

SURFACE TRANSPORTATION BOARD**Ex Parte 711 (Sub-No. 2)****Summary of Ex Parte Meeting Between Association of American Railroads and****Surface Transportation Board Member Michelle Shultz****November 15, 2023**AAR Attendees:

- Fred Miller, Associate General Counsel and Government Affairs Liaison
- Ben Horwich, Counsel to Association of American Railroads
- Carson Scott, Counsel to Association of American Railroads

STB Attendees:

- Hon. Michelle Shultz, Member
- Jessica Caine, Attorney Advisor

Summary:

AAR expressed its support for the Board's focus in the Proposed Rule on remedying inadequate service, and for an approach of identifying specific problems and choosing the appropriate solutions to those problems. AAR explained that one of the primary objectives of its comments is to improve the fit between identified problems and proposed solutions. Specifically, AAR noted that it supports switching as a solution where: (1) a railroad consistently does not provide adequate service under the circumstances and cannot cure its failure; (2) a safe practicable alternative service will remedy the service inadequacy; and (3) the shipper has a compelling reason for that alternative service, judged in the context of the interests of and effects on other stakeholders.

AAR expressed its view that the Board ought to consider the circumstances surrounding a railroad's performance and the proposed remedy before ordering a switch. AAR noted that although the metrics identified in the Proposed Rule are important, there are other factors that the Board also ought to consider to ensure it can make the findings required by statute. In particular, AAR expressed that the Proposed Rule ought to allow for the incumbent railroad to provide factual context for a metrics failure and for the Board to evaluate whether alternative service will address the identified service inadequacy. AAR and Member Schultz discussed the ways in which the Board could most effectively obtain the information necessary to make the findings required by statute, particularly as it concerns the alternative service. AAR observed that certain information may be best provided by the alternate carrier. AAR explained its view that the alternate carrier ought to be involved in proceedings so that its relevant information is available to the Board.

AAR and Member Shultz discussed the extent to which the Proposed Rule could promote resolution outside of formal proceedings. AAR expressed its view that resolution of service issues without resort to adjudication is preferable. AAR also expressed its view that allowing for a period during which the incumbent railroad could cure any inadequacy would facilitate the mutually beneficial resolution of service issues.

AAR expressed its view that where the metrics levels are set will impact what cases are brought before the Board and the nature and circumstances of those cases. AAR and Member Schultz discussed the possibility that the Board may revisit the metrics levels in the future after the rule has been operational. AAR stressed the importance, in this context, of the Board gathering a complete record in each case in order to develop an understanding of the informational value of the metrics and to be best positioned to adjust them if necessary.