

SURFACE TRANSPORTATION BOARD SIMPLIFIES THE RAIL RATE DISPUTE RESOLUTION PROCESS FOR SMALL AND MEDIUM SIZE SHIPMENTS

The Surface Transportation Board (Board) today issued a final decision creating new procedures designed to ensure that small and medium-sized freight rail rate disputes can be resolved in a simplified, expedited and affordable manner.

The Board's decision allows freight rail customers with small shipments to obtain an award of up to \$1 million in relief within eight months of filing a complaint. The filing fee for this simplified "Three Benchmark" process is \$150. The Board's decision also creates a separate new rate dispute resolution process aimed at rate disputes involving mid-sized rail shipments. Pursuant to this alternative "Simplified Stand Alone Cost" process, freight rail customers can obtain an award of up to \$5 million in relief within 17 months of filing a complaint. The Board's decision allows freight rail customers to choose which rate dispute resolution process they would like to use. In an effort to minimize litigation, the Board will require mediation in all rail rate disputes.

In announcing the decision, Board Chairman Charles D. Nottingham stated:

"These two new dispute resolution procedures open our doors to the more than 70% of rail traffic that until now has been effectively blocked from Board review due to the complexity and resulting high costs of the Board's previous procedures. This decision marks a major step forward in the Board's ongoing efforts to deliver meaningful reforms aimed at making the STB more accessible, transparent, and efficient."

The Board's unanimous, bipartisan decision marks a milestone in a 12-year controversy regarding smaller rail rate case dispute resolution procedures. In 1995, Congress directed the Board to establish a simplified and expedited method for resolving smaller rail rate disputes. As a result, the Board adopted procedures in 1996 that were criticized as overly vague and expensive for rail customers to use. The Board held hearings aimed at improving the smaller rate dispute resolution process in 2003, 2004 and 2007, before arriving at today's decision.

The STB's [decision in Simplified Standards For Rail Rate Cases, STB Ex Parte No. 646 \(Sub-No. 1\)](#), is available for viewing and downloading via the Board's Web site at <http://www.stb.dot.gov>, under "E-Library," then under "Decisions & Notices," beneath the date "9/5/07." A printable 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. A fact sheet is attached.

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STB DECISION SIMPLIFYING THE PROCESS FOR RESOLVING SMALL AND MEDIUM-SIZE RAIL RATE DISPUTES

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

FACT SHEET

|↵| Provides access to the rate reasonableness process for all sizes of rail rate disputes, and

in particular, to the estimated 73% of challengeable rail traffic for which the large rate case process would be financially impracticable.

|↵| Requires, for all rail rate disputes, mandatory, nonbinding mediation—a mechanism that has been used successfully in previous cases to arrive at negotiated settlements.

|↵| Allows rail customers to choose the methodology that is most appropriate for consideration of their complaints:

- A rail customer choosing the simplest approach, the "Three-Benchmark" methodology, will be eligible to recover up to \$1 million over a 5-year period.
- A rail customer choosing the "Simplified Stand-Alone Cost" methodology will be eligible to recover up to \$5 million over a 5-year period.

|↵| Requires the use of the Board's Uniform Rail Costing System (URCS), without any movement-specific adjustments, to determine the variable cost of the challenged movement. URCS is the general purpose costing model used to determine if a rate is subject to the Board's jurisdiction (i.e., whether the rate is above 180% of the carrier's variable cost of proving the service). Calculating variable costs based on URCS is a quick and administratively simple process; the advance work is performed by the Board annually, and the computer program is available to the public at a minimal cost.

|↵| Clarifies and revises the Three-Benchmark methodology that evaluates a challenged rate in relation to three benchmark figures. Specifically, this revised methodology:

- Allows shippers of any size (including small shippers) to use this most expedited dispute resolution process to obtain up to \$1 million, with a filing fee of \$150.
- Establishes an expedited procedural schedule that calls for a Board decision within approximately eight months of filing a complaint.
- Changes previous Board policy by providing a complaining shipper access to the unmasked Waybill Sample. The Waybill Sample is a database of nationwide shipments by rail carriers. The unmasked version includes confidential contract revenue information.
- Provides a more detailed explanation of how the comparison group should be developed. Comparability will be determined by reviewing a variety of factors, such as length of movement, commodity type, traffic densities of the likely routes involved, and demand elasticity (although the comparison group need not have movements with identical demand). Movements with different cost characteristics may be included in the comparison group. Only movements of the defendant carrier may be included in the comparison group and the movements must be drawn from the Waybill Sample provided to the parties by the Board at the outset of the case.
- Establishes a "final offer" system for selecting the comparison group. The shipper and railroad will each simultaneously tender their evidence regarding an appropriate comparison group. The Board must select the comparison group that it concludes is most similar in the aggregate to the issue movements, without modification.
- Corrects the calculation of the Revenue Shortfall Allocation Method (RSAM) benchmark, to ensure that when a carrier is not "revenue adequate" under the Board's annual calculations, the carrier's RSAM benchmark will be greater than its $R/VC > 180$ benchmark.
- Uses a single formula for the RSAM benchmark figure, instead of the previous range of values.

- Creates rebuttal presumptions as to the reasonableness of the challenged rate based on the relationship between the R/VCCOMP, RSAM and R/VC>180 benchmarks. Each movement in the selected comparison group will be adjusted by the ratio of RSAM to $\frac{1}{2}$ R/VC>180 to reflect the revenue needs of the defendant carrier. If the challenged rate is above the mean (with a confidence interval) of the adjusted comparison group, it will be presumed unreasonable.

| ↓ | Creates a Simplified Stand-Alone Cost methodology for medium-sized rail rate disputes. Specifically, this methodology:

- Allows any shipper to use this process to obtain up to \$5 million in relief, with a filing fee of \$10,600.
- Establishes an expedited procedural schedule that calls for a Board decision within approximately 17 months of filing a complaint.
- Focuses the analysis on whether the carrier is abusing its market power by charging more than it needs to earn a reasonable return on the replacement cost of the infrastructure used to serve that shipper.
- Simplifies and standardizes the route selection, traffic group selection, configuration, road property investment calculation, operating plan determination and operating expenses calculation, greatly reducing the cost of bringing a case before the Board.