

# **THE CURRENT STB AND WHAT IT MEANS FOR SHORT LINES**

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# AGENDA

1. STB Overview

2. Current Membership

3. Structural & Policy Changes

4. Implications for Short Lines



# STB Overview

- Federal agency with jurisdiction over economic regulation of railroads
- Certain core activities that STB conducts:
  - **Entry and Exit Licensing**
    - Construction and acquisition of rail lines
    - Abandonments and discontinuances
    - Mergers and change of control transactions
  - **Resolution of disputes**
    - Rate reasonableness disputes (for some traffic)
    - Unreasonable practice disputes
    - Disputes among railroads
- In addition to these activities, the STB also conducts oversight and rulemaking proceedings. These policy initiatives are largely set by the Chairman.



# STB Member Composition

- The Board is a five-member body, with not more than three members to be appointed from the same party. 49 U.S.C. § 1301(b).
- There is no quorum requirement.
  - 49 U.S.C. § 1301(b)(6) – Board is not limited by a vacancy.
  - Prior quorum requirement repealed in ICCTA.



# STB Membership



**Chairman  
Patrick Fuchs  
(R)**

**Term expires  
1/14/2029**



**Vice Chairman  
Michelle Schultz  
(R)**

**Term expires  
1/11/2026\***



**Member  
Karen Hedlund  
(D)**

**Term expires  
12/31/2025\***



**Member  
Robert Primus  
(D) was  
terminated by  
President  
Trump on  
8/27/25**



**\*Could be renominated or stay as holdover for one year until replacement is nominated**



# STB Prior to 8/27/2025

- The STB operated with a 2-2 split between May 11, 2024 and August 27, 2025.
- While there is no quorum requirement, a split Board can make it harder to obtain a majority.
  - Where authority is not otherwise delegated to staff, the Board must have a majority to act.
- What happens if the full Board is deadlocked?
  - A case may linger until such time as there is a majority, *or*
  - The Members may nonetheless agree to some other action, e.g.:
    - UP-Construction-Maricopa: No agreement on 110k, but agreed to continue with Section 106 process.
    - Private Railcars, EP 768: No agreement on petition for rulemaking, but agreed to keep proceeding open.
    - Fuel Surcharges: No agreement on substantive next steps, but agreed to close proceeding.



# STB Member Removal

- The statute provides that the President may remove a member for “inefficiency, neglect of duty, or malfeasance in office.” § 1301(b)(3).
- No cause was cited for Robert Primus’s termination.
- The constitutionality of for-cause removal restrictions on other independent agencies has been challenged, and the Supreme Court may soon resolve the issue.



# Removal Authority in General

- In general, the President is permitted to remove high-level executive branch officials for any reason.
- However, there are exceptions to that rule, one of which is embodied in *Humphrey's Executor v. United States* (1935).
- *Humphrey's Executor* upheld for-cause removal restrictions for Federal Trade Commission Commissioners.
  - The Court ruled that the FTC was “disconnected” from the executive branch and also performed judicial- and legislative-type functions, so Congress could restrict the Commissioners’ removal without interfering with the President’s executive power.



# Removal Authority in General

- *Humphrey's Executor* has been criticized by conservative legal scholars, and many observers believe the Supreme Court is poised to reverse it.
- A 2025 emergency docket opinion in *Trump v. Wilcox* stayed a lower court injunction that would have reinstated fired members of the NLRB and MSPB, reasoning in part that the government was likely to show that those independent agencies exercise significant executive power.
  - While not a merits decision, *Wilcox* suggests that the *Humphrey's Executor* exception is in peril.



# Uncertainty at the STB

- Robert Primus indicated that he might challenge his dismissal.
  - If a challenge were filed, there could be some uncertainty about the validity of any 2-1 STB decision.
- It has been reported that the Trump Administration intends to nominate soon a Democrat and a Republican to the STB.
  - Members are appointed by the President and confirmed by the Senate. § 1301(b).
  - The confirmation process can be lengthy, and it requires both committee approval and a vote of the full Senate.



# STB Agency Restructuring

This year, the STB announced major changes to agency structure and staff responsibilities:

- Previously, legal offices were split between the Office of Proceedings and the Office of General Counsel.
  - Director of Proceedings delegated substantial authority to issue decisions.
  - General Counsel responsible for appellate proceedings and ethics.
- Office of Proceedings and Office of General Counsel combined into one legal office—Office of Chief Counsel—to “streamline and improve” processes.
- Functions of the Office of Passenger Rail merged into the Office of Chief Counsel.





# Administrative Law Judges

- STB announced on social media that in July that it had retained an ALJ through OPM's Administrative Law Judge Loan Program.
- The STB described this as responsive to stakeholder feedback on the need for efficient processes and the benefits of having an ALJ handle discovery issues.
- Historically, the ICC made extensive use of ALJs to conduct hearings and issue initial decisions.



# Policy Priorities

- Policy initiatives are largely set by the Chairman, who is designated by the President. 49 U.S.C. § 1301(c)(1).
- Even with independent agencies, policy initiatives often align with priorities of the current Administration.
- Current Administration focus on deregulation and efficiency.
  - E.O. 14,192 (Jan. 2025) (Deregulatory EO)
  - E.O. 14,215 (Feb. 2025) (Independent Agency EO)



# Policy Priorities

- Focus on efficiency – both substantively and structurally.
- Announced policy priorities:
  - Increased use of technical conferences
  - Use of staff liaisons and modifying ex parte communication rules
  - Discovery
  - Delegations of authority to staff
  - Changes to environmental rules

**Chairman Fuchs Takes Action on Outstanding Proceedings**

**STB Gathers More Than 100 Ideas From Legal Practitioners to Streamline Board Processes**

**STB Adds Experts to Drive Efficiency and Regulatory Reform Efforts**

**Chairman Fuchs Provides Updates on Outstanding Proceedings**



# Opportunities for Short Lines

- A significant amount of the STB's rail docket involves short line carriers.
  - Licenses to operate, acquire rail line, construct, and abandon.
  - Acquisition of control of short lines.
- Many of these decisions are delegated to staff, while others require a full Board vote.
- The focus on efficiency and streamlining may result in further delegation or regulatory changes to expedite proceedings before the STB.

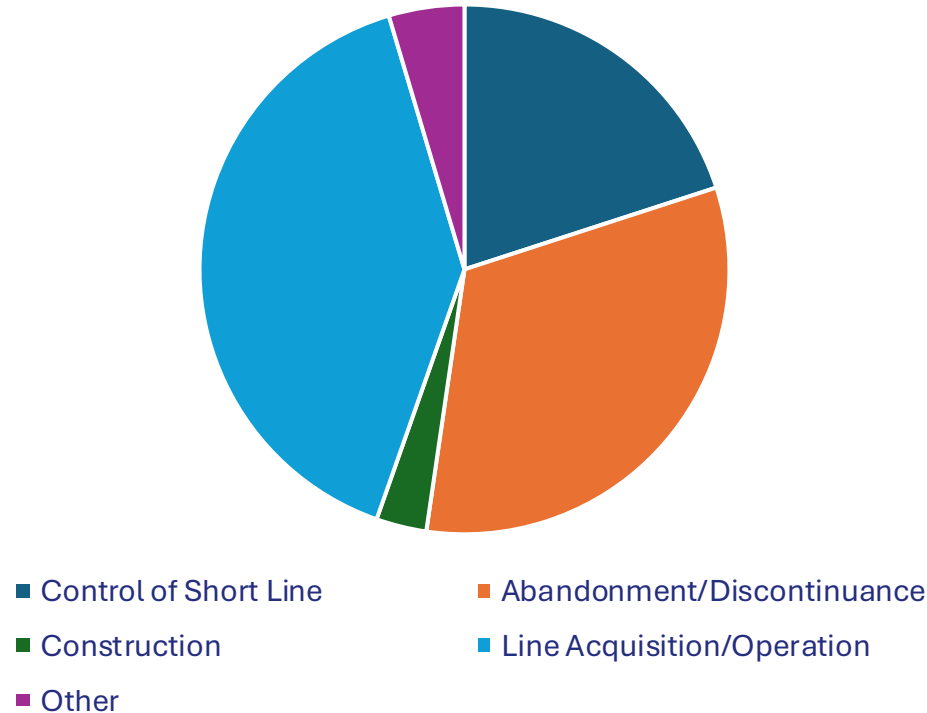


# Delegated Rail Decisions

## 1/1/25 – 6/30/25

Over a 6 month period, the Director of Proceedings (now Chief Counsel) issued 121 rail decisions. Of those, over half (**54%**) involved short lines.

DO Rail Decision Involving Short Lines

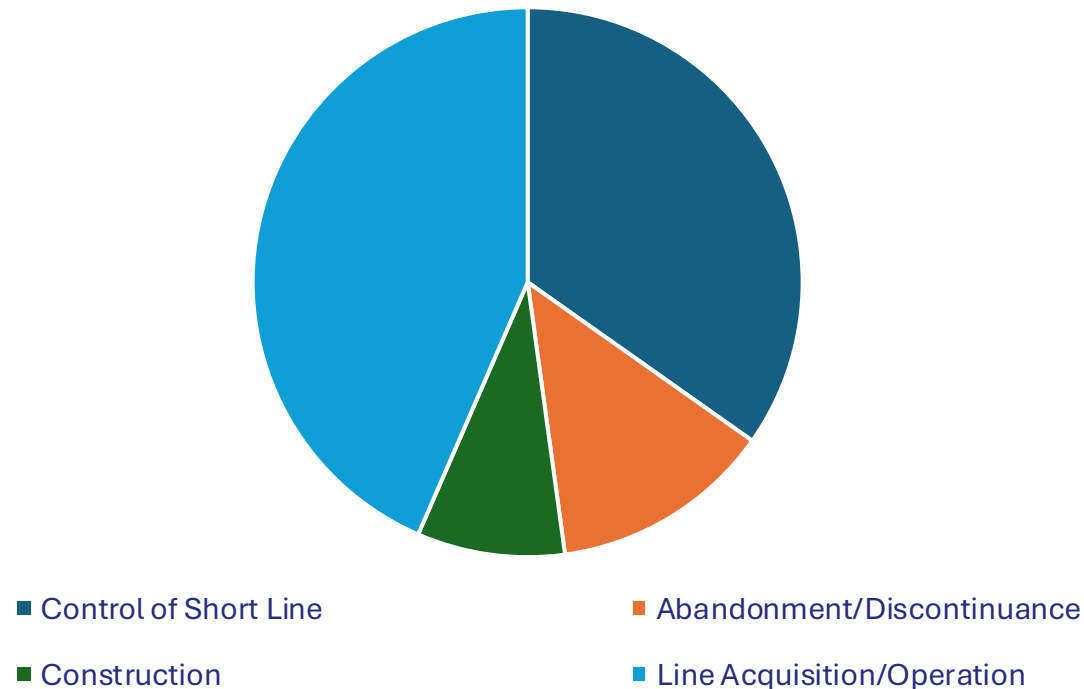


# Full Board Rail Decisions

## 1/1/25 – 6/30/25

Over a 6 month period, the full Board issued 53 rail decisions. Of those, almost half (**43%**) involved short lines.

EB Rail Decisions Involving Short Lines



# Deeper Dive: Full Board Rail Decisions

## 1/1/25 – 6/30/25

- The most significant category of cases involving short lines reaching the full Board involved operating exemptions.
  - 90% of those decisions were addressing requests to waive the 60-day labor notice requirement, which requires a full Board vote.
- Prior failure to get STB authority can elevate current disputes to the full Board.
  - Two of the cases that were elevated to the full Board involved instances where the railroad previously failed to get STB authority for operation and/or ownership of a line.
  - Carriers in those cases were required to get after-the-fact authority.
- Construction cases generally require a full Board vote.
  - Note that the majority of construction cases in past five years were filed by or contemplated by short line operators.



# THANK YOU!

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