

# SURFACE TRANSPORTATION BOARD

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June 28, 2006

Charles W. King  
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1220 L Street, N.W., Suite 410  
Washington, D.C. 20005

RE: Reconsideration of IQ Request No. 06-01

Dear Mr. King:

This letter responds to your May 5, 2006, request for reconsideration of Director Gardner's denial of your request under the Board's Information Quality Guidelines, STB Ex Parte No. 587 (STB served Oct. 1, 2002), to correct alleged errors in the Board's calculation of the 2002 and 2003 Revenue Shortfall Allocation Method (RSAM) benchmarks for the Grand Trunk Corporation (GTC). In your reconsideration request, you ask that the Board either (1) remove the acquisition markup from the calculation of the GTC's RSAM, or (2) convene an evidentiary proceeding to determine whether and, if so, how much of that markup should be included.

I am denying your reconsideration request because I find that your challenge to the RSAM calculations no longer concerns the utility, objectivity, or integrity of the data (as those terms are defined in Ex Parte No. 587), but rather reflects your dissatisfaction with relevant Board regulations.

As you acknowledge (Request at 3), the RSAM calculations that you challenge here are consistent with the Board's regulations. As you note (Request at 2-3), the purpose of the Board's RSAM benchmark, adopted in *Rate Guidelines—Non Coal Proceedings*, 1 S.T.B. 1004 (1996), is to measure

the uniform markup above variable cost that would be needed from every shipper of potentially captive traffic . . . in order for the carrier to recover all of its URCS<sup>[1]</sup> fixed costs. \*\*\* URCS is based primarily on cost and operations reports submitted annually by each railroad . . . . These reports in turn conform to the Board's Uniform System of Accounts ("USOA").

As explained in *Railroad Revenue Adequacy—1988 Determination*, 6 I.C.C.2d 933, 940-41 (1990), *aff'd sub nom. Association of Am. Railroads v. ICC*, 978 F.2d 737 (D.C. Cir.

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<sup>1</sup> See *Adoption of the Uniform Railroad Costing System as a General Purpose Costing System for All Regulatory Costing Purposes*, 5 I.C.C.2d 894 (1989).

1992), the agency's relevant USOA regulations (codified at 49 CFR 1201(2-15)(c)(1), The Instructions for Property Accounts) provide as follows:

When the acquisition results from a purchase . . . the amount includable in account 731, Road and equipment property, shall be the cost at the date of acquisition to the purchaser of the transportation property acquired.

Given that the methodology employed to arrive at the challenged RSAM calculations comports with the Board's RSAM, URCS, and USOA regulations, your complaint about the use of the purchase price in the RSAM calculations is a substantive challenge to agency regulations and is therefore beyond the scope of a request under the Information Quality Guidelines. The Information Quality Guidelines were not intended as a vehicle for challenging existing standards. In interpreting the Information Quality Guidelines legislation (Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. No. 106-554; 114 Stat. 2763)), the Office of Management and Budget has specifically stated that the legislation does "not seek to impose new standards" for statistical information, but rather to reinforce existing standards. See "Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies," Definitions and Other Terms.<sup>2</sup>

While you allege mathematical errors in Mr. Gardner's response, which described the percentage increases in both non-capital and capital-related variable costs, this claim does not appear relevant to your challenge of the RSAM calculations. You have not provided support for these allegations, and, more importantly, you have not demonstrated or even suggested that, if these allegations were shown to be correct, the RSAM calculations would materially change. Indeed, as you note (Request at 6), if the capital-related variable cost is actually 86%, as you allege, this only "strengthens [Mr. Gardner's] conclusion that the marked-up value of the Illinois Central assets contributed strongly to the purported increase in variable costs," which were then reflected in the RSAM calculations. Therefore, these allegations do not support your argument that correction of the RSAM calculations is appropriate.

This response constitutes a final decision in this matter and is not subject to either administrative or judicial appeal. See *Salt Inst. v. Thompson*, 345 F. Supp. 2d 589 (E.D. Va. 2004), *aff'd sub nom. Salt Inst. v. Leavitt*, 440 F.3d 156 (4th Cir. 2006).

Sincerely,



Marilyn R. Levitt  
Information Quality Officer

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<sup>2</sup> 66 Fed. Reg. 49718, 49722 (2001).