

BEFORE THE
SURFACE TRANSPORTATION BOARD

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PAYMENT, FILING AND SERVICE PROCEDURES	))))	EP 747
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COMMENTS OF THE WESTERN COAL TRAFFIC LEAGUE

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The Western Coal Traffic League (“WCTL”) submits these comments in response to the Notice of Proposed Rulemaking (“NPRM”) which the Surface Transportation Board (“Board” or “STB”) served in the above-captioned proceeding on August 24, 2018.

SUMMARY

The Board’s NPRM proposes to make long overdue modifications to the Board’s intake and processing procedures for electronic and paper filings, service of such filings, payment options for filing fees, as well as revisions to fees for Board ministerial services such as copying. WCTL supports the Board’s proposed modifications as described herein.

WCTL’s and its members are active in a variety of adjudicatory and rulemaking proceedings before the Board, including most of the major rulemakings in the past 35 years. Where WCTL previously submitted an original and 10 copies of filings that were often 100s of pages in length, thereby tearing through reams of paper, WCTL now uses the Board’s electronic filing system to submit its filings whenever possible. However, in some instances, the Board’s rules prohibit electronic filing – filings in new

proceedings, in particular – and this incongruity in the Board’s rules and procedures is unnecessarily complicated, inefficient and a waste of resources. The Board’s proposed modifications to its filing rules do much to remedy and update the Board’s procedures to reflect modern legal practice at other agencies and courts around the nation.

WCTL also proposes that the Board consider expanding its electronic filing modifications to include options to submit filings and electronic workpapers in excess of 100 MB directly through the Board’s website or a Board-controlled file transfer system. In addition, WCTL is concerned that the Board has not provided details regarding the submission of electronic workpapers under 100 MB, and instead has provided a placeholder in the proposed regulations that simply directs filers to the Board’s website for “[d]etails regarding electronic submissions, including evidence, workpapers, and other pertinent information”¹ WCTL proposes that the Board provide guidance on such filings prior to finalizing any changes in the existing filing rules, especially since the existing rules do not reflect the typical electronic files used today.²

IDENTITY AND INTEREST

WCTL is a voluntary association whose membership is comprised exclusively of organizations that purchase and ship coal from origins west of the Mississippi River. WCTL members collectively consume more than 125 million tons of coal annually that is moved by rail. Its members include investor-owned electric utilities,

¹ NPRM, slip op. at 13.

² See, e.g., 49 C.F.R. § 1104.3(b)(2) requiring submission of workpapers in Lotus - 1-2-3 or Excel 97.

electric cooperatives, state power authorities, municipalities, and a non-profit fuel supply cooperative.

WCTL was formed in 1977 and, since that time, has actively participated in all major proceedings before the Interstate Commerce Commission (“ICC”) and the STB involving the ICC’s, and the STB’s, regulation of western coal transportation rates and service.

BACKGROUND

The origins of this proceeding are found in President Trump’s Executive Order 13777, “Enforcing the Regulatory Reform Agenda” (“EO 13777”), issued on February 24, 2017.³ EO 13777 directed specified non-independent federal agencies⁴ to establish “Regulatory Reform Task Force[s]”⁵ and directed that these task forces “evaluate existing regulations . . . and make recommendations to the agency head regarding their repeal, replacement, or modification, consistent with applicable law.”⁶ Among the items each Regulatory Task Force should identify for revision are regulation that “are outdated, unnecessary, or ineffective”⁷

³ 82 Fed. Reg. at 12285.

⁴ *Id.*; Office of Management and Budget (“OMB”) Memorandum M-17-23 at 2 (“independent regulatory agencies are not subject to EO 13777”), available at <https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/memoranda/2017/M-17-23.pdf>.

⁵ 82 Fed. Reg. at 12285.

⁶ *Id.* at 12286.

⁷ *Id.*

While the Board, an independent agency, was not required to follow EO 13777, it nevertheless opted to “comply with the spirit” of the order.⁸ The Board’s Task Force issued its 90-Day Status Report on May 25, 2017.⁹ The report, *inter alia*, proposed that the Board ought to consider replacing outdated Board filing rules.¹⁰

On June 20, 2017, the Board instituted an ex parte proceeding to take public comments on the Task Force’s efforts and directed that interested parties attend a listening session or file comments. *Regulatory Reform Task Force*, EP 738 (STB served June 20, 2017) (“RRTF Notice”). In its RRTF Notice, the Board stated that “[t]he RRTF’s mission is to identify rules and practices that are burdensome, unnecessary, or outdated, and to recommend how they should be addressed”¹¹

On July 25, 2017, the Board held a listening session. In addition, interested parties, including WCTL, filed comments on the same day. While WCTL’s comments focused primarily on other matters, WCTL noted it was appropriate for the Task force to pursue the modernization of the Board procedural rules including the payment of filing fees and permitting electronic submittal of all filings through the Board’s website.¹²

⁸ RRTF Notice, slip op. at 1.

⁹ “Within 90 days of the date of this order . . . each Regulatory Reform Task Force shall provide a report to the agency head detailing the agency’s progress” 82 Fed. Reg. at 12286.

¹⁰ 90-Day Status Report at 1-2.

¹¹ RRTF Notice, slip op. at 1.

¹² WCTL Comments at 14 (filed July 25, 2017).

Following the listening session and the submission of comments, on November 21, 2017, the Task Force issued an updated status report (“Updated Status Report”). The Task Force recommended that, in 2018, the Board propose rules that “permit payment of filing fees” online; “permit nearly all filings to be made through the Board’s website;” and “eliminate, in most instances, the requirement that paper copies be filed with the Board.”¹³

On August 20, 2018, the Board issued this NPRM. The Board’s proposal makes revisions to “methods of payment, filing procedures, electronic service of Board decisions, and fees for copying, printing, and related services.”¹⁴ The Board further requested comments of interested parties.¹⁵

COMMENTS

WCTL provides its comments for the Board’s consideration.

I. Methods of Payment

The Board’s proposal addresses three areas where it intends to revise its methods of payment: (1) filing fees generally; (2) recordations; and (3) filing fees for water carrier tariffs and contract summaries. WCTL addresses items 1 and 2 below.

a. Filing Fees (Generally)

Currently, remittance of filing fees, including those required to initiate a proceeding with the Board required payment via check, money order, credit card or

¹³ Updated Status Report at 1.

¹⁴ NPRM, slip op. at 2.

¹⁵ NPRM, slip op. at 1.

billing account kept with the Board. The procedures are cumbersome and outdated. Specifically, the Board's current procedures require the filer to make separate arrangements with the Board to make payment. In WCTL's case, a check is issued and submitted, in person, with the attendant filing. Likewise, there is no simple method to submit a credit card payment. Conversely, as the Board itself notes, many other agencies, including the Department of Transportation, the Securities and Exchange Commission, and the Department of Justice accept electronic payments through Pay.gov.

The Board proposes to revise its methods of payment of filing fees by, for the first time, permitting filers to pay applicable fees electronically through Pay.gov, "a website operated by the Department of Treasury and used by many federal agencies."¹⁶ The Board's revised rule will, at last, provide a means of initiating a proceeding at the Board electronically since payment is made electronically at the time of filing.¹⁷

WCTL supports the Board's electronic payment proposal. In particular, WCTL is pleased that the Board's revisions allow for payments of filing fees to initiate a proceeding, as well as other filings requiring a fee. This procedure simplifies the sometimes cumbersome process of making initial paper filings, determining filing fees, and arranging for payment. In addition, WCTL supports the Board's efforts to reduce wasteful transportation, ministerial, and paper costs that filers incur when submitting

¹⁶ NPRM, slip op. at 2.

¹⁷ NPRM, slip op. at 2-3, 5.

filings in person at the Board's offices. Electronic payments is one step in improving the process.

In conjunction with accepting electronic payments, the Board is proposing to eliminate billing accounts and direct credit card payments to the Board.¹⁸ WCTL supports the Board's proposal as the need for billing accounts is minimal and the Board could simply direct credit card payments to Pay.gov, which is faster and easier to use than the Board's manual credit card processing procedure used today.

b. Recordations

The Board's proposal revises the regulations for recordations "to be consistent with the proposed changes" to filing fee payments.¹⁹ Currently, parties can already submit recordations electronically. Here, the Board proposes to move payments, if possible, for recordations to the Pay.gov procedures it proposes for filing fees.

WCTL supports this change and the elimination of billing accounts in these instances. WCTL notes that many recordation filers are not located in the Washington, D.C. area and making payments for such filings is cumbersome – when for local filers. The Board's proposal to allow electronic payments solves this problem.

¹⁸ NPRM, slip op. at 3.

¹⁹ NPRM, slip op. at 3.

II. Filing Procedures

The Board proposes changes to both its e-filing and paper filing requirements. WCTL generally supports the Board's proposal as discussed below with certain caveats.

a. E-Filing

The Board's current regulations allow for e-filing of most pleadings, letters, and other communications. However, the Board has three restrictions on such filings: "(1) initial filings in a proceeding; (2) filings . . . with associated fees; and (3) large filings in excess of 100 megabytes."²⁰ The Board proposes to revise its rules so that "e-filing would be permitted for all pleadings and recordations (100 megabytes or less)."²¹

WCTL supports the Board's proposal. As noted above, the Board's revised rules, would, at long last, permit the initiation of a proceeding via e-filing. WCTL believes the removal of this procedural roadblock will benefit all stakeholders. Specifically, WCTL has initiated many proceedings at the Board, and the process of producing paper filings, copies thereof, checks and hand delivering it all to the Board is burdensome and wasteful. And while a paperless process is not feasible in all instances, WCTL welcomes the Board's revision to its process.

WCTL suggests, however, that the Board's proposal does not go far enough. WCTL urges the Board to revise its systems or establish a secondary system to

²⁰ NRPM, slip op. at 4-5.

²¹ NPRM, slip op. at 5.

accept filings in excess of 100 MB. As the Board is aware, from proceedings such as maximum reasonable rate cases, filings and related electronic workpapers can easily exceed 100 MB in a single file and certainly more in combination. Today, large filings are, by necessity and rule, submitted on hard drive or flash drive to the Board. In addition, the filing party must also submit a paper original and 10 copies of the same filing (not the electronic workpapers) to the Board. The Board's current procedures result in an unfortunate circumstance where the largest and most cumbersome filings are submitted in paper and electronically via hard electronic media and the simpler filings (where a paper copy might be much easier to submit) can use the e-filing process. WCTL submits that the Board is missing an opportunity to improve its processes for the most challenging filings.

The Board indicates that the filing size limits exists due to "limitations in the Board's e-filing program."²² WCTL is not familiar with the technical limitations of the Board's system, but WCTL is willing to meet with Board staff to consider alternatives that it might use to allow for the e-filing of the occasional file that exceeds 100 MB.

b. Paper Filing

The Board's current rules require that most paper filings include an original and 10 copies when submitted.²³ Likewise, the Board's rules require the identification of

²² NPRM, slip op. at 5.

²³ 49 C.F.R. § 1104.3(a).

color copies in the original; submittal on floppy disk or compact disc of filings greater than 20 pages in length; and numbering schemes for such disks.²⁴ The Board is proposing to eliminate the requirement to submit 10 copies and change the method of electronic submission to comport with whatever standard the Board notes on its website.²⁵

WCTL supports the Board's proposal. As the Board is urging filers to move to e-filing, WCTL expects that the volume of paper filings will dwindle. Moreover, the need for 10 copies has long seemed excessive. The Board regularly posts all filings to its website, which is accessible to the public and Board staff alike. Submitting 10 paper copies wastes resources when electronic versions are at the ready. In addition, for larger filings, printing only a portion when needed is plainly more desirable than making wholesale additional copies.

The Board also proposes to eliminate the regulations regarding the format for filing of electronic workpapers at 49 C.F.R. § 1104.3(b)(2).²⁶ WCTL supports this change as well. In WCTL's experience, the submission of electronic workpapers has long-since moved past CDs and floppy disks. Likewise, it has been many years since Lotus 1-2-3 and Excel 97 have been in use. A more fluid approach is plainly required. WCTL supports the Board's efforts. WCTL also encourages the Board to regularly update interested parties on the systems the Board is using (i.e., versions of Microsoft

²⁴ *Id.*; 49 C.F.R. § 1104.3(b).

²⁵ NPRM, slip op. at 6-7.

²⁶ *Id.*

Office) and submittal forms as necessary, especially as the Board is eliminating the codification of those requirements.

WCTL further urges the Board to revise its proposed version of 49 C.F.R. § 1104.3(b)²⁷ to eliminate the requirement that a party submitting a paper copy identify items in “color on the original, but in black and white on the copies.” To the extent paper filings are even needed if the Board’s proposal is adopted, the need for extra copies will be limited further, as the Board is eliminating the general requirement to submit additional copies.²⁸ Identifying color in the original therefore is unnecessary for almost all applications. The hold-over language is outdated and ought to be eliminated. WCTL further notes that color copies are not as onerous to make as they were 20 years ago, and it suspects most filers submit all copies in color (as needed) today.

III. Fees for Copying, Printing and Related Services

The Board proposes to modify its rules and fees for “copying, printing and related services found at 49 C.F.R. § 1002.1.”²⁹ Under the current rules, the Board has a schedule of fees for searching its records, making copies, and handling such costs for FOIA requests. Here, the Board proposes to reduce certain costs and harmonize its cost structure with its current FOIA fee regulations at 49 C.F.R. § 1002.1(g).³⁰

²⁷ NPRM, slip op. at 13.

²⁸ NPRM, slip op. at 6.

²⁹ NPRM, slip op. at 8.

³⁰ *Id.*

The principal change is that the Board proposes to reduce the charge for each copy \$1.50 per page for letter and legal size copies to \$0.25 per page.³¹ In addition, the \$7.50 minimum charge for such copies is eliminated.³²

WCTL supports the Board's proposed change. While the need for such copies is substantially reduced in this electronic era, especially since the Board has been posting decisions and filings to its website for many years, any cost reductions increase transparency and accessibility.

CONCLUSION

WCTL supports, with certain modification discussed herein, the Board's proposed changes with respect to e-filing payments, e-filing and paper filings in general, and costs for copies and research.

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³¹ NPRM, slip op. at 8.

³² *Id.*