



Surface Transportation Board
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Meeting under Section 5, STB Reauthorization Act

March 23, 2016

Present: Chairman Elliott
Vice Chairman Miller
Commissioner Begeman
General Counsel Craig Keats
Chris Diamond (Chairman Elliott's Office); Brian O'Boyle (Vice Chairman Miller's Office); James Boles (Commissioner Begeman's Office); Jessica Caine (Office of Proceedings); Erik Light (Office of the General Counsel)

Topic: Arbitration Under Section 13, STB Reauthorization Act (49 U.S.C. 11708)

Summary of the Matters Discussed, Prepared by General Counsel Craig Keats

Chairman Elliott proposed this meeting to discuss an anticipated rulemaking regarding the provisions of new § 13 of the STB Reauthorization Act, 49 U.S.C. § 11708. Under § 11708, the Board is required to issue regulations to establish a voluntary and binding arbitration process to resolve rail rate and practice complaints subject to the Board's jurisdiction. The Members and staff discussed the following matters:

- The roster of arbitrators.
 - Section 11708 standards;
 - Possible ways to ensure that the Board can get a roster of arbitrators that are qualified and palatable to parties seeking arbitration;
 - Whether to put arbitrator standards in proposed rules or establish them by practice;
 - American Arbitration Association processes.

- Balance between stringent qualification requirements and the need for an adequately sized pool.

- Size of the roster, culling process.
 - Ensuring a roster sufficiently large to cover all arbitrations;
 - Culling process for particular cases;
 - Size of past arbitration rosters at the Board and the ICC;
 - Process at National Mediation Board.

- How to make arbitration more attractive in general.
 - Possibility of informal meetings prior to rulemaking;
 - Possibility of oral hearing or ex parte meetings after notice of proposed rulemaking;
 - Timing of any such outreach, given the statutory deadline for the rulemaking;
 - Board's prior experience with opt-in, opt-out arbitration/mediation rules.

- Possible ways to handle market dominance in rate case arbitrations so that it will not be an impediment to agreement to arbitrate.