Surface Transportation Board

FY 1998/1999/2000/2001 Report

Surface Transportation Board
Washington, DC 20423

September 20, 2002

To the Congress of the United States:

It is my pleasure to submit the second report of the Surface Transportation Board (Board). This report covers the Board's activities from October 1, 1997, through September 30, 2001. It follows the same basic format as the last report, except that the significant Board actions are included by subject matter in the appropriate places in the body of the report rather than presented separately in an appendix. The statement of appropriations and aggregate expenditures for fiscal years 1998 through 2001 appears in Appendix B.

Since the last report, the Board's composition has changed, with the departure of former Vice Chairman Gus A. Owen and the addition of now Vice Chairman Wayne O. Burkes and Commissioner William Clyburn, Jr. (who has since also departed). Additionally, I was sworn in for a second term on December 1, 1999.

Linda J. Morgan
Chairman

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Statistics

Most of the Board's statistics are computer generated. The 1996/1997 Annual Report was the initial run of computer-generated statistics for the Board and contained programming errors for some types of cases. The errors have been corrected, and the tables presented in this report correct any erroneous statistics that appeared in that report.

Statistics relating to fiscal year (FY) 1996 reflect the combined ICC and Board records; the ICC was terminated on December 31, 1995, and the STB was established on January 1, 1996.

Acronyms

The following acronyms and abbreviated names are used in this report:

Amtrak	National Railroad Passenger Corporation
AAR	Association of American Railroads
BNSF	The Burlington Northern and Santa Fe Railway Company
BTS	Bureau of Transportation Statistics
CBS	Condensed Balance Sheet Report for Class I Railroads
CD	compact disc
CFR	Code of Federal Regulations
CMP	constrained market pricing
CN	Canadian National Railway Company
Conrail	Consolidated Rail Corporation
CP	Canadian Pacific Railway Company
CSX	CSX Transportation, Inc.
DM&E	Dakota, Minnesota & Eastern Railroad Corporation
DOT	Department of Transportation
EA	Environmental Assessment
EIS	Environmental Impact Statement
F.3d	Federal Reporter, 3rd Series

FHWA	Federal Highway Administration
FMC	Federal Maritime Commission
FMCSA	Federal Motor Carrier Safety Administration
FOIA	Freedom of Information Act
FRA	Federal Railroad Administration
FY	fiscal year
GC	Office of the General Counsel
IC	Illinois Central Railway Company
ICC	Interstate Commerce Commission
ICCTA	ICC Termination Act of 1995
KCS	Kansas City Southern Railway Company
NGCC	National Grain Car Council
NS	Norfolk Southern Railway Company
OCE	Office of Compliance and Enforcement
OCPS	Office of Congressional and Public Services
OEEAA	Office of Economics, Environmental Analysis, and Administration
OFA	offer of financial assistance
PD	Office of Proceedings
RCAF	rail cost adjustment factor
RE&I	Revenue, Expenses, and Income Report
RSTAC	Railroad-Shipper Transportation Advisory Council
SAC	stand-alone cost
SE	Office of the Secretary
SEA	Section of Environmental Analysis
SP	Southern Pacific Transportation Company
STB	Surface Transportation Board
S.T.B.	Surface Transportation Board Reports (Volumes 1-3)
Tex Mex	Texas Mexican Railway
UP	Union Pacific Railroad Company
URCS	Uniform Rail Costing System
U.S.C.	United States Code
USDA	United States Department of Agriculture

SURFACE TRANSPORTATION BOARD

STB OVERVIEW

The Surface Transportation Board (STB or Board) is a bipartisan, decisionally independent, adjudicatory body that is organizationally housed within the Department of Transportation (DOT). 49 U.S.C. 701-725. The Board was established pursuant to the ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (1995) (ICCTA), to assume certain of the regulatory functions that had previously been administered by the Interstate Commerce Commission (ICC). Other ICC regulatory functions were either eliminated or transferred to the former Federal Highway Administration (FHWA) (now the Federal Motor Carrier Safety Administration or FMCSA) or the Bureau of Transportation Statistics (BTS) within DOT.

Functional Responsibilities

The Board has broad economic regulatory oversight of railroads, addressing such matters as rates, service, the construction, acquisition and abandonment of rail lines, carrier mergers, and interchange of traffic among carriers. 49 U.S.C. 10101-11908. The Board also has certain oversight of pipeline carriers (49 U.S.C. 15101-16106), and of intercity bus carriers, household goods carriers, motor carriers involved in collective activities or undercharge claims, and water carriers engaged in noncontiguous domestic trade (49 U.S.C. 13101-14914). The Board has discretion to reduce and tailor its regulatory activities, as it finds appropriate, to meet changing transportation environments or individual circumstances, using the broad exemption authority contained in 49 U.S.C. 10502 (rail), 13541 (motor and water), and 15302 (pipeline).

Performance and Policy Goals

The Board is charged with providing an efficient and effective forum for the resolution of disputes and determination of other matters within its jurisdiction. While the Board uses its exemption authority to reduce or remove regulatory requirements where appropriate, the Board is

dedicated to vigilant oversight and to rendering fair decisions expeditiously when regulation is required. In all of its decisions, the Board is committed to advancing the national transportation policy goals expressed by Congress in 49 U.S.C. 10101 (rail) and 13101 (motor and water). Finally, the Board has promoted private-sector negotiations and resolutions where possible and appropriate, and facilitated market-based transactions that are in the public interest.

Organizational Structure

The Board is comprised of three members, who are appointed by the President and confirmed by the Senate for 5-year terms. The Board's **Chairman** is designated by the President from among the members. 49 U.S.C. 701. As the executive head of the Board, the Chairman coordinates and organizes the agency's work and acts as its representative in legislative matters and in relations with other government bodies. The Chairman generally is responsible for:

- Overall Board management and operations;
- Formulation of plans and policies designed to ensure the effective administration of the governing statutes and Board regulations;
- Identification and resolution of major regulatory problems; and
- Development and utilization of effective, expert staff support for the fulfillment of the Board's duties and functions.

The **Vice Chairman** represents the Board and assumes the Chairman's duties as appropriate. Additionally, the Board has delegated certain functions to the Vice Chairman, including matters involving the admission, discipline, and disbarment of nonattorney STB practitioners.

Assisting the Board in carrying out its responsibilities is a staff of approximately 135 experienced and dedicated lawyers, economists, transportation industry specialists, and administrative and support personnel employed in the offices described below.

The **Office of Compliance and Enforcement** (OCE) monitors the activities of STB-regulated companies and organizations to ensure compliance with the governing statutes and

Board regulations; assists the public in the resolution of informal complaints against STB-regulated companies; and oversees matters of rate publication, filing, and interpretation.

The **Office of Congressional and Public Services** (OCPS) informs members of Congress, the public, and the media of Board actions; responds to Congressional, public, and press inquiries; prepares testimony for hearings and comments on proposed legislation; and assists the public in matters involving transportation regulation.

The **Office of Economics, Environmental Analysis, and Administration** (OEEAA) conducts economic and financial analyses of the railroad industry; compiles and publishes financial statistics and reports; performs engineering and cost studies; conducts audits of Class I railroads; and ensures that environmental concerns are adequately assessed in Board proceedings. This office also manages the Board's day-to-day operations, including budget, personnel, administrative services, and systems development.

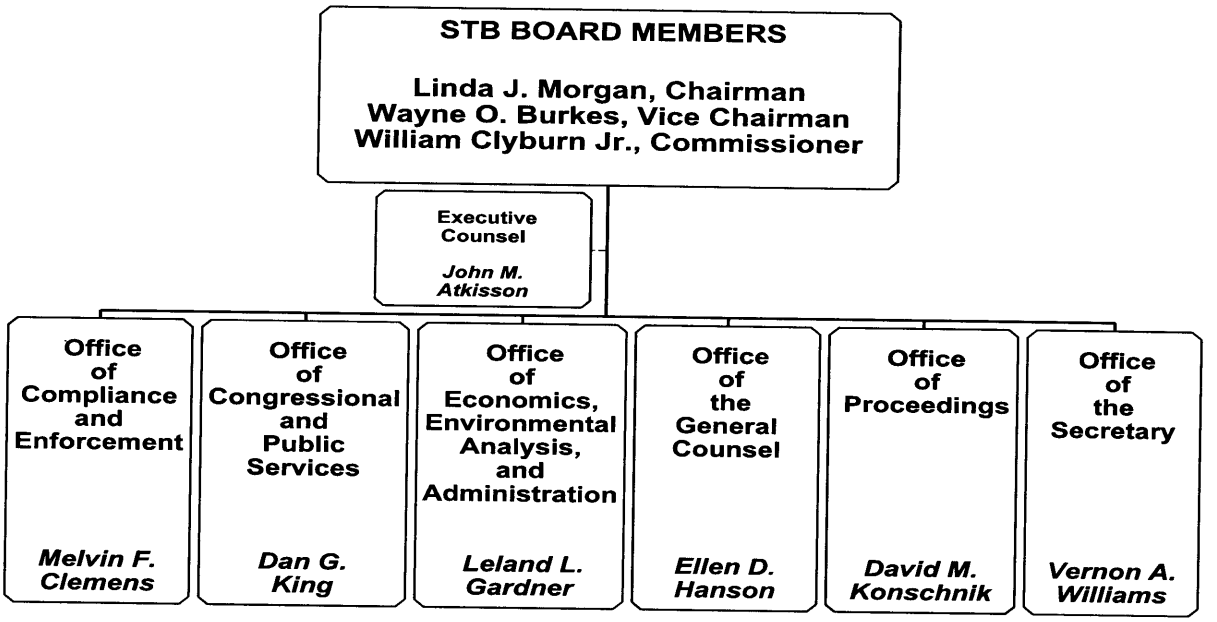
The **Office of the General Counsel** (GC) renders legal advice to the Board and defends Board decisions challenged in court.

The **Office of Proceedings** (PD) provides legal research and prepares draft decisions for cases pending before the Board.

The **Office of the Secretary** (SE) serves as the Board's clerk and document center. It maintains the Board's official records and issues the Board's decisions and other legal documents. This office also records liens on railroad rolling stock and administers the examination program for nonattorney STB practitioners.[1]

[1] By the time this report is released, SE will have been eliminated as a separate organizational unit. However, the position of Secretary remains, and all of the office's functions and personnel will have been folded into other offices of the Board.

STB Organization Chart in FY 2001



Related Entities

The **Railroad-Shipper Transportation Advisory Council** (RSTAC) was created by the ICCTA to advise the Board, the Secretary of Transportation, and Congressional oversight committees on railroad transportation policy issues of particular importance to small shippers and small railroads, such as rail car supply, rates, and competitive issues. 49 U.S.C. 726. The RSTAC is comprised of 15 private-sector senior executive officers of organizations engaged in the railroad or rail shipper industries, the Secretary of Transportation, and the three Board members.

The **National Grain Car Council** (NGCC) assists the Board in addressing problems concerning rail transportation of grain. The council provides an important vehicle for continuing and improving broad-based communications among large railroads, smaller railroads, shippers, rail car manufacturers, and government. Established under the Federal Advisory Committee Act, the NGCC is to be comprised of no fewer than 30 members: 10 representatives from Class I railroads, 5 representatives from Class II and Class III railroads, 10 representatives of grain shippers and receivers, and 5 representatives of private rail car owners and manufacturers. In addition, Board members serve as ex officio members of the NGCC.

The **Grain Logistics Task Force** was established on May 21, 1998, as a joint effort by the STB and the U.S. Department of Agriculture (USDA) to address shipper and railroad information needs related to recurring seasonal problems that affect the transportation of grain and grain products. It is designed to provide grain shippers and railroads with early warnings about the potential for service and congestion-related problems. The task force identifies information that will help the grain and rail industries better plan for, and adjust to, shifts in demand and supply for grain and grain transportation. This data includes information about the capacity of the grain handling and transportation system to collect, store, position, and move grain, as well as information about grain supplies and use. The task force also establishes appropriate mechanisms for collecting and reporting this information.

RAILROAD RESTRUCTURING

Mergers and Consolidations—Review of Carrier Proposals

When two or more rail carriers seek to consolidate through a merger or common control arrangement, the prior approval of the Board is required under 49 U.S.C. 11323-25. See 49 CFR 1180. By law, the Board's authorization exempts such a transaction from all other laws (including antitrust laws) to the extent necessary for the carriers to consummate the approved transaction. 49 U.S.C. 11321.

Carriers may seek Board authorization by filing either an application under 49 U.S.C. 11323-25 or a petition for exemption under 49 U.S.C. 10502. Where a merger or acquisition involves only smaller (Class II or III) railroads whose lines do not connect with each other, the carriers need only follow a simple notification procedure to invoke a class exemption at 49 CFR 1180.2(d)(2). (Class III railroads are those with annual operating revenues below $20 million, in 1991 dollars; Class II railroads have annual operating revenues of at least $20 million, but less than $250 million, in 1991 dollars.)

The Board's docket and handling of railroad proposals for mergers or common control arrangements are summarized in the following table.

Mergers and Consolidations Under 49 U.S.C. 11323*							
	Fiscal Years →	1996	1997	1998	1999	2000	2001
Applications	Filed	5	3	4	2	0	1
	Granted	1	3	2	1 .	0	1
	Denied	0	0	2	2	0	0
	Dismissed	1	0	1	0	1	0
Petitions for Exemption	Filed	26	10	12	2	6	5
	Granted	30	8	10	5	4	3
	Denied	0	0	0	0	0	0
	Dismissed	2	0	1	1	0	2
Notices of Exemption	Filed	40	28	31	13	20	25
	Granted	38	27	29	13	19	23
	Denied	0	0	0	0	0	0
	Dismissed	0	2	0	0	0	0

* Some figures provided in the STB's 1996/1997 Annual Report were incorrect due to a computer programming error. The figures have been restated in the tables in this report.

Railroad merger proposals that were approved by the Board, subject to various conditions, in FY 1998-2001 included:

- the joint acquisition of Conrail by the CSX and Norfolk Southern (NS) railroads and division of Conrail's assets between them, in *CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company--Control and Operating Leases/Agreements--Conrail, Inc. and Consolidated Rail Corporation*, 3 S.T.B. 196 (1998), *aff'd sub nom. Erie-Niagara Rail Steering Committee v. Surface Transportation Board*, 247 F.3d 437 (2d Cir. 2001);

- the acquisition of control by Canadian National (CN) of the Illinois Central (IC), in *Canadian National Railway Company, Grand Truck Corporation, and Grand Trunk Western Railroad Incorporated--Control--Illinois Central Corporation, Illinois Central Railroad Company, Chicago, Central and Pacific Railroad Company, and Cedar River*

Railroad Company, STB Finance Docket No. 33556 (Decision No. 37) (STB served May 25, 1999);

- the acquisition of control by RailAmerica, Inc. (a holding company that controlled 12 Class III rail carriers in the United States) of RailTex, Inc. and the indirect control of RailTex's 17 domestic Class III rail carriers (none of which compete with RailAmerica's carriers), in *RailAmerica, Inc.--Control–RailTex, Inc.*, STB Finance Docket No. 33813 (STB served Jan. 10, 2000); and

- the acquisition of control by CN of the Wisconsin Central, in *Canadian National Railway Company, Grand Trunk Corporation and WC Merger Sub, Inc.—Control—Wisconsin Central Transportation Corporation, Wisconsin Central Ltd., Fox Valley & Western Ltd., Sault Ste. Marie Bridge Company, and Wisconsin Chicago Link Ltd.*, STB Finance Docket No. 34000 (Decision No. 10) (STB served Sept. 7, 2001).

Also, to address the potential for disruptions during the integration phase of a merger, the Board:

- required the applicants to submit safety integration plans in both the CSX-NS-Conrail application (in Decision No. 52 (STB served Nov. 3, 1997)), the CN-IC application (in Decision No. 6 (STB served Aug. 14, 1998)), and the CN-Wisconsin Central application (in Decision No. 2 (STB served May 9, 2001)); and

- proposed procedures, in conjunction with the Federal Railroad Administration (FRA), to ensure adequate and coordinated consideration of issues regarding the safe implementation of proposed railroad mergers in all such cases, in *Safe Implementation of Board-Approved Transactions*, STB Ex Parte No. 574 (STB served Dec 24, 1998).[2]

In December 1999, the Board received notice of a merger proposal to be filed by the Burlington Northern Santa Fe (BNSF) and CN railroads, announced in *Canadian National Railway Company, Grand Trunk Western Railroad Incorporated, Illinois Central Railroad Company, Burlington Norther Santa Fe Corporation, and the Burlington Northern and Santa Fe Railway Company–Common Control*, STB Finance Docket No. 33842 (Decision No. 1) (STB

[2] By the time this report is released, the Board and FRA will have released a final set of rules in this proceeding.

served Dec. 28, 1999). Because that proposal came in the wake of serious service disruptions associated with implementation of recently approved mergers and could well have triggered another and final round of mergers by Class I railroads, the Board held public hearings and received comments on the broad subject of major railroad consolidations and the present and future structure of the North American railroad industry.

On the basis of the comments received, the Board concluded that it needed to develop new rules to address future merger proposals. So that the new rules could be promulgated before any new applications were considered, the Board imposed a 15-month moratorium on the filing of major merger applications by Class I railroads, in *Public Views on Major Rail Consolidations*, STB Ex Parte No. 582 (STB served Mar. 17, 2000), *stay denied* (STB served April 7, 2000). The merger moratorium withstood legal challenges, in *Western Coal Traffic League v. Surface Transportation Board*, 216 F.3d 1168 (D.C. Cir. 2000). On July 21, 2000, BNSF and CN withdrew their notice of intent to present a merger application.

To launch its wholesale reexamination of rail merger procedures, the Board solicited public comment and proposals on a variety of issues, in *Major Rail Consolidation Procedures*, STB Ex Parte No. 582 (Sub-No. 1) (STB served Mar. 31, 2000). After reviewing those submissions, the Board proposed new rules, in *Major Rail Consolidation Procedures*, STB Ex Parte No. 582 (Sub-No. 1) (STB served Oct. 3, 2000). After obtaining and considering further public comment, the Board issued its new rail merger rules, as scheduled, in *Major Rail Consolidation Procedures*, STB Ex Parte No. 582 (Sub-No. 1) (STB served June 11, 2001). The new rules significantly increase the burden on future applicants to demonstrate that a proposed merger transaction is in the public interest.

Mergers and Consolidations—Oversight and Monitoring

In approving major railroad merger or consolidation proposals, the Board has provided for subsequent Board oversight of competitive impacts and monitoring of operational performance on both a formal and an informal basis. These activities have taken many forms, including:

- Annual Oversight Proceedings

  In approving the UP/SP, CSX-NS-Conrail, and CN/IC mergers, the Board provided for a review to be conducted annually for 5 years to examine the effectiveness of the competitive and other conditions previously imposed. In each review, the Board has considered whether adjustments to those conditions were warranted.[3]

  In the CSX-NS-Conrail case, the Board is also conducting a 3-year oversight proceeding focusing on rail rates affecting the Buffalo, NY area.

- Special Oversight Proceedings

  In the aftermath of the UP/SP merger, the Board also conducted a special proceeding to consider additional merger conditions in the Houston/Gulf Coast region. (This proceeding was in addition to the Board proceeding conducted under its emergency service authority to address the 1997-98 service crisis in that region, which is discussed in *Railroad Service Issues, infra.*) In that special proceeding, the Board imposed two additional conditions—a "clear route" operational condition and a requirement that the carriers address and report on infrastructure plans.

  In the CSX-NS-Conrail case, the Board initiated a related proceeding to examine railroad infrastructure issues in the Buffalo, NY area.

- Individual Post-Merger Petitions

  The Board has acted on numerous individual requests for clarification and/or modification of conditions in both the UP/SP and CSX-NS-Conrail cases.

- Regular Operational Monitoring

  OCE has monitored daily operations at all levels (such as yard and terminal fluidity and dwell time, on-time performance and timely delivery to connections, velocity, cars on

[3] By the time this report is released, the CN/IC annual oversight will have been discontinued and the UP/SP 5-year oversight period will have been brought to a close.

line, locomotive capacity, and delays due to crews). With particular respect to the CSX-NS-Conrail case, monitoring began in advance of implementation, given the complexity associated with dividing Conrail. The information sought by the Board included operational data as well as merger implementation status reports monthly in such areas as computers and workforce integration. As part of this ongoing monitoring, the public has been provided with information on many aspects of carrier operations. While the information publicly released has been tailored to protect commercially sensitive information of carriers and shippers, the Board has had full access to all information, which its rail operations experts have used daily to help guide carrier efforts to correct any operating deficiencies.[4]

- Quarterly Oversight and Monitoring

In the case of the merger of the Union Pacific (UP) and Southern Pacific (SP) railroads, both UP/SP and BNSF have provided the Board quarterly with current information on the extent to which the competitive conditions imposed by the Board have worked. Among the conditions were approximately 4,000 miles of trackage rights over UP/SP for BNSF to serve points and corridors that otherwise would have lost two-carrier service as a result of the merger.

In the CSX-NS-Conrail transaction, Amtrak has submitted quarterly reports, which have been used to evaluate effects on rail intercity passenger service.[5]

- Informal Complaints

Finally, OCE hears directly from rail customers, rail passengers, rail employees, and communities about rail service and other related issues, and immediately alerts the carrier(s) involved to ensure that the problems receive appropriate attention. Through this

[4] By the time this report is released, the amount of operational data filed with the Board in connection with the Conrail acquisition will have been reduced.

[5] By the time this report is released, the quarterly reporting in both of these proceedings will have been eliminated.

process, individual complainants receive timely attention and the Board is alerted to specific areas of concern that may need further operational monitoring.

In connection with this oversight and monitoring activity, the Board has issued numerous decisions. With respect to the UP/SP merger, which was authorized in *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*, STB Finance Docket No. 32760 (Decision No. 44) (STB served Aug. 12, 1996), *aff'd sub nom. Western Coal Traffic League v. Surface Transportation Board*, 169 F.3d 775 (D.C. Cir. 1999), among the more significant post-merger actions taken in FY 1998-2000, the Board:

- Enforced a competitive condition by directing UP/SP to allow competing service at a new "transload" facility, in Decision No. 75, 2 S.T.B. 697 (1997);

- Concluded its first oversight review of the competitive impacts of the merger, in STB Finance Docket No. 32760 (Sub-No. 21) (Decision No. 10), 2 S.T.B. 703 (1997);

- Declined to interpret competitive conditions as permitting BNSF to provide additional service to New Orleans, LA (an area already served by several carriers), in Decision No. 77 (STB served Jan. 7, 1998);

- Adopted a protocol for determining whether BNSF is entitled to serve rail shipper facilities at "2-to-1 points," in STB Finance Docket No. 32760 (Sub-No. 21) (Decision No. 11), 3 S.T.B. 7 (1998);

- Interpreted and enforced a competitive condition by directing UP/SP to open a transloading facility in San Antonio, TX to access by BNSF, in Decision No. 81, 3 S.T.B. 737 (1998);

- Initiated a proceeding to consider proposals for new remedial conditions pertaining to service in the Houston, TX/Gulf Coast area, in Finance Docket No. 32760 (Sub-No. 21) (Decision No. 12) (STB served Mar. 31, 1998), redesignated as Finance Docket No. 32760 (Sub-No. 26) (Decision No. 1) (STB served May 19, 1998). In that proceeding, the Board accepted several proposals for consideration, in Decision No. 6, 3 S.T.B. 622

(1998), and ultimately ordered efficiency-producing changes in Houston, but denied a request for open access to Houston facilities, in Decision No. 10, 3 S.T.B. 1030 (1998);

- Completed its second annual general oversight review of the merger, in Finance Docket No. 32760 (Sub-No. 21) (Decision No. 13), 3 S.T.B. 987 (1998);

- Clarified the eligibility requirement for the "new facilities" condition for service by BNSF, but left factual determinations for arbitration as provided in the BNSF trackage rights agreement, in Decision No. 86 (STB served July 12, 1999);

- Completed its third annual general oversight review of the merger, concluding that the 1997-98 UP service crisis was over, that the UP/SP merger was producing benefits for the shipping public, and that, to date, the merger had generated no competitive problems, in Finance Docket No. 32760 (Sub-No. 21) (Decision No. 15) (STB served Nov. 30, 1999);

- Affirmed that the general "build-out" condition imposed by the Board applied to afford Entergy Arkansas access to service by BNSF in connection with a planned build-out from its coal-burning power plant near Redfield, AK, in Decision No. 88 (STB served Mar. 21, 2000);

- Affirmed the right of Union Electric Company, as a "2-to-1-carrier" shipper, to access a second railroad for its coal-fired electric generating plant at Labadie, MO, in Decision No. 89 (STB served June 1, 2000);

- Explained that the condition imposed by the Board allowing "2-to-1" shippers to modify existing contracts with UP/SP so as to use the services of BNSF does not apply to a contract after it was renegotiated with UP post-merger, in Decision No. 90 (STB served Oct. 30, 2000); and

- Completed its fourth annual general oversight review of the merger, finding no demonstrable competitive problems resulting from the merger, in Finance Docket No. 32760 (Sub-No. 21) (Decision No. 16) (STB served Dec. 15, 2000).

With respect to the CSX-NS-Conrail transaction, which was authorized in STB Finance Docket No. 33388, among its post-merger actions, the Board:

- Addressed numerous requests for reconsideration or clarification of the conditions imposed, as summarized in *STB Press Release No. 98-86* (Dec. 23, 1998) and *STB Press Release No. 99-22* (May 20, 1999);

- Provided for the review of the operational, service, labor, environmental and safety aspects of the division of Conrail, as described in *STB Press Release Nos. 99-21 & 99-22* (May 20, 1999);

- Required additional reporting from CSX and NS to aid the Board in its operational monitoring of implementation, as described in *STB Press Release No. 99-29* (June 29, 1999);

- Required additional reporting from CSX and NS to aid monitoring by FRA of safety aspects of implementation, as described in *STB Press Release No. 99-35* (July 12, 1999);

- Dismissed a petition to revisit conditions involving trackage rights for Canadian Pacific (CP) to serve shippers in the New York City area, after the parties settled the dispute privately, in Decision No. 134 (Nov. 19, 1999);

- Initiated a general oversight proceeding and requested public comment on the progress of the implementation of the Conrail transaction, in STB Finance Docket No. 33388 (Sub-No. 91) (Decision No. 1) (STB served Feb. 9, 2000);

- Initiated a proceeding to examine Buffalo-area railroad infrastructure issues, in STB Finance Docket No. 33388 (Sub-No. 93) (June 9, 2000);

- Completed its initial phase of the Buffalo rate study and found that the carriers had complied with all Board-imposed conditions regarding switching in the Buffalo area and that in general rail rates had been reduced, in STB Finance Docket No. 33388 (Sub-No. 90) (Decision No. 4) (STB served July 7, 2000);

- Denied a request by Indianapolis Power & Light Company to impose additional merger conditions relating to its traffic, finding that the shipper's transportation options had been preserved, in STB Finance Docket No. 33388 (Sub-No. 91) (Decision No. 3) (STB served Nov. 30, 2000), *summarily aff'd sub nom. Indianapolis Power & Light Co. v. Surface Transportation Board*, No. 01-1005 (D. C. Cir. July 26, 2001);

- Completed its first annual general oversight review of the merger, in STB Finance Docket No. 33388 (Sub-No. 91) (Decision No. 5) (STB served Feb. 2, 2001);

- Completed the first phase of its 3-year review of Buffalo-area rail rates and switching fees, in STB Finance Docket No. 33388 (Sub-No. 90) (Decision No. 6) (STB served Feb. 2, 2001);

- Concluded its separate examination of Buffalo-area railroad infrastructure issues, finding that both CSX and NS had invested substantial amounts to improve service in that area and had worked with local interests to identify additional projects and to take appropriate actions, in STB Finance Docket No. 33388 (Sub-No. 93) (STB served Feb. 2, 2001);

- Launched an investigation into whether NS' subsequently announced plan to close its Hollidaysburg, PA car shops would violate the Board's general condition that the railroads involved in the Conrail transaction adhere to their representations, in Decision No. 186 (STB served May 21, 2001), and ultimately concluded that the condition would not be violated, but ordered enhanced protection for affected employees, in Decision No. 198 (STB served Sept. 19, 2001), *aff'd sub nom. Commonwealth of Pennsylvania v. Surface Transportation Board, 290 F.3d 522 (3rd Cir. 2002);* and

- Imposed a supplemental condition requiring compliance with the settlement agreement that CSX reached with the "Four City Consortium" of East Chicago, and Hammond, Gary and Whiting, Indiana to address those communities' concerns, in Decision No. 189 (STB served June 20, 2001).

With respect to the CN/IC merger, the Board began a general oversight proceeding on the progress of the implementation of the transaction, in STB Finance Docket No. 33556 (Sub-No. 4) (Decision No. 1) (STB served Mar. 9, 2000). On completing its first annual round of oversight, the Board issued its finding that there had been no competitive problems resulting from the merger, in Decision No. 2 (STB served Nov. 29, 2000).

Line Acquisitions

To acquire or operate an existing rail line, Board approval is required by 49 U.S.C. 10901 for a noncarrier (which will thereby become a carrier), or by 49 U.S.C. 10902 for a Class II or III railroad. See 49 CFR 1150. (The acquisition of an existing line by a Class I railroad, i.e., a carrier with annual operating revenues of at least $250 million in 1991 dollars, is treated as a form of carrier consolidation under 49 U.S.C. 11323.)

Expedited procedures for obtaining the Board's authorization are available under several class exemptions. To acquire a nonconnecting line, Class II and III railroads may elect to use the

class exemption at 49 CFR 1180.2(d)(2), discussed above. Class III railroads may acquire and operate additional rail lines through a simple notification process under 49 CFR 1150.41. However, any acquisitions under that process that will result in the carrier having at least $5 million in annual net revenues require an additional advance notice of the anticipated labor impacts, to afford employees and their communities an opportunity to adjust to the effects of the proposed transaction. 49 CFR 1150.42(e). Noncarriers may acquire rail lines under the class exemption at 49 CFR 1150.31, subject to similar notification processes. These exemptions have resulted in the preservation of rail service in many areas of the country.

The Board's docket and handling of line acquisition proposals are summarized in the following table. No applications under 49 U.S.C. 10901 or 10902 were filed, pending, or considered in the periods covered by this report or the Board's prior report.

— Line Acquisitions* —

By Noncarriers Under 49 U.S.C. 10901

Fiscal Years →	1996		1997		1998		1999		2000		2001	
	No.	Miles	No.	Miles	No.	Miles	No.	Miles	No.	Miles	No.	Miles
Exemption Petitions												
Filed	1	14	0	0	0	0	0	0	0	0	0	0
Granted	0	0	1	14	0	0	0	0	0	0	0	0
Denied	0	0	0	0	0	0	0	0	0	0	0	0
Dismissed	0	0	0	0	0	0	0	0	0	0	0	0
Exemption Notices												
Filed	63	3,536	34	3,921	53	2,537	21	774	36	2,214	41	2,601
Granted	60	3,333	30	4,624	49	2,385	21	849	26	1,400	42	2,580
Denied	0	0	2	48	0	0	0	0	0	0	1	1
Dismissed	4	195	1	14	4	254	4	224	5	786	2	23
By Class II or III Railroads Under 49 U.S.C. 10902												
Exemption Petitions												
Filed	1	143	0	0	0	0	0	0	0	0	0	0
Granted	0	0	0	0	0	0	0	0	0	0	0	0
Denied	0	0	0	0	0	0	0	0	0	0	0	0
Dismissed	0	0	1	143	0	0	0	0	0	0	0	0
Exemption Notices												
Filed	20	611	39	1,516	25	897	31	1,022	28	413	31	1,082
Granted	13	361	40	1,311	29	1,107	31	1,075	25	368	33	1,028
Denied	0	0	0	0	0	0	0	0	0	0	0	0
Dismissed	1	113	0	0	1	132	0	0	0	0	0	0

* Due to start-up problems with the Board's computerization of tables, the figures reported in the STB's 1996/1997 Annual Report overstated the number of notices filed and did not capture petitions for exemptions in these categories. The figures are restated in this report.

Among the more significant actions taken in this area in FY 1998-2001, the Board:

- Determined that STB approval was not required for a regional transit authority to acquire a rail line where the selling carrier would continue to provide freight service over the line, in *Southwest Ohio Regional Transit Authority--Acquisition Exemption--Certain Assets of the Indiana & Ohio Railway*, STB Finance Docket No. 33524 (STB served Dec. 24, 1997);

- Authorized the purchase of an inactive 244.5-mile former "Rock Island" line in Missouri to permit the Missouri Central Railroad to restore service over the line, in *Missouri Central Railroad Company--Acquisition & Operation Exemption--Lines of Union Pacific Railroad Company,* STB Finance Docket No. 33508 (Apr. 30, 1998), *pet. for reconsideration denied* (Sept. 14, 1999), *aff'd sub nom. Lees' Summit, Missouri v. Surface Transportation Board*, 231 F.3d 39 (D.C. Cir. 2000);

- Approved a privately negotiated arrangement for BNSF-UP/SP joint ownership of a line between Dawes, TX and Avondale, LA, to improve rail service in the Houston/Gulf Coast area, in *The Burlington Northern and Santa Fe Railway Company and Union Pacific Railroad Company--Acquisition Exemption--Lines Between Dawes, TX & Avondale, LA,* 3 S.T.B. 733 (1998);

- Authorized the privately negotiated sale of UP's 84.5-mile "Rosenberg Line" in Texas to the Texas Mexican Railway, in *Texas Mexican Railway Company—Purchase Exemption—Union Pacific Railroad Company*, STB Finance Docket No. 33914 (STB served Dec. 11, 2000); and

- Precluded the use of the Board's class exemption process to acquire property in Detroit, MI so as to prevent that City's condemnation action, specifically citing the fact that the existence of that condemnation action was not disclosed to the Board, in *Jefferson Terminal Railroad Company—Acquisition and Operation Exemption—Crown Enterprises, Inc.*, STB Finance Docket No. 33950 (STB served Mar. 19, 2001).

Trackage Rights

Trackage rights arrangements allow one carrier to perform local, overhead, or bridge operations over the tracks of another carrier (which may or may not continue to provide service over the same line). Overhead or bridge trackage rights frequently improve operating efficiency for the acquiring carrier by providing alternative, shorter, and/or faster routes. Local trackage rights may introduce a new competitor, giving shippers service options.

Prior Board approval of trackage rights arrangements is required by 49 U.S.C. 11323 (for a Class I carrier), 49 U.S.C. 10902 (for a Class II or III carrier), or 49 U.S.C. 10901 (for a noncarrier). See 49 CFR 1180 (for proposals under section 11323); 49 CFR 1150 (for proposals under section 10901 or 10902). The Board maintains a class exemption, at 49 CFR 1180.2(d)(7), that provides a simple notification procedure for the acquisition or renewal of trackage rights by carriers through mutual agreement. (This class exemption cannot be used in response to a rail merger or consolidation proposal.)

The Board's docket and handling of trackage rights proposals are summarized in the following table.

Trackage Rights*

Fiscal Years →		1996	1997	1998	1999	2000	2001
Applications	Filed	9	0	17	0	0	0
	Granted	3	0	1	0	0	0
	Denied	4	0	4	0	0	0
	Dismissed	0	0	5	0	1	0
Petitions for Exemption	Filed	1	0	0	0	0	0
	Granted	2	0	0	0	0	0
	Denied	0	0	0	0	0	0
	Dismissed	0	0	0	0	0	0
Notices of Exemption	Filed	51	63	35	39	23	25
	Granted	48	57	37	39	24	24
	Denied	0	0	0	0	0	0
	Dismissed	2	1	0	0	0	0

* Due to start-up problems with the Board's computerization of tables, the figures reported in STB's 1996/1997 Annual Report were double the actual statistics. The figures are restated in this report.

Leases

Leases and contracts to operate rail lines by a Class I railroad require Board approval under 49 U.S.C. 11323. See 49 CFR 1180. (Leases by a Class II or III railroad may be handled as a line acquisition under 49 U.S.C. 10902, and leases by a noncarrier are handled as a line

acquisition under 49 U.S.C. 10901.) Lines are sometimes leased by a nonoperating carrier to an operating carrier willing to assume the common carrier obligation of providing service on demand.

Carriers may seek Board authorization by filing either an application under 49 U.S.C. 11323 or a petition for exemption under 49 U.S.C. 10502. The Board maintains a class exemption, at 49 CFR 1180.2(d)(4), providing a simple notification procedure for the renewal of a previously authorized lease.

The Board's docket and handling of proposed leases are summarized in the following table.

Intercarrier Leases*

	Fiscal Year →	1996	1997	1998	1999	2000	2001
Applications	Filed	0	0	0	0	0	0
	Granted	0	0	0	0	0	0
	Denied	0	0	0	0	0	0
	Dismissed	0	0	0	0	0	0
Petitions for Exemption	Filed	9	0	1	0	0	0
	Granted	13	0	1	0	0	0
	Denied	0	0	0	0	0	0
	Dismissed	0	0	0	0	0	0
Notices of Exemption	Filed	1	0	0	0	0	0
	Granted	1	0	0	0	0	0
	Denied	0	0	0	0	0	0
	Dismissed	0	0	0	0	0	0

* Due to start-up problems with the Board's computerization of tables, the figures reported in STB's 1996/1997 Annual Report were double the actual statistics. The figures are restated in this report.

In a significant action taken in this area during the period covered by this report, the Board, acting upon a complaint by a rail labor organization, ruled that the Soo Line and Wisconsin Central railroads needed approval to enter into a lease arrangement and retroactively authorized the lease, subject to standard labor protective conditions, in *Brotherhood of Maintenance of Way Employees and Soo Line System Division, Brotherhood of Maintenance of Way Employees v. Soo Line Railroad Company and Wisconsin Central Ltd.*, 3 S.T.B. 1076 (1998).

Line Constructions

Authorization by the Board to construct a new rail line is required by 49 U.S.C. 10901. See 49 CFR 1150. In connection with authorizing the construction of a new line, the Board can compel other carriers to permit the new line to cross their tracks, if doing so does not materially interfere with the operation of the crossed line, and the Board can prescribe the appropriate compensation for the line crossing if the parties are unable to agree. 49 U.S.C. 10901(d).

Carriers may seek Board authorization by filing either an application under 49 U.S.C. 10901 or a petition for exemption under 49 U.S.C. 10502. In addition, the Board maintains class exemptions that provide a simple notification procedure for the construction of connecting track on an existing rail right-of way at 49 CFR 1150.36, and for joint projects to relocate track that do not disrupt service to shippers at 49 CFR 1180.2(d)(5).

The Board's docket and handling of proposed constructions are summarized in the following table.

Railroad Constructions												
Fiscal Years →	1996		1997		1998		1999		2000		2001	
	No.	Miles	No	Miles	No.	Miles	No.	Miles	No.	Miles	No.	Miles
Applications												
Filed	1	20	0	0	3	297	0	0	1	34	1	43
Granted	2	50	0	0	0	0	0	0	0	0	0	0
Denied	0	0	0	0	0	0	0	0	0	0	0	0
Dismissed	0	0	0	0	0	0	0	0	0	0	0	0
Petitions for Exemption												
Filed	1	1	14	5	1	88	2	10	2	0	0	0
Granted	2	7	1	1	14	5	0	0	0	0	0	0
Denied	0	0	0	0	0	0	0	0	0	0	0	0
Dismissed	0	0	0	0	1	2	0	0	1	0	0	0
Notices of Exemption*												
Filed	5	230	11	8	7	33	1	1	2	0	0	0
Granted	5	230	0	0	15	33	2	9	2	0	0	0
Denied	0	0	0	0	0	0	0	0	0	0	0	0
Dismissed	0	0	1	0	1	0	0	0	0	0	0	0

* Notices of exemption reflected in the table for FY 1998-2001 include both the class exemption for joint relocation projects under 49 CFR 1180.2(d)(5) and the class exemption for line constructions under 49 CFR 1150.36. The STB's corresponding table in the 1996/1997 Annual Report included only the class exemption for joint relocation projects.

Among the more significant actions taken in this area in FY 1998-2001, the Board:

- Denied a request by Tongue River Railroad to reopen a construction case for consideration of another route, without prejudice to the carrier's right to file a new application, in *Tongue River Railroad Co.--Rail Construction and Operation--Ashland to Decker, Montana*, 2 S.T.B. 735 (1997), but, after receiving an application for the alternative routing, removed the condition that the originally approved route be constructed within 3 years, Finance Docket No. 30186 (Sub-No. 2) (STB served Mar. 23, 1999);

- Ruled that UP did not need Board approval to rehabilitate and reactivate an abandoned rail line (in the New Braunfels area of central Texas) that is roughly parallel to an existing UP mainline, in *Union Pacific Railroad Company--Petition for Declaratory Order--Rehabilitation of Missouri-Kansas-Texas Railroad Between Jude & Ogden Junction, TX*, 3 S.T.B. 646 (1998);

- Held in abeyance further proceedings on a proposal by the Kansas City Southern (KCS) to construct a rail line in Louisiana, pending Board action on the CN-IC merger application, in *Kansas City Southern Railway Company--Construction and Operation Exemption--Geismar Industrial Area Near Gonzales and Sorrento, LA*, 3 S.T.B. 655 (1998);

- Found that a proposal by the Dakota, Minnesota & Eastern Railroad (DM&E) to build a 280-mile rail line to tap into the coal mines of Wyoming's Powder River Basin meets transportation-related standards (although the Board would not decide whether to approve the project until it completed an extensive environmental review), in *Dakota, Minnesota & Eastern Railroad Corporation--Construction*, 3 S.T.B. 847 (1998), and afforded communities additional time to submit bypass alternatives for the proposed rail line, STB Finance Docket No. 33407 (STB served Apr. 20, 1999), and the public additional time to comment on the draft environmental impact statement (STB served Dec. 14, 2000);[6]

- Found that a proposal to construct and operate track to serve an interim storage facility for spent nuclear fuel in Skull Valley, UT meets transportation criteria for approval, although no construction can begin until all environmental matters are fully considered, in *Great Salt Lake and Southern Railroad, L.L.C.—Construction and Operation—In Tooele County, UT*, STB Finance Docket No. 33824 (STB served Dec. 15, 2000);

- Determined that a new 1,500-foot line authorized to be constructed by the Public Service Company of Colorado to serve the Comanche power station in Pueblo County, CO, is entitled to cross BN track, in *Public Service Company of Colorado—Petition for Crossing Authority Under 49 U.S.C. 10901(d)*, STB Finance Docket No. 33862 (Sub-No. 1) (STB served Mar. 22, 2001);

- Conditionally authorized, subject to an environmental review, the construction and operation of a new 7½-mile rail line in Texas to enable BNSF to provide competing rail service to an industrial complex pursuant to a condition in the UP/SP merger preserving

[6] By the time this report is released, the Board will have completed its environmental analysis of the project and given final approval, with environmental mitigation, of the construction.

"build-out" opportunities, in *The Burlington Northern and Santa Fe Railway Company—Construction and Operation Exemption—Seadrift and Kamey, TX*, STB Finance Docket No. 34003 (STB served June 19, 2001); and

- Directed the Keokuk Junction Railway to reopen a long-established rail crossing, in *The Burlington Northern and Santa Fe Railway Company—Petition for Declaration or Prescription of Crossing, Trackage, or Joint Use Rights*, STB Finance Docket No. 33740 (STB served June 22, 2001), *vacated sub nom. Keokuk Junction Ry. v. Surface Transportation Board*, 292 F.3d 884 (D.C. Cir. 2002).

Line Abandonments

Railroads require Board approval under 49 U.S.C. 10903 to abandon a rail line or to discontinue all rail service over a line that will be kept in reserve. See 49 CFR 1152. To obtain Board authorization, a carrier may file an application under 49 U.S.C. 10903 or a petition for exemption under 49 U.S.C. 10502. The Board maintains a class exemption, providing a streamlined notification procedure, for the abandonment of lines over which there has been no traffic in the past 2 years that cannot be rerouted over other lines. 49 CFR 1152.50.

The Board's docket and handling of abandonment cases are summarized in the following table.

Abandonments												
Fiscal Years →	1996		1997		1998		1999		2000		2001	
	No.	Miles	No.	Miles	No.	Miles	No.	Miles	No.	Miles	No.	Miles
Applications												
Filed	15	688	5	306	9	501	5	205	4	205	8	23
Granted	16	677	5	241	6	110	5	568	4	198	1	49
Denied	2	3	0	0	0	0	1	6	0	0	0	0
Dismissed	1	201	1	72	2	19	0	0	2	44	3	28
Dismissed - OFA Sale	1	42	2	23	0	0	0	0	0	0	0	0
Petitions for Exemption												
Filed	38	732	54	713	40	531	32	348	19	594	35	460
Granted	36	783	42	636	49	466	29	295	17	364	27	1,772
Denied	2	4	6	66	3	123	3	45	1	28	0	0
Dismissed	0	0	3	26	2	38	0	0	1	1	0	0
Dismissed - OFA Sale	3	6	0	0	3	8	4	21	1	36	1	0
Notices of Exemption												
Filed	89	891	48	372	47	338	35	481	35	330	47	262
Granted	83	785	41	306	51	396	32	380	30	330	47	374
Denied	0	0	0	0	0	0	0	0	0	0	0	0
Dismissed	4	34	5	58	3	50	4	80	3	199	1	2
Dismissed - OFA Sale	2	10	1	18	0	0	1	22	2	2	0	0

Among the more significant actions taken in this area in FY 1998-2001, the Board:

- Denied an opposed request by Central Railroad of Indiana to abandon a 58-mile line, because of unresolved questions regarding the revenues, operating expenses, and maintenance costs attributable to operation of the line, in *Central Railroad of Indiana--*

Abandonment Exemption--In Dearborn, Decatur, Franklin, Ripley, & Shelby Counties, IN, STB Docket No. AB-459 (Sub-No. 2X) (STB served May 4, 1998);

- Authorized abandonment of Norfolk & Western's inactive 1.5-mile "Riverfront Running Track" in Cincinnati, OH, and discontinuance of another carrier's trackage rights over that line, to facilitate a major waterfront redevelopment project, in *Norfolk and Western Railway Company--Abandonment Exemption--In Cincinnati, Hamilton County, OH*, 3 S.T.B. 110 (1998), and *Grand Trunk Western Railroad Incorporated--Adverse Discontinuance of Trackage Rights Application--A Line of Norfolk and Western Railway Company in Cincinnati, Hamilton County, OH*, 3 S.T.B. 124 (1998);

- Denied a request to abandon a line between San Angelo and Presidio, TX, in order to preserve that gateway between the United States and Mexico, but allowed South Orient Railroad to discontinue service over the line, in *South Orient Railroad Company, Ltd.--Abandonment and Discontinuance of Trackage Rights--Between San Angelo and Presidio, TX*, 3 S.T.B. 743 (1998), *reaffirmed*, STB Docket No. AB-545 (STB served Mar. 26, 1999);

- Denied a request by the Gauley River and CSX railroads to abandon and discontinue service over several lines in West Virginia, because the railroads had failed to justify the request, in *Gauley River Railroad, LLC--Abandonment and Discontinuance of Service--In Webster and Nicholas Counties, WV*, STB Docket Nos. AB-559 (Sub-No. 1X) et al. (STB served June 16, 1999), but subsequently reopened and authorized the abandonment based on new evidence (STB served June 23, 2000), *stay denied* (July 21, 2000);

- Denied a request by BNSF to abandon 2.38 miles of track in Chicago, IL, because the railroad had not shown that it was losing money on the 1.25-mile portion on which protesting shippers sought continued service, in *The Burlington Northern and Santa Fe Railway Company--Abandonment of Chicago Area Trackage in Cook County, IL*, STB Docket No. AB-6 (Sub-No. 382X) (STB served Sept. 21, 1999);

- Denied a request by the Soo Line to abandon 27.5 miles of track between Rosholt and Veblen, SD, because of substantial public opposition to the abandonment and Soo's failure to support its underlying data, in *Soo Line Railroad Company--Abandonment Exemption–in Marshall and Roberts Counties, SD*, STB Docket No. AB-57 (Sub-No. 48X) (STB served Nov. 17, 1999), and allowed withdrawal of subsequent applications to abandon this track, in *Soo Line Railroad Company–Abandonment–In Roberts County, SD*, STB Docket No. AB-57 (Sub-No. 51) (STB served Aug. 14, 2000), and *Soo Line Railroad Company– Abandonment Exemption–In Marshall and Roberts Counties, SD*, STB Docket No. 57 (Sub-No. 50X) (STB served Aug. 15, 2000), after the track was sold

for continued rail service, in *Sunflour Railroad, Inc.–Acquisition and Operation Exemption–Soo Line Railroad Company*, STB Finance Docket No. 33903 (STB served July 25, 2000);

- Dismissed an abandonment petition, thereby allowing the City of Rocky Mount, NC, to proceed with revitalization plans for its downtown area, because the track involved was ancillary track for which abandonment authority was not needed under 49 U.S.C. 10906, in *CSX Transportation– Abandonment Exemption–In Rocky Mount, Nash County, NC*, STB Docket No. AB-55 (Sub-No. 562X) (STB served Dec. 1, 1999); and

- Granted the application of Camas Prairie RailNet, Inc., to abandon its 66.8-mile line between Spalding and Grangeville, ID, subject to environmental conditions and a trail use condition, in *Camas Prairie RailNet, Inc.–Abandonment–In Lewis, Nez Perce, and Idaho Counties, ID Between Spalding and Grangeville, ID*, STB Docket No. AB-564 (STB served Sept. 12, 2000).

Preservation of Rail Lines

The Board administers the following three programs designed to preserve rail service or railroad rights-of-way.

Offers of Financial Assistance. Under 49 U.S.C. 10904, if the Board finds that an abandonment proposal should be authorized and receives an offer by another party to pay for continued rail service, the Board may require the line to be sold for that purpose (or operated under subsidy for a year). See 49 CFR 1152.27. Three lines were sold under this program in FY 1998, five lines in FY 1999, three lines in FY 2000, and one line in FY 2001. See *Abandonments* table.

Among its significant actions in this area in FY 1998-2001, the Board:

- Rejected an offer of financial assistance filed by the Redmond-Issaquah Railroad Preservation Association to acquire a 12.45-mile BNSF line, because the proposal was not a bona fide offer for continued rail service, in *The Burlington Northern and Santa Fe Railway Company--Abandonment Exemption--In King County, WA*, 3 S.T.B. 634 (1998), *aff'd sub nom. Redmond-Issaquah Railroad Preservation Association v. Surface Transportation Board*, 223 F.3d 1057 (9th Cir. 2000); and

- Declared void certain property-interest transfers by Railroad Ventures, Inc. to uphold the integrity of its rail line in connection with the forced sale of the line to Columbiana County Port Authority to allow continued rail service, in *Railroad Ventures, Inc.—Abandonment Exemption—Between Youngstown, OH and Darlington, PA, In Mahoning and Columbiana Counties, OH, and Beaver County, PA,* STB Docket No. AB-556 (Sub-No. 2X) et al. (STB served Oct. 4, 2000), *clarified* (STB served Dec. 7, 2000), *admin. stay denied* (STB served Nov. 2, 2000), *further clarified* (STB served Nov. 9, 2001), *aff'd sub nom. Railroad Ventures, Inc. v. Surface Transportation Board,* Nos. 004303 et al. (6th Cir. Aug. 1, 2002).

Feeder Line Development Program. Under 49 U.S.C. 10907, when a line has been designated in a carrier's system diagram map as a candidate for abandonment or when service is inadequate for a majority of shippers who transport traffic over the line, the Board can compel a railroad to sell the line to a party who will provide service. See 49 CFR 1151.

No applications were filed under this program during FY 1998-2001. However, acting on an application filed with the ICC prior to the ICCTA, the Board ordered one line sold under the feeder line development program—the 52-mile Norman Branch line in Arkansas—in *Caddo Antoine and Little Missouri Railroad Company—Feeder Line Acquisition—Arkansas Midland Railroad Company Line Between Gurdon and Birds Mill, AR*, Finance Docket No. 32479 (STB served Aug. 12, 1999), *modified* (STB served May 5, 2000), *aff'd sub nom. GS Roofing Products Co. v. Surface Transportation Board*, 262 F.3d 767 (8th Cir. 2001).

Trail-Use/Railbanking Program. The Board has a ministerial role in administering the railbanking program under the National Trails System Act Amendments of 1983, 16 U.S.C. 1247(d). See 49 CFR 1152.29. This law allows railroad rights-of-way that have been approved for abandonment to be preserved for possible future restoration of rail service and to be used in the interim as recreational trails. To preserve the right-of-way for potential future reactivation of rail service, the right-of-way remains under the jurisdiction of the Board during the interim trail use, and reversionary property interests in the right-of-way cannot vest.

The Board's docket and handling of trail-use requests are summarized in the following table.

Railbanking/Interim Trail Use						
Fiscal Year	Requests		Grants		Denials	
	Number	Miles	Number	Miles	Number	Miles
1996	49	1,118	39	788	6	309
1997	60	919	36	430	18	239
1998	59	1,081	42	746	12	188
1999	50	1,221	30	574	1	296
2000	29	600	17	442	1	31
2001	45	868	32	445	7	50

RAILROAD RATES

Common Carriage or Contract Carriage

Railroads have a common carrier obligation to provide rail service upon reasonable request. 49 U.S.C. 11101(a). They can provide that service under rates and service terms agreed to in a confidential transportation contract with the shipper (49 U.S.C. 10709) or under openly available common carriage rates and service terms (49 U.S.C. 11101). Rates and service terms established by contract are not subject to Board regulation, except for limited protections against discrimination involving agricultural products. 49 U.S.C. 10709(b), (c).

Railroads are required to file with the Board summaries of all contracts for the transportation of agricultural products. 49 U.S.C. 10709(d). The summaries must contain the information specified at 49 CFR 1313, and the summaries are available for public inspection at the Board's offices. The agricultural contract filings received by the Board in FY 1998-2001 are shown in the following table.

Railroad Agricultural Contract Summary Filings				
	1998	**1999**	**2000**	**2001**
Number of Filings	1,001	776	677	689
Number of Summaries Included	2,625	2,289	1,936	1,935

Among the more significant actions taken in FY 1998-2001 relating to contract carriage, the Board:

- Dismissed a challenge to a switching charge because it was part of transportation covered by a rail transportation contract, in *Omaha Public Power District v. Union Pacific Railroad Company*, STB Docket No. 42006 (STB served Oct. 17, 1997); and
- Ordered a rail carrier to establish a separately challengeable bottleneck rate in order to permit an interchange and subsequent movement of the traffic under a rail contract, in *FMC Wyoming Corporation and FMC Corporation v. Union Pacific Railroad Company*,

2 S.T.B. 766 (1997), *aff'd sub nom. Union Pacific Railroad Company v. Surface Transportation Board,* 202 F.3d 337 (D.C. Cir. 2000).

Rate Disclosure Requirements — Common Carriage

A railroad's common carriage rates and service terms must be disclosed upon request (and published for agricultural products and fertilizer), and advance notice must be given for increases in common carriage rates or changes in the service terms. 49 U.S.C. 11101. And if a railroad does not have a rate in place to move a shipper's traffic, it must promptly establish a rate and service terms upon the shipper's reasonable request. The Board maintains regulations governing the establishment, disclosure, publication, and notification requirements for common carriage rates. 49 CFR 1300. In accordance with these requirements, the Board directed BNSF and UP to establish and maintain common carrier rates for transporting coal from the Powder River Basin to an electrical generating plant in Cochise, AZ, in *Arizona Electric Power Cooperative, Inc. v. The Burlington Northern and Santa Fe Railway Company and Union Pacific Railroad Company*, STB Finance Docket No. 34041 (STB served May 8, 2001), *pet. for judicial review pending sub nom. The Burlington Northern & Santa Fe Railway Company et al. v. Surface Transportation Board,* No. 02-1054 (D.C. Cir. filed Feb. 11, 2002).

These regulatory requirements can be bypassed, thereby allowing rail rates and service terms to be adjusted more expeditiously in response to changing market conditions, where the Board has exempted the class of commodities or rail services involved from regulation pursuant to 49 U.S.C. 10502. In FY 1998-2001 the Board took the following actions regarding proposed class exemptions:

- Denied a request to exempt from regulation the rail transportation of paints and related products, in *Rail General Exemption Authority--Exemption of Paints, Enamels, Lacquers, Shellacs, Etc.*, Ex Parte No. 346 (Sub-No. 33) (STB served Apr. 20, 1998); and

- Exempted from regulation the rail transportation of certain nonferrous recyclable commodities, in *Rail General Exemption Authority--Nonferrous Recyclables*, 3 S.T.B. 62 (1998).

Rate Challenges —Market Dominance Limitation

The Board can adjudicate complaints challenging the reasonableness of a common carriage rate only if the railroad has market dominance over the traffic involved. 49 U.S.C. 10701(c)-(d), 10704, 10707. Market dominance refers to "an absence of effective competition from other rail carriers or modes of transportation for the transportation to which a rate applies." 49 U.S.C. 10707(a).

The Board cannot find that a carrier has market dominance over a movement if the rate charged results in a revenue-to-variable cost percentage that is less than 180%. 49 U.S.C. 10707(d)(1)(A). The Board's Uniform Rail Costing System (URCS) is used to provide a consistent measurement of a railroad's variable costs of performing various rail services. Where the quantitative revenue-to-variable cost threshold is exceeded, the Board examines qualitatively whether competition in the marketplace imposes market discipline upon a railroad's pricing or affords the shipper an alternative to paying the challenged rate.

Among its more significant actions in FY 1998-2001 relating to market dominance issues, the Board:

- Made certain modifications to URCS to improve the accuracy of variable cost estimates, in *Review of the General Purpose Costing System*, 2 S.T.B. 659 (1997), *modified*, 2 S.T.B. 754 (1997);

- Denied discovery regarding product and geographic competition to prevent a railroad from shifting onto a complaining shipper the burden of identifying and demonstrating such competition, in *FMC Wyoming Corporation and FMC Corporation v. Union Pacific Railroad Company*, 3 S.T.B. 88 (1998), *pet. for clarification denied*, STB Docket No. 42022 (STB served May 5, 1998), *motion to compel discovery denied* (STB served Aug. 31, 1998);

- Decided to exclude product and geographic competition from consideration in its market dominance analyses in all cases, in *Market Dominance Determinations--Product and Geographic Competition*, 3 S.T.B. 937 (1998), *pet. for reconsideration denied*, STB Ex Parte No. 627 (STB served July 2, 1999), *remanded for further consideration sub nom. Association of American Railroads v. Surface Transportation Board*, 237 F.3d 676 (D.C. Cir. 2001), *reaffirmed on remand*, STB Ex Parte No. 627 (STB served Apr. 3, 2001), *pet. for judicial review pending sub nom. Association of American Railroads v. Surface Transportation Board*, No. 01-1213 (D.C. Cir. filed May 15, 2001);

- Denied a railroad's request to allow evidence on geographic competition in a bottleneck-segment rate complaint, in *Minnesota Power, Inc. v. Duluth, Missabe and Iron Range Railway Company*, STB Docket No. 42038 (STB served July 8, 1999); and

- Dismissed a complaint filed by the Western Coal Traffic League alleging that UP had improperly recorded certain expenses (associated with the widespread congestion on its Gulf Coast region lines and with its merger with SP) in its 1997 annual report to the Board, finding that UP's accounting for these expenses was consistent the Board's accounting rules, with precedent, and with generally accepted accounting principles, in *Western Coal Traffic League v. Union Pacific Railroad Company*, STB Docket No. 33726 (STB served May 12, 2000).

Rate Challenges —Rate Reasonableness Determination

To assess whether a challenged rate is reasonable, the Board generally uses "constrained market pricing" (CMP) principles. See *Coal Rate Guidelines, Nationwide*, 1 I.C.C.2d 520 (1985), *aff'd sub nom. Consolidated Rail Corp. v. United States*, 812 F.2d 1444 (3d Cir. 1987). CMP principles limit a carrier's rates to levels necessary for an efficient carrier to make a reasonable profit. CMP principles recognize that, in order to earn adequate revenues, railroads need the flexibility to price their services differentially by charging higher mark-ups on captive traffic, but the CMP guidelines impose constraints on a railroad's ability to price differentially. The most commonly used CMP constraint is the "stand-alone cost" (SAC) test. Under the SAC constraint, a railroad may not charge a shipper more than it would cost to build and operate a hypothetical new, optimally efficient railroad tailored to serve a selected traffic group that includes the complainant's traffic.

Although the CMP guidelines provide the most economically authoritative procedures for evaluating the reasonableness of rail rates, a rate challenge using CMP (particularly SAC) can be complex, detailed, and expensive to pursue. Thus, CMP can be impractical to use where the amount of money at issue is not great enough to justify the expense of such an evidentiary presentation. Accordingly, pursuant to 49 U.S.C. 10704(d), the Board maintains simplified guidelines for use in such cases. See *Rate Guidelines--Non-Coal Proceedings*, 1 S.T.B. 958 (1996).

Among its more significant actions in FY 1998-2001 addressing rate reasonableness issues, the Board:

- Directed BNSF to pay $11.4 million to West Texas Utilities Co. in reparations for the earlier collection of an unreasonably high rate, in *West Texas Utilities Company v. Burlington Northern Railroad Company*, 2 S.T.B. 683 (1997);

- Adopted procedures for applying simplified rail rate guidelines to individual cases, in *Expedited Procedures for Processing Simplified Rail Rate Reasonableness Proceedings*, 3 S.T.B. 1 (1998);

- Directed a shipper to show why its pending rate complaint should not be dismissed for lack of market dominance, based on the shipper's admissions of competitive alternatives, in *South-West Railroad Car Parts Company v. Missouri Pacific Railroad Company*, No. 40073 (STB served Feb. 20, 1998), *case later dismissed at request of parties* (STB served Apr. 9, 1998);

- Denied a request to reconsider an earlier decision ordering coal rate reductions and reparations to Arizona Public Service Company, but made technical corrections in the maximum rate calculations, thereby modifying slightly the maximum rate that it can be charged, in *Arizona Public Service Company and Pacificorp v. Atchison, Topeka and Santa Fe Railroad Company*, 3 S.T.B. 70 (1998);

- Dismissed a complaint filed by Potomac Electric Power Company challenging the reasonableness of a rate charged by CSX, after the parties reached a voluntary settlement, in *Potomac Electric Power Company v. CSX Transportation, Inc.*, STB Docket No. 41989 (STB served June 18, 1998);

- Dismissed a coal rate challenge by Sierra Pacific Power Company and Idaho Power Company, after the parties reached a settlement, in *Sierra Pacific Power Company and Idaho Power Company v. Union Pacific Railroad Company*, STB Docket No. 42012 (STB served July 15, 1998);

- Dismissed two additional coal rate complaints—filed by PSI Energy, Inc., and Pennsylvania Power & Light Company—after the parties reached voluntary settlements, in *PSI Energy, Inc. v. CSX Transportation, Inc. and Soo Line Railroad Company d/b/a Canadian Pacific Railway,* Docket Nos. 42034 et al. (STB served May 13, 1999);

- Found that 15 different rates charged by UP (for transportation of soda ash, sodium bicarbonate, sodium sesquicarbonate, phosphorus, and phosphate rock from facilities at

Westvaco and Kemmerer, WY, and Dry Valley ID) were unreasonably high, and prescribed maximum reasonable rates and ordered reparations, in *FMC Wyoming Corporation and FMC Corporation v. Union Pacific Railroad Company*, STB Docket No. 42022 et al. (STB served May 12, 2000), *pet. for reconsideration dismissed after parties reached negotiated settlement* (STB served Dec. 13, 2000);

- To improve the traffic data used in rate cases (and in other contexts), modified the reporting requirements for the annual Carload Waybill Sample so to require all railroads to identify contract movements, and established a 30-year time limit on the confidentiality of the Waybill Sample, in *Modification of the Carload Waybill Sample and Public Use File Regulations*, STB Ex Parte No. 385 (Sub-No. 4) (STB served June 16, 2000);

- Issued general procedures for presenting evidence in SAC cases, designed to standardize the format and focus the evidence so that the Board can more efficiently and effectively evaluate the public record in such cases, in *General Procedures for Presenting Evidence In Stand-Alone Cost Rate Cases*, STB Ex Parte No. 347 (sub-No. 3) (STB served Mar. 12, 2001); and

- Found that a rate charged by UP for transportation of coal from certain mines in the Powder River Basin of Wyoming to an electricity generating facility at Sheboygan, WI was unreasonably high and ordered rate reductions and reparations, in *Wisconsin Power and Light Company v. Union Pacific Railroad Company*, STB Docket No. 42051 (STB served Sept. 13, 2001), *modified* (STB served May 14, 2002), *pets. for judicial review pending sub nom. Union Pacific Railroad Company v. Surface Transportation Board*, Nos. 02-1198 et al. (D.C. Cir. filed June 24, 2002).

RAILROAD SERVICE ISSUES

General Authority

The Board has broad authority to address the adequacy of the service provided by a railroad to its shippers and its connecting carriers, and the reasonableness of a railroad's service provisions. 49 U.S.C. 10701-10705, 10741-10742, 10744-10747, 11101-11103, 11121, and 11122-11123.

The Board is available to resolve service disputes and to require a railroad to meet its service responsibilities. 49 U.S.C. 11701. Among its broad remedial powers, the Board may, in appropriate circumstances, compel a railroad to provide an alternative through route with another railroad for specific traffic, 49 U.S.C. 10705(a), to provide switching for another railroad, 49 U.S.C. 11102(c), or to provide another railroad with access to terminal facilities, 49 U.S.C. 11102(a).

In addition, the Board can issue temporary service orders to address rail service emergencies and can direct one carrier to operate the lines of another carrier that has ceased operations, for a maximum period of 270 days. 49 U.S.C. 11123. Compensation to a carrier providing such directed service comes entirely from the revenues generated by that service. This directed service authority allows the Board to prevent the loss of needed rail services.

Service Emergency in the West

Responding to a UP/SP service crisis in 1997-98, the Board invoked its emergency service order authority for the full 270-day period permitted by law, directing the way in which rail service was provided in the Houston/Gulf Coast region. The Board's actions to help free up traffic in the Houston area were purposely measured, designed to assist shippers in the Houston area without harming shippers elsewhere in the West, and without further aggravating the congestion or impeding the railroad's own efforts to work through the emergency and restore adequate service.

To assess the service problems, the Board first conducted a 12-hour public hearing, on October 27, 1997, as announced in *Rail Service in the Western United States*, STB Ex Parte No.

573 (STB served Oct. 2, 1997) (notice of hearing). The Board then issued an emergency service order, in *Joint Petition for Service Order*, 2 S.T.B. 725 (1997), which, after a further hearing and performance reports from shippers, it modified and extended, in *Joint Petition for Service Order*, 2 S.T.B. 744 (1997), and *Joint Petition for Service Order*, 3 S.T.B. 44 (1998). Under its emergency authority, the Board:

- Authorized the Texas Mexican Railway (Tex Mex) to provide expanded service in and around Houston over UP track;
- Directed UP to release Houston-area shippers from their transportation contracts so that, where possible, they could use either Tex Mex or BNSF in addition to UP;
- Directed UP to modify its Houston/Gulf Coast operations and cooperate with other carriers to route traffic around Houston;
- Directed UP to file weekly extensive operational data so that STB could monitor UP operations in the region and UP's recovery efforts;
- Directed UP to file its investment plans to address the region's needs for additional rail infrastructure;
- Worked with UP and individual shippers to informally resolve individual service problems, but resisted requests to order shipper-specific relief that it viewed as harmful to the recovery efforts or other affected shippers; and
- Lifted the emergency service order at the end of the 270-day period and provided for a 45-day "wind-down" period, as the relevant service indicators, train speed, transit time, car inventory, blocked sidings, and terminal dwell times, reflected more fluid operations in the region and thus an end to the service crisis, in *Joint Petition for a Further Service Order*, 3 S.T.B. 612 (1998).

As noted above, the Board also conducted a special oversight proceeding to consider requests for additional conditions to the UP/SP merger in the Houston/Gulf Coast region. In its concluding decision (after an oral argument), in *Union Pacific Corporation et al.--Control & Merger--Southern Pacific Rail Corporation et al. [Houston/Gulf Coast Oversight]*, 3 S.T.B. 1030 (1998), the Board:

- Imposed a "clear route" condition, permitting the director of the neutral UP/BNSF dispatching center at Spring, TX, to route trains through Houston over available track of any carrier in the Houston Terminal area; and

- Directed UP to report, in subsequent yearly general oversight proceedings, on how its $1.4 billion infrastructure plan for the Houston/Gulf Coast region is being carried out and stated the Board's expectation that UP fully implement that plan.

In that decision, the Board also examined the causes of the service emergency and found no competitive failings produced by the merger, but rather found that the multiple causes included:

- Unanticipated surges in demand for rail service by all carriers in the West;

- Poor rail infrastructure in Houston that was aging and in disrepair, cramped and badly configured, lacking in capacity, with switching operations on mainline track in disrepair, causing undue delay, and otherwise inadequate to deal with the unanticipated surges in demand for rail service;

- Difficulties stemming from UP's implementation of the merger before and after the onset of the crisis, including installation of a new computerized information and management control system, and the process of obtaining labor agreements for the consolidation under one set of rules for various employee functions involved in running the merged system, that, until completed, prevented UP from putting into effect the operational changes—such as "directional running" (using parallel tracks in major traffic corridors each moving traffic only in one direction) and joint UP/BNSF dispatching—which ultimately worked to end the crisis;

- A backup of Mexico-bound traffic at the border crossing at Laredo, TX, due largely to operational problems in Mexico that ultimately forced UP to declare an embargo of the Laredo gateway;

- Major maintenance work by BNSF on its mainline between Houston and New Orleans, delaying UP interchange traffic in the Houston Terminal area and adding to the congestion; and

- Derailments and accidents on UP and SP occurring in 1997, prompting extensive FRA investigations and traffic delays.

Based on the Board's third annual round of general oversight of the UP/SP merger, the Board found that the western rail carriers had recovered from the service crisis, that the merger was producing benefits for the shipping public through better service and lower rates, and that the merger had not produced any competitive problems, in *Union Pacific Corporation et al.--Control & Merger--Southern Pacific Rail Corporation et al. [Houston/Gulf Coast Oversight]*, Finance Docket No. 32760 (Sub-No. 21) (Decision No. 15) (STB served Nov. 30, 1999).

Broad Review of Issues Relating to Access and Competition

In 1998, at the request of its Senate oversight leadership, the Board conducted a broad review of issues relating to access and competition in the rail industry (including access to regulatory relief), as announced in *Review of Rail Access and Competition Issues*, STB Ex Parte No. 575 (STB served Feb. 20, 1998). The Board held two days of public hearings, on April 2-3, 1998. In response to those hearings, the Board initiated various measures to address the diverse concerns expressed, in *Review of Rail Access and Competition Issues*, 3 S.T.B. 92 (1998), *modified*, STB Ex Parte No. 575 (May 4, 1998), and later reported back to Congress on the progress made and on matters for possible legislative consideration, in *Letter from Chairman Morgan to Senators McCain and Hutchison,* dated Dec. 21, 1998, summarized in *STB Press Release No. 98-82* (Dec. 21, 1998). The Board addressed the following areas and took the following actions:

Market Dominance

- To streamline captive shipper access to rate regulatory relief, excluded product and geographic competition from consideration in the Board's market dominance analyses, in *Market Dominance Determinations--Product and Geographic Competition*, 3 S.T.B. 937 (1998), *pet. for reconsideration denied*, STB Ex Parte No. 627 (STB served July 2, 1999), *remanded for further consideration sub nom. Association of American Railroads v. Surface Transportation Board*, 237 F.3d 676 (D.C. Cir. 2001), *reaffirmed on remand*, STB Ex Parte No. 627 (STB served Apr. 3, 2001), *pet. for judicial review pending sub nom. Association of American Railroads v. Surface Transportation Board*, No. 01-1213 (D.C. Cir. filed May 15, 2001);

Competitive Access

- Established expedited procedures for shippers and connecting railroads to obtain temporary alternative service from another rail carrier when the incumbent carrier cannot

properly serve their traffic, in *Expedited Relief for Service Inadequacies*, 3 S.T.B. 968 (1998), *pet. for judicial review dismissed as not ripe, Association of American Railroads v. Surface Transportation Board*, No. 99-1062 (D.C. Cir. Apr. 30, 1999);

- Directed railroad and shipper interests to explore non-service-related access issues (although no private-sector agreement was reached in that area);

- Reported to Congress that the basic policy issues surrounding an "open access" system are more appropriately resolved by Congress;

Revenue Adequacy

- Directed railroad and shipper interests mutually to select a panel of three disinterested experts to assess whether and how the Board's standard for judging the adequacy of a railroad's revenues—mandated by 49 U.S.C. 10704—should be changed (although shippers ultimately did not agree to participate);

- Reported to Congress that review by a panel of disinterested experts remains the best course of action, in view of the Board's limited resources, and pledged to give great deference to such a panel;

- Suggested that Congress may wish to remove the requirement for an annual determination of carrier revenue adequacy, as that determination has little practical effect;

Role of Smaller Railroads

- Directed large and small railroads to address obstacles encountered by shortline railroads, including contractual restrictions, inadequate car supply, and lack of alternative routings—private-sector discussions which ultimately resulted in a Rail Industry Agreement between the nation's large and small railroad organizations on ways to eliminate barriers to the ability of smaller railroads to compete;

- Approved the principles established in that Rail Industry Agreement governing switching charges and interline rates among subscribing large (Class I) railroads and smaller (Class II or III) connecting railroads, in *Association of American Railroads and American Short Line and Regional Railroad Association--Agreement--Application under 49 U.S.C. 10706*, 3 S.T.B. 910 (1998);

- Deferred action on a later request for a rulemaking proceeding to eliminate "paper barriers" (contractual provisions, historically imposed in connection with the purchase by a small carrier of track from a larger carrier, that limit the opportunities for the small railroad to interchange traffic with other carriers) until experience can be gained under the Rail Industry Agreement, in *Review of Rail Access and Competition Issues*, STB Ex Parte No. 575 (STB served Mar. 2, 1999);

Formalized Dialogue Between Railroads and Their Customers

- Directed railroads to establish a regular dialogue with their customers and a more systematic way of addressing customer concerns;

- Was represented by Board Chairman Morgan at the initial round of resulting regional meetings hosted by the Association of American Railroads (AAR) for rail shippers;

Board/Shipper Discussions

- Welcomed informal shipper meetings with Board members to discuss general service issues and other issues of broad concern (but not addressing specific pending cases);

Small Rate Cases

- Reported that simplified procedures for small rate cases are readily available at a reasonable cost;

- Suggested that, if a single benchmark test is needed, Congress should provide the test;[7] and

[7] As discussed herein under *Railroad General Oversight*, the Board later took comment on the appropriateness of legislating mandatory arbitration for such cases.

Override of Collective Bargaining Agreements

- Reported on the current law on this matter, based on a 1991 Supreme Court decision, and suggested that Congress could change the law if it agrees with rail labor's opposition to the current limited override of railroad collective bargaining agreements (CBAs).[8]

Specific Service Matters

Among its more significant actions addressing railroad service issues in FY 1998-2001, the Board:

- Denied a motion to dismiss a complaint by a grain shipper regarding rail car service and granted the shipper access to railroad information vital to its case, in *Grain Land Coop v. Canadian Pacific Limited and Soo Line Railroad Company D/B/A CP Rail System*, STB Docket No. 41687 (STB served Dec. 1, 1997), and later dismissed the case after a mediated settlement (STB served Apr. 26, 2001);

- Decided, based on public comments, to continue to evaluate on a case-by-case basis when a railroad should be required to operate over "excepted track" (track that does not meet FRA track safety standards), rather than adopt a set rule, in *Service Obligations Over Excepted Track*, 2 S.T.B. 679 (1997);

- Authorized a small railroad to substitute its services for those of the existing carrier, under its new rules establishing procedures for obtaining temporary alternative rail service to provide relief from service inadequacies, in *Denver Rock Island Railroad--Alternative Rail Service--Line of Kansas Southwestern Railway, L.L.C.*, STB Finance Docket No. 33762 (STB served June 16, 1999), *extended* (July 14, 1999);

- Declined to issue an emergency service order directing three railroads to cooperate in handling the traffic of Acme Steel Company facilities in the Chicago, IL area, finding that such an order was unnecessary because the railroads involved had already begun cooperative efforts to provide improved service to Acme and other shippers, but stated that the Board would continue to monitor the overall situation and hold the railroads to their representations, in *Petition for Emergency Service Order*, STB Service Order No. 1523 (STB served Nov. 24, 1999);

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[8] Later rail industry and rail labor representatives entered into a private-sector agreement limiting the override of CBAs and establishing a process for handling the matter.

- Dismissed a shipper's complaint against two small railroads regarding rail service and car availability after the parties reached a private settlement, in *Farmco, Inc. v. Central Kansas Railway L.L.C. and Kansas Southwestern Railway L.L.C.*, STB Docket No. 42043 (STB served Aug. 28, 2001); and

- Established a grain logistics task force jointly with USDA to address shipper and railroad information needs related to recurring seasonal problems that affect the transportation of grain and grain products, as announced in *STB Press Release No. 98-34A* (May 21, 1998)—a task force that later issued a series of reports on grain transportation prospects, as announced in *STB Press Release Nos. 98-70* (Nov. 4, 1998), *99-7* (Feb. 26, 1999), and *99-25* (June 10, 1999).

RAILROAD GENERAL OVERSIGHT

Consumer and Compliance Issues

Not included in the docket of formal cases processed by the Board (*see Appendix C*) are the many informal complaints that OCE receives and handles on an informal basis. In the rail area, 2,604 informal complaints were received and handled by OCE in FY 1998-2001. Most involved rail service problems.

In November 2000, the Board enhanced its capability to provide informal assistance to rail consumers with disputes or problems that they are unable to resolve satisfactorily with railroads. The Board's new Rail Consumer Assistance Program features a toll-free telephone number (866-254-1792), a special e-mail address (RailConsumer@stb.dot.gov), and a Rail Consumer page on the Board's website, for the use of individual rail customers and other interested parties who wish to contact the Board and provide information on rail-related issues.

Other

Among its more significant actions addressing other general railroad matters in FY 1998-2001, the Board:

- Instituted a proceeding to monitor and address any anticipated "Y2K" problems within the railroad transportation industries and established OCE as its small business contact point for Y2K issues, in *Y2K Readiness*, STB Ex Parte No. 633 (STB served Aug. 19, 1999);

- Conducted a declaratory order proceeding to address issues regarding federal preemption of state and local regulation of rail transportation and facilities under 49 U.S.C. 10501(b), in *Borough of Riverdale–Petition for Declaratory Order--The New York Susquehanna and Western Railway Corporation*, STB Finance Docket No. 33466 (STB served Sept. 10, 1999) (instituting proceeding and giving general guidance), *concluded* (STB served Feb. 27, 2001) (terminating proceeding after parties settled their dispute);

- Clarified that the Township of Woodbridge, NJ may seek court enforcement of Conrail's own noise-abatement commitments, in *The Town of Woodbridge, NJ, et al. v. Consolidated Rail Corporation, Inc.*, STB Docket No. 42053 (STB served Dec. 1, 2000);

- Issued a staff study (available on the Board's website) finding that railroad rates overall continued their multi-year decline in 1999, led by reductions in the rates charged to eastern coal and western grain, see *STB Press Release No. 00-52* (Dec. 14, 2000);

- Made railroad equipment liens that are recorded at the Board electronically accessible on the Board's website, see *STB Press Release No. 01-9* (Mar. 9, 2001);

- Addressed preemption issues involving construction of a new rail automobile unloading facility near the Ayer, MA aquifer, in *Joint Petition for Declaratory Order—Boston and Main Corporation and Town of Ayer, MA*, STB Finance Docket No. 33971 (STB served May 1, 2001);

- Found no basis for conducting an environmental review of a proposal by BNSF to construct a refueling terminal in Hauser, ID (for which no Board approval was needed), and thus no basis for modifying the environmental measures taken cooperatively by local authorities and BNSF to protect the aquifer near that facility, in *Friends of the Aquifer, City of Hauser, ID, Hauser Lake Water District, Cheryl L. Rodgers, Clay Larkin, Kootenai Environmental Alliance, Railroad and Clearcuts Campaign*, STB Finance Docket No. 33966 (STB served Aug. 15, 2001); and

- Took measures to increase utilization of existing procedures for voluntary arbitration of matters subject to Board jurisdiction and sought public comment on whether (and how) Congress should prescribe mandatory arbitration for settling small rail rate disputes, in *Arbitration—Various Matters Relating to Its Use as an Effective Means of Resolving Disputes That Are Subject to the Board's Jurisdiction*, STB Ex Parte No. 586 (STB served Sept. 20, 2001).[9]

[9] By the time this report is released, the Board will have completed the measures that it could take itself and provided a report to Congress summarizing the public comments it received on potential legislative action.

RAIL LABOR MATTERS

Railroad employees who are adversely affected by certain Board-authorized rail restructurings are entitled to statutorily-prescribed protective conditions under 49 U.S.C. 11326(a) (consolidations of Class I or II carriers), 49 U.S.C. 11326(b) (consolidations between Class II and III carriers), 49 U.S.C. 10902(d) (line acquisitions by Class II carriers), or 49 U.S.C. 10903(b)(2) (line abandonments). These standard conditions address both wage or salary protection and changes in work conditions. They provide procedures for resolving disputes through negotiation and, if necessary, arbitration. Arbitration awards are appealable to the Board under limited criteria that give great deference to the expertise of the arbitrators in resolving such disputes.

Among the more significant actions addressing rail labor protection matters in FY 1998-2001, the Board:

- Declined to stay a labor implementing agreement involving the UP/SP merger pending review of an arbitral award, based on the railroads' representation that no employees would lose jobs or be stripped of seniority for refusal to accept the terms of the agreement until the Board had completed its review, in *Union Pacific Corporation--Control & Merger--Southern Pacific Rail Corporation*, STB Finance Docket No. 32760 (Sub-No. 25) (STB served Dec. 30, 1997);

- Established limits on the right of arbitrators acting under standard Board/ICC-imposed labor protective conditions to modify collective bargaining agreements in order to permit implementation of transactions approved by the Board or the ICC, in *CSX Corporation--Control--Chessie System, Inc. and Seaboard Coast Line Industries, Inc. (Arbitration Review)*, 3 S.T.B. 701 (1998) (the so-called *Carmen III* case);

- Answered questions posed by a court remand and reaffirmed the ICC's decision not to disturb an arbitrator's award that had modified collective bargaining agreements in order to implement authority granted by the ICC for Springfield Terminal to operate the Guilford rail system, in *Delaware and Hudson Railway Co.--Lease and Trackage Rights--Springfield Terminal Railway Company*, 3 S.T.B. 677 (1998);

- Sought to bar Canadian Pacific from transferring five Delaware & Hudson train dispatcher positions from Milwaukee, WI, to Montreal, Quebec, Canada until certain safety concerns expressed by FRA were resolved, in *Canadian Pacific Limited, et al.--*

Purchase and Trackage Rights–Delaware & Hudson Railway Company (Arbitration Review), 3 S.T.B. 845 (1998), *vacated sub nom. Canadian Pacific Ry. et al. v. Surface Transportation Board*, 197 F.3d 1165 (D.C. Cir. 1999), but later denied a request to reopen a 10-year-old merger decision in order to block the transfer, because FRA had not determined that the transfer would compromise safety, in *Canadian Pacific Limited, et al.—Purchase and Trackage Rights—Delaware & Hudson Railway Company*, Finance Docket No. 31700 (STB served Mar. 2, 2000);

- Reversed an arbitrator's summary denial of merger-related labor protection for certain former employees of the Cleveland Union Terminals Company, so as to afford them the opportunity to demonstrate that they are entitled to benefits, in *Pennsylvania Railroad Company–Merger--New York Central Railroad Company (Arbitration Review)*, 3 S.T.B. 834 (1998), *aff'd (as to another part of the Board's decision) sub nom. Augustus et al. v. Surface Transportation Board*, 238 F.3d 419 (6th Cir. 2000);

- Ordered UP to maintain the status quo with respect to certain crew-hauling positions while the Board considered whether UP's planned changes would contravene an arbitral award, in *Union Pacific Corporation et al. —Control and Merger—Southern Pacific Rail Corporation et al. (Petition for Enforcement of Arbitration Award)*, STB Finance Docket No. 32760 (Sub-No. 36) (STB served Dec. 15, 1999), and subsequently upheld the arbitrator's ruling that, if UP chose to transfer the work from a former SP yard to a UP yard (a plan that was later withdrawn), the work must be performed under the collective bargaining agreement of the former SP (which the arbitrator found to be more favorable to employees) (STB served Feb. 25, 2000); and

- Requested public comment on whether rail employees whose work is moved as a result of a rail merger are entitled, under statutorily mandated labor protective conditions, to compensation for the difference in pay if they decline to follow their work but instead exercise their rights, under pre-merger collective bargaining agreements, to take lower-paying jobs at their existing work locations, in *Norfolk Southern Corporation — Control — Norfolk and Western Railway Company and Southern Railway Company (Arbitration Review)*, STB Finance Docket No. 29430 (Sub-No.21) (STB served Dec. 15, 1999), but later dismissed the inquiry based upon the parties' private settlement of the case (STB served June 21, 2001).

ENVIRONMENTAL REVIEW

Overview

Under the National Environmental Policy Act of 1969, 42 U.S.C. 4331-4335, the Board must take into account in its decisionmaking the environmental impacts of its actions, including direct, indirect and cumulative impacts. The Board must consider these impacts before making its final decision in a case. The Section of Environmental Analysis (SEA) assists the Board in meeting this responsibility by: conducting an independent environmental review of cases filed with the Board; preparing any necessary Environmental Impact Statement (EIS) or Environmental Assessment (EA); conducting public outreach to inform the public and communities about proposals before the Board and to notify them of the opportunity to raise environmental concerns; and providing technical advice and recommendations to the Board on environmental matters.

Review Process

Environmental reviews are typically conducted for railroad merger, line construction, and abandonment proposals. The review is conducted in accordance with the Board's environmental rules (49 CFR 1105), the regulations of the President's Council on Environmental Quality (40 CFR 1500 et seq.), and other applicable Federal environmental requirements. It takes into account all applicable Federal environmental statutes, including the Endangered Species Act (16 U.S.C. 1531-1544), the Coastal Zone Management Act (16 U.S.C. 1451 *et seq.*), the Clean Air Act (42 U.S.C. 7401-7642), the Clean Water Act (33 U.S.C. 1344), the National Historic Preservation Act (16 U.S.C. 470 *et seq.*), and pertinent hazardous substance laws (42 U.S.C. 6901-6933 and 9601-9675).

The public (including Federal, state, and local agencies) has an important role in the environmental review process. SEA first presents to the public the preliminary results of its analysis of potential environmental impacts, in either a draft EIS or an EA. This analysis is based on information available at the time from the applicant and the public, SEA's independent analysis, and in some cases site visits. There is then an opportunity for public review and comment on all aspects of the draft EIS or EA, including mitigation options. After the public comment period, SEA performs additional analysis as needed and prepares an EIS or Post-EA

presenting its final recommendations to the Board. The Board then considers the entire environmental record in reaching its final decision in a case.

The Board encourages applicants to consult with affected communities and negotiate mutually acceptable agreements with local governments and organizations addressing specific local concerns. If private solutions to environmental issues are not negotiated, SEA may recommend that the Board impose conditions to address the potential adverse effects that a proposed action may have on the communities that would be most affected by the transaction. Such conditions must be reasonable and must address impacts that would result directly from the transaction being considered by the Board. The Board ultimately determines what mitigation is appropriate. The Board may impose mitigation conditions to address public safety, land use, air quality, wetlands and water quality, hazardous waste and materials, noise, potential disproportionate impacts on minority and low-income populations (referred to as environmental justice issues), and protection of historic resources.

Due to resource constraints, in large cases the Board may use the services of a third-party contractor. Third-party contracting is a voluntary arrangement in which an applicant pays for a contractor to assist SEA in preparing the environmental analysis under SEA's direction, control and supervision. The Board explained its procedures for this practice in *Policy Statement On Use Of Third-Party Contracting In Preparation Of Environmental Documentation*, STB Ex Parte No. 585 (STB served Mar. 19, 2001).

Railroad Mergers

In railroad mergers, the potential environmental impacts typically relate to changes in rail traffic patterns on existing lines, which can be addressed in an EA or an EIS. The Board may impose measures designed to mitigate potential system-wide and corridor-specific environmental impacts. Such measures may address community impacts such as highway/rail at-grade crossing safety and delay, hazardous materials transportation safety, emergency response, air quality, and noise. They may also address environmental justice issues. Safety integration plans, prepared in consultation with FRA, describe how merger applicants would ensure the safe integration of their rail operations.

Among the significant actions taken in this area in FY 1998-2001, the Board:

- In connection with the already approved UP/SP merger, in Finance Docket No. 32760,
    - Issued a final mitigation plan for Reno, NV, containing proposed measures (in addition to those previously imposed) to address environmental impacts that were unique to that area stemming from the projected increased merger-related train traffic (STB served Feb. 11, 1998);
    - Approved additional environmental mitigation negotiated between UP and Wichita/Sedgwick County, KS that was specific to that area, in Decision No. 80, 3 S.T.B. 174 (1998); and
    - Approved additional environmental mitigation negotiated between UP and Reno, NV that was specific to that area, in Decision No. 84, 3 S.T.B. 951 (1998).
- Issued an EIS (in the shortest time an EIS had ever been issued) addressing the CSX-NS proposal to acquire Conrail, in STB Finance Docket No. 33388 (STB served May 22, 1998);
- Issued an EA addressing the CN proposal to acquire IC, in STB Finance Docket No. 33556 (STB served Mar. 8, 1999); and
- Found no need for formal environmental review of the CN proposal to acquire Wisconsin Central, as there would be only minimal changes in railroad operations and the environmental effects would be insignificant, in STB Finance Docket No. 34000 (Decision No. 9) (STB served Aug. 2, 2001).

Rail Line Constructions

Rail construction proposals vary in purpose, size, and complexity of environmental impacts. These projects are located throughout the country and may involve unusually complicated and sensitive environmental issues. An EIS is generally prepared for rail construction cases, although in some cases an EA may be sufficient. In assessing the potential impacts to the environment from a rail construction project, the Board considers alternatives to the proposed action, effects on regional or local transportation systems, land use, energy use, air and water quality, noise, safety, environmental justice, biological resources, historic resources, coastal zones, and cumulative impacts.

Among the significant actions taken in FY 1998-2001 in this area was the Board's examination of the proposal by DM&E to construct and operate a new rail line to serve coal mines in Wyoming's Powder River Basin, in STB Finance Docket No. 33407, in which the Board issued a draft EIS which addressed the various environmental impacts anticipated, recommended preliminary mitigation measures, and requested public comments (STB served Sept. 27, 2000).[10]

Rail Line Abandonments

The Board's review of rail line abandonments includes an analysis of the potential environmental impacts associated with track removal and any diversion of traffic from the line proposed for abandonment. Mitigation conditions imposed on rail line abandonments often involve the protection of critical habitats for threatened and endangered species, historic and cultural resources, and wetlands.

The most significant Board action in this area in FY 1998-2001 was its final approval for UP to salvage the 71.5-mile Wallace Branch line in Idaho, in *Union Pacific Railroad Company–Abandonment–Wallace Branch, ID*, Docket No. AB-33 (Sub-No. 70) (STB served June 26, 2000), *stay denied* (STB served July 25, 2000), *aff'd sub nom. Citizens Against Rails-to Trails et al. v. Surface Transportation Board*, 267 F.3d 1144 (D.C. Cir. 2001). The Board took that action after considering the final Supplemental EA issued by SEA in April 2000, which included an engineering study, a cost analysis, a track-salvage work plan, a wetlands inventory, and a biological assessment. The line had served the silver mining industry beginning in the late 1800s and was contaminated with heavy metal concentrates from past railroad service. The Board imposed four environmental conditions to avoid any adverse environmental impacts from the salvage, and it also authorized an interim trail use arrangement at the request of the State of Idaho and the Coeur d'Alene Tribe.

[10] By the time this report is released, the final EIS will have been issued in that case and the Board will have completed its environmental analysis of the project and given final approval, with environmental mitigation, of the construction.

FINANCIAL CONDITION OF RAILROADS

The Board monitors the financial condition of railroads as part of its oversight of the rail industry. The Board prescribes a uniform accounting system for railroads to use for regulatory purposes. 49 U.S.C. 11141-43, 11161-64; 49 CFR 1200-1201. In addition, the Board requires Class I railroads to submit quarterly and annual reports containing financial and operating statistics, including employment and traffic data. 49 U.S.C. 11145; 49 CFR 1241-1246, 1248.

Based upon the information submitted to it directly by carriers and other information obtained from the industry, the Board regularly compiles and releases various reports about Class I railroads in the aggregate, including expenses, investments, financial results, employment, and traffic data. *See Appendix A.*

In addition, the Board publishes a "rail cost adjustment factor" (RCAF) on a quarterly basis to reflect the changes in the costs incurred by the rail industry during that period. 49 U.S.C. 10708; 49 CFR 1135. The Board publishes both an unadjusted RCAF and an adjusted RCAF that reflects productivity gains in the railroad industry.

In actions taken in this area in FY 1998-2001, the Board:

- Required railroads to make available for public inspection the workpapers used in developing the quarterly RCAF, to ensure against mistakes in the computation of the RCAF, in *Railroad Cost Recovery Procedures*, STB Ex Parte No. 290 (Sub-No. 2) (STB served Jan. 5, 2000); and

- Proposed to require consolidated financial reporting by commonly controlled railroads for use in all regulatory matters, to obtain more meaningful information on rail systems, in *Consolidated Railroad Reporting*, STB Ex Parte No. 634 (STB served Sept. 25, 2000).[11]

Also in FY 1998-2001, the Board issued two special studies in which it measured trends in railroad rates:

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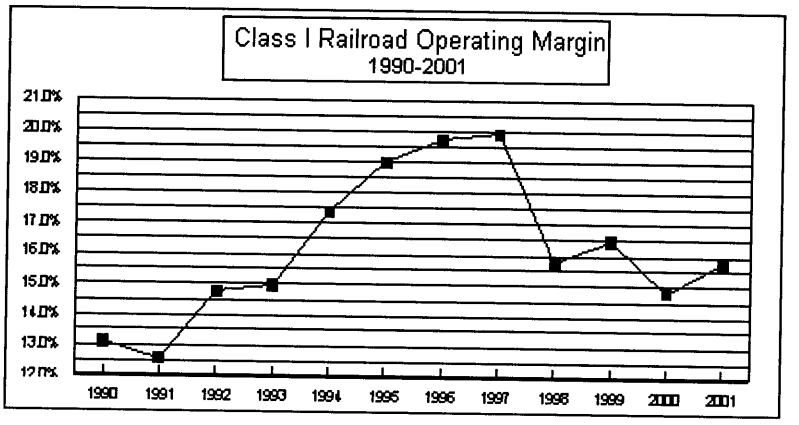
[11] By the time this report is released, the Board will have made that change.

- a February 1998 study, showing that the average, inflation-adjusted railroad rate declined by 46.4% from 1982 through 1996 (and fell in each year during that period) and that, even without any adjustment for inflation, the (nominal) rail rate declined by 15.6%, see *STB Press Release No. 98-11* (Feb. 26, 1998); and

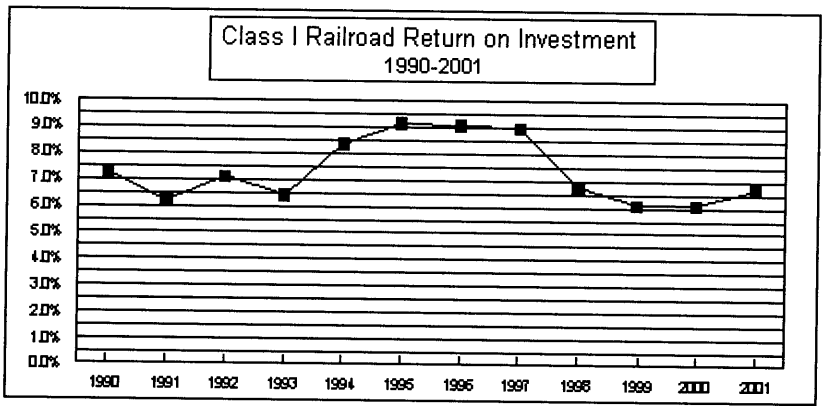
- a December 2000 study, showing that this yearly trend of significantly declining rail rates had continued through 1999 and that, for the period 1984-99, inflation-adjusted rail rates had fallen an average of 45.3% and, even without adjusting for inflation, eastern rail rates had fallen 13.2%, western rail rates had fallen 24.7%, and rates for the nation as a whole had fallen 19.7% over this period, see *STB Press Release No. 00-52* (Dec. 14, 2000).

As shown in the following graphs, the gross profit margin and return on net investment for the railroad industry improved during the 1990 through 1997 time frame, but declined from 1998 through 2000. These declines were due largely to difficulties encountered by UP in connection with its acquisition of SP (affecting the 1998 figures) and difficulties encountered by CSX and NS in connection with their acquisition of Conrail (affecting the 1999 and 2000 figures). In 2001, however, both the gross profit margin and return on net investment improved for the industry.

Class I Railroad Operating Margin



Class I Railroad Return on Investment



AMTRAK

The Board does not have regulatory authority over the National Railroad Passenger Corporation (Amtrak) in most matters. 49 U.S.C. 24301(c). The Board does have limited authority, however, to ensure that Amtrak can operate over the track of the nation's freight railroads. Specifically, the Board is required, if requested by Amtrak, to adjudicate disputes between Amtrak and individual freight railroads concerning shared use of tracks and other facilities and to set the terms and conditions of such use if Amtrak and the freight railroad cannot reach a voluntary agreement. 49 U.S.C. 24308(a), 24904(c).

Also, when a railroad cannot move an Amtrak train over its normal route and requests movement over an alternative route of another carrier, the Board may issue an emergency rerouting order to permit uninterrupted passenger service. 49 U.S.C. 24308(b). No such emergency rerouting orders were required in FY 1998-2001.

In connection with Amtrak, during FY 1998-2001, the Board:

- Clarified the nature of express traffic that Amtrak may carry on its passenger trains and directed UP/SP to continue to make tracks and facilities available to Amtrak, in *Application of the National Railroad Passenger Corporation under 49 U.S.C. 24308(a)--Union Pacific Railroad Company and Southern Pacific Transportation Company*, 3 S.T.B. 143 (1998), *pet. for judicial review voluntarily dismissed, Association of American Railroads v. Surface Transportation Board*, No. 98-1328 (D.C. Cir. Aug. 13, 1998);

- Set the terms and conditions for Amtrak's use of Guilford Rail System track between Plaistow, NH, and Portland, ME, to enable passenger rail service to be reestablished between Boston, MA, and Portland, in *Application of the National Railroad Passenger Corporation under 49 U.S.C. 24308(a)--Springfield Terminal Railway Company, Boston and Maine Corporation, and Portland Terminal Company*, 3 S.T.B. 157 (1998);

- Addressing a subsequent dispute, with assistance from FRA, set the terms and conditions under which Amtrak may operate at speeds of up to 79 miles per hour over the Guilford tracks between Plaistow and Portland, in *National Railroad Passenger Corporation–Petition for Declaratory Order–Weight of Rail*, STB Finance Docket No. 33697 (STB served Oct. 22, 1999); and

- Directed Guilford to allow an Amtrak test of Guilford track to resolve a continuing dispute regarding the safety of operating 79-mile per hour passenger trains over the tracks between Plaistow and Portland, in *National Railroad Passenger Corporation–Petition for Declaratory Order–Weight of Rail*, STB Finance Docket No. 33697 (STB served June 29, 2001).

MOTOR CARRIAGE

The Board has certain, limited oversight responsibilities over motor carriage. Those oversight functions not specifically assigned to the Board are administered by FMCSA (formerly FHWA) or BTS. 49 U.S.C. 13301(a).

Collective Motor Carrier Activities

Approval of Bureaus

The Board may approve agreements by motor carriers to participate in bureaus that can collectively set through routes and joint rates, set rates for the transportation of household goods, establish uniform classifications and mileage guides, and engage in certain other collective activities. 49 U.S.C. 13703; 49 CFR 1331. Board approval confers immunity from the antitrust laws for these collective activities, but results in Board monitoring of the bureau's activities. 49 U.S.C. 13703(a)(6). Under the ICCTA, as amended by the Motor Carrier Safety Improvement Act of 1999, Pub. L. No.106-159, 113 Stat. 1748 (1999), the Board must conduct a periodic review to determine whether the approvals for existing motor carrier bureau agreements should continue. 49 U.S.C. 13703(d).

In FY 1998-2001, the Board:

- Decided to renew approval for existing motor carrier rate bureaus on the condition that the bureaus reduce their "benchmark" rates to market-based levels, in *EC-MAC Motor Carriers Service Association, Inc. et al.*, 3 S.T.B. 926 (1998), *temporarily extended*, Sec. 5a Application No. 118 (STB served Dec. 29, 1999), *pet. for reconsideration denied* (STB served Feb. 11, 2000), and sought suggestions for methodologies to achieve that objective, in *EC-MAC Motor Carriers Service Association, Inc. et al.*, Sec. 5a Application No. 118 (Sub-No. 2) (STB served Feb. 11, 2000); and

- Decided to renew approval for the National Classification Committee on the condition that the bureau change its procedures to provide for more effective shipper participation, in *National Classification Committee--Agreement*, 3 S.T.B. 917 (1998), *temporarily extended*, Section 5a Application No. 61 (STB served Dec. 29, 1999), *pet. for reconsideration denied* (STB served Feb. 11, 2000), and sought suggestions for

methodologies for achieving that objective, in *National Classification Committee--Agreement*, Section 5a Application No. 61 (Sub-No. 6) (STB served Feb. 11, 2000).[12]

Review of Collective Actions

The Board may review the reasonableness of motor carrier rates and practices that are established collectively. 49 U.S.C. 13701(a)-(b), 13703(a)(5).

In FY 1998-2001, the Board:

- Declined to suspend or investigate a proposed amendment to the motor carrier Uniform Straight Bill of Lading providing for incorporation by reference of carrier liability limitations, in *Amend the Uniform Straight Bill of Lading and Accompanying Contract Terms and Conditions (National Motor Freight Classification)*, STB Docket No. ISM-35002 (STB served Dec. 24, 1997); and

- Suspended general rate increases that were proposed by four rate bureaus because the bureaus had not justified those increases and had not addressed the disparity between their class rates and the market-based rates that they asserted they typically charge, in *Protests and Petitions for Suspension and Investigation of General Rate Increases Proposed by EC-MAC Motor Carriers Service Association, Inc., Middlewest Motor Freight Bureau, Inc., North American Transportation Council, Inc., and Rocky Mountain Tariff Bureau, Inc.*, STB Docket No. ISM-35006 (STB served Sept. 30, 1999), but subsequently discontinued its investigation after the bureaus canceled the proposed rate increases (STB served Oct. 15, 1999).

Pooling Arrangements

Motor carriers seeking to pool or divide their traffic, services, or earnings must obtain Board approval. 49 U.S.C. 14302.

In FY 1998-2001, the Board approved a pooling agreement among several motor carriers handling "bulk" commodities, in *Groendyke Transport, Inc., Manfredi Motor Transit Co., Miller*

[12] By the time this report is issued, the Board will have taken further action directing that certain actions be taken by the National Classification Committee in accordance with the Board's earlier decisions.

Transporters, Inc., Superior Carriers, Incorporated, and Trimac Transportation, Inc.–Pooling Agreement, STB Docket No. MC-F-20941 (STB served June 7, 1999).

Household Goods Carriage

Household goods carriers are required to publish tariffs and make them available to residential shippers (although they do not file their tariffs with the Board). 49 U.S.C. 13702(a), (c). The Board's regulations governing household goods carriers' tariffs (49 CFR 1310) require that the tariffs include an accurate description of the services offered and the applicable rates, charges, and service terms for household goods moves. Moreover, shippers must be explicitly informed whenever provisions of a tariff are incorporated into a bill of lading or other document embodying a contract of carriage, and these provisions must be made available for inspection by the shippers. The regulations require additional public notice and explanation when incorporated tariff provisions include terms related to claim restrictions; limits on the carrier's liability for loss, damage, or delay of goods; or provisions for the carrier to impose monetary penalties or to increase the price of the transportation.

OCE contacted over 250 household goods carriers and forwarders in FY 1998 to ensure that they were aware of, and in compliance with, the tariff publication and dissemination requirements of the statute and the Board's regulations. As a result of this effort, carriers and forwarders not in compliance took appropriate action to satisfy the requirements.

In other action in FY 1998-2001, the Board declined to become involved in truck-licensing issues regarding what constitutes household goods transportation, deferring to FMCSA on that issue, in *Household Goods Carriers' Bureau Committee—Petition for Declaratory Order*, STB Docket No. 42055 (STB served July 13, 2001).

Intercity Bus Industry

Intercity bus carriers must obtain Board approval for mergers and similar consolidations, 49 U.S.C. 14303; 49 CFR 1182, and for pooling arrangements between carriers, 49 U.S.C. 14302; 49 CFR 1184. The Board can require bus carriers to provide through routes with other carriers, 49 U.S.C. 13705.

Among the more significant actions involving bus carriers in FY 1998-2001, the Board:

- Approved an arrangement for pooling of operations and revenues by Peter Pan and Greyhound bus lines between New York, NY, and Washington, DC, subject to the condition that the carriers file periodic reports on the fares they charge for service between those points, to address concerns expressed by the United States Department of Justice, in *Peter Pan Bus Lines, Inc.--Pooling--Greyhound Lines, Inc.*, STB Docket No. MC-F-20908 (STB served Apr. 29, 1998);

- Approved the merger of the Laidlaw and Greyhound bus systems, in *Laidlaw Inc. & Laidlaw Transit Acquisition Corporation--Merger--Greyhound Lines, Inc.*, 3 S.T.B. 913 (1998);

- Later required Greyhound, after the Securities and Exchange Commission was notified that Laidlaw was having financial problems, to provide information regarding potential service disruptions, in order to determine if further Board action was warranted, in STB Docket No. MC-F-20940 (STB served Aug. 18, 2000);

- Addressed the responsive filing by Greyhound and Laidlaw, showing positive financial and operational developments, and provided for further monitoring, in STB Docket No. MC-F-20940 (STB served Dec. 6, 2000);

- Revised its procedures governing applications by bus companies to consolidate, in *Revisions to Regulations Governing Finance Applications Involving Motor Passenger Carriers [49 CFR Parts 1002, 1182, 1187, and 1188]*, 3 S.T.B. 658 (1998); and

- Exempted from regulatory scrutiny intra-corporate family transactions of motor passenger carriers that do not result in significant operational changes, adverse changes in service levels, or changes in the competitive balance with carriers outside the corporate family, in *Class Exemption for Motor Passenger Intra-Corporate Family Transactions,* STB Finance Docket No. 33685 (STB served Feb. 18, 2000).

Undercharge Claims

An undercharge claim is a claim made by a motor carrier retroactively to collect the difference between the applicable rate contained in a tariff filed with the ICC (which it was legally obligated to charge) and the rate that it actually charged for a past shipment. Because there is no longer a tariff filing requirement for motor carriers, no undercharge claims based on the filed rate doctrine can arise from transportation occurring after the ICCTA. There remained, however, a number of outstanding undercharge claims based on transportation that had occurred before the tariff filing requirement was eliminated. The Board is charged with resolving issues of tariff applicability, rate reasonableness, reasonableness of rate collection practices, and similar matters. 49 U.S.C. 13708-13711.

The Board began FY 1998 with 230 pending motor carrier undercharge cases and received a few additional such cases during the time period covered by this report. In January 2001, the Board resolved the last remaining case before it arising out of the trucking industry "undercharge crisis" of the 1990s, as announced in *STB Press Release No. 01-2* (Jan. 19, 2001). Together, the Board and the ICC resolved approximately 1,075 proceedings involving undercharge issues.

In one of its more significant undercharge cases in FY 1998-2001, the Board denied certain undercharge claims of an operating carrier, finding that it was improper for the carrier to collect higher rates based upon its use of a cartage agent and to require a written request for discounts that it routinely issued, and that the rates sought to be collected were unreasonably high, in *UARCO Incorporated v. James B. Orr and Freightways Express, Inc.*, Docket No. 40819 (STB served June 25, 1999), *modified* (STB served Mar. 7, 2000).

Consumer and Compliance Issues

Not included in the docket of formal cases processed by the Board (*see Appendix C*) are the many informal complaints that OCE receives and handles on an informal basis. In the motor carrier area, 6,354 informal complaints and requests for assistance were received and handled by OCE in FY 1998-2001. For the most part, these complaints involved household goods transportation problems.

WATER CARRIAGE

The Board has authority to regulate rates for port-to-port and intermodal transportation in the noncontiguous domestic trade, which consists of domestic transportation to or from Alaska, Hawaii, American Samoa, the Northern Mariana Islands, Guam, the Virgin Islands, or Puerto Rico. 49 U.S.C. 13702(a), (b).

Tariff Requirements

Carriers engaged in the noncontiguous domestic trade are required to file with the Board tariffs containing their rates and service terms for this transportation (except that tariffs are not required for transportation provided pursuant to contracts between carriers and shippers, or for services provided by freight forwarders). 49 U.S.C. 13702; 49 CFR 1312. Carriers have the option of filing printed tariffs or filing their tariffs with the Board electronically. In either event, these tariffs are available in the Board's offices for review by the public.

In FY 1998-2001, the Board:

- Announced that the option of electronically filing tariffs for the noncontiguous domestic trade through the Automated Tariff Filing and Information System that had been maintained by the Federal Maritime Commission (FMC) would be eliminated, as of May 1, 1999, because FMC would no longer be maintaining that system, but that individual water carriers could apply for electronic filing authority, in *Regulations for the Publication, Posting and Filing of Tariffs for the Transportation of Property By or with a Water Carrier in the Noncontiguous Domestic Trade*, STB Ex Parte No. 580 (STB served Feb. 3, 1999);

- Later decided to permit tariffs in the noncontiguous domestic trade to be filed electronically using the same software that had been used by FMC, in *Electronic Filing of Noncontiguous Domestic Trade Tariffs*, STB Special Tariff Authority No. 6 (STB served Apr. 29, 1999); and

- Approved the use of e-mail for tariff filings by Matson Navigation Company, in *Filing of Printed Noncontiguous Domestic Trade Tariffs by E-Mail*, STB Special Tariff Authority No. 8 (STB served Dec. 4, 2000).

The number of water tariffs filed with the Board in FY 1998-2001 are shown in the following table.

Water Tariff Filings				
	1998	**1999**	**2000**	**2001**
Printed Tariffs				
Number of Filings	1,373	1,131	852	705
Number of Pages Filed	25,717	25,088	11,030	8,191
Electronic Tariffs				
Number of Filings	1,401	1,634	1,817	1,886
Number of Objects (e.g., tariff rates, rules, etc.)	77,139	83,183	63,101	66,203

Complaints

Upon complaint, the Board must determine the reasonableness of water or joint motor-water rates in the noncontiguous domestic trade. 49 U.S.C. 13701. In FY 1998-2001, various such complaints were pending at the Board, and the Board took evidence in those cases.

Not included in the docket of formal cases processed by the Board (*see Appendix C*) are the informal complaints that OCE receives and handles on an informal basis. OCE received and handled 68 informal complaints in FY 1998-2001 that related to water carrier matters.

PIPELINE CARRIAGE

The Board regulates interstate transportation by pipeline of commodities other than water, gas, and oil. 49 U.S.C. 15301, 15501, 15503, 15701. Pipeline carriers must promptly disclose (in either written or electronic form) their rates and service terms upon request. 49 U.S.C. 15701; 49 CFR 1305. Additionally, pipeline carriers must provide at least 20 days' notice before a rate increase or change in service terms may become effective. Pipeline rates and practices must be reasonable, 49 U.S.C. 15501, and nondiscriminatory, 49 U.S.C. 15505.

During FY 1998-2001, the Board found that certain rate increases taken by Koch Pipeline Company in 1996 for transportation of anhydrous ammonia (an agricultural fertilizer) from production facilities in southern Louisiana to terminals in Illinois, Indiana, Iowa, Missouri, and Nebraska were unreasonable, and the Board ordered a rate rollback and payment of reparations to two shippers, in *CF Industries, Inc. v. Koch Pipeline Company, L.P.*, STB Docket No. 41685 (STB served May 9, 2000), *aff'd sub nom. CF Industries, Inc. v. Surface Transportation Board,* 255 F.3d 816 (D.C. Cir. 2001).

Not included in the docket of formal cases processed by the Board (*see Appendix C*) are the informal complaints that OCE receives and handles on an informal basis. OCE received and handled 6 informal complaints in FY 1998-2001 that related to pipeline matters.

COURT ACTIONS

Judicial review of most Board decisions is available in the United States Courts of Appeals. 28 U.S.C. 2321, 2342(5). Review is available from Federal district courts for Board orders that are solely for the payment of money and for certain matters referred to the Board by district courts. 28 U.S.C. 1336, 2321.

The Board defends its own decisions against challenges in court and may appear in any civil action involving matters within its jurisdiction. 49 U.S.C. 703(d). In addition, the Board is responsible for defending decisions made by its predecessor, the ICC, that involve regulatory functions transferred to the Board, and it defends them under the law in effect at the time those decisions were rendered. ICCTA, Sec. 204(c)(2).

Court actions arising out of Board (or ICC) proceedings reflect the diversity of the Board's functions. Below is a summary of the more significant court decisions rendered in FY 1998-2001.

Railroad Restructuring

Mergers and Common Control Arrangements

The Board's exercise of its authority to establish the terms of exchange for stock held by minority stockholders in the UP/SP merger was upheld in *Zatz v. United States*, 149 F.3d 144 (2d Cir. 1998). The court concluded that, in approving a merger, the Board has authority to determine the fairness of the price for minority shareholders forced to surrender their shares, even though the Board does not otherwise have regulatory authority over securities issuances.

The Board's decision approving the UP/SP merger was affirmed in *Western Coal Traffic League v. Surface Transportation Board*, 169 F.3d 775 (D.C. Cir. 1999). The court upheld the Board's finding that the merger would not lead to a substantial loss of competition for transportation of western coal. The court found that the Board's conclusion that the two major remaining rail carriers would compete, rather than collude, was reasonable and supported by evidence. The court also agreed with the Board's conclusion that source competition was not

reduced by the merger. In particular, the Board had found that the various types of western coal are not substitutable for each other, and the court found that the Board's determination was supported by substantial evidence.

The Board's 15-month moratorium on the filing of any new major railroad merger proposals was upheld in *Western Coal Traffic League et al. v. Surface Transportation Board*, 216 F.3d 1168 (D.C. Cir. 2000). The court found that there was ample justification for the Board's action and that forcing the Board to consider new merger applications before the agency had an opportunity to determine where the public interest lies would defeat the purpose of the agency's review, whereas allowing the Board to focus for a reasonable time upon revising its merger criteria would enable the Board to continue to meet its decisional deadlines once it resumed processing applications.

The Board's approval of the joint acquisition of Conrail by CSX and NS and division of Conrail's assets between them was affirmed in *Erie-Niagara Steering Committee v. Surface Transportation Board*, 247 F.3d 437 (2d Cir. 2001). The court rejected arguments by various parties that the Conrail assets had not been properly valued and that the Board should have imposed various additional conditions upon its approval of the transaction.

Line Acquisitions

The Board's class exemption procedures for line sales to Class III carriers under 49 U.S.C. 10902 were upheld in *United Transportation Union--Illinois Legislative Board v. Surface Transportation Board*, 132 F.3d 1482 (D.C. Cir. 1997). The court expressly affirmed the Board's determination that under the statute no labor protection is available in such cases.

The Board's authorization of the sale of more than 1,100 miles of track and related trackage rights by CP to form a new Class II railroad was upheld in *City of Ottumwa v. Surface Transportation Board*, 153 F.3d 879 (8th Cir. 1998), together with the Board's determination that the sale of a one-third investment interest in the new carrier back to CP did not represent control by CP of the new carrier.

The Board's requirement that buyers in line sales and related transactions must give employees 60 days' notice of their intentions to hire a new work force was upheld in *Association of American Railroads v. Surface Transportation Board*, 161 F.3d 58 (D.C. Cir. 1998). This rule applies only to entities that would have post-acquisition revenues exceeding $5 million.

In *United Transportation Union–Illinois Legislative Board v. Surface Transportation Board*, 169 F.3d 474 (7th Cir. 1999), the court upheld the Board's authorization for the Chicago Rail Link to lease track from UP in Chicago. The court affirmed the Board's application of the "tenant-use" test to determine the character of the track for jurisdictional purposes and the Board's determination that leases may properly be considered under 49 U.S.C. 10902 rather than 49 U.S.C. 11323 (and in that instance do not give rise to employee protective conditions).

In *United Transportation Union–Illinois Legislative Board v. Surface Transportation Board*, 175 F.3d 163 (D.C. Cir. 1999), the court affirmed the Board's authorization for a carrier (Chicago, SouthShore & South Bend Railroad) to operate over a line that was owned by a noncarrier port authority but over which another carrier (Chicago Rail Link) also operated. As in the case discussed above, the court upheld the Board's determination that its permission to operate properly came under 49 U.S.C. 10902 rather than 49 U.S.C. 11323 (and thus did not give rise to employee protective conditions).

In *United Transportation Union--Illinois Legislative Board v. Surface Transportation Board*, 183 F.3d 606 (7th Cir. 1999), the court upheld the Board's determination that its authority was required for a new carrier to operate over two segments of track in and near an industrial park in Effingham, IL, but was not needed for that carrier to operate over a third track segment in the same area, based upon its use of the track. The court also held that the failure of a noncarrier shipper to obtain Board authority to construct one of the track segments did not preclude the Board from authorizing operations over that track by the unrelated carrier.

In *Lee's Summit, Missouri v. Surface Transportation Board*, 231 F.3d 39 (D.C. Cir. 2000), the court affirmed the Board's determination that no environmental review was required for a railroad to acquire and restore service over an unused, but never abandoned, rail line where the anticipated number of trains per day would not exceed a threshold set by the Board for environmental analysis.

Line Constructions

In *City of Auburn v. United States*, 154 F.3d 1025 (9th Cir. 1998), *cert. denied,* 527 U.S. 1022 (1999), the court upheld the Board's interpretation that the broadened preemption provisions of the ICCTA precluded state and local permitting authority over railroad activities associated with the reconstruction and reopening of the Stampede Pass rail line by BNSF in the State of Washington. The court also upheld the Board's environmental review process for

addressing the carrier's reacquisition of a portion of the Stampede Pass line from Washington Central Railroad. The court held that a full EIS was not required and that the EA prepared by the agency reflected a thorough, independent investigation of the environmental consequences of the reacquisition and reactivation of that line.

Line Abandonments

In *Friends of the Atglen-Susquehanna Trail, Inc. v. Surface Transportation Board*, 252 F.3d 246 (3d Cir. 2001), the court ruled that the Board had failed to comply fully with the procedural requirements of the National Historic Preservation Act when the agency denied requests in 1997 and 1999 to reopen and broaden the historic preservation condition imposed by the ICC in a 1990 decision permitting Conrail to abandon all of a 66.5-mile rail line in Pennsylvania except for the bridges.

Preservation of Rail Lines — Offers of Financial Assistance

In *Buffalo Crushed Stone, Inc. v. Surface Transportation Board*, 194 F.3d 125 (D.C. Cir. 1999), the court upheld a Board determination not to revoke the sale of a rail line under the offer of financial assistance (OFA) provisions of 49 U.S.C. 10904 upon learning that the underlying abandonment proceeding had been defective. (In the carrier's abandonment notice, the line had been certified not to have had any traffic in the 2-year pre-notice period. The defect was later brought to light by a shipper who had tendered some shipments during that period, long after the line had been sold under section 10904.) The court found that the Board properly avoided undermining the integrity of OFA procedures.

In *Redmond-Issaquah Railroad Preservation Association v. Surface Transportation Board*, 223 F.3d 1057 (9th Cir. 2000), the court affirmed the Board's decision rejecting an OFA filed by an association of adjacent landowners which, the Board found, would not provide continued rail service. The court agreed with the Board that the OFA procedures of the statute are limited to proposals for continuation of rail service and that future traffic on this particular line was highly, if not totally, unlikely.

In *Kulmer v. Surface Transportation Board*, 236 F.3d 1255 (10th Cir. 2001), the court affirmed the Board's dismissal of an OFA that the Board found would not result in continued rail service and would have disrupted the current owner's plans to use the right-of-way to provide light-rail passenger service. The court accepted the Board's finding that the case presented the

anomalous situation in which any future reinstitution of rail freight service (as an adjunct to the passenger service) appeared more likely under the current owner's own plans than through the OFA process.

Preservation of Rail Lines — Trail Use/Railbanking

In *Becker v. Surface Transportation Board*, 132 F.3d 60 (D.C. Cir. 1997), the court ruled that the ICC lacked jurisdiction to impose a trail use condition because the right-of-way involved had already been abandoned.

In *National Association of Reversionary Property Owners v. Surface Transportation Board*, 158 F.3d 135 (D.C. Cir. 1998), the court declined to disturb the Board's decision not to change its procedures so as to require individual notice to landowners of the prospective conversion of rights-of-way to trail use. The court agreed with the Board that this issue had not been reopened in a proceeding in which the Board had revised its abandonment regulations.

In *RLTD Railroad Corporation v. Surface Transportation Board*, 166 F.3d 808 (6th Cir. 1999), the court upheld the Board's determination that it no longer had jurisdiction over a rail line that was no longer linked to and part of the interstate rail system. Accordingly, the court affirmed the Board's decision declining to process an abandonment notice or to allow trail use and railbanking over the right-of-way.

In *Jost v. Surface Transportation Board*, 194 F.3d 79 (D.C. Cir. 1999), the court affirmed the Board's decision not to reopen a proceeding to scrutinize the financial fitness of a trail sponsor but instead to apply a rebuttable presumption that the sponsor was financially qualified. However, the court remanded the case to the Board for clarification of the impact of alleged sales of certain parcels of land along the right-of-way.

Railroad Rates

The Board's revised regulations and procedures for expedited processing of rate reasonableness, exemption, and revocation proceedings were affirmed in *United Transportation Union–Illinois Legislative Board v. Surface Transportation Board*, 132 F.3d 71 (D.C. Cir. 1998). The court also approved the Board's requirement that copies of lengthy filings be submitted in both electronic and paper formats.

In *Association of American Railroads v. Surface Transportation Board*, 146 F.3d 942 (D.C. Cir. 1998), the court declined to review the simplified rate guidelines developed by the Board for evaluating the reasonableness of a challenged rate in those cases where application of the more sophisticated CMP procedures (principally the SAC constraint) would be impractical. The court concluded that the challenges to the guidelines were not ripe for review because the guidelines had not been applied to invalidate any rate. The court's decision did not disturb the Board's authority to use the new procedures.

In *McCarty Farms, Inc. v. Surface Transportation Board*, 158 F.3d 1294 (D.C. Cir. 1998), the court upheld the Board's finding that the rates charged on movements of wheat and barley from Montana to Pacific Northwest ports for export had not been shown to be unreasonably high under the SAC test. (In 1993, the court had remanded the case to the ICC to either use CMP or explain why CMP could not be used; the parties had then agreed to use the SAC test of CMP.)

In *MidAmerican Energy Co. v. Surface Transportation Board*, 169 F.3d 1099 (8th Cir. 1999), *cert. denied sub nom. Western Coal Traffic League v. Surface Transportation Board, 528 U.S. 950 (1999),* the court affirmed the Board's decisions dismissing the complaints of three electric utilities seeking a rate prescription for only the "bottleneck" portion of their coal movements. The court agreed that carriers are generally not required to provide separate rates for the bottleneck portion of through service and affirmed the longstanding principle that the reasonableness of origin-to-destination rail rates generally are to be examined in their entirety. The court declined to rule on the railroad's challenge to the Board's assertion of authority to require a separate bottleneck rate where a contract is in place to cover the non-bottleneck segment, because none of the three cases presented such a situation.

The issue left unresolved in the *MidAmerican* case was settled in *Union Pacific Railroad Company v. Surface Transportation Board*, 202 F.3d 337 (D.C. Cir. 2000). There, the court affirmed a Board decision requiring a railroad to provide a separately challengeable common carriage rate for the non-bottleneck portion of a movement, to be used in combination with a contract rate that the shipper had obtained for the remaining portion of the movement.

In *Association of American Railroads v. Surface Transportation Board*, 237 F.3d 676 (D.C. Cir. 2001), the court remanded for further Board consideration the Board's policy determination to exclude evidence regarding product and geographic competition in market

dominance analyses. The court directed the Board to weight the effect, if any, of one part of the multi-faceted statutory policy directive in 49 U.S.C. 10101(1).[13]

Railroad Service Issues

In *GS Roofing Products Co. v. Surface Transportation Board*, 143 F.3d 387 (8th Cir. 1998), a divided court set aside the Board's determination that a 3-month cessation of service by Arkansas Midland Railroad over portions of the Norman Branch line in southwestern Arkansas was reasonable under the circumstances and hence should not be the basis for an award of damages. Subsequently, in *GS Roofing Products Co. v. Surface Transportation Board*, 262 F.3d 767 (8th Cir. 2001), the court affirmed the Board's order setting the terms for a forced sale of the entire line to a group of shippers under the feeder line development program. The court also upheld the Board's award of compensation for trackage rights over the line before the sale. Finally, the court affirmed in part and reversed in part the denial of shipper requests for damages for the period when no service had been provided over the line.

In *G&T Terminal Packaging Co. v. United States*, 159 F.3d 1346 (2d Cir. 1998) (*per curiam*), the court upheld the Board's determination—acting on a remand ordered in *Mr. Sprout, Inc. v. United States*, 8 F.3d 118 (2d Cir. 1993)—that Conrail had not engaged in unreasonable practices that might warrant revocation of the class exemption for transportation of fresh fruit and vegetable traffic as applied to the petitioners' traffic.

Railroad General Oversight

In *Tyrell v. Norfolk Southern Railway Company*, 248 F.3d 517 (6th Cir. 2001), the court upheld the Board's position that valid regulations under the Federal Rail Safety Act addressing workplace safety are not preempted by the Interstate Commerce Act.

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[13] On remand the Board reaffirmed its decision to exclude such evidence from consideration, and the railroads have sought judicial review of the Board's redetermination, in *Association of American Railroads v. Surface Transportation Board*, No. 01-1213 (D.C. Cir. filed May 15, 2001).

Rail Labor Matters

In *International Brotherhood of Locomotive Engineers v. Surface Transportation Board*, No. 97-1708 (D.C. Cir. Sept. 14, 1998) (*per curiam*), the court upheld the Board's ruling that 49 U.S.C. 11326(c) precludes imposition of labor protective conditions upon a holding company's acquisition of a Class III rail carrier where the holding company does not own any Class I or II rail carriers.

In *Tu v. Surface Transportation Board*, 141 F.3d 1179 (9th Cir. 1998), the court affirmed a Board decision declining to impose labor protective conditions for the benefit of an employee of a subsidiary of SP in a case growing out of the ICC's 1986 rejection of the merger of the Santa Fe and SP railroads. The court agreed that, because the Board's jurisdiction to impose conditions was based solely on the voting trust established during the pendency of the merger application, the Board could impose conditions only if the Santa Fe had violated the voting trust by directing SP to take action that resulted in the employee's job loss. The court also held that prior decisions by an arbitrator and the court itself precluded petitioner from again contending that SP was bound by the terms of a contract not to lay off employees because of a decline in business.

In *Association of American Railroads v. Surface Transportation Board*, 162 F.3d 101 (D.C. Cir. 1998), the court affirmed the Board's authority to commit to arbitration disputes about labor protective conditions and the Board's decision that, in calculating an offset to severance pay based upon employment with the new carrier, earnings attributable to hours worked in excess of those worked in the preceding year are not to be included. The court rejected, however, as inconsistent with the language of the statute, the Board's decision to provide for protective payments to employees who were placed in a worse position as a result of an acquisition but did not lose their employment.

In *Canadian Pacific Railway Company et al. v. Surface Transportation Board*, 197 F.3d 1165 (D.C. Cir. 1999), the court vacated a Board decision directing CP to refrain from effectuating the transfer of dispatch positions from Milwaukee, WI to Montreal, Canada until certain safety concerns (which had been expressed by FRA in letters to the parties) were resolved. The court concluded that there was not a proper factual or legal basis for the Board's action in the context of the arbitral award that was before the Board for review.

In *Augustus v. Surface Transportation Board*, 238 F.3d 419 (6th Cir. 2001), *cert. denied*, No. 00-1499 (S.Ct. 2002), the court upheld the Board's summary affirmance of an arbitral

decision denying benefits to seven terminated employees on the ground that they did not meet a threshold requirement of the agreement under which they were seeking labor protective benefits (a requirement to report for work). The court found no egregious error in the arbitrator's rejection of petitioners' various arguments that their failure to report to work was excusable, and held that the Board did not need to independently address those arguments in detail so long as the Board's conclusion and underlying reasons may be discerned with confidence.

In *United Steelworkers of America, AFL-CIO-CLC v. United States*, 242 F.3d 458 (3d Cir. 2001), the court affirmed the Board's decision not to disturb an arbitrator's determination allowing the coordination of accounting functions of seven railroads whose common control had been authorized by the ICC in 1988. The court agreed that disputes arising out of Board/ICC-authorized consolidations are to be resolved under the procedures of the *New York Dock* labor protective conditions, without resort to Railway Labor Act procedures, regardless of whether the consolidation was authorized through approval of an application under 49 U.S.C. 11323 or (as in that case) through an exemption under 49 U.S.C. 10502.

In *Swonger v. Surface Transportation Board*, 265 F.3d 1135, *cert. denied*, S.Ct. No. 01-939 (2001), the court affirmed the Board's decision declining to review an arbitral decision that modified certain seniority rights and relocated certain "home terminals." The court found that the arbitrator had adequately demonstrated that the changes satisfied the applicable legal standards.

Motor Carriage

In *In re Americana Expressways, Inc.,* 133 F.3d 752 (10th Cir. 1997), the court affirmed a district court ruling that had, at the urging of the Board, found it unnecessary to reach attempted challenges to the applicability and constitutionality of the Negotiated Rates Act of 1993 because the estate of the bankrupt motor carrier involved had no basis for an undercharge claim, as the estate, having failed to adopt the carrier's pre-bankruptcy tariffs (as required by ICC regulations at the time of the shipments at issue), had no filed rates to enforce.

Water Carriage

In *Caribbean Shippers v. Surface Transportation Board*, 145 F.3d 1362 (D.C. Cir. 1998), the court affirmed the Board's summary dismissal of a complaint alleging that a cargo inspection service utilized by three water carriers in the noncontiguous domestic trade was improperly

sharing, and thereby disclosing, confidential shipper information. The Board had found that the prohibition against disclosing confidential shipper information did not apply to the situation presented, and the court agreed.

Pipeline Carriage

In *CF Industries, Inc. v. Surface Transportation Board*, 255 F.3d 816 (D.C. Cir. 2001), the court affirmed the Board decision disallowing certain rate increases for pipeline transportation of anhydrous ammonia and requiring the carrier to roll back its rates. The court upheld the Board's analysis that there were not effective competitive alternatives. It also upheld the Board's application of the CMP revenue-adequacy constraint and the Board's determination not to reduce the carrier's rates below the 1996 pre-increase level.

Other

The user fees charged by the Board for complaints, declaratory orders, appeals of arbitral awards, other appeals, and petitions for revocations filed by rail labor interests were judicially affirmed in *United Transportation Union–Illinois Legislative Board v. Surface Transportation Board*, 132 F.3d 1483 (D.C. Cir. 1997).

APPENDIX A

REPORTS AND PUBLICATIONS

The Board issues several types of reports and publications, including news releases, technical and statistical reports, general interest publications, and consumer guides. Reports and publications marked herein with an asterisk (*) may be downloaded from the STB's Internet website. Alternatively, STB reports and publications may be obtained from:

Surface Transportation Board
Washington, DC 20423-0001

To request a report or publication, contact the office indicated after the title of the publication sought. These offices are:

OCPS	Office of Congressional and Public Services
OEEAA	Office of Economics, Environmental Analysis, and Administration

Fees are charged for software packages, user documentation, and surveys. (See the list at end of this appendix.) For other publications, copying charges may apply.

STB Website

The Board's website (www.stb.dot.gov) is a valuable resource for current and historical information, including the following:

- Board decisions and notices served on or after November 1, 1996, as well as most EAs served after that date;
- STB Reports, containing major Board decisions served on or after January 1, 1996;
- all filings (other than confidential documents) received after February 5, 2002, in all proceedings, as well as select filings received prior to that date in high-profile proceedings;
- testimony before Congress coincident with its presentation by Board officials;

- rail recordations (equipment liens) and water recordations filed after December 12, 1999;
- technical and statistical reports concerning Class I railroads, such as portions of railroads' annual reports (Form R-1), price indices, employment data, wage statistics, and quarterly earnings reports;
- a guide to environmental rules, a listing of key environmental cases and contacts, and information regarding third-party contracting of work associated with environmental review conducted under the Board's direction and supervision;
- access to the agency's Rail Consumer Assistance Program;
- the Board's Freedom of Information Act (FOIA) regulations, fees and public releases since November 1, 1996;
- the Board's rules and fees for filings and services (49 CFR Part 1002);
- publications, including "how to" guides about the rail line abandonment and line sale processes, as well as basic information about the Rails-to-Trails program;
- a general guide to the STB and its operations, including organizational information; and
- links to significant Board proceedings, Congress, DOT's list of Internet sites, and WEBGOV, containing links to the White House and government agencies.

Documents available at the site may be viewed, printed, and/or downloaded. On-line help is available to guide the user through the site. General inquiries about the Board may be e-mailed to the Board's webmaster.

Financial and Statistical Reports Concerning Class I Railroads

The reports listed below, which are submitted to the Board by Class I railroads, may be examined, by appointment (call (202) 565-1535), between the hours of 8:30 a.m. and 5:00 p.m., Monday through Friday. Copies of these reports may be obtained *(at $1/page plus $21/hour labor if search for past reports is required, $5 minimum charge per order)* from OCPS (Attn: Records Officer) at the above STB address. Documents available on the website are marked with an asterisk (*).

* *Annual Reports (Form R-1s) of Class I Railroads* — report of annual financial and operating statistics (submitted annually). (An Excel version of 14 schedules from each annual report is available on the STB website in *Economic Data.*)

Wage Statistics: Report of Railroad Employees, Service, and Compensation (Form A and Form B) — report of number of employees, service hours, compensation, and mileage (submitted quarterly).

Condensed Balance Sheet Report for Class I Railroads (Form CBS) — report of current assets and liabilities, expenditures for additions and betterments, and traffic statistics (submitted quarterly).

Report of Freight Commodity Statistics (Form QCS) — report of carloads, tonnage, and gross revenue for each commodity group (submitted quarterly and annually).

* *Report of Railroad Employment — Class I Line-Haul Railroads* (Statement M350) — report of number of railroad employees (submitted monthly).

Revenue, Expenses, and Income Report (Form RE&I) — report of quarterly operating revenues, expenses, and income (submitted quarterly).

Board Decisions, News Releases, and Pleadings

Board decisions and filings in Board proceedings may be viewed and copied at the Board's Reading Room (Room 755) at 1925 K Street, NW, Washington, DC 20423-0001. Copies of Board decisions and news releases (up to 1 year from the date of service) and pleadings filed with the Board (up to 6 months from the date of filing) may be obtained from Dā 2 Dā Legal Copy Service, which may be contacted by telephone at (202) 293-7776; by fax at (202) 293-0770; or by e-mail at da2dalegal@earthlink.net. Documents may also be viewed at:

Dā 2 Dā Legal Copy Service
Room 405
1925 K St., NW
Washington, DC 20006

The following periodic decisions and notices relate to publications and reports listed in this appendix. Documents available on the website are marked with an asterisk (*).

Depreciation Rate Prescriptions — depreciation rates, by account, for each Class I railroad (issued periodically). OEEAA

* *Railroad Cost of Capital* — determination of the cost of capital rate for the railroad industry (made annually) (most recent determination, for 2001, was made in STB Ex Parte No. 558 (Sub-No. 5) (served June 20, 2002)). OCPS (Attn: Records Officer)

* *Railroad Revenue Adequacy* — determination of the railroads that are revenue adequate (made annually) (determination for 2001 was made in STB Ex Parte No. 552 (Sub-No. 6) (served July 26, 2002)). OCPS (Attn: Records Officer)

* *Rail Cost Adjustment Factor (RCAF)* — index used to adjust for inflation in long-term railroad contracts, rate negotiations, and transportation studies (computed quarterly) in STB Ex Parte No. 290 (Sub-No. 5). OCPS (Attn: Records Officer)

* *Railroad Cost Recovery Procedures – Productivity Adjustment* — productivity adjustment factor used to adjust the quarterly RCAF (computed annually) in STB Ex Parte No. 290 (Sub-No. 4). OCPS (Attn: Records Officer)

Indexing the Annual Operating Revenues of Railroads — notice setting forth the annual inflation adjusting index numbers used to adjust gross annual operating revenues of railroads for classification purposes (issued annually). OCPS (Attn: Records Officer)

Speeches and Statements

Copies of Board members' speeches (subject to availability) and statements before Congressional committees may be obtained by writing OCPS at the STB address shown above or by contacting Congressional Services (202) 565-1594, Public Services (202) 565-1592, or Media Services (202) 565-1596, as appropriate.

Board Regulations and Governing Statutes

The regulations adopted by the Board are contained in two volumes of the *Code of Federal Regulations* (CFR). The first volume (49 CFR Parts 1000-1199) contains general provisions and rules of practice, including provisions relating to exemptions, rate procedures, rail line constructions and abandonments, and restructurings within the railroad and intercity bus industries. The second volume (49 CFR Parts 1200-End) contains provisions regarding the uniform system of accounts prescribed by the Board, carrier records and reporting requirements, and filing and disclosure requirements with respect to rates and service terms.

These two volumes are available at http://law.house.gov or they may be obtained by calling (202) 512-1800 or writing to the following address:

Superintendent of Documents
U.S. Government Printing Office
P.O. Box 371954
Pittsburgh, PA 15250-7954

The primary statutory provisions that govern the Board and that the Board is responsible for administering are codified at 49 U.S.C. 701-727, 10101-16106. These provisions are published in the *United States Code Annotated* and contained in 49 U.S.C.A. 101-20100. Copies of this volume may be obtained by calling (800) 328-9352 or writing to the following address:

West Publishing Company
P.O. Box 64833
St. Paul, MN 55164

Publications

Following is a list of Board publications. Documents available on the website are marked with an asterisk (*).

* *Class I Line-Haul Railroads — Selected Earnings Data* — compilation of railway operating revenues, net railway operating income, net income, and revenue ton-miles of freight of Class I railroads developed from quarterly RE&I and CBS forms (compiled quarterly). OEEAA

* *Rail Rates Continue Multi-Year Decline* — study of trends in average annual rail rates for 1984-1999, based on data for 15 commodity groups obtained from the annual waybill files (Dec. 2000). OEEAA

* *Report of Railroad Employment — Class I Line-Haul Railroads* (Statement M350) — report of number of railroad employees (prepared monthly). OEEAA

* *Wage Statistics of Class I Railroads in the United States* (Statement A300) — compilation of number of employees, service hours, compensation, and mileage, developed from Wage Forms A and B (compiled annually). OEEAA

* *Statistics of Class I Freight Railroads in the United States* (formerly *Transport Statistics*) — a compilation of expense, investment, and operating statistics of U.S. Class I railroads developed from the Annual Report Form R-1s (compiled annually). OEEAA

* *Guide to the STB's Environmental Rules* — questions and answers to assist in understanding and applying the Board's environmental rules. OEEAA

* *Overview: Abandonments and Alternatives to Abandonments* — rules and regulations applicable to abandonments, line sales, and rail banking (revised Aug. 1997). OCPS

Before You Start A Small Railroad: A Brief Overview of Things to Consider — suggestions for preparing a financial plan for a new railroad (revised May 1993). OCPS

* *So You Want to Start a Small Railroad: Surface Transportation Board Small Railroad Application Procedures* — rules and regulations involved in applying for STB authority to operate a new railroad (revised Mar. 1997). OCPS

* *Surface Transportation Board 1996/1997 Annual Report* — report covering the Board's activities from its inception on January 1, 1996, to the close of the fiscal year that ended September 30, 1997 (Mar. 1998). OCPS (Attn: Records Officer)

* *Surface Transportation Board Reports, Volumes 1, 2 and 3* — containing major Board decisions issued in 1996, 1997 and 1998, respectively.

* *The Surface Transportation Board: Who's Who and What Does it Do?* — names of Board members and Office Directors and a brief description of the Board's jurisdiction and the

functions that were transferred to the Board and to DOT when the ICC was terminated (revised regularly). OCPS

Software, User Documentation, and Surveys Available for a Fee

The following software and user documentation may be obtained from the Board for the fees listed below. For additional information about the software's system requirements and use, contact OEEAA, (202) 565-1535. Detailed information about the computer software and other STB electronic databases may be found in DOT's annual publication *Directory of Transportation Data Sources*, which may be obtained by calling (800) 853-1351.

Computer Assisted Depreciation and Life Analysis System (CADLAS) — programs used to analyze the life characteristics of property, calculate historical salvage ratios, develop depreciation rates, calculate annual accruals and accumulated depreciation, determine Reproduction Cost New Less Depreciation (RCNLD) (also known as Trended Net Original Cost), estimate property replacements, and value assets. OEEAA [Software and User Documentation, $195]

Uniform Railroad Costing System (URCS) Phase III Movement Costing Program — used to develop average variable and total shipment costs for U.S. Class I railroads and for the east and west regions of the United States. OEEAA [Program, Data, and User Manual, $50; Data only (updated annually), $20; Source code, $500]

Carload Waybill Sample — confidential sample of U.S. railroad traffic used in complaint cases before the STB and by states in developing state rail plans and in related studies. OEEAA [CD, $650; User Guide, $50] (Sample and Guide free to states and Federal agencies)

Carload Waybill Sample Public Use File — nonconfidential railroad movement and revenue data for use in performing plant location and other transportation planning studies. OEEAA [CD, $450]

APPENDIX B

APPROPRIATIONS AND EMPLOYMENT

The following tables show average full-time equivalent (FTE) employment and total appropriations for fiscal years 1996 through 2001.

Average FTE Employment and Appropriations FY 1996 - 2001 [1]			
Fiscal Year	**Appropriation**	**STB Offset [2]**	**Average Employment**
1996	$8,414,000	$651,521	106 [3]
1997	12,244,000	3,000,000	131
1998	13,850,000	2,000,000	129
1999	15,959,000	(802,883) [4]	131
2000	16,930,000	(843,230) [4]	133
2001	17,016,481	(900,000) [4]	135

[1] Appropriations data are from annual appropriation acts. Average FTE Employment data are from Report to OPM, SF 113-G.

[2] The STB appropriations have been statutorily offset by the collection of user fees.

[3] The STB operated only 9 months in FY 1996. These average FTE employment figures represent the 9-month equivalent of an annualized employment level.

[4] The FY 1999 appropriation changed the Board's funding methodology. The appropriations for the subsequent years provided that offsetting collections would be credits to the appropriation. The sums appropriated, less enacted rescissions, were to be reduced on a dollar-for-dollar basis as such offsetting collections were received during the fiscal year to result in the final appropriation.

Status of FY 1998 Appropriations *	
Total appropriations	$ 13,850,000
Offsetting collections	2,000,000
Reimbursements from other agencies	7,486
Total obligations	15,828,362
Unobligated balance available for adjustments	29,124
Carryover of offsetting collections to next fiscal year	935,867
Status of FY 1999 Appropriations	
Total appropriations	15,959,000
Offsetting collections *(see note)*	(802,883)
Reimbursements from other agencies	6,305
Total obligations	15,144,592
Unobligated balance available for adjustments	17,830
Carryover of offsetting collections to next fiscal year	940,617
Status of FY 2000 Appropriations	
Total appropriations	16,930,000
Offsetting collections *(see note)*	(843,230)
Reimbursements from other agencies	3,366
Total obligations	16,083,559
Unobligated balance available for adjustments	6,577
Carryover of offsetting collections to next fiscal year	940,617
Status of FY 2001 Appropriations	
Total appropriations	17,016,481
Offsetting collections *(see note)*	(900,000)
Reimbursements from other agencies	0
Total obligations	16,098,379
Unobligated balance available for adjustments	18,102
Carryover of offsetting collections to next fiscal year	940,617

*Appropriations, as of Sept. 30 of each year, are from DOT's Accounting System.

NOTE:
The FY 1999, 2000 and 2001 appropriations provided that offsetting collections would be credits to the appropriation. The sums appropriated, less enacted rescissions, were to be reduced on a dollar-for-dollar basis as such offsetting collections were received during the fiscal year to result in the final appropriation.

APPENDIX C

CASELOADS DURING FY 1998-2001

Caseload During FY 1998 *Rail Matters*					
Category	**Pending at Start**	**Received During**	**Decided During**	**Pending at End**	**Decisions Served**
Carrier Consolidations	18	42	52	8	138
Review of Labor Arbitrators	9	6	9	6	23
Rates and Services					
Rate Reasonableness	14	10	14	10	48
Rate Disclosure	0	0	0	0	0
Through-Routes/Divisions	0	0	0	0	0
Contract Rates	0	1	0	1	0
Reasonable Practice	4	2	1	5	6
Discrimination	1	0	0	1	0
Car Supply and Interchange	3	1	2	2	7
Service Orders	0	3	2	1	11
Competitive Access	1	3	1	3	5
Constructions					
Line Crossing	2	0	0	2	1
Constructions	26	7	27	6	41
Abandonments	50	150	163	37	451

Caseload During FY 1998 (Continued) *Rail Matters*					
Category	**Pending at Start**	**Received During**	**Decided During**	**Pending at End**	**Decisions Served**
Other Line Transactions					
Line Consolidations	27	67	67	27	53
Line Acquisitions Under 49 U.S.C. 10901	14	56	60	10	81
Line Acquisitions by Shortline	9	35	39	5	49
Feeder Line Development	1	0	0	1	0
Collective Actions					
Collective Ratemaking	0	1	1	0	1
Pooling	1	0	0	1	0
Lien Recordation *(see note 1)*	0	0	0	0	0
Data Collection and Oversight					
RCAF	1	2	3	0	9
Accounting and Records	0	1	0	1	0
Reports - Rail *(see note 2)*	0	0	0	0	0
Passenger Rail					
Amtrak Track Use/ Compensation	2	0	2	0	6
Passenger Rail - Other	0	0	0	0	0
Exemption Rulemakings	3	0	2	1	2
Other Rail					
Common Carrier Obligation	6	4	3	7	13
Interlocking Officer or Director	0	0	0	0	0
Other	6	3	3	6	21
Total Rail	**198**	**394**	**451**	**141**	**966**

Caseload During FY 1998 (Continued)

Nonrail Matters

Category	Pending at Start	Received During	Decided During	Pending at End	Decisions Served
Motor					
Rate Reasonableness					
Joint Motor-Water Rates in Non-contiguous Domestic Trade	0	0	0	0	0
Collectively Set Trucking Rates	0	0	0	0	0
Household Goods	0	0	0	0	0
Collective Actions					
Collective Ratemaking Agreements	10	6	4	12	10
Truck Pooling	1	1	2	0	1
Undercharges	229	2	181	50	113
Bus Regulation					
Through-Route Regulation	0	0	0	0	0
Mergers	4	18	21	1	25
Bus Pooling	3	2	4	1	9
Other Motor	11	5	9	7	19
Water					
Port-to-Port Water Rates	0	1	0	1	0
Other	1	0	1	0	0
Pipeline					
Rate Regulation	1	0	0	1	4
Other	0	0	0	0	0
Other	3	10	5	8	19
Total Nonrail	**263**	**45**	**227**	**81**	**200**
Total Rail and Nonrail	**461**	**439**	**678**	**222**	**1,166**

Caseload During FY 1999

Rail Matters

Category	Pending at Start	Received During	Decided During	Pending at End	Decisions Served
Carrier Consolidations	8	15	17	6	107
Review of Labor Arbitral Decisions	6	8	8	6	27
Rates and Services					
Rate Reasonableness	10	4	7	7	28
Rate Disclosure	0	0	0	0	0
Through-Routes or Divisions	0	0	0	0	0
Contract Rates	1	0	0	1	1
Reasonable Practice	5	0	1	4	0
Discrimination	1	0	0	1	0
Car Supply and Interchange	2	1	1	2	3
Service Orders	1	4	4	1	6
Competitive Access	3	1	2	2	6
Constructions					
Line Crossing	2	0	2	0	1
Constructions	6	5	5	6	11
Abandonments	37	125	136	26	359

Caseload During FY 1999 (Continued) *Rail Matters*					
Category	**Pending at Start**	**Received During**	**Decided During**	**Pending at End**	**Decisions Served**
Other Line Transactions					
Line Consolidations	27	51	69	9	76
Line Acquisitions Under 49 U.S.C. 10901	10	26	32	4	39
Line Acquisitions by Shortline	5	33	36	2	46
Feeder Line Development	1	0	0	1	5
Collective Actions					
Collective Ratemaking	0	1	1	0	1
Pooling	1	1	1	1	2
Lien Recordation *(see note 1)*	0	0	0	0	0
Data Collection and Oversight					
RCAF	0	3	2	1	5
Accounting and Records	1	7	6	2	8
Reports - Rail *(see note 2)*	0	1	0	1	1
Passenger Rail					
Amtrak Track Use/ Compensation	0	1	0	1	1
Passenger Rail - Other	0	0	0	0	0
Exemption Rulemakings	1	1	0	2	1
Other Rail					
Common Carrier Obligation	7	0	4	3	8
Interlocking Officer or Director	0	0	0	0	0
Other	6	4	3	7	6
Total Rail	**141**	**292**	**337**	**96**	**748**

Caseload During FY 1999 (Continued)

Nonrail Matters

Category	Pending at Start	Received During	Decided During	Pending at End	Decisions Served
Motor					
Rate Reasonableness					
Joint Motor-Water Rates in Non-contiguous Domestic Trade	0	0	0	0	0
Collectively Set Trucking Rates	0	0	0	0	0
Household Goods	0	1	0	1	0
Collective Actions					
Collective Ratemaking	12	13	0	25	5
Truck Pooling	0	1	1	0	2
Undercharges	50	2	20	32	25
Bus Regulation					
Through-Route Regulation	0	0	0	0	0
Mergers	1	24	24	1	18
Bus Pooling	1	4	4	1	3
Other Motor	7	5	4	8	13
Water					
Port-to-Port Water Rates	1	4	2	3	9
Other	0	0	0	0	0
Pipeline					
Rate Regulation	1	0	0	1	1
Other	0	0	0	0	0
Other	8	6	6	8	6
Total Nonrail	**81**	**60**	**61**	**80**	**82**
Total Rail and Nonrail	**222**	**352**	**398**	**176**	**830**

Caseload During FY 2000 *Rail Matters*					
Category	**Pending at Start**	**Received During**	**Decided During**	**Pending at End**	**Decisions Served**
Carrier Consolidations	6	35	30	11	107
Review of Labor Arbitral Decisions	6	7	6	7	18
Rates and Services					
Rate Reasonableness	7	6	4	9	22
Rate Disclosure	0	0	0	0	0
Through-Routes or Divisions	0	0	0	0	0
Contract Rates	1	0	0	1	2
Reasonable Practice	4	2	3	3	4
Discrimination	1	0	0	1	0
Car Supply and Interchange	2	1	0	3	5
Service Orders	1	1	2	0	2
Competitive Access	2	0	1	1	1
Constructions					
Line Crossing	0	2	1	1	0
Constructions	6	4	3	7	24
Abandonments	26	116	113	29	296

Caseload During FY 2000 (Continued)

Rail Matters

Category	Pending at Start	Received During	Decided During	Pending at End	Decisions Served
Other Line Transactions					
Line Consolidations	9	29	35	3	42
Line Acquisitions Under 49 U.S.C. 10901	4	39	33	10	43
Line Acquisitions by Shortline	2	30	29	3	32
Feeder Line Development	1	0	1	0	3
Collective Actions					
Collective Ratemaking	0	0	0	0	0
Pooling	1	1	0	2	0
Lien Recordation *(see note 1)*	0	0	0	0	0
Data Collection and Oversight					
RCAF	1	2	3	0	7
Accounting and Records	2	10	9	3	13
Reports - Rail *(see note 2)*	1	2	1	2	4
Passenger Rail					
Amtrak Track Use/ Compensation	1	0	1	0	1
Passenger Rail - Other	0	0	0	0	0
Exemption Rulemakings	2	0	2	0	2
Other Rail					
Common Carrier Obligation	3	2	2	3	11
Interlocking Officer or Director	0	0	0	0	0
Other	7	1	5	3	6
Total Rail	**96**	**290**	**284**	**102**	**645**

Caseload During FY 2000 (Continued)

Nonrail Matters

Category	Pending at Start	Received During	Decided During	Pending at End	Decisions Served
Motor					
Rate Reasonableness					
Joint Motor-Water Rates in Non-contiguous Domestic Trade	0	0	0	0	0
Collectively Set Trucking Rates	0	0	0	0	0
Household Goods	1	0	0	1	3
Collective Actions					
Collective Ratemaking	25	0	0	25	14
Truck Pooling	0	0	0	0	0
Undercharges	32	1	27	6	21
Bus Regulation					
Through-Route Regulation	0	0	0	0	0
Mergers	1	21	18	4	20
Bus Pooling	1	0	1	0	1
Other Motor	8	3	7	4	8
Water					
Port-to-Port Water Rates	3	1	1	3	6
Other	0	0	0	0	0
Pipeline					
Rate Regulation	1	0	1	0	6
Other	0	0	0	0	0
Other	8	2	5	5	3
Total Nonrail	**80**	**28**	**60**	**48**	**82**
Total Rail and Nonrail	**176**	**318**	**344**	**150**	**727**

Caseload During FY 2001

Rail Matters

Category	Pending at Start	Received During	Decided During	Pending at End	Decisions Served
Carrier Consolidations	11	29	25	15	89
Review of Labor Arbitrators	7	1	4	4	9
Rates and Services					
Rate Reasonableness	9	9	9	9	28
Rate Disclosure	0	0	0	0	0
Through-Routes/Divisions	0	0	0	0	0
Contract Rates	1	0	1	0	1
Reasonable Practice	3	0	3	0	5
Discrimination	1	0	1	0	1
Car Supply and Interchange	3	10	2	11	1
Service Orders	0	0	0	0	0
Competitive Access	1	0	1	0	2
Constructions					
Line Crossing	1	2	1	2	2
Constructions	7	9	2	14	19
Abandonments	29	136	120	45	388

Caseload During FY 2001 (Continued)
Rail Matters

Category	Pending at Start	Received During	Decided During	Pending at End	Decisions Served
Other Line Transactions					
Line Consolidations	3	36	36	3	42
Line Acquisitions Under 49 U.S.C. 10901	10	48	46	12	68
Line Acquisitions by Shortline	3	33	33	3	40
Feeder Line Development	0	0	0	0	0
Collective Actions					
Collective Ratemaking	0	0	0	0	0
Pooling	2	0	1	1	3
Lien Recordation *(see note 1)*	0	0	0	0	0
Data Collection and Oversight					
RCAF	0	2	2	0	5
Accounting and Records	3	0	2	1	5
Reports - Rail *(see note 2)*	2	1	1	2	1
Passenger Rail					
Amtrak Track Use/ Compensation	0	1	1	0	2
Passenger Rail - Other	0	0	0	0	0
Exemption Rulemakings	0	0	0	0	0
Other Rail					
Common Carrier Obligation	3	4	2	5	5
Interlocking Officer or Director	0	0	0	0	0
Other	3	5	4	4	9
Total Rail	**102**	**326**	**297**	**131**	**725**

Caseload During FY 2001 (Continued)

Nonrail Matters

Category	Pending at Start	Received During	Decided During	Pending at End	Decisions Served
Motor					
Rate Reasonableness					
Joint Motor-Water Rates in Non-contiguous Domestic Trade	0	0	0	0	0
Collectively Set Trucking Rates	0	0	0	0	0
Household Goods	1	0	1	0	1
Collective Actions					
Collective Ratemaking Agreements	25	1	1	25	1
Truck Pooling	0	0	0	0	0
Undercharges	6	0	6	0	6
Bus Regulation					
Through-Route Regulation	0	0	0	0	0
Mergers	4	10	11	3	12
Bus Pooling	0	1	1	0	1
Other Motor	4	0	2	2	5
Water					
Port-to-Port Water Rates	3	0	0	3	4
Other	0	1	1	0	1
Pipeline					
Rate Regulation	0	0	0	0	0
Other	0	0	0	0	0
Other	5	7	7	5	5
Total Nonrail	**48**	**20**	**30**	**38**	**36**
Total Rail and Nonrail	**150**	**346**	**327**	**169**	**761**

NOTES:

1. The Board and the ICC recorded approximately 3,600 liens in FY 1996. The Board recorded 2,401 liens in FY 1997; 2,476 in FY 1998; 2,412 in FY 1999; 2,535 in FY 2000; and 2,312 in FY 2001. No complaints, proceedings, or decisions resulted from this activity during the reported periods.

2. The Board receives from carriers (and makes available to the public) the following reports: Annual Report Form R-1, Form R-1 Schedule 250, RE&I Report, Condensed Balance Sheet (CBS) Report, Quarterly Commodity Statistics (QCS) Report, Wage Form A&B, Monthly Report of Employees (M350), and the STB Carload Waybill Sample. Based on these reports, the Board publishes or makes available to the public the following reports and publications: Quarterly Railroad Earnings Report, Wage Statistic Form A-300, Monthly Report of Employees, Statistics of Class I Freight Railroads in the United States, annual URCS updates, and the STB Carload Waybill Sample Public Use File. No proceedings or decisions resulted from these activities during the reported periods.

APPENDIX D

RAILROAD FINANCIAL AND STATISTICAL DATA

Rail Carriers Regulated by the Board	
Carriers Subject to Uniform System of Accounts and/or Required to File Annual and Periodic Reports (as of 2001)	
Railroads, Class I	8
Railroads Not Required to File Reports* (as of 2001)	
Railroads, Class II	33**
Railroads, Class III	519
Holding Companies - Rail	not available

* Information obtained from a database maintained by the AAR, *Profiles of U.S. Railroads* (2001 edition), containing AAR estimates of carrier revenues.

** As of January 1, 2002, Wisconsin Central Transportation Corporation was reclassified as a Class I railroad, based on its 3 consecutive years of revenues at the Class I level.

Railroads are classified based on their annual operating revenues. A railroad's class is determined by its *inflation-adjusted* operating revenues for 3 consecutive years, using the following scale:

Class I: $250 million or more
Class II: less than $250 million but more than $20 million
Class III: $20 million or less

The following formula is used to adjust a railroad's operating revenues to eliminate the effects of inflation:

$$\textit{Current Year's Revenues} * \left(\frac{\textit{1991 Avg Index}}{\textit{Current Year's Avg Index}} \right)$$

The average index (deflator factor) is based on the annual average Railroad Freight Price Index for all commodities. The factor for 1991 is 1.00; factors for recent years are 0.9750 (1997), 0.9638 (1998), 0.9672 (1999), 0.9545 (2000), and 0.9373 (2001).

Class I Line-Haul Railroads, Condensed Income Statement, Financial Ratios, and Employee Data (Dollars in Thousands)

Calendar Years →	1997	1998	1999	2000	2001
1. Number of carriers represented	9	9	9 [1]	8	8
CONDENSED INCOME STATEMENT					
2. Total operating revenues	$33,118,031	$33,150,891	$33,521,177	$34,102,141	$34,204,537
3. Total operating expenses	27,290,643	27,916,320	28,010,857	29,039,948	28,792,553
4. Net railway operating income	3,984,016	3,698,457	4,046,939	3,925,615	4,111,288
5. Net income	3,155,655	2,806,717	2,970,964	2,500,226	2,739,735
6. Dividends Paid	994,742	1,520,812	2,083,857	818,693	2,120,595
NET INVESTMENT AND EQUITY					
7. Net investment in transportation property and equipment, plus working capital [2]	$55,188,442	$58,606,452	$66,099,810	$61,452,167	$60,836,802
8. Shareholders' equity	34,996,392	32,976,369	33,907,496	32,400,517	34,822,223
FINANCIAL RATIOS (PERCENT)					
9. Operating ratio (L3/L2c)	82.40%	84.29%	83.56%	85.16%	84.18%
10. Return on net investment (L4/L7)	7.22%	6.31%	6.12%	6.39%	6.76%
11. Return on equity (L5/L8)	9.02%	8.51%	8.76%	7.72%	7.87%
EMPLOYEE DATA					
12. Average number of employees	177,981	179,323	179,059	168,352	162,152
13. Compensation	$9,235,302	$9,938,347	$9,702,366	$9,539,262	$9,429,802

[1] Lines 1 through 11 include data for Conrail for first 5 months of 1999 only. Lines 12 and 13 include Conrail for entire year.

[2] Accumulated deferred income tax reserves have been subtracted from the net investment base in accordance with the modification approved by the ICC in *Standards for Railroad Revenue Adequacy*, 3 I.C.C.2d 261 (1986).

Class I Line-Haul Railroads, Selected Balance Sheet Data as of December 31, 1997, 1998, 1999, 2000, and 2001 (Dollars in Millions)

Calendar Years →	1997	1998	1999	2000	2001
1. Total current assets	$6,406.3	$5,779.7	$5,719.7	$3,954.0	$4,597.3
2. Total current liabilities	9,840.6	10,222.6	11,583	9,737.2	10,878.8
3. Transportation property					
Road	69,724.3	73,868.6	76,803.7	72,629.5	75,621.8
Equipment	23,220.3	25,262.6	26,752.4	24,489.1	24,086.1
Other	2,366.7	2,333.0	2,057.4	1,676.0	1,572.2
Less accumulated depreciation and amortization	(22,007.6)	(23,486.8)	(24,518.9)	(22,763.0)	23,193.3
Net Transportation Property	73,303.6	77,977.4	81,094.5	76,031.6	78,086.9
4. Long-term debt (due after 1 year)	13,794.3	18,259.1	18,409.0	15,301.1	14,053.4
5. Shareholders' equity					
Capital stock (Par Value)	711.1	713.8	711.8	709.7	808.1
Additional capital (Above Par)	15,245.9	13,556.7	13,759.9	12,237.2	13,829.3
Retained earnings	19,043.2	18,709.6	19,439.6	19,457.4	20,188.6
Less treasury stock	3.8	3.8	3.8	3.8	3.8
Net shareholders' equity	34,996.4	32,976.3	33,907.5	32,400.5	34,822.2

* Data for Conrail is as of May 31, 1999.

Railroad Revenue Adequacy Status
Showing Returns on Investment (ROI) and Findings
1997 - 2001

Calendar Years →	1997		1998		1999		2000		2001	
Railroad	**ROI**	**Finding**	**ROI**	**Finding**	**ROI**	**Finding**	**ROI**	**Finding**	**ROI**	**Finding**
Burlington Northern-Santa Fe	8.4%	Inadeq.	9.7%	Inadeq.	9.5%	Inadeq.	8.8%	Inadeq.	7.1%	Inadeq.
Consolidated Rail [1]	1.9%	Inadeq.	6.9%	Inadeq.	6.9%	Inadeq.				
CSX Transportation	9.8%	Inadeq.	8.1%	Inadeq.	3.8%	Inadeq.	3.6%	Inadeq.	4.6%	Inadeq.
Grand Trunk Western [2]	5.2%	Inadeq.	3.0%	Inadeq.	25.4%	Adeq.	5.9%	Inadeq.	4.9%	Inadeq.
Illinois Central [2]	15.8%	Adeq.	13.6%	Adeq.	10.0%	Inadeq.				
Kansas City Southern	3.6%	Inadeq.	9.1%	Inadeq.	6.4%	Inadeq.	6.3%	Inadeq.	7.0%	Inadeq.
Norfolk Southern	13.1%	Adeq.	10.5%	Inadeq.	5.2%	Inadeq.	5.5%	Inadeq.	8.3%	Inadeq.
Soo Line	12.3%	Adeq.	4.9%	Inadeq.	2.5%	Inadeq.	5.6%	Inadeq.	5.9%	Inadeq.
Union Pacific	5.2%	Inadeq.	2.9%	Inadeq.	6.8%	Inadeq.	6.9%	Inadeq.	7.6%	Inadeq.

[1] Conrail was acquired by CSX and Norfolk Southern, and its assets were divided between those carriers in 1999.

[2] After 1999 the results for Grand Trunk and Illinois Central, which are now affiliated, are combined and shown under Grand Trunk.

A railroad is considered to be revenue adequate under 49 U.S.C. 10704(a) if it achieves a rate of return on net investment equal to at least the current cost of capital for the railroad industry. The railroad industry's cost of capital was 11.8% in 1997; 10.69% in 1998; 10.8% in 1999; 11.0% in 2000; and 10.2% in 2001.

APPENDIX E

COMMISSIONERS, 1996-2001

Surface Transportation Board Commissioners				
Commissioners	**State**	**Party**	**Oath of Office**	**End of Service**
SIMMONS, J.J. III [1,2]	OK	Democrat	Apr. 27, 1982	Dec. 31, 1996
MORGAN, Linda J. [1]	MD	Democrat	Apr. 28, 1994	
OWEN, Gus A. [1]	CA	Republican	Oct. 4, 1994	Dec. 31, 1998
BURKES, Wayne O.	MS	Republican	Feb. 25, 1998	
CLYBURN, William Jr.	SC	Democrat	Feb. 25, 1998	Dec. 31, 2001

[1] Under 49 U.S.C. 701(b)(4), the last three Commissioners of the ICC became the first three Commissioners of the STB.

[2] Commissioner Simmons resigned as an ICC member in February 1983 following his confirmation as Under Secretary of the Department of the Interior. He rejoined the ICC in September 1984.