

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Docket No. EP -782

ENTERED
Office of Chief Counsel
May 29, 2026
Part of
Public Record

PETITION FOR RULEMAKING- AMENDMENTS TO
REGULATIONS GOVERNING *EX PARTE* COMMUNICATIONS

RAIL UNION COMMENTS

The Brotherhood of Locomotive Engineers and Trainmen, Brotherhood of Maintenance of Way Employees Division/IBT; Brotherhood of Railroad Signalmen; International Brotherhood of Boilermakers; International Association of Machinists and Aerospace Workers District #19; International Association of Sheet Metal, Air, Rail and Transportation Workers Mechanical Division; National Conference of Firemen and Oilers, 32BJ/SEIU; and Transportation Communications Union (“Unions”) submit these Comments in response to the Board’s April 14, 2026 solicitation of comments in response to the Petition for Rulemaking filed by the Association of American Railroads (“AAR”) in which AAR seeks loosening of the Board’s rules regarding *ex parte* communications.

INTERESTS OF THE UNIONS

The Unions represent employees of all of the major rail carriers including all of the Class I rail carriers. These unions collectively represent Locomotive Engineers and Trainmen; Maintenance of Way (track, right of way, bridge and structures) workers; Signalmen; rail shop Boilermakers, Machinists, Sheet Metal Workers, Laborers, Fuelers and Hostlers, and Carmen; and Clerical workers. These unions regularly participate in STB proceedings of the type for

which AAR seeks increased allowance for *ex parte* communications.

THE POSITION OF THE UNIONS

The Unions submit that the fundamental principle ought to be that *ex parte* communications are generally prohibited, discouraged, and strictly limited when allowed. Confidence in Board decisions is undermined when stakeholders believe that non-public communications involving interested parties, particularly parties seeking approvals, exemptions or changes in rules and procedures engage in *ex parte* communications with the Board. While AAR characterizes certain of its requests as concerning technical and procedural issues, and inquiries as to status and Board handling of pending matters; the lines between such issues and inquiries and communications about the merits of pending matters is not always clear; and discussions that may start out as addressing as technical, procedural and compliance issues, and inquiries as to status and Board handling may lapse into conversations about the substance of those matters. A proponent of permitting *ex parte* communications or loosening of rules regarding *ex parte* communications should therefore bear a burden of demonstrating a need for, or value of, permitting otherwise prohibited communications. AAR's petition, does not carry such a burden.

AAR has offered only summary and conclusory assertions in support of its proposals. The petition is remarkably light on justifications and mostly offers descriptions of how the changes AAR seeks might be implemented. Tellingly, AAR has not provided any specific examples where current rules have caused problems or inefficiencies, or where the Agency and public would have gained by loosening the general rule against *ex parte* communications. AAR has offered no instances of situations where *ex parte*

communications were prohibited, but effective, efficient and fair handling of rulemakings or adjudications before the Board were impeded by the current rules. In the absence of demonstration of actual problems, there is no reason for the Board to grant AAR's requests.

To the extent that the Board may consider certain of AAR's proposals, any *ex parte* communications that are allowed by the Board must be subject to the disclosure requirements of 49 C.F.R 1102.2(g)(4). Given the potential for abuse, potential for loss of confidence in the Board's objectivity and impartiality, and the difficulty of drawing lines between *ex parte* communications that the Board would permit versus those it would prohibit, the Board should require public disclosure of all *ex parte* communications that it may allow.

The Board should reject the request to allow *ex parte* communications in transactions that involve Class I railroads. The Board's Notice indicates that the Board is not inclined to authorize the requested change; the Unions support the Board's inclination in that regard. The carriers have failed to provide the Board with any explanation as to how the process of consideration of such transactions, effective assessment of such transactions or the public interest in fair and impartial evaluation of transactions involving Class I railroads would be advanced by allowing *ex parte* communications in such proceedings. Proceedings concerning transactions involving Class I railroads often involve whole regions of the United States and even the entire Country; hundreds if not thousands of parties participate in such proceedings, affected stakeholders include rail workers, shippers, other railroads, communities, state and local governments, non-shipper businesses, and others – those stakeholders vary widely in size and experience with STB proceedings.

Many stakeholders may be new to STB proceedings. Moreover, the complexity in participating in major transaction proceedings as they are now handled, with all documents electronically filed, access to documents requiring use of Big Law firm proprietary software, with supporting documents submitted in the form of spreadsheets, militates against enhancing possible perceptions that there are two or more levels of participation in such proceedings. Given the high level of public interest in transactions involving Class I railroads, the substantial potential gains and losses of interested parties in Class I transactions, the voluminous public records produced in such proceedings, the complexity and detailed nature of issues raised in such transactions, and the heightened interest in such proceedings, public confidence in Board decisionmaking in transactions involving Class I railroads should be as free as possible from taint due to perceived favoritism for, or influence of, the applicants. The Board should therefore reject AAR's request for increased *ex parte* communications in such proceedings.

The Unions recognize that the Board has indicated that it feels it need not address AAR's request to explicitly permit *ex parte* communications in what AAR describes as "uncontested proceedings", because the Board does not view communications in such cases as *ex parte* because there are no parties other than the petitioner or exemption seeker. The Unions agree that the Board should not explicitly permit *ex parte* communications in such proceedings, but not for the reason cited by the Board. The Unions note that such proceedings sometimes become contested and whether they will become contested is not known when the proceedings are initiated. The process for acquisition of authority to engage in a transaction or STB regulated activity through notices of exemption or petitions

for exemption is already compromised by the absence of adversarial engagement regarding the substance of the petitions or notices. Indeed, the Board has developed precedent through what are, in essence, self-serving proceedings, where unchallenged facts and arguments are presented, when potentially adverse parties are not even aware of the pendency of a proceeding. *See e.g.* later decisions under the Board's *State of Maine* doctrine *State of Maine-Acq. and Op. Exemption*, 8 ICC 2d 835 (1991) where standards were set in multiple proceedings without any presentation or consideration of opposing points of view, and those unopposed exemptions were later cited by the Board as actual precedent (*see e.g. Brotherhood of Railroad Signalmen et al v. United States and Surface Transportation Board*, D.C. Cir 10-1138). Often a party adverse to a notice of exemption or petition for exemption becomes aware of a proceeding only well after the initial filing. If there have been *ex parte* communications with the Board before an adverse party intervenes, the perception of STB fairness and regularity could suffer. Given the nature of notices of exemption and petitions for exemption, concerns about fairness and objectivity militate against allowing *ex parte* communications that would otherwise be impermissible in a contested proceeding.

The Board should also reject the request to allow *ex parte* communications with Board staff regarding substantive matters even if subject to the disclosure requirements of 49 C.F.R 1102.2(g)(4). AAR has not articulated a need for or benefit from such communications; and given the ability of staff to attend *ex parte* meetings with members of the Board, it is unclear why the proposed change would be necessary or helpful.

The Unions also oppose extending the cut-off date for *ex parte* communications in

informal rulemakings as unnecessary and unsupported. But the Unions do not oppose a change whereby the Board may extend the cut-off date on a case-by-case basis.

Finally, the Unions do not oppose allowing for *ex parte* communications as to procedural and technical issues and confirmations of compliance with Board orders, so long as the Board limits such communications to ones that are actually about technical, procedural, or compliance questions, and so long as the disclosure rules of 49 C.F.R. 1102.2(g)(4) are applied. If *ex parte* communications are truly about procedural, technical or compliance questions it is not unreasonable for such communications to be held *ex parte*. However, the record in the proceeding should reflect that the communication occurred and the subject of the communication. Such a requirement will not be burdensome; if a communication is simply about a procedural, technical or compliance matter, a disclosure could simply document that there was such a communication (*e.g.* – an inquiry was made with the Office of Chief Counsel regarding how to file an oversize document, or the Office of Chief Counsel was advised that a document was re-served to all parties to a proceeding). As a result of the disclosure, other parties will be informed of the communication, and that it was truly innocuous/non-substantive. And requiring disclosure will also help ensure that the communications are indeed limited to procedural, technical and compliance matters.

Respectfully submitted,

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