

ORIGINAL

Before the
SURFACE TRANSPORTATION BOARD

Ex Parte No. 733

EXPEDITING RATE CASES

REPLY COMMENTS



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Preliminary Statement

Samuel J. Nasca, 1/for and on behalf of SMART/
Transportation Division, New York State Legislative
Board (SMART/TD-NY), submits these reply comments in
response to the Surface Transportation Board (STB or
Board) Notice of Proposed Rulemaking (NPRM) dated March
30, 2017 (served March 31).

SMART/TD on August 1, 2016 responded to the Advance
Notice of Proposed Rulemaking (ANPR), served
June 15, 2016, but withheld further initial comments
regarding the NPRM served March 31, 2017, awaiting the
further direct initial comments of the other parties.

1/New York State Legislative Director for SMART/TD, with
offices at 35 Fuller Road, Albany, NY 12205.

Interest of SMART/TD-NY

The initial comments of SMART/TD-NY in this proceeding, filed August 1, 2016, presented interest and involvement of this employee organization in STB and predecessor ICC rate cases, and its concern for the proper administration of section 11(c) of Surface Transportation Board Reauthorization Act of 2015, P.L. 114-110, wherein section 11(c) is directed to assessing procedures available to parties in court proceedings, and potential application of any such court procedures to rate cases. (STB ID 241222, at 2-3).

Initial Comments

There have been four documents responsive to the latest round of comments directed to the proposed rules advanced in this proceeding. Association of American Railroads (AAR, 10pp.); Joint Comments of American Chemistry Council, et al. (ACC, 8pp.); Western Coal Traffic League, et al. (WCTL, 41pp.); and National Grain and Feed Association (NGFA, 7pp.).

Contrary to the directive of section 11(c) in P.L. 114-110, the above four responses to the NPRM, filed on or about May 15, 2017, show slight concern for specific

court procedures. An examination of the four documents (66 pages) indicates no reference to any court rule by either AAR or ACC. The WCTL filing makes a single passing footnote mention of FRCivP §16 (WCTL, 9n.4), and NGFA cites FRCiv.P §37 at one place. (NGFA 5).

It is clear that section 11(c) of P.L. 114-110 has little specific application or guideline for revision to STB rate proceedings, as recognized in the SMART/TD-NY August 1, 2016 comments to the ANPR.

For many decades the former ICC handled many rate cases at least as complicated as the current major rates disputes, although with some differing issues over the years. The process was administered by the ICC's extensive and experienced corps of Administrative Law Judge individuals. Procedures were usually worked out in pre-hearing conferences, with rules established for each individual situation. Agency personnel in the established bureaus generally were not competent or experienced to handle pre-hearing controversies.

It is suggested the STB would be well-advised to review the SMART/TD-NY comments responsive to the ANPR.

CONCLUSION

The STB is urged to carefully reconsider its proposed rules for rate cases, particularly in light of experience by its own personnel and with annual and periodic carrier reporting, over many decades, as outlined in SMART/TD-NY comments filed earlier in this and in other proceedings.

Respectfully submitted,



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June 14, 2017

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