



# Surface Transportation Board

## Budget Request Fiscal Year 2025

# Table of Contents

- About the Surface Transportation Board ..... 1
- FY 2025 Budget Overview..... 3
- Proposed Appropriation Language ..... 8
- Program Overview ..... 9
- FY 2023 Activities and Accomplishments.....13
- Budget Data .....37
- Administrative and Organizational Data .....52

## About the Surface Transportation Board

The Surface Transportation Board (STB, Board, or agency) is primarily charged with the economic oversight of the nation's freight rail system. The Board has jurisdiction over, among other things, the reasonableness of railroad rates and practices; mergers; line acquisitions; new rail line construction; abandonments of existing rail lines; rail service issues; and certain matters regarding Amtrak. The Board is charged with providing an efficient and effective forum for the resolution of disputes and other matters within its jurisdiction. The Board favors private-sector negotiations and resolutions and takes other actions in the public interest as necessary.

### Our Mission

The STB is an independent economic regulatory agency that seeks to promote a balanced, competitive, and responsive surface transportation system, primarily the interstate rail network, and addresses the needs of the network for the benefit of the general public.

### What We Do

In carrying out its mission, the STB engages in a variety of activities on a day-to-day basis. Regarding formal proceedings, the Board processes legal filings; conducts the appropriate economic, environmental, and legal analysis; researches and prepares draft decisions; conducts a voting process; issues decisions; and defends agency actions that are challenged in court.

Outside of formal proceedings, the Board facilitates informal dispute resolution and works with governmental entities, the public, and the media to provide information about the agency and its processes. The Board also collects and analyzes service-related, economic, and financial data, producing studies and analytical tools that are useful to both the agency and the public at large. As an independent agency, Board employees also handle important administrative functions, including information technology and security, facilities, and human resources.

### History

The bipartisan Board was established in 1996 as the successor to the Interstate Commerce Commission. The Board was administratively aligned with the Department of Transportation

until enactment of the Surface Transportation Board Reauthorization Act of 2015 (STB Reauthorization Act), Pub. L. No. 114--110, which established the Board as a fully independent agency on December 18, 2015. The STB Reauthorization Act also expanded the Board's membership from three to five Board members.

## **Statutory Authority**

The economics of freight rail regulation affect the national transportation network and are important to our nation's economy. For this reason, Congress gave the STB sole jurisdiction over railroad rates, practices, and service. Congress also gave the STB sole jurisdiction over abandonments of existing rail lines, new rail line constructions, and rail mergers and consolidations, exempting STB-approved transactions from federal antitrust laws and state and municipal laws.

While a majority of the Board's work involves freight railroads, the STB's involvement with passenger rail matters has increased. The STB also performs certain oversight of the intercity bus industry, non-energy and non-water pipelines, household goods carriers' tariffs, and rate regulation of non-contiguous domestic water transportation (marine freight shipping involving the mainland United States, Hawaii, Alaska, and U.S. territories and possessions such as Puerto Rico and Guam).

## FY 2025 Budget Overview

The STB requests **\$50,646,000** for Fiscal Year (FY) 2025 to carry out its statutory responsibilities and to continue to meet the needs of stakeholders and the public. This level of funding would allow the Board to sustain its FY 2023 personnel and non-personnel investments and enable the agency to maintain its planned FY 2024 investments, including 10 additional full-time equivalents (FTEs) originally requested in the Board's FY 2024 budget request to carry out the responsibilities of the Board's Office of Passenger Rail. The STB would continue to prioritize efforts toward Information Technology (IT) modernization and cybersecurity, including data infrastructure, in support of evidence-based decision-making and the agency's mission in general. In addition, the agency would continue its innovation and inclusiveness by strengthening and empowering its workforce to help facilitate mission-effectiveness in a hybrid work environment.

The Board's funding request is based on a projected staffing level of 152 FTEs. This level is consistent with the increase of 10 FTEs requested in FY 2024, to support the Board's Office of Passenger Rail. The proposed FY 2025 personnel costs would increase by \$988,000 over the FY 2024 estimate to offset the annualized total cost of the anticipated 5.2% pay raise for FY 2024 and the anticipated 2% pay raise for FY 2025, including the increased cost of employee promotions, within-grade increases, and benefits. The non-personnel expenses would increase by \$1,474,000 to provide the agency with the necessary resources to support its mission and account for the rising costs of goods and services.

As the Board expands its program, hiring and retaining highly skilled, high-performing staff remains a top Board priority. This year, the Board used a mix of new tools to fill positions, such as obtaining direct hire authority for hard to fill positions, relying on the Intergovernmental Personnel Act, and obtaining details from sister agencies, in order to better support the Board's mission and addresses vacancies resulting from employee retirements or other separations. In FY 2024 and FY 2025, the Board will continue to actively seek to fill staff vacancies by attracting staff with appropriate technical skills to achieve the mission of the agency while furthering the STB's efforts to ensure an inclusive work environment. This approach would help the agency build a sense of community and take better account of diverse communities and viewpoints. In addition, the STB will continue its

Internship Program with a goal of at least three paid interns for the Summers of FY 2024 and FY 2025. The STB looks to further its efforts in marketing the agency and its mission in a way that promotes improved recruiting of highly qualified individuals.

The Board's non-personnel budget request would continue to support several IT modernization efforts as it further leverages cloud-based technologies and utilizing the Department of Justice's Shared Security Operations Center (SOC) services while moving to a Zero Trust architecture, as well as supporting continued improvements to the Board's website, data infrastructure, and cybersecurity program. The request also would continue to build out the agency's data and analytical capabilities to strengthen the Board's evidence-based decision-making and management of its data. Further, the requested funding would continue to leverage existing Cloud based systems for records and asset management, as well as acquisition and budgeting.

## Summary of Changes Compared to the FY 2024 Budget Request

(dollar amounts in thousands)

### Personnel Cost Change

#### Personnel Costs



**+\$988**

Personnel costs are expected to increase due to the annualized cost of the 5.2% 2024 pay raise; anticipated 2% 2025 pay raise; and the projected increased costs of promotions, within-grade increases, performance awards and employee benefits, as well continuing the Board's Internship Program.

### Non-Personnel Cost Changes

#### Rent, Building Security, and Utilities



**+\$41**

The Board's rent and associated obligations in FY 2025 is expected to increase due to greater costs for rent and building security. The increase in rent is attributed to an expected escalation of taxes; the increase in building security obligations is a result of anticipated increases in costs associated with labor, supplies, and materials incurred by the Department of Homeland Security. The Board has begun to test digital telephone alternatives to reduce physical landlines, which the Board anticipates will decrease costs in future years.

#### Information Technology and Cybersecurity



**+\$1,220**

IT and cybersecurity obligations are expected to increase as the Board continues to evaluate and modernize its IT infrastructure, continue website upgrades, provide enhanced services to staff and stakeholders, ensure compliance with Section 508 of the Rehabilitation Act of 1973, maintain its improved systems, improve governance of IT systems and the Board's data, and support its level of cybersecurity needs commensurate with its risks. The STB will continue implementing IT enhancements that are cloud-based, as well as tools to improve productivity, collaboration, data analysis, and other innovative solutions to leverage the Board's data as a strategic asset. The cost increase reflects the Board's emphasis on cybersecurity, governance around cloud services, records management, and evidence-based policymaking initiatives.

#### Prioritizing IT Modernization, Cybersecurity, and Digital Experience:

- The increased funding for Cybersecurity would allow the Board to manage its IT environment more effectively by utilizing the Department of Justice's Shared Security Operations Center (SOC) services while moving toward a Zero Trust architecture.
- Additional funding will focus on continuing the implementation of some of the recommendations that were identified during the Board's data maturity assessment – in particular, creating a unified data architecture and continuing to enhance business intelligence automation. These activities will solidify the foundation to implement data visualization on the Board's website, making the Board's data more accessible and

improving the experience to stakeholders as the agency modernizes its public-facing website.

- The Board plans to continue to improve the design and development of the Board’s website, intranet, and other digital resources, and focus on efforts to ensure compliance with Section 508. These activities include dedicating contract resources to conduct routine automated testing and manual testing of websites, purchasing the necessary tools, and training other staff and contractors as needed.

### Interagency Agreements and Technical Services



The Board’s estimate includes anticipated increased costs of STB’s use of shared service providers for records storage and services, Human Resources (HR), IT, Freedom of Information Act (FOIA), employee health, background investigations, and finance, all through agreements with other federal agencies, which improves the efficiency and effectiveness of mission support.

#### Evaluation and Evidence-Based Activities:

The increase in funding will allow the STB to continue to leverage its data maturity roadmap and to integrate evidence-based decision-making into routine practices and policies at the Board. The Board would continue investing in its data transformation efforts to improve the use of data analytic tools to ensure the Board’s analytics meet the needs of the STB and stakeholders. The agency continues to strengthen its data infrastructure and governance, improve data collection and analysis, promote automation, and enhance other evidence-based activities.

### Travel and Transportation



Travel obligations are expected to marginally increase to support regulatory reviews, stakeholder engagement, site visits, representation at stakeholder meetings, representation in court, and other travel required to meet the STB’s mission, as appropriate. The increase also includes travel to enhance skills and to further staff understanding of mission critical issues facing the industry.

### Training



General training obligations are expected to marginally decrease as the Board enhances its leadership and efficaciously develops and increases the technical and professional knowledge of its staff. The STB will continue to utilize FedTalent and other virtual mediums and offer more in-house training sessions to advance staff skills, obtain required certifications, and meet professional education requirements for an evolving workforce. The agency also intends to undertake training to ensure an inclusive environment in which diverse viewpoints and experiences are recognized and valued.

#### Strengthening and empowering the workforce:

Funding will also support the continued reskilling and upskilling of staff to improve employee engagement and retention and increase productivity and collaboration among offices, other



agencies, and stakeholders. In addition, this will allow staff to be more agile and adaptable to shifting priorities and able to provide more value in the work they do to achieve the Board’s mission.

**Office Printing, Supplies, Subscriptions, and Publications**



The STB has centralized its purchasing of supplies and consolidated its subscriptions. While the cost of supplies is expected to decrease due to less need, the STB anticipates that the cost of online subscriptions and publications in the Federal Register and Code of Federal Regulations will increase. The Board will continue to look at efforts for increased digitalization and cost savings.

**Miscellaneous Expenses**



The cost of miscellaneous services to cover costs for building operations, general maintenance, hearings, and other professional services is expected to decrease.

**Working Capital Fund (WCF)**



The cost of WCF obligations such as property management, personnel security administration, and procurement support are forecasted to marginally increase during FY 2025.

**Net Non-Personnel Cost Changes**

**+\$1,474**

**Total Adjustment to Base (\$48,184)**

**+\$2,462**

**Total Budget Request**

**\$50,646**

## Proposed Appropriation Language

### **Salaries and Expenses**

For necessary expenses of the Surface Transportation Board, including services authorized by 5 U.S.C. § 3109, \$50,646,000: Provided, that notwithstanding any other provision of law, not to exceed \$1,250,000 from fees established by the Surface Transportation Board shall be credited to this appropriation as offsetting collections and used for necessary and authorized expenses under this heading: Provided further, that the sum herein appropriated from the general fund shall be reduced on a dollar-for-dollar basis as such offsetting collections are received during fiscal year 2025, to result in a final appropriation from the general fund estimated at no more than \$49,396,000.

# Program Overview

## Strategic Goals

The work that the Board conducts to carry out its responsibilities is guided by the following four strategic goals as set forth in its Strategic Plan FYs 2022-2026<sup>1</sup>:

### **First strategic goal: Promote and protect the public interest in surface transportation matters.**

Strategic Objectives-

- Remedy competitive and other regulatory concerns, where appropriate, by determining reasonable rates and practices for users of the national rail network and other transportation modes within the Board’s jurisdiction;
- Evaluate certain railroad licensing actions for consistency with the public interest, considering the potential effects on shippers, consumers, the rail network, the environment, railroad employees, and the public at large;
- Promote consistent, fluid, and efficient service that fulfills the needs of customers and the public in an ever-changing economy; and
- Consider potential environmental and historic impacts in agency decision-making, consistent with applicable laws and regulations, and impose mitigation conditions as appropriate.

### **Second strategic goal: Foster a competitive and sound surface transportation system that provides reliable service at reasonable rates.**

Strategic Objectives-

- Uphold the common carrier obligation;
- Preserve and enhance competition, including through regulation, where appropriate;
- Provide accessible and transparent rate review processes;
- Provide oversight of passenger rail service in order to carry out statutory directives;
- Monitor the service and operations of carriers and take appropriate action where conditions warrant; and
- Monitor revenue adequacy and promote a climate that encourages carriers to invest in present and future capacity needs.

---

<sup>1</sup>Strategic Plan Fiscal Years 2022-2026, (STB decided February 28, 2023) (Board Member Fuchs dissenting).

**Third strategic goal: Provide an accessible, data-driven, and time- and cost-efficient regulatory process that enables stakeholders in the surface transportation industry to plan and conduct their operations effectively.**

Strategic Objectives-

- Provide well-defined formal and informal dispute resolution processes to enable parties to make informed decisions about how to best resolve their disputes;
- Reach timely adjudicatory decisions by adhering to appropriate internal and external deadlines; and
- Conduct environmental reviews necessary to support the Board’s decisions in a timely and cost-effective manner.

**Fourth strategic goal: Employ a skilled and diverse workforce, encourage innovative leadership at all levels of STB, and apply best practices in a collaborative and well-supported environment.**

Strategic Objectives-

- Foster a workplace culture that is inclusive, equitable, and accessible by developing and employing a skilled workforce that is representative of people from diverse backgrounds at all levels of the agency;
- Encourage innovative leadership at all levels of the STB that creates a culture of inclusion and, among other things, is attentive to our changing work environment; and
- Apply best practices in a collaborative and well-supported environment, incorporating data-driven decision-making.

## **Evidence and Evaluation**

The STB relies on evidence-based decision-making to implement its Strategic Plan. Reliance on evidence-based decision-making is the responsibility of each Board office, from substantive matters of case adjudication and informal assistance regarding freight rail service to administrative matters concerning IT modernization and budgeting. As the agency continues to implement reforms to provide a more efficient and effective regulatory review process, it will endeavor to analyze new proposals against historical and other data to evaluate these reform initiatives. The agency will continue to evaluate its data collection and analysis capacity to support processes like agency operations, human capital management and development, and program administration, as well as to support mission-strategic areas. The Board’s continued goal is to use its data as a strategic asset and to make evidence-based decisions to achieve its mission, serve the public, and steward resources while protecting

security, privacy, and confidentiality. This includes agency efforts related to diversity and inclusion.

The STB continues to make progress pursuant to the Foundations for Evidence-Based Policymaking Act of 2018 (Evidence Act) and the Federal Data Strategy. The STB has furthered its data and analytics maturity and developed a multi-year data strategy that will enable the Board to meet its mission more efficiently and effectively. During FY 2023, the Board continued its data efforts including its use of data science and analytical tools, including pilots for data transformation, a QuickSight Dashboard, and a data warehouse. In addition, the Board matured its CKAN Enterprise Data Catalog architecture. The Board has continued to use a database for the analysis of incoming data from the Class I Railroads which has proved very useful in ongoing Board monitoring.

### **Risk Management, Cybersecurity, and IT Modernization**

During FY 2023, the STB continued working to implement a cost-effective, risk-based cybersecurity program that is aligned with the National Institute of Standards and Technology security standards and guidelines. The Board's Federal Information Security Modernization Act (FISMA) security maturity rating for FY 2023 continues to be Level 3, "Consistently Implemented," while the Board continues to make improvements to specific areas of the cybersecurity program. No new recommendations were issued for FY 2023. Three (3) of the FY 2021 recommendations were closed during the FY 2023 FISMA assessment. The Board continues to work to resolve the five remaining open recommendations from FY 2021.

In FY 2023, the Board continued to strengthen its cybersecurity posture by investing in new technologies, processes, and capabilities to meet FISMA requirements and Office of Management and Budget (OMB) regulations, as well as the current needs of its IT modernization efforts. The STB continues to expand its cybersecurity capabilities by continuing to leverage the Department of Homeland Security Continuous Diagnostics and Mitigation Program resources as it automates its continuous security monitoring of the STB's network. Additionally, the Board has invested in its Security Operations Center and audit logging capabilities by utilizing shared services offering from the Department of Justice.

The benefits of the Board's ongoing IT modernization efforts were evident as the agency continued to operate in a hybrid work environment. Utilizing collaboration tools, staff were able to continue to navigate this new environment with no loss in productivity. Without the continued investments in the Board's IT architecture and infrastructure, this hybrid approach would not have been possible. The Board has completed work to transition to new

solutions for managed data services over a secure, highly redundant, and high-capacity fiber optic telecommunications platform. Larger modernization efforts in FY 2023 include upgrading the Board's servers, expanding the use of multi-factor authentication to support a Zero Trust Architecture, finessing the new cloud-based backup solution, and continuing the migration of content from the Board's data center in Washington, D.C., to the cloud. In FY 2023, the Board initiated migration of data to the new data warehouse in the cloud and began efforts to build a new website in a hosted environment. Going forward, the Board expects to build on this foundation for data management and an upgraded website and continue to support the evidence-based decision-making, data analytics, and data visualization goals of the Board.

The Board also continues to mature its internal risk management process and procedure controls. The Board is leveraging outside consultants to mature its enterprise risk management program. At least once per quarter, the Board's Risk Management Committee meets to assess organizational risk and identify ways to mitigate that risk. At least once per year, the Board reviews and updates its Risk Profile to ensure enterprise risk is considered and addressed.

## **Work Environment**

Having successfully carried out its mission and protected its workforce during COVID-19 and the return to office, the STB has reached a steady state of teleworking, balancing the flexibility of work at home with meaningful in-office work. The Board continued leveraging online collaboration tools, cloud-based software, and cybersecurity to make the hybrid work environment stronger, which enabled the agency to produce sound decisions, conduct informal dispute resolution, meet with stakeholders, and provide the resources needed to accomplish the agency's mission, including the initiatives highlighted below. The STB continues to evaluate its future of work state and its physical space requirements.

## **2022 Best Places to Work in the Federal Government Rankings**

The STB was recognized by the Partnership for Public Service for its ranking in the Best Place to Work in the Federal Government: 8th out of 30 small agencies. Our overall employee engagement score was 84, an increase of 4.8 points since last year. The STB will seek to empower, respect, and galvanize its workforce through policies that are consistent throughout the agency while being sufficiently flexible to address a variety of situations and the future of the Federal workforce.

# FY 2023 Activities and Accomplishments

## Rail Mergers

In FY 2023, the Board spent significant staff time and resources continuing its consideration of the application by Canadian Pacific Railway Limited to acquire control of Kansas City Southern, and through it, the Kansas City Southern Railway Company (KCSR) and its railroad affiliates.

Culminating this extensive review, the Board on March 15, 2023, issued its decision approving the merger and the resulting common control by Canadian Pacific of Canadian Pacific's U.S. railroad subsidiaries, KCSR, and KCSR's railroad affiliates. The Board made its approval subject to numerous conditions, including conditions to preserve existing rail service options at affected gateways on commercially reasonable terms, conditions to reasonably address the expected environmental impacts of the merger, and a robust seven-year oversight condition.

## Rail Service Oversight and Monitoring

During FY 2023, the Board continued its monitoring of rail service across the freight rail network. In particular, the Board continued to focus on the disruptive impact on rail service and operations caused by COVID-19. The Board maintained its frequent contact with stakeholders in an effort to monitor the adequacy of rail service in meeting demand growth as shippers continued to scale up production following pandemic related curtailments. The Board held two days of public hearings, on April 26 and 27, 2022, on recent rail service problems and recovery efforts involving several Class I carriers and directed executive-level officials of BNSF Railway Company, CSX Transportation, Inc., Norfolk Southern Railway Company, and Union Pacific Railroad Company to appear.

Following the public hearing, in *Urgent Issues in Freight Rail Service—Railroad Reporting*, Docket No. EP 770 (Sub-No. 1), on May 6, 2022, and again on June 13, 2022, the Board required these four Class I carriers, the largest U.S. railroads, to develop service recovery plans, to provide additional information on their actions to improve service and communications with their customers, to report detailed service and employment data (including targets), and to participate in biweekly calls with Board staff. In response to the extensive problems described at the hearing, the Board issued an order requiring those four carriers to file service recovery plans that would specifically describe their key remedial initiatives and promote a clearer vantage point into operating conditions on the rail network. On October 28, 2022, the Board extended the collection of key performance indicators such

as velocity, terminal dwell, first-mile/last-mile (FMLM) service (i.e., industry spot and pull), operating inventory, and trip plan compliance in order to continue to monitor the railroads' progress.

The Board also held an in-person public hearing on December 13 and 14, 2022, with Union Pacific Railroad Company (UP) pertaining to the substantial increase in its use of embargoes as a method of reducing rail traffic congestion. UP's use of embargoes to control congestion had increased from a total of 5 in 2017 to more than 1,000 in 2022. The Board received numerous reports that shippers were suffering supply chain problems as a result of the embargoes that are hampering their operations.

The Board noted that UP carries nearly 27 percent of the nation's freight served by rail and nearly 11 percent of all long-distance freight volume. Therefore, disruptions in UP's service levels have a significant detrimental impact on the supply chain and the nation's economy. The Board closely monitors UP's usage of embargoes, and it noticed a disturbing upward trend in their usage in recent years. Following the December hearing, the Board on May 15, 2023, issued an order directing UP to provide additional documents and data related to its use of embargoes.

In addition to monitoring rail service by conducting the above broad-based inquiries in its Ex Parte dockets, the Board also addressed a number of service complaint cases filed by individual shippers. Those cases are discussed under Service, Rate, and Other Complaint Cases, below.

Finally, the Board, through the Rail Customer and Public Assistance (RCPA) program of the Office of Public Assistance, Governmental Affairs, and Compliance (OPAGAC), continued its monthly calls with each Class I railroad to monitor rail service across the network and maintain awareness of positive and negative developments in the industry. These calls are informed by, among other things, the rail service performance data that the Class I railroads and the Chicago Transportation Coordination Office report to the Board on a weekly basis. RCPA reviews the data to identify performance trends and outliers and to make year-over-year and month-over-month comparisons in performance. RCPA also monitors and tracks carrier embargoes.



## Service, Rate, and Other Complaint Cases

In *Omaha Public Power District v. Union Pacific Railroad Company*, Docket No. NOR 42173, a case in which Omaha Public Power District (OPPD) is challenging the reasonableness of a rate assessed by Union Pacific Railroad Company (UP) for transporting unit trains of coal in shipper-supplied railcars to OPPD's power station in Omaha, Neb., from UP's interchange in Omaha with BNSF Railway Company, the Board denied an appeal of a decision of the Director of the Office of Proceedings that granted in part a motion to compel discovery. Later, the Board granted the parties' joint request to hold the proceeding in abeyance pending settlement negotiations.

In *Borough of Dumont, N.J. v. CSX Transportation, Inc., ABC Corporations, & XYZ Individuals*, Docket No. NOR 42174, the Board granted CSX Transportation, Inc.'s motion to dismiss with prejudice a complaint filed by the Borough of Dumont, N.J., alleging violations of New Jersey state and common law, and denied as moot the Borough's request to hold the proceeding in abeyance.

In *Foster Poultry Farms—Ex Parte Petition for Emergency Service Order*, Docket No. FD 36609, the Board on June 17, 2022, granted Foster Poultry Farms' petition for an emergency service order and directed Union Pacific Railroad Company (UP) to deliver certain trains to Foster Poultry Farms' facilities in Traver and Turlock, Cal. Thereafter, on July 1, 2022, the Board directed UP to continue to carry out its specific service commitments to Foster Farms, participate in weekly technical conferences with the Office of Public Assistance, Governmental Affairs, and Compliance (OPAGAC), and file daily service status reports, until July 17, 2022. On July 20, 2022, the Board denied Foster Farms' request to extend the emergency service order further, as the record did not show that the emergency continued to exist, but kept the docket open for six months in the event that further action were to become necessary. On December 29, 2022, Foster Farms filed a new petition for emergency service, and the Board responded the next day, ordering UP to deliver certain specific train sets of animal feed to Foster Farms in order to avert a potential significant loss of livestock in California. After receiving further reports from the parties, the Board on February 14, 2023, denied as moot Foster Farms' December request for a second emergency service order but held the record open until August 14, 2023.

In *Navajo Transitional Energy Company—Ex Parte Petition for Emergency Service Order*, Docket No. NOR 42178, the Board on June 23, 2023 issued a preliminary injunction requiring BNSF Railway Company (BNSF) to transport 4.2 million tons of coal from Navajo Transitional Energy Company, LLC's (NTEC) Spring Creek mine in Montana to the Westshore Terminals

export facility in British Columbia, Canada during 2023. The Board also required BNSF to transport an additional one million tons during 2023 as train sets and crews become available. The Board further ordered weekly status reporting by the parties during the pendency of the proceeding with respect to the number of trains moved, BNSF's efforts to obtain additional crews, and both parties' efforts to obtain additional train sets. On August 14, 2023, the Board denied BNSF's request to stay the "additional one million tons" portion of the June 23 preliminary injunction.

In a separate but related docket, *Navajo Transitional Energy Company v. BNSF Railway*, Docket No. NOR 42179, NTEC filed a complaint and petition for declaratory order alleging that BNSF has breached its common carrier obligation, failed to provide adequate car service, and engaged in unreasonable practices with respect to the transportation of NTEC's coal between Spring Creek and Westshore. On June 30, 2023, the Board adopted a procedural schedule for consideration of this complaint case. On August 7, 2023, the Board denied an appeal of the scheduling decision but modified the schedule and appointed an administrative law judge to resolve discovery disputes.

### **Rates and Competition**

During FY 2023, the Board continued to move forward in reforming its rate review processes. As discussed further below under "Rulemakings," in December 2022 the Board issued two final rules establishing new streamlined approaches for shippers and railroads to resolve smaller rate disputes: a voluntary arbitration program and an entirely new procedure for rate challenges known as Final Offer Rate Review (FORR). The Board also denied reconsideration of its 2022 final rule establishing a streamlined approach for pleading market dominance in rate reasonableness proceedings.

### **Amtrak**

In *Application of The National Railroad Passenger Corporation Under 49 U.S.C. § 24308(e)—CSX Transportation, Inc., and Norfolk Southern Railway Company*, Docket No. FD 36496 the parties, on November 21, 2022, informed the Board that they had agreed to settlement terms that, when fully implemented, will lead to a complete resolution of this proceeding. The proceeding involves an application by Amtrak to operate additional trains over certain lines of the CSX and Norfolk Southern rail systems. To allow the parties additional time needed to effectuate those terms, the Board granted the Parties' request to hold the proceeding in abeyance but required that a status report be filed by June 30, 2023, if the settlement terms were not fulfilled. Subsequently, the Board granted a request from the parties to continue to hold the proceeding in abeyance. If the parties do not notify the Board that settlement terms have been fulfilled, a progress report is due on or by October 31, 2023.

Throughout FY 2023, OPAGAC also continued to monitor Amtrak's performance through publicly available information and responded to informal inquiries about Amtrak. OPAGAC staff also met regularly with Amtrak staff to discuss Amtrak's publicly available, monthly, on-time performance operating statistics.

### **On-Time Performance Investigations**

The Board created the Office of Passenger Rail (OPR) effective October 1, 2022. Among other things, the new office created comprehensive plans related to on-time performance investigation processing and resource allocation. This includes creating a staffing strategy to assist the Board in on-time performance investigations and quarterly on-time performance data analysis.

In addition, the Board renewed its interagency agreement with the U.S. Department of Transportation's Volpe National Transportation Systems Center to develop data tools to quickly analyze the FRA's on-time performance quarterly data. OPR remains the point of contact and the project owner of the Volpe collaboration.

On February 14, 2022, the Federal Railroad Administration (FRA) published the Quarter 4, FY 2021 Amtrak on-time performance data. Since then, FRA continues to regularly release quarterly Amtrak on-time performance data. As FRA's quarterly on-time performance data becomes available, OPR analyzes the data and provides the Board with observations about trends and OPR's assessment.

On December 8, 2022, Amtrak filed a complaint and petition for an on-time performance investigation regarding the Sunset Limited route, in *Complaint and Petition of the National Railroad Passenger Corp. Under 49 U.S.C. § 24308(f)—for Substandard Performance of Amtrak's Sunset Limited Trains 1 and 2*. On July 11, 2023, the Board instituted an investigation and propounded document requests and interrogatories to Amtrak and various other railroads. OPR is the main office responsible for coordinating the Board's investigation.

## Rulemakings

In *Joint Petition for Rulemaking to Establish a Voluntary Arbitration Program for Small Rate Disputes*, Docket No. EP 765, the Board issued the following decisions in FY 2023:

On December 19, 2022, the Board adopted a final rule establishing a new voluntary arbitration program for small rate disputes.

On January 24, 2023, the Board denied a request by four Class I railroads to stay the 20-day deadline under the new rule for Class I carriers to inform the Board whether they will participate in the new arbitration program.

On February 14, 2023, the Board denied a second request by four Class I railroads to stay the new rule's "opt-in" requirement.

In *Final Offer Rate Review*, Docket No. EP 755, the Board adopted a final rule to establish a new procedure for challenging the reasonableness of railroad rates in smaller cases. Under this rate review procedure, known as "Final Offer Rate Review," the Board would decide on an expedited procedural schedule, an eligible unreasonable rate case by selecting either the complainant's or the defendant's final offer.

In *Market Dominance Streamlined Approach*, Docket No. EP 756, the Board in January 2023 denied two petitions seeking reconsideration of the Board's decision in FY 2022 adopting a final rule that established a streamlined approach for pleading market dominance in rate reasonableness proceedings.

In a notice of proposed rulemaking issued on September 7, 2023, in Docket No. EP 711 (Sub-No. 2), *Reciprocal Switching for Inadequate Service*, the Board proposed new regulations that would provide for the prescription of reciprocal switching agreements to address inadequate rail service, as determined using objective standards based on a carrier's original estimated time of arrival, transit time, and first-mile and last-mile service. That decision also closed Docket No. EP 711 (Sub-No. 1).

## Declaratory Orders

In *The Wenger Group, Inc., and Esbenshade, Inc.—Petition for Declaratory Order and Injunctive Relief—Rail Service to Pennsylvania Feed Mills and Other Facilities*, Docket No.

FD 36695, two shippers sought to enjoin a planned temporary cessation of freight service over an Amtrak-owned line. They also sought a declaration that the planned cessation of service would amount to a violation of the common carrier obligation. On May 18, 2023, the Board granted the request of a third shipper, Kellogg Company, to intervene in the case. Ultimately, the parties reached settlement as to all three shippers, and all three moved for voluntary dismissal. Accordingly, on July 20, 2023, the petition was dismissed, and the proceeding closed.

In *Wisconsin Central Ltd.—Petition for Declaratory Order—Interchange with Soo Line Railroad Company*, Docket No. FD 36397, the Board denied the request of Soo Line Railroad Company to strike the post-remand brief of Wisconsin Central, Ltd., and solicited public comments regarding the broad legal issues presented by this proceeding.

In *Rail Line Abutting Landowners—Verified Petition for Declaratory Order*, Docket No. FD 36623, the Board declined a request for a declaratory order to determine the status of a rail line owned by the Massachusetts Bay Transportation Authority.

In *Maryland Department of Natural Resources—Petition for Declaratory Order*, Docket No. FD 36606, the Maryland Department of Natural Resources requested that the Board declare whether a previous owner of a rail line had consummated the abandonment authority granted by the Board’s predecessor agency. The Board found that the abandonment was timely consummated and therefore that the Board lacked jurisdiction over the line.

In *CSX Transportation, Inc.—Petition for Declaratory Order and Cease and Desist Order*, Docket No. FD 33388 (Sub-No. 102), the Board granted a motion filed by CSX Transportation, Inc., to withdraw its petition and amended petition for declaratory and cease-and-desist orders in connection with a labor dispute between CSXT and a union representing rail employees.

In *The City of North Chicago, Ill.—Petition for Declaratory Order*, Docket No. FD 36619, the Board declined to issue a declaratory order relating to a dispute concerning an easement for a water main that crosses under the rail property of 2nd & Main, LLC, in North Chicago, Ill.

In *North County Transit District—Petition for Declaratory Order*, Docket No. FD 36433, the Board declined to issue a declaratory order regarding the applicability of certain laws and regulations related to a proposed bluff stabilization project and held the proceeding in abeyance with respect to the applicability of certain laws and regulations related to petitioner’s proposed fencing project.

In *Ballard Terminal Railroad Company, L.L.C.—Petition for Declaratory Order*, Docket No. FD 36261, the Board granted Ballard Terminal Railroad Company’s motion to withdraw its petition for declaratory order on the ground that the preemption issues raised in the petition had already been decided in state court.

In *U S Rail Corporation—Construction and Operation Exemption—Brookhaven Rail Terminal*, Docket No. FD 35141, et al., in a decision encompassing several dockets pertaining to rail- related activities on a parcel of land in Brookhaven, N.Y., the Board denied in part a petition for declaratory order concerning those activities and directed the parties to provide additional information on the remaining issue raised in the petition.

In *The State of South Dakota Acting by and Through Its Department of Transportation—Petition for Declaratory Order*, Docket No. FD 36697, the Board granted the State of South Dakota’s petition for an order declaring that Dakota Southern Railway’s operating rights pursuant to a modified certificate of public convenience and necessity over a segment of state- owned rail line are terminated and issued a notice of interim trail use for the line.

## Licensing

### Major and Significant Transactions

In *Canadian Pacific Railway Limited; Canadian Pacific Railway Company; Soo Line Railroad Company; Central Maine & Quebec Railway us Inc.; Dakota, Minnesota & Eastern Railroad Corporation; and Delaware & Hudson Railway Company, Inc.—Control—Kansas City Southern; The Kansas City Southern Railway Company; Gateway Eastern Railway Company; and The Texas Mexican Railway Company*, Docket No. FD 36500 et al., the Board issued the following significant decisions in FY 2023:

On October 19, 2022, the Board denied a motion filed by the Commuter Rail Division of the Regional Transportation Authority to strike certain evidence from the record.

On March 3, 2023, the Board approved both the appointment of Ronald L. Batory as successor trustee of the independent voting trust and the related assumption agreement.

On March 15, 2023, the Board approved, with certain conditions, Canadian Pacific Railway Limited's application to acquire control of Kansas City Southern, and through it, of the Kansas City Southern Railway Company (KCSR) and its railroad affiliates, and the resulting common control by Canadian Pacific of its U.S. railroad subsidiaries, and KCSR and its railroad affiliates. The decision imposed numerous conditions, including conditions to preserve existing rail service options at affected gateways on commercially reasonable terms, conditions to reasonably address the expected environmental impacts of the merger, and a robust seven-year oversight condition.

On September 1, 2023, the Board issued two decisions, one clarifying the reporting requirements and certain other aspects of the March 15 approval decision and the other instituting a proceeding to implement the Board's oversight condition.

## Other Transactions

In *California High-Speed Rail Authority—Construction Exemption—in Merced, Madera, and Fresno Counties, Cal.*, Docket No. FD 35724, et al., the Board authorized the California High-Speed Rail Authority to proceed with an addition to the Merced to Fresno section and a modification to the Fresno to Bakersfield section of the proposed California High Speed Rail System, subject to environmental conditions. The Board previously had authorized construction of these two sections in Docket Nos. FD 35724 and FD 35724 (Sub-No. 1), respectively.

In *Norfolk Southern Railway Company and the Cincinnati, New Orleans and Texas Pacific Railway Company—Acquisition—Trustees of The Cincinnati Southern Railway*, Docket No. FD 36699, et al., the Board accepted an application and a related verified notice of exemption, both filed on May 1, 2023, by Norfolk Southern Railway Company (NSR), on behalf of itself and its wholly owned subsidiary, The Cincinnati, New Orleans and Texas Pacific Railway Company (CNOTP) (collectively, Applicants). The Application seeks Board approval for NSR to acquire from the Trustees of the Cincinnati Southern Railway, and to operate, approximately 338.2 miles of rail line between Cincinnati, Ohio, and Chattanooga, Tenn., known as the Cincinnati Southern Railway. The Board found that the Application was complete. The Board also issued the preliminary determination, based on the evidence presented in the Application, that the Transaction is a minor transaction.

In *WeDriveU, Inc.—Acquisition of Control—Transaction Corporate Shuttle, Inc.*, Docket No. MCF 21102, on November 10, 2022, the Board tentatively approved and authorized WeDriveU to acquire direct control of an interstate passenger motor carrier, TransAction Corporate Shuttle, Inc. Thereafter, however, on December 6, 2022, the Board approved WeDriveU, Inc.'s voluntary request to dismiss its application without prejudice.

In *Revolution Rail Holding Company, LLC—Acquisition Exemption—Saratoga and North Creek Railway, LLC.*, Docket No. FD 36612, the Board permitted an exemption to acquire a rail line to become effective.

In *Aberdeen Carolina and Western Railway Company—Acquisition Exemption—Norfolk Southern Railway Company*, Docket No. FD 36648, the Board granted a request to waive a 60-day advance notice requirement and allowed Aberdeen Carolina and Western Railway Company to acquire from Norfolk Southern Railway Company and operate approximately 104 miles of rail in North Carolina on or after December 15, 2022.



In *Patriot Rail Company LLC, SteelRiver Transport Ventures LLC, Global Diversified Infrastructure Fund (North America) LP, First State Infrastructure Managers (International) Limited, And Mitsubishi UFI Financial Group, Inc.—Control Exemption—Delta Southern Railroad, Inc.*, Docket No. FD 36642, the Board lifted the abeyance order and denied Lake Providence Port Commission’s request to reject the notice of exemption.

In *Transdev Group, S.A.—Acquisition of Control—First Transit Topco Inc.*, Docket No. MCF 21103, the Board in January 2023 approved and authorized, subject to the filing of opposing comments, Transdev group, S.A. to acquire control of interstate passenger motor carrier First Transit Topco Inc.

In *Kanawha River Railroad, L.L.C.—Lease Renewal and Operation Exemption with Interchange Commitment—Norfolk Southern Railway Company*, Docket No. FD 36028 (Sub- No. 1), the Board waived a 60-day advance notice requirement and allowed Kanawha River Railroad, L.L.C., to enter into an amended lease agreement with Norfolk Southern Railway Company and continue to operate on nine segments of rail line totaling 309.45 miles in West Virginia and Ohio on or after January 18, 2023.

In *New York, Susquehanna & Western Railway Corp.—Acquisition & Operation Exemption—Onondaga County Industrial Development Agency*, Docket No. FD 36715, the Board waived a 60-day advance notice requirement and allowed the New York, Susquehanna, and Western Railway Corporation to acquire from Onondaga County Industrial Development Agency and continue to operate approximately 10 miles of rail line, known as the Jamesville Cluster, in New York.

In *Red River Valley & Western Railroad—Acquisition & Operation Exemption—Rail Line of BNSF Railway*, Docket No. FD 36719, the Board waived a 60-day advance notice requirement and set the effective date for a notice of exemption for Red River Valley & Western Railroad Company to acquire and operate a 0.4-mile rail line in Casselton, N.D.

In *Avalon Motor Coaches, LLC—Acquisition of Control—Wynne Transportation, LLC*, Docket No. MCF 21105 TA, the Board in January 2023 permitted Avalon Motor Coaches, LLC (Avalon), to operate properties of Wynne Transportation, LLC (Wynne), on an interim basis pending determination of a related application for Avalon to acquire Wynne.

In that related docket, *Avalon Motor Coaches, LLC—Acquisition of Control—Wynne Transportation, LLC*, Docket No. MCF 21105, the Board in February 2023 tentatively approved and authorized, subject to the filing of opposing comments, Avalon Motor Coaches, LLC, an interstate passenger motor carrier, to purchase and assume substantially all the shuttle services of another interstate passenger motor carrier, Wynne Transportation, LLC. No such comments were filed.

In *Van Pool Transportation LLC—Acquisition of Control—Local Motion, Inc.*, Docket No. MCF 21104, the Board in February 2023 tentatively approved and authorized, subject to the filing of opposing comments, Van Pool Transportation LLC, an interstate passenger motor carrier, to acquire control of another interstate passenger motor carrier, Local Motion, Inc. No such comments were filed.

In *BNSF Railway Company—Trackage Rights Exemption—Union Pacific Railroad Company*, Docket No. FD 36377 (Sub-No.7), the Board partially revoked the exemption for BNSF Railway’s trackage rights over certain Union Pacific Railroad Company lines in California, to permit the trackage rights arrangement to expire on the date agreed by the parties.

In *James Riffin—Acquisition and Operation Exemption—in York County, Pa.*, Docket No. FD 36548, the Board granted James Riffin’s motion to withdraw one rail line segment and a portion of another segment from a previously filed notice of exemption to operate and acquire two rail line segments. The Board also denied his petition to reconsider the Board’s rejection of the notice of exemption as to a third rail line segment.

In *Massachusetts Bay Transportation Authority—Acquisition Exemption—Certain Assets of CSX Transportation, Inc.*, Docket No. FD 36669, the Board found that the Massachusetts Bay Transportation Authority (MBTA) does not need Board authority to acquire certain rail assets owned by CSX Transportation, Inc. The Board therefore granted MBTA’s motion to dismiss its notice of exemption seeking such authority.

In *Savage Tooele Railroad Company—Construction and Operation Exemption—Line of Railroad in Tooele County, Utah*, Docket No. FD 36616, Savage Tooele Railroad Company (STR) filed a petition for exemption to construct and operate approximately 11 miles of rail line in Utah. The Board denied STR’s request that the Board preliminarily address the transportation merits of the proposed transaction before the environmental review process is complete.

In *Kelsian USA Inc.—Acquisition of Control—AAAH Topco Corporation*, Docket No. MCF 21106, the Board in April 2023 tentatively approved and authorized, subject to the filing of opposing comments, Kelsian USA Inc. to acquire from AAAHI Holdings LLC the motor carrier assets and direct control of AAAHI Topco Corporation, the owner of several motor carriers.

In *Eastside Community Rail, LLC—Acquisition and Operation Exemption—GNP RLY Inc.*, Docket No. FD 35692, et al., the Board denied a request to reopen and require that an easement be returned to its earlier owner. In Docket No. AB 1316X, the Board denied an appeal of a decision of the Director of the Office of Proceedings and lifted an abeyance order to allow that earlier owner to proceed with the abandonment of the line.

In *Paul Didelius—Continuance in Control Exemption—Rainier Rail LLC*, Docket No. FD 36659, et al., the Board (1) made effective a notice of exemption for Rainier Rail LLC to acquire and operate certain rail lines in the state of Washington; (2) permitted Paul Didelius, a noncarrier individual, to continue in control of Rainier Rail LLC upon its becoming a Class III rail carrier; and (3) made effective a notice of exemption for Rainier Rail to merge with WRL LLC, another railroad owned by Didelius.

In *Atchison, Topeka & Santa Fe Railway Company—Operating Rights—Southern Pacific Transportation Company*, Docket No. FD 22218, a case involving a request to revise the conditions governing certain BNSF trackage rights, the Board granted Union Pacific Railroad Company's unopposed petition to reopen this proceeding, provided a period for discovery, assigned and authorized an administrative law judge to address any discovery disputes, directed the parties to participate in Board-sponsored mediation, and directed the parties to propose a procedural schedule if mediation is unsuccessful.

In *Grainbelt Corporation—Trackage Rights Exemption—BNSF Railway Company*, Docket No. FD 36486 (Sub-No. 5), the Board partially revoked an exemption for Grainbelt Corporation's local trackage rights over a BNSF Railway line in Oklahoma and Texas to permit the trackage rights arrangement to expire on the date agreed by the parties.

In *Grenada Railroad, LLC—Acquisition and Operation Exemption—North Central Mississippi Regional Railroad Authority and Grenada Railway, LLC*, Docket No. FD 36700, the Board granted a request for partial waiver of a 60-day advance notice requirement and allowed

Grenada Railroad, LLC, to acquire and operate approximately 228 miles of rail line in Mississippi from the North Central Mississippi Regional Railroad Authority and Grenada Railway, LLC, on or after May 28, 2023.

In *Van Pool Transportation LLC—Acquisition of Control—Royal Coach Lines, Inc.*, Docket No. MCF 21107, the Board in June 2023 tentatively approved and authorized, subject to the filing of opposing comments, Van Pool Transportation LLC to acquire control of interstate passenger motor carrier Royal Coach Lines, Inc. No such comments were filed.

In *Terry W. Fischer & TKRG Holdings—Acquisition of Control—Royal Coach Tours*, Docket No. MCF 21109, the Board in August 2023 tentatively approved and authorized, subject to the filing of opposing comments, Terry W. Fischer and TKRG Holdings to acquire control of Royal Coach Tours, an interstate motor passenger carrier.

In *Savannah Industrial Transportation—Operation Exemption—in Effingham County, Ga.*, Docket No. FD 36489, the Board found that the owner of a line built in 2020 without Board authority intended the line to be operated as common carrier rail line for which Board authority should have been obtained before construction. The Board held in abeyance a request for operating authority over the line and ordered the line's owner to file for construction authority after the fact, while allowing existing shippers to receive service in the meantime.

In *New Jersey Transit Corp.—Acquisition Exemption—Norfolk Southern Railway Co. in the Counties of Morris and Warren, N.J.*, Docket No. FD 36676, the Board in July 2023 found that the New Jersey Transit Corporation did not need Board authority to acquire certain rail assets owned by Norfolk Southern Railway Company in New Jersey because the transaction did not constitute the sale of a rail line. The Board therefore granted N.J. Transit's motion to dismiss its notice seeking such authority.

In *Academy Express LLC—Purchase of Certain Assets of James River Bus Lines*, Docket No. MCF 21108, the Board tentatively approved and authorized Academy Express LLC and Franmar Leasing LLC to acquire certain assets of James River Bus Lines.

In *Colorado Pacific Rio Grande Railroad, LLC—Petition for Exemption—Acquisition & Operation of Line of Railroad in Costilla County, Colorado*, Docket No. FD 36694, the Board granted Colorado Pacific Rio Grande Railroad, LLC, after-the-fact authority to acquire and operate 1.53 miles of rail line in Costilla County, Colo., known as the Blanca Spur.

In *Norfolk Southern Railway Company—Acquisition—Trustees of the Cincinnati Southern Railway*, Docket Nos. FD 36699 et al., the Board authorized Norfolk Southern Railway Company to acquire from the Trustees of the Cincinnati Southern Railway and operate the Cincinnati Southern Railway, a 338-mile rail line between Cincinnati, Ohio, and Chattanooga, Tenn. The decision also authorized the Cincinnati, New Orleans and Texas Pacific Railway Company, a wholly owned subsidiary of Norfolk Southern, to continue to operate the line.

On September 28, 2023, in *Pan Am Southern LLC—Temporary Overhead Trackage Rights—Boston & Maine Corp.*, Docket No. FD 36726, the Board waived a regulatory requirement in order to allow Pan Am Southern to immediately exercise temporary overhead trackage rights over a rail line of Boston & Maine Corp. in Massachusetts to relieve congestion.

## Abandonments/Discontinuances

In *Wolf Creek Railroad, LLC—Abandonment Exemption—in Gibson County, Tenn.*, Docket No. AB 1322X, the Board allowed Wolf Creek Railroad LLC to abandon an approximately 10-mile railroad line within the Milan Army Ammunition Plant in Gibson County, Tenn.

In *Alabama Railroad, LLC—Abandonment Exemption—Escambia, Conecuh, and Monroe Counties, Ala.*, Docket No. AB 1324, the Board permitted Alabama Railroad, LLC, to abandon approximately 47.5 miles of rail line in Escambia, Conecuh, and Monroe Counties, Ala., subject to conditions.

In *R.J. Corman Railroad Property, LLC—Abandonment Exemption—in Scott, Campbell, and Anderson Counties, Tenn.*, Docket No. AB 1296X, the Board partially granted a petition to reopen because the Board determined that exercising the abandonment authority previously granted in this docket would isolate, or “strand,” a connecting rail line from the interstate rail network. The Board also provided guidance on next steps in the case.

In *South Carolina Central Railroad Company, LLC—Abandonment Exemption—in Darlington County, S.C.*, Docket No. AB 312 (Sub-No. 5X), the Board permitted South Carolina Central Railroad Company to abandon approximately two miles of rail line over six railroad tracks in

Hartsville, Darlington County, S.C., subject to environmental and standard employee protective conditions.

*In Montana Rail Link, Inc.—Discontinuance of Service Exemption—in Yellowstone, Stillwater, Sweet Grass, Park, Gallatin, Broadwater, Jefferson, Lewis and Clark, Powell, Deer Lodge, Granite, Missoula, Lake, Mineral, and Sanders Counties, Mont.; Bonner and Kootenai Counties, Idaho; and Spokane County, Wash.,* Docket No. AB 575 (Sub-No. 2X) the Board granted an exemption for Montana Rail Link to discontinue service over approximately 656.47 miles of non-contiguous rail line and to discontinue trackage rights service over approximately 66.47 miles of rail line in Montana, Idaho, and Washington, subject to standard employee protective conditions. Later, in a separate decision, the Board denied a petition to stay the effective date of the exemption.

*In CSX Transportation, Inc.—Abandonment Exemption—in Mason County, Ky.,* Docket No. AB 55 (Sub-No. 791X), the Board waived a regulatory provision that would have resulted in the expiration of CSX Transportation’s authority to abandon its dock and loadout/conveyor belt in Mason County, Ky., and accepted its late-filed notice of consummation.

*In Snohomish County—Adverse Abandonment—GNP RLY, Inc., in Snohomish County, Wash.,* Docket No. AB 1331, the Board granted exemptions from certain statutory provisions and waived certain regulatory requirements that normally apply when filing an application for abandonment authority but were either unnecessary here or would be difficult or impossible for Snohomish County to comply with, should it file an application for adverse abandonment.

*In City of Peoria, Ill.—Discontinuance of Service Exemption—in Peoria County, Ill.,* Docket No. AB 1066 (Sub-No. 3X), the Board granted the City of Peoria, Ill., authority to discontinue rail service over an approximately 1.1-mile portion of a rail line on behalf of the Central Illinois Railroad Company.

*In City of Tacoma, Department of Public Utilities, d/b/a Tacoma Rail—Discontinuance of Service Exemption—in Pierce County, Wash.,* Docket No. AB 1239 (Sub-No. 3X), et al., the Board allowed Tacoma Rail and Tacoma Rail Mountain Division, two separate departments of the City of Tacoma, Wash., to discontinue rail service over approximately 3.5 miles of rail line in Thurston County, Wash., subject to standard employee protective conditions.

*In Norfolk Southern Railway Company—Abandonment Exemption—in the City of Greensboro, N.C.,* Docket No. AB 290 (Sub-No. 404X), the Board clarified its regulatory authority over a railbanked line in North Carolina, explained the Board’s procedures for determining whether

a portion of a right-of-way can be removed from such a line, and gave the railroad additional time to respond to a petition from the City of Greensboro.

In *Growth Resources of Wellsboro Foundation—Abandonment Exemption—in Tioga County, Pa.*, Docket No. AB 1320X, et.al, the Board lifted the abeyance orders in Docket Nos. AB 1320X and AB 1325X and allowed the notices of exemption in those dockets to be published in the Federal Register. The Board also found that a notice of exemption published in Docket No. FD 35595 in 2012 was void ab initio insofar as it purported to transfer ownership of a certain rail line to Wellsboro & Corning Railroad, LLC, and corrected certain other information contained in that notice.

In *Cleveland & Cuyahoga Railway—Discontinuance of Service Exemption—in Cuyahoga County, Ohio*, Docket No. AB 1333X, the Board allowed Cleveland & Cuyahoga Railway to discontinue service over 10.4 miles of rail line in Cuyahoga County, Ohio, subject to standard employee protective conditions.

In *Great Redwood Trail Agency—Adverse Abandonment—Mendocino Railway in Mendocino County, Cal.*, Docket No. AB 1305 (Sub-No. 1), the Board granted exemptions from certain statutory provisions and waived certain regulatory requirements that normally apply when filing an application for abandonment authority but either would be unnecessary or would be difficult or impossible for the Great Redwood Trail Agency to comply with should it file an application for adverse abandonment.

In *Elkhart & Western Railroad--Discontinuance of Trackage Rights Exemption—in Marshall & Fulton Counties, Ind.*, Docket No. AB 1329X, the Board allows Elkhart & Western Railroad discontinue service over approximately 11.7 miles of rail line in Marshall and Fulton Counties, Ind., subject to standard employee protective conditions and denied a motion to compel discovery.

In *Housatonic Railroad—Discontinuance of Service—Dutchess & Putnam Counties, N.Y.*, Docket Nos. AB 733 (Sub-No. 1X) et al., the Board denied Metro-North Commuter Railroad’s request for a notice of interim trail use for a 41-mile rail line owned by Metro-North but outlined the procedure by which Metro-North could pursue interim trail use/rail banking for the line. The Board also denied as unnecessary Metro-North’s petition to acquire the residual common carrier rights and obligations for the line from its former trackage rights tenant, Housatonic Railroad.

## **Environmental Review**

The Board considers environmental impacts in its decision-making process under the National Environmental Policy Act (NEPA) and related laws and regulations. By preparing the requisite environmental reviews and inviting the public to participate in the Board's environmental review process, the Board ensures its compliance with NEPA. The Board documents its NEPA findings by preparing Environmental Impact Statements (EISs) or Environmental Assessments (EAs), which assess the potential environmental impacts that could result from Board decisions.

During FY 2023, OEA worked on 12 EISs and 28 EAs in rail projects, comprising rail line constructions, rail line abandonments and a major merger. During FY 2023, 164 cases before the Board fell within a categorical exclusion from NEPA review. These cases included leases, operating exemptions, declaratory orders, rulemakings, transactions involving corporate changes, and certain acquisitions and discontinuances.

### **Environmental Impact Statements**

The EISs addressed projects such as the proposed acquisition of KCS by Canadian Pacific. The Board served as a cooperating agency in environmental reviews for rail constructions in Nevada and California. The Board is also monitoring environmental mitigation in rail construction cases in Alaska and Utah.

### **Environmental Assessments**

The EAs addressed 11 rail line construction cases that would provide passenger service, rail service to various industrial complexes and port facilities, the divestiture of a rail line under a responsive application in the major Canadian Pacific/KCS merger case noted above, and 17 rail line abandonments. Finally, the Board has continued working towards completion of the National Historic Preservation Act requirements for a complex rail line abandonment in Jersey City, N.J.



## **Alternative Dispute Resolution**

The Board has established arbitration and mediation rules to help parties informally resolve disputes and avoid costly litigation, and the Board actively encourages parties to use alternative dispute resolution. Mediation efforts have facilitated the settlement of cases and satisfactorily addressed other conflicts. Successful mediation settlements result in significant savings of litigation expenses to the parties, allow both sides to reach mutually satisfactory agreements, and make available the Board's limited staff resources to work on other matters.

The Board continued to engage the expertise of the Federal Mediation and Conciliation Service in FY 2023 to conduct Board-sponsored mediations with Board staff. This partnership has greatly enhanced the Board's mediation services offered to our stakeholders. In FY 2023, the Board held two mediations. To date, there has not been an arbitration case filed under the Board's mediation and arbitration procedures.

## **Public Outreach and Informal Dispute Resolution**

OPAGAC and RCPA continue to provide shippers, carriers, state and local governments, and members of the public with an accessible and effective resource for resolving certain disputes on an informal basis. RCPA works to resolve conflicts that might otherwise be submitted to the Board for adjudication, thereby conserving stakeholder and agency resources.

In FY 2023, RCPA handled 1,492 inquiries from stakeholders, of which approximately 145 pertained to shipper-railroad disputes. RCPA worked with parties to successfully resolve matters related to timely fulfillment of car orders, availability of rail resources, track maintenance, interchange operations, inter-carrier disputes, switching services, car storage, rates and charges, track lease agreements, and responsibility for spur track.

RCPA also informally assisted customers of household goods (HHG) moving companies to resolve service and rate disputes. The Federal Motor Carrier Safety Administration (FMCSA) has primary regulatory and enforcement jurisdiction in this area. RCPA maintained its informal engagement with FMCSA to discuss HHG trends and with the Federal Maritime Commission to discuss issues of common interest.

In addition to its dispute resolution function, OPAGAC also serves as a primary liaison between the public and the Board. OPAGAC fields inquiries from Board practitioners as well as from members of the broader public to provide those parties with a better understanding

of the laws and regulations administered by the Board, as well as proceedings before the Board.

## Court Actions and Other Legal Matters

In FY 2023, the Office of the General Counsel (OGC) handled a variety of cases on behalf of the Board:

In the area of new-carrier entry, the reviewing court vacated and remanded a Board decision authorizing, through an exemption, the construction and operation of a rail line in Utah. *Seven Cnty. Infrastructure Coal.—Rail Constr. & Operation Exemption—in Utah, Carbon, Duchesne, & Uintah Cntys., Utah*, FD 36284, (STB served Dec. 5, 2021). The court found that the Board’s environmental analysis of certain cumulative and indirect impacts under NEPA was not adequate; that the Board did not consider the financial viability of the project; and that, in its decision under the exemption procedures, the Board did not sufficiently weigh the environmental harm associated with the project against its transportation benefits. *Eagle County, Colo. v. Surface Transportation Board*, Nos. 22-1019, et al. (D.C. Cir. Aug. 18, 2023). The proponent of the project, the Seven County Coalition, has filed a petition for rehearing *en banc* arguing that the court’s opinion conflicts with prior D.C. Circuit precedent and with precedent in other circuits.

In the area of combinations and mergers, the Board successfully defended its decision finding that Norfolk Southern Railway Company had not been authorized to acquire control over the Norfolk & Portsmouth Belt Line Railroad Company in the context of a major 1982 consolidation, nor had it obtained control through later corporate-family exemptions that did not mention the Belt Line. *Norfolk Southern Railway Co.—Pet. for Dec. Order*, Docket No. FD 36522 (STB served June 17, 2022). Although the Board’s decision should have been challenged in the U.S. District Court for the Eastern District of Virginia, which had referred the matter to the Board, the D.C. Circuit accepted the petition for review and took jurisdiction over the matter. The D.C. Circuit affirmed the Board’s ruling in all respects. *Norfolk Southern Railway Co. v. Surface Transportation Board*, No. 22-1209 (D.C. Cir. Jun. 30, 2023). Norfolk Southern has indicated that it may seek further review in the Supreme Court. The Board also answered a parallel complaint by Norfolk Southern in the Eastern District of Virginia. See *Norfolk Southern Railway Co. v. Surface Transportation Board*, No. 2:22-cv-00385-EWH-LRL (E.D. Va.).

In the area of abandonment and its associated environmental and historical review, the Board successfully defended a challenge to its interlocutory order finding that Consolidated Rail Corporation did not violate Section 110(k) of the National Historic Preservation Act. *Consol. Rail Corp.—Aban. Exemption—in Hudson Cnty., N.J.*, AB 167 (Sub-No. 1189X) (STB served Aug. 22, 2022). Various interests sought review of the decision in the D.C. Circuit. The court granted the motion filed by the Board and United States to dismiss the petition for lack of jurisdiction because the decision is not a final agency order. *City of Jersey City, et al v. STB*, No. 22-1270 (D.C. Cir. Jan. 6, 2023).

In the area of service, the reviewing court denied a request by BNSF to stay a portion of a Board injunction (in *Navajo Transitional Energy Company—Ex Parte Petition for Emergency Service Order*, Docket No. NOR 42178) ordering the carrier to provide certain levels of service to Navajo Transitional Energy Company. *BNSF Railway Co. v. Surface Transportation Board*, No. 23-60402 (5th Cir. Aug. 30, 2023). Briefing has moved forward on the “merits” of the matter.

In the area of combinations and mergers, the Board is defending its decision approving the combination of Canadian Pacific and Kansas City Southern, which was the first merger of Class I carriers approved by the Board in over 25 years. *Can. Pac. Ry.—Control—Kansas City S.*, FD 36500 (STB served Mar. 15, 2023). Competing rail carrier Union Pacific, Chicago-area commuter rail system Metra, and a coalition of Chicago-area municipalities are seeking review of the decision in the D.C. Circuit. *Union Pac. R.R. Co., et al. v. Surface Transportation Board, et al.*, Nos. 23-1125, 23-1131, 23-1165, and 23-1274 (D.C. Cir.). A briefing schedule has not yet been set, as the progression of the case has been complicated by the pendency of petitions for agency reconsideration by Metra and by CSX Transportation.

In the area of rates, the Board is defending its decision adopting “Final Offer Rate Review” procedures, which give shippers a practical way to seek rate relief through accelerated procedural schedules, flexible rate reasonableness standards, and “final offer” procedures for selecting the rate that will be prescribed for the future. The railroad industry sought review of the decision in the Eighth Circuit. *Union Pacific Railroad Company and the Association of American Railroads v. Surface Transportation Board*, Nos. 22-3648 & 23-1325 (8th Cir.). The Board filed its brief on June 16, 2023. Oral argument has not yet been set in the matter.

In the area of rates, the Board’s decision adopting arbitration procedures for small rate cases has been challenged in court by railroad interests. The arbitration program, which followed the contours but not all the details of a program that the rail industry recommended, would have postponed FORR’s application for a period of at least five years, but only if all Class I railroads opted into the program; because only one railroad did so, the program is currently inoperable. *Joint Pet. for Rulemaking to Establish a Voluntary Arb. Program for Small Rate Disputes*, EP 765 (STB served Dec. 19, 2022). The court case is currently in abeyance as the Board considers administrative petitions for reconsideration. *Grand Trunk Corp. and Illinois Central Railroad Co. v. Surface Transportation Board*, No. 22-3289 (7th Cir.)

In the area of rates, Western Coal Traffic League has filed a petition for a writ of mandamus in the D.C. Circuit asking the court to direct the Board either to initiate rulemakings on revenue adequacy issues or to issue an order closing out its informational proceedings in *Hearing on Revenue Adequacy*, Docket No. EP 761, and *Railroad Revenue Adequacy*, Docket No. EP 722. The Board instituted proceedings and held hearings on general revenue adequacy issues, but it has not proposed any rules. The Board filed its brief responding to the petition on August 24, 2023. *In re: Western Coal Traffic League*, No. 23-1126 (D.C. Cir.).

In addition, Western Coal Traffic League has filed a petition for review of the Board’s decision in *Railroad Cost of Capital—2022*, EP No. 558 (STB served Aug. 3, 2023). The Board’s ministerial ruling in that case calculated the railroad industry’s cost of capital for the year 2022. Consistent with numerous prior decisions calculating the industrywide cost of capital, the Board also declined to entertain in this docket Western Coal’s challenges to the methodology used. Instead, as it has done many times before, it stated that Western Coal should file a petition for rulemaking if it wishes to challenge the methodology.

The Board continued to defend in court its decisions regarding BNSF Railway Company’s terminal trackage rights in *Kansas City Southern Railway Company v. Surface Transportation Board*, Nos. 16-1308 and 20-1116 (D.C. Cir.). Two consolidated appeals are currently being held in abeyance, with the parties providing quarterly status reports to the Court, pending the resolution of the compensation-setting phase at the Board. In April 2022, KCS filed a third petition for review in the D.C. Circuit (No. 22-1069) challenging a recent Board decision setting forth “general service principles the Board expects parties to

include in any future operating plan(s)” for the granted trackage rights and indicating that the parties remained responsible for attempting to establish conditions. The Board moved to dismiss KCS’s new petition for review or, in the alternative, to consolidate it with the prior appeals and hold it in abeyance. On August 11, 2022, the Court granted the Board’s alternative request and ordered that Case No. 22-1069 be consolidated with the two other appeals and held in abeyance pending further order of the Court.

The Board continued to assist the DOJ in the defense of numerous Fifth Amendment takings cases arising from the conversion or attempted conversion of rail lines to interim trail use under the National Trails System Act. The OGC also continued to work on a wide variety of other legal matters, including matters involving FOIA, the Paperwork Reduction Act, the Equal Employment Opportunity Act, NEPA, the National Historic Preservation Act, the National Trails System Act, and the Federal Advisory Committee Act. It provided legal counsel on general personnel and ethics issues, issues related to COVID-19, and government contracting, and participated in the Administrative Conference of the United States. The OGC also houses the Board’s Records Office, which manages the agency’s compliance with the Federal Records Act and related authorities.

## **Advisory Committees**

The Board has three transportation advisory councils, of which the Board members are ex-officio members. Established under the ICC Termination Act of 1995, the Railroad-Shipper Transportation Advisory Council (RSTAC) advises the Board, the Secretary of Transportation, and Congress on railroad-transportation policy issues of particular importance to small shippers and small railroads, such as railcar supply, railroad service, rates, and competitive matters. Its 15 appointed members consist of senior officials representing large and small shippers, large and small railroads, and one at-large representative. Along with the Board members, the Secretary of Transportation is also an ex-officio member. RSTAC held quarterly in-person meetings during FY 2023 on December 6-7, 2022, March 15-16, 2023, June 20-21, 2023, and September 26-27, 2023.

The Rail Energy Transportation Advisory Committee (RETAC) was created in 2007 to provide advice and guidance to the agency on emerging issues concerning the rail transportation of energy resources such as coal, crude oil, ethanol, and other biofuels. The 27 voting members (as of September 20, 2023) of RETAC represent a balance of stakeholders, including large and small railroads, coal producers, electric utilities, the biofuels industry, the petroleum production industry, the private railcar industry, the renewable energy industry, and labor. RETAC typically holds meetings twice per year. RETAC met in-person on October 26, 2022,

and again on April 26, 2023.

The National Grain Car Council (NGCC) assists the Board in addressing issues concerning grain transportation by fostering communication among railroads, shippers, rail-car manufacturers, and the government. The NGCC, which meets once a year, is, as of September 20, 2023, composed of 12 representatives from Class I railroads, seven from Class II and Class III railroads, 14 from grain shippers and receivers, and seven from private rail car owners and manufacturers. NGCC was held in person on August 15, 2023.

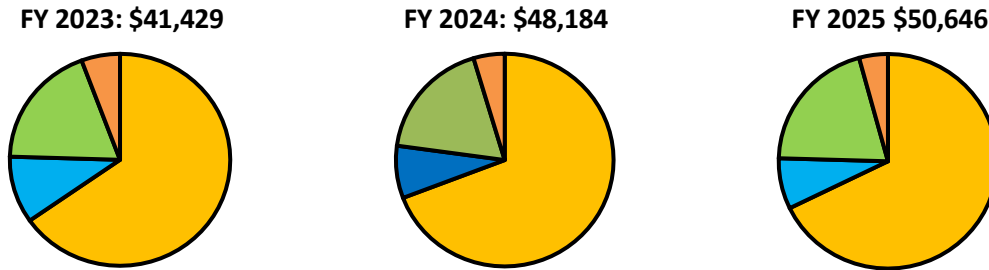
The Board is also in the process of forming a fourth advisory committee: the Passenger Rail Advisory Committee (PRAC). PRAC will provide advice and guidance to the Board on issues surrounding railroad passenger services and transportation. PRAC's 18 members will include representatives from Amtrak; commuter rail operators; intercity passenger rail operators other than Amtrak; states that fund or are served by intercity passenger rail service; Class I, II, and III railroad operators; rail labor; rail passenger advocates; and rail shipper advocates. PRAC will meet at least twice per year and is expected to be formed early in FY 2024.

# Budget Data

## Dollar Cost: Comparison by Object Classification, FYs 2023–2025

(as of 9/30/2023)

(dollar amounts in thousands)



CATEGORY OF OBLIGATION <sup>2</sup>	FY 2023 Actual		FY 2024 Request		FY 2025 Request	
	Dollars	Percent of Total	Dollars	Percent of Total	Dollars	Percent of Total
Personnel Compensation and Benefits	\$26,397	64%	\$33,349	71%	\$34,337	68%
Rent, Utilities, and Security	3,895	9%	3,833	9%	3,874	8%
Services <sup>3</sup>	9,412	23%	8,771	15%	10,279	20%
Other <sup>4</sup>	1,725	4%	2,231	5%	2,156	4%
<b>TOTAL</b>	<b>\$41,429</b>	<b>100%</b>	<b>\$48,184</b>	<b>100%</b>	<b>\$50,646</b>	<b>100%</b>

<sup>2</sup>Note: Dollars may not add due to rounding in this and subsequent charts.

<sup>3</sup> Services include, but are not limited to, obligations for contractor staff (IT services; financial management, internal controls, and financial audits), software licenses, and the Working Capital Fund.

<sup>4</sup> Other includes budget object classes such as equipment, supplies, reimbursable collections, travel, training, printing, postage and contractual mail, and miscellaneous services.

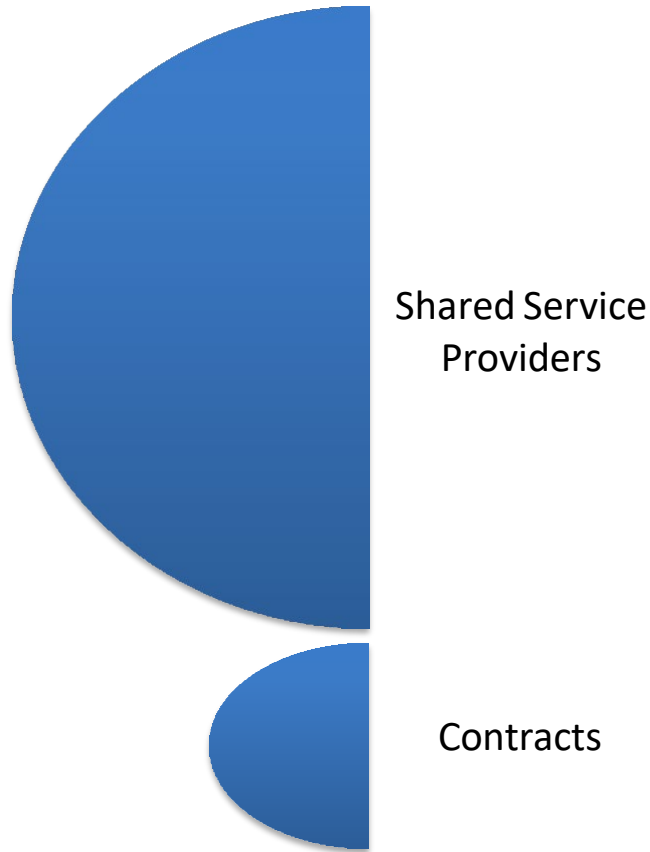
## Analysis of Change by Object Classification, FYs 2023–2025

(dollar amounts in thousands)

	FY 2023 Actual Obligation (As of 9/30/23)	FY 2024 Request	FY 2025 Request	FY 2024-25 Change	Percentage Change
<b>Personnel Compensation and Benefits</b>	<b>\$26,397</b>	<b>\$33,349</b>	<b>\$34,337</b>	<b>988</b>	<b>3%</b>
Rent and Utilities	\$3,094	\$3,107	\$3,126	19	0.6%
Building Security	801	726	748	22	3%
Information Technology	7,210	5,948	7,168	1,220	20.5%
Interagency Agreements and Technical Services	1,860	2,473	2,750	277	11.2%
Working Capital Fund	342	350	361	11	3.1%
Travel and Transportation	129	204	206	2	1%
Training	88	150	149	-1	-0.7%
Office Printing, Supplies, Subscriptions, and Publications (Federal Register, Legal, and Periodicals)	425	449	427	-22	-4.9%
Misc. Expenses (Building maintenance, Operational support, and other operating expenses)	68	178	124	-54	-30.3%
Reimbursable Obligations (Offsetting Collections)	1,015	1,250	1,250	0	0.0%
<b>Subtotal Non-personnel Obligations</b>	<b>\$15,032</b>	<b>\$14,835</b>	<b>\$16,309</b>	<b>\$1,474</b>	<b>9.9%</b>
<b>Total Obligations</b>	<b>\$41,429</b>	<b>\$48,184</b>	<b>\$50,646</b>	<b>\$2,462</b>	<b>5.1%</b>



## FY 2023 Breakout of Shared Service Providers and Non-Federal Partners



- **Department of Interior** (Cloud and Payroll)
- **Department of Justice** (Security Operations Center)
- **Department of Transportation**
  - **Office of the Secretary of Transportation** (Procurement)
  - **Federal Aviation Administration** (Financial)
  - **Office of the Inspector General** (FISMA/Financial Statement audits)
  - **Volpe National Transportation System Center** (Rail OTP)
- *Other Interagency Agreements*
  - **Environmental Protection Agency** (FOIA online)
  - **Veterans Affairs** (Credit Card management)
  - **Office of Personnel Management** (Performance Management)
  - **Health and Human Services** (Employee Health Services)
  - **Federal Mine Safety & Health Review Commission** (Administrative Law Judges)
  - **Federal Railroad Administration** (Waybill collection and analysis)
- **IT Modernization and Cybersecurity Support Services**
- **Website modernization and cloud migration** (Infrastructure)
- **Enterprise Risk Management program** (A-123 and Policies)

## Workload Summary

Workload Category	FY 2023 (actual as of 9/30/2023)	FY 2024 Estimate	FY 2025 Estimate
Alternative Dispute Resolution			
Arbitrations	0	0	0
Informal Dispute Resolution	145	120	120
Mediations	2	6	6
Audits	7	10	10
Decisions			
Complaints			
Rate	7	12	16
Non-Rate	34	25	30
Declaratory Orders	25	20	25
Ex Parte Proceeding Decisions			
Rulemakings	14	25	25
Other	32	22	22
Licensing			
Applications/Petitions	63	100	100
Notices of Exemption	154	185	190
Other (incl. grant stamps)	12	26	40
Non-Rail Decisions	12	10	10
Other	17	25	25
Defensibility Assessments	168	170	170

Depreciation Studies	9	10	10
Economic Statistical Reports	31	27	27
Environmental			
Categorical Exclusions	164	170	170
Environmental Assessments	28	30	30
Environmental Impact Statements	12	13	13
Ethics Reviews	155	160	160
Fee Waiver Decisions	4	12	15
Advisory Committee Meetings (incl. Federal Advisory Committee Act Committees)	8	9	10
Filings	1,799	2,300	2,400
FOIA Requests	119	100	100
Investigations (pursuant to 49 U.S.C. § 11701)	0	1	1
Investigations (pursuant to 49 U.S.C. § 24308(f))	1	1	1
Judicial Review	21	25	25
Outreach & Communication			
Conferences	32	20	20
Environmental Meetings	15	16	16
Ex Parte Meetings	0	20	20
Stakeholder Meetings	289	200	200
Public Forum			
Hearings	2	3	3
Listening Sessions	0	3	3
Oral Arguments	1	3	3
Other	2	0	0

Rail Service Data Reports	384	384	384
Recordations	1,184	1,400	1,500
Section 5 Collaborative Discussions	18	20	20
Technical Conferences	2	2	2
Waybill Requests	150	125	125
Paperwork Reduction Act Requests and Submissions to OMB	24	23	23

# Strategic Performance Goals & Measures

(as of 9/30/23)

**GOAL 1**

**Promote and protect the public interest in surface transportation matters.**

Performance Goals and Measures	FY23 Target	FY23 Actual	FY24 Target
<b><u>Performance Goal 1.0.1: Promptly and fairly resolve disputes consistent with the public interest.</u></b>			
<b>Performance Measure 1.0.1.1:</b> Proportion of cases and disputes in which the Board issues decisions within applicable deadlines	75%	<i>Exceeded</i>	75%
<b>Performance Measure 1.0.1.2:</b> Proportion of court filings timely filed and accepted	95%	100%	95%
<b>Performance Measure 1.0.1.3:</b> Number of substantive judicial filings made	N/A	21	N/A
<b>Performance Measure 1.0.1.4:</b> Proportion of court decisions that fault the STB for failing to address issues raised	≤25%	33.3%	≤25%
<b>Performance Measure 1.0.1.5:</b> Proportion of court decisions that set aside agency rulings	≤25%	33.3%	≤25%
<b>Performance Measure 1.0.1.6:</b> Number of defensibility assessments completed	N/A	168	N/A
<b><u>Performance Goal 1.0.2: Promulgate rules and policy statements, employing notice- and-comment procedures as appropriate.</u></b>			
<b>Performance Measure 1.0.2.1:</b> Proportion of rulemakings with publicly stated deadlines that are completed in the timeline identified in the Regulatory Agenda	Baseline	60%	60%

Performance Goals and Measures	FY23 Target	FY23 Actual	FY24 Target
<p><b>Performance Goal 1.0.3:</b> Provide for transparency and public participation in Board decisions and policymaking to the extent practicable.</p> <p><b>Performance Measure 1.0.3.1:</b> Proportion of FOIA requests responded to within 20 business days as required by statute (excluding statutorily authorized extensions)</p> <p><b>Performance Measure 1.0.3.2:</b> Number of collaborative meetings hosted to discuss emerging challenges and industry trends with various stakeholder groups</p>	<p>95%</p> <p>Baseline</p>	<p>99%</p> <p>164</p>	<p>95%</p> <p>100</p>
<p><b>Objective 1.1:</b> Remedy competitive and other regulatory concerns, where appropriate, by determining reasonable rates and practices for users of the national rail network and other transportation modes within the Board’s jurisdiction.</p>			
<p><b>Performance Goal 1.1.1:</b> Provide rate case processes that fairly and efficiently resolve rate disputes.</p> <p><b>Performance Measure 1.1.1.1:</b> Complete rulemakings to update procedures for small rate disputes in FY23</p> <p><b>Performance Measure 1.1.1.2:</b> Number of rate and unreasonable practice cases/disputes brought before the Board</p>	<p>Achieve</p> <p>N/A</p>	<p>Achieved</p> <p>1</p>	<p>Achieve</p> <p>N/A</p>
<p><b>Objective 1.2:</b> Evaluate certain railroad licensing actions for consistency with the public interest, considering the potential effects on shippers, consumers, the rail network, the environment, railroad employees, and the public at large.</p>			
<p><b>Performance Goal 1.2.1:</b> Ensure compliance with applicable statutory and regulatory requirements.</p> <p><b>Performance Measure 1.2.1.1:</b> Proportion of licensing actions resolved through Director Order in which the Order is timely published, or parties are informed of deficiencies</p> <p><b>Performance Goal 1.2.2:</b> Consider potential economic, environmental, and operational impacts in agency decision-making.</p> <p><b>Performance Measure 1.2.2.1:</b> Number of economic and operational research projects conducted</p> <p><b>Performance Measure 1.2.2.2:</b> Number of categorical exclusions</p>	<p>Baseline</p> <p>Baseline</p> <p>N/A</p>	<p>99%</p> <p>81</p> <p>164</p>	<p>95%</p> <p>81</p> <p>N/A</p>

Performance Goals and Measures	FY23 Target	FY23 Actual	FY24 Target
<p><b>Performance Measure 1.2.2.3:</b> Number of Environmental Impact Statements prepared</p>	N/A	12	N/A
<p><b>Performance Measure 1.2.2.4:</b> Number of Environmental Assessments prepared</p>	N/A	28	N/A
<p><b>Objective 1.3:</b> Promote consistent, fluid, and efficient service that fulfills the needs of customers and the public in an ever-changing economy.</p>			
<p><b>Performance Goal 1.3.1:</b> Through the Rail Customer and Public Assistance Program, provide an informal venue for the private-sector resolution of disputes, and assist Board stakeholders seeking guidance in complying with Board decisions and regulations.</p>			
<p><b>Performance Measure 1.3.1.1:</b> Number of RCPA inquiries received</p>	N/A	1,492	
<p><b>Performance Measure 1.3.1.2:</b> Proportion of informal inquiries and complaints from stakeholders and the public responded to by RCPA within 3 days of receipt</p>	Baseline	95%	95%
<p><b>Objective 1.4:</b> Consider potential environmental and historic impacts in agency decision-making, consistent with applicable laws and regulations and impose mitigation conditions as appropriate.</p>			
<p><b>Performance Goal 1.4.1:</b> Conduct timely and thorough environmental and historic preservation reviews consistent with NEPA, NHPA, and other laws and regulations.</p>			
<p><b>Performance Measure 1.4.1.1:</b> Proportion of environmental reviews concluded within the FY which adhered to applicable regulatory timelines</p>	80%	86%	80%
<p><b>Performance Goal 1.4.2:</b> Consult with other Federal agencies, state and local agencies, tribes, and other interested parties.</p>			
<p><b>Performance Measure 1.4.2.1:</b> Total number of cooperating agencies involved in environmental and historical review processes</p>	N/A	11	N/A
<p><b>Performance Measure 1.4.2.2:</b> Total number of tribes with which government-to-government consultation is conducted</p>	N/A	13	N/A
<p><b>Performance Measure 1.4.2.3:</b> Number of cases in which a NHPA Section 106</p>	N/A	2	N/A

Performance Goals and Measures	FY23 Target	FY23 Actual	FY24 Target
<b>Performance Goal 1.4.3:</b> Provide the opportunity for public participation in the environmental and historic review processes for specific cases before the Board.			
<b>Performance Measure 1.4.3.1:</b> Total number of public meetings held during environmental and historic reviews	N/A	15	N/A
<b>Performance Measure 1.4.3.2:</b> Total number of comments (oral and written) received during environmental and historic reviews	N/A	564	N/A

**GOAL 2** Foster a competitive and sound surface transportation system that provides reliable service at reasonable rates.

Performance Goals and Measures	FY23 Target	FY23 Actual	FY24 Target
<b>Performance Goal 2.0.1:</b> Collect and publish rail service data permitting the public to better understand trends in traffic volumes, rates, and the financial health of the rail industry.			
<b>Performance Measure 2.0.1.1:</b> Proportion of monthly, quarterly, and annual statistical reports published within 30 days of receiving all needed inputs	100%	100%	100%
<b>Performance Measure 2.0.1.2:</b> Proportion of waybill requests timely processed	Baseline	100%	100%
<b>Objective 2.1:</b> Uphold the common carrier obligation.			
<b>Performance Goal 2.1.1:</b> Enforce the common carrier obligation through the formal adjudication of service complaints.			
<b>Performance Measure 2.1.1.1:</b> Number of service complaints brought before the Board	N/A	3	N/A
<b>Performance Goal 2.1.2:</b> Facilitate the common carrier obligation through informal dispute resolution of service complaints.			



Performance Goals and Measures	FY23 Target	FY23 Actual	FY24 Target
<b>Performance Measure 2.1.2.1:</b> Number of informal dispute resolutions relating to the common carrier obligation supported	N/A	145	N/A
<b>Objective 2.2:</b> Preserve and enhance competition, including through regulation where appropriate.			
<b>Performance Goal 2.2.1:</b> Evaluate policies and implement rules to adjust to changes in the industry.			
<b>Performance Measure 2.2.1.1:</b> Number of research projects supporting policy evaluation or rulemakings	Baseline	48	48
<b>Objective 2.3:</b> Provide accessible and transparent rate review processes.			
<b>Performance Goal 2.3.1:</b> Conduct public hearings and listening sessions on matters of economic import, including, when applicable, rate procedures.			
<b>Performance Measure 2.3.1.1:</b> Number of public events convened on matters of economic import	Baseline	2	2
<b>Objective 2.4:</b> Provide oversight of passenger rail service in order to carry out statutory directives.			
<b>Performance Goal 2.4.1:</b> Monitor the On-Time Performance (OTP) and delays of Amtrak’s routes and trains as they provide passenger service over the nation’s rail network.			
<b>Performance Measure 2.4.1.1:</b> Administratively establish the Office of Passenger Rail in FY23	Achieve	Achieved	Achieve
<b>Performance Measure 2.4.1.2:</b> Proportion of quarters in which quarterly data is analyzed and provided to the Board within 10 business days of posting by the FRA	75%	50%	75%
<b>Performance Goal 2.4.2:</b> Enforce OTP through efficient adjudication of OTP complaints and Board-initiated investigations, when appropriate.			
<b>Performance Measure 2.4.2.1:</b> Proportion of non-“grant stamp” decisions related to PRIIA Section 213 in which a plan and deadline for completion is established	100%	100%	100%

Performance Goals and Measures	FY23 Target	FY23 Actual	FY24 Target
<b>Performance Measure 2.4.2.2:</b> Proportion of non-“grant stamp” decisions related to PRIIA Section 213 in which established deadlines are achieved	<i>Baseline</i>	<i>80%</i>	<i>75%</i>
<b>Objective 2.5:</b> Monitor the service and operations of carriers and take appropriate action where conditions warrant.			
<b>Performance Goal 2.5.1:</b> Investigate changes in service metrics and/or reports from stakeholders.			
<b>Performance Measure 2.5.1.1:</b> Number of Class 1 Railroads audited by the STB within the FY	<i>7</i>	<i>7</i>	<i>7</i>
<b>Performance Goal 2.5.2:</b> Issue service letters, perform site visits, and hold meetings and hearings to ensure accountability and service reliability.			
<b>Performance Measure 2.5.2.1:</b> Number of service letters issued	<i>N/A</i>	<i>0</i>	<i>N/A</i>
<b>Objective 2.6:</b> Promote a climate that encourages carriers to invest in present and future capacity needs.			
<b>Performance Goal 2.6.1:</b> Engage and communicate with stakeholders regarding the investment, maintenance, and development of the surface transportation system.			
<b>Performance Measure 2.6.1.1:</b> Proportion of recordations entered into the Board's public database within one business day	<i>90%</i>	<i>Exceeded</i>	<i>90%</i>
<b>Performance Measure 2.6.1.2:</b> Total number of major infrastructure investments reported by Class 1 railroads	<i>N/A</i>	<i>13</i>	<i>N/A</i>
<b>Performance Measure 2.6.1.3:</b> Proportion of depreciation studies timely completed	<i>Baseline</i>	<i>100%</i>	<i>100%</i>

**GOAL 3** Provide an accessible, data-driven, and time- and cost-efficient regulatory process that enables stakeholders in the surface transportation industry to plan and conduct their operations effectively.

Performance Goals and Measures	FY23 Target	FY23 Actual	FY24 Target
<p><b>Performance Goal 3.0.1:</b> Make key, disclosable information from the Board’s internal case monitoring and management system available to the public so that stakeholders can be informed about the expected timing for specific Board decisions.</p> <p><b>Performance Measure 3.0.1.1:</b> Proportion of quarterly reports timely provided to Congress on status of rate reasonableness cases, formal complaints, informal complaints, and pending regulatory proceedings</p> <p><b>Performance Measure 3.0.1.2:</b> Publish Semi-annual Regulatory Agenda</p>	<p><b>100%</b></p> <p><b>Achieve</b></p>	<p><b>100%</b></p> <p><b>Achieved</b></p>	<p><b>100%</b></p> <p><b>Achieve</b></p>
<p><b>Objective 3.1:</b> Provide well-defined formal and informal dispute resolution processes to enable parties to make informed decisions about how to best resolve their disputes.</p>			
<p><b>Performance Goal 3.1.1:</b> Offer alternative dispute resolution services that facilitate private sector solutions to problems.</p> <p><b>Performance Measure 3.1.1.1:</b> Number of formal alternative dispute resolutions initiated</p> <p><b>Performance Measure 3.1.1.2:</b> Number of informal dispute resolutions initiated</p>	<p><b>N/A</b></p> <p><b>N/A</b></p>	<p><b>1</b></p> <p><b>145</b></p>	<p><b>N/A</b></p> <p><b>N/A</b></p>
<p><b>Performance Goal 3.1.2:</b> Hold conferences, hearings, and oral arguments and provide adequate guidance to the parties as to the methods the Board intends to use to adjudicate disputes.</p> <p><b>Performance Measure 3.1.2.1:</b> Number of conferences, hearings, and oral arguments hosted</p>	<p><b>Baseline</b></p>	<p><b>3</b></p>	<p><b>3</b></p>
<p><b>Objective 3.2:</b> Reach timely adjudicatory decisions by adhering to appropriate internal and external deadlines.</p>			
<p><b>Performance Goal 3.2.1:</b> Establish internal timelines and deadlines for work products needed to support Board decisions.</p> <p><b>Performance Measure 3.2.1.1:</b> Proportion of weeks in which the Board is provided with a weekly internal deadline report</p>	<p><b>90%</b></p>	<p><b>96%</b></p>	<p><b>90%</b></p>

**GOAL 4**

**Employ a skilled and diverse workforce, encourage innovative leadership at all levels of STB, and apply best practices in a collaborative and well-supported environment.**

Performance Goals and Measures	FY23 Target	FY23 Actual	FY24 Target
<b>Performance Goal 4.0.1: Ensure that Board members and staff are properly trained on and abide by applicable ethics rules.</b>			
<b>Performance Measure 4.0.1.1:</b> Proportion of STB employees who complete required annual ethics training	100%	100%	100%
<b>Performance Measure 4.0.1.2:</b> Proportion of employee’s ethics inquiries responded to within 48 hours	80%	99%	80%
<b>Objective 4.1: Develop and employ a skilled and diverse workforce community reflecting diversity, equity, inclusion, and accessibility (DEIA).</b>			
<b>Performance Goal 4.1.1: Employ a diverse workforce community</b>			
<b>Performance Measure 4.1.1.1:</b> Proportion of positions filled within 80 days of SF52 submission	Baseline	50%	60%
<b>Performance Measure 4.1.1.2:</b> Proportion of STB staff with a reportable disability	12%	18.25%	12%
<b>Performance Measure 4.1.1.3:</b> Proportion of STB staff with a targeted reportable disability	2%	2.38%	2%
<b>Performance Measure 4.1.1.4:</b> Schedule A hiring authority used to hire candidates with disabilities for positions	Y/N	Y	Y
<b>Performance Measure 4.1.1.5:</b> Submit annual State of Agency brief to Chairman	Achieve	Not Achieved	Achieve
<b>Performance Measure 4.1.1.6:</b> Number of Reasonable Accommodation requests where processing time exceeds 20 days	≤1	1	≤1
<b>Objective 4.2: Encourage innovative and inclusive leadership at all levels of STB that, among other things, addresses our changing work environment.</b>			

Performance Goals and Measures	FY23 Target	FY23 Actual	FY24 Target
<b>Performance Goal 4.2.1: Analyze Federal Employee Viewpoint Results and other agency surveys to identify management practices that would improve employee satisfaction.</b>			
<b>Performance Measure 4.2.1.1: OPM Employee Engagement Index</b>	73%	84%	73%
<b>Performance Measure 4.2.1.2: Number of items identified as strengths from Federal Employee Viewpoint survey results</b>	75	80	75
<b>Objective 4.3: Apply best practices in a collaborative and well-supported environment incorporating data-driven decision-making.</b>			
<b>Performance Goal 4.3.1: Ensure agency data is consistent and accessible across the agency to form the basis for data-based decision-making.</b>			
<b>Performance Measure 4.3.1.1: Proportion of data stored in the cloud environment</b>	Baseline	90%	95%
<b>Performance Goal 4.3.2: Implement recommendations from Data Maturity Assessment efforts to apply Data Management best practices.</b>			
<b>Performance Measure 4.3.2.1: Number of Data Governance Board meetings in which the Data Advisory Group reports on progress on priority goals for data modernization</b>	2	1	2

# Administrative and Organizational Data

## STB Offices

### Board Members

The Board consists of five members nominated by the President and confirmed by the Senate. The Board's vice chairmanship rotates among the members on an annual basis. Since January 11, 2021, the Board has a full complement of five members. Each member has a term of five years unless they are filling an unexpired term. If a member leaves the STB before the end of his or her term, a successor may be appointed to the vacant seat for the remainder of that term. The Board's governing statute permits a member to serve up to one year after the expiration of that member's term unless a successor is appointed.

### STB Office Overview

In addition to the five Board members' offices, the staff of the STB is organized into seven offices. The seven offices are comprised of attorneys, economists, and financial, transportation, and environmental analysts with expertise in the rail industry, as well as HR specialists, paralegals, IT specialists, and contractors providing support to ensure the STB has the capabilities to meet its statutory responsibilities.



#### The Office of Economics (OE)

**OE** provides economic, cost, financial, and engineering analyses for the Board. OE also makes available to the public a variety of statistical and financial analyses of the railroad industry. OE manages the Board-prescribed Uniform System of Accounts and cost accounting systems. OE also audits Class I carriers to ensure their compliance with these systems and uses the data provided by carriers to develop and disseminate the Uniform Railroad Costing System.



### The Office of Environmental Analysis (OEA)

**OEA** assists the Board in meeting its responsibilities under the National Environmental Policy Act (NEPA), and other related Federal statutes. NEPA requires the Board to consider potential environmental impacts before making its final decision in certain cases. OEA conducts an independent environmental review of cases filed with the Board and prepares any necessary environmental documentation. OEA also conducts public outreach to inform the public about proposals before the Board and invites public comments on related environmental matters. It also provides technical advice and environmental recommendations to the Board on pending matters, as appropriate.



### The Office of the General Counsel (OGC)

**OGC** provides legal counsel to the Board. In that role, OGC evaluates and advises on the defensibility of the agency's decisions and defends those decisions when challenged in court. OGC also advises the Board on various mission-related matters, including the Freedom of Information Act, the Paperwork Reduction Act, the Equal Employment Opportunity Act, NEPA, and records management. Finally, OGC assists both the Department of Justice in ancillary litigation related to transportation matters and other matters of government-wide interest.



### The Office of the Managing Director (OMD)

**OMD** provides a wide range of administrative services in support of the Board's mission, including human resource management, financial services, IT support, cybersecurity, the Privacy Act, and facilities management. It heads the Board's Privacy and Risk Management programs, as well as houses the Board's Chief Data Officer, who is responsible for guiding the agency's compliance with the Foundations for Evidence-Based Policymaking Act of 2018.



### The Office of Proceedings (OP)

**OP** has primary responsibility for managing the public record in formal cases (or proceedings) before the Board, which includes making recommendations regarding the resolution of issues presented in those cases and drafting the decisions issued by the Board. Specifically, OP oversees the Board's caseload, providing legal and policy recommendations (in conjunction with other Board offices, as needed) to the Board members for resolving the issues presented, and preparing drafts of decisions. OP also performs administrative services for the Board, including receiving and processing formal filings from the public; administering the Board's voting process; coordinating with the Federal Register for publication of decisions; and tracking the Board's casework. In addition, OP maintains a database for recording and perfecting secured transactions involving vessels and railroad rolling stock.



### The Office of Public Assistance, Governmental Affairs, and Compliance (OPAGAC)

**OPAGAC** serves as the STB’s principal point of contact for the U.S. Congress, Federal agencies, foreign, state and local governments, interested stakeholders, the public, and the media. OPAGAC’s mission is to aid the public, to disseminate accurate information concerning the agency and its work, and to help the public understand the law and the agency’s decisions. This office is responsible for external operations including governmental affairs, communications, and compliance. It is also responsible for monitoring rail operations, service analysis, maintaining tariffs, the monitoring and analysis of certain passenger rail matters, and mediation coordination. OPAGAC is also responsible for the management of the Rail Customer and Public Assistance program, which assists interested stakeholders and the public by answering questions pertaining to Board regulations and procedures and facilitating informal private-sector dispute resolution of rail operational and service-related issues and other matters.



### The Office of Passenger Rail (OPR)

**OPR** supports the Board in its efforts to meet its responsibilities under the Passenger Rail Investment and Improvement Act of 2008. The Office provides the Board with expertise related to passenger rail that includes legal and policy guidance, engineering, data analysis, and rail operations.

The Board has authority to investigate when an Amtrak train’s on-time performance averages less than 80% for any two consecutive calendar quarters. The “on-time performance” of Amtrak trains is a quarterly metric established and reported by the Federal Railroad Administration (FRA). Such an investigation is mandatory upon receipt of an eligible complaint or may be started on the Board’s own initiative. OPR performs data analysis of FRA’s quarterly metrics. The Office also plays a central role in investigations and formal proceedings related to on-time performance.



# STB Office Organization Chart

(as of 9/30/2023)



**Member**  
Robert Primus



**Member**  
Patrick Fuchs



**Chairman**  
Martin Oberman



**Vice Chairman**  
Karen Hedlund



**Member**  
Michelle Schultz



**Office of Equal Employment  
Opportunity**  
*Camella Woodham*  
(Director)



**Office of  
Proceedings**  
*Mai Dinh*  
(Director)



**Office of Economics**  
*Frank O'Connor*  
(Acting Director)



**Office of Environmental  
Analysis**  
*Danielle Gosselin*  
(Director)



**Office of the General  
Counsel**  
*Craig Keats*  
(General Counsel)



**Office of the  
Managing Director**  
*Rachel Campbell*  
(Director)



**Office of Public Assistance,  
Governmental Affairs, and  
Compliance**  
*Janie Sheng*  
(Director)



**Office of Passenger Rail**  
*Neil Moyer*  
(Acting Director)

## Current Staffing Plan and Vacancies

Office	FY 2023			FY 2024
	Employee Positions in Staffing Plan	Employees on Board (as of 9/30/2023)	Vacancies	Employee Positions in Staffing Plan
Members' Offices	13	13	0	13
Equal Employment Opportunity*	0	0	0	0
Office of Economics	25	25	0	26
Office of Environmental Analysis	10	7	3	11
Office of the General Counsel	20	19	1	20
Office of the Managing Director	19	18	1	19
Office of Proceedings	40	32	8	40
Office of Public Assistance, Governmental Affairs, and Compliance	12	9	3	13
Office of Passenger Rail	3	3**	0	10
<b>Board Total</b>	<b>142</b>	<b>126</b>	<b>16</b>	<b>152</b>

\* The STB through an Interagency agreement with the Federal Maritime Commission shares the costs of a Director for the Office of Equal Employment Opportunity, which allows both agencies to use funds responsibly while meeting required federal regulations.

\*\* An additional FTE is on detail from the FRA, raising the total number of OPR FTEs to 4. However, because the FRA detail is not funded by STB, it is not included in the count here.



395 E Street, SW, Washington, D.C. 20423