

ORIGINAL

Before the
SURFACE TRANSPORTATION BOARD

Ex Parte No. 747

PAYMENT, FILING, AND SERVICE PROCEDURES

COMMENTS



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GORDON P. MacDOUGALL
1025 Connecticut Ave., N.W.
Washington DC 20036

Practitioner

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COMMENTS

These comments are submitted by the named signatory practitioner, who has participated in filing pleadings at the Surface Transportation Board (STB), and its predecessor Interstate Commerce Commission, continuously since the year 1957. The comments are responsive to the STB's August 20, 2018 decision (served August 24), 83 Fed. Reg. 42852 (Aug. 24, 2018).

1. E-Filing. The STB should recognize that it draws filings from numerous small entities throughout the nation, the majority of which frequently do not arrive at the agency in E-mail form; indeed, many are from persons who may not be familiar with E-mail. The STB should not discourage such representations to the agency. Practitioner calls attention to the many hundreds of such filings in passenger proceedings, a typical example (among many of this nature) being ExParte No. 726, On-Time Performance Under Section 213 of the Passenger Rail Investment and Improvement Act of 2008. Rail abandonment applications, and abandonment exemption notices

and petitions, frequently involve entities/individuals inexperienced in agency procedures and/or E-filing. Rail line transfers and rail trail issues frequently involve numerous filings from persons and entities unfamiliar with agency E-mail and procedures. STB staff is perhaps more involved with processing filings from major agricultural and industrial organizations; however, the representations from individuals and small entities should be properly processed and recognized..

2. Paper Filing. The proposed 49 CFR §1104.3 would require only the original of a paper filing, rather than the current original plus 10 copies; however the STB would still require an original and 10 copies for all documents in minor and significant proceedings under §11323, such as rail trackage rights and leases. The question arises concerning the prompt distribution of copies of original filings to all board members and appropriate staff, as well as notice and availability to non-parties and the general public. In the past, there have been sustained periods of controversy where agency staff would withhold distribution of a filing, preventing public notice (and perhaps even internal agency member and staff notice /availability) until certain stage or stages of internal agency procedures. It is hoped the past practice of avoiding transparency would not return in some form if only a single copy of a filing is required. In addition, there is concern that although a filing may be initially listed on the agency's website by docket number and/or caption, the text frequently may not be available for examination and/or download for one or several days thereafter, yet the date of filing (and thus time for response) is calculated from the initial listing, rather than the day of text availability. Moreover, the document likewise usually is not available at the agency docket room until after first reproduced on the agency website.

3. Fees. The August 24 decision devotes considerable attention concerning fees. (Decision 2-6, 8). This practitioner suggest the agency should revise the waiver rules, along with provision

for honest mistakes in the submission of an incorrect fee. Real injury may be occasioned if a timely filing is made without a fee or with an incorrect fee, inasmuch as the filing would be deemed untimely and subject to rejection thereby. (Decision 5-6 & n.13). It is suggested that the STB adopt federal court procedures permitting a grace period for the submission of appropriate fees, which thus serve the ends of justice, particularly where statutory limitations are involved.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Gordon P. MacDougall", written in a cursive style.

GORDON P. MacDOUGALL
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Washington DC 20036

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