

**SURFACE TRANSPORTATION BOARD****Ex Parte 711 (Sub-No. 2)****Summary of Ex Parte Meeting Between Norfolk Southern Railway Company****and Surface Transportation Board Chairman Marty Oberman****November 8, 2023**Norfolk Southern Attendees:

- Hanna Chouest, Deputy General Counsel
- Randy Noe, AVP Regulatory Affairs
- Raymond Atkins, Counsel to Norfolk Southern

STB Attendees:

- Martin Oberman, Chairman
- Ellen Erichsen, Chief of Staff
- Jetta Sandin, Attorney Advisor

Meeting Summary:

Norfolk Southern began the meeting by thanking Chairman Oberman and staff for meeting and for creating a new proposal in Sub-No. 2 with a conduct-based standard. Norfolk Southern then summarized three major points from its opening comments.

First, Norfolk Southern expressed its view that case-specific evidence is needed to enable the Board to determine whether opening a switch to a petitioner is in the public interest and whether the governmental imposition of that remedy addresses an identified harm. The meeting participants discussed whether falling below a specified service level is presumptively inconsistent with the public interest, and how to balance the desire for an approach that is simple and easy to administer against a more flexible approach that accounts for complexity.

Second, Norfolk Southern highlighted the Verified Statement of Dr. Israel that was attached to its opening comments, which recommended several improvements to the metrics identified by the Board in its proposed rule. The discussion focused in particular on the creation of confidence intervals to account for statistical variability and to ensure that the metrics relied upon in a proceeding are meaningful, and how such an approach would not interfere with desired predictability and speed.

Finally, Norfolk Southern raised the issue of contract traffic, which in its view ought to be outside the scope of the rule. The discussion turned to how the rule would apply to a customer with a contract about to expire and the application of the Staggers Act to such a customer.

Chairman Oberman offered that in the event of a government shutdown extending beyond the date for reply comments, the Board intended to toll the deadline.

Norfolk Southern thanked Chairman Oberman and staff for the opportunity to discuss the Board's proposal in Sub-No. 2, and Chairman Oberman thanked the Norfolk Southern team for meeting with him and offering its perspective.