



**Surface Transportation Board
FY 2009 Annual Report**



Office of the Chairman

Surface Transportation Board
Washington, D.C. 20423-0001

August 13, 2010

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, 2008, through September 30, 2009. The report follows the format of previous years with a statement of appropriations and aggregate expenditures for Fiscal Year 2009 appearing in Appendix B.

The Board's membership changed during the past fiscal year. On August 13, 2009, I was sworn in as the agency's Chairman for a term expiring December 12, 2013. Former Acting Chairman Francis P. Mulvey currently serves as the Board's Vice Chairman. Former Chairman Charles D. Nottingham now serves as the agency's third Member.

With this edition, the Board's reports will be issued annually, instead of on the former multiyear basis, to provide more current information in a more timely fashion.

Sincerely,

Daniel R. Elliott III

Chairman

TABLE OF CONTENTS

OVERVIEW	1
Performance and Policy Goals	1
Organizational Structure.....	2
Surface Transportation Board Organizational Chart.....	4
Councils and Committees.....	4
Public Outreach	5
RAILROAD RESTRUCTURING	8
Mergers and Consolidations: Review of Carrier Proposals	8
Mergers and Consolidations: Oversight and Monitoring	10
Pooling.....	11
Line Acquisitions	11
Trackage Rights.....	15
Leases by Class I Carriers	17
Line Constructions	17
Line Abandonments	20
Preservation of Rail Lines: Offers of Financial Assistance, Feeder-Line Development Program, Trail Use/Rail Banking.....	20
Liens on Rail Equipment.....	28
RAILROAD RATES	29
Cost of Capital.....	29
Common Carriage or Contract Carriage	30
Rate Disclosure Requirements: Common Carriage.....	31
Rate Challenges: Market Dominance Limitation.....	31
Rate Challenges: Rate Reasonableness Determination.....	32
Rate Challenges: Simplified and Expedited Rate Guidelines	33
RAILROAD SERVICE	35
General Authority.....	35

Board-Shipper Discussions	36
Dialogue Between Railroads and Their Customers	37
Assistance with Specific Service Matters	38
RAIL-LABOR MATTERS.....	39
ENVIRONMENTAL REVIEW	40
Overview	40
Environmental Review Process.....	40
Rail-Line Constructions	42
Rail-Line Abandonments	45
Railroad Mergers	45
FINANCIAL CONDITION OF RAILROADS	47
AMTRAK.....	49
MOTOR CARRIAGE.....	51
Collective Motor Carrier Activities: Bureau Agreements, Pooling Arrangements.....	51
Household-Goods Carriage	51
Intercity Bus Industry.....	52
Motor Carrier Rate Reasonableness.....	53
WATER CARRIAGE	54
Tariff Requirements	54
Complaints.....	55
PIPELINE CARRIAGE	56
COURT ACTIONS	57
Rail Line Abandonments.....	57
Railroad Rates: Reasonableness Determinations	58
Mergers and Acquisitions.....	58
Preemption.....	59
APPENDIX A: REPORTS AND PUBLICATIONS	60
Board Regulations and Governing Statutes.....	60
The Board’s Website	61
Board Decisions, Filings, and News Releases	64

Speeches and Statements	64
Financial and Statistical Reports from Class I Railroads	64
Periodic Financial Decisions and Notices Issued by the Board	66
Publications	67
Software, Data, and User Documentation	69
APPENDIX B: APPROPRIATIONS AND EMPLOYMENT	71
APPENDIX C: DECISIONS DURING FY 2009.....	75
APPENDIX D: RAILROAD FINANCIAL AND STATISTICAL DATA.....	78
APPENDIX E: SURFACE TRANSPORTATION BOARD MEMBERS, 1996-2009.....	82

TABLES

Abandonments	26
Board Member Public Communications.....	6
Average FTE Employment and Appropriations	71
Class I Railroads, Condensed Income Statement, Financial Ratios, and Employee Data ...	79
Class I Railroad Operating Margin	48
Class I Railroad Return on Investment.....	48
Class I Railroads, Selected Balance Sheet Data.....	80
Caseload	75
Line Acquisitions	13
Rail Mergers and Consolidations.....	9
News Releases Issued.....	6
Public Events Held	6
Rail Carriers Regulated by the STB.....	78
Railbanking/Interim Trail Use.....	28
Railroad Construction	19
Railroad Cost of Capital, Percentage Return on Investment, and Revenue	
Adequacy Status	81
Surface Transportation Board Members.....	82
Trackage Rights.....	16
Water Tariff Filings	54

EDITORIAL NOTES

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

AAR	Association of American Railroads
AER	Arizona Eastern Railway
Amtrak	National Railroad Passenger Corporation
BMC	Boston and Maine Corporation
BNSF	BNSF Railway Company
CADLAS	Computer Assisted Depreciation and Life Analysis System
CAPM	Capital Asset Pricing Model
CBS	Condensed Balance Sheet Report for Class I Railroads
C.F.R.	Code of Federal Regulations
CMP	Constrained Market Pricing
CN	Canadian National Railway Company
Conrail	Consolidated Rail Corporation
CORP	Central Oregon & Pacific Railroad, Inc.
CRA	Clean Railroads Act of 2008
CSX	CSX Transportation, Inc.
D.C. Circ.	United States Court of Appeals for the District of Columbia Circuit
DCF	Discounted Cash Flow
DOT	United States Department of Transportation
EA	Environmental Assessment
EIS	Environmental Impact Statement
EJ&E	Elgin, Joliet and Eastern Railway Company
F.3d	Federal Reporter, Third Series
FOIA	Freedom of Information Act
FRA	Federal Railroad Administration
FY	Fiscal Year
GER	Grand Elk Railroad

ICC	Interstate Commerce Commission
I.C.C.	Interstate Commerce Commission Reports
INRD	Indiana Rail Road Company
NGCC	National Grain Car Council
NHPA	National Historic Preservation Act
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
PARI	Pan Am Railways, Inc.
PAS	Pan Am Southern LLC
PRIIA	Passenger Rail Investment and Improvement Act of 2008
RCAF	Rail Cost Adjustment Factor
RCPA	Rail Customer and Public Assistance Program
RE&I	Revenue, Expenses, and Income Report
RETAC	Rail Energy Transportation Advisory Committee
RJC	R. J. Corman Railroad Company
RSAM	Revenue Shortfall Allocation Method
RSTAC	Railroad-Shipper Transportation Advisory Council
SAC	Stand-alone cost
SEA	Section of Environmental Analysis
SPS	South Plains Switching
STB	Surface Transportation Board
S.T.B.	Surface Transportation Board Reports
STRC	Springfield Terminal Railway Company
UP	Union Pacific Railroad Company
URCS	Uniform Rail Costing System
U.S.C.	United States Code
Watco	Watco Companies, Inc.

OVERVIEW

The Surface Transportation Board 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 bipartisan STB was established as of January 1, 1996 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 the U.S. Department of Transportation. The STB is organizationally housed within DOT, but is decisionally independent. For details on the Board's regulations and governing statutes, see Appendix A.

While much of its work involves railroads, 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.

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 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.

¹ 49 U.S.C. §§ 10101-11908.

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

In all of its official decisions, the agency is committed to advancing the national transportation policy goals expressed by Congress.³

During the fiscal year, the Board initiated a movement toward establishing and implementing agency-wide goals to increase transparency regarding agency processing and adjudication of the cases before it.

Organizational Structure

The Board comprises 3 Members nominated by the President and confirmed by the Senate for 5-year terms. The Board's chairman is designated by the President from among the members.⁴ 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.⁵ The vice chairmanship alternates annually between the Chairman's two Member colleagues.

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

The **Office of Public Assistance, Governmental Affairs, and Compliance** 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. §§ 10101 (rail) and 13101 (motor and water).

⁴ 49 U.S.C. § 701.

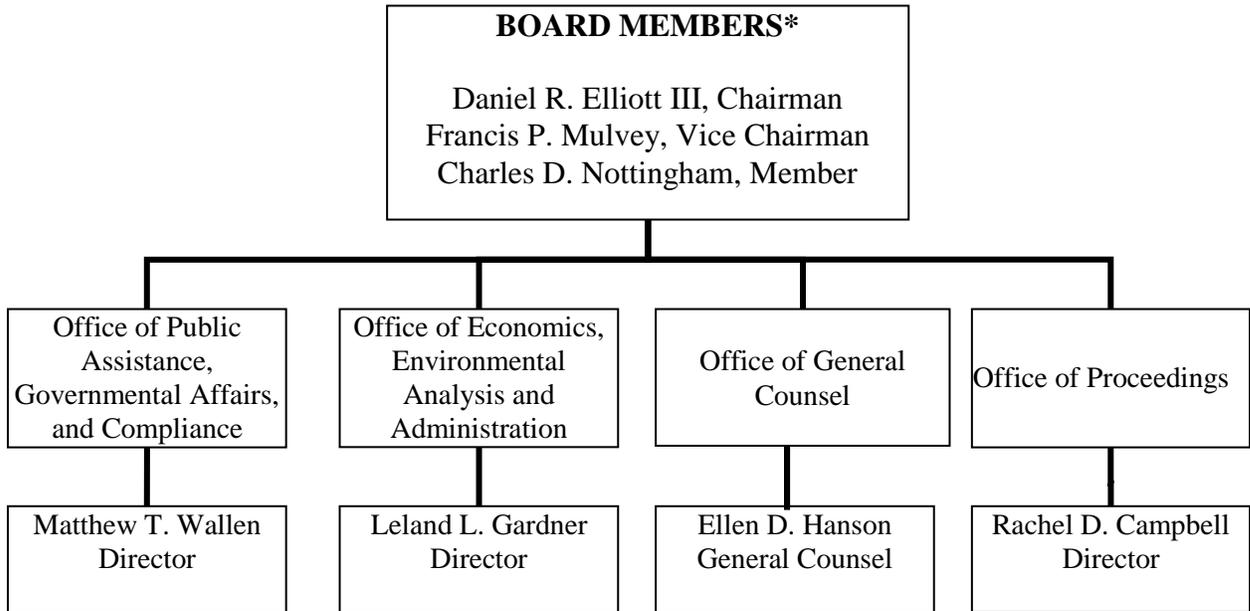
⁵ Persons meeting specific standards, passing an examination, and taking an oath to comply with agency requirements and procedures to practice before the agency.

The **Office of Economics, 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



*On August 13, 2009, Daniel R. Elliott III was sworn in as the Board’s Chairman for a term expiring December 31, 2013. Vice Chairman Francis P. Mulvey formerly served as Acting Chairman, from March 12–August 14, 2009. Member Charles D. Nottingham formerly served as Chairman, from August 14, 2006–March 12, 2009.

Councils and Committees

The Railroad-Shipper Transportation Advisory Council (RSTAC) advises the Board, the Secretary of Transportation, and Congress on railroad-transportation policy issues of particular importance to small shippers and small railroads, such as rail-car supply, rates, and competitive matters.⁶ The RSTAC is composed of 14 private-sector senior executives from the railroad and rail shipping industries, plus 1 public member-at-large. The Secretary of Transportation and the three Board members are ex-officio members.

⁶ 49 U.S.C. § 726.

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 (large) railroads, 7 representatives from Class II (medium-sized) and Class III (small) railroads,⁷ 14 representatives of grain shippers and receivers, and 5 representatives of private rail car owners and manufacturers. The 3 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 composed 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 3 Board Members are ex-officio members. Meetings are held at least twice a year and are open to the public.

Public Outreach

During the past fiscal year, 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 website, www.stb.dot.gov.

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

⁷ For purposes of accounting and reporting, the Surface Transportation Board designates 3 classes of freight railroads based upon their operating revenues, for 3 consecutive years, in 1991 dollars, using the following scale: Class I - \$250 million or more; Class II – Less than \$250 million but more than \$20 million; and Class III - \$20 million or less. These operating revenue thresholds are adjusted annually for inflation.

Board Member Public Communications, FY 2009

<u>Transcripts*</u>	<u>Statements**</u>	<u>Testimonies</u>	<u>Speeches</u>
6	7	0	14

*Official hard copies, and electronically archived audio/visual files, of hearings and oral arguments.

**Presented within hearings and oral arguments.

Public Events Held, FY 2009

<u>Headquarters' hearings</u>	<u>Field Hearings</u>	<u>Oral Arguments</u>	<u>Meetings*</u>
3	1	0	15

*Including headquarters' meetings and field meetings conducted by the Board's Section of Environmental Analysis.

News Releases Issued, FY 2009

<u>Number Issued</u>	<u>Total Website Visits</u>	<u>Average Visits Per Release</u>
41	368,526*	8,988*

*Per site-visit data viewed and compiled on April 13, 2010.

The **Rail Customer and Public Assistance Program** has evolved into the Board's most effective venue to resolve disputes informally between shippers and railroads, thus preventing such disputes from becoming expensive and lengthy formal cases.

The Board has mounted an extensive outreach effort, especially to small shippers, who have increasingly taken advantage of the free program. The RCPA's program staff includes attorneys and former employees of shippers and railroads who bring to the table decades of experience in rail shipping, operations, marketing, analysis, and tariffs and rates. Program staff try to seek common ground and to facilitate the settlement of complaints, allowing both sides to walk away satisfied.

The RCPA program is available to anyone who has a question or issue falling within the STB's area of expertise. Program staff also explain various agencies' different jurisdictions and may redirect parties to another, more appropriate office or agency.

Interested parties may phone, e-mail, fax or write their requests and will receive a reply within 24 hours if possible. Some inquiries can be answered and completed almost immediately. Other issues that deal with specific carrier or shipper disputes may take days, or weeks, to resolve.

In Fiscal Year 2009, the RCPA handled 1,470 complaints and inquiries, including 474 involving railroad rate issues.

RAILROAD RESTRUCTURING

Mergers and Consolidations: Review of Carrier Proposals

When 2 or more railroads seek to consolidate through a merger or common-control arrangement, the Board's prior approval is required under 49 U.S.C. § 11323-25. By law, the STB's authorization exempts such transactions from all other laws (including antitrust laws) to the extent necessary for carriers to consummate an approved transaction.

Carriers may seek Board authorization either by filing an application under 49 U.S.C. §§ 11323-25 or by seeking an exemption from the full application procedures under 49 U.S.C. § 10502. The procedures to be followed in such cases vary depending on the type of transaction involved. Where a merger or acquisition involves only Class II or III railroads whose lines do not connect with each other, carriers need only follow a simple notification procedure to invoke a class exemption (an across-the-board exemption from the full application procedures, applicable to a broad class of transactions) at 49 C.F.R. § 1180.2(d)(2). When larger carriers are involved in merger activities, more rigorous procedures apply, and carriers may be required to file "safety integration plans" under rules that the Board has issued jointly with the Federal Railroad Administration (FRA).⁸

⁸ 49 C.F.R. parts 244 and 1106.

Rail Mergers and Consolidations, FY 2009*	
Under 49 U.S.C. 11343	
Type	No.
Applications	
Filed	0
Granted	2
Denied	0
Dismissed	3
Pending	0
Petitions for Exemption	
Filed	4
Granted	4
Denied	0
Dismissed	0
Pending	0
Notices of Exemption	
Filed	19
Granted	18
Denied	0
Dismissed	0
Pending	2

* Data in this and subsequent charts comprise a snapshot of Board activity at the close of FY 2009; figures thus may not add to a total. The granted, denied, and dismissed totals include cases initiated in FY 2009, as well as cases filed in a prior fiscal year but disposed of in FY 2009. Therefore, the granted, denied, and dismissed totals may be greater or lesser than the number of cases filed in FY 2009. Pending totals include cases filed in FY 2009, or earlier, that were not disposed of in FY 2009, and remain open for disposition in a latter fiscal year.

The Board approved the following railroad control applications, subject to various conditions, in FY 2009:

- The acquisition of control by the Canadian National Railway Corporation (CN) and Grand Trunk Corporation of the EJ&E West Company, a wholly owned, non-carrier subsidiary of the Elgin, Joliet and Eastern Railway Company, in *Canadian National Railway and Grand Trunk Corp.—Control—EJ&E West Company*, FD 35087, Decision No. 16, (STB served Dec. 24, 2008) (CN-EJ&E transaction), *pet. for judicial review pending sub nom., Vill. of Barrington v. STB*, No. 09-1002 et al. (D.C. Cir. filed Jan. 5, 2009). The Board denied a petition to stay the effectiveness of, and a petition to reconsider, the December 24 decision in decisions respectively served January 16, 2009 and August 5, 2009. In a decision served October 23, 2009, the Board granted a joint petition to reopen from the Village of Barrington and the TRAC Coalition for the limited purpose of clarifying the reporting, monitoring, and oversight conditions imposed in the December 24 decision, and denied as premature a petition to reopen filed by the Illinois Department of Transportation.
- The joint acquisition of Pan Am Southern LLC (PAS) by the Norfolk Southern Railway Company (NS), Pan Am Railways, Inc. (PARI), and two of PARI's rail carrier subsidiaries, the Boston and Maine Corporation (BMC) and the Springfield Terminal Railway Company (STRC), in *Norfolk Southern Railway, Pan Am Railways, et al.—Joint Control and Operating/Pooling Agreements—Pan Am Southern, LLC*, FD 35147 (STB served Mar. 10, 2009).

Mergers and Consolidations: Oversight and Monitoring

In approving the CN-EJ&E transaction, the Board imposed numerous conditions concerning environmental, safety, and operational impacts. The Board also established a 5-year monitoring and oversight period. As part of that oversight, the applicants have filed monthly status reports on operational matters related to the acquisition. The applicants also have filed quarterly reports on implementation of the environmental conditions.

Pooling

Rail carriers may seek approval to agree, or to combine, with other carriers to pool or divide traffic, services, or earnings. Among significant actions taken during FY 2009 regarding pooling, the Board:

- Denied the request of applicants NS, PARI, and two of PARI's subsidiaries for pooling authority. In that decision, the Board also granted the applicants' request to jointly control and own a new rail carrier, PAS. The applicants had requested pooling authority in *Norfolk Southern Railway, Pan Am Railways, et al.—Joint Control and Operating/Pooling Agreements—Pan Am Southern, LLC*, FD 35147 (STB served Mar. 10, 2009).
- Requested public comments regarding pooling activities among the TTX Company and participating rail carriers, and thus began preparation of the Board's 5th-year monitoring report, in *TTX Co., et al.—Application for Approval of Pooling of Car Service with Respect to Flatcars*, FD 27590 (Sub-No. 3) (STB served Sept. 25, 2009).

Line Acquisitions

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

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

simple notification process. Acquisitions resulting in a carrier having at least \$5 million in annual net revenues require additional notice, in advance of anticipated labor impacts, to give employees and 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 exemption misuse. Exemptions simplify the regulatory process, while continuing to protect the public, and help preserve rail service in many areas of the country.

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

Line Acquisitions, FY 2009 By Noncarriers Under 49 U.S.C. § 10901		
Type	No.	Miles
Petitions for Exemption		
Filed	0	0
Granted	0	0
Denied	0	0
Dismissed	0	0
Pending	0	0
Notices of Exemption		
Filed	47	1682
Granted	43	953.8
Denied	2	4.0
Dismissed	2	31.39
Pending	2	21.0
By Class II or III Railroads Under 49 U.S.C. § 10902		
Applications for Exemption		
Filed	1	0.075
Granted	0	0
Denied	0	0
Dismissed	0	0
Pending	0	0
Notices of Exemption		
Filed	17	637.9
Granted	9	121.4
Denied	3	0.085
Dismissed	0	0.0
Pending	0	0.0

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

- Rejected as void *ab initio* a notice of exemption filed by the U S Rail Corporation to lease and operate approximately 1,400 feet of track in Paterson, N.J., from Shannon G, a New Jersey limited liability company, on the ground that U S Rail had failed to inform the Board that the City of Paterson had begun a condemnation action on the property, thus rendering the notice's assertions regarding Shannon G's ownership of the property materially misleading by omission, in *U S Rail Corp.—Lease and Operation Exemption—Shannon G., a New Jersey Limited Liability Company*, FD 35042 (STB served Oct. 8, 2008).
- Found that Board authorization was unnecessary for the Port of Seattle, Wash., to acquire the physical assets of the BNSF Railway Company (BNSF), because the Port would not become a common carrier as a result of the transactions at issue, in *The Port of Seattle—Acquisition Exemption—Certain Assets of BNSF Railway*, FD 35128 (STB served Oct. 27, 2008).
- Rejected a notice of exemption filed by an individual to acquire and operate approximately 400 feet of track, known as the Veneer Spur, in Baltimore County, Md. The Board found he had not established that he is a Class III carrier and thus failed to submit sufficient information for the Board to determine whether the proposed transaction qualified for a class exemption, in *James Riffin—Acquisition and Operation Exemption—Veneer Spur—in Baltimore County, Md.*, FD 35221 (STB served March 5, 2009). See also *James Riffin—Acquisition and Operation Exemption—Veneer Spur—in Baltimore County, Md.*, FD 35236 (STB served Apr. 28, 2009).
- Granted an exemption, subject to employee protection, for the Wisconsin & Southern Railroad Company to acquire a permanent and exclusive freight rail operating easement over 10.95 miles of railroad owned by the Union Pacific Railroad Company (UP), in *Wisconsin & Southern Railroad —Acquisition and*

- Operation Exemption—Union Pacific Railroad*, FD 35144 (STB served Apr. 22, 2009).
- Authorized the Grand Elk Railroad, LLC (GER) to acquire by lease, and to operate, 122.9 miles of NS rail lines in Michigan and Indiana, and to obtain incidental trackage rights over 0.43 miles of track in NS' Botsford Yard, in *Grand Elk Railroad—Lease and Operation Exemption—Norfolk Southern Railway*, FD 35187 (STB served Nov. 17, 2008). In a related transaction, Watco sought to continue in control of GER upon GER's becoming a rail carrier, in *Watco Companies, Inc.—Continuance in Control Exemption—Grand Elk Railroad*, FD 35188 (STB served Nov. 17, 2008). The Board later denied a petition by the United Transportation Union to revoke 3 notices of exemption in *Grand Elk Railroad—Lease and Operation Exemption—Norfolk Southern Railway*, FD 35187 (STB served July 13, 2009).
 - Granted King County's petition for an exemption for authority to acquire and reinstitute rail service over approximately 25 miles of "rail-banked" line, in *King County, Wash.—Acquisition Exemption—BNSF Railway*, FD 35148 (STB served Sept. 18, 2009).

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 separate class exemption also exists for trackage

rights for overhead operations only, and these expire in 1 year or less.

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

Trackage Rights, FY 2009		
Type		No.
Applications	Filed	0
	Granted	0
	Denied	0
	Dismissed	0
	Pending	0
Petitions for Exemption	Filed	0
	Granted	0
	Denied	0
	Dismissed	0
	Pending	0
Notices of Exemption	Filed	35
	Granted	43
	Denied	0
	Dismissed	0
	Pending	0

Leases by Class I Carriers

Leases and contracts for the operation of rail lines by Class I railroads require Board approval. Carriers may seek Board authorization by filing either an application or a petition for exemption, and the agency maintains a class exemption for the renewal of a previously authorized lease. There were no significant actions taken in this area during FY 2009.

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 2009, the STB:

- Granted final approval for 3 alternative routes for construction and operation of an approximately 7-mile rail line to an existing limestone quarry site in Medina County, Tex., and to other industries that prospectively may locate along the line, subject to environmental mitigation conditions, in *Southwest Gulf Railroad—Construction and Operation Exemption—Medina County, Tex.*, FD 34284 (STB served Dec. 18, 2008).

- Found that the Indiana Rail Road Company (INRD) did not need construction authority to construct 5 miles of track from its east-west main line at Dugger, Ind., to a new coal mining operation south of that main line, because the new track is an exempt spur rather than a line of railroad, in *Indiana Rail Road—Petition for Declaratory Order*, FD 35181 (STB served Apr. 15, 2009). In finding that the track was a spur, the Board considered that: (1) the proposal’s intent was to improve facilities required by a shipper; (2) the proposed track would serve only that shipper (4.2 miles of the track would be on a right-of-way owned by the shipper); (3) INRD has historically served that area; and (4) the proposed track would not invade the territory of another railroad.
- Granted authority for the Arizona Eastern Railway to construct a 12.1-mile rail line in Graham County, Ariz., subject to environmental mitigation conditions, in *Arizona Eastern Railway—Construction Exemption—In Graham County, Ariz.*, FD 34836 (STB served June 15, 2009).
- Found that if the R. J. Corman Railroad Company (RJC) obtains acquisition and operation authority over the railbanked segment and acquires it, RJC would not need construction authority to reactivate a 9.3-mile portion of rail line, currently railbanked under section 8(d) of the National Trails System Act, 16 U.S.C. § 1247(d), in *R. J. Corman Railroad/Pennsylvania Lines Inc.—Construction and Operation Exemption—In Clearfield County, Pa.*, FD 35116 (STB served July 27, 2009).
- Granted authority for the Port of Moses Lake, a non-carrier, to construct rail lines in Moses Lake, Wash., between Wheeler and Parker Horn, a distance of 4.5 miles, and between the Columbia Basin Railroad Company’s trackage and the east side of the Grant County International Airport, a distance of approximately 3.1 miles, in *Port of Moses Lake—Construction Exemption—Moses Lake, Wash.*, FD 34936, et al. (STB served Aug. 27, 2009). The Board also imposed environmental mitigation conditions in this decision.

- Granted authority for the Meridian Southern Railway to construct, subject to environmental mitigation conditions, approximately 1,910 feet of connecting track in Meridian, Miss., in *Meridian Southern Railway—Construction of Connecting Track Exemption—In Lauderdale County, Miss.*, FD 35218 (STB served Sept. 22, 2009).

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

Railroad Construction, FY 2009		
Type	No.	Miles
Applications		
Filed	0	0.0
Granted	0	0.0
Denied	0	0.0
Dismissed	0	0.0
Pending	0	0.0
Petitions for Exemption		
Filed	2	47.8
Granted	1	12.0
Denied	0	0.0
Dismissed	0	0.0
Pending	2	47.8
Notices of Exemption		
Filed	2	5.50
Granted	1	5.47
Denied	0	0.0
Dismissed	0	0.0
Pending	1	0.036

Line Abandonments

Railroads require Board approval to abandon a rail line or to discontinue all rail service over a line to be held in reserve. Abandonment or discontinuance authority may be sought by an entity with operating authority over the line, or an “adverse” abandonment or discontinuance action may be brought by an opponent to a line’s continued operation. The agency maintains a class exemption, providing a streamlined notification procedure, for the abandonment of lines over which there has been no traffic in 2 consecutive years that could not have been rerouted over other lines.

Preservation of Rail Lines

The Board administers 3 programs designed to preserve railroad service or rail rights-of-way:

Offers of Financial Assistance

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

Feeder-Line Development Program

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

that will provide service.

Trail Use/Rail Banking

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

Among the more significant actions taken in the rail abandonment area during FY 2009, the Board:

- Granted a petition for an exemption to abandon 8.6 miles of rail line, subject to public use, trail use, environmental, and employee protective conditions, because the line would operate at a projected loss, and neither of the 2 shippers that had used the line in the prior 3 years opposed the abandonment, in *East Penn Railroad—Abandonment Exemption—in Berks and Montgomery Counties, Pa.*, AB 1020X (STB served Nov. 18, 2008).
- Granted a petition for an exemption to abandon 12.55 miles of rail line, subject to environmental and employee protective conditions. However, the Board denied a request for an exemption from the OFA provisions because the petitioner failed to provide definite plans of a valid public purpose that could justify such an exemption, in *BNSF Railway—Abandonment Exemption—in King County, Wash.*, AB 6 (Sub-No. 465X) (STB served Nov. 28, 2008).
- Denied a petition for exemption because the petitioners failed to demonstrate that a proposed, substitute arrangement would protect the interests of shippers

- receiving service, in *Union Pacific Railroad—Abandonment Exemption—in Pottawattamie County, Iowa*, AB 33 (Sub-No. 274X) *et al.* (STB served Dec. 12, 2008).
- Denied a petition to revoke a notice of exemption to abandon and discontinue service where a petitioner claimed that abandonment would create a stranded segment. The Board found that the segment was not within its jurisdiction because it had already been abandoned pursuant to authority granted by the agency's predecessor, the ICC, in *Union Pacific Railroad—Abandonment and Discontinuance of Trackage Rights Exemption—in Los Angeles County, Cal.*, AB 33 (Sub-No. 265X) (STB served Dec. 16, 2008).
 - Granted a petition for exemption to abandon approximately 3,205 feet of rail line, subject to trail use, public use, and employee protective conditions, to relieve the carrier from the expense of retaining and maintaining a line generating no traffic, in *Illinois Central Railroad—Abandonment Exemption—in Cook County, Ill.*, AB 43 (Sub-No. 184X) (STB served Dec. 17, 2008).
 - Granted a petition for exemption to abandon 1.80 miles of rail line, subject to employee protective conditions, in *Norfolk Southern Railway—Abandonment Exemption—in Somerset County, Pa.*, AB 290 (Sub-No. 305X) (STB served Jan. 16, 2009). The Board also denied a request for an exemption from the OFA provisions, because the petitioner did not demonstrate that the right-of-way was needed for a valid public purpose.
 - Granted an application to abandon 19.57 miles of rail line, subject to environmental, trail use, public use, and employee protective conditions, in *Union Pacific Railroad—Abandonment—in New Madrid, Scott, and Stoddard Counties, Mo.*, AB 33 (Sub-No. 261) (STB served June 17, 2009). The Board also accepted an OFA made by the Mississippi Central Railroad Co., regarding a portion of a UP line, in a decision served in this case on September 10, 2009.

- Granted an opposed petition for exemption to abandon 49.40 miles of rail line, despite opposition, and subject to environmental and employee protective conditions, because the carrier's net revenue was insufficient to cover the operating costs, opportunity costs and annual maintenance costs, in *Arizona & California Railroad—Abandonment Exemption—in San Bernardino and Riverside Counties, Cal.*, AB 1022 (Sub-No. 1X) (STB served June 30, 2009). In its decision, the Board noted that it will look carefully at cases in which a railroad places lengthy embargoes on a line, spends nothing to fix or maintain the line, and then files for abandonment. The Board stressed that if a carrier believes it cannot sustain a line, it should promptly seek abandonment authority.
- Granted a petition for exemption to abandon 0.31 miles of rail line to permit construction of a school access road post-abandonment, in *CSX Transportation, Inc.—Abandonment Exemption—in Glynn County, Ga.*, AB 55 (Sub-No. 697X) (STB served July 9, 2009).
- Granted a petition for exemption to abandon 2.5 miles of rail line, subject to environmental and standard employee protective conditions, because the line's only shipper failed to generate enough traffic to cover the line's operating costs, resulting in operating losses and significant opportunity costs, in *Huron & Eastern Railway—Abandonment Exemption—in Shiawassee County, Mich.*, AB 1030 (Sub-No. 1X) (STB served July 24, 2009).
- Granted a petition for exemption to abandon 6.4 miles of rail line, subject to trail use, public use, environmental, and employee protective conditions, because the line had operated at a loss, required significant rehabilitation, and had been embargoed because of unsafe track conditions, and the 3 shippers using the line prior to the embargo did not oppose the abandonment and appeared to have found shipping alternatives, in *CSX Transportation, Inc.—Abandonment Exemption—in McMinn County, Tenn.*, AB 55 (Sub-No. 694X) (STB served Aug. 13, 2009).

- Granted an application to abandon 15.69 miles of rail line, subject to environmental and employee protective conditions, because the line did not generate enough freight revenue to justify its significant rehabilitation costs; there were no prospects for increased future traffic; and both shippers on the line were using transportation alternatives, in *Union Pacific Railroad—Abandonment—in Rusk County, Tex.*, AB 33 (Sub-No. 275) (STB served Sept. 11, 2009).

Specifically concerning OFAs, the Board:

- Set terms and conditions for the sale of a rail line under the OFA provisions, in *East Penn Railroad—Abandonment Exemption—in Berks and Montgomery Counties, Pa.*, AB 1020X (STB served Jan. 28, 2009). Prior to this decision, the Board had granted East Penn Railroad’s petition for exemption to abandon its 8.6-mile line of railroad, in Berks and Montgomery Counties, subject to public use, trail use, environmental, and standard employee protective conditions in a decision served November 18, 2008.
- Denied an appeal of an STB Director’s Order rejecting an OFA, explaining that the record showed no current or future traffic to support continued rail service, and that the offeror failed to show that he would be able to finance the purchase and operation of the short segment at issue, in *Union Pacific Railroad—Abandonment Exemption—in Lassen County, Cal., and Washoe County, Nev.*, AB 33 (Sub-No. 230X) (STB served Jan. 27, 2009).
- Rejected an OFA where the offeror failed to make a showing of financial responsibility, and a reasonable offer for the purchase price, in *Norfolk Southern Railway—Abandonment Exemption—in Somerset County, Pa.*, AB 290 (Sub-No. 305X) (STB served Jan. 30, 2009).
- Set terms and conditions for the sale of a rail line under the OFA provisions, in *R.J. Corman Railroad/Pennsylvania Lines, Inc. —Abandonment Exemption—in*

Clearfield, Jefferson, and Indiana Counties, Pa., AB 491 (Sub-No. 2X) (STB served Jan. 30, 2009). After the offeror accepted the terms and conditions, the Board approved the sale in a decision served in this case on February 27, 2009.

- Authorized an offeror, pursuant to the OFA process, to enter into a private agreement to purchase a rail line and operate the line segments, in *Central Railroad of Indianapolis—Abandonment Exemption—in Howard County, Ind.*, AB 511 (Sub-No. 4X) (STB served June 11, 2009).

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

Abandonments, FY 2009		
Type	No.	Miles
Applications		
Filed	3	90.67
Granted	3	129.39
Denied	1	96.13
Dismissed	0	0.0
Dismissed - OFA Sale	0	0.0
Pending	1	55.41
Petitions for Exemption		
Filed	16	87.03
Granted	17	136.75
Denied	1	0.45
Dismissed	1	10.86
Dismissed - OFA Sale	0	0
Pending	5	11.35
Notices of Exemption		
Filed	42	274.08
Granted	35	208.46
Denied	4	8.78
Dismissed	0	0.0
Dismissed - OFA Sale	1	12.18
Pending	2	.52

*These data comprise a snapshot of line-abandonment status at the close of FY 2009; figures thus do not add to a total.

Among the more significant actions taken in the feeder-line development program area during FY 2009, the Board:

- Granted the Oregon International Port of Coos Bay's (the Port) feeder-line application to purchase a 111-mile rail line (the Coos Bay Line), in southwestern Oregon, from the Central Oregon & Pacific Railroad, Inc. (CORP), in *Oregon International Port of Coos Bay—Feeder Line Application—Coos Bay Line of the Central Oregon & Pacific Railroad*, FD 35160 (STB served Oct. 31, 2008). In a concurrently issued decision, *Central Oregon & Pacific Railroad—Abandonment and Discontinuance of Service—in Coos, Douglas, and Lane Counties, Or.*, AB 515 (Sub-No. 2), the Board granted CORP's application for authority to abandon and discontinue service over portions of its track. However, because 94 miles of rail line also were the subject of the feeder-line application, consummation of the abandonment was prohibited unless and until the feeder-line proceeding concluded without a sale. In a decision in FD 35160 (STB served Nov. 20, 2008), the Board established the purchase price of the Coos Bay Line at its constitutional minimum value of \$16,605,987.

Among the more significant actions taken concerning railbanking and interim trail use in FY 2009, the Board:

- Denied a petition filed by several landowners for reconsideration of a March 19, 2008 decision, in *Beaufort Railroad—Modified Rail Certificate*, FD 34943 (STB served May 20, 2009). In the May 20 decision, the Board found that a rail line, extending approximately 25 miles from Yemassee to Port Royal, S.C., had not been abandoned and that the agency retained jurisdiction over the property. The Board also granted a request for an NITU.

The following table summarizes rail banking and interim trail use activity during fiscal year 2009:

Railbanking/Interim Trail Use, FY 2009							
Requests		Grants		Denials		Pending	
No.	Miles	No.	No.	No.	Miles	No.	Miles
28	261.79	26	5	5	81.77	5	46.5

Liens on Rail Equipment

Liens on rail equipment and water vessels intended for use in interstate commerce must be filed with the Board to become valid. Subsequent assignments of rights or release of obligations under such instruments also must be filed with the agency. Such liens maintained by the Board are maintained for public inspection. The STB recorded 1,855 liens in FY 2009.

RAILROAD RATES

Cost of Capital

Each year, the Board determines the railroad industry's cost of capital. The Board then uses this cost of capital figure for a variety of regulatory purposes. It is used to evaluate the adequacy of individual railroads' revenues each year and is employed in maximum rate cases, feeder-line applications, rail line abandonments, and trackage rights cases.

Among the more significant actions taken in this area in FY 2009, the STB:

- Denied an Association of American Railroads (AAR) petition asking the Board to institute a rulemaking proceeding to consider the use of a replacement cost methodology in the STB's annual railroad revenue adequacy determination, and found that AAR had failed to overcome practical difficulties associated with use of a replacement-cost approach to perform the annual determination, in *Association of American Railroads—Petition Regarding Methodology for Determining Railroad Revenue Adequacy*, EP 679 (STB served Oct. 24, 2008).
- Adopted a simple average of its Capital Asset Pricing Model (CAPM) and the Morningstar/Ibbotson multi-stage discounted cash flow (MDCF) model to calculate the cost of equity needed to determine more precisely the railroad industry's cost of capital (which includes costs of both equity and debt). The Board determined that its use of a simple average would yield a more precise determination than reliance on CAPM alone, in *Use of a Multi-Stage Discounted Cash Flow Model in Determining the Railroad Industry's Cost of Capital*, EP 664 (Sub-No. 1) (STB served Jan. 28, 2009).

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 2009 reporting period, the Board began a rulemaking proceeding, in its decision in *Rail Transportation Contracts Under 49 U.S.C. 10709*, EP 676 (STB served Jan. 6, 2009), to clarify the demarcation between contract and common-carrier rates. The Board proposed to amend its rules to provide for a disclosure statement that could be included on an agreement for rail transportation. That is, the Board would not find jurisdiction over a dispute involving rate or service under such an agreement, and would treat the agreement as a rail transportation contract governed by 49 U.S.C. §10709. This proceeding remained under consideration at the end of FY 2009.

Railroads are required to file with the Board summaries of all contracts for the transportation of agricultural products. The summaries must contain specific information contained in 49 C.F.R. § 1313, and are available for public inspection at the agency's Tariff Library, by mail for a fee, and at the agency's website at "www.stb.dot.gov."

There were 1,586 agricultural contract summary filings received by the Board during FY 2009.

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 instances where the Board has exempted from regulation the class of commodities or rail services involved. Class exemptions exist for most agricultural products, intermodal container traffic, boxcar traffic, and other miscellaneous commodities.

During FY 2009, the Board found that UP had an obligation to quote common-carrier rates and service terms to a shipper for movements of chlorine, a toxic inhalation hazard, from Utah to four destinations in Texas and Louisiana, in *Union Pacific Railroad—Petition for Declaratory Order*, FD 35219 (STB served June 11, 2009).

Rate Challenges: Market Dominance Limitation

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

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

Where the revenue-to-variable cost threshold is exceeded, the Board examines whether competition in the marketplace effectively restrains a railroad's pricing, and provides 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 “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*, EP 657 (Sub-No. 1) (STB served Oct. 30, 2006), *aff’d sub nom. BNSF Railway v. STB*, 526 F.3d 770 (D.C. Cir. 2008).

Among the more significant actions taken in FY 2009 regarding rail rate-reasonableness cases, the Board:

- Denied Seminole Electric Cooperative’s request to enjoin CSX Transportation from applying new rates pending Board resolution of Seminole Electric’s rate reasonableness complaint, in *Seminole Electric Cooperative v. CSX Transportation, Inc.*, NOR 42110 (STB served Dec. 22, 2008).

- Found that BNSF had market dominance over the transportation of coal from Wyoming mines and that the challenged rates were unreasonably high. The Board prescribed maximum reasonable rates, and ordered reparations, in *Western Fuels Ass'n., and Basin Electric Power Cooperative v. BNSF Railway*, NOR 42088 (STB served Feb. 18, 2009).
- Reconsidered an earlier Board decision and found that the agency's evolving cost-of-capital methodology did not necessitate restating the stand-alone railroad's cost of equity for previous years; considered technical corrections raised by parties; and updated the discounted cash flow analysis to reflect the agency's most recent cost of capital findings for years not previously available, in *AEP Texas North Co. v. BNSF Railway*, NOR 41191 (Sub-No. 1) (STB served May 15, 2009).
- Found that rates charged by UP yielded revenues exceeding 180% of the variable cost of providing service to the Oklahoma Gas & Electric Company (OG&E), awarded OG&E reparations, and addressed the manner in which parties should calculate 180% of variable costs to determine the maximum lawful rate for future movements throughout the 10-year prescription period, in *Oklahoma Gas & Electric Co. v. Union Pacific Railroad*, NOR 42111 (STB served July 24, 2009). In that case, rather than using SAC, the parties had stipulated that rates above the 180% level would be deemed unlawful.

Rate Challenges: Simplified and Expedited Rate Guidelines

In 1996, the Board adopted simplified and expedited rate guidelines in *Rate Guidelines—Non-Coal Proceedings*, 1 S.T.B. 1004 (1996). Within the next decade, only 2 cases were brought to the Board under these guidelines, both settled with the facilitation of Board-led mediation.

Because no cases had been decided under the simplified guidelines since their

establishment, the Board examined and revised its simplified guidelines in a decision in *Simplified Standards for Rail Rate Cases*, EP 646 (Sub-No. 1) (STB served Sept. 5, 2007). As part of the new simplified guidelines, the Board created a methodology for “medium-sized” cases, and modified its previous simplified guidelines for “small-sized” cases. Specifically, the Board adopted a simplified version of the SAC test for medium-sized cases, which it dubbed “Simplified-SAC,” and modified the previously adopted “Three Benchmark” methodology for small-sized cases, under which a challenged rate is evaluated in relation to three benchmark figures from the rates of a comparable group of traffic. A shipper challenging a rate may choose to present evidence using either a Simplified-SAC or Three-Benchmark approach, but with limits on the relief available if either simplified procedure is used (maximum recovery of \$5 million for Simplified SAC cases, and \$1 million for Three-Benchmark cases).

During FY 2009, the Board had rulemakings related to its simplified and expedited guidelines, including:

- *Simplified Standards For Rail Rate Cases—Taxes in Revenue Shortfall Allocation Method*, EP 646 (Sub-No. 2) (STB served May 11, 2009), in which the Board adopted the AAR’s unopposed evidence relative to calculating state tax rates for each Class I carrier for the years 2002-2007; and *Annual Submission of Tax Information For use in the Revenue Shortfall Allocation Method*, EP 682 (STB served Sept. 21, 2009), in which the Board proposed a rule that would require AAR to update annually each Class I railroad’s weighted average state tax information.

RAILROAD SERVICE

General Authority

The Board has broad authority to address the adequacy of the service provided by a railroad to its shippers and connecting carriers, and the reasonableness of a railroad's service and practices. Among its broad remedial powers, the Board may compel a railroad to provide alternative service by another railroad, switching operations for another railroad, or access to its terminal for another railroad. To prevent the loss of necessary rail service, the Board can issue temporary service orders during rail-service emergencies by directing a railroad to operate, for a maximum of 270 days, the lines of a carrier that has ceased operations. Finally, the Board has authority to address the reasonableness of a rail carrier's rules and practices.

Among its more significant actions addressing railroad service and practice issues in FY 2009, the Board:

- Set the compensation that West Texas and Lubbock Railway Company, an alternative rail service provider to PYCO Industries, Inc. and 2 other shippers over the lines of South Plain Switching (SPS), must pay SPS for use of the lines from January 27, 2006 through November 9, 2007, in *South Plains Switching, Ltd.—Compensation for Use of Facilities in Alternative Rail Service—West Texas and Lubbock Railway*, FD 35111 (STB served Dec. 15, 2008).
- Interpreted the Clean Railroads Act of 2008 (CRA) and, in accordance with the CRA, provided proposed rules, which were issued as interim rules, governing the submission of land-use-exemption permits and related filings, in *Solid Waste Rail Transfer Facilities*, EP 684 (STB served Jan. 14, 2009).

- Found that 6 petitioners (5 shippers and a carrier) failed to make all of the required showings for an alternative rail-service order over approximately 218 miles of line, but held the public record open to provide parties an opportunity to submit supplemental information, in *Roseburg Forest Products Co., Timber Products Co., Suburban Propane, L.P., Cowley D&L, Inc., Sousa Ag Service, and Yreka Western Railroad—Alternative Rail Service—Central Oregon & Pacific Railroad*, FD 35175 et al. (STB served Mar. 4, 2009).
- Declined to find that a lease between the Missouri & Northern Arkansas Railroad Company (lessee) and UP (lessor) contained an interchange restriction creating an unreasonable practice or an unlawful pooling arrangement, in *Entergy Arkansas, Inc. and Entergy Services, Inc. v. Union Pacific Railroad and Missouri & Northern Arkansas Railroad*, NOR 42104 et al. (STB served June 26, 2009). In the same decision, the Board postponed a decision on whether to revoke the exemption that approved the lease transaction containing the restriction and explained that the shipper, Entergy Arkansas and Entergy Services, could pursue further relief under the through-routes provision of 49 U.S.C. §10705.

Board-Shipper Discussions

With the exception of discussions of matters pending before the Board, the agency continued to welcome informal shipper meetings with the 3 Board Members and staff to discuss general service, transportation, and other issues of concern. During FY 2009, 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.

During the fiscal year, the Board took the following actions of interest to shippers:

On November 3, 2008, the Board announced the release of *A Study of Competition in the U.S. Freight Railroad Industry and Analysis of Proposals that Might Enhance*

Competition, an independent study conducted by Christensen Associates, a Wisconsin-based consulting firm. The Board subsequently sought public comment on the report's findings, in the proceeding entitled *Study of Competition in the Freight Railroad Industry*, EP 680. On April 8, 2009, the Board announced the release of Christensen Associates' *Supplemental Report to the U.S. Surface Transportation Board on Capacity and Infrastructure Investment*, which augmented the findings of the firm's November 2008 study, and the Board likewise sought public comment in *Supplemental Report on Capacity and Infrastructure Investment*, EP 680 (Sub-No. 1). On July 30, 2009, the Board announced that Christensen Associates would begin updating its November 2008 study by incorporating the latest available economic data available at the time and by making technical corrections to the original report.

On December 24, 2008, the Board approved, subject to numerous environmental mitigation and oversight conditions, the acquisition of the Elgin, Joliet & Eastern Railway Company by the Canadian National Railway Company (CN) and Grand Trunk Corporation. Beginning in April 2009, CN submitted to the Board its first quarterly report addressing operating matters attendant to that transaction.

On January 16, 2009, the Board's Office of Economics (OE) issued its *Study of Railroad Rates: 1985-2007* summarizing OE's latest findings on trends in freight railroad rates and updating OE's measurement of its rail-rate index through 2007.

Dialogue Between Railroads and Their Customers

During FY 2009, the Board continued to encourage railroads to establish a regular dialogue with their customers as a productive way of addressing rail customer-service concerns, and the agency spearheaded that activity through the work of its Rail Customer and Public Assistance Program. In addition, to aid rail customers in their business planning, the Board asked railroads to submit to the agency their fall 2009 "peak-season"

service plans. The Board publicly released the railroads' responses on the agency's website.

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 employee protective conditions address wage and salary protection and changes in working conditions. Such conditions 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. In one proceeding, the Board denied revocation of notices of exemption in *Pacific Sun Railroad—Lease and Operation Exemption—BNSF Railway*, FD 35173, et al., (STB served May 27, 2009), on the ground that the application of employee protective conditions to the transactions was prohibited under 49 U.S.C. §§10901(c) and 11326(c).

ENVIRONMENTAL REVIEW

Overview

Under the National Environmental Policy Act of 1969,⁹ 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 of cases filed before the Board. 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). SEA also conducts public outreach to inform interested parties about railroad proposals and to provide the opportunity to raise environmental concerns, and provides technical advice and recommendations to the Board on environmental matters.

Environmental Review Process

SEA typically conducts environmental reviews for rail-line construction proposals, rail-line abandonments and mergers. Environmental reviews are conducted according to the agency's environmental rules,¹⁰ regulations of the President's Council on Environmental Quality¹¹ and other applicable federal environmental requirements. Environmental reviews take into account all applicable federal environmental laws, including the Endangered Species Act,¹² the Coastal Zone Management Act,¹³ the Clean Air Act,¹⁴ the

⁹ 42 U.S.C. §§ 4321-43.

¹⁰ 49 C.F.R. § 1105.

¹¹ 49 C.F.R. §§ 1500-08.

¹² 7 U.S.C. § 136, 16 U.S.C. §§ 1531-44.

¹³ 16 U.S.C. §§ 1451-1464.

¹⁴ 42 U.S.C. §§ 7401-7671.

Clean Water Act,¹⁵ the National Historic Preservation Act (NHPA)¹⁶ and pertinent hazardous-substance laws.

The public plays an important role in the environmental-review process. For example, in a railroad proceeding requiring environmental review, 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 involved railroad, the public, SEA's independent analysis, and, in some cases, site visits by SEA staff to the proposed project area. SEA then provides an opportunity for public review and comment on all aspects of the Draft EIS or EA. During the public-comment period, SEA may decide to hold a public meeting or meetings to assist the public in participating in the environmental review process and to facilitate the submission of comments. For example, in FY 2009, SEA held 13 public meetings in project areas around the country and 1 public meeting at the Board's offices. At the conclusion of the public-comment period, SEA performs additional analysis, as needed, and prepares a Final EIS or "Post EA" presenting SEA's final recommendations to the Board. The Board 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 authority to impose conditions to address potential adverse effects of a proposed action on communities. Such 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 environmental mitigation conditions must be reasonable and must address impacts that would result directly from a transaction being considered by the agency.

¹⁵ 33 U.S.C. §§ 1251-1387.

¹⁶ 16 U.S.C. § 470(f).

To conserve its limited resources, the Board sometimes employs the services of third-party contractors to assist SEA in preparing environmental analyses. This is done under 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*, EP 585 (STB served Mar. 19, 2001), 5 S.T.B. 467.

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 of any new construction.

Among the more significant actions involving the preparation of EISs in FY 2009, SEA:

- Issued a Draft EIS and a Final EIS for the proposed construction of an 80-mile rail line, in *Alaska Railroad—Construction and Operation Exemption—Rail Line Between North Pole and Delta Junction, Alaska*, FD 34658 (STB served Dec. 12, 2008 and Sept. 18, 2009).
- Conducted ongoing environmental review and determined that the preparation of an EIS was appropriate in the proposed construction and operation of a 20-mile rail line, in *R.J. Corman Railroad/Pennsylvania Lines Inc.—Construction and Operation Exemption—in Clearfield County, Pa.*, FD 35116 (STB served Jan. 8, 2009).

In addition, during FY 2009, the Board 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, Nev.*, FD 35106.
- Construction of a Trans Texas Corridor involving a 1,000-mile rail line for freight and mass transit in Texas.
- Construction of an approximately 190-mile rail line, known as DesertXpress, from Victorville, Calif., to Las Vegas, Nev., offering high-speed, passenger-rail transportation, in EP 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, Nev., known as the Toquop Energy Project, in EP 667.
- Construction and operation of a 3-mile rail line from a quarry owned by Omya, Inc. to the mainline in Middlebury, Vt., in EP 674.
- Construction and operation of a 5-mile rail line to serve a new coal-mining complex, in *Vaughn Railroad—Construction and Operation Exemption— in Monongalia County, W. Va.*, FD 35131.

In FY 2009, SEA also:

- Conducted ongoing environmental review regarding the identification and evaluation of historic and cultural resources, in *Dakota, Minnesota & Eastern Railroad Corp. Construction into the Powder River Basin*,

FD 33407.

- Conducted ongoing environmental review regarding the proposed construction and operation of a 43-mile rail line to serve coal interests, in *Six County Ass'n of Governments–Construction and Operation Exemption–Rail Line between Levan and Salina, Utah*, FD 34075.
- Conducted ongoing environmental review regarding the proposed construction and operation of between 30 and 45 miles of new rail line, in *Alaska Railroad Corp.–Construction and Operation Exemption–A Rail Line Extension to Port MacKenzie, Alaska*, FD 35095.

Among the more significant actions involving the preparation of EAs in FY 2009, SEA:

- Issued a Post EA for the proposed construction of a 12-mile rail line, in *Arizona Eastern Railway–Construction Exemption–in Graham County, Ariz.*, FD 34836 (STB served Apr. 6, 2009).
- Issued a Draft EA and a Final EA for 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, Wash.*, FD 34936 (STB served Nov. 7, 2008 and May 8, 2009).
- Began environmental review and determined that the preparation of an EA was appropriate for the proposed construction of a 2-mile rail line in Brookhaven, N.Y., in *U S Rail Corp.–Construction and Operation Exemption–Brookhaven Rail Terminal*, FD 35141.
- Began environmental review and determined that the preparation of an EA was appropriate for the proposed construction of a 2.8-mile rail line, in

City of Davenport, Iowa–Construction and Operation Exemption–in Scott County, Iowa, FD 35237.

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 2009, SEA conducted more than 37 environmental assessments in connection with rail-line abandonments.

A significant action during the fiscal year involved a notice of exemption, filed by Consolidated Rail Corporation, CSX Transportation, Inc., and Norfolk Southern Railway Company, requesting authority to abandon and discontinue rail service over a 1.6-mile rail line, known as the Harsimus Branch, in *Consolidated Rail Corp.–Abandonment Exemption–in Hudson County, N.J.*, AB 167 (Sub-No. 1189X) (STB served Mar. 23, 2009). After determining that an EIS was unnecessary, SEA issued an EA recommending that 2 conditions, including a condition requiring that the applicants complete the “Section 106” process of the NHPA¹⁷ before beginning salvage activities, be imposed on any decision granting abandonment authority. During the environmental review for this case, SEA received over 1,000 public comments in opposition to this project, which is unusual in abandonment cases.

Railroad Mergers

In railroad mergers, potential environmental impacts include changes in rail-traffic

¹⁷ Section 106 of the NHPA (16 U.S.C. § 470(f)), imposes a responsibility on federal agencies to "take into account the effect of" their licensing decisions on properties included in, or eligible for inclusion in, the National Register of Historic Places.

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

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

- Issued a Final EIS for the proposed acquisition and control of EJ&E by CN, in *Canadian National Railway and Grand Trunk Corporation—Control—EJ&E West Company*, FD 35087 (STB served Dec. 5, 2008). SEA is currently conducting oversight and monitoring in conjunction with OPAGAC to verify CN's compliance with Board-imposed environmental and operational conditions.
- Issued an EA and a Post EA for the proposed acquisition and joint control of PAS in *Norfolk Southern Railway, Pan Am Railways, et al.—Joint Control and Operating/Pooling Agreements—Pam Am Southern LLC*, FD 35147 (STB served Nov. 14, 2008 and Jan. 30, 2009).

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 system¹⁸ 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.¹⁹

Based upon information submitted by carriers, the Board compiles and releases quarterly employment reports as well as annual wage statistics of Class I railroads. Such information is available on the agency's website, at www.stb.dot.gov (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.²⁰ The agency publishes an unadjusted RCAF and an adjusted RCAF with adjustments reflecting rail-industry productivity gains (See Appendix A).

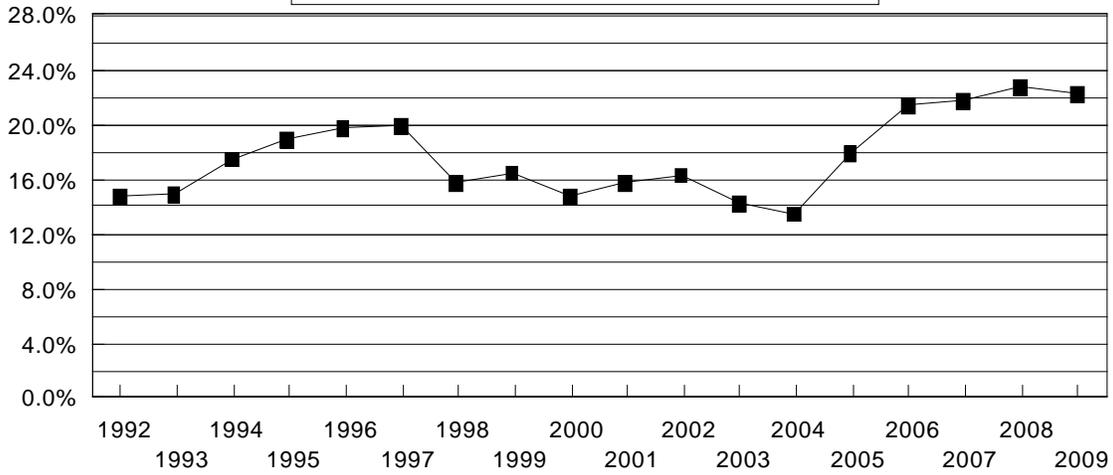
As shown in the following graphs, the *operating margin* (the ratio of income from operations to operating revenues) and *return on investment* for the railroad industry decreased from 2008 to 2009.

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

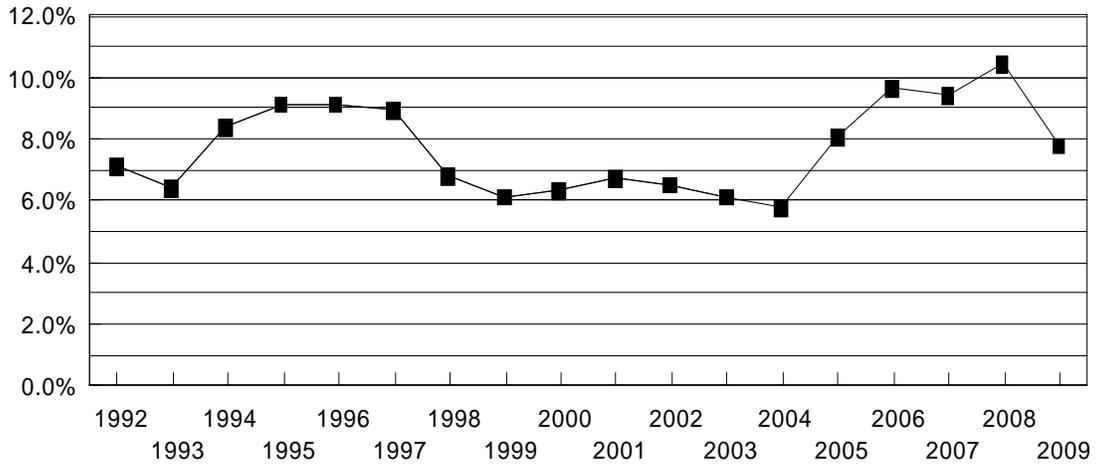
¹⁹ 49 U.S.C. §§ 11145, 1241-1246, 1248.

²⁰ 49 U.S.C. §§ 10708, 1135.

Class I Railroad Operating Margin
1992-2009



Class I Railroad Return on Investment
1992-2009



AMTRAK

The Board has limited but important regulatory authority involving the National Railroad Passenger Corporation, known as Amtrak. The agency has authority to ensure that Amtrak may operate over others' track, and to address disputes concerning shared use of tracks and other facilities. The Board can set the terms and conditions of such shared use if Amtrak and rail carriers or regional transportation authorities fail to reach voluntary agreements. No such disputes requiring Board action arose in FY 2009.

When a rail carrier 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 service. No such emergency rerouting orders were required in FY 2009.

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 FRA, Amtrak, and commuter and freight railroads in 2004 to assess such contingencies, no instances arose during FY 2009 requiring the agency to take action in this area.

Signed into law on October 16, 2008, the Passenger Rail Investment and Improvement Act of 2008, P.L. 110-432, 122 Stat. 4848 (2008) (PRIIA), expands the Board's jurisdiction over passenger rail. PRIIA requires Amtrak and FRA jointly to develop metrics and improved standards for Amtrak performance. The law authorizes the Board to institute enforcement or investigatory action under certain circumstances if the new metrics and standards for Amtrak performance are not met. After investigating, the Board is directed to identify reasonable measures and make recommendations to improve Amtrak performance and/or service quality, and can award damages and prescribe other relief in appropriate circumstances. The Board may be called upon to set terms for access to Amtrak equipment, service and facilities by non-Amtrak passenger carriers under

certain circumstances. Also, the Board will provide mediation services upon request to assist with resolution of disputes regarding commuter-rail access to freight-rail services and facilities.

In FY 2009, the Board consulted with Amtrak and FRA as they worked to develop the new metrics and standards, and the Board submitted comments in FRA's rulemaking proceeding on the draft metrics. While the metrics were due to be finalized by April 16, 2009, they were not made final during FY 2009.

On February 11, 2009, the Board held a public hearing, in *Passenger Rail Investment and Improvement Act of 2008*, EP 683, to receive public comment on the Board's new PRIIA responsibilities. The Board heard from Amtrak, FRA, freight and commuter railroads, industry trade associations, and other interested parties on their views about the STB's role under PRIIA and their interpretations of certain PRIIA provisions. The Board was not called upon to investigate, adjudicate or mediate any issues or disputes under PRIIA during FY 2009.

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. However, the Board decided that it would no longer permit carriers to set base rates and related matters collectively, and it therefore terminated its approval of all outstanding motor-carrier bureau agreements, as well as antitrust immunity for them, on January 1, 2008. Consequently, some motor carrier bureaus disbanded altogether while others revised their activities significantly in an attempt to comply with the antitrust laws.

Pooling Arrangements

Motor carriers seeking to pool or to divide their traffic, services, or earnings among themselves must apply for Board approval. In FY 2009, the Board served no final 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 tariff

provisions are incorporated into a bill of lading or other contract document, and provisions must be made available for inspection by the shippers. Regulations also require additional public notice and explanation when incorporated tariff provisions include terms restricting claims; limiting a carrier's liability for loss, damage, or delay of goods shipment; or allowing a carrier to impose monetary penalties or to increase the price of transportation. There were no Board decisions concerning household-goods carriage in FY 2009.

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 2009, the Board:

- Approved the application of a non-carrier and its subsidiaries to acquire and operate certain assets of 2 motor passenger carriers, in *Stagecoach Group PLC and Coach USA, Inc., et al.—Acquisition of Control—New Today Bus Corp. and New Today Bus, Inc.*, MC-F-21030 (STB served Jan. 30, 2009).
- Approved the application of a non-carrier and its subsidiaries to acquire 100% of the stock of a motor passenger carrier, in *Holland America Line Inc.—Acquisition—Royal Hyway Tours, Inc.*, MC-F-21033 (STB served Apr. 3, 2009).
- Issued decisions seeking public comment on applications to revise a pooling agreement. In these cases, the Board asked parties to address significant differences in the notices that had been provided to the applicant's carrier agents where the application proposed to further restrict the ability of carrier agents to operate under their own authority. *Mayflower Transit, LLC—Pooling Agreement*,

MC-F-17950 (STB served May 18, 2009); *United Van Lines, LLC–Pooling Agreement*, MC-F-4901 and MC-F-6152 (STB served May 18, 2009).

- Provided notice of, and sought comments on, an application for Stagecoach group, Coach USA, and other entities to acquire control of Twin America, LLC, upon Twin America's becoming a carrier, in *Stagecoach Group PLC and Coach USA, Inc.–Acquisition of Control–Twin America, LLC*, MC-F-21035 (STB served Sept. 18, 2009). This proceeding remained pending as of the end of FY 2009.

Motor Carrier Rate Reasonableness

The Board may review the reasonableness of those motor carrier rates that are established collectively. There were no requests for review of such rates in FY 2009.

WATER CARRIAGE

The Board has jurisdiction over both port-to-port and intermodal transportation involving ocean carriers in the noncontiguous domestic trade, that is, transportation between the U.S. mainland and Alaska, Hawaii, and the U.S. Territories of American Samoa, the Northern Mariana Islands, Guam, the Virgin Islands, and Puerto Rico.

Tariff Requirements

Carriers engaged in the noncontiguous domestic trade are required to file tariffs containing rate and service terms with the Board. 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 2009 is shown in the following table.

Water Tariff Filings, FY 2009	
Printed Tariffs	
Number of Pages Filed	10,486
Electronic Tariffs	
Number of Filings	6,176
Number of Objects (e.g., tariff rates, rules, etc.)	108,918

Complaints

If a complaint is filed with the Board, the agency must determine the reasonableness of water or joint motor-water rates in the noncontiguous domestic trade. The Board neither received nor decided any noncontiguous domestic trade-related complaints during FY 2009.

In a petition filed on August 13, 2009, West Point Relocation, Inc., and Eli Cohen sought a declaratory order as to whether it is an unreasonable practice, under 49 U.S.C. 13701, for Horizon Lines LLC (Horizon) to issue tariff rules holding officers and corporate directors personally liable for the actions of the corporation. The matter was referred to the Board on August 4, 2009, by the United States District Court for the Central District of California, in *Horizon Lines LLC v. West Point Relocation*, No. CV 08-6362 RSWL (JTLx). Horizon initiated the court proceeding to collect unpaid amounts accrued between 2007 and 2008, allegedly due under a tariff for shipments of goods. The court stayed the case against Mr. Cohen and granted his motion to refer to the Board the issue of whether the tariff terms were reasonable. The case remained pending at the end of FY 2009.

PIPELINE CARRIAGE

The Board regulates the interstate pipeline transportation of commodities other than water, gas, and oil. Pipeline carriers must promptly disclose their rates and service terms upon public request, and rates and practices must be reasonable and nondiscriminatory. Pipeline carriers must provide at least 20 days' public notice before a rate increase or change in service terms may become effective. The Board neither received nor decided any pipeline-related complaints during FY 2009.

COURT ACTIONS

Judicial review of most Board decisions is available in the federal courts of appeals. Certain Board orders—those solely for the payment of money and those addressing questions referred to the Board by a federal district court—are reviewable in federal district court.

Below is a summary of significant court decisions rendered in FY 2009.

Rail Line Abandonments

In *City of South Bend v. STB*, 566 F.3d 1166 (D.C. Cir. 2009), the court affirmed the Board's denial of a third-party application for authority to compel the adverse abandonment of a dormant rail line. The City of South Bend and the Brothers of the Holy Cross had sought to obtain immediate Board authorization for abandonment of the line to avoid the alleged harms to future city- and private-development plans that reactivation of the line might cause. The court upheld the Board's finding that it was reasonable to preserve the right-of-way for a period of time to permit the potential purchase and development of the line by a party interested in restoring rail service. The court also urged Congress to clarify what the court perceived as an inadvertent statutory uncertainty—whether the Board may continue to authorize adverse abandonments after passage of the ICC Termination Act of 1995.

In *Conrail v. STB*, 571 F.3d 13 (D.C. Cir. 2009), the Consolidated Rail Corporation (Conrail) appealed the Board's finding that a strip of track was a line of railroad when it was transferred to Conrail, and that Conrail thus needed to obtain Board authorization to abandon that track. The court, however, did not rule on that issue. Instead, as requested by another party, the court held that the Board lacked jurisdiction to rule on the matter because it involved an interpretation of the Final System Plan, pursuant to which certain

rail properties of bankrupt eastern railroads were transferred to Conrail. The court held that the Special Court under the Regional Rail Organization Act of 1973 (established in 45 U.S.C. § 719, and whose functions were later transferred to the U.S. District Court for the District of Columbia) has exclusive jurisdiction over matters requiring interpretation of the Final System Plan.

In *Wheeler v. Materials Recovery of Erie Inc.*, 2009 WL 2957795 (W.D. Pa. Sept. 10, 2009), the district court denied a petition for review challenging a Board decision made on a court referral. The court upheld the Board's determination that a recreational trail sponsor had not impermissibly transferred the trail to another trail sponsor without Board authorization by entering into a Donation Agreement that was explicitly subject to STB approval. The court also declined to review the Board's determination not to reopen a prior ruling that the line had been properly railbanked. The district court's opinion has been appealed to the U.S. Court of Appeals for the Third Circuit. *Wheeler v. Materials Recovery of Erie Inc.*, No. 09-4344 (3d Cir. filed Nov. 6, 2009).

Railroad Rates: Rate Reasonableness Determinations

In *CSX Transportation, Inc. v. STB*, 568 F.3d 236 (D.C. Cir. 2009), *vacated in part on reh'g*, 584 F.3d 1076 (D.C. Cir. 2009), the court largely upheld the Board's revised rules establishing simplified and expedited methods of adjudicating small-sized and medium-sized rail rate disputes. However, on rehearing the court found that the Board had not given adequate notice that 4 years of data would be available for use in small-sized rate disputes. The court remanded to the Board that portion of the rulemaking.

Mergers and Acquisitions

In *In re Canadian National Railway Corp.*, No. 08-1303 (D.C. Cir. Nov. 10, 2008), the court denied a petition for a writ of mandamus that would have required the Board to

decide by a certain date a rail carrier's application for authority to acquire all of the common stock of another carrier under 49 U.S.C. § 11324. The court found that the carrier had not established a clear and indisputable right to such relief.

Preemption

In *Franks Investment Co. v. Union Pacific R.R.*, No. 08-30236 (5th Cir. Jan. 6, 2010), the United States Court of Appeals for the Fifth Circuit issued an *en banc* decision finding that 49 U.S.C. § 10501(b) does not preempt a landowner's action under state law to preserve a private road crossing over a Union Pacific Railroad Company line in Louisiana. The court found that, absent evidence that a crossing creates any unusual interference with the railroad, section 10501(b) does not preempt a state law action regarding use of a private railroad/road crossing. The Board filed a brief and presented argument in the case as *amicus curiae* at the request of the court.

APPENDIX A

REPORTS AND PUBLICATIONS

The Board issues several types of reports and publications, including technical and statistical reports, general-interest publications, news releases, and consumer guides, among many others. As noted below, many of these reports and publications are available on the agency's website, at **www.stb.dot.gov**. Unless otherwise indicated, 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* (C.F.R.). The first volume (49 C.F.R. Parts 1000-1199) contains general provisions and rules of practice, including provisions relating to exemptions, rate procedures, rail line constructions and abandonments, and restructurings within the railroad and intercity bus industries. The second volume (49 C.F.R. Parts 1200-End) contains provisions regarding the uniform system of accounts prescribed by the agency, carrier records and reporting requirements, and filing and disclosure requirements with respect to rates and service terms. 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 Website

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

- Agency decisions and notices served on or after 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 website. 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 Customer and Public Assistance Program.
- The STB’s Freedom of Information Act (FOIA) regulations, fees, Reference Guide for FOIA requesters, frequently requested records, and other FOIA-related information.
- The agency’s rules and fees for filings and services.
- Publications, including how-to guides about rail-line abandonment and line-sale processes, as well as basic information about the Rails-to-Trails program.
- A general guide to the Board and its operations, including organizational information.
- Links to significant agency proceedings, the U.S. Congress, the U.S. 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 website 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

The Board's decisions, filings, and news releases may be viewed on the Board's website and also in its 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 available on the agency's website. 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 telephoning the Board's Communication Director at (202) 245-0234.

Financial and Statistical Reports from Class I Railroads

The following reports, submitted to the Board by Class I railroads, may be examined, by appointment with the agency's 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 website, 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 3 months beginning October 1, 2007 [see *Rail Fuel Surcharges*, EP 661 (Sub-No.1) (STB served Aug. 14, 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 2-digit STCC code for each of 3 Revenue-to-Variable Cost (RVC) Ratio categories. This report has historically been created as part of the proceeding entitled Rate Guidelines—Non-Coal Proceedings, EP 347 (Sub-No. 2), and its calculation of the “Revenue Shortfall Allocation Method” (RSAM) percentage and the “Average Revenue-to-Variable Cost > 180” (R/VC>180) percentage.*

Depreciation Rate Prescriptions—depreciation rates, by property 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 *Quarterly Rail Cost Adjustment Factor*, EP 290 (Sub-No. 5).*

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

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

Railroad Revenue Adequacy—determination of the railroads that are revenue adequate, issued annually in EP 552.*

Publications

The following Board publications are available on the agency’s website, as indicated by an asterisk (*). Unless otherwise indicated, 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 March 1997).*

Surface Transportation Board Annual Reports—reports covering the Board's activities from its inception on January 1, 1996, to the close of the fiscal year that ended September 30, 2009.*

Surface Transportation Board Reports, Volumes 1 through 7— reports containing major Board decisions issued from January 1996 - December 2004 (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 a fee. To purchase any of these items or obtain additional information, 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 is \$35, based on a rate of \$70 per hour, per *Regulations Governing Fees for Services Performed in Connection with Licensing and Related Services—2009 Update*, EP 542 (Sub-No. 16) (STB served May 5, 2009), effective June 4, 2009).

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 website at *Industry Data > Economic Data > URCS*.

Confidential Carload Waybill Sample File—movement-specific sample of U.S. railroad traffic used by the Board and others. The *Confidential Carload Waybill Sample File* is available for a fee. Requests for access to the data must follow the procedures specified in 49 C.F.R. § 1244.9. The Reference Guide for the 2008 Surface Transportation Board Carload Waybill Sample for the *Confidential Carload Waybill Sample File* is available on the agency’s website at *Industry Data > Economic Data > Waybill*.

Carload Waybill Sample Public Use File—nonconfidential railroad movement and revenue data for use in performing transportation planning studies. The data files for 2003 through 2008 and the Reference Guide for the 2008 Surface Transportation Board Carload Waybill Sample for the *Carload Waybill Sample Public Use Files* are available on the Board’s website at *Industry Data > Economic Data > Waybill*.

APPENDIX B

APPROPRIATIONS AND EMPLOYMENT

The following tables show average full-time equivalent (FTE) employment and total appropriations, less enacted rescissions, for FY 2002 to 2009 for activities included under the current appropriation title “Salaries and Expenses.”

Average FTE Employment and Appropriations FY 2002-2009¹			
Fiscal Year	Appropriation	STB Offset ²	Average Employment
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
2009	25,597,000	1,250,000	141

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

² The STB appropriations are statutorily offset by the collection of user fees that are reflected as credits to the appropriations.

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

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
Reimbursements from other agencies	0
Total obligations	25,069,749
Unobligated balance available for adjustments	4,751
Carryover of offsetting collections to next fiscal year	940,617

Status of FY 2009 Appropriations*	
Total appropriations	\$25,829,254
Offsetting collections (<i>see note</i>)	1,017,746
Reimbursements from other agencies	0
Total obligations	25,806,587
Unobligated balance available for adjustments	22,667
Carryover of offsetting collections to next fiscal year	940,617

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

NOTES:

The FY 2002-2009 appropriations provided 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 year.

APPENDIX C

DECISIONS DURING FY 2009

FY 2009 Caseload Rail Matters					
Category	Pending at Start	Received During	Decided During	Pending at End	Decisions Served
Carrier Consolidations	5	26	28	3	45
Review of Labor Arbitral Decisions	1	0	0	1	0
Rates and Services	17	17	16	18	63
Rate Reasonableness	9	14	11	12	44
Rate Disclosure	0	0	0	0	0
Through-Routes or Divisions	0	0	0	0	0
Contract Rates	1	0	1	0	1
Reasonable Practice	4	0	2	2	2
Discrimination	0	0	0	0	0
Car Supply and Interchange	0	2	1	1	2
Service Orders	3	0	1	2	3
Competitive Access	0	1	0	1	3
Constructions	14	5	5	14	36
Line Crossing	1	0	0	1	0
Constructions	13	5	5	13	36
Abandonments	41	204	201	44	348

**FY 2009 Caseload
Rail Matters (cont'd)**

Category	Pending at Start	Received During	Decided During	Pending at End	Decisions Served
Other Line Transactions	25	75	80	20	138
Line Consolidations	9	28	25	12	73
Line Acquisitions Under 49 U.S.C. 10901	7	22	26	3	30
Line Acquisitions by Shortline	7	22	25	4	25
Feeder Line Development	1	1	2	0	7
Acquisition and Operation 10502	1	2	2	1	3
Collective Actions	0	1	0	1	1
Collective Ratemaking	0	1	0	1	1
Pooling	0	0	0	0	0
Data Collection and Oversight	2	2	1	3	11
RCAF	0	1	0	1	8
Accounting and Records	2	1	1	2	2
Reports – Rail (see note 2)	0	1	1	0	1
Passenger Rail	0	1	0	1	2
Amtrak Track Use/ Compensation	0	0	0	0	0
Passenger Rail - Other	0	1	0	1	2
Exemption Rulemakings	0	6	2	4	10
Other Rail	8	7	6	9	22
Common Carrier Obligation	0	4	2	2	6
Interlocking Officer or Director	0	0	0	0	0
Other	7	4	4	7	16
Total Rail	112	345	339	118	677

**FY 2009 Caseload
Nonrail Matters**

Category	Pending at Start	Received During	Decided During	Pending at End	Decisions Served
Motor					
Rate Reasonableness	0	1	0	1	0
Joint Motor-Water Rates in Non- contiguous Domestic Trade	0	1	0	1	0
Collectively Set Trucking Rates	0	0	0	0	0
Household Goods	0	0	0	0	0
Collective Actions	0	2	0	2	2
Collective Ratemaking Agreements	0	0	0	0	0
Truck Pooling	0	3	0	3	3
Undercharges	0	0	0	0	0
Bus Regulation	0	10	7	3	8
Through-Route Regulation	0	0	0	0	0
Mergers	0	10	7	3	8
Bus Pooling	0	0	0	0	0
Other Motor	1	0	0	1	0
Water	0	0	0	0	0
Port-to-Port Water Rates	0	0	0	0	0
Other	0	0	0	0	0
Pipeline	0	0	0	0	0
Rate Regulation	0	0	0	0	0
Other	0	0	0	0	0
Other	1	6	3	4	14
Total Nonrail	2	20	10	12	25
Total Rail and Nonrail	114	364	349	129	702

APPENDIX D

RAILROAD FINANCIAL AND STATISTICAL DATA

Rail Carriers Regulated by the STB ^a	
<i>Carriers Subject to the 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 2008)</i>	
Railroads, Regional	33
Railroads, Local	525
Holding Companies – Rail	not available

^a Information was obtained from *Profiles of U.S. Railroads* (2009 edition) maintained by the AAR and containing AAR estimates of carrier revenues. The AAR no longer uses the “Class II” and “Class III” designations. In lieu of the Class II designation, it now defines “regional railroads” as carriers operating at least 350 miles of road and/or earn revenue between \$40 million and the Class I revenue threshold. In lieu of the Class III designation, it defines “local railroads” as those below the regional criteria, plus switching and terminal companies. Information about regional and local railroads was obtained from AAR’s *Railroad Facts, 2009 Edition, p. 3*.

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, in 1991 dollars, using the following scale:

Class I: \$250 million or more.

Class II: Less than \$250 million but more than \$20 million.

Class III: \$20 million or less.

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

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), 0.6952

(2007), and 0.6228 (2008). All indexes are preliminary and subject to revision after their original publication (see 74 Fed. Reg. 41,180 (Aug. 14, 2009) (effective Jan. 1, 2008)).

The STB requires that affiliated railroads with integrated operations in the United States be combined for purposes of determining whether they are Class I railroads. Such combined railroads are required to file consolidated financial reports (see the agency's November 7, 2001 decision in *Proposal to Require Consolidated Reporting By Commonly Controlled Railroads*, EP 634).

Class I Railroads, Condensed Income Statement, Financial Ratios, and Employee Data (Dollars in Thousands)				
	Calendar Year			
	2006	2007	2008	2009
1. Class 1 Carriers	7	7	7	7
CONDENSED INCOME STATEMENT				
2. Total operating revenues	\$52,151,588	\$54,599,504	\$61,242,606	\$47,848,649
3. Total operating expenses	40,980,029	42,747,102	47,347,941	37,225,042
4. Net railway operating income	7,559,597	7,765,051	9,248,350	7,044,981
5. Net income	6,482,025	6,797,225	8,101,774	6,422,621
6. Dividends Paid	1,092,854	6,428,602	3,348,163	1,381,799
NET INVESTMENT AND EQUITY				
7. Net investment, transp. property & equipment ^a	77,837,908	82,512,141	88,261,887	90,285,519
8. Shareholders' equity	58,901,042	59,300,038	62,786,791	67,826,460
FINANCIAL RATIOS (PERCENT)				
9. Operating ratio (L3/L2)	78.58%	78.29%	77.31%	77.80%
10. Return on net investment (L4/L7)	9.71%	9.41%	10.48%	7.80%
11. Return on equity (L5/L8)	11.00%	11.46%	12.90%	9.47%
EMPLOYEE DATA				
12. Average number of employees	167,508	167,215	164,439	151,906
13. Compensation	\$11,421,567	\$11,617,546	\$11,977,016	\$10,930,497

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

Class I Railroads, Selected Balance Sheet Data
as of December 31, 2006-2009
(Dollars in Thousands)

	Calendar Year			
	2006	2007	2008	2009
1. Total current assets	\$8,250,977	\$8,021,330	\$8,825,174	\$8,767,675
2. Total current liabilities	12,711,989	13,503,696	12,428,998	9,800,997
3. Transportation property				
Road	116,371,738	121,909,899	128,119,862	134,390,447
Equipment	28,678,468	30,533,170	31,760,388	33,422,716
Other	2,072,910	2,827,830	2,823,048	2,347,353
Less accumulated depreciation and amortization	36,104,595	38,865,967	41,361,514	44,343,857
Net Transportation Property	111,018,521	116,404,932	121,341,784	125,816,659
4. Long-term debt (due after 1 yr)	15,706,575	15,363,218	15,625,048	16,955,770
5. Shareholders' equity				
Capital stock (Par Value)	696,073	655,272	652,439	649,479
Additional capital (Above Par)	23,804,429	24,034,945	24,192,551	24,332,478
Retained earnings	34,423,935	34,558,129	37,852,644	42,745,796
Less treasury stock	3,787	3,787	3,787	3,787
Net shareholders' equity	\$58,901,042	\$59,300,038	\$62,786,791	\$67,826,460

Railroad Cost of Capital, Percentage Return on Investment (ROI), and Revenue Adequacy Status 2005-2008 ^a				
	Calendar Year			
	2005 ^b	2006 ^c	2007 ^d	2008 ^e
Cost of Capital	12.2	9.9	11.33	11.75
ROIs of Class I Railroads				
Burlington Northern Sante Fe	9.8	11.4	9.97	10.51
Canadian National/Grand Trunk Corp	8.1	9.5	10.11	9.89
CSX Transportation	6.2	8.2	7.61	9.34
Kansas City Southern	5.9	9.3	9.37	7.72
Norfolk Southern	13.2	14.4	13.55	13.75
Soo Line	8.9	11.6	15.25	9.29
Union Pacific	6.3	8.2	8.90	10.46

^a A railroad is considered to be revenue adequate under 49 U.S.C. § 10704(a) if it achieves a rate of Return on Net Investment (ROI) equal to at least the current cost of capital for the railroad industry. The ROIs that meet this criterion are shown in **bold** in this table

^b Cost of Capital for 2005 was determined in EP 558 (Sub-No. 9); Revenue Adequacy for 2005 was determined in EP 552 (Sub-No. 10).

^c Cost of Capital for 2006 was determined in EP 558 (Sub-No. 10); Revenue Adequacy for 2006 was determined in EP 552 (Sub-No. 11).

^d Cost of Capital for 2007 was determined in EP 558 (Sub-No. 11); Revenue Adequacy for 2007 was determined in EP 552 (Sub-No.12).

^e Cost of Capital for 2008 was determined in EP 558 (Sub-No. 12); Revenue Adequacy for 2008 was determined in EP 552 (Sub-No.13).

APPENDIX E

SURFACE TRANSPORTATION BOARD MEMBERS, 1996-2009¹

Name	State	Party	Oath of Office	End of Service ²
SIMMONS, J.J. III	OK	Democrat	Jan. 1, 1996	Dec. 31, 1996
OWEN, Gus A.	CA	Republican	Jan. 1, 1996	Dec. 31, 1998
MORGAN, Linda J. ³	MD	Democrat	Jan. 1, 1996	May 15, 2003
CLYBURN, William Jr.	SC	Democrat	Dec. 21, 1998	Dec. 31, 2001
BURKES, Wayne O.	MS	Republican	Feb. 25, 1999	Mar. 20, 2003
NOBER, Roger ⁴	MD	Republican	Nov. 26, 2002	Jan. 4, 2006
BUTTREY, W. Douglas ⁵	TN	Republican	May, 28, 2004	Mar. 13, 2009 ⁶
MULVEY, Francis P. ⁷	MD	Democrat	June 2, 2004	Term ends 2012
NOTTINGHAM, Charles D. ⁸	DC	Republican	August 14, 2006	Term ends 2010
ELLIOTT, Daniel R. III ⁹	OH	Democrat	August 13, 2009	Term ends 2013

¹ The Surface Transportation Board was created by the ICC Termination Act of 1995 and was established on January 1, 1996.

² A Member is appointed to a 5-year term of office ending on December 31st of the final year of the term. If a Member departs the STB before the end of his or her term, a successor is appointed to the vacant seat for the remainder of the departing Member's term.

³ Chairman of the STB's predecessor agency, the Interstate Commerce Commission, March 23, 1995-December 31, 1995. STB Chairman January 1, 1996-November 26, 2002.

⁴ Chairman, November 26, 2002-January 4, 2006.

^{5,6} Chairman, January 5, 2006-March 12, 2006. His original term of office as a Member expired on December 31, 2008. The Board's governing statute permits a Member to serve up to 1 year after the expiration of the original term, unless a successor is appointed.

⁷ Acting Chairman, March 12-August 14, 2009.

⁸ Chairman, August 14, 2006-March 12, 2009.

⁹ Current Chairman.