

SURFACE TRANSPORTATION BOARD**Ex Parte 711 (Sub-No. 2)****Summary of Ex Parte Meeting Between Norfolk Southern Railway Company****and Surface Transportation Board Member Patrick Fuchs****November 14, 2023**Norfolk Southern Attendees:

- Tom Zoeller, General Counsel Markets and Regulation
- Hanna Chouest, Deputy General Counsel
- 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 began the meeting by thanking Member Fuchs and staff for meeting and the Board for creating a quantitative, metrics-based standard that is superior to the approach in EP 711 (Sub-No. 1). Norfolk Southern then presented some suggestions for how the approach in EP 711 (Sub-No. 2) could be improved, recognizing the natural tension between ease of administration and accuracy.

First, Norfolk Southern focused on how to build flexibility into the metrics. The discussion turned to how the proposed rule accepts trade-offs between predictability and speed on the one hand and accounting for complexity on the other. Norfolk Southern raised the need for building additional flexibility without disrupting these trade-offs, and suggested including enhancing the list of affirmative defenses.

Second, Norfolk Southern raised suggestions for improving the metrics themselves by decreasing the likelihood of false positives. This part of the discussion focused on the time interval for the relevant metrics, statistical testing to account for variability and to ensure significance, and benchmarking against competitive traffic to test for actual market failure.

Finally, the meeting participants discussed the proposed rule's application to contract traffic and its alignment with the Staggers Act.

Norfolk Southern thanked Member Fuchs and staff for the opportunity to discuss the Board's proposal in EP 711 (Sub-No. 2), and Member Fuchs thanked the Norfolk Southern team for meeting with him and offering its perspective.