



**Surface Transportation Board
FY 2005 - 2006 Report**

**Surface Transportation Board
Washington, DC 20423**

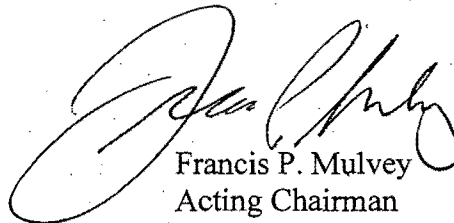
June 10, 2009

To the Congress of the United States:

It is my pleasure to submit this report of the Surface Transportation Board, covering the Board's activities from October 1, 2004, through September 30, 2006. It follows the same basic format as the previous reports, with a statement of appropriations and aggregate expenditures for fiscal years 2004 through 2006 appearing in Appendix B.

The Board's composition has changed since the last report, with the departure of former Chairman Roger Nober on January 4, 2006, and Commissioner W. Douglas Buttrey on March 13, 2009. Commissioner Buttrey served as Chairman from January 4, 2006, until the appointment of Commissioner Charles D. Nottingham as Chairman on August 14, 2006. Vice Chairman Nottingham served as Chairman until my appointment as Acting Chairman on March 13, 2009.

I recognize that this report was not completed until well after FY 2005-2006. The Board is working to submit the 2007-2008 report by September 2009, and I will strive to ensure that such delays in annual reporting do not occur again.



Francis P. Mulvey
Acting Chairman

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Editorial Notes

Acronyms

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

AAR	Association of American Railroads
Amtrak	National Railroad Passenger Corporation
ANPR	advance notice of proposed rulemaking
BNSF	The Burlington Northern and Santa Fe Railway Company or BNSF Ry.
CBS	Condensed Balance Sheet Report for Class I Railroads
CFR	Code of Federal Regulations
CMP	constrained market pricing
CITU	Certificate of Interim Trail Use
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
F.3d	Federal Reporter, Third Series
FMCSA	Federal Motor Carrier Safety Administration
FRA	Federal Railroad Administration
FY	fiscal year
IC&E	Iowa, Chicago & Eastern Railroad Corporation
ICC	Interstate Commerce Commission
ICCTA	ICC Termination Act of 1995
NGCC	National Grain Car Council
NITU	Notice of Interim Trail Use
NS	Norfolk Southern Railway Company
OEEAA	Office of Economics, Environmental Analysis, and Administration
OFA	offer of financial assistance
OPAGAC	Office of Public Assistance, Governmental Affairs, and Compliance
PRB	Powder River Basin, Wyoming
RCAF	rail cost adjustment factor
RCPA	Rail Customer and Public Assistance Program
RE&I	Revenue, Expenses, and Income Report
RSTAC	Railroad-Shipper Transportation Advisory Council
SAC	stand-alone cost
SEA	Section of Environmental Analysis
STB	Surface Transportation Board
S.T.B.	Surface Transportation Board Reports
Tex Mex	Texas Mexican Railway Company
UP	Union Pacific Railroad Company
URCS	Uniform Rail Costing System
U.S.C.	United States Code

SURFACE TRANSPORTATION BOARD

OVERVIEW

The Surface Transportation Board (STB or Board) 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 (FMCSA)) or to the Bureau of Transportation Statistics 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, and water carriers engaged in noncontiguous domestic trade (49 U.S.C. 13101-14914). The STB has discretion to limit 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 the 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 when the Chairman is unavailable. 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 137 experienced and dedicated lawyers, economists, transportation industry specialists, and administrative and support personnel employed in the offices described below.

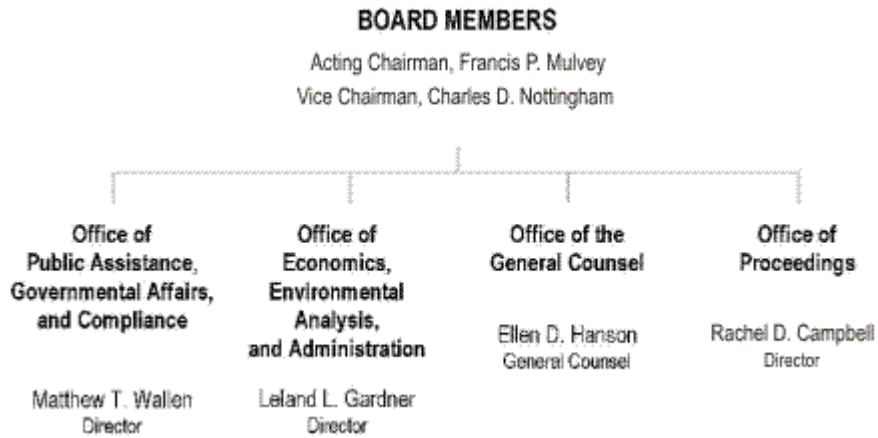
The **Office of Public Assistance, Governmental Affairs, and Compliance (OPAGAC)** (formerly the Office of Congressional and Public Services (OCPS)) informs members of Congress, the public, and the media of STB's actions; responds to Congressional, public, and press inquiries; prepares testimony for hearings and comments on proposed legislation; and assists the public in matters involving transportation regulation. This office now includes the Rail Customer and Public Assistance Program (formerly the Office of Compliance and Enforcement (OCE)), which 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 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 pursuant to 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 matters. 49 U.S.C. 726. The RSTAC is comprised of 14 private-sector senior executives of organizations engaged in the railroad or rail shipping industries, plus one public member at large. The Secretary of Transportation or his/her designee, and the three STB members are ex officio members of RSTAC.

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 consists of 14 representatives from Class I (large) railroads, 7 representatives from Class II (medium-sized) and Class III (small) 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.

The **Rail Energy Transportation Advisory Committee (RETAC)** was established by the Surface Transportation Board in July 2007 to provide advice and guidance to the Board, and to serve as a forum for discussion of emerging issues regarding the transportation by rail of energy resources (including, but not necessarily limited to, coal, ethanol, and other biofuels). RETAC is comprised of 25 members, representing a balance of stakeholders with an interest in energy transportation by rail (including large and small railroads, coal producers, electric utilities, the biofuels industry, and the private railcar industry). In addition, the three members of the Board serve as ex officio members of RETAC. Meetings, which are open to the public, are held at least twice a year.

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. The STB's authorization exempts such transactions from other laws to the extent necessary for the carriers to consummate the approved transaction. 49 U.S.C. 11321.

Carriers may seek STB authorization either by filing an application under 49 U.S.C. 11323-25 or by requesting an exemption under 49 U.S.C. 10502. The procedures to be followed in such cases may vary depending on the significance of the transaction and 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.¹ 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). See 49 CFR Parts 244 and 1106. The STB conducts an environmental review pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4321 et. seq. (NEPA) in transactions that meet certain thresholds under the Board's rules. See 49 CFR 1105 and pages 41-46 of this report.

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

¹ In FY 2007 (the last year for which such information is currently available), Class III railroads were those with annual operating revenues below \$28,768,699; Class II railroads had operating revenues of at least \$28,768,699 but less than \$359,608,745; and Class I railroads had operating revenues of \$359,608,745 or greater.

Mergers and Consolidations Under 49 U.S.C. 11323²			
Fiscal Years		2005	2006
Applications	Filed	1	1
	Granted	1	2
	Denied	0	0
	Dismissed	0	0
Petitions for Exemption	Filed	5	6
	Granted	4	4
	Denied	0	0
	Dismissed	0	1
Notices of Exemption	Filed	24	27
	Granted	16	26
	Denied	0	0
	Dismissed	1	5

In FY 2005, the Board approved, as a minor transaction under 49 CFR 1180.2(c), the control by the Kansas City Southern of The Texas Mexican Railway Company (Tex Mex), subject to various conditions for the benefit of shippers and protection of rail employees, and subject to Board monitoring of operations at the Laredo Bridge, 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. 12 (STB served Nov. 29, 2004) (*KCS/Tex Mex Merger*).

² The figures in this chart include actions taken on consolidation proposals that were pending at the beginning of FY 2005. The reason that the “granted-plus-dismissed” numbers do not match up with the “filed” numbers for each year shown above is that applications, petitions, and notices filed in one year may be decided in another.

RAILROAD RESTRUCTURING

In FY 2005-2006, two additional railroad control applications, classified as minor transactions under 49 CFR 1180.2(c), were filed with the STB:

- The STB authorized, subject to employee protective conditions, the acquisition, by Paducah & Louisville Railway (P&L), of a rail line owned by CSX Transportation, Inc. (CSX), and authorized the transfer of that line from P&L to Evansville Western Railway, Inc., in *Paducah & Louisville Railway, Inc.—Acquisition—CSX Transportation, Inc.* STB Finance Docket No. 34738, Decision No. 5 (STB served Nov. 18, 2005).
- The STB authorized, subject to employee protective conditions, the acquisition, by the Indiana Railroad and Soo Line Railroad (Soo), of a 92.3-mile rail line owned by a subdivision of Soo and certain trackage rights held by Soo, in *Indiana Rail Road Company—Acquisition—Soo Line Railroad Company*, STB Finance Docket No. 34783, Decision No. 4 (STB served Apr. 11, 2006).

Mergers and Consolidations – Oversight and Monitoring

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

Annual Oversight Proceedings: CSX-NS-Conrail Merger

In approving the CSX-NS-Conrail merger, the STB provided for a review to be conducted annually for 5 years to examine the effectiveness of the competitive and other conditions imposed. See *CSX Corp. et al.--Control--Conrail Inc. et al.*, 3 S.T.B. 196 (1998) (*CSX-NS-Conrail Merger*), *petitions for review denied sub nom. Erie-Niagara Rail Steering Comm. v. STB*, 247 F.3d 437 (2d Cir. 2001). During the reporting period, the STB:

- Approved a settlement agreement between Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively, NS), and Wheeling & Lake Erie Railway

Company, intended to satisfy the “Toledo access” and “Huron Dock” conditions imposed by the Board in the *CSX-NS-Conrail Merger*, 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 [Petition to Approve Settlement Agreement and Exempt Embraced Transactions]*, STB Finance Docket No. 33388 (Sub-No. 95) (STB served Jan. 26, 2005).

- Concluded, in the fifth and final round of the oversight proceeding, that the *CS-NS-Conrail Merger* had not resulted in any competitive or market power problems, and formally concluded the five-year oversight in the proceeding as scheduled, 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 [General Oversight]*, STB Finance Docket No. 33388 (Sub-No. 91), Decision No. 17 (STB served Oct. 20, 2004), *reconsid. denied* in Decision No. 18 (STB served Feb. 23, 2005).

Special Oversight Proceedings: *KCS/Tex Mex Merger*

While the STB did not impose a formal oversight period in the *KCS/Tex Mex* merger, the agency required KCS to submit all “protocols,” agreements, and statistical measures relating to the Laredo Bridge and related interchanges, and to notify the agency if they changed. The STB also reserved the right to institute formal oversight if KCS acquires TFM, S.A. de C.V. (formerly known as *Transportación Ferroviaria Mexicana, S.A. de C.V.*), in *KCS/Tex Mex Merger*, STB Docket No. 34342, Decision No. 12 (STB served Nov. 29, 2004).

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. Near the end of the reporting period, the STB received an application from Providence and Worcester Railroad seeking approval for its participation in the Multilevel Car Pooling Agreement for the pooling of services related to multilevel cars used to transport motor vehicles, and boxcars used to transport automobile parts, in *Providence and Worcester Railroad Company—Pooling of Car Service Regarding Multilevel Cars*, STB Finance Docket No. 29653 (Sub-No. 9). That case was pending at the end of the reporting period.

Line Acquisitions

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

Parties may seek exemptions under 49 U.S.C. 10502 in these cases. Additionally, expedited procedures for obtaining the Board's authorization are available under several class exemptions. For nonconnecting lines, Class II and Class 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. Those acquisitions that will result in the carrier having at least \$5 million 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. Required notification processes, together with the Board's ability to revoke the class exemption as it applies to a particular transaction, prevent misuse of the exemptions (for example, to obtain a line for uses other than continued rail operations). Because they simplify the regulatory

process while continuing to protect the public, these exemptions have helped to preserve rail service in many areas of the country.

The Board's docket and handling of line acquisition proposals is summarized in the following table.

— Line Acquisitions —				
By Noncarriers Under 49 U.S.C. 10901				
Fiscal Years	2005		2006	
	No.	Miles	No.	Miles
Applications				
Filed	1	368	0	0
Granted	0	0	0	0
Denied	0	0	0	0
Dismissed	0	0	1	368
Petitions for Exemption				
Filed	0	0	0	0
Granted	0	0	0	0
Denied	0	0	0	0
Dismissed	0	0	0	0
Notices of Exemption				
Filed	35	2254	43	208251
Granted	31	4749	34	19219
Denied	2	70.5	3	166
Dismissed	1	1	4	307.4
By Class II or III Railroads Under 49 U.S.C. 10902				
Petitions for Exemption				
Filed	0	0	1	31.9
Granted	0	0	1	31.9
Denied	0	0	0	0
Dismissed	0	0	0	0
Notices of Exemption				
Filed	38	864.9	16	857.93
Granted	39	980.5	15	844.27
Denied	0	0	0	0
Dismissed	0	0	0	0

Among the more significant actions taken in this area in FY 2005-2006, the STB:

- Rejected a class exemption notice filed by The Burlington Northern and Santa Fe Railway Company (BNSF) to acquire certain core lines owned by South Dakota because the class exemption procedures are reserved for “routine” transactions, not transactions that are subject to substantial controversy and opposition as here, in *The Burlington Northern and Santa Fe Railway Company—Acquisition and Operation Exemption—State of South Dakota*, STB Finance Docket No. 34645 (STB served Jan. 14, 2005).
- Found that approval was not needed for the Washington Department of Transportation (WSDOT) to acquire several rail lines, including the underlying rights-of-way totaling approximately 188 miles, because the seller will retain all common carrier obligations to provide rail freight service and WSDOT will not hold itself out as a common carrier performing such service, in *State of Washington, Department of Transportation—Acquisition Exemption—Palouse River and Coulee City Railroad, Inc.*, STB Finance Docket No. 34609 (STB served May 3, 2005).
- Found that a new carrier properly sought authority to acquire certain Kansas City Southern Railway lines that are not switching track excepted from the Board’s licensing authority, in *Kaw River Railroad, Inc.—Acquisition and Operation Exemption—The Kansas City Southern Railway Company*, STB Finance Docket No. 34509 (STB served May 3, 2005), *appeal dismissed sub nom. Brotherhood of Locomotive Engineers and Trainmen v. STB*, 457 F.3d 24 (D.C. Cir. 2006).
- Denied a union’s petitions to revoke an exemption to acquire by lease and operate 4 miles of rail line and 270 feet of lead track, finding that the evidence did not support the union’s claim that the transaction was a sham, in *East Brookfield & Spencer Railroad, LLC—Lease and Operation Exemption—CSX Transportation, Inc.*, STB Finance Docket No. 34505 (STB served Sept. 15, 2005).

- Found that STB authority was not needed for the New Mexico Department of Transportation (NMDOT) to acquire from BNSF various rights-of-way and trackage in New Mexico and Colorado totaling 297.1 miles because BNSF would retain the common carrier obligation to provide rail freight service and NMDOT would not hold itself out as a common carrier performing such service, in *New Mexico Department of Transportation—Acquisition Exemption—Certain Assets of BNSF Railway Company*, STB Finance Docket No. 34793 (STB served Feb. 6, 2006).
- Proposed new rules lengthening the advance public notice for exempt transactions in order to ensure that the public will have adequate time to object and that the Board will have adequate time to address such objections, in *Public Participation in Class Exemption Proceedings*, STB Ex Parte No. 659 (STB served Mar. 10, 2006).
- Authorized a Class II railroad to acquire, subject to labor protective conditions, a rail yard (consisting of approximately 55 acres and 15 tracks in or near Council Bluffs, Iowa), and thereby provide service to a new customer, in *Iowa Interstate Railroad, Ltd.—Acquisition Exemption—Great Western Railway Company of Iowa, L.L.C.*, STB Finance Docket No. 34855 (STB served June 1, 2006).
- Held a hearing to consider the Western Coal Traffic League’s request to adopt rules limiting the extent to which agreements for the sale or lease of railroad lines, by larger railroads to existing or newly created short line railroads, may contain provisions restricting the interchange of traffic between the short line and other connecting railroads that could compete with the seller or landlord railroad. See *Review of Rail Access and Competition Issues—Renewed Petition of The Western Coal Traffic League*, STB Ex Parte No. 575 (STB served July 17, 2006).

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 faster routes. Local trackage rights may introduce a new competitor, giving shippers service options. Prior Board 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), and 49 U.S.C. 10901 (for a noncarrier). See 49 CFR 1180 (procedures under section 11323); 49 CFR 1150 (procedures under section 10901 or 10902).

The Board maintains a class exemption, at 49 CFR 1180.2(d)(7), providing a simple notification procedure for the acquisition or renewal of trackage rights by carriers through mutual agreement. (This class exemption cannot be used in connection with 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 Board's docket and handling of trackage rights proposals is summarized in the following table.

Trackage Rights			
Fiscal Years		2005	2006
Applications	Filed	0	0
	Granted	0	0
	Denied	0	0
	Dismissed	0	0
Petitions for Exemption	Filed	0	0
	Granted	0	0
	Denied	0	0
	Dismissed	0	0
Notices of Exemption	Filed	47	45
	Granted	50	45
	Denied	0	0
	Dismissed	0	0

Leases by Class I Carriers

Leases and contracts to operate rail lines by a Class I railroad require Board approval under 49 U.S.C. 11323. See 49 CFR 1180. (Leases by a noncarrier or by a Class II or III railroad are handled as line acquisitions under 49 U.S.C. 10901 or 10902, respectively.)

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

During FY 2005-2006, the STB approved, subject to labor protective conditions, the lease by Buckingham Branch Railroad (Buckingham) of rail lines owned by CSX and by

Norfolk Southern Railway Company, in *Buckingham Branch Railroad Company – Lease – CSX Transportation, Inc.*, STB Finance Docket No. 34495 (STB served Nov. 5, 2004), *aff'd sub nom. Brotherhood of Maintenance of Way Employees v. STB*, 200 F. App'x 1 (D.C. Cir. 2006).

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 that authorization, 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 the 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, or on land owned by the connecting railroads, 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).

Among the more significant actions taken in this area during FY 2005-2006, the STB:

- Dismissed a petition for exemption to construct approximately 2,700 feet of new rail line, to acquire 1,300 feet of existing track, and to provide common carrier rail service over the track, finding that the proposed project differed substantially from the one the petitioner had presented to the Board during the environmental review process, in *New England Transrail, LLC, d/b/a Wilmington & Woburn Terminal Railroad Company—Construction, Acquisition, Operation Exemption—In Wilmington and Woburn, MA*, STB Finance Docket No. 34391 (STB served May 3, 2005). A new petition filed by

NET to acquire and construct, and to operate, 7,500 feet of track was pending at the end of the reporting period.

- Granted final approval to the Dakota, Minnesota & Eastern Railroad Corporation (DM&E) to construct and operate a 280-mile rail line from South Dakota to the Powder River Basin (PRB) in Wyoming, in *Dakota, Minnesota, & Eastern Railroad Corporation Construction Into The Powder River Basin*, STB Finance Docket No. 33407 (STB served Feb.15, 2006), *aff'd sub nom. Mayo Found. v. STB*, 472 F.3d 545, 552 (8th Cir. 2006). The Board imposed substantial environmental mitigation conditions on the significant project.
- Granted authority for Ameren Energy to construct and operate approximately 13 miles of line between its power plant and separate connections with Union Pacific Railroad Company (UP) and with BNSF, subject to environmental mitigation measures recommended by the Board's environmental staff, in *Ameren Energy Generating Company—Construction and Operation Exemption—In Coffeen and Walshville, IL*, STB Finance Docket No. 34435 (STB served Feb. 17, 2006).
- Instituted a proceeding to determine whether the Board's jurisdiction preempts state and local environmental review, land use restrictions, and other discretionary permitting requirements that might otherwise apply to DesertXpress Enterprises' proposed construction of an interstate high speed passenger-rail system between Victorville, CA, and Las Vegas, NV, in *DesertXpress Enterprises, LLC—Petition For Declaratory Order*, STB Finance Docket No. 34914 (STB served Aug. 31, 2006).

Railroad Constructions				
Fiscal Years	2005		2006	
	No.	Miles	No.	Miles
Applications				
Filed	0	0	0	0
Granted	0	0	0	0
Denied	0	0	0	0
Dismissed	0	0	0	0
Petitions for Exemption				
Filed	0	0	3	10
Granted	0	0	1	13
Denied	0	0	0	0
Dismissed	1	0	1	0
Notices of Exemption				
Filed	0	0	0	0
Granted	0	0	0	0
Denied	0	0	0	0
Dismissed	0	0	0	0

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. Abandonment or discontinuance authority may be sought by an entity with operating authority on the line, or an “adverse” abandonment or discontinuance action may be brought by a different entity (for example, a proponent of an alternative use of the right-of-way of an inactive line). Abandonment or discontinuance authorization may be sought by application filed under 49 U.S.C. 10903 or by petition for exemption under 49 U.S.C. 10502. The STB also maintains a class exemption, providing a streamlined notification procedure, for the abandonment of lines

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over which there has in the past 2 years been no traffic that cannot be rerouted over other lines. See 49 CFR 1152.50.

On Jan. 19, 2006, the Board issued an Advance Notice of Proposed Rulemaking (ANPR), in response to a petition filed by 65 short-line and regional carriers, requesting public comment on an approach proposed by petitioners to address alleged deficiencies in the current abandonment process, in *Class Exemption for Expedited Abandonment Procedure for Class II and Class III Railroads*, STB Ex Parte No. 647 (STB served Jan. 19, 2006).

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

Abandonments				
Fiscal Years	2005		2006	
	No.	Miles	No.	Miles
Applications				
Filed	1	8.3	1	4.6
Granted	1	8.3	0	0.0
Denied	0	0.0	1	4.6
Dismissed	0	0.0	0	0.0
Dismissed – OFA*	2	60.5	0	0.0
Petitions for Exemption				
Filed	21	236.75	15	274.3
Granted	20	327.92	15	376.2
Denied	1	23.71	3	76.64
Dismissed	0	0	0	0.0
Dismissed - OFA	4	124.18	0	0.0
Notices of Exemption				
Filed	51	488.15	57	288.8
Granted	46	446.34	56	280.5
Denied	1	17.05	0	0
Dismissed	0	0	0	0
Dismissed - OFA	2	18.7	2	21.10

*offer of financial assistance under 49 U.S.C. 10904. See below.

Among its significant actions in this area in FY 2005-2006, the STB:

- Denied an adverse abandonment application because a railroad was currently operating over the functioning line and actively seeking new business for the line, in *Seminole Gulf*

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Railway, L.P.—Adverse Abandonment—in Lee County, FL, STB Docket No. AB-400 (Sub-No. 4) (STB served Nov. 18, 2004).

- Denied an adverse abandonment application because, although the line was out of service and in disrepair, shippers located on the line stated they would use rail service if restored, there was an interested operator, and reactivation of the line was supported by both the local governments and the line-haul railroad whose system connects to the subject line, in *Yakima Interurban Lines Association—Adverse Abandonment—in Yakima County, WA*, STB Docket No. AB-600 (STB served Nov. 19, 2004), *reconsid. denied* (STB served Sept. 15, 2005), *pet. for review dismissed sub nom. Kershaw Sunnyside Ranches, Inc. v. STB*, 252 F. App'x 786 (9th Cir. 2007).
- Granted a petition for exemption to abandon approximately 76.2 miles of railroad line, finding that the revenues petitioner could expect from the only on-line shipper were well below the costs to operate the line, including the projected costs of necessary repairs, in *San Pedro Railroad Operating Company, LLC—Abandonment Exemption—in Cochise County, AZ*, STB Docket No. AB-1081X (STB served Feb. 3, 2006).

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 acquire or subsidize the line in order to continue rail service (OFA), the STB may require the line to be sold for that purpose (or operated under subsidy for one year). See 49 CFR 1152.27. Where the parties cannot agree on the purchase price, the Board will set the price at what it determines to be the fair market value, and

the purchaser will either agree to that price or withdraw its offer. See 49 CFR 1152.26. During this reporting period, the STB:

- Authorized a joint offer by a state agency and a railroad to purchase and operate a rail line under the OFA provisions, in *Wisconsin Central Ltd.–Abandonment–in Ozaukee, Sheboygan, and Manitowac Counties, WI*, STB Docket No. AB-303 (Sub-No. 27) (STB served Dec. 3, 2004).
- Authorized a state agency to purchase a line under the OFA provisions, in *Rocky Mount and Western Railroad Co., Inc.–Abandonment Exemption–in Nash County, NC*, STB Docket No. AB-883 (Sub-No. 1X) (STB served April 14, 2006).
- Authorized a potential shipper on an inactive line to buy the line under the OFA provisions, finding that the sale to the potential shipper took precedence over proposals for trail use under the “rails-to-trails” provision of the law, in *Tennessee Railway Company–Abandonment Exemption–in Scott County, TN*, STB Docket No. AB-290 (Sub-No. 260X) and *Tennessee Railway Company–Abandonment Exemption–in Anderson and Campbell Counties, TN*, STB Docket No. AB-290 (Sub-No. 259X) (STB served Mar. 3, 2006).
- Authorized the sale of an inactive 8.54-mile line under the OFA provisions to WMS, LLC to continue rail service, and granted WMS’s motion to substitute its affiliate as the purchaser, in *CSX Transportation, Inc.–Abandonment Exemption–in Allegany County, MD*, STB Docket No. AB-55 (Sub-No. 659X) (STB served Dec. 14, 2005 and Aug.18, 2006).
- Authorized the sale of an inactive line to Seaside Holdings, Inc. under the OFA provisions so that it could remain available for future movements, in *CSX Transportation, Inc.–Abandonment Exemption–in Harlan County, KY*, STB Docket No. AB-55 (Sub-No. 667X) (STB served Sept. 12, 2006).

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 rail service is inadequate for a majority of shippers that transport traffic over the line, the STB can compel a railroad to sell the line to a party that will provide service. See 49 CFR 1151.

In FY 2005, a feeder line proceeding, instituted during FY 2002-2004, was concluded, and the line sale was authorized, 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 (STB served Feb. 7, 2005), *aff'd sub nom. Toledo, Peoria & Western Railway v. STB*, 462 F.3d 734 (7th Cir. 2006), *cert. denied*, 127 S.Ct. 1829 (2007). This sale restored rail service over a moribund line on which service had not been adequate for the majority of the shippers.

Trail Use/Rail Banking

The STB has a ministerial role in administering the “rail banking” 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. When a railroad and a trail sponsor agree to negotiate for interim trail use of a right-of-way that will be preserved for potential future reactivation of rail service, 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 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
2005	22	271.36	22	271.36	0	0.0
2006	29	446.07	21	352.91	4	39.68

Among the more significant actions taken in this area in FY 2005-2006, the STB:

- Denied a petition to revoke a NITU and determined that removal of track materials from a rail-banked line did not indicate an intent to consummate an abandonment where other evidence showed the railroad’s intent to rail bank the line, in *Norfolk and Western Railway Company—Abandonment Exemption—Between Kokomo and Rochester in Howard, Miami, and Fulton Counties, IN*, STB Docket No. AB-290 (Sub-No. 168X) (STB served May 4, 2005).
- Denied a petition to reopen an abandonment proceeding and revoke the authority for interim trail use where the abandoning railroad sold part of its right-of-way outside the NITU process but retained a connection between the trail and the national rail network, in *Burlington Northern Railroad Company—Abandonment Exemption—Between Klickitat and Goldendale, WA*, STB Docket No. AB-6 (Sub-No. 335X) (STB served June 8, 2005).
- Issued a CITU in an adverse abandonment proceeding, where the third-party abandonment applicant, the railroad, and the trail sponsor concurred in the CITU request, in *Chelsea Property Owners—Abandonment—Portion of the Consolidated Rail Corporation’s West 30th Street Secondary Track in New York, NY*, Docket No. AB-167 (Sub-No 1094A) (STB served June 13, 2005).
- Issued a NITU after an offer of financial assistance, which would have taken precedence over a proposal for trail use under the “rails-to-trails” provision of the law, was

withdrawn, in *San Pedro Railroad Operating Company, LLC–Abandonment Exemption–in Cochise County, AZ*, STB Docket No. AB-1081X (STB served July 26, 2006).

Liens on Rail Equipment

Under 49 U.S.C. 11301, liens on rail equipment and water vessels intended for use in interstate commerce must be filed with the Board in order to perfect the security interest that is the subject of such instrument. Subsequent assignments of rights or release of obligations under such instruments must also be filed with the Board. Such liens maintained by the Board are kept available for public inspection. The STB recorded approximately 2,602 liens in FY 2005 and 3,039 liens in FY 2006.

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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 protection 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 Tariff Library, by mail for a fee, and on the Board's website at www.stb.dot.gov. The number of agricultural contract filings received by the STB during FY 2005 and 2006 are shown in the following table.

Railroad Agricultural Contract Summary Filings		
	2005	2006
Number of Summaries	1,234	1,204

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 those rates or changes in service terms. 49 U.S.C. 11101. The Board maintains regulations governing the 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 Board has exempted the class of commodities or rail services involved from regulation pursuant to 49 U.S.C. 10502. Class exemptions for most agricultural products, intermodal container traffic, boxcar traffic, and other miscellaneous commodities are listed at 49 CFR 1039.

Rate Challenges —Market Dominance Limitation

The Board 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).

The Board 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 Board’s Uniform Rail Costing System (URCS) is used to provide a consistent measurement of a railroad’s variable costs of performing various rail services.

Where the quantitative revenue-to-variable cost threshold is exceeded, the Board 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 proposed to simplify the quantitative aspect of its market dominance jurisdictional inquiry as part of broader rulemaking in *Major Issues in Rail Rate Cases*, STB Ex Parte No. 657 (Sub-No. 1) (STB served Feb. 27, 2006), *aff’d sub nom. BNSF Ry Co., et al. v. STB*, 526 F.3d 770 (DC Cir. 2008). The details of that proposal (which has since been adopted) are discussed in more detail in the following section.

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 the 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 hypothetically new, optimally efficient railroad (“stand-alone railroad” or “SARR”) tailored to serve a selected traffic group that includes the complainant’s traffic.

The STB’s rate reasonableness guidelines have taken shape and been refined through application in individual adjudications. However, in processing these adjudications, the STB became aware that certain components of the SAC test either were subject to gaming by the parties (meaning that a party could skew the results of the test by manipulating certain evidence) or that there were issues concerning some of the details of the test that the parties had repeatedly litigated without definitive resolution. Accordingly, on April 26, 2005, the Board held a hearing on the matter, in *Rail Rate Challenges Under the Stand-Alone Cost Methodology*, STB Ex Parte No. 657. Subsequently, the Board initiated a rulemaking proceeding to consider six proposed changes to the rate reasonableness guidelines, including changes to the SAC test, in *Major Issues in Rail Rate Cases*, STB Ex Parte No. 657 (Sub-No. 1) (STB served Feb. 27, 2006). Specifically, the STB proposed to:

- Simplify its market dominance jurisdictional inquiry by prohibiting parties from introducing evidence of movement-specific adjustments to the URCS system-average data.

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- Adopt a new methodology for allocating the total revenues the SARR earns from “cross-over traffic.”
- Adopt a new methodology for indexing a SARR’s base-year operating expenses over the SAC analysis period.
- Reduce the “discounted cash flow” (DCF) analysis period so that a rate prescription would have effect for no longer than 10 years.
- Adopt a new methodology for determining the amount of a rate prescription in order to eliminate the parties’ ability to game the results of the SAC test.
- Adopt new standards for a shipper seeking to vacate a previous rate prescription.

Because several of the issues addressed in the NPR had been raised or were implicated in the rail rate cases pending at the time, the STB held in abeyance the proceedings in *AEP Texas North Co. v. BNSF Railway Co.*, STB Docket No. 41191 (Sub-No. 1) and *Western Fuels Association, Inc. and Basin Electric Power Cooperative, Inc.*, STB Docket No. 42088, while it examined these issues. The STB also determined that any changes adopted as part of the proceeding would be applied in *Kansas City Power & Light Co. v. Union Pacific Railroad Co.*, STB Docket No. 42095, a pending SAC case in which the record had not yet begun to be developed. Accordingly, the STB suspended the procedural schedule for discovery and the submission of evidence in that case. In a decision served on April 14, 2006, the STB denied a petition for reconsideration filed by the complainants in STB Docket Nos. 42088 and 42095 (joined by the Western Coal Traffic League) of its decision to institute this rulemaking.

In other significant actions in FY 2005 through 2006 regarding rail rate reasonableness cases, the STB:

- Issued a decision in *Kansas City Power & Light Co. v. Union Pacific Railroad Co.*, STB Docket No. 42095 (STB served July 27, 2006), directing the parties to submit briefs on the threshold issue of whether the STB has jurisdiction to entertain the rate complaint, pursuant to 49 U.S.C. 10709(c), which provides the STB jurisdiction over common carriage rates only, not contract rates.
- Issued decisions in *AEP Texas North Co. v. BNSF Railway Co.*, STB Docket No. 41191 (Sub-No. 1) (STB served Mar. 17, 2006 and Apr. 10, 2006) and *Western Fuels Association, Inc. and Basin Electric Power Cooperative, Inc.*, STB Docket No. 42088 (STB served Mar. 17, 2006 and Apr. 21, 2006), requiring that the parties submit supplemental evidence pertaining to the modeling of the stand-alone railroad's operating plan.
- Found that a shipper had not demonstrated that rates charged for transportation of coal from mines in the PRB to a power plant near Milbank, SD, were unreasonable, because the shipper's SAC presentation depended on an improper cross-subsidization of the shipper's traffic, in *Otter Tail Power Co. v. BNSF Railway Co.*, STB Docket No. 42071 (STB served Jan. 27, 2006), *aff'd sub nom. Otter Tail Power Co. v. STB*, 484 F.3d 959 (8th Cir. 2007).
- Dismissed a SAC complaint because the shipper presented an incomplete SAC case, in *Arizona Electric Power Cooperative, Inc. v. The Burlington Northern and Santa Fe Railway Company and Union Pacific Railroad Co.*, STB Docket No. 42058 (STB served Mar. 15, 2005), *aff'd sub nom. Arizona Elec. Power Coop., Inc. v. Surface Transp. Bd.*, 454 F.3d 359 (D.C. Cir. 2006). AEPCO's SAC presentation had relied in part upon the use of the existing track and facilities of one of the defendant railroads for a usage-based fee, without demonstrating that this fee would cover the full stand-alone cost of constructing and maintaining the track and facilities, as is required under the SAC test.
- Modified its previous rate prescription and reparations award and ordered payment to the shipper with interest, in *Public Service Company of Colorado d/b/a Xcel Energy v. The Burlington Northern and Santa Fe Railway Company*, STB Docket No. 42057 (STB served

Jan. 19, 2005 and June 15, 2005), *aff'd sub. nom. Burlington Northern & Santa Fe Ry. v. STB*, 453 F.3d 473 (D.C. Cir. 2006).

- Modified the calculations in its decisions in three Eastern rail rate cases, but found that, even with these modifications, the challenged rates were still not shown to be unreasonable under the stand-alone cost test, in a decision served October 20, 2004, which embraced *Duke Energy Corporation v. Norfolk Southern Railway Company*, STB Docket No. 42069; *Carolina Power & Light Company v. Norfolk Southern Railway Company*, STB Docket No. 42072; and *Duke Energy Corporation v. CSX Transportation, Inc.*, STB Docket No. 42070. In this decision, the STB also provided the complainants in the three Eastern rail rate cases the option to seek relief under the phasing constraint of the *Coal Rate Guidelines*, due to the unusually large rate increases imposed by the defendant carrier.
- Vacated the rate prescription established in *Arizona Public Service Company and PacifiCorp v. The Atchison, Topeka and Santa Fe Railway Company*, 2 S.T.B. 367 (1997), modified, *Arizona Public Service Company and PacifiCorp v. The Atchison, Topeka and Santa Fe Railway Company*, 3 S.T.B. 70 (1998), in *Arizona Public Service Company and PacifiCorp v. The Burlington Northern and Santa Fe Railway Company*, STB Docket No. 41185 (STB served Dec. 13, 2004), based on the fact that the closure of the McKinley mine rendered the original SAC analysis inaccurate. The STB determined that the only way to properly consider the effects of the traffic shortfall created by the mine's closure was to restore rate control to the defendant, and allow the complainant to challenge the reasonableness of the carrier's chosen rate.

Rate Challenges—Simplified and Expedited Rate Guidelines

Pursuant to a Congressional directive in ICCTA, the STB adopted simplified and expedited rate guidelines for cases for which CMP is not appropriate, in *Rate Guidelines—Non-Coal Proceedings*, 1 S.T.B. 1004 (1996). During FY 2005, the first case brought pursuant to these guidelines was settled through STB-led mediation, in *BP Amoco Chem. Co. v. Norfolk S. Ry.*, STB Docket No. 42093 (STB served June 28, 2005). Because the public was generally

dissatisfied with these guidelines, the STB initiated a rulemaking to revise and clarify them, in *Simplified Standards for Rail Rate Cases*, STB Ex Parte No. 646 (Sub-No. 1) (STB served July 28, 2006, and Sept. 15, 2006). The proposal, which was pending at the end of the reporting period but has since been adopted, would create a new Simplified-SAC methodology for resolving “medium-sized” cases, and modify the Board’s previous simplified guidelines for “small-sized” cases.

RAILROAD SERVICE

General Authority

The Board 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 and practices. 49 U.S.C. 10701-10705, 10741-10742, 10744-10747, 11101-11103, 11121, and 11122-11123.

The Board is available to resolve service disputes and to require a railroad to meet its service responsibilities. 49 U.S.C. 11701. Among its broad remedial powers, the Board 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, including mainline tracks for a reasonable distance outside of a terminal (49 U.S.C. 11102(a)). In addition, to prevent the loss of needed rail service, the Board can issue temporary service orders to address rail service emergencies and can direct a carrier to operate the lines of a carrier that has ceased operations, for a maximum period of 270 days. 49 U.S.C. 11123. Finally, the Board has the authority to address the reasonableness of a rail carrier's rules and practices. 49 U.S.C. 10702, 10704.

Among its more significant actions addressing railroad service and practice issues in FY 2005-2006, the Board:

- Granted a petition by Ohio Valley Railroad (OVR) and Mid-America Locomotive & Car Repair to require one rail carrier (Indiana Southwestern Railway Company) to restore the switch that OVR needs for interchange purposes, but denied a request for alternative service and a request that the Board confirm OVR's right to a direct interchange with another rail carrier (CSX), in *Ohio Valley Railroad Company—Petition to Restore Switch*

Connection and Other Relief, STB Finance Docket No. 34608 (STB served Feb. 23, 2005).

- Granted a rail carrier's petition for declaratory order, and declared that the Interstate Commerce Act, 49 U.S.C. 10501(b), preempts the Terrorism Prevention in Hazardous Materials Transportation Emergency Act of 2005, which was adopted by the District of Columbia (the District) to govern the transportation of hazardous materials moving by rail through the District, in *CSX Transportation, Inc.—Petition for Declaratory Order*, STB Finance Docket No. 34662 (STB served March 14, 2005).
- Held a complaint in abeyance and ordered the parties to negotiate for the reinstallation of interchange facilities, in *Minnesota Northern Railroad, Inc. v. Canadian National Railway Company*, STB docket No. 42080 (STB served Mar. 18, 2005).
- Found that, although a county development corporation did not violate its common carrier obligation by failing to make repairs and provide service as soon as it took over a rail line in South Carolina, it was required either to put the line back in service within a reasonable time, or to take steps to obtain abandonment authority, in *Groome & Associates, Inc. and Lee K. Groome v. Greenville County Economic Development Corporation*, STB Docket No. 42087 (STB served July 27, 2005). In a related proceeding, the Board found: that the Interstate Commerce Act, 49 U.S.C. 10502(b)(2), preempts state laws and remedies when a railroad fails to carry out its common carrier obligation; and that while federal district courts and the Board have concurrent jurisdiction under the statute, the Board has primary jurisdiction to determine whether a railroad's common carrier obligation has been met, in *Greenville County Economic Development Corporation—Petition for Declaratory Order*, STB Finance Docket No. 34487 (STB served July 27, 2005).
- Denied a complaint for failure to provide service upon reasonable request under 49 U.S.C. 11101(a) because the only shipper on the line in question had never made a

request for service, in *Michael H. Meyer, Trustee in Bankruptcy for California Western Railroad, Inc. v. North Coast Railroad Authority, d/b/a Northwestern Pacific Railroad*, STB Finance Docket No. 34337 (STB served July 27, 2005).

- Granted a shipper's petition for an order pursuant to 49 U.S.C. 11123(a) authorizing West Texas & Lubbock Railway Company, Inc. to provide interim alternative rail service to the shipper, Pyco Industries, over the lines of South Plains Switching in Lubbock, TX, in *PYCO Industries—Alternative Rail Service—South Plains Switching, Ltd. Co.*, STB Finance Docket No. 34802 (STB served Jan. 26, 2006, Feb. 16, 2006, and June 21, 2006).
- Held a hearing to consider the manner in which fuel surcharges are calculated and charged by railroads, including concerns by the shipper community that fuel surcharges collected by railroads were designed to recover amounts over and above increased fuel costs. Subsequently sought public comment on proposed rules designed to ensure that a fuel surcharge is more closely related to the increases in fuel costs attributable to the movement to which the fuel surcharge is applied, in *Rail Fuel Surcharges*, STB Ex Parte No. 661 (STB served Apr. 25, 2006 and Aug. 3, 2006).

STB Informal Discussions

The STB continued to welcome informal 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.

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. Among other things, the STB asked railroads to submit their 2005 and 2006 “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.

Assistance with Specific Service Matters

Since November of 2000, the STB has provided a Rail Consumer Assistance Program. This program, now known as the Rail Customer and Public Assistance Program (RCPA), is national in scope and provides 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 <rcpa@stb.dot.gov>, or by facsimile at (202-245-0462). RCPA processes complaints, usually within 4 hours of receipt, and has successfully assisted hundreds of complainants since the program’s inception, as reflected in the following table.

Rail Consumer Assistance Program Activity	
Year	Complaints Handled
2005	100
2006	121

Monitoring

In addition to its efforts to assist the public with rail-related issues, RCPA regularly monitors the rail industry’s operational performance to determine where service issues may be developing. For example, RCPA monitors carrier 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 involving Class I and II carriers), 49 U.S.C. 11326(b) (consolidations involving 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 and 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 2005-2006, the STB:

- Granted a petition for exemption to discontinue certain trackage rights, subject to the labor protective conditions for discontinuances, and denied union requests for employee protective conditions that apply to consolidations, in *Delaware and Hudson Railway Company, Inc.—Discontinuance of Trackage Rights Exemption—In Susquehanna County, PA, and Broome, Tioga, Chemung, Steuben, Allegany, Livingston, Wyoming, Erie, and Genesee Counties, NY*, STB Docket No. AB-156 (Sub-No. 25X), et al. (STB served Jan. 19, 2005).
- Denied a carrier's petition for review of an arbitration award concerning the carrier's attempt to implement certain labor operational economies in Arkansas and Tennessee, finding that the carrier had had not shown good cause for failing to file its appeal within the time permitted, 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, STB Finance Docket No. 32760 (Sub-no. 43) (STB served Jan. 21, 2005).

- Granted the Brotherhood of Locomotive Engineers and Trainmen’s petition for review of an arbitrator’s decision, finding that the arbitrator provided no basis for declining jurisdiction over the dispute involving employee reassignments, 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*, STB Finance Docket No. 32760 (Sub-No. 44) (STB served July 27, 2005).
- Declined to review an arbitral award that denied labor-protection benefits to an employee-petitioner, where the arbitrator found that the employee’s 6-year delay in filing the petition had prejudiced the defendant carrier, and that the employee’s status as a senior official of the carrier made him ineligible for such benefits, 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*, STB Finance Docket No. 32760 (Sub-No. 42) (STB served Feb. 28, 2006), *reconsid. petition denied* (STB served Aug. 14, 2006). The Board found that the arbitrator’s determinations involved factual disputes, as to which the Board gives deference to arbitrators.
- Granted a request for waiver of 49 CFR 1150.42(e), which requires advance notice to employees who may be affected by a proposed transaction and to the national offices of the employees’ labor unions, where there were no employees working on the inactive line, in *Reading Blue Mountain and Northern Railroad Company—Operation Exemption—Locust Valley Line*, STB Finance Docket No. 34785 (STB served Jan. 10, 2006).

- Granted a request to waive the pertinent employee-notice requirements of 49 CFR 1150.32(e) where the proposed rail line was not yet constructed and thus had no current employees that could be affected by a transaction involving the acquisition and operation of the future line, in *Wyoming Dakota Railroad Properties, Inc.—Acquisition and Operation Exemption—Dakota Minnesota & Eastern Railroad Corporation*, STB Finance Docket No. 34871 (STB served Aug. 14, 2006).

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 documentation (an Environmental Impact Statement (EIS), where there is a potential for significant environmental impacts, or a more limited Environmental Assessment (EA)); conducting public outreach to inform interested parties about proposals and to provide the opportunity to raise environmental concerns; and providing technical advice and recommendations to the STB on environmental matters.

Review Process

SEA typically conducts environmental reviews for rail line construction proposals, rail abandonment cases, 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. SEA then provides an opportunity 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 United States 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, safety, land use, energy use, air and water quality, noise, environmental justice, biological resources, historic resources, coastal zones, and cumulative impacts.

Among the more significant actions involving the preparation of an EIS in FY 2005-2006, SEA:

- Issued a Draft Supplemental EIS, in *Tongue River Railroad Co.–Construction and Operation–Western Alignment*, STB Docket No. 30186 (Sub-No. 3) (STB served Oct. 15, 2004) (*Tongue River III*), for the proposed construction and operation of 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 41-mile Ashland-to-Decker line previously approved in STB Finance Docket No. 30186 (Sub-No. 2) (*Tongue River II*).
- Issued a Draft EIS for the proposed construction and operation of an approximately 7-mile line of railroad, in *Southwest Gulf Railroad Company–Construction and Operation Exemption–Medina County, TX*, STB Finance Docket No. 34284 (STB served Nov. 5, 2004).
- Determined that the preparation of an EIS was appropriate for the proposed construction and operation of an 80-mile rail line and solicited comments on the draft scope of study, in *The Alaska Railroad Corporation–Petition for Exemption to Construct and Operate a Rail Line Between Eielson Air Force Base (North Pole) and Fort Greely (Delta Junction), Alaska*, STB Finance Docket No. 34658 (STB served Nov. 1, 2005).
- Issued a Final Supplemental EIS for the proposed construction of approximately 280 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 PRB, in

Dakota, Minnesota & Eastern Railroad Corporation, Construction into the Powder River Basin, STB Finance Docket No. 33407 (STB served Dec. 30, 2005). SEA analyzed evidence and public comments primarily regarding four environmental issues remanded by the court in *Mid States Coalition for Progress v. STB*, 345 F.3d 520 (8th Cir. Oct. 2, 2003), and recommended that the Board reimpose the 147 mitigation conditions previously imposed, but expand one of those conditions to address public concern about horn noise.

In addition, during FY 2005 and 2006, the STB was participating as a cooperating agency in the preparation of an EIS in the following cases:

- Construction by the Department of Energy of a nuclear waste repository and new rail lines in Yucca Mountain, Nevada; and
- Construction of a “Trans Texas Corridor,” a 1000-mile rail line for freight and mass transit in the state of Texas.

In FY 2005-2006, SEA also conducted ongoing environmental review regarding the proposed construction of a 2-mile line, in *Holrail LLC—Construction and Operation Exemption—in Orangeburg and Dorchester Counties, SC*, STB Finance Docket No. 34421; regarding a proposed 2,700-foot line, 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. 34797; and regarding a proposed 43-mile line, in *Six County Association of Governments—Construction and Operation Exemption—Rail Line between Levan and Salina, Utah*, STB Finance Docket No. 34075.

Among the more significant actions involving the preparation of an EA in FY 2005-2006, SEA:

- Issued an EA on December 25, 2005 for the proposed construction and operation of an approximately 13.5-mile rail line and an approximately 4.6-mile rail line alternative in

Montgomery County, Illinois in *Ameren Energy Generating Company–Construction and Operation Exemption–In Coffeen and Walshville, IL*, STB Finance Docket No. 34435 (STB served Dec. 25, 2005).

- Began environmental review and determined that the preparation of an EA was appropriate in the proposed construction of a 10-mile rail line, in *Arizona Eastern Railway, Inc. –Construction Exemption–In Graham County, AZ*, STB Finance Docket No. 34836.

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. In FY 2005-2006, SEA conducted over 125 environmental assessments in connection with rail line abandonments.

A significant action in this area in FY 2005-2006 involved the notice of exemption filed by the Wisconsin Central to abandon a 5,160 foot line of railroad known as the Ashland Ore Dock Line, in *Wisconsin Central, Ltd– Abandonment Exemption– in Ashland County, WI*, STB Finance Docket No. AB-303 (Sub-No. 28X) (STB served Feb. 23, 2006). The rail line is elevated 30 feet above street level and the Wisconsin Central planned to sell it to the Northeastern Maritime Historical Foundation, pending regulatory approval, for use in part as a maritime and historic resource. After determining that an EIS was unnecessary, SEA issued an EA, recommending five environmental conditions to the STB. Subsequently, SEA recommended a modification to the original conditions, as well as an additional condition. The STB imposed these conditions in a decision served on April 28, 2006.

Railroad Mergers

In railroad mergers, the potential environmental impacts typically relate to changes in rail traffic patterns on existing lines, which may 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 by merger applicants in consultation with FRA, describe how applicants would ensure the safe integration of their rail operations.

During FY 2005-2006, SEA conducted ongoing environmental review, in connection with the already approved DM&E acquisition of control of the Iowa, Chicago & Eastern Railroad Corporation (IC&E) (STB Finance Docket No. 34178), and IC&E's acquisition of the rail lines and assets of I&M Rail Link, in *Iowa, Chicago & Eastern Railroad Corporation—Acquisition and Operation Exemption—Lines of I&M Rail Link, LLC* (STB Finance Docket No. 34177).

FINANCIAL CONDITION OF RAILROADS

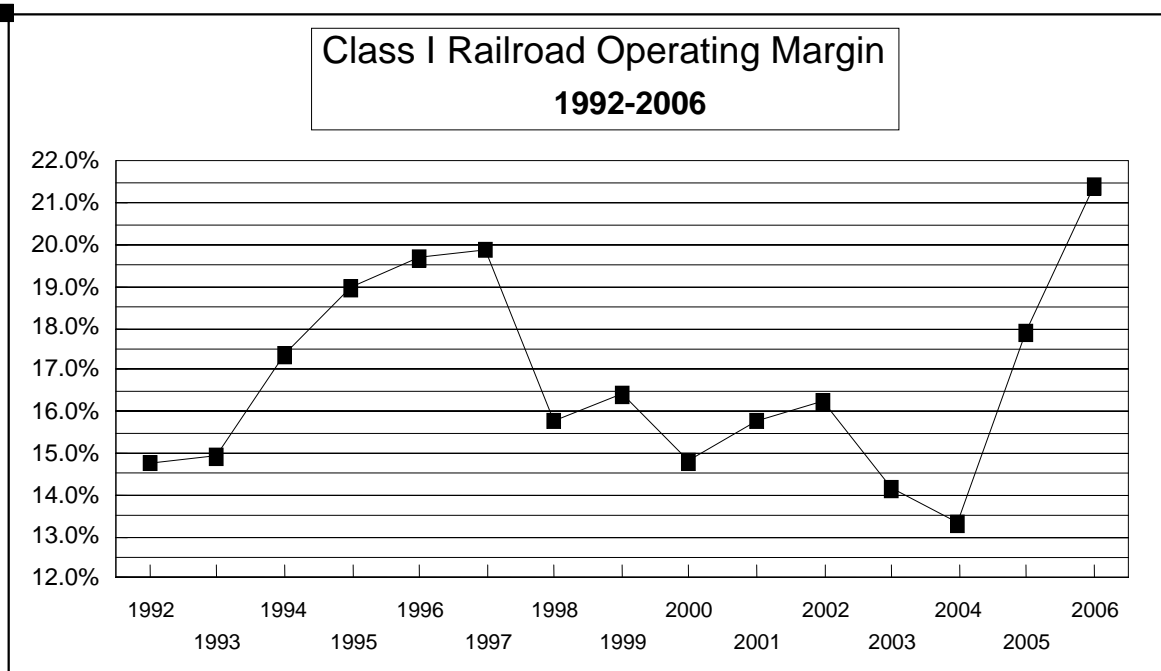
The STB monitors the financial condition of railroads as part of its oversight of the rail industry. The STB prescribes a uniform accounting system for railroads to use for regulatory purposes. 49 U.S.C. 11141-43, 11161-64; 49 CFR 1200-1201. In addition, the STB requires Class I railroads to submit quarterly 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, the STB regularly compiles and releases quarterly (available on the web) employment reports as well as annual wage statistics of Class I railroads in the aggregate. See *Appendix A*.

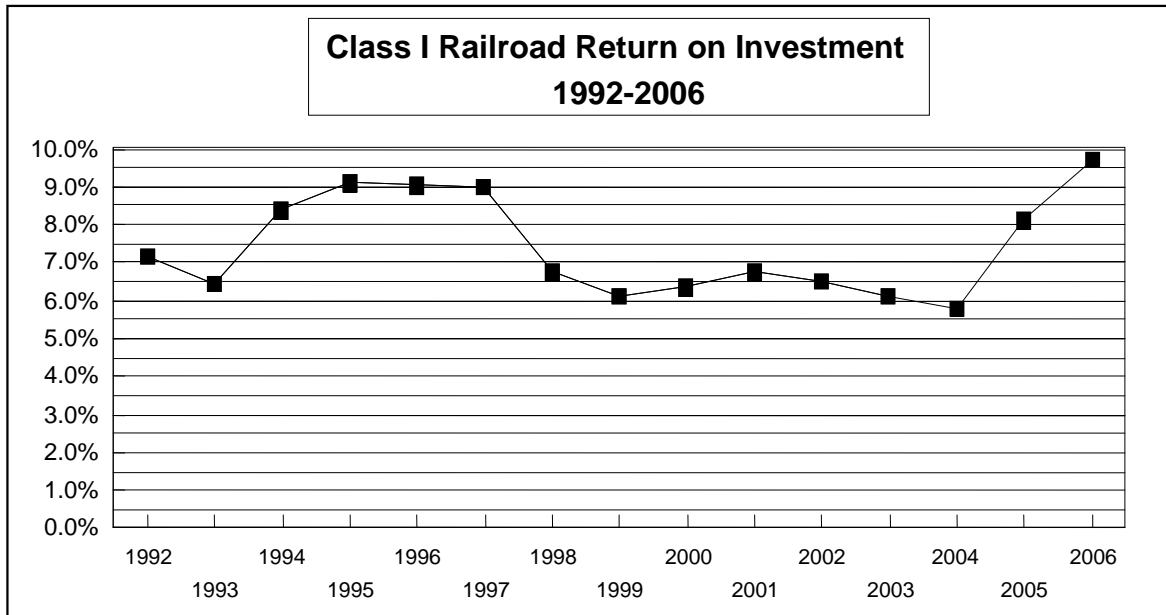
In addition, the STB publishes a “rail cost adjustment factor” (RCAF) on a quarterly basis (also available on the web) to reflect changes in the costs incurred by the rail industry during that period. 49 U.S.C. 10708; 49 CFR 1135. The STB publishes both an unadjusted RCAF and an RCAF with adjustments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

As shown in the following graphs, the operating margin (which reflects the ratio of operating expenses to operating revenues) and return on net investment for the railroad industry improved dramatically during the 2004 through 2006 time frame.

Class I Railroad Operating Margin



Class I Railroad Return on Investment



AMTRAK

During the time period covered by this report, the STB had limited but significant regulatory authority over the National Railroad Passenger Corporation (Amtrak).³ 49 U.S.C. 24301(c). Specifically, the STB had 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 failed to reach a voluntary agreement. 49 U.S.C. 24308(a), 24904(c).

The STB also has authority to issue service or rerouting orders involving commuter rail operations on Amtrak facilities (49 U.S.C. 11123) or Amtrak operations over tracks of a freight railroad (49 U.S.C. 24308(b)), but no such orders were required in FY 2005-2006.

During FY 2005-2006, the STB addressed the maintenance and safety concerns raised by Amtrak regarding the lease by Buckingham Branch Railroad Company (BBRR) of two CSX rail lines near Richmond, VA, in *Buckingham Branch Railroad Company—Lease—CSX Transportation, Inc*, STB Finance Docket No. 34495 (STB served Nov. 5, 2004), *aff'd sub nom. Brotherhood of Maintenance of Way Employees v. STB*, 200 F. App'x 1 (D.C. Cir. 2006).

³ In 2008, the Board received new authority with regard to Amtrak's operations over the lines of the freight railroads. *See* Passenger Rail Investment and Improvement Act of 2008, Pub. L. 110-432.

MOTOR CARRIAGE

Collective Motor Carrier Activities

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 approval results in STB's monitoring of the activities conducted under approved agreements. 49 U.S.C. 13703(a)(6). The STB must conduct a periodic review to determine whether the approvals for the existing motor carrier bureau agreements should continue. 49 U.S.C. 13703(c).

In FY 2005-2006, the STB took the following actions concerning bureau agreements:

- Held an oral argument concerning the request of a rate bureau for authority to expand the scope of its collective activities from regional to nationwide, in *Southern Motor Carriers Rate Conference, Inc.*, Section 5a Application No. 46 (Sub-No. 20) (Oct. 27, 2004).
- Sought comments from motor carrier bureaus seeking to continue Board approval of their agreements, as well as from other interested persons, regarding whether conditions imposed to protect shippers during the prior review cycle have been effective, in *Motor Carrier Bureaus—Periodic Review Proceeding*, STB Ex Parte No. 656 (STB served Dec. 13, 2004), *corrected* (STB served Jan. 21, 2005).
- Initiated a proceeding requesting comments on the practices of the National Classification Committee (NCC), in response to numerous comments directed to

NCC practices during the Board's periodic review of motor carrier bureau agreements, in *Investigation Into The Practices of the National Classification Committee*, STB Ex Parte No. 656 (Sub-No. 1) (STB served Oct. 13, 2005).

Pooling Arrangements

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

In FY 2005-2006, the Board approved an amendment to the pooling agreement between Atlas Van Lines, Inc. and its agents, in *Atlas Van Lines Inc. Et Al. – Pooling Agreement*, STB Docket No. MC-F-21010 (STB served Feb. 23, 2005). The amendment allowed the agents to satisfy Department of Defense requirements by handling DOD traffic under their own nationwide authority, without changing the requirement, under the pre-existing pooling agreement, that agents observe certain restrictions on their ability to engage in non-pool operations.

Household Goods Carriage

Household goods carriers are required to publish tariffs and make them available to residential shippers (although they do not file their tariffs with the Board). 49 U.S.C. 13702(a), (c). Under Board regulations (49 CFR 1310) the tariffs must 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.

During FY 2005-2006, the STB approved a request by motor carriers of household goods to use a different index than the one previously approved by the Board in making annual adjustments to the minimum per-pound valuation and charges that apply in purchasing full value liability protection for shipments of household goods, in *Released Rates of Motor Carriers of Household Goods*, RR-999 (Amendment No. 4 to Released Rate Decision No. MC-999) (STB served July 26, 2006).

As directed by Congress, the STB also conducted a review of Federal regulations governing the level of cargo liability protection provided by motor carriers that transport household goods to determine whether consumers were adequately protected in the case of loss or damage. As a result, the STB proposed several revisions to these regulations and recommended a revision to an FMCSA regulation, in *Review of Liability of Motor Common Carriers of Household Goods*, STB Ex Parte No. 662 (STB served Aug. 9, 2006).

In addition, RCPA contacted over 299 household goods carriers and forwarders in FY 2005-2006 to ensure that they were aware of, and in compliance with, the statutory and regulatory requirements governing tariff publication and dissemination. As a result of this effort, carriers and forwarders that were not in compliance took appropriate action to satisfy the requirements.

Intercity Bus Industry

Intercity bus carriers must obtain Board approval for mergers and similar consolidations (49 U.S.C. 14303; 49 CFR 1182) and for pooling arrangements between carriers (49 U.S.C. 14302; 49 CFR 1184). In addition, the Board can require bus carriers to provide through routes with other carriers. 49 U.S.C. 13705.

Among the more significant actions involving bus carriers in FY 2005-2006, the Board:

- Approved the application of a noncarrier to acquire control of a motor-passenger carrier, in *CUSA RAZ, LLC d/b/a Raz Transportation Company—Acquisition of Assets and Business Operations—Raz Transportation Company*, STB Docket No. MC-F-21007 (STB served Oct. 8, 2004).
- Approved the application of one motor-passenger carrier to acquire the assets and operations of another, in *CUSA FL, LLC d/b/a Franciscan Lines—Acquisition of Assets and Business Operations—Pacific Coast Bus Service, Inc.*, STB Docket No. MC-F-21011 (STB served Nov. 18, 2004).
- Approved the application of one motor-passenger carrier to acquire the assets and operations of another, in *CUSA CSS d/b/a Crew Shuttle Services—Acquisition of Assets and Business Operations—Crew Shuttle Service, Inc.*, STB Docket No. MC-F-21012 (STB served June 1, 2005).
- Approved the application a motor-passenger carrier to purchase the stock and lease the operating authorities of another carrier, in *Casino Transportation, Inc.—Acquisition of Control and Lease—Four Winds, Inc. d/b/a People’s Choice Transportation, Inc.*, STB Docket No. MC-F-21013 (STB served July 8, 2005).
- Approved the application of a noncarrier and its subsidiary noncarrier to acquire control of American Coach Lines, Inc., a non carrier owning several motor-passenger carriers , in *KBUS Holdings, LLC & CUSA, LLC—Acquisition of Control—American Charters, LTD. Et Al.*, STB Docket No. MC-F-21014 (STB served Feb. 22, 2006).
- Approved the application of a noncarrier and its noncarrier subsidiary to acquire all of the stock of two motor-passenger carriers, in *Rail Crew Xpress, LLC and Railcrew Xpress, Corp.—Acquisition of Control—Raudin McCormick, Inc. and JLS, Inc., d/b/a AAA Limo, and Railcrew Xpress, LLC—Acquisition of Control—Brown’s Crew Car of Wyoming*,

Inc., d/b/a Armadillo Express, STB Docket No. MC-F-21015 (STB served Feb. 27, 2006).

- Approved the application of a noncarrier and its noncarrier subsidiary to acquire a newly created motor-passenger carrier, in *Stagecoach Group PLC & Coach USA, Inc., Et Al.—Control—Megabus USA LLC*, STB Docket No. MC-F-21016 (STB served June 13, 2006.).

Motor Carrier Rate 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 2005-2006, there were no requests for review of such rates.

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 RCPA receives and handles informally. In the motor and water carrier areas, 2,417 informal complaints and requests for assistance were received and handled by RCPA in FY 2005-2006. For the most part, these complaints involved household-goods-transportation problems.

WATER CARRIAGE

The Board has jurisdiction over both port-to-port and intermodal transportation in the noncontiguous domestic trade, which consists of domestic transportation to or from Alaska and Hawaii, as well as American Samoa, the Northern Mariana Islands, Guam, the Virgin Islands, and Puerto Rico. 49 U.S.C. 13702(a), (b).

Tariff Requirements

Carriers engaged in the noncontiguous domestic trade are required to file with the Board 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 transportation provided by freight forwarders). 49 U.S.C. 13702; 49 CFR 1312. Tariffs are filed in either paper or electronic form and are available in the Board’s Tariff Library for review by the public, or by mail for a fee. The number of water tariffs filed with the Board in FY 2005-2006 is shown in the following table.

Water Tariff Filings		
	2005	2006
Printed Tariffs		
Number of Pages Filed	9,270	7,959
Electronic Tariffs		
Number of Filings	2,057	2,402
Number of Objects (e.g., tariff rates, rules, etc.)	43,749	37,303

Complaints

Upon complaint, the Board must determine the reasonableness of water or joint motor-water rates in the noncontiguous domestic trade. 49 U.S.C. 13701.

Among the significant actions taken in FY 2005-2006, the STB:

- Denied a complaint filed by a freight forwarder against two water carriers operating between Hawaii and mainland ports, alleging that it was entitled to rate reductions that certain other shippers received, in *DHX, Inc. v. Matson Navigation Company and Sea-Land Service, Inc.*, STB Docket No. WCC-105 (STB served Dec. 15, 2004), *pet. for reconsid. denied* (STB served June 13, 2005), *aff'd sub nom. DHX, Inc. v. STB*, 501 F.3d 1080 (9th Cir. 2007). The Board found that the complaint was essentially an allegation of discrimination, for which there was no longer any statutory remedy, and that the forwarder had failed to show that the defendant carriers' rates were unreasonable.
- Held oral argument on November 16, 2005, regarding the appropriate procedures and methodology for handling a challenge by the Government of the Territory of Guam regarding the reasonableness of certain rates, rules, classifications, and practices of certain entities providing transportation by water in the noncontiguous domestic trade to and from Guam. See *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 Oct. 3, 2005).

Not included in the docket of formal cases processed by the Board (*see Appendix C*) are the informal water carriage complaints that RCPA receives and handles informally. RCPA received and handled 22 informal complaints in FY2005-2006 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 2005-2006, the STB:

- Accepted evidence and held oral argument in a rate proceeding that was ultimately dismissed after the complainant reached settlement with the pipeline defendant, in *Dyno Nobel Inc. v. Kaneb Pipe Line Partners, L.P.*, STB Docket No. 42081 (STB served Mar. 29, 2006).
- Accepted additional evidence and continued to examine a complaint filed by CF Industries concerning the pipeline defendant's increase of its rates above a level prescribed in 2000, in *CF Industries Inc. v. Kaneb Pipe Line Partners, L.P. and Kaneb Pipe Line Operating Partnership, L.P.*, STB Docket No. 42084.

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 significant court decisions rendered in FY 2005-2006.

Railroad Restructuring

Trackage Rights

In *Howard v. STB*, 389 F.3d 259 (1st Cir. 2004), the court affirmed the STB's decision denying a request by the bankruptcy trustee of a railroad to revoke the authorizations permitting another railroad to reach a large shipper located on the now-bankrupt railroad's line.

Line Constructions

In *Green Mountain Rail Road v. State of Vermont*, 404 F.3d 638 (2d Cir. 2005), the court affirmed the ruling of a Vermont district court finding that 49 U.S.C. 10501(b) preempts the State of Vermont from applying its preclearance permitting process to Green Mountain Railroad's use and expansion of a transload facility in Vermont. The Board had filed a brief in the Second Circuit as amicus curiae and had participated in the oral argument.

In *The Burlington, Northern and Santa Fe Railway v. The City of Houston*, No. 14-03-0311-CV (14th District Court of Appeals Texas May 12, 2005), the court reversed and remanded a Texas trial court decision dismissing a condemnation action brought by BNSF to acquire by

eminent domain the right-of-way needed for the construction of a new rail line authorized by the Board. The Texas appeals court found that, while Congress did not preempt state eminent domain laws entirely, when a provision of state eminent domain law effectively blocks a federally-approved rail line, that provision amounts to rail regulation that is preempted under 49 U.S.C. 10501(b). The Board had filed a brief in the appellate court as amicus curiae and had participated in the oral argument.

Line Abandonments

In *Terminal Warehouse, Inc. v. CSX Transportation, Inc.*, 175 F. App'x 715 (D.C. Cir. 2006), the court upheld a Board decision that (1) found that CSX did not act improperly in invoking the class exemption procedures for out-of-service lines to abandon a track on which there had been no service requested for more than two years and (2) dismissed a related complaint alleging that CSX's embargo of the line was unlawful.

Preservation of Rail Lines—Feeder Line Sale

In *Toledo, Peoria & Western Railway v. STB*, 462 F.3d 734 (7th Cir. 2006), *cert. denied*, 127 S.Ct. 1829 (2007), the court upheld the Board's decision granting a feeder line application by Keokuk Junction Railway Company to acquire lines of the Toledo, Peoria & Western Railway (TP&W). The court held that the Board's valuation of TP&W's scrap steel and real estate was reasonable and rejected TP&W's argument that it was entitled to compensation for tax credits.

COURT ACTIONS

Preservation of Rail Lines—Modified Certificate to Operate

In *Town of Springfield v. STB*, 412 F.3d 187 (D.C. Cir. 2005), the court denied a petition to review a Board decision granting to a railroad a modified certificate of public convenience and necessity to operate two previously abandoned rail lines in New Jersey. Although the court would have had jurisdiction to review the Board's denial of a reopening petition based on new evidence or changed circumstances, the court rejected petitioners' allegations that county government resolutions passed after the Board's decisions constituted new evidence or changed circumstances. The court further held that it lacked jurisdiction to review the Board's refusal to reopen the order based on a separate allegation of material error.

Preservation of Rail Lines—Federal Preemption

In *City of Lincoln v. STB*, 414 F.3d 858 (8th Cir. 2005), the court affirmed the STB's decision holding that the plan of the City of Lincoln, Nebraska, to acquire a strip of active railroad right-of-way property through state eminent domain law is preempted as state regulation of rail transportation under 49 U.S.C. 10501(b).

Environmental Issues

In *City of Riverview, et al. v. STB*, 398 F.3d 434 (6th Cir. 2005), the court upheld the Board's decision that a proposal by Riverview Trenton Railroad Company to operate an intermodal transportation facility in the Cities of Trenton and Riverview in Michigan constituted bona fide rail operations. The Court also held that the Board's environmental scrutiny was adequate.

Railroad Rates—Rate Reasonableness Determinations

In *PPL Montana, LLC v. STB*, 437 F.3d 1240 (D.C. Cir. 2006), the court affirmed the Board's decision dismissing PPL Montana's complaint challenging the reasonableness of rates charged by BNSF for transporting coal from mines in Wyoming's PRB to PPL's electricity

generating facility at Billings, MT, under the stand-alone cost (SAC) test. The court endorsed the Board's use of its threshold cross-subsidy test and the Board's application of the SAC test as a reasonable interpretation of the long-standing principles articulated in *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).

In *The Burlington, Northern and Santa Fe Railway v. STB*, 453 F.3d 473 (D.C. Cir. 2006), the court upheld as reasonable and supported by evidence the Board's finding that BNSF's coal rail rates for Xcel Energy were unreasonably high under the SAC test. The court further found that the Board's use of cross-over traffic as a simplifying mechanism within the SAC test was reasonable and rejected BNSF's arguments disputing the Board's methodologies in applying the SAC test.

In *Arizona Electric Power Cooperative, Inc. v. Surface Transportation Board*, 454 F.3d 359 (D.C. Cir. 2006), the court affirmed the Board's decision dismissing the complaint of Arizona Electric Power Cooperative (AEPCO) challenging the reasonableness of a joint BNSF/UP rate for transporting coal from New Mexico mines to the AEPCO Cochise power plant in Arizona. The complaint was dismissed because AEPCO's evidentiary presentation relied in part upon the use of track and facilities of one of the defendant railroads for a fee that had not been shown to be adequate.

In *The Burlington, Northern and Santa Fe Railway v. STB*, 403 F.3d 771 (D.C. Cir. 2005), the court set aside the Board's decision granting a petition by West Texas Utilities Company to vacate the rate prescription governing BNSF's transportation of coal from a mine in the PRB to the utility company's electric generating plant in Vernon, TX. The court found that the Board had not justified applying different standards depending upon which party requested the vacatur, and remanded the case to the Board.

Railroad Service Issues

In *Granite State Concrete Co., Inc. v. STB*, 417 F.3d 85 (1st Cir. 2005), the court affirmed the Board's finding that a host railroad had acted reasonably in light of rail safety concerns when it imposed restrictions on another railroad operating over its lines, and that the host railroad had not failed to meet its service obligations to the other railroad.

Rail Labor Matters

In *Brotherhood of Locomotive Engineers and Trainmen v. STB*, 457 F.3d 24 (D.C. Cir. 2006), the court dismissed on standing grounds a union's challenge to the Board's authorization for Kaw River Railroad, Inc. to lease and operate a rail line, where the union's asserted injuries were not caused by the Board's decision, but rather by the union's own collective bargaining agreement, in which the union had agreed to limit its rights in such transactions.

In *Brotherhood of Maintenance of Way Employees v. STB*, 200 F. App'x 1 (D.C. Cir. 2006), the court affirmed the STB's approval of a lease of rail lines. The court found that substantial evidence supported the STB's determination that the lease was *bona fide* and upheld the STB's rejection of the petitioner's argument that the lease was a sham transaction intended to deprive the petitioner union's members of their right to perform maintenance on the lines.

Water Carriage

In *Norfolk Southern Railway Company v. James N. Kirby, PTY LTD.*, 543 U.S. 14 (2004), the United States Supreme Court, in a unanimous decision reversing and remanding a decision of the United States Court of Appeals for the Eleventh Circuit, held that Federal maritime law applies, and that a U.S. railroad is entitled to the protection of limitations of liability contained in bills of lading for an international intermodal container shipment which originated overseas, where the shipment sustained damage during the final rail leg of its journey within the U.S. The STB participated with other interested Government parties, first in urging the Court to grant certiorari, and then in filing a brief as *amicus curiae*.

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 website www.stb.dot.gov. Unless otherwise indicated you may request paper copies of STB reports and publications by contacting the Records Officer at (202) 245-0235, or at the following address:

Surface Transportation Board
395 E Street, SW
Washington, DC 20423

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 from the U.S. Government Printing Office at (866) 512-1800 [dial 202-512-1800 in the DC Metro Area] or at the following address:

Superintendent of Documents
U.S. Government Printing Office
P.O. Box 979050
St. Louis, MO 63197-9000

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* in volumes 49 U.S.C.A 1 to 10101 and 49 U.S.C.A. 10101 to 20100, which may be viewed at the following URLs:

http://www.access.gpo.gov/uscode/title49/subtitlei_chapter7_.html

http://www.access.gpo.gov/uscode/title49/subtitleiv_.html

These volumes may be obtained in hard copy by calling (800) 328-9352 or writing to the following address:

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

STB Website

The STB's website (www.stb.dot.gov) 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 (posted when submitted) 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 and water recordations (equipment liens under 49 U.S.C. 11301);
- technical and statistical reports concerning Class I railroads, such as the railroads' annual reports (Form R-1) in Adobe Acrobat PDF format, price indices, employment data, wage statistics, and quarterly selected 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 Reference Guide for FOIA Requesters; frequently requested records; and other FOIA-related information;

- 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;
- links to significant STB proceedings, Congress, DOT's list of Internet sites, and WEBGOV, containing links to the White House and government agencies; and
- agricultural contract summaries.

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. FOIA requests and Information Quality requests may also be submitted electronically.

STB Decisions, News Releases, and Pleadings

In addition to being posted on its website, STB decisions and filings in STB proceedings (and many ICC public records) may be viewed (and copied for a fee) at the STB Reading Room/Library (Room 131) at 395 E St., SW, Washington, DC 20423-0001, (202) 245-0406. Copies of these public records are also available (*at \$1.40/page, \$7.00 minimum charge per order*) by contacting the Records Officer at (202) 245-0232. A higher fee is applicable to certified copies.

Copies of STB decisions and news releases (up to one year from the date of service) and pleadings filed with the STB (up to 6 months from the date of filing) may be obtained from ASAP Document Solutions at (202) 306-4004; asapdc@verizon.net.

Speeches and Statements

The STB makes available on its website Members' speeches (when possible) and statements before Congressional committees. Copies may be obtained by writing the Office of Public Assistance, Governmental Affairs and Compliance (OPAGAC) at the STB address shown above or by contacting Congressional Affairs (202) 245-0233, Public Affairs (202) 245-0238, or Media Affairs (202) 245-0234.

Financial and Statistical Reports from Class I Railroads

The reports listed below, which are submitted to the STB by Class I railroads, may be examined (and copied for a fee) by appointment with the Records Officer [(202) 245-0235] between 8:30 a.m. and 5:00 p.m. Monday through Friday. Copies of these reports may be obtained (*at \$1.40/page, \$7.00 minimum charge per order*) from the Records Officer at the above contact number. A higher fee is applicable to certified copies. Documents available on the STB website, in Adobe Acrobat PDF format, are marked with an asterisk (*).

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

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

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

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

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

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

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

Periodic Financial Decisions and Notices Issued by the Board

The following periodic financial decisions and notices are available to the public. Documents available on the website are marked with an asterisk (*). These documents are also available, for a copying charge, through the Records Officer at (202) 245-0235.

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

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

- *Indexing the Annual Operating Revenues of Railroads* — notice setting forth the annual inflation-adjusting index numbers (*Railroad Revenue Deflator Factors*) used to adjust gross annual operating revenues of railroads for classification purposes, issued annually.
- *Rail Cost Adjustment Factor (RCAF)* — index used to adjust for inflation in long-term railroad contracts, rate negotiations, and transportation studies, computed quarterly in STB Ex Parte No. 290 (Sub-No. 5).
- *Railroad Cost of Capital* — determination of the cost of capital rate for the railroad industry issued annually in STB Ex Parte No. 558.
- *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).
- *Railroad Revenue Adequacy* — determination of the railroads that are revenue adequate, issued annually in Ex Parte No. 552.

Publications

The following STB publications are available on the Board's website, as indicated by an asterisk (*). Unless otherwise indicated, paper copies of these documents are also available, for a fee, through the Records Officer at (202) 245-0235.

- *Class I Freight Railroads — Selected Earnings Data* — compilation of railway operating revenues, net railway operating income, net income, and revenue ton-miles of freight of Class I railroads developed from quarterly RE&I and CBS forms (compiled quarterly).
- *Guidance to Historic Preservation* — an overview of the STB's involvement in historic preservation as it relates to railroad licensing proceedings, including those in which a

railroad seeks STB authorization to abandon a rail line or acquire or construct a new rail line.

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

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

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

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

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

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

**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).

**Surface Transportation Board 1998/1999/2000/2001 Annual Report* — report covering the STB's activities for fiscal years 1998 through 2001 (Sept. 2002).

**Surface Transportation Board 2002/2003/2004 Annual Report* — report covering the STB's activities for fiscal years 2002 through 2004 (Sept. 2004).

Surface Transportation Board Reports, Volumes 1 through 6 — reports containing major STB decisions issued from January 1996 to May 2003 (available through the Government Printing Office).

**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).

Software, Data, and User Documentation

The following software, data, and user documentation may be obtained from the Office of Economics, Environmental Analysis, and Administration (OEEAA) for the fees listed below. To purchase any of these items, or for additional information about the software system requirements and use, contact OEEAA, (202) 245-0323.

Computer Assisted Depreciation and Life Analysis System (CADLAS) — programs used to analyze the life characteristics of property, calculate historical salvage ratios, develop depreciation rates, calculate annual accruals and accumulated depreciation, determine Reproduction Cost New Less Depreciation (RCNLD) (also known as Trended Net Original Cost), estimate property replacements, and value assets. [Software and User Documentation, \$30]

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. [Program and Data, including the User Manual and Worktables, are available on the STB website under *Industry Data > Economic Data.*]

Confidential Carload Waybill Sample File — movement-specific sample of U.S. railroad traffic used by the STB and other users. The *Confidential Carload Waybill Sample File* is available for a fee. Requests for access to the data must follow the procedures specified in 49 CFR Part 1244.9. The User Guide for the *Confidential Carload Waybill Sample File* is available on the STB website under *Industry Data > Economic Data*.

Carload Waybill Sample Public Use File — nonconfidential railroad movement and revenue data for use in performing transportation planning studies. The User Guide for the *Carload Waybill Sample Public Use File* is available on the STB website under *Industry Data > Economic Data*. [CD containing the *Carload Waybill Sample Public Use File* and User Guide, \$250 per year].

APPENDIX B

APPROPRIATIONS AND EMPLOYMENT

The following tables show average full-time equivalent (FTE) employment and total appropriations, less enacted rescissions, for fiscal years 2003 to 2006 for activities included under the current appropriation title "Salaries and Expenses."

Average FTE Employment and Appropriations			
FY 2003- 2006¹			
Fiscal Year	Appropriation	STB Offset ²	Average Employment
2003	\$18,320,075	\$1,000,000	137
2004	18,345,599	1,050,000	135
2005	20,020,000	1,050,000	134
2006	25,200,000	1,250,000	137

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

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

Status of FY 2003 Appropriations*	
Total appropriations	\$18,320,075
Offsetting collections (<i>see note</i>)	1,000,000
Reimbursements from other agencies	0
Total obligations	18,307,135
Unobligated balance available for adjustments	12,940
Carryover of offsetting collections to next fiscal year	940,617

Status of FY 2004 Appropriations*	
Total appropriations	\$18,345,599
Offsetting collections (<i>see note</i>)	1,050,000
Reimbursements from other agencies	0
Total obligations	18,336,857
Unobligated balance available for adjustments	8,742
Carryover of offsetting collections to next fiscal year	940,617
Status of FY 2005 Appropriations *	
Total appropriations	\$20,020,000
Offsetting collections (<i>see note</i>)	1,050,000
Reimbursements from other agencies	494,836
Total obligations	20,012,955
Unobligated balance available for adjustments	7,045
Carryover of offsetting collections to next fiscal year	940,617
Status of FY 2006 Appropriations*	
Total appropriations	\$24,948,000
Offsetting collections (<i>see note</i>)	1,250,000
Reimbursements from other agencies	20,259
Total obligations	24,928,304
Unobligated balance available for adjustments	19,696
Carryover of offsetting collections to next fiscal year	940,617

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

NOTES:

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.

The **FY 2005** 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 \$20,200,000, less enacted rescissions.

The **FY 2006** 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 \$25,200,000, less enacted rescissions.

APPENDIX C
DECISIONS DURING FY 2005-2006

Decisions During FY 2005 <i>Rail Matters</i>					
Category	Pending at Start	Received During	Decided⁴ During	Pending at End	Decisions Served
Carrier Consolidations	3	18	14	7	29
Review of Labor Arbitral Decisions	1	3	2	2	7
Rates and Services	16	12	13	15	105
Rate Reasonableness	9	6	6	9	70
Rate Disclosure	0	0	0	0	0
Through-Routes or Divisions	0	2	2	0	9
Contract Rates	0	1	0	1	2
Reasonable Practice	1	3	3	1	13
Discrimination	0	0	0	0	0
Car Supply and Interchange	4	0	0	4	7
Service Orders	2	0	2	0	4
Competitive Access	0	0	0	0	0
Constructions	12	1	3	10	26
Line Crossing	2	1	0	3	9
Constructions	10	0	3	7	17
Abandonments	135	163	192	106	468

⁴ The number of decisions served is the count of all decisions (including both procedural decisions and final decisions on the merits) served in the FY. The number of decisions decided counts only final decisions on the merits of cases (including decisions on petitions for reconsideration).

Decisions During FY 2005 (Continued)					
<i>Rail Matters</i>					
<i>Category</i>	<i>Pending at Start</i>	<i>Received During</i>	<i>Decided During</i>	<i>Pending at End</i>	<i>Decisions Served</i>
Other Line Transactions	32	134	151	15	253
Line Consolidations	11	43	51	3	87
Line Acquisitions Under 49 U.S.C. 10901	12	42	46	8	76
Line Acquisitions by Shortline	7	38	42	3	67
Feeder Line Development	1	1	2	0	9
Acquisition and Operation 49 U.S.C. 10502	1	10	10	1	14
Collective Actions	0	0	0	0	0
Collective Ratemaking	0	0	0	0	0
Pooling	0	0	0	0	0
Data Collection and Oversight	1	1	2	0	7
RCAF	1	1	2	1	7
Accounting and Records	0	0	0	0	0
Reports – Rail	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	1	1	0	2	2
Other Rail	5	8	7	6	28
Common Carrier Obligation	2	0	2	0	4
Interlocking Officer or Director	0	0	0	0	0
Other	3	8	5	6	24
Total Rail	206	341	384	163	925

Decisions During FY 2005 (Continued) <i>Nonrail Matters</i>					
<i>Category</i>	<i>Pending at Start</i>	<i>Received During</i>	<i>Decided During</i>	<i>Pending at End</i>	<i>Decisions Served</i>
<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	17	1	0	18	6
Collective Ratemaking Agreements	17	1	0	18	6
Truck Pooling	0	0	0	0	0
Undercharges	0	0	0	0	0
Bus Regulation	2	7	8	1	19
Through-Route Regulation	0	1	1	0	1
Mergers	2	5	6	1	15
Bus Pooling	0	1	1	0	3
Other Motor	0	0	0	0	0
<i>Water</i>	2	0	1	1	10
Port-to-Port Water Rates	2	0	1	1	10
Other	0	0	0	0	0
<i>Pipeline</i>	2	1	1	2	13
Rate Regulation	2	1	1	2	13
Other	0	0	0	0	0
<i>Other</i>	2	1	2	1	3
<i>Total Nonrail</i>	25	10	12	23	51
<i>Total Rail and Nonrail</i>	231	351	396	185	977

Decisions During FY 2006 <i>Rail Matters</i>					
Category	Pending at Start	Received During	Decided During	Pending at End	Decisions Served
Carrier Consolidations	7	23	26	4	38
Review of Labor Arbitral Decisions	2	1	3	0	10
Rates and Services	15	13	10	18	50
Rate Reasonableness	9	5	5	9	34
Rate Disclosure	0	0	0	0	0
Through-Routes or Divisions	0	0	0	0	0
Contract Rates	1	0	1	0	1
Reasonable Practice	1	0	1	0	2
Discrimination	0	2	0	2	1
Car Supply and Interchange	4	2	3	3	5
Service Orders	0	4	0	4	7
Competitive Access	0	0	0	0	0
Constructions	10	4	3	11	21
Line Crossing	3	0	0	3	3
Constructions	7	4	3	8	18
Abandonments	106	200	214	92	465

Decisions During FY 2006 (Continued) <i>Rail Matters</i>					
Category	Pending at Start	Received During	Decided During	Pending at End	Decisions Served
Other Line Transactions	15	131	128	18	201
Line Consolidations	3	43	41	5	61
Line Acquisitions Under 49 U.S.C. 10901	8	49	50	7	73
Line Acquisitions by Shortline	3	16	16	3	24
Feeder Line Development	0	4	1	3	13
Acquisition and Operation 10502	1	19	20	0	30
Collective Actions	0	1	0	1	0
Collective Ratemaking	0	0	0	0	0
Pooling	0	1	0	1	0
Data Collection and Oversight	0	3	2	1	8
RCAF	0	2	2	0	6
Accounting and Records	0	1	0	1	2
Reports - Rail	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	1	1	2	2
Other Rail	6	5	6	5	31
Common Carrier Obligation	0	1	1	0	2
Interlocking Officer or Director	0	0	0	0	0
Other	6	4	5	5	29
Total Rail	163	382	393	152	826

Decisions During FY 2006 (Continued) <i>Nonrail Matters</i>					
Category	Pending at Start	Received During	Decided During	Pending at End	Decisions Served
Motor					
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	18	1	0	19	3
Collective Ratemaking Agreements	18	1	0	19	3
Truck Pooling	0	0	0	0	0
Undercharges	0	0	0	0	0
Bus Regulation	1	6	6	1	6
Through-Route Regulation	0	0	0	0	0
Mergers	1	6	6	1	6
Bus Pooling	0	0	0	0	0
Other Motor	0	2	2	0	4
Water	1	0	0	1	3
Port-to-Port Water Rates	1	0	0	1	3
Other	0	0	0	0	0
Pipeline	2	0	1	1	9
Rate Regulation	2	0	1	1	9
Other	0	0	0	0	0
Other	1	1	2	0	3
Total Nonrail	23	10	11	22	29
Total Rail and Nonrail	186	392	404	174	855

APPENDIX D

RAILROAD FINANCIAL AND STATISTICAL DATA

Rail Carriers Regulated by the STB *	
<i>Carriers Subject to Uniform System of Accounts and/or Required to File Annual and Periodic Reports (as of 2006)</i>	
Railroads, Class I	7
<i>Railroads Not Required to File Reports (as of 2006)</i>	
Railroads, Regional	33
Railroads, Local	519
Holding Companies – Rail	not available

*Information obtained from a database, Profiles of U.S. Railroads (2007 edition), maintained by the Association of American Railroads (AAR) and containing AAR estimates of carrier revenues. AAR has moved away from the “Class II” and “Class III” designations. In lieu of the Class II designation, it now defines “regional railroads” as carriers that operate at least 350 miles of road and/or earn revenue between \$40 million and the Class I revenue threshold. In lieu of the Class III designation, it now defines “local railroads” as those below the regional criteria, plus switching and terminal companies.

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

- Class I: \$250 million or more in 1991 dollars
- Class II: less than \$250 million but more than \$20 million in 1991 dollars
- Class III: \$20 million or less in 1991 dollars

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

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

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

The STB requires that affiliated railroads with integrated operations in the United States be combined for purposes of determining whether they are Class I (large) railroads. Such combined railroads are required to file consolidated financial reports. See *Proposal to Require Consolidated Reporting By Commonly Controlled Railroads*, STB Ex Parte No. 634 (STB served Nov. 7, 2001).

Class I Line-Haul Railroads, Condensed Income Statement, Financial Ratios, and Employee Data				
<i>(Dollars in Thousands)</i>				
Calendar Year →	2003	2004	2005	2006
1. Number of carriers represented	9	9	9	9
CONDENSED INCOME STATEMENT				
2. Total operating revenues	\$36,638,941	\$40,517,155	\$46,118,002	\$52,151,588
3. Total operating expenses	31,440,382	35,106,830	37,842,772	40,980,029
4. Net railway operating income	4,078,120	4,205,029	6,075,280	7,559,597
5. Net income	2,686,683	2,867,257	4,916,536	6,482,025
6. Dividends Paid	1,407,641	1,892,234	1,270,423	1,092,854
NET INVESTMENT AND EQUITY				
7. Net investment in transportation property and equipment ⁵	\$66,772,330	\$72,519,648	\$74,837,058	\$77,837,908
8. Shareholders' equity	41,150,654	51,955,411	55,828,428	58,901,042

⁵ 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).

FINANCIAL RATIOS (PERCENT)				
9. Operating ratio (L3/L2c)	85.81%	86.65%	82.06%	78.58%
10. Return on net investment (L4/L7)	6.11%	5.80%	8.12%	9.71%
11. Return on equity (L5/L8)	6.53%	5.52%	8.81%	11.00%
EMPLOYEE DATA				
12. Average number of employees	154,652	157,496	162,401	167,508
13. Compensation	\$9,576,782	\$10,347,373	\$10,884,632	\$11,421,567

Class I Line-Haul Railroads, Selected Balance Sheet Data as of December 31, 2003, 2004, 2005, and 2006 <i>(Dollars in Thousands)</i>				
Calendar Year →	2003	2004	2005	2006
1. Total current assets	\$5,204,105	\$7,193,775	\$8,759,960	\$8,250,977
2. Total current liabilities	10,941,481	12,364,982	13,488,492	12,711,989
3. Transportation property				
Road	87,877,145	105,681,990	109,934,508	116,371,738
Equipment	26,080,032	27,883,158	28,143,199	28,678,468
Other	1,597,358	1,708,258	2,376,059	2,072,910
Less accumulated depreciation and amortization	(27,614,825)	30,046,863	32,817,513	36,104,595
Net Transportation Property	87,939,710	105,226,543	107,636,253	111,018,521
4. Long-term debt (due after 1 yr)	13,753,120	15,081,579	15,042,283	15,706,575
5. Shareholders' equity				
Capital stock (Par Value)	2,505,805	2,503,479	2,501,048	696,073
Additional capital (Above Par)	13,945,489	23,597,764	23,898,209	23,804,429
Retained earnings	24,703,147	25,857,955	29,403,365	34,423,935
Less treasury stock	3,787	3,787	3,787	3,787
Net shareholders' equity	41,150,654	51,955,411	55,828,428	58,901,042

Railroad Cost of Capital and Return on Investment (ROI) 2003-2006¹				
Calendar Year →	2003²	2004³	2005⁴	2006⁵
Cost of Capital	9.4%	10.1%	12.2%	9.9%
ROIs of Class I Railroads				
Burlington Northern-Sante Fe	6.2%	5.8%	9.8%	11.4%
CSX Transportation	4.0%	4.4%	6.2%	8.2%
Canadian National/Grand Trunk Corp	4.5%	6.0%	8.1%	9.5%
Kansas City Southern	3.7%	8.3%	5.9%	9.3%
Norfolk Southern	9.1%	11.6%	13.2%	14.4%
Soo Line	0.9%	3.3%	8.9%	11.6%
Union Pacific	7.3%	4.5%	6.3%	8.2%

¹ A railroad is considered to be revenue adequate under 49 U.S.C. 10704(a) if it achieves a rate of Return on Net Investment (ROI) equal to at least the current cost of capital for the railroad industry. The ROIs that meet this criterion are shown in **bold** in this table.

² Cost of Capital for 2003 was determined in STB Ex Parte No. 558 (Sub-No. 7); Revenue Adequacy for 2003 was determined in STB Ex Parte No. 552 (Sub-No. 8).

³ Cost of Capital for 2004 was determined in STB Ex Parte No. 558 (Sub-No. 8); Revenue Adequacy for 2004 was determined in STB Ex Parte No. 552 (Sub-No. 9).

⁴ Cost of Capital for 2005 was determined in STB Ex Parte No. 558 (Sub-No. 9); Revenue Adequacy for 2005 was determined in STB Ex Parte No. 552 (Sub-No. 10).

⁵ Cost of Capital for 2006 was determined in STB Ex Parte No. 558 (Sub-No. 10); Revenue Adequacy for 2006 was determined in STB Ex Parte No. 552 (Sub-No. 11).

APPENDIX E

COMMISSIONERS, 1996-2006

Surface Transportation Board Commissioners				
Commissioners	State	Party	Oath of Office	End of Service
SIMMONS, J.J. III	OK	Democrat	Jan. 1, 1996 ¹	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	Jan. 4, 2006
BUTTREY, W. Douglas	TN	Republican	May, 28, 2004	Mar. 13, 2009
MULVEY, Francis P.	MD	Democrat	June 2, 2004	
NOTTINGHAM, Charles D.	VA	Republican	August 14, 2006	

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