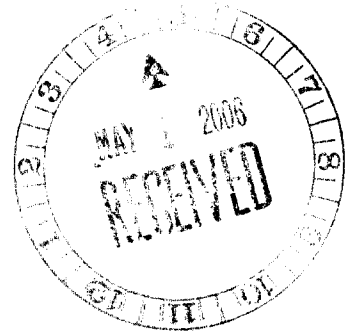


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May 1, 2006

By Hand Delivery

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street NW
Room 700
Washington DC 20423



RE: Ex Parte No. 657 (Sub-No. 1) – Major Issues in Rail Rate Cases

Dear Secretary Williams,

Enclosed for filing in the referenced docket please find the original and twenty copies of the Comments of Snavely King Majoros O'Connor & Lee, Inc.

We have enclosed an extra copy to be date-stamped and returned to our messenger.

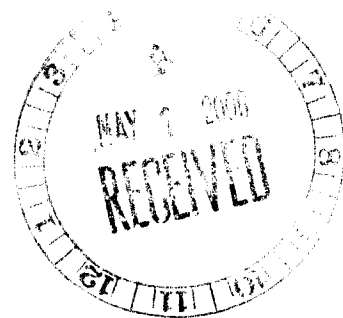
Respectfully submitted,

Kim Hillenbrand
Tom O'Connor

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Ex Parte 657 (Sub-No. 1)

Major Issues in Rail Rate Cases

Comments of Snavely King Majoros O'Connor & Lee

Snavely King Majoros O'Connor & Lee ("Snavely King" or "SK") submits these comments pursuant to the Surface Transportation Board's ("STB") Notice of Proposed Rulemaking ("NPRM") regarding the proper application of the stand-alone cost ("SAC") test. STB Decision served February 27, 2006 at 2.

Throughout its 36-year history, Snavely King has participated in a number of SAC cases on behalf of both shippers and railroads. The current SAC methodology has become too complex, too extended and too costly¹. Moreover, there are major flaws in that methodology. Correcting these flaws and designing alternative mechanisms in large rate cases will take more than the Board's proposals on just the six issues listed in the NPRM. However, the Board's proposed rulemaking is certainly the first step in the right direction.

In this rulemaking, the Board has asked for comments on its proposals on six issues:

- 1) Maximum Rate Determination
- 2) Revenue Allocation for Cross-Over Traffic
- 3) Indexing Operating Expenses
- 4) Movement – Specific Adjustments to URCS
- 5) Stand Alone Cost Analysis
- 6) Uniform Standard for Reopening, Vacating & Filing a New Case

¹ It has been estimated that the cost of the SAC case for a shipper is between \$3 to \$5 million

I. Maximum Rate Determination

Snavely King has no comments at this time on the Board's proposals to replace the percent reduction approach with either a Maximum Contribution Methodology ("MCM") or Maximum Markup Methodology ("MMM"). However, we reserve the right to comment in our reply filing.

II. Revenue Allocation for Cross-Over Traffic

Snavely King has no comments at this time on the Board's proposal to use an Average Total Cost ("ATC") approach as an alternative to the current Modified Straight – Mileage Prorate ("MSP"). Again, we reserve the right to comment in our reply filing.

III. Indexing Operating Expenses

Snavely King welcomes the Board's proposal for a hybrid of the two indices of operating expenses over the Stand-Alone Railroad ("SARR") discounted cash flow period. As the Board has noted, its adopting of the RCAF-U in all the recent SAC cases has the effect of eliminating any consideration of productivity gains. The phasing-in of RCAF-A recognizes that even an initially efficient SARR will realize further gains in efficiency over time. Although the proposal is not perfect, we note that the proposal is a compromise between the shipper and railroad positions.

Our one concern is that if the SAC analysis period is shortened from 20 years to 10 years, the STB should reconsider the percentage increments of its proposed phase-in of the RCAF-A.

IV. Movement-Specific Adjustment to URCS

Snavely King supports the Board's proposal to discontinue movement-specific adjustments to the system average unit costs in SAC cases. Movement-specific adjustments to the URCS system averages should not be allowed in determining the variable cost in rate reasonableness proceedings.

We believe that the use nine required inputs and ability to change those inputs in the detailed movement parameters menu provides adequate opportunity to adjust URCS

to calculate the variable cost of individual movements. For example, when the shipper switches the cars at either the origin or destination, URCS allows the shipper to absorb part of the interchange switch costs. The railroad would incur an interchange switch costs instead of an origin or destination switch. Obviously, such an adjustment should be allowed and should be reflected in the URCS calculation. This factual cost adjustment would not change any of the unit costs.

We agree that there is substantial discovery and litigation over movement-specific adjustments, leading to the increase cost, time, and complexity in stand alone cost cases. As the board noted in the NPRM and in *BP Amoco v Norfolk Southern RR*:

“...the parties proposed many movement-specific adjustments to URCS to estimate the variable cost of the challenged movements. According to the complainant, its proposed adjustments would have lowered the variable cost of the challenged movements by approximately 20%. On the other hand, the railroad’s proposed adjustments would have raised the unadjusted URCS variable costs by roughly 15%. Once we resolved all the disputes, there was only a 1-3% differential between the variable cost with or without movement-specific adjustments, and yet a considerable amount of time and expense had been expended in the process.”²

These comments demonstrate that there is a clear need to simplify the calculation of variable costs in SAC cases. Much of the current litigation cost and computational complexity are not needed

As in SAC cases, SK urges that movement-specific adjustments to the system-average unit costs be discontinued in all rate reasonableness proceedings including *Ex Parte 347 (Sub-2) Rate Guidelines – Non Coal Proceedings*.

V. Stand Alone Cost Analysis Period

Snavely King has no comments at this time on the STB’s proposal to shorten the analysis period of SAC cases from 20 to 10 years. We reserve the right to comment in our reply filing.

² See *BP Amoco Chemical Co. v. Norfolk S. Ry.*, STB Docket No. 42093, slip op. at 9 (STB served June 6, 2005).

VI. Uniform Standard for Reopening, Vacating & Filing a New Case

Snavely King has no comments at this time on the Boards proposal on the steps taken when a shipper or a railroad seeks to reopen or vacate a SAC proceeding. SK reserves the right to comment in its reply filing.

Conclusion

We believe that the Board's proposed rulemaking is a step in the right direction in resolving some of the flaws of the SAC methodology. The proposal to discontinue movement-specific adjustments in variable cost calculations and factoring in RCAF – A in the SARR DCF analysis are both appropriate movements toward reducing the complexity and cost of SAC cases.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Tom O'Connor", followed by a horizontal line and the initials "/KH".

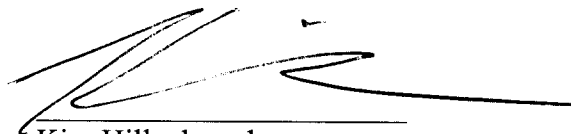
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Washington DC 2005
202.371.9149

Ex Parte 657 (Sub-No. 1)

Major Issues in Rail Rate Cases

CERTIFICATE OF SERVICE

I hereby certify that on the 1st day of Mar, 2006, I served a copy of the foregoing Snavely King Majoros O'Connor & Lee, Inc. Comments by first class mail, postage prepaid to all parties of record.



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