

## **SURFACE TRANSPORTATION BOARD ISSUES NOTICE OF PROPOSED RULEMAKING TO ADDRESS MAJOR ISSUES IN RAIL RATE CASES**

The Surface Transportation Board announced that it has instituted a rulemaking proceeding to address major issues regarding the proper application of the stand-alone cost (SAC) test in rail rate cases and the proper calculation of the floor for any rail rate relief. Topics the rulemaking will address are (1) alternatives to the percent reduction method to determine maximum reasonable rates, (2) the allocation of revenue from cross-over traffic, (3) forecasting future operating expenses of a stand-alone railroad, (4) movement-specific adjustments to the Board's Uniform Railroad Costing System, (5) the time frame for the SAC analyses and corresponding rate prescriptions, and (6) standards for reopening and vacating a prior SAC decision. The Board's proposals on these issues – described in detail in the Notice of Proposed Rulemaking – are intended to ensure that both the SAC test and the jurisdictional floor for rate relief are applied fairly and in conformity with the Board's statutory responsibilities. These issues go to the heart of the SAC test and have industry-wide significance for rail carriers and their captive shippers. The Board seeks comment from all interested parties on the proposed changes.

Because this rulemaking will affect pending SAC cases, the Board has set an expedited schedule for this proceeding in the interest of fairness to the parties in those cases. All parties wishing to participate in the rulemaking should file a notice of intent to participate with the Board. Comments on the proposals are due May 1, 2006, with a copy to be served on all parties participating in this proceeding. Reply comments are due May 31, 2006, and final rebuttal comments are due June 30, 2006.

The STB's decision initiating the rulemaking in Major Issues in Rail Rate Cases, STB Ex Parte No. 657 (Sub-No. 1), is available for viewing and downloading via the Board's website at <http://www.stb.dot.gov>, under E-Library, then under Decisions & Notices, beneath the date "2/27/06." A printed copy of the Board's decision also is available for a fee by contacting ASAP Document Solutions, 9332 Annapolis Rd., Suite 103, Lanham, MD 20706, telephone (202) 306-4004, or via [asapdc@verizon.net](mailto:asapdc@verizon.net). A fact sheet is attached.

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### **FACT SHEET**

#### ***Major Issues in Rail Rate Cases, STB Ex Parte No. 657 (Sub-No. 1)***

The Board's general standards for judging the reasonableness of rail freight rates are set forth in *Coal Rate Guidelines, Nationwide*, 1 I.C.C.2d 520 (1985) (*Guidelines*), *aff'd sub nom. Consolidated Rail Corp. v. United States*, 812 F.2d 1444 (3d Cir. 1987). These guidelines adopt a set of pricing principles known as "constrained market pricing" (CMP). The objectives of CMP can be simply stated. A captive shipper should not be required to pay more than is necessary for the carrier involved to earn adequate revenues. Nor should it pay more than is necessary for efficient service. And a captive shipper should not bear the cost of any facilities or services from which it derives no benefit. Most captive rail shippers seek relief under CMP's stand-alone cost (SAC) test. The SAC test protects a captive shipper from bearing costs of inefficiencies or from cross-subsidizing other traffic by paying more than the revenue needed to replicate rail service to a select subset of the carrier's traffic base. A stand-alone railroad (SARR) is hypothesized that could serve the traffic at issue if the rail industry were free of entry barriers. Under the SAC constraint, the rate at issue cannot be higher than what the SARR would need to charge to serve the complaining shipper while fully covering all of its costs, including a reasonable return on investment.

In this proceeding, the agency seeks comments on proposals it has developed to address six issues that have been raised in recent SAC cases. *First*, the Board presents two alternatives to the “percent reduction” method to determine maximum reasonable rates to address concerns that the existing method can be unfairly manipulated by the railroads. *Second*, the Board proposes a new cost-based method for allocating revenue from “cross-over traffic” to reflect economies of density. *Third*, the Board proposes a method for forecasting future operating expenses of a SARR that would reflect anticipated future productivity gains. *Fourth*, the Board proposes to no longer permit movement-specific adjustments to the Board’s Uniform Railroad Costing System (URCS) when calculating the 180% revenue-to-variable cost jurisdictional floor for rate relief, as such adjustments appear inconsistent with URCS, may distort the variable cost calculation, and contribute inordinately to the complexity and expense of rail rate cases. *Fifth*, the Board proposes to shorten the time frame for its SAC analyses and corresponding rate prescriptions from 20 years to 10 years. *Sixth*, the Board proposes new standards for reopening and vacating a prior Board decision (including any resulting rate prescription) that is based on a SAC analysis.

These proposals are intended to ensure that both the SAC test and the jurisdictional floor for rate relief are applied fairly and in conformity with the agency’s statutory responsibilities. Because the issues they address go to the heart of the SAC test and have industry-wide significance for rail carriers and their captive shippers, all interested parties are invited to comment on these proposed changes. Because these issues have been raised or are implicated in the pending rail rate cases, the agency is holding the pending rail rate cases in *AEP Texas North Co. v. BNSF Ry.*, STB Docket No. 41191 (Sub-No. 1), and *Western Fuels Ass’n, et. al v. BNSF Ry.*, STB Docket No. 42088, in abeyance while it examines these important issues. The parties in those proceedings are asked to comment on whether and to what extent it would be inequitable to apply the proposed changes to their pending cases.