

MR. SMITH: Thank you, Mr. Chairman. May it please the Board, my name is Paul Samuel Smith, and this morning it is my privilege to represent the United States Department of Transportation.

We applaud the Board's continuing efforts to refine its handling of the process by which it determines the reasonableness of rail rates. Of course, here we are dealing with the small rate case, and not those larger cases that involve the complex, but expensive, constrained market pricing methodology.

We have first urged the Board to calculate some of the current quantitative dimensions of the problem in trying to address it this morning. That is, for example, based on data now roughly 10 years old. The ICC calculated that roughly 18 percent of rail revenues then in place were potentially subject to rate challenges. We think it would be helpful to learn what that figure might be today, what amount of tonnage, carloads, and so forth.

We also suggested that, indeed, the Board should try to determine in this proceeding why it was that its RBC benchmarks, adopted some seven-plus years ago, have not resulted in cases. While understanding the reasons for shippers failing to bring those cases in the past, we felt the Board would be better able to fashion a process more useful to and used by those shippers.

Indeed, shippers have submitted some initial reasons in this proceeding for the disuse of those benchmarks. That is, that the process is still too expensive, still too uncertain, and still too time-consuming.

Together with railroad interests, they have offered some possible avenues for exploration at the same time: mandatory, non-binding mediation; accelerated discovery and information exchange procedures, and establishment of a bright-line test to determine eligibility for non-CMP analysis. We believe there is promise to these suggestions and they should be explored further.

I also want to harken back to the three criteria adopted in 1995 by the ICC in guiding its search for the proper standards and processes in small rate cases. First, that the methodology chosen to judge reasonableness would have to be simple and inexpensive enough to make regulatory relief truly accessible. Second, that methodology would have to recognize the need of railroads to engage in differential pricing. Third, that methodology would have to protect captive shippers from bearing too great a share of railroad revenue requirements.

We consider those touchstones as important today as they have ever been, and we urge the Board to continue to incorporate them into its evolving processes. Thank you very much.