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**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C.**



STB Docket No. Ex Parte 738

**NOTICE OF REGULATORY REFORM TASK FORCE LISTENING
SESSION**

**COMMENTS OF THE
AMERICAN SHORT LINE AND REGIONAL RAILROAD ASSOCIATION**

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July 25, 2017

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C.**



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The American Short Line and Regional Railroad Association ("ASLRRA" or "Association"), on behalf of its members, files these Comments in the captioned proceeding in lieu of appearing at the listening session on July 25, 2017. The Association is a national trade organization of approximately 1,000 members, consisting of approximately 500 Class II and Class III railroads, most of which are small and locally based, as well as approximately 500 vendors and suppliers to the railroad industry. Of the railroad members, 147 have 15 or fewer employees and annual revenues of \$2 million or less.

INTRODUCTION

ASLRRA fully supports the mission of the STB Regulatory Reform Task Force ("RRTF") to comply with the spirit of Executive Order No. 13,777, 82 Fed. Reg. 12285 (March 1, 2017) to identify rules and practices that are burdensome, unnecessary or outdated and to recommend how they should be addressed. The small businesses that are railroad members of ASLRRA are frequently adversely affected by existing rules and practices that are burdensome, unnecessary or outdated that the STB should repeal, replace or modify. Furthermore, there are pending rules that likewise threaten them that should be withdrawn.

These Comments are submitted to identify these rules and practices and recommend how they could be addressed. ASLRRA first discusses the letter dated May 18, 2017 filed by the

Association of American Railroads ("AAR") addressed to the RRTF and then the Interoffice Memo submitted by the RRTF to Acting Chairman Ann Begeman on May 25, 2017. We will first identify the positions taken by the AAR and RRTF in their respective submissions with which we agree. We will then add additional Comments on the issues involved in this proceeding.

COMMENTS REGARDING THE AAR LETTER AND THE RRTF REPORT

May 18, 2017, AAR Letter

In its comments, the AAR urged RRTF to identify the following proposed regulations for withdrawal as well as existing regulations for repeal, replacement or modification:

Proposed Regulations for Withdrawal

Reregulation of Commodity Groups

- *Review of Commodity, Boxcar, and TFC/COFC Exemptions*, EP 704 (Sub-No. 1) (served March 23, 2016). ASLRRA fully supports AAR's arguments and reasoning for withdrawing this proposed regulation and adopts its position in these Comments. ASLRRA will add its position on withdrawing this regulation below.

Forced Switching

- *Reciprocal Switching*, EP 711 (Sub-No. 1) (STB served July 27, 2017). ASLRRA fully supports AAR's arguments and reasoning for withdrawing this proposed regulation and adopts its position in these Comments. ASLRRA will add its position on withdrawing this regulation below.

Existing Regulations for Repeal, Replacement or Modification

Revenue Adequacy Constraint and Limit Price Test

While ASLRRA's members are not usually involved in these proceedings, we support the AAR's position and reasoning regarding these items.

Regulations that Impose Costs Exceeding Benefits

AAR submitted that while the RRTF's priority should be repealing, replacing, modifying (or in the case of proposals, withdrawing) regulations that undermine the deregulatory purpose of the Staggers Act, the RRTF should also examine burdensome reporting regulations. AAR provided examples of these type of regulations, including the performance data reporting requirements and the continued reporting of agricultural contract summaries.¹ ASLRRRA agrees with AAR that the RRTF not just limit itself to repealing, replacing, modifying or withdrawing existing or proposed rules and regulations.

The RRTF needs to thoroughly examine its regulations to find the ones that impose burdensome and costly requirements on railroads that serve no useful purpose for the shipping public, the railroads or the STB. After such a review, it is incumbent on the RRTF to recommend that the STB repeal the regulations that are burdensome and that do not provide benefits to anyone, including the examples provided by AAR above.

Regulations that Are Outdated, Unnecessary or Ineffective

AAR also stated that the RRTF should also finish the work begun by the STB in 2011 pursuant to Executive Orders 13379 and 13563. ASLRRRA also concurs with this statement. The record in *Improving Regulation & Regulatory Review*, (Ex Parte 712) (STB served October 12, 2011), is replete with examples of regulations of the sort contained under this heading cited by both AAR and ASLRRRA. *See also*, the Comments below on this subject. It is time for the RRTF to recommend to the Board that the STB revise its rules in accordance with the Executive Orders and as outlined by AAR and ASLRRRA.

¹ On June 30, 2017, the STB issued a decision in *Publication Requirements for Agricultural Products*, Docket No. EP 528 (Sub-No. 1) (STB June 30, 2017) adopting final rules amending its regulations governing the publication of rate and service terms for agricultural products and fertilizer to require Class I railroads to publish such rates and service terms on their websites. This decision allows the modernization of the rules governing publication of rates and services for these commodities, precisely the type action the RRTF should be pursuing in this proceeding.

Promoting Regulatory Reform: Modifying Ex Parte Communication Rules

AAR states the Board should reform its rules regarding ex parte communications to allow increased communications between stakeholders and Board members and staff in the policy, reporting, and rulemaking context. The arguments made by the AAR supporting reformation of the ex parte communication rules are right on point and ASLRRA endorses and adopts this position.

Advancing A Deregulatory Agenda: Federal Preemption

Again, AAR advances cogent, persuasive arguments that the STB actively defend its jurisdiction and the public interest in federal preemption matters. ASLRRA endorses and adopts this position, too.

May 25, 2017, Regulatory Reform Task Force 90-Day Status Report

ASLRRA has reviewed the 90-Day Status Report filed on May 25, 2017, by the RRTF. That report recites the progress RRTF made to the date of its report in improving implementation of regulatory reform initiatives and policies pursuant to Executive Order 13777 and identifies certain regulations for repeal, replacement or modification. The RRTF reported that on May 11, 2017, the members discussed a number of potential proposals, including:

- A proposal to repeal the requirement of water carriers to keep and maintain tariffs setting forth their rates, charges, rules and classifications. Rather, RRTF said it was considering to a move to an email filing system to reduce the burdens on carriers and the STB. While the ASLRRA's railroad members are not directly affected by this proposal, it supports any effort to streamline any filing process, thus reducing the resource burdens for carriers and the Board.
- A proposal to update its environmental rules. The Association unreservedly supports an update of these rules as they are extremely time-consuming and expensive for small railroads to comply with in order to abandon lines, construct needed infrastructure, and otherwise build their businesses to meet the needs of their shippers.

- Modernizing procedural rules by allowing payments of fees and other payments due to the Board, permitting all filings to be made through the Board's website, and repealing the requirement that paper copies be filed with the Board. The current procedural rules are time consuming, costly, and outdated. ASLRRA supports modernizing these rules and any other similar rules regarding payments of fees and other payments as all of these type rules are long overdue for modernizing.
- EP 729 – on June 29, 2017, The Board issued a final rule that enhances the ability of the STB to protect the integrity of the Offer of Financial Assistance ("OFA") process by ensuring offerors are financially capable of maintaining rail service and there is an actual need for rail service. ASLRRA participated in this proceeding, filing Comments supporting the proposed reforms. It applauds the decision of the Board to protect railroads from vexatious litigation in OFA proceedings. The rule will mean only legitimate OFAs will be submitted.
- RRTF stated it is reviewing the comments filed in *Improving Regulation & Regulatory Review*, (Ex Parte 712) (STB served October 12, 2011). ASLRRA filed comments in that proceeding supporting the proposals made by the AAR regarding regulations that it submitted were outmoded, ineffective, insufficient or excessively burdensome. Additionally, it commented on regulations that directly and adversely affect small railroads that the Association deemed should be eliminated.
 - In its Comments in Ex Parte 712, ASLRRA proposed the expansion of the exemption set forth in 49 CFR 1180.2(d)(2) to cover the acquisition and control of Class III carriers regardless of whether they connect with other railroads in a corporate holding company of small railroads. This would harmonize the procedures followed by the STB when the railroads do not connect, save significant additional costs, and time. *See*, Comments of the American Short Line and Regional Railroad Association dated January 10, 2012, in *Improving Regulation and Regulatory Relief*, (Ex Parte 712) (STB served October 12, 2011), pp. 3-4.

- ASLRRA also proposed the expansion of the use of Notice of Exemptions at the time an abandonment of line is proposed. Currently, the Board allows railroads to follow the simplified notice of exemption contained in 49 CFR 1152.50 for abandonments when there has been no traffic on the line for two years. This requirement proves to be excessively burdensome for small railroads and ASLRRA submitted the time frame be reduced to one year to accommodate the needs of small railroads. *See, Ibid.*, pp. 4-5.

ASLRRA renews its proposals in these Comments regarding these two items.

ADDITIONAL COMMENTS

Review of Commodity, Boxcar, and TFC/COFC Exemptions, EP 704 (Sub-No. 1) (served March 23, 2016)

As noted above, the Association vehemently opposes the reregulation of the commodities that the STB proposes to reregulate in *Review of Commodity, Boxcar, and TFC/COFC Exemptions, EP 704 (Sub-No. 1) (served March 23, 2016)*. ASLRRA filed extensive evidence in EP 704 showing why the action proposed by the Board is inimical to the interests and well-being of small railroads. The record in this proceeding does not demonstrate any benefit to revoking the exemptions and, to the contrary, as shown in the evidence submitted by ASLRRA, revocation would actually financially and operationally harm small railroads

In addition to the points made by AAR in its May 18 Letter, the ASLRRA made the following points in its submissions in EP 704: (1) the exemptions are effective, having worked exactly as Congress intended; (2) the low number of revocation petitions demonstrate the exemptions are not being abused; (3) the exemptions are of critical importance to short line railroads and have worked as intended for traffic handled by small railroads; (4) the exempted commodities are subject to intense intra- and intermodal competition; (5) for short lines, the competition for traffic moving 500 miles or less is particularly susceptible to diversion to truck; (6) even for traffic moving for distances longer than 500 miles, small railroads have to compete with trucks, waterways, intermodal, and transload operations; and (7) short lines are inherently incapable of abusing market

power. For these reasons, ASLRRA urges RRTF to recommend withdrawing the proposed regulation.

Reciprocal Switching, EP 711 (Sub-No. 1) (STB served July 27, 2017) ("Forced Switching")

ASLRRA has participated in every proceeding related to *Reciprocal Switching*, EP 711 (Sub-No. 1) (STB served July 27, 2017), including Docket No. EP 705, Competition in the Rail Industry ("EP 705"), Docket No. EP 711, Petition for Rulemaking to Adopt Revised Competitive Switching Rules ("EP 711"), and Docket No. EP 711 (Sub-No. 1), Reciprocal Switching ("EP 711, Sub-No.1"). In each of these proceedings, ASLRRA submitted extensive comments, testimony, and evidence clearly delineating why forced reciprocal switching and other proposals made by some shippers were not in the best interests of railroads, shippers, and the public. In particular, ASLRRA showed how small railroads faced extensive competition, that no alternatives were needed to facilitate more competition, and the imposition of forced reciprocal switching was not needed or warranted.

In addition to the arguments raised by AAR regarding why forced access should not be imposed, its imposition on Small Railroads would have especially disastrous adverse effects on those Small Railroads. If a mandatory switching scheme is adopted it will inevitably disproportionately hurt small railroads because small railroads play such a key role in short-haul and switching operations.

There are multiple examples regarding why Small Railroads cannot be subject to these proposed rules including:

- Only a few customers account for the vast majority of traffic on Small Railroads and the loss of all or a portion of the revenues from any one of those shippers would have a dramatic adverse effect on the financial viability of a Small Railroad in view of the high infrastructure and fixed costs that must be supported by those revenues;
- The costs of Small Railroads cannot be spread over a vast rail system or large customer base and all of those freight revenues are vitally necessary to sustain the financial viability of small railroads;

- The single car traffic handled by small railroads is subject to severe competition from trucks and barges with up to 90% of small railroad traffic subject to diversion to trucks or barges, which shows that competition to the interchange already exists; and
- The problem for small railroads is that a significant revenue reduction from even one large customer has an outsized impact, since two or three customers typically generate the majority of a small railroad's revenues.

For these and all the other reasons adduced in the record in Ex Parte 705, 711 and 711 (Sub-No. 1), these regulations should be withdrawn.

Information Required in Notices and Petitions Containing Interchange Commitments, Ex Parte 714 (STB Served February 17, 2016)

The filing party must certify whether or not a proposed acquisition or operation of a rail line involves a provision or agreement that may limit future interchange with a third-party connecting carrier. If such a provision or agreement exists, then the filing party must file certain information contained in the decision filed with the Board under 49 C.F.R. § 1104.14(a). ASLRRA opposed the imposition of this regulation for a number of reasons but in particular, that they would not add any useful information to matters pending before the Board. The Association also stated that requiring small railroads to file the additional information would be burdensome on them.

Time has proven that the requirements of EP 714 are indeed burdensome on small railroads without providing any useful information to the STB or other potentially interested parties. This is a prime example of a regulation that should be repealed. The usefulness of the additional information outweighs the extra reporting burdens being imposed on small businesses here.

Respectfully submitted,



Linda Bauer Darr

President

American Short Line and Regional Railroad Association