



**Surface Transportation Board
FY 2007 - 2008 Report**

Surface Transportation Board
Washington, DC 20423

September 1, 2009

To the Congress of the United States:

It is my pleasure to submit this report covering the Surface Transportation Board's activities from October 1, 2006, through September 30, 2008. The report follows the format of previous years with a statement of appropriations and aggregate expenditures for Fiscal Years 2007 through 2008 appearing in Appendix B.

The Board's membership has changed since the time period covered in this report. Former Chairman Charles D. Nottingham now serves as the Board's Vice Chairman. Former Acting Chairman Francis P. Mulvey now serves as the agency's third Member.

I will ensure timely submission of all future reports.

Sincerely,

Daniel R. Elliott III
Chairman

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Editorial Notes

Acronyms and Abbreviations

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

AAR	Association of American Railroads
Amtrak	National Railroad Passenger Corporation
ANPR	advance notice of proposed rulemaking
BNSF	The Burlington Northern and Santa Fe Railway Company
CBS	Condensed Balance Sheet Report for Class I Railroads
CFR	Code of Federal Regulations
CMP	constrained market pricing
CITU	Certificate of Interim Trail Use
Conrail	Consolidated Rail Corporation
CSX	CSX Transportation, Inc.
DM&E	Dakota, Minnesota & Eastern Railroad Corporation
DOT	Department of Transportation
EA	Environmental Assessment
EIS	Environmental Impact Statement
F.3d	Federal Reporter, Third Series
FMCSA	Federal Motor Carrier Safety Administration
FRA	Federal Railroad Administration
FY	fiscal year
IC&E	Iowa, Chicago & Eastern Railroad Corporation
ICC	Interstate Commerce Commission
ICCTA	ICC Termination Act of 1995
NGCC	National Grain Car Council
NITU	Notice of Interim Trail Use
NS	Norfolk Southern Railway Company

OEEAA	Office of Economics, Environmental Analysis, and Administration)
OFA	offer of financial assistance
OPAGAC	Office of Public Assistance, Governmental Affairs, and Compliance
PRB	Powder River Basin, Wyoming
RCAF	rail cost adjustment factor
RPCA	Rail Customer and Public Assistance Program
RE&I	Revenue, Expenses, and Income Report
RSTAC	Railroad-Shipper Transportation Advisory Council
SAC	stand-alone cost
SEA	Section of Environmental Analysis
STB	Surface Transportation Board
S.T.B.	Surface Transportation Board Reports
Tex Mex	Texas Mexican Railway Company
UP	Union Pacific Railroad Company
URCS	Uniform Rail Costing System
U.S.C.	United States Code

SURFACE TRANSPORTATION BOARD

OVERVIEW

The Surface Transportation Board is a bipartisan, decisionally-independent adjudicatory body organizationally housed within the U.S. Department of Transportation. The STB was established in 1995 to assume some of the regulatory functions that had been administered by the Interstate Commerce Commission when the ICC was abolished. Other ICC regulatory functions were either eliminated or transferred to the Federal Motor Carrier Safety Administration or to the Bureau of Transportation Statistics within DOT. For details on the Board's regulations and governing statutes, see Appendix A.

The STB has broad economic regulatory oversight of railroads, including rates, service, the construction, acquisition and abandonment of rail lines, carrier mergers and interchange of traffic among carriers.¹

The STB also has certain oversight of pipeline carriers, intercity bus carriers, moving van companies, trucking companies involved in collective activities and water carriers engaged in non-contiguous domestic trade.² The Board has wide discretion to tailor its regulatory activities to meet the nation's changing transportation needs.³

Performance and Policy Goals

The Board provides an efficient and effective forum for the resolution of surface-transportation disputes and other matters within its jurisdiction. While the Board uses its exemption authority to limit or remove regulatory requirements where appropriate, it is dedicated to vigilant oversight and to rendering fair and timely decisions when regulation is required. The Board promotes private-sector negotiations and resolutions where possible and appropriate, and facilitates market-based transactions that are in the public interest. In all of its official decisions, the

¹ 49 U.S.C. 10101-11908

² 49 U.S.C. 13101-14914, 49 U.S.C. 15101-16106

agency is committed to advancing the national transportation policy goals expressed by Congress.⁴

Organizational Structure

The Board is comprised of three members nominated by the President and confirmed by the Senate for five-year terms. The Board's chairman is designated by the President from among the members.⁵ As its chief executive, the chairman coordinates and organizes the agency's work and acts as its representative in legislative matters and in relations with other governmental bodies.

The vice chairman represents the Board and assumes the chairman's duties as appropriate. Additionally, the vice chairman oversees matters involving the admission, discipline, and disbarment of non-attorney Board practitioners.⁶

Assisting the Board in carrying out its responsibilities is a staff of 150 with experience in economics, law, accounting, transportation analysis, finance and administration.

The **Office of Public Assistance, Governmental Affairs, and Compliance** was formed in April 2008 and combined the functions of what were the Board's Office of Congressional and Public Services and Office of Compliance and Enforcement. OPAGAC serves as the agency's principal point of contact with Congress, state and local governments, the media, industry stakeholders and the general public.

³ 49 U.S.C. 10502 (railroads), 13541 (motor carrier and ocean transportation), and 15302 (pipelines)

⁴ 49 U.S.C. 10101 (rail) and 13101 (motor and water)

⁵ 49 U.S.C. 701

⁶ Persons meeting specific standards, passing an examination, and taking an oath to comply with agency requirements and procedures to practice before the agency

OVERVIEW

This office now includes the Rail Customer and Public Assistance Program, where Board staff solves problems in ways ranging from a simple answer to a telephone inquiry to lengthy informal dispute resolution efforts between railroads and shippers. The program staff, including attorneys and former employees of shippers and railroads, bring to the table decades of experience in rail shipping, operations, marketing, analysis, tariffs and rates in seeking common ground and for the settlement of complaints, allowing both sides to walk away satisfied.

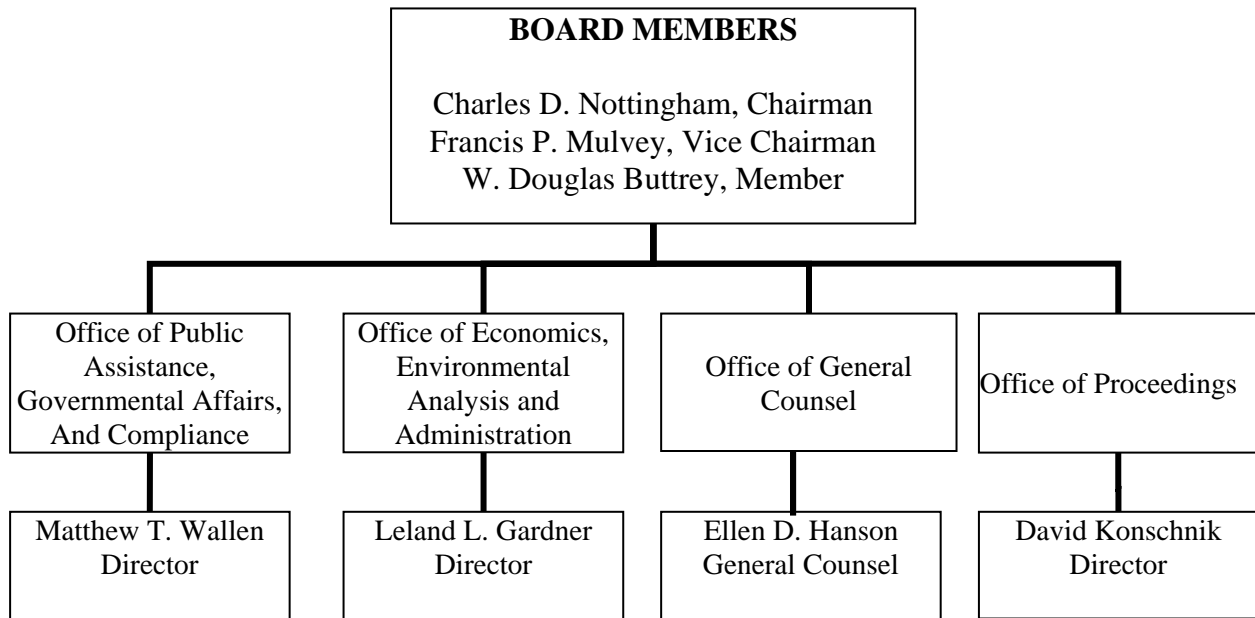
Rail Customer & Public Assistance Program Activity	
Year	Complaints Handled
2007	91
2008	419

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

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

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

Surface Transportation Board Organizational Chart



Councils and Committees

The Railroad-Shipper Transportation Advisory Council (RSTAC) was created by ICCTA to advise 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.⁷ The RSTAC is comprised of 14 private-sector senior executives from the railroad and rail shipping industries, plus one public member-at-large. The Secretary of Transportation and the three Board members are ex-officio members.

⁷ 49 U.S.C. 726.

OVERVIEW

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 government. The NGCC consists of 14 representatives from Class I railroads, seven representatives from Class II (medium-sized) and Class III (small) railroads, 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.

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 comprised of 23 voting members representing a balance of stakeholders, including large and small railroads, coal producers, electric utilities, the biofuels industry, and the private railcar industry. The three Board members are ex-officio members. Meetings, which are open to the public, are held at least twice a year.

Public Outreach

During the past two fiscal years, the Board kept Congress and the public abreast of STB actions and policies through numerous news releases, public-hearings, congressional testimony, customer-service pamphlets and written and audio-visual transcripts. All were made widely available through the agency's Web site, www.stb.dot.gov.

The charts below display counts of major public outreach activities during the reporting period:

Board Member Communications				
	<u>Transcripts</u>	<u>Member Statements</u>	<u>Testimonies</u>	<u>Speeches</u>
2007	4	10	4	7
2008	4	8	14	8

Public Events Held				
	<u>Washington hearings</u>	<u>Field hearings</u>	<u>Oral arguments</u>	<u>Meetings</u>
2007	5		1	
2008	3	1		22

News Releases			
	<u>Number issued</u>	<u>Total Web-site visits</u>	<u>Average visits per release</u>
2007:	40	Not available	Not available
2008:	39	197,325	5,060

RAILROAD RESTRUCTURING

Mergers and Consolidation—Review of Carrier Proposals

When two or more railroads seek to consolidate through a merger or a common-control arrangement, the Board's prior approval is required.⁸ The Board's authorization exempts such transactions from other laws to the extent necessary for carriers to complete an approved transaction.

Carriers may seek STB authorization either by filing an application or by requesting a more streamlined process by which the carrier seeks an exemption. The procedures to be followed in such cases may vary depending on the significance of the transaction and whether the matter involves the large Class I or smaller Class II or III railroads.⁹ Where a merger or acquisition involves only Class II or III railroads whose rail lines do not connect with each other, carriers need only follow a simple notification procedure to invoke a class exemption.¹⁰ When larger carriers are involved in merger activities, more rigorous procedures apply, and carriers may be required to file "safety integration plans" under rules the Board has issued jointly with the Federal Railroad Administration.¹¹ The Board conducts a National Environmental Policy Act (NEPA)¹² environmental review in transactions meeting certain thresholds under the agency's rules.¹³

⁸ 49 CFR 1180, 49 U.S.C. 11322-1325

⁹ In FY 2007-08, Class I railroads had operating revenues of at least \$359,608,745; Class II railroads had operating revenues of at least \$32,113,449; and Class III railroads had revenues less than \$32,113,449.

¹⁰ 49 CFR 1180.2(d)(2)

¹¹ 49 CFR 244, 1106

¹² 42 U.S.C. 4321 et seq.

¹³ 49 CFR 1105

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

Mergers and Consolidations Under 49 U.S.C. 11323¹⁴			
Fiscal Years		2007	2008
Applications	Filed	1	3
	Granted	1	1
	Denied	0	0
	Dismissed	0	0
Petitions for Exemption	Filed	1	5
	Granted	1	4
	Denied	0	2
	Dismissed	0	0
Notices of Exemption	Filed	15	15
	Granted	14	13
	Denied	0	0
	Dismissed	1	1

¹⁴ The figures in this chart include actions taken on consolidation proposals pending at the beginning of FY 2005. “Granted-plus-dismissed” numbers do not match the “filed” numbers for each year shown above, as applications, petitions, and notices filed during one fiscal year may be officially decided by the Board in another year.

RAILROAD RESTRUCTURING

During FY 2007-08, there were four railroad control applications, one classified as a “significant” transaction and three classified as “minor” transactions filed with the Board:

- The agency accepted for consideration, and classified as a significant transaction, an October 5, 2007 application by the Canadian Pacific Railway Corporation; the Soo Line Holding Company; the Dakota, Minnesota & Eastern Railroad Corporation; and the Iowa, Chicago & Eastern Railroad Corporation, in the proceeding entitled *Canadian Pacific Railway Company, et al.—Control—Dakota, Minnesota & Eastern Railroad Corp., et al.*, STB Finance Docket No. 35081, Decision No. 2, served November 2, 2007. The Board considered the Oct. 5, 2007 filing a pre-filing notification, effectively allowing the application to be perfected on December 5, 2007. The Board granted the application subject to various conditions, in *Canadian Pacific Railway Company, et al.—Control—Dakota, Minnesota & Eastern Railroad Corp., et al.*, STB Finance Docket No. 35081, Decision No. 11, served September 30, 2008.
- The Board accepted for consideration the May 22, 2007 minor control application of the Fortress Investment Group, Iron Horse Acquisition Holding, NEWCO, RailAmerica, Florida East Coast Industries, and the Florida East Coast Railway, and issued a procedural schedule to be followed, in *Fortress Investment Group LLC, et al.—Control—Florida East Coast Railway, LLC*, STB Finance Docket No. 35031, Decision No. 2, served June 21, 2007. The agency subsequently granted the application, subject to various conditions, in *Fortress Investment Group LLC, et al.—Control—Florida East Coast Railway, LLC*, STB Finance Docket No. 35031, Decision No. 4, served September 28, 2007.
- The Board accepted for consideration the October 30, 2007 application by the Canadian National Railway Corporation and the Grand Trunk Corporation and issued a procedural schedule finding the proposed transaction to be a minor transaction in *Canadian National Railway Company and Grand Trunk Corporation—Control—EJ&E West Company*, STB Finance Docket No. 35087, Decision No. 2, served November 26, 2007.

- The Board accepted for consideration the May 30, 2008 application filed by the Norfolk Southern Railway Company, Pan Am Railways, Inc, and two of Pan Am's rail- carrier subsidiaries, the Boston and Maine Corporation and the Springfield Terminal Railway Company. The agency issued a procedural schedule, finding the transaction to be minor, in *Norfolk Southern Railway Company, Pan Am Railways, Inc., et al.—Joint Control and Operating/Pooling Agreements—Pan Am Southern, LLC*, STB Finance Docket No. 35147, Decision No. 2, served June 26, 2008.

Mergers and Consolidations—Oversight and Monitoring

In approving major railroad merger or consolidation proposals, the Board has continually monitored subsequent competition and operations. These activities have included:

Annual Oversight Proceedings: CSX-NS-Conrail Merger

In approving the CSX-NS-Conrail merger,¹⁵ the Board provided for an annual review for five years to examine the effectiveness of the competitive and other conditions imposed by the agency.¹⁶ The Board is still receiving updates and reports.

The agency concluded, in the fifth and final round of the oversight proceeding, that the *CSX-NS-Conrail* merger had not resulted in any competitive or market-power problems, and formally concluded the five-year oversight in the proceeding as scheduled.

¹⁵ *CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company—Control and Operating Leases/Agreements—Conrail Inc. and Consolidated Rail Corporation*, STB Finance Docket No. 33388, with reconsideration denied by the Board in Decision No. 18, served February 23, 2005.

¹⁶ *CSX Corp. et al.—Control--Conrail Inc. et al.*, 3 S.T.B. 196 (1998) (*CSX-NS-Conrail Merger*). Petitions for review were denied *sub nom Erie-Niagara Rail Steering Comm. v. STB*, 247 F.3d 437 (2d Cir. 2001). In *CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company—Control and Operating Leases/Agreements—Conrail Inc. and Consolidated Rail Corporation [General Oversight]*, STB Finance Docket No. 33388 (Sub-No. 91), Decision No. 17, served October 20, 2004. Reconsideration was denied in Decision No. 18, served February 23, 2005.

Pooling

Rail carriers may seek approval to agree or combine with other carriers to pool or divide traffic, services, or earnings.¹⁷ During this reporting period, the Board approved the Providence and Worcester Railroad Company's participation in the Multilevel Car Pooling Agreement for the pooling of multilevel railcars used to transport motor vehicles, and boxcars used to transport automobile parts, in *Providence and Worcester Railroad Company—Pooling of Car Service Regarding Multilevel Cars*, STB Finance Docket No. 29653 (Sub-No. 9), served January 8, 2007.

Line Acquisitions

Board approval is required for a non-carrier or a Class II or III railroad to acquire or operate an existing rail line. 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 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 annual net revenues require additional notice in advance of anticipated labor impacts to give employees and their communities 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, prevents misuse of exemptions. Exemptions simplify the regulatory process while continuing to protect the public, and help preserve rail service in many areas of the country.

The Board's handling of line-acquisition proposals is summarized in the following table:

¹⁷ 49 U.S.C. 1322

RAILROAD RESTRUCTURING

Line Acquisitions				
By Non-carriers Under 49 U.S.C. 10901				
Fiscal Years	2007		2008	
	No.	Miles	No.	Miles
Applications				
Filed	0	0	0	0
Granted	0	0	0	0
Denied	0	0	0	0
Dismissed	0	0	0	0
Petitions for Exemption				
Filed	0	0	0	0
Granted	0	0	0	0
Denied	0	0	0	0
Dismissed	0	0	0	0
Notices of Exemption				
Filed	32	1369	31	2225
Granted	31	1355	19	600.8
Denied	2	16.8	3	201.6
Dismissed	1	33.1	1	52.0
By Class II or III Railroads Under 49 U.S.C. 10902				
Petitions for Exemption				
Filed	0	0	1	0
Granted	0	0	1	0
Denied	0	0	0	0
Dismissed	0	0	0	0
Notices of Exemption				
Filed	22	579.0	16	285.3
Granted	19	561.5	16	285.3
Denied	1	0	3	30.16

Among the more significant actions taken in this area in FY 2007-2008, the Board:

- Modified environmental conditions on the acquisition of I&M Rail Link by a non-carrier affiliated with DM&E to preclude DM&E from transporting any coal from Wyoming's Powder River Basin over the former I&M rail lines until the agency issues a decision finding that the environmental review process is completed and allows such operations, in *Iowa, Chicago & Eastern Railroad Corporation—Acquisition and Operation Exemption—Lines of I&M Rail Link, LLC*, STB Finance Docket No. 34177, served October 18, 2006.
- Found that Board authorization was unnecessary for Washington County, Ore., and, subsequently, the Tri-County Metropolitan Transportation District of Oregon, to acquire the physical assets of the Union Pacific Railroad Company because neither would become a common carrier as a result of the transactions, in *Washington County, OR—Acquisition Exemption—Certain Assets of the Union Pacific Railroad Company*, STB Finance Docket No. 34810 *et al.*, served April 11, 2007.
- Partially revoked exemptions invoked by a notice filed by the Washington State Department of Transportation to facilitate continuous service to shippers, in *Washington State Department of Transportation—Acquisition Exemption—Palouse River and Coulee City Railroad, Inc.*, STB Finance Docket No. 35024 *et al.*, served May 30, 2007. By its notice, the Washington Department of Transportation obtained authority to acquire certain physical assets, operating rights, and the underlying rights-of-way of eight rail lines, totaling approximately 296 miles.
- Found that the Utah Transit Authority did not require Board authorization to acquire certain real estate underlying a rail line from UP because the UTA would not become a rail carrier as a result of the transaction, in *Utah Transit Authority—Acquisition Exemption—Union Pacific Railroad Company*, STB Finance Docket No. 35008 *et al.*, served July 23, 2007.

- Denied a request by the New Jersey Department of Environmental Protection for a continued stay of the effectiveness of an exemption for Northern and Bergen Railroad to acquire approximately 1.1 miles of a rail line in Bergen County, N.J., in *Northern and Bergen Railroad L.L.C.—Acquisition Exemption—A Line of Railroad Owned by New York & Greenwood Lake Railway*, STB Finance Docket No. 35020, served June 25, 2007.
- Granted an exemption, subject to labor protection, for Soo, doing business as CP, to acquire 35.26 miles of rail lines owned jointly by CP and the BNSF Railway Company and a contiguous 9.96-mile rail line owned by BNSF in *Soo Line Railroad Company d/b/a Canadian Pacific Railway—Acquisition and Operation Exemption—BNSF Railway Company*, STB Finance Docket No. 35068, served September 7, 2007.
- Denied a petition filed by the Keokuk Junction Railway Company for an exemption to lease and to operate a 42.1-mile line owned by BNSF, finding that the transaction would adversely affect the ability of a coal shipper to obtain competitive rail service, in *Keokuk Junction Railway Company d/b/a Peoria and Western Railway—Lease and Operation Exemption—BNSF Railway Company*, STB Finance Docket No. 34974, served December 6, 2007.
- Denied a petition filed by Michigan Central Railway, LLC, a newly formed non-carrier, for an exemption to acquire and to operate 299 miles of NS track, finding that the transaction was not subject to the jurisdiction of the Board under 49 U.S.C. 10901, in *Michigan Central Railway, LLC—Acquisition and Operation Exemption—Lines of Norfolk Southern Railway Company*, STB Finance Docket No. 35063, served December 10, 2007.
- Processed a notice of exemption that allowed SSP Railroad Holding LLC, a newly formed non-carrier, to acquire expeditiously from Mittal Steel USA—Railways, Inc. and to operate 183 miles of rail lines in and around Sparrows Point, Md., lines which were for sale as part of a consent decree resulting from an action brought by the U.S. Department

of Justice, in *SSP Railroad Holding LLC–Acquisition and Operation Exemption–Mittal Steel–USA Railways, Inc.*, STB Finance Docket No. 35129, served April 17, 2008.

- Rejected a notice of exemption by which JP Rail, Inc., a small Class III railroad, attempted to obtain authority to lease one mile of track in Carroll Township, Pennsylvania, finding that the carrier would be engaging in the unauthorized trans-loading of construction and demolition material, in *JP Rail, Inc.–Lease and Operation Exemption–NAT Industries, Inc.*, STB Finance Docket No. 35090, served January 18, 2008.
- Granted, subject to labor protection, a petition filed by DM&E for an exemption allowing DM&E to purchase from BNSF a 3.5-mile rail line in Yale, S.D., to allow more efficient service to a grain elevator, in *Dakota Minnesota & Eastern Railroad Corporation–Acquisition Exemption–Line of BNSF Railway Company*, STB Finance Docket No. 35125, served STB served May 14, 2008.

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 improve 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 agreement. A class exemption exists for trackage rights for overhead operations only, and these expire in one year or less.

The Board’s docket and handling of trackage-rights proposals is summarized in the following table:

Trackage Rights			
	Fiscal Years	2007	2008
Applications	Filed	0	0
	Granted	0	0
	Denied	0	0
	Dismissed	0	0
Petitions for Exemption	Filed	0	0
	Granted	0	0
	Denied	0	0
	Dismissed	0	0
Notices of Exemption	Filed	36	22
	Granted	37	14
	Denied	1	0
	Dismissed	0	1

Leases by Class I Carriers

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

Among the more significant actions taken in this area in FY 2007-2008, the Board:

- Exempted BNSF from the agency's prior-approval requirements to lease and operate an interlocker plant and the underlying land owned by the Illinois Central Railroad Company in Cook County, Ill., in *BNSF Railway Company—Lease and Operation Exemption—Interlocker Plant of the Illinois Central Railroad Company*, STB Docket No. 34976, served February 23, 2007.
- Clarified the extent of trackage rights granted to BNSF intermodal trains moving over two UP lines in California under an agreement between the two railroads, and under a subsequent amended agreement. The Board determined that restrictions in the original agreement remained as originally authorized by the agency, and subsequently clarified that if BNSF obtained a decision from a competent tribunal stating that BNSF and UP had reached a binding agreement to expand trackage rights in the subsequent agreement, BNSF could request that the Board authorize those trackage rights. The Board issued its decisions in *Union Pacific Corporation, Union Pacific Railroad Company, and Missouri Pacific Railroad Company—Control and Merger—Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and the Denver and Rio Grande Western Railroad Company*, STB Finance Docket No. 32760, served May 1, 2008 and January 22, 2009.
- Granted a petition for partial revocation of a trackage rights exemption to permit UP's local trackage rights over a BNSF rail line to expire on or about December 31, 2008, as agreed by both railroads, with employee protection imposed, in *Union Pacific Railroad*

Company—Temporary Trackage Rights Exemption—BNSF Railway Company, STB Finance Docket No. 34554 (Sub-No. 9), served March 20, 2008.

Line Constructions

New rail-line construction requires Board authorization. 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 crossed line, and if the owner of the crossed line is compensated. If railroads cannot agree to terms, the Board can prescribe appropriate compensation.

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.

Among the more significant actions taken in this area during FY 2007-2008, the STB:

- Found that New England Transrail, would, if authorized by the Board, become a rail carrier subject to the agency's jurisdiction under Transrail's proposal, but that some of Transrail's planned activities would extend beyond the scope of rail transportation, and therefore federal preemption, in *New England Transrail, LLC, d/b/a Wilmington & Woburn Terminal Railway—Construction, Acquisition, and Operation Exemption—in Wilmington and Woburn, MA*, STB Finance Docket No. 34797, served July 10, 2007.
- Denied the petition filed by HolRail, LLC for authority to cross a CSX Transportation, Inc. right-of-way because the proposal did not come within the intended scope and purpose of the crossing statute¹⁸, and denied HolRail's request for authority to construct and operate its proposed preferred route, as track could not be laid without the crossing authority, in *Holrail LLC—Construction and Operation Exemption—in Orangeburg and*

¹⁸ 49 U.S.C. 10901(d)

Dorchester Counties, SC, STB Finance Docket No. 34421 *et al.*, served February 12, 2007.

- Granted a petition for declaratory order filed by DesertXpress Enterprises and found that DesertXpress’s proposed construction of an interstate high-speed passenger rail system is not subject to state, local environmental review and land use, and other permitting requirements because of federal preemption, in *DesertXpress Enterprises, LLC—Petition for Declaratory Order*, STB Finance Docket No. 34914, served June 27, 2007.
- Granted authority for Itasca County Regional Rail Authority, a non-carrier, to construct a nine-mile rail line from a connection with an existing rail line at Taconite, Minn., to the site of a new steel mill to be built by Minnesota Steel Industries LLC at Nashwauk, Minn., subject to environmental mitigation measures, in *Itasca County Regional Rail Authority—Petition for Exemption—Construction of a Line of Railroad in Itasca County, MN*, STB Finance Docket No. 34992, served September 8, 2008.
- Denied the State of Nevada’s motion to reject the United States Department of Energy’s application to construct and operate an approximately 300-mile rail line connecting an existing UP line near Caliente, Nev., to a proposed geologic repository at Yucca Mountain, Nev., and adopted a procedural schedule to govern submissions in this proceeding, in *United States Department of Energy – Rail Construction and Operation—Caliente Rail Line in Lincoln, Nye, and Esmeralda Counties, NV*, STB Finance Docket No. 35106, served April 11, 2008 and June 27, 2008.
- Approved the Tongue River Railroad Company, Inc.’s application for the construction and operation of a 17.3-mile rail line in Rosebud and Big Horn Counties, Mont., and modified the environmental conditions imposed on Tongue River Railroad’s authority to construct and operate two related lines, in *Tongue River Railroad Company, Inc.—Construction and Operation—Western Alignment*, STB Finance Docket No. 30186 (Sub-No. 3), served October 9, 2007, with a petition for reconsideration denied by the Board on March 13, 2008.

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

Railroad Construction				
Fiscal Years	2007		2008	
	No.	Miles	No.	Miles
Applications				
Filed	0	0	1	300.0
Granted	0	0	0	0
Denied	0	0	0	0
Dismissed	0	0	0	0
Petitions for				
Filed	2	89	4	120.55
Granted	0	0	1	9.0
Denied	0	0	0	0
Dismissed	1	0	1	0
Notices of Exemption				
Filed	1	1.52	0	0
Granted	0	0	0	0
Denied	0	0	0	0
Dismissed	0	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 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 the past two years that could not have been rerouted over other lines.

Preservation of Rail Lines

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

1. Offers of Financial Assistance

If the Board finds that a railroad’s abandonment proposal should be authorized and 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 purchaser will either agree to that price or withdraw its offer.

2. Feeder Line Development Program

When railroad service is inadequate for a majority of shippers transporting traffic over a particular line or the line in question has been designated in a carrier’s system diagram map as a candidate for abandonment, the Board can compel a railroad to sell the line to a party that will provide service.

3. Trail Use/Rail Banking

The Board administers the National Trails System Act's "rail banking" program. This law allows railroad rights-of-way approved for abandonment to be preserved for the future restoration of rail service while allowing them to be used in the interim 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 (NITU). If a trail arrangement is reached, the right-of-way remains under the agency's jurisdiction and cannot be sold back to the original owners.

Among the more significant actions taken in the rail-abandonment area during FY 2007-2008, the Board:

- Granted a petition for exemption to abandon 28.36 miles of rail line, subject to trail use, public use, environmental, and standard employee protection, because the line was operating at a loss, in *Kettle Falls International Railway, LLC—Abandonment Exemption—In Ferry County, WA*, STB Docket No. AB-994X, served October 11, 2006.
- Granted a petition for exemption to abandon 2.39 miles of rail line, subject to trail use, public use, environmental, and standard employee protection, because the line was operating at a loss, in *CSX Transportation, Inc.—Abandonment Exemption—In Middlesex County, MA*, STB Docket No. AB-55 (Sub-No. 670X), served October 25, 2006.
- Granted a petition for exemption from financial-assistance and public-use provisions in an adverse-abandonment proceeding because a grant of an adverse abandonment could be frustrated if those provisions were to be invoked in an effort to continue rail service, in *Norfolk Southern Railway Company—Adverse Abandonment—St. Joseph County, IN*, STB Docket No. AB-290 (Sub-No. 286), served October 26, 2006. The Board subsequently denied petitions to reject a third party's notice of intent to file an additional adverse-abandonment application, and the application itself, in a decision served January 23, 2007. In a decision served February 14, 2008, the Board denied an application asking the agency to find that the public convenience and necessity required or permitted the

adverse abandonment of two NS rail lines, because of the potential for renewed rail operations.

- Granted a petition for exemption to abandon 17 miles of rail line, subject to trail use, public use, historic, environmental and standard employee protection, because continued operation of the line would have resulted in significant monetary losses, in *Minnesota Northern Railroad, Inc.—Abandonment Exemption—In Polk and Norman Counties, MN*, STB Docket No. AB-497 (Sub-No. 3X), served December 4, 2006. In another decision, the Board subsequently granted a request to extend the period for submitting an OFA because the abandoning railroad had not yet provided necessary OFA information to the potential offeror, served December 8, 2006.
- Granted a petition for exemption to discontinue service over 116 miles of rail line, subject to standard employee protection, allowing the owner railroad to resume operations, thus significantly improving the overall operating efficiencies of both the tenant and owner railroads, in *Timber Rock Railroad, Inc.—Discontinuance of Service Exemption—In Burlison, Brazos, Grimes, Montgomery, Liberty, Hardin and Jefferson Counties, TX*, STB Docket No. AB-998X, served January 25, 2007.
- Granted an exemption for discontinuance authority over 5.7 miles of rail line, on the Board’s own motion, subject to standard employee protection, because although the two railroads involved did not file for discontinuance authority, they presumably consented to discontinuance by allowing an entity under their control to seek abandonment authority, in *Consolidated Rail Corporation—Abandonment Exemption—In Mercer County, NJ*, STB Docket No. AB-167 (Sub-No. 1185X), *et al.*, served January 26, 2007.
- Granted a petition for exemption to abandon 22.34 miles of rail line, subject to environmental conditions, standard employee protection, and a historic preservation condition, because there would soon be no demand for service on the line, in *Union Pacific Railroad Company—Abandonment Exemption—In Lassen County, CA, and Washoe County, NV*, STB Docket No. AB-33 (Sub-No. 230X), served January 26, 2007.

In another decision, the Board subsequently granted a request to toll the period for submitting an OFA because the abandoning railroad had not yet provided necessary OFA information to the potential offeror, served February 2, 2007.

- Rejected a tenant railroad's notice of exemption to discontinue service over 2.95 miles of disconnected portions of rail line because the line was active within the prior two years; granted, on its own motion, an exemption for the tenant railroad to discontinue service over the line because there were no longer any shippers on the tenant railroad's two disconnected segments; and denied a request to reject the notice of exemption for the owner railroad to abandon the same line because there was no local traffic on the line, and because the non-local traffic could continue to move without access to the subject line, in *BNSF Railway Company—Abandonment Exemption—In Oklahoma County, OK*, STB Docket No. AB-6 (Sub-No. 430X), *et al.*, served January 26, 2007. The Board issued another decision subsequently requiring the owner railroad to respond to allegations that it provided service to shippers on the line within the two years prior to filing the notice of exemption to abandon the line, and ordered the railroad not to consummate the abandonment until the agency ruled on a petition for reconsideration, served February 7, 2008.
- Granted a petition for exemption to abandon 1.1 miles of rail line, subject to an environmental condition and standard employee protection, because a shipper on the line agreed to buy, maintain, and operate the line as private track, and further agreed to protect the interest of the only other shipper on the line; granted exemptions from financial assistance and public use provisions because the shippers would be adequately served by the shipper intending to buy the line; there was little-to-no potential for new shippers on the line; and because the imposition of those provisions could delay the transfer of the needed portion of the right-of-way to its new owner, in *The Cincinnati, New Orleans and Texas Pacific Railway Company—Abandonment Exemption—In Roane County, TN*, STB Docket No. AB-290 (Sub-No. 280X), served February 23, 2007.
- Granted a petition for exemption to discontinue service over 4.77 miles of rail line,

subject to standard employee protection, because there were no shippers on the line and the owner railroad sought to avoid unnecessary operation and maintenance costs, in *Union Pacific Railroad Company—Discontinuance of Service Exemption—In Yuba County, CA*, STB Docket No. AB-33 (Sub-No. 238X), served March 6, 2007).

- Granted a petition for exemption for an owner railroad to abandon, and a tenant railroad to discontinue service over, 2.74 miles of rail line, subject to environmental and standard employee protection, because very little traffic moved over the line. After coming to an agreement with a developer that bought the real estate underlying the rail line, active shippers on the line arranged for alternative transportation and filed letters in support of the owner's petition, in *Union Pacific Railroad Company—Abandonment Exemption—In Bexar County, TX*, STB Docket No. AB-33 (Sub-No. 236X), served April 4, 2007.
- Granted a petition for exemption to abandon 4.54 miles of rail line, subject to trail use, environmental, and standard employee protection, to allow a railroad to avoid significant rehabilitation and maintenance costs necessary to reactive a line, and the ownership costs associated with retaining a line that had been dormant for over seven years, and granted exemptions from financial-assistance and public-use provisions. The Board took this action because there was no current demand for continued rail service, and granting the exemptions would allow a local governmental entity to expeditiously apply a grant to create a trail on the line before the grant expired. The Board served its decision in *Georgia Southwestern Railroad, Inc.—Abandonment Exemption—In Barbour County, AL*, STB Docket No. AB-1000X, on April 25, 2007.
- Granted a petition for exemption to abandon 1.64 miles of rail line, subject to environmental and standard employee protection, to avoid maintenance costs and allow an inactive line to be reclassified as industrial-storage or “house” track; granted a request for exemption from the public-use provisions because the exemption was unopposed; denied a request for exemption from financial-assistance provisions because the petitioning railroad had not shown that the right-of-way was needed for an overriding public purpose or an important private undertaking, and because a potential offeror

indicated an interest in providing continued rail service, in *Norfolk Southern Railway Company—Abandonment Exemption—In Orange County, NY*, STB Docket No. AB-290 (Sub-No. 283X), served May 2, 2007. In a decisions served on June 22, 2007, the Board subsequently granted a request to toll the period for submitting an OFA because the abandoning railroad had not yet provided the necessary OFA information to a potential offeror.

- Granted an opposed petition for exemption to discontinue service over 5.2 miles of rail line, subject to standard employee protection, to allow a tenant railroad to avoid expensive needed repairs and costly maintenance, and because the only active shipper on the line did not oppose the discontinuance and planned for adequate alternative transportation. The agency found that the shipper protester's general opposition to losing the ability to use the line was without merit, as the protester had no specific plans to use the line. Additionally, a new industrial site, which would not require rail service, requested that the tenant railroad discontinue service through its campus because of security and vibration issues, in *Caldwell County Railroad Company—Discontinuance of Service Exemption—In Caldwell County, NC*, STB Docket No. AB-999X, served July 9, 2007.
- Denied an opposed petition for exemption to abandon 4.15 miles of rail line because there was insufficient information on the record to assess the line's financial viability or the burden that continued operation would impose on the railroad, and on shippers on other lines dependent on the railroad's service, in *Lake State Railway Company—Abandonment Exemption—Rail Line in Otsego County, MI*, STB Docket No. AB-534 (Sub-No. 3X), served July 16, 2007.
- Granted a petition for exemption to abandon 1.78 miles of rail line, subject to environmental and standard employee protection, to allow a railroad to reclassify a line as excepted track so that it could sell or lease it to the only active shipper on the line to use for switching and storing cars, in *CSX Transportation, Inc.—Abandonment Exemption—In Genesee County, MI*, STB Docket No. AB-55 (Sub-No. 633X), served

July 25, 2007.

- Granted a petition for exemption to discontinue service over 2.36 miles of rail line, subject to standard employee protection, because there were no active shippers on the line and an owner railroad had asked a tenant railroad to seek discontinuance of service authority, in *Central Railroad Company of Indianapolis—Discontinuance of Service Exemption—In Grant County, IN*, STB Docket No. AB-511 (Sub-No. 3X), served August 1, 2007.
- Granted a petition for exemption to abandon 0.2 miles of rail line, subject to environmental and standard employee protection, because the only recent shipper on the line had closed its facility; the line was incapable of moving overhead traffic; there would be no possible need for future rail service; and, if operations were to resume, the line would have required substantial rehabilitation, in *Palouse River & Coulee City Railroad, Inc.—Abandonment Exemption—In Latah County, ID*, STB Docket No. AB-570 (Sub-No. 2X), served August 17, 2007.
- Granted a petition for exemption to abandon 73.5 miles of rail line, subject to environmental and standard employee protection, because the line was operating at a loss and the two active shippers on it did not oppose the abandonment and had trucking alternatives available, in *Nekoosa Railway, Inc.—Abandonment Exemption—In Dawes and Sheridan Counties, NE*, STB Docket No. AB-988 (Sub-No. 1X), served August 22, 2007.

- Granted a petition for exemption to abandon 1.98 miles of rail line, subject to an environmental condition and standard employee protection, because the sole shipper on the line had relocated to a different location, and UP thus would be relieved from the cost of maintaining and operating a line that would no longer be used, in *Union Pacific Railroad Company—Abandonment Exemption—in Cass County, NE*, STB Docket No. AB-33 (Sub-No. 250X), served October 5, 2007.
- Granted a petition for exemption to abandon 2.41 miles of rail line, subject to standard employee protection, because the line was operating at a loss and needed rehabilitation; the involved railroad had offered to construct a dock for its sole active shipper; and prospects of other shippers on the line were poor, in *Wisconsin & Southern Railroad Co.—Abandonment Exemption—In Milwaukee County, WI*, STB Docket No. AB-383 (Sub-No. 5X), served August 24, 2007. In a decision served on September 4, 2007, the Board denied the railroad's request to make the August 24 decision effective upon its service because such a grant would have effectively exempted the railroad from financial-assistance provisions, and the railroad's plan to sell part of the line for an unspecified, non-rail purpose was an insufficient reason to foreclose the OFA process.
- Granted in part and denied in part a petition for exemption from several statutory provisions and waivers of regulations in connection with a third-party application for an adverse abandonment of approximately 13.34 miles of rail line, in *CSX Transportation, Inc.—Adverse Abandonment—in Shelby County, TN*, STB Docket No. AB-1010, served October 10, 2007.
- Granted a third-party application for adverse abandonment of approximately one mile of rail line, subject to environmental and employee protection, in *Denver & Rio Grande Railway Historic Foundation—Adverse Abandonment—in Mineral County, CO*, STB Docket No. AB-1014, served May 23, 2008.

- Granted a petition for exemption to abandon 8.41 miles of rail line, subject to standard employee protection, because the line generated very little traffic and because there was no opposition from the line's sole shipper that intended to purchase it for use as a spur track after the line was abandoned, in *BNSF Railway Company—Abandonment Exemption—in Webster County, NE*, STB Docket No. AB-6 (Sub-No. 460X), served October 29, 2007.
- Granted a petition for exemption to abandon 15.34 miles of rail line, subject to environmental and employee protection; granted a request for exemption from the OFA process; and denied a request for sanctions against a protestant to the abandonment proposal, in *Norfolk Southern Railway Company—Abandonment Exemption—in Norfolk and Virginia Beach, VA*, STB Docket No. AB-290 (Sub-No. 293X), served November 6, 2007.
- Upon its reopening of a proceeding, denied an application for adverse discontinuance of service over an 8.29-mile rail line, finding that the petitioner did not meet its burden of showing that the benefits of granting adverse discontinuance would outweigh harm to the remaining shipper, the line's operator, and interstate commerce in general, in *City of Peoria and the Village of Peoria Heights, IL—Adverse Discontinuance—Pioneer Industrial Railway Company*, STB Docket No. AB-878, served November 19, 2007. In a decision served December 7, 2007, the Board directed the parties to meet, in the presence of the agency's staff, to negotiate joint operating protocols for the line. In an April 15, 2008 decision, the Board denied a petition to modify its November 19, 2007 decision, and to hold the proceeding in abeyance.
- Granted a petition for exemption to abandon 43 miles of rail line and to discontinue overhead trackage rights over a different line, subject to trail use, public use, environmental, and standard employee protection, because the line was underutilized and there were out-of-pocket expenses and significant opportunity costs associated with its maintenance, in *Georgia Southwestern Railroad, Inc.—Abandonment and*

Discontinuance Exemption—in Harris and Meriwether Counties, GA, STB Docket No. AB-1000 (Sub-No. 1X), served December 10, 2007.

- Granted a joint petition for exemption to abandon and discontinue service over 4.25 miles of rail line subject to an environmental condition and standard employee protection, because continued operation of the line would have resulted in significant monetary losses for the railroads at issue. The Board also denied requests for exemptions from OFA and public-use provisions, in *The Kansas City Southern Railway Company—Abandonment Exemption—Line in Warren County MS*, STB Docket No. AB-103 (Sub-No. 21X) and *Vicksburg Southern Railroad, Inc.—Discontinuance of Service Exemption—Line in Warren County, MS*, STB Docket No. AB-1016X, served December 12, 2007.
- Granted an application for authority to discontinue service over 27.57 miles of rail line subject to certain employee protection, because rehabilitation costs alone dwarfed the operating profit for a forecast year and because a protestant's claims of future shipping need were too speculative to be credible, in *Union Pacific Railroad Company—Discontinuance—in Utah County, Utah*, STB Docket No. AB-33 (Sub-No. 209), served January 2, 2008.
- Denied an application for an adverse abandonment of approximately 3.7 miles of rail line, because a potential receiver remained on the line with a significant annual demand for coal, in *Norfolk Southern Railway Company—Adverse Abandonment—St. Joseph County, IN*, STB Docket No. AB-290 (Sub-No. 286), served February 14, 2008. The Board denied a petition to reopen this proceeding in a decision served August 27, 2008.
- Granted an application to abandon 5.6 miles of rail line subject to environmental, employee protection and historic preservation conditions, because the line's rehabilitation costs and return-on-value calculations resulted in a forecast year subsidy requirement of over \$6 million, while shippers had alternative transportation options

available, in *Union Pacific Railroad Company—Abandonment—in Carver and Scott Counties, MN*, STB Docket No. AB-33 (Sub-No. 255), served April 1, 2008.

- Granted an adverse abandonment application for a one-mile portion of rail line subject to certain employee and environmental protection, because there was no realistic prospect for future freight rail traffic, and the petitioner, a nearby city, had provided plans to develop the line's underlying property for public purposes, in *Denver & Rio Grande Railway Historical Foundation—Adverse Abandonment—in Mineral County, CO*, STB Docket No. AB-1014, served May 23, 2008.
- Granted a petition for exemption to abandon a 30.57-mile portion of a rail line, subject to trail-use conditions and environmental and standard employee protection, because continued operation of the line would have imposed a substantial economic burden on the railroad and on interstate commerce, and because protestants were unable to show that shippers had made commitments to resume rail shipments to the extent necessary to justify continued rail service, in *San Joaquin Valley Railroad Company—Abandonment Exemption—in Tulare County, CA*, STB Docket No. AB-398 (Sub-No. 7X), served June 6, 2008.
- Denied a petition seeking an exemption to abandon a 9.20-mile portion of rail line, because a shipper demonstrated that traffic had increased dramatically in recent years and because reliable evidence was produced that the shipper's traffic would likely increase even more, in *San Joaquin Valley Railroad Company—Abandonment Exemption—in Tulare County, CA*, STB Docket No. AB-398 (Sub-No. 8X), served June 6, 2008.
- Granted a petition for exemption to abandon 24.7 miles of rail line subject to trail-use, historic preservation and standard employee-protection conditions, because one of two shippers on the line was closing its facility and the other shipper had not used rail service since December of 2006, in *Mid-Michigan Railroad, Inc.—Abandonment Exemption—in Kent, Ionia, and Montcalm Counties, MI*, STB Docket No. AB-364 (Sub-No. 14X),

served June 9, 2008, with a petition to reopen the case denied by the Board in a decision served on September 26, 2008.

- Dismissed as moot a notice invoking a class exemption to abandon a 0.31-mile section of track, because the track segment was embraced within a blanket exemption from the provisions of the Interstate Commerce Act granted by the Board's predecessor in a 1992 ICC decision, in *Los Angeles County Metropolitan Transportation Authority—Abandonment Exemption—in Los Angeles County, CA*, STB Docket No. AB-409 (Sub-No. 5X), served July 17, 2008.

Specifically concerning OFAs, the Board also:

- Authorized a railroad to purchase a line under OFA provisions, in *CSX Transportation, Inc.—Abandonment Exemption—In Vigo County, IN*, STB Docket No. AB-55 (Sub-No. 674X), served November 20, 2006.
- Terminated an OFA proceeding and issued an NITU after the withdrawal of an offeror, in *The Kansas City Southern Railway Company—Abandonment Exemption—in Warren County, MS*, STB Docket No. AB-103 (Sub No. 21X), served STB served June 16, 2008. Prior to the offeror's withdrawal, the agency had set terms and conditions for the sale under the OFA provisions for joint offerors in a decision served February 22, 2008.
- Rejected a potential offeror's notice of intent to file an OFA, determining that OFA process was inappropriate because the offeror was not genuinely interested in providing rail service and there was no likelihood of future traffic, in *Union Pacific Railroad Company—Abandonment and Discontinuance of Trackage Rights Exemption—in Los Angeles County, CA*, STB Docket No. AB-33 (Sub-No. 265X), served May 7, 2008.
- Required a showing of one or more of the following when there is opposition to a request for an exemption to OFA provisions or an intention to file an OFA: whether there is a demonstrable commercial need for rail service; whether there is community support for

continued rail service; whether acquisition of freight-rail operating rights would interfere with current and planned transit services; and whether continued rail service is operationally feasible, in *Los Angeles County Metropolitan Transportation Authority-Abandonment Exemption-In Los Angeles County, CA*, STB Docket No. AB-409 (Sub-No. 5X), served June 16, 2008. On July 17, 2008, the Board subsequently dismissed as moot a petition for exemption from the OFA provisions and a request to toll the OFA filing period.

- Set terms and conditions for the sale of a rail line under the OFA provisions, which the offeror declined to accept, in *San Joaquin Valley Railroad Company-Abandonment Exemption-in Tulare County, CA*, STB Docket No. AB-398 (Sub-No. 7X), served September 10, 2008.
- Rejected an OFA when there was no current or future traffic to support continued rail service over the segment of rail line, and where the offeror had failed to show that he would be able to finance the purchase and operation of the segment, in *Union Pacific Railroad Company-Abandonment Exemption-in Lassen County, CA, and Washoe County, NV*, STB Docket No. AB-33 (Sub-No. 230X), served September 19, 2008.

RAILROAD RESTRUCTURING

The STB's docket and handling of abandonment cases are summarized in the following table:

Abandonments				
Fiscal Years	2007		2008	
	No.	Miles	No.	Miles
Applications				
Filed	2	31.27	5	102.2
Granted	1	8.3	5	40.25
Denied	0	0.0	1	3.7
Dismissed	0	0.0	1	7.56
Dismissed – OFA	0	0.0	0	0.0
Petitions for Exemption				
Filed	24	436.64	23	195.4
Granted	16	252.53	23	302.4
Denied	1	23.71	2	33.9
Dismissed	0	0	1	3.28
Dismissed - OFA	0	0	0	0.0
Notices of Exemption				
Filed	64	407.69	57	543
Granted	54	346.21	56	513.4
Denied	0	0.0	0	0
Dismissed	2	14.24	3	7.0
Dismissed - OFA	1	7.4	0	0.0

Specifically concerning the feeder-line development program, the Board:

- Authorized the sale of a line in Texas on which service had been inadequate for the majority of the line's shippers, and over which the Board had authorized alternative rail service by a different rail carrier for one of the line's largest shippers. The sale was authorized by the agency's decision in *PYCO Industries, Inc.—Feeder Line Application—Lines of South Plains Switching, Ltd. Co.*, STB Finance Docket No. 34890, *et al.*, served August 31, 2007.
- Clarified its 2007 decision, above, approving the purchase of all of the rail lines of South Plains Switching, Ltd. Co. in Lubbock, TX, under the feeder-line provision, finding that only one of two disputed line segments was included in the sale, and that the status of a switch was for Texas courts to decide under state contract law, in *PYCO Industries, Inc.—Feeder Line Application—Lines of South Plains Switching, Ltd. Co.*, STB Finance Docket No. 34890, served September 8, 2008.

Regarding trail use and rail banking, the Board:

- Denied a motion to dismiss a notice of exemption on the grounds that the agency lacked jurisdiction over a rail line, finding that the line remained within agency jurisdiction because the Board had issued an NITU over the line, and because the line was still connected to the interstate rail system, in *Yakima Interurban Lines Association--Abandonment Exemption--in Yakima County, WA*, STB Docket No. AB-600, (Sub-No. 1X), served October 31, 2006.
- Denied a petition filed by several landowners for reconsideration of the Board's December 2006 finding that a rail line, extending 25.05 miles from Yemassee, S.C., to Port Royal, S.C., qualified for a modified certificate of public convenience, in *Beaufort Railroad Company, Inc.—Modified Rail Certificate*, STB Finance Docket No. 34943, served March 19, 2008.

RAILROAD RESTRUCTURING

- Determined that a 5.73-mile, rail-banked right-of-way in Erie County, Pa., continued to be subject to interim trail-use conditions, and granted a request to reopen that proceeding to allow Northwest Pennsylvania Trail Association to replace Material Recovery of Erie, Inc. as the interim trail sponsor, in *Victor Wheeler, et al.—Petition for Declaratory Order—Rail Line in Erie County, PA*, STB Finance Docket No. 35082, and *Bessemer and Lake Erie Railroad Company—Abandonment Exemption—in Erie County, PA*, Docket No. AB-88 (Sub-No. 5X), served August 27, 2008.

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

Rail banking/Interim Trail Use						
Fiscal Year	Requests		Grants		Denials	
	Number	Miles	Number	Miles	Number	Miles
2007	27	396.94	21	343.52	2	27.04
2008	40	379.93	29	408.17	8	44.67

Liens on Rail Equipment

Liens on rail equipment and water vessels intended for use in interstate commerce must be filed with the Board in order for them to be 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 maintained for public inspection. The agency recorded 2,824 liens in FY 2007 and 2,116 liens in FY 2008.

RAILROAD RATES

Common Carriage or Contract Carriage

Railroads have a common-carrier obligation to provide rail service upon reasonable request under federal law. 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.

During the FY 2007-2008 reporting period, in its decision entitled *Kansas City Power & Light Co. v. Union Pacific Railroad Co.*, STB Docket No. 42095, served March 29, 2007, the Board noted its concern that a common-carrier rate that a shipper sought to challenge possessed the characteristics of a contract and thus might not be subject to the agency's jurisdiction. The Board ultimately decided to allow the case to proceed, finding that the involved parties had reasonably relied on Board and former ICC precedent that the rate at issue was a common-carrier rate.

However, in a decision served March 29, 2007, the Board began a rulemaking, in *Interpretation of the Term "Contract" in 49 U.S.C. 10709*, STB Ex Parte 669, to propose an interpretation of the term "contract" that would distinguish public common-carrier rates from confidential rail-transportation contracts to avoid confusion about the rate involved and its legal consequences. Specifically, the agency proposed that the term "contract" mean any bilateral agreement between a railroad and a shipper for rail transportation in which a carrier agrees to a specific rate for a specific period of time and a shipper commits to tender a specific amount of freight during a specific period of time or to make specific investments in rail facilities.

In a decision served on March 12, 2008, the Board found that the proposed rule would not adequately resolve the concerns that motivated it, but instead proposed to consider a different

RAILROAD RATES

rule to clarify the demarcation between contract and common-carrier rates in *Rail Transportation Contracts Under 49 U.S.C. 10709*, STB Ex Parte No. 676. The Board proposed to consider imposing a requirement that a rail carrier include a disclosure statement in a document identifying it as a contract and providing the shipper with informed consent statement to sign.

Railroads are required to file with the Board summaries of all contracts for the transportation of agricultural products. The summaries must contain specific information,¹⁹ and are available for public inspection at the agency's Tariff Library, by mail for a fee, and at the agency's Web site at "www.stb.dot.gov."

The number of agricultural contract filings received by the Board during FY 2007 and 2008 are shown in the following table:

Railroad Agricultural Contract Summary Filings		
	2007	2008
Number of Summaries	1,072	1,176

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 also must be published.

These regulatory requirements can be bypassed in cases where the Board has exempted from regulation the class of commodities or rail services involved. Class exemptions exist for most

¹⁹ 49 CFR 1313

agricultural products, intermodal container traffic, boxcar traffic, and other miscellaneous commodities.²⁰

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, trucks or barges for a specific movement to which a rate applies.

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 that is less than 180 percent. The Board's Uniform Rail Costing System (URCS) is used to provide a consistent measurement of a railroad's variable costs of performing various rail services.

Where the revenue-to-variable cost threshold is exceeded, the Board examines whether competition in the marketplace imposes market discipline upon a railroad's pricing, or gives a shipper an alternative to paying the challenged rate.

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 markups on "captive" traffic (traffic with no alternative means of transportation). But the CMP guidelines impose constraints on a railroad's ability to do so. The most commonly used CMP constraint is the "stand-alone cost" (SAC) test. Under the SAC constraint, a railroad may not charge a shipper more than it would cost to build and operate a hypothetically new, optimally efficient railroad (a

²⁰ 49 CFR 1039

²² 7 U.S.C.136, 16 U.S.C. 1531 et seq.

“stand-alone railroad”) tailored to serve a selected traffic group that includes the complainant’s traffic.

The Board’s rate reasonableness guidelines have taken shape and 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*, STB Ex Parte No. 657 (Sub-No. 1) (STB served Oct. 30, 2006), *aff’d sub nom, BNSF Ry Co., et al. v. STB*, 526 F.3d 770 (DC Cir. 2008).

In that rulemaking, the Board adopted six changes to the rate-reasonableness guidelines, including closing a loophole that allowed carriers to affect the maximum lawful rate by how high they set their common carrier rates, prohibiting movement-specific adjustments to the variable cost figures produced by the URCS, and adopting a new allocation method for cross-over traffic, among others.

Among the more significant actions taken in this area in FY 2007-2008 regarding rail rate-reasonableness cases, the Board:

- Found that rates challenged for movements of coal from Wyoming’s Powder River Basin to a coal-fired electric generating plant near Ladue, Missouri exceeded 180 percent of the variable cost of providing such service and, according to a stipulation between the parties, prescribed a maximum reasonable rate limited to 180 percent of variable cost (the statutory floor for regulatory relief) until 2015, and ordered reparations, plus interest, in *Kansas City Power & Light Company v. Union Pacific Railroad Company*, STB Docket No. 42095, served May 19, 2008.
- Denied petitions for reconsideration of a September 2007 decision, in which the Board found that although the shipper had not demonstrated that rates challenged for coal movements from Powder River Basin origins to a coal-fired electric utility plant at Moba Junction, WY, were unreasonable, the parties should file supplemental evidence to overcome deficiencies in the record in *Western Fuels Association, Inc., and Basin*

Electric Power Cooperative v. BNSF Railway Company, STB Docket No. 42088, served February 29, 2008).

Rate Challenges—Simplified and Expedited Rate Guidelines

In 1996, the Board adopted simplified and expedited rate guidelines in *Rate Guidelines—Non-Coal Proceedings, I S.T.B. 1004 (1996)*. Within the subsequent decade, only two cases were brought to the Board under these guidelines, both settled according to Board-led mediation, in *BP Amoco Chem. Co. v. Norfolk S. Ry.*, STB Docket No. 42093, issued June 28, 2005, and in *William Olefins, LLC v. Grand Trunk Corp.*, STB Docket No. 42098, served February 15, 2007.

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*, STB Ex Parte No. 646 (Sub-No. 1)(*Simplified Standards*), served September 5, 2007. As part of the new simplified guidelines, the agency created a methodology for “medium-sized” cases, and modified its previous simplified guidelines for “small-sized” cases.

Specifically, the Board adopted a simplified version of the SAC test for medium-sized cases, which it dubbed “Simplified-SAC,” and modified the previously adopted “Three Benchmark” methodology for small-sized cases, under which a challenged rate is evaluated in relation to three benchmark figures from the rates of a comparable group of traffic. A shipper challenging a rate may choose to present evidence using either a Simplified-SAC or Three-Benchmark approach, but with limits on the relief available if either simplified procedure is used.

In significant cases related to the Board’s simplified and expedited guidelines during FY-2007-2008, the Board:

- Denied a group of shippers’ and Arkansas Electric Cooperative Corporation’s petition for reconsideration of various aspects of the agency’s simplified rail-rate guidelines, concluding that the limits on relief available under the simplified procedures were reasonable and proper at the time, in *Simplified Standards For Rail Rate Cases*, STB Ex Parte No. 646 (Sub-No. 1), served March 12, 2008.

- Denied a motion to dismiss, as well as preliminary arguments filed by a railroad in response to three separate complaints challenging the reasonableness of rates for non-exempt commodities, including hazardous materials, in *E. I. DuPont de Nemours and Company v. CSX Transportation, Inc.*, STB Docket No. 42099, *et al.*, issued December 20, 2007. The railroad argued that the challenged rates were not subject to the Board's jurisdiction because they were contract rates, but the agency disagreed. The railroad also argued that the challenged rates for hazardous materials should not be considered under *Simplified Standards* but, again, the Board disagreed by its conclusion that *Simplified Standards* would apply to rate challenges to such movements.
- Sought public comments on a proposal to adjust its Revenue Shortfall Allocation Method, a component of the agency's Three Benchmark Methodology for reviewing the reasonableness of a challenged rail rate, to account for taxes. Comment specifically was sought on whether the applicable formula should be modified and, if so, what tax rate should to be used to adjust the revenue adequacy shortfall, in *Simplified Standards for Rail Rate Cases—Taxes in Revenue Shortfall Allocation Method*, STB Ex Parte No. 646 (Sub-No. 1), served June 27, 2008.
- Found that a railroad had market dominance over movements of nitrobenzene by tank car from Pascagoula, Miss., to Neuse, N.C. and that, under the Three-Benchmark method set forth in *Simplified Standards*, the challenged rate was unreasonably high, in *E. I. DuPont de Nemours and Company v. CSX Transportation, Inc.*, STB Docket No. 42101, served June 30, 2008. The railroad was directed to establish a new rate, not to exceed maximum reasonable rates prescribed, and to pay reparations, plus interest, to the shipper.
- Found a railroad had market dominance over two chlorine movements by rail tankcar from Niagara Falls, New York, and Natrium, West Virginia to New Johnsonville, Tennessee, and that, under the Three-Benchmark method set forth in *Simplified Standards*, the challenged rate was unreasonably high. In the Board's decision in *E. I. DuPont de Nemours and Company v. CSX Transportation, Inc.*, STB Docket

No. 42100, served June 30, 2008, the railroad was directed to establish new rates, not to exceed maximum reasonable rates prescribed, and to pay reparations, plus interest, to the shipper.

- Found that a railroad had market dominance over three movements: the movement of synthetic plastic powder from Ampthill, Va., to Wyandotte, Mich.; and two movements of plasticizers from Heyden, N.J., to Duart, N.C., and Washington, W.V. The Board further held that, under the Three-Benchmark method set forth in Simplified Standards, the challenged rates were unreasonably high in *E. I. DuPont de Nemours and Company v. CSX Transportation, Inc.*, STB Docket No. 42099 (STB served June 30, 2008). The railroad was directed to establish new rates, not to exceed the maximum reasonable rates prescribed, and to pay reparations, plus interest, to the shipper

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 an alternative route using another railroad, or to provide switching for another railroad or give another railroad access to its terminal.

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.

Among its more significant actions addressing railroad service and practice issues in FY 2007-2008, the Board:

- Granted the petition of PYCO Industries for an order authorizing the West Texas & Lubbock Railway Company, Inc. to provide temporary, alternative rail service to PYCO over the lines of the South Plains Switching, Ltd. Co. in Lubbock, Texas, in *PYCO Industries, Inc.—Alternative Rail Service—South Plains Switching, Ltd. Co.*, STB Finance Docket No. 34889, *et al.*, served November 21, 2007.
- Found that CSX Transportation, Inc. unreasonably interfered with the Maumee & Western Railroad Company's ability to conduct common-carrier rail service operations by removing two crossing diamonds that effectively severed M&W's main line track, and ordered CSXT promptly to restore the crossing diamonds unless the railroads agreed to a different crossing arrangement, in *Maumee & Western Railroad Company and RMW*

Ventures LLC—Petition for Declaratory Order—CSX Transportation, Inc. Crossing Rights at Defiance, OH, STB Finance Docket No. 34527, served May 9, 2007.

- Implemented several new rules in the way railroad fuel surcharges are calculated by rail carriers. The rules (1) require that a railroad wishing to assess a fuel surcharge more closely link that surcharge to the carrier’s fuel costs attributable to the movement to which the fuel surcharge is applied; (2) prohibit carriers from “double dipping” by imposing a fuel surcharge and also applying a rate escalator based on an index, such as the Board’s Railroad Cost Adjustment Factor, without first subtracting any fuel cost component from that index and (3) require each Class I railroad to report to the agency regarding its fuel costs and fuel-surcharge revenues, in *Rail Fuel Surcharges*, STB Ex Parte No. 661, served January 26, 2007, and in *Rail Fuel Surcharges*, STB Ex Parte No. 661 (Sub-No. 1), served August 14, 2007.
- Denied a North American Freight Car Association complaint, and that of 10 association members, challenging BNSF traffic provisions imposing storage and demurrage charges on empty private freight cars when held on BNSF property beyond a “free time” period, in *North American Freight Car Association, et al. v. BNSF Railway Company*, STB Docket No. 42060 (Sub-No. 1), served January 26, 2007.
- Granted the Pioneer Industrial Railway Company’s petition to reopen a Board decision granting an adverse discontinuance against Pioneer, based on new evidence and changed circumstances showing that a shipper was not receiving adequate service from a subsequent carrier in *Pioneer Industrial Railway Co.—Alternative Rail Service—Central Illinois Railroad Company*, STB Docket Finance Docket No. 34917, *et al.*, served January 12, 2007.
- Denied an application for adverse discontinuance of service by Pioneer based on, among other things, concerns about the cost, frequency, and reliability of service to Carver Lumber; the service available to that shipper via trans-loading; and Pioneer’s willingness to reinstate its prior satisfactory service over the Kellar Branch line, in *City of Peoria and*

the Village of Peoria Heights, IL—Adverse Discontinuance—Pioneer Industrial Railway Company, STB Docket No. AB-878, served November 19, 2007.

- Denied a request from the Western Coal Traffic League to set rules of general applicability regarding so-called “paper barriers,” deciding instead to consider the propriety of such interchange commitments on an individual, case-by-case basis, in *Review of Rail Access and Competition Issues—Renewed Petition of the Western Coal Traffic League*, STB Ex Parte No. 575, served October 30, 2007. The Board proposed new disclosure requirements in *Disclosure of Rail Interchange Commitments*, STB Ex Parte No. 575 (Sub-No. 1), served October 30, 2007.
- Concluded that the Maryland Transit Administration had adequately addressed Board concerns about possible obstacles to freight-rail service on the Cockeyville [Md.] Industrial Track, ultimately determining that authorization from the agency’s predecessor, the former ICC, was not required for MTA’s 1990 acquisition of the Cockeyville Industrial Track, in *Maryland Transit Administration—Petition for Declaratory Order*, STB Finance Docket No. 34975, served October 9, 2007.
- Dismissed a complaint alleging wrongful assessment of demurrage charges, finding that two alleged claims were not within the primary jurisdiction of the agency, in *PCI Transportation, Inc. v. Fort Worth & Western Railroad Company*, STB Docket No. 42094 (Sub-No. 1), served April 25, 2008.
- Found that the Savannah Port Terminal Railroad, Inc., had properly applied demurrage charges against Capital Cargo, Inc., and that SPTR was not required to provide Capital with three switching actions per day to meet SPTR’s service obligations under the Interstate Commerce Act, in *Savannah Port Terminal Railroad, Inc.—Petition for Declaratory Order—Certain Rates and Practices as Applied to Capital Cargo, Inc.*, STB Finance Docket No. 34920, served May 30, 2008.
- Instituted a proceeding and adopted a procedural schedule to resolve a dispute over

demurrage charges assessed by Illinois Central Railroad Company, ultimately holding the proceeding in abeyance, at the request of the parties, to allow them to pursue a mediated agreement, in *Ameropan Oil Corporation—Petition for Declaratory Order—Reasonableness of Demurrage Charges*, STB Docket No. 42106, served July 22, 2008.

- Denied a request for an investigation and emergency relief to prohibit a railroad from applying a new security deposit in a proposed demurrage tariff, in *Railroad Salvage & Restoration, Inc., and G.F. Weideman International, Inc.—Petition for Investigation and for Emergency Relief under 49 U.S.C. 721(B)(4)—Security Deposit for Demurrage Charges, Missouri & Northern Arkansas Railroad Company, Inc. (Revised Item 1010)*, STB Docket No. 42109, *et al.*, served July 25, 2008.

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 2007 and 2008, the Board continued to foster industry dialogue about railroad service through the annual meetings of the National Grain Car Council, and through quarterly meetings of the Railroad Shipper Transportation Advisory Council. The Board also held a public hearing, on November 2, 2006, to examine issues related to rail transportation of grain in the proceeding entitled, *Rail Transportation of Grain*, STB Ex Parte 665.

The Board established a Rail Energy Transportation Advisory Committee, to provide advice to the agency regarding the rail transportation of energy resources such as coal, ethanol, and other biofuels, in *Establishment of a Rail Energy Transportation Advisory Committee*, STB Ex Parte No. 670, in which the Board served a decision on September 21, 2007. RETAC held quarterly meetings in FY 2008.

On September 13, 2007, the agency announced that it had awarded a contract to Christensen Associates, a Wisconsin-based consulting firm, to conduct an independent study to assess the state of competition in the freight-rail industry in the United States.

Dialogue Between Railroads and Their Customers

The Board continues to encourage railroads to establish a regular dialogue with their customers as a productive way of addressing rail customer-service concerns. On April 11, 2007, the agency held a public hearing, in the proceeding entitled *Rail Capacity and Infrastructure Requirements*, STB Ex Parte No. 671, on rail-traffic forecasts and infrastructure requirements. The hearing was attended by representatives from the freight-rail industry, shippers, passenger-rail groups and leaders from all levels of government.

Additionally, to aid rail customers in their business planning, the Board asked railroads to submit to the agency their fall 2007 and, a year later, their fall 2008, “peak-season” service plans. The Board publicly released the railroads’ responses on the agency’s Web site.

Assistance With Specific Service Matters

In addition to the Rail Customer and Public Assistance Program’s work in providing informal rail customer problem-solving expertise, the staff regularly monitors the rail industry’s operational performance with an eye toward identifying service issues before they become major problems.

RAIL-LABOR MATTERS

Railroad employees adversely affected by certain Board-authorized rail restructurings are entitled to protection prescribed by law. Standard protective conditions address both wage and salary protection, and changes in working conditions. They provide 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.

Among the more significant actions addressing rail-labor protection in FY 2007-2008, the Board:

- Denied a request to waive the requirement that a railroad certify to the Board that it gave advance notice of a transaction to affected employees and their unions, in *Western New York and Pennsylvania Railroad, LLC—Lease and Operation Exemption—Certain Assets of Norfolk Southern Railway Company and Chautauqua, Cattaraugus, Allegany, and Steuben Southern Tier Extension Railroad Authority*, STB Finance Docket No. 35019, issued June 26, 2007.
- Granted a railroad's request to waive labor-notice requirements where the carrier would continue to provide the same service with the same employees after the proposed transaction in *Portland & Western Railroad, Inc.—Acquisition and Operation Exemption—Union Pacific Railroad Company*, STB Finance Docket No. 34792, served November 22, 2006.
- Found that the agency did not have discretion to impose labor protection sought by the United Transportation Union-General Committee of Adjustment and United Transportation Union-Montana State Legislative Board as part of a Board grant of a rail-construction application, in *Tongue River Railroad Company, Inc.—Construction and Operation—Western Alignment*, STB Finance Docket No. 30186 (Sub-No. 3), served October 9, 2007.

- Waived a requirement that a railroad applicant provide notice of intent to certified labor organizations representing affected employees because no such employees were found to be affiliated with such organizations, in *CSX Transportation, Inc.—Adverse Abandonment—In Shelby County, TN*, STB Docket No. AB-1010X, served October 10, 2007.
- Granted the Columbia Basin Railroad Company, Inc.’s request for waiver of the advance labor-notice requirement because there would be no substantial change in the railroad’s operations, and affected employees already had received 30 days notice, in *Columbia Basin Railroad Company, Inc.—Acquisition and Operation Exemption—BNSF Railway Company and BNSF Acquisition, Inc.*, STB Finance Docket No. 35066, served November 30, 2007.
- Denied a petition for exemption to acquire certain rail lines based on labor interests’ assertions that a proposed transaction did not qualify for a class exemption. The Board found that Norfolk Southern Railway would have sufficient control of the Michigan Central Railway that the transaction would not come within the scope of section 10901, in *Michigan Central Railway, LLC—Acquisition and Operation Exemption—Certain Lines of Norfolk Southern Railway Company, et al.*, STB Finance Docket No. 35063, *et al.*, served December 10, 2007.
- Declined to review an arbitration award addressing a dispute between the Sheet Metal Workers International Association and CSXT, in *CSX Corporation—Control—Chessie System, Inc. and Seaboard Coast Line Industries, Inc.*, STB Finance Docket No. 28905, issued (Sub-No. 29), served March 14, 2008.

- Granted SSP Railroad Holding LLC’s request for waiver of advance labor-notice requirements because the employees at issue would not be detrimentally affected, and because the national labor organization favored the transaction, in *SSP Railroad Holding LLC—Acquisition and Operation Exemption—Mital Steel USA – Railway Inc.*, STB Finance Docket 35129, served April 29, 2008.
- Denied a request to impose labor protection in reference to a contract dispute because, among other reasons, it was unlikely that the employees would be affected, in *Union Pacific Corporation, Union Pacific Railroad Company, and Missouri Pacific Railroad Company—Control and Merger—Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and the Denver and Rio Grande Western Railroad Company*, STB Finance Docket No. 32760, served May 1, 2008.

ENVIRONMENTAL REVIEW

Overview

Under the National Environmental Policy Act, the Board must take into account the environmental impacts of its actions before making its final decision in a case. The Board's Section of Environmental Analysis (SEA) assists the agency by conducting independent environmental reviews in cases filed with the agency. This includes preparation of any necessary environmental documentation, such as an Environmental Impact Statement (EIS), where there is a potential for significant environmental impacts or a more limited Environmental Assessment (EA). The SEA also conducts public outreach to inform interested parties about railroad proposals, provides the opportunity to the public to raise environmental concerns and provides technical advice and recommendations to the Board on environmental matters.

Review Process

The SEA typically conducts environmental reviews for rail-line construction proposals, and for rail abandonments and mergers. Reviews are conducted according to the agency's environmental rules, regulations of the President's Council on Environmental Quality and other applicable federal environmental requirements. Reviews take into account all applicable federal environmental laws, including the Endangered Species Act,²² the Coastal Zone Management Act,²³ the Clean Air Act,²⁴ the Clean Water Act,²⁵ the National Historic Preservation Act²⁶ and pertinent hazardous-substance laws.

The public plays an important role in the environmental-review process. The SEA first presents to the public the preliminary results of its analysis of potential environmental impacts in either a draft EIS or an EA. This analysis is based on information available at the time from the railroad

²³ 16 USC 1451-1464

²⁴ 42 U.S.C. 7401 et seq.

²⁵ 33 U.S.C. 1251 et seq.

²⁶ 16 U.S.C. 470 et seq.

applicant and the public, the SEA's independent analysis, and, in some cases, site visits by SEA staff to the proposed project area. The SEA then provides an opportunity for public review and comment on all aspects of the draft EIS or EA. At the conclusion of the public-comment period, the SEA performs additional analysis, as needed, and prepares an EIS or "Post-EA" presenting the SEA's final recommendations to the Board. The STB then considers the entire environmental record 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 Board has the authority to impose conditions to address potential adverse effects of a proposed action on communities. Conditions could address public safety, land use, air quality, wetlands and water quality, hazardous waste and materials, noise, historic preservation, and potentially disproportionate impacts on minority and low-income populations. Such conditions must be reasonable and must address impacts that would result directly from a transaction being considered by the agency.

To conserve its limited resources, the Board sometimes employs the services of a third-party contractor to assist the SEA in preparing environmental analyses. This is done under the SEA's direction, control, and supervision. The agency has explained its procedures under this practice in *Policy Statement On Use Of Third-Party Contracting In Preparation Of Environmental Documentation*, STB Ex Parte No. 585, served March 19, 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 impacts on the environment, the Board considers alternatives to the proposed action, 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 impacts.

Among the more significant actions involving the preparation of EISs in FY 2007-2008, the SEA:

- Issued a Final Supplemental EIS, and completed environmental review, in *Tongue River Railroad Co.–Construction and Operation–Western Alignment*, STB Finance Docket No. 30186 (Sub-No. 3), served October 13, 2006 (*Tongue River III*), for the proposed construction and operation of a 17.3-mile line of railroad, known as the “Western Alignment,” in Rosebud and Big Horn Counties, Minn., as an alternative routing for a portion of the 41-mile, Ashland-to-Decker line previously approved in STB Finance Docket No. 30186 (Sub-No. 2), (*Tongue River II*).
- Issued a Supplemental Draft EIS and a Final EIS for the proposed construction and operation of seven-mile line of railroad, in *Southwest Gulf Railroad Company–Construction and Operation Exemption–in Medina County, TX*, STB Finance Docket No. 34284, served December 8, 2006 and May 30, 2008.
- Issued a Draft EIS for the proposed construction and operation of a 43-mile rail line to serve coal interests, in *Six County Association of Governments–Construction and Operation Exemption–Rail Line between Levan and Salina, Utah*, STB Finance Docket No. 34075, served June 29, 2007.
- Began environmental review and determined that the preparation of an EIS was appropriate in the proposed construction and operation of between 30 and 45 miles of new rail line in, *Alaska Railroad Corporation–Construction and Operation Exemption–A Rail Line Extension to Port MacKenzie, AK*, STB Finance Docket No. 35095, served February 12, 2008.

In addition, during FY 2007 and 2008, the STB participated as a cooperating agency in the preparation of EISs in the:

- United States Department of Energy's construction of a nuclear-waste repository and new rail lines in Yucca Mountain, Nev., in *United States Department of Energy—Rail Construction and Operation—Caliente Rail Line in Lincoln, NYE, and Esmeralda Counties, NV*, STB Finance Docket No. 35106.
- Construction of a Trans Texas Corridor involving a 1,000-mile rail line for freight and mass transit in Texas.
- Construction of an 80-mile rail line, known as DesertXpress, from Victorville, Calif. to Las Vegas, Nev., offering high-speed, passenger-rail transportation, in STB Ex Parte No. 660.
- Construction and operation of a 35-mile rail line from Sithe Global's proposed coal-fired, power-generating plant to an existing rail line in Lincoln County, NV, known as the Toquop Energy Project, in STB Ex Parte No. 667.
- Construction and operation of a three-mile rail line from a quarry owned by Omya, Inc. to the mainline in Middlebury, Vt., in STB Ex Parte No. 674.

In FY 2007-2008, the SEA also:

- Began environmental review regarding the proposed construction of a 20-mile rail line, in *R.J. Corman Railroad Company/Pennsylvania Lines Inc.—Construction And Operation Exemption—in Clearfield County, PA*, STB Finance Docket No. 35116.
- Conducted ongoing environmental review regarding the proposed construction of a

2,700-foot rail line, in *New England Transrail, LLC, d/b/a Wilmington & Woburn Terminal Railroad Co.–Construction, Acquisition, and Operation Exemption–in Wilmington and Woburn, MA*, STB Finance Docket No. 34797.

- Conducted ongoing environmental review regarding a proposed 80-mile rail line, in *Alaska Railroad Corporation–Petition for Exemption–to Construct and Operate a Rail Line Between North Pole, Alaska and Delta Junction, Alaska*, STB Finance Docket No. 34658.
- Conducted ongoing environmental review regarding the identification and evaluation of historic and cultural resources, in *Dakota, Minnesota & Eastern Railroad Corporation Construction into the Powder River Basin*, STB Finance Docket No. 33407.

Among the more significant actions involving the preparation of EAs in FY 2007-2008, the SEA:

- Issued a Draft EA for the proposed construction of a 10-mile rail line, in *Arizona Eastern Railway, Inc. –Construction Exemption–in Graham County, AZ*, STB Finance Docket No. 34836, served February 25, 2008.
- Issued a Draft EA for the proposed construction of a nine-mile rail line, in *Itasca County Regional Rail Authority–Petition for Exemption–Construction of a Line of Railroad in Itasca County, MN*, STB Finance Docket No. 34992, served March 28, 2008.
- Began environmental review and determined that the preparation of an EA was appropriate in the proposed construction of two new rail-line segments, and the rehabilitation of an existing rail segment, in *Port of Moses Lake–Construction Exemption–Moses Lake, Washington*, STB Finance Docket No. 34936.

- Issued a Draft EA for the proposed construction of a nine-mile rail line, in *Itasca County Regional Rail Authority–Petition for Exemption–Construction of a Line of Railroad in Itasca County, MN*, STB Finance Docket No. 34992, served March 28, 2008.

In FY 2007-2008, the SEA also began environmental review regarding the proposed construction of a 32-mile rail line, in *Liberty County Rural Rail Transportation District No. 1-Construction and Operation Exemption-in Liberty County, TX*, STB Finance Docket No. 35061 and regarding the proposed construction of an approximately five-mile rail line, in *Vaughn Railroad Company–Construction and Operation Exemption– in Monongalia County, WV*, STB Finance Docket No. 35131.

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 rail-line abandonments often involve the protection of critical habitats for threatened and endangered species, historic and cultural resources, and wetlands. In FY 2007-2008, the SEA conducted more than 130 environmental assessments in connection with rail-line abandonments.

A significant action in this reporting period involved an adverse abandonment application, filed by the City of South Bend, Indiana, the Brothers of Holy Cross, Inc., and the Sisters of the Holy Cross, Inc., requesting Board authorization of third-party or adverse abandonment of 3.7 miles of railroad, in *Norfolk Southern Railway Company–Adverse Abandonment–St. Joseph County, IN*, STB Finance Docket No. AB-290 (Sub-No. 286), served December 11, 2006. After determining that an EIS was unnecessary, the SEA issued an EA recommending that the applicants complete the Section 106 process of the National Historic Preservation Act before beginning any salvage activities. The agency later denied the application, for other than environmental reasons, in a decision served February 14, 2008.

Railroad Mergers

In railroad mergers, potential environmental impacts include changes in rail-traffic patterns on existing lines, which may be addressed in an EA or an EIS. The Board may impose measures designed to mitigate potential system-wide and corridor-specific environmental impacts. Such measures may address at-grade crossing safety and delays, hazardous-materials transportation safety, emergency response, air quality and noise. Measures may also address potentially disproportionate impacts on minority and low-income populations. Safety-integration plans, prepared by merger applicants in consultation with the FRA, describe how applicants would ensure the safe integration of their rail operations.

Among the more significant actions taken in this area, the SEA:

- Determined that the preparation of an EIS was appropriate, in connection with the already-approved DM&E acquisition of control of the Iowa, Chicago & Eastern Railroad Corporation (IC&E), in *Dakota, Minnesota & Eastern Railroad Corporation and Cedar American Rail Holdings, Inc.—Control—Iowa, Chicago & Eastern Railroad Corporation*, STB Finance Docket No. 34178; and IC&E's acquisition of the rail lines and assets of I&M Rail Link (I&M), in *Iowa, Chicago & Eastern Railroad Corporation—Acquisition and Operation Exemption—Lines of I&M Rail Link, LLC*, STB Finance Docket No. 34177, served October 18, 2006. During the reporting period, the environmental review in this case was on hold to permit DM&E to develop updated rail-traffic projections of DM&E coal trains from the Powder River Basin to be routed over the I&M system.
- Determined that the proposed acquisition and control of the Florida East Coast Railway, in *Fortress Investment Group LLC, Et Al.—Control—Florida East Coast Railway, LLC*, STB Finance Docket No. 35031, served June 21, 2007, was categorically excluded from environmental review under the Board's regulations because the proposal likely would not result in any potential environmental

impact warranting further environmental review under NEPA and the agency's environmental rules.

- Issued a Draft EIS for the proposed acquisition and control of the EJ&E West Company, a wholly owned, non-carrier subsidiary of the Elgin, Joliet and Eastern Railway Company, in *Canadian National Railway Company and Grand Trunk Corporation—Control—EJ&E West Company*, STB Finance Docket No. 35087, served July 25, 2008.

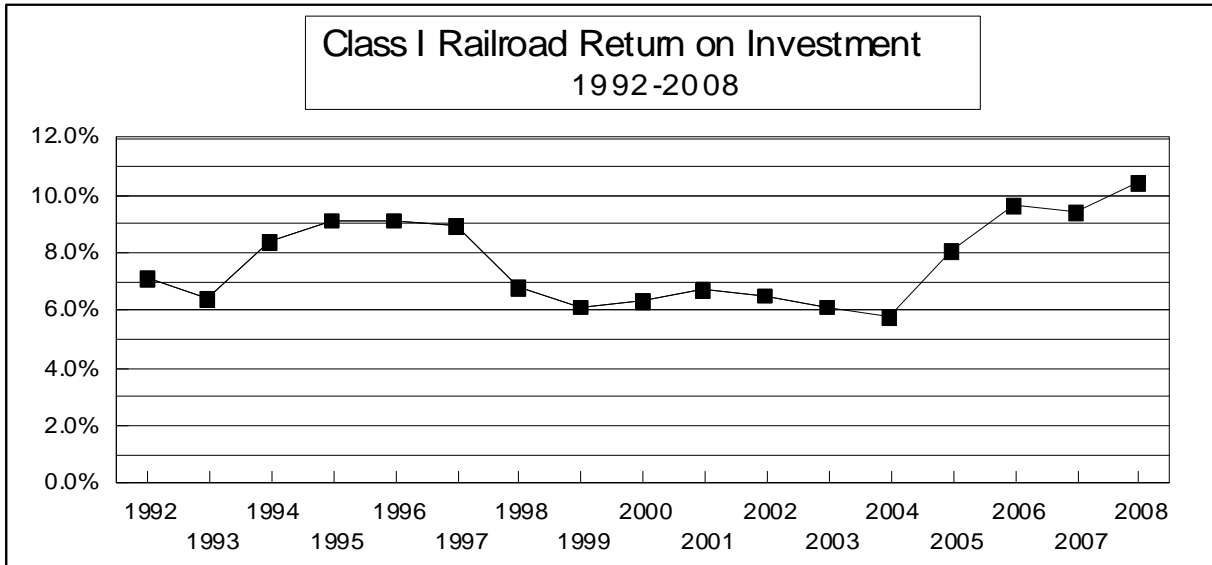
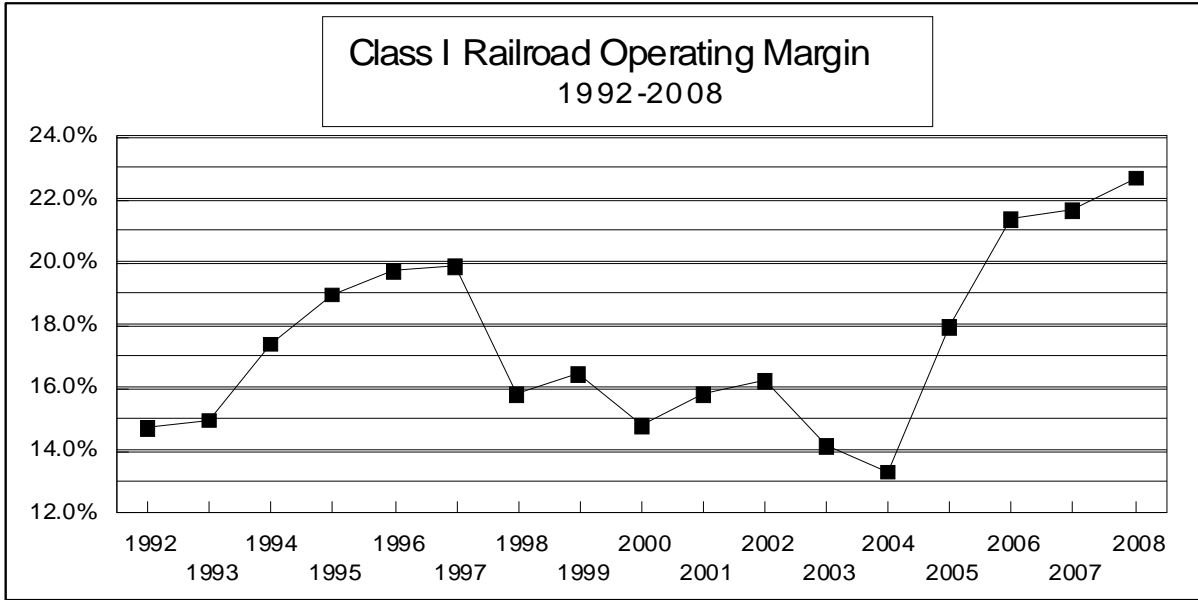
FINANCIAL CONDITION OF RAILROADS

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

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 Web site, at www.stb.dot.gov (See Appendix A).

The Board also publishes a "rail cost adjustment factor" (RCAF) on a quarterly basis to reflect changes in costs incurred by the rail industry during each quarter of the year. The agency publishes an unadjusted RCAF, and an adjusted RCAF with adjustments reflecting rail-industry productivity gains (See Appendix A).

As shown in the following graphs, the operating margin and return on net investment for the railroad industry improved during calendar years 2006-08:



AMTRAK

The Board has limited but significant regulatory authority over the National Railroad Passenger Corporation, known as Amtrak. The agency has authority to ensure that Amtrak may operate over the track of the nation's freight railroads, and to address disputes between and among Amtrak and individual freight railroads concerning shared use of tracks and other facilities. The Board can set the terms and conditions of such shared use if Amtrak and freight railroads fail to reach voluntary agreements.

When a freight railroad cannot permit an Amtrak train to move over its tracks as part of Amtrak's normal routing, the Board may issue an emergency rerouting order to permit uninterrupted Amtrak passenger service. No such emergency rerouting orders were required in FY 2007 and FY 2008.

The Board also has authority to direct commuter-rail operations in the event of a cessation of service by Amtrak. Though the Board had worked with the FRA, Amtrak, and commuter and freight railroads in 2004 in assessing such contingencies, no instances arose during FY 2007 and FY 2008 requiring the agency to take action in this area.

In connection with Amtrak, during the reporting period the Board:

Held a public hearing to examine issues related to rail-capacity constraints and infrastructure requirements, in *Rail Capacity and Infrastructure Requirements*, STB Ex Parte No. 671, served March 6, 2007; March 30, 2007; and April 16, 2007. At the hearing, Amtrak's President and Chief Executive Officer testified on Amtrak's view of the nature and magnitude of the issue of rail-capacity and expressed its support for public investment in rail infrastructure.

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. Board approval effectively confers immunity from antitrust laws for such collective activities, with the Board monitoring activities conducted under approved agreements. The Board periodically reviews motor carrier bureau agreements to determine whether they should continue.

In FY 2007 and FY 2008, the Board terminated its approval of all outstanding motor-carrier bureau agreements, those being agreements of 11 motor-carrier rate bureaus and an agreement of the National Classification Committee, in *Motor Carrier Periodic Review Proceeding*, STB Ex Parte No. 656, *et al.*, initially served May 7, 2007.²⁷ As a result, antitrust immunity for of these bureau agreements terminated on January 1, 2008.

²⁷ A corrected decision was served May 16, 2007, a modification was served June 28, 2007, and clarification was denied October 25, 2007.

MOTOR CARRIAGE

Pooling Arrangements

Motor carriers seeking to pool or to divide their traffic, services, or earnings among themselves must apply for Board approval. In FY 2007 and FY 2008, the Board issued no decisions on motor carrier pooling arrangements.

Household-Goods Carriage

Household-goods carriers, such as moving-van companies, are required to publish tariffs and make them available to residential shippers. Such tariffs must include an accurate description of the services offered and the applicable rates, charges, and service terms for household-goods moves. Shippers must be explicitly informed whenever provisions of a tariff are incorporated into a bill of lading or other contract document, and these provisions must be made available for inspection by the shippers. Regulations also require additional public notice and explanation when incorporated tariff provisions include terms that restrict claims, put limits on a carrier's liability for loss, damage, or delay of goods, or allow a carrier to impose monetary penalties or to increase the price of the transportation.

Among the more significant actions in this area, the Board:

- Approved a request by household-goods carriers asking the agency to amend its previous decisions authorizing movers to offer “released rates,” under which they limit their cargo liability, to comport with a legal change in the standard liability of motor carriers for damage to, or loss of, the household goods they transport in *Released Rates of Motor Carriers of Household Goods*, MC-999, served June 11, 2007.
- Sought public comment on three proposed changes, designed to enhance consumer protection, in the authority of motor carriers to offer “released rates” under which a customer, in exchange for a lower cost, agrees that the carrier will be liable for an amount less than the legal level of liability for damage to, or loss, of household goods in the

carrier's care, in *Released Rates of Motor Common Carriers of Household Goods*, RR-999 (Amendment No. 5 to Released Rate Decision No. MC-999, served June 13, 2007).

- Amended carriers' released-rates authority to provide that, if a motor carrier fails to obtain a customer's signature or initials on a contract or bill of lading indicating the customer's receipt of an explanatory brochure about the carrier's level of liability, the carrier will be held liable for the replacement value of the goods, in *Released Rates of Motor Common Carriers of Household Goods*, RR-999 (Amendment No. 4 to Released Rates Decision No. MC-999, served June 13, 2007).
- Contacted several household-goods carriers and forwarders in FY 2007-2008 to ensure that they were aware of, and in compliance with, statutory and regulatory requirements governing tariff publication and dissemination. As a result of this effort, carriers and forwarders not in compliance took appropriate action to satisfy requirements.

Intercity Bus Industry

Intercity bus carriers must obtain Board approval for mergers and similar consolidations, and for pooling arrangements between and among carriers. In addition, the agency can require bus carriers to provide through routes with other carriers.

Among the more significant actions involving bus carriers in FY 2007-2008, the Board:

- Approved the application of a non-carrier in control of passenger-bus companies to acquire another non carrier in control of bus companies, in *FirstGroup plc—Laidlaw International, Inc.*, STB Docket No. MC-F-21020, served April 5, 2007.
- Approved the application of a non-carrier, and its subsidiaries, to acquire a non carrier and its 30 bus subsidiaries, in *Fenway Partners Capital Fund III, L.P., et al.—Control—Coach America Holdings, Inc., et al.*, STB Docket No. MC-F-21019, served December 29, 2006.

- Found that the U.S. Department of Transportation, not the Board, is the appropriate federal agency to address the reach and effect of federally issued authority, in *East West Resort Transportation, LLC and TMS, LLC, d/b/a Colorado Mountain Express—Petition for Declaratory Order—Motor Carrier Transportation of Passengers in Colorado*, STB Docket No. MC-F-21008, served January 31, 2007.
- Approved the application of a non-carrier in control of bus carriers to acquire the properties of a bus company, in *FirstGroup plc—Acquisition—Cognisa Transportation, Inc.*, STB Docket No. MC-F-21021, served July 13, 2007.
- Approved the application of a non-carrier individual to acquire a bus company via a stock purchase from another bus company, in *Cullen Hotard—Acquisition—Hotard Coaches, Inc.*, STB Docket No. MC-F-21022, served July 13, 2007.
- Granted an application to enable several applicants to pool their respective operating territories into a service network covering the continental United States, determining that the agreement was not of major transportation importance and that there was no substantial likelihood that the agreement would unduly restrain competition, in *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*, STB Docket No. MC-F-21023, served January 31, 2008.
- Approved the application of Fenway and Coach America to acquire control of Renzenberger, a Kansas corporation and federally regulated passenger-bus carrier with operating authority to transport passengers in: (1) contract carriage (transportation performed under contract) with rail carriers for their crews; (2) nationwide common-carrier charter and special operations; and (3) common-carrier service over specified regular routes in Nebraska, Iowa, Colorado, and Kansas, operating more than 1,500 vehicles in more than 20 states, in *Fenway Partners Capital Fund III, L.P. and*

Coach America Holdings, Inc.—Control—Renzenberger, Inc., STB Docket No. MC-F-21024, served February 26, 2008.

- Approved the application of Fenway and Coach America to acquire control of Lakefront and Hopkins (a sister company of Lakefront), two Ohio corporations providing interstate and intrastate passenger transportation service, in *Fenway Partners Capital Fund III, L.P., and Coach America Holdings, Inc.—Control—Lakefront Lines, Inc., and Hopkins Airport Limousine Service, Inc.*, STB Docket No. MC-F-21025, served February 26, 2008.
- Approved the application of Holland America Line Inc. (HAL), a non-carrier controlling four regulated passenger-bus carriers, for acquisition of control by HAL of a new bus carrier, Discover Alaska Tours, Inc., and for continuance in control of the four bus carriers HAL already controls, in *Holland America Line Inc.—Control—Westours Motor Coaches, Inc., Evergreen Trails, Inc., Westmark Hotels of Canada, Ltd., Horizon Coach Lines, Ltd., and Discover Alaska Tours, Inc.*, STB Docket No. MC-F-21026, served March 21, 2008.
- Approved the application of Stagecoach and Coach USA to acquire control of Megabus Northeast, which would utilize a fleet of motorcoaches to provide scheduled express bus service over regular routes between New York and several cities in the Northeast and Middle Atlantic states, including Washington and Boston, in *Stagecoach Group PLC and Coach USA, Inc., et al.—Control—Megabus Northeast LLC*, STB Docket No. MC-F-21027, served April 11, 2008.
- Approved the application of Delivery Acquisition, Inc., (Delivery)—an indirect subsidiary of Vail Resorts, Inc. (VRI)—to acquire control, through purchase, of the properties of Transportation Management Systems, LLC, formerly known as TMS, Inc., and East West Resort Transportation, LLC. The application also sought Board authority for VRI to control Delivery, which would become a carrier upon its acquisition of the carrier assets, including operating authorities. The Board served its decision in *Delivery*

MOTOR CARRIAGE

Acquisition, Inc.—Purchase—Transportation Management Systems, LLC and East West Resort Transportation, LLC, STB Docket No. MC-F-21028, served July 18, 2008.

- Approved the application of non-carrier Stagecoach, Coach USA, and KILT, a motor passenger carrier controlled by Coach USA, to acquire and operate certain assets of Eastern Travel & Tour, Inc., a bus carrier, in *Stagecoach Group PLC and Coach USA, INC., et al.—Acquisition of Control—Eastern Travel & Tour, Inc.*, STB Docket No. MC-F-20129, served September 18, 2008.

Motor Carrier Rate Reasonableness

The Board may review the reasonableness of most motor carrier rates only if they are established collectively. In FY 2007-2008, there were no requests for review of such rates.

WATER CARRIAGE

The Board has jurisdiction over both port-to-port and intermodal transportation in the noncontiguous domestic trade, which consists of domestic water transportation to or from Alaska and Hawaii, as well as to and from 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 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.

The number of water tariffs filed with the Board in FY 2007-2008 is shown in the following table.

Water Tariff Filings		
	2007	2008
Printed Tariffs		
Number of Pages Filed	4,778	6,038
Electronic Tariffs		
Number of Filings	2,720	3,112
Number of Objects (e.g., tariff rates, rules.)	47,731	55,049

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.

Among the significant actions taken in this area in FY 2007-2008, the Board:

- Denied a motion to dismiss a complaint filed by a government entity and explained what the agency would review in determining whether water-carrier rates to and from Guam were reasonable. The Board's decision included an initial analysis of whether sufficient competition in the noncontiguous domestic trade existed to preclude carriers from exercising significant market power. The decision also addressed the proper methodology to be used in assessing the reasonableness of rate levels involved in the rate complaint, if insufficient competition was found. Finally, the Board addressed the appropriate application of a zone of reasonableness to rate levels of the serving water carriers. The Board's decision was served in *Government of the Territory of Guam v. Sea-Land Service, Inc., American President Lines, Ltd., and Matson Navigation Company, Inc.* STB Docket No. WCC-101, served February 2, 2007, and a petition for reconsideration was denied on August 30, 2007.
- Denied a petition for declaratory order requesting the Board to determine that certain movements on through bills of lading, via foreign-flag vessels and Canadian rail lines and truck lines operating in Canada and the United States, were "sham movements" designed to circumvent Section 27 of the Merchant Marine Act of 1920 because the agency does not administer or enforce Section 27 of the Merchant Marine Act of 1920. The decision was served in *Horizon Lines—Petition for Declaratory Order*, STB Finance Docket No. 35039, served December 19, 2007.

PIPELINE CARRIAGE

The Board regulates the interstate transportation by pipeline of commodities other than water, gas, and oil. Pipeline carriers must promptly disclose their rates and service terms upon public request. Pipeline rates and practices must be reasonable and nondiscriminatory. Pipeline carriers must provide at least 20 days' notice before a rate increase or change in service terms may become effective.

During FY 2007-2008, the Board continued to examine a complaint filed by CF Industries concerning a pipeline's rate increase above a level prescribed in 2000. While the Board analyzed CF's complaint, the shipper and the pipeline reached a settlement agreement. Following a motion filed by the parties, the agency approved the parties' settlement agreement, vacated a rate prescription, and prescribed rates according to the agreement, in *CF Industries Inc. v. Kanab Pipe Line Partners, L.P. and Kanab Pipe Line Operating Partnership, L.P.*, STB Docket No. 42084, served November 21, 2006.

The Board neither received nor handled any informal pipeline-related complaints during FY 2007 and FY 2008.

COURT ACTIONS

Judicial review of most Board decisions is available in the United States courts of appeals. Judicial review of Board orders that are solely for the payment of money is available in the federal district courts. Judicial review of Board orders that address questions referred to the Board by a federal district court is available in the federal district court that made the referral.

Below is a summary of significant court decisions rendered in FY 2007-2008.

Railroad Restructuring

Line Constructions

In *Holrail LLC v. STB*, 515 F.3d 1313 (D.C. Cir. 2008), the court upheld the Board's decision finding that a proposal to construct a new rail line almost entirely in the right-of-way of another carrier would not be simply a "crossing" that the other carrier would have to permit.

Preservation of Rail Lines—Feeder Line Sale

In *Caddo Valley Railroad Company v. STB*, 512 F.3d 1021 (8th Cir. 2008), the court affirmed the Board's determination that, with respect to a rail line purchased under feeder-line provisions, the planned sale of 100 percent of the purchaser rail corporation's stock by its shareholders was equivalent to the corporation's selling the railroad line, thus triggering a statutory right-of-first-refusal.

Environmental Issues

In *Mayo Foundation v. STB*, 472 F.3d 545 (8th Cir. 2006), the court affirmed in all respects the Board's 2006 decision authorizing the Dakota, Minnesota & Eastern Railroad Corporation to construct 280 miles of new rail line to reach the coal mines of Wyoming's Powder River Basin. The court found that the Board had adequately considered all relevant environmental issues as directed by the court in *Mid States Coalition for Progress v. STB*, 345 F.3d 520 (8th Cir. 2003).

Railroad Rates—Rate Reasonableness Determinations

In *Otter Tail Power Company v. STB*, 484 F.3d 959 (8th Cir. 2007), the court upheld the Board's finding that rates charged by BNSF Railway to haul coal from the Powder River Basin to Otter Tail Power Company's electric generating plant near Milbank, S.D., were not shown to be unreasonable, thus denying Otter Tail's request for relief. In two procedural rulings in this matter, the court held that Otter Tail had failed to forcefully present its arguments to the agency in a timely fashion, and that the Board appropriately excluded evidence submitted for the first time in the rebuttal stage.

In *BNSF Ry. v. STB*, 526 F.3d 770 (D.C. Cir. 2008), the Court upheld as reasonable the Board's decision, in *Major Issues in Rail Rate Cases*, STB Ex Parte 657 (Sub-No. 1), served October 30, 2006, adopting several significant changes in its rate reasonableness procedures for handling large rail-rate disputes. In that decision, the agency had made significant changes to the proper application of the stand-alone cost (SAC) test in rail rate cases, as well as the proper calculation of the floor for any rail rate relief, including (1) precluding "movement-specific adjustments" to the Board's Uniform Rail Costing System (URCS) in computing the variable costs of the movement at issues; (2) replacing the "percent reduction approach" with a "maximum markup methodology" to calculate the maximum lawful rate under the SAC test; (3) fashioning a hybrid approach for forecasting operating expenses to account for future productivity gains; and (4) adopting an "average total cost" approach to allocate revenue from "cross-over" traffic. The Court affirmed all four changes.

COURT ACTIONS

In *Western Coal Traffic League v. STB*, No. 07-1064 (D.C. Cir. Feb. 1, 2008) (unpublished decision), the court denied a petition for review of a Board order setting the cost-of-capital calculation for the rail industry for 2005 based on the traditional, single-stage discounted cash flow methodology for setting industry cost of equity, even though the Board had agreed to consider, in a separate rulemaking, whether to change to a “Capital Asset Pricing Model” for subsequent years.

Railroad Service Issues

In *North America Freight Car Ass'n v. STB*, 529 F.3d 1166 (D.C. Cir. 2008), the court affirmed the Board’s decision that it was not necessarily unreasonable for rail carriers to assess demurrage charges on empty private cars left on a carrier’s tracks beyond an established “free period.” The court upheld the agency’s policy choice to determine whether demurrage charges are proper on a fact-specific, case-by-case basis, taking into account whether the carrier was at fault for the delay in accepting empty private cars.

Rail-Labor Matters

In *Black v. STB*, 476 F.3d 409 (6th Cir. 2007), the court affirmed the Board’s decision to uphold an arbitration award that denied employee protection to two rail employees who had refused to accept their employer carrier’s offer to transfer them to reasonably comparable positions when their own positions were abolished as a result of a rail merger.

Water Carriage

In *DHX v. STB*, 501 F.3d 1080 (9th Cir. 2007), the court affirmed the Board’s decision ruling against a freight forwarder that had challenged the rates and practices of two water carriers operating in the non-contiguous domestic trade between Hawaii and the continental United States. The court agreed with the Board that Congress did not intend to retain a private cause of action against water carriers for discrimination when it enacted the ICC Termination Act of 1995, and that the absence of a discrimination remedy does not hamstring the agency in its

ability to police whether a carrier acts in an anticompetitive fashion. The court also upheld the Board's finding that particular rates charged by the carriers had not been shown to be unreasonable, even though they may have been higher than rates that the carriers charged to certain other shippers.

Miscellaneous

Common-Carrier Service

In *American Orient Express Railway v. STB*, 484 F.3d 554 (D.C. Cir. 2007), the court affirmed the Board's decision finding that American Orient Express Railway Company, which offered luxury vacations in its restored vintage railroad cars between various points in the United States, was a rail carrier subject to agency jurisdiction. The court found that even though the railroad's cars were actually pulled by Amtrak, Amtrak pulled the cars on behalf of American Orient and, therefore, American Orient was the entity that was offering rail service.

State Tax Discrimination against Railroads

In *CSX Transportation, Inc. v. State Board of Equalization of the State of Georgia*, 552 U.S. 9 (2007), the United States Supreme Court, in a unanimous decision reversing and remanding a decision of the United States Court of Appeals for the Eleventh Circuit, agreed with the government's position that, in a case alleging that a state's property tax assessment discriminated against a railroad, the railroad could challenge the methodology by which the State of Georgia calculated the railroad's true market value. Although the Board was not a party in the case, the agency assisted the U.S. Department of Justice in formulating the government's position before the Supreme Court, and in preparing the government's amicus brief.

COURT ACTIONS

Car Mileage Payments

In *Springfield Terminal Ry. Co. v. STB*, 472 F. Supp. 89 (D. Mass. 2007), the court upheld the Board's decision, arising from a question referred to the Board by the court, that under the applicable tariff a cause of action for unpaid car mileage allowances accrues when a claim is denied or when the claim handling period expires, whichever occurs first. The court found that the Board had rationally concluded that the accrual provision of 49 U.S.C. 11705(g), which pertains to claims "related to a shipment of property," did not apply to claims for unpaid car mileage allowances.

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 Web site, at **www.stb.dot.gov**. Unless otherwise indicated, paper copies of agency reports and publications are available by calling the Board's Records Officer at (202) 245-0235, or by writing to:

Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0001

Copying charges may apply.

Board Regulations and Governing Statutes

Regulations adopted by the STB are contained in two volumes of the *Code of Federal Regulations* (CFR). The first volume (49 CFR Parts 1000-1199) contains general provisions and rules of practice, including provisions relating to exemptions, rate procedures, rail line constructions and abandonments, and restructurings within the railroad and intercity bus industries. The second volume (49 CFR Parts 1200-End) contains provisions regarding the uniform system of accounts prescribed by the agency, carrier records and reporting requirements, and filing and disclosure requirements with respect to rates and service terms. Both volumes are available at <http://ecfr.gpoaccess.gov>, or they may be obtained from the U.S. Government Printing Office, at (866) 512-1800 or (202) 512-1800 or by writing to:

Superintendent of Documents

**U.S. Government Printing Office
P.O. Box 979050
St. Louis, MO 63197-9000**

The primary statutory provisions governing the Board, and which the agency is charged with administering, are codified at 49 U.S.C. 701-727, 10101-16106. These provisions are published in the *United States Code Annotated*, in volumes 49 U.S.C.A 1 to 10101 and 49 U.S.C.A. 10101 to 20100. Both volumes may be viewed at the following URLs:

http://www.access.gpo.gov/uscode/title49/subtitlei_chapter7_.html

http://www.access.gpo.gov/uscode/title49/subtitleiv_.html

Paper copies of both volumes may be obtained by calling 1 (800) 328-9352, or writing to the following address:

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

The Board's Web site

The Board's Web site (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 November 1, 1996, as well as most environmental documents (such as Environmental Assessments and Environmental Impact Statements), served after that date.
- Agency reports containing major decisions issued on or after January 1, 1996.

- All public filings, in all proceedings, received by the agency after February 5, 2002, as well as selected filings received prior to that date in major cases.
- Proceedings.
- Testimony before Congress by Board Members and agency officials.
- Live audio and video streaming of public Board events, including hearings, meetings, and oral arguments. Proceedings are archived on the agency's Web site. Electronic transcripts of public events and statements made by Board members are also posted to the site.
- News releases issued by the Board, beginning in January 1997.
- Railroad and water-carrier recordations (equipment liens).
- 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 Consumer Assistance Program.
- The STB's Freedom of Information Act regulations, fees, Reference Guide for FOIA requesters, frequently requested records, and other FOIA-related information.

- The agency's rules and fees for filings and services.
- Publications, including how-to guides about rail-line abandonment and line-sale processes, as well as basic information about the Rails-to-Trails program.
- A general guide to the Board and its operations, including organizational information.
- Links to significant agency proceedings, the U.S. Congress, the U.S. Department of Transportation's list of Internet sites, and WEBGOV containing links to the White House and governmental agencies.
- Agricultural-contract summaries.

Documents available at the Board's Web site may be searched, viewed, printed or downloaded. Online help is available to guide users through the site. The site has e-mail address links relative to specific subject areas, and general inquiries about the agency may be e-mailed 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 a proceeding are available electronically. FOIA requests and Information Quality requests also may be electronically submitted.

Board Decisions, Filings, and News Releases

In addition to their posting to the Board's Web site, the agency's decisions, filings, and news releases, also may be viewed at the Board's Reading Room, at the agency's headquarters at 395 E St., S.W., Washington, D.C. Paper copies of decisions and filings are available for a fee, minimum charges apply, and a higher fee applies to requests for certified copies. Copies of news releases are free of charge. For information, contact the Board's Records Officer at (202) 245-0235.

Speeches and Statements

Board members' speeches and testimony before Congress are posted to the agency's Web site. Paper copies may be obtained by writing the Office of Public Assistance, Governmental Affairs and Compliance at the address shown at the beginning of this Appendix, or by calling the Board's communication director at (202) 245-0234. Paper copies of decisions and filings are available for a fee, minimum charges apply, and a higher fee applies to requests for certified copies. Copies of news releases are free of charge. For information, contact the Board's Records Officer at (202) 245-0235.

Financial and Statistical Reports from Class I Railroads

The following reports, submitted to the Board by Class I railroads, may be examined, by appointment with the agency's Records Officer, (202) 245-0235, between the hours of 8:30 a.m. and 5:00 p.m., Monday through Friday. Report copies are available for a fee, minimum charges apply, and a higher fee applies to requests for certified copies. Documents available on the Board's Web site, in Adobe Acrobat PDF format, are marked with an asterisk (*).

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

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

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

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

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

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.

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

Report of fuel cost, consumption, and surcharge revenue — A quarterly report containing the following information: total monthly fuel cost; gallons of fuel consumed during the month; increased or decreased cost of fuel over the previous month; and total monthly revenue from fuel surcharges for all traffic and regulated traffic. This required reporting commences with the three months beginning Oct. 1, 2007, [Ex Parte 661 (Sub-no.1) Rail Fuel Surcharges Decided: August 8, 2007].*

Periodic Financial Decisions and Notices Issued by the Board

The following periodic financial decisions and notices are available to the public. Documents available on the website are marked with an asterisk (*). These documents are also available, for a copying charge, through the Board's Records Officer, at (202) 245-0235.

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 Ex Parte 347 (Sub-No. 2) – Rate Guidelines – Non-Coal Proceedings and its calculation of the “Revenue Shortfall Allocation Method” (RSAM) percentage and the “Average Revenue-to-Variable Cost > 180” (R/VC>180) percentage.*

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

Indexing the Annual Operating Revenues of Railroads — 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, issued annually.*

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

Railroad Cost of Capital — determination of the cost of capital rate for the railroad industry issued annually in STB Ex Parte No. 558.*

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

Railroad Revenue Adequacy — determination of the railroads that are revenue adequate, issued annually in Ex Parte No. 552.*

Publications

The following Board publications are available on the agency's Web site, as indicated by an asterisk (*). Unless otherwise indicated, paper copies of these documents are also available, for a fee, through the Records Officer, at (202) 245-0235.

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

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

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

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

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

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

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 Mar. 1997).*

Surface Transportation Annual Report — report covering the Board's activities from its inception on January 1, 1996, to the close of the fiscal year that ended September 30, 2007 (Sept. 2009).

Surface Transportation Board Reports, Volumes 1 through 6 — reports containing major Board decisions issued from January 1996 to May 2003 (available through the U.S. Government Printing Office).

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

Software, Data, and User Documentation

The following software, data, and user documentation may be obtained from the Office of Economics, Environmental Analysis, and Administration for the fees listed below. To purchase any of these items, or for additional information about the software system requirements and use, contact OEEAA at (202) 245-0323.

Computer Assisted Depreciation and Life Analysis System (CADLAS) — programs used to analyze the life characteristics of property, calculate historical salvage ratios, develop depreciation rates, calculate annual accruals and accumulated depreciation, determine Reproduction Cost New Less Depreciation (RCNLD) (also known as Trended Net Original Cost), estimate property replacements, and value assets. [The cost for the Software and User Documentation generally runs \$30 (based on a rate of \$60 per hour per 49 CFR 1002.1 (f)(1)).]

Uniform Railroad Costing System (URCS) Phase III Movement Costing Program — used to develop individual shipment cost estimates for U.S. Class I railroads and for the eastern and western regions of the United States. [Program and Data, including the User Manual and Worktables, are available on the Board’s Web site under *Industry Data > Economic Data.*]

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 CFR Part 1244.9. The User Guide for the *Confidential Carload Waybill Sample File* is available on the agency’s Web site under *Industry Data > Economic Data.*

Carload Waybill Sample Public Use File — nonconfidential railroad movement and revenue data for use in performing transportation planning studies. The Data and User Guide for the *Carload Waybill Sample Public Use File* are available on the Board’s Web site under *Industry Data > Economic Data.*

APPENDIX B

APPROPRIATIONS AND EMPLOYMENT

The following tables show average full-time equivalent (FTE) employment at the Board and total appropriations, less enacted rescissions, for Fiscal Years 1999 to 2008 for activities included under the current appropriation title "Salaries and Expenses."

Average FTE Employment and Appropriations			
FY 2000- 2008¹			
Fiscal Year	Appropriation	STB Offset ²	Average Employment
2000	16,086,770	843,230	133
2001	17,016,481	900,000	135
2002	17,485,000	950,000	135
2003	18,320,075	1,000,000	137
2004	18,345,599	1,050,000	135
2005	20,020,000	1,050,000	134
2006	25,200,000	1,250,000	137
2007	25,074,501	1,250,000	136
2008	25,074,500	1,250,000	138

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

Status of FY 2002 Appropriations*	
Total appropriations	\$17,485,000
Offsetting collections (<i>see note</i>)	950,000
Reimbursements from other agencies	0
Total obligations	17,466,106
Unobligated balance available for adjustments	18,894
Carryover of offsetting collections to next fiscal year	940,617
Status of FY 2003 Appropriations*	
Total appropriations	\$18,320,075
Offsetting collections (<i>see note</i>)	1,000,000
Reimbursements from other agencies	0
Total obligations	18,307,135
Unobligated balance available for adjustments	12,940
Carryover of offsetting collections to next fiscal year	940,617
Status of FY 2004 Appropriations*	
Total appropriations	\$18,345,599
Offsetting collections (<i>see note</i>)	1,050,000
Reimbursements from other agencies	0
Total obligations	18,336,857
Unobligated balance available for adjustments	8,742
Carryover of offsetting collections to next fiscal year	940,617

² Board Appropriations are offset by user fees reflected as credits.

Status of FY 2005 Appropriations*	
Total appropriations (adjusted)	\$20,031,323
Offsetting collections (<i>see note</i>)	1,038,077
Reimbursements from other agencies	494,836
Total obligations	20,012,955
Unobligated balance available for adjustments	18,368
Carryover of offsetting collections to next fiscal year	940,617
Status of FY 2006 Appropriations *	
Total appropriations (adjusted)	\$24,999,349
Offsetting collections (<i>see note</i>)	1,198,651
Reimbursements from other agencies	20,259
Total obligations	24,928,304
Unobligated balance available for adjustments	71,045
Carryover of offsetting collections to next fiscal year	940,617
Status of FY 2007 Appropriations*	
Total appropriations (adjusted)	\$25,450,866
Offsetting collections (<i>see note</i>)	873,635
Reimbursements from other agencies	0
Total obligations	25,379,087
Unobligated balance available for adjustments	71,779
Carryover of offsetting collections to next fiscal year	940,617
Status of FY 2008 Appropriations*	
Total appropriations	\$25,074,500
Offsetting collections (<i>see note</i>)	1,250,000

APPENDIX B

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

* Appropriations, as of September 30 of each year, are from U.S. Department of Transportation's Accounting System.

NOTES:

In Fiscal Years 2007-2008, appropriations were provided under the condition that offsetting collections would be credits to the appropriation. The sum appropriated was to be reduced on a dollar-for-dollar basis as such offsetting collections were received during the fiscal years.

APPENDIX C
DECISIONS DURING FY 2007-2008

Caseload During FY 2007					
<i>Rail Matters</i>					
Category	Pending at Start	Received During	Decided During	Pending at End	Decisions Served
Carrier Consolidations	4	15	16	3	33
Review of Labor Arbitral Decisions	0	1	0	1	3
Rates and Services	18	11	11	18	60
Rate Reasonableness	9	6	6	9	34
Rate Disclosure	0	0	0	0	0
Through-Routes or Divisions	0	0	0	0	0
Contract Rates	0	1	0	1	6
Reasonable Practice	0	1	0	1	2
Discrimination	2	0	1	1	4
Car Supply and Interchange	3	2	2	3	9
Service Orders	4	1	2	3	5
Competitive Access	0	0	0	0	0
Constructions	11	2	4	9	14
Line Crossing	3	0	2	1	3
Constructions	8	2	2	8	11
Abandonments	92	198	182	108	409

Decisions During FY 2007 (Continued)					
<i>Category</i> <i>Rail Matters</i>	<i>Pending at Start</i>	<i>Received During</i>	<i>Decided During</i>	<i>Pending at End</i>	<i>Decisions Served</i>
Other Line Transactions	18	114	104	28	200
Line Consolidations	5	44	39	10	68
Line Acquisitions Under 49 U.S.C. 10901	7	32	31	8	72
Line Acquisitions by Shortline	3	28	25	6	39
Feeder Line Development	3	2	4	1	11
Acquisition and Operation 49 U.S.C. 10502	0	8	5	3	10
Collective Actions	1	0	1	0	2
Collective Ratemaking	0	0	0	0	0
Pooling	1	0	1	0	2
Data Collection and Oversight	1	3	2	2	14
RCAF	0	2	2	0	4
Accounting and Records	1	1	0	2	10
Reports – Rail	0	0	0	0	0
Passenger Rail	0	0	0	0	0
Amtrak Track Use/ Compensation	0	0	0	0	0
Passenger Rail - Other	0	0	0	0	0
Exemption Rulemakings	2	1	3	0	4

Other Rail	5	10	7	8	25
Common Carrier Obligation	0	0	0	0	0
Interlocking Officer or Director	0	0	0	0	0
Other	5	10	7	8	25
Total Rail	152	355	330	177	764

Caseload During FY 2007					
<i>Nonrail Matters</i>					
<i>Category</i>	<i>Pending at Start</i>	<i>Received During</i>	<i>Decided During</i>	<i>Pending at End</i>	<i>Decisions Served</i>
<i>Motor</i>					
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	19	1	19	1	4
Collective Ratemaking Agreements	19	1	19	1	4
Truck Pooling	0	0	0	0	0
Undercharges	0	0	0	0	0
Bus Regulation	1	5	6	0	6
Through-Route Regulation	0	0	0	0	0
Mergers	1	5	6	0	6
Bus Pooling	0	0	0	0	0
Other Motor	0	2	1	1	2
<i>Water</i>					
Port-to-Port Water Rates	1	1	0	2	3
Other	0	0	0	0	0
<i>Pipeline</i>					
Rate Regulation	1	0	1	0	1
Other	0	0	0	0	0
<i>Other</i>					
	0	2	1	1	1
<i>Total Nonrail</i>	22	11	28	5	17

<i>Total Rail and Nonrail</i>	<i>174</i>	<i>366</i>	<i>358</i>	<i>182</i>	<i>781</i>
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Caseload During FY 2008					
<i>Rail Matters</i>					
Category	Pending at Start	Received During	Decided During	Pending at End	Decisions Served
Carrier Consolidations	3	17	15	5	65
Review of Labor Arbitral Decisions	1	1	1	1	4
Rates and Services	18	14	15	17	66
Rate Reasonableness	9	6	6	9	36
Rate Disclosure	0	0	0	0	0
Through-Routes or Divisions	0	0	0	0	0
Contract Rates	1	1	1	1	2
Reasonable Practice	1	4	1	4	15
Discrimination	1	0	1	0	1
Car Supply and Interchange	3	0	3	0	7
Service Orders	3	3	3	3	5
Competitive Access	0	0	0	0	0
Constructions	9	9	4	14	29
Line Crossing	1	0	0	1	0
Constructions	8	9	4	13	29
Abandonments	108	143	210	41	459

Caseload During FY 2008 (Continued)					
<i>Rail Matters</i>					
<i>Category</i>	<i>Pending at Start</i>	<i>Received During</i>	<i>Decided During</i>	<i>Pending at End</i>	<i>Decisions Served</i>
<i>Other Line Transactions</i>	28	65	62	31	115
<i>Line Consolidations</i>	10	23	20	13	39
<i>Line Acquisitions Under 49 U.S.C. 10901</i>	8	18	17	9	34
<i>Line Acquisitions by Shortline</i>	6	20	19	7	29
<i>Feeder Line Development</i>	1	1	1	1	6
<i>Acquisition and Operation 10502</i>	3	3	5	1	7
<i>Collective Actions</i>	0	0	0	0	0
<i>Collective Ratemaking</i>	0	0	0	0	0
<i>Pooling</i>	0	0	0	0	0
Data Collection and Oversight	2	3	3	2	20
RCAF	0	2	2	0	4
Accounting and Records	2	1	1	2	14
Reports – Rail (see note 2)	0	0	0	0	2
Passenger Rail	0	0	0	0	0
Amtrak Track Use/ Compensation	0	0	0	0	0
Passenger Rail - Other	0	0	0	0	0
Exemption Rulemakings	0	0	0	0	0

Other Rail	7	9	8	8	23
Common Carrier Obligation	0	3	2	1	10
Interlocking Officer or Director	0	0	0	0	0
Other	7	6	6	7	13
Total Rail	176	261	318	119	781

Caseload During FY 2008					
<i>Nonrail Matters</i>					
<i>Category</i>	<i>Pending at Start</i>	<i>Received During</i>	<i>Decided During</i>	<i>Pending at End</i>	<i>Decisions Served</i>
<i>Motor</i>					
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	1	0	1	0	1
Collective Ratemaking Agreements	1	0	1	0	1
Truck Pooling	0	0	0	0	0
Undercharges	0	0	0	0	0
Bus Regulation	0	7	7	0	7
Through-Route Regulation	0	0	0	0	0
Mergers	0	6	6	0	6
Bus Pooling	0	1	1	0	1
Other Motor	1	0	0	1	0
<i>Water</i>					
Port-to-Port Water Rates	2	0	2	0	2

APPENDIX C

Other	0	0	0	0	0
<i>Pipeline</i>	0	0	0	0	0
Rate Regulation	0	0	0	0	0
Other	0	0	0	0	0
<i>Other</i>	1	3	3	1	8
<i>Total Nonrail</i>	5	10	13	2	18
<i>Total Rail and Nonrail</i>	181	271	331	121	799

APPENDIX D

RAILROAD FINANCIAL AND STATISTICAL DATA

Rail Carriers Regulated by the STB	
<i>Carriers Subject to Uniform System of Accounts and/or Required to File Annual and Periodic Reports (as of 2008)</i>	
Railroads, Class I	7
<i>Railroads Not Required to File Reports (as of 2007)</i>	
Railroads, Regional	33
Railroads, Local	523
Holding Companies – Rail	not available

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 3 consecutive years, using the following scale:

Class I: \$250 million or more in 1991 dollars

Class II: less than \$250 million but more than \$20 million in 1991 dollars

Class III: \$20 million or less in 1991 dollars

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

$$\text{Current Year's Revenues (1991 Average Index / Current Year's Average Index)}$$

The average index (deflator factor) is based on the annual average Railroad Freight Price Index for all commodities. The factor for 1991 is 1.00; factors for recent years are 0.9750

(1997), 0.9638 (1998), 0.9672 (1999), 0.9545 (2000), 0.9373 (2001), 0.9192 (2002), 0.9003 (2003), 0.8640 (2004), 0.7829 (2005), 0.7209 (2006), and 0.6952 (2007)

The Board requires that affiliated railroads with integrated operations in the United States be combined for purposes of determining whether they are Class I (large) railroads. Such combined railroads are required to file consolidated financial reports (See the Board's decision in *Proposal to Require Consolidated Reporting By Commonly Controlled Railroads*, STB Ex Parte No. 634, served November 7, 2001).

Class I Railroads, Condensed Income Statement, Financial Ratios, and Employee Data <i>(Dollars in Thousands)</i>				
Calendar Year →	2005	2006	2007	2008
1. Class 1 Carriers	7	7	7	7
CONDENSED INCOME STATEMENT				
2. Total operating revenues	\$46,118,002	\$52,151,588	\$54,599,504	\$61,242,606
3. Total operating expenses	37,842,772	40,980,029	42,747,102	47,347,941
4. Net railway operating income	6,075,280	7,559,597	7,765,051	9,248,350
5. Net income	4,916,536	6,482,025	6,797,225	8,101,774
6. Dividends Paid	1,270,423	1,092,854	6,428,602	3,348,163
NET INVESTMENT AND EQUITY				
7. Net investment in transportation property and equipment ²⁸	\$74,837,058	\$77,837,908	\$82,512,141	\$88,261,887
8. Shareholders' equity	55,828,428	58,901,042	59,300,038	62,786,791

²⁸ Accumulated deferred income tax reserves have been subtracted from the net investment base in accordance with the modification approved by the former Interstate Commerce Commission in *Standards for Railroad Revenue Adequacy*, 3 I.C.C.2d 261 (1986).

FINANCIAL RATIOS (PERCENT)				
9. Operating ratio (L3/L2)	82.06 percent	78.58 percent	78.29 percent	77.31 percent
10. Return on net investment (L4/L7)	8.12 percent	9.71 percent	9.41 percent	10.48 percent
11. Return on equity (L5/L8)	8.81 percent	11.00 percent	11.46 percent	12.90 percent
EMPLOYEE DATA				
12. Average number of employees	162,401	167,508	167,215	164,439
13. Compensation	\$10,884,632	\$11,421,567	\$11,617,546	\$11,977,185

Class I Railroads, Selected Balance Sheet Data				
as of December 31				
2005-2008				
<i>(Dollars in Thousands)</i>				
Calendar Year →	2005	2006	2007	2008
1. Total current assets	\$8,759,960	\$8,250,977	\$8,021,330	\$8,825,174
2. Total current liabilities	13,488,492	12,711,989	13,503,696	12,428,998
3. Transportation property				
Road	109,934,508	116,371,738	121,909,899	128,119,862

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Equipment	28,143,199	28,678,468	30,533,170	31,760,388
Other	2,376,059	2,072,910	2,827,830	2,823,048
Less accumulated depreciation and amortization	32,817,513	36,104,595	38,865,967	41,361,514
Net Transportation Property	107,636,253	111,018,521	116,404,932	121,341,784
4. Long-term debt (due after 1 yr)	15,042,283	15,706,575	15,363,218	15,625,048
5. Shareholders' equity				
Capital stock (Par Value)	2,501,048	696,073	655,272	652,439
Additional capital (Above Par)	23,898,209	23,804,429	24,034,945	24,192,551
Retained earnings	29,403,365	34,423,935	34,558,129	37,852,644
Less treasury stock	3,787	3,787	3,787	3,787
Net shareholders' equity	55,828,428	58,901,042	59,300,038	62,786,791

Railroad Adequacy Status			
including			
Return on Investment (ROI)			
2005-2007			
Calendar Year →	2005	2006	2007
Cost of Capital	12.2 percent	9.9 percent	11.33 percent
ROIs of Class I Railroads			
Burlington Northern-Sante Fe	9.8	11.4	9.97
Canadian National/Grand Trunk Corp	8.1	9.5	10.11
CSX Transportation	6.2	8.2	7.61
Kansas City Southern	5.9	9.3	9.37
Norfolk Southern	13.2	14.4	13.55
Soo Line	8.9	11.6	15.25
Union Pacific	6.3	8.2	8.90

APPENDIX E

COMMISSIONERS, 1996-2008

Surface Transportation Board Commissioners				
Commissioners	State	Party	Oath of Office	End of Service
SIMMONS, J.J. III	Okla.	Democrat	Jan. 1, 1996 ¹	Dec. 31, 1996
OWEN, Gus A.	Calif.	Republican	Jan. 1, 1996	Dec. 31, 1998
MORGAN, Linda J.	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	Md.	Republican	Nov. 26, 2002	Jan. 4, 2006
BUTTREY, W. Douglas	Tenn.	Republican	May, 28, 2004	Term ends 2008
MULVEY, Francis P.	Md.	Democrat	June 2, 2004	Term ends 2012
NOTTINGHAM, Charles D.	Va.	Republican	August 14, 2006	Term ends 2010

* The Surface Transportation Board was established on January 1, 1996 by the Interstate Commerce Commission Act of 1995.