



SURFACE TRANSPORTATION BOARD

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SURFACE TRANSPORTATION BOARD PROPOSES RULES TO REFORM AND IMPROVE ITS RATE REVIEW PROCEDURES AND MAKE THEM MORE ACCESSIBLE

The Surface Transportation Board today is proposing new rules as part of its effort to make its rate review procedures more accessible, efficient, and transparent, including for small customers. Building on the work of the agency’s Rate Reform Task Force (RRTF), the Board is proposing rules to establish a new rate review option for smaller cases, and provide a streamlined market dominance process that could be used in any rate review proceeding.

After holding informal meetings throughout the country in 2018, the RRTF issued its recommendations in a report released in April 2019. The RRTF recommended both administrative and legislative proposals to reduce the cost and complexity of rate cases, particularly for smaller cases. The RRTF recommended a “final offer” procedure for smaller rate cases, which would draw upon versions of final offer processes recommended by the U.S. Department of Agriculture and the Transportation Research Board. The RRTF also recommended a streamlined market dominance approach that would use prima facie criteria to reduce the cost and time of the market dominance inquiry.

Final Offer Rate Review

The Board’s proposed rule would establish a new rate review option for smaller cases, the Final Offer Rate Review (FORR), that utilizes procedural limitations to constrain the cost and complexity of a rate case. The proposed rule would include principle-based, non-prescriptive criteria to allow for innovation with respect to rate review methodologies. To decide a case brought under FORR, the Board would select either the complainant’s or the defendant’s final offer, subject to an expedited procedural schedule that adheres to firm deadlines and results in a Board decision 135 days from the filing of a complaint.

The FORR procedure is designed to bring economy to the rate review process and provide complainants with smaller cases, who otherwise have been deterred from challenging a rate due to the cost of bringing a case under the Board’s existing rate reasonableness methodologies, with a more accessible option. The proposed relief for cases brought under FORR would be subject to a two-year limit on rate prescriptions (unless the parties agree

otherwise) with a proposed cap of \$4 million. The cap is consistent with the potential relief afforded under the Board's existing methodology for smaller cases (known as Three-Benchmark).

Market Dominance Streamlined Approach

The Board's proposed streamlined market dominance approach is designed to reduce the burden on rate case parties by establishing that a complainant can make a prima facie showing of market dominance when the complainant has demonstrated that:

- The movement has a revenue-to-variable cost ratio of 180% or greater;
- The movement would exceed 500 highway miles between origin and destination;
- There is no intramodal competition from other railroads;
- There is no barge competition;
- The complainant has used trucks for 10% or fewer of its movements subject to the rate at issue over a five-year period; and
- The complainant has no practical build-out alternative due to physical, regulatory, financial, or other issues (or combination of issues).

The Board's proposed streamlined market dominance approach would be available to complainants under any of the Board's rate review methodologies. Complainants who cannot make the showing under these six factors would need to establish market dominance in a non-streamlined presentation. Under either approach, defendant railroads would continue to have the opportunity to rebut a complainant's evidence.

Comments on both the Final Offer Rate Review and the Market Dominance Streamlined Approach are due by November 12, 2019, and replies are due by January 10, 2020.

The Board's decision in Final Offer Rate Review, EP 755, may be viewed and downloaded [here](#). The Board's decision in Market Dominance Streamlined Approach, EP 756, may be viewed and downloaded [here](#).

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