

Voting Conference Statement

Good morning Chairman Nober, Vice-Chairman Burkes, and Commissioner Morgan.

This case is a notice of proposed rulemaking entitled RAILROAD CONSOLIDATION PROCEDURES—EXEMPTION FOR TEMPORARY TRACKAGE RIGHTS, STB Ex Parte No. 282 (Sub-No. 20).

A rail carrier may acquire trackage rights over the line of another rail carrier only if it receives the authorization of the Board. Parties often acquire this authority by filing a notice to invoke a class exemption contained in the Board's rules. Those trackage rights extend indefinitely. Any carrier seeking to terminate those rights must file an application or petition for authority to discontinue operations.

In recent years, carriers have sought trackage rights authority that expires after a finite period of time. These requests for trackage rights of limited duration have involved carriers whose own tracks are under repair, who have a need to store rail cars or make provision for local service, who are undergoing line relocation and rehabilitation projects, or who conduct freight, intercity passenger, and commuter operations. Parties have sought these limited grants of authority by filing individual petitions for exemption. The Board has granted these requests on a case-by-case basis. Given the Board's experience in these individual cases, we believe that

both rail carriers and the public would benefit from, and the draft decision before you proposes, a rule that expressly provides a class exemption for authorization of temporary trackage rights.

By statute, the Board must exempt a transaction from the full regulatory process when it finds that its regulation is not necessary to carry out the Rail Transportation Policy, and either the transaction is of limited scope or regulation is not necessary to prevent an abuse of market power.

Individual approval of temporary trackage rights proposals does not appear to be necessary to carry out the goals of the Rail Transportation Policy. Rather, we believe that exempting such proposals as a class would promote the Rail Transportation Policy by eliminating unnecessary pleadings, by facilitating the process of line repair and maintenance, and by promoting coordination between rail carriers. A class exemption for temporary trackage rights transactions would also reduce the regulatory uncertainty of the parties, facilitate the parties' ability to reach agreement on temporary trackage rights, reduce the filing fees required of carriers seeking such rights, and encourage more overall use of trackage rights.

A rule exempting temporary trackage rights proposals also appears to be of limited scope because the Board is limiting the class of exempted transactions. These trackage rights will be limited in duration, and the requirement of a written agreement will ensure that the temporary trackage rights agreement will be available.

In addition, we believe that regulation of this class of temporary trackage rights is not

necessary to protect shippers from the abuse of market power. Providing temporary trackage rights would not reduce competition, and temporary trackage rights proposals that add no service on the line, such as those involving overhead traffic, merely maintain the status quo among carriers and shippers on the line.

In implementing this rule, standard labor conditions would be imposed on any carrier using this class exemption, and carriers using the exemption could discontinue service at the end of the authorization period without the need to obtain a certificate or an exemption from the Board.

We would be happy to address any questions you might have.

Thank you.