53310 SERVICE DATES – NOVEMBER 12, 2026
OCC

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. NOR 42189

2145 AVOCADO LAND TRUST AND HOME WRECKERS, INC.
v.
FLORIDA EAST COAST RAILWAY, LLC

Decided: November 12, 2026

2145 Avocado Land Trust and Home Wreckers, Inc. (collectively, Complainants), have filed a complaint against Florida East Coast Railway, LLC (FEC), alleging FEC violated its obligations under 49 U.S.C. § 10702. Complainants allege that FEC's alteration of the drainage along its right-of-way has cast recurring floodwaters onto Complainants' property, and they seek an order under 49 U.S.C. § 10704 directing FEC to remediate that practice and an award of damages under 49 U.S.C. § 11704 for the harm the flooding has caused.

On October 2, 2026, FEC filed a motion for clarification and motion for extension, alleging that Complainants' certificate of service is inaccurate and that service of the complaint has not been completed. FEC requests that the Board clarify that the 20-day period for FEC to file its answer under 49 C.F.R. § 1111.5(c) has not started to run. In the alternative, FEC requests that the Board clarify that the answer period began to run on September 24, 2026, when FEC received notice of the complaint, and extend the resulting October 14, 2026, deadline to November 13, 2026. On October 29, 2026, Complainants filed a notice of non-objection to FEC filing its answer to the complaint by November 13.

Under the Board's regulations, a complainant is responsible for serving formal complaints on the defendant. See 49 C.F.R. § 1111.4. Service shall be made by sending a copy of such complaint to the chief legal officer of each defendant by either confirmed facsimile and first-class mail or express overnight courier, and the cover page of each facsimile and the front of each envelope must include the legend "Service of STB Complaint." Id. Service is deemed completed on the date the complaint is served by confirmed facsimile or, if service is made by express overnight courier, on the date the defendant actually receives the complaint. Id. The complaint should be filed with an acknowledgment of service by the persons served or a proof of service stating the date and manner of service, the names of the persons served, and the addresses to which the papers were mailed or delivered, certified by the person who made service. Id. The defendant's answer is due within 20 days after service of the complaint. 49 C.F.R. § 1111.5(c). These complaint-specific requirements differ from the Board's general service rules for other filings, under which service upon a party's attorney or Board practitioner is deemed service upon the party. See 49 C.F.R. § 1104.12(a).

Here, the certificate of service attached to the complaint states that the complaint was served "via US Certified Mail and electronic mail to John Terwilliger [sic], Esq., counsel for Respondent." (Compl. 14.) The certificate does not indicate that the complaint was sent to FEC's chief legal officer, by confirmed facsimile and first-class mail or by express overnight courier, or with the legend required by § 1111.4, and it does not state the address to which the complaint was sent. FEC further states that Mr. Terwilleger, its outside litigation counsel (not its chief legal officer), never received the complaint by email, that the flash drive that was to contain the complaint was missing from the envelope Complainants mailed to him, and that FEC did not learn of the complaint until September 24, 2026. (FEC Mot. 2-3 & Ex. 1.) Complainants' only response to FEC's motion is their notice of non-objection, which does not dispute these statements or otherwise address service of the complaint. On this record, it appears that the complaint has not been served in accordance with § 1111.4, and the time for FEC's answer therefore cannot be determined.

Accordingly, Complainants will be directed to submit a response specifically addressing the service issues under § 1111.4. Complainants may respond either by demonstrating that the complaint was served in accordance with § 1111.4, or by serving the complaint in accordance with § 1111.4 and filing the proof of service that section requires. Complainants' response will be due by November 23, 2026. If Complainants do not timely respond, the complaint may be dismissed in a subsequent Board order.

FEC's motion for clarification will be granted to the extent that FEC will not be required to answer the complaint until Complainants serve the complaint in accordance with § 1111.4 and respond to the Board as directed in this order, and the Board establishes a deadline for FEC's answer. FEC's alternative requests to clarify that the answer period began on September 24, 2026, and to extend the answer deadline to November 13, 2026, therefore will be denied as moot. Given the questions surrounding service, this proceeding will be held in abeyance pending further order of the Board.

It is ordered:

1. Complainants are directed to submit a response specifically addressing the service issues under 49 C.F.R. § 1111.4. Complainants' response is due by November 23, 2026.

2. FEC's motion for clarification is granted to the extent discussed above. FEC's answer to the complaint will be due on a date to be set by further order of the Board. FEC's alternative requests to clarify that the answer period began on September 24, 2026, and to extend the answer deadline to November 13, 2026, are denied as moot.

3. This proceeding is held in abeyance pending further order of the Board.

4. This decision is effective on the date of service.

By the Board, Anika S. Cooper, Chief Counsel, Office of Chief Counsel.