



**Surface Transportation Board
FY 2010 Annual Report**



Office of the Chairman

Surface Transportation Board
Washington, D.C. 20423-0001

July 14, 2011

To the Congress of the United States:

It is my pleasure to submit this report covering the Surface Transportation Board's activities from Oct. 1, 2009, through Sept. 30, 2010. The report follows the format of previous years with a statement of appropriations and aggregate expenditures for Fiscal Year (FY) 2010 appearing in Appendix B.

The Board's membership remained unchanged during the past fiscal year. However, Vice Chairman Charles D. Nottingham, whose term of office was to end on Dec. 31, 2010, announced in the autumn of 2010 that he would not seek a second term, and has since resigned. On April 14, 2011, the Senate confirmed Ms. Ann D. Begeman, Minority Staff Director of the Senate Committee on Commerce, Science, and Transportation, to the seat made vacant by Vice Chairman Nottingham's departure, for a term to expire Dec. 31, 2015. She was sworn in as a member of the Board on May 2, 2011. Commissioner Francis P. Mulvey (former Acting Chairman and Vice Chairman) continues to serve.

With this edition, the Board introduces a new informational appendix entitled "Railroad Rate Cases at the STB." This appendix lists all freight-railroad rate complaint cases reviewed by the Board, from the agency's Jan. 1, 1996 inception through the close of FY 2010, as well as the outcome in each case.

Sincerely,

Daniel R. Elliott III
Chairman

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EDITORIAL NOTES

The following acronyms and abbreviated names are used in this report:

AAR	Association of American Railroads
Amtrak	National Railroad Passenger Corporation
ATSF	Atchison, Topeka and Santa Fe Railway
BNSF	BNSF Railway Company
C.F.R.	Code of Federal Regulations
Christensen	Christensen Associates
CMP	Constrained Market Pricing
CN	Canadian National Railway Company
Coalition	Clean Truck Coalition, LLC
Conrail	Consolidated Rail Corporation
CSX	CSX Transportation, Inc.
DOT	United States Department of Transportation
EA	Environmental Assessment
EIS	Environmental Impact Statement
EJ&E	Elgin, Joliet and Eastern Railway Company
FOIA	Freedom of Information Act
FRA	Federal Railroad Administration
FTE	Full-time employee
FY	Fiscal Year
GTC	Grand Trunk Corporation
HDR	HDR Engineering, Inc.
Horizon	Horizon Lines LLC
ICC	Interstate Commerce Commission
LNW	Louisiana & North West Railroad
Mass Coastal	Massachusetts Coastal Railroad, LLC
MassDOT	Massachusetts Department of Transportation
MCRC	Mississippi Central Railroad Co.

MITC	Milwaukee Industrial Trade Center, LLC
MNA	Missouri & Northern Arkansas Railroad
MVPR	Missouri & Valley Park Railroad
NGCC	National Grain Car Council
NS	Norfolk Southern Railway Company
NYSW	New York Susquehanna & Western Railway Corporation
OE	Office of Economics
OEA	Office of Environmental Analysis
OFA	Offer of Financial Assistance
OPAGAC	Office of Public Assistance, Governmental Affairs, and Compliance
OPM	U.S. Office of Personnel Management
PRIIA	Passenger Rail Investment and Improvement Act of 2008
RCAF	Rail Cost Adjustment Factor
RCPA	Rail Customer and Public Assistance Program
RETAC	Rail Energy Transportation Advisory Committee
ROI	Return on Investment
RSAM	Revenue Shortfall Allocation Method
RSTAC	Railroad-Shipper Transportation Advisory Council
RVC	Revenue-to-Variable Cost
SAC	Stand-alone cost
Soo	Soo Line Railroad
STB	Surface Transportation Board
STCC	Standard Transportation Commodity Code
UP	Union Pacific Railroad Company
URCS	Uniform Rail Costing System
U S Rail	U S Rail Corporation
WisDOT	Wisconsin Department of Transportation

OVERVIEW

The Surface Transportation Board (STB or Board) has broad economic regulatory oversight of railroads, including rates; service; construction, acquisition, and abandonment of rail lines; carrier mergers; and interchange of traffic among carriers.¹

The bipartisan STB was established on Jan. 1, 1996, to assume some of the regulatory functions that had been administered by the Interstate Commerce Commission (ICC) when the ICC was abolished. Other ICC regulatory functions were either eliminated or transferred to the Federal Motor Carrier Safety Administration or to the Bureau of Transportation Statistics within the U.S. Department of Transportation (DOT). The STB is organizationally housed within DOT, but is decisionally independent. For details on the Board's regulations and governing statutes, see Appendix A.

While much of its work involves railroads, the STB also has certain oversight of pipeline carriers, intercity bus carriers, moving-van companies, trucking companies involved in collective activities, and water carriers engaged in non-contiguous domestic trade (i.e., trade involving Alaska, Hawaii, or U.S. territories or possessions).² The Board has wide discretion to tailor its regulatory activities to meet the nation's changing transportation needs.

Performance and Policy Goals

The Board provides an efficient and effective forum for the resolution of surface transportation disputes and other matters within its jurisdiction. While the Board uses its exemption authority to limit or remove regulatory requirements where appropriate, it is

¹ 49 U.S.C. §§ 10101-11908.

² 49 U.S.C. §§ 13101-14914, 15101-16106.

dedicated to vigilant oversight and rendering fair and timely decisions when regulation is required. The Board promotes private-sector negotiations and resolutions where possible and appropriate, and facilitates market-based transactions that are in the public interest. In all of its official decisions, the agency is committed to advancing the national transportation policy goals expressed by Congress.³

In this regard, on May 27, 2010, the Board issued a report⁴ concerning the Uniform Rail Costing System (URCS), the agency's general purpose costing methodology. Undertaken in response to a Senate Committee on Appropriations directive that the Board submit a report providing basic, moderate, and comprehensive options for updating URCS, the Board evaluated URCS's current functionality and studied criticisms of URCS made by stakeholder groups (including railroads and rail shippers), and by transportation economists and other analysts. The report discussed the Board's review and, pursuant to the Committee's request, described a range of options the agency could consider to update URCS.

Also, in response to Congressional request,⁵ on June 10, 2010, the Board submitted a letter report on the liability and indemnity provisions contained in agreements between passenger and freight railroads. The report discussed the Board's review of liability provisions; summarized a recent Government Accountability Office (GAO) report on commuter rail liability and indemnity provisions; and discussed new agreements, additional information, and case law since the issuance of the GAO report.

At the request of the State of Maine (State), the Board held a public hearing on July 7, 2010, in Presque Isle, Maine, concerning the Montreal, Maine & Atlantic Railway, Ltd.'s (MMA) application for permission to abandon and discontinue service over

³ 49 U.S.C. §§ 10101 (rail) and 13101 (motor and water).

⁴ *Surface Transportation Board Report to Congress Regarding the Uniform Rail Costing System, Submitted Pursuant to Transportation and Housing and Urban Development, and Related Agencies Appropriations Bill*, S. Rep. No. 111-69 (2009).

⁵ *Departments of Transportation and Housing and Urban Development, and Related Agencies Appropriations Act, 2010*, H.R. Rep. No. 111-366, at 39 "Liability review" (2009) (Conf. Rep. to accompany H.R. 3288).

approximately 233 miles of line in Aroostook and Penobscot Counties.⁶ That public hearing followed an earlier Board order encouraging parties, particularly MMA and the State, to enter Board-assisted mediation to resolve issues arising out of the abandonment application, the State's proposal to purchase the line for continued service, and later approval of the State's relevant financing measure. Taken together, these Board actions facilitated a multiparty effort, undertaken over several months' time, to save freight railroad service in northern Maine, and paved the way for the State's acquisition of the line and its finding of a third-party operator to serve rail customers.

During the fiscal year, the Board endeavored to increase transparency regarding agency processing and adjudication of the cases before it. On October 7, 2009, the Board announced that it would begin holding public oral arguments in certain major cases in an effort to give parties the opportunity to address the Board directly and to give Board Members the opportunity to ask questions of the parties before making a decision.⁷ Soon afterwards, on October 27, 2009, the Board conducted the first of six oral arguments held during Fiscal Year (FY) 2010. Additionally, on September 2, 2010, the Board informed the public that the agency henceforth would include a plain-language digest in each decision issued by the entire board.⁸ Designed for public convenience and the purposes of increasing transparency in government and public understanding of the agency's work, the digests summarize decisions in plain language without relying on the use of citations to statutes or case law.

As Board regulations require parties in a rate reasonableness case to participate in mediation with agency staff at the outset of a case,⁹ the Board sought public comment during the fiscal year on measures the agency could implement to encourage greater use of both arbitration and mediation, and on possible amendments to Board regulations to permit the use of Board-facilitated mediation in instances where a formal complaint has

⁶ In *Montreal, Maine & Atlantic Railway—Discontinuance of Service & Abandonment—in Aroostook & Penobscot Counties, Me.*, AB 1043 (Sub-No. 1) (STB served Oct. 7, 2009).

⁷ In *Surface Transportation Board To Begin Holding Oral Arguments in Major Cases*, STB News Release No. 09-27, issued Oct. 7, 2009.

⁸ In *Policy Statement on Plain Language Digests in Decisions*, EP 696 (STB served Sept. 2, 2010).

⁹ If mediation is unsuccessful and a proceeding continues, Board staff members that had served as mediators are recused from both discussion of, and work on, that case.

not been filed.¹⁰ In FY 2010, Board staff performed mediation in 4 rate cases: *U.S. Magnesium, L.L.C. v. Union Pacific Railroad Company*, STB Docket No. 42116 (where the parties eventually settled, but not as a result of Board mediation); *Total Petrochemicals USA, Inc. v. CSX Transportation, Inc.*, STB Docket No. 42121; *NRG Power Marketing L.L.C. v. CSX Transportation, Inc.* STB Docket No. 42122 (which resulted in settlement); and *M&G Polymers USA, L.L.C. v. CSX Transportation, Inc.*, STB Docket No. 42123.

The Board additionally offers parties in non-rate proceedings the opportunity to voluntarily mediate. In FY 2010, Board staff served as mediators in *Cargill, Inc., et al., v. Association of American Railroads, et al.*, STB Docket No. 42117, a case in which mediation is ongoing. Board staff also performed mediation in *Bell Oil Terminal, Inc. v. BNSF Railway Company*, STB Finance Docket No. 35302.

Organizational Structure

The Board is comprised of 3 members nominated by the president and confirmed by the Senate for 5-year terms. The Board's chairman is designated by the president from among the members.¹¹ As its chief executive, the chairman coordinates and organizes the agency's work and acts as its representative in legislative matters and in relations with other governmental bodies.

The vice chairman represents the Board and assumes the chairman's duties as appropriate. Additionally, the vice chairman oversees matters involving the admission, discipline, and disbarment of non-attorney Board practitioners.¹² The vice chairmanship alternates annually between the Board's 2 member colleagues. Additionally, the vice chairman is designated co-chairman of the National Grain Car Council.

¹⁰ In *Assessment of Mediation and Arbitration Procedures*, EP 699 (STB served Aug. 20, 2010).

¹¹ 49 U.S.C. § 701.

¹² Persons meeting specific standards, passing an examination, and taking an oath to comply with Board requirements and procedures to practice before the agency.

Furthermore, assisting the Board in carrying out its responsibilities is a staff of approximately 150, with expertise in economics, law, accounting, transportation analysis, finance and administration serving within the following offices:

The **Office of Public Assistance, Governmental Affairs, and Compliance** serves as the agency's principal point of contact with Congress, state and local governments, the media, industry stakeholders, and the general public.

The **Office of Economics**¹³ supports the STB's decision-making process through collection of industry financial and operating data; maintenance of the Board's costing methodology; and economic, cost, financial, and engineering analyses in railroad maximum-rate proceedings, mergers, line abandonments, and line construction and trackage rights cases before the agency.

The **Office of Environmental Analysis**¹⁴ is responsible for directing the environmental review process in pertinent cases before the agency, conducting independent analyses of all environmental data submitted to the Board during the environmental review process, and making recommendations to the Board Members on environmental matters.

The **Office of the Managing Director**¹⁵ provides a wide range of management services to the agency and its staff, including: building facilities; supplies and services; information systems; financial management (including budgeting, payroll, and user-fee collection); human resources; and advice to Board Members and staff on issues regarding ethics and codes of conduct.

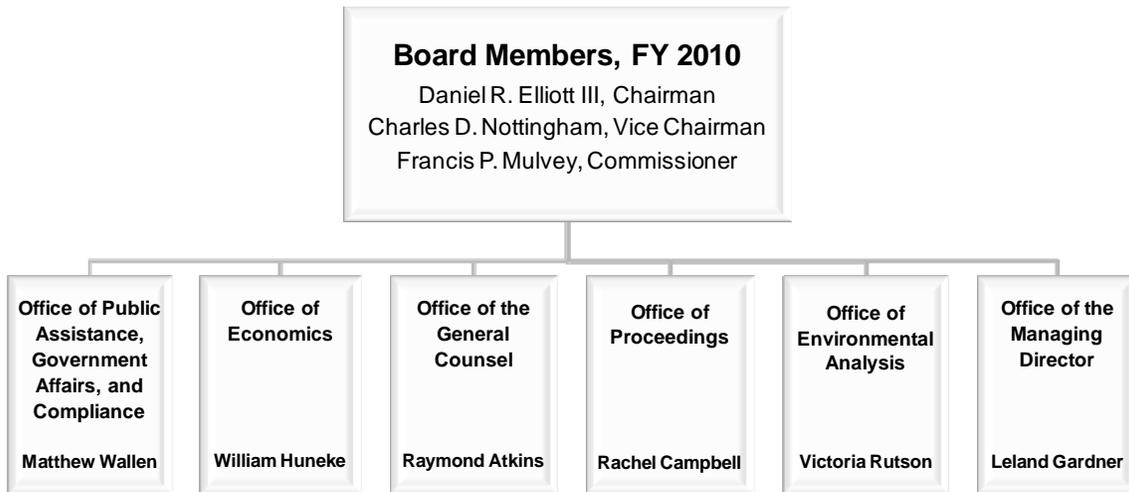
The **Office of the General Counsel** provides legal advice to the Board and defends

^{13, 14, 15} To enhance responsiveness to the public, on September 1, 2010, the Board reorganized its former Office of Economics, Environmental Analysis, and Administration into 3 separate offices, the Office of Economics, Office of Environmental Analysis, and the Office of the Managing Director, as described above.

agency decisions challenged in court.

The **Office of Proceedings** provides legal research and analysis, and prepares draft decisions for cases pending before the Board.

Surface Transportation Board Organizational Chart



Councils and Committees

The Railroad-Shipper Transportation Advisory Council (RSTAC) advises the Board, the Secretary of Transportation, and Congress on railroad-transportation policy issues of particular importance to small shippers and small railroads, such as rail-car supply, rates, and competitive matters.¹⁶ The RSTAC is composed of 14 private-sector senior executives from the railroad and rail shipping industries, plus 1 member-at-large. The Secretary of Transportation and the 3 Board Members are ex officio Members. RSTAC meetings are held quarterly and are not open to the public.

¹⁶ 49 U.S.C. § 726.

The National Grain Car Council (NGCC) assists the Board in addressing problems concerning grain transportation by fostering communication among railroads, shippers, rail-car manufacturers, and government. The NGCC consists of 14 representatives from Class I (large) railroads, 7 representatives from Class II (medium-sized) and Class III (small) railroads,¹⁷ 14 representatives of grain shippers and receivers, and 5 representatives of private rail car owners and manufacturers. The 3 Board Members are ex officio members, and the vice chairman is designated NGCC co-chairman. Meetings are held annually, and are open to the public.

The Rail Energy Transportation Advisory Committee (RETAC) was established by the Board in July 2007 to provide advice and guidance regarding the transportation by rail of energy resources such as coal, ethanol, and other biofuels. The RETAC is composed of 23 voting members representing a balance of stakeholders, including large and small railroads, coal producers, electric utilities, the biofuels industry, and the private railcar industry. The 3 Board Members are ex officio members. Meetings are held at least twice a year and are open to the public.

On August 3, 2010, the Board proposed forming the advisory **Toxic by Inhalation Hazard Common Carrier Transportation Committee** to provide the agency with independent advice and policy suggestions on railroads' common carrier obligation to transport toxic by inhalation hazards (TIH). In its decision, the Board requested public comments regarding the structure and scope of the proposed committee, as well as nominations for committee membership. The committee would focus on whether railroads reasonably can ask TIH shippers to share responsibility for liability, and would facilitate dialogue among TIH shippers; railroads; insurers and underwriters; and rail tank-car owners, lessors, and manufacturers with economic concerns about the transportation of TIH. The Board discontinued the proceeding because of concerns raised during the comment period.

¹⁷ For purposes of accounting and reporting, the Surface Transportation Board designates 3 classes of freight railroads based upon their operating revenues for 3 consecutive years using the following scale: Class I—\$250 million or more; Class II—less than \$250 million but more than \$20 million; and Class III—\$20 million or less. These operating revenue thresholds are stated in 1991 dollars and are adjusted annually for inflation.

Public Outreach

During the past fiscal year, the Board kept Congress and the public abreast of STB actions and policies through numerous news releases, public hearings, congressional testimony, customer-service pamphlets, and written and audio-visual transcripts. All were made available through the agency's website, www.stb.dot.gov.

The tables below display counts of major public outreach activities during the reporting period:

Board Member Public Communications in FY 2010			
<u>Transcripts*</u>	<u>Statements†</u>	<u>Testimonies††</u>	<u>Speeches</u>
8	0	1	26

*Official copies, and electronically archived audio/visual files, of Board hearings and oral arguments.
†Written statements occasionally read at the commencement of a Board hearing and posted to the agency's website in addition to the official event transcript.
††Before the United States Congress.

Public Events Held in FY 2010			
<u>Headquarters Hearings</u>	<u>Field Hearings</u>	<u>Oral Arguments</u>	<u>Meetings*</u>
1	1	6	8

*Conducted nationwide by the Board's Office of Environmental Analysis.

News Releases Issued in FY 2010		
<u>Number Issued</u>	<u>Total Website Visits</u>	<u>Average Visits Per Release</u>
29	46,604*	1,607*

*Per site-visit data viewed and compiled on October 20, 2010.

The **Rail Customer and Public Assistance Program** has evolved into the Board’s most effective venue to resolve disputes informally between shippers and railroads, thus preventing such disputes from becoming expensive and lengthy formal cases.

The Board has mounted an extensive outreach effort, especially to small shippers who have increasingly taken advantage of this free program. The RCPA’s program staff includes attorneys and former employees of shippers and railroads who have decades of experience in rail shipping, operations, marketing, analysis, and tariffs and rates. Program staff attempt to seek common ground and to facilitate the informal settlement of complaints, allowing both sides to walk away satisfied.

The RCPA program is available to anyone who has a question or issue falling within the STB’s area of expertise. Program staff also explain various federal agencies’ differing jurisdictions and may redirect parties to other, more appropriate agencies.

Interested persons may phone, e-mail, fax or mail in their inquiries and will receive a reply within 1 business day if possible. Some inquiries can be answered and completed almost immediately. Other issues dealing with specific carrier or shipper disputes may take days or weeks to resolve.

In FY 2010, the RCPA handled 1,406 complaints and inquiries, including 472 core railroad-related issues. On 94 occasions, the RCPA was asked by a party in a railroad-shipper or railroad-railroad dispute to contact a common carrier railroad operating within the United States in an effort to seek compromise. Compromise was achieved in 61 (65%) of those instances.

RAILROAD RESTRUCTURING

Mergers and Consolidations: Review of Carrier Proposals

When 2 or more railroads seek to consolidate through a merger or common-control arrangement, the Board's prior approval is required under 49 U.S.C. §§ 11323-25. By law, STB authorization exempts such transactions from all other laws (including antitrust laws) to the extent necessary for carriers to consummate an approved transaction.

Carriers may seek Board authorization either by filing an application under 49 U.S.C. §§ 11323-25 or by seeking an exemption from the full application procedures under 49 U.S.C. § 10502. The procedures to be followed in such cases vary depending on the type of transaction involved. Where a merger or acquisition involves only Class II or III railroads whose lines do not connect with each other, carriers need only follow a simple notification procedure to invoke a class exemption (an across-the-board exemption from the full application procedures, applicable to a broad class of transactions) at 49 C.F.R. § 1180.2(d)(2). When larger carriers are involved in merger activities, more rigorous procedures apply, and carriers may be required to file "safety integration plans" under rules that the Board has issued jointly with the Federal Railroad Administration.¹⁸

¹⁸ 49 C.F.R. parts 244 and 1106.

Railroad Mergers and Consolidations, FY 2010*	
Under 49 U.S.C. § 11343	
Type	No.
Applications	
Filed	2
Granted	1
Denied	0
Dismissed	0
Pending	1
Petitions for Exemption	
Filed	4
Granted	2
Denied	1
Dismissed	0
Pending	1
Notices of Exemption	
Filed	13
Granted	15
Denied	0
Dismissed	0
Pending	3

* Data in this and subsequent tables comprise a snapshot of Board activity at the close of FY 2010; figures thus may not total. The granted, denied, and dismissed totals include cases initiated in FY 2010, as well as cases filed in a prior fiscal year but disposed of in FY 2010. Therefore, the granted, denied, and dismissed totals may be greater or lesser than the number of cases filed in FY 2010. Pending totals include cases filed in FY 2010, or earlier, that were not disposed of in FY 2010 and thus remain open for disposition in a later fiscal year.

Two railroad merger/consolidation applications were filed with the Board in FY 2010:

- The agency accepted for consideration, and classified as a minor transaction, the Massachusetts Coastal Railroad, LLC (Mass Coastal) and CSX Transportation, Inc.'s (CSX) application for Mass Coastal to acquire a permanent rail-freight easement owned by CSX, in *Massachusetts Coastal Railroad—Acquisition—CSX Transportation, Inc.*, FD 35314 (STB served Dec. 21, 2009), and granted the application, subject to various conditions, in *Massachusetts Coastal Railroad—Acquisition—CSX Transportation, Inc.*, FD 35314 (STB served Mar. 29, 2010).
- The agency accepted for consideration, and classified as a minor transaction, CSX and the Delaware and Hudson Railway's application to begin operations pursuant to a joint-use agreement, and issued a procedural schedule to be followed in *CSX Transportation, Inc. & Delaware & Hudson Railway—Joint Use Agreement*, FD 35348 (STB served May 27, 2010).

Mergers and Consolidations: Oversight and Monitoring

In its 2008 approval of the Canadian National Railway Company's (CN) acquisition of the EJ&E West Company (EJ&E), the Board imposed numerous environmental mitigation and other conditions, and established a 5-year monitoring and oversight period. *See Canadian Nat'l Ry.—Control—EJ&E W. Co.*, FD 35087 (STB served Dec. 24, 2008), *aff'd sub nom. Vill. of Barrington v. STB*, No. 09-1002 (D.C. Cir. Mar. 15, 2011). As part of that process, CN has filed monthly status reports on operational matters related to the acquisition, as well as quarterly reports on the implementation of environmental conditions.

In light of concerns raised by citizens and communities along the former EJ&E line regarding the accuracy and completeness of CN's reports, the Board tasked an independent third-party contractor, HDR Engineering, Inc. (HDR) to verify information

contained in CN's November and December 2009 monthly reports. The Board directed HDR to investigate and prepare audit reports on 6 "task" areas of concern: community and agency outreach, train noise and vibration, train volumes and street blockages, vehicle delays and traffic congestion, review of operational accidents, and public grade crossing signs. On April 14, 2010, HDR issued its final audit report.

Following its review of that final audit report, the Board ordered CN to appear at an April 28, 2010 public hearing at the Board to explain why its submissions to the agency concerning railroad-crossing blockages lasting 10 minutes or more differed from data automatically reported by CN's own crossing gates, and why the railroad had not disclosed that it possessed such information. The Board also ordered CN to provide supplemental reports and raw data on crossing blockages lasting 10 minutes or more. *See Canadian Nat'l Ry.—Control—EJ&E W. Co.*, FD 35087 (STB served Apr. 21, 2010.) (In a decision served Dec. 21, 2010, the Board ordered CN to pay a \$250,000 fine for knowingly violating Board orders.)

Pooling

Rail carriers may seek approval to agree, or to combine, with other carriers to pool or divide traffic, services, or earnings. Among significant actions taken during FY 2010 regarding pooling, the Board, in accordance with the monitoring report requirement in *TTX Co.—Application for Approval of Pooling of Car Service with Respect to Flat Cars*, 7 S.T.B. 778 (2004), concluded that no modification was necessary to its approval of the pooling activities among TTX Company and participating rail carriers. *TTX Co.—Application for Approval of Pooling of Car Service with Respect to Flatcars*, FD 27590 (Sub-No. 3) (STB served Aug. 17, 2010).

Line Acquisitions

Board approval is required for a non-carrier or a Class II or Class III railroad to acquire or operate an existing line of railroad. (The acquisition of an existing line by a Class I railroad is treated as a form of carrier consolidation under a separate procedure.) Non-carriers or Class II or III railroads may seek exemptions under certain conditions, and there are expedited procedures for obtaining Board authorization under several class exemptions (for certain types of transactions that generally require minimal scrutiny).

For non-connecting lines, Class II and Class III railroads may choose to use a class exemption, and Class III railroads may acquire and operate additional lines through a simple notification process. Acquisitions resulting in a carrier having at least \$5 million in annual net revenues require additional notice, in advance of anticipated labor impacts, to give employees and their communities an opportunity to adjust to the effects of a proposed transaction. Non-carriers may acquire rail lines under a class exemption.

Required notification, together with the Board's ability to revoke class exemptions in particular transactions, prevent exemption misuse. Exemptions simplify the regulatory process, while continuing to protect the public, and help preserve rail service in many areas of the country.

The Board's handling of line-acquisition proposals is summarized in the following table:

Line Acquisitions, FY 2010 By Non-carriers Under 49 U.S.C. § 10901		
Type	No.	Miles
Applications for Exemption		
Filed	0	0
Granted	0	0
Denied	0	0
Dismissed	0	0
Pending	0	0
Notices of Exemption		
Filed	50	1211
Granted	47	1034
Denied	1	6.2
Dismissed	4	61.61
Pending	3	200.2
By Class II or III Railroads Under 49 U.S.C. § 10902		
Applications for Exemption		
Filed	0	0
Granted	0	0
Denied	1	0.075
Dismissed	0	0
Pending	0	0
Notices of Exemption		
Filed	22	652.1
Granted	20	645.1
Denied	1	1.0
Dismissed	0	0.0
Pending	1	6.0

Among the more significant actions taken in this area, the Board:

- Found that Board authorization was unnecessary for the Massachusetts Department of Transportation (MassDOT) to acquire the physical assets of a rail line owned by CSX Transportation, Inc., because MassDOT would not become a common carrier as a result of the transaction at issue, in *Massachusetts Department of Transportation–Acquisition Exemption–Certain Assets of CSX Transportation, Inc.*, FD 35312 (STB served May 3, 2010). A reviewing court upheld the Board’s decision in all respects. *Brotherhood of Railroad Signalmen v. Surface Transportation Board*, U.S.C.A., D.C. Cir., No. 10-1138 (March 29, 2011).
- Revoked an acquisition and operation exemption given to the Milwaukee Industrial Trade Center, LLC, doing business as the Milwaukee Terminal Railway (MITC), upon the Board’s finding that the public record raised reasonable and specific concerns that MITC had misused the agency’s class-exemption procedures for non-rail purposes, in *Milwaukee Industrial Trade Center, LLC–Acquisition & Operation Exemption–Line Owned by Milwaukee Industrial Trade Center*, FD 35133 (STB served June 16, 2010).
- Denied a petition filed by Mississippi State Representative Sidney Bondurant to revoke a notice of exemption filed by Grenada Railway, LLC’s (Grenada) acquisition and operation of an Illinois Central Railroad Company line and a Waterloo Railway Company line in Mississippi, in *Grenada Railway–Acquisition & Operation Exemption–Illinois Central Railroad*, FD 35247 (STB served Dec. 3, 2009). The Board’s decision explained that the notice of exemption did not contain false or misleading information because Grenada had no duty to disclose its status as an affiliate of A&K Railroad Materials, Inc.
- Clarified the rights and obligations of a non-carrier owner of a line that leased a 13-mile segment to a rail carrier, in *Macrie—Continuance in Control*

Exemption—N.J. Seashore Lines, Inc., FD 35296, et al. (STB served Aug. 31, 2010). The Board found that the non-carrier merely was leasing its property to the rail carrier and that the lease arrangement did not confer any common carrier obligation on the non-carrier owner.

- Found that Board authorization was unnecessary for the Regional Transportation District (RTD) to acquire the physical assets of a rail line owned by the Union Pacific Railroad Company because RTD would not become a common carrier as a result of the transaction at issue, in *Regional Transportation District—Acquisition Exemption—Union Pacific Railroad in Adams, Boulder, Broomfield, & Weld, Colo.*, FD 35252 (STB served June 29, 2010).
- Found that the Wisconsin Department of Transportation (WisDOT) would not become a rail carrier if it consummated its proposed purchase of various rail segments owned by the Wisconsin & Southern Railroad Co., in *Wisconsin Department of Transportation—Petition for Declaratory Order—Rail Lines in Janesville, Rock County, Wis.*, FD 35301 (STB served Dec. 11, 2009). The Board’s decision explained that if WisDOT sought to go forward with the proposed transaction, Board approval would be unnecessary.
- Found that the WisDOT would become a rail carrier if it acquires parts of a rail line in Barron County, Wisconsin, as proposed in WisDOT’s filing in *Wisconsin Department of Transportation—Petition for Declaratory Order—Rail Lines in Almena, Cameron, & Rice Lake, Barron County, Wis.*, FD 35366 (STB served Sept. 23, 2010). The Board’s decision explained that if the petitioner sought to go forward with the proposed transaction, it would need Board approval before acquiring the rail line.

Trackage Rights

Trackage rights arrangements allow a railroad to use the track of another railroad that may or may not continue to provide service over the line at issue. Such arrangements improve the operating efficiency for the carrier acquiring the rights by providing alternative, shorter, and faster routes. Local trackage rights may introduce new competition, thus giving shippers service options. The Board's prior approval is required for trackage rights arrangements.

The Board maintains a class exemption for the acquisition or renewal of trackage rights through a mutual carrier arrangement. A separate class exemption also exists for trackage rights for overhead operations only, and these expire in 1 year or less.

The Board's docket and handling of trackage rights proposals is summarized in the following table:

Trackage Rights, FY 2010	
Type	No.
Applications	
Filed	0
Granted	0
Denied	0
Dismissed	0
Pending	0
Petitions for Exemption	
Filed	0
Granted	0
Denied	0
Dismissed	0
Pending	0
Notices of Exemption	
Filed	25
Granted	24
Denied	0
Dismissed	0
Pending	0

Leases by Class I Carriers

Leases and contracts for the operation of rail lines by Class I railroads require Board approval. Carriers may seek Board authorization by filing either an application or a petition for exemption, and the agency maintains a class exemption for the renewal of a previously authorized lease. There were no significant actions taken in this area during FY 2010.

Line Constructions

New rail-line construction requires Board authorization. The agency can compel a railroad to permit a new line to cross its tracks if doing so does not interfere with the operation of the crossed line, and if the owner of the crossed line is compensated. If railroads cannot agree to terms, the Board can prescribe appropriate compensation.

Carriers may seek Board authorization by filing either an application or a petition for exemption. The agency maintains class exemptions providing a simple notification procedure for the construction of connecting track on an existing rail right-of-way, on land owned by the connecting railroads, or for joint track-relocation projects that do not disrupt service to shippers.

The STB's docket and handling of construction cases are summarized in the following table:

Railroad Construction, FY 2010		
Type	No.	Miles
Applications		
Filed	0	0.0
Granted	0	0.0
Denied	0	0.0
Dismissed	0	0.0
Pending	0	0.0
Petitions for Exemption		
Filed	0	0.0
Granted	1	3.4
Denied	0	0.0
Dismissed	0	0.0
Pending	0	0.0
Notices of Exemption		
Filed	0	0.0
Granted	1	59.24
Denied	0	0.0
Dismissed	0	0.0
Pending	0	0.0

Among the more significant actions taken in this area during FY 2010, the Board:

- In a 2-1 vote, granted a request by the Alaska Railroad Corporation, a carrier owned by the State of Alaska, for authority to construct and operate a new, 80-

mile rail line that would provide year-round freight and passenger service extending from Delta Junction to the region south of North Pole, Alaska, subject to extensive environmental mitigation conditions, in *Alaska Railroad—Construction & Operation Exemption—Rail Line Between North Pole & Delta Junction, Alaska*, FD 34658 (STB served Jan. 6, 2010).

- Denied a California-Nevada Super Speed Train Commission and American Magline Group petition to reopen the Board’s 2007 declaratory-order decision finding that a proposed high-speed passenger rail line between southern California and Las Vegas, Nevada, would require Board approval and be subject to federal preemption, in *DesertXpress Enterprises, LLC—Petition for Declaratory Order*, FD 34914 (STB served May 7, 2010). The Board’s May decision found that the petitioners had not identified any new evidence or changed circumstances relative to the Board’s 2007 decision, nor had they demonstrated any material error on the agency’s part that would justify a reopening of that decision, given that the plain language of the applicable statute embraces passenger rail construction projects. *See id.* (citing 49 U.S.C. §§ 10102, 10501).
- Authorized U S Rail Corporation’s (U S Rail) construction and operation of an 18,000-foot rail line in Brookhaven, Suffolk County, New York, that would connect U S Rail with the Long Island Railroad, subject to environmental mitigation conditions, in *U S Rail Corp.—Construction & Operation Exemption—Brookhaven Rail Terminal*, FD 35141 (STB served Sept. 9, 2010). U S Rail stated that the line would allow it to provide rail freight service to the Brookhaven Rail Terminal, thereby reducing truck traffic in the New York City metropolitan area.

Line Abandonments

Railroads require Board approval to abandon a rail line or to discontinue all rail service

over a line to be held in reserve. Abandonment or discontinuance authority typically is sought by an entity with operating authority over the line, although on rare occasions an “adverse” abandonment or discontinuance action may be brought by an opponent to a line’s continued operation.

The agency maintains a class exemption providing a streamlined notification procedure for the abandonment of lines over which there has been no traffic in 2 consecutive years that could not have been rerouted over other lines.

Preservation of Rail Lines

The Board administers 3 programs designed to preserve railroad service or rail rights-of-way:

Offers of Financial Assistance

If the Board finds that a railroad’s abandonment proposal should be authorized, and the railroad receives an offer by another party to acquire or subsidize continued rail operations on the line to preserve rail service—known as an Offer of Financial Assistance (OFA)—the agency may require the line to be sold for that purpose or operated under subsidy for one year. Where parties cannot agree on a purchase price, the agency will set the price at fair market value, and the offeror will either agree to that price or withdraw its offer.

Feeder-Line Development Program

When railroad service is inadequate for a majority of shippers transporting traffic over a particular line, or the line has been designated in a carrier’s system diagram map as a candidate for abandonment, the Board can compel the carrier to sell the line to a party that will provide service. There were no significant actions taken in this area during

FY 2010.

Trail Use/Rail Banking

The Board administers the National Trails System Act's "rail banking" program allowing railroad rights-of-way approved for abandonment to be preserved for the future restoration of rail service, and for interim use as recreational trails. When a railroad and a trail sponsor agree to negotiate for interim trail use, the agency issues a Certificate of Interim Trail Use or a Notice of Interim Trail Use. If a trail use arrangement is reached, the right-of-way remains under the agency's jurisdiction and does not revert to the original landowners.

The Board's docket and processing of abandonment cases are summarized in the following table:

Abandonments, FY 2010		
Type	No.	Miles
Applications		
Filed	2	3.7
Granted	2	55.7
Denied	0	0.0
Dismissed	0	0.0
Dismissed--OFA sale	0	0.0
Pending	1	233.05
Petitions for Exemption		
Filed	16	264.89
Granted	17	265.18
Denied	0	0.0
Dismissed	0	0.0
Dismissed--OFA sale	0	0
Pending	2	48.35
Notices of Exemption		
Filed	42	648.37
Granted	40	617.95
Denied	0	0.0
Dismissed	0	0.0
Dismissed--OFA sale	0	0.0
Pending	3	4.22

The following table summarizes rail banking and interim trail use activity during fiscal year 2010:

Interim Trail Use/Rail Banking, FY 2010*							
Requests		Grants		Denials		Pending	
No.	Miles	No.	Miles	No.	Miles	No.	Miles
36	522.12	29	410.89	2	18.53	3	9.53

*Data in this table compromise a snapshot of Board activity at the close of FY 2010. The granted, denied, and pending totals include requests filed in FY 2010, as well as requests filed in a prior fiscal year but disposed of in FY 2010. Thus, the granted, denied, and pending totals above do not add up to the number of requests. The pending total includes requests filed in FY 2010, or earlier, that were not disposed of in FY 2010 and thus remain open for disposition in a later fiscal year.

Among the more significant actions taken in the rail abandonment area during FY 2010, the Board:

- Authorized the discontinuance of service over 18.12 miles of rail line, subject to standard employee protective conditions, in *Dakota Northern Railroad—Discontinuance of Service Exemption—in Walsh & Pembina Counties, N.D.*, AB 1041X (STB served Jan. 22, 2010). The Board noted that revenue from traffic on the line was marginal compared to the cost of the line’s operation, and that the line’s 2 shippers did not oppose the proposed service discontinuance.
- Authorized the abandonment of approximately 20 miles of rail line, subject to trail use, public use, environmental, and standard employee protective conditions, in *Minnesota Northern Railroad, Inc.—Abandonment Exemption—in Roseau County, Minn.*, AB 497 (Sub-No. 5X) (STB served Jan. 22, 2010). The Board observed that the only active shippers on the line appeared to have alternative transportation available and that they did not file in opposition to the proposed abandonment.

- Denied petitions to reject an application to abandon and discontinue service over 233 miles of line, in *Montreal, Maine & Atlantic Railway—Discontinuance of Service & Abandonment—in Aroostook & Penobscot Counties, Me.*, AB 1043 (Sub-No. 1) (STB served Mar. 17, 2010). The Board found no basis for rejection because there was no showing that the application was incomplete. The Board subsequently issued an order encouraging parties, particularly the railroad and the State of Maine, to enter talks, with the assistance of Board staff, to resolve issues arising out of the abandonment application and the State’s proposal to purchase the line for continued rail service, in *Montreal, Maine & Atlantic Railway—Discontinuance of Service & Abandonment—in Aroostook & Penobscot Counties, Me.*, AB 1043 (Sub-No. 1) (STB served May 25, 2010). (Ultimately, as a result of these talks, the line has remained an active line.)
- Authorized the abandonment of 22.8 miles of rail line, subject to environmental, historic preservation, trail use, public use, and standard employee protective conditions, in *Indiana Rail Road Co.—Abandonment Exemption—in Martin & Lawrence Counties, Ind.*, AB 295 (Sub-No. 7X) (STB served Mar. 26, 2010). The Board found that the railroad had demonstrated that continued service would be extremely costly and that the prospect of future economic development on the line was speculative. The Board, however, denied the railroad’s request to exempt the line from public use conditions.
- Authorized the abandonment of a 13.26-mile, dead-end segment of a rail line, subject to standard employee protective conditions, in *Norfolk Southern Railway—Petition for Exemption—in Baltimore City & Baltimore County, Md.*, AB 290 (Sub-No. 311X) (STB served Apr. 5, 2010), *pet. for judicial review pending sub nom. Lois Lowe v. STB*, No. 10-1130, *et al.* (D.C. Cir. filed June 2, 2010). The Board granted a request to exempt the line from the OFA process because the railroad had demonstrated that the right-of-way was needed for a valid public purpose overriding the need for continued rail service.

- Authorized the discontinuance of service over 62.3 miles of rail line, subject to standard employee protective conditions, in *CSX Transportation, Inc.—Discontinuance of Service Exemption—in Clark, Floyd, Lawrence, Orange, & Washington Counties, Ind.*, AB 55 (Sub-No. 698X) (STB served Apr. 7, 2010). The Board held a public meeting in Indiana in this proceeding to solicit the views of communities served by the line. After reviewing the public record, the Board concluded that the expenses the railroad was incurring at the time in providing service, coupled with the lack of traffic on the line, justified granting the requested discontinuance.
- Authorized the discontinuance of certain service over segments of the Kellar Branch in Peoria Heights, Ill., in *Pioneer Industrial Railway—Discontinuance of Service Exemption—Line in Peoria County, Ill.*, AB 1056X (STB served Apr. 16, 2010). By also exempting the line from the OFA process and imposing a trail use condition, the Board laid to rest a long-running controversy over the line’s future.
- Granted an application for adverse discontinuance of operating authority over approximately 27 miles of rail line in central New Hampshire, finding that public convenience and necessity required or permitted the discontinuance of operations, subject to employee protective conditions, in *Boston & Maine Corp.—Adverse Discontinuance—New England Southern Railroad*, AB 32 (Sub-No. 100) (STB served Apr. 30, 2010).
- Granted the application of the City of Chicago for the adverse abandonment of 2 lines owned by the Chicago Terminal Railroad, subject to environmental and employee protective conditions, in *City of Chicago—Adverse Abandonment—Chicago Terminal Railroad*, AB 1036 (STB served June 16, 2010).
- Held that a railroad may not consummate abandonment of any portion of a line prior to fulfilling historic-preservation conditions imposed pursuant to Section 106 of the National Historic Preservation Act, in *Missouri-Kansas-Texas Railroad—Abandonment—in St. Charles, Warren, Montgomery, Callaway,*

Boone, Howard Cooper and Pettis Counties, Mo.—Petition for Declaratory Order, AB 102 (Sub-No. 13) (STB served July 13, 2010). The Board additionally vacated a certificate of interim trail use or abandonment for the portion of a right-of-way encompassed by a bridge.

- Denied a declaratory order petition requesting that the Board declare that the petitioner retained a rail right-of-way on a former street in Philadelphia, Pa., because the petitioner had neither supported its argument that it had provided common carrier service over the lines in question (and thereby created a common carrier obligation over a different easement), nor its argument that a right-of-way granted by a municipality (but never exercised, developed, or otherwise perfected under the Transportation Act of 1920) must be authorized to be abandoned pursuant to 49 U.S.C. § 10903 before it may be dissolved, in *Philadelphia Belt Line Railroad—Petition for Declaratory Order*, FD 35345 (STB served Aug. 4, 2010).
- Authorized the abandonment of approximately 42.93 miles of rail line, subject to trail use, public use, and employee protective conditions, to relieve the carrier from the expense of operating an unprofitable line, in *Escanaba & Lake Superior Railroad Co.—Abandonment Exemption—in Ontonagon & Houghton Counties, Mich.*, AB 415 (Sub-No. 2X) (STB served Sept. 27, 2010). The Board noted that the line’s shippers had transportation alternatives and that only 1 shipper had opposed the proposed abandonment. The Board delayed its decision 60 days to explore whether operations would resume at the shipper’s mill.

Specifically concerning OFAs, the Board:

- Denied a request by BNSF Railway Company to exempt the abandonment of a 6.23-mile rail line from OFA provisions because, while there were potentially valid public purposes other than freight rail for the exemption request (the expansion of 3 colleges and construction of a new building for a public museum in the vicinity), evidence in the public record was insufficient to justify granting

the request, in *BNSF Railway—Abandonment Exemption—in Kootenai County, Idaho*, AB 6 (Sub-No. 468X) (STB served Nov. 27, 2009).

- Exempted the Lehigh Valley Main Line, in Jersey City, N.J., from OFA provisions because future freight activity would interfere with a commuter line planned by New Jersey Transit, in *Consolidated Rail Corp.—Abandonment Exemption—in Hudson County, N.J.*, AB 167 (Sub-No. 1190X) (STB served May 17, 2010), *pet. for judicial review pending sub nom. James Riffin v. STB*, No. 10-1150 (D.C. Cir. filed July 1, 2010).

Liens on Rail Equipment

Liens on rail equipment and water vessels intended for use in interstate commerce must be filed with the Board to become valid. Subsequent assignments of rights or release of obligations under such instruments also must be filed with the agency. Such liens maintained by the Board are preserved for public inspection. The STB recorded 2,759 liens in FY 2010.

RAILROAD RATES

Cost of Capital

Each year, the Board determines the railroad industry's cost of capital. The Board then uses this cost of capital figure for a variety of regulatory purposes. It is used to evaluate the adequacy of individual railroads' revenues each year and is employed in maximum rate cases, feeder-line applications, rail line abandonments, and trackage rights cases.

Common Carriage or Contract Carriage

Railroads have a common carrier obligation to provide rail service upon reasonable request under federal law. A railroad can provide that service either under rate and service terms agreed to in a confidential transportation contract with a shipper, or under openly available common-carriage rate and service terms. Rate and service terms established by contract are not subject to Board regulation, except for limited protection against discrimination involving agricultural products.

During the FY 2010 reporting period, the Board discontinued a rulemaking proceeding, in *Rail Transportation Contracts Under 49 U.S.C. 10709*, EP 676 (STB served Jan. 22, 2010), in which the Board had proposed to clarify the demarcation between contract and common carrier rates by providing a disclosure statement that could be included in an agreement for rail transportation. After considering public comments, the Board decided that the rail transportation contract disclosure statement proposed by the agency would neither adequately caution a potential shipper of its rights under the statute, nor make clear the full legal consequences of agreement to a rail-transportation contract. Additionally, no interested party offered a suitable alternative disclosure statement, and many opposed the idea of adopting a disclosure statement at all.

Railroads continue to be required to file with the Board summaries of all contracts for the transportation of agricultural products. The summaries must contain specific information contained in 49 C.F.R. § 1313, and are available for public inspection at the agency's Tariff Library, by mail for a fee, and at the agency's website at "www.stb.dot.gov."

There were 1,526 agricultural contract summary filings received by the Board during FY 2010.

Rate Disclosure Requirements: Common Carriage

A railroad's common-carriage rates and service terms must be disclosed upon request, and advance notice must be given for rate increases or changes in service terms. Rates and terms for agricultural products and fertilizer also must be published. These regulatory requirements can be bypassed in instances where the Board has exempted from regulation the class of commodities or rail services involved. Class exemptions exist for most agricultural products, intermodal container traffic, boxcar traffic, and other miscellaneous commodities.

Rate Challenges: Market Dominance Limitation

The Board has jurisdiction over complaints challenging the reasonableness of a common-carriage rate only if a railroad has market dominance over the traffic involved. Market dominance refers to an absence of effective competition from other railroads or transportation modes for a specific movement to which a rate applies.

The Board cannot find that a railroad has market dominance over a movement if the rate charged results in a revenue-to-variable cost percentage of less than 180 percent. The Board's URCS is used to provide a measurement of a railroad's systemwide-average variable costs of performing various rail services.

Where the revenue-to-variable cost threshold is exceeded, the Board examines whether competition in the marketplace effectively restrains a railroad's pricing and provides a shipper a feasible alternative to paying the challenged rate.

Rate Challenges: "SAC" Rate Reasonableness Determination

To assess whether a challenged rate is reasonable, the Board generally uses "constrained market pricing" (CMP) principles. These principles limit a railroad's rates to levels necessary for an efficient carrier to make a reasonable profit. CMP principles recognize that to earn adequate revenues railroads need pricing flexibility, including charging higher markups on "captive" traffic (traffic with no alternative means of transportation). But the CMP guidelines impose constraints on a railroad's ability to do so. The most commonly used CMP constraint is the "stand-alone cost" (SAC) test. Under the SAC constraint, a railroad may not charge a shipper more than it would cost to build and operate a hypothetically new, optimally efficient railroad (a "stand-alone railroad") tailored to serve a selected traffic group that includes the complainant's traffic.

The Board's rate reasonableness guidelines have taken shape and been refined through application in individual cases. The agency further developed changes to the rate reasonableness guidelines, including changes to the SAC test, in *Major Issues in Rail Rate Cases*, EP 657 (Sub-No. 1) (STB served Oct. 30, 2006), *aff'd sub nom. BNSF Railway v. STB*, 526 F.3d 770 (D.C. Cir. 2008).

Among the more significant actions taken in FY 2010 regarding rail rate-reasonableness cases, the Board:

- Ordered a carrier to reimburse a shipper for amounts previously collected above the prescribed levels, together with interest calculated according to Board regulations, in *Western Fuels Association v. BNSF Railway*, NOR 42088 (Sub-

No. 1) (STB served Oct. 22, 2009).

- Clarified the method for calculating rates for a prescription period, and ordered a carrier to pay any necessary reparations, with interest, for shipments moved prior to the establishment of reasonable rates, in *Oklahoma Gas & Electric Co. v. Union Pacific Railroad*, NOR 42111 (STB served Oct. 26, 2009).
- Facilitated the settlement of a rate-reasonableness complaint in *NRG Power Marketing LLC v. CSX Transportation, Inc.*, NOR 42122 (STB served July 8, 2010), through mediation by Board staff.
- Held an oral argument, in *Seminole Electric Cooperative, Inc. v. CSX Transportation, Inc.*, NOR 42110, on June 30, 2010, on the threshold question of whether a carrier had market dominance over the traffic at issue. On Sept. 27, 2010, the Board dismissed the complaint because the parties reached a voluntary settlement.
- Held an oral argument in *Arizona Electric Power Cooperative, Inc. v. BNSF Railway & Union Pacific Railroad*, NOR 42113, on Sept. 28, 2010, on the merits of the rate-reasonableness complaint before the Board.

Rate Challenges: Simplified and Expedited Rate Guidelines

In 1996, the Board adopted simplified and expedited rate guidelines in *Rate Guidelines—Non-Coal Proceedings*, 1 S.T.B. 1004 (1996). During the next decade, only 2 cases were brought to the Board under these guidelines, and both settled with the facilitation of Board-led mediation.

Because no cases had been decided under the simplified guidelines since their establishment, the Board examined and revised its simplified guidelines in a decision in

Simplified Standards for Rail Rate Cases, EP 646 (Sub-No. 1) (STB served Sept. 5, 2007), *aff'd sub nom. CSX Transportation, Inc. v. STB*, 568 F.3d 236 (D.C. Cir. 2009), *vacated in part on reh'g, CSX Transportation, Inc. v. STB*, 584 F.3d 1076 (D.C. Cir. 2009). As part of the new simplified guidelines, the Board created a methodology for “medium-sized” cases, and modified its previous simplified guidelines for “small-sized” cases. Specifically, the Board adopted a simplified version of the SAC test for medium-sized cases, which it dubbed “Simplified-SAC,” and modified the previously adopted “Three Benchmark” methodology for small-sized cases, under which a challenged rate is evaluated in relation to three benchmark figures from the rates of a comparable group of traffic. A shipper challenging a rate may choose to present evidence using either a Simplified-SAC or Three-Benchmark approach, but with limits on the relief available if either simplified procedure is used (maximum recovery of \$5 million for Simplified-SAC cases, and \$1 million for Three-Benchmark cases).

During FY 2010, the Board conducted proceedings relative to its simplified and expedited guidelines, including:

- *US Magnesium, L.L.C. v. Union Pacific Railroad Co.*, NOR 42114 (STB served Jan. 28, 2010), *aff'd sub nom. Union Pacific Railroad Co. v. STB*, No. 10-1019 (D.C. Cir. Dec. 28, 2010), in which the Board found that the defendant railroad had market dominance over the 2 movements at issue and that the challenged rates for those movements were unreasonably high under the Three-Benchmark analysis. The railroad was directed to establish new rates not exceeding the maximum reasonable rates prescribed, and to pay reparations, with interest, to the shipper. In 2 related proceedings, the parties settled their small-rates dispute after mediation by Board staff.
- *Simplified Standards for Rail Rate Cases—Taxes in Revenue Shortfall Allocation Method*, EP 646 (Sub-No. 2) (STB served Jan. 22, 2010), in which the Board adopted the Association of American Railroads’ (AAR) evidence for calculating average state tax rates for use in the Board’s Revenue Shortfall

Allocation Method (RSAM) calculation for 2008. The RSAM calculation allows the Board, in determining whether a railroad is charging unreasonable rates to a shipper, to take into account a railroad's overall revenue need by measuring the average markup above variable costs that the railroad would need to charge all of its potentially captive traffic in order to earn adequate revenues.

- *Waybill Data Reporting for Toxic Inhalation Hazards*, EP 385 (Sub-No. 7) (STB served Jan. 28, 2010), in which the Board proposed, and solicited comments on, rules that would require railroads to submit data to the agency regarding all traffic movements designated as Toxic by Inhalation Hazards as part of their Waybill Sample information.
- *Annual Submission of Tax Information for Use in the Revenue Shortfall Allocation Method*, EP 682 (STB served Feb. 26, 2010), in which the Board adopted a rule requiring AAR to update annually each Class I railroad's weighted-average state-tax information for use in developing RSAM calculations.
- *Waybill Data Released in Three-Benchmark Rail Rate Proceedings*, EP 646 (Sub-No. 3) (STB served Apr. 2, 2010), in which the Board proposed to release to parties in the Three-Benchmark proceedings the unmasked Waybill Sample data of the defendant railroad for the 4 years corresponding to the most recently published RSAM figures.

RAILROAD SERVICE

General Authority

The Board has broad authority to address the adequacy of the service provided by a railroad to its shippers and connecting carriers, and the reasonableness of a railroad's service and practices. Among its broad remedial powers, the Board may compel a railroad to provide alternative service by another railroad, switching operations for another railroad, or access to its terminal for another railroad. To prevent the loss of necessary rail service, the Board can issue temporary service orders during rail-service emergencies by directing a railroad to operate, for a maximum of 270 days, the lines of a carrier that has ceased operations. Finally, the Board has authority to address the reasonableness of a rail carrier's rules and practices.

Among its more significant actions addressing railroad service and practice issues in FY 2010, the Board:

- Found its prior decisions in *Town of Babylon—Petition for Declaratory Order*, FD 35057, still valid after passage of the Clean Railroads Act of 2008 (CRA). The CRA is a fairly new law that limits the Board's authority over solid waste transfer facilities to the siting of such facilities owned or operated by or on behalf of a rail carrier. In decisions served in February and September 2008, the Board had found that proposals to build and operate a facility to transload construction and demolition debris did not qualify for federal preemption and, therefore, were fully subject to state and local regulation. In a decision served on October 16, 2009, the Board found that the facility was not subject to the CRA because it was not owned or operated for or on behalf of a rail carrier. In so finding, the Board concluded that an amended agreement between a railroad and the facility's operator did not grant the railroad the necessary level of involvement with the facility for the latter's operations to be federally preempted. A reviewing court

affirmed the Board's decisions in all respects in *New York and Atlantic Railway Company v. Surface Transportation Board*, U.S.C.A., 2d Cir., No. 10-1490-ag. (March 15, 2011).

- Instituted a declaratory-order proceeding regarding a tariff requiring shippers over certain lines in Wyoming's Powder River Basin to ensure that coal-dust emissions from railcars do not exceed emission standards set by the railroad at issue, in *Arkansas Electric Cooperative Corp.—Petition for Declaratory Order*, FD 35305 (STB served Dec. 1, 2009). Issues specifically noted for public comment were whether: (1) the tariff provisions constitute an unreasonable rule or practice; (2) the railroad may establish rules designed to inhibit the dispersion of coal dust from coal trains operating over its lines; and (3) whether refusal to provide service for non-compliance with the tariff provisions, or other actions to enforce compliance, would violate the railroad's common carrier obligation.
- Explained why the Board's decision interpreting the Clean Railroads Act of 2008, and proposing interim rules governing the submission of land-use-exemption permits and related filings, will not, under 5 U.S.C. § 605(b) of the Regulatory Flexibility Act, have a significant economic impact on a substantial number of small entities, in *Solid Waste Rail Transfer Facilities*, EP 684 (STB served Dec. 17, 2009).
- Required a complainant to identify, in its opening evidence and argument, the through-route service it had sought for prescription under 49 U.S.C. § 10705, in *Entergy Arkansas, Inc. v. Union Pacific Railroad*, NOR 42104 (STB served Dec. 30, 2009). In the same decision, the Board denied a motion filed by a defendant, the Missouri & Northern Arkansas Railroad (MNA), to dismiss the complaint.
- Granted a declaratory-order petition filed by the Norfolk Southern Railway Company and The Alabama Great Southern Railroad Company (collectively,

NS), following a referral from the United States District Court for the Northern District of Alabama, and found that the public record demonstrated that NS requires the property in question for its operations and, therefore, the City of Birmingham's attempts to condemn the property were federally preempted, in *Norfolk Southern Railway—Petition for Declaratory Order*, FD 35196 (STB served Mar. 1, 2010).

- Found that a rail easement between 16th Street and 21st Street in Pittsburgh, Pa. remains available for use as a line of railroad, in *Alleghany Valley Railroad—Petition for Declaratory Order*, FD 35239 (STB served June 15, 2010), *pet. for judicial review pending sub nom. Buncher Co. v. STB*, No. 10-1225 (D.C. Cir. filed Aug. 6, 2010). (The matter has since been dismissed in court so that the parties can file additional evidence with the Board.)
- Resolved several demurrage-charge disputes that arose from court actions in the U.S. District Court for the Western District of Missouri, Southwestern Division (*Missouri & Northern Arkansas Railroad v. Railroad Salvage & Restoration, Inc.*, No. 07-5017-CV-SE-DW), and the Circuit Court of Jasper County, Mo. (*Missouri & Northern Arkansas Railroad v. G.F. Wiedeman International, Inc.*, No. 07AO-CC00112), in *Railroad Salvage & Restoration, Inc.—Petition for Declaratory Order—Reasonableness of Demurrage Charges*, NOR 42102, *et al.* (STB served July 20, 2010), *pet. for judicial review pending sub nom. Railroad Salvage & Restoration, Inc. v. STB*, No. 10-3074 (8th Cir. filed Sept. 20, 2010).
- Found the operations of the New York Susquehanna & Western Railway Corporation (NYSW) at its facility in the Borough of Riverdale, N.J., were part of rail transportation and qualified for preemption, in *Borough of Riverdale—Petition for Declaratory Order*, FD 35299 (STB served Aug. 5, 2010).
- Authorized the Arkansas Midland Railroad to provide rail service for 30 days over a rail line in Gurdon, Ark., that was owned and operated by the Caddo

Valley Railroad, in *Arkansas Midland Railroad—Alternative Rail Service – Line of Caddo Valley Railroad*, FD 35416 (STB served Sept. 17, 2010).

Board-Shipper Discussions

With the exception of discussions of matters pending before the Board, the agency continued to welcome informal shipper meetings with the 3 Board Members and staff to discuss general service, transportation, and other issues of concern. During FY 2010, the Board continued to foster industry dialogue about railroad service through the annual meeting of the National Grain Car Council, quarterly meetings of the Railroad-Shipper Transportation Advisory Council, and meetings of the Railroad Energy Transportation Advisory Committee held at least twice a year.

During the fiscal year, the Board took the following actions:

- On October 27, 2009, the Board held at its Washington, D.C. headquarters the first of a continuing series of oral arguments (similar in format to such arguments held in federal appellate courts) in major cases before the agency. This action was taken to provide parties the opportunity to address the Board Members directly, and to provide the Members the opportunity to question parties directly before deliberating a decision.
- On February 1, 2010, the Board announced the release of *An Update to the Study of Competition in the U.S. Freight Railroad Industry*, an independent study conducted by Christensen Associates (Christensen), a Wisconsin-based consulting firm, updating Christensen's November 2008 findings in *A Study of Competition in the U.S. Freight Railroad Industry and Analysis of Proposals that Might Enhance Competition*. Copies of the Christensen study were published on the Board's website and sent to House and Senate Appropriations Committees, the House Transportation and Infrastructure Committee, and the Senate Commerce,

Science, and Transportation Committee.

- On July 29, 2010, the Board held a public hearing at its Washington, D.C. headquarters concerning whether a railroad may deny transportation service to coal shippers that do not follow the railroad's rules on coal-dust dispersal, in *Arkansas Electric Cooperative—Petition for Declaratory Order*, FD 35305.

Dialogue Between Railroads and Their Customers

In early August 2010, as an aid to rail customers in their business planning, the Board asked railroads to submit to the agency a forward-looking assessment of their respective abilities to meet end-of-year business demands for U.S. rail service. The Board publicly posted the railroads' responses on the agency's website.

During the fiscal year, the Board continued to encourage railroads to establish a regular dialogue with their customers as a productive way of preventing and addressing rail customer-service concerns, and the agency spearheaded that activity through the work of its Rail Customer and Public Assistance Program (RCPA Program).

Assistance with Specific Service Matters

In addition to the RCPA Program's dispute resolution work, its staff regularly monitors the rail industry's operational performance with an eye toward identifying service issues before they become major problems.

RAIL-LABOR MATTERS

Railroad employees adversely affected by certain Board-authorized rail restructurings are entitled to protection prescribed by law. Standard employee protective conditions address wage and salary protection and changes in working conditions. Such conditions provide procedures for dispute resolution through negotiation and, if necessary, arbitration. Arbitration awards are appealable to the agency under limited criteria giving great deference to arbitrators' expertise.

Among the actions addressing labor protection matters in FY 2010, the STB:

- Granted a railroad's request to waive an advance notice to labor, because the public record indicated that no employees would be adversely affected by the proposed transaction, in *Piedmont & Atlantic Railroad—Acquisition & Operation Exemption—Norfolk Southern Railway*, FD 35308 (STB served Nov. 3, 2009).
- Denied a request to waive labor-notice requirements, because the petitioner failed to support its assertion that there were no employees on the active rail line at issue, in *Indiana Business Railroad —Adverse Discontinuance of Rail Service—Portion of Norfolk Southern Railway's Rockport Branch*, AB 1044 (STB served Nov. 30, 2009).

ENVIRONMENTAL REVIEW

Overview

Under the National Environmental Policy Act of 1969,¹⁹ the Board must take into account the environmental impacts of its actions before making its final decision in a case. The Board's Office of Environmental Analysis (OEA) assists the agency by conducting independent environmental reviews of cases filed before the Board. This includes preparation of any necessary environmental documentation, such as an Environmental Impact Statement (EIS) where there is a potential for significant environmental impacts, or a more limited Environmental Assessment (EA). OEA also conducts public outreach to inform interested parties about railroad proposals and to provide the opportunity to raise environmental concerns. OEA provides technical advice and recommendations to the Board on environmental matters.

Environmental Review Process

OEA typically conducts environmental reviews for rail-line construction proposals, rail-line abandonments, and mergers. Environmental reviews are conducted according to the agency's environmental rules,²⁰ regulations of the President's Council on Environmental Quality,²¹ and other applicable federal environmental requirements. Environmental reviews take into account all applicable federal environmental laws, including the Endangered Species Act,²² the Coastal Zone Management Act,²³ the Clean Air Act,²⁴ the

¹⁹ 42 U.S.C. §§ 4321-43.

²⁰ 49 C.F.R. § 1105.

²¹ 49 C.F.R. §§ 1500-08.

²² 7 U.S.C. § 136, 16 U.S.C. §§ 1531-44.

²³ 16 U.S.C. §§ 1451-1464.

²⁴ 42 U.S.C. §§ 7401-7671.

Clean Water Act,²⁵ the National Historic Preservation Act,²⁶ and pertinent hazardous-substance laws.

The public plays an important role in the environmental-review process. OEA first presents to the public the preliminary results of its analysis of potential environmental impacts in either a Draft EIS or an EA in a railroad proceeding requiring environmental review. This analysis is based on information available at the time from the involved railroad, the public, OEA's independent analysis, and, in some cases, site visits by OEA staff to the proposed project area. OEA then provides an opportunity for public review and comment on all aspects of the Draft EIS or EA. During the public-comment period, OEA may decide to hold a public meeting or meetings to assist the public in participating in the environmental review process and to facilitate the submission of comments. In FY 2010, OEA held 8 public meetings in project areas around the country. At the conclusion of the public-comment period, OEA performs additional analysis, as needed, and prepares a Final EIS or EA presenting OEA's final recommendations to the Board. The Board then considers the entire environmental record in reaching its final decision in a case.

The Board encourages railroad applicants to consult with communities that could be affected by a proposal, and to negotiate mutually acceptable agreements with local governments and organizations to address specific local concerns. The Board has authority to impose conditions to address potential adverse effects of a proposed action on communities. Such conditions could address public safety, land use, air quality, wetlands and water quality, hazardous waste and materials, noise, historic preservation, and potentially disproportionate impacts on minority and low-income populations. Such environmental mitigation conditions must be reasonable and must address impacts that would result directly from a transaction being considered by the agency.

²⁵ 33 U.S.C. §§ 1251-1387.

²⁶ 16 U.S.C. § 470(f).

To conserve its limited resources, the Board sometimes employs the services of third-party contractors to assist OEA in preparing environmental analyses. This is done under OEA's direction, control, and supervision. The agency has explained its procedures under this practice in *Policy Statement On Use Of Third-Party Contracting In Preparation Of Environmental Documentation*, EP 585 (STB served Mar. 19, 2001), 5 S.T.B. 467.

Rail-Line Constructions

An EIS is generally prepared for rail construction cases although, in some instances, an EA may be sufficient. In assessing a construction proposal's potential impacts on the environment, the Board considers alternatives to the proposed action, effects on regional or local transportation systems, safety, land use, energy use, air and water quality, noise, environmental justice, biological resources, historic resources and coastal zones, as well as cumulative impacts of any new construction.

Among the more significant actions involving the preparation of EISs in FY 2010, OEA:

- Issued a Draft EIS for the proposed construction and operation of between 30 and 45 miles of new rail line, in *Alaska Railroad Corp.—Construction and Operation Exemption—A Rail Line Extension to Port MacKenzie, Alaska*, FD 35095 (STB served Mar. 16, 2010).
- Issued a Draft EIS for the proposed construction and operation of a 20-mile rail line, in *R.J. Corman Railroad/Pennsylvania Lines Inc.—Construction and Operation Exemption—in Clearfield County, Pa.*, FD 35116 (STB served July 23, 2010).

In addition, during FY 2010, the Board participated as a cooperating agency in the preparation of EISs in the:

- Construction of a Trans–Texas Corridor involving a 1,000-mile rail line for freight and mass transit in Texas.
- Construction of an approximately 190-mile rail line, known as DesertXpress, from Victorville, Calif., to Las Vegas, Nev., offering high-speed, passenger-rail transportation.
- Construction and operation of a 5-mile rail line to serve a new coal-mining complex located in Monongalia County, W. Va.
- Construction of approximately 8 miles of rail line in the U.S. and 26 miles of rail line in Mexico, from Eagle Pass, Tex., to an energy plant in Mex.
- Construction of a possible rail line to enhance the movement of freight across New York Harbor from New York to New Jersey.

In FY 2010, OEA also:

- Conducted ongoing environmental review regarding the identification and evaluation of historic and cultural resources, in *Dakota, Minnesota & Eastern Railroad Corp. Construction into the Powder River Basin*, FD 33407.
- Conducted ongoing environmental review regarding the proposed construction and operation of a 43-mile rail line to serve coal interests, in *Six County Ass’n of Governments–Construction and Operation Exemption–Rail Line between Levan and Salina, Utah*, FD 34075.
- Conducted ongoing environmental review regarding the identification and valuation of historic and cultural resources, in *Alaska Railroad–*

Construction and Operation Exemption–Rail Line Between North Pole and Delta Junction, Alaska, FD 34658.

- Began environmental review for the proposed construction and operation of approximately 1.8 miles of new rail line in Phila., Pa., in *Swanson Rail Transfer LLP–Petition for Declaratory Order, FD 35424.*

Among the more significant actions involving the preparation of EAs in FY 2010, OEA:

- Issued a Draft EA and a Final EA for the proposed construction of a 2-mile rail line in Brookhaven, N.Y., in *U S Rail Corp.–Construction and Operation Exemption–Brookhaven Rail Terminal, FD 35141* (STB served July 26, 2010 and Aug. 20, 2010).
- Adopted an EA for the proposed construction of a 2.8-mile rail line, in *City of Davenport, Iowa–Construction and Operation Exemption–in Scott County, Iowa, FD 35237* (STB served Oct. 26, 2009).

Rail-Line Abandonments

The Board's review of rail-line abandonments includes an analysis of potential environmental impacts associated with track removal and any traffic diversion from a line proposed for abandonment. Mitigation conditions imposed on rail-line abandonments often involve the protection of critical habitats for threatened and endangered species, historic and cultural resources, and wetlands. In FY 2010, OEA conducted more than 40 environmental assessments in connection with rail-line abandonments.

Railroad Mergers

In railroad mergers, potential environmental impacts include changes in rail-traffic patterns on existing lines, which may be addressed in an EA or an EIS. The Board may impose conditions designed to mitigate potential systemwide and corridor-specific environmental impacts. Such conditions may address at-grade crossing safety and delays, hazardous-materials transportation safety, emergency response, air quality, and noise. Conditions may also address potentially disproportionate impacts on minority and low-income populations. Safety-integration plans, prepared by merger applicants in consultation with the Federal Railroad Administration, describe how applicants would ensure the safe integration of their rail operations.

Among the more significant actions taken in this area, OEA conducted oversight and monitoring in conjunction with OPAGAC to verify CN's compliance with Board-imposed environmental and operational condition for the proposed acquisition and control of EJ&E by CN, in *Canadian National Railway and Grand Trunk Corporation—Control—EJ&E West Company*, FD 35087.

FINANCIAL CONDITION OF RAILROADS

The Board monitors the financial condition of railroads as part of its oversight of the rail industry. The agency prescribes a uniform accounting system²⁷ for railroads to use for regulatory purposes and requires Class I railroads to submit quarterly and annual reports containing financial and operating statistics, including employment and traffic data.²⁸

Based upon information submitted by carriers, the Board compiles and releases quarterly employment reports as well as annual wage statistics of Class I railroads. Such information is available on the agency's website at www.stb.dot.gov. See Appendix A.

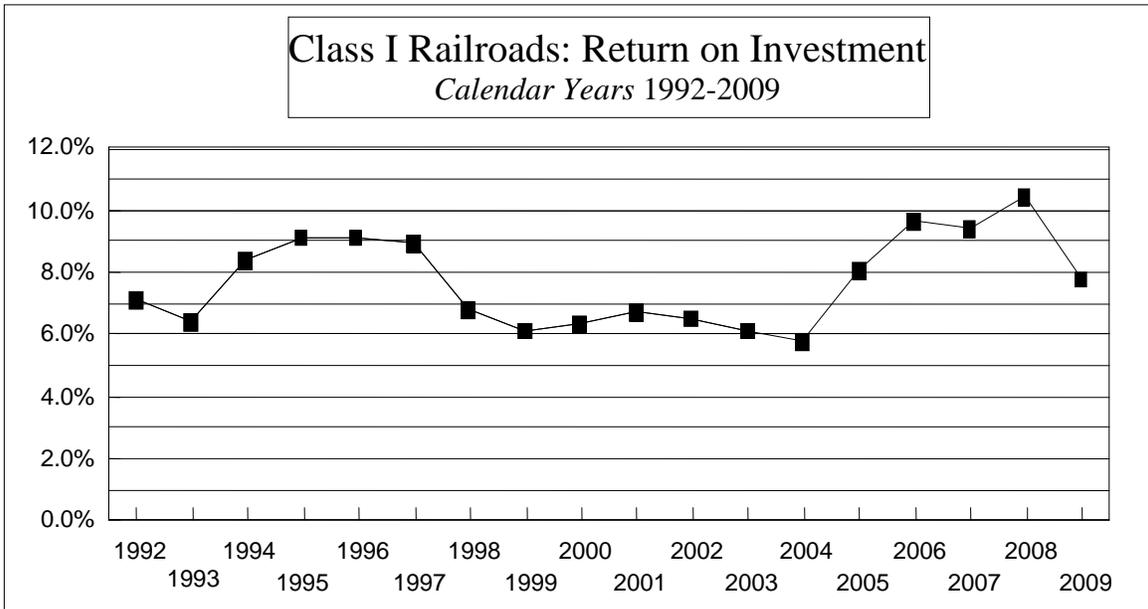
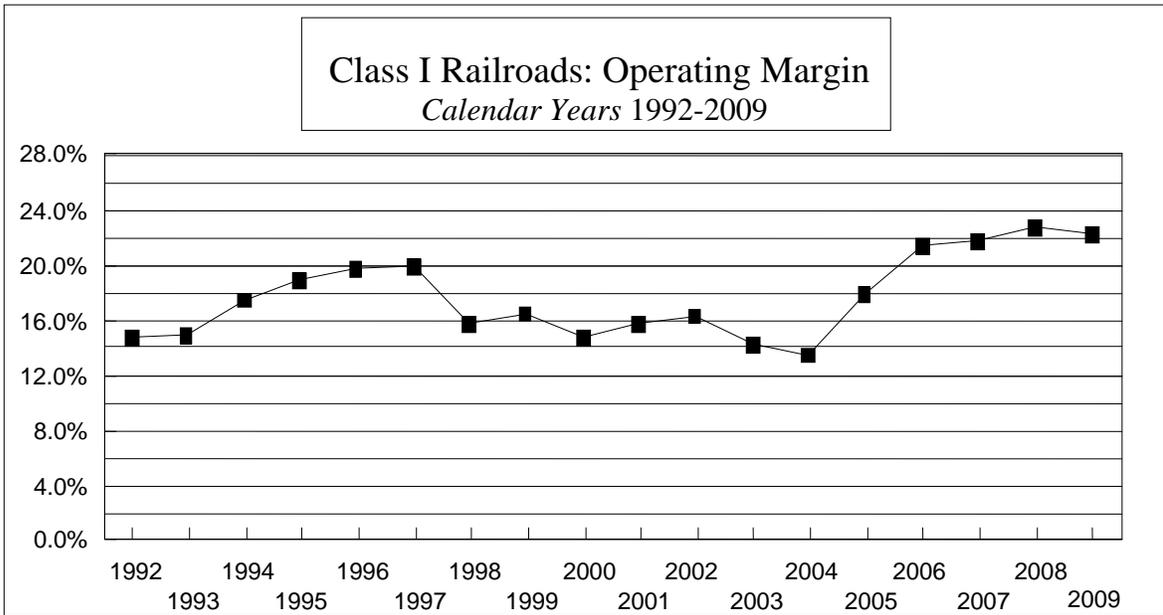
The Board also publishes a "rail cost adjustment factor" (RCAF) on a quarterly basis to reflect changes in costs incurred by the rail industry during each quarter of the year.²⁹ The agency publishes an unadjusted RCAF and an adjusted RCAF with adjustments reflecting rail-industry productivity gains. See Appendix A.

As shown in the following graphs, the *operating margin* (the ratio of income from operations to operating revenues) and *return on investment* for the railroad industry decreased from 2008 to 2009.

²⁷ 49 U.S.C. §§ 11141-43, 11161-64, 1200-1201.

²⁸ 49 U.S.C. §§ 11145, 1241-1246, 1248.

²⁹ 49 U.S.C. §§ 10708, 1135.



AMTRAK AND PASSENGER RAIL

The Board has limited but significant regulatory authority involving the National Railroad Passenger Corporation, known as Amtrak. The agency has authority to ensure that Amtrak may operate over other rail carriers' track, and to address disputes concerning shared use of tracks and other facilities. The Board can set the terms and conditions of such shared use if Amtrak and rail carriers or regional transportation authorities fail to reach voluntary agreements. No such disputes requiring Board action arose in FY 2010.

When a rail carrier cannot permit an Amtrak train to move over its tracks as part of Amtrak's normal routing, the Board may issue an emergency rerouting order to permit uninterrupted Amtrak service. No such emergency rerouting orders were required in FY 2010.

The Board also has authority to direct commuter rail operations in the event of a cessation of service by Amtrak. Though the Board works with FRA, Amtrak, and commuter and freight railroads to assess such contingencies, no instances arose during FY 2010 requiring the agency to take action in this area.

Signed into law on October 16, 2008, the Passenger Rail Investment and Improvement Act of 2008, P.L. 110-432, 122 Stat. 4848 (2008) (PRIIA), expands the Board's jurisdiction over passenger rail. PRIIA requires Amtrak and FRA jointly to develop metrics and improved standards for Amtrak performance. The metrics were finalized by FRA on May 12, 2010, and the Board has analyzed them. The law authorizes the Board to institute enforcement or investigatory action under certain circumstances if the new metrics and standards for Amtrak performance are not met. After investigating, the Board is directed to identify reasonable measures and make recommendations to improve Amtrak performance and/or service quality, and can award damages and prescribe other relief in appropriate circumstances. The Board may be called upon to set terms for access

to Amtrak equipment, service and facilities by non-Amtrak passenger carriers under certain circumstances. Also, the Board will provide mediation services upon request to assist with resolution of disputes regarding commuter-rail access to freight-rail services and facilities.

During FY 2010, the Board has continued work on implementing its passenger rail responsibilities as directed by PRIIA. Board staff has monitored Amtrak performance through publicly available information, and responded to informal inquiries about Amtrak and PRIIA as needed. Board staff has also spoken to industry trade associations to raise awareness of the Board's new commuter-rail access dispute mediation authority. The Board was not called upon to investigate, adjudicate or mediate any issues or disputes under PRIIA during FY 2010.

Finally, in response to a Congressional request, in June 2010, the Board submitted a letter report on liability and indemnity issues between passenger rail and freight rail carriers. The report may be viewed on the Board's home page, at www.stb.dot.gov, under "Items of Interest"/"Liability and Indemnity Report."

MOTOR CARRIAGE

Collective Motor Carrier Activities:

Bureau Agreements

The Board may approve agreements by motor carriers to collectively set through routes and joint rates, establish uniform classifications and mileage guides, and engage in certain other collective activities. However, the Board decided that it would no longer permit carriers to set base rates and related matters collectively, and it therefore terminated its approval of all outstanding motor-carrier bureau agreements, as well as antitrust immunity for them, on January 1, 2008. Consequently, some motor carrier bureaus disbanded altogether while others revised their activities significantly in an attempt to comply with the antitrust laws.

Pooling Arrangements

Motor carriers seeking to pool or to divide their traffic, services, or earnings among themselves must apply for Board approval.

In FY 2010, the Board served a decision approving the application of the Clean Truck Coalition, LLC (Coalition) to share motor carrier tractors meeting truck-emissions criteria for serving the Ports of Los Angeles and Long Beach, California, in *Clean Truck Coalition, LLC—Pooling Application*, MCF 21034 (STB served Nov. 19, 2009). The Board found that, in light of the small percentage of tractors at issue (10 to 12% of the certified clean tractors serving the Los Angeles port), the pooling agreement was not of major transportation importance and would not unreasonably restrain competition, but rather would enhance it by giving the Coalition's smaller and mid-sized companies greater access to clean trucks.

The Board also issued final decisions approving the revised pooling applications of two moving-van companies (also referred to here as van-line systems) in *Mayflower Transit, LLC—Pooling Agreement*, MCF 17950 (STB served Dec. 3, 2009) and *United Van Lines, LLC—Pooling Agreement*, MCF 4901, *et al.* (STB served Dec. 3, 2009). In both cases, the van-line systems had revised their agreements to prevent a carrier-agent (a party that acted as an agent of a van-line system while also holding its own DOT-issued registration to operate in its own name) from transporting, under the carrier-agent's own registration, any interstate shipments of household goods other than governmental shipments. The Board found that the changes to the pooling agreements were similar to other practices previously approved by the former ICC and the Board limiting the ability of carrier-agents to compete with their van-line systems, while still allowing the more important competition between van-line systems. The revised agreements thus were found to be in the interest of better service to the public and not undue restraints on competition.

Household-Goods Carriage

Household-goods carriers, such as moving-van companies, are required to publish tariffs and make them available to residential shippers. Such tariffs must include an accurate description of the services offered and the applicable rates, charges, and service terms for household-goods moves. Shippers must be explicitly informed whenever tariff provisions are incorporated into a bill of lading or other contract document, and provisions must be made available for inspection by the shippers. Regulations also require additional public notice and explanation when incorporated tariff provisions include terms restricting claims; limiting a carrier's liability for loss, damage, or delay of a shipment; or allowing a carrier to impose monetary penalties or to increase the price of transportation. Other than the two pooling-agreement decisions discussed above, no additional decisions concerning household-goods carriage were served by the Board in FY 2010.

Intercity Bus Industry

Intercity bus carriers must obtain Board approval for mergers and similar consolidations, and for pooling arrangements between and among carriers. In addition, the agency can require bus carriers to provide through routes with other carriers.

Among the more significant actions involving bus carriers in FY 2010, the Board:

- Approved the application of a non-carrier to continue in control of a motor passenger carrier once another non-carrier that the applicant also is seeking to control becomes a carrier, in *Marmurstein–Continuance in Control–R.W. Express, LLC*, MCF 21036 (STB served Oct. 16, 2009).
- Approved the application of a non-carrier to acquire control of 2 motor passenger carriers and to continue in control of a motor passenger carrier, in *Francis W. Sherman–Control–Evergreen Trails*, MCF 21037 (STB served Oct. 23, 2009).
- Issued a decision stating that the Board could not approve an amendment to a pooling agreement, which includes another city in an existing route, without formal Board action, in *Peter Pan Bus Lines, Inc.–Pooling–Greyhound Lines, Inc.* MCF 20908 (STB served Mar. 24, 2010).

Motor Carrier Rate Reasonableness

The Board may review the reasonableness of those motor carriers rates that are established collectively. In view of the Board's termination of approval for any motor carriers to set rates collectively, that type of rate no longer is sanctioned, see *Motor Carrier Bureaus—Periodic Review Proceeding*, EP 656 (STB served May 7, 2007 and June 28, 2007), and, accordingly, there were no requests for review of such rates in FY 2010.

WATER CARRIAGE

The Board has jurisdiction over both port-to-port and intermodal transportation involving ocean carriers in the noncontiguous domestic trade, that is, transportation between the U.S. mainland and Alaska, Hawaii, and the U.S. Territories of American Samoa, the Northern Mariana Islands, Guam, the Virgin Islands, and Puerto Rico.

Tariff Requirements

Carriers engaged in the noncontiguous domestic trade are required to file tariffs with the Board containing their rates and service terms for such transportation. Tariffs are not required for transportation provided under contracts between carriers and shippers, or for transportation provided by freight forwarders. Tariffs are filed in either paper or electronic form and are available in the Board's Tariff Library for review by the public, or by mail for a fee.

The number of water tariffs filed with the Board in FY 2010 is shown in the following table.

Water Tariff Filings, FY 2010	
Printed Tariffs	
Number of pages filed	4,639
Electronic Tariffs	
Number of filings	3,213
Number of Objects (e.g., tariff rates, rules.)	67,243

Complaints

If a complaint is filed with the Board, the agency must determine the reasonableness of water or joint motor-water rates in the noncontiguous domestic trade. During FY 2010, the Board neither received nor decided any noncontiguous domestic trade-related complaints.

Regarding a matter pending at the close of the fiscal year, in a petition filed on August 13, 2009, West Point Relocation, Inc., and Eli Cohen had sought a declaratory order as to whether it is an unreasonable practice, under 49 U.S.C. § 13701, for Horizon Lines LLC (Horizon) to issue tariff rules holding officers and corporate directors personally liable for the actions of the corporation. The matter was referred to the Board on August 4, 2009, by the United States District Court for the Central District of California, in *Horizon Lines LLC v. West Point Relocation*, No. CV 08-6362 RSWL (JTLx). Horizon had initiated the court proceeding to collect unpaid amounts accrued between 2007 and 2008, allegedly due under a tariff for shipments of goods. The court stayed the case against Mr. Cohen and granted his motion to refer to the Board the issue of whether the tariff terms were reasonable. A declaratory order proceeding was instituted at the Board to resolve whether the “principals” of the billed party are personally liable for the billed party’s failure to pay charges due, in *West Point Relocation, Inc.–Petition for Declaratory Order*, FD 35290 (STB served Oct. 26, 2009).

In a decision served on October 29, 2010, the Board found the challenged tariff unreasonable as applied to this case.

PIPELINE CARRIAGE

The Board regulates the interstate transportation by pipeline of commodities other than oil, gas, or water. Specifically, the Board regulates pipeline commodities such as coal slurry and anhydrous ammonia.

Pipeline carriers must promptly disclose their rates and service terms upon public request, and rates and practices must be reasonable and nondiscriminatory. Pipeline carriers must provide at least 20 days' public notice before a rate increase or change in service terms may become effective. The Board neither received nor decided any pipeline-related complaints during FY 2010, nor were any pending at the close of the fiscal year.

OTHER RULEMAKINGS

Among other rulemakings in FY 2010, the Board:

- Eliminated the position of Secretary of the Board, reassigned delegations of authority from the Secretary to other agency offices, and made additional updates to Board regulations to eliminate incorrect or obsolete references, in *Removal of Delegations of Authority to Secretary*, EP 685 (STB served Oct. 15, 2009).
- Sought public comment on measures the Board could implement to encourage greater use of mediation and arbitration, and on possible amendments to Board regulations to permit the use of Board-facilitated mediation in instances where a formal complaint has not been filed, in *Assessment of Mediation and Arbitration Procedures*, EP 699 (STB served Aug. 20, 2010).
- Informed the public that the text of decisions served by the entire Board would be preceded by a plain-English digest explaining the Board's action in those decisions, in *Policy Statement on Plain Language Digests in Decisions*, EP 696 (STB served Sept. 2, 2010).

COURT ACTIONS

Judicial review of most Board decisions is available in the federal courts of appeals. Certain Board orders—those solely for the payment of money and those addressing questions referred to the Board by a federal district court—are reviewable in federal district court.

Below is a summary of significant court decisions rendered in FY 2010.

Rail-Line Abandonments

- In *Riffin v. STB*, No. 08-1208, 364 Fed. Appx. 650 (D.C. Cir. Jan. 22, 2010) (unpublished), an individual sought review of a Board decision denying his request to compel the reissuance of a deed for rail property that had been issued to his corporate affiliate on the ground that the dispute involved questions of property law that should be resolved in court. The court affirmed the Board's denial, finding that where an OFA offeror and an offeree railroad voluntarily agree to the terms of a sale, the Board has no role in such title transfer disputes.
- In *Wheeler v. Material Recovery of Erie, Inc.*, No. 09-4344, 398 Fed. Appx. 786 (3d Cir. Oct. 1, 2010) (unpublished), a group of landowners challenged the railbanking/interim trail use of an approximately 6-mile section of right-of-way in Erie, Pennsylvania. The case initially had been referred to the Board by a district court. The district court then affirmed the Board's determination that the rail right-of-way had been properly set aside for interim trail use and possible later reinstatement of rail service. The court of appeals denied the landowners' appeal of the district court ruling, affirming the Board's decision.

- In *Kemp v. STB*, No. 09-70576, 387 Fed. Appx. 703 (9th Cir. Jul. 13, 2010) (unpublished), an individual challenged the Board’s decision rejecting his OFA seeking to acquire a 220-foot segment of track because of his failure to show the financial or operational feasibility of his planned new service. The court affirmed the Board’s decision after concluding that the Board’s rejection of the OFA was supported by substantial evidence.
- In *Fox v. STB*, No. 09-9529, 379 Fed. Appx. 767 (May 24, 2010) (unpublished), an individual owning property abutting railroad tracks appealed the Board’s determination that it had jurisdiction over a segment of ancillary track alleged to have been abandoned. The court upheld the finding that the segment was subject to the Board’s exclusive jurisdiction under 49 U.S.C. § 10501(b)(2), and agreed with the Board’s determination that the carrier had not abandoned the segment.

Railroad Rates—Rate Reasonableness Determinations

- In *BNSF Ry. v. STB*, 604 F.3d 602 (D.C. Cir. 2010), the railroad petitioner sought review of the Board’s determination that certain challenged rates were unreasonably high. The court rejected as untimely the carrier’s argument that the rate case before the Board should have been dismissed under a statutory provision directing the agency to decide “investigations” within three years, and the court left intact most of the determinations the Board had made in its Stand Alone Cost analysis. However, the court did find that the Board had not specifically addressed one of the carrier’s many arguments—that the so-called “modified Average Total Cost methodology” would result in an impermissible double-counting of variable costs—and remanded the case to the Board to address that argument.
- In *AEP Texas North Co. v. STB*, 609 F.3d 432 (D.C. Cir. 2010), the shipper petitioner sought review of the Board’s determination that challenged rates had

not been shown to be unreasonably high, in part because the Board continued to apply to a portion of the analysis its long-standing “Discounted Cash Flow” cost-of-capital analytical method, instead of using a new “Capital Asset Pricing Model” methodology adopted in contemporaneous rulemaking. While the court upheld the way the Board performed its cost of capital analysis, it expressed concern that the Board did not explain why, for one portion of its analysis, the Board continued to use the old methodology rather than switching to a newer procedure.

Mergers and Acquisitions

In *Commuter Rail Division v. STB*, 608 F.3d 24 (D.C. Cir. 2010), a commuter operator and an environmental group challenged the Board’s decision authorizing a merger between one of the Canadian Pacific (CP) subsidiaries (Soo Line) and the Dakota, Minnesota & Eastern. The commuter operator complained that the Board did not impose appropriate conditions to protect its operations over a line that CP dispatches. The environmental group challenged the Board’s deferral of an Environmental Impact Statement addressing the transportation of coal pending the railroad’s action to construct other track that would make the coal shipments feasible. The court determined that the environmental group had no “standing” to sue—it was not injured because an environmental review would be conducted before coal could move—and that the protective conditions that the Board imposed here were not unreasonable.

Environmental Issues

Endangered Species

In *Medina Cty. Env’tl Action Ass’n v. STB*, 602 F.3d 687 (5th Cir. 2010), a group of landowners challenged the Board’s finding that the construction of a rail line, subject to 91 environmental mitigation conditions, was not likely to adversely affect any threatened

or endangered species. The court affirmed the Board's decision, finding that the Board had properly limited its review to "reasonably foreseeable" effects, had adequately evaluated those possible effects, and had reasonably relied on certain voluntary mitigation conditions.

Miscellaneous

Preemption

- In *Riffin v. STB*, 592 F.3d 195 (D.C. Cir. 2010), an individual sought review of the Board's determination that state and local laws that could affect his construction of a purported maintenance-of-way facility were not preempted by 49 U.S.C. § 10501(b). The court remanded the matter after concluding that the Board had failed to fully explain its conclusion that, even if the individual were deemed to be a rail carrier, the preemption that would apply to his rail-service operations would not apply to his activities at a different location.
- In *District of Columbia v. STB*, Nos. 05-1220 & 05-1235 (D. C. Cir. Jul. 15, 2010), the court granted the motion to dismiss filed by the District of Columbia and the Sierra Club. Petitioners had sought review of the Board's declaratory order finding that 49 U.S.C. § 10501(b) preempted a District of Columbia law seeking to govern the transportation of hazardous materials moving by rail through the District. After performing the route analysis specified in newly final Pipeline and Hazardous Materials Safety Administration rules for the transportation of security-sensitive materials, the carrier began re-routing the materials in a manner that did not contradict District of Columbia law and thereby rendered review of the Board decision moot.
- In *Franks Inv. Co. LLC v. Union Pac. R.R. Co.*, 593 F.3d 404 (5th Cir. 2010) (*en banc*), the court considered whether 49 U.S.C. 10501(b) preempts a landowner's action under state law to preserve a private road crossing of a railroad line in

Louisiana. The Board filed a brief as *amicus curiae* at the court's request and participated in oral argument, explaining to the court that, under precedent interpreting 49 U.S.C. § 10501(b), easements for railroad/road crossings are preempted only if they would impede rail operations or pose undue safety risks. Agreeing with the Board's interpretation, the court reversed the district court finding of preemption and remanded the matter for further proceedings on the landowner's state law claims.

APPENDIX A

REPORTS AND PUBLICATIONS

The Board issues several types of reports and publications, including technical and statistical reports, general-interest publications, news releases, and consumer guides, among many others. As noted below, many of these reports and publications are available on the agency's website, at **www.stb.dot.gov**. Unless otherwise indicated, paper copies of agency reports and publications are available by calling the Board's Records Officer, at (202) 245-0238, or by writing to the address below:

**SURFACE TRANSPORTATION BOARD
395 E ST SW
WASHINGTON DC 20423-0001**

Copying charges may apply.

Board Regulations and Governing Statutes

Regulations adopted by the STB are contained in two volumes of the *Code of Federal Regulations* (C.F.R.). The first volume (49 C.F.R. Parts 1000-1199) contains general provisions and rules of practice, including provisions relating to exemptions, rate procedures, rail line constructions and abandonments, and restructurings within the railroad and intercity bus industries. The second volume (49 C.F.R. Parts 1200-End) contains provisions regarding the uniform system of accounts prescribed by the agency, carrier records and reporting requirements, and filing and disclosure requirements with respect to rates and service terms. The volumes are available at <http://ecfr.gpoaccess.gov>, or they may be obtained from the U.S. Government Printing Office, at (866) 512-1800 or (202) 512-1800, or by writing to the following address:

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The primary statutory provisions governing the Board, and which the agency is charged with administering, are codified at 49 U.S.C. §§ 701-727, 10101-16106. These provisions are published in the *United States Code Annotated*, in volumes 49 U.S.C.A. §§ 1 to 10100 and 49 U.S.C.A. §§ 10101 to 20100. Both volumes may be viewed at the following URLs:

<http://www.gpo.gov/fdsys/browse/collectionUScode.action?collectionCode=USCODE>

Paper copies of both volumes may be obtained by calling 1 (800) 328-9352, or writing to the following address:

**WEST PUBLISHING CO
PO BOX 64833
ST PAUL MN 55164**

The Board's Website

The Board's website (www.stb.dot.gov) is a valuable resource for current and historical agency information, including the following:

- Agency decisions and notices served on or after November 1, 1996, as well as most environmental documents (such as Environmental Assessments and Environmental Impact Statements), served after that date.
- Agency reports containing major Board decisions issued on or after January 1, 1996.

- All public filings, in all proceedings, received by the agency after February 5, 2002, as well as selected filings received prior to that date in major cases.
- Testimony before Congress by Board Members and agency officials.
- Live audio and video streaming of public Board events, including hearings, meetings, and oral arguments. Proceedings are archived on the agency's website. Electronic transcripts of public events and statements made by Board members are also posted to the site.
- News releases issued by the Board, beginning in January 1997.
- Technical and statistical reports concerning Class I railroads, such as railroad annual reports (Form R-1) in Adobe Acrobat PDF format, price indices, employment data, wage statistics, and selected quarterly earnings reports.
- A guide to environmental rules, a listing of key environmental cases and contacts, and information regarding third-party contracting of work associated with environmental review conducted under the agency's direction and supervision.
- Access to information concerning the agency's Rail Customer and Public Assistance Program.
- The STB's Freedom of Information Act (FOIA) regulations, fees, Reference Guide for FOIA requesters, frequently requested records, and other FOIA-related information.
- The agency's rules and fees for filings and services.
- Publications, including how-to guides about rail-line abandonment and line-sale processes, as well as basic information about the Rails-to-Trails program.

- A general guide to the Board and its operations, including organizational information.
- Links to significant agency proceedings, the U.S. Congress, the U.S. Department of Transportation's list of Internet sites, and WebGov containing links to the White House and governmental agencies.
- Agricultural-contract summaries.
- Recordations, a listing of documents evidencing perfected security interests in railroad rolling stock and some water-carrier equipment.

Documents available at the Board's website may be searched, viewed, printed or downloaded. Online help is available to guide users through the site. The site has e-mail address links relative to specific subject areas, and general inquiries about the agency may be e-mailed using the "Contact Us" feature on the site's home page. In addition, parties may make electronic filings with the Board, and lists of official participants in a proceeding are available electronically. FOIA requests and Information Quality requests also may be electronically submitted.

Board Decisions, Filings, and News Releases

The Board's decisions, filings, and news releases may be viewed on the Board's website and also in its Library at the agency's headquarters at 395 E Street, S.W., Washington, D.C. Paper copies of decisions and filings are available for a fee (minimum charges apply), and a higher fee applies to requests for certified copies. Copies of news releases are free of charge. For information, contact the Board's Records Officer at (202) 245-0238.

Speeches and Statements

Board Members' speeches and testimony before Congress are available on the agency's website. Paper copies may be obtained by writing the Office of Public Assistance, Governmental Affairs and Compliance at the address shown at the beginning of this Appendix, or by telephoning the Board's Communication Director at (202) 245-0234.

Financial and Statistical Reports from Class I Railroads

The following reports, submitted to the Board by Class I railroads, may be examined, by appointment with the agency's Records Officer, (202) 245-0238, between the hours of 8:30 a.m. and 5:00 p.m., Monday through Friday. Report copies are available for a fee, minimum charges apply, and a higher fee applies to requests for certified copies. Documents available on the Board's website are marked with an asterisk (*).

Annual Reports (Form R-1s) of Class I Railroads—report of annual financial and operating statistics (submitted annually).*

Condensed Balance Sheet Report for Class I Railroads (Form CBS)—report of current assets and liabilities, expenditures for additions and betterments, and traffic statistics (submitted quarterly).

Report of Freight Commodity Statistics (Form QCS)—report of carloads, tonnage, and gross revenue for each commodity group (submitted quarterly and annually).

Report of Railroad Employment—Class I Line-Haul Railroads (Statement M350)—report of number of railroad employees (submitted monthly).

Revenue, Expenses, and Income Report (Form RE&I)—report of quarterly operating revenues, expenses, and income (submitted quarterly).

Form STB-54—Annual Report of Cars Loaded and Cars Terminated—report of the annual number of cars loaded and terminated, by car type (submitted annually).

Wage Statistics: Report of Railroad Employees, Service, and Compensation (Form A and Form B)—report of number of employees, service hours, compensation, and mileage (submitted quarterly).

Report of Fuel Cost, Consumption, and Surcharge Revenue—A quarterly report containing the following information: total quarterly fuel cost; gallons of fuel consumed during the quarter; increased or decreased cost of fuel over the previous quarter; and total quarterly revenue from fuel surcharges for all traffic and regulated traffic. This required reporting commenced with the 3 months beginning October 1, 2007 [see *Rail Fuel Surcharges*, EP 661 (Sub-No.1) (STB served Aug. 14, 2007)].*

Periodic Financial Decisions and Notices Issued by the Board

The following periodic financial decisions and notices are available to the public. Documents available on the website are marked with an asterisk (*). These documents are also available, for a copying charge, through the Board's Records Officer, at (202) 245-0238.

Commodity Revenue Stratification Report—report showing the revenue and URCS variable costs by 2-digit STCC code for each of 3 Revenue-to-Variable Cost (RVC) Ratio categories. This report has historically been created as part of the proceeding entitled Rate Guidelines—Non-Coal Proceedings, EP 347 (Sub-No. 2), and its calculation of the “Revenue Shortfall Allocation Method” (RSAM) percentage and the “Average Revenue-to-Variable Cost > 180” (R/VC>180) percentage.*

Depreciation Rate Prescriptions—depreciation rates, by property account, for each Class I railroad.*

Indexing the Annual Operating Revenues of Railroads—notice setting forth the annual inflation-adjusting index numbers (railroad revenue deflator factors) used to adjust gross annual operating revenues of railroads for classification purposes, issued annually.*

Rail Cost Adjustment Factor (RCAF)—index used to adjust for inflation in long-term railroad contracts, rate negotiations, and transportation studies, computed quarterly in *Quarterly Rail Cost Adjustment Factor*, EP 290 (Sub-No. 5).*

Railroad Cost of Capital—determination of the cost of capital rate for the railroad industry issued annually in EP 558.*

Railroad Cost Recovery Procedures—Productivity Adjustment—productivity adjustment factor used to adjust the quarterly RCAF, computed annually in EP 290 (Sub-No. 4).*

Railroad Revenue Adequacy—determination of the railroads that are revenue adequate, issued annually in EP 552.*

Publications

The following Board publications are available on the agency's website, as indicated by an asterisk (*). Unless otherwise indicated, paper copies of these documents are also available, for a fee, through the Records Officer, at (202) 245-0238.

Class I Freight Railroads—Selected Earnings Data—compilation of railway operating revenues, net railway operating income, net income, and revenue ton-miles of freight of Class I railroads developed from quarterly RE&I and CBS forms compiled quarterly.*

Guidance to Historic Preservation—an overview of the Board's involvement in historic preservation relating to railroad licensing proceedings, including those in which a railroad seeks agency authorization to abandon a rail line or acquire or construct a new rail line.*

Guide to the STB's Environmental Rules—questions and answers to assist in understanding and applying the Board's environmental rules.*

Overview: Abandonments and Alternatives to Abandonments—rules and regulations applicable to abandonments, line sales, and rail banking (April 1997).*

Rail Rates Continue Multi-Year Decline—study of trends in average annual rail rates for 1984-1999, based on data for 15 commodity groups obtained from the annual waybill files (Dec. 2000).*

Report of Railroad Employment—Class I Line-Haul Railroads (Statement M350)—report of number of railroad employees compiled monthly.*

Request for Interim Trail Use—a sample of a request for both a Public Use Condition and a Trail Use Condition.*

So You Want to Start a Small Railroad: Surface Transportation Board Small Railroad Application Procedures—rules and regulations involved in applying for Board authority to operate a new railroad (revised March 1997).*

Surface Transportation Board Annual Reports—reports covering the Board’s activities from its inception on January 1, 1996, to the close of the fiscal year that ended September 30, 2010.*

Surface Transportation Board Reports, Volumes 1 through 7— reports containing major Board decisions, including final rules, issued from January 1996 - December 2004 (available on the Board’s website and through the U.S. Government Printing Office).

Wage Statistics of Class I Railroads in the United States (Statement A300) —compilation of the number of employees, service hours, compensation, and mileage, developed from Wage Forms A and B (compiled annually).*

Software, Data, and User Documentation

The following software, data, and user documentation may be obtained from the Office of Economics (OE) for a fee. To purchase any of these items or obtain additional information, contact OE at (202) 245-0323.

Computer Assisted Depreciation and Life Analysis System (CADLAS)—programs used to analyze the life characteristics of property, calculate historical salvage ratios, develop

depreciation rates, calculate annual accruals and accumulated depreciation, determine Reproduction Cost New Less Depreciation (RCNLD) (also known as Trended Net Original Cost), estimate property replacements, and value assets. The cost for the Software and User Documentation generally is \$35.50 (based on a rate of \$71 per hour -- *Regulations Governing Fees for Services Performed in Connection with Licensing and Related Services—2010 Update*, EP 542 (Sub-No. 17) (STB served July 28, 2010), effective August 27, 2010).

Uniform Railroad Costing System (URCS) Phase III Movement Costing Program—used to develop individual shipment cost estimates for U.S. Class I railroads and the eastern and western regions of the United States. The *URCS Phase III Movement Costing Program* and *User Manual*, as well as Worktables and Data for 2006 through 2008, are available on STB’s website at *Industry Data > Economic Data > URCS*.

Confidential Carload Waybill Sample File—movement-specific sample of U.S. railroad traffic used by the Board and others. The *Confidential Carload Waybill Sample File* is available for a fee. Requests for access to the data must follow the procedures specified in 49 C.F.R. § 1244.9. The *Reference Guide for the 2008 Surface Transportation Board Carload Waybill Sample* is available on the Board’s website at *Industry Data > Economic Data > Waybill*.

Carload Waybill Sample Public Use File—nonconfidential railroad movement and revenue data for use in performing transportation planning studies. The *Carload Waybill Sample Public Use Files* for 2006 through 2008 are available on the Board’s website at *Industry Data > Economic Data > Waybill*.

APPENDIX B

APPROPRIATIONS AND EMPLOYMENT

The following tables show average full-time equivalent (FTE) employment and total appropriations, less enacted rescissions, for fiscal years 1996 to 2010 for activities included under the current appropriation title “Salaries and Expenses.”

Average FTE Employment and Appropriations			
FY 1996 - 2010¹			
Fiscal Year	Appropriation	STB Offset ²	Average Employment
1996	8,414,000	651,521	106
1997	12,244,000	3,000,000	131
1998	13,850,000	2,000,000	129
1999	15,156,117	802,883	131
2000	16,086,770	843,230	133
2001	17,016,481	900,000	135
2002	17,485,000	950,000	135
2003	18,320,075	1,000,000	137
2004	18,345,599	1,050,000	135
2005	20,020,000	1,050,000	134
2006	25,200,000	1,250,000	137
2007	25,074,501	1,250,000	136
2008	25,074,500	1,250,000	138
2009	25,597,000	1,250,000	141
2010	27,816,000	1,250,000	149

¹ Appropriations data are from annual appropriation acts. Average FTE Employment data are from Report to OPM, SF 113-G.

² The STB appropriations are statutorily offset by the collection of user fees that are reflected as credits to the appropriations.

Status of FY 2003 Appropriations*		
	Total appropriations	\$18,320,075
	Offsetting collections (<i>see note</i>)	1,000,000
	Reimbursements from other agencies	0
	Total obligations	18,307,135
	Unobligated balance available for adjustments	12,940
	Carryover of offsetting collections to next fiscal year	940,617
Status of FY 2004 Appropriations*		
	Total appropriations	\$18,345,599
	Offsetting collections (<i>see note</i>)	1,050,000
	Reimbursements from other agencies	0
	Total obligations	18,336,857
	Unobligated balance available for adjustments	8,742
	Carryover of offsetting collections to next fiscal year	940,617
Status of FY 2005 Appropriations*		
	Total appropriations (adjusted)	20,031,323
	Offsetting collections (<i>see note</i>)	1,038,077
	Reimbursements from other agencies	494,836
	Total obligations	20,012,955
	Unobligated balance available for adjustments	18,368
	Carryover of offsetting collections to next fiscal year	940,617
Status of FY 2006 Appropriations *		
	Total appropriations (adjusted)	\$24,999,349
	Offsetting collections (<i>see note</i>)	1,198,651
	Reimbursements from other agencies	20,259
	Total obligations	24,928,304
	Unobligated balance available for adjustments	71,045
	Carryover of offsetting collections to next fiscal year	940,617
Status of FY 2007 Appropriations*		
	Total appropriations (adjusted)	\$25,450,866
	Offsetting collections (<i>see note</i>)	873,635
	Reimbursements from other agencies	0

	Total obligations	25,379,087
	Unobligated balance available for adjustments	71,779
	Carryover of offsetting collections to next fiscal year	940,617
Status of FY 2008 Appropriations*		
	Total appropriations	\$25,074,500
	Offsetting collections (<i>see note</i>)	1,250,000
	Reimbursements from other agencies	0
	Total obligations	25,069,749
	Unobligated balance available for adjustments	4,751
	Carryover of offsetting collections to next fiscal year	940,617
Status of FY 2009 Appropriations*		
	Total appropriations (adjusted)	\$25,829,254
	Offsetting collections (<i>see note</i>)	1,017,746
	Reimbursements from other agencies	0
	Total obligations	25,806,587
	Unobligated balance available for adjustments	22,667
	Carryover of offsetting collections to next fiscal year	940,617
Status of FY 2010 Appropriations*		
	Total appropriations (adjusted)	\$28,311,150
	Offsetting collections (<i>see note</i>)	754,850
	Reimbursements from other agencies	0
	Total obligations	29,050,318
	Unobligated balance available for adjustments	15,682
	Carryover of offsetting collections to next fiscal year	940,617

* Appropriations, as of Sept. 30 of each year, are from DOT's Accounting System

NOTE:

The FY 2002-2010 appropriations provided that offsetting collections would be credits to the appropriation. The sum appropriated was to be reduced on a dollar for dollar basis as such offsetting collections were receiving during the fiscal year.

APPENDIX C

DECISIONS DURING FY 2010

FY 2010 Caseload Rail Matters					
Category	Pending at Start	Received During	Decided During	Pending at End	Decisions Served
Carrier Consolidations	3	21	22	2	42
Review of Labor Arbitral Decisions	1	1	0	2	3
Rates and Services	18	14	17	15	67
Rate Reasonableness	12	8	13	7	39
Rate Disclosure	0	0	0	0	0
Through-Routes or Divisions	0	1	0	1	0
Contract Rates	0	0	0	0	0
Reasonable Practice	2	4	2	4	26
Discrimination	0	0	0	0	0
Car Supply and Interchange	1	0	1	0	1
Service Orders	2	1	1	2	1
Competitive Access	1	0	0	1	0
Constructions	14	2	3	13	21
Line Crossing	1	0	0	1	0
Constructions	13	2	3	12	21
Abandonments	43	171	184	30	317

**FY 2010 Caseload
Rail Matters (cont'd)**

Category	Pending at Start	Received During	Decided During	Pending at End	Decisions Served
Other Line Transactions	20	128	122	26	148
Line Consolidations	12	41	44	9	53
Line Acquisitions Under 49 U.S.C. 10901	3	50	45	8	53
Line Acquisitions by Shortline	4	31	27	8	32
Feeder Line Development	0	3	3	0	5
Acquisition and Operation Under 49 U.S.C.10502	1	3	3	1	5
Collective Actions	1	0	1	0	1
Collective Ratemaking	1	0	1	0	1
Pooling	0	0	0	0	0
Data Collection and Oversight	3	1	1	3	12
RCAF	1	0	1	0	10
Accounting and Records	2	1	0	3	2
Reports–Rail	0	0	0	0	0
Passenger Rail	1	1	0	1	0
Amtrak Track Use/Compensation	0	0	0	0	0
Passenger Rail–Other	1	0	1	0	1
Exemption Rulemakings	4	6	4	6	11
Other Rail	9	3	11	1	10
Common Carrier Obligation	2	3	4	1	4
Interlocking Officer or Director	0	0	0	0	0
Other	7	0	7	0	6
Total Rail	117	348	365	100	632

**FY 2010 Caseload
Nonrail Matters**

Category	Pending at Start	Received During	Decided During	Pending at End	Decisions Served
Motor					
Rate Reasonableness	1	0	0	1	1
Joint Motor-Water Rates in Non-contiguous Domestic Trade	1	0	0	1	1
Collectively Set Trucking Rates	0	0	0	0	0
Household Goods	0	0	0	0	0
Collective Actions	3	0	3	0	3
Collective Ratemaking Agreements	0	0	0	0	0
Truck Pooling	3	0	3	0	3
Undercharges	0	0	0	0	0
Bus Regulation	3	3	3	3	7
Through-Route Regulation	0	2	1	1	1
Mergers	3	0	2	1	6
Bus Pooling	0	1	0	1	0
Other Motor	1	0	0	1	0
Water	0	0	0	0	0
Port-to-Port Water Rates	0	0	0	0	0
Other	0	0	0	0	0
Pipeline	0	0	0	0	0
Rate Regulation	0	0	0	0	0
Other	0	0	0	0	0
Other	4	2	3	3	17
Total Nonrail	12	5	9	8	28
Total Rail and Nonrail	129	353	374	108	660

APPENDIX D

RAILROAD FINANCIAL AND STATISTICAL DATA

Railroad Carriers Regulated by the STB as of Jan. 1, 2010	
<i>Carriers Subject to the Uniform System of Accounts and/or Required to File Annual and Periodic Reports ^a</i>	
Railroads, Class I	7
<i>Railroads Not Required to File Reports ^b</i>	
Railroads, Regional	23
Railroads, Local	533
Holding Companies – Rail	not available

^a *Profiles of U.S. Railroads, 2010 Edition*, maintained by the Association of American Railroads and containing AAR estimates of carrier revenues.

^b AAR's *Railroad Facts, 2010 Edition, p. 3*. The AAR no longer uses the "Class II" and "Class III" designations. In lieu of the Class II designation, the AAR defines "regional railroads." These carriers must have revenue of at least \$20 million. They must also operate at least 350 miles of road or earn revenue between \$40 million and the Class I revenue threshold. This new definition, as of 2009, has reduced the number of regional railroads. In lieu of the Class III designation, the AAR defines "local railroads" as carriers below the regional criteria, plus switching and terminal companies.

For regulatory purposes, railroads are classified as Class I, II, or III based on their annual operating revenues. A carrier's class is determined by its inflation-adjusted operating revenues, for 3 consecutive years, in 1991 dollars, using the following scale:

Class I: \$250 million or more.

Class II: Less than \$250 million but more than \$20 million.

Class III: \$20 million or less.

The following formula is used to adjust a railroad's operating revenues to eliminate the effects of inflation:

$$\text{Current Year's Revenues (1991 Average Index / Current Year's Average Index)}$$

The average index (deflator factor) is based on the annual average Railroad Freight Price Index for all commodities. The factor for 1991 is 1.00; factors for recent years are 0.9750 (1997), 0.9638 (1998), 0.9672 (1999), 0.9545 (2000), 0.9373 (2001), 0.9192 (2002), 0.9003 (2003), 0.8640 (2004), 0.7829 (2005), 0.7209 (2006), 0.6952 (2007), 0.6228 (2008), and 0.6600 (2009). All indexes are preliminary and subject to

revision after their original publication (see 75 Fed. Reg. 57,553 (Sept. 21, 2010), effective Jan. 1, 2009).

The STB requires that data from affiliated railroads with integrated operations in the United States be combined to determine whether they are Class I railroads. Such combined railroads are required to file consolidated financial reports [see *Proposal to Require Consolidated Reporting By Commonly Controlled Railroads*, EP 634 (STB served Nov. 7, 2001)].

Class I Railroads: Condensed Income Statement, Financial Ratios, and Employee Data (Dollars in Thousands)				
	Calendar Year			
	2006	2007	2008	2009
1. Class I Carriers	7	7	7	7
CONDENSED INCOME STATEMENT				
2. Total operating revenues	\$52,151,588	\$54,599,504	\$61,242,606	\$47,848,649
3. Total operating expenses	40,980,029	42,747,102	47,347,941	37,225,042
4. Net railway operating income	7,559,597	7,765,051	9,248,350	7,044,981
5. Net income	6,482,025	6,797,225	8,101,774	6,422,621
6. Dividends Paid	1,092,854	6,428,602	3,348,163	1,381,799
NET INVESTMENT AND EQUITY				
7. Net investment, transp. prop. & eqpmt ^a	77,837,908	82,512,141	88,261,887	90,285,519
8. Shareholders' equity	58,901,042	59,300,038	62,786,791	67,826,460
FINANCIAL RATIOS (PERCENT)				
9. Operating ratio (L3/L2)	78.58%	78.29%	77.31%	77.80%
10. Return on net investment (L4/L7)	9.71%	9.41%	10.48%	7.80%
11. Return on equity (L5/L8)	11.00%	11.46%	12.90%	9.47%
EMPLOYEE DATA				
12. Average number of employees	167,508	167,215	164,439	151,906
13. Compensation	\$11,421,567	\$11,617,546	\$11,977,016	\$10,930,497

^a Accumulated deferred income tax reserves have been subtracted from the net investment base in accordance with the modification approved by the ICC in *Standards for Railroad Revenue Adequacy*, 3 I.C.C.2d 261 (1986).

Class I Railroads: Selected Balance Sheet Data				
as of December 31, 2006-2009				
<i>(Dollars in Thousands)</i>				
	Calendar Year			
	2006	2007	2008	2009
1. Total current assets	\$8,250,977	\$8,021,330	\$8,825,174	\$8,767,675
2. Total current liabilities	12,711,989	13,503,696	12,428,998	9,800,997
3. Transportation property				
Road	116,371,738	121,909,899	128,119,862	134,390,447
Equipment	28,678,468	30,533,170	31,760,388	33,422,716
Other	2,072,910	2,827,830	2,823,048	2,347,353
Less accumulated depreciation and amortization	36,104,595	38,865,967	41,361,514	44,343,857
Net transportation property	111,018,521	116,404,932	121,341,784	125,816,659
4. Long-term debt (due after 1 yr)	15,706,575	15,363,218	15,625,048	16,955,770
5. Shareholders' equity				
Capital stock (par value)	696,073	655,272	652,439	649,479
Additional capital (above par)	23,804,429	24,034,945	24,192,551	24,332,478
Retained earnings	34,423,935	34,558,129	37,852,644	42,745,796
Less treasury stock	3,787	3,787	3,787	3,787
Net shareholders' equity	\$58,901,042	\$59,300,038	\$62,786,791	\$67,826,460

Railroad Cost of Capital, Percentage Return on Investment (ROI), and Revenue Adequacy Status 2006-2009 ^a				
	Calendar Year			
	2006 ^b	2007 ^c	2008 ^d	2009 ^e
Cost of Capital	9.9	11.33	11.75	10.43
ROIs of Class I Railroads				
Burlington Northern Sante Fe	11.4	9.97	10.51	8.67
Canadian National/Grand Trunk Corp	9.5	10.11	9.89	7.30
CSX Transportation	8.2	7.61	9.34	6.04
Kansas City Southern	9.3	9.37	7.72	6.51
Norfolk Southern	14.4	13.55	13.75	7.69
Soo Line	11.6	15.25	9.29	6.28
Union Pacific	8.2	8.90	10.46	8.62

^a A railroad is considered to be revenue adequate under 49 U.S.C. § 10704(a) if it achieves a rate of Return on Net Investment (ROI) equal to or greater than the Board's calculated average cost of capital for the freight rail industry. The ROIs that meet this criterion are shown in **bold** in this table.

^b Cost of Capital for 2006 was determined in EP 558 (Sub-No. 10); Revenue Adequacy for 2006 was determined in EP 552 (Sub-No. 11).

^c Cost of Capital for 2007 was determined in EP 558 (Sub-No. 11); Revenue Adequacy for 2007 was determined in EP 552 (Sub-No.12).

^d Cost of Capital for 2008 was determined in EP 558 (Sub-No. 12); Revenue Adequacy for 2008 was determined in EP 552 (Sub-No.13).

^e Cost of Capital for 2009 was determined in EP 558 (Sub-No. 13); Revenue Adequacy for 2009 was determined in EP 552 (Sub-No.14).

APPENDIX E

RAILROAD RATE CASES AT THE STB

The Surface Transportation Board receives frequent inquiries regarding its handling of freight rail rate complaints. This appendix lists all freight rail rate cases reviewed by the Board since the agency's inception on Jan. 1, 1996, along with the outcome in each case. For more information, contact the Office of Public Assistance, Governmental Affairs, and Compliance at (202) 245-0234.

Rail Rate Cases at the STB <i>(1996 to Sept. 30, 2010)</i>					
Docket No	Case Name	Commodity	Guideline Used *	Date of Served Decision	Decision
41191	West Texas v. BNSF	Coal	SAC	5/3/1996	Rates Unreasonable
37809	McCarty Farms v. BN	Grain	SAC	8/20/1997	Rates Reasonable
41185	APS v. ATSF	Coal	SAC	4/17/1998	Rates Unreasonable
41989	Pepco v. CSX	Coal	SAC	6/18/1998	<i>Settlement</i>
42012	Sierra Pacific v. UP	Coal	SAC	7/17/1998	<i>Settlement</i>
41670	Shell Chemical v. NS	Chemical	Simplified	3/12/1999	<i>Settlement</i>
41295	PPL v. Conrail	Coal	SAC	5/13/1999	<i>Settlement</i>
42034	PSI Energy v. Soo	Coal	SAC	5/13/1999	<i>Settlement</i>
42022	FMC v. UP	Minerals	SAC	5/12/2000	Rates Unreasonable
42038	MN Power v. DMIR	Coal	Stipulated R/VC	1/5/2001	<i>Settlement</i>
42051	WPL v. UP	Coal	SAC	5/14/2002	Rates Unreasonable
42054	PPL v. BNSF	Coal	SAC	8/20/2002	Rates Reasonable
42059	Northern States v. UP	Coal	Stipulated R/VC	8/7/2003	<i>Settlement</i>
42077	APS v. BNSF	Coal	SAC	12/31/2003	<i>Withdrawn</i>
42056	TMPA v. BNSF	Coal	SAC	9/27/2004	Rates Unreasonable
42069	Duke v. NS	Coal	SAC	10/20/2004	Rates Reasonable
42070	Duke v. CSXT	Coal	SAC	10/20/2004	Rates Reasonable
42072	Carolina Power v. NS	Coal	SAC	10/20/2004	Rates Reasonable
42057	Xcel v. BNSF	Coal	SAC	12/14/2004	Rates Unreasonable
42058	AEPCO v. BNSF	Coal	SAC	3/15/2005	Rates Reasonable
42093	BP Amoco v. NS	Chemical	Simplified	6/28/2005	<i>Settlement</i>
42071	Otter Tail v. BNSF	Coal	SAC	1/27/2006	Rates Reasonable
42091	APS v. BNSF	Coal	SAC	2/10/2006	<i>Settlement</i>
42097	Albemarle v. LNW	Chemical	SAC	11/14/2006	<i>Settlement</i>
42098	Williams Olefins v. GTC	Chemical	Simplified	2/15/2007	<i>Settlement</i>

Rail Rate Cases at the STB

(1996 to Sept. 30, 2010)

Docket No	Case Name	Commodity	Guideline Used *	Date of Served Decision	Decision
42095	KCPL v. UP	Coal	Stipulated R/VC	5/19/2008	Rates Unreasonable
42088	Western Fuels v. BNSF	Coal	SAC	2/18/2009	Rates Unreasonable
42112	E.I. Dupont v. CSX	Chemical	SAC	5/11/2009	<i>Settlement</i>
41191(S1)	AEP Texas v. BNSF	Coal	SAC	5/15/2009	Rates Reasonable
42111	Oklahoma Gas v. UP	Coal	Stipulated R/VC	7/23/2009	Rates Unreasonable
42088(S1)	Western Fuels v. BNSF	Coal	SAC	7/27/2009	Rate Prescr Guidelines
42099	DuPont v. CSX	Chemical	Three-Benchmark	9/1/2009	<i>Settlement</i>
42100	DuPont v. CSX	Chemical	Three-Benchmark	9/1/2009	<i>Settlement</i>
42101	DuPont v. CSX	Chemical	Three-Benchmark	9/1/2009	<i>Settlement</i>
42114	U.S. Magnesium v. UP	Chemical	Three-Benchmark	1/28/2010	Rates Unreasonable
42115	U.S. Magnesium v. UP	Chemical	Simplified SAC	4/2/2010	<i>Settlement</i>
42116	U.S. Magnesium v. UP	Chemical	Simplified SAC	4/2/2010	<i>Settlement</i>
42122	NRG v. CSXT	Coal	SAC	7/8/2010	<i>Settlement</i>
42110	Seminole Electric v. CSX	Coal	SAC	9/27/2010	<i>Settlement</i>

Rail Rate Cases Pending at the STB as of Sept. 30, 2010

42113	AEPCO v. BNSF & UP	Coal	SAC		To be Determined
42113(S1)	AEPCO v. UP	Coal	SAC		To be Determined
42121	TPI v. CSXT	Chemicals	SAC		To be Determined
42123	M&G Polymers v. CSXT	Chemicals	SAC		To be Determined

* Abbreviations:

1. **SAC** = Stand-Alone Cost Methodology applied for a hypothetical railroad.
2. **Simplified** = Using a Simplified, rather than SAC, Methodology for determining the reasonableness of rates as set forth in Coal Rate Guidelines, Nationwide, 1 I.C.C.2d 520 (1985) (Guidelines).
3. **Stipulated R/VC** = Parties agreed to use revenue to variable cost (R/VC) ratios @ 180% level in lieu of SAC.
4. **Three-Benchmark Methodology** = Methodology of seeking relief pursuant to the revised Simplified Procedures as set forth in Simplified Standards for Rail Rate Cases, STB Ex Parte No. 646 (Sub-No. 1) (STB served Sept. 5, 2007) and any additional Sub-No. decisions.

APPENDIX F

SURFACE TRANSPORTATION BOARD MEMBERS, 1996-2010¹

Name	State	Party	Oath of Office	End of Service ²
SIMMONS, J.J. III	Okla.	Democrat	Jan. 1, 1996	Dec. 31, 1996
OWEN, Gus A.	Calif.	Republican	Jan. 1, 1996	Dec. 31, 1998
MORGAN, Linda J. ³	Md.	Democrat	Jan. 1, 1996	May 15, 2003
CLYBURN, William Jr.	S.C.	Democrat	Dec. 21, 1998	Dec. 31, 2001
BURKES, Wayne O.	Miss.	Republican	Feb. 25, 1999	March 20, 2003
NOBER, Roger ⁴	Md.	Republican	Nov. 26, 2002	Jan. 4, 2006
BUTTREY, W. Douglas ⁵	Tenn.	Republican	May, 28, 2004	March 13, 2009
MULVEY, Francis P. ⁶	Md.	Democrat	June 2, 2004	Term ends 2012
NOTTINGHAM, Charles D. ⁷	D.C.	Republican	Aug. 14, 2006	March 18, 2011
ELLIOTT, Daniel R. III ⁸	Ohio	Democrat	Aug. 13, 2009	Term ends 2013

¹ The Surface Transportation Board was created by the ICC Termination Act of 1995 and was established on Jan. 1, 1996.

² A Member is appointed to a 5-year term of office ending on December 31st of the final year of the term. If a Member departs the STB before the end of his or her term, a successor is appointed to the vacant seat for the remainder of the departing Member's term. The Board's governing statute permits a Member to serve up to 1 year after the expiration of the original term, unless a successor is appointed.

³ Chairman of the STB's predecessor agency, the Interstate Commerce Commission, March 23, 1995-Dec. 31, 1995. STB Chairman Jan. 1, 1996-Nov. 26, 2002.

⁴ Chairman, Nov. 26, 2002-Jan. 4, 2006.

⁵ Chairman, Jan. 5, 2006-March 12, 2006.

⁶ Acting Chairman, March 12-August 13, 2009. Vice Chairman, Jan. 5, 2010-Jan. 4, 2011.

⁷ Chairman, Aug. 14, 2006-March 12, 2009; Vice Chairman, Jan. 4-March 18, 2011.

⁸ Current Chairman.