

### Surface Transportation Board Announces Results of July 27 Voting Conference

Surface Transportation Board Chairman Roger Nober today announced the results of the voting conference held today, July 27, 2005 by the STB.

The Board voted unanimously to adopt each of the draft decisions before it. A summary of those votes is attached as a fact sheet.

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#### ATTACHMENT

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Fact Sheet

### VOTING RESULTS OF SURFACE TRANSPORTATION BOARD'S JULY 27, 2005 VOTING CONFERENCE

• ***United States Department of Energy and the United States Department of Defense v. Baltimore & Ohio Railroad, et al., Docket No. 38302S.***

Embraced case: *United States Department of Energy and the United States Department of Defense v. Aberdeen & Rockfish Railroad Company, et al., Docket No. 38376S.*

These cases concern a motion filed jointly by the U.S. Department of Energy and U.S. Department of Defense (collectively, the Government) and the Union Pacific Railroad Company (UP) seeking approval of a settlement agreement (Agreement) the Government has negotiated to resolve rate reasonableness complaints filed by the Government against UP. The Agreement eliminates UP as a defendant in these longstanding Government complaints challenging railroad rates charged by UP and other railroads for the transportation of spent nuclear fuel.

The Board voted, 3 to 0, to (1) prescribe the Agreement's rate and rate update methodologies as the maximum reasonable rate levels as to UP; (2) extinguish UP's liability for reparations in these proceedings; (3) agree not to entertain cross-complaints against UP in subsequent proceedings involving the Government's claims for reparations against remaining railroad parties that participated in through rates (rates from origin to destination in which several railroads participate) with UP; (4) grant the Government's request to continue holding the proceedings in abeyance subject to the requirement that the Government submit quarterly reports on the progress of settlement negotiations; and (5) decline in part to rule on, and grant in part, the Government's separate request for ground rules to govern future proceedings against remaining railroad parties.

• ***Union Pacific Corporation, Union Pacific Railroad Company, and Missouri Pacific Railroad Company--Control and Merger--Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and The Denver and Rio Grande Western Railroad Company (Arbitration Review), STB Finance Docket No. 32760 (Sub-No. 44).***

At issue is a Brotherhood of Locomotive Engineers and Trainmen (BLET) appeal of an April 2005 decision of an arbitrator finding lack of jurisdiction under the STB's *New York Dock* employee protective conditions to review certain actions by the Union Pacific Railroad Company (UP) affecting engineers at Dexter, Missouri. In a separate pleading, the BLET also sought a stay of UP's actions pending a ruling on the merits by an arbitration panel.

The Board voted, 3 to 0, to grant the BLET appeal and vacate the arbitrator's decision finding no jurisdiction to hear certain issues under the *New York Dock* conditions, but to deny BLET's request for stay of the employment actions at issue pending arbitration.

• ***Groome & Associates, Inc. and Lee K. Groome v. Greenville County Economic Development Corporation*, STB Docket No. 42087.**

At issue is an August 2004 complaint by Groome & Associates and its principal, Lee K. Groome (jointly, Complainants) asking the STB to institute a complaint proceeding concerning a damaged rail line at Greenville, South Carolina, which the Greenville County Economic Development Corporation (GCEDC) acquired in June 1999. The August 2004 complaint asserts that the GCEDC violated its obligation to provide common carrier service upon a reasonable request over the line.

The Board voted, 3 to 0, to find that the GCEDC had a common carrier obligation to provide service to the Complainants, and to find that the GCEDC is liable for damages for additional storage, handling, and shipping costs incurred during the period between August 2002 and June 2003.

• ***Greenville County Economic Development Corporation--Petition for Declaratory Order*, STB Finance Docket No. 34487.**

This proceeding concerns the issue of whether the preemption provisions of Section 10501(b)(2) of Title 49, *United States Code* [49 U.S.C. 10501(b)(2)] preclude a state court from hearing a lawsuit alleging that a railroad has failed to carry out its common carrier obligation to provide service.

The Board voted, 3 to 0, to find that, while federal district courts and the STB have concurrent jurisdiction, the provisions of 49 U.S.C. 10501(b)(2) preempt state laws and remedies regarding a railroad's failing to carry out its common carrier obligation.

• ***Michael H. Meyer, Trustee in Bankruptcy for California Western Railroad, Inc. v. North Coast Railroad Authority, d/b/a [doing business as] Northwestern Pacific Railroad*, STB Finance Docket No. 34337.**

Embraced case: *Rail General Exemption Authority--Lumber or Wood Products--Petition for Partial Revocation*, STB Ex Parte No. 346 (Sub-No. 25B).

These cases involve a failure to provide service over a line owned by the North Coast Railroad Authority, doing business as the Northwestern Pacific Railroad (NWP), between Arcata and Schellville/Napa Junction, in California. In 1998, the Federal Railroad Administration (FRA) found unsafe conditions and widespread noncompliance with federal railroad safety laws and regulations on the line. The FRA accordingly issued an emergency order requiring NWP to cease operating trains over the line. That order, which is still in effect relative to the NWP line, had the effect of severing the California Western Railroad, Inc. (CWR), whose primary shipper was the operator of a lumber mill, from the national rail system. On December 3, 2002, CWR filed for bankruptcy. On December 1, 2004, Michael H. Meyer (Mr. Meyer), trustee in bankruptcy for the CWR, filed a complaint on behalf of CWR, asking the STB to find the NWP liable for damages sustained as a result of NWP's alleged violation of its common carrier obligation, and a petition for the partial revocation of the STB's exemption for the rail transportation of lumber or wood products so that the agency can institute a proceeding and set a procedural schedule to consider Mr. Meyer's complaint. Mr. Meyer maintains that NWP's failure to bring itself into compliance with FRA's safety regulations effectively removed CWR from the freight-hauling business and cost it revenue and operating income. CWR, however, did not tender traffic to NWP for movement, nor did it ask NWP to make the necessary repairs to restore service over NWP's line following the FRA order.

The Board voted, 3 to 0, to deny the complaint against the NWP.

• ***New York & Greenwood Lake Railway--Feeder Line Acquisition--A Line of Norfolk Southern Railway Company*, STB Finance Docket No. 34649.**

At issue in this proceeding is an appeal to the STB's February 2005 rejection of an application filed by the New York & Greenwood Lake Railway (Greenwood) under the Feeder Railroad Development Program (Section 10907 of Title 49, *United States Code* [49 U.S.C. 10907] and Part 1151 of Title 49, *Code of Federal Regulations* [49 CFR 1151]), to acquire from the Norfolk Southern Railway Company (NS) a 6.2-mile segment of the Boonton line between a point in or near Jersey City and a point in or near Newark, and the contiguous, 3.8-mile Newark Industrial Track extending between a point in or near Secaucus and a point in or near Kearny in Essex and Hudson Counties, New Jersey. The STB's February 2005 decision rejected Greenwood's application for failing to meet specific criteria at 49 U.S.C. 10907(b)(1)(A) and 49 CFR 1151. Greenwood appealed.

The Board voted, 3 to 0, to affirm its February 2005 decision rejecting Greenwood's feeder line application and to deny Greenwood's appeal.

• ***CSX Transportation, Inc.--Abandonment Exemption--in Franklin County, PA, STB Docket No. AB-55 (Sub-No. 568X).***

This case involves a petition filed by New Franklin Properties, LLC, for the STB's reconsideration of its July 2004 decision in this case and a reopening of the STB's original, March 1999 decision exempting abandonment by CSX Transportation, Inc. of a 1.9-mile rail line in Pennsylvania, to permit the filing of an offer of financial assistance for a 0.3-mile segment of that line.

The Board voted, 3 to 0, to deny the relief sought.

The STB provides the above summaries as a courtesy to the public and the media. The STB's actions in these cases, however, are the agency's written decisions. Those decisions will be forthcoming. Printed copies of the decisions will be 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). The decisions also will be available for viewing and downloading via the Board's website at <http://www.stb.dot.gov>.

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