



Surface Transportation Board

FY 2015 Annual Report

Chairman Daniel R. Elliott III
Vice Chairman Ann D. Begeman
Board Member Deb Miller



Office of the Chairman

SURFACE TRANSPORTATION BOARD

Washington, D.C. 20423-0001

June 1, 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, 2014, through Sept. 30, 2015. The report follows the format of previous years' reports with a statement of appropriations and aggregate expenditures for Fiscal Year (FY) 2015 appearing in Appendix B.

The Board operated with two Board Members for a period of time during FY 2015. The final day of my first term of office, including a holdover period, was December 31, 2014. Upon my departure, 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 Deb 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) Ann Begeman continues to serve as a Board Member.

Sincerely,

A handwritten signature in blue ink, appearing to read "D. R. Elliott, III".

Daniel R. Elliott, III
Chairman

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ABBREVIATIONS

The following abbreviations are used throughout this report:

AAF	All Aboard Florida
AAR	Association of American Railroads
Ameren	Union Electric Company d/b/a Ameren Missouri
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
CSXT/CSX	CSX Transportation, Inc.
d/b/a	doing business as
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 Printing Office
GTW	Grand Trunk Western Railway Company

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HST	High-Speed Train
ICC	Interstate Commerce Commission
IPA	Intermountain Power Agency
LLC	Limited Liability Company
MCF	Motor Carrier Finance
MCRC	Missouri Central Railroad Company
NEPA	National Environmental Policy Act
NGCC	National Grain Car Council
NHPA	National Historic Preservation Act
NOR	Notice of Rates
NS/NSCRP	Norfolk Southern Railway Company/NS Combined Rr Props.
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
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

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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>
Western Fuels	Western Fuels Association, Inc. and Basin Electric Collective (collectively)

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.¹

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) Federal Motor Carrier Safety Administration or Bureau of Transportation Statistics. At the end of FY 2015, 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.

¹ 49 U.S.C. §§ 10101-11908.

Introduction

The Board is charged with advancing the national transportation policy goals enacted by Congress² and promoting an efficient, competitive, safe and cost-effective freight rail network. The Board accomplishes these goals by enabling railroads to earn adequate revenues that foster reinvestment in their systems, attract outside capital, and provide reliable service, while at the same time working to ensure that effective competition exists between railroads and that reasonable rates exist where there is a lack of effective competition.

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).³ 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.

The agency is committed to vigilant oversight and the rendering of fair and timely decisions when regulation is required. Where regulatory requirements can be removed or reduced, the Board applies its exemption authority to the maximum extent consistent with the law to streamline approval processes for stakeholders.⁴

² 49 U.S.C. §§ 10101 (rail), 13101 (motor and water), 15101 (concerning pipelines).

³ 49 U.S.C. §§ 13101-14914, 15101-16106.

⁴ 49 U.S.C. § 10502(a).

Organizational Structure

The Board comprises three Members nominated by the President and confirmed by the Senate for five-year terms.⁵ The Board's Chairman is designated by the President from among the Members.⁶ 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 serves on 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,⁷ 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 137 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** 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.

⁵ The Surface Transportation Board Reauthorization Act of 2015, Pub. L. No. 114-110 (2015), increased the Board's size to five Members, although there are currently three sitting Members.

⁶ 49 U.S.C. § 1301.

⁷ Practitioners are persons meeting specific standards, passing an examination, and taking an oath to comply with agency requirements and procedures to practice before the agency.

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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** 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.

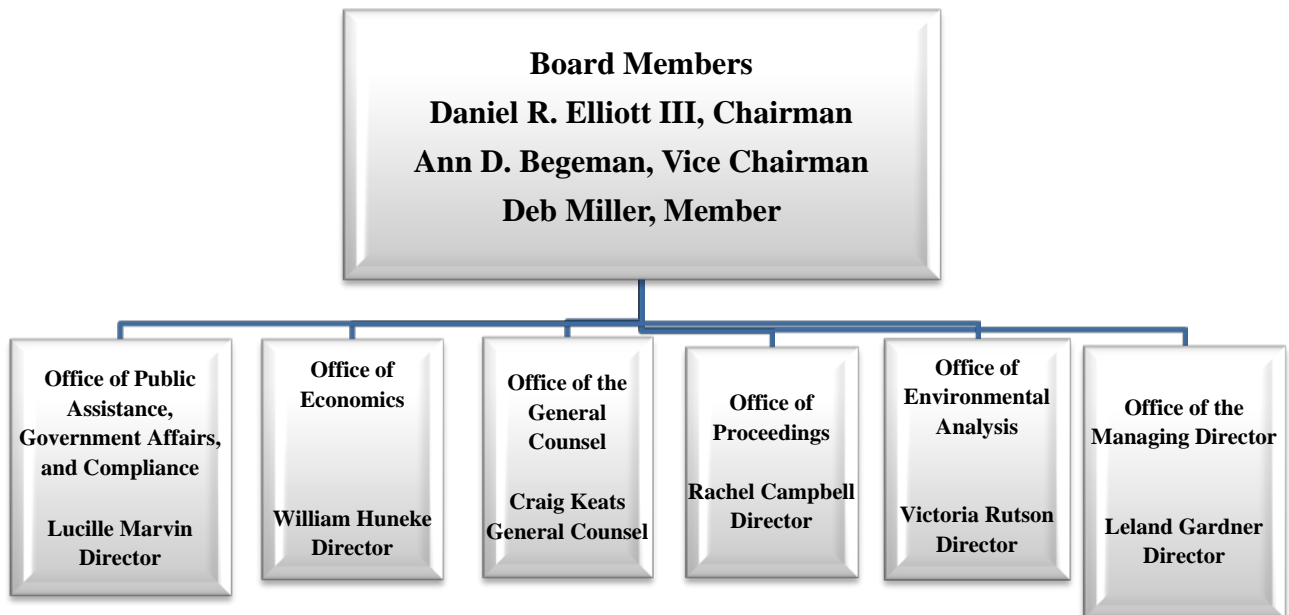


Figure 1.1 STB Organizational Chart, FY 2015

Significant Actions in FY 2015

To carry out its regulatory mission, the Board primarily engages in three types of activities: adjudication, rulemaking, and licensing. First, the Board adjudicates disputes between shippers and railroads on the reasonableness of the carriers' rates and service practices. In some instances, the Board also adjudicates disputes between the carriers themselves, or between the railroads and local communities in which their lines are located. Second, the Board conducts rulemaking proceedings, in which the agency proposes regulations that it believes are needed to carry out the agency's mission. After issuing a notice of the proposed regulations, the Board receives comments from its stakeholders and other interested parties and, based on those comments, decides whether to adopt, not adopt, or adopt with modification the proposed regulations. Third, the Board is required to approve any entry to, exit from, or consolidation within, the rail transportation market in order to ensure that the transactions are in the public interest.

The following is a summary of the significant Board adjudicatory, rulemaking, and licensing actions taken in FY 2015:

The Board continued its work in monitoring rail service across the Nation's freight rail network in *United States Rail Service Issues*, Docket No. EP 724. In a decision served October 14, 2014, the Board directed Canadian Pacific Railway Company to answer specific questions to clarify ambiguities related to the railroad's efforts to resolve its service problems and respond to fall peak demand. In *United States Rail Service Issues—Data Collection*, Docket No. EP 724 (Sub-No. 3) (STB Served October 8, 2014), the Board required all Class I railroads to publicly file weekly data reports to promote industry-wide transparency, accountability, and improvements in rail service on a temporary basis. These reports are reviewed by Board staff and posted on the Board's website for stakeholders' use. Later, in *United States Rail Service Issues—Performance Data Reporting*, EP 724 (Sub-No. 4) (STB served Dec. 30, 2014), the Board proposed a rule to require railroads to publicly file such weekly data reports, with some modifications, on a permanent basis.

The Board held several important public hearings during FY 2015. In June 2015, the Board held a hearing on *Rail Transportation of Grain, Rate Regulation Review*, Docket No. EP 665 (Sub-No. 1), to explore the issue of making the Board's rate case process more accessible to grain shippers. During the hearing, the Board heard the viewpoints of numerous railroads and shippers, with respect to grain shipping rates, and access to rate relief before the Board.

The Board also held a hearing in July 2015, which encompassed two proceedings: *Railroad Revenue Adequacy*, Docket No. 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*, Docket No. EP 664 (Sub-No. 2). Pursuant to 49 U.S.C. § 10704(a)(2), revenue adequacy is defined as a level of revenues that a carrier must earn to cover total operating expenses, including depreciation and obsolescence, plus a reasonable and economic profit or return (or both) on capital employed in the business. In addition, the statute provides that revenue levels should provide a flow of net income plus depreciation adequate to support prudent capital outlays, assure the repayment of a reasonable level of debt, permit the raising of needed equity capital, cover the effects of inflation, and attract and retain capital in amounts adequate to provide a sound transportation system in the United States. That statutory provision requires the Board to maintain standards and procedures to establish revenue levels consistent with that definition, and to make an adequate and continuing effort to assist rail carriers in attaining such levels of revenue. During the July 2015 hearing, the Board heard from numerous stakeholders and explored how the Board should determine whether a carrier is revenue adequate and how such a finding should impact regulation of the railroads' rates, among other issues.

The Board had two major rate cases pending as of September 2015: *Total Petrochemicals & Refining USA, Inc. vs. CSX Transportation, Inc.*, Docket No. NOR 42121; and *Consumers Energy Company v. CSX Transportation, Inc.*, Docket No. NOR 42142. In addition, the Board was adjudicating two administrative appeals in *E.I. du Pont Nemours & Co. v. Norfolk Southern Railway Company*, Docket No. NOR 42125, and *Sunbelt Chlor Alkali Partnership v. Norfolk Southern Railway Company*, Docket No. NOR 42130.

Another rate case, *Western Fuels Association, Inc. v. BNSF Railway*, Docket No. NOR 42088, was before the Board on remand, and during FY 2015, the Board granted a joint petition to vacate the rate prescription, dismiss the complaint with prejudice, and discontinue the proceeding. In a second rate case, *Arizona Electric Power Cooperative, Inc. v. BNSF Railway*, Docket No. NOR 42113, the Board issued a decision clarifying how its previously-imposed rate prescription in this proceeding should be calculated. The uncertainty arose out of another Board proceeding in which it determined how the “acquisition premium” that was paid by Berkshire Hathaway Inc. (Berkshire) to purchase BNSF Railway Co. should be treated for accounting purposes. *Western Coal Traffic League—Petition for Declaratory Order*, Docket No. FD 35506. Based on the clarification set forth in the Board’s decision, the rate prescription for the years 2009-2013 was reinstated. To allow the asset markup resulting from the Berkshire Hathaway acquisition of BNSF to be fully reflected in BNSF’s variable costs and the rate prescription, for 2014-2016, when each year’s financial data becomes available, the Board will prescribe the rate for that year. Once the asset markup is fully incorporated, the Board will reinstitute the rate prescription for 2017-2018.

With respect to passenger rail, during FY 2015, the Board continued to implement its passenger rail responsibilities under PRIIA. STB staff monitored Amtrak performance through publicly available information, and responded to informal inquiries concerning Amtrak and PRIIA. Amtrak filed an application in 2013 asking the Board to establish terms and conditions governing Amtrak’s use of CN rail lines and facilities. The agency initiated a proceeding titled *Application of the National Railroad Passenger Corp. Under 49 U.S.C. § 24308(a)—Canadian National Railway*, Docket No. FD 35743, to address the matter and subsequently adopted a procedural schedule. Thereafter, the Board extended the schedule at the parties’ request several times to accommodate ongoing discovery (the production of documents and answers to questions posed by one party to another) and issued decisions resolving certain discovery disputes. In FY 2015, the Board continued to adjudicate the case, issuing further decisions regarding discovery disputes and adjusting the schedule accordingly. Pre-evidentiary discovery concluded in July 2015, and the parties submitted their opening evidence in September 2015. The case remained pending at the close of the fiscal year.

In May 2015, the Board instituted a proceeding in *On-Time Performance Under Section 213 of the Passenger Rail Investment & Improvement Act of 2008*, Docket No. EP 726, to define “on-time performance” for purposes of PRIIA Section 213 cases. At the end of FY 2015, the rulemaking proceeding in Docket No. EP 726 and the two PRIIA Section 213 cases before the Board in Docket Nos. NOR 42134 and NOR 42141 remained pending.

In another area of interest, federal preemption, the Board issued a declaratory order providing its opinion that federal law preempted application of the California Environmental Quality Act (CEQA) to the construction of a high-speed passenger line between Fresno and Bakersfield, Cal. *Cal. High-Speed Rail Auth.—Pet. for Declaratory Order*, FD 35861 (STB served Dec. 12, 2014), *recon. not granted due to lack of majority*, *Cal. High-Speed Rail Auth.—Pet. for Declaratory Order*, FD 35861 (STB served May 5, 2015). And in *SEA-3, Inc.—Pet. for Declaratory Order*, FD 35853 (STB served March 17, 2015), the Board denied a petition for declaratory order, explaining that the City of Portsmouth’s participation in zoning litigation over the expansion of a non-carrier facility was not preempted by federal law.

In the area of rail construction, the Board’s Office of Environmental Analysis (OEA) issued a Draft Environmental Impact Statement and held 10 public meetings in Montana 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.*, Docket No. FD 30186. In addition, OEA participated in ongoing environmental review for the California High-Speed Train System, in *California High-Speed Rail Authority—Construction Exemption—in Fresno, Kings, Tulare & Kern Counties, Cal.*, Docket No. FD 35724. OEA was also a cooperating agency with the California Department of Transportation (Caltrans) and the Los Angeles County Metropolitan Transportation Authority in the environmental review for the High Desert Corridor project in California, a proposed 63-mile multipurpose corridor between Los Angeles County and San Bernardino County.

During FY 2015, OEA also conducted ongoing oversight and monitoring to verify the 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.*, Docket No. FD 35522.

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.⁸ 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.

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,⁹ 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 Act¹⁰ (FACA), meetings are held annually and are open to the public.

⁸ 49 U.S.C. § 1325.

⁹ 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 2014 dollars, the scale is as follows: Class I - \$475,754,803 or more; Class II – Less than \$475,754,803 but more than \$38,060,384; and Class III - \$38,060,384 or less. (*See Appendix D: Railroad Financial and Statistical Data.*)

¹⁰ P. L. 92-463.

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.

A list of the current membership of each of these councils or committees and information about past meetings can be found on the Board’s website, under the menu for “Rail Consumers.”

Public Outreach

In FY 2015, the Board kept Congress and the public informed about agency actions and policies through hearings, printed transcripts, news releases, and customer-service pamphlets. All were made widely available through the agency’s website, www.stb.dot.gov. The following tables display counts of major public outreach activities during the reporting period:

Table 1.1			
Board Member Public Communications in FY 2015			
Transcripts[*]	Statements[†]	Testimonies^{††}	Written Speeches
2	1	1	9

^{*} Official copies, and electronically archived audio/visual files, of Board hearings and oral arguments.

[†] 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.

^{††} Before the United States Congress.

Table 1.2			
Public Events Held in FY 2015			
Headquarters Hearings	Field Hearings	Oral Arguments	Meetings*
3	0	0	16

* Conducted nationwide by the Board’s Office of Environmental Analysis.

Table 1.3		
1.3 News Releases Issued in FY 2015		
Number Issued	Total Webpage Visits	Average Visits Per Release
22	19,056	866

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 2015, the RCPA handled approximately 1,220 inquiries from stakeholders, of which approximately 78 pertained to informal railroad service disputes.

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).¹¹

¹¹ 49 C.F.R. Parts 244 and 1106.

Table 2.1	
Rail Mergers and Consolidations, FY 2015	
Under 49 U.S.C. 11323 *	
Type	No.
Applications	
Filed	1
Granted	2
Denied	1
Dismissed	0
Pending	0
Petitions for Exemption	
Filed	4
Granted	6
Denied	3
Dismissed	0
Pending	0
Notices of Exemption	
Filed	18
Granted	16
Denied	2
Dismissed	1
Pending	1

* Data in this and subsequent charts compose a snapshot of Board activity at the close of FY 2015; figures thus may not add to a total. The “Granted,” “Denied,” and “Dismissed” totals not only include cases initiated in FY 2015, but also cases filed in a prior fiscal year but disposed of in FY 2015. Thus, the granted, denied, and dismissed totals may be greater or lesser than the number of cases filed in FY 2015. “Pending” totals include cases filed in FY 2015, or earlier, that were not disposed of in FY 2015 and thus remain open for disposition in a later fiscal year.

Mergers and Consolidations: Oversight and Monitoring

The Board extended the oversight period for the transaction in which CN acquired control over the EJ&E line around Chicago, until January 2017. *Canadian National Railway Company and Grand Trunk Corporation—Control—EJ&E West Co.*, FD 35087 (STB served Dec. 17, 2014). Member Begeman dissented with a separate expression.

The Board denied the State of South Dakota's request that the Board enforce certain representations that CP allegedly made as part of its 2008 acquisition of DM&E lines in South Dakota. *Canadian Pacific Railway Co. —Control—Dakota, Minnesota & Eastern Railroad Corp.*, FD 35081 (Sub-No. 2) (STB served Sept. 25, 2015).

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 2015.

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 authorized, subject to conditions, the acquisition by Norfolk Southern Railway Company of 282.55 miles of rail line, in New York and Pennsylvania, owned by the Delaware & Hudson Railway Company, *Norfolk Southern Railway—Acquisition & Operation—Certain Rail Lines of the Delaware & Hudson Railway*, FD 35873 (STB served May 15, 2015).

The Board denied the request of Ballard Terminal Railroad Company, L.L.C. (a third party with no property interest in the line at issue) for authority to reinstitute rail service on a line of railroad owned by the City of Kirkland, Wash., Central Puget Sound Regional Transit Authority, and King County, Wash., that is currently subject to interim trail use/rail banking under the National Trails System Act, 16 U.S.C. § 1247(d), and the Board denied Ballard's related petition to partially vacate the notice of interim trail use that had been issued for the line. *Ballard Terminal Railroad Company, L.L.C.—Acquisition & Operation Exemption—Woodinville Subdivision*, FD 35731 et al. (STB served Dec. 30, 2014). Member Begeman dissented with a separate expression.

The Board's handling of line-acquisition proposals during FY 2015 is summarized in the following tables:

Table 2.2		
Line Acquisitions, FY 2015		
By Noncarriers Under 49 U.S.C. § 10901		
Type	No.	Miles
Petitions for Exemption		
Filed	0	0
Granted	0	0
Denied	0	0
Dismissed	0	0
Pending	0	0
Notices of Exemption		
Filed	21	568.41
Granted	19	363.89
Denied	0	0
Dismissed	1	17.7
Pending	1	186.82
Table 2.3		
Line Acquisitions, FY 2015		
By Class II or III Railroads Under 49 U.S.C. § 10902		
Petitions for Exemption		
Filed	0	0
Granted	0	0
Denied	2	2.04
Dismissed	0	0
Pending	1	41.2
Notices of Exemption		
Filed	25	395.34
Granted	27	629.24
Denied	0	0.0
Dismissed	0	0.0
Pending	0	0.0

During FY 2015, the Board issued decisions licensing the acquisition of approximately 993 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.

The Board authorized the expiration of certain Board-approved rights by one carrier to operate over the lines of another carrier, even though such rights typically continue indefinitely, *BNSF Railway Company—Temporary Trackage Rights Exemption—Union Pacific Railroad Company*, FD 35879 (Sub-No. 1) (STB served Feb. 23, 2015).

The Board's docket and handling of trackage-rights proposals during FY 2015 is summarized in the following table:

Table 2.4		
Trackage Rights, FY 2015		
Type		No.
Applications	Filed	0
	Granted	0
	Denied	0
	Dismissed	0
	Pending	0
Petitions for Exemption	Filed	0
	Granted	0
	Denied	0
	Dismissed	0
	Pending	0
Notices of Exemption	Filed	9
	Granted	8
	Denied	0
	Dismissed	0
	Pending	0

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.

CSX Transportation, Inc.—Joint Use—Louisville & Indiana Railroad, FD 35523 (STB served April 10, 2015). In this case, the Board granted approval for CSX and Louisville & Indiana Railroad Company, Inc. to jointly use a 106.5-mile railroad line pursuant to a perpetual, non-exclusive freight railroad operating easement granted to CSXT by L&I, subject to environmental conditions and standard employee protective conditions.

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 FY 2015, the Board's Office of Environmental Analysis (OEA) issued a Draft Environmental Impact Statement and held 10 public meetings in Montana 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.*, Docket No. FD 30186. This case was later dismissed during FY 2016, and no construction license was granted.

The STB's docket and handling of construction cases during FY 2015 are summarized in the following table:

Table 2.5		
Railroad Construction, FY 2015		
Type	No.	Miles
Applications		
Filed	0	0.0
Granted	0	0.0
Denied	0	0.0
Dismissed	0	0.0
Pending	0	0.0
Petitions for Exemption		
Filed	1	3.18
Granted	0	0.0
Denied	0	0.0
Dismissed	0	0.0
Pending	2	8.68
Notices of Exemption		
Filed	0	0.0
Granted	0	0.0
Denied	0	0.0
Dismissed	0	0.0
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 2015, the Board authorized approximately 861 miles of rail line for abandonment in 46 abandonment and exemption proceedings.

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.

The Board’s docket and processing of abandonment cases for FY 2015 are summarized in the table that follows:

Table 2.6 Abandonments, FY 2015		
Type	No.	Miles
Applications		
Filed	0	0.0
Granted	0	0
Denied	0	0.0
Dismissed	0	0.0
Dismissed - OFA Sale	0	0.0
Pending	0	0.0
Petitions for Exemption		
Filed	7	36.47
Granted	7	89.17
Denied	0	0.0
Dismissed	0	0.0
Dismissed - OFA Sale	0	0.0
Pending	3	83.24
Notices of Exemption		
Filed	40	774.11
Granted	39	772.82
Denied	1	0.3
Dismissed	0	0.0
Dismissed - OFA Sale	0	0.0
Pending	1	0.99

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.

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 2015:

Table 2.7							
Railbanking/Interim Trail Use, FY 2015 * **							
Requests		Grants		Denials		Pending	
No.	Miles	No.	No.	No.	Miles	No.	Miles
18	347.61	14	211.83	0	0.0	3	135.41

* Data in this table provide a snapshot of Board activity at the close of FY 2015. The “Grants,” “Denials,” and “Pending” totals include “Requests” filed in FY 2015, as well as requests filed in a prior fiscal year but disposed of in FY 2015. 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 2015, or earlier, that were not disposed of in FY 2015 and thus remain open for disposition in a later fiscal year.

** One withdrawn for 0.37 miles.

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 1,681 liens in FY 2015.

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 2014, the Board found four Class I railroads—BNSF, Grand Trunk Corporation, Norfolk Southern Combined Railroad Subsidiaries, 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.¹²

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. Summaries must contain specific information contained in 49 C.F.R. pt. 1313 and are available

¹² See *Railroad Revenue Adequacy—2014 Determination*, EP 552 (Sub-No. 18) (STB served Sept. 8, 2015) and “Appendix D: Railroad Financial and Statistical Data,” Table D.5, of this report. www.stb.dot.gov.

for public inspection at the agency's Tariff Library, by mail for a fee, and at the agency's website.

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 FY 2015, the Board held a hearing in June 2015 on *Rail Transportation of Grain, Rate Regulation Review*, Docket No. EP 665 (Sub-No. 1), to explore the issue of making the Board’s rate case process more accessible to grain shippers.

The Board also held a hearing in July 2015, which encompassed two proceedings: *Railroad Revenue Adequacy*, Docket No. 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*, Docket No. EP 664 (Sub-No. 2).

The Board had two major rate cases pending as of September 2015: *Total Petrochemicals & Refining USA, Inc. vs. CSX Transportation, Inc.*, Docket No. NOR 42121; and *Consumers Energy Company v. CSX Transportation, Inc.*, Docket No. NOR 42142. In addition, the Board was adjudicating two administrative appeals in *E.I. du Pont Nemours & Co. v. Norfolk Southern Railway Company*, Docket No. NOR 42125, and *Sunbelt Chlor Alkali Partnership v. Norfolk Southern Railway Company*, Docket No. NOR 42130.

As of September 2015, the Board also issued decisions in two other rate cases. *Western Fuels Association, Inc. v. BNSF Railway*, Docket No. NOR 42088, was before the Board on remand;

however, the Board granted a joint petition to vacate the rate prescription, dismiss the complaint with prejudice, and discontinue the proceeding.

In addition, in *Arizona Electric Power Cooperative, Inc. v. BNSF Railway*, Docket No. NOR 42113, the Board issued a decision clarifying how its previously-imposed rate prescription should be calculated. The uncertainty arose out of another Board proceeding in which it determined how the “acquisition premium” that was paid by Berkshire Hathaway Inc. (Berkshire) to purchase BNSF Railway Co. should be treated for accounting purposes. *Western Coal Traffic League—Petition for Declaratory Order*, Docket No. FD 35506. Based on the clarification set forth in the Board’s decision, it reinstated the rate prescription in this proceeding for the years 2009-2013. To allow the asset markup resulting from the Berkshire Hathaway acquisition of BNSF to be fully reflected in BNSF’s variable costs and the rate prescription, for 2014-2016, when each year’s financial data becomes available, the Board will prescribe the rate for that year. Once the asset markup is fully incorporated, the Board will reinstate the rate prescription for 2017-2018.

Rate Challenges: Discovery on Technical Issues

The Board held a technical conference in *Total Petrochemicals & Refining USA, Inc. vs. CSX Transportation, Inc.*, Docket No. NOR 42121 on May 27, 2015, for the parties to discuss with Board staff their operating plans and Rail Traffic Controller (RTC) model evidence.

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 the Three-Benchmark procedure is used. The maximum recovery was revised so that it is now unlimited for Simplified-SAC cases, and \$4 million for Three-Benchmark cases, indexed for inflation. See *Rate Regulation Reforms*, EP 715 (STB served July 18, 2013, Dec. 3, 2014).

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 provide alternative service by another railroad, switching operations for another railroad, or access to its terminal for another railroad. 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 2015 were the following Board decisions:

Colorado Wheat Administrative Committee v. V & S Railway, LLC, NOR 42140 (STB served May 7, 2015). In this case, the Board issued a preliminary injunction to prohibit V & S Railway from removing track on one of its line segments in Colorado while the Board considered a complaint filed by wheat shippers that said they were seeking to preserve the line for rail service.

Sherwin Alumina Company, LLC v. Union Pacific Railroad, NOR 42143 (STB served Sept. 29, 2015). In this case, the Board found that Union Pacific Railroad Company's denial of rail service to Sherwin Alumina Company, a shipper whose facility was subject to a picket line, did not violate the common carrier obligation. The Board found the railroad's explanation—that it was refusing to provide service because of concerns over the potential effect that crossing the picket line would have on its labor relations, as well as resulting effects—to be reasonable.

North American Freight Car Association v. Union Pacific Railroad, NOR 42119 (STB served March 12, 2015). Here, the Board found that three portions of Union Pacific Railroad Company's tariff, which involved a surcharge for a shipper's failure to remove lading residue from railcars, were not shown to be unreasonable practices. The Board, however, found that one

portion of the tariff, which assessed a surcharge for lading residue found after a car had left the customer's facility and begun moving in line-haul service, was shown to be unreasonable.

United States Rail Service Issues, EP 724 (STB served Oct. 14, 2014). In this phase of this proceeding, the Board directed Canadian Pacific Railway Company to answer specific questions to clarify ambiguities related to the railroad's efforts to resolve its service problems and respond to fall peak demand. In a separate decision in Docket No. EP 724, the Board directed BNSF Railway Company to submit a detailed description of the contingency plans the carrier would use to mitigate an acute coal inventory shortage at one or more generating stations in a region.

United States Rail Service Issues—Data Collection, EP 724 (Sub-No. 3) (STB served Oct. 8, 2014). In this phase of the proceeding, the Board required all Class I railroads to publicly file weekly data reports to promote industry-wide transparency, accountability, and improvements in rail service on a temporary basis.

United States Rail Service Issues—Performance Data Reporting, EP 724 (Sub-No. 4) (STB served Dec. 30, 2014). In this decision, the Board proposed a rule to require railroads to publicly file various weekly data reports pertaining to service performance on a permanent basis.

Board-Shipper Discussions

With the exception of discussions of matters pending before the Board, 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. During FY 2015, 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 July 13, 2015, as an aid to rail customers in their business planning and to enhance the Board's perspective on rail service, 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. As noted, the Board also issued an order requiring CP to provide additional detail regarding its plan for responding to the fall service demand.

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 in order to identify 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 2015, there were no significant cases in this area.

PREEMPTION

The Board is often called upon to address preemption questions under 49 U.S.C. § 10501(b). During FY 2015, the Board took action in this area in the following proceedings:

Fillmore & Western Freight Service, LLC—Emergency Petition for Declaratory Order, FD 35813 (STB served March 12, 2015). In this case, the Board denied a request that the Board issue an order finding that actions taken by the Ventura County Transportation Commission, the City of Santa Paula, Cal., and the Santa Paula Branch Line Advisory Committee interfered with the railroad operations of the Fillmore & Western Freight Service.

Peninsula Corridor Joint Powers Board—Petition for Declaratory Order, FD 35929 (STB served July 2, 2015). In this case, the Board concluded that 49 U.S.C. § 10501(b) does not preempt the application of the California Environmental Quality Act to the electrification of the Peninsula Corridor Joint Powers Board's rail line between San Jose and San Francisco, Cal.

Wichita Terminal Association—Petition for Declaratory Order, FD 35765 (STB served June 23, 2015). In this case, the Board held that the Kansas courts' orders requiring a railroad crossing in Wichita, Kan., are preempted by federal law.

Great Canadian Railtour Company Limited d/b/a Rocky Mountaineer—Petition for Exemption from 49 U.S.C. Subtitle IV, FD 35851 (STB served June 3, 2015). In this case, the Board found that it has jurisdiction over a passenger rail company that contracts with Amtrak to offer service between points in Canada and Washington State, but exempted that company from most of the Board's regulations.

California High-Speed Rail Authority—Petition for Declaratory Order, FD 35861 (STB served Dec. 12, 2014). In this case, the Board provided its views to the California courts to assist those courts in resolving preemption questions currently pending before them. The Board explained that 49 U.S.C. § 10501(b) does preempt the application of the California Environmental Quality

Act to the construction of a high-speed passenger rail line between Fresno and Bakersfield, Cal. Member Begeman dissented with a separate expression.

Soo Line Railroad—Petition for Declaratory Order, FD 35850 (STB served Dec. 23, 2014), where the Board found that Federal law preempts state and local permitting and preclearance requirements and other state and local laws that would prohibit or unreasonably burden or interfere with Canadian Pacific Railway Company’s track extension project at its St. Paul, Minn., yard.

CSX Transportation, Inc.—Petition for Declaratory Order, FD 35832 (STB served July 31, 2015), where the Board denied CSX Transportation, Inc.’s request to declare that pending civil claims against the railroad arising under Virginia state law are preempted, but the Board provided guidance on the question of preemption.

JGB Properties, LLC—Petition for Declaratory Order, FD 35817 (STB served May 22, 2015), where the Board found that a state court is not preempted from finding that a landowner unlawfully interfered with a permanent rail easement by removing track from its property.

SEA-3, Inc.—Pet. for Declaratory Order, FD 35853 (STB served March 17, 2015), where the Board denied a petition for declaratory order, explaining that the City of Portsmouth’s participation in zoning litigation over the expansion of a non-carrier facility was not preempted by federal law.

United States EPA—Petition for Declaratory Order, FD 35803 (STB served Dec. 30, 2014), where the Board declined to issue a declaratory order because of the many unresolved issues outside the scope of this proceeding, but provided guidance on issues of preemption as it applies to the proposed rules.

Pullman Sleeping Car Company—Petition for Exemption from 49 U.S.C. Subtitle IV, FD 35738 (STB served Feb. 5, 2015), where the Board found that it had jurisdiction over a company

providing sleeping car service, and dining and lounge facilities on passenger trains, but exempted that company from most of the Board's regulations.

Thomas Tubbs—Petition for Declaratory Order, FD 35792 (STB served Oct. 31, 2014), where the Board found that claims under Missouri state law for flooding and property damage allegedly caused by the improper design, construction, and maintenance of BNSF's rail line are preempted by federal law.

Diana Del Grosso—Petition for Declaratory Order, FD 35652 (STB served Dec. 5, 2014), where the Board found that federal preemption applies to certain operations conducted at a bulk transloading facility in the Town of Upton, Mass.

Pinelawn Cemetery—Petition for Declaratory Order, FD 35468 (STB served April 21, 2015), where the Board explained that a portion of a rail yard remains part of the national rail system even if it is used by a lessee that is not a rail carrier unless the Board authorizes removal from its jurisdiction, notwithstanding the owner's claim that the lease under which the rail property is operated had terminated.

ENVIRONMENTAL REVIEW

Overview

Under the National Environmental Policy Act of 1969 (NEPA),¹³ 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,¹⁴ regulations of the President's Council on Environmental Quality,¹⁵ and other applicable federal environmental requirements. Environmental reviews take into account all applicable federal environmental laws, including the Endangered Species Act,¹⁶ Coastal Zone Management Act,¹⁷ Clean Air

¹³ 42 U.S.C. §§ 4321-45.

¹⁴ 49 C.F.R. § 1105.

¹⁵ 40 C.F.R. §§ 1500-08.

¹⁶ 16 U.S.C. §§ 1531-44.

¹⁷ 16 U.S.C. §§ 1451-1466.

Act,¹⁸ Clean Water Act,¹⁹ National Historic Preservation Act (NHPA),²⁰ and pertinent hazardous- substance laws.

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.

¹⁸ 42 U.S.C. §§ 7401-7671.

¹⁹ 33 U.S.C. §§ 1251-1388.

²⁰ Cited 16 U.S.C. §§ 470(f) - 470x-6 during the period covered within this report, recodified as 54 U.S.C. § 300101 et seq. on December 19, 2014.

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 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 2015, OEA participated in ongoing environmental review for the California High-Speed Train System, in *California High-Speed Rail Authority—Construction Exemption—in Fresno, Kings, Tulare & Kern Counties, Cal.*, Docket No. FD 35724. OEA also participated as a cooperating agency with the California Department of Transportation (Caltrans) and the Los Angeles County Metropolitan Transportation Authority in the environmental review for the High Desert Corridor project in California, a proposed 63-mile multipurpose corridor between Los Angeles County and San Bernardino County.

OEA additionally:

- Issued a Final 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*, Docket No. FD 34075;
- Issued a Draft EIS and held 10 public meetings in Montana for the proposed construction and operation of a rail line from mines in the Otter Creek and Ashland,

Mont. area, in *Tongue River Railroad.—Rail Construction & Operation—in Custer, Powder River & Rosebud Counties., Mont.*, Docket No. 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*, Docket No. 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*, Docket No. FD 35095;
- Issued a Draft Scope of Study for the EIS and held scoping meetings 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 & Operate a Rail Line Extension to Port Canaveral, Fla.*, Docket No. FD 35852;
- Issued a Final 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.*, Docket No. 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.*, Docket No. FD 35802;
- Gathered and reviewed information to ensure the railroad’s compliance with three environmental conditions imposed by the Board in 2010, in *U S Rail Corp.—*

Construction & Operation Exemption—Brookhaven Rail Terminal, Docket No. FD 35141;

- Reopened the Section 106 process to develop a new programmatic agreement, in *Southwest Gulf Railroad Co.—Construction & Operation Exemption—in Medina County, Tex.*, Docket No. FD 34284; and
- Conducted environmental review for the proposed construction and operation of approximately 3.18 miles of track to serve an industrial park, in *Lone Star Railroad, Inc. & Southern Switching Co.—Track Construction & Operation Exemption—in Howard County, Tex.*, Docket No. FD 35874.

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 2015, OEA conducted approximately 40 EAs in connection with rail-line abandonments. Among its more significant actions, OEA:

- Began the Section 106 consultation process 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.*, Docket No. AB 167 (Sub-No. 1189X); and
- Conducted environmental and historic review involving complex issues associated with trails use, Section 106 of NHPA and Section 7 of the Endangered Species Act for an approximately 144-mile abandonment, in *Missouri Central Railroad Co.—Abandonment*

Exemption—in Cass, Pettis, Benton, Morgan, Miller, Cole, Osage, Maries, Gasconade, & Franklin Counties, Mo., Docket No. AB 1068 (Sub-No. 3X).

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.²¹

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 & Grand Trunk Corp.—Control—EJ&E West Co.*, Docket No. FD 35087.

During FY 2015, OEA also:

- Conducted ongoing oversight and monitoring to verify the 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*,

²¹ See 49 C.F.R. Part 1106.

Surface Transportation Board

Inc.—Acquisition of Operating Easement—Grand Trunk Western Railroad, Docket No. FD 35522; and

- Issued a Supplemental EA 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 & Indiana Railroad, Docket No. FD 35523.*

FINANCIAL CONDITION OF RAILROADS

The Board monitors the financial condition of railroads as part of its oversight of the rail industry. The agency prescribes a uniform accounting system²² for railroads to use for regulatory purposes. The Board requires Class I railroads to submit quarterly and annual reports containing financial and operating statistics, including employment and traffic data.²³

Based upon information submitted by carriers, the Board compiles and releases quarterly employment reports, as well as annual wage statistics of Class I railroads. Such information is available on the agency's website, at www.stb.dot.gov, and in Appendix A of this report.

The Board publishes "rail cost adjustment factor" (RCAF) indices each quarter to reflect changes in costs incurred by the rail industry.²⁴ 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).²⁵ Additionally, the Board publishes the RCAF-5 index that also reflects national average productivity changes; however, these productivity changes are calculated as if a five-year moving average had been applied consistently from the productivity adjustment's inception in 1989.²⁶

The operating margin and return on investment for the railroad industry are shown in the following graphs. Operating margin is the ratio of operating income to operating revenues; operating income is the net of operating revenues and operating expenses.

²² 49 U.S.C. §§ 11141-43, 11161-64, 1200-1201.

²³ 49 U.S.C. §§ 11145, 1241-1246, 1248.

²⁴ See Appendix A.

²⁵ 49 U.S.C. §§ 10708, 1135

²⁶ Productivity Adjustment—Implementation, 1 S.T.B. 739 (1996).

In an area of railroad operations concerning the matter of Positive Train Control (PTC, an automated system designed to prevent train-to-train collision and other accidents), the Board adopted final rules requiring railroads submitting to the Board's annual Form R-1 reports (financial and statistical reports by Class I carriers, the industry's largest), whose contents identify information on capital and operating expenditures for PTC, to separately report those expenses so that such expenses can be viewed both as components of, and separately from, other capital investments and expenses, in *Reporting Requirements for Positive Train Control Expenses and Investments*, EP 706 (STB served Aug. 14, 2013).

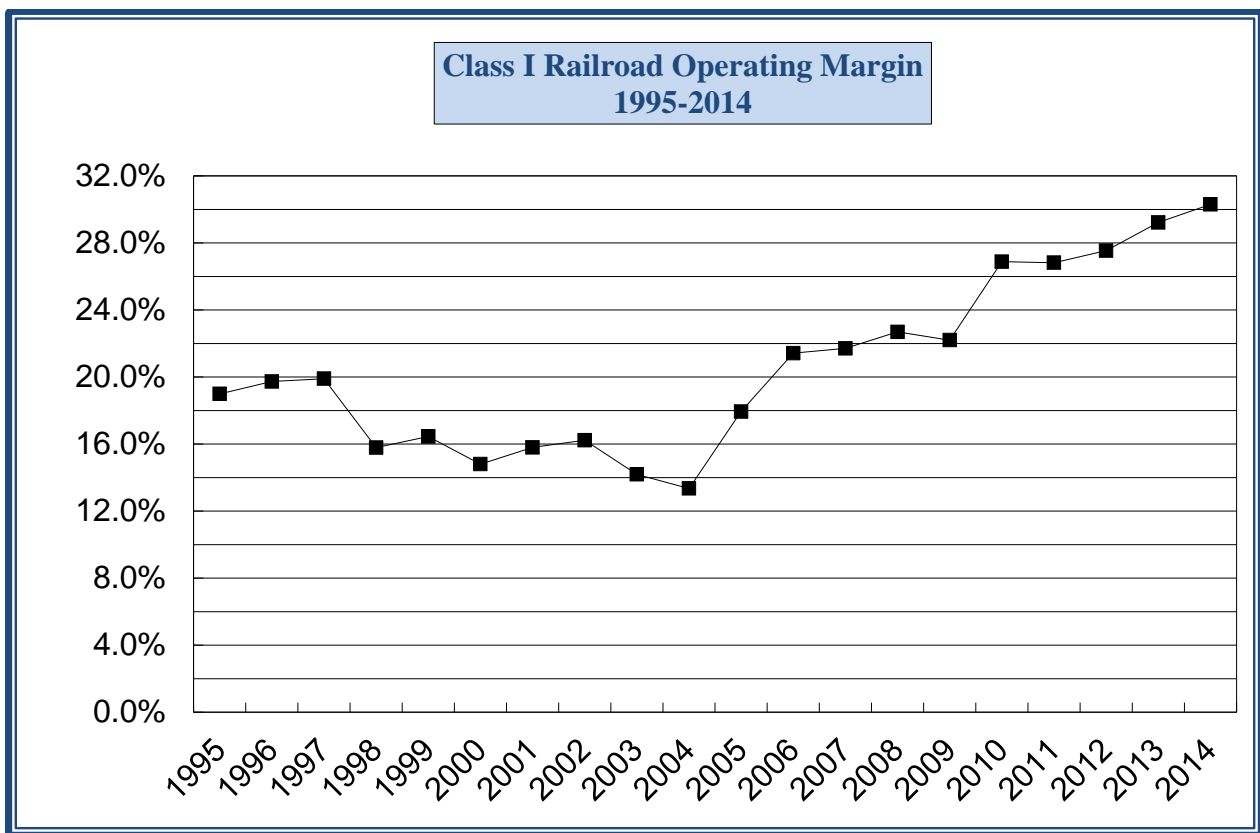


Figure 8.1 Class I Railroad Operating Margin

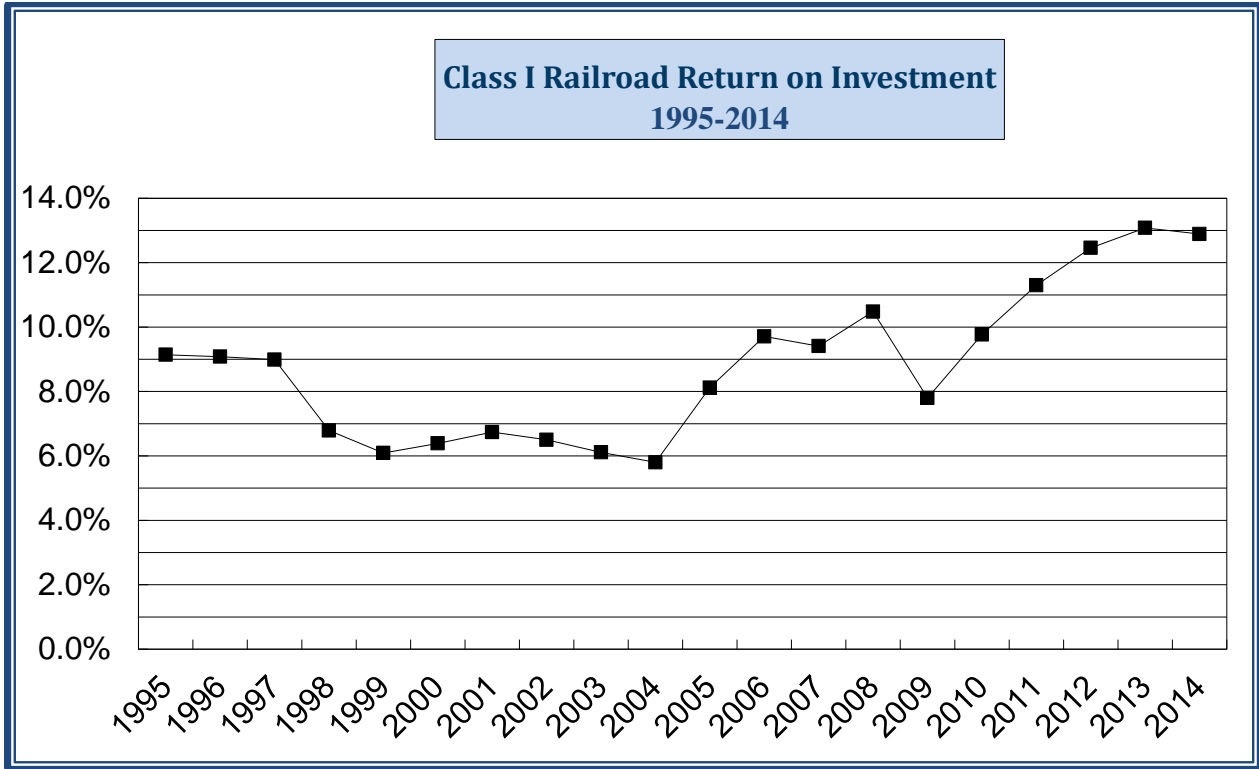


Figure 8.2 Class I Railroad Return on Investment

AMTRAK AND PASSENGER RAIL

The Board has limited, but significant, regulatory authority involving Amtrak, including authority to ensure that Amtrak may operate over other railroads' track, to 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.

Amtrak filed an application in 2013 asking the Board to establish terms and conditions governing Amtrak's use of CN rail lines and facilities. The agency initiated a proceeding titled *Application of the National Railroad Passenger Corp. Under 49 U.S.C. § 24308(a)—Canadian National Railway*, Docket No. FD 35743, to address the matter and subsequently adopted a procedural schedule. Thereafter, the Board extended the schedule at the parties' request several times to accommodate ongoing discovery (the production of documents and answers to questions posed by one party to another) and issued decisions resolving certain discovery disputes. In FY 2015, the Board continued to adjudicate the case, issuing further decisions regarding discovery disputes and adjusting the schedule accordingly. Pre-evidentiary discovery concluded in July 2015, and the parties submitted their opening evidence in September 2015. The case remained pending at the close of the fiscal year.

During an emergency, the Board may require a rail carrier to provide facilities, on terms prescribed by the Board, to enable Amtrak to conduct its operations. No such emergency routing orders were required in FY 2015. In a related matter, the Board in FY 2015 terminated the rulemaking proceeding in *Amtrak Emergency Routing Orders*, Docket No. EP 697. The Board concluded that the proposed rules (which were intended to provide a more formal process for Amtrak to seek, and the Board to issue, emergency routing orders) would not be feasible or practical. In lieu of the proposed rules, in a separate decision in *Appointment of Agent to Require Emergency Routing of Amtrak Passenger Trains*, Docket No. EP 697 (Sub-No. 1), the Board appointed the director of the Office of Public Assistance, Governmental Affairs, and Compliance

(or, in the director's absence, a deputy director of that office) as the Board's agent authorized to issue orders requiring a railroad immediately to make its tracks and facilities available to Amtrak for the operation of its passenger trains in emergencies.

The Board also has authority to direct commuter rail operations in the event of a cessation of service by Amtrak. Although the STB works with the FRA, Amtrak, and commuter and freight railroads to assess such contingencies, no instances arose during FY 2015 requiring the agency to take action in this area.

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 passenger rail. PRIIA authorizes the STB to institute enforcement or investigatory action under certain circumstances. Following investigatory action, the agency is to identify reasonable measures and make recommendations to improve Amtrak performance and/or service quality, and it can award damages and prescribe other relief in appropriate instances.

During FY 2015, the Board continued to implement its passenger rail responsibilities under PRIIA. STB staff monitored Amtrak performance through publicly available information, and responded to informal inquiries concerning Amtrak and PRIIA.

Pursuant to PRIIA Section 213, in January 2012, Amtrak filed a complaint against CN alleging substandard on-time performance of Amtrak routes that run over CN lines. The proceeding is titled *National Railroad Passenger Corporation—Section 213 Investigation of Substandard Performance on Rail Lines of Canadian National Railway Company*, Docket No. NOR 42134. At the parties' request, Board staff mediated this dispute over a six-month period between April and October 2012, but no settlement was reached. Thereafter, the case was reactivated and a procedural schedule established. In February 2013, at the request of the parties, the Board held the case in abeyance to facilitate settlement discussions. Thereafter, the Board, at the parties' request, extended the abeyance period several times, ultimately through July 31, 2014. During the abeyance period, the U.S. Court of Appeals for the District of Columbia Circuit in July 2013 invalidated PRIIA Section 207, which had authorized Amtrak and FRA to jointly establish

metrics and standards designed for use in investigations of Amtrak performance. *Association of American Railroads v. U.S. Department of Transportation*, 721 F.3d 666 (D.C. Cir. 2013). In December 2014, after the requested abeyance period ended without settlement, the Board concluded that the pending court litigation did not preclude the case before the Board from moving forward and sought the parties' comments on the meaning of "on-time performance" under PRIIA Section 213. *National Railroad Passenger Corporation—Section 213 Investigation of Substandard Performance on Rail Lines of Canadian National Railway Company*, NOR 42134 (STB served Dec. 19, 2014).²⁷ Member Begeman dissented with a separate expression. In January 2015, however, the Board suspended the filing of those comments in order to consider various pleadings filed in the meantime, including a petition to reconsider the December 2014 decision, motions to intervene, and a petition filed by the Association of American Railroads (AAR) in a separate docket asking the Board to establish a rulemaking on the meaning of "on-time performance" under PRIIA section 213.

Meanwhile, in November 2014, Amtrak filed a second on-time performance complaint under PRIIA Section 213, this one pertaining to Amtrak's Capitol Limited service on lines of CSX Transportation, Inc., and Norfolk Southern Railway Company between Chicago, Ill., and Washington, D.C. That case is titled *National Railroad Passenger Corp.—Investigation of Substandard Performance of the Capitol Ltd.*, Docket No. NOR 42141. On April 7, 2015, the Board granted CSXT's and NSR's requests that the Board refer the parties to mediation. The mediation period concluded on August 14, 2015, without settlement.

In March 2015, the U.S. Supreme Court vacated the Court of Appeals' 2013 decision invalidating PRIIA Section 207, holding that Amtrak is a governmental entity for the purposes of determining metrics and standards. However, the 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.

²⁷ In its December 2014 decision, the Board also granted Amtrak's Motion to Amend its complaint, narrowing the scope of the proceeding to a single route, on the Illini/Saluki.

In May 2015, in response to AAR's petition, the Board instituted a proceeding in *On-Time Performance Under Section 213 of the Passenger Rail Investment & Improvement Act of 2008*, Docket No. EP 726, to define "on-time performance" for purposes of PRIIA Section 213 cases.

At the end of FY 2015, the rulemaking proceeding in Docket No. EP 726 and the two PRIIA Section 213 cases before the Board in Docket Nos. NOR 42134 and NOR 42141 remained pending.

Following the end of FY 2015, on December 28, 2015, the Board issued a notice of proposed rulemaking in the on-time performance rulemaking in Docket No. EP 726. On the same day, the Board began a new proceeding titled *Policy Statement on Implementing Intercity Passenger Train On-Time Performance and Preference Provisions of 49 U.S.C. § 24308(c) and (f)*, Docket No. EP 728, in which it issued a proposed Policy Statement of guidance regarding issues that may arise and the evidence to be presented in PRIIA Section 213 cases and requested public comment. In light of the proceedings in Docket Nos. EP 726 and EP 728, the Board also on December 28, 2015, formally held in abeyance the two pending Section 213 on-time performance cases in Docket Nos. NOR 42134 and NOR 42141.

Under certain circumstances, the Board may be called upon to set terms for access to Amtrak equipment, service, and facilities by non-Amtrak passenger railroads, and, upon request, the STB provides mediation services to assist dispute resolution regarding commuter-rail access to freight-rail services and facilities. No instances arose during FY 2015 requiring agency action in these areas.

Section 209 of PRIIA requires Amtrak, in consultation with the Secretary of Transportation and the relevant states, to establish a standardized, nationwide methodology for allocating operational and capital costs among Amtrak and the relevant states for certain state-subsidized intercity passenger rail services. The statute provides that if Amtrak and the relevant states do not voluntarily adopt such a methodology, the Board shall do so. As most, but not all, of the affected states reached agreement with Amtrak on a methodology, Amtrak in 2011 petitioned the Board to determine that the proposed methodology is the appropriate methodology under PRIIA.

The Board did so, finding the proposed methodology met the requirements of PRIIA Section 209(a). *See Amtrak’s Pet. for Determination of PRIIA Section 209 Cost Methodology*, FD 35571 (STB served Mar. 15, 2012). Thereafter, as Amtrak and the affected states implemented the approved methodology by means of a jointly-developed Policy, issues emerged over time requiring clarification or modification of the Policy. To foster consensual resolution of those issues, in 2014 the Board engaged the Federal Mediation and Conciliation Service (FMCS) to organize and facilitate focused discussions involving Amtrak and the affected states. In June 2015, the parties, with the assistance of the Board-sponsored FMCS facilitation team, reached agreement on the creation of a committee structure including Amtrak, the Federal Railroad Administration, and the affected states, to negotiate and resolve ongoing cost allocation issues. Since then, that committee, with the continuing support of FMCS under Board auspices, has made substantial progress toward reaching agreement among the parties on various specific cost-allocation topics.

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.”²⁸ Excluded from this jurisdiction, however, is “mass transportation provided by a local government authority.”²⁹ During FY 2015, the Board considered, and issued decisions in, the following cases involving issues regarding the Board’s jurisdiction over passenger rail:

In *Pullman Sleeping Car Co.—Petition for Exemption from 49 U.S.C. Subtitle IV*, Docket No. FD 35738, the Pullman Sleeping Car Company, which provides dining, lounge, and sleeping car service for passengers traveling between Chicago, Ill., and New Orleans, La., by attaching its passenger rail cars to regularly scheduled Amtrak trains, sought a finding from the Board that its service is not subject to the Board’s regulatory oversight. By decision served on February 5, 2015, the Board found that the service Pullman offers is subject to the Board’s jurisdiction but concluded that it is reasonable to exempt this service from most of Subtitle IV.

²⁸ 49 U.S.C. § 10501(a)(2)(A).

²⁹ 49 U.S.C. § 10501(c)(2)(A).

Similarly, the Board found that it had jurisdiction over a passenger rail company that contracts with Amtrak to offer luxury passenger service between points in the Canadian Rockies and Washington State. As in the *Pullman* case, the Board exempted that company, Great Canadian Railtour Co., from most of the Board's regulations, finding that regulation was not necessary to carry out the rail transportation policy of the Board's statute. *Great Can. Railtour Co.—Pet. for Exemption from 49 U.S.C. Subtitle IV, FD 35851* (STB served June 3, 2015).

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 2015 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 2015, there was no new 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 2015, 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 2015, the Board issued the following decisions:

- *Ace Express Coaches, LLC Et Al. – Acquisition and Control – Certain Properties of Evergreen Trails, Inc. D/B/A Horizon Coach Lines*, MCF 21062 (STB served Aug. 14, 2015)
- *Prisoner Transportation Services, LLC – Control – PTS of America, LLC D/B/A PTS and Brevard Extraditions, Inc. D/B/A U.S. Prisoner Transport*, MCF 21064 (STB served July 24, 2015)
- *Academy Bus, LLC – Acquisition of the Properties of Evergreen Trails Inc. D/B/A Horizon Coach Lines*, MCF 21060 (STB served May 29, 2015 and March 5, 2015)
- *Academy Express, LLC – Acquisition of the Properties of Go Bus LLC and Its Affiliate, MCIZ Corp.*, MCF 21059 (STB served Feb. 17, 2015)
- *Averitt Express, Inc., DATS Trucking, Inc., Lakeville Motor Express, Inc., Land Air Express of New England, Pitt Ohio Express, LLC, Canadian Freightways, and Epic Express – Pooling Agreement*, MCF 21023 (STB served Feb. 12, 2015)

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. No instances arose during FY 2015 requiring agency action in this area.

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 2015, 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 2015, and had no activity in this area during FY 2015.

OTHER BOARD ORDERS

Beginning December 15, 2011, the Board implemented a grant-stamp procedure³⁰ 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 2015.



Figure 13.1 Grant Stamp, FY 2015

³⁰ Per *Policy Statement on Grant Stamp Procedure in Routine Director Orders*, EP 709 (STB served Nov. 14, 2011).

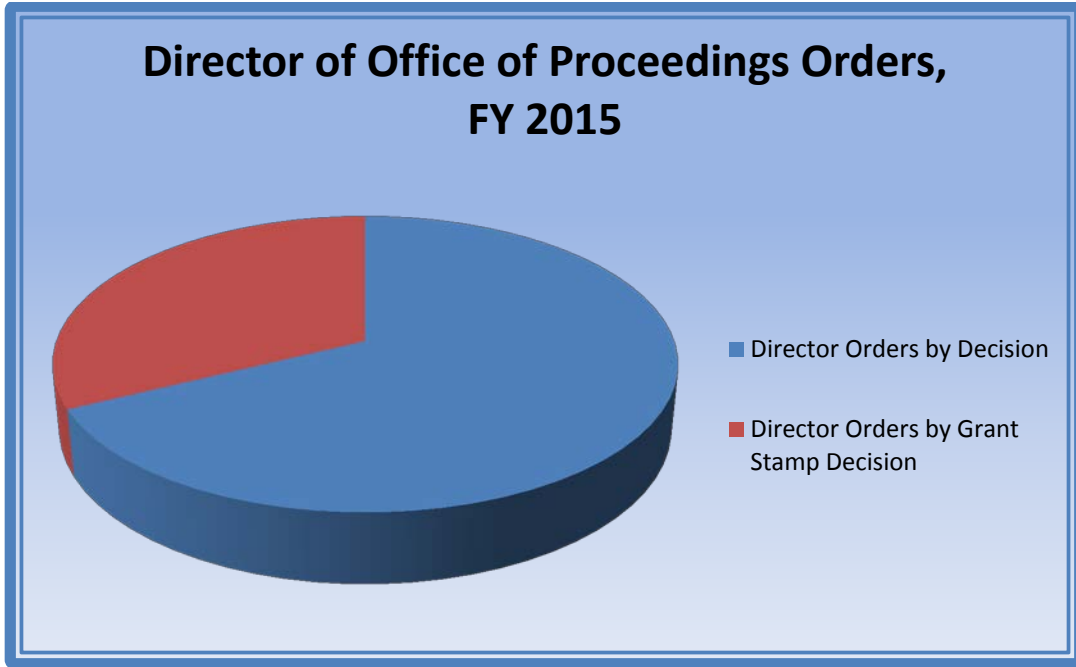


Figure 13.2 Director of Office of Proceedings Orders, FY 2015

Of the 406 Director Order decisions made during the fiscal year 2015, 131 (or approximately 32%) 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 2015.

In *CSX Transportation, Inc. v. STB*, 774 F.3d 25 (D.C. Cir. 2014), CSX sought review of two Board orders finding that the railroad has market dominance over certain transportation routes and, therefore, that the Board has jurisdiction to determine the reasonableness of certain rates charged to Total Petrochemicals & Refining USA, Inc. (TPI). In court, in addition to defending the merits of its decision, the Board argued that CSX's appeal should be dismissed because the Board's decisions are not appealable "final orders" under the Hobbs Act, the statute governing judicial review of STB decisions. After denying CSX's request for a stay of the Board's decisions, the court held oral argument and, on December 16, 2014, the Court issued its decision agreeing with the Board that CSX's appeal must be dismissed because the Board's market dominance decisions are not appealable final orders.

In *Rail-Term Corp. v. STB*, D.C. Cir. No. 15-1033, 2015 U.S. App. LEXIS 11786 (Jul. 8, 2015), the United States Court of Appeals dismissed a petition for review of the Board's decision in *Rail-Term Corp.—Petition for Declaratory Order*, FD 35582 (STB served Dec. 30, 2014). That decision denied a petition seeking reconsideration, on grounds of material error, of the STB's earlier decision finding that Rail-Term Corporation, a provider of dispatching services, is a rail carrier under 49 U.S.C. § 10102(5). Following Supreme Court precedent, the court found that it lacked jurisdiction to hear an appeal of an STB decision denying reconsideration solely on grounds of material error. Rail-Term Corporation's petition for a writ of certiorari is pending before the Supreme Court of the United States.

In *Dep't of Transp., et al. v. Ass'n of Am. Railroads*, 135 S. Ct. 1225 (2015), the Supreme Court vacated a ruling of the United States Court of Appeals for the District of Columbia Circuit

concerning Section 207 of the Passenger Rail Investment and Improvement Act of 2008 (PRIIA). Based on its determination that Amtrak is not a governmental entity, the D.C. Circuit had held that, by delegating to Amtrak a portion of the responsibility for developing “metrics and standards” for passenger rail performance, Section 207 effected an unconstitutional delegation of legislative authority to a private business. *Ass’n of Am. R.R.s. v. DOT*, 721 F.3d 666 (D.C. Cir. 2013). The Supreme Court concluded that Amtrak is indeed “a governmental entity” (rather than a private corporation) for purposes of determining the validity of PRIIA Section 207. In remanding the case, however, the Court did not direct the D.C. Circuit to uphold the metrics and standards developed under PRIIA, but rather ordered the lower court to consider various remaining questions regarding the constitutionality of PRIIA Section 207. The STB is not a direct party to this case, but it is a key party in implementing Section 207, and so it has worked with counsel for the United States in an advisory capacity.

In *Riffin v. STB*, Nos. 14-4839 and 15-1302, slip ops. at 2 (3rd Cir. May 11, 2015), and *In re: James Riffin*, No. 15-1615, slip op. at 1 (3rd Cir. May 11, 2015), the United States Court of Appeals for the Third Circuit dismissed two petitions for review filed by James Riffin challenging Board orders accepting Norfolk Southern Railway Company’s application seeking to acquire from Delaware and Hudson Railway Company approximately 283 miles of rail line in New York and Pennsylvania. In three separate decisions, the court concluded that it lacked jurisdiction to review the Board’s decisions because those decisions were not “final” orders.

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 Rail Customer and Public Assistance office, at (866) 254-1792, or by emailing STB.Library@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 <http://www.gpo.gov/>; by calling the GPO, at (866) 512-1800 or (202) 512-1800; or by writing to the following address:

**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

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 (888) 728-7677, 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) is a valuable resource for current and historical agency information, including the following:

- Agency decisions and notices served on or after Jan. 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.
- 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 Rail Customer and Public Assistance office, at (866) 254-1792, or by emailing RCPA@stb.dot.gov.

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 (202) 245-0234.

Financial and Statistical Reports from Class I Railroads

The following reports, submitted to the Board by Class I railroads are available on the Board's website, and may be examined, by appointment with the agency's Rail Customer and Public Assistance office, at (866) 254-1792, between the hours of 10:00 A.M. to 3:00 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.

Annual Reports (Form R-1s) of Class I Railroads—report of annual financial and operating statistics (submitted annually; 1996 to present).

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; 2011 to present).

Report of Freight Commodity Statistics (Form QCS)—report of carloads, tonnage, and gross revenue for each commodity group (submitted quarterly; 2006 to present).

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

Revenue, Expenses, and Income Report (Form RE&I)—report of quarterly operating revenues, expenses, and income (submitted quarterly; 2011 to present).

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; 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; 2011 to present).

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, total quarterly revenue from

fuel surcharges for all traffic, and revenue from fuel surcharges on 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) (submitted quarterly; 4th quarter 2007 to present).

Periodic Financial Decisions and Notices Issued by the STB

The following periodic financial decisions and notices are available to the public on the Board's website. These documents are also available, for a copying charge, through the Board's records staff, at (202) 245-0405.

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 Standard Transportation Commodity Code (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 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. Unless otherwise indicated, hardcopies of these documents are also available, for a fee, through the Rail Customer and Public Assistance office, at (866) 254-1792, or by emailing RCPA@stb.dot.gov.

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 Rate Studies—study of trends in average annual rail rates, based on data of select commodity groups obtained from the annual waybill files.

Report of Railroad Employment—Class I Line-Haul Railroads (Form C)—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, 1996 inception through the fiscal year ended Sept. 30, 2013.

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 A-300)—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) 245-0333.

Uniform Railroad Costing System (URCS) Phase III Railroad Cost 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 Railroad Cost 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*.

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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 2008 to 2015 for activities included under the current appropriation title “Salaries and Expenses.”

Table B.1 Average FTE Employment and Appropriations FY 2008 – 2015 ¹			
Fiscal Year	Appropriation	STB Offset ²	Average Employment
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
2015	30,125,000	1,250,000	137

¹ 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).

² 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 2008- 2015 *		
Status of FY 2008 Appropriations*		
	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
Status of FY 2009 Appropriations*		
	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
Status of FY 2010 Appropriations*		
	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
Status of FY 2011 Appropriations*		
	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

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Status of FY 2012 Appropriations*		
	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
Status of FY 2013 Appropriations*		
	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
Status of FY 2014 Appropriations*		
	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
Status of FY 2015 Appropriations*		
	Total appropriations (adjusted)	30,789,727
	Offsetting collections (<i>see note</i>)	585,273
	Reimbursements from other agencies	0
	Total obligations	30,703,765
	Unobligated balance available for adjustments	85,962
	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.

NOTE: FY 2008-2015 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 2015

<p style="text-align: center;">Table C.1 FY 2015 Caseload Rail Matters</p>					
Category	Pending at Start	Received During	Decided During	Pending at End	Decisions Served
Carrier Consolidations	5	18	21	2	28
Review of Labor Arbitral Decisions	1	0	1	0	1
Rates and Services	8	9	9	8	56
Rate Reasonableness	8	6	7	7	46
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	0	0	0	0	0
Discrimination	0	0	0	0	0
Car Supply and Interchange	0	2	2	0	2
Service Orders	0	0	0	0	0
Competitive Access	0	1	0	1	8
Constructions	14	1	8	7	19
Line Crossing	2	0	1	1	1
Constructions	12	1	7	6	18
Abandonments	16	105	107	14	277

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Table C.1 FY 2015 Caseload Rail Matters (cont'd)					
Category	Pending at Start	Received During	Decided During	Pending at End	Decisions Served
Other Line Transactions	20	62	78	4	140
Line Consolidations	8	14	19	3	48
Line Acquisitions under 49 U.S.C. 10901	4	20	23	1	43
Line Acquisitions by Shortline	3	25	28	0	35
Feeder Line Development	0	0	0	0	0
Acquisition and Operation under 49 U.S.C. 10502	5	3	8	0	14
Collective Actions	1	0	1	0	1
Collective Ratemaking	0	0	0	0	0
Pooling	1	0	1	0	1
Data Collection and Oversight	0	5	5	0	5
RCAF	0	5	5	0	5
Accounting and Records	0	0	0	0	0
Reports – Rail	0	0	0	0	0
Passenger Rail	3	1	1	3	11
Amtrak Track Use/ Compensation	2	1	1	2	9
Passenger Rail – Other	1	0	0	1	2
Exemption Rulemakings	8	2	2	8	18
Other Rail	2	0	2	0	6
Common Carrier Obligation	1	0	1	0	2
Interlocking Officer or Director	0	0	0	0	0
Other	1	0	1	0	4
Total Rail	78	203	235	46	562

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Table C.2 FY 2015 Caseload Nonrail Matters					
Category	Pending at Start	Received During	Decided During	Pending at End	Decisions Served
Motor	0	0	0	0	0
Rate Reasonableness	0	0	0	0	0
Joint Motor-Water Rates in Non-contiguous Domestic Trade	0	0	0	0	0
Collectively Set Trucking Rates	0	0	0	0	0
Household Goods	0	0	0	0	0
Collective Actions	0	0	0	0	0
Collective Ratemaking Agreements	0	0	0	0	0
Truck Pooling	0	0	0	0	0
Undercharges	0	0	0	0	0
Bus Regulation	1	6	7	0	10
Through-Route Regulation	0	0	0	0	0
Mergers	1	5	6	0	9
Bus Pooling	0	1	1	0	1
Other Motor	0	0	0	0	0
Water	0	0	0	0	0
Port-to-Port Water Rates	0	0	0	0	0
Other	0	0	0	0	0
Pipeline	0	0	0	0	0
Rate Regulation	0	0	0	0	0
Other	0	0	0	0	0
Other	8	8	6	10	38
Total Nonrail	9	14	13	10	48
Total Rail and Nonrail	87	217	248	56	610

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, 2015	
<i>Carriers Subject to the Uniform System of Accounts and/or Required to File Annual and Periodic Reports^a</i>	
Railroads, Class I	7
<i>Railroads Not Required to File Reports</i>	
Railroads, Regional	
Railroads, Local	

^a AAR’s *Railroad Facts, 2015 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, 2015 Edition, p. 3*. did not have updated 2014 numbers 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 2009 are listed in Vol. 78 No. 67 Fed. Reg. 21007 (2013).

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**Table D.2
Table D. 2 Railroad Revenue Thresholds**

Year	Factor	Class I	Class II
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
2014	0.5255	475,754,803	38,060,384

**Table D.3
Class I Railroads: Condensed Income Statement, Financial Ratios, and
Employee Data, 2011-2014
(Dollars in Thousands)**

	Calendar Year			
	2011	2012	2013	2014
1. Class I Carriers	7	7	7	7
CONDENSED INCOME STATEMENT				
2. Total operating revenues	\$67,366,882	\$69,887,072	\$72,873,269	\$77,658,866
3. Total operating expenses	49,296,647	50,641,286	51,582,531	54,129,064
4. Net railway operating income	11,758,962	12,199,092	13,559,750	14,889,933
5. Net income ^a	11,039,469	12,483,243	13,396,923	14,403,212
6. Dividends Paid	3,620,735	4,763,696	4,497,750	3,482,565
NET INVESTMENT AND EQUITY				
7. Net investment, transp. prop. & eqpmt ^b	104,096,191	100,197,089	105,870,413	113,679,403
8. Shareholders' equity	101,497,991	84,083,414	99,026,878	112,060,764
FINANCIAL RATIOS (PERCENT)				
9. Operating ratio (L3/L2)	73.18%	72.46%	70.78%	69.70%
10. Return on net investment (L4/L7)	11.30%	12.18%	12.81%	13.10%
11. Return on equity (L5/L8)	10.88%	14.85%	13.53%	12.85%
EMPLOYEE DATA				
12. Average number of employees	158,623	163,464	162,798	166,625
13. Compensation	12,149,882	12,643,207	13,072,880	14,733,720

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

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).

Table D. 4				
Class I Railroads: Selected Balance Sheet Data as of December 31				
2011-2014				
<i>(Dollars in Thousands)</i>				
	Calendar Year			
	2011	2012	2013	2014
1. Total current assets	\$18,933,200	\$23,031,289	\$21,133,864	\$24,153,702
2. Total current liabilities	17,051,606	19,827,532	16,318,500	18,233,269
3. Transportation property				
Road	151,067,760	152,843,970	160,600,659	168,665,380
Equipment	35,276,050	41,134,185	43,019,991	46,510,823
Other	3,401,801	3,112,362	3,432,195	4,474,258
Less accumulated depreciation and amortization	38,763,465	52,703,363	52,965,373	53,992,840
Net transportation property	150,982,146	144,387,154	154,087,472	165,657,621
4. Long-term debt (due after 1 yr)	15,680,996	16,417,018	17,018,470	17,846,535
5. Shareholders' equity				
Capital stock (par value)	405,640	558,866	558,789	405,486
Additional capital (above par)	62,061,009	25,581,637	34,321,654	43,795,989
Retained earnings	39,035,129	57,946,698	64,150,222	67,863,076
Less treasury stock	3,787	3,787	3,787	3,787
Net shareholders' equity	101,497,991	84,083,414	99,026,878	112,060,764

Table D.5
Railroad Cost of Capital, Percentage Return on Investment (ROI),
Revenue Adequacy Status
2011-2014 ^a

	Calendar Year			
	2011 ^b	2012 ^c	2013 ^d	2014 ^e
Cost of Capital	11.57	11.12	11.32	10.65
ROIs of Class I Railroads				
BNSF Railway Company	9.86	13.47	14.01	12.88
CSX Transportation, Inc.	11.54	10.64	10.00	10.18
Grand Trunk Corp (including U.S. affiliates of Canadian National Railway)	8.74	10.19	11.84	11.30
Kansas City Southern Railway Company	10.76	9.54	8.67	8.18
Norfolk Southern Combined Railroad Subsidiaries	12.87	11.48	12.07	11.69
Soo Line Corp (including U.S. affiliates of Canadian Pacific Railway)	7.13	5.15	12.03	-0.42
Union Pacific Railroad Company	13.11	14.69	15.39	17.35

^a 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.

^b 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).

^c 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).

^d 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).

^e Cost of Capital for 2014 was determined in EP 558 (Sub-No. 18);
 Revenue Adequacy for 2014 was determined in EP 552 (Sub-No. 19).

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, 2015

Docket No	Case Name	Commodity	Guideline Used *	Date Decision Served	Decision
41191	West Texas v. BNSF	Coal	SAC	5/3/1996	Rates Unreasonable
37809	McCarty Farms v. BN	Grain	SAC	8/20/1997	Rates Reasonable
41185	APS v. ATSF	Coal	SAC	4/17/1998	Rates Unreasonable
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	Rates Unreasonable
42038	MN Power v. DMIR	Coal	Stipulated R/VC	1/5/2001	Settlement
42051	WPL v. UP	Coal	SAC	5/14/2002	Rates Unreasonable
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	Rates Unreasonable
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	Rates Unreasonable
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	Rates Unreasonable
42088	Western Fuels v. BNSF	Coal	SAC	2/18/2009	Rates Unreasonable
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
42111	Oklahoma Gas v. UP	Coal	Stipulated R/VC	7/23/2009	Rates Unreasonable

Table E.1
Railroad Rate Cases at the STB
 1996 through Sept. 30, 2015

Docket No	Case Name	Commodity	Guideline Used *	Date Decision Served	Decision
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	Rates Unreasonable
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	Rates Unreasonable
42132	Canexus v. BNSF	Chemical	Three-Benchmark	7/23/2012	Settlement
42127	IPA v. UP	Coal	SAC	11/2/2012	Withdrawn
42123	M&G Polymers v. CSXT	Chemicals	SAC	1/7/2013	Settlement
42125	DuPont v. NS	Chemicals	SAC	3/24/2014	Rates Reasonable
42130	SunBelt v. NS	Chemicals	SAC	6/20/2014	No Rate Prescribed ³¹
42136	IPA v. UP	Coal	SAC	10/8/2014	Settlement
42088	Western Fuels v. BNSF	Coal	SAC	6/15/2015	Settlement

Rail Rate Cases Pending at the STB as of Sept. 30, 2015

42121	TPI v. CSXT	Chemicals	SAC
42125	DuPont v. NS (reconsideration)	Chemicals	SAC
42130	SunBelt v. NS (reconsideration)	Chemicals	SAC
42142	Consumers v. CSXT	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.

During the 7-year period FY 2009-2015, 23 Board decisions were served: 15 were resolved through a settlement agreement between the parties; four found the rates unreasonable; two found the rates to be reasonable; one case had no rate prescription; and one case was withdrawn.

³¹ 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.

APPENDIX F: SURFACE TRANSPORTATION BOARD MEMBERS

Table F.1				
Table F.1 Surface Transportation Board Members				
Name	State	Party	Oath of Office	End of Service ²
SIMMONS, J.J. III	Okla.	Democrat	Jan. 1, 1996	Dec 31, 1996
OWEN, Gus A.	Calif.	Republican	Jan. 1, 1996	Dec 31, 1998
MORGAN, Linda J. ³	Md.	Democrat	Jan 1, 1996	May 15, 2003
CLYBURN, William Jr.	S.C.	Democrat	Dec 21, 1998	Dec 31, 2001
BURKES, Wayne O.	Miss.	Republican	Feb 25, 1999	Mar 20, 2003
NOBER, Roger ⁴	Md.	Republican	Nov 26, 2002	Jan 4, 2006
BUTTREY, W. Douglas ⁵	Tenn.	Republican	May 28, 2004	Mar 13, 2009
MULVEY, Francis P. ⁶	Md.	Democrat	Jun 2, 2004	Dec. 31, 2013
NOTTINGHAM, Charles D. ⁷	D.C.	Republican	Aug 14, 2006	Mar 18, 2011
ELLIOTT, Daniel R. III ⁸	Ohio	Democrat	Aug 13, 2009	Term ends 2018
BEGEMAN, Ann D. ⁹	Va.	Republican	May 2, 2011	Holdover Term ends 2016
MILLER, Deb ¹⁰	Kans.	Democrat	Apr 28, 2014	Term ends 2017

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

² A Member is appointed to a five-year term of office ending on December 31st 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.

³ 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.

⁴ Chairman Nov. 26, 2002, to Jan. 4, 2006.

⁵ Chairman Jan. 5, 2006, to Aug. 14, 2006.

⁶ Acting Chairman March 12 to Aug. 13, 2009.

⁷ Chairman Aug. 14, 2006, to March 12, 2009.

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

⁹ 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).

¹⁰ 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).