



# Surface Transportation Board

## ***FY 2014 Annual Report***

*Chairman Daniel R. Elliott III*

*Vice Chairman Deb Miller*

*Board Member Ann D. Begeman*



Office of the Chairman

## SURFACE TRANSPORTATION BOARD

Washington, D.C. 20423-0001

April 5, 2016

To the Congress of the United States:

It is my pleasure to submit this report covering the Surface Transportation Board's activities from Oct. 1, 2013, through Sept. 30, 2014. The report follows the format of previous years' reports with a statement of appropriations and aggregate expenditures for Fiscal Year (FY) 2014 appearing in Appendix B.

The Board's membership changed during FY 2014, as reflected in Appendix F of this report. Board Member Francis P. Mulvey departed the agency on Dec. 31, 2013, at the conclusion of his term of office. Deb Miller was sworn in as a new Board Member, on April 28, 2014, to serve the seat formerly held by Member Mulvey, and I designated her as Vice Chairman on May 27, 2014.

Beyond the chronological study period of this report, the final day of my first term of office, including a holdover period, was December 31, 2014. Upon my departure that date, the Board unanimously approved then-Vice Chairman Miller as Acting Chairman and then-Board Member Ann Begeman was designated Vice Chairman on January 1, 2015.

On January 13, 2015, the White House sent to the Senate my reappointment nomination for a second term. I was confirmed by the Senate on June 22, 2015, and was sworn in as the Board's Chairman on June 26, 2015, for a term of office expiring December 31, 2018. Member Miller was designated Vice Chairman on January 7, 2016, in the agency's annual rotation of the Vice Chairmanship. Former Vice Chairman (January 1, 2015-January 7, 2016) Begeman continues to serve as a Board Member.

Sincerely,

Daniel R. Elliott, III  
Chairman



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## **ABBREVIATIONS**

The following abbreviations are used throughout this report:

AAR	Association of American Railroads
Amtrak	National Railroad Passenger Corporation
Berkshire	Berkshire Hathaway Inc.
BNSF	BNSF Railway Company
Board	Surface Transportation Board
C.F.R.	Code of Federal Regulations
CHSRA	California High-Speed Rail Authority
CMP	Constrained Market Pricing
CN	Canadian National Railway Company
Conrail	Consolidated Rail Corporation
CP	Canadian Pacific Railway Company
CSX	CSX Transportation, Inc.
DOT	United States Department of Transportation
EA	Environmental Assessment
EIS	Environmental Impact Statement
EJ&E	EJ&E West Company
EP	Ex Parte
FACA	Federal Advisory Committee Act
FD	Finance Docket
FOIA	Freedom of Information Act
FRA	Federal Railroad Administration
FTE	Full-time employee
FY	Fiscal Year
GPO	U.S. Government Publishing Office
GTW	Grand Trunk Western Railway Company
HST	High-Speed Train
ICC	Interstate Commerce Commission



IPA	Intermountain Power Agency
MCF	Motor Carrier Finance
NEPA	National Environmental Policy Act
NGCC	National Grain Car Council
NHPA	National Historic Preservation Act
NITL	National Industrial Transportation League
NOR	Notice of Rates
NS	Norfolk Southern Railway Company
OEA	Office of Environmental Analysis
OFA	Offer of Financial Assistance
OPAGAC	Office of Public Assistance, Governmental Affairs, and Compliance
P.L.	Public Law
PRIIA	Passenger Rail Investment and Improvement Act of 2008
PTC	Positive Train Control
RCAF	Rail Cost Adjustment Factor
RCPA	Rail Customer and Public Assistance Program
RETAC	Rail Energy Transportation Advisory Committee
ROI	Return on Investment
RRB	U.S. Railroad Retirement Board
RSAM	Revenue Shortfall Allocation Method
RSTAC	Railroad-Shipper Transportation Advisory Council
RVC	Revenue-to-Variable Cost
SAC	Stand-Alone Cost
Soo	Soo Line Railroad
STB	Surface Transportation Board
STCC	Standard Transportation Commodity Code
TIH	Toxic-by-inhalation
Trails Act	National Trails System Act
TRRC	Tongue River Railroad Company

UP	Union Pacific Railroad Company
URCS	Uniform Rail Costing System
U.S.C.	<i>United States Code</i>
U.S.C.A.	<i>United States Code Annotated</i>

## **OVERVIEW**

The Surface Transportation Board (Board/STB/agency) has broad economic regulatory oversight of freight railroads, including rates; service; construction, acquisition and abandonment of rail lines; carrier mergers; and the interchange of traffic among railroads.<sup>1</sup>

The bipartisan Board was established on Jan. 1, 1996, to assume some of the regulatory functions formerly administered by the Interstate Commerce Commission (ICC) when the ICC was abolished. Other ICC regulatory functions were either eliminated or transferred to the U.S. Department of Transportation's (DOT) former Office of Motor Carriers—now the Federal Motor Carrier Safety Administration—or to DOT's Bureau of Transportation Statistics. In FY 2014, the Board was administratively aligned with DOT, but was decisionally independent. The Surface Transportation Board Reauthorization Act of 2015, Pub. L. No. 114-110 (2015), established the Board as an independent agency on December 18, 2015.

While much of the agency's work involves freight railroads, the Board also has certain oversight of passenger rail carriers, pipeline carriers, intercity bus carriers, moving-van companies, trucking companies involved in collective activities, and water carriers engaged in non-contiguous domestic trade (i.e., trade involving Alaska, Hawaii, or U.S. territories or possessions).<sup>2</sup> Additionally, the STB has limited but significant regulatory authority over the National Railroad Passenger Corporation, more commonly known as "Amtrak"; its operations on other railroads' track; disputes over shared track use and facilities; and cost allocation for Amtrak operations. The agency has wide discretion to tailor its regulatory approach to meet the Nation's changing transportation needs.

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<sup>1</sup> 49 U.S.C. §§ 10101-11908.

<sup>2</sup> 49 U.S.C. §§ 13101-14914, 15101-16106.

## Performance and Policy Goals

The Board strives to provide an efficient and effective forum for the resolution of surface transportation disputes and other matters within its jurisdiction. In all of its official decisions, the STB seeks to advance the national transportation policy goals enacted by Congress.<sup>3</sup>

Although the Board uses its exemption authority to reduce or remove regulatory requirements where appropriate, the agency is committed to vigilant oversight and the rendering of fair and timely decisions when regulation is required. Attendant to this commitment, the STB endeavors to continue to establish, implement, and meet agency-wide goals, initiated in Fiscal Year (FY) 2010, to increase transparency in its processing and adjudication of cases, and to promote alternative dispute resolution for parties. The following is an FY 2014 chronological summary of significant Board actions towards these ends:

On November 13, 2013, the Board held an oral argument at its Washington, D.C., headquarters addressing the Intermountain Power Agency's (IPA) complaint challenging the reasonableness of the Union Pacific Railroad Company's rates for unit-train (i.e., a train of railcars employed entirely in the transportation of a single commodity, manufactured good, etc. ) coal transportation service from an interchange point with the Utah Railway Company at Provo, Utah, to IPA's electric-generating facilities at Lynndyl, Utah, in *Intermountain Power Agency v. Union Pacific Railroad Company*, NOR 42136.

On November 15, 2013, Board staff held an open forum in Winona, Mississippi, to receive public comment on a dispute before the STB in which several rail shippers and local communities had challenged the Grenada Railway LLC's cessation of service over a significant portion of its line spanning several Mississippi Counties, in *Grenada Railway, LLC—Rail Line in Granada, Montgomery, Carroll, Holmes, Yazoo and Madison Counties, Miss.*, FD 35247 (Sub-No. 1).

In response to a railroad-labor question referred to it by the United States Court of Appeals for

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<sup>3</sup> 49 U.S.C. §§ 10101 (rail), 13101 (motor and water), 15101 (concerning pipelines).

the District of Columbia, the Board determined that the Rail-Term Corporation is a railroad carrier,<sup>4</sup> a conclusion based on the public record showing that several shortline railroads had outsourced to Rail-Term the dispatch function of the shortlines' freight service, and that Rail-Term's dispatching services are subject to STB jurisdiction, in *Rail-Term Corp.—Petition for Declaratory Order*, FD 35582. Vice Chairman Begeman dissented to that November 19, 2013, decision with a separate expression.

Undertaken as a subdocket of an earlier-instituted proceeding, *Rail Transportation of Grain*, EP 665, that explored grain-transportation markets following concerns expressed by grain producers, public officials, and other stakeholders over rail-rate and rail-service issues, the Board instituted *Rail Transportation of Grain, Rate Regulation Review*, EP 665 (Sub-No. 1), on December 12, 2013, to examine the STB's rate-case procedures to ensure their accessibility to, and effectiveness in protecting, grain shippers. Comments were sought and received from interested parties relative to grain shippers' ability to seek relief effectively for unreasonable rates, and proposals for modifying existing procedures or for new, alternative rate-relief methodologies.

In its December 13, 2013 decision in *Reasonableness of BNSF Railway Coal Dust Mitigation Tariff Provisions*, FD 35557, the Board found reasonable the "safe harbor" provision of a BNSF tariff requiring coal shippers to mitigate in-transit coal dust emissions by applying approved dust-suppression methods. However, the STB found unreasonable the tariff's broadly worded indemnification provision obligating shippers to protect BNSF from liability arising from the use of the suppression methods.

In another area of interest, the Board held a March 25-26, 2014 public hearing at its headquarters in *Petition for Rulemaking to Adopt Revised Competitive Switching Rules*, EP 711, to explore issues surrounding The National Industrial Transportation League's petition to modify the Board's standards for mandatory competitive switching to allow certain "captive" shippers (those with access to the service of only one railroad) located in rail-terminal areas to be granted

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<sup>4</sup> Within the definition at 49 U.S.C. § 10102(5). The question was relevant to the court's review of the U.S. Railroad Retirement Board's (RRB) finding that Rail-Term is a covered employer, under rail employee-benefits acts administered by the RRB, thus entitling Rail-Term employees to benefits.

access to a competing railroad, if there is a working railroad interchange point between or among railroads within a reasonable distance.<sup>5</sup>

Following the Board's ongoing monitoring of the railroad industry's performance metrics; its concern over mounting service problems across the Nation's rail network, particularly on the BNSF Railway Company (BNSF) and Canadian Pacific Railway Company (CP) systems; and Board Member correspondence and meetings with BNSF and CP leadership to discuss such concerns, the STB conducted a regional meeting among agency staff experts and concerned shippers,<sup>6</sup> followed by an April 10, 2014 public hearing in *United States Rail Service Issues*, EP 724, at the agency's headquarters, to provide interested persons and parties the opportunity to report on recent rail-service issues, review proposed solutions to existing service problems, and discuss additional options for service improvement. Later that spring, Board staff conducted two additional regional meetings in the Midwest with concerned shippers,<sup>7</sup> made themselves available to meet with shippers at the North American Rail Shippers Association's annual meeting,<sup>8</sup> and soon afterwards held a third regional meeting with Midwestern shippers.<sup>9</sup> On September 4, 2014, the Board held a public field hearing in Fargo, N.D., to provide interested persons the opportunity to report on service problems on the Nation's rail network, to hear from rail-industry executives on their efforts to address service problems, and to discuss additional options to improve service.

Statutorily required since 1981 to annually determine which railroads are revenue adequate,<sup>10</sup> the Board has since made adjustments to its methodology to improve the STB's ability to accurately determine revenue adequacy. However, during the past decade, both the rail industry's structure and the Nation's flow of commerce continued to substantially change, which developments

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<sup>5</sup> 30 miles, under NITL's proposal.

<sup>6</sup> In March 2014 in Fargo, North Dakota.

<sup>7</sup> May 6, 2014, in Sioux Falls, South Dakota; May 14, 2014, in Bloomington, Minnesota.

<sup>8</sup> May 28-30, 2014, in San Francisco, California.

<sup>9</sup> On June 11, 2014, in Malta, Montana.

<sup>10</sup> A railroad is considered to be revenue adequate if it achieves a rate of return on net investment equal to at least the current cost of capital (the Board's annual estimate of the average rate of return needed to persuade investors to provide capital to the freight rail industry).

prompted the agency's belief in the need for a new examination of revenue adequacy. Accordingly, on April 2, 2014, in advance of a future public hearing,<sup>11</sup> the Board sought written comments from the public to explore the STB's methodology for determining railroad revenue adequacy and the revenue adequacy-component used by the agency in judging the reasonableness of rail freight rates, in *Railroad Revenue Adequacy*, EP 722, and *Petition of the Western Coal Traffic League to Institute a Rulemaking Proceeding to Abolish the Use of the Multi-Stage Discounted Cash Flow Model in Determining the Railroad Industry's Cost of Equity Capital*, EP 664 (Sub-No. 2).

On May 29, 2014, the Board revisited a prior-adjudicated matter by its institution of an Advance Notice of Proposed Rulemaking proceeding, *Rail Fuel Surcharges (Safe Harbor)*, EP 661 (Sub-No. 2), to provide interested persons the opportunity to comment on whether the "safe harbor" provision of the STB's rail fuel-surge rules should be modified or removed. As background, in a 2007 decision in *Rail Fuel Surcharges*, EP 661, the agency prohibited rate-based fuel surcharges as an unreasonable practice and established as a "safe harbor" an index upon which railroads could rely to measure changes in fuel costs for purposes of a fuel-surge program. In a later complaint proceeding, *Cargill, Inc. v. BNSF Ry.*, NOR 42120, a shipper challenged a railroad's fuel-surge program, a critical issue being the manner in which the railroad's incremental fuel costs should be measured. In the latter case, the Board utilized the safe-harbor index but indicated that it would revisit the safe harbor in light of issues raised.

On September 19, 2014, the Board announced that it had awarded a contract to a private-sector consulting firm to conduct an independent analysis evaluating potential alternative rate-regulation approaches, the goals being the reduction of the time, cost, and complexity of rate-reasonableness complaints brought before the STB.<sup>12</sup>

In the area of rail construction, the Board continued to adjudicate the application of Tongue River Railroad Company to construct and operate a new rail line in southeast Montana. The

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<sup>11</sup> Held on July 22 and 23, 2014, at the STB's headquarters.

<sup>12</sup> InterVISTAS Consulting LLC was contracted to produce a *Railroad Rate Regulation Study* due late 2015.

purpose of the proposed line is to transport low-sulfur, sub-bituminous coal from a planned coal mine currently in the permitting process at Otter Creek, Mont., and any future mines that might be developed in the Otter Creek and Ashland, Mont., area. During FY 2014, the STB issued several procedural decisions in *Tongue River Railroad—Rail Construction & Operation—in Custer, Powder River & Rosebud Counties, Mont.*, FD 30186, continuing the proceeding's progress within the merits phase.

In FY 2014, the Board addressed the California High-Speed Rail Authority's request that the STB conditionally grant an exemption from its prior-approval requirements to address the project's transportation aspects in advance of the agency's examination of attendant environmental issues, and to allow the Authority's construction of a portion of an approximately 114-mile, high-speed line, from Fresno to Bakersfield, Calif., by a specific date, in part out of the Authority's concern over the possibility of a future Board-Member vacancy. In its December 4, 2013 decision in *California High-Speed Rail Authority—Construction Exemption—In Fresno, Kings, Tulare, and Kern Counties, Cal.*, FD 35724 (Sub-No. 1), the Board denied the Authority's request for a decision on the transportation aspects of the project before the environmental review of the project was completed, and extended the time for public comment on the transportation merits of the proposed construction project. Vice Chairman Begeman concurred with a separate expression.

On August 12, 2014, the Board issued its decision in FD 35724 (Sub-No. 1) authorizing the Authority to construct the planned, 114-mile line between Fresno and Bakersfield, subject to environmental-mitigation conditions. Vice Chairman Miller concurred with a separate expression and Member Begeman dissented with a separate expression.

Concerning Amtrak, the Board continued to adjudicate a dispute between Amtrak and the Canadian National Railway Company (CN), regarding the performance of Amtrak passenger trains operating on lines owned by CN and its subsidiaries in *Application of the National Railroad Passenger Corporation under 49 U.S.C. § 24308(a)—Canadian National Railway*, FD 35743.



## **Organizational Structure**

The Board comprises three Members nominated by the President and confirmed by the Senate for five-year terms.<sup>13</sup> The Board's Chairman is designated by the President from among the Members.<sup>14</sup> As its chief executive, the Chairman coordinates and organizes the agency's work and acts as its representative in legislative matters and in relations with other governmental bodies.

The Vice Chairman represents the Board and assumes the Chairman's duties as appropriate. Additionally, the Vice Chairman oversees matters involving the admission, discipline, and disbarment of non-attorney Board practitioners,<sup>15</sup> and is also designated Co-Chairman of the National Grain Car Council. The Vice Chairmanship alternates annually between the Chairman's two Member colleagues.

Assisting the Board in carrying out its responsibilities is a staff of approximately 136, with experience in economics, law, accounting, transportation analysis, finance, and administration, serving within the following offices:

The **Office of Public Assistance, Governmental Affairs, and Compliance** (OPAGAC) serves as the agency's principal point of contact for Congress, state and local governments, industry stakeholders, the general public, and the news media; monitors certain aspects of Amtrak's operations over other carriers' track, related disputes, and Amtrak's cost allocations; and facilitates mediation and arbitration of certain disputes involving the Board's regulatory jurisdiction, whenever possible, in lieu of time-consuming and costly litigation.

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<sup>13</sup> The Surface Transportation Board Act of 2015, Pub. L. No. 114-110 (2015), increased the Board's size to five Members,

<sup>14</sup> 49 U.S.C. § 1301.

<sup>15</sup> Persons meeting specific standards, passing an examination, and taking an oath to comply with agency requirements and procedures to practice before the agency.

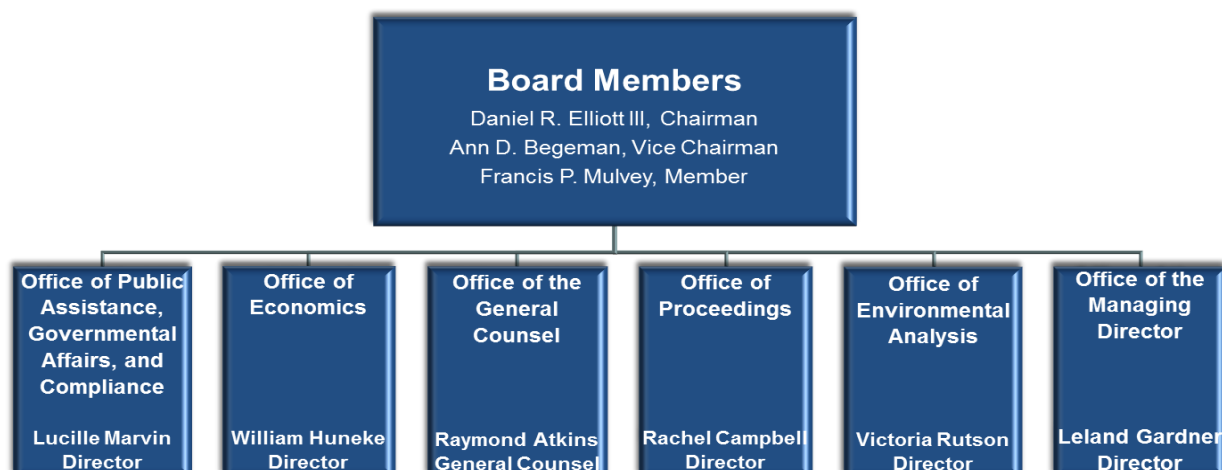
The **Office of Economics** supports the Board's decision-making process through economic, cost, financial, and engineering analyses in railroad maximum-rate proceedings, mergers, rail-line abandonments, and line-construction and trackage rights cases before the agency.

The **Office of Environmental Analysis** (OEA) is responsible for directing the environmental review process in pertinent cases before the agency, conducting independent analyses of all environmental data, and making environmental recommendations to the Board.

The **Office of the Managing Director** provides a wide range of management services to the agency and to its staff.

The **Office of the General Counsel** provides legal advice to the Board and defends agency decisions challenged in court.

The **Office of Proceedings** provides decisional and procedural assistance in open matters pending before the Board; conducts legal research and analysis; and prepares draft decisions for cases pending before the Board.



**Figure 1.1 STB Organizational Chart, FY 2014<sup>16</sup>**

## **Councils and Committees**

**The Railroad-Shipper Transportation Advisory Council (RSTAC)** advises the Board, the Secretary of Transportation, and Congress on railroad-transportation policy issues of particular importance to small shippers and small railroads, such as rail-car supply, rates, and competitive matters.<sup>17</sup> The RSTAC is composed of 14 private-sector senior executives from the railroad and rail shipping industries, plus one member-at-large. The Secretary of Transportation and the three Board Members are ex-officio members. RSTAC holds meetings quarterly.

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<sup>16</sup> During FY 2014, the Board both lost and gained a Member through former Vice Chairman Francis P. Mulvey's departure from the agency, upon the conclusion of his term, and the April 28, 2014 swearing-in of Deb Miller to fill his seat as a new Member. Mulvey had served as Vice Chairman from the beginning of the fiscal year through Jan. 3, 2013, and was succeeded by Ann D. Begeman, who served in that capacity from Jan. 4, 2013, through the end of the fiscal year. Ray Atkins served as General Counsel for the entire fiscal year, and departed that position and the STB on Oct. 31, 2013. Craig Keats subsequently was appointed General Counsel on Nov. 14, 2013, in which capacity he currently serves. For a detailed historical summary of Board Member service dates, see Appendix F.

<sup>17</sup> 49 U.S.C. § 1325.

**The National Grain Car Council (NGCC)** assists the Board in addressing problems concerning grain transportation by fostering communication among railroads, shippers, rail-car manufacturers and lessors, and government. The NGCC consists of 14 representatives from Class I (large) railroads, seven representatives from Class II (medium-sized) and Class III (small) railroads,<sup>18</sup> 14 representatives of grain shippers and receivers, and five representatives of private rail car owners and manufacturers. The three Board Members are ex-officio members, and the Vice Chairman is designated NGCC Co-Chairman. In accordance with the Federal Advisory Committee Act<sup>19</sup> (FACA), meetings are held annually and are open to the public.

**The Rail Energy Transportation Advisory Committee (RETAC)** was established by the Board in July 2007 to provide advice and guidance regarding the transportation by rail of energy resources such as coal, ethanol, and other biofuels. The RETAC is composed of 25 voting members representing a balance of stakeholders, including large and small railroads, coal producers, electric utilities, the biofuels industry, the private railcar industry, the domestic petroleum industry, and rail labor. The three Board Members are ex-officio members. In accordance with FACA, RETAC meetings are held at least twice a year and are open to the public.

## **Public Outreach**

In FY 2014, the Board kept Congress and the public abreast of agency actions and policies through hearings, oral arguments, a public meeting, printed and audio-visual transcripts, news releases, and customer-service pamphlets. All were made widely available through the agency's website, [www.stb.dot.gov](http://www.stb.dot.gov). The following tables display counts of major public outreach activities during the reporting period:

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<sup>18</sup> For purposes of accounting and reporting, the Board designates three classes of freight railroads based upon their operating revenues, for three consecutive years, in 1991 dollars, using the following scale: Class I - \$250 million or more; Class II - less than \$250 million but more than \$20 million; and Class III - \$20 million or less. These operating revenue thresholds are adjusted annually for inflation. In 2013 dollars, the scale is as follows: Class I - \$467,063,129 or more; Class II – Less than \$467,063,129 but more than \$37,365,050; and Class III - \$37,365,0500 or less. (See Appendix D: Railroad Financial and Statistical Data.)

<sup>19</sup> P. L. 92-463.

<b>Table 1.1</b> <b>Board Member Public Communications in FY 2014</b>			
<b>Transcripts<sup>*</sup></b>	<b>Statements<sup>†</sup></b>	<b>Testimonies<sup>††</sup></b>	<b>Written Speeches</b>
6	0	0	9

<sup>\*</sup> Official copies, and electronically archived audio/visual files, of Board hearings and oral arguments.

<sup>†</sup> Written statements occasionally read at the commencement of a Board hearing and posted to the agency's website in addition to the official event transcript.

<sup>††</sup> Before the United States Congress.

<b>Table 1.2</b> <b>Public Events Held in FY 2014</b>			
<b>Headquarters Hearings</b>	<b>Field Hearings</b>	<b>Oral Arguments</b>	<b>Meetings<sup>*</sup></b>
3	2	1	14

<sup>\*</sup> Conducted nationwide by the Board's Office of Environmental Analysis.

<b>Table 1.3</b> <b>News Releases Issued in FY 2014</b>		
<b>Number Issued</b>	<b>Total Webpage Visits<sup>*</sup></b>	<b>Average Visits Per Release<sup>*</sup></b>
20	26,332	1,317

<sup>\*</sup> Calculations undertaken February 11, 2016.

The **Rail Customer and Public Assistance Program (RCPA)** continues to be the Board's most effective tool for resolving disputes informally between shippers and railroads, thus preventing such disputes from becoming expensive and lengthy formal cases.

The Board has mounted an extensive outreach effort, especially to small shippers who have increasingly taken advantage of this free program. The RCPA Program office includes attorneys and former railroad and shipper employees who have decades of experience in rail shipping, operations, marketing, analysis, tariffs, and rates. Program staff attempt to seek common ground and to facilitate the informal settlement of disputes, allowing both sides to walk away satisfied.

RCPA's services are available to anyone who has a question or issue falling within the Board's area of expertise. RCPA also explains the differing jurisdictions of various federal transportation agencies and properly redirects parties and individuals to them as necessary.

Interested parties may phone, e-mail, or mail in their inquiries and will receive a reply as soon as possible. Some inquiries can be answered and completed almost immediately. Other issues dealing with specific carrier or shipper disputes can take days or weeks to resolve.

In FY 2014, the RCPA handled approximately 1,200 inquiries from stakeholders, of which, approximately 150 pertained to railroad service issues.

## **RAILROAD RESTRUCTURING**

### **Mergers and Consolidations: Review of Carrier Proposals**

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

Carriers may seek Board authorization either by filing an application under 49 U.S.C. §§ 11323-25 or by seeking an exemption from the full application procedures under 49 U.S.C. § 10502. The procedures to be followed in such cases vary depending on the type of transaction involved. Where a merger or acquisition involves only Class II or III railroads whose lines do not connect with each other, carriers need only follow a simple notification procedure to invoke a class exemption (an across-the-board exemption from the full application procedures, applicable to a broad class of transactions) at 49 C.F.R. § 1180.2(d)(2). When larger carriers are involved in merger activities, more rigorous procedures apply, and carriers may be required to file "safety integration plans" under rules that the Board has issued jointly with the Federal Railroad Administration (FRA).<sup>20</sup>

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<sup>20</sup> 49 C.F.R. Parts 244 and 1106.

<b>Table 2.1</b> <b>Rail Mergers and Consolidations, FY 2014</b> <b>Under 49 U.S.C. 11323*</b>	
<b>Type</b>	<b>No.</b>
<b>Applications</b>	
Filed	0
Granted	0
Denied	0
Dismissed	0
Pending	1
<b>Petitions for Exemption</b>	
Filed	5
Granted	4
Denied	0
Dismissed	0
Pending	3
<b>Notices of Exemption</b>	
Filed	17
Granted	16
Denied	0
Dismissed	0
Pending	1

\* Data in this and subsequent charts compose a snapshot of Board activity at the close of FY 2014; figures thus may not add to a total. The “Granted,” “Denied,” and “Dismissed” totals not only include cases initiated in FY 2014, but also cases filed in a prior fiscal year but disposed of in FY 2014. Thus, the granted, denied, and dismissed totals may be greater or lesser than the number of cases filed in FY 2014. “Pending” totals include cases filed in FY 2014, or earlier, that were not disposed of in FY 2014 and thus remain open for disposition in a later fiscal year.



## **Mergers and Consolidations: Oversight and Monitoring**

In its 2008 approval of CN's acquisition of the EJ&E West Company (EJ&E), the Board imposed numerous environmental mitigation and other conditions, and established a five-year monitoring and oversight period. *Canadian Nat'l Ry.—Control—EJ&E W. Co.*, FD 35087 (STB served Dec. 24, 2008), *aff'd*, *Vill. of Barrington v. STB*, 636 F.3d 650 (D.C. Cir. 2009). As part of that process, CN filed monthly status reports on operations matters related to the acquisition, as well as quarterly reports on the implementation of environmental conditions.

In October 2011, the Village of Barrington, Ill. (Barrington) petitioned the Board for imposition of additional mitigation pursuant to the Board's continuing oversight jurisdiction, or in the alternative, for reopening of the Board's 2008 acquisition approval decision. Barrington requested that the Board impose additional mitigation that would require CN to provide 100 percent of the funding for a grade separation (overpass or underpass) at the intersection of the CN/EJ&E rail line and U.S. Route 14 (U.S. 14) in Barrington.

In November 2012, the Board found that Barrington had not produced new evidence warranting imposition of an additional condition requiring CN to construct the requested grade separation, and that Barrington had shown that the Board materially erred in its 2008 decision by relying on the environmental analysis performed at that time. On December 26, 2012, the United States Court of Appeals for the District of Columbia Circuit announced the institution of Barrington's court challenge to the Board's determination in *Village of Barrington, Illinois v. Surface Transportation Board*. [Barrington's petition for review was subsequently denied in *Barrington v. STB*, 758 F.3d. 326 (D.C. Cir. 2014).]

Regarding another transaction, during FY 2013 the Board had completed its review of the acquisition of BNSF by Berkshire Hathaway Inc. (Berkshire) in light of the belated disclosure that Berkshire failed to recognize its ownership of two shortline railroads at the time of the acquisition, and thus its failure to seek advance approval from the STB. In *Western Coal Traffic League—Petition for Declaratory Order*, FD 35506 (STB served July 25, 2013), the agency had specifically required BNSF to remove its \$8.1 billion markup of its rail assets over their book

value, often referred to as an “acquisition premium.” The Board had also ordered BNSF to phase in the markup of its rail assets equally over a four-year period, beginning in 2013, until full recognition of the markup under Generally Accepted Accounting Principles, a remedy designed to mitigate the effect of the markup on the jurisdictional threshold in rate reasonableness cases brought by captive shippers served by BNSF.

During FY 2014, the Board denied the request of several petitioners asking the STB to conduct a technical conference for the petitioners to obtain the views of agency staff on how the Board planned to use inputs from BNSF’s revised financial statements that had been certified as accurate and audited by the STB’s accountants. In reaching its decision, the Board stated that the petitioners had offered no basis for the STB’s questioning of the validity of the final data, as certified by BNSF management and outside accountants and audited by the agency’s own accounting staff, in *Western Coal Traffic League—Petition for Declaratory Order*, FD 35506 (STB served February 6, 2014).

## **Pooling**

Rail carriers may seek approval to agree, or to combine, with other carriers to pool or divide traffic, services, or earnings. There were no significant actions taken in this area during FY 2014.

## **Line Acquisitions**

Board approval is required for a non-carrier or a Class II or Class III railroad to acquire or operate an existing line of railroad. (The acquisition of an existing line by a Class I railroad is treated as a form of carrier consolidation under a separate procedure.) Non-carriers or Class II or III railroads may seek exemptions under certain conditions, and there are expedited procedures for obtaining Board authorization under several class exemptions (for certain types of transactions that generally require minimal scrutiny).

For non-connecting lines, Class II and Class III railroads may choose to use a class exemption, and Class III railroads may acquire and operate additional lines through a simple notification

process. Acquisitions resulting in a carrier having at least \$5 million in annual net revenues require additional notice, in advance of anticipated labor impacts, to give employees and the communities served by those carriers an opportunity to adjust to the effects of a proposed transaction.

Non-carriers may acquire rail lines under a class exemption. Required notification, together with the Board's ability to revoke class exemptions in particular transactions, prevent exemption misuse. Exemptions simplify the regulatory process, while continuing to protect the public, and help preserve rail service in many areas of the country.

The Board's handling of line-acquisition proposals during FY 2014 is summarized in the following tables:

**Table 2.2**  
**Line Acquisitions by Noncarriers, FY 2014**  
**Under 49 U.S.C. § 10901**

<b>Type</b>	<b>No.</b>	<b>Miles</b>
<b>Petitions for Exemption</b>		
Filed	0	0
Granted	0	0
Denied	0	0
Dismissed	0	0
Pending	0	0
<b>Notices of Exemption</b>		
Filed	16	1323.6
Granted	15	1319.88
Denied	0	0
Dismissed	0	0
Pending	0	0

**Table 2.3**  
**Line Acquisitions By Class II or III**  
**Railroads, FY 2014**  
**Under 49 U.S.C. § 10902**

<b>Applications for Exemption</b>		
Filed	3	1018.62
Granted	0	0
Denied	0	0
Dismissed	0	0
Pending	3	1018.62
<b>Notices of Exemption</b>		
Filed	10	568.41
Granted	8	273.47
Denied	0	0.0
Dismissed	0	0.0
Pending	3	254.9

During FY 2014, the Board issued decisions licensing the acquisition of nearly 1,593.35 miles of rail line.

## **Trackage Rights**

Trackage-rights arrangements allow a railroad to use the track of another railroad that may or may not continue to provide service over the line at issue. Such arrangements can improve the operating efficiency for the carrier acquiring the rights by providing alternative, shorter, and faster routes. Local trackage rights may introduce new competition, thus giving shippers service options. The Board's prior approval is required for trackage-rights arrangements.

The Board maintains a class exemption for the acquisition or renewal of trackage rights through a mutual carrier arrangement. A separate class exemption also exists for trackage rights for overhead operations only, and these expire in one year or less.

In a case involving CSX Transportation, Inc. (CSX), The Baltimore & Ohio Chicago Terminal Railroad Company, and the Norfolk Southern Railway Company's (NS) participation in a joint relocation project proposed to foster improvements to the Gary-Chicago International Airport Authority in Indiana, the Board granted an exemption from the agency's prior-approval requirements<sup>21</sup> to allow CSX to obtain trackage rights over NS's Gary Branch, subject to standard employee protection; found that regulation of the proposed transaction was unnecessary to protect shippers from the abuse of market power; and determined that the proposed trackage-rights agreement would neither disrupt service to shippers nor expand service into a new territory, in *CSX Transportation, Inc., The Baltimore & Ohio Chicago Terminal Railroad Company, and Norfolk Southern Railway Company—Joint Relocation Project Exemption—Gary-Chicago International Airport Authority*, FD 35804 (Sub-No. 1).

The Board's docket and handling of trackage-rights proposals during FY 2014 is summarized in the following table:

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<sup>21</sup> 49 U.S.C. § 11323(a)(6)

Table 2.4 Trackage Rights, FY 2014		
Type		No.
<b>Applications</b>	Filed	0
	Granted	0
	Denied	0
	Dismissed	0
	Pending	0
<b>Petitions for Exemption</b>	Filed	0
	Granted	0
	Denied	0
	Dismissed	0
	Pending	0
<b>Notices of Exemption</b>	Filed	15
	Granted	14
	Denied	0
	Dismissed	0
	Pending	1

### **Leases by Class I Carriers**

Leases and contracts for the operation of rail lines by Class I railroads require Board approval. Carriers may seek Board authorization by filing either an application or a petition for exemption, and the agency maintains a class exemption for the renewal of a previously authorized lease.

There were no significant actions taken in this area during FY 2014.

### **Line Constructions**

New rail-line construction requires Board authorization. Carriers may seek Board authorization by filing either an application or a petition for exemption. The agency maintains class

exemptions providing a simple notification procedure for the construction of connecting track on an existing rail right-of-way, on land owned by the connecting railroads, or for joint track-relocation projects that do not disrupt service to shippers.

The agency can compel a railroad to permit a new line to cross its tracks if doing so does not interfere with the operation of the existing line and if the owner of the existing line is compensated. If railroads cannot agree to terms, the Board can prescribe appropriate compensation.

During the fiscal year, the Board denied a petition by the Brazos River Bottom Alliance asking the STB to open a declaratory-order proceeding (in which the agency issues a decision, at the request of a party or parties, stating the agency's position on a matter of dispute) and find that the Union Pacific Railroad Company (UP) needed STB approval for the proposed construction of a rail yard in Robertson County, Tex. In its decision, the Board ruled that UP did not need STB approval for the proposed project because the intended use of the yard was ancillary to UP's line-haul service; the proposal would allow UP to increase capacity on its existing lines while neither physically penetrating new territory nor reaching new customers in an area where UP was not already authorized to perform rail service; and, as UP through trains would continue to move over UP's existing main lines to their destinations, the proposed yard would be incidental to the operations of trains over those lines, in *Brazos River Bottom Alliance—Petition for Declaratory Order*, FD 35781, (STB served February 19, 2014).

The STB's docket and handling of construction cases during FY 2014 are summarized in the following table:

<b>Table 2.5</b>		
<b>Railroad Construction, FY 2014</b>		
<b>Type</b>	<b>No.</b>	<b>Miles</b>
<b>Applications</b>		
Filed	0	0.0
Granted	0	0.0
Denied	0	0.0
Dismissed	0	0.0
Pending	0	0.0
<b>Petitions for Exemption</b>		
Filed	1	5.5
Granted	0	0.0
Denied	0	0.0
Dismissed	0	0.0
Pending	1	5.5
<b>Notices of Exemption</b>		
Filed	1	6.24
Granted	0	0.0
Denied	0	0.0
Dismissed	1	6.24
Pending	0	0.0



## **Line Abandonments**

Railroads require Board approval to abandon a rail line or to discontinue all rail service over a line to be held in reserve. Abandonment or discontinuance authority may be sought by an entity with operating authority over the line, or an “adverse” abandonment or discontinuance action may be brought by an opponent to a line’s continued operation.

The agency maintains a class exemption providing a streamlined notification procedure for the abandonment of lines over which there has been no traffic in two consecutive years that could not have been rerouted over other lines.

In FY 2014, the Board authorized 416.02 miles of rail line for abandonment in 39 abandonment and exemption proceedings.

The Board’s docket and processing of abandonment cases for FY 2014 are summarized in the table that follows:

<b>Table 2.6 Abandonments, FY 2014</b>		
<b>Type</b>	<b>No.</b>	<b>Miles</b>
<b>Applications</b>		
Filed`	0	0.0
Granted	0	0.0
Denied	0	0.0
Dismissed	0	0.0
Dismissed, OFA sale	0	0.0
Pending	0	0.0
<b>Petitions for Exemption</b>		
Filed	16	310.76
Granted	10	114.23
Denied	1	9.67
Dismissed	0	0.0
Dismissed, OFA sale	0	0.0
Pending	3	83.24
<b>Notices of Exemption</b>		
Filed	33	382.86
Granted	29	301.79
Denied	0	0.0
Dismissed	1	38.0
Dismissed, OFA sale	0	0.0
Pending	11	114.79

## **Preservation of Rail Lines**

The Board administers three programs designed to preserve railroad service or rail rights-of-way, as discussed below.

### *Offers of Financial Assistance*

If the Board finds that a railroad's abandonment proposal should be authorized, and the railroad receives an offer by another party to acquire or subsidize continued rail operations on the line to preserve rail service—known as an Offer of Financial Assistance (OFA)—the agency may require the line to be sold for that purpose or operated under subsidy for one year. Where parties cannot agree on a purchase price, the agency will set the price at fair market value, and the offeror will either agree to that price or withdraw its offer.

### *Feeder-Line Development Program*

When railroad service is inadequate for a majority of shippers transporting traffic over a particular line, or the line has been designated in a carrier's system diagram map as a candidate for abandonment, the Board can compel the carrier to sell the line to a party that will provide service. There were no significant actions taken in this area during FY 2014.

### *Trail Use/Rail Banking*

The Board administers the National Trails System Act's "rail banking" program allowing railroad rights-of-way approved for abandonment to be preserved for the future restoration of rail service, and for interim use as recreational trails. When a railroad and a trail sponsor agree to negotiate for interim trail use, the agency issues a Certificate of Interim Trail Use or a Notice of Interim Trail Use. If a trail use arrangement is reached, the right-of-way remains under the agency's jurisdiction and does not revert to the original landowners.

The following table summarizes rail banking and interim trail use activity during FY 2014:

Table 2.7							
Rail Banking/Interim Trail Use, FY 2014*							
Requests		Grants		Denials		Pending	
No.	Miles	No.	Miles	No.	Miles	No.	Miles
16	148.3	10	40.18	3	30.09	2	78.03

\* Data in this table provide a snapshot of Board activity at the close of FY 2014. The “Grants,” “Denials,” and “Pending” totals include “Requests” filed in FY 2014, as well as requests filed in a prior fiscal year but disposed of in FY 2014. Thus, the granted, denied, and pending totals above do not add up to the number of requests. The pending total includes requests filed in FY 2014, or earlier, that were not disposed of in FY 2014 and thus remain open for disposition in a later fiscal year.

### **Liens on Rail Equipment**

Liens on rail equipment and water vessels intended for use in interstate commerce must be filed with the Board to become valid. Subsequent assignments of rights or release of obligations under such instruments must also be filed with the agency. Such liens maintained by the Board are preserved for public inspection. The STB recorded 1,946 liens in FY 2014.

## **RAILROAD RATES**

### **Cost of Capital**

Each year, the Board determines the after-tax, composite cost of equity capital for the freight-railroad industry (i.e., the STB’s estimate of the average rate of return needed to persuade investors to provide such capital), and uses that “cost-of-capital” figure for a variety of regulatory purposes. It is employed in maximum railroad-rate cases, feeder-line applications, rail-line abandonments, trackage-rights cases, rail-merger reviews, the Board’s Uniform Railroad Costing System (URCS) and, more generally, in annually evaluating the adequacy of individual railroads’ revenues. For calendar year 2013, the Board found five Class I railroads—BNSF, Grand Trunk Corporation, Norfolk Southern Combined Railroad Subsidiaries, Soo Line Corporation, and Union Pacific—to be “revenue adequate,” meaning that these carriers achieved a rate of return equal to or greater than the STB’s calculation of the average cost of equity capital to the freight rail industry.<sup>22</sup>

### **Common Carriage or Contract Carriage**

Under federal law, railroads have a common carrier obligation to provide rail service upon reasonable request. A railroad can provide that service either under rate and service terms agreed to in a confidential transportation contract with a shipper or under openly available common-carriage rate and service terms. Rate and service terms established by contract are not subject to Board regulation, except for limited protection against discrimination involving agricultural products.

Railroads are also required to file with the Board summaries of all contracts for the transportation of agricultural products within seven days of the contracts’ effective dates.

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<sup>22</sup> See *Railroad Revenue Adequacy—2013 Determination*, EP 552 (Sub-No. 18) (STB served Sept. 2, 2014) and “Appendix D: Railroad Financial and Statistical Data,” Table D.5, of this report.

Summaries must contain specific information contained in 49 C.F.R. § 1313 and are available for public inspection at the agency's Tariff Library, by mail for a fee, and at the agency's website, [www.stb.dot.gov](http://www.stb.dot.gov).

### **Rate Disclosure Requirements: Common Carriage**

A railroad's common-carriage rates and service terms must be disclosed upon request, and advance notice must be given for rate increases or changes in service terms. Rates and terms for agricultural products and fertilizer must also be published. These regulatory requirements can be bypassed in instances where the Board has exempted from regulation the class of commodities or rail services involved. Class exemptions exist for most agricultural products, intermodal container traffic, boxcar traffic, and other miscellaneous commodities.

### **Rate Challenges: Market-Dominance Limitation**

The Board has jurisdiction over complaints challenging the reasonableness of a common-carriage rate only if a railroad has market dominance over the traffic involved. Market dominance refers to an absence of effective competition from other railroads or transportation modes for a specific movement to which a rate applies.

By law, the Board cannot find that a railroad has market dominance over a movement if the rate charged results in a revenue-to-variable cost percentage of less than 180 percent. The Board's URCS is used to provide a measurement of a railroad's systemwide-average variable costs of performing various rail services.

Where the revenue-to-variable cost threshold is exceeded, the Board examines whether competition in the marketplace effectively restrains a railroad's pricing.

### **Rate Challenges: Rate-Reasonableness Determination**

To assess whether a challenged rate is reasonable, the Board generally uses "constrained market pricing" (CMP) principles. These principles limit a railroad's rates to levels necessary for an

efficient carrier to make a reasonable profit. CMP principles recognize that, to earn adequate revenues, railroads need pricing flexibility, including charging higher rates on “captive” traffic (traffic with no alternative means of transportation). The CMP guidelines also impose constraints on a railroad’s ability to do so. The most commonly used CMP constraint is the “stand-alone cost” (SAC) test. Under this constraint, a railroad may not charge a shipper more than it would cost to build and operate a hypothetical new, optimally efficient railroad (a “stand-alone railroad”) tailored to serve a selected traffic group that includes the complainant’s traffic.

The STB’s rate reasonableness guidelines have been refined through application in individual cases. The agency further developed changes to the rate reasonableness guidelines, including changes to the SAC test, in *Major Issues in Rail Rate Cases*, EP 657 (Sub-No. 1) (STB served Oct. 30, 2006), *aff’d sub nom., BNSF Railway v. STB*, 526 F.3d 770 (D.C. Cir. 2008).

In March 2014, the Board found that a complaining shipper, E.I. DuPont de Nemours and Company (DuPont), did not have a feasible shipping alternative to the Norfolk Southern Railway Company’s (NS) transportation service for a number of movements of a variety of commodities, but also that DuPont had failed to demonstrate that the rates it challenged were unreasonably high, in *E.I. DuPont de Nemours and Company v. Norfolk Southern Railway Company*, NOR 42125 (STB served March 14, 2014). Chairman Elliott and Vice Chairman Begeman respectively concurred with separate expressions. The March 14 decision was soon updated to include an appendix (STB served March 24, 2014).

Later, in June 2014, the STB found that a complaining shipper, Sunbelt Chlor Alkali Partnership (Sunbelt), did not have a feasible shipping alternative to NS’s transportation of chlorine from McIntosh to New Orleans, La., but also that the rates Sunbelt challenged would not be unreasonably high until the year 2021. Based on the latter finding, the agency declined to prescribe a rate for such future movements, in *Sunbelt Chlor Alkali Partnership v. Norfolk Southern Railway Company*, NOR 42130 (STB served June 20, 2014). Chairman Elliott and Vice Chairman Miller respectively concurred with separate expressions. Vice Chairman Begeman dissented with a separate expression.

## **Rate Challenges: Discovery on Technical Issues**

The Board dealt with no significant technical and procedural issues in its rate cases during FY 2014.

## **Rate Challenges: Simplified and Expedited Rate Guidelines**

In 1996, the Board adopted simplified and expedited rate guidelines in *Rate Guidelines—Non-Coal Proceedings*, 1 S.T.B. 1004 (1996). During the next decade, only two cases were brought to the Board under these guidelines, and both settled with the facilitation of Board-led mediation.

Because no cases had been decided under the simplified guidelines since their establishment, the Board examined and revised its simplified guidelines in a decision in *Simplified Standards for Rail Rate Cases*, EP 646 (Sub-No. 1) (STB served Sept. 5, 2007), *aff'd sub nom.*, *CSX Transportation, Inc. v. STB*, 568 F.3d 236 (D.C. Cir. 2009), *and vacated in part on reh'g*, *CSX Transportation, Inc. v. STB*, 584 F.3d 1076 (D.C. Cir. 2009). As part of the new simplified guidelines, the Board created a methodology for “medium-sized” cases, and modified its previous simplified guidelines for “small-sized” cases. Specifically, the Board adopted a simplified version of the SAC test for medium-sized cases, which it dubbed “Simplified-SAC,” and modified the previously adopted “Three Benchmark” methodology for small-sized cases, under which a challenged rate is evaluated in relation to three benchmark figures from the rates of a comparable group of traffic.

A shipper challenging a rate may choose to present evidence using either a Simplified-SAC or Three-Benchmark approach, but with limits on the relief available if either simplified procedure is used. The maximum recovery was previously set at \$5 million for Simplified-SAC cases, and \$1 million for Three-Benchmark cases, both indexed for inflation. In *Rate Regulation Reforms*, EP 715 (STB served July 18, 2013), the Board removed the relief limitation for Simplified-SAC cases and raised the limit on relief in Three-Benchmark cases to \$4 million.<sup>23</sup>

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<sup>23</sup> On appeal, the United States Court of Appeals for the District of Columbia Circuit remanded to the Board an issue involving the calculation of the \$4 million relief limit in Three-Benchmark cases. *CSX Transp., Inc. v. STB*, 754 F.3d 1056, 1066 (D.C. Cir. 2014). The Board addressed this issue in

(continued . . .)



During the fiscal year, the Board invited public comment on grain shippers' ability to effectively seek relief for unreasonable rates, including proposals for modifying existing procedures, or new, alternative rate-relief methodologies, should they be necessary, in *Rail Transportation of Grain, Rate Regulation Review*, EP 665 (Sub-No. 1) (STB served December 12, 2013). Though external to the Oct. 1, 2013 through Sept. 30, 2014 scope of this FY 2014 report, in May 2015 the Board scheduled a public hearing in EP 665 (Sub-No. 1) to explore these issues, which hearing was held at the STB's Washington, D.C., headquarters on June 10, 2015.

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( . . . continued)

decisions served in 2014 and 2015. Rate Regulation Reforms, EP 715 (STB served Dec. 3, 2014 & Mar. 13, 2015).

## RAILROAD SERVICE

### General Authority

The Board has broad authority to address the adequacy of the service provided by a railroad to its shippers and connecting carriers, and the reasonableness of a railroad's service and practices. Among its broad remedial powers, the Board may compel a railroad to

- allow another railroad to provide alternative service;
- provide switching operations to allow a shipper to access another railroad (reciprocal switching); or
- provide another railroad access to its terminal (terminal trackage rights)..

To prevent the loss of necessary rail service, the Board can issue temporary service orders during rail-service emergencies by directing a railroad to operate, for a maximum of 270 days, the lines of a carrier that has ceased operations. Finally, the Board has authority to address the reasonableness of a rail carrier's rules and practices.

Noteworthy during FY 2014 were the following Board decisions:

- In a proceeding involving a challenge to the “safe harbor” provision of a BNSF Railway Company (BNSF) tariff requiring coal shippers to reduce the amount of coal dust lost from railcars during transit from mines in Wyoming's Powder River Basin to ultimate destinations, the Board found that coal shippers challenging the safe harbor had not sufficiently established that coal-dust suppression methods stated within the tariff were unreasonable, and also found that one tariff provision, regarding shipper liability, was unenforceable because its language was overly broad and ambiguous, in *Reasonableness of BNSF Ry. Coal Dust Mitigation Tariff Provisions*, FD 35557 (STB served Dec. 17, 2013).

- The Board announced that it would hold a public hearing on April 10, 2014, at the STB's Washington, D.C., headquarters to provide interested persons and parties the opportunity to report on recent service problems experienced on the United States railroad network, to listen to rail-industry executives report their plans to address service problems, and to discuss additional options to improve service, in *United States Rail Service Issues—Grain*, EP 724 (STB served Apr. 1, 2014).
- Following its April 10, 2014, public hearing on railroad-service issues, the Board directed CP and BNSF to publicly file with the STB their respective plans to ensure the timely delivery of fertilizer shipments for the spring planting of crops in the United States, and further directed CP and BNSF respectively to file weekly status reports regarding fertilizer delivery on their networks, in *United States Rail Service Issues*, EP 724 (Sub-No. 1) (STB served Apr. 15, 2014).
- Based on public concerns raised before and after the Board's April 10, 2014 rail-service hearing, and to focus CP and BNSF's attention on resolving their respective backlogs of grain-car orders, improving service to grain shippers, and addressing extensive service and car-supply issues for all commodities across their networks, the Board required both railroads to file with the agency their respective plans for the resolution of grain-car order backlogs, as well as weekly status reports pertaining to grain car service, in *United States Rail Service Issues—Grain*, EP 724 (Sub-No. 2) (STB served June 20, 2014).
- The Board announced, and directed CP and BNSF representatives to appear at, a Sept. 4, 2014 public field hearing in Fargo, ND, to provide interested persons and parties the opportunity to report on service problems experienced on the United States rail network, to listen to rail-industry executives report their efforts to address such problems, and to discuss additional options to improve service, in *United States Rail Service Issues—Grain*, EP 724 (STB served Aug. 18, 2014).

## **Board-Shipper Discussions**

The agency continued to welcome informal shipper meetings with the three Board Members and staff to discuss general service, transportation, and other issues of concern (with the exception of matters pending before the Board). During FY 2014, the Board continued to foster industry dialogue about railroad service through the annual meeting of the NGCC, quarterly meetings of the RSTAC, and meetings of the RETAC.

## **Dialogue between Railroads and Their Customers**

On August 19, 2014, as an aid to rail customers in their business planning, the Board continued its annual practice (initiated in 2004) of asking railroads to submit to the agency a forward-looking assessment of their respective abilities to meet end-of-year business demands for U.S. rail service. The Board publicly posted the railroads' responses to the agency's website.

During the fiscal year, the Board also continued to encourage railroads to establish a regular dialogue with their customers as a productive way of preventing and addressing rail customer-service concerns. The agency spearheaded that activity through the work of its RCPA Program.

## **Assistance with Specific Service Matters**

In addition to the RCPA Program's dispute-resolution work, staff regularly monitored the rail industry's operating performance with an eye toward identifying service issues before they became major problems.

## RAIL-LABOR MATTERS

Railroad employees adversely affected by certain Board-authorized rail restructurings are entitled to protection prescribed by law. Standard employee protective conditions address wage and salary protection and changes in working conditions. Such employee protection provides procedures for dispute resolution through negotiation and, if necessary, arbitration. Arbitration awards are appealable to the agency under limited criteria giving great deference to arbitrators' expertise.

During FY 2014, in response to a question referred to it by the United States Court of Appeals for the District of Columbia, the Board determined that the Rail-Term Corporation is a rail carrier.<sup>24</sup> The STB reached that conclusion based on the public record's showing that several shortline railroads had outsourced to Rail-Term the dispatch function of the shortlines' freight service, and that Rail-Term's dispatching services are subject to STB jurisdiction, in *Rail-Term Corp.—Petition for Declaratory Order*, FD 35582 (STB served November 19, 2013). Vice Chairman Begeman dissented with a separate expression.

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<sup>24</sup> Within the definition at 49 U.S.C. § 10102(5). The question was relevant to the court's review of the U.S. Railroad Retirement Board's (RRB) finding that Rail-Term is a covered employer, under rail employee-benefits acts administered by the RRB, thus entitling Rail-Term employees to benefits.

## PREEMPTION

The Board is called upon to determine preemption and property-related questions from time to time. During FY 2014, the Board took action in this area in:

*Allied Erecting and Dismantling, Inc., and Allied Industrial Development Corporation—Petition for Declaratory Order—Rail Easements in Mahoning County, Ohio*, FD 35316 (STB served Dec. 20, 2013). This case involved the Board's response to questions referred to it by the State of Ohio's Court of Common Pleas of Mahoning County (the state court) regarding an ongoing property dispute between a property owner, Allied Erecting and Dismantling, Inc., and Allied Industrial Development Corporation (collectively, Allied), and six railroad members of the Ohio Central Railroad System (collectively, Ohio Central) concerning Ohio Central's use of two rail easements related to Allied's property. The Board concluded that Ohio Central had the authority to operate over the easements at issue; the STB's jurisdiction over rail transportation extended to the stopping and staging (i.e., interchanging or rearranging) of railcars; and, in agreement with the state court, that the easements did not prohibit Ohio Central's stopping, staging, or storing of railcars.

*Grafton & Upton Railroad Company—Petition for Declaratory Order*, FD 35779 (STB served Jan. 27, 2014). In this case, the railroad company filed a petition with the Board requesting the agency's issuance of a declaratory order to clarify that the preclearance and permitting laws and regulations of the Commonwealth of Massachusetts, and those of the Commonwealth's localities, are preempted by federal law<sup>25</sup> in connection with the railroad's proposed construction of an additional rail yard and storage tracks on a parcel of land in the Town of Grafton (Grafton). The Board declared that Grafton's preclearance regulations and other requirements that would prohibit, or unreasonably interfere with, the proposed construction of an additional yard and tracks within the town are preempted, and it provided guidance on the types of state and local laws that are not preempted.

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<sup>25</sup> Pursuant to 49 U.S.C. § 10501(b).

*United States Environmental Protection Agency—Petition for Declaratory Order*, FD 35803 (STB served Feb. 26, 2014). At the Environmental Protection Agency's (EPA) request, and after reviewing public commentary, the Board initiated this proceeding to consider whether two rules concerning locomotive idling, as issued by the South Coast Air Quality Management District,<sup>26</sup> would be preempted if the EPA were to approve the rules as part of that state's air-quality management plan (known as the California State Implementation Plan) under the Clean Air Act.<sup>27</sup> The case was pending at the close of the fiscal year.

*14500 Limited LLC—Pet. For Declaratory Order*, FD 35788 (STB served June 5, 2014). Following referral by a federal district court in Ohio, the petitioner, a trucking company (the company) filed a petition with the Board seeking a declaratory order stating that, under Ohio common law, the company was the owner of a parcel of land in CSX Transportation, Inc.'s (CSXT) Collinwood Rail Yard, in Cleveland, Ohio, or that the company had an easement allowing it to use that parcel. In its decision, the Board agreed with the referring court's conclusion that the company's state common-law claims of ownership and easement were federally preempted because they would deprive CSXT of the use of its property to the detriment of interstate railroad transportation.

*212 Marin Boulevard, LLC, et al.—Pet. for Declaratory Order*, FD 35825 (STB served Aug. 11, 2014). In May 2014, a group of Hudson County, New Jersey, property owners filed a petition asking the Board to issue a declaratory order terminating all STB jurisdiction over certain rail trackage, known as the Harsimus Branch, located in an urban area of Jersey City, N.J., and formerly operated by Consolidated Rail Corporation (Conrail). The parties' rationale was that the property at issue was no longer needed or suitable for railroad use, and that Conrail's abandonment of a nearby line had severed the Branch from the national transportation system, thus constituting the Harsimus Branch's *de facto* abandonment by Conrail and divesting the agency of its jurisdiction over it. In response, the Board stated that the United States Court of Appeals for the District of Columbia Circuit and the United States Court for the District of

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<sup>26</sup> An air-pollution control agency for Orange County and the urban portions of Los Angeles, Riverside, and San Bernardino Counties, California.

<sup>27</sup> 42 U.S.C. § 7401 et seq.

Columbia had previously found that the Harsimus Branch earlier had been conveyed to Conrail as a rail line requiring STB abandonment authority. Finding neither an existing controversy nor uncertainty warranting the agency's institution of a declaratory-order proceeding, the Board denied the parties' petition for one and terminated this proceeding.

*Denver & Rio Grande Ry. Historical Foundation—Pet. For Declaratory Order*, FD 35496 (STB served Aug. 18, 2014). Here, the petitioning railroad, a Colorado not-for-profit corporation and Class III railroad doing business as the Denver & Rio Grande Railway, L.L.C. (DRGHF), asked the Board to declare whether a City of Monte Vista, Colo., municipal-zoning ordinance, prohibiting the storage of railcars on track not connected to a rail line in any residential, industrial, or commercial zone of the City, is preempted by federal law. The Board found that various activities conducted by DRGHF on a parcel of land DRGHF leased within the City were not part of transportation within the STB's jurisdiction and, as a consequence, the City ordinance prohibiting railcar storage was declared not to be preempted by federal law.

*Grafton & Upton R.R.—Petition for Declaratory Order*, FD 35752 (served Sept. 19, 2014). The Board instituted this proceeding in its Jan. 27, 2014 decision in *Grafton & Upton Railroad Company—Petition for Declaratory Order*, FD 35779, discussed above, because at that time the Board had determined that the public record in FD 35779 was unclear as to whether the railroad would finance, own, and operate the transload facility (a site at which shipments are transferred to or from railroad to truck proposed in that proceeding). After examining the public record developed in this subsequent proceeding, the STB found that the railroad's activities at its planned transload facility would be part of the carrier's rail transportation operations. The Board accordingly declared that state and local permitting and preclearance requirements, including zoning requirements, are preempted with regard to the construction and operation of the facility.



## ENVIRONMENTAL REVIEW

### Overview

Under the National Environmental Policy Act of 1969 (NEPA),<sup>28</sup> the Board must take into account the environmental impacts of its actions before making its final decision in certain cases filed before the Board. The STB's Office of Environmental Analysis (OEA) assists the Board by conducting independent environmental reviews of certain cases filed before the agency. This includes preparation of any necessary environmental documentation, such as an Environmental Impact Statement (EIS), when a railroad proposal presents a potential for significant environmental impacts, or a more limited Environmental Assessment (EA). OEA also conducts public outreach to inform interested parties about railroad proposals and to provide an opportunity to raise environmental concerns. OEA additionally provides technical advice and recommendations to the Board on environmental matters.

### Environmental-Review Process

OEA typically conducts environmental reviews for rail-line construction proposals, abandonments, and mergers according to the Board's environmental rules,<sup>29</sup> regulations of the President's Council on Environmental Quality,<sup>30</sup> and other applicable federal environmental requirements. Environmental reviews take into account all applicable federal environmental laws, including the Endangered Species Act,<sup>31</sup> Coastal Zone Management Act,<sup>32</sup> Clean Air Act,<sup>33</sup> Clean Water Act,<sup>34</sup> National Historic Preservation Act (NHPA),<sup>35</sup> and pertinent hazardous-substance laws.

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<sup>28</sup> 42 U.S.C. §§ 4321-43.

<sup>29</sup> 49 C.F.R. § 1105.

<sup>30</sup> 49 C.F.R. §§ 1500-08.

<sup>31</sup> 7 U.S.C. § 136,; 16 U.S.C. §§ 1531-44.

<sup>32</sup> 16 U.S.C. §§ 1451-1464.

<sup>33</sup> 42 U.S.C. §§ 7401-7671.

<sup>34</sup> 33 U.S.C. §§ 1251-1387.

The public plays an important role in the environmental-review process. OEA first presents to the public the preliminary results of its analysis of potential environmental impacts in either a Draft EIS or a Draft EA in a railroad proceeding requiring environmental review. This analysis is based on information available at the time from the involved railroad, the public, OEA's independent analysis, and, in some cases, site visits by OEA staff to the proposed project area. OEA then provides an opportunity for public review and comment on all aspects of the Draft EIS or Draft EA. During the public comment period, OEA may decide to hold one or more public meetings to assist public participation in the environmental-review process, and to facilitate the submission of comments. At the conclusion of the public comment period, OEA performs additional analysis, as needed, and prepares a Final EIS or Final EA presenting final recommendations to the Board. The STB then considers the entire environmental record, together with the transportation aspects of the proposal, in reaching its final decision in a case.

The Board encourages railroad applicants to consult with communities that could be affected by a proposal, and to negotiate mutually acceptable agreements with local governments and organizations to address specific local concerns. The STB also has authority to impose conditions to address potential adverse effects of a proposed action on communities. Such conditions typically could address impacts to public safety, land use, air quality, wetlands and water resources, biological resources, soils and geology, visual resources, hazardous waste and materials, noise and vibration, historic and cultural resources, and potentially disproportionate impacts on minority and low-income populations (the latter known as "environmental-justice" conditions). Such environmental-mitigation conditions must be reasonable and address impacts that would result from the transaction under the agency's consideration.

To conserve its limited resources, the Board sometimes uses third-party contractors—who work under OEA's direction, control, and supervision—to assist OEA in preparing environmental analyses. The STB's practice and procedures in this area are explained in *Policy Statement On*

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( . . . continued)

<sup>35</sup> Cited 16 U.S.C. § 470(f) during the period covered within this report, recodified as 54 U.S.C. § 306108 on December 19, 2014.

*Use Of Third-Party Contracting In Preparation Of Environmental Documentation*, 5 S.T.B. 467 (2001).

## **Rail Line Constructions**

An EIS is generally prepared for rail construction cases although, in some instances, an EA may be sufficient. In assessing a construction proposal's potential environmental impacts, the Board considers alternatives to the proposed action, direct effects on regional or local transportation systems, safety, land use, energy use, air and water quality, noise, environmental justice, biological resources, historic resources and coastal zones, as well as cumulative and indirect impacts of any new construction.

Among the more significant actions involving the preparation of EISs in FY 2014, OEA recommended to the Board that it adopt the Final EIS for the proposed construction of the Fresno-to-Bakersfield, California, section of the California High-Speed Train System (HST System), in *California High-Speed Rail Authority—Construction Exemption—in Fresno, Kings, Tulare & Kern Counties, Cal.*, FD 35724 (Sub- No. 1). OEA also participated in site investigations and scoping meetings for the Palmdale-to-Burbank and Burbank-to-Los Angeles sections of the proposed HST System, in *California High-Speed Rail Authority—Construction Exemption—in Fresno, Kings, Tulare & Kern Counties, Cal.*, FD 35724.

OEA additionally:

- Issued a Supplemental Draft EIS for the proposed construction and operation of a 43-mile rail line to serve coal interests in *Six County Association of Governments—Construction & Operation Exemption—Rail Line between Levan & Salina, Utah*, FD 34075;
- Conducted environmental review for the proposed construction and operation of a rail line from mines in the Otter Creek and Ashland, Montana, area, in *Tongue River Railroad Co., Inc.—Rail Construction & Operation—in Custer, Powder River and Rosebud Counties., Mont.*, FD 30186;

- Conducted ongoing monitoring of the identification and valuation of historic and cultural resources toward implementation of the Programmatic Agreement, setting forth the process for historic review under Section 106 of NHPA, in *Alaska Railroad Corp.—Petition for Exemption—to Construct & Operate a Rail Line Between North Pole and Delta Junction, Alaska*, FD 34658;
- Conducted ongoing monitoring of the identification and valuation of historic and cultural resources toward implementation of the Programmatic Agreement under Section 106 of NHPA, and ongoing oversight and monitoring to verify the railroad’s compliance with the implementation of Board-imposed mitigation measures, in *Alaska Railroad Corp.—Construction & Operation Exemption—a Rail Line Extension to Port MacKenzie, Alaska*, FD 35095;
- Began the environmental-review process for the proposed construction and operation of an 11-mile rail line extension to connect Port Canaveral to the main line, in *Canaveral Port Authority—Petition for Exemption to Construct and Operate a Rail Line Extension to Port Canaveral, Florida*, FD 35852;
- Issued a Draft EA for the proposed construction and operation of a 1,300-foot rail line to connect to a CSX mainline for the transportation of a variety of commodities, including grain, soybean meal, potash, limestone, lumber, propane, and granite rock, in *Hartwell Railroad Co.—Construction & Operation Exemption—in Elbert County, Ga.*, FD 35756;
- Conducted environmental review for the proposed construction and operation of an approximately six-mile rail line to serve an existing port facility at Cates Landing, and a proposed industrial park nearby, in *Northwest Tennessee Regional Port Authority—Construction & Operation Exemption—In Lake County, Tenn.*, FD 35802; and
- Began the environmental-review process for the proposed construction and operation of an 800-foot rail line, to connect two proposed loop tracks to a mainline and to serve concrete and composting facilities on Smith Island in Everett, Washington.

## **Rail Line Abandonments**

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

In FY 2014, OEA conducted approximately 31 EAs in connection with rail-line abandonments. Among its more significant actions, OEA:

- Began the environmental-review process and coordinated with the applicant railroad, the New Jersey Historic Preservation Office, and the Advisory Council on Historic Preservation, to begin development of a Section 106 consultation plan to address potential effects of the proposed abandonment on the historic Harsimus Stem Embankment and neighboring historic properties, in *Consolidated Rail Corp.—Abandonment Exemption—In Hudson County, N.J.*, AB 167 (Sub-No. 1189X); and
- Successfully worked with the applicant railroad and the Indiana Department of Natural Resources, Division of Historic Preservation and Archeology to amend the 2012 Memorandum of Agreement mitigating the loss of the historic Wildcat Creek Bridge, in *CSX Transportation, Inc.—Abandonment—Between Delphi and Frankfort, Ind.*, AB-55 (Sub-No. 401).

## **Railroad Mergers and Acquisitions**

The potential environmental impacts of proposed railroad mergers include changes in rail traffic patterns on existing lines that may be addressed in an EA or an EIS, and the Board may impose conditions designed to mitigate potential system-wide and corridor-specific environmental impacts. Such conditions may address at-grade crossing safety and traffic delays, including

delays for emergency response vehicles; hazardous-materials transportation safety; air quality; noise impacts; and, where pertinent, may also address potentially disproportionate environmental justice impacts. Safety-integration plans (prepared by merger applicants in consultation with FRA) additionally describe the process for combining and safely integrating infrastructure, equipment, personnel, and operating practices of two or more entities following a merger or acquisition.<sup>36</sup>

Among the more significant actions taken in this area, OEA conducted oversight and monitoring, in conjunction with the Board's Office of Public Assistance, Governmental Affairs, and Compliance, to verify CN's compliance with Board-imposed environmental and operational conditions for the proposed acquisition and control of EJ&E by CN, in *Canadian National Railway and Grand Trunk Corp.—Control—EJ&E West Co.*, FD 35087.

During FY 2014, OEA also:

- Conducted ongoing oversight and monitoring to verify a railroad's compliance with the implementation of mitigation measures imposed by the Board in a decision granting an operating easement over Grand Trunk Western Railroad track on the Elsdon Subdivision, between a connection with CSX at Munster, Ind., and Elsdon, Ill., in *CSX Transportation, Inc.—Acquisition of Operating Easement—Grand Trunk Western Railroad Co.*, FD 35522; and
- Conducted environmental review for joint use of the 106-mile Louisville and Indiana Railroad Company trackage between Louisville, Ky. and Indianapolis, Ind., in *CSX Transportation, Inc.—Joint Use—Louisville and Indiana Railroad Co.*, FD 35523.

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<sup>36</sup> See 49 C.F.R. Part 1106.

## FINANCIAL CONDITION OF RAILROADS

The Board monitors the financial condition of railroads as part of its oversight of the rail industry, prescribes a uniform accounting system<sup>37</sup> for railroads to use for regulatory purposes, and requires Class I railroads to submit quarterly and annual reports containing financial and operating statistics, including employment and traffic data.<sup>38</sup>

Based upon data submitted by the Class I carriers (the industry's largest), the Board compiles and releases quarterly employment reports and annual wage statistics, places such information on the STB's website, [www.stb.dot.gov](http://www.stb.dot.gov), and advises the public of the availability of such industrial information, among other informational offerings, in Appendix A of this report.

Each quarter of the year, the Board publishes "rail cost adjustment factor" (RCAF) indices to reflect changes in costs incurred by the rail industry.<sup>39</sup> These indices include an unadjusted RCAF (reflecting cost changes experienced by the railroad industry, without reference to changes in rail productivity) and a productivity-adjusted RCAF (reflecting national average productivity changes, as originally developed and applied by the ICC, based on a five-year moving average).<sup>40</sup> The STB also calculates, on a quarterly basis, the RCAF-5 index reflecting national average productivity changes as if a five-year moving average had been applied consistently from the productivity adjustment's inception in 1989.<sup>41</sup>

Class I railroad operating margin<sup>42</sup> and return-on-investment information is separately presented in these graphs:

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<sup>37</sup> 49 U.S.C. §§ 11141-43, 11161-64, 1200-1201.

<sup>38</sup> 49 U.S.C. §§ 11145, 1241-1246, 1248.

<sup>39</sup> See Appendix A.

<sup>40</sup> 49 U.S.C. §§ 10708, 1135

<sup>41</sup> Productivity Adjustment—Implementation, 1 S.T.B. 739 (1996)

<sup>42</sup> The ratio of operating income (operating revenues minus operating expenses) to operating revenues.

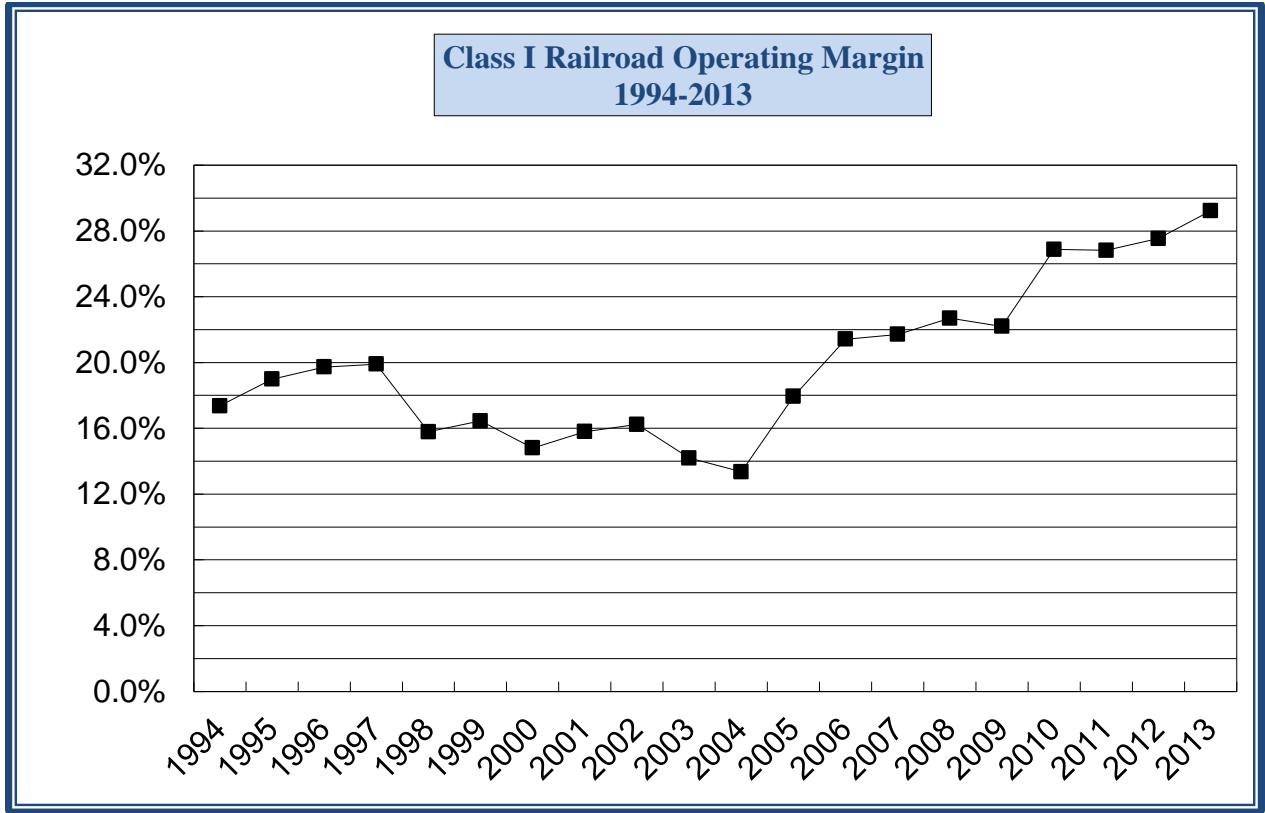


Figure 8.1 Class I Railroad Operating Margin

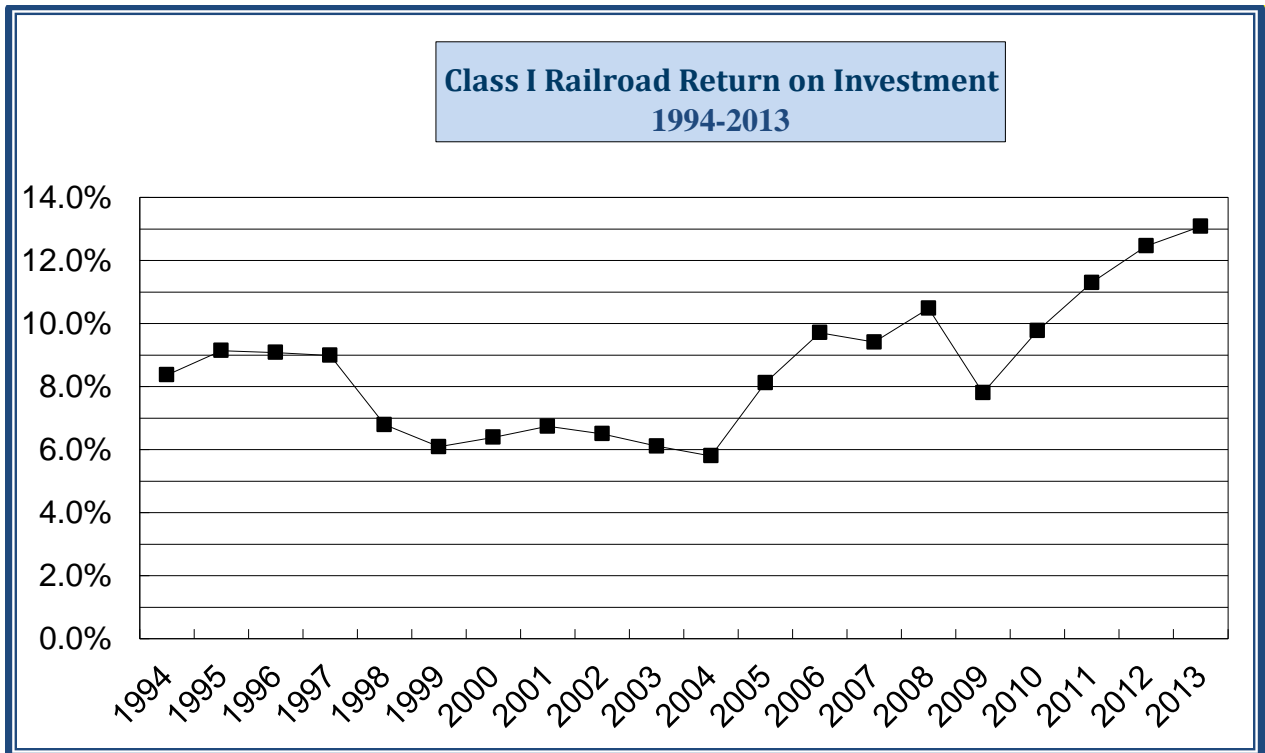


Figure 8.2 Class I Railroad Return on Investment



## INTERCITY PASSENGER RAIL

The Board has limited, but significant, regulatory authority involving intercity passenger rail, including authority to ensure that the National Railroad Passenger Corporation (Amtrak) may operate over other railroads' track; address disputes concerning shared use of tracks and other facilities; and set the terms and conditions of shared use if Amtrak and railroads or regional transportation authorities fail to reach voluntary agreements. The Board's authority also pertains to certain intercity passenger rail services and facilities provided, or intended to be provided, by non-Amtrak entities.

On July 30, 2013, Amtrak filed an application asking the STB to establish terms and conditions governing Amtrak's use of CN rail lines and facilities. The Board initiated a proceeding to address the matter and subsequently adopted a procedural schedule in the proceeding titled *Application of the Nat'l Railroad Passenger Corp. under 49 U.S.C. § 24308(a)—Canadian Nat'l Ry. Co.*, FD 35743 (STB served Aug. 9, 2013; Aug. 21, 2013). In reply to the requests of the involved parties, during FY 2014 the Board served a number of decisions largely regarding such case-administration matters as a protective order (applied to certain sensitive documents and information filed with the STB to control use); discovery (questions or other information requests posed by one party to another in a proceeding before agency); extensions of time to the procedural schedule; and the production of certain documents. This proceeding was pending at the close of the fiscal year.

In another proceeding, *New Jersey Assoc. of R.R. Passengers—Pet. for Declaratory Order—Princeton Branch*, FD 35745 (STB served July 24, 2014), the Board ruled that the New Jersey Transit Corporation (NJ Transit) did not need STB authority to remove certain track from a branch line (track leading from a mainline to one or more locations not served by the mainline), in Princeton, N.J., an approximately three-mile part of the NJ Transit system connecting various New Jersey points with New York City and Philadelphia. At issue was Princeton University's (the University) development of an Arts and Transit complex partially involving the repurposing of the existing, on-campus Princeton Station located at track's end; the original station's

replacement by a new station approximately 450 feet south of the original site; and the removal of some track to align this short line segment with the new station's platform. Petitioners in this case variously argued that the University's proposed track removal required the STB's permission because NJ Transit's ticketing and connecting-service operations were interstate in nature; part of the interstate rail network connecting to Amtrak at Princeton Junction, Trenton, N.J., and New York City; and part of the Northeast Corridor providing service to stations elsewhere in New York State and connecting service to points in Pennsylvania and Delaware. In reaching its decision, the Board stated that the STB does not have jurisdiction over mass transportation provided by commuter rail services under local governmental authority, an exception to the agency's interstate jurisdiction specifically established by Congress.<sup>43</sup>

Signed into law on October 16, 2008, the Passenger Rail Investment and Improvement Act of 2008, P.L. 110-432, 122 Stat. 4848 (2008) (PRIIA), expanded the Board's jurisdiction over certain aspects of intercity passenger rail.

With regard to the service quality (specifically including the on-time performance) of intercity passenger rail, Section 213 of PRIIA (49 U.S.C. § 24308(f)) authorizes the STB to institute, under certain circumstances, investigatory action potentially leading to enforcement. Following an investigation, the agency is directed to identify reasonable measures, and make recommendations, to improve the quality (including the on-time performance) of Amtrak's service, and it can award damages and prescribe other relief in specified instances.

During FY 2014, the Board continued to implement its passenger rail responsibilities under PRIIA. Utilizing publicly available information, STB staff informally monitored Amtrak performance and responded to public inquiries concerning Amtrak and PRIIA.

On January 19, 2012, pursuant to PRIIA Section 213, and with reference to the metrics and standards for intercity passenger rail as developed by Amtrak and the Federal Railroad Administration under PRIIA Section 207, Amtrak filed a formal complaint against CN alleging

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<sup>43</sup> See 49 U.S.C. § 10501(c)(2)(A).

substandard on-time performance of Amtrak trains operating during FY 2011 over eight routes that include CN lines. Board staff mediated this dispute, over a six-month period extending from FY 2012 into FY 2013, in *National Railroad Passenger Corporation—Section 213 Investigation of Substandard Performance on Rail Lines of Canadian National Railway Company*, NOR 42134 (STB served Nov. 5, 2012). In a July 2013 decision in *Assc. of American Railroads v. U.S. Dept. of Transp.*, 721 F.3d 666 (D.C. Cir. 2013), the U.S. Court of Appeals for the District of Columbia invalidated PRIIA Section 207.<sup>44</sup> At the parties' request, on March 26 and August 19, 2013, the STB respectively held Docket NOR 42134 in abeyance, and extended the abeyance, to facilitate further discussions between the parties, which did not result in closure.

On August 29, 2014, Amtrak amended its complaint to refer solely to PRIIA Section 213 (rather than both Sections 207 and 213), and to focus exclusively on the *Illini* and *Saluki* trains between Chicago and Carbondale, Illinois. The Board in December 2014 granted Amtrak's motion to amend its complaint, and concluded that pending court litigation involving the constitutionality of metrics and standards developed under PRIIA Section 207 did not preclude the case from moving forward. Commissioner Begeman dissented with a separate expression.

Under PRIIA Section 209, Amtrak had developed a single, nationwide standardized methodology for establishing and allocating operating and capital costs among the States and Amtrak for all State-subsidized intercity passenger rail services. Lacking the unanimous concurrence of the concerned States, the methodology had undergone mandatory review by the STB, which had found it to be in compliance with the PRIIA requirements.<sup>45</sup> By FY 2014, noteworthy issues had emerged between Amtrak and the States in the course of their good-faith efforts to implement PRIIA Section 209. In order to resolve these issues informally and speedily, the STB — as the approving authority for the methodology and with the parties'

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<sup>44</sup> In FY 2015, the U.S. Supreme Court vacated the Court of Appeals's 2013 decision, holding that Amtrak is a governmental entity for the purposes of determining metrics and standards. The Supreme Court also remanded the matter to the Court of Appeals to address the lawfulness of the metrics and standards, specifically identifying two Constitutional issues—structural separation of powers and the Appointments Clause.

<sup>45</sup> See Amtrak's Pet. for Determination of PRIIA Section 209 Cost Methodology, FD 35571 (STB served Mar. 15, 2012).

assent—sought the assistance of the Federal Mediation and Conciliation Service (FMCS), a trusted neutral Federal agency with significant expertise in alternative dispute resolution. On September 18, 2014, the STB and the FMCS reached an interagency agreement for this purpose.

The Board also has jurisdiction over certain non-Amtrak passenger services, including jurisdiction over a passenger railroad operating in “a State and a place in the same or another State as part of the interstate rail network.”<sup>46</sup> As discussed above, on August 12, 2014, the Board issued a decision in *California High-Speed Rail Authority—Construction Exemption—in Fresno, Kings, Tulare & Kern Counties, Cal.*, FD 35724 (Sub-No. 1).

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<sup>46</sup> 49 U.S.C. § 10501(a)(2)(A).

## **MOTOR CARRIAGE**

### **Collective Motor Carrier Activities**

#### *Bureau Agreements*

The Board may approve agreements by motor carriers to collectively set through routes and joint rates, establish uniform classifications and mileage guides, and engage in certain other collective activities. Beginning Jan. 1, 2008, the Board ceased to allow carriers to set base rates and related matters collectively, and the agency terminated its approval of all outstanding motor-carrier bureau agreements, as well as antitrust immunity for them, in *Motor Carrier Bureaus—Periodic Review Proceeding*, EP 656 (STB served May 7, 2007, and June 28, 2007). Consequently, some motor carrier bureaus disbanded altogether while others revised their activities significantly in an attempt to comply with the antitrust laws. No instances arose during FY 2013 requiring agency action in this area.

#### *Pooling Arrangements*

Motor carriers seeking to pool or to divide their traffic, services, or earnings among themselves must apply for Board approval. In FY 2014, there was no agency activity in this area.

#### *Household-Goods Carriage*

Household goods motor carriers are required to publish tariffs and make them available to shippers and the Board upon request. Such tariffs must include an accurate description of the services offered and the applicable rates, charges, and service terms for household goods moves. Regulations also require the Board to approve the terms by which household goods motor carriers may limit their liability for loss and damage of the goods.

In FY 2014, the Board issued no formal decisions in the area of household goods, and no case(s) were filed with the Board.

### *Intercity Bus Industry*

Intercity bus carriers must obtain Board approval for mergers and similar consolidations, and for pooling arrangements between and among carriers. Such approval is commonly granted through a streamlined notice-of-exemption process that applies to transactions within a single corporate family. The agency can also require bus carriers to provide through routes with other carriers.

In FY 2014, the Board issued the following decisions:

- *Academy Express, LLC—Acquisition of the Properties of Go Bus LLC and Its Affiliate, MCIZ Corp., MCF 21059 (STB served Sept. 24, 2014);*
- *Texas Bus and Limo Acquisition Corp.—Control—GBJ, Inc., Echo Tours and Charters, L.P., etc. MCF 21058 (STB served July 9, 2014)*
- *Royal City Charter Coach Lines, Ltd.—Acquisition of Control—Quick Coach Lines, Ltd., etc., MCF 21057 (STB served Dec. 18, 2013)*
- *Tedesco Family EST Trust, et al.—Purchase of Certain Assets and Membership Interests—Evergreen Trails, Inc., etc. MCF 21056 (STB served Nov. 21, 2013)*
- *Celerity Partners IV, LLC, etc.—Control—Sureride Charter, Inc. etc., MCF 21055 (STB served October 29, 2013)*

### *Motor Carrier Rate Reasonableness*

The Board may review the reasonableness of motor carrier rates established collectively. In view of the Board's termination of approval for motor carriers to set rates collectively (see the foregoing "Bureau Agreements" subtopic of this chapter), that type of rate is no longer sanctioned.

## **WATER CARRIAGE**

The Board has jurisdiction over transportation by or with a water carrier in the noncontiguous domestic trade, that is, transportation between the U.S. mainland and Alaska, Hawaii, and the U.S. Territories of American Samoa, the Northern Mariana Islands, Guam, the Virgin Islands, and Puerto Rico.

### **Tariff Requirements**

Carriers engaged in the noncontiguous domestic trade are required to file tariffs with the Board containing their rates and service terms for such transportation. Tariffs are not required for transportation provided under private contracts between carriers and shippers, or for transportation provided by freight forwarders. Tariffs are filed in either paper or electronic form and are available in the Board's Tariff Library for review by the public, or by mail for a fee.

### **Complaints**

If a complaint is filed with the Board, the agency must determine the reasonableness of water or joint motor-water rates in the noncontiguous domestic trade. The Board neither received nor decided any water carrier-related complaints during FY 2014, and none were pending at the close of the fiscal year.

## **PIPELINE CARRIAGE**

The Board regulates the interstate transportation by pipeline of commodities other than oil, gas, or water. Specifically, the Board regulates pipeline commodities such as coal slurry and anhydrous ammonia.

Pipeline carriers must promptly disclose their rates and service terms upon public request, and rates and practices must be reasonable and nondiscriminatory. Pipeline carriers must provide at least 20 days' public notice before a rate increase or change in service terms may become effective. The Board neither received nor decided any pipeline-related complaints during FY 2014, and had no activity in this area during FY 2014.



## OTHER RULEMAKINGS

Among other rulemakings in FY 2014, the Board took the following actions:

*Rail Revenue Adequacy—2012 Determination*, EP 552 (Sub-No. 17) (STB served Oct. 17, 2013).

The Board found here that two Class I railroads, the Norfolk Southern Combined Railroad Subsidiaries (NSCRS)<sup>47</sup> and Union Pacific, were “revenue adequate” for the year 2012, meaning that both carriers achieved a rate of return equal to or greater than the STB’s calculation of the average cost of equity capital to the freight rail industry.

*Information Required in Notices & Petitions Containing Interchange Commitments*, EP 714 (STB served Nov. 26, 2013). In response to the American Short Line and Regional Railroad Association’s request for clarification of the Board’s Sept. 5, 2013 decision in this case adopting final rules concerning interchange commitments, the STB made clear that the final rules neither altered substantive standards for agency approval of rail-line acquisitions with interchange commitments, nor the timing of an agency decision regarding such acquisitions.

*Petition of the Western Coal Traffic League to Institute a Rulemaking Proceeding to Abolish the Use of the Multi-State Discounted Cash Flow Model in Determining the Railroad Industry’s Cost of Equity Capital*, EP 664 (Sub-No. 2) (STB served Dec. 20, 2013). The Board opened this rulemaking proceeding in response to the party’s request that the agency abolish use of the multi-stage discounted cash flow model and to instead rely exclusively on the capital asset pricing model in the STB’s annual determination of the railroad industry’s cost of equity capital.

Though the Board did not rule on the merits of the petition, the Board stated that it would solicit public comments in a subsequent decision. In April 2014, the Board issued a decision requesting

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<sup>47</sup> Pursuant to *Standards for Railroad Revenue Adequacy (Standards I)*, 364 I.C.C. 803 (1981); *Standards for Railroad Revenue Adequacy (Standards II)*, 3 I.C.C. 2d 261 (1986); and *Supplemental Reporting of Consolidated Information for Revenue Adequacy (Supplemental Reporting)*, 5 I.C.C. 2d 65 (1988), revenue-adequacy determinations for Class I railroads are made on a system-wide basis, which includes railroad affiliates.

public comments in *Railroad Revenue Adequacy*, EP 722 (STB served April 2, 2014), to explore the STB’s methodology for determining railroad revenue adequacy and for determining the revenue-adequacy component used in judging the reasonableness of rail freight rates. That decision concomitantly requested public comments in EP 664 (Sub-No. 2) on how the agency calculates the railroad industry's cost of equity capital, given that that calculation is a component of the Board methodology used to determine revenue adequacy.

*Railroad Revenue Adequacy—2012 Determination*, EP 552 (Sub-No. 17) (STB served Jan. 2, 2014). Taking into consideration BNSF’s refiled *Annual Railroad Report (Form R-1)* containing updated annual financial and operating statistics reflecting Berkshire Hathaway Inc.’s (Berkshire) belated disclosure to the Board that, at the time of its FY 2013 acquisition of BNSF, Berkshire had failed to recognize its ownership of two shortline railroads<sup>48</sup>, the STB found that three Class I railroads—BNSF, NSCRS, and Union Pacific—were revenue adequate for the year 2012.

*Demurrage Liability*, EP 707 (STB served Apr. 11, 2014). Here, the Board adopted final rules establishing that a person receiving railcars from a railroad, for either unloading or loading, who detains the cars beyond the “free time” provided in the carrier’s tariff (a railroad’s list of rates and terms of service), will generally be responsible for paying a “demurrage” charge if that person has actual notice, prior to railcar delivery, of the demurrage tariff establishing such a liability.

*Rail Fuel Surcharges (Safe Harbor)*, EP 661 (Sub-No. 2) (STB served May 29, 2014). In its January 2007 decision in the Board proceeding entitled *Rail Fuel Surcharges*, EP 661 (STB served Jan. 26, 2007), the agency inquired into, and made findings regarding, railroad practices related to fuel surcharges, i.e., separately identified components of total transportation rates involved for rail movements that are designed to recoup increases in a carrier’s fuel costs. In that decision, the Board prohibited rate-based fuel surcharges as an unreasonable practice and

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<sup>48</sup> See the detailed “Mergers and Consolidations: Oversight and Monitoring” subtopic of Chapter 2, “Railroad Restructuring,” of this report.

established as a “safe harbor” an index upon which railroads could rely to measure changes in fuel costs for purposes of their respective fuel-surcharge programs. In its May 2014 decision, the Board instituted an advance notice of proposed rulemaking to give shippers, railroads, and other interested persons the opportunity to comment on whether the “safe harbor” provision of the STB’s current fuel-surcharge rules should be modified or removed. This proceeding was pending at the close of FY 2014.

*Regulations Governing Fees for Services Performed in Connection with Licensing and Related Services—2014 Update*, EP 542 (Sub-No. 22) (STB served July 11, 2014). The Board is required to update at least once annually the fees the public must pay, at full-cost levels, to file certain cases and pleadings with the agency. In this decision, the STB published its 2014 fee schedule with 13 fees increased by \$50 or less in comparison to the 2013 fee level, 46 fees unchanged, 39 fees decreased by \$100 or less, and 27 fees decreased by more than \$100.

*Railroad Cost of Capital—2013*, EP 558 (Sub-No. 17) (STB served July 31, 2014). In this proceeding, the Board calculated the freight-railroad industry’s 2013 after-tax cost of equity capital (the STB’s estimate of the average rate of return needed to persuade investors to provide capital to the industry) to be 11.32 percent, a calculation slightly higher than the agency’s 2012 cost-of-capital finding of 11.12 percent. Calculated annually, the cost-of-capital figure is essential to the Board’s annual evaluation of the adequacy of individual railroads’ revenues; determination of the reasonableness of a challenged rail rate; consideration of rail-line abandonment proposals; and valuation of a particular railroad operation.

*Pet. of Norfolk S. Ry. & CSX Trans., Inc., to Institute a Rulemaking Proceeding to Exempt Railroads from Filing Agricultural Trans. Contract Summaries*, EP 725 (STB served Aug. 11, 2014). The Board denied the railroads’ petition to institute a proceeding to exempt rail carriers, as a class, from the statutory requirement of the filing of agricultural-transportation contract summaries with the Board, on the grounds that the railroads had met requirements for exemption; such summaries are unnecessary because they are rarely, if ever, reviewed or used and have never been relied on by the STB nor used by any party to an STB proceeding; and that the filing requirement constitutes an undue burden. In its decision, the Board stated that, in

enacting the Interstate Commerce Commission Termination Act, Congress determined that continuation of the requirement to file such summaries is warranted due to agricultural-shipper concerns over rail service, and that the persistent concern indicated in this case demonstrated that need. Vice Chairman Deb Miller concurred with a separate expression.

*Railroad Revenue Adequacy—2013 Determination*, EP 552 (Sub No. 18) (STB served Sept. 2, 2014). In its third revenue-adequacy finding during FY 2014, the Board found five Class I railroads—BNSF, the Grand Trunk Corporation, NSCRS, the Soo Line Corporation, and Union Pacific—were revenue adequate for the year 2013.

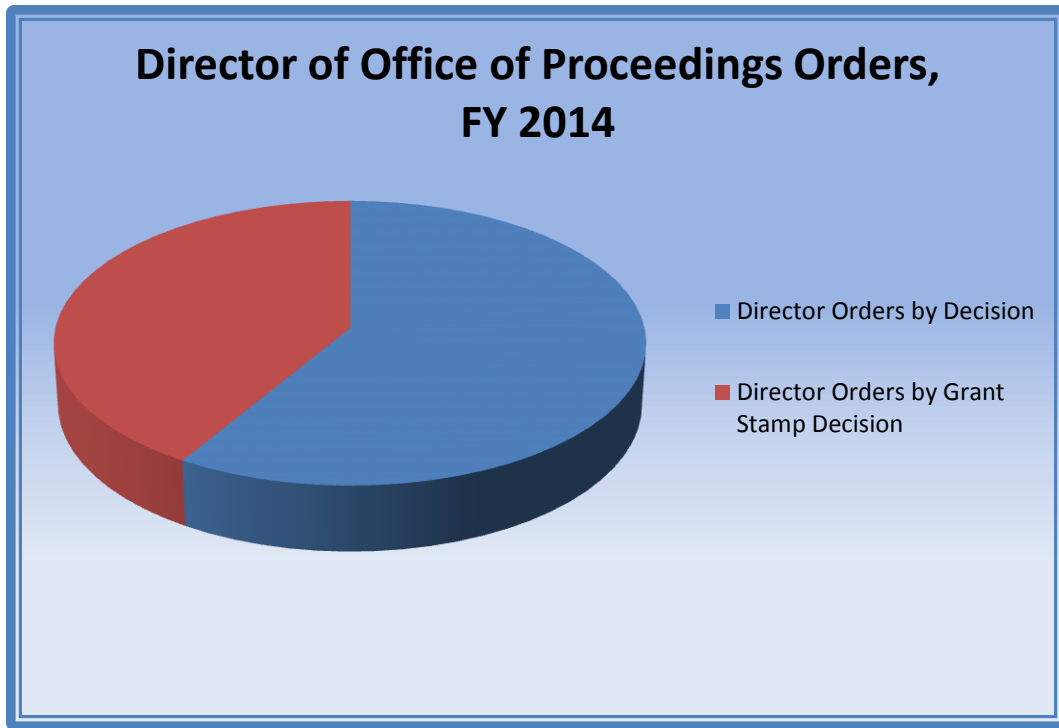
Beginning December 15, 2011, the Board implemented a grant-stamp procedure<sup>49</sup> for the issuance of decisions in uncontested, routine procedural matters delegated to the STB’s Director of the Office of Proceedings whenever further explanation or discussion is unnecessary. This procedure is designed to better serve the public, streamline Board processes, and remove uncertainty. The image of the grant stamp adopted by the Board is shown below, followed by a pie chart displaying the frequency of its usage during FY 2014.



**Figure 13.1 Grant Stamp, FY 2014**

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<sup>49</sup> Per *Policy Statement on Grant Stamp Procedure in Routine Director Orders*, EP 709 (STB served Nov. 14, 2011).



**Figure 13.2 Director of Office of Proceedings Order Categories, FY 2014**

Of the 382 Director Order decisions made during the fiscal year, 158 (or approximately 41 percent) were made by grant stamp.

## COURT ACTIONS

Judicial review of most Board decisions is available in the federal courts of appeals. Certain STB orders, such as those solely for the payment of money and those addressing questions referred to the agency by a federal district court, are reviewable in federal district court. Below is a summary of significant court decisions rendered in FY 2014.

*BNSF Ry. v. STB*, 748 F.3d 1295 (D.C. Cir. 2014). The court upheld the Board's determination that, when challenging a joint rate under the stand-alone-cost test, the shipper need not maintain the incumbent carriers' prior division of responsibilities for the challenged movement, nor design a hypothetical railroad traversing the incumbent carriers' point of interchange. The court also affirmed the Board's determination to tally the costs incurred by all of the real-world railroads involved in providing the joint-rate service, even those that operated under contract with the larger carriers, in estimating the costs of the movement. Finally, the court agreed with the Board that the incumbent carriers could bill under either a joint or a proportional rate, as long as the service remains the same and the total amount charged is no higher than the total rate prescribed.

*Village of Barrington, Ill. v. STB*, 758 F.3d 326 (D.C. Cir. 2014). The court upheld the Board's denial of a request to reopen the STB's 2008 decision approving the Canadian National Railway Company's (CN) acquisition of the EJ&E Railway Company. The Village of Barrington wanted the Board to reopen and impose an additional condition requiring CN to fund a grade separation at a crossing in the Village.

*CSX Transp., Inc. v. STB*, 754 F.3d 1056 (D.C. Cir. 2014). The court in this instance largely upheld a Board decision revising its rate-reasonableness procedures, finding that the STB could remove the relief cap on "Simplified-SAC" cases; that it could adopt the "Alternative ATC" revenue-allocation methodology for so-called "cross-over" traffic; and that it could raise the interest rate that railroads pay when a shipper is awarded reparations. The court remanded one issue to the agency; specifically, a claim that the Board had double-counted certain costs when it decided to raise the relief cap for cases brought under the STB's "Three-Benchmark" test.

*BNSF Ry. v. STB*, 741 F.3d 163 (D.C. Cir. 2014). By a vote of 2-1, the court of appeals vacated a Board decision on remand to apply the “Modified ATC” revenue-allocation methodology in a rate-reasonableness adjudication, holding that the STB should have considered in more detail a double-count objection to the use of Modified ATC.

*Riffin v. STB*, 733 F.3d 340 (D.C. Cir. 2013); *Strohmeyer v. STB*, 550 Fed. Appx. 8 (D.C. Cir. 2013); *Riffin v. STB*, 2013 WL 6801160 (D.C. Cir. 2013); and *Lowe v. STB*, Nos. 10-1130 & 10-1133, 540 Fed. Appx. 6 (D.C. Cir. Nov. 1, 2013). In each of these cases, the court upheld the Board’s denial of a license for James Riffin or his affiliates to operate rail service. In the first case, the STB’s denial was based on the fact that the applicants had sought to exclude toxic inhalation hazard commodities (TIH) from their common carrier transportation obligation. In the second case, the agency found that the most expedited procedures should not be used because the proposal raised issues of fact and regulatory policy requiring full examination. In the third case, the Board rejected the attempt to buy a narrow, 20-foot-wide band of right-of-way on a tiny portion of a defunct line in the middle of a city. In the fourth case, the Board exempted the line, which was being abandoned, from the statutory provision (49 U.S.C. § 10904) allowing qualified individuals to purchase a line for continued rail service, finding that the line was needed for a valid public purpose (light-rail passenger service) and that there was no overriding need for freight rail service on the line.

## **APPENDIX A: REPORTS AND PUBLICATIONS**

The Board issues several types of reports and publications, including technical and statistical reports, general-interest publications, news releases, and consumer guides, among many others. As noted below, many of these reports and publications are available on the agency's website, at **www.stb.dot.gov**. Unless otherwise indicated, hardcopies of agency reports and publications are available by telephoning the Board's Librarian, at (202) 245-0406, or by emailing [rcpa@stb.dot.gov](mailto:rcpa@stb.dot.gov) or writing to the address below:

**SURFACE TRANSPORTATION BOARD  
395 E ST, SW  
WASHINGTON, DC 20423-0001**

Copying charges may apply.

### **Board Regulations and Governing Statutes**

Board regulations are contained in two volumes of the *Code of Federal Regulations* (C.F.R.). The first volume (49 C.F.R. 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 C.F.R. Parts 1200-End) contains provisions regarding the uniform system of accounts prescribed by the agency, carrier records and reporting requirements, and filing and disclosure requirements with respect to rates and service terms. The volumes are available for viewing or downloading from the U.S. Government Printing Office (GPO), at [ecfr.gpoaccess.gov](http://ecfr.gpoaccess.gov); by calling the GPO, at (866) 512-1800 or (202) 512-1800; or by writing to the following address:



**SUPERINTENDENT OF DOCUMENTS  
U.S. GOVERNMENT PRINTING OFFICE  
PO BOX 979050  
ST LOUIS, MO 63197-9000**

The primary statutory provisions governing the Board, which the agency is charged with administering, are codified at 49 U.S.C. §§ 1301-1326 and §§ 10101-16106 and may be viewed at the following:

[www.gpo.gov/fdsys/browse/collectionUScode.action?collectionCode=USCODE](http://www.gpo.gov/fdsys/browse/collectionUScode.action?collectionCode=USCODE)

These provisions are also published in the *United States Code Annotated* in volumes 49 U.S.C.A. §§ 1 to 10100 and 49 U.S.C.A. §§ 10101 to 20100. Both of these volumes, as well as the remainder of the *United States Code Annotated*, may be purchased in hardcopy format by calling 1 (800) 328-9352, or writing to the following address:

**WEST PUBLISHING CO  
P.O. BOX 64833  
ST PAUL, MN 55164**

The Board also has certain responsibilities relative to passenger rail as codified in various statutory sections in 49 U.S.C. Subtitle V. Rail Programs.

### **The Board's Website**

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

- Agency decisions and notices served on or after Nov. 1, 1996, as well as most environmental documents (such as Environmental Assessments and Environmental Impact Statements) served after that date.
- Agency reports containing major Board decisions issued on or after Jan. 1, 1996.

- All public filings, in all proceedings, received by the agency after Feb. 5, 2002, as well as selected filings in major cases received prior to that date.
- Testimony before Congress by Board Members.
- Live audio and video streaming of public Board events, including hearings, meetings, and oral arguments. Proceedings are archived on the agency's website. Electronic transcripts of public events and statements made by Board Members are also posted to the site.
- Board news releases issued since January 1997.
- Technical and statistical reports concerning Class I railroads, such as railroad annual reports (Form R-1) in Adobe Acrobat PDF format, price indices, employment data, wage statistics, and selected 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 agency's direction and supervision.
- Access to information concerning the agency's Rail Customer and Public Assistance Program.
- The STB's Freedom of Information Act (FOIA) regulations, fees, Reference Guide for FOIA requesters, frequently requested records, and other FOIA-related information.
- The agency's rules and fees for filings and services.
- Publications, including how-to guides about rail-line abandonment and line-sale processes, as well as basic information about the Rails-to-Trails program.
- A general guide to the Board and its operations, including organizational information.
- Links to significant agency proceedings, the U.S. Congress, the U.S. DOT's list of Internet sites, and WebGov containing links to the White House and governmental agencies.
- Agricultural-contract summaries.

- Recordations, a listing of documents reflecting liens (claims), on railroad “rolling stock” (including railcars and locomotives) and some water-carrier equipment, as a security for the payment of a financial obligation.
- Rail-service updates in response to various STB directives. Beginning in April 2014, Class I railroads commenced the filing of various reports reflecting carriers’ respective levels of service performance, in *United States Rail Service Issues*, EP 724 (STB served April 1, 2014).

Documents available at the Board’s website may be searched, viewed, printed or downloaded. Online help is available to guide users through the site. The site has email address links relative to specific subject areas, and general inquiries about the agency may be emailed using the “Contact Us” feature on the site’s home page. In addition, parties may make electronic filings with the Board, and lists of official participants in proceedings are available electronically. FOIA requests and Information Quality requests also may be electronically submitted.

### **Board Decisions, Filings, and News Releases**

The Board’s decisions, filings, and news releases may be viewed on the Board’s website and also in its Library at the agency’s headquarters at 395 E Street, S.W., Washington, DC. Hardcopies of decisions and filings are available for a fee (minimum charges apply), and a higher fee applies to requests for certified copies. Hardcopies of news releases are free of charge. For information, contact the Board’s Librarian at (202) 245-0406.

### **Speeches and Statements**

Board Members’ speeches and testimony before Congress are available on the agency’s website. Hardcopies may be obtained by writing the Office of Public Assistance, Governmental Affairs, and Compliance at the address shown at the beginning of this Appendix, or by calling the Board’s Public Affairs Officer at (202) 245-0234.

## **Financial and Statistical Reports from Class I Railroads**

The following reports, submitted to the Board by Class I railroads, may be examined by appointment with the agency's Office of Public Assistance, Governmental Affairs, and Compliance, (202)-245-0238, between the hours of 8:30 a.m. and 5:00 p.m., Monday through Friday. Report copies are available for a fee, minimum charges apply, and a higher fee applies to requests for certified copies. Documents available on the Board's website are marked with an asterisk (\*).

*Annual Reports (Form R-Is) of Class I Railroads*—report of annual financial and operating statistics (submitted annually).\*

*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; archived from 1997 to present).\*

*Report of Railroad Employment—Class I Line-Haul Railroads (STB Form C)*—report of number of railroad employees (submitted monthly; archived from 1997 to present).

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

*Form STB-54—Annual Report of Cars Loaded and Cars Terminated*—report of the annual number of cars loaded and terminated, by car type (submitted annually; archived from 2011 to present).

*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).

*Report of Fuel Cost, Consumption, and Surcharge Revenue*—A quarterly report containing the following information: total quarterly fuel cost, gallons of fuel consumed during the quarter, increased or decreased cost of fuel over the previous quarter, and total quarterly revenue from fuel surcharges for all traffic and regulated traffic. This required reporting commenced with the three months beginning Oct. 1, 2007. *Rail Fuel Surcharges*, EP 661 (Sub-No.1) (STB served Aug. 14, 2007).\*

## **Periodic Financial Decisions and Notices Issued by the STB**

The following periodic financial decisions and notices are available to the public. Documents available on the website are marked with an asterisk (\*). These documents are also available, for a copying charge, through the Board's Records Officer, at (202) 245-0238.

*Commodity Revenue Stratification Report*—report showing the revenue and URCS variable costs by two-digit STCC code for each of three Revenue-to-Variable Cost (RVC) Ratio categories. This report has historically been created as part of the proceeding entitled *Rate Guidelines—Non-Coal Proceedings*, EP 347 (Sub-No. 2), and its calculation of the “Revenue Shortfall Allocation Method” (RSAM) percentage and the “Average Revenue-to-Variable Cost > 180” (R/VC>180) percentage. The STB also has released an expanded version of the Commodity Revenue Stratification Report, a 5-Digit STCC report. The 5-Digit STCC report shows the revenue, variable costs, tons, and carloads associated with many combinations of car type and five-digit Standard Transportation Commodity Code (STCC).\*

*Depreciation Rate Prescriptions*—depreciation rates, by property account, for each Class I railroad.\*

*Indexing the Annual Operating Revenues of Railroads*—an annual notice setting forth the annual inflation-adjusting index numbers (railroad revenue deflator factors) used to adjust gross annual operating revenues of railroads for classification purposes.\*

*Rail Cost Adjustment Factor (RCAF)*—an index used to adjust for inflation in long-term railroad contracts, rate negotiations, and transportation studies as computed quarterly in *Quarterly Rail Cost Adjustment Factor*, EP 290 (Sub-No. 5).\*

*Railroad Cost of Capital*—determination of the cost of capital rate for the railroad industry issued annually in EP 558.\*

*Railroad Cost Recovery Procedures—Productivity Adjustment*—productivity adjustment factor used to adjust the quarterly RCAF, computed annually in EP 290 (Sub-No. 4).\*

*Railroad Revenue Adequacy*—determination of revenue-adequate railroads issued annually in EP 552.\*

## **Publications**

The following Board publications are available on the agency's website, as indicated by an asterisk (\*). Unless otherwise indicated, hardcopies of these documents are also available, for a fee, through the Office of Public Assistance, Governmental Affairs, and Compliance, at (202) 245-0406.

*Class I Freight 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.\*

*Guidance to Historic Preservation*—an overview of the Board's involvement in historic preservation relating to railroad licensing proceedings, including those in which a railroad seeks agency authorization to abandon a rail line or acquire or construct a new rail line.\*

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

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

*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 (December 2000).\*

*Report of Railroad Employment—Class I Line-Haul Railroads* (Statement M350)—monthly compilation of the number of railroad employees in this industrial segment.\*

*Request for Interim Trail Use*—a sample of a request for both a Public Use Condition and a Trail Use Condition.\*

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

*Surface Transportation Board Annual Reports*—reports covering the Board’s activities from its Jan. 1, 1966 inception through the fiscal year ended Sept. 30, 2012.\*

*Surface Transportation Board Reports, Volumes 1 through 7*—GPO-published reports containing major Board decisions, including final rules, served from January 1996 through December 2004.\*

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

## **Software, Data, and User Documentation**

The following software, data, and user documentation may be obtained from the Office of Economics (OE) for a fee or in some cases free of charge. To purchase any of these items or obtain additional information, contact OE at (202) 245-0321.

*Uniform Railroad Costing System (URCS) Phase III Movement Costing Program*—used to develop individual shipment cost estimates for U.S. Class I railroads and the eastern and western regions of the United States. The *URCS Phase III Movement Costing Program* and *User Manual*, as well as Worktables and Data for recent years, are available on STB’s website at *Industry Data > Economic Data > URCS*.

*Confidential Carload Waybill Sample File*—movement-specific sample of U.S. railroad traffic used by the Board and others. The *Confidential Carload Waybill Sample File* is available for a fee. Requests for access to the data must follow the procedures specified in 49 C.F.R. § 1244.9. The *Reference Guide for the Surface Transportation Board Carload Waybill Sample* is available on the Board’s website at *Industry Data > Economic Data > Waybill*.

*Carload Waybill Sample Public Use File*—non-confidential railroad movement and revenue data for use in performing transportation planning studies. The *Carload Waybill Sample Public Use Files* for recent years are available on the Board’s website at *Industry Data > Economic Data > Waybill*.



## **APPENDIX B: APPROPRIATIONS AND EMPLOYMENT**

The following tables show actual full-time equivalent (FTE) employment and total appropriations, less enacted rescissions, for fiscal years 2007 to 2014 for activities included under the current appropriation title “Salaries and Expenses.”

<b>Table B.1</b> <b>Average FTE Employment and Appropriations</b> <b>FY 2007 - 2014<sup>1</sup></b>			
<b>Fiscal Year</b>	<b>Appropriation</b>	<b>STB Offset <sup>2</sup></b>	<b>Average Employment</b>
2007	25,074,501	1,250,000	136
2008	25,074,500	1,250,000	138
2009	25,597,000	1,250,000	141
2010	27,816,000	1,250,000	149
2011	27,760,368	1,250,000	140
2012	28,060,000	1,250,000	134
2013	28,003,880	1,250,000	136
2014	29,750,000	1,250,000	136

<sup>1</sup> Appropriations data are from annual appropriation acts. Actual FTE employment data are from Board reports to the U.S. Office of Personnel Management (SF 113-G).

<sup>2</sup> Board appropriations are statutorily offset by the collection of user fees reflected as credits to the appropriations.

**Table B.2  
Status of STB Fiscal Year Appropriations  
FY 2007- 2014\***

<b>Status of FY 2007 Appropriations*</b>		
	Total appropriations (adjusted)	\$25,450,866
	Offsetting collections ( <i>see note</i> )	873,635
	Reimbursements from other agencies	0
	Total obligations	25,379,087
	Unobligated balance available for adjustments	71,779
	Carryover of offsetting collections to next fiscal year	940,617
<b>Status of FY 2008 Appropriations*</b>		
	Total appropriations (adjusted)	\$25,074,500
	Offsetting collections ( <i>see note</i> )	1,250,000
	Reimbursements from other agencies	0
	Total obligations	25,069,749
	Unobligated balance available for adjustments	4,751
	Carryover of offsetting collections to next fiscal year	940,617
<b>Status of FY 2009 Appropriations*</b>		
	Total appropriations	\$25,829,254
	Offsetting collections ( <i>see note</i> )	1,017,746
	Reimbursements from other agencies	0
	Total obligations	25,806,587
	Unobligated balance available for adjustments	22,667
	Carryover of offsetting collections to next fiscal year	940,617
<b>Status of FY 2010 Appropriations*</b>		
	Total appropriations (adjusted)	\$28,311,150
	Offsetting collections ( <i>see note</i> )	754,850
	Reimbursements from other agencies	0
	Total obligations	28,295,468
	Unobligated balance available for adjustments	15,682
	Carryover of offsetting collections to next fiscal year	940,617

<b>Status of FY 2011 Appropriations*</b>		
	Total appropriations (adjusted)	\$28,247,459
	Offsetting collections ( <i>see note</i> )	762,909
	Reimbursements from other agencies	0
	Total obligations	28,224,359
	Unobligated balance available for adjustments	23,100
	Carryover of offsetting collections to next fiscal year	940,617
<b>Status of FY 2012 Appropriations*</b>		
	Total appropriations (adjusted)	\$28,677,278
	Offsetting collections ( <i>see note</i> )	632,722
	Reimbursements from other agencies	0
	Total obligations	28,421,923
	Unobligated balance available for adjustments	255,355
	Carryover of offsetting collections to next fiscal year	0
<b>Status of FY 2013 Appropriations*</b>		
	Total appropriations (adjusted)	27,039,715
	Offsetting collections ( <i>see note</i> )	740,079
	Reimbursements from other agencies	0
	Total obligations	26,947,932
	Unobligated balance available for adjustments	91,783
	Carryover of offsetting collections to next fiscal year	0
<b>Status of FY 2014 Appropriations*</b>		
	Total appropriations (adjusted)	30,355,203
	Offsetting collections ( <i>see note</i> )	644,797
	Reimbursements from other agencies	0
	Total obligations	30,209,494
	Unobligated balance available for adjustments	145,709
	Carryover of offsetting collections to next fiscal year	0

\* Appropriations, as of Sept. 30 of each year, are from the U.S. Department of Transportation's Delphi Financial System.

**NOTES:**

FY 2007-2014 appropriations provided that offsetting collections would be credits to the appropriations. Sums appropriated were to be reduced, on a dollar-for-dollar-basis, as such offsetting collections were received during each fiscal year.

## APPENDIX C: DECISIONS DURING FY 2014

Table C.1 FY 2014 Caseload: Rail Matters					
Category	Pending at Start	Received During	Decided During	Pending at End	Decisions Served
<b>Carrier Consolidations</b>	<b>5</b>	<b>19</b>	<b>19</b>	<b>5</b>	<b>29</b>
<b>Review of Labor Arbitral Decisions</b>	<b>0</b>	<b>1</b>	<b>0</b>	<b>1</b>	<b>2</b>
<b>Rates and Services</b>	<b>12</b>	<b>7</b>	<b>11</b>	<b>8</b>	<b>46</b>
Rate reasonableness	9	5	6	8	37
Rate disclosure	0	0	0	0	0
Through-routes or divisions	0	0	0	0	0
Contract rates	0	0	0	0	0
Reasonable practice	3	0	3	0	7
Discrimination	0	0	0	0	0
Car supply and interchange	0	2	2	0	1
Service orders	0	0	0	0	0
Competitive access	0	0	0	0	1
<b>Constructions</b>	<b>9</b>	<b>7</b>	<b>2</b>	<b>14</b>	<b>23</b>
Line crossing	1	1	0	2	4
Other	8	6	2	12	19
<b>Abandonments</b>	<b>14</b>	<b>94</b>	<b>92</b>	<b>16</b>	<b>247</b>

(Table continued...)

**Table C.1  
FY 2014 Caseload: Rail Matters (cont'd)**

<b>Category</b>	<b>Pending at Start</b>	<b>Received During</b>	<b>Decided During</b>	<b>Pending at End</b>	<b>Decisions Served</b>
<b>Other Line Transactions</b>	<b>21</b>	<b>58</b>	<b>59</b>	<b>20</b>	<b>98</b>
Line consolidations	9	24	25	8	43
Line acquisitions under 49 U.S.C. 10901	8	17	21	4	34
Line acquisitions by shortline	3	9	9	3	12
Feeder line development	0	0	0	0	0
Acquisition and operation under 49 U.S.C. 10502	1	8	4	5	9
<b>Collective Actions</b>	<b>0</b>	<b>1</b>	<b>0</b>	<b>1</b>	<b>1</b>
Collective ratemaking	0	0	0	0	0
Pooling	0	1	0	1	1
<b>Data Collection and Oversight</b>	<b>0</b>	<b>7</b>	<b>7</b>	<b>0</b>	<b>7</b>
RCAF	0	7	7	0	7
Accounting and records	0	0	0	0	0
Reports – rail (see note 2)	0	0	0	0	0
<b>Passenger Rail</b>	<b>3</b>	<b>1</b>	<b>1</b>	<b>3</b>	<b>17</b>
Amtrak track use/compensation	2	1	1	2	17
Passenger Rail – Other	1	0	0	1	0
<b>Exemption Rulemakings</b>	<b>9</b>	<b>4</b>	<b>5</b>	<b>8</b>	<b>22</b>
<b>Other Rail</b>	<b>2</b>	<b>0</b>	<b>1</b>	<b>2</b>	<b>7</b>
Common carrier obligation	1	0	1	1	3
Interlocking officer or director	0	0	0	0	0
Other	1	0	0	1	4
<b>Total Rail</b>	<b>75</b>	<b>199</b>	<b>197</b>	<b>78</b>	<b>499</b>

*Surface Transportation Board*

<b>Table C.2</b> <b>FY 2014 Caseload: Nonrail Matters</b>					
<b>Category</b>	<b>Pending at Start</b>	<b>Received During</b>	<b>Decided During</b>	<b>Pending at End</b>	<b>Decisions Served</b>
<b>Motor</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>Rate Reasonableness</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
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
<b>Collective Actions</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
Collective Ratemaking Agreements	0	0	0	0	0
Truck Pooling	0	0	0	0	0
<b>Undercharges</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>Bus Regulation</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>1</b>	<b>7</b>
Through-Route Regulation	0	0	0	0	0
Mergers	2	3	4	1	7
Bus Pooling	0	0	0	0	0
<b>Other Motor</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>Water</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
Port-to-Port Water Rates	0	0	0	0	0
Other	0	0	0	0	0
<b>Pipeline</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
Rate Regulation	0	0	0	0	0
Other	0	0	0	0	0
<b>Other</b>	<b>6</b>	<b>8</b>	<b>6</b>	<b>8</b>	<b>18</b>
<b>Total Nonrail</b>	<b>8</b>	<b>11</b>	<b>10</b>	<b>9</b>	<b>25</b>
<b>Total Rail and Nonrail</b>	<b>83</b>	<b>210</b>	<b>207</b>	<b>87</b>	<b>524</b>

## APPENDIX D: RAILROAD FINANCIAL AND STATISTICAL DATA

For regulatory purposes, railroads are classified as Class I, II, or III based on their annual operating revenues. A carrier's class is determined by its inflation-adjusted operating revenues, for three consecutive years, in 1991 dollars, 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.

Class II and III railroads are sometimes referred to as regional, local, or shortline railroads.

Table D.1 Railroad Carriers Regulated by the STB as of Jan. 1, 2014	
<i>Carriers Subject to the Uniform System of Accounts and/or Required to File Annual and Periodic Reports <sup>a</sup></i>	
Railroads, Class I	7
<i>Railroads Not Required to File Reports</i>	
Railroads, Regional	
Railroads, Local	

<sup>a</sup> AAR's *Railroad Facts, 2014 Edition*, p. 3. In lieu of the Class II designation, the AAR defines regional railroads as carriers having revenue of at least \$20 million. They must also operate at least 350 miles of road or earn revenue between \$40 million and the Class I revenue threshold. In lieu of the Class III designation, the AAR defines local railroads as carriers with revenues below that of the regional criteria, plus switching and terminal companies. AAR's *Railroad Facts, 2014 Edition*, p. 3. did not have updated 2013 data for Regional and Local Railroads at the time this report was completed.

A Current Year's Revenues Deflator Factor is used to adjust a railroad's operating revenues to eliminate the effects of inflation. Deflator factors are based on the annual average Railroad Freight Price Index for all commodities as developed by the U.S. Department of Labor's Bureau of Labor Statistics. Factors for recent years are shown in the table below. Deflator factors prior to 2007 are listed in 77 Fed. Reg. 34,125 (2012).

**Table D.2  
Railroad Revenue Thresholds**

<b>Year</b>	<b>Factor</b>	<b>Class I</b>	<b>Class II</b>
2009	0.6600	378,774,016	30,301,921
2010	0.6271	398,673,376	31,893,870
2011	0.5771	433,211,345	34,656,908
2012	0.5523	452,653,248	36,212,260
2013	0.5353	467,063,129	37,365,050

**Table D.3  
Class I Railroads: Condensed Income Statement, Financial Ratios, and  
Employee Data, 2010-2013  
(Dollars in Thousands)**

	<b>Calendar Year</b>			
	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>
1. Class 1 Carriers	7	7	7	7
<b>CONDENSED INCOME STATEMENT</b>				
2. Total operating revenues	\$58,404,634	\$67,366,882	\$69,887,072	\$72,873,269
3. Total operating expenses	42,707,642	49,296,647	50,641,286	51,582,531
4. Net railway operating income	9,959,209	11,758,962	12,199,092	13,559,750
5. Net income <sup>b</sup>	9,246,692	11,039,469	12,483,243	13,396,923
6. Dividends Paid	1,988,581	3,620,735	4,763,696	4,497,750
<b>NET INVESTMENT AND EQUITY</b>				
7. Net investment, transp. prop. & eqpmt <sup>a</sup>	101,885,684	104,096,191	100,197,089	105,870,413
8. Shareholders' equity	96,933,643	101,497,991	84,083,414	99,026,878
<b>FINANCIAL RATIOS (PERCENT)</b>				
9. Operating ratio (L3/L2)	73.12%	73.18%	72.46%	70.78%
10. Return on net investment (L4/L7)	9.77%	11.30%	12.18%	12.81%
11. Return on equity (L5/L8)	9.54%	10.88%	14.85%	13.53%
<b>EMPLOYEE DATA</b>				
12. Average number of employees	151,933	158,623	163,464	162,798
13. Compensation	11,014,707	12,149,882	12,643,207	13,072,880



- <sup>a</sup> 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).
- <sup>b</sup> 2010, 2011, and 2012 used Adjusted Net Income from Schedule 250 Ln. 5. Starting in 2013, Schedule 210 Ln. 61 Net Income will be used.

The STB requires that data from affiliated railroads with integrated operations in the United States be combined to determine whether they are Class I railroads. Such combined railroads are required to file consolidated financial reports. *See Proposal to Require Consolidated Reporting By Commonly Controlled Railroads*, EP 634 (STB served Nov. 7, 2001).

<b>Table D. 4</b> <b>Class I Railroads: Selected Balance Sheet Data as of December 31</b> <b>2010-2013</b> <i>(Dollars in Thousands)</i>				
	Calendar Year			
	2010	2011	2012	2013
<b>1. Total current assets</b>	\$16,064,106	\$18,933,200	\$23,031,289	\$21,133,864
<b>2. Total current liabilities</b>	14,921,086	17,051,606	19,827,532	16,318,500
<b>3. Transportation property</b>				
Road	145,962,289	151,067,760	152,843,970	160,600,659
Equipment	32,602,295	35,276,050	41,134,185	43,019,991
Other	2,375,819	3,401,801	3,112,362	3,432,195
Less accumulated depreciation and amortization	36,116,914	38,763,465	52,703,363	52,965,373
Net transportation property	144,823,489	150,982,146	144,387,154	154,087,472
<b>4. Long-term debt (due after 1 yr)</b>	16,639,863	15,680,996	16,417,018	17,018,470
<b>5. Shareholders' equity</b>				
Capital stock (par value)	405,747	405,640	558,866	558,789
Additional capital (above par)	61,990,598	62,061,009	25,581,637	34,321,654
Retained earnings	34,541,085	39,035,129	57,946,698	64,150,222
Less treasury stock	3,787	3,787	3,787	3,787
<b>Net shareholders' equity</b>	96,933,643	101,497,991	84,083,414	99,026,878

**Table D.5**  
**Railroad Cost of Capital, Percentage Return on Investment (ROI),**  
**Revenue Adequacy Status**  
**2010-2013 <sup>a</sup>**

	Calendar Year			
	2010 <sup>b</sup>	2011 <sup>c</sup>	2012 <sup>d</sup>	2013 <sup>e</sup>
<b>Cost of Capital</b>	11.03	11.57	11.12	11.32
<b>ROIs of Class I Railroads</b>				
BNSF Railway Company	9.22	9.86	<b>13.47</b>	<b>14.01</b>
CSX Transportation, Inc.	10.85	11.54	10.64	10.00
Grand Trunk Corp (including U.S. affiliates of Canadian National Railway)	9.21	8.74	10.19	<b>11.84</b>
Kansas City Southern Railway Company	9.77	10.76	9.54	8.67
Norfolk Southern Combined Railroad Subsidiaries	10.96	<b>12.87</b>	<b>11.48</b>	<b>12.07</b>
Soo Line Corp (including U.S. affiliates of Canadian Pacific Railway)	8.01	7.13	5.15	<b>12.03</b>
Union Pacific Railroad Company	<b>11.54</b>	<b>13.11</b>	<b>14.69</b>	<b>15.39</b>

<sup>a</sup> 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 (ROI) equal to or greater than the Board's calculated average cost of capital for the freight rail industry. The ROIs that meet this criterion are shown in **bold** in this table.

<sup>b</sup> Cost of Capital for 2010 was determined in EP 558 (Sub-No. 14);  
Revenue Adequacy for 2010 was determined in EP 552 (Sub-No. 15).

<sup>c</sup> Cost of Capital for 2011 was determined in EP 558 (Sub-No. 15);  
Revenue Adequacy for 2011 was determined in EP 552 (Sub-No. 16).

<sup>d</sup> Cost of Capital for 2012 was determined in EP 558 (Sub-No. 16);  
Revenue Adequacy for 2012 was determined in EP 552 (Sub-No. 17).

<sup>e</sup> Cost of Capital for 2013 was determined in EP 558 (Sub-No. 17);  
Revenue Adequacy for 2013 was determined in EP 552 (Sub-No. 18).

## APPENDIX E: RAILROAD RATE CASES AT THE STB

The STB receives frequent inquiries regarding its handling of freight rail rate complaints. This appendix lists all freight rail rate cases reviewed by the Board since the agency's inception on Jan. 1, 1996, along with the outcome in each case. For more information, contact the Office of Public Assistance, Governmental Affairs, and Compliance at (202) 245-0238.

**Table E.1**  
**Railroad Rate Cases at the STB**  
1996 through Sept. 30, 2014

Docket No	Case Name	Commodity	Guideline Used *	Date Decision Served	Decision
41191	West Texas v. BNSF	Coal	SAC	5/3/1996	<b>Rates Unreasonable</b>
37809	McCarty Farms v. BN	Grain	SAC	8/20/1997	Rates Reasonable
41185	APS v. ATSF	Coal	SAC	4/17/1998	<b>Rates Unreasonable</b>
41989	Pepco v. CSX	Coal	SAC	6/18/1998	Settlement
42012	Sierra Pacific v. UP	Coal	SAC	7/17/1998	Settlement
41670	Shell Chemical v. NS	Chemical	Simplified	3/12/1999	Settlement
41295	PPL v. Conrail	Coal	SAC	5/13/1999	Settlement
42034	PSI Energy v. Soo	Coal	SAC	5/13/1999	Settlement
42022	FMC v. UP	Minerals	SAC	5/12/2000	<b>Rates Unreasonable</b>
42038	MN Power v. DMIR	Coal	Stipulated R/VC	1/5/2001	Settlement
42051	WPL v. UP	Coal	SAC	5/14/2002	<b>Rates Unreasonable</b>
42054	PPL v. BNSF	Coal	SAC	8/20/2002	Rates Reasonable
42059	Northern States v. UP	Coal	Stipulated R/VC	8/7/2003	Settlement
42077	APS v. BNSF	Coal	SAC	12/31/2003	Withdrawn
42056	TMPA v. BNSF	Coal	SAC	9/27/2004	<b>Rates Unreasonable</b>
42069	Duke v. NS	Coal	SAC	10/20/2004	Rates Reasonable
42070	Duke v. CSXT	Coal	SAC	10/20/2004	Rates Reasonable
42072	Carolina Power v. NS	Coal	SAC	10/20/2004	Rates Reasonable
42057	Xcel v. BNSF	Coal	SAC	12/14/2004	<b>Rates Unreasonable</b>
42058	AEPCO v. BNSF	Coal	SAC	3/15/2005	Rates Reasonable
42093	BP Amoco v. NS	Chemical	Simplified	6/28/2005	Settlement
42071	Otter Tail v. BNSF	Coal	SAC	1/27/2006	Rates Reasonable
42091	APS v. BNSF	Coal	SAC	2/10/2006	Settlement
42097	Albemarle v. LNW	Chemical	SAC	11/14/2006	Settlement
42098	Williams Olefins v. GTC	Chemical	Simplified	2/15/2007	Settlement
42095	KCPL v. UP	Coal	Stipulated R/VC	5/19/2008	<b>Rates Unreasonable</b>
42088	Western Fuels v. BNSF	Coal	SAC	2/18/2009	<b>Rates Unreasonable</b>
42112	E.I. Dupont v. CSX	Chemical	SAC	5/11/2009	Settlement
41191(S1)	AEP Texas v. BNSF	Coal	SAC	5/15/2009	Rates Reasonable

**Table E.1**  
**Railroad Rate Cases at the STB**

1996 through Sept. 30, 2014

Docket No	Case Name	Commodity	Guideline Used *	Date Decision Served	Decision
42111	Oklahoma Gas v. UP	Coal	Stipulated R/VC	7/23/2009	<b>Rates Unreasonable</b>
42099	DuPont v. CSX	Chemical	Three-Benchmark	9/1/2009	Settlement
42100	DuPont v. CSX	Chemical	Three-Benchmark	9/1/2009	Settlement
42101	DuPont v. CSX	Chemical	Three-Benchmark	9/1/2009	Settlement
42114	U.S. Magnesium v. UP	Chemical	Three-Benchmark	1/28/2010	<b>Rates Unreasonable</b>
42115	U.S. Magnesium v. UP	Chemical	Simplified SAC	4/2/2010	Settlement
42116	U.S. Magnesium v. UP	Chemical	Simplified SAC	4/2/2010	Settlement
42122	NRG v. CSXT	Coal	SAC	7/8/2010	Settlement
42110	Seminole Electric v. CSX	Coal	SAC	9/27/2010	Settlement
42113(S1)	AEPCO v. UP	Coal	SAC	4/15/2011	Settlement
42128	SMEPA v. NS	Coal	SAC	8/31/2011	Settlement
41191(S1)	AEP Texas v. BNSF	Coal	SAC-Remand	10/26/2011	Settlement
42113	AEPCO v. BNSF & UP	Coal	SAC	11/22/2011	<b>Rates Unreasonable</b>
42132	Canexus v. BNSF	Chemical	Three-Benchmark	7/20/2012	Settlement
42127	IPA v. UP	Coal	SAC	11/2/2012	Withdrawn
42123	M&G Polymers v. CSXT	Chemical	SAC	1/7/2013	Settlement
42125	DuPont v. NS	Chemical	SAC	3/24/2014	Rates Reasonable
42130	SunBelt v. NS	Chemical	SAC	6/20/2014	No Rate Prescribed <sup>a</sup>

**Rail Rate Cases Pending at the STB as of Sept. 30, 2014**

42121	TPI v. CSXT	Chemicals	SAC
42130	SunBelt v. NS (reconsideration)	Chemicals	SAC
42136	IPA v. UP	Coal	SAC

**\*Abbreviations:**

**SAC:** Stand-Alone Cost Methodology applied for a hypothetical railroad.

**Simplified:** Using a Simplified, rather than SAC, Methodology for determining the reasonableness of rates as set forth in Coal Rate Guidelines, Nationwide, 1 I.C.C.2d 520 (1985) (Guidelines).

**Stipulated R/VC:** Parties agreed to use revenue to variable cost (R/VC) ratios at 180% level in lieu of SAC.

**Three-Benchmark Methodology:** Methodology of seeking relief pursuant to revised Simplified Procedures as set forth in Simplified Standards for Rail Rate Cases, STB Ex Parte No. 646 (Sub-No. 1) (STB served Sept. 5, 2007) and any additional Sub-No. decisions.

<sup>a</sup> The Board declined to impose a rate prescription because the complainant did not demonstrate that the challenged rates would be unreasonable under the SAC test until the last year of the 10-year analysis period, and then to only a small degree.

During the five-year period FY 2010-2014, 14 Board decisions were served (NOR 42114 through NOR 42125, above). Of these decisions, 9 were resolved through a settlement agreement between the parties; two found the rates unreasonable; one [NOR 42125, STB served March 24, 2014] found the rates to be reasonable; one case had no rate prescription; and one case was withdrawn.

## APPENDIX F: SURFACE TRANSPORTATION BOARD MEMBERS

<b>Table F.1</b>				
<b>Table F. 1 Surface Transportation Board Members</b>				
<b>Name</b>	<b>State</b>	<b>Party</b>	<b>Oath of Office</b>	<b>End of Service <sup>2</sup></b>
SIMMONS, J.J. III	OK	Democrat	Jan. 1, 1996	Dec 31, 1996
OWEN, Gus A.	CA	Republican	Jan. 1, 1996	Dec 31, 1998
MORGAN, Linda J. <sup>3</sup>	MD	Democrat	Jan 1, 1996	May 15, 2003
CLYBURN, William Jr.	SC	Democrat	Dec 21, 1998	Dec 31, 2001
BURKES, Wayne O.	MS	Republican	Feb 25, 1999	Mar 20, 2003
NOBER, Roger <sup>4</sup>	MD	Republican	Nov 26, 2002	Jan 4, 2006
BUTTREY, W. Douglas <sup>5</sup>	TN	Republican	May 28, 2004	Mar 13, 2009
MULVEY, Francis P. <sup>6</sup>	MD	Democrat	Jun 2, 2004	Dec. 31, 2013
NOTTINGHAM, Charles D. <sup>7</sup>	DC	Republican	Aug 14, 2006	Mar 18, 2011
ELLIOTT, Daniel R. III <sup>8</sup>	OH	Democrat	Aug 13, 2009	Term ends 2018
BEGEMAN, Ann D. <sup>9</sup>	VA	Republican	May 2, 2011	Term ends 2015
MILLER, Deb <sup>10</sup>	KS	Democrat	Apr 28, 2014	Term ends 2017

<sup>1</sup> The STB was created by the ICC Termination Act of 1995 and was established on Jan. 1, 1996.

<sup>2</sup> A Member is appointed to a five-year term of office ending on December 31<sup>st</sup> of the final year of the term. If a Member departs the STB before the end of his or her term, a successor is appointed to the vacant seat for the remainder of the departing Member's term. The Board's governing statute permits a Member to serve up to one year after the expiration of the original term, unless a successor is appointed.

<sup>3</sup> Chairman of the STB's predecessor agency, the Interstate Commerce Commission, March 23, 1995, to Dec. 31, 1995. STB Chairman Jan. 1, 1996, to Nov. 26, 2002.

<sup>4</sup> Chairman Nov. 26, 2002, to Jan. 4, 2006.

<sup>5</sup> Chairman Jan. 5, 2006, to Aug. 14, 2006.

<sup>6</sup> Acting Chairman March 12 to Aug. 13, 2009.

<sup>7</sup> Chairman Aug. 14, 2006, to March 12, 2009.

<sup>8</sup> Chairman Aug. 13, 2009 to December 31, 2014; current Chairman, effective June 26, 2015.

<sup>9</sup> Vice Chairman May 2, 2011 to Jan. 3, 2012; January 4, 2013 to May 27, 2014; Jan. 1 2015 to Jan. 7, 2016; current Member (as of Jan. 7, 2016).

<sup>10</sup> Vice Chairman May 27, 2014 to Dec. 31, 2014; Acting Chairman, Jan. 1, 2015 to June 26, 2015; current Vice Chairman (as of Jan. 7, 2016).