

STEPTOE & JOHNSON LLP

ATTORNEYS AT LAW

Samuel M. Sipe Jr.
202.429.6486
ssipe@steptoe.com

1330 Connecticut Avenue, NW
Washington, DC 20036-1795

Telephone 202.429.3000
Facsimile 202.429.3902
www.steptoel.com

208186

June 23, 2003



Via HAND DELIVERY

INTERED
Office of Proceeding.

Honorable Roger Nober
Chairman, Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001

JUN 23 2003

Part of
Public Record

Re: **STB Ex Parte No. 646, Rail Rate Challenges in Small Shipper Cases**

Dear Chairman Nober:

I am writing on behalf of the Association of American Railroads in regard to the above-referenced proceeding. AAR has participated in prior phases of this proceeding, including the April 22, 2003 oral hearing before the Board, and remains vitally interested in the issues related to rail rate challenges in small shipper cases.

You suggested at the April 22 hearing that the Board would be interested in receiving additional comments regarding eligibility for small rate case treatment and rate reasonableness standards that participants at the hearing could offer in the 60-day period following the hearing. In response to your suggestion, AAR and its members have devoted considerable attention to small rate case issues in the intervening period. It is a difficult subject, and while we have not yet been able to reach consensus on a specific proposal, we have identified the general contours of an approach that the Board may wish to consider in the event that it serves a formal notice of proposed rulemaking in this proceeding.

AAR suggests that the Board may wish to consider identifying a sub-class of cases brought by truly small shippers. This sub-class would be carved out from the larger set of cases potentially eligible by statute to be decided under rate standards other than Constrained Market Pricing ("CMP"). Shippers who qualify as truly small under a bright line eligibility standard would also qualify for simplified small case rate reasonableness standards to be determined. AAR would support further simplification of procedures for cases brought by truly small shippers so that such cases could be decided expeditiously at minimal cost to the litigants.

WASHINGTON

PHOENIX

LOS ANGELES

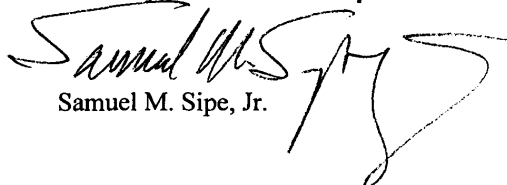
LONDON

Honorable Roger Nober, Chairman
June 23, 2003
Page 2

If the Board were to provide simplified rate standards and highly expeditious treatment for a sub-class of truly small shippers, it would address the concern expressed by shipper interests that there are at least some truly small shippers who have been deterred from bringing rate cases because they believe that they lack meaningful access to the regulatory process. AAR is very concerned, however, that some, if not most, of the shipper interests that express this view are not themselves truly small shippers but are in fact large entities with very substantial assets that seek to take advantage of revised small rate case dispute standards and procedures. A bright line eligibility test would not only enable the Board to identify truly small shippers eligible for simplified standards and procedures, it would also serve as a means for the Board to identify those entities that seek to disguise themselves in "small shipper" clothing.

It cannot be overemphasized that any decisions the Board might make regarding its small rate case guidelines would have potentially serious financial implications for the railroad industry. The Board, of course, has a statutory responsibility to protect shippers from railroad abuses of market power. But it also has a statutory responsibility to assist railroads in achieving revenue adequacy, and it has concluded that the best way to do this is to encourage differential pricing of rail services so that shippers with relatively high demand pay proportionately higher rates. The Board has previously noted that the use of rate standards other than CMP entail an unavoidable sacrifice of accuracy for simplicity. Devising special standards and procedures consistent with the governing statute for a sub-class of truly small shippers may be a way to address the concerns of shippers who believe they currently lack access to meaningful relief while minimizing the adverse financial impact on the railroad industry of relatively imprecise rate reasonableness standards.

Sincerely,



Samuel M. Sipe, Jr.

Cc: Parties of Record

OFFICE OF CHAIRMAN
NOBER

2003 JUN 23 P 4: 54

RECEIVED
SURFACE TRANSPORTATION
BOARD