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SERVICE DATE – SEPTEMBER 23, 2009

SURFACE TRANSPORTATION BOARD

DECISION

STB Ex Parte No. 646 (Sub-No. 2)

SIMPLIFIED STANDARDS FOR RAIL RATE CASES—
TAXES IN REVENUE SHORTFALL ALLOCATION METHOD

Decided: September 22, 2009

In this proceeding, the Board recently revised its methodology to calculate the revenue shortfall allocation method (RSAM), which is one of the three benchmarks used in the smallest rate cases under Simplified Standards for Rail Rate Cases, STB Docket No. 646 (Sub-No. 1) (STB served Sept. 5, 2007). Specifically, RSAM was corrected to take into account state and federal taxes. While federal tax rates are readily available, the Board requested comment on how best to incorporate state tax rates, which can vary based on the state and the railroad. After notice and comment, the Board determined that state tax rates should be incorporated through a weighted average state tax rate for each railroad using the route-miles of track for each railroad in each state and the state tax rates. See Simplified Standards for Rail Rate Cases—Taxes in Revenue Shortfall Allocation Method, STB Ex Parte No. 646 (Sub-No. 2) (STB served Nov. 28, 2008).

To obtain this information for past years, the Board directed the Association of American Railroads (AAR) to submit the evidence and calculations necessary to establish carrier-specific weighted average state tax rates for each Class I railroad, using the corporate income tax rate for each state in which a carrier operates and the number of miles operated in each state. See Simplified Standards for Rail Rate Cases—Taxes in Revenue Shortfall Allocation Method, STB Ex Parte No. 646 (Sub-No. 2) (STB served Jan. 30, 2009) (January 30 decision). In the January 30 decision, we requested the carrier-specific weighted average state tax rates for the years 2002-2007.

In Annual Submission of Tax Information for Use in the Revenue Shortfall Allocation Method, STB Ex Parte No. 682, (STB served Sept. 21, 2009) (RSAM Notice), we issued a notice of proposed rulemaking in which we requested comment on having AAR annually update the carrier-specific weighted average state tax rates for each Class I railroad. Although we expect the RSAM Notice proceeding to conclude prior to the point at which the state tax information will be needed for 2009, there will still be a gap in our state tax information for the year 2008.

Therefore, we now direct AAR to submit supplemental evidence and calculations necessary to establish carrier-specific average state tax rates for each Class I railroad for the year 2008. The submission shall use the 2008 state corporate income tax rates and the number of miles operated by each carrier in 2008 for each state in which it operated in 2008. As we did

earlier in this proceeding, we ask that AAR use information from the railroads' respective R-1 Schedule 702 (Miles of Road at Close of Year—By States and Territories (Single Track)) to calculate the route-mile portion of the average state tax rate equation. Specifically, we direct AAR to use column (g) of Schedule 702, which is the total miles operated, including both "line owned" and "line operated under trackage rights." AAR should then calculate the carrier-specific state tax rates for the 2008 year. All workpapers supporting those calculations must be submitted to the Board.

AAR shall submit the requested information 30 days from the date of service of this decision. We will give interested persons 20 days from the date of submission to comment on the calculations for the carriers. AAR will be given 14 days to file rebuttal comments. Once we resolve any disputes over the carrier-specific state tax rates, we will publish the new RSAM figures for 2008 as soon as practicable.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. AAR shall submit the evidence described above by October 23, 2009.
2. Replies, if any, are due November 12, 2009.
3. AAR's rebuttal evidence is due November 27, 2009.
4. This decision is effective on its service date.

By the Board, Chairman Elliott, Vice Chairman Nottingham, and Commissioner Mulvey.

Anne K. Quinlan
Acting Secretary