

Surface Transportation Board Adopts New Rules To Expedite Resolution of Rail-Rate Challenges Under Agency's Stand-Alone Cost Methodology

Surface Transportation Board Chairman (Board) Roger Nober today announced new procedures to expedite the resolution of major railroad rate disputes considered under the Board's Stand-Alone Cost (SAC) methodology.

The new rules adopted today in the case entitled *Procedures to Expedite Resolution of Rail Rate Challenges To Be Considered Under the Stand-Alone Cost Methodology*, Ex Parte No. 638, establish (1) mandatory, non-binding, post-complaint mediation--under the Board's auspices--between a complaining shipper and the defendant railroad; (2) expedited processes for resolving discovery disputes using Board staff; (3) technical conferences to resolve certain factual disputes between the parties using the expertise of Board staff; and (4) that parties must prepare and submit versions of their filings suitable for review by the public as well as by their opponents.

Lauding today's rulemaking as the culmination of the mutual efforts of shippers, railroads, the U.S. Department of Transportation, and other parties in a process begun last year, Chairman Nober said,

"These new rules are a major step toward expediting these major rate cases. We have looked at the entire process of bringing and resolving a rate case, and have made changes to almost every step of the process with the goal of resolving cases brought before the Board better, faster and cheaper.

"I thank all parties for the interest and contributions leading toward their crafting these rules. The new rules issued today are the product of a cooperative process, begun in September 2002, wherein the Board identified possible ways to expedite our handling of rate cases and asked members of the industry and the public for comments and suggestions toward that end.

"We received thoughtful comment and the benefit of innovative proposals toward expeditious rate-case handling from a wide variety of the Board's stakeholders through written comments and oral presentations made to us during a February public hearing held on this issue. Today's rulemaking decision adopts parts of the agency's original proposals as modified to reflect those public comments and the hearing testimony submitted to the Board, and represents a model for future decisionmaking."

Commissioner Linda J. Morgan, who filed a comment on today's decision, said,

"Our decision today represents another important milestone in this agency's ongoing efforts to find ways to further streamline and expedite the resolution of matters brought before it. We are moving now on mediation and ways to facilitate discovery in major rail rate cases, and we are seeking comment on other proposals made by the parties to ensure that the Board's efforts in this area continue. Good government is government that never stops looking for ways to improve upon itself, and this decision is the result of yet another significant Board initiative to that end."

A fact sheet on today's decision in Ex Parte No. 638 is attached. A printed copy of today's decision is available for a fee by contacting **D~ 2 D~ Legal Copy Service, Suite 405, 1925 K Street, N.W., Washington, DC 20006, telephone (202) 293-7776**, or via da2dalegal@earthlink.net. The decision also is available for viewing and downloading via the Board's website at <http://www.stb.dot.gov>.

ATTACHMENT

Fact Sheet On

Procedures To Expedite Resolution of Rail Rate Challenges To Be Considered Under the Stand-Alone Cost Methodology, Ex Parte 638

Adopting Mandatory Mediation

The new rules require that a party challenging the reasonableness of a rail rate before the Board must participate in non-binding, confidential mediation with the defendant railroad under the direction of a mediator appointed by the Board.

The rules provide that, upon the filing of such a challenge with the Board, the agency will promptly assign a mediator to work, over a 60-day period, with the party challenging the rate and the defendant railroad to reach a full or partial settlement of the rate dispute. The rule further provides that, if parties reach an impasse before the end of that 60-day period, the mediator may terminate mediation. The parties must include in their mediation teams at least one "principal" who has the authority to make a binding settlement on the party's behalf, and who would attend any session at which the mediator requests the principal's attendance.

Addressing Discovery-Related Delays

The new rules require that, at an early stage of discovery, parties jointly schedule a conference--along with Board staff--to identify and resolve issues that may be involved in discovery, and how discovery may be moved forward expeditiously. The rules also provide for Board staff promptly to convene a conference with the parties after a motion to compel has been filed. If pertinent issues are not resolved voluntarily at the conference, the Board's Secretary would then issue a summary ruling on the dispute, which would be appealable to the entire Board.

Streamlining Resolution of Evidentiary Disputes

The new rules provide for parties to schedule, and the Board's staff to convene before any evidence is filed, a technical conference to narrow disputes over the service characteristics that are to be used in computing the railroad's variable costs of providing the service to which the challenged rate applies.

Requiring "Sunshine" Filings

The Board announced that parties must adhere to existing Board rules by filing a non-confidential version of their submissions that can be made available to the general public. Additionally, each party to a SAC case is required to make available a version of its submissions that the opposing party--not just the opposing party's outside lawyers and consultants--may review without revealing confidential information that its staff should not see.