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Before the
SURFACE TRANSPORTATION BOARD



Ex Parte No. 589

CALCULATION OF VARIABLE COSTS IN
RATE COMPLAINT PROCEEDINGS INVOLVING
NON-CLASS I RAILROADS

ENTERED
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REPLY COMMENTS

JUL 31 2002

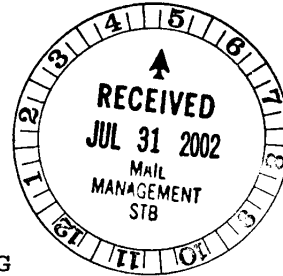
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Due Date: July 31, 2002

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REPLY COMMENTS

Preliminary Statement

These Reply Comments are submitted by John D. Fitzgerald,^{1/} for and on behalf of United Transportation Union-General Committee of Adjustment GO-386 (UTU/GO-386), with respect to the Comments filed jointly by Duluth Missabe & Iron Range Railway Company (DM&IR) and Bessemer & Lake Erie Railroad Company (B&LE), and separately by Transtar, Inc.,^{2/} RailAmerica, Inc.,^{3/} American Short Line and Regional Railroad Association (ASLRRA), Association

^{1/} General Chairman for United Transportation Union (UTU) on lines of The Burlington Northern and Santa Fe Railway Company, with offices at 400 E. Evergreen Blvd., Vancouver WA 98660.

^{2/} Transtar, Inc. is a non-carrier holding company. Its comments were submitted on behalf of its five rail carrier subsidiaries, Birmingham Southern Railroad Company (BSRR), Elgin, Joliet & Eastern Railway Company (EJ&E), The Lake Terminal Railroad Company (LT), Union Railroad Company (URR), and McKeesport Connecting Railroad Company (McK).

^{3/} RailAmerica, Inc. submitted its comments on behalf of its 37 subsidiary Class II and Class III railroads.

of American Railroads (AAR),^{4/} U.S. Department of Transportation (DOT), and The Western Coal Traffic League (WCTL).

This Notice of Proposed Rulemaking (NPRM) was instituted April 22, 2002 (served April 30), 67 FR 21321 (Apr. 30, 2002), and arose out of cost accounting problems in connection with treating DM&IR as a Class II carrier. The NPRM refers to a single problem case, Docket No. 42038, Minnesota Power, Inc. v. Duluth, M & I.R. Ry., (NPRM, 3, 5-6). The NPRM opines there could be more cases in the future, citing the bottleneck-segment litigation. (NPRM, 6 n.21).

The NPRM proposes to impute the costs of Class I carriers upon non-Class I carriers, and not to require non-Class I carriers to keep their own accounting records in accord with the Uniform System of Accounts (USOA) or to file annual reports containing data needed to calculate variable costs using the Uniform Railroad Costing System (URCS).

The Board recognizes (NPRM, 3 n.12) that the former ICC had eliminated accounting and reporting requirements for Class II and Class III rail carriers.^{5/} However, the agency in 1992 had downgraded many Class I carriers to Class II carriers status by

^{4/} AAR's comments were submitted on behalf of its "members," but are not otherwise identified.

^{5/} Elimination of Accounting & Reporting Requirements of Class II Railroads (No. 37614, served Feb. 25, 1982); Reduction of Accounting & Reporting Requirements (No. 37523, served Dec. 15, 1980). The former ICC continued to require Class I carrier reports, although certain schedules were eliminated over employee objection. Revision to Railroad Annual Report Form R-1, 365 I.C.C. 552 (1982) and 1 I.C.C.2d 661 (1985); Simmons v. ICC, 716 F.2d 40 (DC. Cir. 1983) and 757 F.2d 296 (D.C. Cir. 1985).

substantially raising the annual revenue requirement for Class I carriers. The annual revenue requirement for Class I status rose from \$50 million to \$250 million.^{6/} Montana Rail Link, Inc., and Wisconsin Central Ltd., 8 I.C.C.2d 625 (1992).

THE INCREASING TREND FOR FICTIONALIZED
COSTS GOES IN THE WRONG DIRECTION
FOR RAILROAD REPORTING AND REGULATION

Railroad employees have an interest in the integrity of the reporting and accounting for the railroad industry. There is an obvious impact on employees from the reports/costs in abandonment proceedings, and in other regulatory matters affecting employees. The NPRM acknowledges the widespread impact from reports filed by carriers and carrier costing procedures. (NPRM, 3-4 & n.17).

Much of the problem discussed in the NPRM stems from the unfortunate decision of the former ICC to take a number of carriers out of the Class I classification, and place them in Class II. UTU/GO-386 was a major participant in Montana Rail Link, Inc., and Wisconsin Central Ltd., supra, in opposition to this effort to eliminate carrier reporting by means of substantially raising the revenue threshold for Class I status.^{7/} Indeed, DM&IR--the carrier whose recent rate case led to the instant NPRM--at the time of Montana Rail Line, Inc., and Wisconsin Central Ltd., supra, had revenues exceeding the Class I threshold for three consecutive years, as noted in the ICC's 1992 decision; lifting the Class I

^{6/} STB has indexed the Class I reporting level to apx. \$266 million. 67 FR 49061 (July 29, 2002).

^{7/} Mr. M.M. Winter, listed in the report as General Chairman for UTU, served in that capacity for UTU/GO-386. 8 I.C.C.2d at 629 n.10.

revenue requirement from \$50 million to \$250 million served to moot DM&IR's temporary exemption request. 8 I.C.C.2d at 626 n.4. Thus the very DM&IR problem now sought to be remedied could have been avoided by retaining DM&IR as a Class I rail carrier.

UTU/GO-386 desires that maximum rail information be made public and available to all. The trend toward secrecy in railroad regulation is regrettable. The Board is urged to revisit its 1992 carrier classification decision, and reduce the annual revenue requirement for reporting.

Respectfully submitted,


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