

SURFACE TRANSPORTATION BOARD

DECISION

STB Ex Parte No. 646 (Sub-No. 1)

SIMPLIFIED STANDARDS FOR RAIL RATE CASES

Decided: October 20, 2006

In a decision served on July 28, 2006, the Board issued a Notice of Proposed Rulemaking (NRPM) seeking public comments on a proposal to revise and clarify its standards and procedures for resolving “those cases in which a full stand-alone cost presentation is too costly, given the value of the case.” 49 U.S.C. 10701(d)(3). As discussed in the NPRM, the Board proposed to create a simplified stand-alone cost (SAC) procedure to use in medium-size rate disputes, retain the Three-Benchmark method, with certain modifications and refinements, for small rate disputes, and establish eligibility presumptions based on the maximum value of the case to distinguish between large, medium-size, and small rail rate disputes.

On September 13, 2006, The National Industrial Transportation League (NITL) filed a broad request for any and all workpapers underlying the NPRM.¹ In particular, NITL sought the workpapers underlying three sets of computations offered for illustrative purposes. The computations include (1) Table 1, which showed the anticipated impact of the proposed changes on the relationship between the RSAM and R/VC_{total} benchmarks; (2) Table 2, which estimated the percentage of regulated rail movements that would be presumed eligible to use these new simplified guidelines; and (3) all tables in Appendix A, which showed the Board’s findings in six prior SAC cases for a variety of road-property investment expense categories.²

On September 25, 2006, the Secretary denied the request for workpapers, stating that: (1) the release of the workpapers supporting Table 2 and the tables in Appendix A would entail the unnecessary release of confidential, commercially sensitive information;

¹ By a decision served September 15, 2006, the Secretary granted the request from NITL and others for a short extension to file opening comments from September 29, 2006, to October 24, 2006.

² The request also asked for any pre-decisional, internal agency analyses or evaluations of the application of the proposed standards or the economic impact of the proposal, which is not a request for workpapers and was therefore properly not addressed by the Secretary.

and (2) the material sought is not needed to assess or fully comment on the merits of the methodological changes the Board has proposed.

On October 16, 2006, NITL filed an appeal of that decision. NITL contends that it needs access to the confidential workpapers to test the accuracy of the figures in Table 2 and Appendix A, and it needs the Board to provide it the public information used to derive the figures in Table 1. NITL maintains that the fact that its request would encompass confidential information is not a reason to deny the information in its entirety. It also argues that its attempt to test the accuracy of the numbers in the NPRM is not premature, because the agency is now considering whether it should change its proposal and, if so, how.

DISCUSSION AND CONCLUSIONS

Appeals from a decision of the Secretary acting under authority delegated by the Chairman of the Board must be filed within 10 days of the date of the action taken. Such appeals “are not favored; they will be granted only in exceptional circumstances to correct a clear error in judgment or to prevent manifest injustice.” 49 CFR 1115.1(c). NITL’s appeal will be denied because the appeal was not filed within 10 days.

Even if we were to consider the merits of the appeal, NITL has failed to demonstrate a clear error in judgment or manifest injustice that would result from the decision. NITL made a sweeping request for workpapers, the vast majority of which are highly confidential. In particular, its motion can be broken into three parts: (1) its request for the unmasked Waybill sample that was used to derive Table 2; (2) its request for the workpapers in prior SAC cases that underlie the Board’s findings that were noted in Appendix A; and (3) its request for the public information used to derive the calculations in Table 1.

NITL has not shown why it needs access to the unmasked Waybill sample in order to comment on the proposal in the rulemaking. The Secretary provided NITL the methodology underlying the results in Table 2 and we have already provided NITL access to the confidential Waybill Sample (with masked contract information) pursuant to 49 CFR 1244.9(b)(4). Using the masked confidential Waybill Sample should have no material effect on the aggregated analysis.

Nor has it demonstrated a manifest injustice if it does not obtain access to all the confidential workpapers in prior, closed SAC cases. We did not intend with this rulemaking to reopen six prior SAC cases to make public confidential records filed as evidence to allow nonparties to those proceedings to inspect and comment on the accuracy of our prior findings. Rather, the proposal is to use those findings, without modification, to simplify the road-property investment analysis in a medium-size rail rate dispute. The Secretary properly advised NITL that, if it believes we cannot use those

prior findings without permitting future litigants access to the confidential records in those cases, it should present those concerns in their comments on our proposal.³

Finally, NITL seeks the workpapers supporting the calculations in Table 1, which showed the anticipated impact of the proposed changes on the relationship between the RSAM and R/VC_{total} benchmarks. We had already set forth, in considerable detail, the methodology used to derive those new benchmarks. See NPRM at 23-24. We advised the public that the numbers were derived from publicly available information, and directed them to that information. Id. at 23 nn.42-43. To the extent NITL is having difficulty finding that public information, or seeks assurances that it is using the correct sources, we gathered the necessary information and provide it to all parties in an appendix to this decision.

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

It is ordered:

1. The appeal of the Secretary's order is denied.
2. This decision is effective on the date of service.

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

Vernon A. Williams

Secretary

³ NITL also sought the index used for Table A-1. The index used was a historical cost index drawn from R. S. Means, Site and Landscape Cost Data, 2005, at 558 (Kingston, MA: 2004).

APPENDIX

Public Information Underlying Table 1

(A)	(B)	(C)	(D)	(E)=(C)*(D)	(F)= (E)-(B)	(G)	(H)= (F)+(G)	(I)	100*(H) / (I)	100*(G) / (I)
	NROI	Net Investment Base	Cost of Capital	Required NROI	Shortfall	Actual Revenue	Needed Revenue	Variable Cost	Proposed RSAM	Proposed R/VCtotal
BNSF	\$1,051,085	\$17,994,909	10.10%	\$1,817,486	\$ 766,401	\$10,857,363	\$11,623,764	\$8,369,119	139	130
CSXT	\$ 552,627	\$12,478,512	10.10%	\$1,260,330	\$ 707,703	\$ 7,114,226	\$ 7,821,929	\$5,721,342	137	124
GTC	\$ 313,299	\$ 5,269,425	10.10%	\$ 532,212	\$ 218,913	\$ 1,788,685	\$ 2,007,598	\$1,331,309	151	134
KCS	\$ 79,717	\$ 960,501	10.10%	\$ 97,011	\$ 17,294	\$ 635,678	\$ 652,972	\$ 448,776	146	142
NS	\$1,295,945	\$11,141,510	10.10%	\$1,125,293	\$ (170,652)	\$ 7,311,869	\$ 7,141,217	\$5,415,165	132	135
SOO	\$ 36,852	\$ 1,123,922	10.10%	\$ 113,516	\$ 76,664	\$ 629,720	\$ 706,384	\$ 477,522	148	132
UP	\$ 964,776	\$21,266,619	10.10%	\$2,147,929	\$1,183,153	\$12,179,614	\$13,362,767	\$9,840,522	136	124

Sources:

NROI	Ex Parte 552 (Sub No. 9) Revenue Adequacy - 2004 Determination, Schedule 250
Net Investment Base	Ex Parte 552 (Sub No. 9) Revenue Adequacy - 2004 Determination, Schedule 250
Cost of Capital	Ex Parte 558 (Sub No. 8) Cost of Capital 2004
Actual Revenue	2004 R-1 Schedule 210 Line 13
Variable Cost	2004 URCS worktable D8 line 614