

STEPTOE & JOHNSON LLP**ATTORNEYS AT LAW**

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208 623

August 4, 2003

Via HAND DELIVERY

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

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

Dear Chairman Nober:

As you know from its prior participation, the Association of American Railroads is vitally interested in the future course and the ultimate outcome of this proceeding. AAR is compelled to address through this letter certain points raised in the Joint Comments of various shipper interests filed with the Board on July 11, 2003. In particular, AAR wishes to make clear its position that the shippers' suggestions regarding eligibility for small rate case treatment do not provide an acceptable starting point for a proceeding to consider modification of the existing rules.

AAR is troubled by the statement, made in the context of what they call a request for guidance from the Board on implementation of maximum rate standards, that "[t]he Joint Commenters are emphatically not suggesting that the Board open a new rulemaking or solicit new comments." Joint Comments at 12. The shippers' treatment of this issue in fact amounts to a proposed substantive change in the existing rules. Those rules made clear that the three benchmarks are only the starting point for the Board's rate reasonableness analysis and could be supplemented with particularized evidence. Any suggestion that the Board should or could adopt changes to its existing Ex Parte No. 347 (Sub-No. 2) rate guidelines without formal notice and the opportunity for comment must be rejected.

AAR vehemently opposes the shippers' proposed standard of eligibility for small rate case disputes, i.e., any movement of a particular commodity between an origin and destination that generates annual freight revenues of less than \$4.8 million would be eligible for small rate case treatment. This proposal is overreaching in the extreme, as it would make a substantial majority of potentially market dominant rail traffic subject to challenge under a rate standard that

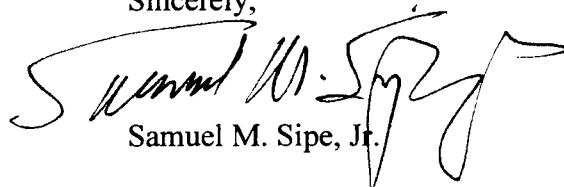
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“will necessarily be cruder than CMP.”¹ The substance of this eligibility proposal suggests that small shipper interests are in danger of being hijacked by the interests of large, economically powerful shippers who have no need for special treatment from the Board.

One of the problems with the Joint Commenters’ proposal regarding eligibility is that it rests on the mistaken premise that the cost of all cases decided under CMP standards would approach the costs of recent large coal rate disputes decided under the stand-alone cost test. This proposition is wholly unsupported.

AAR supports meaningful procedural reform for those parties who have truly small rate disputes to bring before the Board. AAR continues to believe that the best way to achieve such reform, while complying with the statute, is for the Board to identify 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 CMP. Shippers who qualify as truly small under a bright line eligibility standard would also qualify for simplified small case rate reasonableness standards and expedited procedures. We request that the Board give this approach favorable consideration if it decides to issue a formal notice of proposed rulemaking.

Sincerely,

A handwritten signature in black ink, appearing to read 'Samuel M. Sipe, Jr.', with a stylized flourish at the end.

Samuel M. Sipe, Jr.

cc: Parties of Record

¹ In Ex Parte No. 347 (Sub-No. 2) the Board stated that “[t]he ICC expressed confidence that reliance on a cruder method would not significantly affect a carrier’s overall ability to earn adequate revenues, because only a very small portion of rail traffic could be subjected to rate reasonableness review using such simplified procedures.” 1 S.T.B. at 1008-09.

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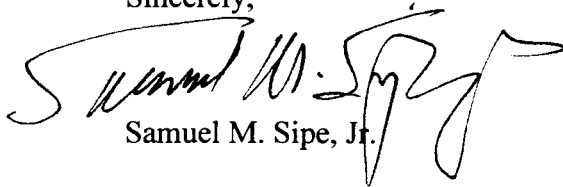
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