

SURFACE TRANSPORTATION BOARD**Ex Parte 711 (Sub. No. 1)****Summary of Ex Parte Meeting Between Norfolk Southern Railway Company
and Surface Transportation Board Member Patrick Fuchs****March 30, 2022**ENTERED
Office of Proceedings
April 4, 2022
Part of
Public RecordNorfolk Southern Attendees:

- Tom Zoeller, General Counsel Markets and Regulation
- Randy Noe, AVP Regulatory Affairs
- Raymond Atkins, Counsel to Norfolk Southern

STB Attendees:

- Patrick Fuchs, Board Member
- Lisa Novins, Attorney Advisor

Meeting Summary:

Norfolk Southern thanked Member Fuchs for the opportunity to further discuss the Board's 2016 reciprocal switching proposal. Member Fuchs thanked Norfolk Southern for meeting with him and for offering its perspective.

Norfolk Southern began by stating that the testimony offered in the recent public hearing on Ex Parte 711 (Sub. No. 1) reinforced its view that the 2016 proposal presents significant operational and investment risk, and noted that the hearing included discussion about the merits of ways to limit its scope. Norfolk Southern indicated that Member Fuchs's line of questioning during the hearing around possible modifications to the Board's existing regulations at 49 CFR § 1147.1 highlighted an interesting and potentially fruitful way to address shipper concerns about service inadequacies that avoided many of Norfolk Southern's concerns with the 2016 proposal.

The meeting participants discussed several of the provisions in § 1147.1 and explored whether those provisions give parties sufficient certainty to seek relief from the Board. The discussion primarily focused on four areas – the duration of relief available, the standards for demonstrating inadequate service; the standards for demonstrating that inadequate service has persisted for a sufficient period of time, and the timing of securing a commitment from an alternate carrier.

With regard to the duration of relief, the discussion focused on whether the existing standard in § 1147.1 was too vague to give a shipper confidence that the duration of relief would be worth the effort and expense of seeking it from the Board. The meeting participants also discussed whether an alternate carrier likewise would desire a more certain duration, recognizing that it would need to engage in planning and a commitment of resources to provide the alternate service.

The discussion of inadequate service focused on the standard against which service should be measured to satisfy the "substantial, measurable deterioration" provision in the regulation.

The meeting participants discussed whether the regulation's standard for inadequate service existing over "an identified period of time" provides meaningful guidance.

Finally, the discussion of alternate carriers focused on whether it would be appropriate for a shipper to petition the Board for relief while discussions with an alternate carrier were underway but before the alternate carrier made a commitment to provide the service.

Member Fuchs encouraged Norfolk Southern to continue thinking about whether and how the existing regulation could be improved. Norfolk Southern committed to doing so and thanked Member Fuchs for his time.