



***Surface Transportation Board
FY 2002 - 2004 Report***


Surface Transportation Board
Washington, DC 20423

December 2005

To the Congress of the United States:

It is my pleasure to submit the third report of the Surface Transportation Board. This report covers the Board's activities from October 1, 2001, through September 30, 2004. It follows the same basic format as the last report, with a statement of appropriations and aggregate expenditures for fiscal years 2002 through 2004 appearing in Appendix B.

The Board's composition has changed since the last report, with the departure of former Chairman Linda J. Morgan and former Board Member Wayne O. Burkes. I was appointed Chairman on November 26, 2002. New Board Member W. Douglas Buttrey was sworn in on May 28, 2004, followed by Francis P. Mulvey, on June 2, 2004.



Roger Nober
Chairman

CONTENTS

	Page
STB OVERVIEW	1
Functional Responsibilities	1
Performance and Policy Goals	1
Organizational Structure	2
Related Entities	5
RAILROAD RESTRUCTURING	6
Mergers and Consolidation—Review of Carrier Proposals	6
Mergers and Consolidations—Oversight and Monitoring	9
Pooling	12
Line Acquisitions	12
Trackage Rights	17
Leases	19
Line Constructions	20
Line Abandonments	25
Preservation of Rail Lines	29
Offers of Financial Assistance	29
Feeder Line Development Program	30
Trail Use/Railbanking Program	30
RAILROAD RATES	32
Common Carriage or Contract Carriage	32
Rate Disclosure Requirements—Common Carriage	32
Rate Challenges—Market Dominance Limitation	33
Rate Challenges—Rate Reasonableness Determination	34

RAILROAD SERVICE	38
General Authority	38
Dialogue Between Railroads and Their Customers	39
Other Service-Related Decisions	39
STB/Shipper Discussions	41
Assistance with Specific Service Matters	41
Monitoring	42
RAIL LABOR MATTERS	43
ENVIRONMENTAL REVIEW	46
Overview	46
Review Process	46
Rail Line Constructions	47
Rail Line Abandonments	50
Railroad Mergers	51
FINANCIAL CONDITION OF RAILROADS	52
AMTRAK	54
MOTOR CARRIAGE	56
Collective Motor Carrier Activities	56
Approval of Bureau Agreements	56
Pooling Arrangements	57
Household Goods Carriage	58
Intercity Bus Industry	59
Motor Carrier Reasonableness	60
Consumer and Compliance Issues	61

WATER CARRIAGE	62
Tariff Requirements	62
Complaints	63
PIPELINE CARRIAGE	65
COURT ACTIONS	66
Railroad Restructuring	66
Line Constructions	66
Line Abandonments	67
Preservation of Rail Lines—Offers of Financial Assistance	67
Preservation of Rail Lines — Trail Use/Railbanking	68
Environmental Issues	68
Railroad Rates	68
Rate Challenges—Market Dominance Limitation	68
Rate Challenges—Rate Reasonableness Determination	69
Railroad Service Issues	69
Rail Labor Matters	70
APPENDIX A	
REPORTS AND PUBLICATIONS	71
STB Regulations and Governing Statutes	71
STB Web Site	72
STB Decisions, News Releases, and Pleadings	74
Speeches and Statements	74
Financial and Statistical Reports Concerning Class I Railroads	74
Periodic Financial Decisions and Notices	75
Publications	76
Software, User Documentation, and Surveys Available for a Fee	77

APPENDIX B

APPROPRIATIONS AND EMPLOYMENT	79
-------------------------------------	----

APPENDIX C

CASELOADS DURING FY 2002-2004	83
-------------------------------------	----

APPENDIX D

RAILROAD FINANCIAL AND STATISTICAL DATA	93
---	----

APPENDIX E

COMMISSIONERS, 1996-2004	98
--------------------------------	----

TABLES

	Page
Mergers and Consolidations Under 49 U.S.C. 11323	7
Line Acquisitions	14
Trackage Rights	18
Intercarrier Leases	19
Railroad Constructions	21
Abandonments	26
Railbanking/Interim Trail Use	31
Railroad Agricultural Contract Summary Filings	32
Rail Consumer Assistance Program Activity	42
Class I Railroad Operating Margin	53
Class I Railroad Return on Investment	53
Water Carrier Tariff Filings	62
Average FTE Employment and Appropriations	
FY 1996 - 2004	79
Status of FY 1998 Appropriations	80
Status of FY 1999 Appropriations	80
Status of FY 2000 Appropriations	80
Status of FY 2001 Appropriations	80
Status of FY 2002 Appropriations	81
Status of FY 2003 Appropriations	81
Status of FY 2004 Appropriations	81
Caseload During FY 2002	83
Caseload During FY 2003	86
Caseload During FY 2004	89
Rail Carriers Regulated by the STB	93
Class I Line-Haul Railroads, Condensed Income Statement, etc.	95
Class I Line-Haul Railroads, Selected Balance Sheet Data	96
Railroad Revenue Adequacy Status	97
Surface Transportation Board Commissioners	98

Editorial Notes

Acronyms

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

Amtrak	National Railroad Passenger Corporation
AAR	Association of American Railroads
B&M	Boston & Maine Corporation
BNSF	The Burlington Northern and Santa Fe Railway Company
BTS	Bureau of Transportation Statistics
CBS	Condensed Balance Sheet Report for Class I Railroads
CD	compact disc
CFR	Code of Federal Regulations
CMP	constrained market pricing
CN	Canadian National Railway Company
Conrail	Consolidated Rail Corporation
CSX	CSX Transportation, Inc.
DM&E	Dakota, Minnesota & Eastern Railroad Corporation
DOT	Department of Transportation
EA	Environmental Assessment
EIS	Environmental Impact Statement
EPA	Environmental Protection Agency
F.3d	Federal Reporter, 3 rd Series
FMCSA	Federal Motor Carrier Safety Administration
FRA	Federal Railroad Administration
FY	fiscal year
IC	Illinois Central Railway Company
IC&E	Iowa, Chicago & Eastern Railroad Corporation
ICC	Interstate Commerce Commission
ICCTA	ICC Termination Act of 1995
NGCC	National Grain Car Council
NS	Norfolk Southern Railway Company
OCE	Office of Compliance and Enforcement
OCPS	Office of Congressional and Public Services

OEEAA	Office of Economics, Environmental Analysis, and Administration
OFA	offer of financial assistance
RCAF	rail cost adjustment factor
RE&I	Revenue, Expenses, and Income Report
RSTAC	Railroad-Shipper Transportation Advisory Council
SAC	stand-alone cost
SEA	Section of Environmental Analysis
SP	Southern Pacific Transportation Company
STB	Surface Transportation Board
S.T.B.	Surface Transportation Board Reports (Volumes 1-3)
Tex Mex	Texas Mexican Railway
UP	Union Pacific Railroad Company
URCS	Uniform Rail Costing System
U.S.C.	United States Code

SURFACE TRANSPORTATION BOARD

STB OVERVIEW

The Surface Transportation Board (STB) is a bipartisan, decisionally-independent, adjudicatory body that is organizationally housed within the Department of Transportation (DOT). 49 U.S.C. 701-725. The STB was established pursuant to the ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (1995) (ICCTA), to assume certain of the regulatory functions that had previously been administered by the Interstate Commerce Commission (ICC). Other ICC regulatory functions were either eliminated or transferred to the Federal Highway Administration (now handled by the Federal Motor Carrier Safety Administration or FMCSA) or the Bureau of Transportation Statistics (BTS) within DOT.

Functional Responsibilities

The STB has broad economic regulatory oversight of railroads, addressing such matters as rates, service, the construction, acquisition and abandonment of rail lines, carrier mergers, and interchange of traffic among carriers. 49 U.S.C. 10101-11908. The STB also has certain oversight of pipeline carriers (49 U.S.C. 15101-16106), and of intercity bus carriers, household goods carriers, motor carriers involved in collective activities or undercharge claims, and water carriers engaged in noncontiguous domestic trade (49 U.S.C. 13101-14914). The STB has discretion to reduce and tailor its regulatory activities, as it finds appropriate, to meet changing transportation environments or individual circumstances, using the broad exemption authority contained in 49 U.S.C. 10502 (rail), 13541 (motor and water), and 15302 (pipeline).

Performance and Policy Goals

The STB is charged with providing an efficient and effective forum for the resolution of disputes and determination of other matters within its jurisdiction. While the STB uses its exemption authority to reduce or remove regulatory requirements where appropriate, it is

dedicated to vigilant oversight and to rendering fair decisions expeditiously when regulation is required. In all of its decisions, the STB is committed to advancing the national transportation policy goals expressed by Congress in 49 U.S.C. 10101 (rail) and 13101 (motor and water). Finally, the STB has promoted private-sector negotiations and resolutions where possible and appropriate, and facilitated market-based transactions that are in the public interest.

Organizational Structure

The STB is comprised of three members, who are appointed by the President and confirmed by the Senate for 5-year terms. The STB's **Chairman** is designated by the President from among the members. 49 U.S.C. 701. As the executive head, the Chairman coordinates and organizes the agency's work and acts as its representative in legislative matters and in relations with other government bodies. The Chairman generally is responsible for:

- Overall agency management and operations;
- Formulation of plans and policies designed to ensure the effective administration of the governing statutes and STB regulations;
- Identification and resolution of major regulatory problems; and
- Development and utilization of effective, expert staff support for the fulfillment of the STB's duties and functions.

The **Vice Chairman** represents the agency and assumes the Chairman's duties as appropriate. Additionally, the STB has delegated certain functions to the Vice Chairman, including matters involving the admission, discipline, and disbarment of nonattorney STB practitioners.

Assisting the agency in carrying out its responsibilities is a staff of approximately 140 experienced and dedicated lawyers, economists, transportation industry specialists, and administrative and support personnel employed in the offices described below.

The **Office of Compliance and Enforcement** (OCE) monitors the activities of STB-regulated companies and organizations to ensure compliance with the governing statutes and STB regulations; assists the public in the resolution of informal complaints against

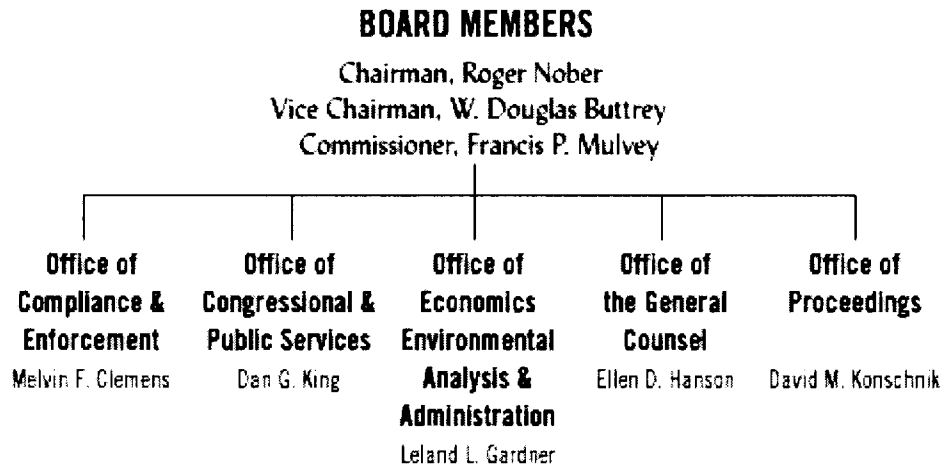
STB-regulated companies; and oversees matters of rate publication, filing, and interpretation.

The **Office of Congressional and Public Services** (OCPS) informs members of Congress, the public, and the media of STB's actions; responds to Congressional, public, and press inquiries; prepares testimony for hearings and comments on proposed legislation; and assists the public in matters involving transportation regulation.

The **Office of Economics, Environmental Analysis, and Administration** (OEEAA) conducts economic and financial analyses of the railroad industry; compiles and publishes financial statistics and reports; performs engineering and cost studies; conducts audits of Class I railroads; and ensures that environmental concerns are adequately assessed in STB proceedings. This office also manages the Agency's day-to-day operations, including budget, personnel, administrative services, and systems development.

The **Office of the General Counsel** renders legal advice to the STB and defends STB decisions challenged in court.

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

STB Organization Chart

Related Entities

The Railroad-Shipper Transportation Advisory Council (RSTAC) was created by the ICCTA to advise the STB, the Secretary of Transportation, and Congressional oversight committees on railroad transportation policy issues of particular importance to small shippers and small railroads, such as rail car supply, rates, and competitive issues. 49 U.S.C. 726. The RSTAC is comprised of 15 private-sector senior executives of organizations engaged in the railroad or rail shipping industries, the Secretary of Transportation, or his/her designee, and the three STB members.

The **National Grain Car Council (NGCC)** assists the STB in addressing problems concerning rail transportation of grain. The council provides an important vehicle for continuing and improving broad-based communications among large railroads, smaller railroads, shippers, rail car manufacturers, and government. Established under the Federal Advisory Committee Act, the NGCC is to be comprised of 14 representatives from Class I railroads, 7 representatives from Class II and Class III railroads, 14 representatives of grain shippers and receivers, and 5 representatives of private rail car owners and manufacturers. In addition, STB members serve as ex officio members of the NGCC.

RAILROAD RESTRUCTURING

Mergers and Consolidation—Review of Carrier Proposals

When two or more rail carriers seek to consolidate through a merger or common control arrangement, the prior approval of the STB is required under 49 U.S.C. 11323-25. See 49 CFR 1180. By law, the STB's authorization exempts such a transaction from all other laws (including antitrust laws) to the extent necessary for the carriers to consummate the approved transaction. 49 U.S.C. 11321.

Carriers may seek STB authorization by filing either an application under 49 U.S.C. 11323-25 or a petition for exemption under 49 U.S.C. 10502. The procedures to be followed in such cases may vary depending on whether the matter involves large (Class I) or smaller (Class II or III) railroads. Class III railroads are those with annual operating revenues below \$20 million, in 1991 dollars; Class II railroads have annual operating revenues of at least \$20 million, but less than \$250 million, in 1991 dollars. Where a merger or acquisition involves only Class II or III railroads whose lines do not connect with each other, the carriers need only follow a simple notification procedure to invoke a class exemption at 49 CFR 1180.2(d)(2). When larger carriers are involved in merger activities, more rigorous procedures apply, and the carriers may be required to file "safety integration plans" under rules that the STB issued jointly with the Federal Railroad Administration (FRA), in *Regulations on Safety Integration Plans Governing Railroad Consolidations, Mergers, and Acquisitions of Control; and Procedures for Surface Transportation Board Consideration of Safety Integrations Plans in Cases Involving Railroad Consolidations, Mergers, and Acquisitions of Control*, STB Ex Parte No. 574 (STB served Mar. 8, 2004).

The STB's docket and handling of railroad proposals for mergers or common control arrangements are summarized in the following table.

Mergers and Consolidations Under 49 U.S.C. 11323				
Fiscal Years →		2002	2003	2004
Applications	Filed	1	1	1
	Granted	0	1	1
	Denied	0	0	0
	Dismissed	1	0	0
Petitions for	Filed	7	5	5
	Granted	7	4	7
	Denied	0	0	0
	Dismissed	0	0	0
Notices of Exemption	Filed	19	20	14
	Granted	22	19	12
	Denied	0	0	0
	Dismissed	0	1	0

In FY 2002-2004, three railroad control applications, classified as minor transactions under 49 CFR 1180.2(c), were filed with the STB:

- The STB accepted for consideration the primary application (and related filings), filed August 29, 2002, by the Dakota, Minnesota & Eastern Railroad (DM&E), Cedar American Rail Holdings, Inc., and Iowa, Chicago & Eastern Railroad (IC&E), and issued the procedural schedule to be followed, in a decision in *Dakota, Minnesota & Eastern Railroad Corporation and Cedar American Rail Holdings, Inc.—Control—Iowa, Chicago & Eastern Railroad Corporation*, STB Finance Docket No. 34178, Decision No. 2, (STB served Sept. 26, 2002). The STB subsequently granted the application, subject to various conditions, in *Dakota, Minnesota & Eastern Railroad Corporation and Cedar American Rail Holdings, Inc.—Control—Iowa, Chicago & Eastern Railroad Corporation*, STB Finance Docket No. 34178, Decision No. 7 (STB served Feb. 3, 2003).

- The STB accepted for consideration the railroad control application filed May 14, 2003, by Kansas City Southern, The Kansas City Southern Railway Company, Gateway Eastern Railway Company, The Texas Mexican Railway Company (TexMex), and Mexrail, Inc., and issued the procedural schedule to be followed in a decision in *Kansas City Southern—Control—The Kansas City Southern Railway Company, Gateway Eastern Railway Company, and The Texas Mexican Railway Company*, STB Finance Docket No. 34342, Decision No. 2 (STB served June 9, 2003). The STB held a public hearing in this proceeding on July 31, 2003, in Washington, D.C., to provide a forum for shippers, railroads, and other interested persons to express their views on the matters. By decision served October 8, 2003 (Decision No. 10), the STB suspended the procedural schedule adopted in Decision No. 2, pending a resolution of the uncertainties that surrounded the efforts of Kansas City Southern to acquire control of TexMex. By decision served August 31, 2004 (Decision No. 11), the STB resumed the procedural schedule and invited additional comments in light of changes to the proposal. The application was approved, subject to various conditions and oversight provisions, in a decision served November 29, 2004.
- The STB accepted for consideration the primary application and related filings submitted November 5, 2003, by Canadian National Railway and Grand Trunk Corporation and three U.S. railroads (Duluth, Missabe and Iron Range Railway Company, Bessemer and Lake Erie Railroad Company, and The Pittsburgh & Conneaut Dock Company) and issued a procedural schedule to be followed, in *Canadian National Railway Company and Grand Trunk Corporation — Control — Duluth, Missabe and Iron Range Railway Company, Bessemer and Lake Erie Railroad Company, and the Pittsburgh & Conneaut Dock Company*, STB Finance Docket No. 34424, Decision No. 2 (STB served Dec. 1, 2003). The STB held oral argument on March 3, 2004. The STB subsequently authorized the transaction, subject to various conditions, and imposed a one-year period of oversight by decision served April 9, 2004 (Decision No. 7).

Mergers and Consolidations—Oversight and Monitoring

In approving major railroad merger or consolidation proposals, the STB has provided for subsequent STB oversight of competitive impacts and monitoring of operational performance on both a formal and informal basis. These activities have taken many forms, including:

Annual Oversight Proceedings

In approving the UP/SP, CSX-NS-Conrail, and CN/IC mergers, the STB provided for a review to be conducted annually for 5 years to examine the effectiveness of the competitive and other conditions previously imposed. In each review, the STB has considered whether adjustments to those conditions were warranted.

In the UP/SP Merger proceeding:

- The STB issued a decision addressing the Houston-Memphis-St. Louis corridor trackage rights issues raised in the fifth annual round of the UP/SP general oversight proceeding. The STB clarified that the “entry/exit” and “Texas/Louisiana” restrictions placed on those trackage rights received by Burlington Northern Santa Fe Railway (BNSF) in connection with the 1996 UP/SP merger are not applicable to certain BNSF traffic. *Union Pacific Corporation, Union Pacific Railroad Company, and Missouri Pacific Railroad Company—Control & Merger—Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and The Denver and Rio Grande Western Railroad Company [General Oversight]*, STB Finance Docket No. 32760 (Sub-No. 21), Decision No. 19 (STB served Nov. 8, 2001).
- In Decision Nos. 20 and 21 in STB Finance Docket No. 32760 (Sub-No. 21) (STB served Dec. 20, 2001), the STB concluded its formal oversight of the UP/SP merger by addressing the remaining issues raised in the fifth annual round of the UP/SP general oversight proceeding, as follows:

- In Decision No. 20, the STB addressed certain disputes concerning the scope of the BNSF Agreement (which described all of the rights granted to BNSF in connection with the UP/SP merger) involving: (1) the definition of “2-to-1” points; (2) the definition of existing transload facilities and new transload facilities; (3) BNSF’s access to new facilities on the Stockton-Elvas trackage rights line; and (4) BNSF’s right to purchase or lease team tracks at 2-to-1 points.
- In Decision No. 21, the STB addressed the remaining issues and concluded the formal oversight process imposed on that merger. The STB found that, overall, the evidence demonstrated that the conditions it imposed on the UP/SP merger effectively remedied, as intended, any competitive harm that would otherwise have been associated with that transaction. The STB indicated that, notwithstanding the end of the formal oversight process, the STB would continue to be available to resolve merger-related disputes concerning the BNSF trackage rights and the various other conditions imposed on the merger.
- Finally, in decisions in the lead UP/SP docket (STB Finance Docket No. 32760), served Mar. 21 and Oct. 22, 2002, the STB resolved disputes regarding the mechanism for adjusting fees for trackage rights acquired by BNSF in connection with the merger.

In the CSX-NS-Conrail Merger proceeding:

- The STB issued decisions in the second, third and fourth annual rounds of the Conrail merger general oversight proceeding. In each of these decisions, the agency concluded after reviewing the record that the CSX and Norfolk Southern (NS) railroads had resolved the service problems resulting from the implementation of the Conrail transaction, that there continued to be no competitive or market power problems stemming from the merger, that the conditions the STB imposed were working as intended, and that significant progress had been made in implementing the various environmental conditions and settlement agreements imposed. *CSX Corporation and CSX Transportation, Inc.*

Norfolk Southern Corporation and Norfolk Southern Railway Company—Control and Operating Leases/Agreements—Conrail Inc. and Consolidated Rail Corporation [General Oversight], STB Finance Docket No. 33388 (Sub-No. 91), Decision No. 6 (STB served Dec. 13, 2001), Decision No. 10 (STB served Nov. 5, 2002), Decision No. 11 (STB served Jan. 21, 2004).

- Also in Decision No. 11, the STB instituted the fifth and final round of general oversight in this proceeding. Two public hearings were held in that proceeding: one in Trenton, New Jersey on April 2, 2004 (addressing the “Shared Asset Areas”) and one on May 3, 2004 in Washington, D.C. (addressing other concerns). The STB ultimately discontinued oversight in Decision No. 17 in the “Sub-No. 91” docket (served Oct. 20, 2004).
- Finally, the STB authorized a “Supplemental Transaction” in which CSXT and NS revised their organizational structure by absorbing certain subsidiaries that had been established during the Conrail Transaction. *CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company—Control and Operating Leases/Agreements—Conrail Inc. and Consolidated Rail Corporation [General Oversight]*, STB Finance Docket No. 33388 (Sub-No. 94) [Petition for Supplemental Order], Decision No. 2 (STB served Nov. 7, 2003).

In the CN/IC Merger proceeding:

- After completing two rounds of annual oversight that disclosed no competitive problems, and after obtaining comments from interested parties on whether this general oversight proceeding should continue, the STB discontinued its formal oversight of the merger but emphasized that it remains available to address concerns relating to the conditions the agency had imposed on the merger. *Canadian National Railway Company, Grand Trunk Corporation, and Grand Trunk Western Railroad Incorporated—Control—Illinois Central Corporation, Illinois Central Railroad Company, Chicago, Central and Pacific Railroad Company, and Cedar River Railroad Company [General Oversight]*, STB Finance Docket No. 33556 (Sub-No. 4), Decision No. 4 (STB served Dec. 27, 2001).

Special Oversight Proceedings:

- In the CSX-NS-Conrail merger, the STB conducted a 3-year oversight proceeding focusing on rail rates affecting the Buffalo, NY area. The 3-year Buffalo Rate Study concluded the third and final annual round of the 3-year Buffalo Rate Study proceeding, finding that Buffalo-area rates had declined slightly as a result of the transaction. *CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company – Control and Operating Leases/Agreements–Conrail Inc. and Consolidated Rail Corporation (Buffalo Rate Study)*, STB Finance Docket No. 33388 (Sub-No. 90), Decision No. 7 (STB served Dec. 17, 2001), Decision No. 8 (STB served Nov. 15, 2002).

Pooling

Rail carriers may seek approval to agree or combine with other carriers to pool or divide traffic, services, or earnings under 49 U.S.C. 1322. During this reporting period, the STB approved a 10-year extension of TTX's authority to pool its extensive fleet of specialized flatcars for the benefit of 10 participating Class I and Class II railroads, in *TTX Company, et al.–Application for Approval of pooling of Car Service with Respect to Flatcars*, STB Finance Docket No. 27590 (Sub-No. 3) (STB served Aug. 31, 2004).

Line Acquisitions

To acquire or operate an existing rail line, STB approval is required by 49 U.S.C. 10901 for a noncarrier (which will thereby become a carrier), or by 49 U.S.C. 10902 for a Class II or III railroad. See 49 CFR 1150. (The acquisition of an existing line by a larger, Class I railroad is treated as a form of carrier consolidation under 49 U.S.C. 11323.)

Expedited procedures for obtaining the STB's authorization are available under several class exemptions. To acquire a nonconnecting line, Class II and III railroads may elect to use the class exemption at 49 CFR 1180.2(d)(2), discussed above. Class III railroads may acquire and

operate additional rail lines through a simple notification process under 49 CFR 1150.41. However, any acquisitions under that process that will result in the carrier having at least \$5 million in annual net revenues require an additional advance notice of the anticipated labor impacts, to afford employees and their communities an opportunity to adjust to the effects of the proposed transaction. 49 CFR 1150.42(e). Noncarriers may acquire rail lines under the class exemption at 49 CFR 1150.31, subject to similar notification processes. These exemptions have resulted in the preservation of rail service in many areas of the country.

The STB's docket and handling of line acquisition proposals are summarized in the following table. All of the acquisition proposals that were filed, pending, or considered in the periods covered by this report or the STB's prior report were filed using expedited exemption procedures.

Line Acquisitions						
By Noncarriers Under 49 U.S.C. 10901						
Fiscal Years →	2002		2003		20042005	
	No.	Miles	No.	Miles	No.	Miles
Petitions for Exemption						
Filed	0	0	1	3	0	0
Granted	0	0	1	3	0	0
Denied	0	0	0	0	0	0
Dismissed	0	0	0	0	0	0
Notices of Exemption						
Filed	52	4,139	34	754	37	1,460
Granted	46	3,973	23	491	32	1,241
Denied	1	2	3	84	0	0
Dismissed	5	139	10	227	2	117
By Class II or III Railroads Under 49 U.S.C. 10902						
Petitions for Exemption						
Filed	0	0	0	0	0	0
Granted	0	0	0	0	0	0
Denied	0	0	0	0	0	0
Dismissed	0	0	0	0	0	0
Notices of Exemption						
Filed	22	596	34	1,251	27	1,547
Granted	20	573	28	1,016	29	1,488
Denied	0	0	0	0	0	0
Dismissed	1	98	2	62	0	0

Among the more significant actions taken in this area in FY 2002-2004, the STB:

- Found that STB approval was not needed for Santa Clara Valley Transportation Authority to acquire 5.8 miles of Union Pacific Railroad right-of-way in California to allow both passenger and freight service to be accommodated, in *Santa Clara*

Valley Transportation Authority–Acquisition Exemption–Union Pacific Railroad Company, STB Finance Docket No. 34094 (STB served Nov. 16, 2001);

- Found that STB approval was not needed for Utah Transit Authority’s acquisition of 63 miles of UP’s right-of-way under an agreement between the parties that accommodates both rail passenger and freight service, in *Utah Transit Authority–Acquisition Exemption–Certain Assets of Union Pacific Railroad Company*, STB Finance Docket No. 34170 (STB served May 22, 2002);
- Denied requests to stay and to revoke the effectiveness of an exemption, allowing the acquisition of I&M Rail Link by a noncarrier affiliated with the DM&E to proceed, in *Iowa, Chicago & Eastern Railroad Corporation–Acquisition and Operation Exemption–Lines of I&M Rail Link, LLC*, STB Finance Docket No. 34177 (STB served July 22, 2002 and Jan. 21, 2003);
- Found that STB authorization was not required for Massachusetts Port Authority to acquire the physical assets of the Boston and Maine Corporation’s 1.45-mile Mystic Wharf Branch because B&M would retain the common carrier easement and obligation to provide rail freight service, in *Massachusetts Port Authority–Acquisition Exemption–Certain Assets of Boston and Maine Corporation*, STB Finance Docket No. 34276 (STB served Mar. 25, 2003);
- Authorized Riverview Trenton Railroad to acquire and operate track on the site of a former steel mill in Wayne County, MI, in order to provide a competitive alternative to other intermodal facilities, subject to various conditions, including a community liaison and a three-year monitoring and reporting requirement (to address opponents’ concerns that the railroad did not intend to perform regulated railroad services), in *Riverview Trenton Railroad Company–Petition for an Exemption from 49 U.S.C. 10901 to Acquire and Operate a Rail Line in Wayne County, MI*, STB Finance Docket No. 34040 (STB served May 15, 2003), *aff’d*, *City of Riverview v. STB*, 398 F.3d 434 (6th Cir. 2005);
- Found that STB authorization was not required for the State of Vermont to acquire the physical assets of a 61-mile rail line, as the Washington County Railroad would

retain the common carrier obligation to provide rail freight service over that line, in *State of Vermont--Acquisition Exemption--Certain Assets of Newport and Richford Railroad Company, Northern Vermont Railroad Company Incorporated, and Canadian American Railroad Company*, STB Finance Docket No. 34294 (STB served May 22, 2003);

- Found that STB authorization was not required for Metro Regional Transit Authority to acquire the physical assets of a 24.42-mile rail line in Stark and Summit Counties, OH because CSXT would retain the common carrier rights and obligations that attach to the line, in *Metro Regional Transit Authority -- Acquisition Exemption--CSX Transportation, Inc.*, STB Finance Docket No. 33838 (STB served Oct. 10, 2003);
- Permitted a sale from one carrier to another carrier that would only provide contract, rather than common carrier service, in order to preserve rail service to two shippers over an economically marginal line already authorized for abandonment, in *BG & CM Railroad, Inc.--Exemption from 49 U.S.C. Subtitle IV, BG & CM Railroad Inc.--Acquisition and Operation Exemption--Camas Prairie Railnet, Inc.*, STB Finance Docket No. 34398 (STB served Oct. 17, 2003);
- Found that STB authority was not required to permit Dallas Area Rapid Transit to operate passenger rail service over the lines of a freight carrier that would retain the exclusive right and obligation to provide common carrier freight rail service, in *Dallas Area Rapid Transit--Acquisition Exemption--Certain Assets of Regional Rail Right of Way Company*, STB Finance Docket No. 34346 (STB served Nov. 12, 2003);
- Authorized a Class II carrier to acquire from CSX and provide service over a 16.82-mile line, over which CSX had already discontinued service, in order to bring coal cars to a utility in Homer City, PA, in *Buffalo & Pittsburgh Railroad, Inc.--Acquisition and Operation Exemption--CSX Transportation, Inc.*, STB Finance Docket No. 34410 (STB served Nov. 19, 2003);

- Found that the Transportation Agency of Monterey County, CA did not require STB authority to acquire the physical assets of a rail line for the purpose of conducting passenger rail operations, in *Transportation Agency of Monterey County–Acquisition Exemption–Certain Assets of Union Pacific Railroad Company*, STB Finance Docket No. 34405 (STB served Jan. 23, 2004);
- Revoked an acquisition and operation exemption after the State of Maryland raised substantial factual and legal issues that made use of the expedited class exemption procedures inappropriate, in *James Riffin d/b/a The Northern Central Railroad–Acquisition and Operation Exemption–in York County, PA, and Baltimore County, MD*, STB Finance Docket No. 34484 (STB served Apr. 20, 2004);
- Denied the petition of five New Jersey municipalities to reopen a Board decision granting a modified certificate of public convenience and necessity to a Class III shortline carrier to operate certain railroad lines in New Jersey, in *Morristown & Erie Railway, Inc.–Modified Rail Certificate*, STB Finance Docket No. 34054 (STB served June 22, 2004), *aff’d, Town of Springfield, New Jersey v. STB*, No. 04-1280 (D.C. Cir. June 24, 2005); and
- Found that a city’s proposed taking of a 20-foot-wide strip of a railroad’s rail right-of-way for a five-block distance under state eminent domain law would be federally preempted because it would prevent or unduly interfere with railroad operations and interstate commerce, in *City of Lincoln–Petition for Declaratory Order*, STB Finance Docket No. 34425 (STB served Aug. 12, 2004), *aff’d, City of Lincoln v. STB*, No. 04-3453 (8th Cir. Jul. 12, 2005).

Trackage Rights

Trackage rights arrangements allow one carrier to perform local, overhead, or bridge operations over the tracks of another carrier (which may or may not continue to provide service over the same line). Overhead or bridge trackage rights frequently improve operating efficiency for the acquiring carrier by providing alternative, shorter, and/or faster routes. Local trackage rights may introduce a new competitor, giving shippers service options.

Prior STB approval of trackage rights arrangements is required by 49 U.S.C. 11323 (for a Class I carrier), 49 U.S.C. 10902 (for a Class II or III carrier), or 49 U.S.C. 10901 (for a noncarrier). See 49 CFR 1180 (for proposals under section 11323); 49 CFR 1150 (for proposals under section 10901 or 10902). The STB maintains a class exemption, at 49 CFR 1180.2(d)(7), that provides a simple notification procedure for the acquisition or renewal of trackage rights by carriers through mutual agreement. (This class exemption cannot be used in response to a rail merger or consolidation proposal.) The STB has also adopted a class exemption, at 49 CFR 1180.2(d)(8), for trackage rights that, by their terms, are for overhead operations only and expire on a date certain, not to exceed 1 year from the effective date of the exemption.

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

Trackage Rights				
Fiscal Years →		2002	2003	2004
Applications	Filed	0	0	4
	Granted	0	0	0
	Denied	0	0	0
	Dismissed	0	0	0
Petitions for Exemption	Filed	0	0	0
	Granted	0	0	0
	Denied	0	0	0
	Dismissed	0	0	0
Notices of Exemption	Filed	23	28	32
	Granted	23	33	26
	Denied	0	0	0
	Dismissed	0	0	1

Leases

Leases and contracts to operate rail lines by a Class I railroad require STB approval under 49 U.S.C. 11323. See 49 CFR 1180. (Leases by a Class II or III railroad may be handled as a line acquisition under 49 U.S.C. 10902, and leases by a noncarrier are handled as a line acquisition under 49 U.S.C. 10901.) Lines are sometimes leased by a nonoperating carrier to an operating carrier willing to assume the common carrier obligation of providing service on demand.

Carriers may seek STB authorization by filing either an application under 49 U.S.C. 11323 or a petition for exemption under 49 U.S.C. 10502. The STB maintains a class exemption, at 49 CFR 1180.2(d)(4), providing a simple notification procedure for the renewal of a previously authorized lease.

The STB's docket and handling of proposed leases are summarized in the following table.

Intercarrier Leases				
	Fiscal Year →	2002	2003	2004
Applications	Filed	0	0	1
	Granted	0	0	0
	Denied	0	0	0
	Dismissed	0	0	0
Petitions for Exemption	Filed	2	0	0
	Granted	1	0	0
	Denied	0	0	0
	Dismissed	1	0	0
Notices of Exemption	Filed	1	0	1
	Granted	1	0	0
	Denied	0	0	0
	Dismissed	0	0	0

Among its significant actions in this area in FY 2002-2004, the STB accepted for consideration, and ultimately granted, an application for authority to lease a 199.7-mile CSX line and sublease a 9.1-mile line owned by Norfolk Southern Railway Company, in *Buckingham Branch Railroad Company–Lease–CSX Transportation, Inc.*, STB Finance Docket No. 34495 (STB served June 22, 2004, Nov. 5, 2004), *pet. for judicial review pending sub nom. Brotherhood of Maintenance of Way Employees Division IBT Rail Conference v. STB*, No. 04-1441 (D.C. Cir. Filed Dec. 29, 2004). In a different proceeding, the STB determined that it had jurisdiction over a new carrier that leased track that had been operated by the lessor as excepted spur and side track, in *Central Illinois Railroad Company–Lease and Operation Exemption–Lines of Burlington Northern and Santa Fe Railway Company at Chicago, Cook County, IL*, STB Finance Docket No. 33960 (STB served Sept. 12, 2002).

Line Constructions

Authorization by the STB to construct a new rail line is required by 49 U.S.C. 10901. See 49 CFR 1150. In connection with authorizing the construction of a new line, the STB can compel other carriers to permit the new line to cross their tracks, if doing so does not materially interfere with the operation of the crossed line and the owner of the crossed line is compensated. 49 U.S.C. 10901(d)(1). If the parties cannot agree on terms, the STB can prescribe appropriate compensation. 49 U.S.C. 10901(d)(2).

Carriers may seek STB authorization by filing either an application under 49 U.S.C. 10901 or a petition for exemption under 49 U.S.C. 10502. Also, the STB maintains class exemptions that provide a simple notification procedure for the construction of connecting track on an existing rail right-of-way at 49 CFR 1150.36, and for joint projects to relocate track that do not disrupt service to shippers at 49 CFR 1180.2(d)(5).

The STB's docket and handling of proposed constructions is summarized in the following table.

Railroad Constructions						
Fiscal Years →	2002		2003		2004	
	No.	Miles	No.	Miles	No.	Miles
Applications						
Filed	1	11	0	5	0	0
Granted	2	323	1	5	0	0
Denied	0	0	0	0	0	0
Dismissed	0	0	0	0	0	0
Petitions for Exemption						
Filed	1	5	3	12	3	15
Granted	5	34	3	19	0	0
Denied	0	0	0	0	0	0
Dismissed	0	0	0	0	1	9
Notices of Exemption						
Filed	3	15	0	0	2	3
Granted	3	15	0	0	2	3
Denied	0	0	0	0	0	0
Dismissed	0	0	0	0	0	0

Among the more significant actions taken in this area during FY 2002-04, the STB:

- Authorized the DM&E to construct and operate a 280-mile rail line into the Powder River Basin of Wyoming, subject to an environmental oversight period and extensive conditions designed to mitigate anticipated adverse environmental impacts. *Dakota, Minnesota & Eastern Railroad Corporation Construction into the Powder River Basin*, STB Finance Docket No. 33407 (STB served Jan. 30, 2002). On appeal, the United States Court of Appeals for the Eighth Circuit upheld the STB's decision with respect to all transportation issues and most environmental issues, but vacated and partially remanded the decision so that the agency could further review certain environmental issues. *Mid States Coalition for Progress v. STB*, 345 F.3d 520 (8th Cir. Oct. 2, 2003).

- Granted final approval for an exemption sought by San Jacinto Rail Limited to construct, and the BNSF to operate, a rail line in Harris County, TX, subject to environmental conditions. In doing so, the STB identified a preferred routing alternative, but explained that the other routing alternatives considered in detail during the environmental review process would also be environmentally acceptable and therefore were also approved. *San Jacinto Rail Limited Construction Exemption and The Burlington Northern and Santa Fe Railway Company Operation Exemption—Build-out to the Bayport Loop Near Houston, Harris County, TX*, STB Finance Docket No. 34079 (STB served May 9, 2003 and July 9, 2003). A state court subsequently dismissed BNSF’s condemnation action to acquire right-of-way needed for the project. But in the appeal, in which the STB filed an *amicus curiae* brief, the Texas appellate court found that the trial court’s interpretation and application of Texas condemnation law in a way that would preclude the completion of the Board-authorized construction project was preempted under 49 U.S.C. 10501(b). *The Burlington Northern and Santa Fe Railway Company v. City of Houston*, No. 14-03-01311-CV (Tex. App. Dist. 14 – Houston filed May 12, 2005).
- Finalized approval for Illinois Central to construct a 3.2-mile rail line in East Baton Rouge Parish, LA, enabling an ExxonMobil chemical plant to receive service from a second railroad. *Illinois Central Railroad Company—Construction and Operation Exemption—In East Baton Rouge Parish, LA*, STB Finance Docket No. 33877 (STB served Jan. 14, 2002), *admin. stay denied* (Feb. 20, 2002), *pet. for judicial review dismissed sub nom. Kansas City S. Ry. v. STB*, No. 02-1068 (D.C. Cir. Mar. 15, 2002).
- Authorized Illinois Central to cross Kansas City Southern track as part of the proposed project to the ExxonMobil plant. *Illinois Central Railroad Company—Petition For Crossing Authority—In East Baton Rouge Parish, LA*, STB Finance Docket No. 33877 (Sub-No. 1) (STB served May 13, 2002).
- Granted final approval for an exemption sought by Midwest Generation, LLC (Midwest) to construct a rail line connecting its plant to track operated by the UP and gave Midwest authority under 49 U.S.C. 10901(d) to cross the track of the IC.

Midwest Generation, LLC – Exemption from 49 U.S.C. 10901–For Construction in Will County, IL, STB Finance Docket No. 34060 (STB served Oct. 4, 2002). The STB also required that the parties enter into negotiations to establish compensation and terms of operation for the crossing. *Midwest Generation, LLC–Petition for Line Crossing Authority Under 49 U.S.C. 10901(d)*, STB Finance Docket No. 34060 (Sub-No. 1) (STB served Oct. 4, 2002).

- Finalized approval for “Entergy Arkansas” to construct an 8.6-mile rail line near Pine Bluff, AR, subject to environmental impact mitigation measures. *Entergy Arkansas and Entergy Rail–Construction and Operation Exemption–White Bluff to Pine Bluff, AR*, STB Finance Docket No. 33782 (STB served Oct. 2, 2001).
- Approved construction by the BNSF railroad of a 7½-mile rail line between Seadrift and Kamey, TX, to enable that railroad to provide competing rail service to an industrial complex pursuant to a condition to the Board’s approval of the UP/SP merger preserving “build-out” opportunities. *The Burlington Northern and Santa Fe Railway Company–Construction and Operation Exemption–Seadrift and Kamey, TX*, STB Finance Docket No. 34003 (STB served Jan. 25, 2002).
- Approved an application by NS to construct and operate a 5.26-mile rail line between Saltsburg, PA, and Clarksburg, PA, allowing NS to haul coal to the Reliant Energy Keystone Generating Plant in Shelocta, PA, over a 66-mile route in lieu of the existing haul of 117 miles over steep grades. *Norfolk Southern Corporation and Norfolk Southern Railway Company–Construction and Operation–In Indiana County, PA*, STB Finance Docket No. 33928 (STB served May 16, 2003).
- Granted a conditional exemption for Southwest Gulf Railroad to construct and operate an approximately 7-mile line of railroad in Medina County, TX, subject to completion of the environmental review process. *Southwest Gulf Railroad Company–Construction and Operation Exemption–Medina County, TX*, STB Finance Docket No. 34284 (STB served May 19, 2003), *reconsid. denied* (STB served Aug. 21, 2003).

- Finalized approval for Alamo North Texas Railroad to construct a 2.25-mile rail line in Wise County, TX, subject to various environmental mitigation conditions, to provide a connection from a quarry to Union Pacific track. *Alamo North Texas Railroad Corporation—Construction and Operation Exemption—In Wise County, TX*, STB Finance Docket No. 34002 (STB served Sept. 3, 2002).
- Ruled that STB approval was not required for a utility to construct its own track that would be operated by a large carrier in private carriage exclusively to serve that utility. *B. Willis, C.P.A., Inc.—Petition For Declaratory Order*, STB Finance Docket No. 34013 (STB served Oct. 3, 2001), *pet. to reopen denied* (July 26, 2002), *aff'd sub nom. B. Willis, C.P.A., Inc. v. STB*, 51 Fed. Appx. 321 (D.C. Cir. Nov. 26, 2002).
- Ruled that STB approval was not required for construction of connecting track that would improve already authorized service. *Port Authority of New York and New Jersey—Petition for Declaratory Order*, STB Finance Docket No. 43328 (STB served Jan. 21, 2004).
- Granted a conditional exemption to construct 2,700 feet of new line, to acquire 1,300 feet of existing track, and to operate the entire approximately 4,000 feet of track in Wilmington and Woburn, MA, to provide shippers in the greater Boston area with a new intermodal transportation option. *New England Transrail, LLC, d/b/a Wilmington and Woburn Terminal Railroad Co.—Construction, Acquisition, and Operation Exemption—in Wilmington and Woburn, MA*, STB Finance Docket No. 34391 (STB served Mar. 2, 2004). The authority was subsequently revoked, in a decision served May 3, 2005, because the proposal had changed substantially while the matter was under environmental review.
- Gave final approval, subject to certain environmental conditions, to an exemption for BNSF to construct and operate an 850-foot line of railroad in Merced County, CA, that would connect a BNSF main line to a printing and distribution facility. *The Burlington Northern and Santa Fe Railway Company—Construction and Operation Exemption—Merced County, CA*, STB Finance Docket No. 34305 (STB served Mar. 4, 2004).

- Found that STB authority was not required for construction of spur and switching track between a reactivated line and a new facility one mile from that line. *The New York City Economic Development Corporation–Petition for Declaratory Order*, STB Finance Docket 34429 (STB served July 15, 2004).
- Declined to open a proceeding where it was clear that the STB’s jurisdiction, and therefore the broad scope of Federal preemption, does not shield from local zoning regulations, state wetlands laws, or other applicable laws activities that are not performed either by a rail carrier or on behalf of a rail carrier holding out those services to the public. *Town of Milford, MA–Petition for Declaratory Order*, STB Finance Docket No. 34444 (STB served Aug. 12, 2004).

Line Abandonments

Railroads require STB approval under 49 U.S.C. 10903 to abandon a rail line or to discontinue all rail service over a line that will be kept in reserve. See 49 CFR 1152. To obtain STB authorization, a carrier may file an application under 49 U.S.C. 10903 or a petition for exemption under 49 U.S.C. 10502. The STB maintains a class exemption, providing a streamlined notification procedure, for the abandonment of lines over which there has been no traffic in the past 2 years that cannot be rerouted over other lines. See 49 CFR 1152.50. In addition, the STB is considering a petition filed by sixty-five short-line and regional carriers to make the abandonment procedures less burdensome on small carriers and to enhance the prospects of preserving rail service through the Board’s offer of financial assistance (OFA) procedures, in *Class Exemption for Expedited Abandonment Procedure for Class II and Class III Railroads*, STB Ex Parte No. 647 (STB served Aug. 7, 2003). A public hearing on this matter was held on August 31, 2004 in Washington, D.C.

The STB’s docket and handling of abandonment cases are summarized in the following table.

Abandonments						
Fiscal Years →	2002		2003		2004	
	No.	Miles	No.	Miles	No.	Miles
Applications						
Filed	3	2.4	3	39.1	4	48
Granted	7	42.7	2	1.1	2	24
Denied	1	1.3	0	0	2	47
Dismissed	1	1.5	0	0	0	0
Dismissed - OFA Sale	0	0	0	0	0	0
Petitions for Exemption						
Filed	17	153.9	30	209	29	573
Granted	24	142.1	21	136.2	31	420.1
Denied	1	13.3	0	0	1	38
Dismissed	0	0	0	0	1	20
Dismissed - OFA Sale	1	43.9	0	0	0	0
Notices of Exemption						
Filed	51	486.8	66	600.4	54	575
Granted	49	494.2	63	523.3	58	644
Denied	0	0	0	0	1	0
Dismissed	0	0	1	10.8	1	1
Dismissed - OFA Sale	5	43	1	33.5	2	56.22

Among its significant actions in this area in FY 2002-2004, the STB:

- Denied a request by CSX to abandon a line between Memphis and Cordova, TN, because the railroad failed to provide sufficient data pertaining to the line's operating costs and revenues, or the repair costs to bridges to justify the request, in *CSX Transportation, Inc.—Abandonment Exemption—(between Memphis and*

Cordova) in Shelby County, TN, STB Docket No. AB-55 (Sub-No. 590X) (STB served Dec. 12, 2001);

- Granted a request by NS and CSX to discontinue service over two rail segments formerly owned by Conrail to enable the New Jersey Transit Corporation to use the lines for light-rail service, in *Norfolk Southern Railway Co.—Discontinuance Exemption—in Hudson County, NJ*, STB Docket No. AB-290 (Sub-No. 212X) and *CSX Transportation, Inc.—Discontinuance Exemption—in Hudson County, NJ*, STB Docket No. AB-55 (Sub-No. 584X) (STB served Jan. 28, 2002);
- Denied an adverse abandonment application, because of the potential for continued operations and the railroad’s intent to resume use of the line and its steps to attract traffic, in *Salt Lake City Corp.—Adverse Abandonment—in Salt Lake City, UT*, STB Docket No. AB-33 (Sub-No. 183) (STB served Mar. 8, 2002), *pet. for judicial review pending sub nom. Salt Lake City v. STB*, No. 02-9526 (10th Cir. filed May 1, 2002);
- Refused to impose on the sale of a right-of-way protective covenants that would constitute an unconstitutional taking of property under the Fifth Amendment, in *CSX Transportation, Inc.—Abandonment Exemption—in Allegheny County, PA*, AB-55 (Sub-No. 606X) (served June 14, 2002);
- Granted a request to abandon a line within a Superfund site in order to facilitate the EPA-mandated environmental cleanup, in *Butte-Silver Bow County—Abandonment Exemption—in Silver Bow County, MT*, AB-597X (STB served Oct. 4, 2002);
- Granted an adverse abandonment application, so that New York City could seek to reclaim City property used in a rail car float bridge service, in *New York City Economic Development Corp.—Adverse Abandonment—New York Cross Harbor Railroad in Brooklyn, NY*, STB Docket No. AB596 (STB served May 12, 2003), *vacated and remanded, New York Cross Harbor Railroad v. STB*, 374 F.3d 1177 (D.C. Cir. 2004);

- Reinstated a notice of exemption because the line did qualify for exemption as an out-of service rail line under the exemption in 49 CFR 1152 Subpart F, in *Burlington Northern and Santa Fe Railway Company–Abandonment Exemption–in Jefferson County, NE*, STB Docket No. AB-6 (Sub-No. 399X) (STB served May 19, 2003);
- Granted an exemption to abandon approximately 1.77 miles of rail line, but conditioned the exemption on requirements that the carrier provide alternative transload service to the shipper on the line and compensate the shipper for its recent investment in facilities to receive direct rail shipments from the carrier, in *Central Michigan Railway Company–Abandonment Exemption–in Saginaw County, MI*, STB Docket No. AB-308 (Sub-No. 3X) (STB served Oct. 31, 2003), clarified (STB served June 22, 2004);
- Dismissed an abandonment exemption upon the request of the carrier that had sought the exemption, despite a pending OFA, on the ground that abandonment is permissive, in *Almono LP–Abandonment Exemption–In Allegheny County, PA*, STB Docket No. AB-842X (STB served Jan. 28, 2004);
- Dismissed a notice of exemption to discontinue service on an 11.8-mile rail line because pending litigation regarding failure to provide service made use of the class exemption inappropriate, in *Greenville County Economic Development Corporation–Discontinuance of Service Exemption–In Greenville County, SC*, STB Docket No. AB-490X (STB served Jan. 29, 2004);
- Denied a shipper’s petition to reopen and revoke an abandonment exemption for approximately 5,780 feet of rail line in the city of Paducah, KY, upon finding that alternative transportation—although more expensive—was available, in *Paducah & Louisville Railway, Inc.–Abandonment Exemption–In McCracken County, KY*, No. AB-468 (Sub-No. 5X) (STB served Mar. 16, 2004);
- Denied adverse abandonment and discontinuance applications that would have reduced competitive options available to a shipper, in *Waterloo Railway Company–Adverse Abandonment–Lines of Bangor and Aroostook Railroad*

Company and Van Buren Bridge Company in Aroostook County, ME, STB Docket No. AB-124 (Sub-No. 2) (STB served May 3, 2004), *aff'd*, *Howard v. STB*, 389 F.3d 259 (1st Cir. 2004);

- Denied a petition to revoke the use of the 2-year-out-of-service class exemption because the petitioner had failed to demonstrate that the line had been subject to an unlawful embargo, in *CSX Transportation, Inc.—Abandonment Exemption—in Summit County, OH*, STB Docket No. AB-55 (Sub-No. 631X) (STB served May 12, 2004); and
- Determined that the City of Venice, IL, did not require Board authority to abandon a 2-mile line of railroad because the City had no common carrier obligation to provide service over the line, in *City of Venice—Abandonment Exemption—in Venice, IL, and St. Louis, MO*, STB Docket No. AB-863 (STB served June 22, 2004).

Preservation of Rail Lines

The STB administers three programs designed to preserve rail service or railroad rights-of-way. A description of those programs and significant actions follows.

Offers of Financial Assistance.

Under 49 U.S.C. 10904, if the STB finds that an abandonment proposal should be authorized and receives an offer by another party to pay for continued rail service, the STB may require the line to be sold for that purpose (or operated under subsidy for a year). See 49 CFR 1152.27. During this reporting period, the STB authorized a shipper on an inactive line slated for abandonment to buy the line so that it could remain available for future movements, and found that the sale to the shipper took precedence over a proposal for trail use under the “rails-to-trails” provision of the law. *1411 Corp.—Abandonment Exemption—in Lancaster County, PA*, STB Docket No. AB-581x (STB served May 30, 2002), *aff'd sub nom. Borough of Columbia v. STB*, 342 F.3d 222 (3d Cir. 2003).

In another case, the STB authorized the Town of North Judson, IN, to purchase a line under the OFA provisions, in *CSX Transportation, Inc.–Abandonment Exemption–in LaPorte, Porter and Starke Counties, IN*, STB Docket No. AB-55 (Sub-No. 643X) (STB served May 14, 2004).

Feeder Line Development Program.

Under 49 U.S.C. 10907, when a line has been designated in a carrier's system diagram map as a candidate for abandonment or when service is inadequate for a majority of shippers who transport traffic over the line, the STB can compel a railroad to sell the line to a party who will provide service. See 49 CFR 1151.

One such "feeder-line" proceeding was instituted during FY 2002-2004 in *Keokuk Junction Railway Company–Feeder Line Acquisition–Line of Toledo Peoria and Western Railway Corporation Between La Harpe and Hollis, IL*, STB Finance Docket No. 34335. It followed a petition to revoke a class exemption for the acquisition of the operating easement and other assets of the 71.5-mile La Harpe line in Illinois. The STB accepted the petitioner's argument that the acquisition was intended to result in the abandonment and salvage of the line and directed that the line be reconveyed to the seller in *SF&L Railway, Inc.–Acquisition and Operation Exemption–Toledo, Peoria and Western Railway Corporation Between La Harpe and Peoria, IL*, STB Finance Docket No. 33995 *et al.* (STB served Oct. 17, 2002), *clarified* (STB served Jan. 31, 2003). The petitioner's subsequent feeder line application to acquire the La Harpe line and 4.5 miles of additional line was granted in a decision issued on October 28, 2004.

Trail Use/Railbanking Program.

The STB has a ministerial role in administering the railbanking program under the National Trails System Act Amendments of 1983, 16 U.S.C. 1247(d) (Trails Act). See 49 CFR 1152.29. This law allows railroad rights-of-way that have been approved for abandonment to be preserved for possible future restoration of rail service and to be used in the interim as recreational trails. To preserve the right-of-way for potential future reactivation of rail service, when a railroad and a trail sponsor agree to negotiate for interim trail use, the STB issues a Certificate of Interim Trail Use (CITU) or a Notice of Interim Trail Use (NITU); if a trail arrangement is reached, the right-of-way remains under the jurisdiction of the STB during the interim trail use, and reversionary property interests in the right-of-way cannot vest.

The STB's docket and handling of trail-use requests are summarized in the following table.

Railbanking/Interim Trail Use						
Fiscal Year	Requests		Grants		Denials	
	Number	Miles	Number	Miles	Number	Miles
2002	39	467	21	141	2	34
2003	41	333	38	233	2	11
2004	37	476	42	606	12	34

Among the more significant actions taken in this area in FY 2002-2004, the STB:

- Reopened a proceeding to vacate a CITU and to authorize the replacement trail sponsor, in *St. Louis Southwestern Railway Co.–Abandonment Exemption–in Smith and Cherokee Counties, TX*, STB Docket No. AB-39 (Sub-No. 12) (STB served Mar. 12, 2002);
- Vacated a NITU held by a trail sponsor after the railroad was permitted to reactivate rail service over a rail-banked line, and determined that the Trails Act did not entitle a trail user to compensation when a carrier reactivates service, in *Georgia Great Southern Division, South Carolina Central Railroad Co., Inc.–Abandonment and Discontinuance Exemption–between Albany and Dawson, in Terrell, Lee, and Dougherty Counties, GA*, AB-389 (Sub-No. 1X) (served May 16, 2003), *reconsid. denied* (STB served Feb. 2, 2004);and
- Denied a request to require either the railroad or trail sponsor to post a performance bond or to escrow funds for potential removal or cleanup costs for rail property that will be rail-banked and used in the interim as a trail, in *A & R Line, Inc.–Abandonment Exemption–in Cass and Pulaski Counties, IN*, STB Docket No. AB-855 (Sub-No. 1X) (STB served Aug. 13, 2004).

RAILROAD RATES

Common Carriage or Contract Carriage

Railroads have a common carrier obligation to provide rail service upon reasonable request. 49 U.S.C. 11101(a). They can provide that service under rates and service terms agreed to in a confidential transportation contract with the shipper (49 U.S.C. 10709) or under openly available common carriage rates and service terms (49 U.S.C. 11101). Rates and service terms established by contract are not subject to STB regulation, except for limited protections against discrimination involving agricultural products. 49 U.S.C. 10709(b), (c).

Railroads are required to file with the STB summaries of all contracts for the transportation of agricultural products. 49 U.S.C. 10709(d). The summaries must contain the information specified at 49 CFR 1313, and the summaries are available for public inspection at the STB's offices. The agricultural contract filings received by the STB in FY 2002-2004 are shown in the following table.

Railroad Agricultural Contract Summary Filings			
	2002	2003	2004
Number of Summaries Filed	2,325	2,200	1,656

Rate Disclosure Requirements—Common Carriage

A railroad's common carriage rates and service terms must be disclosed upon request (and published for agricultural products and fertilizer), and advance notice must be given for increases in common carriage rates or changes in the service terms. 49 U.S.C. 11101. And if a railroad does not have a rate in place to move a shipper's traffic, it must promptly establish a rate and service terms upon the shipper's reasonable request. The STB maintains regulations governing the establishment, disclosure, publication, and notification requirements for common carriage rates. 49 CFR 1300.

These regulatory requirements can be bypassed, thereby allowing rail rates and service terms to be adjusted more expeditiously in response to changing market conditions, where the class of commodities or rail services involved has been exempted from regulation pursuant to 49 U.S.C. 10502. The STB maintains a number of such class exemptions, including exemptions for boxcar traffic, intermodal container traffic, most agricultural products, and miscellaneous commodities listed at 49 CFR 1039.

In 2003, the STB found that a carrier violated its common carrier obligation by failing to provide a requested rate for the transportation of automobile shredder residue during the period the commodity was not exempted from regulation, in *Pejepscot Industrial Park, Inc., d/b/a/ Grimmel Industries—Petition for Declaratory Order*, STB Finance Docket No. 33989 (STB served Nov. 7, 2003).

Rate Challenges—Market Dominance Limitation

The STB can adjudicate complaints challenging the reasonableness of a common carriage rate only if the railroad has market dominance over the traffic involved. 49 U.S.C. 10701(c)-(d), 10704, 10707. Market dominance refers to “an absence of effective competition from other rail carriers or modes of transportation for the transportation to which a rate applies.” 49 U.S.C. 10707(a). Therefore, in considering any rail rate complaint, the STB examines qualitatively whether competition in the marketplace imposes market discipline upon a railroad’s pricing or affords the shipper an alternative to paying the challenged rate.

The STB cannot find that a carrier has market dominance over a movement if the rate charged results in a revenue-to-variable cost percentage that is less than 180%. 49 U.S.C. 10707(d)(1)(A). The STB’s Uniform Rail Costing System (URCS) is used to provide a consistent measurement of a railroad’s variable costs of performing various rail services.

The data used by URCS is collected, maintained, and reported to the STB only by the large (Class I) carriers, and not by smaller carriers. For non-Class I railroads, the STB decided, in *Calculation of Variable Costs in Rate Complaint Proceedings Involving Non-Class I Railroads*, STB Ex Parte No. 589 (STB served Mar. 28, 2003), to determine the carrier’s variable costs using the average costs of the Class I railroads operating in that region, with appropriate adjustments to those average costs to be considered on a case-by-case basis.

Rate Challenges—Rate Reasonableness Determination

To assess whether a challenged rate is reasonable, the STB generally uses “constrained market pricing” (CMP) principles. See *Coal Rate Guidelines, Nationwide*, 1 I.C.C.2d 520 (1985), *aff’d sub nom. Consolidated Rail Corp. v. United States*, 812 F.2d 1444 (3d Cir. 1987). CMP principles limit a carrier’s rates to levels necessary for an efficient carrier to make a reasonable profit. CMP principles recognize that, in order to earn adequate revenues, railroads need the flexibility to price their services differentially by charging higher mark-ups on captive traffic, but the CMP guidelines impose constraints on a railroad’s ability to price differentially. 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 hypothetical new, optimally efficient railroad (“stand-alone railroad”) tailored to serve a selected traffic group that includes the complainant’s traffic.

Although the CMP guidelines provide the most economically authoritative procedures for evaluating the reasonableness of rail rates, a rate challenge using CMP (particularly SAC) is also the most complex, detailed, time-consuming, and costly type of case brought before the STB. To expedite these rate cases and reduce their cost and complexity, the STB introduced some procedural innovations in *Procedures to Expedite Resolution of Rail Rate Challenges to be Considered Under the Stand-Alone Cost Methodology*, STB Ex Parte No. 638 (STB served Apr. 3, 2003). More specifically, the STB amended its regulations to require mandatory, non-binding mediation between shipper and railroad under STB auspices; established an informal expedited process for resolving discovery disputes using STB staff; and provided for technical conferences with STB staff to resolve such matters as disputed operating characteristics used for variable cost computations. The STB also directed parties to prepare and submit public versions of all filings.

Putting these new measures into practice, the STB in August 2003 named former Congressman John Thune as the mediator for a newly filed rate dispute in *AEP Texas North Company v. The Burlington Northern and Santa Fe Railway Company*, STB Docket No. 41191 (Sub-No. 1). Although the mediation did not resolve the case, the experience was instructional. The STB has also held technical conferences in several rate cases, and those conferences have led to the voluntary resolution of numerous disputed issues. Finally, in September 2003 the STB began holding oral arguments in rail rate cases, a practice welcomed by the parties and the public.

In other significant actions in FY 2002-2004 regarding rail rate reasonableness cases, the STB:

- Found that a shipper had not demonstrated that rates charged for transportation of coal from mines in the Powder River Basin of Wyoming and Montana to a power plant at Billings, MT, were unreasonable, as the shipper's stand-alone cost presentation depended on an improper cross-subsidization of the shipper's traffic, in *PPL Montana, LLC v. The Burlington Northern and Santa Fe Railway Company*, STB Docket No. 42054 (STB served Aug. 20, 2002). The agency subsequently reopened the record to obtain further cost allocation evidence in that case (STB served Mar. 24, 2003), *petition for reconsideration denied* (STB served June 30, 2003), and affirmed its 2002 decision (STB served Aug. 31, 2004), *pet. for judicial review pending sub nom. PPL Montana LLC v. STB*, No. 04-1369 (D.C. Cir. filed Oct. 28, 2004).
- Found that a rate charged for transportation of coal from mines in the Powder River Basin of Wyoming to a power plant at Iola, TX, was unreasonably high, and ordered rate reductions and reparations, in *Texas Municipal Power Agency v. The Burlington Northern and Santa Fe Railway Company*, STB Docket No. 42056 (STB served Mar. 24, 2003). Subsequently, in a decision served Sept. 27, 2004, the Board affirmed its prior finding that the carrier was not required to use shipper-supplied cars if it could meet its common carrier obligation using its own cars, and made certain adjustments that modified the rate prescription and reparations.
- Reopened an outstanding coal rate prescription due to changed circumstances (it had become apparent that the coal mine involved in the case would exhaust its coal reserves sooner than anticipated), suspended the rate prescription, and entered an interim order temporarily limiting the rate the carrier can charge but requiring each party to make the other whole, as appropriate, at the end of the litigation, in *Arizona Public Service Company v. The Burlington Northern and Santa Fe Railway Company*, STB Docket No. 41185 (STB served May 12, 2003). The rate prescription was ultimately vacated (STB served Dec. 13, 2004), *pet. for judicial review pending sub nom. Arizona Public Service Company v. STB*, No. 04-1425 (D.C. Cir. filed Dec. 17, 2004).

- Dismissed a coal rate complaint, after the parties reached a voluntary settlement, in *Northern States Power Company Minnesota d/b/a Xcel Energy v. Union Pacific Railroad Company*, STB Docket No. 42059 (STB served Aug. 7, 2003).
- Addressed a challenge to the rates charged for the movement of coal from origins in West Virginia, Kentucky and Virginia to power plants at Mayo and Hyco, NC, and after initially finding the rates to be too high, ultimately found that they were not unreasonable. *Carolina Power & Light Company v. Norfolk Southern Railroad Company*, STB Docket No. 42072, (STB served Dec. 23, 2003, *reversed on reconsideration* (STB served Oct. 20, 2004).
- Addressed a challenge to the rates charged for movements of coal from Central Appalachian mines to several North Carolina power plants, and after initially finding the rates to be too high, ultimately found that they were not unreasonable. *Duke Energy Corporation v. Norfolk Southern Railroad Company*, STB Docket No. 42069 (STB served Feb. 3, 2004), *reversed on reconsideration* (STB served Oct. 20, 2004).
- Found that a shipper had not demonstrated that rates charged for movements of coal from various mines in Virginia, West Virginia, and Kentucky to power plants located in North and South Carolina were unreasonable, but indicated that the STB might be willing to require the carrier to phase in the sizable rate increase, in *Duke Energy Corporation v. CSX Transportation, Inc.*, STB Docket No. 42070 (STB served Feb. 4, 2004), *reconsid. denied* (STB served Oct. 20, 2004).
- Found that challenged rates for movements of coal from origins in the Powder River Basin of Wyoming to a power plant near Brush, CO, were unreasonably high; prescribed a reasonable rate; and ordered reparations, in *Public Service Company of Colorado d/b/a/ Xcel Energy v. BNSF*, STB Docket No. 42057 (STB served June 8, 2004), *modified* (STB served Dec. 14, 2004 and Jan. 19, 2005), *pet for judicial review pending sub nom. BNSF Railway Company v. STB*, No. 05-1030 (D.C. Cir. filed Jan. 28, 2005).

As both Congress and the STB have recognized, the CMP methodologies can be impractical to use where the amount of money at issue is not great enough to justify the expense of such an evidentiary presentation. Accordingly, pursuant to 49 U.S.C. 10704(d), the STB maintains simplified guidelines for use in such cases. See *Rate Guidelines--Non-Coal Proceedings*, 1 S.T.B. 958 (1996). The STB conducted a hearing in April 2003 and July 2004 to elicit proposals from rail shippers, railroads, and other interested persons for revising its simplified guidelines for rate reasonableness challenges. See *Rail Rate Challenges in Small Cases*, STB Ex Parte No. 646 (STB served Apr. 16, 2003 and July 14, 2004).

RAILROAD SERVICE

General Authority

The STB has broad authority to address the adequacy of the service provided by a railroad to its shippers and its connecting carriers, and the reasonableness of a railroad's service provisions. 49 U.S.C. 10701-10705, 10741-10742, 10744-10747, 11101-11103, 11121, and 11122-11123.

The STB is available to resolve service disputes and to require a railroad to meet its service obligations. 49 U.S.C. 11701. Among its broad remedial powers, the STB may, in appropriate circumstances, compel a railroad to provide an alternative through route with another railroad for specific traffic, 49 U.S.C. 10705(a), to provide switching for another railroad, 49 U.S.C. 11102(c), or to provide another railroad with access to terminal facilities, 49 U.S.C. 11102(a). In 2004, the STB instituted a declaratory order proceeding and requested comments on whether the preemption provisions of 49 U.S.C. 10501(b)(2) preclude a state court from hearing a lawsuit alleging that a railroad has failed to carry out its common carrier obligation to provide service, in *Greenville County Economic Development Corporation–Petition for Declaratory Order*, STB Finance Docket No. 34487 (STB served Mar. 22, 2004).

In addition, the STB can issue service orders to address rail service emergencies and can direct one carrier to operate the lines of another carrier that has ceased operations, or authorize an alternative carrier to operate another carrier's lines due to service inadequacies for a maximum period of 270 days. 49 U.S.C. 11123. Compensation to a carrier providing such directed or alternative service comes entirely from the revenues generated by that service. This authority allows the STB to prevent the loss of needed rail services to affected shippers. Among the actions taken in this area, the STB issued an emergency service order for Arkansas Midland Railroad Company to provide interim rail service on a 39.42-mile line leased by UP to and exclusively operated by another carrier, in *Arkansas Midland Railroad Company, Inc.–Alternative Rail Service–Line of Delta Southern Railroad, Inc.*, STB Finance Docket No. 34479 (STB served Mar. 19, 2004). However, the STB declined to authorize alternative service where the alleged service inadequacy was based primarily on a rate dispute, in *Keokuk Junction Railway Company–Alternative Rail Service–Line of Toledo, Peoria and Western Railway Corporation*, STB Finance Docket No. 34397 (STB served Oct.31, 2003).

Dialogue Between Railroads and Their Customers

The STB continues to encourage railroads to establish a regular dialogue with their customers and a more systematic way of addressing customer service concerns. In this regard, the STB:

- Asked the Association of American Railroads (AAR) to convene a meeting with railroads, shippers, and other involved parties to resolve issues concerning delays in interchange of railroad cars. *Union Pacific Railroad Company, Petition for Declaratory Order—Unilaterally Increased Charges* (STB Docket No. 42052, served Dec. 10, 2001); and
- Directed railroads to negotiate, in accordance with a 1986 agreement, disputes with private tank car owners about certain charges for storing cars or diverting them from their original destinations. As a result of these negotiations, several of the parties settled their disputes. *North American Freight Car Association—Protest and Petition For Investigation—Tariff Publications of the Burlington Northern and Santa Fe Railway Company*, STB Docket No. 42060 et al. (STB served Oct. 18, 2001, May 15, 2002, Sept. 19, 2002).
- Asked railroads to conduct a fall peak service forum, which was held in September 2004 in Kansas City, MO, and which was attended by over 500 customers.
- Asked railroads to submit their 2004 “fall peak” service plans, which the agency publicly released, so that rail customers could know in advance what they could expect from the railroads during the fall peak shipping season.

Other Service-Related Decisions

Among the decisions that it issued that relate to rail service matters, the STB:

- Reviewed the terms of 1990 trackage rights for the Connecticut River Line and, based on those terms, found that a shipper was entitled to obtain service from the

New England Central in addition to service from the Springfield Terminal Railroad, in *Rymes Heating Oils–Petition For Declaratory Order*, STB Docket No. 34098 (STB served July 19, 2002);

- Delegated authority to the agency’s Chairman to take necessary actions in emergency situations when the Chairman is the only Board member reasonably available, in *Revision of Delegation of Authority Regulations*, STB Ex Parte No. 642 (STB served Feb. 14, 2003)(codified at 49 CFR 1011.4(a)(9)); and delegated authority to the Director of the Board’s Office of Compliance and Enforcement (OCE) to take necessary actions in emergency situations when no Board member is reasonably available (codified at 49 CFR 1011.7(c)(5));
- Found that an embargo of a 1.1-mile rail line near Memphis, TN, was not unreasonable, and authorized the railroad to discontinue its operations over the line, rather than repair a damaged bridge at a cost that would far exceed the annual profits that the railroad could expect from the anticipated traffic on the line, in *Bolen-Brunson-Bell Lumber Company v. CSX Transportation Company*, STB Finance Docket No. 34236 (STB served May 15, 2003);
- Found that BNSF’s car storage and diversion charges on certain private cars should not be found inconsistent with an agreement between the railroad industry and private car owners that was approved by the ICC in 1978, but denied Burlington Northern’s motion to dismiss a separate complaint charging that the carrier’s storage and demurrage charges on private cars in general violated the Interstate Commerce Act, in *North America Freight Car Association–Protest and Petition for Investigation–Tariff Publications of The Burlington Northern and Santa Fe Railway Company*, STB Docket No. 42060 (STB served Aug. 13, 2004);
- Found (upon referral from the Superior Court of Fulton County, Atlanta Judicial Circuit) that NS’s demurrage charge and its method for calculating demurrage were not unreasonable, and provided the court with guidance for evaluating the shipper’s unreasonable-practice argument as applied to particular facts, in *Capitol Materials Incorporated–Petition for Declaratory Order–Certain Rates and Practices of Norfolk Southern Railway Company*, STB Docket No. 42068 (STB served Apr. 12, 2004);

- Found that the actions of the owner of a rail line imposing certain restrictions on a second carrier with trackage rights over the line did not constitute an unreasonable practice, in *Granite State Concrete Co., Inc. and Milford-Bennington Railroad Company, Inc. v. Boston and Maine, Corp. and Springfield Terminal Railway Company*, STB Docket No. 42083 (STB served Sept. 24, 2004), *pet. for judicial review pending sub nom. Granite State Concrete Co, Inc., et al. v. STB*, No. 04-2551 (1st Cir. filed Nov. 16, 2004); and
- Addressed questions (upon referral by a U.S. district court) concerning industry-wide mileage allowance provisions applicable to privately owned railroad tank cars, in *Engelhard Corporation–Petition for Declaratory Order–Springfield Terminal Railway Company and Consolidated Rail Corporation*, STB Docket No. 42075 (STB served Sept.27, 2004), *pet for judicial review pending sub nom Springfield Terminal Railway Company v. STB* , No. 04-12705 (D. Mass. filed Dec. 27, 2004).

STB/Shipper Discussions

The STB welcomed informal shipper meetings with STB members and staff to discuss general service and transportation issues and other issues of concern (but not including pending cases). In addition, the STB continued, through the annual meetings of its National Grain Car Council and the quarterly meetings of the Railroad Shipper Transportation Advisory Council, to facilitate discussions about railroad service involving a broad spectrum of commodity and transportation sectors.

Assistance with Specific Service Matters

Among its more significant initiatives addressing railroad service issues, the STB, in November of 2000, instituted through its Office of Compliance and Enforcement (OCE) the Rail Consumer Assistance Program. This program is national in scope, and is an informal process available to any rail customer with a service problem involving a jurisdictional railroad. The program is available by toll-free telephone (1-866-254-1792), electronically at (railconsumer@stb.dot.gov), or by facsimile at (202-565-9011). OCE processes complaints, usually within

4 hours of receipt, and has successfully assisted literally hundreds of complainants since the program's inception, as reflected in the following table.

Rail Consumer Assistance Program Activity	
Year	Complaints Handled
2004	125
2003	103
2002	78

Monitoring

In addition to its efforts to assist the public with rail-related issues, OCE regularly monitors the rail industry's operational performance to determine where service issues may be developing, as well as monitoring planning for anticipated peak demand periods.

RAIL LABOR MATTERS

Railroad employees who are adversely affected by certain STB-authorized rail restructurings are entitled to statutorily prescribed protective conditions under 49 U.S.C. 11326(a) (consolidations of Class I or II carriers), 49 U.S.C. 11326(b) (consolidations between Class II and III carriers), 49 U.S.C. 10902(d) (line acquisitions by Class II carriers), or 49 U.S.C. 10903(b)(2) (line abandonments). These standard conditions address both wage or salary protection and changes in work conditions. They provide procedures for resolving disputes through negotiation and, if necessary, arbitration. Arbitration awards are appealable to the STB under limited criteria that give great deference to the expertise of the arbitrators in resolving such disputes.

Among the more significant actions addressing rail labor protection matters in FY 2002-2004, the STB:

- Declined to review an arbitrator's finding that an outsourcing of the company's management and information services division was causally related to the DRGW-SP merger, entitling certain former employees to labor protection benefits, in *Rio Grande Industries, Inc., SPTC Holding, Inc., and The Denver and Rio Grande Western Railroad Company—Control—Southern Pacific Transportation Company (Arbitration Review)*, STB Finance Docket No. 32000 (Sub-No. 12) (STB served Sept. 19, 2002), *rev'd sub nom. Union Pac. R.R. v. STB*, 358 F.3d 31 (D.C. Cir. 2004);
- Declined to review an arbitrator's decision finding that, under an implementing agreement, administrative and support employees who transferred to a noncarrier subsidiary were entitled to displacement allowances for months in which their actual earnings fell short of monthly test period average earnings, in *USX Corporation—Control Exemption—Transtar, Inc. (Arbitration Review)*, STB Finance Docket No. 33942 (Sub-No. 1) (STB served Sept. 24, 2002), *pet. for judicial review dismissed sub nom. Track Traffic & Mngt. Serv. v. STB*, No. 02-1328 (D.C. Cir. Mar. 28, 2003);

- Declined to review an arbitration award finding that employees adversely affected by certain operational changes had recourse to labor protections in a collective bargaining agreement known as the National Agreement rather than the labor protective conditions imposed in the BNSF merger proceeding, in *Burlington Northern Inc. and Burlington Northern Railroad Company—Control and Merger—Santa Fe Pacific Corporation and The Atchison, Topeka and Santa Fe Railway Company (Arbitration Review)*, STB Finance Docket No. 32549 (Sub-No. 23) (STB served Sept. 25, 2002);
- Declined to review an arbitrator’s decision finding that claims by an employee adversely affected by the BN/SF merger for labor protection benefits were timely filed in *The Burlington Northern and Santa Fe Railway Company—Petition for Review of Arbitration Award*, STB Finance Docket No. 32549 (Sub-No. 24) (STB served Sept. 25, 2002);
- Declined to review an arbitrator’s decisions that were founded on factual determinations involving whether the Claimants actually relocated so as to qualify for relocation benefits under the imposed labor protective conditions, in *Union Pacific Corporation, Union Pacific Railroad Company, and Missouri Pacific Railroad Company—Control and Merger—Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and the Denver and Rio Grande Western Railroad Company (Arbitration Review)*, STB Finance Docket No. 32760 (Sub-No. 40) (STB served Oct. 10, 2003);
- Waived the standard 60-day notice requirement, at the request of both the carrier and the affected rail labor union, to prevent the carrier and its subsidiaries from being forced to cease operations and dismiss employees whose jobs the notice provision aims to protect, in *PAV Railroad, Inc.—Acquisition and Operation Exemption—Assets of N&T Railway Company LLC*, STB Finance Docket No. 34450 (STB served Dec. 19, 2003); and

- Amended its rules regarding the class exemption for temporary trackage rights to require not only the imposition of the *Norfolk and Western* conditions on the acquisition of that authority, but also the imposition of the *Oregon Short Line* conditions for the discontinuance component of that authority, in *Railroad Consolidation Procedures—Exemption for Temporary Trackage Rights*, STB Ex Parte No. 282 (Sub-No. 20) (STB served May 17, 2004).

ENVIRONMENTAL REVIEW

Overview

Under the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.* (NEPA), the STB must take into account the environmental impacts of its actions, including direct, indirect, and cumulative impacts, before making its final decision in a case. The Section of Environmental Analysis (SEA) assists the STB in meeting this responsibility by conducting an independent environmental review of cases filed with the Agency, preparing any necessary Environmental Impact Statement (EIS) or Environmental Assessment (EA), conducting public outreach to inform interested parties about proposals and provide the opportunity to raise environmental concerns, and providing technical advice and recommendations to the STB on environmental matters.

Review Process

Environmental reviews are typically conducted for rail line construction, rail abandonment proposals, and railroad mergers. The review is conducted in accordance with the STB's environmental rules (49 CFR 1105), the regulations of the President's Council on Environmental Quality (40 CFR 1500 *et seq.*), and other applicable Federal environmental requirements. It takes into account all applicable Federal environmental statutes, including the Endangered Species Act (16 U.S.C. 1531-1544), the Coastal Zone Management Act (16 U.S.C. 1451 *et seq.*), the Clean Air Act (42 U.S.C. 7401-7642), the Clean Water Act (33 U.S.C. 1344), the National Historic Preservation Act (16 U.S.C. 470 *et seq.*), and pertinent hazardous substance laws (42 U.S.C. 6901-6933 and 9601-9675).

The public (including Federal, state, and local agencies) has an important role in the environmental review process. SEA first presents to the public the preliminary results of its analysis of potential environmental impacts in either a draft EIS or an EA. This analysis is based on information available at the time from the applicant and the public, SEA's independent analysis, and in some cases, site visits to the project area. An opportunity is then provided for public review and comment on all aspects of the draft EIS or EA, including mitigation options. After the public comment period, SEA performs additional analysis as needed and prepares an

EIS or Post-EA presenting its final recommendations to the STB. The STB then considers the entire environmental record in reaching its final decision in a case.

The STB encourages applicants to consult with affected communities and negotiate mutually acceptable agreements with local governments and organizations to address specific local concerns. SEA also may recommend, and the STB has the authority to impose, conditions to address the potential adverse effects that a proposed action may have on communities affected by the transaction, including conditions to address public safety, land use, air quality, wetlands and water quality, hazardous waste and materials, noise, potential disproportionate impacts on minority and low-income populations (referred to as environmental justice issues), and protection of historic resources. Such conditions must be reasonable and must address impacts that would result directly from the transaction being considered by the STB.

In many rail line construction and merger proceedings, to conserve its strained resources, the STB uses the services of a third-party contractor to assist SEA in preparing the environmental analysis under SEA's direction, control and supervision. The STB explained its procedures for this practice in *Policy Statement On Use Of Third-Party Contracting In Preparation Of Environmental Documentation*, STB Ex Parte No. 585 (STB served Mar. 19, 2001).

Rail Line Constructions

Rail construction proposals vary in purpose, size, and complexity of environmental impacts. These projects are located throughout the country and may involve unusually complicated and sensitive environmental issues. An EIS is generally prepared for rail construction cases, although in some cases an EA may be sufficient. In assessing the potential impacts to the environment from a rail construction project, the STB considers alternatives to the proposed action, effects on regional or local transportation systems, land use, energy use, air and water quality, noise, safety, environmental justice, biological resources, historic resources, coastal zones, and cumulative impacts.

Among the more significant actions in this area in FY 2002-2004, the STB:

- Issued a 7,500-page EIS and gave final approval for the proposed construction of approximately 300 miles of new rail line and the rehabilitation of approximately 600 miles of existing rail line by the DM&E to serve coal mines in Wyoming's Powder River Basin, subject to 147 environmental conditions, in *Dakota, Minnesota, & Eastern Railroad Corporation, Construction into the Powder River Basin*, STB Finance Docket No. 33407 (STB served Nov. 19, 2001 and Jan. 30, 2002). The Board's decision was *partially remanded* in *Mid States Coalition for Progress v. STB*, 345 F.3d 520 (8th Cir. Oct. 2, 2003) (upholding the STB's decision with respect to all transportation issues and most environmental issues, but vacating and partially remanding the decision so that the agency could further review certain environmental issues);
- Issued a Draft EIS and Final EIS on January 23, 2003 and May 2, 2003, respectively, concluding that the proposed construction of approximately 12.8 miles of new rail line to serve petrochemical industrial facilities in the "Bayport Loop" would not have a significant impact on the human environment, and gave final approval for the proposed construction, in *San Jacinto Rail Limited and the Burlington Northern and Santa Fe Railway Company, Construction and Operation of a Rail Line from the Bayport Loop in Harris County, Texas*, STB Finance Docket No. 34079 (STB served May 9, 2003 and July 9, 2003);
- In connection with the previously approved construction of a 41-mile rail line between Ashland and Decker, MT, in STB Finance Docket No. 30186 (Sub-No. 2) (*Tongue River II*),
 - Issued a decision permitting the Tongue River Railroad Company to supplement the application it filed earlier, in *Tongue River Railroad Co.—Construction and Operation—Western Alignment*, STB Finance Docket No. 30186 (Sub-No. 3) (*Tongue River III*), for authority to construct and operate a 17.3-mile line of railroad known as the "Western Alignment" in Rosebud and Big Horn Counties, MT, as an alternative routing for a portion of the previously approved 41-mile Ashland to Decker line (STB served March 11, 2003);

- Resumed the environmental review of the application, following a three-year abeyance, and issued an Amended Final Scope of the Supplemental EIS (*Tongue River III*) (STB served Aug. 22, 2003), *pet. for review denied* (STB served Mar. 18, 2004);
- Conducted an EA of a proposed 4,007-foot rail line that would cross Illinois Central trackage and provide alternative rail service to a station served solely by IC and determined that, subject to certain environmental conditions, the proposed construction would have no significant environmental impacts, in *Midwest Generation, LLC—Exemption from 49 U.S.C. 10901—for Construction in Will County, IL*, STB Finance Docket No. 34060 (STB served October 4, 2002);
- Determined that the preparation of an EIS was appropriate for the proposed construction and operation of an approximately 43-mile rail line to serve coal interests in central Utah, in *Six County Association of Governments—Construction and Operation Exemption—Rail Line between Levan and Salina, Utah*, STB Finance Docket No. 34075 (STB served Sept. 30, 2003). SEA held two public meetings in Salina and Gunnison, UT, in October 2003 to obtain public comments on the scope of SEA’s environmental review in this proceeding, and preparation of the EIS is ongoing;
- Determined that the preparation of an EIS was appropriate for the proposed construction and operation of an approximately 7-mile line of railroad in Medina County, TX, and solicited comments on the draft scope of study, in *Southwest Gulf Railroad Company—Construction and Operation Exemption—Medina County, TX*, STB Finance Docket No. 34284 (STB served Jan. 28, 2004), and issued the final scope of study (STB served May 7, 2004 and Nov. 5, 2004); and
- Issued an EA and Post EA for a project involving the proposed construction of 2,700 feet of new line and of other on-site improvements, and the rehabilitation of 1,300 feet of existing track, in Wilmington and Woburn, MA, in *New England Transrail, LLC, d/b/a Wilmington and Woburn Terminal Railroad Co.—Construction, Acquisition, and Operation Exemption—in Wilmington and Woburn, MA*, STB Finance Docket No. 34391 (STB served Aug. 4, 2004).

- The STB, along with three other Federal agencies, was designated a cooperating agency in the EIS process for the construction and operation of a proposed 319-mile new rail line to the Yucca Mountain Geologic Repository in Nye County, NV. The Department of Energy, which has been working for years on a program to use Yucca Mountain as a repository for spent nuclear fuel and high-level radioactive waste that would be transported to the Repository by rail from sites throughout the United States, has identified its preferred corridor for the new rail service and is acting as the lead agency in the preparation of this EIS.

Rail Line Abandonments

The STB's review of rail line abandonments includes an analysis of the potential environmental impacts associated with track removal and any diversion of traffic from the 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.

The most significant action in this area in FY 2002-2004 was SEA's reinitiation of the historic preservation review process for Conrail's proposal to abandon 66.5 miles of track called the Enola Branch in Lancaster and Chester Counties, pursuant to Section 106 of the National Historic Preservation Act (NHPA) (16 U.S.C. 470f). *Consolidated Rail Corporation—Abandonment Exemption—in Lancaster and Chester Counties, PA*, Docket Number AB-167 (Sub-No. 1095X). After consultation with the Pennsylvania Historical and Museum Commission, the Advisory Council on Historic Preservation, the railroad, and the public, SEA developed measures to reduce impacts on the historic properties, and these measures were incorporated into a proposed Memorandum of Agreement (MOA). In November 2003, SEA held a public meeting in Quarryville, PA, to receive comments on the draft MOA, and in April 2004, the STB issued a final MOA, including measures for mitigating adverse effects of the proposed abandonment on historic properties. The final MOA was executed in July 2004 and filed with the Advisory Council for Historic Preservation on August 4, 2004.

Railroad Mergers

In railroad mergers, the potential environmental impacts typically relate to changes in rail traffic patterns on existing lines, which can be addressed in an EA or an EIS. The STB may impose measures designed to mitigate potential system-wide and corridor-specific environmental impacts. Such measures may address community impacts such as highway/rail at-grade crossing safety and delay, hazardous materials transportation safety, emergency response, air quality, and noise. They may also address environmental justice issues. Safety integration plans, prepared in consultation with FRA, describe how merger applicants would ensure the safe integration of their rail operations.

In the most significant actions taken in this area in FY 2002-2004, the STB:

- Determined, in connection with the already approved DM&E acquisition of control of IC&E (in STB Finance Docket No. 34178), and IC&E's acquisition of the rail lines and assets of I&M Rail Link (in STB Finance Docket No. 34177), that the newly acquired IC&E and I&M lines could not be used to handle coal traffic associated with the DM&E line into the Powder River Basin (should the line be authorized) until an environmental review of the impacts of the new coal traffic is completed after DM&E actually decides to build the line. *Iowa, Chicago & Eastern Railroad Corporation—Acquisition and Operation Exemption—Lines of I&M Rail Link, LLC*, STB Finance Docket 34177 (STB served July 22, 2002).
- Agreed with SEA, in connection with the STB-approved acquisition by Canadian National Railway Company of control of three U.S. railroads (in STB Finance Docket No. 34424 et al.), that preparation of an EA or an EIS was not warranted, but imposed a condition requiring applicants to comply with the final safety integration plan, and making it clear that the ongoing regulatory activities associated with the safety integration process should continue until FRA advises the STB that the transaction has been implemented safely, in *Canadian National Railway Company and Grand Trunk Corporation — Control — Duluth, Missabe and Iron Range Railway Company, Bessemer and Lake Erie Railroad Company, and The Pittsburgh & Conneaut Dock Company*, STB Finance Docket 34424 (STB served April 9, 2004).

FINANCIAL CONDITION OF RAILROADS

The STB monitors the financial condition of railroads as part of its oversight of the rail industry. The STB prescribes a uniform accounting system for railroads to use for regulatory purposes. 49 U.S.C. 11141-43, 11161-64; 49 CFR 1200-1201. In addition, the STB requires Class I railroads to submit quarterly and annual reports containing financial and operating statistics, including employment and traffic data. 49 U.S.C. 11145; 49 CFR 1241-1246, 1248.

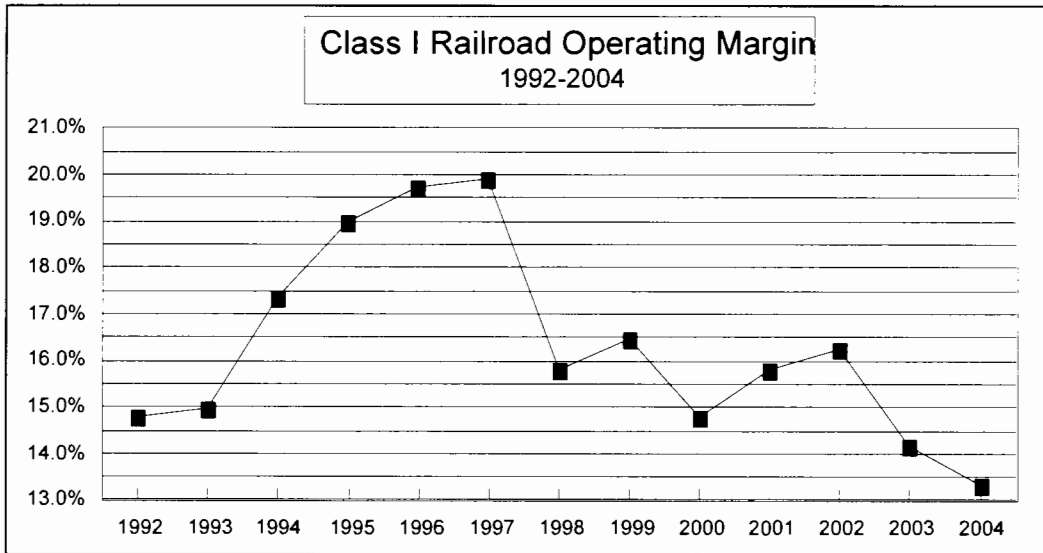
Based upon the information submitted to it directly by carriers and other information obtained from the industry, the STB regularly compiles and releases various reports about Class I railroads in the aggregate, including expenses, investments, financial results, employment, and traffic data. See *Appendix A*.

In addition, the STB publishes a “rail cost adjustment factor” (RCAF) on a quarterly basis to reflect changes in the costs incurred by the rail industry during that period. 49 U.S.C. 10708; 49 CFR 1135. The STB publishes both an unadjusted RCAF and an RCAF with adjustments that reflect productivity gains in the railroad industry.

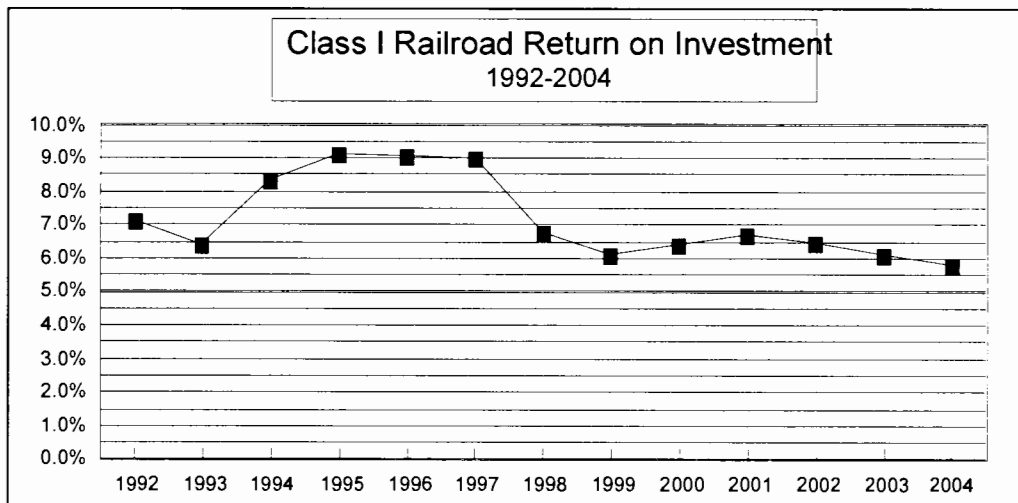
The STB has not taken any major actions in this area in FY 2002-2004.

As shown in the following graphs, the gross profit margin and return on net investment for the railroad industry improved during the 1992 through 1997 time frame but declined since that time.

Class I Railroad Operating Margin



Class I Railroad Return on Investment



AMTRAK

The STB has limited but significant regulatory authority over the National Railroad Passenger Corporation (Amtrak). 49 U.S.C. 24301(c). Specifically, the STB has authority to ensure that Amtrak may operate over the track of the nation's freight railroads, and to adjudicate disputes between Amtrak and individual freight railroads concerning shared use of tracks and other facilities and to set the terms and conditions of such use if Amtrak and the freight railroad fail to reach a voluntary agreement. 49 U.S.C. 24308(a), 24904(c).

Secondly, in 2004, Congress amended section 11123 of Title 49 to vest the STB with the authority to direct the service of commuter rail operations in the event of a cessation of service by Amtrak. The STB worked with the Federal Railroad Administration, Amtrak, and the commuter and freight railroads to explore what would be involved should the need arise to exercise that authority.

Also, when a railroad cannot move an Amtrak train over its normal route and Amtrak requests movement over an alternative route of another carrier, the STB may issue an emergency rerouting order to permit uninterrupted passenger service. 49 U.S.C. 24308(b). No such emergency rerouting orders were required in FY 2002-2004.

In connection with Amtrak, during FY 2002-2004, the STB:

- Determined that Amtrak had satisfactorily completed rehabilitating a rail line between Plaistow, NH, and Portland, ME, and that, consistent with the purpose of the track rehabilitation, Amtrak should be permitted to operate at speeds of up to 79 miles per hour, subject to FRA's safety oversight, in *National Railroad Passenger Corporation—Petition for Declaratory Order—Weight of Rail*, STB Finance Docket No. 33697 (STB served Jan. 31, 2003 and Mar. 25, 2003), *pet. for judicial review dismissed sub nom. Boston & Maine Corp. v. STB*, 364 F.3d 318 (D.C. Cir. 2004); and

- Facilitated discussions among CSX, NS, and Amtrak to resolve concerns about sub-par passenger train performance over rail lines previously owned and operated by Conrail that were acquired by, and divided between, CSX and NS in *CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company—Control and Operating Leases/Agreements—Conrail, Inc. and Consolidated Rail Corporation*, STB Finance Docket No. 33388 (Sub-No. 91) (General Oversight Decision No. 6) (STB served Dec. 13, 2001).

MOTOR CARRIAGE

The STB has certain limited oversight responsibilities over motor carriage. Those oversight functions not specifically assigned to the STB are administered by FMCSA or the BTS. 49 U.S.C. 13301(a).

Collective Motor Carrier Activities

Approval of Bureau Agreements

The STB may approve agreements by motor carriers to participate in bureaus that can collectively set through routes and joint rates, set rates for the transportation of household goods, establish uniform classifications and mileage guides, and engage in certain other collective activities. 49 U.S.C. 13703; 49 CFR 1331. STB approval effectively confers immunity from the antitrust laws for these collective activities, but results in STB monitoring of the activities conducted under approved agreements. 49 U.S.C. 13703(a)(6). Under the Interstate Commerce Act, as amended by the Motor Carrier Safety Improvement Act of 1999, Pub. L. No. 106-159, 113 Stat. 1748 (1999), the STB must conduct a periodic review to determine whether the approvals for existing motor carrier bureau agreements should continue. 49 U.S.C. 13703(d).

In FY 2002-2004, the STB:

- Renewed approval of the bureau agreement of the National Bus Traffic Association, in *Application of the National Bus Traffic Association, Inc., for Extended Approval of its Conformed Agreement, Section 5a Application No. 9* (Amendment No. 8) (STB served May 24, 2002);
- Renewed approval of the bureau agreement of the National Classification Committee (NCC), subject to its amendment (1) to adopt specified procedures that will allow increased participation of shippers in the classification process and

(2) to provide for a right of review of NCC decisions by a neutral arbitrator, in *National Classification Committee–Agreement*, Section 5a Application No. 61 (Sub-No. 6) (STB served Nov. 20, 2001, Mar. 27, 2003 and Oct. 16, 2003);

- Renewed approval of 12 motor carrier rate bureau agreements, subject to their amendment so as to require their member carriers (1) to give shippers a “truth-in-rates” notice informing them that bureau rates quoted to them have been discounted in the marketplace, (2) to disclose the range of discounts provided by bureau members, and (3) to certify that they will not apply a loss-of-discount provision that would reinstate the collectively set rate as a penalty for late payment, in *EC-MAC Motor Carriers Service Association, Inc., et al.*, STB Section 5a Application No. 118 (Sub-No. 2), *et al.* (STB served Nov. 20, 2001 and Mar. 27, 2003; and
- Reopened the record regarding the application of the Southern Motor Carriers Rate Conference, Inc. (SMCRC) to expand the geographic scope of its collective ratemaking authority from regional to nationwide, and asked for additional information from SMCRC and comments from other interested persons, in *Southern Motor Carriers Rate Conference, Inc.*, STB Section 5a Application No. 46 (Sub-No. 20) (STB served Mar. 23, 2004), oral argument held on October 27, 2004.

Pooling Arrangements

Motor carriers seeking to pool or divide their traffic, services, or earnings must apply for STB approval. 49 U.S.C. 14302.

In FY 2002-2004, while the STB did not process any such applications by freight carriers, it did approve an application by two passenger carriers to pool portions of their commuter operations in the New York City area, in *New Jersey Transit Bus Operations, Inc.–Pooling–Academy Lines, L.L.C.*, STB Docket No. MC-F-20994 (STB served June 12, 2003).

Household Goods Carriage

Rates and practices of household goods carriers are subject to regulation under 49 U.S.C. 13701(a)(1)(A). Household goods carriers are required to publish tariffs and make them available for inspection by residential shippers and the STB (although they need not file their tariffs with the STB). 49 U.S.C. 13702(a), (c). The STB's regulations governing household goods carriers' tariffs (49 CFR 1310) require that the tariffs include an accurate description of the services offered and the applicable rates, charges, and service terms for household goods moves. Moreover, shippers must be explicitly informed whenever provisions of a tariff are incorporated into a bill of lading or other document embodying a contract of carriage, and these provisions must be made available for inspection by the shippers. The regulations require additional public notice and explanation when incorporated tariff provisions include terms related to claim restrictions; limits on the carrier's liability for loss, damage, or delay of goods; or provisions for the carrier to impose monetary penalties or to increase the price of the transportation.

Acting under 49 U.S.C. 14706(f), household goods carriers may establish optional, "released rates," i.e., reduced rates under which the carrier is released from the statutory level of cargo liability under 49 U.S.C. 14706(a)(1) for actual damage to transported property. In FY 2002-2004, the STB authorized a new procedure governing the collectively established released rates published by the Households Goods Carriers' Bureau Committee, a collective ratemaking bureau, in *Released Rates of Motor Common Carriers of Household Goods*, Amendment No. 4 to Released Rates Decision No. MC-999 (STB served Dec. 21, 2001, Jan. 18, 2002, and Apr. 22, 2002). In that proceeding, the STB approved the Committee's proposal, subject to certain conditions, to allow its members and other household goods carriers to offer consumers the choice of a level of rates based on loss and damage coverage at (1) 60 cents per pound, regardless of how much the goods were actually worth, or (2) "full value protection," where the mover would have the option of paying either the repair cost of damaged goods (to restore them to their prior condition) or their replacement cost. In particular, the STB conditioned the use of this approach to require movers to clearly notify their customers, in writing, that most household goods are

worth far more than 60 cents per pound and to require movers to provide to all of their customers a current brochure explaining the cargo liability options offered.

OCE contacted over 509 household goods carriers and forwarders in FY 2002-2004 to ensure that they were aware of, and in compliance with, the tariff publication and dissemination requirements of the statute and the STB's regulations. As a result of this effort, carriers and forwarders not in compliance took appropriate action to satisfy the requirements.

Intercity Bus Industry

Intercity bus carriers must obtain STB approval for mergers and similar consolidations, 49 U.S.C. 14303; 49 CFR 1182. As noted above, they also must obtain STB approval for pooling arrangements between carriers, 49 U.S.C. 14302; 49 CFR 1184. The STB can require bus carriers to provide through routes with other carriers, 49 U.S.C. 13705.

In FY 2002-2004, there were a number of consolidations of smaller carriers into larger carriers or noncarrier holding companies. Among the more significant actions involving bus carriers, the STB:

- Approved the application of Peter Pan Bus Lines Trust to acquire control of five motor passenger carriers that were controlled by Coach USA, Inc., in *Peter Pan Bus Lines Trust – Purchase and Acquisition of Control–Arrow Line Acquisition, LLC, Bonanza Acquisition, LLC, Maine Line, LLC, Pawtuxet Valley, LLC, Peter Pan Boston, LLC, and Peter Pan Bus Lines, Inc.*, STB Docket No. MC-F-20995 (STB served May 12, 2003);

- Approved the application of KBUS Holdings, LLC, to acquire 31 bus/tour companies, in *KBUS Holdings, LLC–Acquisition of Assets and Business Operations–All West Coachlines, Inc., et al.*, STB Docket No. MC-F-21000 (STB served July 23, 2003);
- Approved the application of three noncarrier holding companies to control 13 bus/tour companies, in *Lincolnshire Equity Fund II, L.P., et al.–Control–America Charters, Ltd., et al.*, STB Docket No. MC-F-21003 (STB served Aug. 18, 2003);
- Approved the application of four noncarriers to acquire control of a newly formed company, in *Lincolnshire Equity Fund II, L.P., VSC Partners, LLC, ACL Acquisition, LLC, and Southeast Coach, Inc.–Control–American Coach Lines of Miami, Inc.*, STB Docket No. MC-F-21004 (STB served Nov. 14, 2003); and
- Approved the application of a noncarrier holding company and its noncarrier and carrier subsidiaries to acquire control and operate certain assets of a motor passenger carrier and subsidiary of Greyhound Lines, Inc., in *Stagecoach Group PLC and Coach USA, Inc., et. al.–Acquisition and Consolidation of Assets–Rockford Coach Lines, L.L.C.*, STB Docket No. MC-F-21006 (STB served May 14, 2004).

Motor Carrier Reasonableness

Under 49 U.S.C. 13701(a)(1) and 13703(a)(5), the STB may review the reasonableness of most motor carrier rates only if they are established collectively. In FY 2002-2004, there were no requests for review of such rates.

In FY 2002, the STB resolved a motor carrier rate reasonableness case referred by a court that fell under pre-ICCTA law, finding that the shipper did not show that the freight charges billed in 1987-1993 were unreasonable, in *The TJX Companies, Inc.–Petition for Declaratory Order–Certain Rates and Practices of Sweeney Transportation, Inc., and Knickerbocker East-West, Inc.*, Docket No. 41192 (STB served Sept. 20, 2002).

Consumer and Compliance Issues

Not included in the docket of formal cases processed by the STB (see *Appendix C*) are the many informal complaints that OCE receives and handles on an informal basis. In the motor carrier area, 3,063 informal complaints and requests for assistance were received and handled by OCE in FY 2002-2004. For the most part, these complaints involved household goods transportation problems.

WATER CARRIAGE

The STB has authority to regulate rates for transportation in the noncontiguous domestic trade, which consists of domestic transportation to or from Alaska, Hawaii, American Samoa, the Northern Mariana Islands, Guam, the Virgin Islands, and Puerto Rico. 49 U.S.C. 13501, 13701, and 13702(a), (b).

Tariff Requirements

Carriers engaged in the noncontiguous domestic trade are required to file with the STB tariffs containing their rates and service terms for this transportation (except that tariffs are not required for transportation provided pursuant to contracts between carriers and shippers, or for services provided by freight forwarders). 49 U.S.C. 13702, 14101(b); 49 CFR 1312. Carriers have the option of filing printed tariffs or filing their tariffs with the STB electronically. In either event, these tariffs are available in the STB's offices for review by the public.

In FY 2002-2004, the STB approved electronic tariff filing programs proposed by CSX Lines, LLC, and by Global Maritime Transportation Services, Inc.

The water carrier tariff filings received by the STB in FY 2002-2004 are shown in the following table.

Water Carrier Tariff Filings			
	2002	2003	2004
Printed Tariffs			
Number of Pages Filed	5,485	7,595	9,173
Electronic Tariffs			
Number of Filings	2,547	2,164	2,114
Number of Objects (e.g., tariff rates, rules, etc.)	68,155	75,273	44,068

WATER CARRIAGE

Complaints

Upon complaint, the STB must determine the reasonableness of water or joint motor-water rates and carrier practices in the noncontiguous domestic trade. 49 U.S.C. 13701. Among the more significant actions taken in this area in FY 2002-2004, the STB:

- Denied a motion to dismiss a complaint filed by the Government of Guam challenging the reasonableness of the rates, rules, classification, and practices for transportation in the Guam trade; and adopted a procedural schedule for the parties to address the appropriate rate reasonableness methodology to be applied in the case, in *Government of the Territory of Guam v. Sea-Land Service, Inc., American President Lines, Ltd., and Matson Navigation Company, Inc.*, STB Docket No. WCC-101 (STB served Nov. 15, 2001); [The parties have presented evidence, but the case was held up at complainant's request.]

- Denied a motion filed by Matson Navigation Company and Sea-Land Service, Inc. (Sea-Land), to dismiss a complaint filed by freight forwarder DHX, Inc. (DHX), challenging the reasonableness of certain rates and practices in the Hawaii trade, although the agency suggested that to prevail in its complaint, DHX would have to support with particularity its general claim that the carriers' practices were unlawful. The STB subsequently dismissed two counts of the amended complaint, and ultimately denied relief as to the remaining counts. *DHX, Inc., v. Matson Navigation Company and Sea-Land Service, Inc.*, STB Docket No. WCC-105 (STB served Dec. 21, 2001, May 14, 2003, and June 13, 2005); and

WATER CARRIAGE

- Dismissed a complaint filed by Trailer Bridge, Inc., against Sea Star Lines, LLC (Sea Star) alleging that Sea Star engaged in unreasonable practices in violation of 49 U.S.C. 13701(a)(1)(B) in the Puerto Rico trade after the parties reached a settlement of their dispute, in *Trailer Bridge, Inc., v. Sea Star Lines, LLC*, STB Docket No. WCC-104 (STB served Apr. 30, 2002).

Not included in the docket of formal cases processed by the STB (see *Appendix C*) are the informal complaints that OCE receives and handles on an informal basis. OCE received and handled 30 informal complaints in FY 2002-2004 that related to water carrier matters.

PIPELINE CARRIAGE

The STB regulates interstate transportation by pipeline of commodities other than water, gas, and oil. 49 U.S.C. 15301, 15501, 15503, 15701. Pipeline carriers must promptly disclose (in either written or electronic form) their rates and service terms upon request. 49 U.S.C. 15701; 49 CFR 1305. Additionally, pipeline carriers must provide at least 20 days' notice before a rate increase or change in service terms may become effective. Pipeline rates and practices must be reasonable, 49 U.S.C. 15501, and nondiscriminatory, 49 U.S.C. 15505.

During FY 2002-2004, the STB issued six procedural decisions in *Dyno Nobel Inc. v. Kaneb Pipe Line Partners, L.P.*, STB Docket No. 42081 (filed June 16, 2003), in which Dyno Nobel Inc. challenges certain rate increases made by Kaneb Pipe Line Partners, L.P. for pipeline shipments of anhydrous ammonia (a gas compound used to manufacture fertilizers). The STB also considered a complaint filed by CF Industries, Inc. (CFI), against Kaneb, ordering Kaneb to reduce its rates to the levels previously prescribed by the STB, and to pay reparations for the excess amounts CFI has already paid. The STB asked the parties to present additional evidence so that the agency can determine whether changed circumstances warrant vacating the rate prescription for future transportation. *CF Industries, Inc. v. Kaneb Pipe Line Partners, L.P. and Kaneb Pipe Line Operating Partnership, L.P.*, STB Docket No. 42084 (STB served Aug. 12, 2004).

Unlike the previous reporting period, the STB's OCE did not receive or handle any informal complaints that related to pipeline matters during FY 2002-2004.

COURT ACTIONS

Judicial review of most STB decisions is available in the United States Courts of Appeals. 28 U.S.C. 2321, 2342(5). Review is available from Federal district courts for STB orders that are solely for the payment of money and for certain matters referred to the STB by district courts. 28 U.S.C. 1336, 2321. The STB defends its own decisions against challenges in court and may appear in any civil action involving matters within its jurisdiction. 49 U.S.C. 703(d).

Court actions arising out of STB (or ICC) proceedings reflect the diversity of the STB's functions. Below is a summary of the more significant court decisions rendered in FY 2002-2004.

Railroad Restructuring

Line Constructions

In *Keokuk Junction Railway v. STB*, 292 F.3d 884 (D.C. Cir. 2002), the court reversed a Board decision directing one railroad to continue its longstanding practice of allowing another railroad to cross its tracks. The court ruled that, in view of the language of 49 U.S.C. 10901(d), the STB could not order the crossing without first issuing a license for the crossing carrier to construct and operate its line (which had been built in the 1800's prior to the advent of rail regulation). On remand, the STB in May 2003 issued the necessary license.

In an unpublished decision in *B. Willis, C.P.A., Inc. v. STB*, No. 01-1441 (D.C. Cir. Nov. 26, 2002), *petition for rehearing denied* (D.C. Cir. Dec. 23, 2002), *petition for certiorari denied* (U.S. Oct. 6, 2003), the court affirmed an STB determination that certain rail track in Oklahoma was private track over which the STB has no jurisdiction and that an STB license to construct and operate that track was thus not needed.

In *Iowa, Chicago & Eastern Railroad v. Washington County, Iowa*, 384 F.3d 557 (8th Cir. 2004), consistent with the position taken by the Board in the *amicus curiae* brief filed at the court's request, the court determined that the Federal preemption provision at 49 U.S.C. 10501(b) does not wholly invalidate a process under which a state can apportion the costs of a rail/highway bridge replacement project. However, the court emphasized that if the state imposes any of the cost of such a project on a railroad, the railroad's allocation must be fair, reasonable, and consistent with Federal constitutional and statutory requirements.

Line Abandonments

In *Montezuma Grain Co., LLP v. STB*, 335 F.3d 535 (7th Cir. 2003), the court affirmed an STB decision declining to disturb the agency's prior authorizations for a carrier to abandon two segments of unused rail track in Indiana.

In *New York Cross Harbor Railroad v. Surface Transportation Board*, 374 F.3d 1177 (D.C. Cir. 2004), the court set aside the Board's decision granting New York City Economic Development Corporation's application for adverse abandonment of certain operations of the New York Cross Harbor Railroad, and remanded the case to the Board.

Preservation of Rail Lines—Offers of Financial Assistance

In *Railroad Ventures, Inc. v. STB*, 299 F.3d 523 (6th Cir. 2002), the court upheld an STB decision setting the price and other terms of sale of a rail line under the offer of financial assistance (OFA) provisions of 49 U.S.C. 10904. Most notably, the court affirmed the Board's ruling that the selling carrier was required to transfer all of its interest in the property. And in *Railroad Ventures, Inc. v. STB*, No. 01-4262 (6th Cir. June 4, 2003), the court held that the Board's requirement that the sale include transfer of various licenses pertaining to use of the right-of-way was not an unconstitutional taking of the seller's property.

In *Borough of Columbia v. STB*, 342 F.3d 222 (3d Cir. 2003), the court upheld another Board decision requiring the sale of a line under the OFA provisions and rejected the argument that the sale was an unlawful taking of property.

Preservation of Rail Lines — Trail Use/Railbanking

In *Citizens Against Rails-to-Trails v. STB*, 267 F.3d 1144 (D.C. Cir. 2001), the court affirmed the Board's determination that the issuance of a trail condition under the Trails Act does not require an environmental review under NEPA. The court agreed with the Board that questions relating to whether and how a right-of-way should be used as a trail are not matters for the Board because the Board's role under the Trails Act is largely ministerial.

Environmental Issues

In *Mid States Coalition for Progress v. STB*, 345 F.3d 520 (8th Cir. 2003), *reh 'g denied* (8th Cir. Jan. 30, 2004), the court upheld the Board's decision approving the "DM&E" construction proposal on all transportation issues and most environmental issues, but vacated and partially remanded for further review of certain environmental issues, including an assessment of the environmental impacts of the increased coal consumption that would result from increased availability and lower prices for this coal.

Railroad Rates

Rate Challenges—Market Dominance Limitation

In *Association of American Railroads v. STB*, 306 F.3d 1108 (D.C. Cir. 2002), the court affirmed the Board's decision to exclude from consideration in its market dominance analyses any evidence relating to indirect competitive alternatives—the ability of a shipper to avoid using the service of a particular railroad by substituting other products ("product competition") or by switching to other origins or destinations ("geographic competition"). The court agreed that the

Board had struck a reasonable balance in an effort to make the rail rate complaint process more manageable and thus ensure that shippers that lack competitive alternatives have practical access to that process.

Rate Challenges—Rate Reasonableness Determination

In *Union Pacific Railroad Company and Wisconsin Power & Light Company v. STB*, 62 Fed. Appx. 354, 355 (D.C. Cir. 2003), the court affirmed the Board's finding that a rail rate for transportation of coal was unreasonably high under the stand-alone cost test. Each party to the rate dispute had challenged aspects of the Board's decisions in the case, but the court summarily upheld those decisions.

Railroad Service Issues

In *Decatur County Commissioners v. STB*, 308 F.3d 710 (7th Cir. 2002), the court affirmed the Board's determination that a railroad's 20-month embargo of a portion of its line was not unreasonable in light of factors such as the condition of the track and the cost of the rehabilitation required to put the track back into service.

In *Boston & Maine Corporation v. STB*, 364 F.3d 318 (D.C. Cir. 2004), the court dismissed a challenge to the Board's orders authorizing the National Railroad Passenger Corporation (Amtrak) to operate passenger trains at speeds of up to 79 miles per hour over the 78-mile Plaistow, NH-to-Portland, ME, rail line owned by subsidiaries of Guilford Transportation Industries, Inc. The court agreed that the Board had properly deferred to the expertise and jurisdiction of the FRA over safety matters, and the court also found that Guilford lacked standing to challenge the Board's order.

Rail Labor Matters

In *Hagerman v. STB*, 281 F.3d 1189 (10th Cir. 2002), the court upheld a district court's rejection of a collateral challenge to the implementation of an STB-approved merger. The court found that the remedies available under the STB's labor protective conditions, including the procedures for arbitration of disputes, preempt other legal remedies.

In *Commonwealth of Pennsylvania v. STB*, 290 F.3d 522 (3d Cir. 2002), the court upheld the STB's decision not to require Norfolk Southern to keep open the Hollidaysburg Car Shops in Altoona, PA. The court agreed with the STB that Norfolk Southern, in seeking STB authorization to acquire portions of the Conrail system, had not represented that it would operate that repair facility indefinitely without regard to business conditions.

In *Union Pacific Railroad Company v. STB*, 358 F.3d 31 (8th Cir. 2004), the court reversed a Board decision that declined to review a labor arbitration panel's findings. The court held that the Board should have reviewed and reversed the decision because there was egregious error in the panel's ruling that the outsourcing of UP's information systems function was causally related to a prior Board-approved merger.

In *United Transportation Union—General Committee of Adjustment (GO-386) v. STB*, 363 F.3d 465 (D.C. Cir. 2004), the court vacated the Board's class exemption for authorization of temporary trackage rights arrangements to the extent that it failed to impose the STB's standard employee protective conditions for abandonments and discontinuances (the *Oregon Short Line* conditions) on the advance authorization of discontinuance of the trackage rights.

APPENDIX A

REPORTS AND PUBLICATIONS

The STB issues several types of reports and publications, including news releases, technical and statistical reports, general interest publications, and consumer guides. As noted below, many of these reports and publications are available on the STB's Web site (www.stb.dot.gov). Alternatively, paper copies of STB reports and publications may be obtained from:

Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423-0001

To request such a report or publication, contact the office indicated after the title of the publication sought. These offices are:

OCPS	Office of Congressional and Public Services
OEEAA	Office of Economics, Environmental Analysis, and Administration

Fees are charged for software packages, user documentation, and surveys (see the list at end of this appendix). For other publications, copying charges may apply.

STB Regulations and Governing Statutes

The regulations adopted by the STB are contained in two volumes of the *Code of Federal Regulations* (CFR). The first volume (49 CFR 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 CFR Parts 1200-End) contains provisions regarding the uniform system of accounts prescribed by the STB, carrier records and reporting requirements, and filing and disclosure requirements with respect to rates and service terms.

These two volumes are available at <http://ecfr.gpoaccess.gov> or they may be obtained by contacting the U.S. Government Printing Office at (202) 512-1800 or writing to the following address:

Superintendent of Documents
U.S. Government Printing Office
P.O. Box 371954
Pittsburgh, PA 15250-7954

The primary statutory provisions that govern the STB and that the agency is responsible for administering are codified at 49 U.S.C. 701-727, 10101-16106. These provisions are published in the *United States Code Annotated* and contained in 49 U.S.C.A. 101-20100. This may be viewed at <http://www.access.gpo.gov/uscode/title49>. Copies of this volume may be obtained by calling (800) 328-9352 or writing to the following address:

West Publishing Company
P.O. Box 64833
St. Paul, MN 55164

STB Web Site

The STB's Web site (www.stb.dot.gov), which was redesigned in April 2004, is a valuable resource for current and historical information, including the following:

- agency decisions and notices served on or after November 1, 1996, as well as most environmental documents such as EAs and EISs served after that date;
- STB Reports, containing major decisions served on or after January 1, 1996;
- all filings (other than confidential documents) received after February 5, 2002, in all proceedings, as well as select filings received prior to that date in high-profile proceedings;
- testimony before Congress coincident with its presentation by STB officials;
- live audio streaming of STB meetings and audio archives of prior meetings, transcripts of hearings before the STB and statements by Members and staff at voting conferences;

- news releases issued by the STB, beginning in January 1997;
- rail recordations (equipment liens) and water recordations filed after December 12, 1999;
- technical and statistical reports concerning Class I railroads, such as portions of railroads' annual reports (Form R-1), price indices, employment data, wage statistics, and 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 STB's direction and supervision;
- access to the agency's Rail Consumer Assistance Program;
- the STB's Freedom of Information Act regulations, fees and public releases since November 1, 1996;
- the agency's rules and fees for filings and services (49 CFR Part 1002);
- publications, including "how to" guides about the rail line abandonment and line sale processes, as well as basic information about the Rails-to-Trails program;
- a general guide to the STB and its operations, including organizational information; and
- links to significant STB proceedings, Congress, DOT's list of Internet sites, and WEBGOV, containing links to the White House and government agencies.

Documents available at the site may be searched, viewed, printed, and/or downloaded. On-line help is available to guide the user through the site. The site has e-mail address links for specific subject areas; general inquiries about the STB may be e-mailed using the Contact Us page. In addition parties may now make Board filings electronically, and service lists are available electronically.

STB Decisions, News Releases, and Pleadings

In addition to being posted on its Web site, STB decisions and filings in STB proceedings may be viewed and copied at the agency's Reading Room (Room 755) at 1925 K Street, NW, Washington, DC 20423-0001. Copies of STB decisions and news releases (up to one year from the date of service) and pleadings filed with the STB (up to six months from the date of filing) may be obtained from ASAP Document Solutions, which may be contacted by telephone at (301) 577-2600; or by e-mail at asapmd@verizon.net. Documents may also be viewed at:

ASAP Document Solutions
9332 Annapolis Road, Suite 103
Lanham, MD 20706

Speeches and Statements

The STB makes available on its Web site Members' speeches (subject to availability) and statements before Congressional committees. Copies may be obtained by writing OCPS at the STB address shown above or by contacting Congressional Services (202) 565-1594, Public Services (202) 565-1592, or Media Services (202) 565-1596.

Financial and Statistical Reports Concerning Class I Railroads

The reports listed below, which are submitted to the STB by Class I railroads, may be examined, by appointment (contact staff at (202) 565-1535), between the hours of 8:30 a.m. and 5:00 p.m., Monday through Friday. Copies of these reports may be obtained (*at \$1/page plus \$21/hour labor if search for past reports is required, \$5 minimum charge per order*) from OCPS (Attn: Records Officer) at the above STB address. Documents available on the Web site are marked with an asterisk (*).

* *Annual Reports (Form R-1s) of Class I Railroads* — report of annual financial and operating statistics (submitted annually). (An Excel version of 14 schedules from each annual report is available on the STB Web site under the *Industry Data* button on the home page.)

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).

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).

Periodic Financial Decisions and Notices

The following periodic decisions and notices relate to publications and reports listed in this appendix. Documents available on the Web site are marked with an asterisk (*).

Depreciation Rate Prescriptions — depreciation rates, by account, for each Class I railroad (issued periodically). OEEAA

* *Railroad Cost of Capital* — determination of the cost of capital rate for the railroad industry (made annually) [most recent determination, for 2003, was made in STB Ex Parte No. 558 (Sub-No. 7) (served June 28, 2004)]. OCPS (Attn: Records Officer)

* *Railroad Revenue Adequacy* — determination of the railroads that are revenue adequate (made annually) [determination for 2003 was made in STB Ex Parte No. 552 (Sub-No. 8) (served Aug 12, 2004)]. OCPS (Attn: Records Officer)

* *Rail Cost Adjustment Factor (RCAF)* — index used to adjust for inflation in long-term railroad contracts, rate negotiations, and transportation studies (computed quarterly) in STB Ex Parte No. 290 (Sub-No. 5). OCPS (Attn: Records Officer)

* *Railroad Cost Recovery Procedures – Productivity Adjustment* — productivity adjustment factor used to adjust the quarterly RCAF (computed annually) in STB Ex Parte No. 290 (Sub-No. 4). OCPS (Attn: Records Officer)

Indexing the Annual Operating Revenues of Railroads — notice setting forth the annual inflation adjusting index numbers used to adjust gross annual operating revenues of railroads for classification purposes (issued annually). OCPS (Attn: Records Officer)

Publications

Following is a list of STB publications. Documents available on the Web site are marked with an asterisk (*).

- * *Class I Line-Haul 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). OEEAA
- * *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). OEEAA
- * *Report of Railroad Employment — Class I Line-Haul Railroads* (Statement M350) — report of number of railroad employees (prepared monthly). OEEAA
- * *Wage Statistics of Class I Railroads in the United States* (Statement A300) — compilation of number of employees, service hours, compensation, and mileage, developed from Wage Forms A and B (compiled annually). OEEAA
- * *Statistics of Class I Freight Railroads in the United States* (formerly *Transport Statistics*) — a compilation of expense, investment, and operating statistics of U.S. Class I railroads developed from the Annual Report Form R-1s (compiled annually). OEEAA
- * *Guide to the STB's Environmental Rules* — questions and answers to assist in understanding and applying the STB's environmental rules. OEEAA
- * *Overview: Abandonments and Alternatives to Abandonments* — rules and regulations applicable to abandonments, line sales, and rail banking (revised Aug. 1997). OCPS
- * *So You Want to Start a Small Railroad: Surface Transportation Board Small Railroad Application Procedures* — rules and regulations involved in applying for STB authority to operate a new railroad (revised Mar. 1997). OCPS

- * *Surface Transportation Board 1996/1997 Annual Report* — report covering the STB's activities from its inception on January 1, 1996, to the close of the fiscal year that ended September 30, 1997 (Mar. 1998). OCPS (Attn: Records Officer)
- * *Surface Transportation Board 1998/1999/2000/2001 Annual Report* -- report covering the STB's activities for fiscal years 1998 through 2001 (Sept. 2002). (OCPS) (Attn: Records Officer)
- * *Surface Transportation Board Reports, Volumes 1, 2, 3, and 4* — containing major STB decisions issued in 1996, 1997, 1998, and 1999 - 2000, respectively.
- * *The Surface Transportation Board: Who's Who and What Does it Do?* — names of STB Members and Office Directors, and a brief description of the STB's jurisdiction and the functions that were transferred to the agency and to DOT when the ICC was terminated (revised regularly). OCPS

Software, User Documentation, and Surveys Available for a Fee

The following software and user documentation may be obtained from the STB for the fees listed below. For additional information about the software's system requirements and use, contact OEEAA, (202) 565-1535. Detailed information about the computer software and other STB electronic databases may be found in DOT's annual publication *Directory of Transportation Data Sources*, which may be obtained by calling (800) 853-1351.

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. OEEAA [Software and User Documentation, \$195]

Uniform Railroad Costing System (URCS) Phase III Movement Costing Program — used to develop average variable and total shipment costs for U.S. Class I railroads and for the eastern and western regions of the United States. OEEAA [Program, Data, and User Manual, \$50; Data only (updated annually), \$20; Source code, \$500]

Carload Waybill Sample — confidential sample of U.S. railroad traffic used in complaint cases before the STB and by states in developing state rail plans and in related studies. The STB recently revised the railroad carload waybill sampling procedures to require sampling of export rail traffic. *Modification of the Carload Waybill Sample Reporting Procedures*, STB Ex Parte No. 385 (Sub-No. 5). OEEAA [CD, \$650; User Guide, \$50] (Sample and Guide free to states and Federal agencies)

Carload Waybill Sample Public Use File — nonconfidential railroad movement and revenue data for use in performing plant location and other transportation planning studies. OEEAA [CD, \$450].

APPENDIX B

APPROPRIATIONS AND EMPLOYMENT

The following tables show average full-time equivalent (FTE) employment and total appropriations, less enacted rescissions, for fiscal years 1995 to 2004 for activities included under the current appropriation title "Salaries and Expenses."

Average FTE Employment and Appropriations FY 1996 - 2004 ¹			
Fiscal Year	Appropriation	STB Offset ²	Average Employment
1996	\$8,414,000	\$651,521	106 ³
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

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

² The STB appropriations have been statutorily offset by the collection of user fees.

³ The STB operated only 9 months in FY 1996. These average FTE employment figures represent the 9-month equivalent of an annualized employment level.

Status of FY 1998 Appropriations *	
Total appropriations	\$ 13,850,000
Offsetting collections	2,000,000
Reimbursements from other agencies	7,486
Total obligations	15,828,362
Unobligated balance available for adjustments	29,124
Carryover of offsetting collections to next fiscal year	935,867
Status of FY 1999 Appropriations	
Total appropriations	15,959,000
Offsetting collections (<i>see note</i>)	(802,883)
Reimbursements from other agencies	6,305
Total obligations	15,144,592
Unobligated balance available for adjustments	17,830
Carryover of offsetting collections to next fiscal year	940,617
Status of FY 2000 Appropriations	
Total appropriations	16,930,000
Offsetting collections (<i>see note</i>)	(843,230)
Reimbursements from other agencies	3,366
Total obligations	16,083,559
Unobligated balance available for adjustments	6,577
Carryover of offsetting collections to next fiscal year	940,617
Status of FY 2001 Appropriations	
Total appropriations	17,016,481
Offsetting collections (<i>see note</i>)	(900,000)
Reimbursements from other agencies	0
Total obligations	16,098,379
Unobligated balance available for adjustments	18,102
Carryover of offsetting collections to next fiscal year	940,617

Status of FY 2002 Appropriations	
Total appropriations	\$ 17,485,000
Offsetting collections	950,000
Reimbursements from other agencies	0
Total obligations	18,416,106
Unobligated balance available for adjustments	18,894
Carryover of offsetting collections to next fiscal year	940,617
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
Unobligated balance available for adjustments	8,742
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 1999, 2000 and 2001 appropriations provided that offsetting collections would be credits to the appropriation. The sums appropriated, less enacted rescissions, were to be reduced on a dollar-for-dollar basis as such offsetting collections were received during the fiscal year to result in the final appropriation.

The FY 2002 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, to result in a final appropriation

estimated at no more than \$17,485,000, less enacted rescissions.

The FY 2003 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, to result in a final appropriation estimated at no more than \$18,450,000, less enacted rescissions.

The FY 2004 appropriations provided that offsetting collections shall be a credit to the appropriation. The sum appropriated shall be reduced on a dollar for dollar basis as such offsetting collections are received during the fiscal year, to result in a final appropriation estimated at no more than \$18,471,000, less enacted rescissions.

APPENDIX C

CASELOADS DURING FY 2002-2004

Caseload During FY 2002					
<i>Rail Matters</i>					
Category	Pending at Start	Received During	Decided During	Pending at End	Decisions Served
Carrier Consolidations	15	24	31	8	66
Review of Labor Arbitrators	4	2	6	0	7
Rates and Services					
Rate Reasonableness	10	10	5	15	48
Rate Disclosure	0	0	0	0	0
Through-Routes/Divisions	0	1	1	0	1
Contract Rates	0	0	0	0	0
Reasonable Practice	0	2	0	2	3
Discrimination	0	0	0	0	0
Car Supply and Interchange	11	1	7	5	15
Service Orders	0	0	0	0	0
Competitive Access	0	1	0	1	0
Constructions					
Line Crossing	2	0	1	1	3
Constructions	14	3	8	9	40
Abandonments	47	123	144	27	415

Caseload During FY 2002 (Continued)					
<i>Rail Matters</i>					
Category	Pending at Start	Received During	Decided During	Pending at End	Decisions Served
Other Line Transactions					
Line Consolidations	3	39	37	5	48
Line Acquisitions Under 49 U.S.C. 10901	12	56	57	11	91
Line Acquisitions by Shortline	3	22	24	1	23
Feeder Line Development	0	0	0	0	0
Collective Actions					
Collective Ratemaking	0	0	0	0	0
Pooling	1	0	1	0	1
Lien Recordation (<i>see note 1</i>)	0	0	0	0	0
Data Collection and Oversight					
RCAF	0	2	2	0	5
Accounting and Records	1	2	3	0	4
Reports - Rail (<i>see note 2</i>)	2	0	2	0	1
Passenger Rail					
Amtrak Track Use/ Compensation	0	1	0	1	2
Passenger Rail - Other	0	0	0	0	0
Exemption Rulemakings	0	1	0	1	1
Other Rail					
Common Carrier Obligation	5	3	5	3	5
Interlocking Officer or Director	0	0	0	0	0
Other	4	3	3	4	10
Total Rail	134	296	337	94	789

Caseload During FY 2002 (Continued)					
<i>Nonrail Matters</i>					
Category	Pending	Received	Decided	Pending	Decisions
<i>Motor</i>					
Rate Reasonableness					
Joint Motor-Water Rates in Non-contiguous Domestic Trade	0	0	0	0	0
Collectively Set Trucking Rates	0	0	0	0	0
Household Goods	0	0	0	0	0
Collective Actions					
Collective Ratemaking Agreements	25	0	2	23	8
Truck Pooling	0	0	0	0	0
Undercharges	0	0	0	0	0
Bus Regulation					
Through-Route Regulation	0	0	0	0	0
Mergers	3	8	11	0	11
Bus Pooling	0	1	1	0	1
Other Motor	2	1	2	1	5
<i>Water</i>					
Port-to-Port Water Rates	3	0	1	2	10
Other	0	0	0	0	0
<i>Pipeline</i>					
Rate Regulation	0	0	0	0	0
Other	0	0	0	0	0
<i>Other</i>	5	7	7	5	8
Total Nonrail	38	17	24	31	43
Total Rail and Nonrail	172	338	361	125	832

Caseload During FY 2003					
<i>Rail Matters</i>					
Category	Pending at Start	Received During	Decided During	Pending at End	Decisions Served
Carrier Consolidations	8	25	29	4	49
Review of Labor Arbitral Decisions	0	2	0	2	2
Rates and Services					
Rate Reasonableness	15	7	5	17	38
Rate Disclosure	0	0	0	0	0
Through-Routes or Divisions	0	1	1	0	3
Contract Rates	0	0	0	0	0
Reasonable Practice	2	2	1	3	3
Discrimination	1	0	0	1	0
Car Supply and Interchange	5	3	1	7	8
Service Orders	0	2	1	1	1
Competitive Access	1	0	1	0	5
Constructions					
Line Crossing	1	1	1	1	0
Constructions	9	5	5	9	41
Abandonments	27	166	136	57	423

Caseload During FY 2003 (Continued)					
<i>Rail Matters</i>					
Category	Pending	Received	Decided	Pending	Decisions
Other Line Transactions					
Line Consolidations	5	33	38	0	47
Line Acquisitions Under 49 U.S.C. 10901	11	37	43	5	75
Line Acquisitions by Shortline	1	36	30	7	50
Feeder Line Development	0	1	0	1	6
Collective Actions					
Collective Ratemaking	0	0	0	0	0
Pooling	0	0	0	0	0
Lien Recordation (<i>see note 1</i>)	0	0	0	0	0
Data Collection and Oversight					
RCAF	0	2	2	0	5
Accounting and Records	0	1	1	0	2
Reports - Rail (<i>see note 2</i>)	0	0	0	0	0
Passenger Rail					
Amtrak Track Use/ Compensation	1	0	1	0	3
Passenger Rail - Other	0	0	0	0	0
Exemption Rulemakings	1	2	2	1	5
Other Rail					
Common Carrier Obligation	3	1	2	2	4
Interlocking Officer or Director	0	0	0	0	0
Other	4	6	5	5	6
Total Rail	95	333	305	123	776

Caseload During FY 2003 (Continued)					
<i>Nonrail Matters</i>					
Category	Pending	Received	Decided	Pending	Decisions
<i>Motor</i>					
Rate Reasonableness					
Joint Motor-Water Rates in Non-contiguous Domestic Trade	0	0	0	0	0
Collectively Set Trucking Rates	0	0	0	0	0
Household Goods	0	0	0	0	0
Collective Actions					
Collective Ratemaking	23	1		23	3
Truck Pooling	0	0	0	0	0
Undercharges	0	0	0	0	0
Bus Regulation					
Through-Route Regulation	0	0	0	0	0
Mergers	0	7	7	0	8
Bus Pooling	0	2	1	1	3
Other Motor	1	0	1	0	2
<i>Water</i>					
Port-to-Port Water Rates	2	0	0	2	4
Other	0	0	0	0	0
<i>Pipeline</i>					
Rate Regulation	0	2	0	2	5
Other	0	0	0	0	0
<i>Other</i>	5	7	7	5	10
Total Nonrail	31	19	17	33	35
Total Rail and Nonrail	126	352	322	156	811

Caseload During FY 2004					
<i>Rail Matters</i>					
Category	Pending at Start	Received During	Decided During	Pending at End	Decisions Served
Carrier Consolidations	3	11	12	2	29
Review of Labor Arbitral Decisions	3	2	3	2	4
Rates and Services	29	11	23	17	86
Rate Reasonableness	18	6	11	13	65
Rate Disclosure	0	0	0	0	0
Through-Routes or Divisions	0	0	0	0	0
Contract Rates	0	0	0	0	0
Reasonable Practice	2	2	4	0	9
Discrimination	0	0	0	0	0
Car Supply and Interchange	7	0	3	4	5
Service Orders	1	3	4	0	5
Competitive Access	1	0	1	0	2
Constructions	9	6	4	11	29
Line Crossing	1	1	0	2	0
Constructions	8	5	4	9	29
Abandonments	91	178	191	37	508

Caseload During FY 2004 (Continued)					
<i>Rail Matters</i>					
Category	Pending	Received	Decided	Pending	Decisions
Other Line Transactions	39	128	113	51	159
Line Consolidations	10	44	33	19	36
Line Acquisitions Under 49 U.S.C. 10901	15	50	45	20	64
Line Acquisitions by Shortline	12	31	33	10	51
Feeder Line Development	1	0	10	0	3
Acquisition and Operation 10502	1	3	2	2	5
Collective Actions	0	1	1	0	6
Collective Ratemaking	0	0	0	0	0
Pooling	0	1	1	0	6
Lien Recordation <i>(see note 1)</i>	0	0	0	0	0
Data Collection and Oversight	1	1	2	0	5
RCAF	1	1	2	0	5
Accounting and Records	0	0	0	0	0
Reports - Rail <i>(see note 2)</i>	0	0	0	0	0
Passenger Rail	0	0	0	0	0
Amtrak Track Use/ Compensation	0	0	0	0	0
Passenger Rail - Other	0	0	0	0	0
Exemption Rulemakings	2	2	2	2	3
Other Rail	13	4	6	11	14
Common Carrier Obligation	3	1	2	2	2
Interlocking Officer or Director	0	0	0	0	0
Other	10	3	4	9	12
Total Rail	190	344	357	174	843

Caseload During FY 2004 (Continued)					
<i>Nonrail Matters</i>					
Category	Pending	Received	Decided	Pending	Decisions
<i>Motor</i>					
Rate Reasonableness	0	0	0	0	0
Joint Motor-Water Rates in Non-contiguous Domestic Trade	0	0	0	0	0
Collectively Set Trucking Rates	0	0	0	0	0
Household Goods	0	0	0	0	0
Collective Actions	24	3	15	12	8
Collective Ratemaking	24	3	15	12	8
Truck Pooling	0	0	0	0	0
Undercharges	0	1	1	0	2
Bus Regulation	4	6	5	5	4
Through-Route Regulation	0	0	0	0	0
Mergers	3	6	4	5	4
Bus Pooling	1	0	1	0	0
Other Motor	0	0	0	0	0
<i>Water</i>					
Port-to-Port Water Rates	2	0	0	2	3
Other	2	0	0	2	3
<i>Pipeline</i>					
Rate Regulation	0	0	0	0	0
Other	2	0	0	2	5
<i>Other</i>					
	5	7	9	3	11
Total Nonrail	37	17	30	22	33
Total Rail and Nonrail	227	347	387	198	876

Notes:

1. The STB recorded approximately 1,976 liens in FY 2002 and 2,116 liens in FY 2003. No complaints, proceedings, or decisions resulted from this activity during the reported periods.

2. The Board receives from carriers (and makes available to the public) the following reports: Annual Report Form R-1, Form R-1 Schedule 250, RE&I Report, Condensed Balance Sheet (CBS) Report, Quarterly Commodity Statistics (QCS) Report, Wage Form A&B, Monthly Report of Employees (M350), and the STB Carload Waybill Sample. Based on these reports, the Board publishes or makes available to the public the following reports and publications: Quarterly Railroad Earnings Report, Wage Statistic Form A-300, Monthly Report of Employees, Statistics of Class I Freight Railroads in the United States, annual URCS updates, and the STB Carload Waybill Sample Public Use File. No proceedings or decisions resulted from these activities during the reported periods.

APPENDIX D

RAILROAD FINANCIAL AND STATISTICAL DATA

Rail Carriers Regulated by the STB	
Carriers Subject to Uniform System of Accounts and/or Required to File Annual and Periodic Reports (as of 2004)	
Railroads, Class I	9
Railroads Not Required to File Reports* (as of 2004)	
Railroads, Class II	21
Railroads, Class III	525
Holding Companies - Rail	not available

* Information obtained from a database maintained by the AAR, *Profiles of U.S. Railroads* (2003 edition), containing AAR estimates of carrier revenues.

Railroads are classified based on their annual operating revenues. The STB recently required that affiliated railroads with integrated operations in the United States be combined for purposes of determining whether they are Class I (large) railroads and, if so, required them to file consolidated financial reports. *Proposal to Require Consolidated Reporting By Commonly Controlled Railroads*, STB Ex Parte No. 634 (STB served Nov. 7, 2001). A railroad's class is determined by its *inflation-adjusted* 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
- Class III: \$20 million or less

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

$$\text{Current Year's Revenues} * \left(\frac{1991 \text{ Avg Index}}{\text{Current Year's Avg Index}} \right)$$

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).

Class I Line-Haul Railroads, Condensed Income Statement, Financial Ratios, and Employee Data (Dollars in Thousands)				
Calendar Year →	2001	2002	2003	2004
1. Number of carriers represented	8	8	9	9
CONDENSED INCOME STATEMENT				
2. Total operating revenues	\$34,575,851	\$35,327,265	\$36,638,941	\$40,517,155
3. Total operating expenses	\$29,163,867	29,592,326	31,440,382	35,106,830
4. Net railway operating income	\$4,111,288	4,247,712	4,078,120	4,205,029
5. Net income	\$2,739,835	3,201,404	2,686,683	2,867,257
6. Dividends Paid	\$2,120,195	870,166	1,407,641	1,892,234
NET INVESTMENT AND EQUITY				
7. Net investment in transportation property and equipment ¹	\$61,001,099	\$65,380,473	\$66,772,330	\$72,519,648
8. Shareholders' equity	\$34,822,223	39,674,707	41,150,654	51,955,411
FINANCIAL RATIOS (PERCENT)				
9. Operating ratio (L3/L2c)	84.35%	83.77%	85.81%	86.65%
10. Return on net investment (L4/L7)	6.74%	6.50%	6.11%	5.80%
11. Return on equity (L5/L8)	7.87%	8.07%	6.53%	5.52%
EMPLOYEE DATA				
12. Average number of employees	162,152	157,290	154,652	157,496
13. Compensation	\$9,429,802	\$9,380,225	\$9,576,782	\$10,347,373

¹ 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 Line-Haul Railroads, Selected Balance Sheet Data				
as of December 31, 2001, 2002, 2003, and 2004				
(Dollars in Thousands)				
Calendar Year →	2001	2002	2003	2004
	Amount	Amount	Amount	Amount
1. Total current assets	\$4,597,301	\$4,347,374	\$5,204,105	\$7,193,775
2. Total current liabilities	10,878,817	10,384,581	10,941,481	12,364,982
3. Transportation property				
Road	75,621,803	84,285,464	87,877,145	105,681,990
Equipment	24,086,146	24,667,750	26,080,032	27,883,158
Other	1,572,241	1,492,344	1,597,358	1,708,258
Less accumulated depreciation and amortization	(23,193,264)	(25,094,554)	(27,614,825)	30,046,863
Net Transportation Property	78,086,926	85,351,004	87,939,710	105,226,543
4. Long-term debt (due after 1 year)	14,053,419	13,208,281	13,753,120	15,081,579
5. Shareholders' equity				
Capital stock (Par Value)	808,149	2,578,082	2,505,805	2,503,479
Additional capital (Above Par)	13,829,292	13,813,381	13,945,489	23,597,764
Retained earnings	20,188,569	232,870,310	24,703,147	25,857,955
Less treasury stock	3,787	3,787	3,787	3,787
Net shareholders' equity	34,822,223	39,674,707	41,150,654	51,955,411

Railroad Revenue Adequacy Status Including Return on Investment 2001-2003			
	2001	2002	2003
Burlington Northern-Santa Fe	7.1% Inadequate	6.4% Inadequate	6.2% Inadequate
CSX Transportation	4.6% Inadequate	5.2% Inadequate	3.4% Inadequate
Canadian National/Grand Trunk Corp.	4.9% Inadequate	3.1% Inadequate	4.5% Inadequate
Kansas City Southern	7.0% Inadequate	6.5% Inadequate	3.7% Inadequate
Norfolk Southern	8.3% Inadequate	9.1% Inadequate	9.1% Inadequate
Soo Line	5.9% Inadequate	5.7% Inadequate	0.9% Inadequate
Union Pacific	7.6% Inadequate	8.6% Inadequate	7.3% Inadequate

APPENDIX E

COMMISSIONERS, 1996-2004

Surface Transportation Board Commissioners				
Commissioners	State	Party	Oath of Office	End of Service
SIMMONS, J.J. III	OK	Democrat	Jan. 1, 1996*	Dec. 31, 1996
OWEN, Gus A.	CA	Republican	Jan. 1, 1996	Dec. 31, 1998
MORGAN, Linda J.	MD	Democrat	Jan. 1, 1996	May 15, 2003
CLYBURN, William Jr.	SC	Democrat	Dec. 21, 1998	Dec. 31, 2001
BURKES, Wayne O.	MS	Republican	Feb. 25, 1999	Mar. 20, 2003
NOBER, Roger	MD	Republican	Nov. 26, 2002	
BUTTREY, W. Douglas	TN	Republican	May, 28, 2004	
MULVEY, Francis P.	MD	Democrat	June 2, 2004	

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