

**SURFACE TRANSPORTATION BOARD ANNOUNCES FAVORABLE APPEALS COURT RULING AFFIRMING
"MCCARTY FARMS" DECISION**

Surface Transportation Board (Board) Chairman Linda J. Morgan announced today that the United States Court of Appeals for the District of Columbia circuit has issued a decision affirming in all respects the Board's decision in the "McCarty Farms" rail rate case.

In 1980, McCarty Farms, Inc., and other Montana grain shipper interests (McCarty) challenged the rates charged by the predecessor of Burlington Northern and Santa Fe Railway Company (BNSF) for the transportation of wheat and barley. The case took several years as it moved through the courts. Finally, in 1991, the Interstate Commerce Commission (ICC) found some of the challenged rates too high, and ordered the railroad to pay over \$9 million in damages. In 1993, the ICC's decision, which had been appealed by the railroad, was reversed in court and, on remand, all parties agreed that the ICC should use the maximum rate standards set out in its "constrained market pricing" (CMP) guidelines. Accordingly, the ICC took evidence and argument under the "stand-alone cost" (SAC) facet of the CMP guidelines.

Under SAC, the reasonableness of a railroad's rates are judged against the simulated cost of constructing and operating a hypothetical, efficient "stand-alone" railroad serving the shipper's traffic and all other traffic selected by the shipper. In recent cases, the Board has found that the rates charged exceeded the costs of building and operating the hypothetical stand-alone railroad, and it ordered rate reductions and substantial reparations (see, e.g., "Surface Transportation Board News" releases No. 96-25, issued May 1, 1996, and No. 97-61, issued July 29, 1997, describing decisions awarding relief to West Texas Utilities Company and Arizona Power Company). In this case, however, because BNSF's rates were lower than the SAC costs for the railroad that McCarty hypothesized, the Board found that they had not been shown to be unreasonably high.

In its appeal, McCarty argued that the Board's calculations under the SAC procedures were erroneous and that the Board acted improperly by issuing a supplemental decision amending some of the technical findings while the appeal was pending. The court disagreed, finding that the Board "rationally set forth the grounds on which it acted," and that "its findings [were] based on substantial evidence." The court also found that the Board's supplemental decision was "helpful to the court and not prejudicial to the parties."

The Board's decision was issued on August 20, 1997 in *McCarty Farms, Inc., et al. v. Burlington Northern, Inc.*, STB Docket No. 37809, et al. The decision is available on the Board's web site at www.stb.dot.gov. The court's decision was issued on October 20, 1998, in *McCarty Farms, Inc., et al. v. Surface Transportation Board*, No. 97-1632 (D.C. Cir.) and is available on the court's web site at www.cadc.uscourts.gov.

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