

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

ELIMINATING REGULATORY
BARRIERS TO COMPETITION:
REVIEW OF PART 1144

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Docket No. EP 788

310957

**COMMENTS OF THE
WESTERN COAL TRAFFIC LEAGUE**

ENTERED
Office of Chief Counsel
March 10, 2026
Part of
Public Record

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Dated: March 10, 2026

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The Western Coal Traffic League (“WCTL”) submits these Comments in response to the Surface Transportation Board’s (“STB” or “Board”) Notice of Proposed Rulemaking (“NPRM”) served in this proceeding on January 7, 2026. WCTL heartily supports the Board’s proposal to repeal part 1144 of its regulations and thereafter to consider prescription requests on a case-by-case basis under the applicable statutory standards. WCTL submits that the Board should leave discovery matters in future access proceedings (and other case-administration details) to case-by-case adjudication.

IDENTITY AND INTEREST

WCTL is a voluntary association whose regular membership consists entirely of shippers of coal mined west of the Mississippi River and transported by rail. WCTL’s members include Ameren Energy Fuels & Services, Arizona Electric Power Cooperative, Inc., Austin Energy (City of Austin, Texas), Central Louisiana Electric Company, CPS Energy, Entergy Services, Inc., Evergy, Inc., Lower Colorado River Authority, MidAmerican Energy Company, Minnesota Power, Nebraska Public Power District, and Western Fuels Association, Inc.

WCTL was founded to advocate the interests of consumers of western coal. Beginning in 1977, WCTL has advanced and protected the interests of western coal consumers before the United States Congress, the United States Departments of Commerce, Interior, Justice and Transportation; federal and state courts; and numerous federal and state regulatory departments and agencies including the U.S. Surface Transportation Board, the Bureau of Land Management and the Federal Trade Commission.

WCTL has appeared in many proceedings before the Board involving rail competition and rail service issues.

COMMENTS

A. WCTL Fully Supports the Board's Proposal to Repeal Part 1144

WCTL fully and enthusiastically supports the Board's proposal to repeal 49 C.F.R. part 1144 and its anticompetitive conduct standard. 49 C.F.R. § 1144.5 (allowing relief if "necessary to remedy or prevent an act that is contrary to the competition policies of 49 U.S.C. 10101a or is otherwise anticompetitive" and if "the complaining shipper has used or would use [the new route, rate, or switching] to meet a significant portion of its current or future railroad transportation needs between the origin and destination"). Forty years of experience have shown that it was unnecessary and inappropriate to narrow the agency's discretion relative to the language of Title 49.

WCTL actively participated in the 1985 proceedings before the ICC, and strongly opposed the ICC's across-the-board adoption of the anti-competitive conduct standard for

application in cases involving bulk commodities. WCTL argued at the time that adoption of the proposed rules including this standard would likely be the death-knell for any meaningful form of reciprocal switching relief for coal shippers. *See* Joint Comments of the Western Coal Traffic League and the Consumer Owned Power Coalition, *Intramodal Rail Competition*, EP 445 (Sub-No. 1), at 4 (filed May 31, 1985) (proposals under consideration do not “offer[] meaningful relief to captive shippers”). WCTL’s objections fell on deaf ears, and the ICC proceeded to adopt its new rules requiring shippers to prove anticompetitive conduct before any relief could be ordered.

Looking back at the Commission’s 1985 decision adopting part 1144, it is striking to note the degree of confidence that existed as to the benefit that the regulations would provide to shippers. For example, the majority decision itself observed that “[t]he rules we are adopting here respond to many of the shipper and small carrier concerns and should facilitate efforts to ensure reasonable competitive access where needed” and that “[t]his in turn will give shippers more routing alternatives, while promoting competition among railroads.” *Intramodal Rail Competition*, 1 I.C.C.2d 822, 837 (1985).

Commissioner Strenio’s concurring opinion went even further, offering that the Commission’s decision amounted to a “giant stride forward in responding to complaints the Commission has received about a lack of access encountered by some shippers and carriers” and suggesting that the Commission had “substantially liberalized the conditions under which we will grant competitive access to shippers and competing carriers when requested.” *Intramodal Rail Competition*, 1 I.C.C.2d at 838 (Commissioner Strenio, concurring).

Consistent with the Board’s observations in the NPRM, this initial optimism proved to be unwarranted. NPRM at 12 (noting that “there remains a ‘dearth of cases’ under part 1144 [that] continues to suggest (strongly) that the anticompetitive conduct requirement within part 1144 effectively operates as a bar to relief”); *id.* at 9-10 (recounting NITL’s observation that the part 1144 regulations have never been successfully applied to promote or restore rail competition in the forty years since their adoption and given the “daunting precedent” under the anticompetitive conduct standard, no requests for such an arrangement have been file in the last thirty years).

In its NPRM, the Board identifies several separate bases for its proposal to repeal part 1144, each of which constitutes a compelling justification. Those separate bases include: (1) the fact that the rule is no longer acceptable to a broad section of the marketplace; (2) the fact that it makes little sense to continue to hold shippers to NITL’s 1985 agreement with AAR that was rendered largely obsolete by subsequent statutory and regulatory changes; (3) the fact that removing part 1144 eliminates an unnecessarily high barrier to statutory relief; (4) the fact that the rail industry has changed substantially and that the problems of inefficient routes and insolvent railroads “are of far less concern today.” *Id.* at 11-12. WCTL agrees with each of these independent justifications.

The Board is entirely correct in ascertaining that it makes little sense to preserve a narrowing of statutory authority where the initial optimism for the regulations proved to be unjustified, where the railroad industry has shed any semblance of financial difficulty (and instead routinely displays operating ratios that likely would have been unimaginable for the industry in 1985), and where underlying statutory language itself has changed in a

manner that further removes any need for the regulations. WCTL respectfully submits that the 1985 regulations have stifled competition in a manner that has been inconsistent with statutory intent. WCTL fully supports the Board's determination that the time has come to end this situation and to open up the possibility of greater competition between rail carriers.¹

B. The Board Should Leave Discovery and Other Case-Administration Matters to Case-by-Case Adjudication

In its NPRM, the Board comments on future agency litigation under the Administrative Procedure Act and indicates that “[c]ommenters may propose suggestions for the conduct of these proceedings, including expectations regarding case initiation, discovery, evidence, and burden of proof, which the Board would consider incorporating into a non-binding guidance document.” *Id.* at 13 n.22; *but see id.* (explaining that the Board “anticipates that the standards for the granting of a switching or through route prescription would be further developed through case-by-case adjudication”).

WCTL believes that the Board should refrain from attempting, in advance, to define the discovery principles or other case-administration guidelines for litigation under 49 U.S.C. §§ 10705 and 11102. The Board's existing case-processing regulations are sufficiently robust to allow for the initiation of a proceeding of this nature, and the Board's regulations likewise are sufficient to govern discovery.

¹ WCTL does not support the alternative proposal to repeal part 1144 only in part. NPRM at 14-15.

The forty-year history of part 1144 itself shows that – despite what may have seemed to be legitimate grounds for agency optimism in 1985 – an effort to anticipate and plan for all of the details that can arise in administrative litigation certainly can do more harm than good. It is far more likely that case-processing decisions made in response to the actual facts and circumstances of actual litigation will better conform to the parties’ needs in any given case.

CONCLUSION

WCTL respectfully requests that the Board finalize and implement its proposed elimination of part 1144 and that the Board refrain from attempting to address in advance the various procedural issues of future litigation under 49 U.S.C. §§ 10705 and 11102 through a non-binding guidance document.

Respectfully submitted,

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