



Surface Transportation Board

FY 2011 Annual Report

Chairman Daniel R. Elliott III
Vice Chairman Francis P. Mulvey
Board Member Ann D. Begeman



Office of the Chairman

SURFACE TRANSPORTATION BOARD

Washington, D.C. 20423-0001

November 28, 2012

To the Congress of the United States:

It is my pleasure to submit this report covering the Surface Transportation Board's activities from Oct. 1, 2010, through Sept. 30, 2011. The report follows the format of previous years' reports with a statement of appropriations and aggregate expenditures for Fiscal Year (FY) 2011 appearing in Appendix B.

The Board's membership changed during the past fiscal year. On April 14, 2011, the Senate confirmed Ms. Ann D. Begeman, former Minority Staff Director of the Senate Committee on Commerce, Science, and Transportation, to the seat made vacant by the resignation of former Vice Chairman Charles D. Nottingham, for a term to expire Dec. 31, 2015. Ms. Begeman was sworn in as a Board Member on May 2, 2011. Francis P. Mulvey currently serves as the agency's Vice Chairman.

With this edition, the Board introduces graphic information on the number and regional origins of public-assistance issues handled, on a fiscal-year basis, by the agency's Rail Customer and Public Assistance Program.

Sincerely,

Daniel R. Elliott III
Chairman

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ACRONYMS AND ABBREVIATIONS

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

AAR	Association of American Railroads
Amtrak	National Railroad Passenger Corporation
ATSF	Atchison, Topeka and Santa Fe Railway
BNSF	BNSF Railway Company
C.F.R.	Code of Federal Regulations
CMP	Constrained Market Pricing
CN	Canadian National Railway Company
Conrail	Consolidated Rail Corporation
CSX	CSX Transportation, Inc.
DOT	United States Department of Transportation
EA	Environmental Assessment
EIS	Environmental Impact Statement
EJ&E	Elgin, Joliet and Eastern Railway Company
FACA	Federal Advisory Committee Act
FOIA	Freedom of Information Act
FRA	Federal Railroad Administration
FTE	Full-time employee
FY	Fiscal Year
GPO	U.S. Government Printing Office
GTC	Grand Trunk Corporation
HDR	HDR Engineering, Inc.
ICC	Interstate Commerce Commission
LNW	Louisiana & North West Railroad
LVR	Lassen Valley Railway LLC

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MM&A	Montreal, Maine & Atlantic Railway
MNRC	Maine Northern Railway Company
NGCC	National Grain Car Council
NS	Norfolk Southern Railway Company
OE	Office of Economics
OEA	Office of Environmental Analysis
OFA	Offer of Financial Assistance
OPAGAC	Office of Public Assistance, Governmental Affairs, and Compliance
OPM	U.S. Office of Personnel Management
PRIIA	Passenger Rail Investment and Improvement Act of 2008
PTC	Positive Train Control
RCAF	Rail Cost Adjustment Factor
RCPA	Rail Customer and Public Assistance Program
RETAC	Rail Energy Transportation Advisory Committee
ROI	Return on Investment
RSAM	Revenue Shortfall Allocation Method
RSTAC	Railroad-Shipper Transportation Advisory Council
RVC	Revenue-to-Variable Cost
SAC	Stand-alone cost
San Benito	San Benito Railroad LLC
S.F.-M.I. R.R.	San Francisco Bay Railroad-Mare Island
SLRG	San Luis & Rio Grande Railroad
Soo	Soo Line Railroad
STB	Surface Transportation Board
STCC	Standard Transportation Commodity Code
UP	Union Pacific Railroad Company
URCS	Uniform Railroad Costing System
WCTL	Western Coal Traffic League
WFA	Western Fuels Association, Inc., and Basin Electric Power Collective (collectively)

OVERVIEW

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

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

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

Performance and Policy Goals

The Board strives to provide an efficient and effective forum for the resolution of surface-transportation disputes and other matters within its jurisdiction. While the Board uses its

¹ 49 U.S.C. §§ 10101-11908.

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

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

exemption authority to limit or remove regulatory requirements where appropriate, it is dedicated to oversight and rendering fair and timely decisions when regulation is required. The Board promotes private-sector negotiations and resolutions where possible and appropriate and facilitates market-based transactions in the public interest. In all of its official decisions, the agency is committed to advancing the national transportation policy goals expressed by Congress.⁴ Attendant to this commitment is the Board's endeavor to continue to establish, implement, and meet agency-wide goals, initiated in Fiscal Year (FY) 2010, to increase transparency regarding agency processing and adjudication of the cases before it.

In this regard, on Oct. 21, 2010, the Board announced its scheduling of a public hearing to review existing exemptions from railroad-transportation regulations for certain commodity, boxcar, and intermodal freight traffic. In the Staggers Act, Congress directed the ICC to pursue exemptions and to correct any problems arising as a result of exemption through the ICC's revocation authority.⁵ Consistent with that directive, the ICC exempted numerous commodities, services, and types of transactions from regulation. However, in recent years, the Board had received informal inquiries questioning the relevance and/or necessity of some of the existing commodity exemptions, given the changes in the competitive landscape that have occurred over the past three decades. Accordingly, on Feb. 24, 2011, the Board held a hearing to explore the continuing utility of, and issues surrounding, categorical exemptions,⁶ specifically various commodity exemptions,⁷ boxcar exemptions,⁸ and trailer-on-flatcar/container-on-flatcar exemptions.⁹

On Dec. 21, 2010, the Board ordered the Canadian National Railway Company (CN) to pay a \$250,000 fine—the first levied by the agency since its 1996 inception—for knowingly violating Board orders. Those orders, issued by the Board as part of its December 2008 approval with conditions of CN's acquisition and control of the Elgin, Joliet & Eastern Railway Company

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

⁵ H.R. Rep. No. 96-1430, at 105 (1980)

⁶ 49 U.S.C. 10502.

⁷ 49 C.F.R. §§ 1039.10 and 1039.11

⁸ 49 C.F.R. § 1039.14

⁹ 49 C.F.R. pt. 1090.

(EJ&E), mandated that CN report each blocked railroad crossing occurrence of 10 minutes or more in duration. While in two monthly reports CN had informed the Board that its halted or slowly moving trains had caused 14 blockages, an audit conducted on the Board's behalf by an independent, third-party consultant identified 1,457 blockages. The Board rejected CN's claim that CN only was required to report to the Board only those blockages caused by fully stopped trains. Thus, the agency accordingly convened a hearing and subsequently imposed the monetary penalty based on the railroad's inadequate compliance with the agency's specific acquisition-approval condition of blockage reporting, the outcome of the audit of CN's records, and statements made by the auditor and CN representatives at the Board hearing.

After months of Board-led mediation and the extensive involvement of federal, state, and local officials, members of the public, businesses, workers, and railroad officials in Maine, the Board formally approved, on Dec. 27, 2010, the Montreal, Maine & Atlantic Railway's (MM&A) request to abandon 233 miles of rail line in Aroostook and Penobscot Counties. The Board's work in this multiparty effort to preserve freight rail service in northern Maine was the culmination of mediation and the agency's July 2010 hearing in Presque Isle, Maine. Subsequently, pursuant to a lease and operating agreement between Maine Northern Railway Company (MNRC) and the State, MNRC was selected as the new operator. *See Me. N. Ry.—Modified Rail Certificate—In Aroostook and Penobscot Cntys., Me.*, FD 35521 (STB served June 15, 2011).

On Jan. 11, 2011, the Board announced a hearing to explore the current state of competition in the railroad industry and possible policy alternatives to facilitate more competition, where appropriate. In its public notice, the Board observed that the railroad industry in the United States has changed significantly since the Board's competitive access standards were originally adopted in the mid-1980s. Among the more salient developments since then have been the industry's improving economic health; increased consolidation among "Class I" railroads (the nation's largest);¹⁰ proliferation of a short-line rail network;¹¹ and increased participation of rail customers in railcar ownership and maintenance, as well as in other activities previously

¹⁰ *See* Appendix D.

¹¹ *Ibid.*

undertaken by railroads alone. From 1980 to 2004, railroad productivity improved dramatically, with lower rates the result. Since 2004, however, productivity gains appear to be diminishing and overall rail transportation prices have increased. Taken together, these trends were the impetus for the Board's decision to consider further the issues of competition and access. Because of the broad industry and public interest in the hearing, the Board devoted two days, June 22-23, 2011, to hearing all of the interested parties. The Board has proposed to modify its rules to simplify and expedite its process for resolving rate disputes and to make the process more accessible to parties.

Also in January 2011, the Board scheduled a Feb. 17, 2011, hearing in Colorado on the San Luis & Rio Grande Railroad's (SLRG) proposed ownership and operation of a containerized, truck-to-railroad, solid waste transload facility in Antonito, Conejos County, Colo., that would facilitate the U.S. Department of Energy's movement of contaminated materials shipped in containers from New Mexico to Utah. SLRG asked the Board for a declaratory order (an order in which the Board issues a decision, at the request of a party or parties, stating the agency's position on a disputed matter) finding that a local land-use law was federally preempted and thus not applicable to SLRG's proposed operations, and that the Clean Railroads Act would not apply. Ultimately, the Board dismissed the petition (without prejudice to SLRG's refile of it) as premature because of a related court settlement requiring additional environmental review before any contaminated materials could move through the proposed facility.

In a significant move announced on Feb. 15, 2011, the Board proposed to reduce filing fees for formal rate or unreasonable-practice complaints to \$350 (as opposed to a \$20,600 filing fee generally applicable to non-rate complaints at that time). The Board's rationale was based on three public-policy considerations justifying lower complaint-filing fees: (1) the filing of a complaint is often the Board's only mechanism for investigating and addressing potential rate violations or other unlawful practices; (2) high formal complaint filing fees were seen as discouraging shippers and other entities from bringing complaints before the Board; and (3) the proposed reduction would result in better docket and resource management by the agency. The Board adopted this proposal on July 7, 2011.

On March 3, 2011, the Board served a decision finding that the BNSF Railway Company (BNSF) could not enforce that railroad's rule requiring a coal shipper to limit the loss of coal dust from the top of the shipper's loaded coal cars while in transit. The Board recognized the safety and maintenance issues of coal-dust accumulation and indicated that BNSF could require shippers to take "reasonable measures" to address the problem. Yet the Board found that this attempt to mitigate the problem was not reasonable. The Board asked railroads and their customers to collaborate in developing a mutual solution so that railcars would be both safe for movement and secure from loss of contents during transit.

On Sept. 28, 2011, the Board instituted a proceeding to explore the impact of Berkshire Hathaway, Inc.'s acquisition of BNSF on the Board's costing determinations. The Board is considering whether the write-up from the acquisition on BNSF's net investment base should be included in the Board's annual Uniform Railroad Costing System (URCS) and revenue-adequacy determinations for BNSF. On Feb. 16, 2012, the Board scheduled a public hearing for March 22, 2012, on this matter.

In addition to these formal proceedings, the Board offers parties the opportunity to voluntarily mediate their disputes. In FY 2011, Board staff served as mediators in *Canexus Chemicals Canada L.P. v. BNSF Railway Co.*, FD 35524. The Board also ordered the parties in *Providence and Worcester Railroad Company—Petition for Declaratory Order—Gardner Branch*, FD 35393, to meet with Board staff to try to resolve their dispute. Those parties reached a settlement prior to a joint meeting with Board staff.

Organizational Structure

The Board comprises three Members nominated by the President and confirmed by the Senate for five-year terms. The Board's Chairman is designated by the President from among the Members.¹² As its chief executive, the Chairman coordinates and organizes the agency's work and acts as its representative in legislative matters and in relations with other governmental bodies.

¹² 49 U.S.C. § 701.

The Vice Chairman represents the Board and assumes the Chairman's duties as appropriate. Additionally, the Vice Chairman oversees matters involving the admission, discipline, and disbarment of non-attorney Board practitioners.¹³ The Vice Chairmanship alternates annually between the Chairman's two Member colleagues. The Vice Chairman is also designated Co-Chairman of the National Grain Car Council.

Assisting the Board in carrying out its responsibilities is a staff of approximately 140, with experience in economics, law, accounting, transportation analysis, finance, and administration, serving within the following offices:

The **Office of Public Assistance, Governmental Affairs, and Compliance** 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 operational cost allocations; and facilitates mediation and arbitration of certain disputes involving the Board's regulatory jurisdiction whenever possible in lieu of time-consuming and costly litigation.

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

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

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

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

¹³ Persons meeting specific standards, passing an examination, and taking an oath to comply with agency requirements and procedures to practice before the agency.

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



Figure 1.1 STB Organizational Chart, FY 2011¹⁴

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.¹⁵ The RSTAC is composed of 14 private-sector senior executives from the railroad and

¹⁴ During FY 2011, Daniel R. Elliott III continued service as Chairman for a term expiring Dec. 31, 2013. The Vice Chairmanship was served by Francis P. Mulvey, from Oct. 1, 2010, through Jan. 4, 2011; Charles D. Nottingham, from Jan. 4, 2011, through his resignation from the Board on March 18, 2011; and Ann D. Begeman, from May 2, 2011, through Sept. 30, 2011. For a detailed historical summary of Board Member service dates, see Appendix F. In addition, Matthew Wallen, Director of the Office of Public Assistance, Governmental Affairs, and Compliance, departed the agency on July 8, 2011. (He was succeeded in that position by Lucille L. Marvin on Nov. 8, 2011.)

¹⁵ 49 U.S.C. § 726.

rail shipping industries, plus one member-at-large. The Secretary of Transportation and the three Board Members are ex-officio members. RSTAC meetings are held quarterly.

The National Grain Car Council (NGCC) assists the Board in addressing problems concerning grain transportation by fostering communication among railroads, shippers, rail-car manufacturers and lessors, and government. The NGCC consists of 14 representatives from Class I (large) railroads, seven representatives from Class II (medium-sized) and Class III (small) railroads,¹⁶ 14 representatives of grain shippers and receivers, and five representatives of private rail car owners and manufacturers. The three Board Members are ex-officio members, and the Vice Chairman is designated NGCC Co-Chairman. In accordance with FACA, NGCC meetings are held annually and are open to the public.

The Rail Energy Transportation Advisory Committee (RETAC) was established by the Board in July 2007 to provide advice and guidance regarding the transportation by rail of energy resources such as coal, ethanol, and other biofuels. The RETAC is composed of 23 voting members representing a balance of stakeholders, including large and small railroads, coal producers, electric utilities, the biofuels industry, the private railcar industry, and rail labor. The three Board Members are ex-officio members. In accordance with FACA, RETAC meetings are held at least twice a year and are open to the public.

Public Outreach

During the past fiscal year, the Board kept Congress and the public abreast of agency actions and policies through hearings, oral arguments, public meetings, printed and audio-visual transcripts, news releases, and customer-service pamphlets. All were made widely available through the agency's website, www.stb.dot.gov.

¹⁶ For purposes of accounting and reporting, the Board designates three classes of freight railroads based upon their operating revenues, for three consecutive years, in 1991 dollars, using the following scale: Class I - \$250 million or more; Class II – Less than \$250 million but more than \$20 million; and Class III - \$20 million or less. These operating revenue thresholds are adjusted annually for inflation. (*See* Appendix D: Railroad Financial and Statistical Data.)

Surface Transportation Board

The following tables display counts of major public outreach activities during the reporting period:

Table 1.1 Board Member Public Communications in FY 2011			
Transcripts[*]	Statements[†]	Testimonies^{††}	Speeches
8	4	0	27

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

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

†† Before the United States Congress.

Table 1.2 Public Events Held in FY 2011			
Headquarters Hearings	Field Hearings	Oral Arguments	Meetings[*]
2	1	4	6

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

Table 1.3 News Releases Issued in FY 2011		
Number Issued	Total Webpage Visits	Average Visits Per Release
22	78,324 [*]	3,560 [*]

* Per site-visit data viewed and compiled on Feb. 13, 2012.

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

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

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

Interested parties may phone, email, fax or mail in their inquiries and will receive a reply within one business day if possible. Some inquiries can be answered and completed almost immediately. Other issues dealing with specific carrier or shipper disputes may take days or weeks to resolve.

In FY 2011, the RCPA handled 1,369 complaints and inquiries, including 474 core railroad-related issues. In 100 instances, the RCPA was asked by a party in a railroad-shipper or railroad-railroad dispute to contact a common carrier railroad operating within the United States in an effort to seek compromise. Compromise was achieved in 65 percent of those instances.

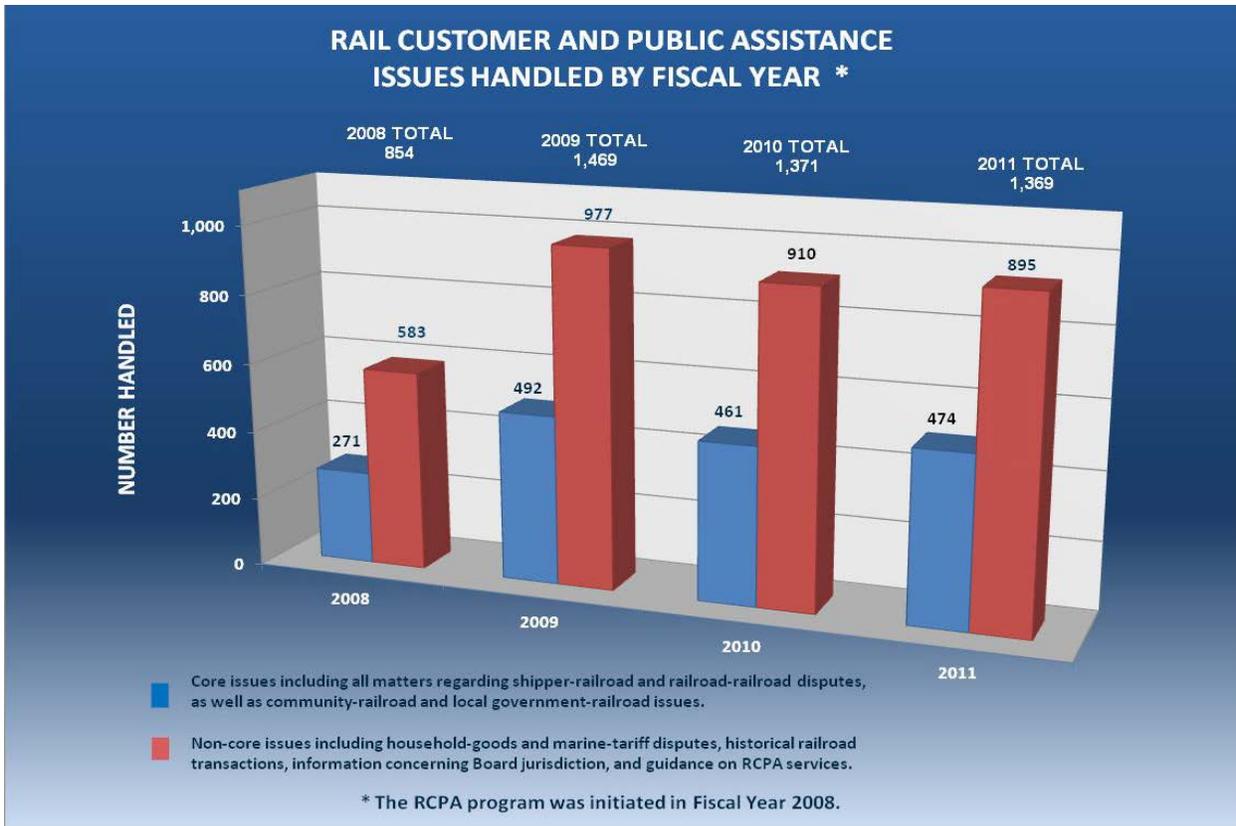


Figure 1.2 RCPA Issues Handled by Fiscal Year

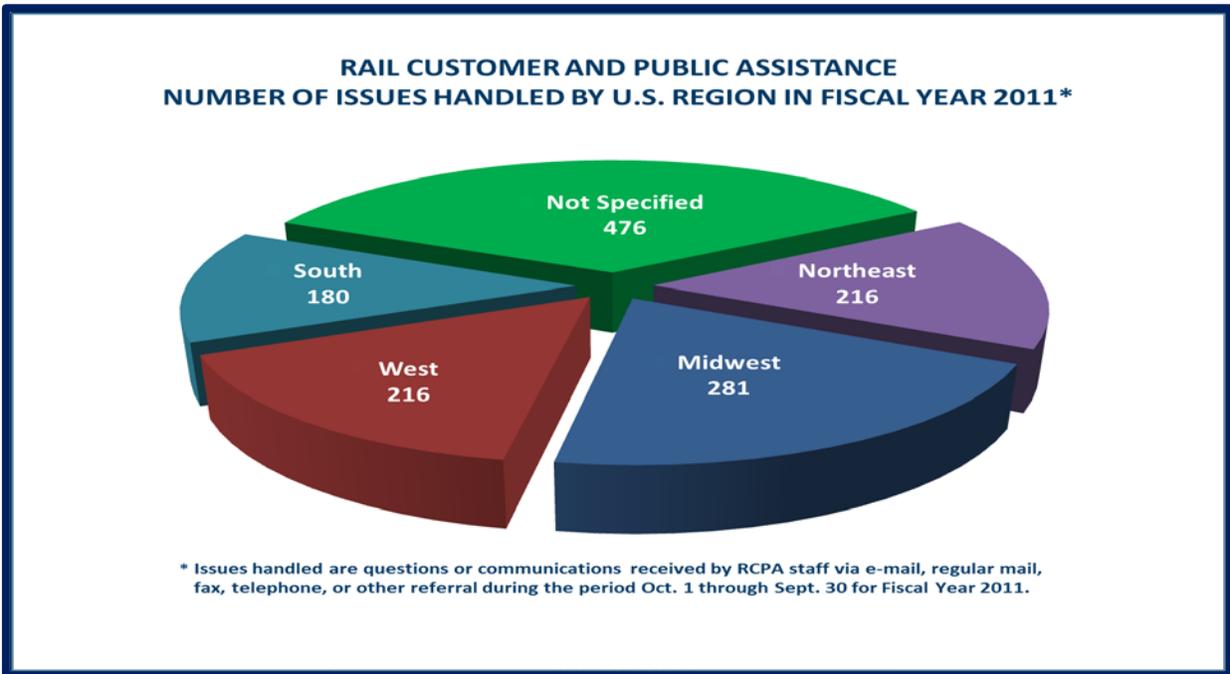


Figure 1.3 RCPA Issues Handled by U.S. Region

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).¹⁷

¹⁷ 49 C.F.R. Parts 244 and 1106.

Table 2.1	
Rail Mergers and Consolidations, FY 2011	
Under 49 U.S.C. 11343*	
Type	No.
Applications	
Filed	1
Granted	2
Denied	0
Dismissed	0
Pending	0
Petitions for Exemption	
Filed	3
Granted	4
Denied	1
Dismissed	0
Pending	0
Notices of Exemption	
Filed	21
Granted	21
Denied	1
Dismissed	1
Pending	0

* Data in this and subsequent charts compose a snapshot of Board activity at the close of FY 2011; figures thus may not add to a total. The granted, denied, and dismissed totals include cases initiated in FY 2011, as well as cases filed in a prior fiscal year but disposed of in FY 2011. Therefore, the granted, denied, and dismissed totals may be greater or lesser than the number of cases filed in FY 2011. Pending totals include cases filed in FY 2011, or earlier, that were not disposed of in FY 2011 and thus remain open for disposition in a later fiscal year.

Mergers and Consolidations: Oversight and Monitoring

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

In light of concerns raised by citizens and communities along the former EJ&E line concerning the accuracy and completeness of CN's reports, the Board tasked an independent third-party contractor, HDR Engineering, Inc. (HDR), to verify information contained in CN's November and December 2009 monthly reports. On April 14, 2010, HDR issued its audit report.

Following its review of that audit report, the Board ordered CN to appear at an April 28, 2010, public hearing, at the Board's Washington, D.C., headquarters, to explain why its submissions to the agency concerning railroad-crossing blockages lasting 10 minutes or more differed from data automatically reported by CN's own crossing gates, and why the railroad had not disclosed that it possessed such information. The Board also ordered CN to provide supplemental reports and raw data on crossing blockages lasting 10 minutes or more.

After holding the public hearing and reviewing the audit findings, the Board identified four locations that had experienced a significant increase in blocked crossings since the merger and required CN to provide additional information on these crossings in its quarterly environmental reports. The Board ordered another audit to be conducted in FY 2011 and extended the oversight period an additional year, to January 2015. *See Canadian Nat'l Ry.—Control—EJ&E W. Co.*, FD 35087 (STB served Dec. 21, 2010) (Decision No. 26). CN had claimed that the Board's reporting condition required CN only to report to the agency those blockages caused by fully stopped trains. The Board disagreed and ordered CN to pay a \$250,000 fine for knowingly violating the Board's orders that CN report the date and descriptive information for each crossing

blockage exceeding 10 minutes in duration. *See Canadian Nat'l Ry.—Control—EJ&E W. Co.*, FD 35087 (STB served Dec. 21, 2010) (Decision No. 27).

Pooling

Rail carriers may seek approval to agree, or to combine, with other carriers to pool or divide traffic, services, or earnings. There were no significant actions taken in this area during FY 2011.

Line Acquisitions

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

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

Non-carriers may acquire rail lines under a class exemption. Required notification, together with the Board's ability to revoke class exemptions in particular transactions, 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.

Surface Transportation Board

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

Table 2.2		
Line Acquisitions By Noncarriers, FY 2011		
Under 49 U.S.C. § 10901		
Type	No.	Miles
Petitions for Exemption		
Filed	0	0
Granted	0	0
Denied	0	0
Dismissed	0	0
Pending	0	0
Notices of Exemption		
Filed	45	1,307
Granted	45	1,433
Denied	1	6.27
Dismissed	0	0
Pending	2	12.07

Table 2.3		
Line Acquisitions By Class II or III Railroads, FY 2011		
Under 49 U.S.C. § 10902		
Type	No.	Miles
Applications for Exemption		
Filed	0	0
Granted	0	0
Denied	1	0.075
Dismissed	0	0
Pending	0	0
Notices of Exemption		
Filed	17	448.57
Granted	16	447.84
Denied	0	0
Dismissed	0	0
Pending	1	0.73

During FY 2011, the Board issued decisions licensing the acquisition of nearly 2,000 miles of rail. In addition to those decisions, the Board resolved numerous disputes regarding the revocation of that licensing authority. Among the more significant actions taken in this area, the Board:

- Found that permission granted to the San Francisco Bay Railroad-Mare Island (S.F.-M.I. R.R.) to operate over rail track in Vallejo, Cal., was void because the request for permission was misleading. The railroad had failed to mention that it did not have permission from an owner of a segment of the track at issue—a prerequisite for such a request—in *San Francisco Bay Railroad-Mare Island—Operation Exemption in California Northern Railroad*, FD 35304 *et al.* (STB served Dec. 6, 2010). The Board also denied S.F.-M.I. R.R.’s request for an emergency service order and a request for a declaratory order stating that the railroad had a right to provide service because operating permission had been granted by the Board in FD 35304, in *San Francisco Bay Railroad-Mare Island Petition for Emergency Service Order and Petition for Declaratory Order—Lennar Mare Island, LLC*, FD 35360 (STB served Dec. 6, 2010).
- Relying on the decision in *James Riffin Petition for Declaratory Order*, FD 35245 (STB served Sept. 15, 2009, *aff’d per curiam*, *Riffin v. STB*, No. 09-1277, 2010 WL 4924719 (D.C. Cir. Nov. 30, 2010), in which the Board found that James Riffin was not a rail common carrier, the Board found no need to address on remand the D.C. Circuit’s finding that, in an earlier decision, the Board had not adequately explained why Riffin’s activities at his Cockeysville, Md., property did not fall under the Board’s jurisdiction and within the preemptive ambit of § 10501(b), in *James Riffin—Petition for Declaratory Order*, FD 34997 (STB served July 13, 2011).
- Denied requests for revocation, and determined that the protestants’ arguments were insufficient to void a notice of exemption or disallow use of the notice of exemption authorized by the Board in an earlier decision in which Adrian & Blissfield Railroad Company, a Class III rail carrier, was granted authority to continue to control the Jackson & Lansing Railroad Company upon the latter’s becoming a Class III rail carrier, in *Adrian & Blissfield Rail Road—Lease & Operation Exemption—Jackson & Lansing Railroad*, FD 35411 (STB served Sept. 27, 2011).

- Found that a petitioner’s request for revocation on competitive grounds lacked sufficient evidence to revoke Board authorization granting a lease between Middletown & New Jersey Railroad, LLC and Norfolk Southern Railway Company, in *Middletown & New Jersey Railroad—Lease and Operation Exemption—Norfolk Southern Railway*, FD 35412 (STB served Sept. 23, 2011).
- Denied a petition to reject or revoke a notice of exemption allowing Lassen Valley Railway LLC (LVR) to acquire from the Union Pacific Railroad Company (UP), and to operate, an approximately 22-mile rail line between Nevada and California, and found that no misrepresentations were shown in the related notice of exemption allowing Kern W. Schumacher to continue in control of LVR once it became a Class III rail carrier, in *Lassen Valley Railway—Acquisition and Operation Exemption—Union Pacific Railroad*, FD 35306 (STB served Nov. 30, 2010).
- Granted in part and denied in part a petition by Cerro Gordo County, Iowa, for the waiver of certain Board regulations and exemption from certain statutory provisions in connection with an adverse or third-party application the County plans to file under 49 U.S.C. § 10903, in *Cerro Gordo County, Iowa—Adverse Discontinuance—Iowa Traction Railroad*, AB 1063 (STB served March 16, 2010).

The Board applied the *State of Maine* precedent¹⁸ in issuing several decisions finding that agency authorization was unnecessary for the acquisition of the physical assets of a rail line because the acquirers would not be acting as common carriers. Thus, authorization was unnecessary for:

- The Florida Department of Transportation to acquire the physical assets of a rail line owned by CSX Transportation, Inc., in *Florida Department of Transportation—Acquisition Exemption—Certain Assets of CSX Transportation, Inc.*, FD 35110 (STB served Dec. 15, 2010), *pet. for recon. denied*. The Board later denied a Brotherhood of Railroad Signalmen petition for reconsideration of its decision, in *Florida Department of*

¹⁸ See *Montreal, Maine & Atlantic Railway—Abandonment Exemption—In Aroostook County, Me.*, AB 1043 (Sub-No. 2X) (STB served July 15, 2011).

Transportation–Acquisition Exemption–Certain Assets of CSX Transportation, Inc., FD 35110 (STB served June 22, 2011).

- The Virginia Port Authority to acquire the physical assets of a rail line owned by Norfolk and Portsmouth Belt Line Railroad Company, in *Virginia Port Authority—Acquisition Exemption—Norfolk and Portsmouth Belt Line Railroad*, FD 35532 (STB served Aug. 1, 2011).
- The Regional Transportation District, a political subdivision of the State of Colorado, to acquire two segments of railroad property owned by UP, in *Regional Transportation District—Acquisition Exemption—Union Pacific Railroad in Adams, Denver, and Jefferson Counties, Colo.*, FD 35394 (STB served Dec. 21, 2010).

However, the Board found that authorization was necessary for the San Benito Railroad LLC (San Benito) to acquire the physical assets of a rail line owned by UP. San Benito had not met requirements for the *State of Maine* exception to 49 U.S.C. § 10901(a)(4) because it had not offered a legitimate business justification for the proposed transaction advancing either the preservation of service on freight rail lines or the promotion of passenger rail operations, in *San Benito Railroad—Acquisition Exemption—Certain Assets of Union Pacific Railroad*, FD 35225 (STB served June 23, 2011).

Trackage Rights

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

Surface Transportation Board

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

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

Table 2.4	
Trackage Rights, FY 2011	
Type	No.
Applications	
Filed	0
Granted	0
Denied	0
Dismissed	0
Pending	0
Petitions for Exemption	
Filed	0
Granted	0
Denied	0
Dismissed	0
Pending	0
Notices of Exemption	
Filed	22
Granted	25
Denied	0
Dismissed	1
Pending	0

Leases by Class I Carriers

Leases and contracts for the operation of rail lines by Class I railroads require Board approval. Carriers may seek Board authorization by filing either an application or a petition for exemption, and the agency maintains a class exemption for the renewal of a previously authorized lease. There were no significant actions taken in this area during FY 2011.

Line Constructions

New rail-line construction requires Board authorization. Carriers may seek Board authorization by filing either an application or a petition for exemption. The agency maintains class exemptions providing a simple notification procedure for the construction of connecting track on an existing rail right-of-way, on land owned by the connecting railroads, or for joint track-relocation projects that do not disrupt service to shippers.

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

Among the more significant actions taken in this area during FY 2011, the Board:

- Advised a railroad that its plans to expand and realign a rail line, which included constructing two new connections to a nearby lead (i.e., track extending to a main track), new track to serve a planned transload facility, and new track for rail-car storage and holding, did not require Board permission because the construction did not extend the railroad's line into new territory, in *Swanson Rail Transfer, LP—Declaratory Order—Swanson Rail Yard Terminal*, FD 35424 (STB served June 14, 2011).
- Examined a petition jointly filed by the Northern Plains Resource Council and Mark Fix to reopen several related cases in which the agency granted the Tongue River Railroad Company, Inc. authority to construct and operate an approximately 130-mile line in

Montana. The line is intended to haul coal, and the petitioners asked the Board to reexamine the licenses granted on environmental grounds because additional coal volumes—beyond those presented in the public record on which the Board had based its decision—might soon be available for transportation. The Board found it unnecessary to review the grants of authority or to conduct additional environmental review, in *Tongue River Railroad—Construction and Operation—Western Alignment, et al.*, FD 30186 (Sub-Nos. 2 &3) (STB served June 15, 2011), *aff'd in part and rev'd and remanded in part sub nom. N. Plains Res. Council v. STB*, 668 F.3d 1067 (9th Cir. 2011).¹⁹

¹⁹ After the court's decision, Tongue River Railroad advised the Board that it did not intend to build the two portions of the rail line at issue in the court case, but that it did intend to build the original 89-mile portion previously authorized by the agency. As a result, the Board reopened the initial proceeding, directed the railroad to submit a new application, and stated that the Board will conduct a new environmental review.

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

Table 2.5		
Railroad Construction, FY 2011		
Type	No.	Miles
Applications		
Filed	0	0
Granted	0	0
Denied	0	0
Dismissed	0	0
Pending	0	0
Petitions for Exemption		
Filed	1	190
Granted	1	2.8
Denied	0	0
Dismissed	0	0
Pending	0	0
Notices of Exemption		
Filed	0	0
Granted	0	0
Denied	0	0
Dismissed	0	0
Pending	0	0

Line Abandonments

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

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

In FY 2011, the Board authorized 647.51 miles of rail line for abandonment in 51 full abandonment and exemption proceedings.

Among the actions taken in the rail abandonment area during FY 2011, the Board:

- Allowed the Montreal, Maine & Atlantic Railway, Ltd. to abandon an approximately half-mile line of railroad in Van Buren, Me., by granting the railroad an exemption from the prior approval requirements of 49 U.S.C. § 10903, in *Montreal, Maine & Atlantic Railway—Abandonment Exemption—In Aroostook County, Me.*, AB 1043 (Sub-No. 2X) (STB served July 15, 2011). The underlying property is intended to host a new land port of entry facility for the U.S. Customs and Border Protection Agency, and the Board also granted the railroad an exemption from the offer of financial assistance program to facilitate that project.
- Authorized the discontinuance of service over the Manufacturers Railway Company's entire system in St. Louis, Mo., subject to standard employee protection, in *Manufacturers Railway —Discontinuance Exemption—in St. Louis, Mo.*, AB 1075X (STB served July 12, 2011), *vacated and remanded sub nom. Mfrs. Ry. Co. v. STB*, 676 F.3d 1094 (D.C. Cir. 2012).
- Denied the Michigan Air-Line Railway Co.'s request to abandon an approximately five-mile rail line in Oakland County, Mich., because the railroad failed to provide the Board with sufficient evidence in support of its request and because one active shipper on the line protested the abandonment, in *Michigan Air-Line Railway—Abandonment Exemption—in Oakland County, Mich.*, AB 1053 (Sub-No. 1X) (STB served May 18, 2011).

Preservation of Rail Lines

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

Offers of Financial Assistance

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

Specifically concerning OFAs, the Board:

- Approved the sale of an approximately 24-mile line of railroad in Desha and Chicot Counties, Ark., pursuant to an OFA and dismissed the petition for abandonment exemption filed by Delta Southern Railroad, Inc., in *Delta Southern Railroad—Abandonment Exemption—in Desha & Chicot Counties, Ark.*, AB 384 (Sub-No. 3X) (STB served May 19, 2011).
- Found that the Town of Poseyville, Ind., had failed to demonstrate that it had sufficient funds to justify an OFA to purchase several rail lines in *Indiana Southwestern Railway—Abandonment Exemption—In Posey and Vanderburgh Counties, Ind.*, AB 1065X (STB served Sept. 23, 2011). The Board had recently approved the lines for abandonment, and Poseyville was attempting to force the abandoning carrier to sell the lines to the town. Although the Board foreclosed the possibility of a forced-sale in its decision, the agency did note that the town is free to negotiate a private sale with the railroad.

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

Table 2.6		
Abandonments, FY 2011		
Type	No.	Miles
Applications		
Filed	2	53.24
Granted	2	278.84
Denied	0	0
Dismissed	0	0
Dismissed - OFA Sale	0	0
Pending	1	7.40
Petitions for Exemption		
Filed	14	204.45
Granted	12	110.23
Denied	1	5.45
Dismissed	0	0
Dismissed - OFA Sale	0	0
Pending	2	99.16
Notices of Exemption		
Filed	41	468.31
Granted	37	258.44
Denied	0	0
Dismissed	0	0
Dismissed - OFA Sale	0	0
Pending	5	201.98

* These data compose a snapshot of the line-abandonment status at the close of FY 2011; figures thus do not add to a total.

Feeder-Line Development Program

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

for abandonment, the Board can compel the carrier to sell the line to a party that will provide service. There were no significant actions taken in this area during FY 2011.

Trail Use/Rail Banking

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

Among the actions taken with respect to trail use during FY 2011, the Board:

- Proposed and solicited comments on rules clarifying and updating the regulations and procedures pertaining to the use of railroad right-of-ways for rail banking and interim trail use, in *National Trails System Act and Railroad Rights-of-Way*, EP 702 (STB served Feb. 16, 2011).
- Found that a trail sponsor seeking Board authorization for interim trail use over an abandoned right-of-way may not alter the language under the National Trails System Act, 16 U.S.C. § 1247(d), regarding the assumption of full responsibility for any legal liability arising from the transfer of the right-of-way or its use as a trail, in *Chesapeake Railroad—Certificate of Interim Trail Use and Termination of Modified Certificate*, FD 32609 (STB served Feb. 24, 2011), *pet. for judicial review pending sub. nom., Maryland Transit Administration v. STB*, No. 11-1412 (4th Cir. filed April 25, 2011).

The following table summarizes rail banking and interim trail use activity during FY 2011:

Table 2.7							
Railbanking/Interim Trail Use, FY 2011							
Requests		Grants		Denials		Pending	
No.	Miles	No.	Miles	No.	Miles	No.	Miles
20	265.4	12	95.43	4	56.7	3	113.27

* Data in this table provide a snapshot of Board activity at the close of FY 2011. The granted, denied, and pending totals include requests filed in FY 2011, as well as requests filed in a prior fiscal year but disposed of in FY 2011. Thus, the granted, denied, and pending totals above do not add up to the number of requests. The pending total includes requests filed in FY 2011, or earlier, that were not disposed of in FY 2011 and thus remain open for disposition in a later fiscal year.

Liens on Rail Equipment

Liens on rail equipment and water vessels intended for use in interstate commerce must be filed with the Board to become valid. Subsequent assignments of rights or release of obligations under such instruments also must be filed with the agency. Such liens maintained by the Board are preserved for public inspection. The STB recorded 1,761 liens in FY 2011.

RAILROAD RATES

Cost of Capital

Each year, the Board determines the composite cost of capital for the freight rail industry. The Board uses this cost of capital figure for a variety of regulatory purposes. It is used to evaluate the adequacy of individual railroads' revenues each year and is employed in maximum rate cases, the Board's URCS, feeder-line applications, rail line abandonments, and trackage-rights cases. For the calendar year 2010, the Board found one Class I railroad to be revenue adequate. This railroad achieved a rate of return equal to or greater than the Board's calculated composite industry cost of capital.²⁰ See Table D.5 in Appendix D: Railroad Financial and Statistical Data.

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.

²⁰ See *Railroad Revenue Adequacy—2010 Determination*, EP 552 (Sub-No. 15) (STB served Nov. 3, 2011).

Railroads also are required to file with the Board summaries of all contracts for the transportation of agricultural products within seven days of the contracts' effective dates. Summaries must contain specific information contained in 49 C.F.R. §1313 and are available for public inspection at the agency's Tariff Library, by mail for a fee, and at the agency's website www.stb.dot.gov. There were 1,917 agricultural contract summary filings received by the Board during FY 2011.

Rate Disclosure Requirements: Common Carriage

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

Rate Challenges: Market-Dominance Limitation

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

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

Where the revenue-to-variable cost threshold is exceeded, the Board examines whether competition in the marketplace effectively restrains a railroad's pricing and provides a shipper an alternative to paying the challenged rate.

In FY 2011, the Board granted a motion to bifurcate a rate complaint proceeding into separate evidentiary phases, for market dominance and rate reasonableness, because the Board found that there was considerable doubt that the railroad defendant was market dominant over a number of the challenged movements subject to the complaint, in *Total Petrochemicals USA, Inc. v. CSX Transportation, Inc.*, NOR 42121 (STB served April 5, 2011). In another proceeding, the shipper did not oppose bifurcation, and the Board granted the unopposed request of the railroad at issue for a determination of jurisdiction over the challenged rates, in *M&G Polymers USA, LLC v. CSX Transportation, Inc.*, NOR 42123 (STB served May 6, 2011).

Rate Challenges: Rate-Reasonableness Determination

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

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

Among the more significant actions taken in FY 2011 regarding rail rate-reasonableness were the Board's decisions in these cases:

- The Board denied a request by the Texas Municipal Power Agency to “enforce,” through the first quarter of 2021, the agency’s previously imposed rate prescription against the BNSF Railway Company (BNSF) because, under Board decisions imposing rate relief in 2003 and 2004, the prescription expired at the end of 2010, in *Texas Municipal Power Agency v. Burlington Northern & Santa Fe Railway*, NOR 42056 (STB served July 27, 2011), *pet’n for review pending sub nom., Texas Municipal Power Agency v. STB*, No. 12-1087 (D.C. Cir. filed Feb. 10, 2012).

Rate Challenges: Discovery and Technical Issues

The Board assisted parties with several discovery disputes, including holding two staff-supervised discovery conferences resulting in the resolution of a motion to compel discovery, in *Total Petrochemicals USA, Inc. v. CSX Transportation, Inc.*, NOR 42121 (STB served Dec. 9, 2010), and in two motions to compel discovery in *E.I. du Pont de Nemours & Co. v. Norfolk Southern Railway*, NOR 42125 (STB served May 23, 2011). The Board also decided appeals of orders denying motions to compel discovery, in *Total Petrochemicals USA, Inc. v. CSX Transportation, Inc. et al.*, NOR 42121 (STB served Dec. 23, 2010), and in *M&G Polymers USA, LLC v. CSX Transportation, Inc.*, NOR 42123 (STB served Dec. 23, 2010). The Board additionally held a conference with the parties in *Arizona Electric Power Cooperative, Inc. v. BNSF Railway & Union Pacific Railroad*, NOR 42113 (STB served May 31, 2011), to discuss how the parties developed their costs for cross-over traffic. Finally, the Board, along with the Federal Railroad Administration and the Transportation Security Administration, worked with the parties in two rate cases to ensure that discovery could move forward without running afoul of federal regulations on sensitive security information. *South Mississippi Electric Power Ass’n v. Norfolk Southern Railway*, NOR 42128; *E.I. DuPont de Nemours and Co. v. Norfolk Southern Railroad*, NOR 42125.

Rate Challenges: Simplified and Expedited Rate Guidelines

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

During FY 2011, the Board issued decisions relative to its simplified and expedited guidelines, including:

- *2010 Tax Information for Use in the Revenue Shortfall Allocation Method*, EP 682 (Sub-No. 2) (STB served July 8, 2011), in which the Board provided notice of the 2010 weighted average state tax rates for each Class I railroad, as calculated by the Association of American Railroads, for use in the Revenue Shortfall Allocation Method.
- *Simplified Standards for Rail Rate Cases—2009 RSAM and R/VC_{>180} Calculations*, EP 689 (Sub-No. 2) (STB served July 14, 2011), in which the Board published the 2009 Revenue Shortfall Allocation Method and Revenue-to-Variable Cost Greater than 180 percent ratios for the Class I railroads, as well as railroads’ four-year averages.

- *Waybill Data Released in Three-Benchmark Rail Rate Proceedings*, EP 646 (Sub-No. 3) (STB served Oct. 22, 2010), in which the Board republished, with an expanded discussion of its rationale and regulatory objectives, its April 2, 2010, notice of proposed rulemaking. This rulemaking proposed the release of the unmasked Waybill Sample data of the defendant railroad to parties in Three-Benchmark rail rate proceedings. The release would be for the four years corresponding to the most recently published RSAM figures, from which the parties would draw their comparison groups.

RAILROAD SERVICE

General Authority

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

Among the actions addressing railroad service and practice issues in FY 2011, the Board:

- On referral from a state court, calculated the reasonable total demurrage charges based on a review of the facts as presented by the parties, in *Portland & Western Railroad—Petition for Declaratory Order—RK Storage & Warehousing, Inc.*, FD 35406 (STB served July 27, 2011).
- Affirmed the Board's earlier calculation of reasonable total demurrage charges by an administratively final decision, in *Portland & Western Railroad—Petition for Declaratory Order—RK Storage & Warehousing, Inc.*, FD 35406 (STB served Sept. 29, 2011).
- Denied the request of GNP Rly, Inc., a Class III rail carrier, for authority to restart rail service over a line that is rail banked because GNP failed to establish that it was a bona fide petitioner, in *GNP Rly, Inc.—Acquisition and Operation Exemption—Redmond Spur and Woodinville Subdivision*, FD 35407 (STB served June 15, 2011).

- Granted BNSF’s motion to dismiss a double recovery count, one of the three counts in Cargill’s complaint challenging the lawfulness of the fuel surcharges collected by BNSF on Cargill shipments, and seeking both a prescription of reasonable fuel surcharge practices and monetary damages with interest, in *Cargill, Incorporated v. BNSF Railway*, NOR 42120 (STB served Jan. 4, 2011).
- Examined a petition for declaratory order filed by a railroad attempting to establish a transload facility for contaminated materials in *San Luis & Rio Grande Railroad—Petition for Declaratory Order*, FD 35380 (STB served July 23, 2011). The railroad petitioned the Board to find, among other things, that preemption forbade the enforcement of local laws at the facility. In its decision, the Board ruled that the finding sought by the railroad was premature because upcoming environmental review of the facility might alter its operations or foreclose its use.
- Granted a petition filed by the Arkansas Midland Railroad Company, Inc. to obtain a 120-day extension of its service authority to provide local rail service on three miles of rail line at Gurdon, Ark., where the line’s owner has ceased operations, one or more active shippers supported the extension, and negotiations for the line’s transfer were in progress, in *Arkansas Midland Railroad—Alternative Rail Service—Line of Caddo Valley Railroad*, FD 35416 (STB served Feb. 11, 2011 and Oct. 15, 2010).
- Found that a coal-fired electric utility plant co-owned by Entergy Arkansas, Inc. and Entergy Services, Inc. (jointly Entergy) and Arkansas Electric Cooperative Corporation has a statutory right to service by BNSF, and that the alternative rail route proposed by Entergy would be neither better nor more efficient than the existing route, in *Entergy Arkansas, Inc. & Entergy Services, Inc. v. Union Pacific Railroad*, NOR 42104 *et al.* (STB served March 15, 2011).
- The Board concluded that, while rail carriers may take reasonable measures to address coal dust blowing off of rail cars in transit, a tariff issued by BNSF requiring shippers to suppress coal dust, as devised, was an unreasonable practice, in *Arkansas Electric Cooperative Corporation—Petition for Declaratory Order*, FD 35305 (STB served

March 3, 2011). The Board subsequently denied a petition of the Western Coal Traffic League (WCTL) asking the Board to stay (enjoin) the effective date of a modified tariff, issued by BNSF subsequent to the March 2011 decision, requiring shippers to limit the amount of coal dust blowing off of coal-carrying rail cars in transit because WCTL failed to show that allowing the tariff to take effect would cause irreparable harm to coal shippers, in *Arkansas Electric Cooperative Corporation—Petition for Declaratory Order*, FD 35305 (STB served Aug. 31, 2011).

Board-Shipper Discussions

With exception of discussions of matters pending before the Board, the agency continued to welcome informal shipper meetings with the three Board Members and staff to discuss general service, transportation, and other issues of concern. During FY 2011, the Board continued to foster industry dialogue about railroad service through the annual meeting of the National Grain Car Council, quarterly meetings of the Railroad-Shipper Transportation Advisory Council, and meetings of the Railroad Energy Transportation Advisory Committee held at least twice a year.

During the fiscal year, the Board also took the following actions:²¹

- As initiated in October 2009, the Board held at its Washington, D.C. headquarters a series of oral arguments (similar in format to such arguments held in federal appellate courts) in major cases before the agency. Held in the Board’s hearing room in sessions open to the public, these oral arguments provided parties the opportunity to address the Board Members directly, and provided the Members the opportunity to question parties directly before deliberating their decisions in the proceedings at issue.
- On Oct. 21, 2010, the Board announced its scheduling of a public hearing, held on Feb. 4, 2011, to review existing exemptions from railroad-transportation regulations for certain commodities, boxcar, and intermodal freight.

²¹ These actions are addressed in greater detail in the “Overview” chapter of this report.

- Following months of Board-led mediation; extensive public, business, and federal, state, and local governmental involvement; and a July 7, 2010, public hearing at Presque Isle, Me., in which shipper testimony was presented, the Board formally approved, on Dec. 27, 2010, the Montreal, Maine & Atlantic Railway's (MM&A) request to abandon 233 miles of rail line in Maine. This action paved the way for the State of Maine to acquire the line, and to find an operator to serve rail customers in Northern Maine, while continuing the line's operation by MM&A.
- On Jan. 11, 2011, the Board announced a June 22-23 public hearing at which shippers provided testimony toward the Board's exploration of the state of competition in the railroad industry and possible policy alternatives, where appropriate, to facilitate increased competition.
- On March 3, 2011, the Board served a decision finding that the BNSF could not enforce, as then written, the railroad's rule requiring coal shippers to limit the loss of coal dust from the top of their loaded coal cars while in transit.

Dialogue between Railroads and Their Customers

In early September 2011, as an aid to rail customers in their business planning, the Board asked railroads to submit to the agency a forward-looking assessment of their respective abilities to meet end-of-year business demands for U.S. rail service. The Board publicly posted the railroads' responses to the agency's website.

During FY 2011, the Board continued to encourage railroads to establish a regular dialogue with their customers as a productive way of preventing and addressing rail customer-service concerns. The agency spearheaded that activity through the work of its Rail Customer and Public Assistance Program (RCPA Program).

Assistance with Specific Service Matters

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

RAIL-LABOR MATTERS

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

In FY 2011, the Board upheld the arbitration award of approximately \$13.4 million in employee protection benefits and interest to 32 claimants (or their survivors or other personal representatives) who were employed by the Penn Central Transportation Company before it ceased to exist as a railroad in 1976, in *Pennsylvania Railroad—Merger—New York Central Railroad (Arbitration Review)*, FD 21989 (Sub-No. 4) (STB served Jan. 10, 2011).

ENVIRONMENTAL REVIEW

Overview

Under the National Environmental Policy Act of 1969 (NEPA),²² the Board must take into account the environmental impacts of its actions before making its final decision in a case. The Board's Office of Environmental Analysis (OEA) assists the agency by conducting independent environmental reviews of cases filed before the Board. This includes preparation of any necessary environmental documentation, such as an Environmental Impact Statement (EIS) where there is a potential for significant environmental impacts, or a more limited Environmental Assessment (EA). OEA also conducts public outreach to inform interested parties about railroad proposals and to provide an opportunity to raise environmental concerns. In addition, OEA provides technical advice and recommendations to the Board on environmental matters.

Environmental Review Process

OEA typically conducts environmental reviews for rail line construction proposals, abandonments, and mergers. Environmental reviews are conducted according to the agency's environmental rules,²³ regulations of the President's Council on Environmental Quality,²⁴ and other applicable federal environmental requirements. Environmental reviews take into account all applicable federal environmental laws, including the Endangered Species Act,²⁵ the Coastal

²² 42 U.S.C. §§ 4321-43.

²³ 49 C.F.R. § 1105.

²⁴ 49 C.F.R. §§ 1500-08.

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

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

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

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

²⁶ 16 U.S.C. §§ 1451-1464.

²⁷ 42 U.S.C. §§ 7401-7671.

²⁸ 33 U.S.C. §§ 1251-1387.

²⁹ 16 U.S.C. § 470(f).

To conserve its limited resources, the Board sometimes employs the services of third-party contractors to assist OEA in preparing environmental analyses. This is done under OEA's direction, control, and supervision. The agency has explained its procedures under this practice in *Policy Statement On Use Of Third-Party Contracting In Preparation Of Environmental Documentation*, 5 S.T.B. 467 (2001).

Rail Line Constructions

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

Among the more significant actions involving the preparation of EISs in FY 2011, OEA:

- Issued a Final EIS for the proposed construction and operation of approximately 35 miles of new rail line connecting the Port MacKenzie District in south-central Alaska to a point on the Alaska Railroad Corporation's existing main line near Houston, AL, in *Alaska Railroad Corp.—Construction and Operation Exemption—A Rail Line Extension to Port MacKenzie, Alaska*, FD 35095 (STB served March 25, 2011).
- Issued a Supplemental Draft EIS for the proposed construction and operation of a 20-mile rail line that would serve a new waste-to-ethanol facility, in *R.J. Corman Railroad/Pennsylvania Lines Inc.—Construction and Operation Exemption—in Clearfield County, Pa.*, FD 35116 (STB served March 4, 2011).

In addition, during FY 2011, the Board participated in the preparation of EISs in the:

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- Construction of an approximately 190-mile rail line, known as DesertXpress, from Victorville, Calif., to Las Vegas, Nev., offering high-speed passenger rail service between Southern California and Las Vegas.
- Evaluation of transportation alternatives, including the possible construction of a rail line, to enhance the movement of freight across New York Harbor from New York to New Jersey.
- Construction of approximately 34 miles of rail line in the U.S. and Mexico, 8 of which are from a proposed coal mine in Eagle Pass, Texas, to the U.S.-Mexico border, and 26 miles of which are from the border to an energy plant in Nuevo Laredo, Mexico.

In FY 2011, OEA also:

- Reopened the Section 106 process³⁰ to develop a Programmatic Agreement, in *Tongue River Railroad Company, Inc.—Construction and Operation—Western Alignment*, FD 30186 (Sub-No. 3).
- Conducted ongoing environmental review regarding the proposed construction and operation of a 43-mile rail line to serve coal interests, in *Six County Ass'n of Governments—Construction and Operation Exemption—Rail Line between Levan and Salina, Utah*, FD 34075.
- Conducted a preliminary review regarding the proposed construction of an approximately 8-mile rail line that would serve the Port of Yellow Bend located on the Mississippi River, in *North Louisiana and Arkansas Railroad, Inc.—Construction Exemption—In Chicot and Desha Counties, Ark.*, FD 35577.
- Conducted ongoing monitoring of the identification and valuation of historic and cultural resources for purposes of implementing a Programmatic Agreement pursuant to Section

³⁰ Section 106 of the NHPA imposes a responsibility on federal agencies to take into account the effect of their licensing decisions on properties included in, or eligible for inclusion in, the National Register of Historic Places.

106 of the NHPA, in *Alaska Railroad—Construction and Operation Exemption—Rail Line Between North Pole and Delta Junction, Alaska*, FD 34658.

- Conducted site visits in preparation for environmental reviews of the proposed acquisition and operation of a 22.3-mile rail line located between Munster, Ind., and Elsdon, Ill., in *CSX Transportation, Inc.—Acquisition and Operation*, FD 35522, and the proposed acquisition of an easement over a 106.5-mile rail line located between Indianapolis, Ind., and Louisville, Ky., in *CSX Transportation, Inc.—Easement Acquisition of Louisville and Indiana Railroad Company between Indianapolis, Ind. and Louisville, Ky.*, FD 35523.
- Held a number of meetings with Native American Tribes in project areas around the country.³¹

Among the more significant actions involving EAs in FY 2011, OEA:

- Participated in a project reevaluation for the proposed construction of a 2.8-mile rail line in Scott County, Iowa, and concurred with the Federal Highway Administration's determination³² a Supplemental EA was not warranted, in *City of Davenport, Iowa—Construction and Operation Exemption—In Scott County, Iowa*, FD 35237.

Rail Line Abandonments

The Board's review of rail line abandonments includes an analysis of potential environmental impacts associated with track removal and any traffic diversion from a line proposed for abandonment. Mitigation conditions imposed on rail line abandonments often involve the

³¹ OEA is delegated the responsibility to ensure the Board's compliance with NEPA, and NEPA's two purposes are disclosing potential environmental impacts to decision makers before they make a decision and involving the public in the environmental review process. For this reason, OEA conducts a variety of public meetings nationwide as part of its duties under NEPA.

³² Under NEPA, involved agencies are encouraged to work together on a single environmental review. In this instance, FHWA was the lead agency preparing the Environmental Assessment, and the STB was the cooperating agency.

protection of critical habitats for threatened and endangered species, historic and cultural resources, and wetlands. In FY 2011, OEA conducted approximately 39 environmental assessments in connection with rail line abandonments.

Railroad Mergers

In railroad mergers, potential environmental impacts include changes in rail traffic patterns on existing lines, which may be addressed in an EA or an EIS. The Board may impose conditions designed to mitigate potential system wide and corridor-specific environmental impacts. Such conditions may address at-grade crossing safety and traffic delays, including delays for emergency response vehicles; hazardous materials transportation safety; air quality; and noise impacts. Conditions may also address potentially disproportionate impacts on minority and low-income populations. In addition, safety integration plans (prepared by merger applicants in consultation with the Federal Railroad Administration) describe the process for combining and safely integrating the infrastructure, equipment, personnel, and operating practices of two or more entities following a merger or acquisition.³³

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

³³ See 49 C.F.R. Part 1106.

FINANCIAL CONDITION OF RAILROADS

The Board monitors the financial condition of railroads as part of its oversight of the rail industry. The agency prescribes a uniform accounting system³⁴ 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.³⁵

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

The Board publishes “rail cost adjustment factor” (RCAF) indices each quarter to reflect changes in costs incurred by the rail industry.³⁶ 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 5-year moving average).³⁷ Additionally, the Board publishes the **RCAF-5** index that also reflects national average productivity changes; however, these productivity changes are calculated as if a 5-year moving average had been applied consistently from the productivity adjustment's inception in 1989.³⁸

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.

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

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

³⁶ See Appendix A.

³⁷ 49 U.S.C. §§ 10708, 1135

³⁸ Productivity Adjustment—Implementation, 1 S.T.B. 739 (1996)

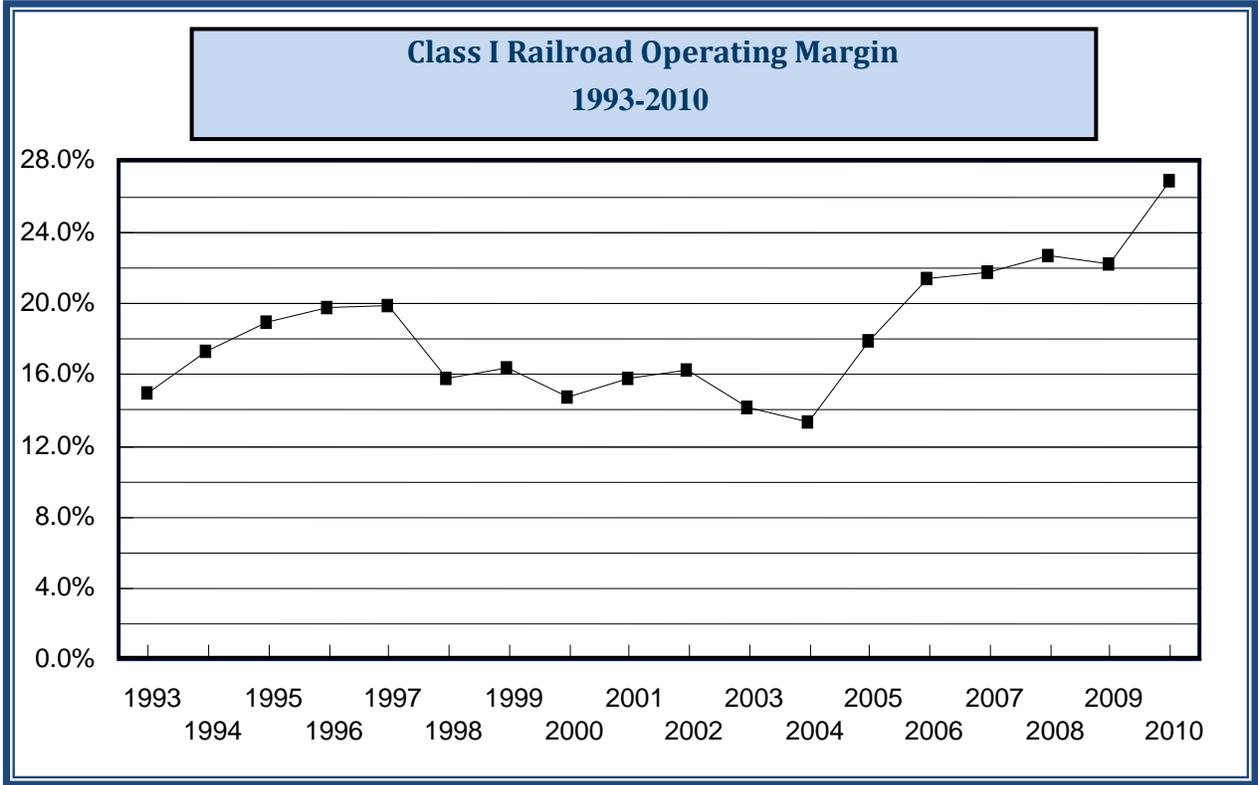


Figure 7.1 Class I Railroad Operating Margin

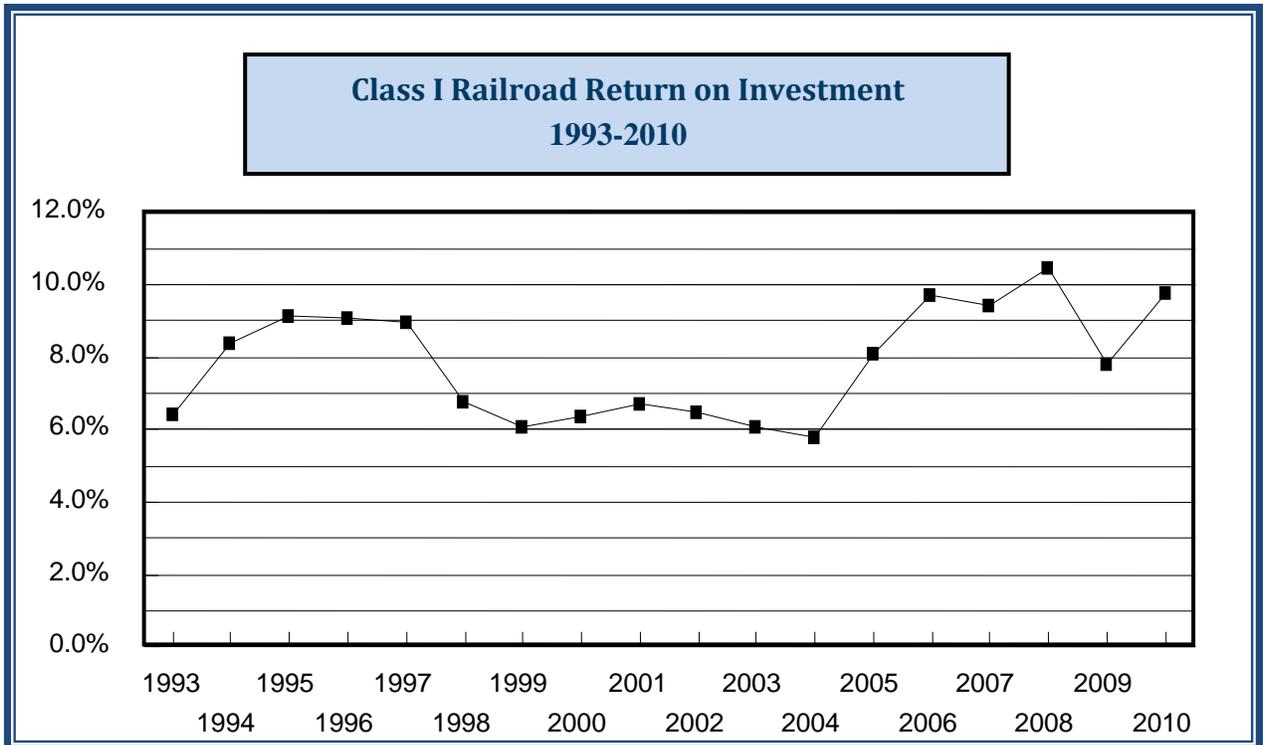


Figure 7.2 Class I Railroad Return on Investment

AMTRAK AND PASSENGER RAIL

The Board has limited but significant regulatory authority involving Amtrak. The agency has authority to ensure that Amtrak may operate over other rail carriers' track, and to address disputes concerning shared use of tracks and other facilities. The Board can set the terms and conditions of such shared use if Amtrak and rail carriers or regional transportation authorities fail to reach voluntary agreements. No such disputes requiring Board action arose in FY 2011.

When a rail carrier cannot permit an Amtrak train to move over its tracks as part of Amtrak's normal routing, the Board may issue an emergency rerouting order to permit uninterrupted Amtrak service. No such emergency rerouting orders were required in FY 2011.

The Board also has authority to direct commuter rail operations in the event of a cessation of service by Amtrak. Though the Board works with FRA, Amtrak, and commuter and freight railroads to assess such contingencies, no instances arose during FY 2011 requiring the agency to take action in this area.

Signed into law on October 16, 2008, the Passenger Rail Investment and Improvement Act of 2008, P.L. 110-432, 122 Stat. 4848 (2008) (PRIIA), expanded the Board's jurisdiction over passenger rail. PRIIA requires Amtrak and FRA jointly to develop metrics and improved standards for Amtrak performance. The metrics were finalized by FRA on May 12, 2010, and the Board has analyzed them. The law authorizes the Board to institute enforcement or investigatory action under certain circumstances if the new metrics and standards for Amtrak performance are not met. After investigating, the Board is directed to identify reasonable measures and make recommendations to improve Amtrak performance and/or service quality, and can award damages and prescribe other relief in appropriate circumstances. The Board may be called upon to set terms for access to Amtrak equipment, service and facilities by non-Amtrak passenger carriers under certain circumstances. Also, the Board will provide mediation services

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upon request to assist with resolution of disputes regarding commuter-rail access to freight-rail services and facilities.

During FY 2011, the Board has continued work on implementing its passenger rail responsibilities under PRIIA. Board staff has monitored Amtrak performance through publicly available information, and responded to informal inquiries about Amtrak and PRIIA as needed. The Board was not called upon to investigate, adjudicate or mediate any issues or disputes under PRIIA during FY 2011. However, Board staff has spoken to industry trade associations to raise awareness of the Board's new commuter-rail access dispute mediation authority, and about the Board's June 2010 report to Congress on passenger rail liability and indemnity issues.

MOTOR CARRIAGE

Collective Motor Carrier Activities

Bureau Agreements

The Board may approve agreements by motor carriers to collectively set through routes and joint rates, establish uniform classifications and mileage guides, and engage in certain other collective activities. However, the Board decided that it would no longer permit carriers to set base rates and related matters collectively, and it therefore terminated its approval of all outstanding motor-carrier bureau agreements, as well as antitrust immunity for them, beginning on Jan. 1, 2008. *See Motor Carrier Bureaus—Periodic Review Proceeding*, EP 656 (STB served May 7, 2007, and June 28, 2007). Consequently, some motor carrier bureaus disbanded altogether while others revised their activities significantly in an attempt to comply with the antitrust laws. No instances arose during FY 2011 requiring agency action in this area.

Pooling Arrangements

Motor carriers seeking to pool or to divide their traffic, services, or earnings among themselves must apply for Board approval. The Board's only activity concerning motor carrier pooling arrangements in FY 2011 was its approval of a modification of an existing pooling agreement in which some motor carriers withdrew from the agreement and others were added in their place. *See Averitt Express, Inc. DATS Trucking, Inc. Lakeville Motor Express, Inc., Land Air Express of New England, Pitt Ohio Express, LLC, Canadian Freightways, and Epic Express—Pooling Agreement*, MCF 21023 (STB served Feb. 18, 2011).

Household-Goods Carriage

Household goods 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 carriers may limit their liability for loss and damage of the goods.

In FY 2011, the Board proposed two changes to the rules governing household goods moves, the first requiring moving companies to provide certain information to consumers concerning the two available cargo-liability options and the second increasing the dollar value levels used in reimbursing a consumer under the replacement-value option when the consumer had not declared in advance how much the goods were worth, in *Released Rates of Motor Common Carriers of Household Goods*, RR 999 (Amendment No. 5) (STB served Jan. 21, 2011), *clarified* (STB served Jan. 12, 2012).

Intercity Bus Industry

Intercity bus carriers must obtain Board approval for mergers and similar consolidations, and for pooling arrangements between and among carriers. In addition, the agency can require bus carriers to provide through routes with other carriers. In FY 2011, the Board denied approval of a joint venture between two competing motor carriers that provide sightseeing bus services primarily in New York City, concluding that the transaction was not in the public interest because it would create an entity with excessive market power, in *Stagecoach Group PLC and Coach USA Inc., et al.—Acquisition of Control—Twin America, LLC*, MCF 21035 (STB served Feb. 8, 2011).

Motor Carrier Rate Reasonableness

The Board may review the reasonableness of those motor carriers rates that are established collectively. In view of the Board's termination of approval for any motor carriers to set rates

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collectively, that type of rate no longer is sanctioned [*see Motor Carrier Bureaus—Periodic Review Proceeding*, EP 656 (STB served May 7, 2007, and June 28, 2007)] and, accordingly, there were no requests for review of such rates in FY 2011. No instances arose during FY 2011 requiring agency action in this area.

WATER CARRIAGE

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

Tariff Requirements

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

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. During FY 2011, the Board found that a challenged water carrier tariff provision cannot hold an individual responsible for a corporation's debts when there is no other indication that the individual has expressly agreed to assume that obligation, in *West Point Relocation, Inc. & Eli Cohen—Petition for Declaratory Order*, FD 35290 (STB served Oct. 29, 2010).

PIPELINE CARRIAGE

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

Pipeline carriers must promptly disclose their rates and service terms upon public request, and rates and practices must be reasonable and nondiscriminatory. Pipeline carriers must provide at least 20 days' public notice before a rate increase or change in service terms may become effective. The Board neither received nor decided any pipeline-related complaints during FY 2011, nor were any pending at the close of the fiscal year.

OTHER RULEMAKINGS

Among other rulemakings in FY 2011, the Board:

- Modified the Board's interim rules governing land-use-exemption permits for solid waste rail transfer facilities, in *Solid Waste Rail Transfer Facilities*, EP 684 (STB served March 24, 2011).
- Proposed rules for Amtrak requests for Board orders that would permit Amtrak trains to detour over the lines of other railroads in emergency situations, in *Amtrak Emergency Rerouting Orders*, EP 697 (STB served Jan. 6, 2011).
- Sought input from interested parties, including the Railroad-Shipper Transportation Advisory Council, regarding measures it can implement to encourage greater use of the Board's mediation and arbitration procedures, *Assessment of Mediation and Arbitration Procedures*, EP 699 (STB served Dec. 3, 2010).
- Instituted a rulemaking proceeding to consider ways of determining the liability of warehousemen and other intermediaries for demurrage (*i.e.*, charges for shipper-held rail cars), in *Demurrage Liability*, EP 707 (STB served Dec. 6, 2010).
- Proposed to amend its rules regarding annual financial reporting for large railroads so that the railroads will specifically identify expenditures attributable to the installation and operation of Positive Train Control (PTC), rather than mixing such PTC expenditures among the contents of a larger category of unidentifiable reported expenditures, in *Reporting Requirements for Positive Train Control Expenses and Investments*, EP 706 (STB served Oct. 13, 2011).

COURT ACTIONS

Judicial review of most Board decisions is available in the federal courts of appeals. Certain Board orders—those solely for the payment of money and those addressing questions referred to the Board by a federal district court—are reviewable in federal district court. Below is a summary of significant court decisions rendered in FY 2011.

Rail-Line Abandonments

In *Riffin v. STB*, No. 10-1150, 423 Fed. Appx. 1 (D.C. Cir. May 27, 2011) (unpublished), the D.C. Circuit addressed a Board decision regarding an individual who was seeking, through a statutory forced sale provision, to purchase a railroad line the Board had approved for abandonment. The Board found that the individual did not meet the statutory requirements for such a sale because, among other things, he was insolvent. The individual challenged the Board's decision in court. The D.C. Circuit affirmed the Board's decision holding that insolvency is inconsistent with being "financially responsible" for purposes of the "offer of financial assistance" provisions at 49 U.S.C. § 10904.

In *Kessler v. STB*, 635 F.3d 1 (D.C. Cir. 2011), two individuals sought review of a Board decision exempting a rail-line abandonment from the statutory provision (49 U.S.C. § 10904) that would have allowed them to purchase the line through a forced sale. The court affirmed the Board's decision that the right-of-way was needed for a valid public purpose (an interstate highway) and that there was no overriding public need for rail service on the unused line.

Rail-Line Sales

In *Brotherhood of Railroad Signalmen v. STB*, 638 F.3d 807 (D.C. Cir. 2011), several labor unions appealed the Board's determination that a state transit agency's purchase of track and other physical rail assets from a freight rail carrier was not an acquisition of a "railroad line" requiring Board authorization under 49 U.S.C. § 10901(a)(4) because the rail carrier reserved a permanent, exclusive freight-rail operating easement over the track; retained the common carrier obligation; and negotiated terms and conditions that would protect against unreasonable interference with freight rail service. The Court found that Congress had given the Board latitude to decide when a sale of railroad assets constituted the sale of a "railroad line" and that the Board's decision was reasonable.

Railroad Rates: Rate Reasonableness Determinations

In *Union Pacific Railroad v. STB*, 628 F.3d 597 (D.C. Cir. 2010), the railroad petitioner sought review of the Board's determination that the challenged rates for the shipment of chlorine were unreasonably high. The involved shipper (US Magnesium) had elected to bring its rate-reasonableness challenge before the Board under the Three Benchmark framework for small rate cases. One important component of the Three Benchmark approach is a comparison of the challenged rate to the rate charged for a group of comparable movements. Here, UP appealed the Board's selection of US Magnesium's comparison group instead of UP's, and the agency's ultimate decision that UP's rates were unreasonably high. The Court found no grounds on which to reverse the Board's decision. Because the Board's decision articulated a rational connection between the facts found and the decision made, the Court denied the railroad's petition for review.

Railroad Practices: Practice Reasonableness Determinations

In *Railroad Salvage and Restoration v. STB*, 648 F.3d 915 (8th Cir. 2011), two shippers appealed a Board decision finding that they had failed to meet the burden of demonstrating that the

demurrage practices of the railroad at issue were unreasonable. The court dismissed the majority of the shippers' appeal for lack of jurisdiction because the appeal should have been brought before the federal district court that had referred the claims to the Board.

In *Kessler v. STB*, 637 F. 3d 369 (D.C. Cir. 2011), an individual sought review of the Board's refusal to enjoin an auction of property held because of his outstanding demurrage debts. The court determined that most of the individual's claims had been mooted by the sale. The court dismissed the petition for review after finding that the individual's remaining claims were not yet ripe for review as he had failed to pursue administrative remedies that could have led to compensation for any losses arising from unlawful carrier conduct.

Environmental Issues

In *Village of Barrington v. STB*, 636 F.3d 650 (D.C. Cir. 2011), the court rejected, in all respects, environmental challenges brought by the railroad and local communities in a case involving consolidation of CN with EJ&E. The court upheld the Board's authority to attach environmental conditions to its approvals of smaller rail carrier consolidations (consolidations not involving two or more large "Class I" railroads). The court also rejected the railroad's challenge to the Board's decision requiring grade separations at two highway crossings and assigning most of the separations' costs to the railroad. Finally, the court rejected the communities' claims that the Board's environmental review and conditions were inadequate.

Miscellaneous

Preemption

In *New York & Atlantic Railway v. STB*, 635 F. 3d 66 (2d Cir. 2011), a railroad sought review of Board decisions finding that a truck-to-rail transload facility, operated by a non-railroad entity in a railroad's yard, does not fall within the Board's jurisdiction and thus fails to qualify for federal

preemption from local zoning regulations under 49 U.S.C. § 10501(b). The court agreed with the Board that the Clean Railroads Act, 49 U.S.C. § 10908(a) (CRA), did not apply to the transload facility. Under the CRA, a solid waste rail transfer facility must comply with all applicable federal and state requirements except for zoning and siting laws if the facility files for and is issued a land use exemption permit by the Board. The CRA applies only to facilities that fall within the Board's jurisdiction, and the transload facility at issue in this case was not within the Board's jurisdiction because it was not transportation by a rail carrier.

Definition of a Rail Carrier

In *Riffin v. STB*, No. 09-1277, 402 Fed. Appx. 532 (D.C. Cir. Nov. 30, 2010) (unpublished), an individual sought review of a Board determination that he was not a "rail carrier." The court affirmed the Board's decision because the individual had not shown that he could provide rail service.

Procedural Issues

In *South Plains Switching, Ltd. v. STB*, No. 10-1196 (D.C. Cir. Dec. 14, 2010) (unpublished order), a rail carrier sought review of the Board's refusal to reconsider an earlier decision finding that the carrier had sold certain rail tracks as part of a larger sale. The court dismissed the appeal for lack of jurisdiction because the carrier sought review based not on new evidence or changed circumstances, but rather on a legal argument the carrier had raised for the first time in its petition for reconsideration, even though that argument could have been raised earlier in the proceeding.

APPENDIX A

REPORTS AND PUBLICATIONS

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

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

Copying charges may apply.

Board Regulations and Governing Statutes

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

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

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

<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 rest of the United States Code Annotated, may be purchased in hardcopy format by calling 1 (800) 328-9352, or writing to the following address:

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

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

The Board's Website

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

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

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

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- Links to significant agency proceedings, the U.S. Congress, the U.S. Department of Transportation's list of Internet sites, and WebGov containing links to the White House and governmental agencies.
- Agricultural-contract summaries.
- Recordations, a listing of documents evidencing perfected security interests in railroad rolling stock and some water-carrier equipment.

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 a proceeding are available electronically. FOIA requests and Information Quality requests also may be electronically submitted.

Board Decisions, Filings, and News Releases

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

Speeches and Statements

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

Financial and Statistical Reports from Class I Railroads

The following reports, submitted to the Board by Class I railroads, may be examined, by appointment with the agency's Records Officer, (202) 245-0238, between the hours of 8:30 a.m. and 5:00 p.m., Monday through Friday. Report copies are available for a fee, minimum charges apply, and a higher fee applies to requests for certified copies. Documents available on the Board's website are marked with an asterisk (*).

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

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

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

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

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

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

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

Report of Fuel Cost, Consumption, and Surcharge Revenue—A quarterly report containing the following information: total quarterly fuel cost; gallons of fuel consumed during the quarter; increased or decreased cost of fuel over the previous quarter; and total quarterly revenue

from fuel surcharges for all traffic and regulated traffic. This required reporting commenced with the 3 months beginning Oct. 1, 2007. See *Rail Fuel Surcharges*, EP 661 (Sub-No.1) (STB served Aug. 14, 2007).*

Periodic Financial Decisions and Notices Issued by the STB

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

Commodity Revenue Stratification Report—report showing the revenue and URCS variable costs by 2-digit STCC code for each of 3 Revenue-to-Variable Cost (RVC) Ratio categories. This report has historically been created as part of the proceeding entitled *Rate Guidelines—Non-Coal Proceedings*, EP 347 (Sub-No. 2), and its calculation of the “Revenue Shortfall Allocation Method” (RSAM) percentage and the “Average Revenue-to-Variable Cost > 180” (R/VC>180) percentage.*

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

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

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

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

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

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

Publications

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

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

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

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

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

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

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

Surface Transportation Board

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

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

Surface Transportation Board Annual Reports—reports covering the Board’s activities from its inception on Jan. 1, 1996, to the close of the fiscal year that ended Sept. 30, 2011.*

Surface Transportation Board Reports, Volumes 1 through 7— reports containing major Board decisions, including final rules, issued from January 1996 - December 2004 (available on the Board’s website and through the U.S. Government Printing Office).

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

Software, Data, and User Documentation

The following software, data, and user documentation may be obtained from the Office of Economics (OE) for a fee. To purchase any of these items or obtain additional information, contact OE at (202) 245-0323.

Computer Assisted Depreciation and Life Analysis System (CADLAS)—programs used to analyze the life characteristics of property, calculate historical salvage ratios, develop depreciation rates, calculate annual accruals and accumulated depreciation, determine Reproduction Cost New Less Depreciation (RCNLD) (also known as Trended Net Original Cost), estimate property replacements, and value assets. The cost for the Software and User Documentation generally is \$35.50 based on a rate of \$71 per hour [*Regulations Governing Fees for Services Performed in Connection with Licensing and Related Services—2010 Update*, EP 542 (Sub-No. 17) (STB served July 28, 2010) (effective Aug. 27, 2010)].

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

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

Carload Waybill Sample Public Use File—nonconfidential 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 average full-time equivalent (FTE) employment and total appropriations, less enacted rescissions, for fiscal years 2004 to 2011 for activities included under the current appropriation title “Salaries and Expenses.”

Table B.1			
Average FTE Employment and Appropriations			
FY 2004 - 2011¹			
Fiscal Year	Appropriation	STB Offset ²	Average Employment
2004	18,345,599	1,050,000	135
2005	20,020,000	1,050,000	134
2006	25,200,000	1,250,000	137
2007	25,074,501	1,250,000	136
2008	25,074,500	1,250,000	138
2009	25,597,000	1,250,000	141
2010	27,816,000	1,250,000	149
2011	27,760,368	1,250,000	140

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

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

Table B.2 Status of STB Fiscal Year Appropriations FY 2004-2011 *	
Status of FY 2004 Appropriations	
Total appropriations	\$18,345,599
Offsetting collections (<i>see note</i>)	1,050,000
Reimbursements from other agencies	0
Total obligations	18,336,857
Unobligated balance available for adjustments	8,742
Carryover of offsetting collections to next fiscal year	940,617
Status of FY 2005 Appropriations	
Total appropriations (adjusted)	\$20,031,323
Offsetting collections (<i>see note</i>)	1,038,077
Reimbursements from other agencies	494,836
Total obligations	20,012,955
Unobligated balance available for adjustments	18,368
Carryover of offsetting collections to next fiscal year	940,617
Status of FY 2006 Appropriations	
Total appropriations (adjusted)	\$24,999,349
Offsetting collections (<i>see note</i>)	1,198,651
Reimbursements from other agencies	20,259
Total obligations	24,928,304
Unobligated balance available for adjustments	71,045
Carryover of offsetting collections to next fiscal year	940,617
Status of FY 2007 Appropriations	
Total appropriations (adjusted)	\$25,450,866
Offsetting collections (<i>see note</i>)	873,635
Reimbursements from other agencies	0
Total obligations	25,379,087
Unobligated balance available for adjustments	71,779
Carryover of offsetting collections to next fiscal year	940,617

(Table continued...)

Table B.2	
Status of STB Fiscal Year Appropriations	
FY 2004-2011 *	
Status of FY 2008 Appropriations	
Total appropriations	\$25,074,500
Offsetting collections (<i>see note</i>)	1,250,000
Reimbursements from other agencies	0
Total obligations	25,069,749
Unobligated balance available for adjustments	4,751
Carryover of offsetting collections to next fiscal year	940,617
Status of FY 2009 Appropriations	
Total appropriations (adjusted)	\$25,829,254
Offsetting collections (<i>see note</i>)	1,017,746
Reimbursements from other agencies	0
Total obligations	25,806,587
Unobligated balance available for adjustments	22,667
Carryover of offsetting collections to next fiscal year	940,617
Status of FY 2010 Appropriations	
Total appropriations (adjusted)	\$28,311,150
Offsetting collections (<i>see note</i>)	754,850
Reimbursements from other agencies	0
Total obligations	29,050,318
Unobligated balance available for adjustments	15,682
Carryover of offsetting collections to next fiscal year	940,617
Status of FY 2011 Appropriations	
Total appropriations (adjusted)	\$28,224,359
Offsetting collections (<i>see note</i>)	762,909
Reimbursements from other agencies	0
Total obligations	28,987,268
Unobligated balance available for adjustments	23,100
Carryover of offsetting collections to next fiscal year	940,617

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

NOTES:

FY 2004-2011 appropriations provided that offsetting collections would be credits to the appropriations. Sums appropriated were to be reduced, on a dollar-for-dollar basis, as such offsetting collections were receiving during each fiscal year.

APPENDIX C
DECISIONS DURING FY 2011

Table C.1					
FY 2011 Caseload: Rail Matters					
Category	Pending at Start	Received During	Closed During	Pending at End	Decisions Served
Carrier Consolidations	2	21	22	1	52
Review of Labor Arbitral Decisions	2	1	0	3	2
Rates and Services	15	19	11	23	88
Rate Reasonableness	7	13	7	13	67
Rate Disclosure	0	0	0	0	0
Through-Routes or Divisions	1	0	1	0	0
Contract Rates	0	0	0	0	0
Reasonable Practice	4	4	2	6	19
Discrimination	0	0	0	0	0
Car Supply and Interchange	0	0	0	0	0
Service Orders	2	2	1	3	2
Competitive Access	1	0	0	1	0
Constructions	13	5	5	13	12
Line Crossing	1	1	0	2	0
Constructions	12	4	5	11	12
Abandonments	30	171	184	17	289

(Table continued...)

**Table C.1
FY 2011 Caseload: Rail Matters**

Category	Pending at Start	Received During	Closed During	Pending at End	Decisions Served
<i>Continued...</i>					
Other Line Transactions	26	82	88	20	152
Line Consolidations	9	35	36	8	59
Line Acquisitions Under 49 U.S.C. 10901	8	22	22	8	52
Line Acquisitions by Shortline	8	20	24	4	31
Feeder Line Development	0	3	3	0	0
Acquisition and Operation 10502	1	2	3	0	10
Collective Actions	0	0	0	0	0
Collective Ratemaking	0	0	0	0	0
Pooling	0	0	0	0	0
Data Collection and Oversight	3	4	6	1	6
RCAF	0	2	2	0	5
Accounting and Records	3	2	4	1	1
Reports – Rail	0	0	0	0	0
Passenger Rail	0	0	0	0	0
Amtrak Track Use/ Compensation	0	0	0	0	0
Passenger Rail – Other	0	0	0	0	0
Exemption Rulemakings	6	8	2	12	17
Other Rail	1	3	1	3	8
Common Carrier Obligation	1	1	1	1	4
Interlocking Officer or Director	0	0	0	0	0
Other	0	2	0	2	4
Total Rail	98	314	319	93	626

Table C.2 FY 2011 Caseload: Nonrail Matters					
Category	Pending at Start	Received During	Closed During	Pending at End	Decisions Served
MOTOR					
Rate Reasonableness	1	0	0	1	1
Joint Motor-Water Rates in Non-contiguous Domestic Trade	1	0	0	1	1
Collectively Set Trucking Rates	0	0	0	0	0
Household Goods	0	0	0	0	0
Collective Actions	0	0	0	0	0
Collective Ratemaking Agreements	0	0	0	0	0
Truck Pooling	0	0	0	0	0
Undercharges	0	0	0	0	0
Bus Regulation	3	5	7	1	8
Through-Route Regulation	1	1	2	0	1
Mergers	1	4	4	1	6
Bus Pooling	1	0	1	0	1
Other Motor	1	0	0	1	3
WATER	0	0	0	0	0
Port-to-Port Water Rates	0	0	0	0	0
Other	0	0	0	0	0
PIPELINE	0	0	0	0	0
Rate Regulation	0	0	0	0	0
Other	0	0	0	0	0
OTHER	3	6	5	4	12
Total Nonrail	8	11	12	7	24
Total Rail and Nonrail	106	325	331	100	649

APPENDIX D

RAILROAD FINANCIAL AND STATISTICAL DATA

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

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

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

Table D.1	
Railroad Carriers Regulated by the STB as of Jan. 1, 2011	
<i>Carriers Subject to the Uniform System of Accounts and/or Required to File Annual and Periodic Reports^a</i>	
Railroads, Class I	7
<i>Railroads Not Required to File Reports</i>	
Railroads, Regional	21
Railroads, Local	537
Holding Companies – Rail	not available

^a AAR's *Railroad Facts*, 2011 Edition, p. 3. In lieu of the Class II designation, the AAR defines *regional railroads* as carriers having revenue of at least \$20 million. They must also operate at least 350 miles of road or earn revenue between \$40 million and the Class I revenue threshold. In lieu of the Class III designation, the AAR defines *local railroads* as carriers with revenues below that of the regional criteria, plus switching and terminal companies.

A Current Year's Revenues Deflator Factor is used to adjust a railroad's operating revenues to eliminate the effects of inflation. Deflator factors are based on the annual average Railroad Freight Price Index for all commodities as developed by the U.S. Department of Labor's Bureau of Labor Statistics. Factors for recent years are shown in the table below. Deflator factors prior to 2006 are listed in 76 Fed. Reg. 52,384 (2011).

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Table D.2 Railroad Revenue Thresholds			
Year	Factor	Class I	Class II
2006	0.7209	346,788,736	27,743,099
2007	0.6952	359,608,745	28,768,699
2008	0.6228	401,418,115	32,113,449
2009	0.6600	378,774,016	30,301,921
2010	0.6271	398,673,376	31,893,870

Table D.3 Class I Railroads: Condensed Income Statement, Financial Ratios, and Employee Data				
	Calendar Year			
	2007	2008	2009	2010
1. Class 1 Carriers	7	7	7	7
CONDENSED INCOME STATEMENT				
2. Total operating revenues	\$54,599,504	\$61,242,606	\$47,848,649	\$58,404,634
3. Total operating expenses	42,747,102	47,347,941	37,225,042	42,707,642
4. Net railway operating income	7,765,051	9,248,350	7,044,981	9,959,209
5. Net income	6,797,225	8,101,774	6,422,621	9,246,692
6. Dividends Paid	6,428,602	3,348,163	1,381,799	1,988,581
NET INVESTMENT AND EQUITY				
7. Net investment, transp. prop. & eqpmt ^a	82,512,141	88,261,887	90,285,519	101,885,684
8. Shareholders' equity	59,300,038	62,786,791	67,826,460	96,933,643
FINANCIAL RATIOS (PERCENT)				
9. Operating ratio (L3/L2)	78.29%	77.31%	77.80%	73.12%
10. Return on net investment (L4/L7)	9.41%	10.48%	7.80%	9.77%
11. Return on equity (L5/L8)	11.46%	12.90%	9.47%	9.54%
EMPLOYEE DATA				
12. Average number of employees	167,215	164,439	151,906	151,933
13. Compensation	\$11,617,546	\$11,977,016	\$10,930,497	\$11,014,707

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

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

Table D. 4				
Class I Railroads: Selected Balance Sheet Data as of December 31				
2007-2010				
<i>(Dollars in Thousands)</i>				
	Calendar Year			
	2007	2008	2009	2010
1. Total current assets	\$8,021,330	\$8,825,174	\$8,767,675	\$16,064,106
2. Total current liabilities	13,503,696	12,428,998	9,800,997	14,921,086
3. Transportation property				
Road	121,909,899	128,119,862	134,390,447	145,962,289
Equipment	30,533,170	31,760,388	33,422,716	32,602,295
Other	2,827,830	2,823,048	2,347,353	2,375,819
Less accumulated depreciation and amortization	38,865,967	41,361,514	44,343,857	36,116,914
Net transportation property	116,404,932	121,341,784	125,816,659	144,823,489
4. Long-term debt (due after 1 yr)	15,363,218	15,625,048	16,955,770	16,639,863
5. Shareholders' equity				
Capital stock (par value)	655,272	652,439	649,479	405,747
Additional capital (above par)	24,034,945	24,192,551	24,332,478	61,990,598
Retained earnings	34,558,129	37,852,644	42,745,796	34,541,085
Less treasury stock	3,787	3,787	3,787	3,787
Net shareholders' equity	\$59,300,038	\$62,786,791	\$67,826,460	96,933,643

Table D.5
Railroad Cost of Capital, Percentage Return on Investment (ROI),
Revenue Adequacy Status
2007-2010 ^a

	Calendar Year			
	2007 ^b	2008 ^c	2009 ^d	2010 ^e
Cost of Capital	11.33	11.75	10.43	11.03
ROIs of Class I Railroads				
Burlington Northern Sante Fe	9.97	10.51	8.67	9.22
Canadian National/Grand Trunk Corp	10.11	9.89	7.30	9.21
CSX Transportation	7.61	9.34	6.04	10.85
Kansas City Southern	9.37	7.72	6.51	9.77
Norfolk Southern	13.55	13.75	7.69	10.96
Soo Line	15.25	9.29	6.28	8.01
Union Pacific	8.90	10.46	8.62	11.54

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

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

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

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

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

APPENDIX E

RAILROAD RATE CASES AT THE STB

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

Table E.1
Railroad Rate Cases at the STB
(1996 through Sept. 30, 2011)

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

(Table continued...)

Surface Transportation Board

Table E.1
Railroad Rate Cases at the STB
(1996 through Sept. 30, 2011)

Docket No	Case Name	Commodity	Guideline Used *	Date Decision Served	Decision
<i>Continued...</i>					
42095	KCPL v. UP	Coal	Stipulated R/VC	5/19/2008	Rates Unreasonable
42088	Western Fuels v. BNSF	Coal	SAC	2/18/2009	Rates Unreasonable
42112	E.I. Dupont v. CSX	Chemical	SAC	5/11/2009	Settlement
41191(S1)	AEP Texas v. BNSF	Coal	SAC	5/15/2009	Rates Reasonable
42111	Oklahoma Gas v. UP	Coal	Stipulated R/VC	7/23/2009	Rates Unreasonable
42088(S1)	Western Fuels v. BNSF	Coal	SAC	7/27/2009	Rate Guidelines
42099	DuPont v. CSX	Chemical	Three-Benchmark	9/1/2009	Settlement
42100	DuPont v. CSX	Chemical	Three-Benchmark	9/1/2009	Settlement
42101	DuPont v. CSX	Chemical	Three-Benchmark	9/1/2009	Settlement
42114	U.S. Magnesium v. UP	Chemical	Three-Benchmark	1/28/2010	Rates Unreasonable
42115	U.S. Magnesium v. UP	Chemical	Simplified SAC	4/2/2010	Settlement
42116	U.S. Magnesium v. UP	Chemical	Simplified SAC	4/2/2010	Settlement
42122	NRG v. CSXT	Coal	SAC	7/8/2010	Settlement
42110	Seminole Electric v. CSX	Coal	SAC	9/27/2010	Settlement
42113(S1)	AEPCO v. UP	Coal	SAC	4/15/2011	Settlement
42128	SMEPA v. NS	Coal	SAC	8/31/2011	Settlement
Rail Rate Cases Pending at the STB as of Sept. 30, 2011					
42113	AEPCO v. BNSF & UP	Coal	SAC		
42121	TPI v. CSXT	Chemicals	SAC		
42123	M&G Polymers v. CSXT	Chemicals	SAC		
42125	DuPont v. NS	Chemicals	SAC		
42127	IPA v. UP	Coal	SAC		
42130	SunBelt v. NS & UP	Chemicals	SAC		

*** Abbreviations:**

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

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

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

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

During the five-year period FY 2007- 2011, 18 Board decisions were served (NOR 42097 through NOR 42128 above). Of these decisions, 12 were resolved through a settlement agreement between the parties, five found the rates unreasonable, and one [NOR 41191(S1)] found the rates to be reasonable.

APPENDIX F

SURFACE TRANSPORTATION BOARD MEMBERS

Table F.1 Surface Transportation Board Members 1996-2011 ¹				
Name	State	Party	Oath of Office	End of Service ²
SIMMONS, J.J. III	OK	Democrat	Jan 1, 1996	Dec 31, 1996
OWEN, Gus A.	CA	Republican	Jan 1, 1996	Dec 31, 1998
MORGAN, Linda J. ³	MD	Democrat	Jan 1, 1996	May 15, 2003
CLYBURN, William Jr.	SC	Democrat	Dec 21, 1998	Dec 31, 2001
BURKES, Wayne O.	MS	Republican	Feb 25, 1999	Mar 20, 2003
NOBER, Roger ⁴	MD	Republican	Nov 26, 2002	Jan 4, 2006
BUTTREY, W. Douglas ⁵	TN	Republican	May 28, 2004	Mar 13, 2009
MULVEY, Francis P. ⁶	MD	Democrat	Jun 2, 2004	Term ends 2012
NOTTINGHAM, Charles D. ⁷	DC	Republican	Aug 14, 2006	Mar 18, 2011
ELLIOTT, Daniel R. III ⁸	OH	Democrat	Aug 13, 2009	Term ends 2013
BEGEMAN, Ann D. ⁹	VA	Republican	Apr 14, 2011	Term ends 2015

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

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

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

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

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

⁶ Acting Chairman March 12 to Aug. 13, 2009; current Vice Chairman.

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

⁸ Current Chairman.

⁹ Current Member.