

BEFORE THE
SURFACE TRANSPORTATION BOARD

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December 19, 2014
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Public Record

STB Ex Parte No. 715

RATE REGULATION REFORMS

**COMMENTS OF
THE AMERICAN CHEMISTRY COUNCIL**

The American Chemistry Council (“ACC”) submits these Comments in response to the Notice served by the Surface Transportation Board (“Board”) in the above-captioned proceeding on December 3, 2014. ACC supports the Board’s explanation, on remand from the U.S. Court of Appeals for the District of Columbia, for increasing the relief cap for Three-Benchmark rate reasonableness cases to \$4 million.

The Board has fully and accurately applied the same rationale for its original relief cap of \$2 million, adopted in *Simplified Standards for Rail Rate Cases*, EP646 (Sub-No. 1) (served Sept 5, 2007), *aff’d sub nom. CSX Transp., Inc. v. STB*, 568 F.3d 236 (D.C. Cir.), *vacated in part on reh’g*, 584 F.3d 1076 (D.C. Cir. 2009) (“*Simplified Standards*”). The original cap was based on litigation cost estimates for Simplified-SAC rate reasonableness cases. Because the Board modified the Simplified-SAC standards in this proceeding, which increased the cost of a Simplified-SAC case, the Board received updated litigation cost estimates based upon actual litigation experience and new evidence of the cost to litigate under the new standards. It then combined both cost estimates to arrive at a relief cap consistent with its prior methodology.

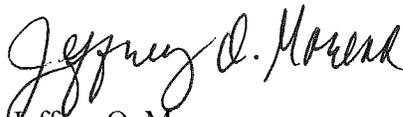
Although the Board has concluded that it overstated those revised litigation costs for Simplified-SAC cases by double-counting certain cost items in both the prior and supplemental

cost estimates, it has reasonably determined that those double-counts were not sufficiently significant to require a reduction of the \$4 million relief cap for Three-Benchmark cases. In light of the Board's prior practice of rounding up to the nearest million dollars, this action was eminently reasonable. Indeed, as the Board notes, it has rounded up by a smaller percentage to reach \$4 million than it did in the *Simplified Standards* decision.

Moreover, the revised litigation cost estimate of \$2 million from a prior Simplified-SAC proceeding represented costs incurred over three years prior to the Board's July 18, 2013 decision in this proceeding.¹ As a result, those costs likely understated the true litigation cost at the time of the Board's decision adopting the \$4 million relief cap. Because the Board indexes the relief caps that are based upon those costs, it would have been appropriate for the Board to index the \$2 million litigation cost component to 2013 levels. *See*, Notice, slip op. at 3 (n. 5). If the Board were to properly index those costs, the magnitude of its rounding would be even smaller than described on page 4 of the Notice.

For the foregoing reasons, ACC supports the Board's proposal to retain the \$4 million relief cap for Three-Benchmark rate cases.

Respectfully submitted,



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¹ The prior case, *U.S. Magnesium, LLC v. Union Pac. R.R. Co.*, Docket NOR 42115, was litigated mostly in 2009.