



# Surface Transportation Board

**FY 2017 Annual Report**  
[www.stb.gov](http://www.stb.gov)





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

February 14, 2018

To the Congress of the United States:

We are pleased to submit this report covering the Surface Transportation Board's (Board) activities for Fiscal Year (FY) 2017.

In addition to highlighting the Board's continued efforts to implement the Surface Transportation Board Reauthorization Act of 2015, which made the Board fully independent, this report details the Board's important adjudicatory, rulemaking, and licensing actions taken by the agency during FY 2017. It also discusses the Board's important rail service oversight and public assistance efforts.

We appreciate Congress's 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 Begeman  
Acting Chairman

  
Deb Miller  
Vice Chairman

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## 1

## OVERVIEW

The Surface Transportation Board (Board/STB/agency) was established on January 1, 1996, to assume some of the regulatory functions formerly administered by the Interstate Commerce Commission (ICC)<sup>1</sup> after the ICC was abolished. Other ICC functions were either eliminated or transferred to the Federal Motor Carrier Safety Administration at the U.S. Department of Transportation (DOT) or the Bureau of Transportation Statistics at DOT. The bipartisan 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 a fully independent agency on December 18, 2015.

### Introduction

Charged with advancing the national transportation policy goals enacted by Congress,<sup>2</sup> the Board has regulatory jurisdiction over railroad rate reasonableness, mergers, line acquisitions, new rail line construction, abandonments of existing rail lines, and the conversion of rail rights-of-way into hiking and biking trails. The agency also has certain oversight responsibilities for 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).<sup>3</sup> Additionally, the STB has certain regulatory authority over the operations of the National Railroad Passenger Corporation (Amtrak) on other railroads' track, disputes over shared track use and facilities, and cost allocations for Amtrak operations. Where regulatory requirements can be removed or reduced, the Board can apply its exemption authority to the maximum extent consistent with the

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<sup>1</sup> 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, 109 Stat 803.

<sup>2</sup> 49 U.S.C. §§ 10101 (rail), 13101 (motor and water), 15101 (pipelines).

<sup>3</sup> 49 U.S.C. §§ 13101-14914, 15101-16106.



law to streamline approval processes for stakeholders.<sup>4</sup> The agency therefore has wide discretion to tailor its regulatory approach to meet the Nation's changing transportation needs.

## **Organizational Structure**

The Board is comprised of five Members nominated by the President and confirmed by the Senate for five-year terms.<sup>5</sup> The Board's Chairman is designated by the President from among the Members.<sup>6</sup> As the agency's chief executive, the Chairman coordinates and organizes the Board's work and acts as its representative in legislative matters and in relations with other governmental bodies.

The Vice Chairman assumes the Chairman's duties as appropriate. The Vice Chairman is designated Co-Chairman of the National Grain Car Council. The position typically rotates among the Chairman's Member colleagues.

As the fiscal year began, Daniel R. Elliott III was serving as the Board's Chairman and continued to do so until January 23, 2017. On that date, President Donald J. Trump designated Board Member Ann Begeman as the agency's Acting Chairman, and former Chairman Elliott was later designated Vice Chairman by Board action. On September 30, 2017, Vice Chairman Elliott resigned from the Board and, on October 11, 2017, Board Member Miller was designated Vice Chairman.

Assisting the Board in carrying out its responsibilities is a staff of approximately 120 with experience in law, economics, accounting, transportation analysis, finance, and administration, serving within the following offices:

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<sup>4</sup> 49 U.S.C. § 10502(a).

<sup>5</sup> The STB Reauthorization Act expanded the Board from three to five Members. Currently, two Members are serving.

<sup>6</sup> 49 U.S.C. § 1301.

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 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, 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 informal disputes involving the Board's regulatory jurisdiction, whenever possible, in lieu of time-consuming and costly litigation; and

The **Office of the Managing Director** provides a wide range of management and administrative services to the agency and to its staff, including human resource management, financial services, information technology support, and facilities management.

Figure 1.1 STB Organizational Chart, FY 2017 (as of September 2017)



<sup>a</sup> Daniel R. Elliott III, resigned from the Board on September 30, 2017.

<sup>b</sup> Acting.

**Significant Actions in FY 2017**

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, approval from the Board is required for entry into, exit from, or consolidation within the rail transportation market to ensure that the transactions are in the public interest.

## **The STB Reauthorization Act Implementation**

Enactment of the STB Reauthorization Act in December 2015 was the most significant legislative development affecting the Board since its 1996 inception. This law transformed the Board into a fully independent federal agency and marked the agency's first reauthorization since it was established in 1996.

The STB Reauthorization Act also:

- Expanded the Board's membership from three to five Board Members;
- Allowed 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 afterward;
- Gave the Board authority to initiate investigations and required the STB to establish regulations relative to such authority and to include each instance in which the Board has initiated an investigation in its annual report;
- Directed the Board to adjust its voluntary arbitration process, including allowing arbitration in rate disputes up to \$25 million;
- Shortened timelines for large rate case proceedings, including limits on the time allowed for discovery and development of an evidentiary record; and
- Directed the Board to submit a rate-case methodology report and quarterly reports of unfinished regulatory proceedings to pertinent Congressional committees, and to post quarterly reports on rail rate review cases and formal and informal railroad service complaints.

The quarterly reports can be found on the STB's website, [www.stb.gov](http://www.stb.gov).

Below is a summary of the most significant actions taken by the Board to implement the STB Reauthorization Act during FY 2017.

### ***Expediting SAC Cases***

Section 11 of the STB Reauthorization Act directed 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, 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 Stand-Alone Cost (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 outlining measures to expedite its handling of rate cases, *Expediting Rate Cases*, EP 733 (STB served Jun. 15, 2016). After review and consideration of the comments received, the Board proposed specific changes to help improve and expedite rail rate reasonableness cases in a Notice of Proposed Rulemaking (NPR) issued on March 31, 2017. The Board adopted a final rule on November 30, 2017 (during FY 2018), modifying rules pertaining to its rate case procedures.

### ***Collaborative Discussions***

In FY 2017, the Board continued to hold collaborative meetings 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.<sup>7</sup>

### ***Quarterly Reports***

The Board has continued to post its quarterly reports on rate-review metrics, formal and informal rail service complaints; and unfinished regulatory proceedings. The reports can be viewed on the STB website, [www.stb.gov](http://www.stb.gov).

### ***Investigations***

The STB 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), which established a three-stage process of preliminary fact-finding; Board-initiated investigation; and the formal Board proceeding.

On December 14, 2016, the Board adopted final rules in *Rules Relating to Board-Initiated Investigations*, EP 731 (STB served Dec. 14, 2016), to establish procedures for Board-initiated investigations pursuant to Section 12 of the STB Reauthorization Act. No investigations were conducted in FY 2017.

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<sup>7</sup> 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 be present at the meeting. In addition, after the meeting's conclusion, the Board must make available to the public a list of the meeting's participants 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 5 U.S.C. § 552b(c). 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.

### ***Independence***

Section 3 of the STB Reauthorization Act made the STB fully independent from DOT. During FY 2017, the Board continued progress towards its transition to full independence while ensuring that critical administrative services were not interrupted. The focus of the Board's efforts continues to be in the areas of information technology, budget and fiscal services, and human resources.

### ***Alternatives to SAC***

In September 2016, the Board released an independent study it had commissioned from InterVISTAS Consulting LLC (InterVISTAS), "An Examination of the STB's Approach to Freight Rail Rate Regulation and Options for Simplification." In October 2016, the Board held an economic roundtable to discuss the study and invited 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 the SAC process. The Board intends to explore additional ways in which it can improve its rate case processes.

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**

***Regulatory Reform Task Force.*** The Regulatory Reform Task Force (RRTF) was established to comply with the spirit of Executive Order 13,777, issued February 24, 2017. The RRTF seeks to identify burdensome, outdated, or cumbersome regulations, and make recommendations for implementing regulatory reform initiatives. In May, the RRTF identified several initial proposals, including repealing the requirement to file water carrier tariffs, revising the Board's environmental rules, and replacing outdated procedural and filing rules. To ensure stakeholder engagement, the RRTF held a listening session on July 25, 2017, and invited written comments. *See Regulatory Reform Task Force, EP 738 (STB served Jun. 20, 2017).* Based upon further

review of the comments made at the listening session and written comments submitted, as well as its own ongoing review of existing agency regulations and policies, the RRTF intends to make additional reform recommendations to the Board.

***Offers of Financial Assistance.*** In *Offers of Financial Assistance*, EP 729 (STB served Jun. 29, 2017), after seeking public input, the Board adopted a final rule to modify the Offer of Financial Assistance (OFA) process to improve that procedure and protect it against abuse. Under the OFA process, financially responsible parties may offer to temporarily subsidize continued rail service over a line that a carrier seeks to abandon or discontinue service, or offer to purchase a line and provide continued rail service on a line that a carrier seeks to abandon. The OFA modifications will improve overall efficiency and transparency of the OFA process. They also enhance the Board’s ability to protect the integrity of the OFA process by ensuring that offerors are financially capable of subsidizing service or purchasing the line, and that there is a continued need for rail service.

***Civil Monetary Penalties.*** In *Civil Monetary Penalty Inflation Adjustment Rule*, EP 716 (Sub-No. 1) (STB served Oct. 20, 2016), the Board issued an interim final rule to increase its existing civil monetary penalties in accordance with the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015. The Board also determined that it will thereafter adjust these penalties for inflation at least once every year. Accordingly, in *Civil Monetary Penalties—2017 Adjustment*, EP 716 (Sub-No. 2) (STB served Jan. 13, 2017), the Board issued a final rule to adjust its existing civil monetary penalties for inflation for 2017.

***Revised Inspection of Records and Related Fees.*** In *Revised Inspection of Records and Related Fees*, EP 737 (STB served Dec. 15, 2016), the Board revised its regulations governing “Inspection of Records” and “Fees” in accordance with changes to the Freedom of Information Act (FOIA) made by the FOIA Improvement Act of 2016, Pub. L. No. 114-185 (2016). Pursuant to the FOIA Improvement Act, the Board extended the deadline for administrative appeals, added information on dispute resolution services, and amended the way fees are charged in certain circumstances.



***Agricultural and Fertilizer Tariffs.*** In *Publication Requirements for Agricultural Products*, EP 528 (Sub-No. 1) (STB served Jun. 30, 2017), the Board announced that it had updated its regulations for Class I railroads to publish common carrier pricing and service terms for shipping agricultural products and fertilizer. The STB's final rule modernized the way that Class I railroads comply with this requirement so that Class I carriers will publish their pricing and service terms on their respective websites.

***Ex Parte Communications.*** In *Ex Parte Communications in Informal Rulemakings*, EP 739 (STB served Sept. 28, 2017), the Board proposed changes to its regulations to permit ex parte communications in rulemaking proceedings, subject to disclosure requirements. The Board also proposed certain other changes to clarify when and how interested parties may communicate with the Board in other types of pending proceedings. The record in the proceeding was completed in November 2017 (during FY 2018) and a final rule is expected in early 2018.

## **Rail Service Oversight and Data Monitoring**

Following the railroad service disruptions 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 weekly performance reports on an interim basis, beginning in October 2014. In December 2014, the Board began a rulemaking to make public reporting of service performance data permanent in *United States Rail Service Issues—Performance Data Reporting*, EP 724 (Sub-No. 4) (STB served Dec. 30, 2014). The Board adopted a final rule on November 30, 2016, requiring the permanent reporting of performance metrics on a weekly, semiannual, and occasional basis. A key purpose of the rulemaking was to facilitate the agency's monitoring of service conditions in the rail industry and the identification of trends or aberrations that could indicate service problems. Data reporting under the final rule began March 29, 2017.

During the summer of 2017, the Board initiated informal oversight and public assistance efforts in response to service problems caused by operational changes made by CSX Transportation, Inc. (CSX). The Board's efforts were prompted by several informal complaints from CSX customers, Congressional offices, and industry stakeholders, alleging increased transit times, unreliable switching operations, inefficient car routings, poor communications from CSX customer service, and acute disruptions to customers' business operations. These service issues were corroborated by performance data that all Class I railroads must now provide the Board.

The staff of the Board's Rail Customer and Public Assistance (RCPA) program has been working with CSX customers that sought informal assistance. In addition, the Board sent two letters to CSX's President and CEO to express its concern over deteriorated service across the railroad's network. In the first letter, the Board requested that CSX senior personnel participate in weekly calls with Board staff to better understand the scope and magnitude of CSX's performance issues and its efforts to resolve these problems. In the second letter, the Board further requested that CSX provide additional weekly service metrics to supplement the normally-required metrics. These CSX weekly service summaries are available on the Board's website. The Board also sent letters to the Senate Committee on Commerce, Science, and Transportation and to the House of Representatives Committee on Transportation and Infrastructure on August 16, 2017, to keep Congress apprised of Board efforts on these important service issues.

The Board held a public listening session in Washington, D.C., on October 11, 2017 (during FY 2018), to hear from CSX executives on plans to address the service problems, to provide interested parties the opportunity to report on recent service problems with CSX, and to discuss additional options to improve service. Further Board oversight and monitoring will continue until CSX has recovered from its service problems.

## **Passenger Rail**

*In On-Time Performance Under Section 213 of the Passenger Rail Investment & Improvement Act of 2008, EP 726 (STB served Jul. 28, 2016), the Board had issued a final rule defining "on-*

time performance” for purposes of implementing Section 213 of the Passenger Rail Investment and Improvement Act of 2008 (PRIIA), Pub. L. 110-432, 122 Stat. 4848 (2008). During FY 2017, the U.S. Court of Appeals for the Eighth Circuit determined that Congress had not authorized the Board to define intercity passenger rail on-time performance. Accordingly, the court vacated the STB’s EP 726 final rule. *Union Pac. R.R. v. STB*, 863 F.3d 816 (8th Cir. 2017), *petition for cert. filed* (U.S. Nov. 9, 2017) (No. 17-714).

In November 2016, the Board promulgated a final rule in *Dispute Resolution Procedures Under the Fixing America’s Surface Transportation Act of 2015*, EP 734 (STB served Nov. 29, 2016). Title XI of the Fixing America’s Surface Transportation Act of 2015 (FAST Act), Pub. L. No. 114-94 (2015) had 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. With respect to the enumerated cost allocation and recovery matters, the FAST Act had also authorized the Board to assist in arranging for alternative resolution of disputes between Amtrak and state agencies. The final rule laid out the procedures through which parties could request such assistance from the Board. On March 22, 2017, the Board denied a petition for reconsideration of its final rules.

## 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.<sup>8</sup> Its 15 appointed members consist of senior officials representing large and small shippers, large and small railroads, and one at-large representative. The Secretary of Transportation and the Board Members are ex-officio members. RSTAC holds meetings quarterly.

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<sup>8</sup> 49 U.S.C. § 1325.

**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,<sup>9</sup> 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 Board Vice Chairman is designated NGCC Co-Chairman. Meetings are held annually and, in accordance with Federal Advisory Committee Act, Pub. L. No. 92-463 (FACA), are open to the public.

**The Rail Energy Transportation Advisory Committee (RETAC)** provides 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. RETAC meetings are held at least twice a year and, in accordance with FACA, 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, respectively, on the Board's website at [https://www.stb.gov/stb/rail/railshipper\\_council](https://www.stb.gov/stb/rail/railshipper_council), [https://www.stb.gov/stb/rail/graincar\\_council](https://www.stb.gov/stb/rail/graincar_council), and <https://www.stb.gov/stb/rail/retac>.

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<sup>9</sup> For purposes of accounting and reporting, the Board designates three classes of freight railroads based upon their operating revenues, for three consecutive years. In 2016 dollars, the scale is as follows: Class I - \$447,621,226 or more; Class II – Less than \$447,621,226 but more than \$35,809,698; and Class III - \$35,809,698 or less. *See* Appendix D: Railroad Financial and Statistical Data.

## **Public Outreach**

In FY 2017, the Board kept Congress and the public informed about agency actions through public listening sessions, printed transcripts, news releases, and customer-service pamphlets. All of this information is made widely available through the agency's website, [www.stb.gov](http://www.stb.gov). The Board held an economic roundtable, and the Board's Regulatory Reform Task Force held a listening session during the fiscal year. Additionally, the Office of Environmental Analysis (OEA) conducted two public outreach meetings, one involving a rail acquisition case in the Chicago area and the other for a rail line construction case in Massachusetts.

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. RCPA staff attempt to seek common ground and to facilitate the informal settlement of disputes, allowing both sides to walk away satisfied.

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

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

In FY 2017, the RCPA handled 1,500 inquiries from stakeholders, of which approximately 210 pertained to informal railroad service disputes.

## 2

**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).<sup>10</sup> The Board decided 13 merger and consolidation matters in FY 2017.

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<sup>10</sup> 49 C.F.R. Parts 244 and 1106.

## Mergers and Consolidations: Oversight and Monitoring

In FY 2017, the Board continued to monitor CSX operations over a rail line in the Chicago area known as the Elsdon Line. The Board had permitted CSX to acquire an operating easement over the Elsdon Line in 2013. In 2016, based on concerns about blocked road crossings on the line and false activation of crossing gates, the Board required CSX to submit monthly status reports. In *CSX Transportation, Inc.—Acquisition of Operating Easement—Grand Trunk Western Railroad*, FD 35522 (STB served Jul. 27, 2017), the Board granted an unopposed request by CSX to modify one of the voluntary mitigation conditions imposed in 2013 and, noting that the agency remains concerned about fluidity problems, extended the monthly reporting requirement for an additional six months, through December 2017. In a decision served on December 14, 2017, the Board further extended the reporting requirement until June 2018 and asked that CSX provide additional information.

## 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 Class 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 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.

During FY 2017, the Board issued decisions licensing the acquisition of approximately 883 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. During FY 2017, the Board granted eight notices of exemption for trackage rights.



## 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 FY 2017, the Board rejected an application for the construction and operation of 261 miles of rail line in Wisconsin, Illinois, and Indiana, in *Great Lakes Basin Transportation, Inc.—Rail Construction & Operation—in Rock County, Wisc., Winnebago, Ogle, Lee, LaSalle, Grundy, and Kankakee Counties, Ill., and Lake, Porter, and LaPorte Counties, Ind.*, FD 35952 (STB served Aug. 31, 2017). In its decision, the Board found that Great Lakes Basin Transportation failed to provide sufficient financial information supporting its fiscal fitness to undertake the project. Accordingly, the Board rejected Great Lakes Basin Transportation's application and discontinued the environmental review process associated with the project.

Two construction cases are pending before the Board. OEA, in consultation with the U.S. Army Corps of Engineers (the joint-lead agency), is conducting a screening analysis as part of its environmental review of alternatives to determine which alternatives will be studied in the Environmental Assessment for *Palmetto Railways—Construction & Operation Exemption—in Berkeley County, S.C.*, Docket No. FD 36095. In November 2017 (during FY 2018), OEA issued the final scope of study for the Environmental Impact Statement (EIS) for the proposed acquisition, construction, and operation in *New England Transrail, LLC, d/b/a Wilmington & Woburn Terminal Railway—Construction, Acquisition & Operation Exemption—in Wilmington and Woburn, Mass.*, Docket No. FD 34797 (Sub-No. 1).

## 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 local traffic in two consecutive years and any overhead traffic can be rerouted over other lines.

In FY 2017, the Board authorized approximately 745 miles of rail line for abandonment in 34 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—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.

As noted, the Board significantly modified its long-standing OFA procedures in *Offers of Financial Assistance*, EP 729 (STB served Jun. 29, 2017).

In *CSX Transportation, Inc.—Abandonment Exemption—in LaPorte, Porter, and Starke Counties, Ind.*, AB 55 (Sub-No. 643X) (STB served May 31, 2017), the Board denied a request to reopen a 2004 decision that approved the sale of a 32.97-mile rail line by CSX, to the Town of North Judson, Ind., under the Board’s OFA procedures. The Board also denied the request to institute a declaratory order proceeding to address the Town’s actions. On June 20, 2017, the Chesapeake and Indiana Railroad Company filed a petition for reconsideration of the Board’s decision, but the parties later settled their dispute, and, at the parties’ request, the Board dismissed the petition for reconsideration with prejudice on September 29, 2017.

In *Norfolk Southern Railway—Abandonment Exemption—in Roanoke, VA*, Docket No. AB 290 (Sub-No. 389X), the Board accepted a late-filed notice of intent to file an OFA; ultimately however, no OFA was submitted. On December 20, 2017 (during FY 2018), the railroad gave notice to the Board that it had consummated abandonment of the line at issue.

### **Feeder-Line Development Program**

In *KCVN, LLC & Colorado Pacific Railroad--Feeder Line Application--Line of V&S Railway Located in Crowley, Pueblo, Otero, & Kiowa Counties, Colo.*, FD 36005 (STB served Jul. 31, 2017), the Board found that a feeder line application for a rail line in Colorado met the statutory criteria for a forced sale under 49 U.S.C. § 10907 and that the proposed purchaser was financially responsible and eligible to acquire the line. The Board then initiated a mediation process to help the parties agree on a purchase price for the line. At the conclusion of FY 2017, the case was pending at the Board. Thereafter (during FY 2018), the parties reached an agreement on the terms and conditions of the sale, and the Board approved the parties’ arrangement in a decision served on December 18, 2017.

### **Trail Use/Railbanking**

The Board administers the National Trails System Act’s “railbanking” 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/railbanking.

During FY 2017, the Board granted 15 requests for railbanking and interim trail use.

## **Liens on Rail Equipment**

Liens on rail equipment 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 1,530 rail liens in FY 2017.

## 3

**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 used 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 railroad’s revenues.

In September 2017, the Board announced that it had made its annual determination of revenue adequacy for the Class I freight railroads for 2016, in *Railroad Revenue Adequacy—2016 Determination*, EP 552 (Sub-No. 21) (STB served Sept. 6, 2017). A railroad is considered 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 2016, which the Board determined to be 8.88 percent. Congress directed the Board to conduct such revenue adequacy determinations on an annual basis. Here the Board found that the BNSF Railway Company (BNSF), Norfolk Southern Combined Railroad Subsidiaries, Soo Line Corporation, and Union Pacific Railroad Company (Union Pacific) were “revenue adequate” for 2016. 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. *See* Table D.5 in Appendix D for the actual figures.

In *Revisions to the Cost-of-Capital Composite Railroad Criteria*, EP 664 (Sub-No. 3) (STB served Apr. 18, 2017), to better reflect the current marketplace, the Board proposed rules to update one of the screening criteria used to create the “composite railroad” for the Board’s annual cost-of-capital determination. Specifically, the Board proposed that the stock exchange screening criteria require a company’s stock to be listed on either the New York Stock Exchange

(NYSE) or the Nasdaq Stock Market, rather than on either the NYSE or American Stock Exchange (AMEX), as the AMEX no longer exists. On October 25, 2017, the Board adopted this proposal as a final rule.

## **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 available on the agency's website, [www.stb.gov](http://www.stb.gov), as well as on the websites of the originating carriers.

## **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.

As noted earlier, during FY 2017, the Board modified its regulations regarding the manner in which Class I carriers must disclose their rates and terms for agricultural products and fertilizer,

by requiring these carriers to make them available through their websites. *See Publication Requirements for Agricultural Products*, EP 528 (Sub-No. 1) (STB served Jun. 30, 2017).

### **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 complaint is filed asserting that 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" 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 Board had one rate case pending the issuance of a merits decision at the close of FY 2017: *Consumers Energy Company v. CSX Transportation, Inc.*, Docket No. NOR 42142. This case required significant Board attention and resources. The last evidentiary filing was received in April 2017, and the Board issued a decision on the reasonableness of the challenged rates on January 11, 2018 (during FY 2018).

On January 4, 2017, the Board issued a final decision in *Total Petrochemicals & Refining USA, Inc. v. CSX Transportation, Inc.*, NOR 42121 (STB served Jan. 4, 2017), dismissing as moot the petitions of CSX for technical corrections and reconsideration of the Board's September 14, 2016 decision. In its September 2016 decision, the Board found that Total Petrochemicals & Refining USA, Inc. had not demonstrated that the challenged rates were unreasonable under the SAC test.

## **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 *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 those 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 Jul. 18, 2013, Dec. 3, 2014).

As highlighted earlier, in March 2017, pursuant to Section 11 of the STB Reauthorization Act, the Board proposed changes to its rules pertaining to its rate case procedures to help improve and expedite the rate review process, *Expediting Rate Cases*, EP 733 (STB served Mar. 31, 2017). The Board adopted a final rule on November 30, 2017 (during FY 2018).

In *Rail Transportation of Grain, Rate Regulation Review*, EP 665 (Sub-No. 1) (STB served Jun. 30, 2017), the Board denied a petition for reconsideration of the Board's policy statement regarding aggregation of claims and standing issues as they relate to rate complaint procedures.

## 4

**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. The Board also has authority to address the reasonableness of a rail carrier's rules and practices.

Noteworthy cases during FY 2017 include the following:

*North Coast Railroad v. Sonoma-Marín Area Rail Transit District*, NOR 42148, and *North Coast Railroad—Petition for Declaratory Order*, FD 36077 (STB served Oct. 21, 2016). The North Coast Railroad Authority and Northwestern Pacific Railroad Company sought an emergency declaratory order and preliminary injunctive relief to prevent Sonoma-Marín Area Rail Transit District from interfering with freight rail operations over portions of a rail line. The Board denied the request for a preliminary injunction finding that irreparable harm, in the absence of an injunction, had not been demonstrated. Due to the apparent cessation of freight rail service, the Board scheduled a series of conference calls to clarify the record and address the disposition of certain pending shipments. After further briefing and adopting a procedural schedule, the parties ultimately reached an agreement as to rail transportation and storage.

*Richard Best Transfer, Inc. v. Union Pacific Railroad Company*, NOR 42149 (STB served Dec. 22, 2016). Richard Best Transfer, Inc., filed an unreasonable practice complaint regarding certain revisions to a Union Pacific tariff and sought a preliminary injunction of the

implementation of the revisions. The Board denied the request for a preliminary injunction because there was no showing of irreparable harm or that the unreasonable practice complaint was likely to succeed on the merits.

*American Fuel & Petrochemical Manufacturers v. BNSF Railway Company*, NOR 42146 (STB served Feb. 8, 2017). American Fuel & Petrochemical Manufacturers (AFPM) filed a complaint requesting that certain railroad charges by BNSF be voided and rescinded as unreasonable and in violation of BNSF's common carrier obligation. The Board granted a motion filed by BNSF to dismiss AFPM's complaint finding that AFPM had not stated reasonable grounds for investigation or action.

*United States Department of Energy and United States Department of Defense v. Baltimore & Ohio Railroad*, NOR 38302S, and *United States Department of Energy and United States Department of Defense v. Aberdeen & Rockfish Railroad*, NOR 38376S (STB served Jun. 28, 2017). The Board approved an agreement negotiated between two federal government departments and Norfolk Southern Railway Company to settle longstanding rate reasonableness complaints as between them only. At the parties' request, the Board prescribed the rates, rate update methodologies, as amended, and the maximum revenue-to-variable cost ratios contained in the agreement.

In *North American Freight Car Association, et. al. v. Union Pacific Railroad Company*, NOR 42144 (STB served Mar. 31, 2017), the Board granted a motion filed by Union Pacific to consolidate three unreasonable tariff and practices complaint proceedings (NOR 42144; NOR 42150; and NOR 42152). The cases were pending before the Board at the conclusion of FY 2017. On October 5, 2017 (during FY 2018), the Board granted a motion by Union Pacific to consolidate a new complaint proceeding (NOR 42153) with the existing consolidated proceedings.

## **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 and other issues of concern. During FY 2017, 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.

**5****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 protections provide procedures for dispute resolution through negotiation and, if necessary, arbitration. Arbitration awards are appealable to the agency under limited criteria giving great deference to the arbitrators' expertise.

During FY 2017, there were no significant cases in this area.

## 6

**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 2017 are discussed below.

*Tesoro Refining & Marketing Co.—Petition for Declaratory Order*, FD 36041 (STB served Nov. 16, 2016). The Board denied a request that it issue a declaratory order finding that 49 U.S.C. § 10501(b) preempts claims of a Native American tribe in pending federal district court litigation between that tribe and a railroad. Board Member Begeman dissented with a separate expression.

*Sunflower Rails-Trails Conservancy, Inc.—Petition for Declaratory Order—Sale of Railbanked Right-of-Way*, FD 36034 (STB served Feb. 23, 2017). The Board found that a county's foreclosure on, and sale of, parcels of a railbanked line that occurred in 2004 were preempted by federal law. The Board also provided the parties with guidance on how they could proceed to have their claims addressed.

*San Pedro Peninsula Homeowner's United Inc.—Petition for Declaratory Order*, FD 36065 (STB served Mar. 6, 2017). The Board denied a petition for declaratory order regarding certain rail movements associated with the Port of Los Angeles Harbor Department and Rancho LPG Holdings, LLC, but provided guidance on application of federal preemption.

*Washington & Idaho Railway—Petition for Declaratory Order*, FD 36017 (STB served Mar. 17, 2017). The Board denied a petition for an order declaring that federal law preempts state and local laws that would prohibit or unreasonably burden or interfere with a planned rail transload facility project in Spokane County, Wash. The Board also provided guidance on the question of preemption.

*The City of Ozark, Ark.—Petition for Declaratory Order*, FD 36104 (STB served Jul. 28, 2017). The Board found that requiring reinstallation of an at-grade crossing in Ozark, Ark., under state law is preempted by 49 U.S.C. § 10501(b). On December 8, 2017 (during FY 2018), the Board

issued a decision denying a petition filed by the City of Ozark, Ark., requesting reconsideration of the Board's July 28, 2017 decision.

*Diana Del Grosso, et al.—Petition for Declaratory Order, FD 35652 (STB served Jul. 31, 2017).*

On remand from a decision of the U.S. Court of Appeals for the First Circuit, the Board determined that certain activities performed at a rail-truck transloading facility in Upton, Mass., are services related to the movement of property by rail and thus constitute transportation to which preemption applies. Board Member Miller dissented in part.

## 7

**ENVIRONMENTAL REVIEW****Environmental Review Process**

Under the National Environmental Policy Act of 1969 (NEPA),<sup>11</sup> the Board must consider the environmental impacts of its actions before making its final decision in certain cases (termed “major federal actions” in NEPA) filed before the Board. OEA assists the Board by conducting independent environmental reviews of major federal actions and by preparing necessary environmental documentation, such as an EIS, when a railroad proposal presents a potential for significant environmental impacts, a more limited Environmental Assessment (EA), or a finding that the railroad proposal is exempt from NEPA. OEA also conducts public outreach to inform interested parties about railroad proposals and to provide an opportunity for the public to identify environmental concerns. Finally, OEA provides technical advice and recommendations to the Board on environmental matters.

OEA typically conducts environmental reviews for rail-line construction proposals, abandonments, and mergers. Following the provisions of NEPA, the Board’s environmental rules,<sup>12</sup> regulations of the President’s Council on Environmental Quality,<sup>13</sup> the National Historic Preservation Act (NHPA),<sup>14</sup> and other applicable federal environmental requirements, OEA strives to produce efficient, accessible, cost-effective, and legally defensible environmental analyses.

**Rail Line Constructions**

In FY 2017, OEA continued work on EISs involving the California High-Speed Rail 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 in

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<sup>11</sup> 42 U.S.C. §§ 4321-45.

<sup>12</sup> 49 C.F.R. § 1105.

<sup>13</sup> 40 C.F.R. §§ 1500-08.

<sup>14</sup> 54 U.S.C. §§ 300101-307101.



the environmental review for the Baltimore-Washington Superconducting MAGLEV Project, the proposed high-speed magnetic levitation train connecting Baltimore, Md., BWI Airport, and Washington, D.C., and for the Jasper Ocean Terminal Port Project, involving the construction of a double track rail corridor between the proposed marine container terminal and existing rail lines in Jasper County, S.C.

In other rail line construction proposals, OEA accomplished the following:

- 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 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;
- Approved a Draft Cultural Resources Report and a Final Resolution Plan submitted by the railroad applicant 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;
- Conducted preliminary environmental analysis 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;
- Conducted scoping analysis 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);

- Began the environmental review process for the proposed construction and operation of a 20-mile rail line to serve the Camp Hall Commerce Park, in *Palmetto Railways—Construction & Operation Exemption—in Berkeley County, S.C.*, Docket No. FD 36095; and
- Reviewed a Tier 2 Project Level EA as a cooperating agency with the Minnesota Department of Transportation for 152 miles of new passenger rail service that would run between Minneapolis and Duluth, in *Northern Lights Express—Minneapolis to Duluth, Minn.*, Docket No. FD 36052.

## 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 2017, OEA conducted approximately 30 EAs in connection with rail line abandonments. Most notably, OEA continued work on complying with the four-step historic preservation process in the proposed abandonment on the Harsimus Stem Embankment, in *Consolidated Rail Corp.—Abandonment Exemption—in Hudson County, N.J.*, Docket No. AB 167 (Sub-No. 1189X).

## Railroad Mergers and Acquisitions

In the area of rail mergers and acquisitions, 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.<sup>15</sup> That oversight and monitoring ended in January 2017, when the Board-imposed conditions expired.

OEA also:

- Conducted ongoing oversight and monitoring to verify a 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 a 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.

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<sup>15</sup> See 49 C.F.R. Part 1106.

## 8

**FINANCIAL CONDITION OF RAILROADS**

The Board monitors the financial condition of railroads as part of its oversight of the rail industry. The agency prescribes a uniform accounting system<sup>16</sup> 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.<sup>17</sup>

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](http://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.<sup>18</sup> 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).<sup>19</sup> 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 adjustment's inception in 1989.<sup>20</sup>

In FY 2017, the Board proposed a one-time modification to the annual productivity adjustment, which is used to adjust RCAF. The need for a modification was due to a change in methodology used by the government's contractor to measure rail movement distances. To account for the difference in the distance methodologies and avoid unfairly skewing the 2015 productivity adjustment, the Board proposed a “linking factor,” which it ultimately adopted (during FY 2018)

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<sup>16</sup> 49 U.S.C. §§ 11141-43, 11161-64, 1200-1201.

<sup>17</sup> 49 U.S.C. §§ 11145, 1241-1246, 1248.

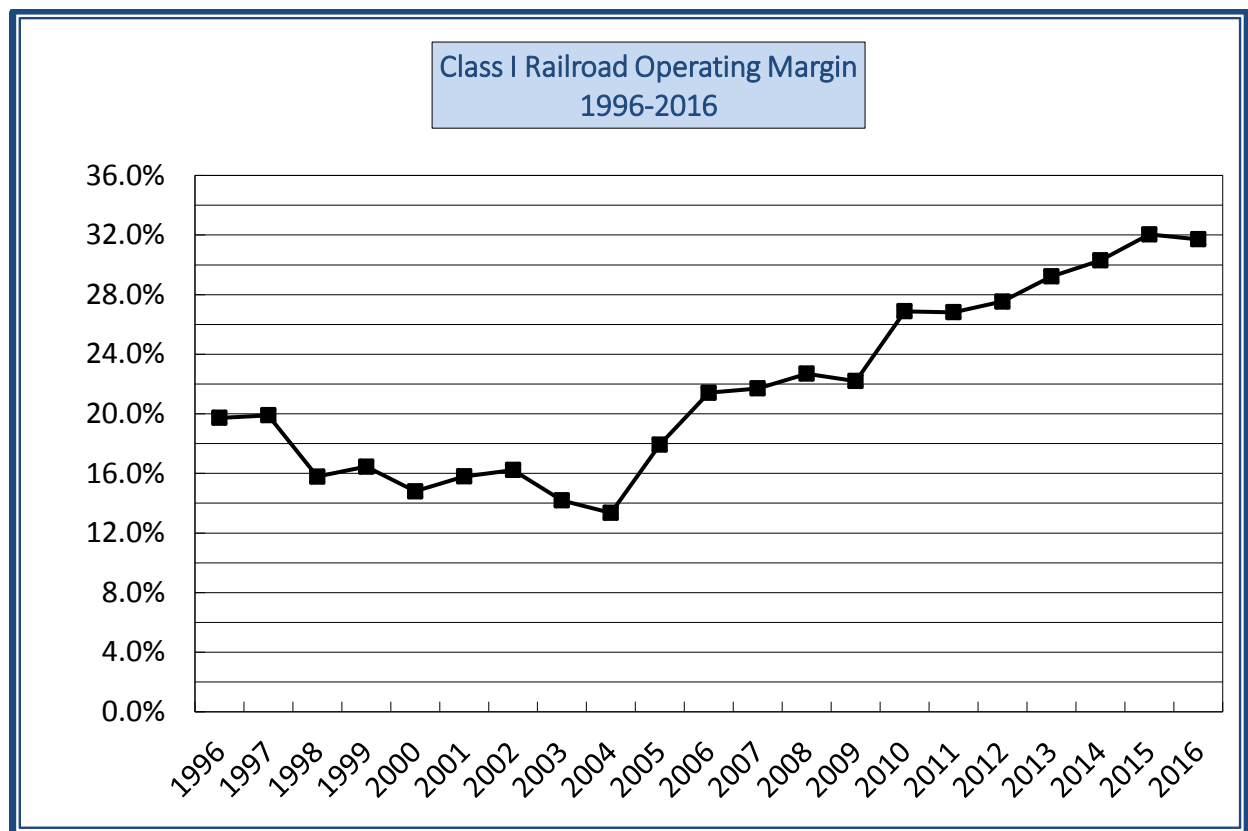
<sup>18</sup> See Appendix A.

<sup>19</sup> 49 U.S.C. §§ 10708, 1135.

<sup>20</sup> *Productivity Adjustment—Implementation*, 1 S.T.B. 739 (1996).

after seeking comments and holding a technical workshop to explain the proposed linking factor to interested persons and to answer technical questions about the linking factor methodology. See *Railroad Cost Recovery Procedures—Productivity Adjustment*, EP 290 (Sub-No. 4) (STB served Sept. 29, 2017).

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.



**Figure 8.1 Class I Railroad Operating Margin**

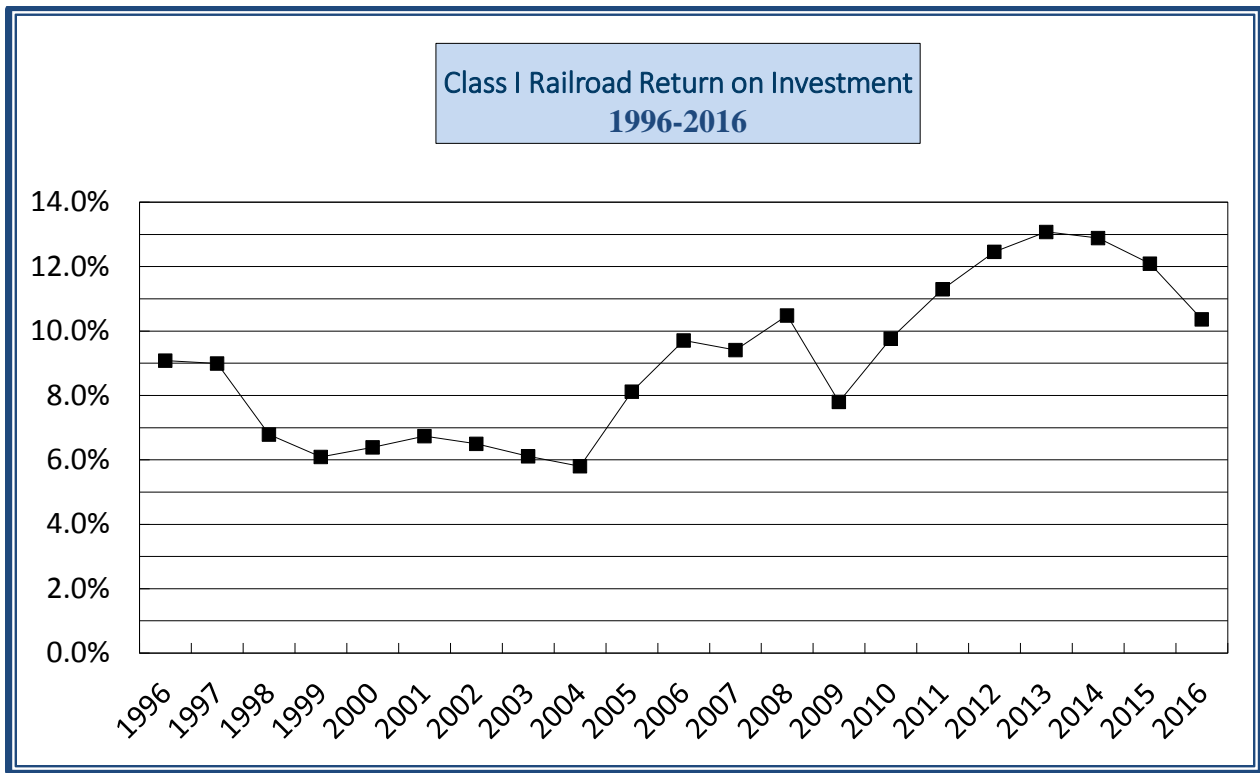


Figure 8.2 Class I Railroad Return on Investment

## 9

**AMTRAK AND PASSENGER RAIL**

The Board has certain 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 (including disputes concerning Amtrak's statutory right of preference over other railroads' lines), and to set the terms and conditions of shared use if Amtrak and railroads or regional transportation authorities fail to reach voluntary agreements.

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

**Amtrak Contracts with Freight Carrier Hosts**

*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. Per the parties' schedule, rebuttal submissions were filed in September 2017, and the evidentiary record is expected to close in February 2018 (during FY 2018).*

**Amtrak On-Time Performance**

Two on-time performance cases brought under Section 213 of PRIIA are pending at the Board, but the FRA/Amtrak metrics and standards governing on-time performance are not in effect because Section 207 of PRIIA, under which those metrics and standards were adopted, was found unconstitutional by the U.S. Court of Appeals for the D.C. Circuit.

And, as noted earlier, the Board's decision seeking to step in and adopt its own on-time performance rules under Section 213 of PRIIA was set aside by the Eighth Circuit in a decision served on July 12, 2017.

As of the end of FY 2017, certain residual legal procedures had not been definitively concluded with respect to the constitutionality of PRIIA Section 207, and the deadline (November 9, 2017) for filing a writ of certiorari regarding the Eighth Circuit's decision in *Union Pac. R.R. v. STB*, 863 F.3d 816 (8th Cir. 2017), *petition for cert. filed* (U.S. Nov. 9, 2017) (No. 17-714) had not passed, although petitions for certiorari were filed during FY 2018.

## **Amtrak State-Supported Routes**

Under certain circumstances, the Board may be called upon to set terms for access to Amtrak equipment, service, and facilities by non-Amtrak passenger railroads, and, upon request, the STB provides mediation services to assist dispute resolution regarding commuter-rail access to freight-rail services and facilities.

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 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 developed by the Northeast Corridor Commission (NEC Commission). At MBTA's request, the Board put the case in abeyance in October 2016. On July 10, 2017, Amtrak informed the Board that it had reached agreement with the MBTA on a new agreement covering the areas in dispute under Docket No. FD 36048. The Board terminated the proceeding by decision served Jul. 31, 2017.

## **Non-Amtrak Passenger Service**

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



interstate rail network.”<sup>21</sup> Excluded from this jurisdiction, however, is “mass transportation provided by a local government authority.”<sup>22</sup> The Board had no significant proceedings involving non-Amtrak passenger carriers in FY 2017.

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<sup>21</sup> 49 U.S.C. § 10501(a)(2)(A).

<sup>22</sup> 49 U.S.C. § 10501(c)(2)(A).

## 10

**MOTOR, WATER, AND PIPELINE CARRIAGE****MOTOR CARRIAGE****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 2017, the Board issued the following decisions:

- *AAAHI Acquisition Corp.—Acquisition of Control—All Aboard America! Holdings, Inc.*, MCF 21071 (STB served Oct. 28, 2016);
- *National Express LLC—Acquisition of Control—Trinity, Inc.*, MCF 21073 (STB served Nov. 4, 2016);
- *Prisoner Transportation Services, LLC—Control—U.S. Corrections*, MCF 21067 (STB served Nov. 11, 2016);
- *Cavallo Bus Lines, LLC—Acquisition of Control of Assets—White Knight Limousine, Inc.*, MCF 21075 (STB served Mar. 17, 2017);
- *Monarch Ventures Inc.—Acquisition of Control—Quick Coach Lines Ltd.*, MCF 21074 (STB served Mar. 29, 2017); and
- *Lone Star Coaches, Inc.—Control—Tri-City Charter of Bossier, Inc.*, MCF 21076 (STB served Jun. 9, 2017).

**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 2017, the Board issued no formal decisions in the household goods area, and no cases were filed with the Board.

## **Collective Activities**

In *Petition for Suspension and Investigation NMFC 100-AP Supplement 2*, ISM 35008 (STB served Jan. 11, 2017), the Board denied a request to investigate amendments to the Uniform Straight Bill of Lading set forth in the National Motor Freight Classification. Because the amendments were not adopted under an approved collective rate-setting agreement, they were not subject to the reasonableness requirements of 49 U.S.C. § 13703. Thus, there was no basis for an investigation.

## **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 did not receive any

water carrier-related complaints during FY 2017, 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 2017, the Board had one pipeline case pending the issuance of a merits decision: *Dyno Nobel, Inc. & Dyno Nobel La. Ammonia, LLC v. NuStar Pipeline Operating P'ship, L.P.*, Docket No. NOR 42147. On March 24, 2017, the Board held the proceeding in abeyance pending resolution of the parties' state law issues and, on September 29, 2017, denied Dyno Nobel's petition to reconsider the March 2017 decision.

## 11

**BOARD JURISDICTION AND REGULATION**

Under 5 U.S.C. § 554(e) and 49 U.S.C. § 1321 (formerly § 721), the Board may issue a declaratory order to terminate a controversy or remove uncertainty. The Board has broad discretion in determining whether to issue a declaratory order. *See Intercity Transp. Co. v. United States*, 737 F.2d 103 (D.C. Cir. 1984); *Delegation of Auth.—Declaratory Order Proceedings*, 5 I.C.C. 2d 675 (1989). During FY 2017, the Board issued decisions in response to petitions for declaratory order in the following noteworthy cases.

*Atlanta Development Authority—Verified Petition for a Declaratory Order*, FD 35991 (STB served Dec. 15, 2016). The Board found that while the acquisition of the northern segment of a line of railroad in Fulton County, Ga., did not require Board authority, acquisition of the southern segment did require Board authority. Because part of the southern segment had subsequently been abandoned by the carrier that had improperly conveyed the segment without Board authority, the Board determined that no corrective action was necessary. But for the part of the southern segment that remained within the Board’s jurisdiction, the Board required Atlanta Development Authority and Atlanta BeltLine, Inc. (Atlanta Beltline) to either obtain Board authority for the acquisition or amend the real estate deed so that Board authority would not be required. In response, Atlanta Beltline amended the deed.

*CL Consulting and Management Corporation—Petition for Declaratory Order*, FD 36042 (STB served Jan. 25, 2017). The Board denied a petition for declaratory order filed by CL Consulting and Management Corp. (CLC) because the dispute over demurrage charges was still pending in the U.S. District Court for the District of New Jersey, and the district court denied CLC’s motion to refer issues associated with the demurrage charges to the Board.

*Jersey Marine Rail, LLC—Petition for Declaratory Order*, FD 36063 (STB served Jan. 31, 2017). The Board concluded that Jersey Marine Rail, LLC (JMR) needed operating authority, but not construction authority, to carry out a proposed plan to rehabilitate certain track within the

City of Linden, N.J., and operate over that track as a common carrier. The Board also granted JMR the necessary operating authority.

*Angeles A. Zorzi, et al.,—Petition for Declaratory Order*, FD 36016 (STB served Jan 31, 2017). The Board denied a petition for declaratory order, finding that a railroad right-of-way in Montpelier, Vt., has not been abandoned and remains part of the national rail network.

*NewVistas Property Holdings, LLC—Petition for Declaratory Order*, FD 36040 (STB served Mar. 17, 2017). The Board found that a portion of Union Pacific’s Ironton Branch in Provo City, Utah, remained within the Board’s jurisdiction but another portion of the Ironton Branch was not part of the national rail system and was no longer within the Board’s jurisdiction.

*Tri-City Railroad—Petition for Declaratory Order*, FD 36037 (STB served Jun. 1, 2017). The Board denied a petition for declaratory order filed by Tri-City Railroad Company, LLC regarding the nature of certain track serving an industrial park that the City of Richland owns, the need for Board authority on that track, and the effect of certain terms of the track use agreements under which BNSF and Union Pacific operate over the track.

*State of South Dakota—Petition for Declaratory Order*, FD 36096 (STB served Jun. 14, 2017). The Board granted the State of South Dakota’s request for an order declaring that the Napa-Platte Regional Railroad Authority’s operating rights over a state-owned rail line are terminated.

*Soo Line Railroad—Petition for Declaratory Order*, FD 36107 (STB served Aug. 10, 2017). Soo Line Railroad filed a petition for declaratory order requesting that the Board find that termination of an interchange agreement would require Board approval. The Board found that litigation between the parties in United States District Court over a contractual issue between the parties presented a threshold matter that should be resolved prior to the Board considering the petition. Therefore, the Board placed the proceeding in abeyance pending resolution of the issue in District Court. This case was pending before the Board at the end of FY 2017.

*Hartwell First United Methodist Church—Adverse Abandonment and Discontinuance—The Great Walton Railroad Company, Inc., in Hart County, Ga.*, AB 1242 (STB served Aug. 31, 2017). Hartwell First United Methodist Church filed an application under 49 U.S.C. § 10903 requesting that the Board authorize the third-party, or adverse, abandonment and discontinuance of approximately 0.25 miles of rail line and associated right-of-way owned by The Great Walton Railroad Company (GWRC) in Hartwell, Ga. In its August 31, 2017 decision, the Board directed GWRC to provide supplemental information about its agreement to lease the subject rail line to a third party. On January 31, 2018 (during FY 2018), the Board issued a decision that denied the third-party application but, given the unique circumstances of the case, directed GWRC to biannually submit status reports on the rail line’s rehabilitation and use.

## 12

## OTHER BOARD ORDERS

The Board uses a grant-stamp procedure<sup>23</sup> for issuing 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.

**Figure 12.1 Grant Stamp, FY 2017**

Of the 321 Director Order decisions made during the fiscal year 2017, 105 (or approximately 32 percent) were made by grant stamp.

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<sup>23</sup> *Policy Statement on Grant Stamp Procedure in Routine Director Orders*, EP 709 (STB served Nov. 14, 2011).



## 13

## 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 2017.

In a case requesting “enforcement of merger conditions,” the U.S. Court of Appeals for the Ninth Circuit upheld the Board’s decision denying a request by G3 Enterprises and BNSF to construe the 1996 decision approving, with conditions, the Union Pacific/Southern Pacific merger as giving G3 competitive access to BNSF. *G3 Enterprises v. STB*, No. 15-70597 (9th Cir. Feb. 24, 2017).

In an abandonment case, the D.C. Circuit granted the Board’s motion to summarily dismiss an appeal by Mr. James Riffin arguing that the Board should have disallowed a Conrail abandonment because Conrail allegedly had earlier transferred the property to another carrier. *Riffin v. STB*, No. 16-1147 (D.C. Cir. Oct. 6, 2016).

In a review of a rulemaking proceeding, the Eighth Circuit set aside the Board’s rulemaking decision adopting on-time performance standards for Amtrak, finding that Congress intended to give that authority only to the FRA and Amtrak, under a separate statutory provision that another court found unconstitutional. *Union Pac. R.R. v. STB*, 863 F.3d 816 (8th Cir. 2017), *petition for cert. filed* (U.S. Nov. 9, 2017) (No. 17-714).

In a preemption case, the D.C. Circuit upheld a Board decision finding that a Delaware statute seeking to regulate railroad idling was categorically preempted. *State of Delaware v. STB*, 859 F.3d 16 (D.C. Cir. 2017).

In another case involving preemption, the Ninth Circuit found a Board decision providing guidance to the California Supreme Court on rail projects involving state rail agencies to be advisory and hence not reviewable. *Kings County v. STB*, No. 15-71780 (9th Cir Aug. 2, 2017).

## 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](http://www.stb.gov). Unless otherwise indicated, hardcopies of agency reports and publications are available by telephoning the Office of Public Assistance, Governmental Affairs, and Compliance, at (202) 245-0238, or by emailing [RCPA@stb.gov](mailto:RCPA@stb.gov), or writing to the address below:

**SURFACE TRANSPORTATION BOARD  
395 E ST, SW  
WASHINGTON, D.C. 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](http://www.gpo.gov/fdsys/browse/collectionUScode.action?collectionCode=USCODE)

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

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

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

## **The Board's Website**

The Board's website ([www.stb.gov](http://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 EAs and EISs) 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;
- The quarterly correspondence and reports sent from the Board to the oversight committees of the U.S. Senate and U.S. House of Representatives;

- Testimony before Congress by Board Members;
- Live audio and video streaming of public Board events, including hearings, meetings, and oral arguments (proceedings are archived on the agency's website and 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 RCPA Program;
- The STB's 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;
- 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; and
- 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 Apr. 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 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. Hardcopies of decisions and filings are available for a fee (minimum charges apply), and a higher fee applies to requests for certified copies. For information, contact the Office of Public Assistance, Governmental Affairs, and Compliance, at (202) 245-0238, or by emailing [RCPA@stb.gov](mailto: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 shown at the beginning of this Appendix, or by calling (202) 245-0238.

## 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 Office of Public Assistance, Governmental Affairs, and Compliance, at (202) 245-0238, between the hours of 10:00 A.M. to 3:00 P.M., Monday through Friday. Report copies are available for a fee, minimum charges apply, and a higher fee applies to requests for certified copies.

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

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

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

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

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

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

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



*Report of Fuel Cost, Consumption, and Surcharge Revenue*—A quarterly report containing the following information: total quarterly fuel cost, gallons of fuel consumed during the quarter, increased or decreased cost of fuel over the previous quarter, total quarterly revenue from fuel surcharges for all traffic, and revenue from fuel surcharges on regulated traffic. This required reporting commenced with the three months beginning Oct. 1, 2007. *Rail Fuel Surcharges*, EP 661 (Sub-No.1) (STB served Aug. 14, 2007) (submitted quarterly; 4<sup>th</sup> 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 Office of Public Assistance, Governmental Affairs, and Compliance, 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 expanded versions of the Commodity Revenue Stratification Report, a 5-Digit Standard Transportation Commodity Code (STCC) report and a 7-Digit STCC report. These reports show the revenue, variable costs, tons, and carloads associated with many combinations of car type and five-digit STCC.

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

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

*Rail Cost Adjustment Factor (RCAF)*—an index used to adjust for inflation in long-term railroad contracts, rate negotiations, and transportation studies as computed quarterly in *Quarterly Rail Cost Adjustment Factor*, 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 Docket No. 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 Office of Public Assistance, Governmental Affairs, and Compliance, at (202) 245-0238, or by emailing [RCPA@stb.gov](mailto: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 FY 2017 as required by the *Government Performance and Results Modernization Act of 2010* (Pub.L.103-62); includes the Independent Auditors’ Report for the STB for FY 2017.

*Overview: Abandonments and Alternatives to Abandonments*—rules and regulations applicable to abandonments, line sales, and railbanking (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, 2017.

*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 for a fee or in some cases free of charge. To purchase any of these items or obtain additional information, contact the Office of Economics at (202) 245-0333.

*Uniform Railroad Costing System 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 2010 to 2017 for activities included under the current appropriation title “Salaries and Expenses.”

Table B.1 Average FTE Employment and Appropriations FY 2010 – 2017 <sup>1</sup>			
Fiscal Year	Appropriation	STB Offset <sup>2</sup>	Average Employment
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
2017	35,750,000	1,250,000	130

<sup>1</sup> 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).

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

<b>Table B.2</b>		
<b>Status of STB Fiscal Year Appropriations</b>		
<b>FY 2010- 2017 *</b>		
<b>Status of FY 2010 Appropriations*</b>		
	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
<b>Status of FY 2011 Appropriations*</b>		
	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
<b>Status of FY 2012 Appropriations*</b>		
	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
<b>Status of FY 2013 Appropriations*</b>		
	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
<b>Status of FY 2014 Appropriations*</b>		
	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
<b>Status of FY 2015 Appropriations*</b>		
	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
Status of FY 2017 Appropriations*		
	Total appropriations (adjusted)	36,367,053
	Offsetting collections ( <i>see note</i> )	632,947
	Reimbursements from other agencies	0
	Total obligations	32,256,809
	Unobligated balance available for adjustments	4,110,244
	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 2010-2017 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 2017

<b>Table C.1 FY 2017 Caseload Rail Matters</b>					
<b>Category</b>	<b>Pending at Start</b>	<b>Received During</b>	<b>Decided During</b>	<b>Pending at End</b>	<b>Decisions Served</b>
Carrier Consolidations	1	10	11	0	18
Review of Labor Arbitral Decisions	0	0	0	0	0
Rates and Services	7	12	7	12	42
Constructions	5	2	1	6	3
Abandonments	12	84	85	11	209
Other Line Transactions	16	53	59	10	87
Collective Actions	0	0	0	0	0
Data Collection and Oversight	0	7	6	1	9
Passenger Rail	4	0	1	3	8
Exempt Rulemakings	12	11	12	11	37
Other Rail	0	2	2	0	3
<b>Total Rail</b>	<b>57</b>	<b>181</b>	<b>184</b>	<b>54</b>	<b>416</b>

<b>Table C.2 FY 2017 Caseload Nonrail Matters</b>					
<b>Category</b>	<b>Pending at Start</b>	<b>Received During</b>	<b>Decided During</b>	<b>Pending at End</b>	<b>Decisions Served</b>
<b>Motor</b>	0	0	0	0	0
Rate Reasonableness	0	0	0	0	0
Collective Actions	0	0	0	0	0
Undercharges	0	0	0	0	0
Bus Regulation	1	5	6	0	9
Other Motor	1	0	0	1	1
<b>Water</b>	0	0	0	0	0
<b>Pipeline</b>	0	0	0	0	0
<b>Other</b>	9	11	13	7	48
<b>Total Nonrail</b>	<b>11</b>	<b>16</b>	<b>19</b>	<b>8</b>	<b>58</b>
<b>Total Rail and Nonrail</b>	<b>68</b>	<b>197</b>	<b>203</b>	<b>62</b>	<b>474</b>

## **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. As of January 1, 2017, seven Class I Railroads were subject to the Uniform System of Accounts or were required to file annual and periodic reports.

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 2012 are listed in 82 Fed. Reg. 29361 (2017).

<b>Table D.1 Railroad Revenue Thresholds</b>			
<b>Year</b>	<b>Factor</b>	<b>Class I</b>	<b>Class II</b>
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
2016	0.5585	447,621,226	35,809,698

<b>Table D.2</b>				
<b>Class I Railroads: Condensed Income Statement, Financial Ratios, and Employee Data, 2013-2016</b>				
<i>(Dollars in Thousands)</i>				
	Calendar Year			
	2013	2014	2015	2016
1. Class 1 Carriers	7	7	7	7
<b>CONDENSED INCOME STATEMENT</b>				
2. Total operating revenues	\$72,873,269	\$77,658,866	\$71,709,219	\$65,762,062
3. Total operating expenses	51,582,531	54,129,064	48,731,146	44,908,540
4. Net railway operating income	13,851,791	14,651,212	14,814,868	13,429,437
5. Net income	13,396,923	14,403,212	14,470,416	13,202,313
6. Dividends Paid	4,497,750	3,482,565	2,655,257	2,733,406
<b>NET INVESTMENT AND EQUITY</b>				
7. Net investment, transp. prop. & eqpmt <sup>a</sup>	105,870,413	113,679,403	122,515,510	129,559,422
8. Shareholders' equity	99,026,878	112,060,764	126,460,795	138,944,359
<b>FINANCIAL RATIOS (PERCENT)</b>				
9. Operating ratio (L3/L2)	70.78%	69.70%	67.96%	68.29%
10. Return on net investment (L4/L7)	13.08%	12.89%	12.09%	10.37%
11. Return on equity (L5/L8)	13.53%	12.85%	11.44%	9.50%
<b>EMPLOYEE DATA</b>				
12. Average number of employees	162,798	166,625	169,384	152,696
13. Compensation	13,072,880	14,733,720	14,621,903	12,942,802

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

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

<b>Table D.3</b>				
<b>Class I Railroads: Selected Balance Sheet Data as of</b>				
<b>December 31, 2013-2016</b>				
<b>(Dollars in Thousands)</b>				
	<b>Calendar Year</b>			
	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>
<b>1. Total current assets</b>	\$21,133,864	\$24,153,702	\$26,831,227	\$ 21,629,779
<b>2. Total current liabilities</b>	16,318,500	18,233,269	18,709,907	12,679,317
<b>3. Transportation property</b>				
Road	160,600,659	168,665,380	178,674,502	187,205,662
Equipment	43,019,991	46,510,823	49,456,284	51,284,088
Other	3,432,195	4,474,258	4,585,481	4,350,655
Less accumulated depreciation and amortization	52,965,373	53,992,840	53,935,397	54,881,239
Net transportation property	154,087,472	165,657,621	178,780,870	187,959,166
<b>4. Long-term debt (due after 1 yr.)</b>	17,018,470	17,846,535	20,203,622	20,740,225
<b>5. Shareholders' equity</b>				
Capital stock (par value)	558,789	405,486	405,487	405,487
Additional capital (above par)	34,321,654	43,795,989	52,875,916	61,863,544
Retained earnings	64,150,222	67,863,076	73,183,179	76,679,115
Less treasury stock	3,787	3,787	3,787	3,787
<b>Net shareholders' equity</b>	99,026,878	112,060,764	126,460,795	138,944,359

Table D.4 Railroad Cost of Capital, Percentage Return on Investment (ROI), Revenue Adequacy Status 2013-2016 <sup>a</sup>				
	Calendar Year			
	2013 <sup>b</sup>	2014 <sup>c</sup>	2015 <sup>d</sup>	2016 <sup>e</sup>
<b>Cost of Capital</b>	11.32	10.65	9.61	8.88
<b>ROIs of Class I Railroads</b>				
BNSF Railway Company	<b>14.01</b>	<b>12.88</b>	<b>12.82</b>	<b>10.11</b>
CSX Transportation, Inc.	10.00	10.18	9.00	8.62
Grand Trunk Corp (including U.S. affiliates of Canadian National Railway)	<b>11.84</b>	<b>11.30</b>	<b>10.77</b>	8.60
Kansas City Southern Railway Company	8.67	8.18	7.20	6.23
Norfolk Southern Combined Railroad Subsidiaries	<b>12.07</b>	<b>11.69</b>	9.03	<b>9.20</b>
Soo Line Corp (including U.S. affiliates of Canadian Pacific Railway)	<b>12.03</b>	-0.42	<b>14.50</b>	<b>9.58</b>
Union Pacific Railroad Company	<b>15.39</b>	<b>17.35</b>	<b>15.54</b>	<b>13.39</b>

<sup>a</sup> A railroad is considered revenue adequate under 49 U.S.C. § 10704(a) if it achieves a rate of Return on Net Investment 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.

<sup>b</sup> Cost of Capital for 2013 was determined in Docket No. EP 558 (Sub-No. 17); Revenue Adequacy for 2013 was determined in Docket No. EP 552 (Sub-No. 18).

<sup>c</sup> Cost of Capital for 2014 was determined in Docket No. EP 558 (Sub-No. 18); Revenue Adequacy for 2014 was determined in Docket No. EP 552 (Sub-No. 19).

<sup>d</sup> Cost of Capital for 2015 was determined in Docket No. EP 558 (Sub-No. 19); Revenue Adequacy for 2015 was determined in Docket No. EP 552 (Sub-No. 20).

<sup>e</sup> Cost of Capital for 2016 was determined in Docket No. EP 558 (Sub-No. 20); Revenue Adequacy for 2016 was determined in Docket No. EP 552 (Sub-No. 21).



## APPENDIX E: RAILROAD RATE CASES AT THE STB

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.

<b>Docket No.</b>	<b>Case Name</b>	<b>Comm.</b>	<b>Guideline Used *</b>	<b>Date Decision Served</b>	<b>Decision</b>
41191	West Texas v. BNSF	Coal	SAC	5/3/1996	<b>Rates Unreasonable</b>
37809	McCarty Farms v. BN	Grain	SAC	8/20/1997	Rates Reasonable
41185	APS v. ATSF	Coal	SAC	4/17/1998	<b>Rates Unreasonable</b>
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	Chems.	Non-SAC	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	Mins.	SAC	5/12/2000	<b>Rates Unreasonable</b>
42038	MN Power v. DMIR	Coal	Stip. R/VC	1/5/2001	Settlement
42051	WPL v. UP	Coal	SAC	5/14/2002	<b>Rates Unreasonable</b>
42054	PPL v. BNSF	Coal	SAC	8/20/2002	Rates Reasonable
42059	Northern States v. UP	Coal	Stip. R/VC	8/7/2003	Settlement
42077	APS v. BNSF	Coal	SAC	12/31/200	Withdrawn
42056	TMPA v. BNSF	Coal	SAC	9/27/2004	<b>Rates Unreasonable</b>
42069	Duke v. NS	Coal	SAC	10/20/200	Rates Reasonable
42070	Duke v. CSXT	Coal	SAC	10/20/200	Rates Reasonable
42072	Carolina Power v. NS	Coal	SAC	10/20/200	Rates Reasonable
42057	Xcel v. BNSF	Coal	SAC	12/14/200	<b>Rates Unreasonable</b>
42058	AEPCO v. BNSF	Coal	SAC	3/15/2005	Rates Reasonable
42093	BP Amoco v. NS	Chems.	Non-SAC	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	Chems.	SAC	11/14/200	Settlement
42098	Williams Olefins v. GTC	Chems.	Non-SAC	2/15/2007	Settlement
42095	KCPL v. UP	Coal	Stip. R/VC	5/19/2008	<b>Rates Unreasonable</b>
42088	Western Fuels v. BNSF	Coal	SAC	2/18/2009	<b>Rates Unreasonable</b>
42112	E.I. Dupont v. CSX	Chems.	SAC	5/11/2009	Settlement
41191(S1)	AEP Texas v. BNSF	Coal	SAC	5/15/2009	Rates Reasonable
42111	Oklahoma Gas v. UP	Coal	Stip. R/VC	7/24/2009	<b>Rates Unreasonable</b>
42099	DuPont v. CSXT	Chems.	3-Bench	9/1/2009	Settlement
42100	DuPont v. CSXT	Chems.	3-Bench	9/1/2009	Settlement

**Table E.1**  
**Railroad Rate Cases at the STB**  
**1996 through Sept. 30, 2017**

<b>Docket No.</b>	<b>Case Name</b>	<b>Comm.</b>	<b>Guideline Used *</b>	<b>Date Decision Served</b>	<b>Decision</b>
42101	DuPont v. CSXT	Chems.	3-Bench	9/1/2009	Settlement
42114	U.S. Magnesium v. UP	Chems.	3-Bench	1/28/2010	<b>Rates Unreasonable</b>
42115	U.S. Magnesium v. UP	Chems.	Simpl. SAC	4/2/2010	Settlement
42116	U.S. Magnesium v. UP	Chems.	Simpl. 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-	10/26/201	Settlement
42113	AEPCO v. BNSF & UP	Coal	SAC	11/22/201	<b>Rates Unreasonable</b>
42132	Canexus v. BNSF	Chems.	3-Bench	7/20/2012	Settlement
42127	IPA v. UP	Coal	SAC	11/2/2012	Withdrawn
42123	M&G Polymers v. CSXT	Chems.	SAC	1/7/2013	Settlement
42125	DuPont v. NS	Chems.	SAC	3/24/2014	Rates Reasonable
42130	SunBelt v. NS	Chems.	SAC	6/20/2014	No Rate Prescribed <sup>24</sup>
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	Chems.	SAC	9/14/2016	Rates Reasonable
<b>Rail Rate Cases Pending at the STB as of Sept. 30, 2017</b>					
42142	Consumers v. CSXT	Coal	SAC		
<b>*Abbreviations:</b>					
<b>SAC:</b> Stand-Alone Cost Methodology applied for a hypothetical railroad.					
<b>Non-SAC:</b> 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).					
<b>Stipulated R/VC (Stip. R/VC):</b> Parties agreed to use revenue to variable cost (R/VC) ratios at 180% level in lieu of SAC.					
<b>Three-Benchmark Methodology (3-Bench):</b> Methodology of seeking relief pursuant to revised Simplified Procedures as set forth in <i>Simplified Standards for Rail Rate Cases</i> , EP 646 (Sub-No. 1) (STB served Sept. 5, 2007) and any additional Sub-No. decisions.					

<sup>24</sup> 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 ten-year analysis period, and then to only a small degree.

During the nine-year period FY 2009-2017, 24 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.

## APPENDIX F: SURFACE TRANSPORTATION BOARD MEMBERS

<b>Table F.1</b>				
<b>Surface Transportation Board Members <sup>1</sup></b>				
<b>Name</b>	<b>State</b>	<b>Party</b>	<b>Oath of Office</b>	<b>End of Service <sup>2</sup></b>
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. <sup>3</sup>	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 <sup>4</sup>	Md.	Republican	Nov 26, 2002	Jan 4, 2006
BUTTREY, W. Douglas <sup>5</sup>	Tenn.	Republican	May 28, 2004	Mar 13, 2009
MULVEY, Francis P. <sup>6</sup>	Md.	Democrat	Jun 2, 2004	Dec 31, 2013
NOTTINGHAM, Charles D. <sup>7</sup>	D.C.	Republican	Aug 14, 2006	Mar 18, 2011
ELLIOTT, Daniel R. III <sup>8</sup>	Ohio	Democrat	Aug 13, 2009	Sept 30, 2017
BEGEMAN, Ann <sup>9</sup>	Va.	Republican	May 2, 2011	Term ends 2020
MILLER, Deb <sup>10</sup>	Kans.	Democrat	Apr 28, 2014	Term ends 2017

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

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

<sup>3</sup> 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.

<sup>4</sup> Chairman Nov. 26, 2002, to Jan. 4, 2006.

<sup>5</sup> Chairman Jan. 5, 2006, to Aug. 14, 2006.

<sup>6</sup> Acting Chairman March 12 to Aug. 13, 2009.

<sup>7</sup> Chairman Aug. 14, 2006, to March 12, 2009.

<sup>8</sup> Chairman Aug. 13, 2009 to Dec. 31, 2014; Chairman June 26, 2015 to Jan. 23, 2017.  
Resigned on Sept. 30, 2017.

<sup>9</sup> Acting Chairman Jan. 23, 2017.

<sup>10</sup> Acting Chairman Jan. 1, 2015 to June 26, 2015.