

**Before the
Surface Transportation Board
Washington, D.C.**

MAJOR ISSUES IN RAIL RATE CASES	)	Ex Parte No. 657 (Sub-No. 1)
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**Rebuttal Comments of the
United States Department of Transportation**

I. Introduction

The Surface Transportation Board (“STB” or “Board”) in this proceeding has proposed changes to the Stand-Alone Cost (“SAC”) process, the means by which the reasonableness of rail rates is determined in “large” rate cases. The United States Department of Transportation (“DOT” or “Department”) in its initial comments in this proceeding expressed “strong support for a SAC process that is more accessible and useful to all concerned, and that encourages expanded rail capacity investment.” DOT Initial Comments at 2. In these rebuttal comments, the Department wishes to address the submissions of various parties and three of the Board’s proposals: 1) the cost-based method for allocating revenue from cross-over traffic to reflect economies of density; 2) the prohibition on movement-specific adjustments to average cost data contained in the STB’s Uniform Rail Costing System (“URCS”); and 3) the period of time covered by SAC analyses and rate prescriptions. We also suggest that it is appropriate for the STB to consider additional modifications to the standards and processes governing rate cases.

II. Background

A. The Importance of Coal and Coal Rates

The coal traffic for which the SAC process is most frequently used to determine rate reasonableness is critical to the health of the nation's economy. Coal is the single largest component of the business of Class I railroads as a whole, representing 20 percent of revenues and 43 percent of tons originated in 2004. Association of American Railroads, Freight Commodity Statistics, 2004.¹ Moreover, coal remains the largest source of fuel in the production of electricity nationwide, generating over 53 percent of the country's energy output in 2005. Energy Information Administration, Annual Energy Outlook, 2006, Table 8. As such, its continued availability to power the economy, heat and cool homes and businesses, and otherwise fuel the nation must not be put at risk. Finally, transportation costs are a large component of the delivered price of coal.²

The mechanism for determining the reasonableness of coal rates thus does more than simply resolve commercial disputes between two parties. The implications extend much more broadly: If rail rates are set too low to encourage sufficient investment in rail transportation infrastructure, coal supplies to actual and potential power plants may be inadequate, and reliance on other more expensive or less desirable alternatives may increase, with concomitant effects on businesses and consumers. If, on the other hand,

^{1/} In the west, coal comprises 20 percent of rail revenue and 46 percent of the tons originated, and in the east, 21 percent of revenues and 39 percent of originated tonnage. Id.

^{2/} The average cost per ton of coal delivered by rail in 2001 was \$24.81; approximately 42 percent of this was for rail transportation. See <http://www.eia.doe.gov/cneaf/coal/page/trans/coaltrans.xls#table2.06!A1> and <http://tonto.eia.doe.gov/FTP/ROOT/coal/qcr/0121011q.pdf>.

rates are set too high, similar shifts in the market may occur if the delivered price of coal prompts utilities to turn to other fuels and/or to raise their own rates.

B. The SAC Process and Capital Investment

Consistent with the statutory goal of “revenue adequacy,” the SAC process benefits railroads because it is designed to result in rates that provide adequate incentives for capital investment. The process also benefits captive shippers as well because it is designed to simulate a competitive rate, by the hypothetical creation of an efficient Stand-Alone Railroad (“SARR”). See Decision (served February 27, 2006) at 3-6. Finally, in the course of determining rates the SAC process also incorporates differential pricing, which virtually all economists agree is necessary for railroads to remain viable.

It is beyond dispute that differential pricing has been effective in restoring financial health to the rail industry. Differential pricing is based on the principle that “competitive” traffic (i.e., traffic that enjoys the benefit of transportation alternatives or other competitive forces) should pay lower rates that nonetheless make some contribution to railroad fixed costs, while “captive” traffic (i.e., traffic that must travel by rail and for which there is no intramodal competition) should pay higher rates that are still lower than they would be if only the captive traffic was available to pay total fixed costs. Coal Rate Guidelines – Nationwide, 1 I.C.C.2d 520, 523-34 (1985). Additionally, captive shipper rates should provide the capacity they need, but not be so high that they subsidize capacity for other traffic. Id.

Thus, the most important objectives of any modifications to the SAC process should be, first, to assure that the proper incentives are in place to provide the capital funding required to maintain and (if warranted) increase capacity and thus the supply of

rail transportation services demanded; and second, to assure that captive shippers are not subsidizing capacity increases for other traffic. In considering changes the Board should also strive both to simplify the process, thereby making it more accessible, and to produce consistent, predictable results.

III. Coal Rates and the Coal Rate Guidelines

The basic dispute apparent in this record does not center on the principles, previously discussed, underlying the Coal Rate Guidelines. Rather, in regulatory terms, the parties disagree on whether the current SAC process results in real-world rates (particularly coal rates) that are consistent with the Guidelines. In other words, the real point of contention is whether those rates are either (1) so high that they violate the Guidelines, either because they produce profits that exceed the returns necessary to maintain adequate capacity or they force captive shippers to subsidize other traffic, or (2) so low that they violate the Guidelines because they discourage the levels of investment needed to carry coal traffic. Not surprisingly, railroads and shippers take different sides on this critical issue.

It appears that railroads have significantly increased rates on “competitive” traffic. See Burlington Northern Santa Fe Corp. First Quarter 2006 Financial Presentation (April 25, 2006) at 16-23; CSX First Quarter Earnings Release (April 19, 2006) at 18; Norfolk Southern First Quarter Earnings Release (April 26, 2006), “Merchandise Revenue and Volume” Slide; and Union Pacific First Quarter Earnings Release (April 20, 2006) at

7, 19-22, 25-26.³ The higher rates and resulting profits have led the carriers to undertake a number of expensive capacity improvements to serve this traffic (e.g., intermodal freight). See CSX First Quarter Earnings Release at 11-13, UP First Quarter Earnings Release at 36, and Norfolk Southern First Quarter Earnings Release, “New or Expanded Intermodal Terminals Opening 2006” Slide, all supra. Thus, it seems that competitive traffic is paying for at least some of the additional capacity its shippers are demanding. The picture is less clear with respect to coal.

The Union Pacific Railroad Company (“UP”) flatly asserts that the coal business “has not been providing adequate returns on investment” to support additional capital expenditures. UP Opening Submission at 15. The Western Coal Traffic League, joined with other coal shippers (“WCTL”), counters that coal traffic is paying more than its “fair share” and proffers various grounds to rebut UP’s position. WCTL Joint Reply Comments at 7. The importance of coal makes it incumbent on the Board to resolve this issue properly and so ensure continued investment where it is warranted.

The WCTL cites three grounds to support its assertion that coal rates are already at or above levels sufficient to support the additional capacity investment required by the industry. First, on the basis of Waybill data it notes that “the major coal railroads earned \$1.2 and \$1.4 billion in revenues over and above the full cost of service, which cost included a return on investment equal to the cost of capital (14.1% for 2001 and 13.7%

³/ This information may be found at the following cites, respectively:
http://www.bnsf.com/investors/presentations/pdf/1Q_2006_Presentation_Color.pdf;
http://www.csx.com/share/investor/pub_qtr_files/docs/flash-2006/2006-Q1-bwslides.pdf ;
http://www.nscorp.com/nscorp/application?pageid=Investors&category=Investors&contentId=english/nscorp/investors/analyst_presentation.html; and <http://www.up.com/investors/earnings/2006/index.shtml>.

for 2002).” Id. at 4. Waybill revenues, however, have a number of anomalies that render the kinds of estimates made by WCTL problematic. Most notably, the STB’s Waybill database masks or obscures revenues from contract rates in order to protect the parties’ confidentiality, which makes it impossible as a practical matter to identify total costs and total revenues for coal or any other single commodity. See 49 C.F.R. § 1244.3.

Second, WCTL offers expert testimony to bolster its own case and to critique the analysis of UP’s main witness on this point, Thomas C. Haley. UP’s Mr. Haley believes that the traditional perception of coal as among the most profitable commodities for railroads is outdated. He claims that “coal contributes relatively less than other commodities that share UP’s network.” Verified Statement (“VS”) of Thomas C. Haley at 12. WCTL’s Mr. Crowley responds that this testimony does not definitively answer the question of the adequacy of rail revenues to meet growing demands; he considers the UP analysis both biased and incomplete. Reply Verified Statement (“RVS”) of Thomas D. Crowley at 5.

In support of his view that rail revenues are adequate in this respect, Mr. Crowley submits that “an accurate measure of a given commodity group’s contribution to a carrier’s bottom line [profit] is aggregate dollars.” RVS Crowley at 3. Since at UP energy ranks second among six major commodity groups in terms of the ratio of revenues to variable cost (at 137.8%, energy is surpassed only by chemicals at 146%), it is clear to WCTL that coal revenues do in fact produce the profits necessary to support further capital investment. Id.

There are difficulties with the analyses of both shipper and carrier witnesses. First, DOT agrees with the WCTL’s Mr. Crowley that the testimony of UP’s Mr. Haley

does not persuasively establish the inadequacy of coal revenues for the relevant purpose. Powder River Basin (“PRB”) coal traffic *is* profitable. If it were not, it is unlikely that the railroads would be continuing to invest in infrastructure to support the traffic. See BNSF First Quarter 2006 Financial Presentation at 35, supra; UP/BNSF Joint Press Release (May 8, 2006), “UP, BNSF Announce Southern Powder River Basin Joint Line \$100 Million Capacity Expansion Plan,” available at: <http://www.bnsf.com/media/news/articles/2006/05/2006-05-08a.html>

But the Department must take issue with Mr. Crowley’s assertion that the “aggregate dollars” (which we understand to mean overall revenues), produced by a category of traffic accurately reflect the “bottom line,” or profit contribution, of that category. Revenue from hauling a commodity covers both the cost of the transportation service and any profit derived from the traffic. High revenues do not equate to high profits if, for example, costs are also high. And it is profit, not revenue, that provides the wherewithal to expand capacity and the incentive to do so. Thus the fact that “the energy commodity group contributed \$659.6 million to UP’s net operating income in 2004” (RVS Crowley at 5), does not answer the question of what coal contributes to UP’s total profit, much less whether coal rates are at levels that remain consistent with the Guidelines.

By focusing on revenues WCTL’s Mr. Crowley has established that coal is a very important part of UP’s business, but neither he nor UP’s Mr. Haley provides evidence clearly demonstrating that coal does or does not pay rates adequate to support expanded rail infrastructure to handle the growing demand for coal. The above estimate of revenue-to-variable cost ratio for coal (137.8%) clearly shows that this traffic covers its

variable cost and makes a contribution to fixed costs. However, whether that level of revenues is consistent with the Guidelines -- i.e., whether it warrants the magnitude of expenditures required to expand capacity so as to meet likely demand -- is not clear from either analysis.

Third, WCTL relies upon the well-known “Bottom Line” study produced by the American Association of State Highway and Transportation Officials” (“AASHTO”) to refute “UP’s claims that current profit margins on western coal traffic somehow are inadequate to support capital investment in expanded capacity.” WCTL Joint Reply Comments at 6. Specifically, WCTL cites the AASHTO report’s conclusion “that capacity in the PRB corridor should keep pace with traffic growth over the next twenty years.” Id.

The Department wishes to make several observations about the AASHTO study. First, although the report was issued in 2003, it is largely based on 2000 data. Among other things, that means its release preceded the large run-up in oil and natural gas prices that has stimulated demand for PRB coal. One consequence is that AASHTO’s projections about such coal traffic turned out to be wholly inaccurate. For example, the report estimated that PRB unit trains would haul 336.3 million tons of coal in 2020, and AASHTO assumed levels of investment consistent with traffic growth of this magnitude over that period of time. AASHTO, Freight Rail Bottom Line Report (2003)(“Report”) at 119, Table 23.

In reality, PRB unit coal trains carried almost that amount last year. UP Opening Submission at 8 (325 million tons of coal moved over the joint PRB line of UP and BNSF Railway Company (“BNSF”) in 2005). Whatever the validity of AASHTO’s

expectation that railroad capacity could keep pace if such traffic volumes were reached over the course of twenty years, there is no basis to reach the same conclusion when traffic has largely met these levels already.

The AASHTO study's central concern was with "the capacity of the nation's freight transportation system, especially the freight-rail system, to keep pace with the expected growth of the economy over the next twenty years." AASHTO Report at 1. Even on the basis of its own traffic projections, AASHTO concluded that "the rail industry today is stable, productive, and competitive, with enough business and profit to operate *but not to replenish its infrastructure quickly or grow rapidly*. Market forces will continue to pressure the rail industry to streamline and downsize, to maximize revenues, and to minimize capital costs." Id. at 3 (emphasis added). The real issue -- whether railroad profits on coal traffic are high enough to warrant sufficient investment to meet rapidly rising demand without being "unreasonable" as a matter of law -- is one the Department believes has yet to be answered.

IV. Revenue Allocation of Cross-Over Traffic

As previously explained, the role of the SARR is critical in the SAC process. So-called "cross-over" traffic carried by the SARR, and the assignment of revenues derived from it, have become pivotal as well. Cross-over traffic is that traffic "for which the SARR would not replicate all of [the incumbent] railroad's service, but would instead interchange the traffic with the residual portion of the [incumbent] railroad's system." Decision at 17. In other words, it is traffic that moves partly on the SARR and partly on the incumbent railroad. Because taking cross-over traffic into account avoids the need

and expense of trying to replicate ever-greater portions of the incumbent carrier, and thus simplifies the SAC analysis, it has proven popular among shippers. Cross-over traffic is treated as if it is interchanged between the incumbent railroad and the SARR. With total revenue on the traffic assumed to stay the same, the question is how that revenue is divided between the part of the haul handled by the incumbent and the part handled by the SARR. Id.

More specifically, the issue is how to divide the revenue above that necessary to cover variable costs, i.e., the portion of the revenue that can be used to pay fixed costs and profits. Participating shippers tended to support awarding all of the revenue above variable cost to the SARR, because this would reduce the rate they would need to pay in order to ensure that all appropriate SARR costs were covered. WCTL Joint Opening Comments at 26-33; WCTL Joint Reply Comments, VS of George H. Borts at 11. In their view the SARR would be in the position of a “bottleneck” carrier, and thus able to extract all the economic rent from the move.

Railroad parties took the position that the revenue credited to the SARR should only be the incumbent railroad’s “avoidable cost” (i.e., the amount it would cost the incumbent to provide the transportation, its variable cost and the normal rate of return on the service) because this would raise the rate shippers would need to pay. UP Opening Submission, VS of Kevin Neels at 14-15; BNSF Reply Comments at 21. This view is consistent with the basic premise of Constrained Market Pricing, which assumes there are no barriers to entry in the railroad industry.

The Board has proposed to use Average Total Cost (“ATC”) to allocate the revenues of cross-over traffic. Decision at 19. By using the URCS variable and fixed

costs for the carrier, and the traffic density and mileage of each segment, parties can calculate a railroad's average total cost per segment of a movement. The STB approach would allocate the revenues from each segment in proportion to the average total costs of the entire movement, both on and off the SARR. Ironically, the only point upon which railroad and shipper parties agreed was their opposition to ATC. See UP Opening Submission at 23; WCTL Joint Comments at 48-53; BNSF Reply Comments at 16-17.⁴

The Department acknowledges that ATC is somewhat imprecise, and we share the STB's recognition that use of average costs does not comport with the demand-based the principles of differential pricing. Decision at 17-19. However, DOT supports the Board's proposal to use ATC for allocating cross-over traffic revenues, with some qualifications.

DOT considers the railroad view more consistent with a basic precept of the SAC process, which is the construction of a SARR under the assumption that there are no entry barriers in the rail industry. This would thus be the preferred method if it were simple to calculate. However, the chief reason for allowing the use of cross-over traffic is "to make the analysis more manageable without introducing bias." Decision at 17. The risk of misallocation (i.e., of understating or overstating revenues attributed to a SARR) rises with the proportion of cross-over traffic carried by the SARR.⁵ In the context of PRB coal movements, that could translate into rates that are either too low, and thus

⁴/ BNSF supported ATC if the Board denied the railroad's preferred approach based on contestability principles (i.e., the assumption of no barriers to entry).

⁵/ UP alleged that cross-over traffic comprised 99 percent of a SARR's traffic in one case. UP Opening Submission at 22.

discourage investment, or too high, and thus discourage traffic. Either outcome would be detrimental to the public interest.

After considering the submissions of all the parties, DOT does not believe that there is one clearly correct, economically rigorous method for allocating the revenue contribution from cross-over traffic. On the other hand, we accept the need for a realistic, workable approach. Therefore, the Department supports the STB's ATC proposal with the qualification that either party in a rate case may choose to present a "full SAC analysis" that includes the selected cross-over traffic if that party believes that the ATC approach introduces significant bias into the calculations.

V. The Use of URCS Costs

The Board has proposed to disallow movement-specific adjustments to the Uniform Railroad Costing System when calculating the jurisdictional floor for rate relief, which is 180 percent revenue-to-variable costs. *Id.* at 21-27.⁶ The STB is concerned that such adjustments may appear inconsistent with URCS, distort the variable cost calculation, and contribute inordinately to the complexity and expense of rail rate cases. *Id.* at 2, 23-27.

UP and the BNSF generally support the Board's proposal to use unadjusted URCS costs to determine the jurisdictional threshold, but both carriers also favor allowing certain adjustments for other specific purposes. For example, both carriers

⁶/ Oversimplified, URCS determines the portion of each Class I railroad's costs that represents its system-average variable unit cost. *Id.* at 22. URCS costs are used in the STB's jurisdictional inquiry.

maintain that adjustments should be permitted for railroad payments to third parties,⁷ and they also argue that users of STB's URCS Phase III program⁸ should be able to make adjustments that can affect movement costs beyond those already taken into account by the URCS program. BNSF Comments at 64-67, Reply Comments at 41; UP Original Submission at 41, Reply Submission at 38.

CSX Transportation Co. ("CSXT") and Norfolk Southern Railroad Co. ("NS") jointly oppose the Board's approach. They propose two possible alternatives, one of which is comparable to that proposed by BNSF and UP with respect to adjustments for particular purposes. CSXT/NS Joint Comments at 17.⁹ The Canadian Pacific Railway Co. ("CP") also opposes the Board's proposal. CP Comments at 5-9, Reply Comments at 5.

The WCTL and other coal shippers oppose the Board's proposal. The WCTL harkens back to prior STB holdings to the effect that movement-specific adjustments to URCS costs are necessary to reflect accurately the economies and efficiencies of unit train service and are preferable to system-average costs. Comments of WCTL at 90, Reply Comments at 46-47.

⁷/ UP reports that railroads sometimes pay third parties to load or unload trains at shipper facilities. UP Opening Submission at 37-40.

⁸/ As the Board states, URCS consists of a series of computer programs and manual procedures organized in three phases. Phase I compiles raw data in to a useable format and then through statistical estimation procedures determines the proportions of expenses assigned to specific expense groupings. These relationships are used in Phase II to develop unit variable costs that can be used to cost specific rail movements. Phase III, through an interactive program, allows the user to cost specific moves using these unit costs. Id at 22.

⁹/ Their second proposal allows railroads to make an initial election with respect to the threshold issue of market dominance, and also allows either party to make another election on cost data depending on the outcome of the rate case. Id. at 15, CSXT/NS Reply Comments at 17-18, 22. DOT takes no position on this alternative.

The Department considers accurate cost data a crucial part of rate reasonableness proceedings and thus must oppose the STB proposal. With admitted exceptions, various railroads and shippers advocate the need for movement-specific adjustments. DOT appreciates the value of such adjustments and is concerned that their absence might skew the results of any given analysis; in the long run they could undermine the investments essential to the continued delivery of coal.

Should the Board decide to adopt its proposal and rely solely on URCS average costs, then in a separate proceeding it should reexamine the URCS system. It has been 17 years since the Board adopted URCS as the general purpose costing system for regulatory purposes. Ex Parte No. 431 (Sub-No. 1), served Jan. 26, 1989, Adoption of the Uniform Railroad Costing System As a General Purpose Costing System For All Regulatory Costing Purposes, 5 I.C.C.2d 894 (1989). At that time the methodology included data assembly, the development of regression relationships between railroad activities and expenses, the calculation of unit costs, and procedures for applying those unit costs to the movement of specific shipments. The rail industry has changed since these equations were derived, and many of the underlying factors that established rail cost relationships may have changed as well.

VI. Other Issues

The Board sought comment on six proposals that would make various changes to SAC proceedings. In addition to our comments above on the appropriate treatment of cross-over traffic and movement-specific cost adjustments, the Department supports the STB proposal that the analysis time period be reduced from 20 years to 10 years.

Decision at 28-31. Although adjustments may be necessary to assure that the change does not introduce bias, it seems reasonable to reduce the period in view of the difficulty in forecasting markets and other factors so far in the future. We are aware of no justification for a longer or different period for rate prescriptions.

As noted by various parties, several commenters submitted additional proposals of their own. See CSXT/NS Reply Comments at 1. For their part, CSXT/NS urge the Board to not consider new proposals without appropriate notice and comment. Id. at 1-2. However, CSXT/NS believe there are a number of other SAC issues the Board should consider in separate proceedings. Id. The Department of Transportation agrees that the STB should initiate a proceeding to consider additional issues.

One CSXT/NS proposal is that the Board “consider how Constrained Market Pricing should take into account the current need for extensive capital investment to increase capacity.” Id. The Department agrees that the STB should take up this issue. We would suggest as well that any such a proceeding should consider how to assure that shippers are not cross-subsidizing additional capacity they do not need themselves.

There are at least two more rate-related areas appropriate for the Board’s attention. The first has to do with the fact that the SAC process is truly accessible only to shippers with consistently very large volumes of freight moving between very limited origin-destination pairs. See, e.g., Comments of South Carolina Electric & Gas Co. at 3-4; Comments of PPL EnergyPlus, LLC at 3. The second is the regulatory alternative in place for the overwhelming majority of shippers and shipments within the STB’s rate jurisdiction, the “small” rate case. But there is uncertainty over whether this alternative is

available to small “shippers” or to small “shipments.”¹⁰ Also problematic is the fact that there has never been a final decision on the merits in a “small” rate case to provide guidance and predictability.¹¹

The Board’s then-Chairman, Roger Nober, recently testified before Congress that the situation with respect to both types of rate cases was “unacceptable.”¹² The Department agrees.¹³ DOT urges the STB to renew its efforts to refine and improve the rules governing both “large” and “small” rate cases and so offer a realistic possibility of relief to all shippers and shipments within its regulatory authority.

VII. Conclusion

The importance of coal and the reality of rail system capacity constraints make it crucial that the SAC process result in rates that do not discourage continued capital investment in rail infrastructure. Consistency with the Coal Rate Guidelines also requires that coal shippers not subsidize rail capacity demanded by other traffic. Assertions to the

¹⁰/ The STB’s most recent decision on this procedure, Rate Guidelines – Non-Coal Proceedings, 1 S.T.B. 1004 at 1045-51 (1996), left its availability to be decided on a case-by-case basis.

¹¹/ Despite the Board’s best efforts to make this option more accessible, only one “small” rate case has ever been filed. That was by a shipper that is a very large corporation, and the defendant railroad agreed to use of this procedure. The case was subsequently settled. STB Dkt. 42093.

¹²/ Chairman Nober’s testimony is referenced by parties to this proceeding (e.g., Comments of PPL EnergyPlus, LLC at 6) and is available on the Board’s website at <http://www.stb.dot.gov/testandspeech.nsf/219d1aee5889780b85256e59005edefe/a3fc4daa8ac103f385256dc90050e8c5?OpenDocument>.

¹³/ Chairman Nober estimated that only seventy-five shippers of coal could realistically utilize the SAC process. Some parties have claimed that even fewer large shippers can avail themselves of the SAC process now. E.g., Comments of PPL EnergyPlus, LLC at 6. If true, to the extent this is due to the financial and other burdens of litigating a SAC case, the regulatory framework is insufficiently accessible even to large shippers. On the other hand, to the extent shippers are discouraged from participating simply because they may have prevailed less frequently than railroads, this result does not necessarily reflect flaws in the regulatory process.

contrary notwithstanding, there is no conclusive evidence of record that current SAC procedures result in coal rates that either are or are not consistent with the Guidelines. The Department supports adoption of the Board's ATC approach for allocating revenue for cross-over traffic and reducing to ten years the SAC analysis and rate prescription periods. We also favor allowing parties to retain the ability to make movement-specific adjustments to URCS costs, but any STB decision to rely solely on URCS costs should include a commitment to re-examine and update the URCS system. Finally, DOT urges the Board to consider further modifications that would make its rate regulatory mechanisms more accessible and predictable.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Rosalind A. Knapp". The signature is fluid and cursive, with the first name being the most prominent.

ROSALIND A. KNAPP
Deputy General Counsel

June 30, 2006

CERTIFICATE OF SERVICE

I hereby certify that on this date I have caused a copy of the Rebuttal Comments of the United States Department of Transportation in Ex Parte No. 657 (Sub-No. 1) to be served by first class mail, postage prepaid, upon all Parties of Record in this proceeding.

A handwritten signature in black ink, appearing to read "Paul Samuel Smith", written in a cursive style.

Paul Samuel Smith

July 30, 2006