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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Docket No. EP 761

HEARING ON REVENUE ADEQUACY

Docket No. EP 722

RAILROAD REVENUE ADEQUACY

INDUSTRIAL MINERALS ASSOCIATION- NORTH AMERICA COMMENTS

Industrial Minerals Association (“IMA-NA”) respectfully submits its comments for the Hearing on Revenue Adequacy. On September 12, 2019, the Surface Transportation Board (“STB” or “Board”) issued a Notice of Public Hearing (“Notice”) for December 12, 2019 on revenue adequacy issues raised in the report issued by the Board’s Rate Reform Task Force (“RRTF”). IMA-NA sincerely thanks the Board for having this hearing on a matter that is extremely important to us. Presently, IMA-NA feels its members have no recourse when a rate is unreasonable and commends the Board for attempting to find better ways to challenge a rate in this proceeding and in the Final Offer Rate Review and Market Dominance Streamlined Approach proceedings.

In January 2018, the Board established the RRTF with the objectives of developing recommendations to reform and streamline the Board’s rate review process for large cases and determining how to best provide a rate review process for smaller cases. After holding informal meetings throughout 2018, the RRTF issued a report on April 25, 2019 (RRTF Report). The

RRTF Report recommended, among other things, that the Board consider policy changes regarding revenue adequacy. RRTF Report 12-13, 32-42.

In the Notice, the Board asked interested persons to provide input on the RRTF's recommendations regarding railroad revenue adequacy. The Board specifically asked participants to address the following RRTF recommendations in their written testimony at the hearing:

- Definition of long-term revenue adequacy: The RRTF recommended determining long-term revenue adequacy by looking at the annual determinations over “the shortest period of time, not less than five years, that includes both a year in which a recession began and a year that follows a year in which a recession began.” RRTF Report 13, 33.
- Rate increase constraint: The RRTF recommended considering a rate increase constraint for long-term revenue-adequate carriers, which would identify a point beyond which further application of differential pricing would be unwarranted. See RRTF Report 13, 36-39.
- Bottleneck changes: The RRTF recommended considering suspension of the Board's Bottleneck protections as applied to long-term revenue-adequate carriers. See RRTF Report 13, 39-41.
- Simplified Stand-Alone Cost (Simplified-SAC) changes: For purposes of considering whether a long-term revenue-adequate carrier's rate is reasonable under Simplified-SAC, the RRTF recommended reinstating the simplification of the Road Property Investment analysis. See RRTF Report 13, 41-42, & app. B.

IMA-NA will address each of these points in the order presented by the Board.

IDENTITY AND INTEREST

The IMA-NA is a trade association that represents companies that mine, process and sell industrial minerals throughout North America. IMA-NA represents a wide variety of minerals in North America, including: ball clay, barite bentonite, borates, calcium carbonate, diatomite, feldspar, industrial sand, kaolin, soda ash, talc, wollastonite and other minerals. The industrial minerals produced by IMA-NA member companies are the raw material feedstock that are incorporated into a broad range of products, including among other things, containers, flat and specialty glasses, paint and coatings, ceramics, and a broad range of building products. Additionally, industrial minerals are used to make foundry molds and cores, which are in turn

utilized to make metal shapes for the manufacturing of automobiles, SUVs and trucks, rail cars and almost all other items that have metal castings. The demand for many of these minerals from manufacturers is global, and the continued pressure its member companies are feeling from the railroads in the form of constant rate increases is making it more difficult to compete in that global market.

In this global market, IMA-NA has seen with certain minerals that it is now cheaper for its members' global competitors to ship via vessel from Europe and elsewhere to portions of the United States than it is for IMA-NA members to ship via rail in the United States with the skyrocketing rail rates. These unchecked rates imposed by the railroads are having a negative overall impact on the U.S. economy, and matters could get even worse if they are not held accountable.

Industrial minerals are low margin, high volume products. IMA-NA member companies are heavily dependent upon a reliable and cost-effective transportation network, especially rail, and are major shippers with the Class I rails. To help highlight that, in 2014, the nonmetallic minerals, except fuels category, made up \$1.5 billion in total freight rail premiums.

As a result, IMA-NA has a very strong interest in having the Board provide a revenue adequacy constraint process and in the market dominance streamlined process in EP 756 and in final offer rate review process in EP 755. IMA-NA commends the Board for taking an interest in promoting policies that remove barriers to accessing regulatory protection remedies and is extremely pleased that the Board is having this discussion about the revenue adequacy constraint.

DEFINITION OF LONG-TERM REVENUE ADEQUACY

The first recommendation the Board asks IMA-NA to address is the definition of long-term revenue adequacy. As noted, the RRTF recommended determining long-term revenue adequacy by looking at the annual determinations over "the shortest period of time, not less than five years, that includes both a year in which a recession began and a year that follows a year in which a recession began." RRTF Report 13, 33. Generally, IMA-NA is supportive of this approach but suggests broadening it to ensure it captures all revenue adequate carriers that are financially healthy by adding the right to submit additional probative evidence on revenue

adequacy and an STB-determined range around the cost of capital calculation that would take into account the inexact nature of the process.

Under 49 U.S.C. § 10701(d)(2), when determining whether a rate is reasonable, the Board is directed to give due consideration to three factors, recognizing the policy that “rail carriers shall earn adequate revenues.” The Board is required to “annually determine which rail carriers are earning adequate revenues.” 49 U.S.C. § 10704(a)(3); see, e.g., R.R. Revenue Adequacy—2017 Determination, EP 552 (Sub-No. 22) (STB served Dec. 21, 2018). This annual determination is distinct from long-term revenue adequacy, which “calls for a company, *over time*, to average return on investment equal to its cost of capital.” Coal Rate Guidelines, Nationwide, 1 I.C.C.2d 520, 536 (1985).

Each year, the Board determines the railroad industry’s cost of capital and then uses this figure in a variety of regulatory proceedings, including the annual determination of railroad revenue adequacy. The Board calculates the cost of capital as the weighted average of the cost of debt and the cost of equity. See Methodology to be Employed in Determining the R.R. Indus.’s Cost of Capital, EP 664, slip op. at 3 (STB served Jan. 17, 2008). While the cost of debt is observable and readily available, **the cost of equity (the expected return that equity investors require) can only be estimated.** Id. Thus, “estimating the cost of equity requires relying on appropriate finance models.” Pet. of the W. Coal Traffic League to Inst. a Rulemaking Proceeding to Abolish the Use of the Multi-Stage Discounted Cash Flow Model in Determining the R.R. Indus.’s Cost of Equity Capital, EP 664 (Sub-No. 2), slip op. at 2 (STB served Oct. 31, 2016).

As the Board has stated previously, **there is no single simple or correct way to estimate the cost of equity for the railroad industry**, and many model options are available. Use of a Multi-Stage Discounted Cash Flow Model, EP 664 (Sub-No. 1), slip op. at 15; see also Pet. of the W. Coal Traffic League, EP 664 (Sub-No. 2), slip op. at 2, 20 (STB served Oct. 31, 2016). The Board has acknowledged that “by using multiple models that are based on different perspectives and rely on different inputs, the Board benefits because anomalies affecting one model are less likely to affect the other.” Pet. of the W. Coal Traffic League, EP 664 (Sub-No. 2), slip op. at 3 (STB served Apr. 28, 2017). The Board has previously determined that a

methodology that uses multiple models is more robust than a methodology that utilizes only one model, not because one model is “conceptually or pragmatically superior to the other,” but rather because each has different strengths and weaknesses. Pet. of the W. Coal Traffic League, EP 664 (Sub-No. 2), slip op. at 11 (STB served Oct. 31, 2016). Since 2009, the Board has found that the simple average of the Capital Asset Pricing Model (“CAPM”) and the Morningstar/Ibbotson Multi-Stage Discounted Cash Flow Model (“MSDCF”) has produced a reasonable estimate of the cost of equity used to gauge the financial health of the railroad industry.

This annual cost of capital determination has been the subject of much controversy and debate over the years, including various challenges and changes to the process. In fact, the Board presently has a proceeding pending before it in EP 664 (Sub-No. 4), Revisions to the Board’s Methodology for Determining the Railroad Industry’s Cost of Capital, regarding a proposal to incorporate an additional model, called the “Step MSDCF” to complement its use of the CAPM and Morningstar/Ibbotson MSDCF approaches. IMA-NA is supportive of the proposed rule in this proceeding but urges the Board to have some additional flexibility in its approach when determining long-term revenue adequacy instead of closely following these annual determinations that the Board concedes are not exact because the cost of equity determination is merely an estimate.

In making a decision on long-term revenue adequacy, the Board should consider that most economists and financial analysts presently do not consider any Class I railroad to be revenue inadequate. In a congressionally mandated report, a distinguished committee of economists put together by the Transportation Research Board declared their belief that the rail industry is now revenue adequate. Nat’l Acads. Of Sciences, Eng’g, and Med., Modernizing Freight Rail Regulation (2015) (“TRB Committee Report”). It even recommended that the STB discontinue issuing annual reports on the revenue adequacy of individual railroads and replace them with periodic studies of economic and competitive conditions in the rail industry. Id. Moreover, the U.S. Senate Commerce Committee issued a report, The Current Financial State of the Class I Freight Rail Industry, in 2010, that found the railroad industry to be revenue adequate and extremely financially healthy.

In fact, CSX in May of this year had its stock price top 80, increasing from a price of 14 in December of 2007. Moreover, CSX's operating ratio in 2018 reached an all-time low of 58.7%. However, the Board recently in a revenue adequacy constraint rate case found CSX not to be revenue adequate despite this obvious good health. Consumers Energy Company v. CSX Transportation, Inc., NOR 42142, slip op. at 21 (STB served Jan. 11, 2018 and updated Mar. 14, 2018). While CSX was close to being revenue adequate in the Board's annual determinations during the present business cycle, it never achieved that standard which resulted in this confusing finding of revenue inadequacy despite the railroad's skyrocketing stock price and record low operating ratio.

Now, as noted, the Board proposes to define long-term revenue adequacy by looking at these annual determinations over "the shortest period of time, not less than five years, that includes both a year in which a recession began and a year that follows a year in which a recession began." RRTF Report 13, 33. While this approach is compelling in its straightforwardness and simplicity, CSX still would not have been found to be revenue adequate if the Board had used this approach in Consumers. Obviously, this result seems irrational and needs to be fixed in some fashion.

Consequently, IMA-NA urges the Board to use its proposed test, but it should add in two additional parts. First, IMA-NA suggests that the Board also permit additional probative evidence of revenue adequacy or inadequacy to be submitted by the parties in these cases. This suggestion follows the existing precedent in these types of proceedings regarding revenue adequacy which permits this type of evidence. See Consumers, slip op. at 5-6. However, the Board should reevaluate how it could possibly find a company like CSX to be revenue inadequate despite receiving ample additional evidence of its extremely good financial health. Otherwise, the revenue adequacy constraint may lie fallow like the Stand-Alone Cost constraint presently does.

One way to ensure that railroads are considered to be revenue adequate when they are earning a return just below the cost of capital standard is to create a range around this number of two percentage points. Therefore, if the Board determined the cost of capital to be 12% over a business cycle, a railroad that earned 10.5% would still be considered long-term revenue

adequate. This approach is justifiable because the cost of capital determination is merely an estimate. This proposed range would have resulted in the correct finding in Consumers and would fix a clear flaw in the process.

IMA-NA again commends the Board for having this discussion about a standard for when a railroad is considered to be long-term revenue adequate. However, it urges the Board to consider all probative and competent evidence when reaching this result and to provide some flexibility in making this determination by establishing some type of cost of capital range when deciding whether a railroad earned its cost of capital over a business cycle.

RATE INCREASE CONSTRAINT

As noted, the RRTF recommended considering a rate increase constraint for long-term revenue-adequate carriers, which would identify a point beyond which further application of differential pricing would be unwarranted. See RRTF Report 13, 36-39. The RRTF reasoned that “the purpose of this proposal is ‘to maintain reasonable rates where there is an absence of effective competition and where rail rates provide revenues which exceed the amount necessary to maintain the rail system and to attract capital.’” RRTF Report 36 (quoting 49 U.S.C. § 10101(6)); see also Coal Rate Guidelines, 1 I.C.C.2d at 535-36 (“the logical first constraint on a carrier’s pricing is that its rates not be designed to earn greater revenues than needed to achieve and maintain this ‘revenue adequacy’ level. In other words, captive shippers should not be required to continue to pay differentially higher rates than other shippers when some or all of that differential is no longer necessary to ensure a financially sound carrier capable of meeting its current and future service needs.”) IMA-NA again thanks the Board for this opportunity to discuss this recommendation which provides a form of relief for rail shippers when long-term revenue adequacy is found.

The RRTF explained that this constraint is an identification of the point at which the existing application of differential pricing is enough. However, in applying this constraint, the Board would not rebate any money to shippers and would not reduce the rates shippers are currently paying beyond the level identified. Moreover, carriers could continue to charge their existing rates to their existing customers; the constraint would impose no change on their existing rate structure. For shippers whose rates exceed the rate increase constraint, carriers

would be forbidden from raising non-contract, non-exempt rates by more than the rate of inflation (as measured by RCAF-U). Long-term revenue adequate carriers would be free to raise non-contract, non-exempt rates below the threshold, but only up to the threshold, not beyond it. No constraint would be enforced as to commodities or services that are exempt or pursuant to a contract as described in 49 U.S.C. § 10709(a). The threshold level would vary based on the category of transportation and would rise and fall each year as the carrier's revenue above the long-term revenue adequacy threshold rises or falls. RRTF Report 36-37.

In other words, the Board would prospectively constrain long-term revenue adequate railroads from raising rates but would not provide a shipper any relief from an existing unreasonable rate prospectively or retrospectively. While this constraint would be an extremely useful tool for shippers to help them control the unreasonable rate increases which seem to have become a matter of course in the rail industry, it would not solve the existing or past problem of an unreasonable rate. As a result, IMA-NA urges the Board to adopt this constraint and also to make competitive access more available to shippers as discussed in the following section.

BOTTLENECK CHANGES

As noted, the RRTF recommended considering suspension of the Board's Bottleneck protections as applied to long-term revenue-adequate carriers. See RRTF Report 13, 39-41. IMA-NA applauds this proposal and only asks the Board to take one further step by also making reciprocal switching available to shippers by using a more lenient standard as applied to long-term revenue adequate carriers.¹

As background, "competitive access" refers to inter-railroad cooperative arrangements under which railroads participate in "through routes" with other railroads, offer shippers "joint rates" on such routes, use other railroads' terminal trackage facilities, and "switch" cars in the service of other railroads to and from track sidings where shippers are located. A through route is an arrangement under which a shipment is transported to its ultimate destination by two or more railroads in succession.

¹ IMA-NA continues to support the Board's reciprocal switching proposal in Reciprocal Switching, EP 711 (Sub-No. 1). However, it makes this suggestion for reciprocal switching here based on its uncertainty about how that matter will proceed.

After the enactment of the Staggers Rail Act of 1980, the Interstate Commerce Commission (“ICC”) adopted regulations regarding competitive access substantially similar to a proposal submitted by joint agreement between certain shippers and railroads. Intramodal Rail Competition, EP 445 (Sub-No. 1) (served Oct. 31, 1985). These regulations set out the standards the ICC and now the Board would thereafter use in determining whether to prescribe through routes and joint rates, and establish switching arrangements: the ICC will step in only where necessary to remedy or prevent acts that are "contrary to the competition policies of 49 U.S.C. [Sec.] 10101a or [are] otherwise anticompetitive." 49 C.F.R. Sec. 1144.5(a)(1)(i) (1986). Since the enactment of this regulatory standard, shippers have rarely utilized this remedy because it was believed to be unattainable by most and has proven to be so.

As mentioned above, one means of competitive access that is available to a shipper and is at issue in this recommendation is a through route under 49 U.S.C. § 10705, which is subject to the Bottleneck protections. This remedy can be used when a rail bottleneck arises. The RRTF explained that a rail bottleneck arises when more than one railroad may be involved in providing service from an origin to a destination, but only one—the bottleneck carrier—can serve either the origin or the destination. In the late 1990s, the Board handled the three Bottleneck cases, see Cent. Power & Light Co. v. S. Pac. Transp. Co., 1 S.T.B. 1059 (1996), clarified, 2 S.T.B. 235 (1997), aff’d sub nom. MidAmerican Energy Co. v. STB, 169 F.3d 1099 (8th Cir. 1999). in which a utility company sought to require the bottleneck carrier to establish a “local rate” for the segment of the through movement that was served by that carrier so that the utility could combine that local rate with a rate for the remainder of the movement by another carrier. The idea was that, rather than having to challenge the full origin-to-destination rate in its entirety, as generally required by Great Northern Railway v. Sullivan, 294 U.S. 458, 463 (1935), the utility could create competition for the bulk of the movement and separately challenge the reasonableness of the local (bottleneck) rate, presumably resulting in lower charges overall.

In its decisions, the Board found that a shipper cannot force a bottleneck carrier to use a routing over the line of the non-bottleneck carrier without making a full-blown “competitive access” case subject to the strict regulatory test established in Intramodal Rail Competition, even if such a routing could result in lower rates. Otherwise, the Board found that a shipper could direct a bottleneck carrier that could provide origin-to-destination rail service to “shorthaul”

itself by routing traffic over the lines of the non-bottleneck carrier if it obtained a rail contract under 49 U.S.C. § 10709 for the non-bottleneck segment. The Board's decisions were affirmed in MidAmerican.

Concluding that they reflected a "permissible" reading of the statute, the MidAmerican court found that the Board's Bottleneck decisions "grappled with the tension between two competing policies expressed in the Interstate Commerce Act": carrier discretion in setting rates and routing traffic (49 U.S.C. § 10701(c)) so that railroads could "achieve revenue adequacy by competing on a free-market basis," on the one hand; and the requirement that market-dominant carriers charge only reasonable rates (49 U.S.C. § 10701(d)), on the other. 169 F.3d at 1104-05. The reviewing court's decision was based in part on the Board's conclusion that permitting the maximum differential pricing at bottlenecks would "assist[] carriers in achieving revenue adequacy." Id. at 1107. Indeed, the MidAmerican court found that permitting the maximum differential pricing at bottlenecks would assist carriers in "achiev[ing] revenue adequacy by competing on a free-market basis." See 169 F.3d at 1105-07.

The RRTF stated that this rationale in the Bottleneck cases loses its force for carriers that have already achieved long-term revenue adequacy and for a part of an industry that is viewed as quite profitable. RRTF Report 41. The RRTF explained that given the significant improvement in the rail industry's finances, a change making it easier to require revenue-adequate carriers to short-haul to promote competition for a portion of a movement might well be another permissible reading of the statute. RRTF Report 40.

IMA-NA believes this recommendation to make a through route more available when a carrier is found to be long-term revenue adequate is indisputably within the Board's statutory power as explained in the RRTF Report. 40-41. Also, because the rail industry is clearly revenue adequate, the suspension of the Bottleneck decisions (that have essentially stopped the through route remedy to this point) makes complete sense. The vibrant and healthy rail industry today and the ailing and stagnant rail industry in the 80s are completely different animals. Therefore, due to this change in the state of the industry, the Board should implement this new standard making through routes more available by suspending the Bottleneck protections under these circumstances.

However, the Board should not stop there. Changing the standard for bottleneck situations alone would be a great first step; however, this remedy would not be as useful for some shippers as it would be for others. As the Board noted, if a shipper obtained this access, it would still have to bring a rate case to obtain relief on the shorter captive portion of the route against the incumbent carrier. Of course, the hope would be that the shipper would now have more negotiating power due to the availability of this remedy, but as the Board knows and is the point of the RRTF Report, bringing a rate case is not a simple matter and might render this proposal less effective. As a result, IMA-NA also believes the Board should reverse its decisions to use the existing competitive access standard discussed above to obtain the reciprocal switching remedy, thereby giving shippers another option when a railroad is found to be long-term revenue adequate.

Under reciprocal switching, or as it is sometimes called, “competitive switching,” an incumbent carrier transports a shipper’s traffic to an interchange point, where it switches the cars over to the competing carrier. The competing carrier pays the incumbent carrier a switching fee for bringing or taking the cars from the shipper’s facility to the interchange point, or vice versa, which is incorporated into the competing carrier’s total rate to the shipper. Reciprocal switching thus enables a competing carrier to offer its own single-line rate to compete with the incumbent carrier’s single-line rate, even if the competing carrier’s lines do not physically reach a shipper’s facility.

Reciprocal switching can occur as part of a voluntary arrangement between carriers, or it may be ordered by the Board. The statutory provision governing the Board’s authority to order reciprocal switching arrangements was first enacted by Congress in the Staggers Rail Act of 1980, Pub. L. 96-448, 94 Stat. 1895. That provision now states as follows:

The Board may require rail carriers to enter into reciprocal switching agreements where it finds such agreements to be practicable and in the public interest, or where such agreements are necessary to provide competitive rail service. The rail carriers entering into such an agreement shall establish the conditions and compensation applicable to such agreement, but, if the rail carriers cannot agree upon such conditions and compensation within a reasonable period of time, the Board may establish such conditions and compensation.

49 U.S.C. § 11102(c)(1) (emphasis added) (previously codified at 49 U.S.C. § 11103(c) (1980)).

In 1986, the ICC decided its first reciprocal switching case under the strict competitive access regulations discussed above. In Midtec Paper Corp. v. Chicago & North Western Transportation Co., 3 I.C.C.2d 171 (1986), the ICC denied a shipper's petition for competitive access either via terminal trackage rights or reciprocal switching. In so doing, the ICC elaborated on the rules it adopted in Intramodal Rail Competition and their relation to the statute:

(W)e think it correct to view the Staggers (Act) changes as directed to situations where some competitive failure occurs. There is a vast difference between using the Commission's regulatory power to correct abuses that result from insufficient intramodal competition and using that power to initiate an open-ended restructuring of service to and within terminal areas solely to introduce additional carrier service.

Id. at 174. Thus, although “(u)nder (§ 11102(c)), awarding reciprocal switching is discretionary,” the ICC explained that the key issue under its then-new regulations was whether the incumbent railroad “has engaged or is likely to engage in conduct that is contrary to the rail transportation policy or is otherwise anticompetitive.” Id. at 181.

Since adoption of the agency's stringent competitive access regulations in 1985 discussed above, the regulations have not changed substantively. Few requests for reciprocal switching have been filed with the agency since then, and in none of those cases has the Board granted a request for reciprocal switching. See, e.g., Midtec Paper Corp., 3 I.C.C.2d 171; Vista Chem. Co. v. Atchison, Topeka & Santa Fe Ry., 5 I.C.C.2d 331 (1989). Therefore, like with the Bottleneck cases, this competitive access remedy has been rendered somewhat useless to captive shippers since Intramodal Rail Competition and Midtec Paper Corp.

As noted, the health of the rail industry has improved substantially since these competitive access policies were imposed in 1985. In the 80s, the rail industry was barely alive due to decades of inefficiencies and bankruptcies. In the TRB Committee Report, it was noted that “[t]he U.S. freight rail industry has undergone a remarkable transformation since the enactment of the Staggers Rail Act of 1980,” and exclaimed that “the industry has evolved and the railroads' financial viability has drastically improved.” 1-2. Therefore, for the same reasons the RRTF suggested suspending the Bottleneck decisions when a carrier is found to be long-term

revenue adequate, the Board should also apply that rationale to reciprocal switching. The Board should suspend the use of a single anticompetitive standard for reciprocal switching cases when a railroad is found to be long-term revenue adequate and a less stringent standard like the one proposed in EP 711 (Sub-No. 1) or used in Canada should be applied.

Moreover, reciprocal switching is commonly viewed as the least intrusive of the competitive access remedies available to the Board. The less intrusive nature of this remedy, the great improvement to the health of the rail industry since the 80s, and the complexities of a bottleneck case make the addition of this remedy a perfect fit for the Board's intent to make the regulatory process more effective for captive shippers who now have no options available.

IMA-NA assumes the Class I railroads will argue that making these competitive access remedies available upon a finding of long-term revenue adequacy will be a financial and operational disaster for them. However, one must merely look to our north in Canada to see that the use of these remedies will have very little effect on the financial and operational health of large railroads. In Canada, "competitive line haul rates" and "interswitching" have proven to be successful policies for the protection of shippers and have had no adverse effect financially, operationally, or otherwise on the rail industry. In fact, the Canadian rail industry has long been a favorite of financial analysts with operating ratios in 2018 below 60%, generally better than their U.S. counterparts, except ironically for CSX.

Consequently, IMA-NA asks the Board to add this additional competitive access change to the Bottleneck cases recommendation in the event of long-term revenue adequacy by a railroad. This addition would make the Board's recommendation more effective and would provide captive shippers with the protection they need from rail market dominance. When the ICC imposed the stringent competitive harm standard for these access remedies, it did so to protect an industry that was reeling from bankruptcies and inefficient operations. Now, the rail industry has strongly recovered and these policies of the past are no longer necessary. In fact, the pendulum has completely swung to the other side with shippers having nearly no access to rate relief or competitive access remedies that Congress intended to be used for their protection. As a result, these changes making bottleneck relief and reciprocal switching more available are

crucial to a regulatory scheme that seemingly has lost its way during the rail renaissance over the past few decades.

SIMPLIFIED STAND-ALONE COST CHANGES

As noted, the Board also asked for testimony on the RRTF recommendation reinstating the simplification of the Road Property Investment Analysis for purposes of considering whether a long-term revenue adequate carrier's rate is reasonable under Simplified-SAC. While IMA-NA is more interested in having these other recommendations discussed above being imposed, it fully supports this proposed change to Simplified-SAC which could possibly result in this process being used in the future. As mentioned in the RRTF Report, Simplified-SAC has never been litigated to a final decision. Therefore, any mechanism that might breathe some life into this process would be welcomed.

CONCLUSION

IMA-NA once again thanks the Board for taking this important step to define when a railroad is considered to be long-term revenue adequate and to determine what regulatory action should then occur. As discussed herein, IMA-NA supports the recommendations by RRTF listed in the Notice but also seeks a slight broadening of the proposed long-term revenue adequacy standard and the addition of reciprocal switching to the Bottleneck protections change. With the imposition of these recommendations for a revenue adequacy constraint and the rules proposed in Final Offer Rate Review and Market Dominance Streamlined Approach, IMA-NA believes the Board will be able to regulate the railroad industry in the manner Congress intended. As a result, IMA-NA asks the Board to take these needed steps and bring back some balance to a regulatory scheme that has been less effective than necessary to protect railroad shippers.

Respectfully submitted,

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