

ORIGINAL

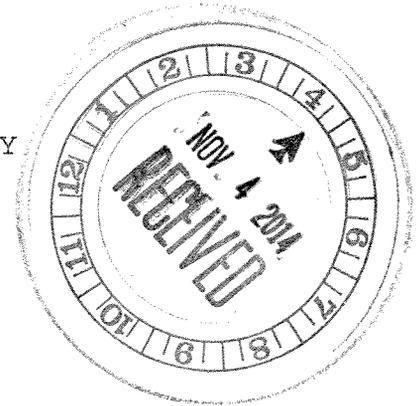
ORIGINAL

Before the  
SURFACE TRANSPORTATION BOARD

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Ex Parte No. 722

RAILROAD REVENUE ADEQUACY

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REPLY COMMENTS



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Attorney for Samuel J. Nasca

November 4, 2014

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SURFACE TRANSPORTATION BOARD

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REPLY COMMENTS

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Samuel J. Nasca,<sup>1/</sup> for and on behalf of SMART-Transportation Division-New York State Legislative Board, submits these Reply Comments, in accordance with the Surface Transportation Board (STB or "Board") Notice dated April 1, 2014 (served April 2). 79 Fed. Reg. 19042-44. (April 7, 2014).<sup>2/</sup>

These reply comments are not directed to the companion proceeding embraced in the April 1 Notice.<sup>3/</sup> Nor is SMART-TD responding with respect to the numerous comments dealing with how the term "revenue adequacy" should be defined or revised; rather, SMART-TD is primarily concerned with that part of the Board's Notice which seeks comments on how to apply revenue adequacy in

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<sup>1/</sup>New York State Legislative Director for SMART-Transportation Div., with offices at 35 Fuller Road, Albany, NY 12205.

<sup>2/</sup>Procedural schedule modified by STB decision dated and served June 16, 2014.

<sup>3/</sup>Ex Parte No. 664 (Sub-No. 2), Petition of the Western Coal Traffic League To Institute a Rulemaking Proceeding To Abolish the Use of the Multi-Stage Discounted Cash Flow Model in Determining the Railroad Industry's Cost of Equity Capital.

determining the reasonableness of rates (Notice, 4, para. 3),<sup>4/</sup> and the initial comments responsive thereto.<sup>5/</sup> SMART-TD believes it would be most inappropriate for the Board to rule that a carrier or rail industry finding of revenue adequacy should have the effect of ending differential pricing. Where conditions permit, a carrier should be able to obtain earnings on specific traffic which are above being merely "adequate."

To be sure, the former ICC hinted that rail prosperity might come to a revenue adequacy restraint on ratemaking in Coal Rate Guidelines, Nationwide, 1 I.C.C.2d 520, 534-37 (1985), yet the ICC elsewhere in its decision recognized the value of differential pricing. 1 I.C.C.2d at 526. Moreover, the goal of revenue adequacy was announced at a time, 40 years ago, when the fortunes of the rail industry (and its employees), were far different from today. It should be noted neither the ICC nor the STB have actually utilized the revenue adequacy concept in decided cases to any extent over this 40-year period.

The long-maintained precedent of the agency has been the general rule that a substantial increase in railway operating income is of little probative value in determining the reasonableness of rates on a particular commodity. For a collection of decisions on the point, and its exception, see: Shinn, Glenn: Reasonable Freight Rates, 94-97 (1952).

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<sup>4/</sup>The Board's June 16, 2014 decision places the issue more precisely, as "the use of revenue adequacy in rate reasonableness cases." (Decision, 6/16/14, 1 para.1),

<sup>5/</sup>For example, see: The Western Coal Traffic League, et al., 30; Alliance for Rail Competition, et al., 20-24; Concerned Shipper Associations, 15.

The end of differential pricing throughout the railroad industry would most likely result in reducing competition between railroads with a diminution of the U.S. "common market," and bring monopolization of markets at certain origins and/or destinations. Such would be adverse to rail movement and to rail employment.

Respectfully submitted,



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November 4, 2014

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CERTIFICATE OF SERVICE

I hereby certify I have served a copy of the foregoing upon all parties of record by first-class mail postage-prepaid.

Washington DC



Gordon P. MacDougall