



Surface Transportation Board

FY 2016 Annual Report
www.stb.gov

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



SURFACE TRANSPORTATION BOARD

Washington, D.C. 20423-0001

Office of the Chairman

March 23, 2017

To the Congress of the United States:

We are pleased to submit this report covering the Surface Transportation Board's activities for Fiscal Year 2016. The report follows the format of previous years' reports with a statement of appropriations and aggregate expenditures for Fiscal Year 2016 appearing in Appendix B.

As you know, Fiscal Year 2016 marked a very important year for the Surface Transportation Board, as it became fully independent by the December 18, 2015 passage of the *Surface Transportation Reauthorization Act of 2015*, Public Law 114-110. In addition to becoming reauthorized for the first time since the agency's inception 20 years ago, the Act expanded the Board's membership from three to five, empowered the STB with investigatory authority, and required the reporting of certain information concerning the Board's rate case processes, open regulatory proceedings, and formal and informal complaints. The Act also directed the agency's implementation of the legislation's many provisions, which the Board successfully accomplished, as explained in this report.

We appreciate Congress's ongoing interest in the Board's work and remain committed to advancing efforts to improve our agency's accountability and processes for the benefit of Board stakeholders and the public.

Sincerely,

Ann D. Begeman
Acting Chairman

Daniel R. Elliott III
Vice Chairman

Deb Miller
Board Member

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ABBREVIATIONS

The following abbreviations are used throughout this report:

AAR	Association of American Railroads
Amtrak	National Railroad Passenger Corporation
ANPR	Advanced Notice of Proposed Rulemaking
BNSF	BNSF Railway Company
Board	Surface Transportation Board
C.F.R.	Code of Federal Regulations
CMP	Constrained Market Pricing
CN	Canadian National Railway Company
Conrail	Consolidated Rail Corporation
CSXT/CSX	CSX Transportation, Inc.
CTCO	Chicago Transportation Coordination Office
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
FMCS	Federal Mediation and Conciliation Service
FOIA	Freedom of Information Act
FRA	Federal Railroad Administration
FTE	Full-time employee
FY	Fiscal Year
G&U	Grafton & Upton Railroad Company
GPO	U.S. Government Printing Office
ICC	Interstate Commerce Commission
InterVISTAS	InterVISTAS Consulting LLC
IPA	Intermountain Power Agency

Surface Transportation Board

LLC	Limited Liability Company
MCF	Motor Carrier Finance
NEPA	National Environmental Policy Act
NGCC	National Grain Car Council
NHPA	National Historic Preservation Act
NOR	Notice of Rates
NPR	Notice of Proposed Rulemaking
OEA	Office of Environmental Analysis
OFA	Offer of Financial Assistance
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
Reauthorization Act	Surface Transportation Board Reauthorization Act of 2015
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
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) is an adjudicatory agency with 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 January 1, 1996, to assume some of the regulatory functions formerly administered by the former Interstate Commerce Commission (ICC)² when the ICC was abolished. Other ICC regulatory functions were either eliminated or transferred to the U.S. Department of Transportation's (DOT) Federal Motor Carrier Safety Administration or Bureau of Transportation Statistics. The Board, while decisionally independent, was administratively aligned with DOT until enactment of The Surface Transportation Board Reauthorization Act of 2015 (STB Reauthorization Act), Pub. L. No. 114-110, which established the Board as an independent agency on December 18, 2015.

Introduction

The Board is charged with advancing the national transportation policy goals enacted by Congress³ and promoting an efficient, competitive, safe and cost-effective freight rail network. The Board accomplishes these goals by enabling railroads to earn adequate revenues that foster reinvestment in their systems, attract outside capital, and provide reliable service, while at the same time working to ensure that effective competition exists between railroads and that reasonable rates exist where there is a lack of effective competition.

¹ 49 U.S.C. §§ 10101-11908.

² Established February 4, 1887 by the Interstate Commerce Act, Pub. L. No. 49-41; abolished effective December 31, 2015 by the ICC Termination Act of 1995, Pub. L. No. 104-88.

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

While much of the agency's work involves freight railroads, the Board also has certain oversight of passenger rail carriers, pipeline carriers, intercity bus carriers, moving-van companies, trucking companies involved in collective activities approved by the Board, and water carriers engaged in non-contiguous domestic trade (i.e., trade involving Alaska, Hawaii, or U.S. territories or possessions).⁴ Additionally, the STB has certain regulatory authority over the National Railroad Passenger Corporation, more commonly known as Amtrak; its operations on other railroads' track; disputes over shared track use and facilities; and cost allocation for Amtrak operations. The agency has wide discretion to tailor its regulatory approach to meet the Nation's changing transportation needs.

The agency is committed to vigilant oversight and the rendering of fair and timely decisions when regulation is required. Where regulatory requirements can be removed or reduced, the Board applies its exemption authority to the maximum extent consistent with the law to streamline approval processes for stakeholders.⁵

Organizational Structure

The Board comprises five Members nominated by the President and confirmed by the Senate for five-year terms.⁶ The Board's Chairman is designated by the President from among the Members.⁷ As its chief executive, the Chairman coordinates and organizes the agency's work and acts as its representative in legislative matters and in relations with other governmental bodies.

The Vice Chairman serves on the Board and assumes the Chairman's duties as appropriate, and is also designated Co-Chairman of the National Grain Car Council. The Vice Chairmanship rotates annually between the Chairman's Member colleagues.

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

⁵ 49 U.S.C. § 10502(a).

⁶ The STB Reauthorization Act of 2015, Pub. L. No. 114-110, expanded the Board from three to five Members. Currently, three Members are serving.

⁷ 49 U.S.C. § 1301.

Surface Transportation Board

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

The **Office of 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.

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

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

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

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

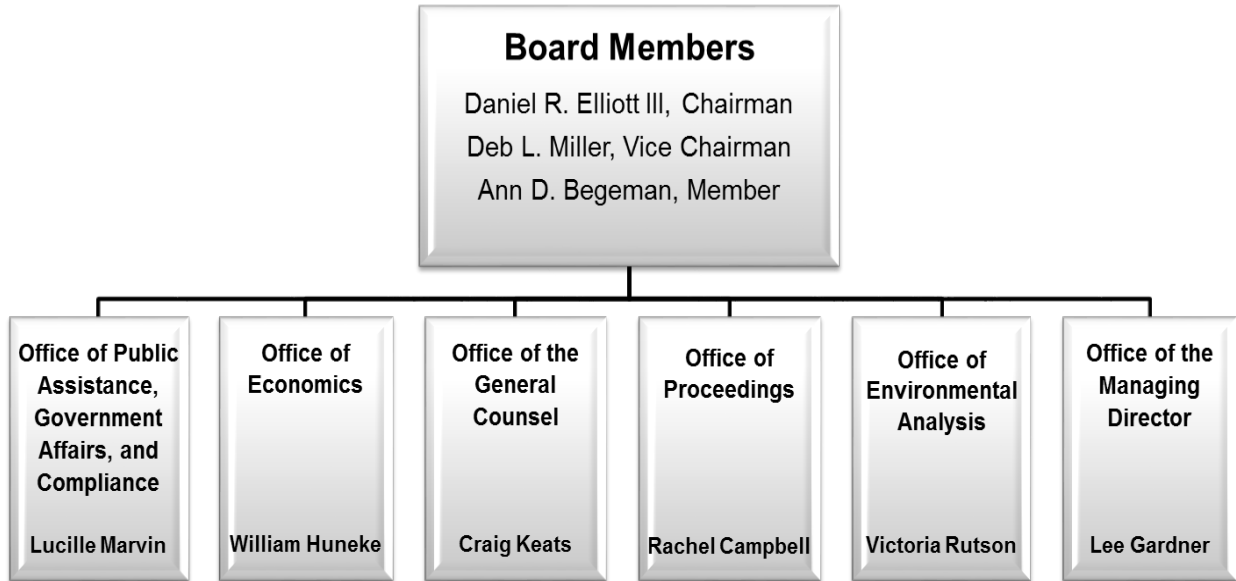


Figure 1.1 STB Organizational Chart, FY 2016

Significant Actions in FY 2016

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

The following is a summary of the significant Board adjudicatory, rulemaking, and licensing actions taken in FY 2016:

The STB Reauthorization Act Implementation

One of the most significant legislative developments affecting the Board since its 1996 inception was the December 18, 2015 passage of the STB Reauthorization Act⁸ which transformed the Board into a fully independent federal agency and marked the agency's first reauthorization since its 1996 inception.⁹

The STB Reauthorization Act also:

- Expanded the Board's membership from three to five Board Members.
- Allows a majority of Board Members to meet in private to discuss agency matters, if no vote or official action is undertaken within such a meeting, and if a meeting summary is made publicly available no later than two business days after the event. If a discussion directly relates to an ongoing proceeding before the STB, a meeting summary is instead made publicly available on the date of a final agency decision.
- Gives the Board authority to initiate investigations and requires the STB to begin a rulemaking to establish a regulation relative to such authority and to include each instance in which the Board has initiated an investigation in its annual report.
- Directs the Board to adjust its voluntary arbitration process, including allowing arbitration in rate disputes up to \$25 million.
- Shortens timelines for large rate case proceedings, including limits on the time allowed for discovery and development of an evidentiary record.

⁸ Pub. L. No. 114-110, 129 Stat 2228.

⁹ Prior to the STB Reauthorization Act, the Board was administratively aligned with the U.S. DOT, although the STB had been decisionally independent since its 1996 creation by the ICC Termination Act of 1995 (Pub. L. 104-88, 109 Stat 803).

- Directs the Comptroller General of the United States (the head of the United States General Accountability Office) to begin a study of rail transportation contract proposals containing multiple origin-to-destination movements¹⁰; and
- Directs Board submission of a rate-case methodology report, and quarterly reports on unfinished regulatory proceedings and formal and informal railroad service complaints to pertinent Congressional committees.

Throughout FY 2016, the Board issued monthly progress reports informing the public and Congress of the actions taken by the Board to implement the STB Reauthorization Act and related matters. These reports on implementation and required quarterly reports can be found on the STB's website at www.stb.gov.

Below is a summary of the most significant actions taken by the Board to implement the STB Reauthorization Act during the FY 2016.

Timeline in SAC Cases

On February 2, 2016, the Board revised the procedural schedule for the expeditious handling of rate cases pursuant to Section 11 of the STB Reauthorization Act in *Revised Procedural Schedule in Stand-Alone Cost Cases*, EP 732 (STB served Mar. 9, 2016). The Board's final rule significantly shortened timelines in stand alone cost (SAC) rate cases,¹¹ including limits on the time allowed for discovery and for development of a proceeding's evidentiary record.

Expediting SAC Cases

Section 11 of the STB Reauthorization Act also instructed the STB to "initiate a proceeding to assess procedures that are available to parties in litigation before courts to expedite such litigation and the potential application of any such procedures to rate cases." In an effort to implement this and other parts of the STB Reauthorization Act, the Board announced that, in April 2016, Board staff would hold a series of informal meetings with practitioners, consultants,

¹⁰ The GAO report was subsequently issued in December 2016.

¹¹ Found at 49 C.F.R. § 1111.8.

and other stakeholders to discuss ways to advance those rate cases more quickly, including procedures available to parties in court litigation and the potential application of such procedures to the STB's rate-case processing. The Board also announced that it would assess whether additional changes to the SAC process could help the STB meet the expedited timeline for a final decision established under the Act.

Based on the input received during the informal meetings, the Board issued an Advanced Notice of Proposed Rulemaking (ANPR) outlining measures to expedite its handling of rate cases, *Expediting Rate Cases*, EP 733 (STB served June 15, 2016).

Collaborative Discussions

In February 2016, the Board held its first meeting pursuant to Section 5 of the STB Reauthorization Act, which permits a majority of the Board to hold a meeting that is not open to public observation to discuss official agency business, so long as certain conditions are met.¹²

Quarterly Reports

In April 2016, the Board issued the quarterly reports required by the STB Reauthorization Act, including the first quarterly report on rate-review metrics; the first quarterly report on both formal and informal rail-service complaints; and a quarterly report on unfinished regulatory proceedings.¹³ The Board has continued to post these quarterly reports at the end of each calendar quarter. The reports can be viewed on the STB website.

¹² In particular, no formal or informal vote or other official agency action may be taken at the meeting; each individual present at the meeting must be a member or an employee of the Board; and the General Counsel of the Board must present at the meeting. In addition, after the conclusion of such a meeting, the Board must make available to the public a list of the individuals present at the meeting and a summary of the matters discussed at the meeting, except for any matters the Board properly determines may be withheld from the public under section 552b(c) of title 5. The disclosure must be made two days after the meeting, unless the discussion directly relates to an ongoing proceeding before the Board, in which case, the Board shall make the disclosure on the date of the final Board decision.

¹³ Pursuant to the STB Reauthorization Act, the first report on unfinished regulatory proceedings was required 60 days after passage. Accordingly, the first such report was issued on February 16, 2016.

Arbitration

On May 12, 2016, the Board issued its proposal to amend existing procedures for the arbitration of disputes before the STB to make those procedures conform to statutory requirements of the STB Reauthorization Act. While the Board's existing regulations governing the use of arbitration were generally consistent with STB Reauthorization Act requirements, the STB nevertheless proposed modifications to 49 C.F.R. §§ 1108 and 1115.8, and other minor clarifications. Most notably, the Board modified its rules to allow parties to arbitrate disputes involving rates, though not to exceed \$25 million, and increased the cap on awards for all other arbitration to \$2 million. After reviewing comments and replies regarding the Board's proposed rules, the Board announced its adoption of final rules in *Revisions to Arbitration Procedures*, EP 730 (STB served Sept. 30, 2016).

Investigations

The Reauthorization Act provided a basic framework for the Board's conduct of investigations on its own initiative. The STB issued an NPR in *Rules Relating to Board-Initiated Investigations*, EP 731 (STB served May 16, 2016),¹⁴ which established a three-stage process of preliminary fact-finding; Board-initiated investigation; and formal Board proceeding. The Board proposed that staff would conduct a nonpublic preliminary fact-finding regarding an issue to determine the existence of a potential violation of 49 U.S.C. Subtitle IV, Part A, of national or regional significance warranting investigation. The STB could then decide whether to begin an agency-initiated investigation after the fact-finding, which would provide notice and relevant information to parties under investigation.¹⁵ Finally, a formal Board proceeding would involve a Board decision whether to open a public, formal STB proceeding to determine whether a provision of 49 U.S.C. Subtitle IV, Part A, has been violated. Pursuant to the Reauthorization

¹⁴ During the first quarter of FY 2017, the Board issued a decision in EP 731 adopting a final rule to establish procedures for STB-initiated investigations concerning railroad issues of national or regional significance pursuant to Section 12 of the STB Reauthorization Act. This decision, in *Rules Relating to Board-Initiated Investigations*, EP 731 (STB served Dec. 14, 2016) also marked the final milestone in the Board's implementation of the STB Reauthorization Act.

¹⁵ Pursuant to the STB Reauthorization Act, investigations must be concluded within one year and, within 90 days of receiving recommendations and summary of findings from staff, the Board must either dismiss the investigation, if no further action is warranted, or initiate a formal STB proceeding to determine whether a provision of 49 U.S.C. Subtitle IV, Part A has been violated.

Act, any remedy the agency might order as a result of such a proceeding that began a Board-initiated investigation would only be applied prospectively.

Implementation Hearing

At the invitation of the Senate Committee on Commerce, Science, and Transportation, the Board Members testified on August 11, 2016, at a hearing on “Freight Rail Reform: Implementation of the Surface Transportation Board Reauthorization Act of 2015” held in Sioux Falls, South Dakota. The hearing focused on STB Reauthorization Act implementation, an examination of the STB’s completed and ongoing work to implement the law’s reforms, and ways to improve dispute resolution, enable more proactive problem-solving, increase transparency, and enhance the decision-making processes. The hearing also explored emerging rail issues as part of the Committee’s oversight role and to help ensure a competitive, efficient and reliable national rail system.

Independence from U.S. DOT

Section 3 of the STB Reauthorization Act made the STB fully independent from the Department of Transportation. During FY 2016, the Board developed plans toward an orderly transition to full independence while ensuring that critical administrative services were not interrupted. The focus of the Board’s efforts has been in the areas of information technology, budget and fiscal services, and human relations procedures. On August 29, 2016, the agency announced the change of its website address from the former “www.stb.dot.gov,” to “www.stb.gov”, reflecting the Board’s status as a wholly independent federal agency as a result of the STB Reauthorization Act.

Alternatives to SAC

On September 22, 2016, the Board announced that the September 14, 2016 report, *An Examination of the STB’s Approach to Freight Rail Rate Regulation and Options for Simplification*, on rate case methodology pursuant to Section 15 of the Reauthorization Act, was complete and available for viewing on the STB’s website. The Board commissioned InterVISTAS Consulting LLC (InterVISTAS) to provide an independent study of the STB’s SAC rate reasonableness methodology. The scope of the work required InterVISTAS to look for alternative methodologies to SAC that exist or could be developed and that could be used to

reduce the time, complexity, and expense historically involved in rate cases; determine whether SAC is sufficient for large rate cases; and whether the Board's simplified methodologies were appropriate alternatives to SAC. The Board held an economic roundtable in October 2016 and invited independent economists from InterVISTAS, Georgetown University, Harvard University, Consumer Federation of America, U.S. Department of Justice, University of Oregon, Massachusetts Institute of Technology, as well as STB economists to comment on the InterVISTAS report and SAC process.

In addition to the Board's initiatives to implement the STB Reauthorization Act, the Board took a number of other important actions, highlighted below.

Regulatory Review

Competitive Switching. As an outgrowth of a petition for rulemaking submitted by The National Industrial Transportation League (NITL) in July 2011, the Board partially granted NITL's requests in the STB's decision in *Petition for Rulemaking to Adopt Revised Competitive Switching Rules*, EP 711 (Sub-No. 1) (STB served July 27, 2016). Board Member Begeman dissented with separate expression. The Board's decision proposed new regulations governing reciprocal switching that would broaden the circumstances under which the Board could impose a reciprocal switching arrangement (that is, an arrangement under which the Board could order a rail carrier to switch traffic to another carrier to give the shipper facility access to an additional railroad). Existing regulations require a showing that the incumbent carrier's actions are anticompetitive before access can be ordered. The proposal requires a showing that the arrangement is "practicable and in the public interest" or "necessary to provide competitive rail service."

Commodity Class Exemptions. On March 23, 2016, the Board proposed to revoke existing class exemptions from railroad regulations concerning crushed or broken stoned or rip rap (a type of loose stone used to maintain surface stability); hydraulic cement; coke produced from coal, primary iron or steel products, and iron or steel scrap, wastes, or tailings. See *Review of Commodity, Boxcar, and TOFC/COFC Exemptions*, Docket No. EP 704 (Sub-No. 1) (STB served Mar. 23, 2016) (Board Member Begeman dissented

with a separate expression). This proposal was part of the STB's ongoing examination of its current regulations in light of the many changes in the rail industry over recent decades. In the nearly quarter-century since the agency adopted these exemptions, this was the first Board-issued decision proposing a complete revocation of one or more commodity exemptions. The Board also invited comments regarding the possible revocation of other commodity class exemptions, and such comments were requested to address any marketplace changes comparable to the ones addressed in the STB's decision.

Rate Reasonableness. In another August decision, the Board issued an ANPR that considered a new, streamlined procedure to make accessible and resolve small rate disputes between shippers of all commodities and Class I railroads in *Rail Transportation of Grain, Rate Regulatory Review*, EP 665 (Sub-No. 2) (STB served Aug. 31, 2016). Under the procedures outlined in the ANPR, the Board would design a “comparison group” of similar rail shipments against which to judge the reasonableness of the rate being challenged.

Data Reporting

Following the railroad service crisis during the winter and spring of 2013-14, the Board required Class I railroads, and the Chicago Transportation Coordination Office (CTCO), through its Class I members, to file public, weekly performance reports on an interim basis, beginning in October 2014. In December 2014, the Board began a rulemaking to make reporting of service performance data permanent in *United States Rail Service Issues—Performance Data Reporting*, EP 724 (Sub-No. 4) (STB served Nov. 9, 2015).

After receiving stakeholder comments on the proposed rule, the STB decided to waive its *ex parte* rules temporarily to allow for discussions of the proposal between and among individual stakeholders and STB staff. These sessions allowed staff to talk directly with railroad representatives, shippers, and other interested parties to gain additional insight into the utility of the interim reporting, to learn more about rail data-keeping and performance-measurement practices, and to discuss technical issues raised by the proposed rulemaking.

As a result of the comments and meetings, the Board proposed revisions to its earlier-proposed rule and sought public comment in a Supplemental Notice of Proposed Rulemaking, in *United States Rail Service Issues—Performance Data Reporting*, Docket No. EP 724 (Sub-No. 4) (STB served Apr. 29, 2016), that would require Class I and the CTCO to publicly file certain service performance metrics on a weekly basis.¹⁶

Passenger Rail

In July 2016, the Board issued two decisions related to its oversight of Amtrak’s operations under the Passenger Rail Investment and Improvement Act of 2008 (PRIIA). First, the STB decided, in *On-Time Performance Under Section 213 of the Passenger Rail Investment & Improvement Act of 2008*, EP 726 (STB served July 28, 2016), that it would consider on-time arrival and departure at all stations along a passenger train’s route for purposes of assessing on-time performance. The agency stated it would deem a train “on time” if it arrives at or departs from a station no more than 15 minutes after its scheduled arrival or departure. The Board also announced it was withdrawing its proposed policy statement on proceedings under PRIIA, in favor of a case-by-case approach, in *Policy Statement on Implementing Intercity Passenger Train On-Time Performance and Preference Provisions of 49 U.S.C. § 24308(c) and (f)*, Docket No. EP 728 (STB served July 28, 2016).

Also in July 2016, the Board proposed new regulations to implement passenger rail-related dispute resolution provisions of Title XI of the Fixing America’s Surface Transportation Act of 2015 (FAST Act), Pub. L. No. 114-94, Dec. 4, 2015. The FAST Act added to the Board’s passenger rail adjudicatory responsibilities by including provisions involving Amtrak cost recovery for its operations on state-supported routes, and for costs allocated to states in their use of rail facilities for commuter-rail operations within the Washington, D.C.-to-Boston Northeast Corridor. The Board proposed new procedural regulations to implement these provisions in *Dispute Resolution Procedures Under the Fixing America’s Surface Transportation Act of 2015*, EP 734 (STB served July 28, 2016).

¹⁶ The Board adopted a final rule requiring Class I railroads and the CTCO to report certain service-performance metrics to the STB on a weekly, semiannual, and occasional basis, in *U.S. Rail Service Issues—Performance Data Reporting*, EP 724 (Sub-No. 4) (STB served Nov. 30, 2016).

STB-Canadian Transportation Agency MOU

On July 11, 2016, then-Chairman Elliott visited by invitation the Canadian Transportation Agency (CTA) in Ottawa, Canada, to discuss rail transportation matters of mutual interest with the CTA's chairman and chief executive officer, as well as opportunities for the two agencies to work together to share information. Like the STB, the CTA is the economic regulator of freight railroads and certain other transportation modes in Canada. Information shared between the two officials during the meeting was only available in the public domain of both the United States and Canada. STB and CTA entered into a Memorandum of Understanding to facilitate information sharing between the agencies in December 2016.

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.¹⁷ 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 Board Members are ex-officio members. RSTAC holds meetings quarterly.

The National Grain Car Council (NGCC) assists the Board in addressing problems concerning grain transportation by fostering communication among railroads, shippers, rail-car manufacturers and lessors, and government. The NGCC consists of 14 representatives from Class I (large) railroads, seven representatives from Class II (medium-sized) and Class III (small) railroads,¹⁸ 14 representatives of grain shippers and receivers, and five representatives of private rail car owners and manufacturers. The Board Members are ex-officio members, and the Vice

¹⁷ 49 U.S.C. § 1325.

¹⁸ For purposes of accounting and reporting, the Board designates three classes of freight railroads based upon their operating revenues, for three consecutive years, in 1991 dollars, using the following scale: Class I - \$250 million or more; Class II - less than \$250 million but more than \$20 million; and Class III - \$20 million or less. These operating revenue thresholds are adjusted annually for inflation. In 2014 dollars, the scale is as follows: Class I - \$457,913,998 or more; Class II - Less than \$457,913,998 but more than \$36,633,120; and Class III - \$36,633,120 or less. *See* Appendix D: Railroad Financial and Statistical Data.

Surface Transportation Board

Chairman is designated NGCC Co-Chairman. In accordance with Federal Advisory Committee Act, Pub. L. No. 92-463 (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 Board Members are ex-officio members. In accordance with FACA, RETAC meetings are held at least twice a year and are open to the public.

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

Public Outreach

In FY 2016, the Board kept Congress and the public informed about agency actions and policies through hearings, printed transcripts, news releases, and customer-service pamphlets. All of them were made widely available through the agency’s website, www.stb.gov. The following tables display counts of major public outreach activities during the reporting period:

Table 1.1			
Board Member Public Communications in FY 2016			
Transcripts*	Statements†	Testimonies††	Written Speeches
0	0	3	5

* 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 2016			
Headquarters Hearings	Field Hearings	Oral Arguments	Meetings*
0	0	0	14

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

Table 1.3		
News Releases Issued in FY 2016		
Number Issued	Total Webpage Visits	Average Visits Per Release
31	20,787	671

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

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

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

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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 2016, the RCPA handled approximately 1,500 inquiries from stakeholders, of which approximately 170 pertained to informal railroad service disputes.

RAILROAD RESTRUCTURING

Mergers and Consolidations: Review of Carrier Proposals

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

Carriers may seek Board authorization either by filing an application under 49 U.S.C. §§ 11323-25 or by seeking an exemption from the full application procedures under 49 U.S.C. § 10502. The procedures to be followed in such cases vary depending on the type of transaction involved. Where a merger or acquisition involves only Class II or III railroads whose lines do not connect with each other, carriers need only follow a simple notification procedure to invoke a class exemption (an across-the-board exemption from the full application procedures, applicable to a broad class of transactions) at 49 C.F.R. § 1180.2(d)(2). When larger carriers are involved in merger activities, more rigorous procedures apply, and carriers may be required to file "safety integration plans" under rules that the Board has issued jointly with the Federal Railroad Administration (FRA).¹⁹

¹⁹ 49 C.F.R. Parts 244 and 1106.

Table 2.1 Rail Mergers and Consolidations, FY 2016 Under 49 U.S.C. 11323 *	
Type	No.
Applications	
Filed	0
Granted	0
Denied	0
Dismissed	0
Pending	0
Petitions for Exemption	
Filed	3
Granted	2
Denied	0
Dismissed	0
Pending	1
Notices of Exemption	
Filed	15
Granted	17
Denied	1
Dismissed	0
Pending	0

* Data in this and subsequent charts compose a snapshot of Board activity at the close of FY 2016; figures thus may not add to a total. The “Granted,” “Denied,” and “Dismissed” totals include not only cases initiated in FY 2016, but also cases filed in a prior fiscal year but disposed of in FY 2016. Thus, the granted, denied, and dismissed totals may be greater or less than the number of cases filed in FY 2016. “Pending” totals include cases filed in FY 2016, or earlier, that were not disposed of in FY 2016 and thus remain open for disposition in a later fiscal year.

Mergers and Consolidations: Oversight and Monitoring

The Board reopened a proceeding where it had previously authorized CSX Transportation, Inc. (CSXT), to acquire an operating easement over a rail line in the Chicago area, known as the Elsdon Line, owned by the Grand Trunk Western Railroad Company. In *CSX Transportation, Inc.—Acquisition of Operating Easement—Grand Trunk Western Railroad*, FD 35522 (STB served June 22, 2016), the Board ordered CSXT to comply with the representation it made in its application that it would not route a train onto the Elsdon Line unless the line was clear, or show cause why it is unable to do so. To assist the Board’s monitoring of the situation, the decision also required CSXT to file monthly reports for one year providing detailed information about at-grade crossings on the line, blockages of those crossings exceeding 10 minutes, and the status of operating protocols with third-party carriers. In FY 2016, the first two of those monthly reports were filed on August 15 and September 15, 2016.

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 2016.

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 only limited scrutiny.

For non-connecting lines, Class II and Class III railroads may choose to use a class exemption, and Class III railroads may acquire and operate additional lines through a simple notification process. Acquisitions resulting in a carrier having at least \$5 million in annual net revenues require additional advance notice of anticipated labor impacts to give employees and the

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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 2016 is summarized in the following tables:

Table 2.2 Line Acquisitions, FY 2016 By Noncarriers Under 49 U.S.C. § 10901		
	No.	Miles
Petitions for Exemption		
Filed	0	0
Granted	0	0
Denied	0	0
Dismissed	0	0
Pending	0	0
Notices of Exemption		
Filed	35	1936.16
Granted	28	811.71
Denied	0	0
Dismissed	4	114.17
Pending	3	1027

Table 2.3		
Line Acquisitions, FY 2016		
By Class II or III Railroads Under 49 U.S.C. § 10902		
Type	No.	Miles
Petitions for Exemption		
Filed	0	0
Granted	0	0
Denied	0	0
Dismissed	1	41.2
Pending	0	0
Notices of Exemption		
Filed	27	778.34
Granted	20	400.96
Denied	0	0.0
Dismissed	4	225.78
Pending	3	151.6

During FY 2016, the Board issued decisions licensing the acquisition of approximately 1,213 miles of rail line.

Trackage Rights

Trackage rights arrangements allow a railroad to use the track of another railroad that may or may not continue to provide service over the line at issue. Such arrangements can improve the operating efficiency for the carrier acquiring the rights by providing alternative, shorter, and faster routes. Local trackage rights (i.e., rights that allow the trackage rights carrier to serve customers on the line) 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 temporary trackage rights that are for overhead operations only, (i.e., rights that allow the trackage rights carrier to traverse the line but not serve shippers on it) and that expire in one year or less.

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The Board's docket and handling of trackage-rights proposals during FY 2016 is summarized in the following table:

Table 2.4 Trackage Rights, FY 2016		
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	14
	Granted	11
	Denied	0
	Dismissed	0
	Pending	3

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 another carrier's new line to cross its tracks if doing so would 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.

In Northwest Tennessee Regional Port Authority—Construction and Operation Exemption—in Lake County, Tenn., FD 35802 (STB served Apr. 21, 2016), the Board authorized Northwest Tennessee Regional Port Authority to construct and operate approximately 6 miles of new rail line in Lake County, Tenn., subject to environmental mitigation conditions and the requirement that it build the environmentally preferable route.

In Lone Star Railroad—Track Construction & Operation Exemption—in Howard County, Tex., FD 35874 (STB served Mar. 3, 2016), the Board authorized Lone Star Railroad, Inc., to build and operate a new line of railroad in Howard County, Tex., subject to environmental mitigation conditions, but denied Southern Switching Company's request for authority to operate the newly constructed line because the public record in this case did not support the authority requested.

The STB's docket and handling of construction cases during FY 2016 are summarized in the following table:

Table 2.5 Railroad Construction, FY 2016		
Type	No.	Miles
Applications		
Filed	0	0.0
Granted	0	0.0
Denied	0	0.0
Dismissed	0	0.0
Pending	0	0.0
Petitions for Exemption		
Filed	2	243.14
Granted	2	8.68
Denied	0	0.0
Dismissed	1	240
Pending	1	3.14
Notices of Exemption		
Filed	0	0.0
Granted	0	0.0
Denied	0	0.0
Dismissed	0	0.0
Pending	0	0.0

Line Abandonments

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

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

In FY 2016, the Board authorized approximately 337 miles of rail line for abandonment in 56 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 2016 are summarized in the table that follows.

Table 2.6 Abandonments, FY 2016		
Type	No.	Miles
Applications		
Filed	0	0.0
Granted	0	0.0
Denied	0	0.0
Dismissed	0	0.0
Dismissed - OFA	0	0.0
Pending	0	0.0
Petitions for Exemption		
Filed	13	218
Granted	10	89.17
Denied	0	0.0
Dismissed	1	77.7
Dismissed - OFA	0	0.0
Pending	5	80.4
Notices of Exemption		
Filed	4	21
Granted	4	19
Denied	0	0.0
Dismissed	2	18.91
Dismissed - OFA	0	0.0
Pending	0	0.0

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. On March 18, 2016, KCVN, LLC and Colorado Pacific Railroad filed a feeder line application to acquire from V and S Railway a 122-mile rail line in Colorado known as the Towner Line. The record closed in September 2016 and the case remained pending at the close of FY 2016.

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 agreement is reached, the right of way is not considered abandoned and remains under the agency’s jurisdiction during the period of interim trail use/rail banking.

The following table summarizes rail banking and interim trail use activity during FY 2016:

Table 2.7							
Railbanking/Interim Trail Use, FY 2016 *							
Requests		Grants		Denials		Pending	
No.	Miles	No.	No.	No.	Miles	No.	Miles
11	110.39	11	165.26	1	77.7	2	2.84

* Data in this table provide a snapshot of Board activity at the close of FY 2016. The “Grants,” “Denials,” and “Pending” totals include “Requests” filed in FY 2016, as well as requests filed in a prior fiscal year but disposed of in FY 2016. 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 2016, or earlier, that were not disposed of in FY 2016 and thus remain open for disposition in a later fiscal year.

Liens on Rail Equipment

Liens on rail equipment and water vessels intended for use in interstate commerce must be filed with the Board to become valid. Subsequent assignments of rights or release of obligations under such instruments must also be filed with the agency. Such liens maintained by the Board are preserved for public inspection. The STB recorded 1,545 liens in FY 2016.

RAILROAD RATES

Cost of Capital

Each year, the Board determines the after-tax, composite cost of equity capital for the freight-railroad industry (i.e., the STB’s estimate of the average rate of return needed to persuade investors to provide such capital), and uses that “cost-of-capital” figure for a variety of regulatory purposes. It is employed in maximum railroad-rate cases, feeder-line applications, rail-line abandonments, trackage-rights cases, rail-merger reviews, the Board’s Uniform Railroad Costing System (URCS) and, more generally, in annually evaluating the adequacy of individual railroads’ revenues. For calendar year 2015, the Board found four Class I railroads—BNSF Railway Company, Grand Trunk Corporation, and Union Pacific Railroad Company—to be “revenue adequate,” meaning that these carriers achieved a rate of return equal to or greater than the STB’s calculation of the average cost of equity capital to the freight rail industry.²⁰

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, which must contain specific information contained in 49 C.F.R. pt. 1313, are

²⁰ See *Railroad Revenue Adequacy—2015 Determination*, EP 552 (Sub-No. 20) (STB served Sept. 8, 2016) and “Appendix D: Railroad Financial and Statistical Data,” Table D.5, of this report.

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

Rate Disclosure Requirements: Common Carriage

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

Rate Challenges: Market-Dominance Limitation

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

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

Where a rate results in a revenue-to-variable cost ratio of 180 percent or more, the Board examines whether competition in the marketplace effectively restrains a railroad's pricing.

Rate Challenges: Rate-Reasonableness Determination

To assess whether a challenged rate is reasonable, the Board generally uses "constrained market pricing" (CMP) principles. These principles limit a railroad's rates to levels necessary for an efficient carrier to make a reasonable profit. CMP principles recognize that, to earn adequate revenues, railroads need pricing flexibility, including charging higher rates on "captive" traffic

(traffic with no alternative means of transportation). The CMP guidelines also impose constraints on a railroad's ability to do so. The most commonly used CMP constraint is the "stand-alone cost" (SAC) test. Under this constraint, a railroad may not charge a shipper more than it would cost to build and operate a hypothetical new, optimally efficient railroad (a "stand-alone railroad") tailored to serve a selected traffic group that includes the complainant's traffic.

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

As highlighted earlier, in September 2016, the Board announced that it had made its annual determination of revenue adequacy for the Class I freight railroads for 2015, in *Railroad Revenue Adequacy—2015 Determination*, Docket No. EP 552 (Sub-No. 20) (STB served Sept. 8, 2016). Here the STB found that the BNSF Railway Company, Grand Trunk Corporation, Soo Line Corporation, and Union Pacific Railroad Company were "revenue adequate" for 2015.

A railroad is considered to be revenue adequate if it achieves a rate of return on net investment equal to at least the current cost of capital for the railroad industry for 2015, which the Board determined to be 9.61 percent. Congress directed the Board to conduct such revenue adequacy determinations on an annual basis. The Board found that these four Class I railroads achieved a rate of return on net investment equal to or greater than the agency's calculation of the cost of capital for the railroad industry.

As highlighted earlier, in FY 2016, pursuant to the Surface Transportation Board Reauthorization Act of 2015, P.L. 114-110 (2015), the Board issued final rules in *Revised Procedural Schedule in Stand-Alone Cost Cases*, EP 732 (STB served Mar. 9, 2016), amending its rules and adjusting the procedural schedule in stand-alone cost cases to conform with Section 11(b) of the Act. Also, pursuant to the Act, the Board instituted a proceeding to assess procedures that are available to parties in litigation before courts to expedite such litigation, and the potential

application of any such procedures to rate cases before the Board in *Expediting Rate Cases*, EP 733 (STB served June 15, 2016).

In FY 2016, the Board issued a decision on the merits in one of its pending major rate cases. In *Total Petrochemicals & Refining USA, Inc. vs. CSX Transportation, Inc.*, NOR 42121 (STB served Sept. 14, 2016), the Board found that the rates challenged by the complaining shipper were not demonstrated to be unreasonably high. Vice Chairman Miller commented with a separate expression and Board Member Begeman dissented in part with a separate expression. As of September 2016, *Consumers Energy Company v. CSX Transportation, Inc.*, Docket No. NOR 42142, remained pending.

In addition, the Board adjudicated two administrative appeals. The Board denied reconsideration in *E.I. du Pont Nemours & Co. v. Norfolk Southern Railway Company*, NOR 42125 (STB served Dec. 23, 2015). Board Member Miller concurred with a separate expression and Vice Chairman Begeman dissented with a separate expression. In *Sunbelt Chlor Alkali Partnership v. Norfolk Southern Railway Company*, NOR 42130 (STB served June 30, 2016), the Board made technical corrections, granted reconsideration on several issues, and maintained its original finding that the plaintiff-shipper was not entitled to rate relief. Board Member Miller concurred with a separate expression and Board Member Begeman dissented with no further comment.

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 adopted a version of the SAC test for medium-sized cases, which it dubbed

“Simplified-SAC,” and modified the previously adopted “Three Benchmark” methodology for small-sized cases, under which a challenged rate is evaluated in relation to three benchmark figures from the rates of a comparable group of traffic.

A shipper challenging a rate may choose to present evidence using either a Simplified-SAC or Three-Benchmark approach, but with limits on the relief available if the Three-Benchmark procedure is used. The maximum recovery was revised so that it is now unlimited for Simplified-SAC cases, and \$4 million for Three-Benchmark cases, indexed for inflation. See *Rate Regulation Reforms*, EP 715 (STB served July 18, 2013, Dec. 3, 2014).

Prior to FY 2016, the Board had opened *Rail Transportation of Grain, Rate Regulation Review*, Docket No. EP 665 (Sub-No 1), to obtain input from interested parties on grain shippers’ ability to effectively seek relief for unreasonable rates, as well as proposals for modifying existing procedures, or new alternative rate relief methodologies, should they be necessary. Based on comments received and a hearing held in 2015, the Board opened a new sub-docket as it expanded the scope of its inquiry. In *Expanding Access to Rate Relief*, EP 665 (Sub-No. 2) (STB served Aug. 31, 2016), the Board sought comment on procedures that could form the basis for a new rate reasonableness methodology for use in very small disputes, which would be available to shippers of agricultural products and all other commodities.²¹

²¹ The comment/reply period was scheduled to close in December 2016, during the first quarter of FY 2017.

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 2016 were the following Board decisions:

United States Rail Service Issues—Performance Data Reporting, EP 724 (Sub-No. 4) (STB served Apr. 29, 2016). In this Supplemental Notice of Proposed Rulemaking, the Board proposed revisions to a December 2014 proposed rule to require certain railroads to publicly file various weekly data reports pertaining to service performance on a permanent basis.

BNSF Ry.—Terminal Trackage Rights—Kansas City S. Ry., FD 32760 (Sub-No. 46) (STB served July 5, 2016). In this case, BNSF argued that the merger conditions imposed by the Board during the 1996 merger between the Union Pacific and Southern Pacific railroad companies granted BNSF the option to handle the traffic of shippers in the Lake Charles area of Louisiana directly via trackage rights, and not simply through reciprocal switching. In this decision, the Board granted BNSF's application for terminal trackage rights and directed the parties to negotiate the terms of access. If they were unable to reach an agreement, they could return to the Board if necessary.

Board-Shipper Discussions

Except for discussions of matters pending before the Board, the agency continued to welcome informal shipper meetings with the Board Members and staff to discuss general service, transportation, and other issues of concern. During FY 2016, 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

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

On August 22, 2016, the Board announced that it was discontinuing the practice of sending an annual letter to the railroad industry asking Class I and other railroads to comment on their end-of-year outlook for traffic volumes and operations. This practice, which began in 2004 and continued annually through 2015, sought assessments from the railroads about 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. In recent years, however, changes to railroad shipping patterns have diminished the need for the "Fall Peak letter," as there is no longer a highly conspicuous peak season. And the need for this end-of-year letter further diminished when, in October 2014, the Board began collecting weekly service performance reports from the Class I railroads, providing a snapshot of the industry in near real-time.

Assistance with Specific Service Matters

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

RAIL-LABOR MATTERS

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

During FY 2016, there were no significant cases in this area.

PREEMPTION

The Board is often called upon to address preemption questions under 49 U.S.C. § 10501(b). Some of the notable decisions issued by the Board in this area in FY 2016 are discussed below:

Petition of Norfolk Southern Railway for Expedited Declaratory Order, FD 35949 (STB served Feb. 25, 2016). Here, the Board granted the petition for declaratory order and determined that the restrictions on locomotive idling enacted by State of Delaware were federally preempted.

Norfolk Southern Railway—Petition For Declaratory Order, FD 35950 (STB served Feb. 29, 2016). In this proceeding, Norfolk Southern Railway Company requested an order declaring that claims of an adjacent property owner seeking to recover damages against the railroad related to flooding are preempted by federal law. In this decision, the Board denied the petition for declaratory order but provided guidance on the question of preemption.

Reading, Blue Mountain & Northern Railroad—Petition for Declaratory Order, FD 35956 (STB served June 6, 2016). In this decision, the Board found that application of the competitive-bidding requirement of the Pennsylvania Municipal Authorities Act (PMAA) to contract for the operation of railroad lines, by state-chartered municipally owned rail carriers, was not preempted by federal law. Board Member Begeman dissented with a separate expression. The Board provided guidance on the question of preemption of another provision of the PMMA that placed limitations on competition between municipal authorities and privately owned businesses.

Northwestern Pacific Railroad—Petition for Declaratory Order, FD 35977 (STB served April 25, 2016). Here, the Board declined to issue a declaratory order and instead referred the parties to a recent declaratory order fully addressing the same preemption issues.

Valero Refining Company—Petition for Declaratory Order, FD 36036 (STB served Sept. 20, 2016). Here, the Board was asked to issue a declaratory order finding that City of Benicia Planning Commission's decisions denying certification of an environmental impact report and

Valero's conditional use permit for a crude oil off-loading facility were preempted by federal law. The Board denied the petition for declaratory order, but provided guidance on the issue of preemption.

ENVIRONMENTAL REVIEW

Overview

Under the National Environmental Policy Act of 1969 (NEPA),²² the Board must consider the environmental impacts of its actions before making its final decision in certain cases filed before the Board. The STB's Office of Environmental Analysis (OEA) assists the Board by conducting independent environmental reviews of certain cases filed before the agency. This includes preparing 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 for the public to identify environmental concerns. Lastly, 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 according to the provisions of NEPA, the Board's environmental rules,²³ regulations of the President's Council on Environmental Quality,²⁴ and other applicable federal environmental requirements. Environmental reviews take into account all applicable federal environmental laws, including the Endangered Species Act,²⁵ Coastal Zone Management

²² 42 U.S.C. §§ 4321-45.

²³ 49 C.F.R. § 1105.

²⁴ 40 C.F.R. §§ 1500-08.

²⁵ 16 U.S.C. §§ 1531-44.

Act,²⁶ Clean Air Act,²⁷ Clean Water Act,²⁸ National Historic Preservation Act (NHPA),²⁹ and pertinent hazardous-substance laws.

The public plays an important role in the environmental review process. The public helps OEA define the pertinent environmental issues that must be assessed in the EA or EIS. This initial outreach to the public and other key stakeholders, known as scoping, helps define the issues of concern, the timing of the environmental review process, and whether other agencies should participate with the Board in preparing the EA or EIS. OEA 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 and other stakeholders, OEA's independent analysis, and, in many cases, site visits by OEA staff to the proposed project area. OEA then provides an opportunity for public review and comment on all aspects of the Draft EIS or Draft EA. During the public comment period, OEA may decide to hold one or more public meetings to assist public participation in the environmental review process, and to facilitate the submission of comments. At the conclusion of the public comment period, OEA performs additional analysis, as needed, and prepares a Final EIS or a 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

²⁶ 16 U.S.C. §§ 1451-1466.

²⁷ 42 U.S.C. §§ 7401-7671.

²⁸ 33 U.S.C. §§ 1251-1388.

²⁹ Cited 16 U.S.C. § 470(f) during the period covered within this report, recodified as 54 U.S.C. § 300101 *et seq.* on December 19, 2014.

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 sole direction, control, and supervision—to assist OEA in preparing environmental analyses. The STB’s practice and procedures in this area are explained in *Policy Statement On Use of Third-Party Contracting In Preparation Of Environmental Documentation*, 5 S.T.B. 467 (2001).

Rail Line Constructions

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

Among the more significant actions involving the preparation of EISs in FY 2016, OEA participated in ongoing environmental review for the California High-Speed Train System, in *California High-Speed Rail Authority—Construction Exemption—in Fresno, Kings, Tulare & Kern Counties, Cal.*, Docket No. FD 35724. OEA also participated as a cooperating agency with the California Department of Transportation (Caltrans) and the Los Angeles County Metropolitan Transportation Authority in the environmental review for the High Desert Corridor project in California, a proposed 63-mile multipurpose corridor between Los Angeles County and San Bernardino County.

OEA additionally:

- Reviewed comments received on the Draft EIS and began preparing the Final EIS, in *Tongue River Railroad—Rail Construction & Operation—in Custer, Powder River & Rosebud Counties., Mont.*, Docket No. FD 30186;
- Conducted ongoing monitoring of the identification and valuation of historic and cultural resources toward implementation of the Programmatic Agreement, setting forth the process for historic review under Section 106 of NHPA, in *Alaska Railroad Corp.—Petition for Exemption—to Construct & Operate a Rail Line Between North Pole and Delta Junction, Alaska*, Docket No. FD 34658;
- Conducted ongoing monitoring of the identification and valuation of historic and cultural resources toward implementation of the Programmatic Agreement under Section 106 of NHPA, and ongoing oversight and monitoring to verify the railroad’s compliance with the implementation of Board-imposed mitigation measures, in *Alaska Railroad Corp.—Construction & Operation Exemption—a Rail Line Extension to Port MacKenzie, Alaska*, Docket No. FD 35095;
- Conducted ongoing monitoring of the identification and valuation of historic and cultural resources toward implementation of the Programmatic Agreement under Section 106 of NHPA, and ongoing oversight and monitoring to verify the railroad’s compliance with the implementation of Board-imposed mitigation measures, in *Six County Association of Governments—Construction & Operation Exemption—Rail Line between Levan & Salina, Utah*, Docket No. FD 34075;
- Conducted environmental review for the proposed construction and operation of an 11-mile rail line extension to connect Port Canaveral to the main line, in *Canaveral Port Authority—Petition for Exemption to Construct & Operate a Rail Line Extension to Port Canaveral, Fla.*, Docket No. FD 35852;
- Issued a Draft EA and a Final EA for the proposed construction and operation of an approximately six-mile rail line to serve an existing port facility at Cates Landing, and a

proposed industrial park nearby, in *Northwest Tennessee Regional Port Authority—Construction & Operation Exemption—in Lake County, Tenn.*, Docket No. FD 35802;

- Reviewed information to determine the railroad’s compliance with three environmental conditions imposed by the Board in 2010, in *U S Rail Corp.—Construction & Operation Exemption—Brookhaven Rail Terminal*, Docket No. FD 35141;
- Finalized a new Programmatic Agreement and conducted ongoing monitoring of the identification and valuation of historic and cultural resources toward implementation of the new Programmatic Agreement under Section 106 of NHPA, in *Southwest Gulf Railroad Co.—Construction & Operation Exemption—in Medina County, Tex.*, Docket No. FD 34284;
- Issued a Draft EA and a Final EA for the proposed construction and operation of approximately 3.18 miles of track to serve an industrial park, in *Lone Star Railroad, Inc. & Southern Switching Co.—Track Construction & Operation Exemption—in Howard County, Tex.*, Docket No. FD 35874;
- Issued a Draft Scope of Study for the EIS and held ten public meetings in the project area for the proposed construction and operation of a 278-mile rail line to connect with existing Class I and short line railroads, in *Great Lakes Basin Transportation, Inc.—Authority to Construct and Operate a Rail Line in Ind., Ill. and Wis.*, Docket No. FD 35952; and
- Issued a Draft Scope of Study for the EIS for the proposed acquisition, construction and operation of approximately 5,727 feet of existing track and 10,838 feet of new and rehabilitated track on a Superfund site, in *New England Transrail, LLC, d/b/a Wilmington and Woburn Terminal Railway—Construction, Acquisition & Operation Exemption—in Wilmington & Woburn, Mass.*, Docket No. FD 34797 (Sub-No. 1).

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 2016, OEA conducted approximately 25 EAs in connection with rail line abandonments. Among its more significant actions, OEA:

- Conducted environmental and historic review and held public and key stakeholder meetings to address potential effects of the proposed abandonment on the historic Harsimus Stem Embankment and neighboring historic properties, in *Consolidated Rail Corp.—Abandonment Exemption—in Hudson County, N.J.*, Docket No. AB 167 (Sub-No. 1189X); and
- Conducted ongoing monitoring of the identification and valuation of historic and cultural resources toward implementation of the Memorandum of Agreement for an approximately 144-mile abandonment, in *Missouri Central Railroad Co.—Abandonment Exemption—in Cass, Pettis, Benton, Morgan, Miller, Cole, Osage, Maries, Gasconade, & Franklin Counties, Mo.*, Docket No. AB 1068 (Sub-No. 3X).

Railroad Mergers and Acquisitions

The potential environmental impacts of proposed railroad mergers include changes in rail traffic patterns on existing lines that may be addressed in an EA or an EIS, and the Board may impose conditions designed to mitigate potential system-wide and corridor-specific environmental impacts. Such conditions may address at-grade crossing safety and traffic delays, including delays for emergency response vehicles; hazardous-materials transportation safety; air quality; noise impacts; and, where pertinent, potentially disproportionate environmental justice impacts. Safety-integration plans (prepared by merger applicants in consultation with FRA) additionally

describe the process for combining and safely integrating infrastructure, equipment, personnel, and operating practices of two or more entities following a merger or acquisition.³⁰

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 Canadian National Railway Company's (CN) compliance with Board-imposed environmental and operational conditions for the proposed acquisition and control of EJ&E West Company by CN, in *Canadian National Railway & Grand Trunk Corp.—Control—EJ&E West Co.*, Docket No. FD 35087.

During FY 2016, OEA also:

- Conducted ongoing oversight and monitoring to verify the railroad's compliance with the implementation of mitigation measures imposed by the Board in a decision granting an operating easement over Grand Trunk Western Railroad track on the Elsdon Subdivision, between a connection with CSX at Munster, Ind., and Elsdon, Ill., in *CSX Transportation, Inc.—Acquisition of Operating Easement—Grand Trunk Western Railroad*, Docket No. FD 35522; and
- Conducted ongoing oversight and monitoring to verify the railroad's compliance with the implementation of mitigation measures imposed by the Board in a decision approving joint use of the 106-mile Louisville and Indiana Railroad Company trackage between Louisville, Ky. and Indianapolis, Ind., in *CSX Transportation, Inc.—Joint Use—Louisville & Indiana Railroad*, Docket No. FD 35523.

³⁰ 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 system³¹ 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.³²

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.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.³³ 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).³⁴ 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 1989.³⁵

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.

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

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

³³ See Appendix A.

³⁴ 49 U.S.C. §§ 10708, 1135

³⁵ Productivity Adjustment—Implementation, 1 S.T.B. 739 (1996).

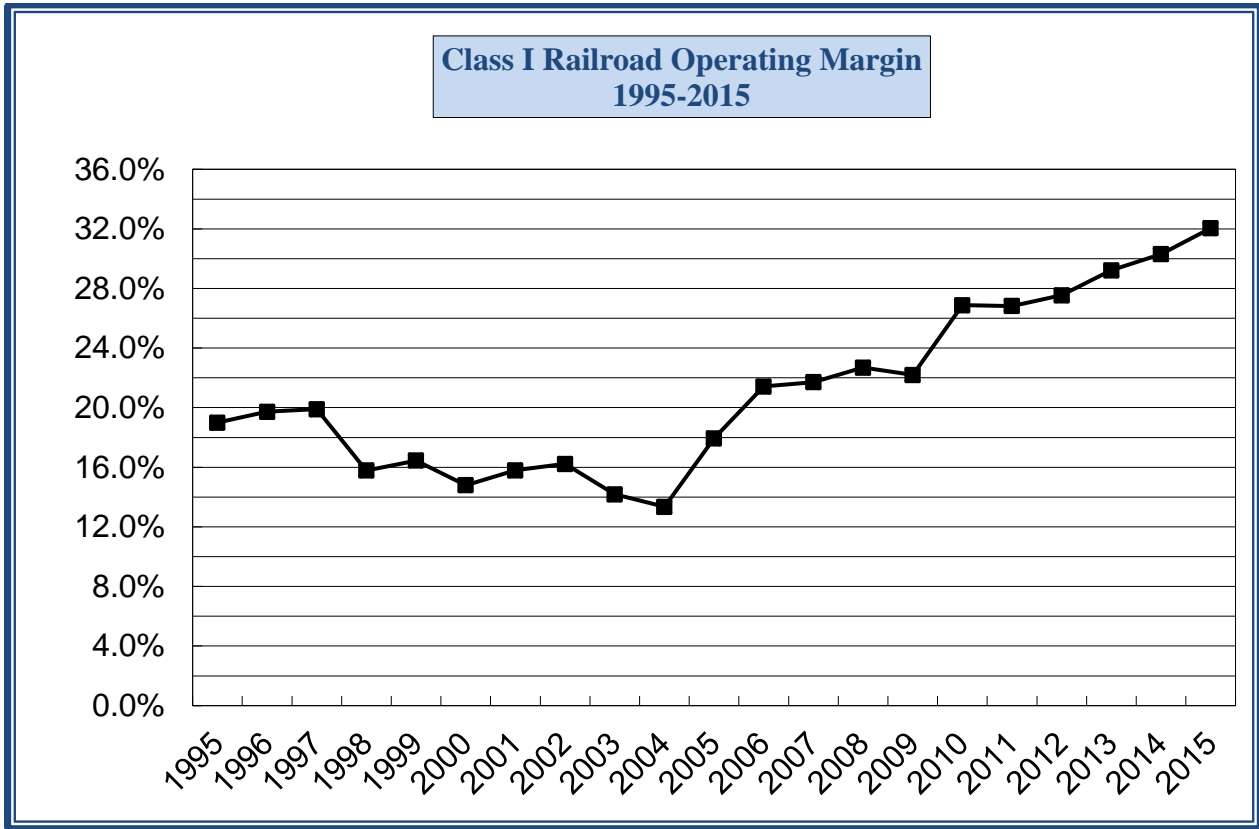


Figure 8.1 Class I Railroad Operating Margin

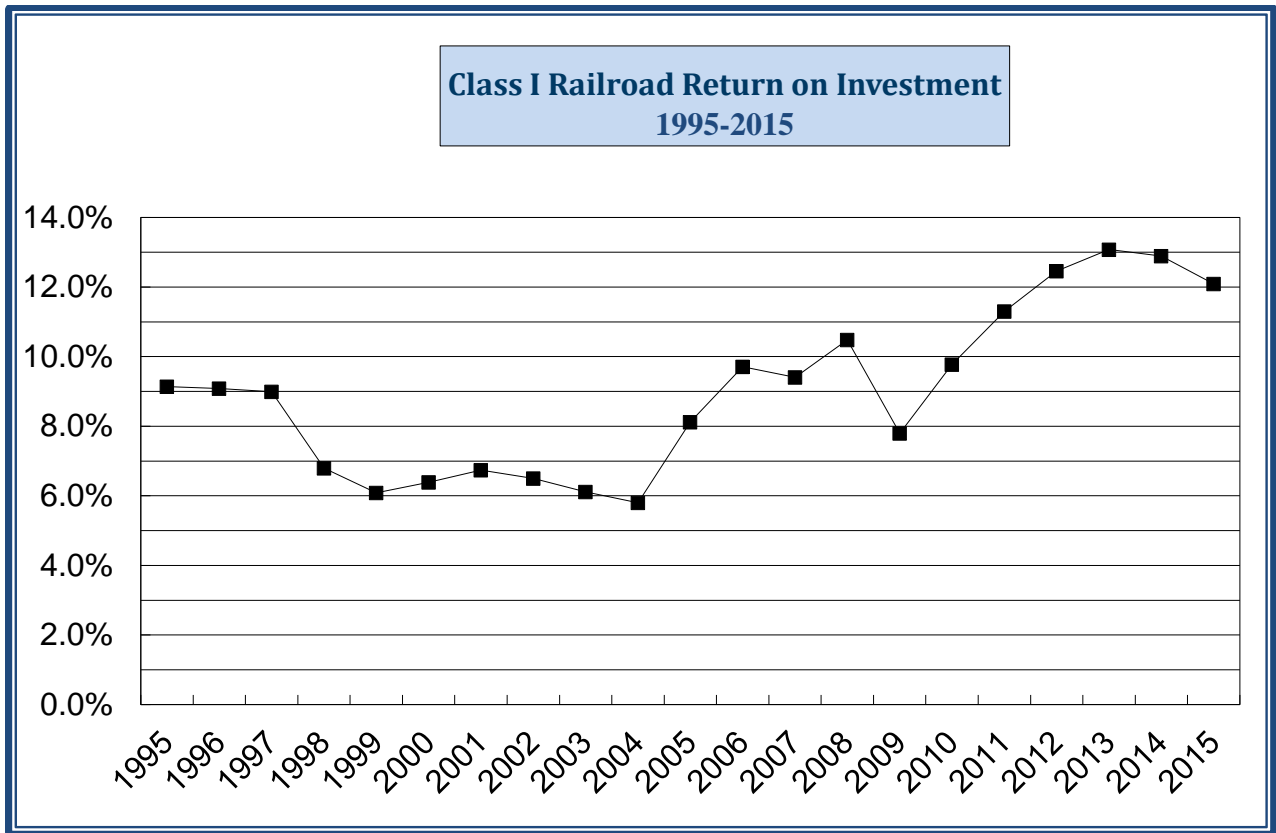


Figure 8.2 Class I Railroad Return on Investment

AMTRAK AND PASSENGER RAIL

The Board has limited, but significant, regulatory authority involving Amtrak, including authority to ensure that Amtrak may operate over other railroads' track, to address disputes concerning shared use of tracks and other facilities if Amtrak and railroads or regional transportation entities fail to reach voluntary agreements, and to resolve disagreements between Amtrak and State entities concerning the allocation of costs for State-supported intercity passenger rail services and for Northeast Corridor operations, maintenance, and capital needs. More generally, with respect to non-Amtrak operators of intercity passenger rail service and non-Amtrak developers of intercity passenger rail infrastructure, the Board retains its regulatory authority under the Interstate Commerce Act over such economic matters as entry and exit licensing.

In Application of the National Railroad Passenger Corp. Under 49 U.S.C. § 24308(a)—Canadian National Railway, Docket No. FD 35743, Amtrak has asked the Board to establish terms and conditions governing Amtrak's use of CN rail lines and facilities. After opening evidence was filed in September 2015, the parties continued to seek extensions of the schedule to accommodate additional discovery before filing rebuttal evidence. Most recently, on December 9, 2015, the Board granted the parties' joint motion to reset the procedural schedule after the parties jointly certify that discovery is concluded. The parties remained engaged in discovery at the close of FY 2016.

Section 213 of the Passenger Rail Investment and Improvement Act of 2008, P.L. 110-432, 122 Stat. 4848 (2008) (PRIIA), codified as 49 U.S.C. § 24308(f), permits or requires the Board to initiate an investigation when, "for any 2 consecutive calendar quarters," either "the on-time performance of any intercity passenger train averages less than 80 percent . . . or the service quality of intercity passenger train operations for which minimum standards are established [by Amtrak and the Federal Railroad Administration] under section 207 of [PRIIA] fails to meet those standards." 49 U.S.C. § 24308(f)(1).

PRIIA Section 207 and the metrics and standards jointly issued by Amtrak and FRA were found unconstitutional by the U.S. Court of Appeals for the District of Columbia Circuit on April 29, 2016.³⁶ In the meantime, however, Amtrak filed two on-time performance complaints with the Board: *National Railroad Passenger Corporation—Section 213 Investigation of Substandard Performance on Rail Lines of Canadian National Railway Company*, Docket No. NOR 42134, and *National Railroad Passenger Corp.—Investigation of Substandard Performance of the Capitol Ltd.*, Docket No. NOR 42141. Both were pending at the end of FY 2016.

In light of the constitutional challenge to the FRA/Amtrak metrics and standards and in response to a conditional petition by the Association of American Railroads, the Board instituted a rulemaking on May 15, 2015, to define “on time performance” for purposes of Section 213 of PRIIA. On July 28, 2016, the Board issued a final rule linking on-time performance to whether a train arrives at, or departs from, any given station no later than 15 minutes after its scheduled time. *On-Time Performance Under Section 213 of the Passenger Rail Investment and Improvement Act of 2008*, EP 726 (STB served July 28, 2016). The final rule was challenged in court by several freight rail interests.³⁷ As of the end of FY 2016, the STB on-time performance cases in Docket Nos. NOR 42134 and 42141 and the Eighth Circuit’s judicial review of the Board’s on-time performance rule in Docket No. EP 726 remained pending.

In an effort to provide guidance regarding the litigation of on-time performance complaints, the Board on December 28, 2015, issued a proposed *Policy Statement on Implementing Intercity Passenger Train On-Time Performance and Preference Provisions of 49 U.S.C. § 24308(c) and (f)*, in Docket No. EP 728. As the docket comments revealed broad disagreement among the interested parties regarding the conceptual basis for § 24308(f) investigations, the Board subsequently decided not to issue a policy statement and terminated the proceeding.

Title XI of the FAST Act, entitled “Passenger Rail Reform and Investment Act of 2015,” includes new provisions involving cost recovery by Amtrak for Amtrak’s operation of “state-

³⁶ *Ass’n of Am. R.R.s. v. Dep’t of Transp.*, 821 F.3d 19 (AAR II) (D.C. Cir. 2016). See also *Ass’n of Am. R.R.s. v. Dep’t of Transp.*, 721 F.3d 666 (D.C. Cir. 2013), *rev’d and remanded*, *Dep’t of Transp. v. Ass’n of Am. R.R.s.*, 135 S. Ct. 1225 (2015).

³⁷ *Union Pac. RR. v. STB*, No. 16-3307 (8th Cir.).

supported routes” and for the costs allocated to states (including state entities) using the Northeast Corridor rail facilities for their commuter rail operations, and it gives the Board authority to resolve cost allocation and access disputes between Amtrak, the states, and potential non-Amtrak operators of intercity passenger rail service. The FAST Act directs the Board to establish procedures for the resolution of certain of these disputes, “which may include the provision of professional mediation services.” 49 U.S.C. § 24712(c)(2) & 24905(c)(4). On July 28, 2016, in Docket No. EP 734, the Board issued a decision proposing regulations in response to this FAST Act mandate. Comments and replies were due by September 30, 2016; a final rule was in preparation as FY 2017 began.

On June 24, 2016, in *Petition of the National Railroad Passenger Corp. for Relief Pursuant to 49 U.S.C. § 24905*, Docket No. FD 36048, Amtrak filed a petition under 49 U.S.C. § 24905 seeking an order determining the appropriate compensation amounts between Amtrak and the Massachusetts Bay Transportation Authority (MBTA) in accordance with the Northeast Corridor Commuter and Intercity Rail Cost Allocation Policy (Policy) developed by the Northeast Corridor Commission (NEC). At the close of FY 2016, the Board had under consideration a motion by MBTA to hold the case in abeyance pending resolution of MBTA’s ongoing lawsuit in federal district court challenging the constitutionality of the NEC itself and the procedures used to develop the Policy.

Under the Interstate Commerce Act, the Board 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.”³⁸ Excluded from this jurisdiction, however, is “mass transportation provided by a local government authority.”³⁹ During FY 2016, the Board considered, and issued decisions in, the following cases involving issues regarding the Board’s jurisdiction over non-Amtrak passenger rail:

In *Boston Surface Railroad Company, Inc.—Petition for Partial Exemption from 49 U.S.C. Subtitle IV*, Docket No. FD 36043, decision served September 15, 2016, the Board found that it

³⁸ 49 U.S.C. § 10501(a)(2)(A).

³⁹ 49 U.S.C. § 10501(c)(2)(A).

has jurisdiction over a company seeking to provide passenger rail service on an existing route between Worcester, Mass., and Providence, R.I., but exempted that company from most of the Board's regulations.

In Texas Central Railroad & Infrastructure, Inc. & Texas Central Railroad, LLC—Petition for Exemption—Passenger Rail Line Between Dallas & Houston, Tex., Docket No. FD 36025, decision served July 18, 2016, the petitioners sought an exemption under § 10502 from the prior approval requirements of 49 U.S.C. § 10901 to construct and operate a 240-mile passenger rail line between Dallas and Houston, Tex. The Board found that the proposed rail line, as described, would not require Board approval, as it would be constructed and operated entirely within the State of Texas and—with no direct connection to Amtrak or any other interstate passenger rail carrier—would not be part of the interstate rail network. Accordingly, the Board dismissed the proceeding.

MOTOR CARRIAGE

Collective Motor Carrier Activities

Bureau Agreements

The Board may authorize collective actions by motor carriers to set through routes and joint rates, establish uniform classifications and mileage guides, and engage in certain other activities. At present, there are no such authorizations. No instances arose during FY 2016 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 2016, there was no new agency activity in this area.

Household-Goods Carriage

Household goods motor carriers are required to publish tariffs and make them available to shippers and the Board upon request. Such tariffs must include an accurate description of the services offered and the applicable rates, charges, and service terms for household goods moves. Regulations also require the Board to approve the terms by which household goods motor carriers may limit their liability for loss and damage of the goods. In FY 2016, the Board issued no formal decisions in the household goods area, and no cases were filed with the Board.

Intercity Bus Industry

Intercity passenger bus carriers must obtain Board approval for mergers and similar consolidations, and for pooling arrangements between and among carriers. Approval is typically granted through a streamlined application process or through a notice of exemption procedure specifically applicable to transactions within a corporate family. The agency can also require bus carriers to provide through routes with other carriers. In FY 2016, the Board issued the following decisions:

Surface Transportation Board

- *Prisoner Transportation Services, LLC—Control—PTS of America, LLC D/B/A PTS and Brevard Extraditions, Inc. D/B/A U.S. Prisoner Transport*, MCF 21064 (STB served Nov. 27, 2015)
- *Rose Chauffeured Transportation, LTD.—Acquisition of Control—My Bus Division of Cherry Consulting of the Carolinas, Inc.*, MCF 21066 (STB served May 11, 2016)
- *Prisoner Transportation Services, LLC—Control—U.S. Corrections, LLC D/B/A USC*, MCF 21067 (STB served June 24, 2016)
- *Silverado Stages, Inc.—Acquisition of Control—Michelangelo Leasing, Inc. and Ryan’s Express Transportation Services, Inc.*, MCF 21068 (STB served July 21, 2016)
- *Academy Bus, LLC, and Corporate Coaches, Inc.—Purchase of Certain Assets of Corporate Coaches, Inc.*, MCF 21069 (STB served July 22, 2016)
- *Suntx Capital III Management Corp., et al.—Control—TBL Group, Inc.; GBJ, Inc.; Echo Tours and Charters L.P.*, MCF 21070 TA (STB served July 28, 2016)
- *Suntx Capital Management Corp., et al.—Control—TBL Group, Inc.; GBJ, Inc.; Echo Tours and Charters L.P.*, MCF 21070 (STB served July 28, 2016)
- *National Express LLC—Acquisition of Control—New Dawn Transit, LLC*, MCF 21072 (STB served Sept. 16, 2016).

Motor Carrier Rate Reasonableness

The Board may review the reasonableness of motor carrier rates established collectively. During FY 2016, there was no case brought to the Board 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.

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 2016, and none were pending at the close of the fiscal year.

PIPELINE CARRIAGE

The Board has economic regulatory jurisdiction over the interstate transportation by pipeline of commodities other than oil, gas, or water. The Board's authority applies to commodities such as anhydrous ammonia and industrial chemicals.

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. During FY 2016, the Board received a formal complaint in *Dyno Nobel, Inc. and Dyno Nobel Louisiana Ammonia, LLC v. NuStar Pipeline Operating Partnership, L.P.* NOR 42147.

OTHER BOARD ORDERS

Beginning December 15, 2011, the Board implemented a grant-stamp procedure⁴⁰ for the issuance of decisions in uncontested, routine procedural matters delegated to the STB’s Director of the Office of Proceedings whenever further explanation or discussion is unnecessary. This procedure is designed to better serve the public, streamline Board processes, and remove uncertainty. The image of the grant stamp adopted by the Board is shown below, followed by a pie chart displaying the frequency of its usage during FY 2016.



Figure 13.1 Grant Stamp, FY 2016

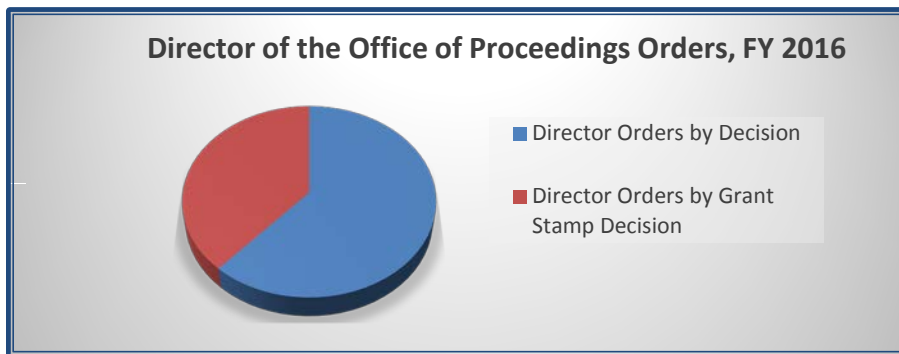


Figure 13.2 Director of Office of Proceedings Orders, FY 2016

Of the 412 Director Order decisions made during the fiscal year 2016, 159 (or approximately 38 percent) were made by grant stamp.

⁴⁰ Policy Statement on Grant Stamp Procedure in Routine Director Orders, EP 709 (STB served Nov. 14, 2011).

COURT ACTIONS

Judicial review of most Board decisions is available in the federal courts of appeals. Certain STB orders, such as those solely for the payment of money and those addressing questions referred to the agency by a federal district court, are reviewable in federal district court. Below is a summary of significant court decisions rendered in FY 2016.

In *Padgett v. STB*, 804 F.3d 103 (1st Cir. 2015), a locality sought review of a Board order finding that a propane transload facility Grafton & Upton Railroad Co. (G&U) intends to build and operate is subject to federal preemption under 49 U.S.C. § 10501(b). The Board found that the facility qualified for preemption because it would be constructed and operated by G&U, a rail carrier. The court affirmed the Board's decision.

In *Del Grosso. v. STB*, 804 F.3d 110 (1st Cir. 2015), a companion case to *Padgett*, neighboring residents sought review of a Board order finding that a wood pellet bagging operation at a transload facility constituted "transportation by rail carrier" because it allowed for the use of more efficient hopper cars rather than box cars, and thus that the operation was subject to federal preemption. Applying a narrow standard of review, the court set aside the Board's decision in part, concluding that the Board's efficiency-based standard was defective because it failed to relate the facility's activities to the physical movement of property. The court remanded to the Board to determine whether the wood pellet bagging operation facilitated the transloading of the pellets from rail cars to trucks.

In *Tubbs v. STB*, 812 F.3d 1141 (8th Cir. 2015), a landowner sought review of the Board's declaratory order finding that federal preemption applied to the landowner's state law tort claims against a rail carrier for damages related to the flooding of the landowner's farm allegedly caused by the design, construction, maintenance, and repair of the carrier's rail line. The court agreed with the Board that the state tort claims were preempted because they would interfere with the maintenance and operation of a rail carrier.

Surface Transportation Board

In *Allied Erecting and Dismantling Co. v. STB*, 835 F.3d 538 (6th Cir. 2016), a case involving the intersection of property rights and regulatory law, the United States Court of Appeals for the Sixth Circuit rejected challenges to Board decisions finding jurisdiction over certain railroad tracks used by a common carrier. The Board found that, because the tracks were used to provide common carriage in interstate commerce, the Board had jurisdiction even though the carrier had never obtained Board operating authority to use the tracks.

The General Counsel's Office successfully sought summary affirmance or dismissal of a petition for review of STB rulings related to an abandonment of a line by RJ Corman, Inc. *See Riffin v. STB*, No. 15-3501 (3d Cir. June 3, 2016). In another case involving the same petitioner, the Third Circuit agreed with the STB that it was not the appropriate venue and transferred the case to the D.C. Circuit. *Riffin v. STB*, No. 15-2701 (3d Cir. Feb. 4, 2016).

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.gov. Unless otherwise indicated, hardcopies of agency reports and publications are available by telephoning the Rail Customer and Public Assistance office, at (866) 254-1792, or by emailing RCPA@stb.gov, or writing to the address below:

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

Copying charges may apply.

Board Regulations and Governing Statutes

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

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

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

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

These provisions are also published in the *United States Code Annotated* in volumes 49 U.S.C.A. §§ 1 to 10100 and 49 U.S.C.A. §§ 10101 to 20100. Both volumes, as well as the remainder of the *United States Code Annotated*, may be purchased in hardcopy format by calling 1 (888) 728-7677, or writing to the following address:

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

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

The Board's Website

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

- Agency decisions and notices served on or after Jan. 1, 1996, as well as most environmental documents (such as Environmental Assessments and Environmental Impact Statements) served after that date.
- Agency reports containing major Board decisions issued on or after Jan. 1, 1996.
- All public filings, in all proceedings, received by the agency after Feb. 5, 2002, as well as selected filings in major cases received prior to that date.
- Testimony before Congress by Board Members.

Surface Transportation Board

- Live audio and video streaming of public Board events, including hearings, meetings, and oral arguments. Proceedings are archived on the agency’s website. Electronic transcripts of public events and statements made by Board Members are also posted to the site.
- Board news releases issued since January 1997.
- Technical and statistical reports concerning Class I railroads, such as railroad annual reports (Form R-1) in Adobe Acrobat PDF format, price indices, employment data, wage statistics, and selected quarterly earnings reports.
- A guide to environmental rules, a listing of key environmental cases and contacts, and information regarding third-party contracting of work associated with environmental review conducted under the agency’s direction and supervision.
- Access to information concerning the agency’s Rail Customer and Public Assistance Program.
- The STB’s Freedom of Information Act (FOIA) regulations, fees, Reference Guide for FOIA requesters, frequently requested records, and other FOIA-related information.
- The agency’s rules and fees for filings and services.
- Publications, including how-to guides about rail-line abandonment and line-sale processes, as well as basic information about the Rails-to-Trails program.
- A general guide to the Board and its operations, including organizational information.
- Agricultural-contract summaries.
- Recordations, a listing of documents reflecting liens (claims), on railroad “rolling stock” (including railcars and locomotives) and some water-carrier equipment, as a security for the payment of a financial obligation.

- Rail-service updates in response to various STB directives. Beginning in April 2014, Class I railroads commenced the filing of various reports reflecting carriers' respective levels of service performance, in *United States Rail Service Issues*, EP 724 (STB served April 1, 2014).

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

Board Decisions, Filings, and News Releases

The Board's decisions, filings, and news releases may be viewed on the Board's website and also in its library at the agency's headquarters at 395 E Street, S.W., Washington, DC. Hardcopies of decisions and filings are available for a fee (minimum charges apply), and a higher fee applies to requests for certified copies. Hardcopies of news releases are free of charge. For information, contact the Rail Customer and Public Assistance office, at (866) 254-1792, or by emailing RCPA@stb.gov.

Speeches and Statements

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

Financial and Statistical Reports from Class I Railroads

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

through Friday. Report copies are available for a fee, minimum charges apply, and a higher fee applies to requests for certified copies.

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

Condensed Balance Sheet Report for Class I Railroads (Form CBS)—report of current assets and liabilities, expenditures for additions and betterments, and traffic statistics (submitted quarterly; 2011 to present).

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

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

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

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

Wage Statistics: Report of Railroad Employees, Service, and Compensation (Form A and Form B)—report of number of employees, service hours, compensation, and mileage (submitted quarterly; 2011 to present).

Report of Fuel Cost, Consumption, and Surcharge Revenue—A quarterly report containing the following information: total quarterly fuel cost, gallons of fuel consumed during the quarter, increased or decreased cost of fuel over the previous quarter, total quarterly revenue from fuel surcharges for all traffic, and revenue from fuel surcharges on regulated traffic. This required reporting commenced Oct. 1, 2007. Rail Fuel Surcharges, EP 661 (Sub-No.1) (STB served Aug. 14, 2007) (submitted quarterly; 4th quarter 2007 to present).

Periodic Financial Decisions and Notices Issued by the STB

The following periodic financial decisions and notices are available to the public on the Board's website. These documents are also available, for a copying charge, through the Board's records staff, at (202) 245-0238.

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*, Docket No. EP 347 (Sub-No. 2), and its calculation of the “Revenue Shortfall Allocation Method” (RSAM) percentage and the “Average Revenue-to-Variable Cost > 180” (R/VC>180) percentage. The STB also has released an expanded version of the Commodity Revenue Stratification Report, a 5-Digit Standard Transportation Commodity Code (STCC) report. The 5-Digit STCC report shows the revenue, variable costs, tons, and carloads associated with many combinations of car type and 5-Digit STCC. In addition to the 5-Digit STCC report, the Board also prepares a 7-Digit STCC report that provides more specificity.

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*, Docket No. 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 Docket No. EP 290 (Sub-No. 4).

Railroad Revenue Adequacy—determination of revenue-adequate railroads issued annually in Docket No. EP 552.

Publications

The following Board publications are available on the agency’s website. Unless otherwise indicated, hardcopies of these documents are also available, for a fee, through the Rail Customer and Public Assistance office, at (866) 254-1792, or by emailing RCPA@stb.gov.

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

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

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

Performance and Accountability Report (PAR)—report on the Board’s performance results against its established goals for fiscal year 2016 as required by the *Government Performance and Results Modernization Act of 2010* (Pub. L. No. 103-62); includes the Independent Auditors’ Report for the STB for FY 2016.

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

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

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

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

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

Surface Transportation Board Annual Reports—reports to Congress covering the Board’s activities from its Jan. 1, 1996 inception through the fiscal year ending Sept. 30, 2015.

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

Wage Statistics of Class I Railroads in the United States (Statement A-300)—compilation of the number of employees, service hours, compensation, and mileage as developed from Wage Forms A and B (compiled annually).

Software, Data, and User Documentation

The following software, data, and user documentation may be obtained from the Office of Economics (OE) for a fee or in some cases free of charge. To purchase any of these items or obtain additional information, contact OE at (202) 245-0333.

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

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 2009 to 2016 for activities included under the current appropriation title “Salaries and Expenses.”

Table B.1			
Average FTE Employment and Appropriations			
FY 2009 – 2016 ¹			
Fiscal Year	Appropriation	STB Offset ²	Average Employment
2009	25,597,000	1,250,000	141
2010	27,816,000	1,250,000	149
2011	27,760,368	1,250,000	140
2012	28,060,000	1,250,000	134
2013	28,003,880	1,250,000	136
2014	29,750,000	1,250,000	136
2015	30,125,000	1,250,000	137
2016	31,125,000	1,250,000	136

¹ Appropriations data are from annual appropriation acts. Actual FTE employment data are from Board reports to 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 2009- 2016 *		
Status of FY 2009 Appropriations*		
	Total appropriations	\$25,829,254
	Offsetting collections (<i>see note</i>)	1,017,746
	Reimbursements from other agencies	0
	Total obligations	25,806,587
	Unobligated balance available for adjustments	22,667
	Carryover of offsetting collections to next fiscal year	940,617
Status of FY 2010 Appropriations*		
	Total appropriations (adjusted)	\$28,311,150
	Offsetting collections (<i>see note</i>)	754,850
	Reimbursements from other agencies	0
	Total obligations	28,295,468
	Unobligated balance available for adjustments	15,682
	Carryover of offsetting collections to next fiscal year	940,617
Status of FY 2011 Appropriations*		
	Total appropriations (adjusted)	\$28,247,459
	Offsetting collections (<i>see note</i>)	762,909
	Reimbursements from other agencies	0
	Total obligations	28,224,359
	Unobligated balance available for adjustments	23,100
	Carryover of offsetting collections to next fiscal year	940,617
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

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Status of FY 2013 Appropriations*		
	Total appropriations (adjusted)	27,039,715
	Offsetting collections (<i>see note</i>)	740,079
	Reimbursements from other agencies	0
	Total obligations	26,947,932
	Unobligated balance available for adjustments	91,783
	Carryover of offsetting collections to next fiscal year	0
Status of FY 2014 Appropriations*		
	Total appropriations (adjusted)	30,355,203
	Offsetting collections (<i>see note</i>)	644,797
	Reimbursements from other agencies	0
	Total obligations	30,209,494
	Unobligated balance available for adjustments	145,709
	Carryover of offsetting collections to next fiscal year	0
Status of FY 2015 Appropriations*		
	Total appropriations (adjusted)	30,789,727
	Offsetting collections (<i>see note</i>)	585,273
	Reimbursements from other agencies	0
	Total obligations	30,703,765
	Unobligated balance available for adjustments	85,962
	Carryover of offsetting collections to next fiscal year	0
Status of FY 2016 Appropriations*		
	Total appropriations (adjusted)	31,732,037
	Offsetting collections (<i>see note</i>)	642,963
	Reimbursements from other agencies	0
	Total obligations	31,390,074
	Unobligated balance available for adjustments	341,963
	Carryover of offsetting collections to next fiscal year	0

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

NOTE: FY 2009-2016 appropriations provided that offsetting collections would be credits to the appropriations. Sums appropriated were to be reduced, on a dollar-for-dollar-basis, as such offsetting collections were received during each fiscal year.

APPENDIX C: DECISIONS DURING FY 2016

<p align="center">Table C.1 FY 2016 Caseload Rail Matters</p>					
Category	Pending at Start	Received During	Decided During	Pending at End	Decisions Served
Carrier Consolidations	2	18	19	1	28
Review of Labor Arbitral Decisions	0	0	0	0	0
Rates and Services	8	4	5	7	40
Rate Reasonableness	7	2	3	6	36
Rate Disclosure	0	0	0	0	0
Through-Routes or Divisions	0	0	0	0	0
Contract Rates	0	0	0	0	0
Reasonable Practice	0	1	0	1	0
Discrimination	0	0	0	0	0
Car Supply and Interchange	0	1	1	0	1
Service Orders	0	0	0	0	0
Competitive Access	1	0	1	0	3
Constructions	7	4	6	5	26
Line Crossing	1	0	0	1	0
Constructions	6	4	6	4	26
Abandonments	14	111	113	12	234

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Table C.1 FY 2016 Caseload Rail Matters (cont'd)					
Category	Pending at Start	Received During	Decided During	Pending at End	Decisions Served
Other Line Transactions	4	71	59	16	125
Line Consolidations	3	19	17	5	42
Line Acquisitions Under 49 U.S.C. 10901	1	24	22	3	39
Line Acquisitions by Shortline	0	25	18	7	30
Feeder Line Development	0	1	0	1	7
Acquisition and Operation Under 49 U.S.C. 10502	0	2	2	0	7
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	7	7	0	7
RCAF	0	7	7	0	7
Accounting and Records	0	0	0	0	0
Reports – Rail	0	0	0	0	0
Passenger Rail	3	1	0	4	9
Amtrak Track Use/ Compensation	2	1	0	3	7
Passenger Rail – Other	1	0	0	1	2
Exempt Rulemakings	8	18	14	12	44
Other Rail	0	0	0	0	0
Common Carrier Obligation	0	0	0	0	0
Interlocking Officer or Director	0	0	0	0	0
Other	0	0	0	0	0
Total Rail	46	234	223	57	513

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<p align="center">Table C.2 FY 2016 Caseload Nonrail Matters</p>					
Category	Pending at Start	Received During	Decided During	Pending at End	Decisions Served
Motor	0	0	0	0	0
Rate Reasonableness	0	0	0	0	0
Joint Motor-Water Rates in Non-contiguous Domestic Trade	0	0	0	0	0
Collectively Set Trucking Rates	0	0	0	0	0
Household Goods	0	0	0	0	0
Collective Actions	0	0	0	0	0
Collective Ratemaking Agreements	0	0	0	0	0
Truck Pooling	0	0	0	0	0
Undercharges	0	0	0	0	0
Bus Regulation	0	10	9	1	9
Through-Route Regulation	0	0	0	0	0
Mergers	0	10	9	1	9
Bus Pooling	0	0	0	0	0
Other Motor	0	1	0	1	1
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	10	14	15	9	53
Total Nonrail	10	25	24	11	63
Total Rail and Nonrail	56	259	247	68	576

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, 2016	
<i>Carriers Subject to the Uniform System of Accounts and/or Required to File Annual and Periodic Reports ^a</i>	
Railroads, Class I	7

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 2011 are listed in Vol. 81 No. 126 Fed. Reg. 42784 (2016).

Table D.2 Railroad Revenue Thresholds			
Year	Factor	Class I	Class II
2011	0.5771	433,211,345	34,656,908
2012	0.5523	452,653,248	36,212,260
2013	0.5353	467,063,129	37,365,050
2014	0.5255	475,754,803	38,060,384
2015	0.5460	457,913,998	36,633,120

Table D.3
Class I Railroads: Condensed Income Statement, Financial Ratios, and Employee Data,
2012-2015
(Dollars in Thousands)

	Calendar Year			
	2012	2013	2014	2015
1. Class 1 Carriers	7	7	7	7
CONDENSED INCOME STATEMENT				
2. Total operating revenues	\$69,887,072	\$72,873,269	\$77,658,866	\$71,709,219
3. Total operating expenses	50,641,286	51,582,531	54,129,064	48,731,146
4. Net railway operating income	12,199,092	13,559,750	14,889,933	14,814,868
5. Net income ^a	12,483,243	13,396,923	14,403,212	14,470,416
6. Dividends Paid	4,763,696	4,497,750	3,482,565	2,655,257
NET INVESTMENT AND EQUITY				
7. Net investment, transp. prop. & eqpmt ^b	100,197,089	105,870,413	113,679,403	122,515,510
8. Shareholders' equity	84,083,414	99,026,878	112,060,764	126,460,795
FINANCIAL RATIOS (PERCENT)				
9. Operating ratio (L3/L2)	72.46%	70.78%	69.70%	67.96%
10. Return on net investment (L4/L7)	12.18%	12.81%	13.10%	12.09%
11. Return on equity (L5/L8)	14.85%	13.53%	12.85%	11.44%
EMPLOYEE DATA				
12. Average number of employees	163,464	162,798	166,625	169,384
13. Compensation	12,643,207	13,072,880	14,733,720	14,621,903

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

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

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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, 2012-2015				
<i>(Dollars in Thousands)</i>				
Calendar Year				
	2012	2013	2014	2015
1. Total current assets	\$23,031,289	\$21,133,864	\$24,153,702	\$26,831,227
2. Total current liabilities	19,827,532	16,318,500	18,233,269	18,709,907
3. Transportation property				
Road	152,843,970	160,600,659	168,665,380	178,674,502
Equipment	41,134,185	43,019,991	46,510,823	49,456,284
Other	3,112,362	3,432,195	4,474,258	4,585,481
Less accumulated depreciation and amortization	52,703,363	52,965,373	53,992,840	53,935,397
Net transportation property	144,387,154	154,087,472	165,657,621	178,780,870
4. Long-term debt (due after 1 yr)	16,417,018	17,018,470	17,846,535	20,203,622
5. Shareholders' equity				
Capital stock (par value)	558,866	558,789	405,486	405,487
Additional capital (above par)	25,581,637	34,321,654	43,795,989	52,875,916
Retained earnings	57,946,698	64,150,222	67,863,076	73,183,179
Less treasury stock	3,787	3,787	3,787	3,787
Net shareholders' equity	84,083,414	99,026,878	112,060,764	126,460,795

Table D.5
Railroad Cost of Capital, Percentage Return on Investment (ROI),
Revenue Adequacy Status
2012-2015 ^a

	Calendar Year			
	2012 ^b	2013 ^c	2014 ^d	2015 ^e
Cost of Capital	11.12	11.32	10.65	9.61
ROIs of Class I Railroads				
BNSF Railway Company	13.47	14.01	12.88	12.82
CSX Transportation, Inc.	10.81	10.00	10.18	9.00
Grand Trunk Corp (including U.S. affiliates of Canadian National Railway)	10.19	11.84	11.30	10.77
Kansas City Southern Railway Company	9.54	8.67	8.18	7.20
Norfolk Southern Combined Railroad Subsidiaries	11.48	12.07	11.69	9.03
Soo Line Corp (including U.S. affiliates of Canadian Pacific Railway)	5.15	12.03	-0.42	14.50
Union Pacific Railroad Company	14.69	15.39	17.35	15.54

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

^c Cost of Capital for 2013 was determined in EP 558 (Sub-No. 17); Revenue Adequacy for 2013 was determined in EP 552 (Sub-No. 18).

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

^e Cost of Capital for 2015 was determined in EP 558 (Sub-No. 19); Revenue Adequacy for 2015 was determined in EP 552 (Sub-No. 20).

APPENDIX E: RAILROAD RATE CASES AT THE STB

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

Table E.1
Railroad Rate Cases at the STB
1996 through Sept. 30, 2016

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

Table E.1
Railroad Rate Cases at the STB
1996 through Sept. 30, 2016

Docket No	Case Name	Commodity	Guideline Used *	Date Decision	
				Served	Decision
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
42125	DuPont v. NS	Chemicals	SAC	3/24/2014	Rates Reasonable
42130	SunBelt v. NS	Chemicals	SAC	6/20/2014	No Rate Prescribed ⁴¹
42136	IPA v. UP	Coal	SAC	10/8/2014	Settlement
42088	Western Fuels v. BNSF	Coal	SAC	6/15/2015	Settlement
42121	TPI v. CSXT	Chemicals	SAC	9/14/2016	Rates Reasonable

Rail Rate Cases Pending at the STB as of Sept. 30, 2016

42142	Consumers v. CSXT	Coal	SAC
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***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.

In FY 2009-2016 24 rate-related Board decisions were served: 15 were resolved through a settlement agreement between the parties; four found the rates unreasonable; three found the rates to be reasonable; one case had no rate prescription; and one case was withdrawn.

⁴¹ The Board declined to impose a rate prescription because the complainant did not demonstrate that the challenged rates would be unreasonable under the SAC test until the last year of the 10-year analysis period, and then to only a small degree.

APPENDIX F: SURFACE TRANSPORTATION BOARD MEMBERS

Name	State	Party	Oath of Office	End of Service ²
SIMMONS, J.J. III	Okla.	Democrat	Jan 1, 1996	Dec 31, 1996
OWEN, Gus A.	Calif.	Republican	Jan 1, 1996	Dec 31, 1998
MORGAN, Linda J. ³	Md.	Democrat	Jan 1, 1996	May 15, 2003
CLYBURN, William Jr.	S.C.	Democrat	Dec 21, 1998	Dec 31, 2001
BURKES, Wayne O.	Miss.	Republican	Feb 25, 1999	Mar 20, 2003
NOBER, Roger ⁴	Md.	Republican	Nov 26, 2002	Jan 4, 2006
BUTTREY, W. Douglas ⁵	Tenn.	Republican	May 28, 2004	Mar 13, 2009
MULVEY, Francis P. ⁶	Md.	Democrat	Jun 2, 2004	Dec 31, 2013
NOTTINGHAM, Charles D. ⁷	D.C.	Republican	Aug 14, 2006	Mar 18, 2011
ELLIOTT, Daniel R. III ⁸	Ohio	Democrat	Aug 13, 2009	Term ends 2018
BEGEMAN, Ann D. ⁹	Va.	Republican	May 2, 2011	Term ends 2020
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; Chairman, June 26, 2015-Jan. 23, 2017; designated Vice Chairman Feb. 1, 2017.

⁹ Vice Chairman May 2, 2011 to Jan. 3, 2012; January 4, 2013 to May 27, 2014; Jan. 1, 2015 to Jan. 7, 2016. Nominated December 7, 2016, confirmed December 9, 2016, for a second, five-year term expiring December 31, 2020. Designated Acting Chair Jan. 23, 2017.

¹⁰ Vice Chairman May 27, 2014 to Dec. 31, 2014; Acting Chairman, Jan. 1, 2015 to June 26, 2015; Vice Chairman, of Jan. 7, 2016 to Feb. 1, 2017.