



**U.S. Department of
Transportation**

Office of the Secretary
of Transportation

GENERAL COUNSEL

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Washington, D.C. 20590

207648

April 16, 2003

Vernon A. Williams, Secretary
Surface Transportation Board
Suite 700
1925 K Street, N.W.
Washington, D.C. 20423-0001



Re: Ex Parte No. 646

Dear Secretary Williams:

Enclosed herewith are the original and ten copies of the Statement of the United States Department of Transportation in the above-referenced proceeding. There is also a computer diskette of this document, convertible into Word Perfect. I have included as well an additional copy of the Department's testimony that I request be date-stamped and returned with the messenger.

Respectfully submitted,

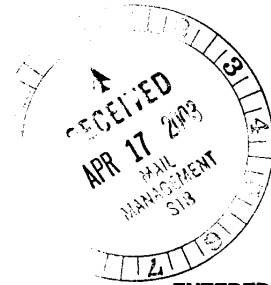
Paul Samuel Smith
Senior Trial Attorney

Enclosures

Before the
Surface Transportation Board
Washington, D.C.

Rail Rate Challenges in Small Cases)

Ex Parte No. 646



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Statement of the
United States Department of Transportation

The Surface Transportation Board ("STB" or "Board") in this proceeding has scheduled a public hearing to provide a forum "for the expression of views and proposals ... regarding rail rate challenges in small cases." Notice served March 26, 2003. The United States Department of Transportation ("DOT" or "Department") is pleased to participate in this latest in a series of efforts to refine the handling of rail rate cases.

For years the Board and its predecessor, the Interstate Commerce Commission ("ICC"), have striven to improve the regulatory processes applicable to these cases. Since 1985, major cases involving large, recurrent volumes of traffic have employed a relatively accurate but complicated and expensive methodology called constrained market pricing ("CMP"). Coal Rate Guidelines -- Nationwide, 1 I.C.C.2d 520 (1985). In an effort to simplify these cases, the Board in 1998 eliminated geographic and product competition from consideration. Ex Parte No. 627, Market Dominance Determinations -- Product and Geographic Competition, decision served December 21, 1998. Most recently the STB adopted changes to its rules to encourage mediation and accelerated resolution of discovery disputes. Ex Parte No. 638, Procedures to Expedite Resolution of

Rail Rate Challenges to be Considered under Stand-Alone Cost Methodology, decision served April 3, 2003.

The Board has had several fundamental goals when considering how best to handle cases involving small shippers. The first is to identify a more simple analysis than CMP in order to provide meaningful regulatory access. The second is to enable railroads to differentially price their services according to the demand characteristics of the traffic. The third is to protect captive shippers from bearing an undue share of railroad revenue requirements. Ex Parte No. 347 (Sub-No. 2), Rate Guidelines -- Non-Coal Proceedings, (served December 1, 1995) ("NPRM") at 15-16. The Department believes that these bedrock principles should continue to guide the STB's efforts.

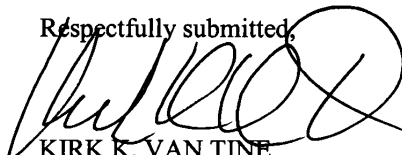
The approach applicable to small rate cases today grew out of the Board's most recent attempt to serve these disparate but important goals. It uses multiple revenue-to-variable cost ("R/VC") benchmarks that, for simplicity and lower expenses, rely upon average cost figures. Rate Guidelines -- Non-Coal Proceedings, 1 S.T.B. 1004 (1996).¹ For this reason a relatively less accurate result is to be expected in a given case, unless additional data about the precise traffic at issue is available. However, the Department is aware of only one case decided under this simplified approach. No. 40073, South-West Railroad Car Parts Co. v. Missouri Pacific Railroad Co., (served December 31, 1996).

^{1/} There are three such benchmarks: the revenue shortfall allocation method, or RSAM (which is intended to reflect the defendant railroad's revenue needs); the revenue-to-variable cost comparison test, or R/VC_{COMP} (which reflects differential pricing principles), and the revenue-to variable cost percentage above 180% test, or R/VC_{>180} (which compares the average markups applied to traffic).

DOT is anxious to learn of any proposals offered by other interested parties. At the outset, however, we have two suggestions. The first is that before the Board considers any particular alternative, it should try to ascertain why small shippers have not brought cases utilizing the benchmark approach. Many parties criticized various aspects of the three benchmarks in the course of the proceeding, including DOT, but the STB adopted them as "a next-best approach" that was both fair and reasonable. 1 S.T.B. at 1023. Small shippers, however, have apparently found the benchmark approach unsuitable. The Board should question shipper representatives at the hearing to learn just why that has been the case, in order to avoid spending time and energy on modifications or alternatives that might ultimately suffer the same shortcomings.

The Department's second suggestion is that the Board emulate the ICC and determine the approximate dimensions of the problem. In 1995 the ICC calculated that, after eliminating various types of traffic outside of its jurisdiction, roughly 18 percent of total railroad revenues were potentially subject to rate challenge. NPRM at 4-5. This was based on 1993 data. DOT urges the STB to update these calculations with contemporaneous information and, if possible, to screen out as well the revenues or traffic suitable for CMP analysis. The result should be a more precise picture of the parameters of the rail/shipper universe that are potentially to be affected by any future rule changes.

Respectfully submitted,



KIRK K. VAN TINE
General Counsel