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SERVICE DATE – JULY 7, 2011

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. EP 542 (Sub-No. 18)

REGULATIONS GOVERNING FEES FOR SERVICES

Digest:¹ This decision caps the fee charged for filing certain complaints with the Board, providing the public greater access to the Board's processes.

Decided: July 1, 2011

AGENCY: Surface Transportation Board.

ACTION: Final Rule.

SUMMARY: The Surface Transportation Board (Board) is amending the regulations governing user fees for services performed. The amendment sets the fee for sub-items 56(i), 56(ii), and 56(iv) of the Board's fee schedule, 49 C.F.R. § 1002.2(f), Part V, at \$350.

EFFECTIVE DATE: This rule is effective on the date of service.

ADDRESSES: Questions regarding this final rule should be in writing, addressed to: Chief, Section of Administration, Office of Proceedings, Surface Transportation Board, Attn: Docket No. EP 542 (Sub-No. 18), 395 E Street, S.W., Washington, DC 20423-0001.

FOR FURTHER INFORMATION CONTACT: Valerie Quinn at 202-245-0382. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1-800-877-8339.

SUPPLEMENTARY INFORMATION: On February 15, 2011, the Board served a notice of proposed rulemaking (NPRM), in which it proposed amending the Board's regulations governing user fees for services performed, 49 C.F.R. § 1002.2(f), Part V, by lowering the fee for sub-item 56(iv) [all other formal complaints except competitive access] from \$20,600 to \$350. Under the proposal, the fee for sub-items 56(i) [full Stand-Alone Cost rate complaints] and 56(ii) [Simplified-SAC rate complaints] would be set at \$350, and the fee for sub-item 56(iii) [Three

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

Benchmark rate complaints], the most likely path to rate relief for small shippers, would remain at \$150.

The Board sets user fees in accordance with the Independent Offices Appropriation Act of 1952 (IOAA). The IOAA directs agencies such as the Board to establish fees for specific services that it provides to identifiable recipients, so that the service provided may be “self-sustaining to the extent possible.” 31 U.S.C. § 9701(a). The fees must be “fair” and be based on a variety of factors, including (but not limited to) the costs to the agency of each covered service, public policy or interest served, and the value of the service to the entity receiving it. 31 U.S.C. § 9701(b). The Board’s fees transfer some of the cost of funding the agency from the general taxpayer to the entity receiving the benefit of a particular Board action.²

As stated in the NPRM, we believe three sound public policy considerations call for the Board to set relatively low fees for filing a complaint. Under the ICC Termination Act of 1995,³ Congress eliminated authority previously held by the Interstate Commerce Commission to initiate investigations of alleged illegal or unreasonable rates or practices. As a result, the filing of a complaint by shippers or other entities is often the Board’s only mechanism for investigating and addressing potential rate violations or other unlawful practices.

Second, it is possible that the relatively high fees for filing formal complaints under item 56(iv) – currently \$20,600 – may be having a chilling effect on shippers and other entities seeking to bring a complaint to the Board. For example, over the past 10 years, our Rail Consumer and Public Assistance unit has assessed hundreds of informal complaints related to service and demurrage, and although many have been successfully resolved, several that were unresolved did not become the subjects of formal complaints. While we presume that some of these cases were not brought before the Board for reasons unrelated to fees, the proposed fee amendment would minimize any chilling effect of high fees, and encourage outside parties to bring allegations of regulatory violations before the Board for adjudication.

Finally, the proposed amendment should result in better management of the Board’s docket and use of Board resources. Maintaining comparatively low filing fees for petitions for declaratory orders, coupled with the high fee for complaints (other than rate or competitive access complaints) under fee item 56(iv), appears to have led parties to seek broad declarations by the Board rather than asking the Board to resolve individual complaints. In some cases, an individual complaint may have been preferable, and the Board’s fee structure should not be the deciding factor in a party’s decision of what type of case to bring.

Comments in support of the proposed rules were filed individually by the U.S. Department of Agriculture, National Grain and Feed Association, the Fertilizer Institute, the National Industrial Transportation League, Consumers United For Rail Equity (CURE), and

² The fees established by the Board for specific services offset the Board’s appropriated funding, and do not directly add to it.

³ Pub. L. No. 104-88, 109 Stat. 803 (1995).

jointly by Western Coal Traffic League, American Public Power Association, and National Rural Electric Cooperative Association (collectively, Coal Shippers). CURE and Coal Shippers⁴ also filed replies in support of other parties' initial comments. No comments opposing any aspect of the proposed rules were filed. For the reasons set forth in this decision and in the NPRM, we will adopt the proposal in its entirety.

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

It is ordered:

1. The final rules set forth in the Appendix to this decision are adopted.
2. Notice of this decision will be published in the Federal Register.
3. This decision and the final rules adopted herein are effective on the date of service.

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

⁴ On reply, Coal Shippers included Edison Electric Institute.

Appendix

Code of Federal Regulations

For reasons set forth in the preamble, the Surface Transportation Board amends title 49, chapter X, part 1002, of the Code of Federal Regulations as follows:

Part 1002 – FEES

1. The authority citation for part 1002 continues to read as follows:

Authority: 5 U.S.C. § 552(a)(4)(A) and § 553; 31 U.S.C. § 9701 and 49 U.S.C. § 721(a). Section 1002.1(g)(11) also issued under 5 U.S.C. § 5514 and 31 U.S.C. § 3717.

2. Revise § 1002.2, paragraph (f)(56) to read as follows:

§ 1002.2 Filing fees.

* * * * *
(f) * * *

PART V: Formal Proceedings:	
* * *	
(56) A formal complaint alleging unlawful rates or practices of carriers:	
(i) A formal complaint filed under the coal rate guidelines (Stand-Alone Cost Methodology) alleging unlawful rates and/or practices of rail carriers under 49 U.S.C. 10704(c)(1)	\$350.
(ii) A formal complaint involving rail maximum rates filed under the Simplified-SAC methodology	\$350.
(iii) A formal complaint involving rail maximum rates filed under the Three Benchmark methodology.	\$150.
(iv) All other formal complaints (except competitive access complaints)	\$350.
(v) Competitive access complaints.	\$150.
(vi) A request for an order compelling a rail carrier to establish a common carrier rate.	\$250.
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