



Surface Transportation Board

FY 2013 Annual Report

Chairman Daniel R. Elliott III

Vice Chairman Ann D. Begeman

Board Member Francis P. Mulvey



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

Office of the Chairman

June 2, 2015

To the Congress of the United States:

It is my pleasure to submit this report covering the Surface Transportation Board's activities from Oct. 1, 2012, through Sept. 30, 2013. The report follows the format of previous years' reports with a statement of appropriations and aggregate expenditures for Fiscal Year (FY) 2013 appearing in Appendix B.

The Board's membership remained unchanged during FY 2013, as reflected in Appendix F of this report.

More recently, however, I was sworn in as a new Board Member on April 28, 2014, and former Board Chairman Daniel Elliott III designated me as the agency's Vice Chairman on May 27, 2014. The last day of former Chairman Elliott's term of office, including a holdover period, was December 31, 2014, on which date the Board unanimously approved me as Acting Chairman, upon Chairman Elliott's departure, and unanimously approved Board Member Ann Begeman to serve as the agency's Vice Chairman. On January 13, 2015, the White House sent to the Senate its reappointment nomination of former Chairman Elliott for a term expiring December 31, 2018, where that nomination currently awaits action.

Sincerely,

Deb Miller
Acting Chairman

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ABBREVIATIONS

The following abbreviations are used throughout this report:

AAF	All Aboard Florida
AAR	Association of American Railroads
Ameren	Union Electric Company d/b/a Ameren Missouri
Amtrak	National Railroad Passenger Corporation
Berkshire	Berkshire Hathaway Inc.
BNSF	BNSF Railway Company
Board	Surface Transportation Board
C.F.R.	Code of Federal Regulations
CHSRA	California High-Speed Rail Authority
CMP	Constrained Market Pricing
CN	Canadian National Railway Company
Conrail	Consolidated Rail Corporation
CSX	CSX Transportation, Inc.
d/b/a	doing business as
DOT	United States Department of Transportation
EA	Environmental Assessment
EIS	Environmental Impact Statement
EJ&E	EJ&E West Company
EP	Ex Parte
FACA	Federal Advisory Committee Act
FD	Finance Docket
FOIA	Freedom of Information Act
FRA	Federal Railroad Administration
FTE	Full-time employee
FY	Fiscal Year
GPO	U.S. Government Printing Office
GTW	Grand Trunk Western Railway Company

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

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TRRC	Tongue River Railroad Company
UP	Union Pacific Railroad Company
URCS	Uniform Rail Costing System
U.S.C.	<i>United States Code</i>
U.S.C.A.	<i>United States Code Annotated</i>
Western Fuels	Western Fuels Association, Inc. and Basin Electric Collective (collectively)

OVERVIEW

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

The bipartisan Board was established on Jan. 1, 1996, to assume some of the regulatory functions formerly administered by the Interstate Commerce Commission (ICC) when the ICC was abolished. Other ICC regulatory functions were either eliminated or transferred to the U.S. Department of Transportation's (DOT) former Office of Motor Carriers—now the Federal Motor Carrier Safety Administration—or to DOT's Bureau of Transportation Statistics. The Board is organizationally housed within DOT, but is decisionally independent.²

While much of its work involves freight railroads, the Board also has certain oversight of passenger rail carriers, pipeline carriers, intercity bus carriers, moving-van companies, trucking companies involved in collective activities, and water carriers engaged in non-contiguous domestic trade (i.e., trade involving Alaska, Hawaii, or U.S. territories or possessions).³ Additionally, the STB has limited but significant regulatory authority over the National Railroad Passenger Corporation, known as “Amtrak”; its operations on other railroads' track; disputes over shared track use and facilities; and cost allocation for Amtrak operations. The agency has wide discretion to tailor its regulatory approach to meet the nation's changing transportation needs.

¹ 49 U.S.C. §§ 10101-11908.

² For details on the Board's regulations and governing statutes, *see* Appendix A.

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

Performance and Policy Goals

The Board strives to provide an efficient and effective forum for the resolution of surface transportation disputes and other matters within its jurisdiction. In all of its official decisions, the STB seeks to advance the national transportation policy goals enacted by Congress.⁴ Although the Board uses its exemption authority to reduce or remove regulatory requirements where appropriate, the agency is committed to vigilant oversight and the rendering of fair and timely decisions when regulation is required. Attendant to this commitment, the STB endeavors to continue to establish, implement, and meet agency-wide goals, initiated in Fiscal Year (FY) 2010, to increase transparency in its processing and adjudication of cases, and to promote alternative dispute resolution for parties.

In this regard, on May 13, 2013, in the proceeding titled *Assessment of Mediation and Arbitration Procedures*, Docket No. EP 699, the Board issued new rules to promote the use of arbitration and mediation to resolve certain disputes within its jurisdiction. The new arbitration rules allow shippers and railroads to agree in advance to voluntarily arbitrate conflicts related to demurrage; accessorial charges; misrouting or mishandling of railcars; and railroads' published rules and practices applicable to a specific transportation service. Arbitral awards are generally subject to a limit of \$200,000, unless the involved parties agree otherwise. The changes to the Board's mediation rules allow the STB to order parties to participate in mediation for disputes on a case-by-case basis, except those involving the agency's licensing functions. Unless parties decide to engage the services of a private mediator, Board staff trained in mediation will conduct mediation sessions generally limited to 30 days' time.

The Board held one oral argument in FY 2013. On January 15, 2013, the STB conducted oral argument in *Union Pacific Corporation—Control & Merger—Southern Pacific Rail Corporation*, Docket No. FD 32760, a case examining whether Union Pacific Railroad (UP) was required, as a condition of the STB's approval of the UP-Southern Pacific merger, to grant

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

reciprocal switching to BNSF Railway Company (BNSF) at a shipper's facility near Modesto, Calif.

In the area of regulation of railroad rates, the Board advanced a review of its regulations for small, medium, and large rate cases. In *Rate Regulation Reforms*, Docket No. EP 715, the STB refined its rules by: (1) removing the limitation on damages recoverable in medium-sized rate disputes and raising the level of recovery to \$4 million in small rate disputes; (2) modifying the way that revenue from cross-over traffic is allocated in large rate cases under the Stand-Alone Cost (SAC) framework; and (3) changing the interest rate on reparations awarded in SAC cases. All of these changes are intended to streamline the rate process and to make it fairer and more accessible to parties.

The Board also issued a proposed rule to make technical changes to its Uniform Rail Costing System (URCS). The STB employs URCS in rate cases between shippers and railroads, particularly to determine whether a challenged rate is subject to agency review, and also in rail line abandonment proceedings. To eliminate a separate mathematical adjustment, referred to as the "make-whole adjustment," the Board proposed changes that will allow URCS to better track railroads' economies of scale in handling larger shipments. The proposal, in *Review of the General Purpose Costing System*, Docket No. EP 431 (Sub-No. 4), would make a number of related changes to URCS that would result in more accurate movement costs and modification of two of the agency's reporting requirements to support these proposals.

In the area of competitive rail access, Board staff continued to review and analyze comments and submissions from rail-industry stakeholders concerning the STB's consideration of the National Industrial Transportation League's proposal, in *Petition for Rulemaking to Adopt Revised Competitive Switching Rules*, Docket No. EP 711, to revise its regulations governing reciprocal switching. If adopted, the proposal would facilitate access to a second railroad for certain solely served shippers located within defined terminal areas. Also in this area, the Board issued new regulations, in *Information Required in Notices & Petitions Containing Interchange Commitments*, Docket No. EP 714, augmenting public-disclosure requirements when the sale or lease of a railroad line contains an interchange commitment. Sometimes referred to as a "paper

barrier,” an interchange commitment is a contractual provision restricting the purchaser (or lessee) of a line from interchanging traffic with a railroad other than the seller (or lessor) of the line. The new rules reflect the STB’s concern about potential anticompetitive effects of interchange commitments. Vice Chairman Begeman dissented with a separate expression.

The Board also completed two proceedings with industry-wide significance involving railroad tariff provisions. In one case, *Union Pacific Railroad Company—Petition for Declaratory Order*, Docket No. FD 35504, the disputed tariff provision purported to indemnify a railroad from harm related to its transportation of toxic-by-inhalation (TIH) commodities. In its decision, the STB found the indemnification provision unreasonable because it required that shippers broadly assume liability for loss or injury related to the railroad carriage of such substances without regard to respective fault. In the other case, *Cargill, Inc. v. BNSF Railway*, Docket No. NOR 42120, a major shipper challenged a tariff provision imposing a fuel surcharge on industrial and agricultural products. Here, the STB found that the railroad’s mileage-based fuel surcharge was reasonable, in that it did not allow over-recovery of incremental fuel costs. However, the agency initiated a separate investigation to determine whether a fuel price index published by the U.S. Department of Energy—and previously approved by the STB for purposes of rail fuel surcharges—could be manipulated to gain excessive compensation.

During FY 2013, the Board also continued its work on a new rule pertaining to liability for demurrage charges. To harmonize application of demurrage among consignors, consignees, and third-party receivers of railcars, the STB had proposed, in May 2012 in the case titled *Demurrage Liability*, Docket No. EP 707, a rule that any person receiving railcars from a railroad (for either loading or unloading) who detains the cars beyond a specified time period may be held liable for demurrage if that person had, prior to the railroad’s placement of the railcars, actual notice of the terms of the demurrage tariff providing for such liability. The comment period for this rule closed at the end of August 2013.

Also during the fiscal year, the Board completed its review of the acquisition of BNSF by Berkshire Hathaway Inc. (Berkshire) in light of the belated disclosure that Berkshire failed to recognize its ownership of two shortline railroads at the time of the acquisition, and thus its

failure to seek advance approval from the STB. In *Western Coal Traffic League—Petition for Declaratory Order*, Docket No. FD 35506, the agency specifically required BNSF to remove its \$8.1 billion markup of its rail assets over their book value, often referred to as an acquisition premium. The Board also ordered BNSF to phase in the markup of its rail assets equally over a four-year period, beginning in 2013, until full recognition of the markup under Generally Accepted Accounting Principles. This remedy is designed to mitigate the effect of the markup on the jurisdictional threshold in rate reasonableness cases brought by captive shippers served by BNSF.

In the area of rail mergers, the Board approved the acquisition of RailAmerica, Inc., and its Class III railroad subsidiaries by Genesee & Wyoming, Inc., the corporate parent of several Class II and III railroads. In reaching its decision, the STB found that the proposed acquisition was unlikely to cause a substantial lessening of competition, create a monopoly, restrain interstate trade, or enhance market power, and that, to the contrary, all commonly owned railroads would continue to operate and compete in their own local markets in the same manner as that prior to the transaction. The agency did require, however, that the applicants adhere to all representations made on the public record during the proceeding, *Genesee & Wyoming Inc.—Control—RailAmerica*, Docket No. FD 35654, and imposed standard labor-protective conditions,

In the area of rail construction, the Board continues to adjudicate the application of Tongue River Railroad Company to construct and operate a new rail line in southeast Montana. The purpose of the proposed line is to transport low-sulfur, sub-bituminous coal from a planned coal mine currently in the permitting process at Otter Creek, Mont., and any future mines that might be developed in the Otter Creek and Ashland, Mont., area. During FY 2013, the Board issued several procedural decisions moving the case, *Tongue River Railroad—Rail Construction & Operation—in Custer, Powder River & Rosebud Counties, Mont.*, Docket No. FD 30186, into the merits phase.

In June 2013 in *California High-Speed Rail Authority—Construction Exemption*, Docket No. FD 35724, the STB issued approval for the first phase of construction of the California High-Speed Train System (HST System) from Merced to Fresno, Calif. The agency found jurisdiction

over the project because of the project's extensive connections with interstate commerce, including Amtrak. Vice Chairman Begeman concurred in part and dissented in part with a separate expression. Commissioner Mulvey concurred with a separate expression.

Concerning Amtrak, the Board continues to adjudicate a dispute between Amtrak and the Canadian National Railway Company (CN), concerning the performance of Amtrak passenger trains operating on lines owned by CN and its subsidiaries. (During the autumn of 2013, the STB ruled on procedural motions for the conduct of discovery and briefing of the merits in *Application of the National Railroad Passenger Corporation under 49 U.S.C. § 24308(a)—Canadian National Railway*, Docket No. FD 35743.)

Other significant, calendar-year 2013 events, external to the October 1, 2012 through September 30, 2013 reporting period of this Fiscal Year 2013 report, include:

On November 14, 2013, the Board heard oral argument in *Intermountain Power Agency v. Union Pacific Railroad*, Docket No. NOR 42136, a proceeding in which Intermountain Power Agency (IPA) challenged UP's rates for transporting coal from an interchange point with another railroad to IPA's coal-fired power plant in Lynndyl, Utah.

On November 15, 2013, Board staff held an open forum in Winona, Mississippi to receive public comment on a dispute before the STB in which several rail shippers and local communities had challenged the Grenada Railway LLC's cessation of service over a significant portion of its line spanning several Mississippi counties.

On December 12, 2013, in *Rail Transportation of Grain, Rate Regulation Review*, Docket No. EP 665 (Sub-No. 1), the Board initiated a proceeding to determine whether its rate-case rules are meaningfully accessible to agricultural shippers, and what changes, if any, are necessary for cases brought by these shippers. This action is representative of the STB's continuing efforts to improve and streamline its regulation of railroad rates to ensure that the agency is effectively exercising its statutory oversight responsibilities for all stakeholders.

In *Reasonableness of BNSF Railway Coal Dust Mitigation Tariff Provisions*, Docket No. 35557, the Board found reasonable the “safe harbor” provision of a BNSF tariff requiring coal shippers to mitigate in-transit coal dust emissions by applying approved dust-suppression methods. However, the STB found unreasonable the tariff’s broadly worded indemnification obligating shippers to protect BNSF from liability arising from the use of the suppression methods.

Finally, in a December 2013 decision in *California High-Speed Rail Authority—Construction Exemption—In Fresno, King, Tulare, and Kern Counties, Cal.*, Docket No. FD 35724 (Sub-No. 1), the Board denied conditional approval of the transportation aspects of the second HST System construction phase, from Fresno to Bakersfield, Calif., pending completion of relevant environmental review. The STB found that conditional approval would be inconsistent with its practice of considering environmental implications in conjunction with its analysis of the merits of rail construction projects. Vice Chairman Begeman concurred with a separate expression.

Organizational Structure

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

The Vice Chairman represents the Board and assumes the Chairman’s duties as appropriate. Additionally, the Vice Chairman oversees matters involving the admission, discipline, and disbarment of non-attorney Board practitioners.⁶ The Vice Chairmanship alternates annually between the Chairman’s two Member colleagues. The Vice Chairman is also designated Co-Chairman of the National Grain Car Council.

⁵ 49 U.S.C. § 701.

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

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Assisting the Board in carrying out its responsibilities is a staff of approximately 135, with experience in economics, law, accounting, transportation analysis, finance, and administration, serving within the following offices:

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

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

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

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

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

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



Figure 1.1 STB Organizational Chart, FY 2013⁷

Councils and Committees

The **Railroad-Shipper Transportation Advisory Council (RSTAC)** advises the Board, the Secretary of Transportation, and Congress on railroad-transportation policy issues of particular importance to small shippers and small railroads, such as rail-car supply, rates, and competitive matters.⁸ The RSTAC is composed of 14 private-sector senior executives from the railroad and rail shipping industries, plus one member-at-large. The Secretary of Transportation and the three Board Members are ex-officio members. RSTAC holds meetings quarterly.

The **National Grain Car Council (NGCC)** assists the Board in addressing problems concerning grain transportation by fostering communication among railroads, shippers, rail-car manufacturers and lessors, and government. The NGCC consists of 14 representatives from Class I (large) railroads, seven representatives from Class II (medium-sized) and Class III (small)

⁷ During FY 2013, Daniel R. Elliott III continued service as Chairman for a term expiring Dec. 31, 2013. The Vice Chairmanship was held by Francis P. Mulvey from the beginning of the fiscal year until Jan. 3, 2013, and by Ann D. Begeman from Jan. 4, 2013, through the end of the fiscal year. See Appendix F for a detailed historical summary of Board Member service dates.

⁸ 49 U.S.C. § 726.

railroads,⁹ 14 representatives of grain shippers and receivers, and five representatives of private rail car owners and manufacturers. The three Board Members are ex-officio members, and the Vice Chairman is designated NGCC Co-Chairman. In accordance with the Federal Advisory Committee Act¹⁰ (FACA), meetings are held annually and are open to the public.

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

Public Outreach

In FY 2013, the Board kept Congress and the public abreast of agency actions and policies through hearings, oral arguments, a public meeting, printed and audio-visual transcripts, news releases, and customer-service pamphlets. All were made widely available through the agency's website, www.stb.dot.gov. The following tables display counts of major public outreach activities during the reporting period:

⁹ For purposes of accounting and reporting, the Board designates three classes of freight railroads based upon their operating revenues, for three consecutive years, in 1991 dollars, using the following scale: Class I - \$250 million or more; Class II - less than \$250 million but more than \$20 million; and Class III - \$20 million or less. These operating revenue thresholds are adjusted annually for inflation. In 2012 dollars, the scale is as follows: Class I - \$467,063,129 or more; Class II – Less than \$467,063,129 but more than \$37,365,050; and Class III - \$37,365,050 or less. (See Appendix D: Railroad Financial and Statistical Data.)

¹⁰ P. L. 92-463.

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Table 1.1			
Board Member Public Communications in FY 2013			
Transcripts[*]	Statements[†]	Testimonies^{††}	Written Speeches
1	0	0	4

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

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

†† Before the United States Congress.

Table 1.2			
Public Events Held in FY 2013			
Headquarters Hearings	Field Hearings	Oral Arguments	Meetings[*]
1	0	0	14

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

Table 1.3		
News Releases Issued in FY 2013		
Number Issued	Total Webpage Visits	Average Visits Per Release
20	23,194	1,160

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

The Board has mounted an extensive outreach effort, especially to small shippers who have increasingly taken advantage of this free program. The RCPA Program staff includes attorneys

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and former railroad and shipper employees who have decades of experience in rail shipping, operations, marketing, analysis, tariffs, and rates. Program staff attempt to seek common ground and to facilitate the informal settlement of disputes, allowing both sides to walk away satisfied.

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

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

In FY 2013, the RCPA handled 1,172 complaints and inquiries, including 246 core railroad-related issues. In 62 instances, the RCPA was asked by a party in a railroad-shipper or railroad-railroad dispute to contact a common carrier railroad operating within the United States in an effort to seek compromise. Compromise was achieved in 79 percent of those instances.

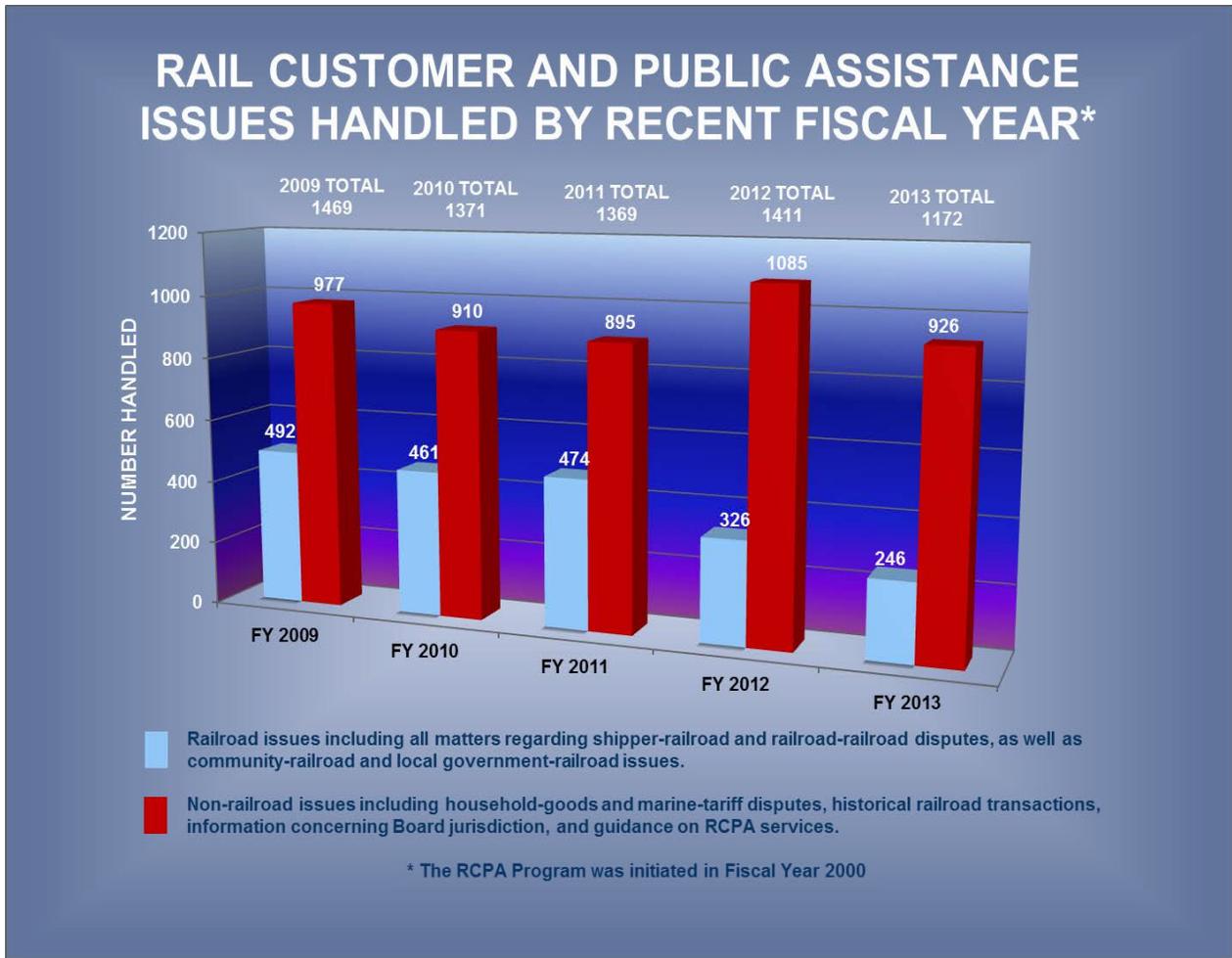


Figure 1.2 RCPA Issues Handled by Fiscal Year

RAILROAD RESTRUCTURING

Mergers and Consolidations: Review of Carrier Proposals

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

Carriers may seek Board authorization either by filing an application under 49 U.S.C. §§ 11323-25 or by seeking an exemption from the full application procedures under 49 U.S.C. § 10502. The procedures to be followed in such cases vary depending on the type of transaction involved. Where a merger or acquisition involves only Class II or III railroads whose lines do not connect with each other, carriers need only follow a simple notification procedure to invoke a class exemption (an across-the-board exemption from the full application procedures, applicable to a broad class of transactions) at 49 C.F.R. § 1180.2(d)(2). When larger carriers are involved in merger activities, more rigorous procedures apply, and carriers may be required to file "safety integration plans" under rules that the Board has issued jointly with the Federal Railroad Administration (FRA).¹¹

¹¹ 49 C.F.R. Parts 244 and 1106.

Table 2.1 Rail Mergers and Consolidations, FY 2013 Under 49 U.S.C. 11343*	
Type	No.
Applications	
Filed	1
Granted	2
Denied	0
Dismissed	0
Pending	1
Petitions for Exemption	
Filed	6
Granted	6
Denied	1
Dismissed	1
Pending	1
Notices of Exemption	
Filed	15
Granted	15
Denied	0
Dismissed	0
Pending	0

* Data in this and subsequent charts compose a snapshot of Board activity at the close of FY 2013; figures thus may not add to a total. The granted, denied, and dismissed totals include cases initiated in FY 2013, as well as cases filed in a prior fiscal year but disposed of in FY 2013. Therefore, the granted, denied, and dismissed totals may be greater or lesser than the number of cases filed in FY 2013. Pending totals include cases filed in FY 2013, or earlier, that were not disposed of in FY 2013 and thus remain open for disposition in a later fiscal year.

Mergers and Consolidations: Oversight and Monitoring

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

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

On November 8, 2012, the Board found that Barrington had not produced new evidence warranting imposition an additional condition requiring CN to construct the requested grade separation, and that Barrington had shown that the Board materially erred in its 2008 decision by relying on the environmental analysis performed at that time. On December 26, 2012, the United States Court of Appeals for the District of Columbia Circuit announced the institution of Barrington's court challenge to the Board's determination in No. 12-1485, *Village of Barrington, Illinois v. Surface Transportation Board*. [Barrington's petition for review was subsequently denied in *Barrington v. STB*, 758 F.3d. 326 (D.C. Cir. 2014).]

Though external to the October 1, 2012 through September 30, 2013 reporting period of this report, on December 17, 2014, the Board granted Barrington and the TRAC Coalition's August 28, 2014 request for an extension of the agency's oversight of the CN-EJ&E transaction for two years, until January 23, 2017. In reaching its decision, the Board expressed concern regarding the impacts on the surrounding communities of increased rail traffic on the EJ&E line. In particular, the Board noted the connection between increased train traffic and increases in vehicle

traffic delay, noise, and air emissions—as well as a recent spike in blocked crossings on the EJ&E line. Vice Chairman Begeman dissented with a separate expression.

In another consolidation area, the Board took one of three concurrent actions during FY 2013 relative to Berkshire’s purchase of BNSF in 2010 without prior Board authorization.¹² Because Berkshire had failed at the time to seek and obtain agency authorization for its purchase, as was required by federal law, the Board determined that BNSF could not revalue its railroad assets to reflect a markup during 2010, 2011, and 2012, the years when Berkshire had unauthorized control of BNSF. Commencing with BNSF’s asset valuation as of January 1, 2013, the Board directed the railroad to transition to full asset markup over a four-year period, in *Western Coal Traffic League—Petition for Declaratory Order*, FD 35506 (STB served July 25, 2013).

Pooling

Rail carriers may seek approval to agree, or to combine, with other carriers to pool or divide traffic, services, or earnings. There were no significant actions taken in this area during FY 2013.

Line Acquisitions

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

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

¹² The other two actions are discussed in Chapter 3, “Railroad Rates,” under the “Rate Challenges: Rate-Reasonableness Determination” subtopic of this report.

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

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

The Board's handling of line-acquisition proposals during FY 2013 is summarized in the following tables:

Table 2.2		
Line Acquisitions by Noncarriers, FY 2013		
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	32	492.51
Granted	32	450.28
Denied	1	7.0
Dismissed	2	35.86
Pending	0	0
Table 2.3		
Line Acquisitions By Class II or III		
Railroads, FY 2013		
Under 49 U.S.C. § 10902		
Applications for Exemption		
Filed	0	0
Granted	0	0
Denied	0	0
Dismissed	0	0
Pending	0	0
Notices of Exemption		
Filed	11	222.07
Granted	1	191.91
Denied	0	0.0
Dismissed	0	0.0
Pending	1	35.7

During FY 2013, the Board issued decisions licensing the acquisition of nearly 642 miles of rail line.

The Board additionally took the following actions during the fiscal year:

- Approved, subject to standard employee protection and other conditions, Genesee and Wyoming Inc.'s (a noncarrier holding company of Class II and Class III railroads) acquisition of RailAmerica, Inc. (a noncarrier holding company of Class III railroads), in Decision No. 5 in *Genesee & Wyoming Inc.—Control—RailAmerica, Inc., Et Al.*, FD 35654 (STB served Dec. 20, 2012), and
- Based on public comments received in response to its Nov. 1, 2012 Notice of Proposed Rulemaking, the Board adopted final rules establishing additional disclosure requirements for notices and petitions for exemption where the underlying lease or rail-line sale includes an interchange agreement. The final rules reduced the amount of information initially proposed to be required for submission to the agency in *Information Required in Notices and Petitions Containing Interchange Commitments*, EP 714 (STB served Sept. 5, 2013). Vice Chairman Begeman dissented with a separate expression.

Trackage Rights

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

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

In this area, the Board approved CSX Transportation, Inc.'s (CSX) application to acquire an operating easement over a Grand Trunk Western Railroad Company (GTW) rail line in the Chicago area, as well as two related requests for trackage rights authority over the line, subject to environmental and standard employee protection, in *CSX Transportation, Inc.—Acquisition of Operating Easement—Grand Trunk Western Railroad Company*, FD 35522 (STB served Feb. 8, 2013).

Additionally, the Board allowed the GTW to acquire an operating easement over a rail line owned by CSX near Memphis, Tennessee, subject to standard employee protection, in *Grand Trunk Western Railroad Company—Acquisition of Operating Easement—CSX Transportation, Inc.*, FD 35661 (STB served Feb. 8, 2013).

The Board's docket and handling of trackage-rights proposals during FY 2013 is summarized in the following table:

Table 2.4 Trackage Rights, FY 2013		
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	18
	Granted	18
	Denied	0
	Dismissed	1
	Pending	2

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 2013.

Line Constructions

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

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

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

The Board took action in this area during FY 2013 in the following cases:

- The Board found that All Aboard Florida-Operations LLC and All Aboard Florida-Stations LLC's (collectively, AAF) proposal to build and operate a rail line in Florida did not require the STB's approval because the line would be constructed and operated entirely within that state and thus would not be part of the interstate rail network. The Board accordingly dismissed AAF's request for STB authority to construct and operate the proposed line because the proposed intrastate passenger operations are outside the agency's jurisdiction, in *All Aboard Florida-Operations LLC and All Aboard Florida-Stations—Construction and Operations Exemption—In Miami, Fla., and Orlando, Fla.*, FD 35680 (STB served Dec. 21, 2012). Vice Chairman Mulvey dissented with a separate expression.
- The Board accepted for consideration the Tongue River Railroad Company Inc.'s (TRRC) supplemental application to build and operate a rail line, in southeastern Montana, over which low-sulfur, sub-bituminous coal from mining sites in the Otter Creek and Ashland, Mont. area, would be transported. With this acceptance, the Board turned to consider the transportation merits of the proposal while its Office of Environmental Analysis (OEA) proceeded with preparation of an Environmental Impact Statement (EIS) concerning the proposal's potential environmental impacts, in *Tongue River Railroad Company, Inc.—Rail Construction and Operation—In Custer, Powder River and Rosebud Counties, Mont.*, FD 30186 (STB served Jan. 8, 2013).

- On March 27, 2013, the CHSRA, a noncarrier state agency, filed a petition of exemption, under 49 U.S.C. § 10502, from the Board’s prior-approval requirements of 49 U.S.C. §10901 to construct an approximately 65-mile, dedicated high-speed passenger rail line (the project) between Merced and Fresno, Calif. Concurrently, the Authority filed a motion to dismiss its petition for lack of jurisdiction (motion to dismiss) by asserting that the project did not require Board approval under 49 U.S.C. 10901 because the project would be located entirely within California, would provide only intrastate passenger rail service, and would not be constructed or operated “as part of the interstate rail network” under 49 U.S.C. §10501. The Board found that it has jurisdiction over the Authority’s project, including the approximately 65-mile, Merced-to-Fresno section, and dismissed the Authority’s motion to dismiss, in *California High-Speed Rail Authority—Construction Exemption—In Merced and Fresno Counties, Calif.*, FD 35724 (STB served April 18, 2013). Vice Chairman Begeman concurred in part and dissented in part with a separate expression.

- The Board exempted the Authority’s construction of a 65-mile, Merced-to-Fresno passenger line from the prior-approval requirements of 49 U.S.C. § 10901, and thus authorized the Authority to construct that 65-mile section, subject to environmental conditions, in *California High-Speed Rail Authority—Construction Exemption—In Merced, Madera and Fresno Counties, Cal.*, FD 35724 (STB served June 13, 2013). Vice Chairman Begeman concurred in part and dissented in part with a separate expression. Commissioner Mulvey concurred with a separate expression.

The STB’s docket and handling of construction cases during FY 2013 are summarized in the following table:

Table 2.5 Railroad Construction, FY 2013		
Type	No.	Miles
Applications		
Filed	0	0.0
Granted	0	0.0
Denied	0	0.0
Dismissed	0	0.0
Pending	0	0.0
Petitions for Exemption		
Filed	1	65.0
Granted	1	65.0
Denied	0	0.0
Dismissed	0	0.0
Pending	0	0.0
Notices of Exemption		
Filed	2	2.38
Granted	2	2.38
Denied	1	7.0
Dismissed	0	0.0
Pending	0	0.0

Line Abandonments

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

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

In FY 2013, the Board authorized 601.5 miles of rail line for abandonment in 58 abandonment and exemption proceedings.

Preservation of Rail Lines

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

Offers of Financial Assistance

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

The Board's docket and processing of abandonment cases for FY 2013 are summarized in the table that follows:

Table 2.6 Abandonments, FY 2013		
Type	No.	Miles
Applications		
Filed`	0	0.0
Granted	1	7.4
Denied	0	0.0
Dismissed	0	0.0
Dismissed - OFA Sale	0	0.0
Pending	0	0.0
Petitions for Exemption		
Filed	11	175.47
Granted	12	265.47
Denied	1	5.8
Dismissed	0	0.0
Dismissed - OFA Sale	0	0.0
Pending	2	0.56
Notices of Exemption		
Filed	46	330.76
Granted	45	328.18
Denied	0	0.0
Dismissed	0	0.0
Dismissed - OFA Sale	0	0.0
Pending	1	2.0

Feeder-Line Development Program

When railroad service is inadequate for a majority of shippers transporting traffic over a particular line, or the line has been designated in a carrier’s system diagram map as a candidate for abandonment, the Board can compel the carrier to sell the line to a party that will provide service. There were no significant actions taken in this area during FY 2013.

Trail Use/Rail Banking

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

The following table summarizes rail banking and interim trail use activity during FY 2013:

Table 2.7							
Railbanking/Interim Trail Use, FY 2013*							
Requests		Grants		Denials		Pending	
No.	Miles	No.	No.	No.	Miles	No.	Miles
33	240.22	30	218.54	1	6.3	3	22.78

* Data in this table provide a snapshot of Board activity at the close of FY 2013. The Granted, Denied, and Pending totals include Requests filed in FY 2013, as well as Requests filed in a prior fiscal year but disposed of in FY 2013. Thus, the Granted, Denied, and Pending totals above do not add up to the number of requests. The Pending total includes Requests filed in FY 2013, or earlier, that were not disposed of in FY 2013 and thus remain open for disposition in a later fiscal year.

Liens on Rail Equipment

Liens on rail equipment and water vessels intended for use in interstate commerce must be filed with the Board to become valid. Subsequent assignments of rights or release of obligations

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under such instruments must also be filed with the agency. Such liens maintained by the Board are preserved for public inspection. The STB recorded 2,020 liens in FY 2013.

RAILROAD RATES

Cost of Capital

Each year, the Board determines the composite cost of capital for the freight rail industry. The Board 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, the Board's URCS, feeder-line applications, rail line abandonments, and trackage-rights cases. For the calendar year 2010, the Board found one Class I railroad (UP) to be revenue adequate, because it achieved a rate of return equal to or greater than the Board's calculated composite industry cost of capital.¹³ *Infra* "Appendix D: Railroad Financial and Statistical Data," Table D.5.

Common Carriage or Contract Carriage

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

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

¹³ See *Railroad Revenue Adequacy—2010 Determination*, EP 552 (Sub-No. 15) (STB served Nov. 3, 2011).

Rate Disclosure Requirements: Common Carriage

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

Rate Challenges: Market-Dominance Limitation

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

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

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

In FY 2013, the Board denied an Association of American Railroads (AAR) petition asking the agency to institute a rulemaking proceeding to consider the reintroduction of indirect competition as a factor in the determination of the reasonableness of railroad rates for coal transportation, finding that AAR's proposal failed to provide a practical means of determining the absence or presence of effective competition for coal transportation, and that the proposal did not overcome the administrative burdens underlying the Board's rationale for excluding indirect product and geographic competition from its market-dominance determinations, in *Petition of the Association of American Railroads to Institute a Rulemaking Proceeding to Reintroduce Indirect*

Competition as a Factor Considered in Market Dominance Determinations for Coal Transported to Utility Generation Facilities, EP 717 (STB served March 19, 2013).

Rate Challenges: Rate-Reasonableness Determination

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

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

Among the more significant actions taken in FY 2013 regarding rail rate-reasonableness issues were the Board’s decisions in these cases:

- In 2009, the BNSF modified its tariff governing medium-sized wheat shipments originating in Montana, and the State of Montana subsequently filed a complaint alleging that the modification constituted an unreasonable practice implemented by BNSF to manipulate the Board’s rate reasonableness jurisdiction. During this fiscal year, the Board determined that BNSF’s action did not constitute an unreasonable practice, but advised BNSF that it could not justify a refusal to provide the requested service with a rational related to the agency’s URCS. The Board also clarified that the service at issue would continue to be costed under the URCS, regardless of the manner in which the

service was billed by BNSF, in *State of Montana v. BNSF Railway Company*, NOR 42124 (STB served April 26, 2013).

- Concurrent with its July 25, 2013 decision in *Western Coal Traffic League—Petition for Declaratory Order*, FD 35506, determining that BNSF was not allowed to revalue its railroad assets to reflect a markup during 2010, 2011, and 2012, the years during which Berkshire had unauthorized control of BNSF,¹⁴ the Board directed involved parties to confer and propose a suitable mechanism to adjust the current rate prescription to hold the plaintiffs harmless from the revaluation of BNSF’s railroad assets, in *Western Fuels Association, Inc., and Basin Electric Power Cooperative v. BNSF Railway Company*, NOR 42088, (STB served July 25, 2013), and directed the parties to confer and comment on approaches to reinstating the rate prescription, in *Arizona Electric Power Cooperative, Inc. v. BNSF Railway Company and Union Pacific Railway Company*, NOR 42113 (STB served July 25, 2013).
- In its decision in the rail rate-complaint proceeding titled *Total Petrochemicals & Refining USA, Inc. v. CSX Transportation, Inc.*, NOR 42121 (STB served May 31, 2013), the Board determined that CSX possessed market dominance relative to 51 of 84 separate rates challenged by the shipper, found that the railroad lacked market dominance with respect to the other 21 challenged rates, and granted in part and denied in part CSX’s motion to strike certain evidence in this proceeding. Vice Chairman Begeman dissented with a separate expression.
- The Board approved an agreement, negotiated between the United States Departments of Energy and Defense and the BNSF, to settle longstanding rate reasonableness complaints among those parties only; at their request, prescribed the rate, rate update methodology, and the maximum revenue-to-variable cost ratios contained in the agreement; and continued to hold the instant proceedings in abeyance, relative to the remaining defendants, to allow continued settlement negotiations, in *United States Department of*

¹⁴ See Chapter 2, “Railroad Restructuring,” under the “Mergers and Consolidations: Oversight and Monitoring” subtopic of this Report.

Energy and United States Department of Defense v. Baltimore & Ohio Railroad Company, ET AL., NOR 38302S, and *United States Department of Energy and United States Department of Defense v. Aberdeen & Rockfish Railroad Company, ET AL.*, NOR 38706 S (STB served Aug. 26, 2013).

Rate Challenges: Discovery and Technical Issues

There were no significant actions taken in this area during FY 2013.

Rate Challenges: Simplified and Expedited Rate Guidelines

In 1996, the Board adopted simplified and expedited rate guidelines in *Rate Guidelines—Non-Coal Proceedings*, 1 S.T.B. 1004 (1996). During the next decade, only two cases were brought to the Board under these guidelines, and both settled with the facilitation of Board-led mediation. Because no cases had been decided under the simplified guidelines since their establishment, the Board examined and revised its simplified guidelines in a decision in *Simplified Standards for Rail Rate Cases*, EP 646 (Sub-No. 1) (STB served Sept. 5, 2007), *aff'd sub nom.*, *CSX Transportation, Inc. v. STB*, 568 F.3d 236 (D.C. Cir. 2009), and *vacated in part on reh'g*, *CSX Transportation, Inc. v. STB*, 584 F.3d 1076 (D.C. Cir. 2009). As part of the new simplified guidelines, the Board created a methodology for “medium-sized” cases, and modified its previous simplified guidelines for “small-sized” cases. Specifically, the Board adopted a simplified version of the SAC test for medium-sized cases, which it dubbed “Simplified-SAC,” and modified the previously adopted “Three Benchmark” methodology for small-sized cases, under which a challenged rate is evaluated in relation to three benchmark figures from the rates of a comparable group of traffic. A shipper challenging a rate may choose to present evidence using either a Simplified-SAC or Three-Benchmark approach, but with limits on the relief available if either simplified procedure is used. The maximum recovery was set at \$5 million for Simplified-SAC cases, and \$1 million for Three-Benchmark cases, both of which are indexed for inflation. In *Rate Regulation Reforms*, EP 715 (STB served July 25, 2012), the Board proposed to remove the relief limitation for Simplified-SAC cases, and to raise the limit on relief in Three-Benchmark cases to \$2 million.

During FY 2013, the Board issued a unanimous decision marking another in a series of steps to improve the agency's rate-regulation process, particularly the procedures governing the resolution of small rail rate case disputes, by adopting revised rules to its railroad rate-reasonableness procedures. The decision removed limitations on relief for medium-sized rate disputes, raised to \$4 million the relief available for small rate disputes, made technical changes to its rate complaint procedures, set the U.S. Prime Rate as the interest rate on reparations that railroads must pay to shippers for charging unreasonable rates, and announced that future proceedings will be held to address crossover traffic and the concerns of agricultural shippers, in *Rate Regulation Reforms*, EP 715 (STB served July 18, 2013).

RAILROAD SERVICE

General Authority

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

Noteworthy during FY 2013 were the following Board decisions:

- The Board may grant a request to reconsider a prior decision, and reopen a related proceeding, if a petitioner demonstrates material error on the agency's part in arriving at that decision, or the presence of new evidence, or the existence of substantially changed circumstances that would materially affect a case. On this basis, the Board denied a petition for reconsideration of a 2011 decision because the petitioner either failed to identify errors or, in the case of the Board's transportation movement-specific adjustments to its railroad costing model, failed to identify an error of sufficient materiality to convince the Board to alter the 2011 decision, in *Entergy Arkansas, Inc. v. Union Pacific Railroad*, NOR 42104 (STB served Nov. 26, 2012).
- The Board found reasonable a practice of operating trains at an appropriate speed for safe operations, based on current conditions; directed railroads not to enforce a blanket lower speed limit, specific to certain hazardous commodities, applicable at all times and in all locations; and requested comment from the FRA, the Pipeline and Hazardous Materials

Safety Administration, and the Transportation Security Administration regarding the effects on safety and security of two other railroad practices, in *CF Industries, Inc. v. Indiana & Ohio Railways—Petition for Declaratory Order*, FD 35517 (STB served Nov. 28, 2012).

- Relative to the UP's completed, 1999 sale of a rail line to the Missouri Central Railroad Company (MCRC) involving a contractual service restriction preventing MCRC from serving an electric-generating station owned by the Union Electric Company, doing business as Ameren Missouri (Ameren), MCRC and Ameren later asked the Board to remove the restriction so that MCRC could provide rail service to Ameren, which already received service from two other railroads. Finding no basis to partially revoke its prior approval to restructure the terms of sale between the parties, the Board rejected the MCRC-Ameren request, in *Union Electric Company d/b/a American Missouri v. Union Pacific Railroad*, NOR 42126; *Missouri Central Railroad—Acquisition & Operation Exemption—Lines of Union Pacific Railroad Company*, FD 33508; and in *GRC Holdings Corporation—Acquisition Exemption—Lines of Union Pacific Railroad*, FD 33537 (all concurrently STB served Feb. 27, 2013).
- The Board denied UP's petition for a declaratory order (in which the Board issues a decision, at the request of a party or parties, stating the agency's position on a matter of dispute) requesting that the STB find reasonable certain UP tariff provisions requiring shippers of Toxic-by-Inhalation Hazardous commodities to indemnify UP against all liabilities not caused through UP's own negligence or fault. In reaching its decision, the Board agreed with shipper parties that had argued that the language of the UP tariff provisions at issue was overly broad, and that UP had not provided adequate support for the tariff requirements, in *Union Pacific Railroad—Petition for Declaratory Order*, FD 35504 (STB served April 30, 2013).
- Following the BNSF's imposition of a fuel surcharge on tariff rates charged to customers for carload shipments of agricultural and industrial products, one of those customers, Cargill, Inc., filed a complaint alleging that BNSF's surcharge violated the Board's rules and was an unreasonable practice. The Board found that Cargill had not shown that BNSF's surcharge constituted an unreasonable practice under existing fuel surcharge

rules. The Board also gave notice that it would begin a proceeding to obtain public comments on the agency's "safe harbor" rule allowing railroads to rely on an agency-approved fuel index to measure changes in fuel prices for purposes of their surcharge programs, in *Cargill, Incorporated v. BNSF Railway*, NOR 42120 (STB served Aug. 12, 2013).

- In *Petition for Rulemaking to Adopt Revised Competitive Switching Rules*, EP 711, the National Industrial Transportation League proposed that certain rail shippers, located in terminal areas without effective transportation alternatives, be granted access to a competing railroad if there is a working interchange within 30 miles. The Board issued a notice (STB served Aug. 13, 2013) scheduling an Oct. 22, 2013 public hearing to be held at the agency's Washington, D.C. headquarters. [In FY 2014, the STB issued a decision (STB served Oct. 16, 2013) postponing the Oct. 22, 2013 hearing until further notice, because of the federal governmental shutdown ongoing at that time the postponement was announced, then later issued a decision (STB served Feb. 3, 2014) rescheduling the hearing for March 25-26, 2014, during which dates it was held.]

Board-Shipper Discussions

With exception of discussions of matters pending before the Board, the agency continued to welcome informal shipper meetings with the three Board Members and staff to discuss general service, transportation, and other issues of concern. During FY 2013, the Board continued to foster industry dialogue about railroad service through the annual meeting of the NGCC, quarterly meetings of the RSTAC, and meetings of the RETAC.

Dialogue between Railroads and Their Customers

On August 1, 2013, as an aid to rail customers in their business planning, the Board continued its annual practice (initiated in 2004) of asking railroads to submit to the agency a forward-looking assessment of their respective abilities to meet end-of-year business demands for U.S. rail service. The Board publicly posted the railroads' responses to the agency's website.

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

Assistance with Specific Service Matters

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

RAIL-LABOR MATTERS

Railroad employees adversely affected by certain Board-authorized rail restructurings are entitled to protection prescribed by law. Standard employee protective conditions address wage and salary protection and changes in working conditions. Such employee protection provides procedures for dispute resolution through negotiation and, if necessary, arbitration. Arbitration awards are appealable to the agency under limited criteria giving great deference to arbitrators' expertise. The Board took no significant actions in this area in FY 2013.

PREEMPTION

The Board is called upon to determine preemption and property-related questions from time to time. During FY 2013, the Board took action in this area in:

- In *Boston & Maine Corp.—Petition for Declaratory Order*, Docket No. FD 35749, the Board declared that certain zoning decisions issued by the Town of Winchester, Mass., which would ban freight rail transportation to a warehouse in the Town, were preempted by federal law.
- In *City of Milwaukie—Petition for Declaratory Order*, Docket No. FD 35625, the Board discussed whether two local ordinances were preempted by federal law. The Board provided guidance to the court, but did not resolve the preemption issue because a final decision on preemption was dependent upon resolution of a state property law matter (which was brought to the Board’s attention after the Board instituted the proceeding).

ENVIRONMENTAL REVIEW

Overview

Under the National Environmental Policy Act of 1969 (NEPA),¹⁵ the Board must take into account the environmental impacts of its actions before making its final decision in certain cases filed before the Board. The STB's Office of Environmental Analysis (OEA) assists the agency by conducting independent environmental reviews of certain cases filed before the Board. This includes preparation of any necessary environmental documentation, such as an Environmental Impact Statement (EIS) when a railroad proposal presents a potential for significant environmental impacts, or a more limited Environmental Assessment (EA). OEA also conducts public outreach to inform interested parties about railroad proposals and to provide an opportunity to raise environmental concerns. In addition, OEA provides technical advice and recommendations to the Board on environmental matters.

Environmental Review Process

OEA typically conducts environmental reviews for rail line construction proposals, abandonments, and mergers. Environmental reviews are conducted according to the agency's environmental rules,¹⁶ regulations of the President's Council on Environmental Quality,¹⁷ and other applicable federal environmental requirements. Environmental reviews take into account all applicable federal environmental laws, including the Endangered Species Act,¹⁸ the Coastal Zone Management Act,¹⁹ the Clean Air Act,²⁰ the Clean Water Act,²¹ the National Historic Preservation Act (NHPA),²² and pertinent hazardous substance laws.

¹⁵ 42 U.S.C. §§ 4321-43.

¹⁶ 49 C.F.R. § 1105.

¹⁷ 49 C.F.R. §§ 1500-08.

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

¹⁹ 16 U.S.C. §§ 1451-1464.

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

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

To conserve its limited resources, the Board sometimes uses third-party contractors—who work under OEA's direction, control, and supervision—to assist OEA in preparing environmental

²⁰ 42 U.S.C. §§ 7401-7671.

²¹ 33 U.S.C. §§ 1251-1387.

²² Cited 16 U.S.C. § 470(f) during the period covered within this report, recodified as 54 U.S.C. § 306108 on December 19, 2014.

analyses. The STB's practice and procedures in this area are explained in *Policy Statement On Use Of Third-Party Contracting In Preparation Of Environmental Documentation*, 5 S.T.B. 467 (2001).

Rail Line Constructions

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

Among the more significant actions involving the preparation of EISs in FY 2013, OEA recommended to the Board that it adopt the Final EIS for the CHSRA's proposed construction of the approximately 65-mile section of the California High-Speed Train System (HST System) between Merced and Fresno, in *California High-Speed Rail Authority—Construction Exemption—in Merced, Madera, & Fresno Counties, Cal.*, FD 35724. OEA also participated in a site investigation of alternative rail alignments for the Fresno-to-Bakersfield section of the proposed HST System, in *California High-Speed Rail Authority—Construction Exemption—in Fresno, Kings, Tulare & Kern Counties, Cal.*, FD 35724 (Sub- No. 1).

During FY 2013, OEA also participated as a cooperating agency in the environmental reviews for a number of passenger rail cases that have not yet been filed with the Board, but may be in the future. In addition, OEA also began the environmental review process for two rail construction cases in Rusk County, Texas, and the Port of Yellow Bend, in Arkansas, but both cases were later put on hold by the applicants.

OEA additionally:

- Conducted ongoing environmental review for the proposed construction and operation of a 43-mile rail line to serve coal interests in *Six County Association of Governments—Construction & Operation Exemption—Rail Line between Levan & Salina, Utah*, FD 34075;
- Conducted environmental review, issued the Draft and Final Scopes of Study for the EIS, and held 10 public scoping meetings in Montana for the proposed construction and operation of a rail line from mines in the Otter Creek and Ashland, Montana area, in *Tongue River Railroad Co., Inc.—Rail Construction & Operation—in Custer, Powder River and Rosebud Counties., Mont.*, FD 30186;
- Conducted ongoing monitoring of the identification and valuation of historic and cultural resources toward implementation of the Programmatic Agreement, setting forth the process for historic review under Section 106 of NHPA, in *Alaska Railroad Corp.—Petition for Exemption—to Construct & Operate a Rail Line Between North Pole and Delta Junction, Alaska*, FD 34658;
- Conducted ongoing monitoring of the identification and the valuation of historic and cultural resources toward implementation of the Programmatic Agreement under Section 106 of NHPA, and ongoing oversight and monitoring to verify the railroad’s compliance with the implementation of mitigation measures imposed by the Board, in *Alaska Railroad Corp.—Construction & Operation Exemption—a Rail Line Extension to Port MacKenzie, Alaska*, FD 35095;
- Began the environmental review process for the proposed construction and operation of a 1,300-foot rail line to connect to the CSX mainline to transport a variety of commodities, including grain, soybean meal, potash, limestone, lumber, propane, and granite rock in *Hartwell Railroad Co.—Construction & Operation Exemption—in Elbert County, Ga.*, FD 35756: and
- Began the environmental review for the proposed construction of a rail line in the Uinta basin in east-central Utah to expand market access for commodities produced in the basin, including crude oil, natural gas, oil shale, oils sands, soda ash and phosphate,

in Six County Infrastructure Coalition—Construction & Operation Exemption—in the Uintah Basin, Utah, FD 35856.

Rail Line Abandonments

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

In FY 2013, OEA conducted approximately 40 EAs in connection with rail line abandonments. Among its more significant actions, the OEA:

- Conducted historic review involving complex issues associated with trails use, per Section 106 of NHPA and Section 7 of the Endangered Species Act in *Missouri Central Railroad Co.—Abandonment Exemption—in Cass, Henry, Johnson, and Pettis Counties, Mo.*, AB 1068 (Sub-No. 1X); *Central Midland Railway Co.—Discontinuance of Service Exemption—in Cass, Henry, Johnson, and Pettis Counties, Mo.*, AB 1070 (Sub-No. 1X).
- Successfully worked with the applicant railroad; the New York State Office of Parks, Recreation & Historic Preservation; the New York State Department of Environmental Conservation; the U.S. Coast Guard; and the Advisory Council on Historic Preservation to develop a Memorandum of Agreement to address impacts to the Hojack Swing Bridge, in *Consolidated Rail Corp.—Abandonment Exemption—in Monroe County, N.Y.*, AB 167 (Sub-No. 1162X).

Railroad Mergers and Acquisitions

In railroad mergers, potential environmental impacts include changes in rail traffic patterns on existing lines, which may be addressed in an EA or an EIS. The Board may impose conditions designed to mitigate potential system-wide and corridor-specific environmental impacts. Such conditions may address at-grade crossing safety and traffic delays, including delays for emergency response vehicles; hazardous materials transportation safety; air quality; noise impacts; and, where pertinent, may also address potentially disproportionate environmental-justice impacts. In addition, safety integration plans (prepared by merger applicants in consultation with FRA) describe the process for combining and safely integrating the infrastructure, equipment, personnel, and operating practices of two or more entities following a merger or acquisition.²³

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

OEA also:

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

²³ See 49 C.F.R. Part 1106.

FINANCIAL CONDITION OF RAILROADS

The Board monitors the financial condition of railroads as part of its oversight of the rail industry. The agency prescribes a uniform accounting system²⁴ for railroads to use for regulatory purposes. The Board requires Class I railroads to submit quarterly and annual reports containing financial and operating statistics, including employment and traffic data.²⁵

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

The Board publishes "rail cost adjustment factor" (RCAF) indices each quarter to reflect changes in costs incurred by the rail industry.²⁶ These indices include an unadjusted RCAF (reflecting cost changes experienced by the railroad industry, without reference to changes in rail productivity) and a productivity-adjusted RCAF (reflecting national average productivity changes, as originally developed and applied by the ICC, based on a five-year moving average).²⁷ Additionally, the Board publishes the RCAF-5 index that also reflects national average productivity changes; however, these productivity changes are calculated as if a five-year moving average had been applied consistently from the productivity adjustment's inception in 1989.²⁸

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

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

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

²⁶ See Appendix A.

²⁷ 49 U.S.C. §§ 10708, 1135

²⁸ Productivity Adjustment—Implementation, 1 S.T.B. 739 (1996)

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

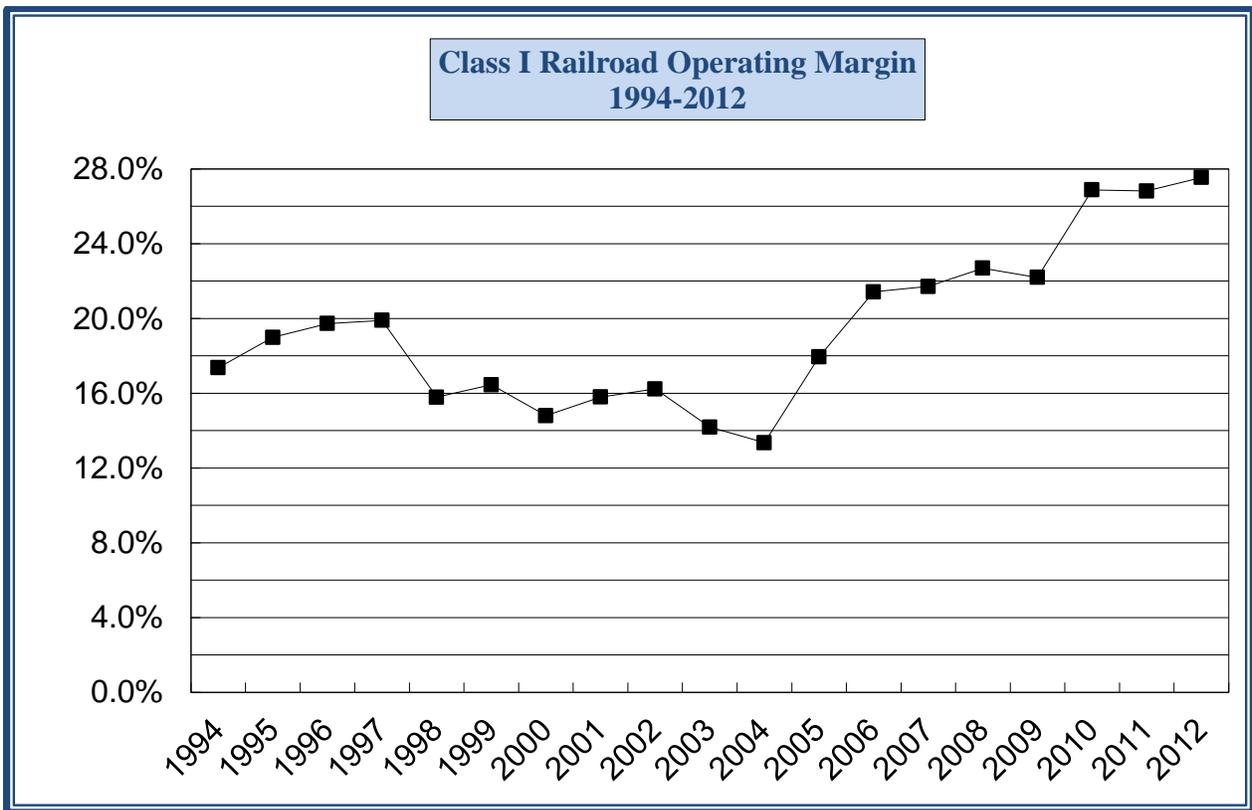


Figure 8.1 Class I Railroad Operating Margin

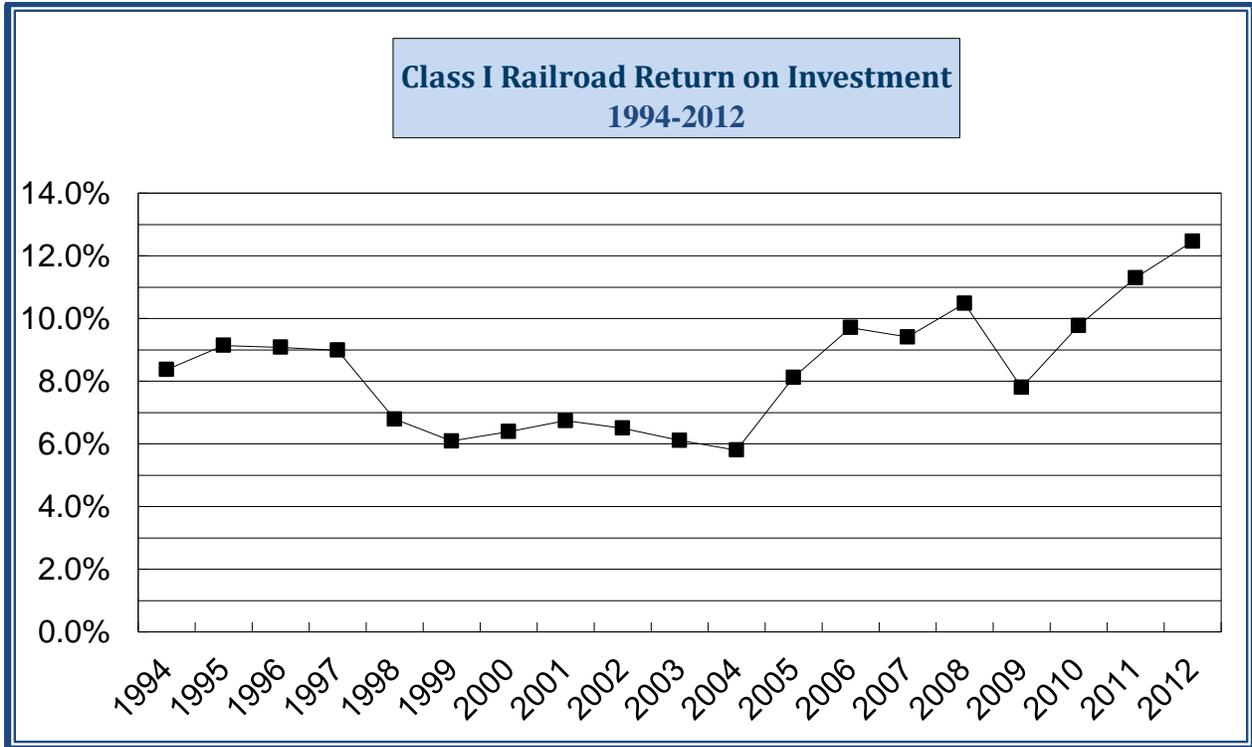


Figure 8.2 Class I Railroad Return on Investment

AMTRAK AND PASSENGER RAIL

The Board has limited, but significant, regulatory authority involving Amtrak, including authority to ensure that Amtrak may operate over other railroads' track; address disputes concerning shared use of tracks and other facilities; and set the terms and conditions of shared use if Amtrak and railroads or regional transportation authorities fail to reach voluntary agreements. On July 30, 2013, Amtrak filed an application asking the STB to establish terms and conditions governing Amtrak's use of CN rail lines and facilities. The Board initiated a proceeding to address the matter and subsequently adopted a procedural schedule in the proceeding titled *Application of the Nat'l Railroad Passenger Corp. under 49 U.S.C. § 24308(a)—Canadian Nat'l Ry. Co.*, FD 35743 (STB served Aug. 9, 2013; Aug. 21, 2013).

During an emergency, the Board may require a rail carrier to provide facilities, on terms prescribed by the Board, to enable Amtrak to conduct its operations. No such emergency rerouting orders were required in FY 2013.

The Board also has authority to direct commuter rail operations in the event of a cessation of service by Amtrak. Although the STB works with the FRA, Amtrak, and commuter and freight railroads to assess such contingencies, no instances arose during FY 2013 requiring the agency to take action in this area.

Signed into law on October 16, 2008, the Passenger Rail Investment and Improvement Act of 2008, P.L. 110-432, 122 Stat. 4848 (2008) (PRIIA), expanded the Board's jurisdiction over passenger rail. PRIIA authorizes the STB to institute enforcement or investigatory action under certain circumstances. Following investigatory action, the agency is directed to identify reasonable measures, and make recommendations, to improve Amtrak performance and/or service quality, and it can award damages and prescribe other relief in appropriate instances.

During FY 2013, the Board continued to implement its passenger rail responsibilities under PRIIA. STB staff monitored Amtrak performance through publicly available information; responded to informal inquiries concerning Amtrak and PRIIA; and, through OPAGAC, led an ongoing project of information inspection and exploration related to Amtrak's on-time performance.

Pursuant to PRIIA Section 213, on January 19, 2012, Amtrak filed a complaint against CN alleging substandard on-time performance of Amtrak trains operating during FY 2011 over eight routes that include CN lines. Board staff mediated this dispute, over a six-month period extending from FY 2012 into FY 2013, in *National Railroad Passenger Corporation—Section 213 Investigation of Substandard Performance on Rail Lines of Canadian National Railway Company*, NOR 42134 (STB served Nov. 5, 2012). Of special note, in its July 2013 decision in *Assc. of American Railroads v. U.S. Dept. of Transp.*, 721 F.3d 666 (D.C. Cir. 2013), the U.S. Court of Appeals for the District of Columbia invalidated PRIIA Section 207, which had authorized Amtrak and FRA to jointly establish metrics designed for use in investigations of Amtrak performance. At the parties' request, on March 26 and August 19, 2013, the STB respectively held Docket NOR 42134 in abeyance, and extended the abeyance, to facilitate further discussions between the parties. [In FY 2015, the U.S. Supreme Court vacated the Court of Appeals's 2013 decision, holding that Amtrak is a governmental entity for the purposes of determining metrics and standards. The Supreme Court also remanded the matter to the Court of Appeals to address the lawfulness of the metrics and standards, specifically identifying two Constitutional issues—structural separation of powers and the Appointments Clause.]

Under certain circumstances, the Board may be called upon to set terms for access to Amtrak equipment, service, and facilities by non-Amtrak passenger railroads, and, upon request, the STB provides mediation services to assist dispute resolution regarding commuter-rail access to freight-rail services and facilities. No instances arose during FY 2013 requiring agency action in these areas.

The Board also has jurisdiction over certain non-Amtrak passenger services, including jurisdiction over a passenger railroad operating in “a State and a place in the same or another

State as part of the interstate rail network.”²⁹ Three matters involving non-Amtrak passenger operators came before the Board in FY 2013:

On October 9, 2012, All Aboard Florida (AAF) sought Board permission to build and operate an intercity passenger rail line connecting Miami and Orlando, Fla. Part of the proposed line would run within an existing right-of-way owned by Florida East Coast Railway, L.L.C., while another part would be built on a newly constructed right-of-way. AAF simultaneously filed a motion to dismiss in which it asked the STB to find that construction did not require agency approval. Concluding that the proposed line would not be part of the interstate rail network, the Board granted the latter motion in *All Aboard Florida—Operations LLC & All Aboard Florida—Stations LLC—Authority to Construct and Operate—Petition for Exemption from 49 U.S.C. § 10901—Passenger Rail Line between Miami, FL and Orlando, FL*, FD 35680 (STB served Dec. 21, 2012). Vice Chairman Mulvey dissented with a separate expression.

On March 27, 2013, the CHSRA sought Board permission to begin construction of a high-speed rail line, between Merced and Fresno, Calif., and simultaneously submitted a motion to dismiss asking the STB to find that CHSRA’s proposal did not require agency approval. In its April 18, 2013 decision in *California High-Speed Rail Authority—Construction Exemption—in Merced, Madera and Fresno Counties, Cal.*, FD 35724, the agency found that it had jurisdiction over the proposed construction and denied CHSRA’s motion to dismiss. Vice Chairman Begeman concurred in part and dissented in part with a separate expression. Later in the same proceeding, on June 13, 2013, the Board authorized CHSRA to construct the line, subject to environmental mitigation conditions. Vice Chairman Begeman concurred in part and dissented in part with a separate expression. Commissioner Mulvey concurred with a separate expression.

In a related matter, on September 26, 2013, CHSRA sought permission to build a continuation of the line, from Fresno to Bakersfield, Calif., in *California High-Speed Rail Auth.—Construction Exempt—In Fresno, Kings, Tulare and Kern Counties, Cal.*, FD 35724 (Sub-No. 1). That request was pending before the Board at the close of FY 2013.

²⁹ 49 U.S.C. § 10501(a)(2)(A).

MOTOR CARRIAGE

Collective Motor Carrier Activities

Bureau Agreements

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

Pooling Arrangements

Motor carriers seeking to pool or to divide their traffic, services, or earnings among themselves must apply for Board approval. In FY 2013, the Board approved an agreement among 10 motor carriers for the pooling of intermodal chassis, in *North American Chassis Pool Cooperative, LLC*, MCF 21050 (STB served Jan. 22, 2013).

Household-Goods Carriage

Household goods motor carriers are required to publish tariffs and make them available to shippers and the Board upon request. Such tariffs must include an accurate description of the services offered and the applicable rates, charges, and service terms for household goods moves.

Regulations also require the Board to approve the terms by which household goods motor carriers may limit their liability for loss and damage of the goods.

In FY 2013, the Board issued no formal decisions in the area of household goods, and no cases were filed with the Board.

Intercity Bus Industry

Intercity bus carriers must obtain Board approval for mergers and similar consolidations, and for pooling arrangements between and among carriers. Such approval is commonly granted through a streamlined notice-of-exemption process that applies to transactions within a single corporate family. The agency can also require bus carriers to provide through routes with other carriers. In FY 2013, the Board issued the following decisions:

- *Frank Sherman, Evergreen Trails, Inc., Cabana Coaches, LLC, TMS West Coast, Inc. and FSCS Corporation—Intra-Corporate Family Transaction Exemption*, MCF 21054 (STB served July 22, 2013);
- *Conway Bus Service, Inc.—Sale of Certain Assets—Academy Express, LLC*, MCF 21053 (STB served July 3, 2013);
- *Southfield Coinvest Holdings, LLC, et al.—Acquisition of Control—Renzenberger, Inc.*, MCF 21052 (STB Served March 28, 2013); and
- *Hotard Coaches, Inc. and Calco Travel, Inc.—Corporate Family Transaction*, MCF 21051 (STB served Dec. 31, 2012).

Motor Carrier Rate Reasonableness

The Board may review the reasonableness of motor carrier rates established collectively. In view of the Board’s termination of approval for motor carriers to set rates collectively (see the foregoing “Bureau Agreements” subtopic of this chapter), that type of rate is no longer sanctioned. No instances arose during FY 2013 requiring agency action in this area.

WATER CARRIAGE

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

Tariff Requirements

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

Complaints

If a complaint is filed with the Board, the agency must determine the reasonableness of water or joint motor-water rates in the noncontiguous domestic trade. The Board neither received nor decided any water carrier-related complaints during FY 2013, nor were any pending at the close of the fiscal year.

PIPELINE CARRIAGE

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

Pipeline carriers must promptly disclose their rates and service terms upon public request, and rates and practices must be reasonable and nondiscriminatory. Pipeline carriers must provide at least 20 days' public notice before a rate increase or change in service terms may become effective. The Board neither received nor decided any pipeline-related complaints during FY 2013, nor were any pending at the close of the fiscal year.

OTHER RULEMAKINGS

Among other rulemakings in FY 2013, the Board took the following actions:

- The Board issued a final rule to increase the agency's civil monetary penalties by 10 percent for inflation, pursuant to the Federal Civil Penalties Inflation Act of 1990, as amended by the Debt Collection Improvement Act of 1996, and to review and adjust those penalties for inflation at least once quadrennially, in *Civil Monetary Penalty Inflation Adjustment Rule*, EP 716 (STB served Oct. 22, 2012).
- Based on the Board's evaluation and review of suggestions received in public comments on the agency's 2011-revised interim rules governing land-use-exemption permits for solid waste rail transfer facilities, the Board adopted final regulations, with minor modifications, in *Solid Waste Rail Transfer Facilities*, EP 684 (STB served Nov. 20, 2012).
- The Board granted the Association of AAR's petition for clarification and additional information, and made available certain information to allow interested parties to conduct thorough analyses of the STB's proposed changes to the URCS (the agency's railroad general-purpose costing system used to estimate variable and total unit costs for Class I U.S. railroads). To provide commenters with sufficient time to evaluate the additional information and to prepare comments, the Board extended the procedural schedule by 45 days in *Review of the General Purpose Costing System*, EP 431 (Sub-No. 4) (STB served April 25, 2013).
- After seeking public comment, the Board adopted final mediation and arbitration rules establishing a new arbitration program. Under the program, shippers and railroads may agree, in advance, to voluntarily arbitrate certain types of disputes with clearly defined liability limits in matters coming before the agency via rules establishing procedures by which the agency may order parties to participate in mediation in certain types of disputes,

and on a case-specific basis, in *Assessment of Mediation and Arbitration Procedures*, EP 699 (STB served May 13, 2013).

Finally, beginning December 15, 2011, the Board implemented a grant-stamp procedure³⁰ for decisions in uncontested, routine procedural matters delegated to the Board's Director of the Office of Proceedings when no further explanation or discussion is necessary. The grant-stamp procedure is designed to better serve the public, streamline Board processes, and remove uncertainty. The image of the grant stamp adopted by the Board is shown below, followed by pie chart displaying the frequency of its usage during FY 2013.



Figure 13.1 Grant Stamp, FY 2013

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

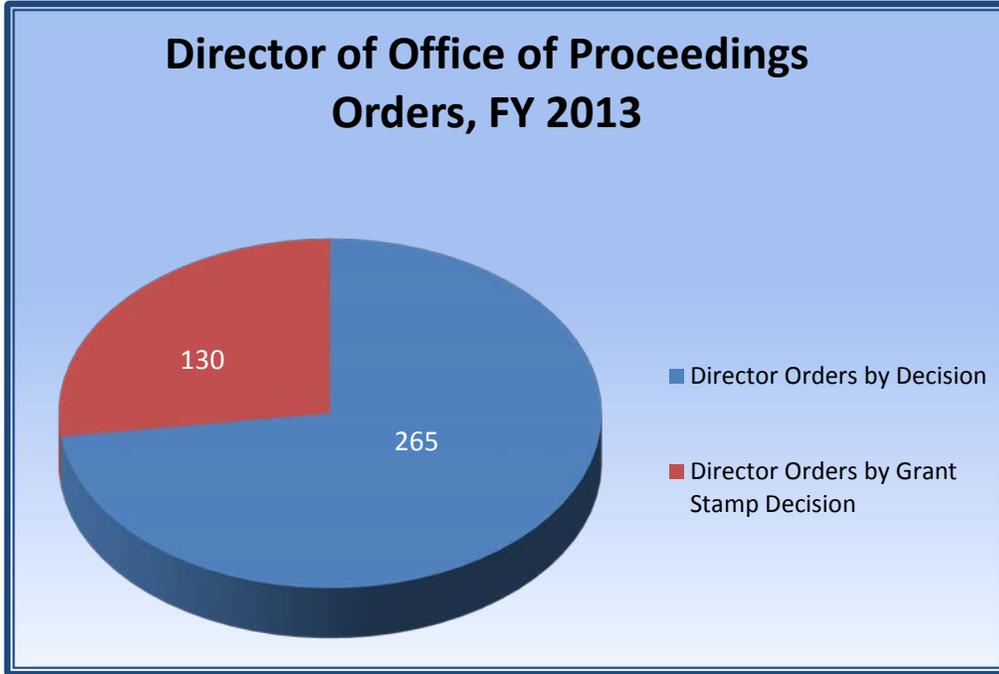


Figure 13.2 Director of Office of Proceedings Order Categories, FY 2013

Of the 395 Director Order decisions made during the fiscal year, 130 (or approximately 32.9 percent) were made by grant stamp.

COURT ACTIONS

Judicial review of most Board decisions is available in the federal courts of appeals. Certain STB orders—those solely for the payment of money and those addressing questions referred to the agency by a federal district court—are reviewable in federal district court. Below is a summary of significant court decisions rendered in FY 2013.

Alaska Survival v. STB, 704 F.3d 615 (9th Cir. 2012) and 705 F.3d 1073 (9th Cir. 2013). The court of appeals affirmed a Board decision to authorize a proposal for the construction and operation of a 35-mile rail line in Port MacKenzie, Alaska by granting an exemption from the full licensing requirements of 49 U.S.C. § 10901. The court found that the STB acted within its discretion in granting the exemption and had adequately considered the relevant rail transportation policy factors. The court also affirmed the agency’s environmental review of the project under NEPA. In response to the petitioners’ specific NEPA claims, the court found that the Board’s “purpose and need” statement satisfied NEPA, that the STB properly rejected an unreasonable alternative proposed during the environmental review process, and that the agency’s examination of wetlands impacts and mitigation was detailed and thorough.

Maryland Transit Administration v. STB, 700 F.3d 139 (4th Cir. 2012). The court of appeals affirmed a Board decision applying its longstanding rule at 49 C.F.R. § 1152.29(a) and finding that two state agencies could not take advantage of the Trails Act program allowing railbanking/interim trail use without agreeing to the requirement that potential trail sponsors with immunity either assume “full responsibility” for any legal liability arising out of use of the right-of-way as a trail, or agree to indemnify the railroad for any potential liability. The court agreed with the STB that the regulation comported with the Trails Act and did not infringe on the State’s sovereign immunity.

APPENDIX A: REPORTS AND PUBLICATIONS

The Board issues several types of reports and publications, including technical and statistical reports, general-interest publications, news releases, and consumer guides, among many others. As noted below, many of these reports and publications are available on the agency's website, at www.stb.dot.gov. Unless otherwise indicated, hardcopies of agency reports and publications are available by telephoning the Board's Records Officer, at (202) 245-0238, or by writing to the address below:

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

Copying charges may apply.

Board Regulations and Governing Statutes

Board regulations are contained in two volumes of the *Code of Federal Regulations* (C.F.R.). The first volume (49 C.F.R. Parts 1000-1199) contains general provisions and rules of practice, including provisions relating to exemptions, rate procedures, rail line constructions and abandonments, and restructurings within the railroad and intercity bus industries. The second volume (49 C.F.R. Parts 1200-End) contains provisions regarding the uniform system of accounts prescribed by the agency, carrier records and reporting requirements, and filing and disclosure requirements with respect to rates and service terms. The volumes are available for viewing or downloading from the U.S. Government Printing Office (GPO), at ecfr.gpoaccess.gov; by calling the GPO, at (866) 512-1800 or (202) 512-1800; or by writing to the following address:

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

The primary statutory provisions governing the Board, which the agency is charged with administering, are codified at 49 U.S.C. §§ 701-727 and §§ 10101-16106 and may be viewed at the following:

www.gpo.gov/fdsys/browse/collectionUScode.action?collectionCode=USCODE

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

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

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

The Board's Website

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

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

- All public filings, in all proceedings, received by the agency after Feb. 5, 2002, as well as selected filings in major cases received prior to that date.
- Testimony before Congress by Board Members.
- Live audio and video streaming of public Board events, including hearings, meetings, and oral arguments. Proceedings are archived on the agency's website. Electronic transcripts of public events and statements made by Board Members are also posted to the site.
- Board news releases issued since January 1997.
- Technical and statistical reports concerning Class I railroads, such as railroad annual reports (Form R-1) in Adobe Acrobat PDF format, price indices, employment data, wage statistics, and selected quarterly earnings reports.
- A guide to environmental rules, a listing of key environmental cases and contacts, and information regarding third-party contracting of work associated with environmental review conducted under the agency's direction and supervision.
- Access to information concerning the agency's Rail Customer and Public Assistance Program.
- The STB's Freedom of Information Act (FOIA) regulations, fees, Reference Guide for FOIA requesters, frequently requested records, and other FOIA-related information.
- The agency's rules and fees for filings and services.
- Publications, including how-to guides about rail-line abandonment and line-sale processes, as well as basic information about the Rails-to-Trails program.
- A general guide to the Board and its operations, including organizational information.

- Links to significant agency proceedings, the U.S. Congress, the U.S. DOT’s list of Internet sites, and WebGov containing links to the White House and governmental agencies.
- Agricultural-contract summaries.
- Recordations, a listing of documents reflecting liens (claims), on railroad “rolling stock” (including railcars and locomotives) and some water-carrier equipment, as a security for the payment of a financial obligation.
- Rail-service updates [though not filed with the Board during the time period covered by this FY 2013 annual report, in response to various STB directives and beginning in April 2014, Class I railroads commenced the filing of various reports reflecting carriers’ respective levels of service performance, in *United States Rail Service Issues*, EP 724 (STB served April 1, 2014).]

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

Board Decisions, Filings, and News Releases

The Board’s decisions, filings, and news releases may be viewed on the Board’s website and also in its Library at the agency’s headquarters at 395 E Street, S.W., Washington, DC. Hardcopies of decisions and filings are available for a fee (minimum charges apply), and a higher fee applies to requests for certified copies. Hardcopies of news releases are free of charge. For information, contact the Board’s Records Officer at (202) 245-0238.

Speeches and Statements

Board Members' written speeches and testimony before Congress are available on the agency's website. Hardcopies may be obtained by writing the Office of Public Assistance, Governmental Affairs, and Compliance at the address shown at the beginning of this Appendix, or by calling the Board's Communications 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) 245-0238, between the hours of 8:30 a.m. and 5:00 p.m., Monday through Friday. Report copies are available for a fee, minimum charges apply, and a higher fee applies to requests for certified copies. Documents available on the Board's website are marked with an asterisk (*).

Annual Reports (Form R-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; archived from 1997 to present).*

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

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

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

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

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

Periodic Financial Decisions and Notices Issued by the STB

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

Commodity Revenue Stratification Report—report showing the revenue and URCS variable costs by two-digit STCC code for each of three Revenue-to-Variable Cost (RVC) Ratio categories. This report has historically been created as part of the proceeding entitled *Rate Guidelines—Non-Coal Proceedings*, EP 347 (Sub-No. 2), and its calculation of the “Revenue Shortfall Allocation Method” (RSAM) percentage and the “Average Revenue-to-Variable Cost > 180” (R/VC>180) percentage.*

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

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

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

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

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

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

Publications

The following Board publications are available on the agency’s website, as indicated by an asterisk (*). Unless otherwise indicated, hardcopies of these documents are also available, for a fee, through the Records Officer, at (202) 245-0238.

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

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

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

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

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

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

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

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

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

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

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

Software, Data, and User Documentation

The following software, data, and user documentation may be obtained from the Office of Economics (OE) for a fee. To purchase any of these items or obtain additional information, contact OE 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 \$35.50 based on a rate of \$71 per hour [*Regulations Governing Fees for Services Performed in Connection with Licensing and Related Services—2010 Update*, EP 542 (Sub-No. 17) (STB served July 28, 2010) (effective Aug. 27, 2010)].

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

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

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

APPENDIX B: APPROPRIATIONS AND EMPLOYMENT

The following tables show actual full-time equivalent (FTE) employment and total appropriations, less enacted rescissions, for fiscal years 2006 to 2013 for activities included under the current appropriation title “Salaries and Expenses.”

Table B.1 Average FTE Employment and Appropriations FY 2006 - 2013¹			
Fiscal Year	Appropriation	STB Offset ²	Average Employment
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
2010	27,816,000	1,250,000	149
2011	27,760,368	1,250,000	140
2012	28,060,000	1,250,000	134
2013	28,003,880	1,250,000	136

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

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

Table B.2 Status of STB Fiscal Year Appropriations FY 2006- 2013*		
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 (adjusted)	\$25,074,500
	Offsetting collections (<i>see note</i>)	1,250,000
	Reimbursements from other agencies	0
	Total obligations	25,069,749
	Unobligated balance available for adjustments	4,751
	Carryover of offsetting collections to next fiscal year	940,617
Status of FY 2009 Appropriations*		
	Total appropriations	\$25,829,254
	Offsetting collections (<i>see note</i>)	1,017,746
	Reimbursements from other agencies	0
	Total obligations	25,806,587
	Unobligated balance available for adjustments	22,667
	Carryover of offsetting collections to next fiscal year	940,617

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Status of FY 2010 Appropriations*		
	Total appropriations (adjusted)	\$28,311,150
	Offsetting collections (<i>see note</i>)	754,850
	Reimbursements from other agencies	0
	Total obligations	28,295,468
	Unobligated balance available for adjustments	15,682
	Carryover of offsetting collections to next fiscal year	940,617
Status of FY 2011 Appropriations*		
	Total appropriations (adjusted)	\$28,247,459
	Offsetting collections (<i>see note</i>)	762,909
	Reimbursements from other agencies	0
	Total obligations	28,224,359
	Unobligated balance available for adjustments	23,100
	Carryover of offsetting collections to next fiscal year	940,617
Status of FY 2012 Appropriations*		
	Total appropriations (adjusted)	\$28,677,278
	Offsetting collections (<i>see note</i>)	632,722
	Reimbursements from other agencies	0
	Total obligations	28,421,923
	Unobligated balance available for adjustments	255,355
	Carryover of offsetting collections to next fiscal year	0
Status of FY 2013 Appropriations*		
	Total appropriations (adjusted)	27,039,715
	Offsetting collections (<i>see note</i>)	740,079
	Reimbursements from other agencies	0
	Total obligations	26,947,932
	Unobligated balance available for adjustments	91,783
	Carryover of offsetting collections to next fiscal year	0

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

NOTES:

FY 2006-2013 appropriations provided that offsetting collections would be credits to the appropriations. Sums appropriated were to be reduced, on a dollar-for-dollar-basis, as such offsetting collections were receiving during each fiscal year.

APPENDIX C: DECISIONS DURING FY 2013

Table C.1 FY 2013 Caseload: Rail Matters					
Category	Pending at Start	Received During	Decided During	Pending at End	Decisions Served
Carrier Consolidations	1	21	17	5	31
Review of Labor Arbitral Decisions	0	0	0	0	0
Rates and Services	17	6	11	12	53
Rate reasonableness	11	3	5	9	40
Rate disclosure	0	0	0	0	0
Through-routes or divisions	0	0	0	0	0
Contract rates	0	0	0	0	0
Reasonable practice	6	1	4	3	11
Discrimination	0	0	0	0	0
Car supply and interchange	0	2	2	0	2
Service orders	0	0	0	0	0
Competitive access	0	0	0	0	0
Constructions	8	3	2	9	18
Line crossing	1	0	0	0	0
Other	7	3	2	8	18
Abandonments	13	149	148	14	262

(Table continued...)

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Table C.1 FY 2013 Caseload: Rail Matters (cont'd)					
Category	Pending at Start	Received During	Decided During	Pending at End	Decisions Served
Other Line Transactions	28	75	82	21	132
Line consolidations	11	26	27	9	46
Line acquisitions under 49 U.S.C. 10901	7	31	31	8	45
Line acquisitions by shortline	8	14	20	3	27
Feeder line development	0	0	0	0	0
Acquisition and operation under 49 U.S.C. 10502	2	4	5	1	14
Collective Actions	0	0	0	0	0
Collective ratemaking	0	0	0	0	0
Pooling	0	0	0	0	0
Data Collection and Oversight	0	10	10	0	10
RCAF	0	10	10	0	10
Accounting and records	0	0	0	0	0
Reports – rail (see note 2)	0	0	0	0	0
Passenger Rail	2	2	1	3	9
Amtrak track use/compensation	1	2	1	2	3
Passenger Rail – Other	1	0	0	1	6
Exemption Rulemakings	12	1	4	9	16
Other Rail	4	2	4	2	6
Common carrier obligation	2	0	1	1	1
Interlocking officer or director	0	0	0	0	0
Other	2	2	3	1	5
Total Rail	85	269	279	75	537

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Table C.2					
FY 2013 Caseload: Nonrail Matters					
Category	Pending at Start	Received During	Decided During	Pending at End	Decisions Served
Motor					
Rate Reasonableness	0	0	0	0	0
Joint Motor-Water Rates in Non-contiguous Domestic Trade	0	0	0	0	0
Collectively Set Trucking Rates	0	0	0	0	0
Household Goods	0	0	0	0	0
Collective Actions	0	1	1	0	1
Collective Ratemaking Agreements	0	0	0	0	0
Truck Pooling	0	1	1	0	1
Undercharges	0	0	0	0	0
Bus Regulation	0	7	5	2	7
Through-Route Regulation	0	0	0	0	0
Mergers	0	7	5	2	7
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	5	5	4	6	13
Total Nonrail	6	13	10	9	21
Total Rail and Nonrail	91	282	289	83	558

APPENDIX D: RAILROAD FINANCIAL AND STATISTICAL DATA

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

- Class I: \$250 million or more.
- Class II: Less than \$250 million but more than \$20 million.
- Class III: \$20 million or less.

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

Table D.1 Railroad Carriers Regulated by the STB as of Jan. 1, 2013	
<i>Carriers Subject to the Uniform System of Accounts and/or Required to File Annual and Periodic Reports ^a</i>	
Railroads, Class I	7
<i>Railroads Not Required to File Reports</i>	
Railroads, Regional	21
Railroads, Local	546

^a AAR's *Railroad Facts*, 2013 Edition, p. 3. In lieu of the Class II designation, the AAR defines *regional railroads* as carriers having revenue of at least \$20 million. They must also operate at least 350 miles of road or earn revenue between \$40 million and the Class I revenue threshold. In lieu of the Class III designation, the AAR defines *local railroads* as carriers with revenues below that of the regional criteria, plus switching and terminal companies.

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

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Table D.2 Railroad Revenue Thresholds			
Year	Factor	Class I	Class II
2008	0.6228	401,418,115	32,113,449
2009	0.6600	378,774,016	30,301,921
2010	0.6271	398,673,376	31,893,870
2011	0.5771	433,211,345	34,656,908
2012	0.5523	452,653,248	36,212,260

Table D.3 Class I Railroads: Condensed Income Statement, Financial Ratios, and Employee Data, 2009-2012 (Dollars in Thousands)				
	Calendar Year			
	2009	2010	2011	2012
1. Class 1 Carriers	7	7	7	7
CONDENSED INCOME STATEMENT				
2. Total operating revenues	\$47,848,649	\$58,404,634	\$67,366,882	\$69,887,072
3. Total operating expenses	37,225,042	42,707,642	49,296,647	50,641,286
4. Net railway operating income	7,044,981	9,959,209	11,758,962	12,199,092
5. Net income	6,422,621	9,246,692	11,039,469	12,483,243
6. Dividends Paid	1,381,799	1,988,581	3,620,735	4,763,696
NET INVESTMENT AND EQUITY				
7. Net investment, transp. prop. & eqpmt ^a	90,285,519	101,885,684	104,096,191	100,197,089
8. Shareholders' equity	67,826,460	96,933,643	101,497,991	84,083,414
FINANCIAL RATIOS (PERCENT)				
9. Operating ratio (L3/L2)	77.80%	73.12%	73.18%	72.46%
10. Return on net investment (L4/L7)	7.80%	9.77%	11.30%	12.18%
11. Return on equity (L5/L8)	9.47%	9.54%	10.88%	14.85%
EMPLOYEE DATA				
12. Average number of employees	151,906	151,933	158,623	163,464
13. Compensation	10,930,497	11,014,707	12,149,882	12,643,207

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^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).

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

Table D. 4				
Class I Railroads: Selected Balance Sheet Data as of December 31				
2009-2012				
<i>(Dollars in Thousands)</i>				
	Calendar Year			
	2009	2010	2011	2012
1. Total current assets	\$12,345,532	\$16,064,106	\$18,933,200	\$23,031,289
2. Total current liabilities	9,800,997	14,921,086	17,051,606	19,827,532
3. Transportation property				
Road	134,390,447	145,962,289	151,067,760	152,843,970
Equipment	33,422,716	32,602,295	35,276,050	41,134,185
Other	2,347,353	2,375,819	3,401,801	3,112,362
Less accumulated depreciation and amortization	44,343,857	36,116,914	38,763,465	52,703,363
Net transportation property	125,816,659	144,823,489	150,982,146	144,387,154
4. Long-term debt (due after 1 yr)	16,955,770	16,639,863	15,680,996	16,417,018
5. Shareholders' equity				
Capital stock (par value)	649,479	405,747	405,640	558,866
Additional capital (above par)	24,332,478	61,990,598	62,061,009	25,581,637
Retained earnings	42,745,796	34,541,085	39,035,129	57,946,698
Less treasury stock	3,787	3,787	3,787	3,787
Net shareholders' equity	67,826,460	96,933,643	101,497,991	84,083,414

Table D.5
Railroad Cost of Capital, Percentage Return on Investment (ROI),
Revenue Adequacy Status
2009-2012 ^a

	Calendar Year			
	2009 ^b	2010 ^c	2011 ^d	2012 ^e
Cost of Capital	10.43	11.03	11.57	11.12
ROIs of Class I Railroads				
BNSF Railway Company	8.67	9.22	9.86	13.47
CSX Transportation, Inc.	6.04	10.85	11.54	10.64
Grand Trunk Corp (including U.S. affiliates of Canadian National Railway)	7.30	9.21	8.74	10.19
Kansas City Southern Railway Company	6.51	9.77	10.76	9.54
Norfolk Southern Combined Railroad Subsidiaries	7.69	10.96	12.87	11.48
Soo Line Corp (including U.S. affiliates of Canadian Pacific Railway)	6.28	8.01	7.13	5.15
Union Pacific Railroad Company	8.62	11.54	13.11	14.69

^a A railroad is considered to be revenue adequate under 49 U.S.C. § 10704(a) if it achieves a rate of Return on Net Investment (ROI) equal to or greater than the Board’s calculated average cost of capital for the freight rail industry. The ROIs that meet this criterion are shown in **bold** in this table.

^b Cost of Capital for 2009 was determined in EP 558 (Sub-No. 13); Revenue Adequacy for 2009 was determined in EP 552 (Sub-No.14).

^c Cost of Capital for 2010 was determined in EP 558 (Sub-No. 14); Revenue Adequacy for 2010 was determined in EP 552 (Sub-No. 15).

^d Cost of Capital for 2011 was determined in EP 558 (Sub-No. 15); Revenue Adequacy for 2011 was determined in EP 552 (Sub-No. 16).

^e Cost of Capital for 2012 was determined in EP 558 (Sub-No. 16); Revenue Adequacy for 2012 was determined in EP 552 (Sub-No. 17).

APPENDIX E: RAILROAD RATE CASES AT THE STB

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

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

Table E.1

Railroad Rate Cases at the STB

1996 through Sept. 30, 2013

Docket No	Case Name	Commodity	Guideline Used *	Date Decision Served	Decision
42112	E.I. Dupont v. CSX	Chemical	SAC	5/11/2009	Settlement
41191(S1)	AEP Texas v. BNSF	Coal	SAC	5/15/2009	Rates Reasonable
42111	Oklahoma Gas v. UP	Coal	Stipulated R/VC	7/23/2009	Rates Unreasonable
42099	DuPont v. CSX	Chemical	Three-Benchmark	9/1/2009	Settlement
42100	DuPont v. CSX	Chemical	Three-Benchmark	9/1/2009	Settlement
42101	DuPont v. CSX	Chemical	Three-Benchmark	9/1/2009	Settlement
42114	U.S. Magnesium v. UP	Chemical	Three-Benchmark	1/28/2010	Rates Unreasonable
42115	U.S. Magnesium v. UP	Chemical	Simplified SAC	4/2/2010	Settlement
42116	U.S. Magnesium v. UP	Chemical	Simplified SAC	4/2/2010	Settlement
42122	NRG v. CSXT	Coal	SAC	7/8/2010	Settlement
42110	Seminole Electric v. CSX	Coal	SAC	9/27/2010	Settlement
42113(S1)	AEPCO v. UP	Coal	SAC	4/15/2011	Settlement
42128	SMEPA v. NS	Coal	SAC	8/31/2011	Settlement
41191(S1)	AEP Texas v. BNSF	Coal	SAC-Remand	10/26/2011	Settlement
42113	AEPCO v. BNSF & UP	Coal	SAC	11/22/2011	Rates Unreasonable
42132	Canexus v. BNSF	Chemical	Three-Benchmark	7/23/2012	Settlement
42127	IPA v. UP	Coal	SAC	11/2/2012	Withdrawn
42123	M&G Polymers v. CSXT	Chemicals	SAC	1/7/2013	Settlement

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42121	TPI v. CSXT	Chemicals	SAC
42125	DuPont v. NS	Chemicals	SAC
42130	SunBelt v. NS	Chemicals	SAC
42136	IPA v. UP	Coal	SAC

***Abbreviations:**

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

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

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

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

During the five-year period FY 2009-2013, 19 Board decisions were served (NOR 42088 through NOR 42123, above). Of these decisions, 13 were resolved through a settlement agreement between the parties; four found the rates unreasonable; one [NOR 41191(S1), STB served May 15, 2009] found the rates to be reasonable; and one case was withdrawn.

APPENDIX F: SURFACE TRANSPORTATION BOARD MEMBERS

Table F.1				
Table F.1 Surface Transportation Board Members				
Name	State	Party	Oath of Office	End of Service ²
SIMMONS, J.J. III	Okla.	Democrat	Jan. 1, 1996	Dec 31, 1996
OWEN, Gus A.	Calif.	Republican	Jan. 1, 1996	Dec 31, 1998
MORGAN, Linda J. ³	Md.	Democrat	Jan 1, 1996	May 15, 2003
CLYBURN, William Jr.	S.C.	Democrat	Dec 21, 1998	Dec 31, 2001
BURKES, Wayne O.	Miss.	Republican	Feb 25, 1999	Mar 20, 2003
NOBER, Roger ⁴	Md.	Republican	Nov 26, 2002	Jan 4, 2006
BUTTREY, W. Douglas ⁵	Tenn.	Republican	May 28, 2004	Mar 13, 2009
MULVEY, Francis P. ⁶	Md.	Democrat	Jun 2, 2004	Dec. 31, 2013
NOTTINGHAM, Charles D. ⁷	D.C.	Republican	Aug 14, 2006	Mar 18, 2011
ELLIOTT, Daniel R. III ⁸	Ohio	Democrat	Aug 13, 2009	Dec. 31, 2014
BEGEMAN, Ann D. ⁹	Va.	Republican	May 2, 2011	Term ends 2015
MILLER, Deb ¹⁰	Kans.	Democrat	Apr 28, 2014	Term ends 2017

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

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

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

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

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

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

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

⁸ Chairman Aug. 13, 2009 to December 31, 2014.

⁹ Current Vice Chairman.

¹⁰ Current Acting Chairman.