

BAKER & MILLER PLLC

ATTORNEYS and COUNSELLORS

2401 PENNSYLVANIA AVENUE, NW
SUITE 300
WASHINGTON, DC 20037

TELEPHONE: (202) 663-7820
FACSIMILE: (202) 663-7849

William A. Mullins
E-Mail: wmullins@bakerandmiller.com

Direct Dial: (202) 663-7823

October 24, 2006

VIA E-FILING

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423-0001

Re: STB Ex Parte No. 646 (Sub-No. 1)
Simplified Standards For Rail Rate Cases

Dear Secretary Williams:

Pursuant to the Surface Transportation Board's decisions issued on July 28, 2006 and September 15, 2006 in the above captioned proceeding, The Kansas City Southern Railway Company ("KCSR") hereby files, via e-filing, its "Opening Comments" in the above captioned matter. If there are any questions concerning this e-filing, please contact me by telephone at (202) 663-7823 or by e-mail at wmullins@bakerandmiller.com.

Sincerely,



William A. Mullins

Enclosures

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Ex Parte No. 646 (Sub-No. 1)

SIMPLIFIED STANDARDS FOR RAIL RATE CASES

OPENING COMMENTS OF THE KANSAS CITY SOUTHERN RAILWAY COMPANY

**Robert B. Terry
W. James Wochner
David C. Reeves
THE KANSAS CITY SOUTHERN
RAILWAY COMPANY
P.O. Box 219335
Kansas City, MO 64121-9335
Telephone: (816) 983-1303
Facsimile: (816) 983-1227**

**William A. Mullins
BAKER & MILLER PLLC
2401 Pennsylvania Ave., N.W.
Suite 300
Washington, DC 20037
Telephone: (202) 663-7820
Facsimile: (202) 663-7849**

**Attorneys for The Kansas City
Southern Railway Company**

Dated: October 24, 2006

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Ex Parte No. 646 (Sub-No. 1)

SIMPLIFIED STANDARDS FOR RAIL RATE CASES

OPENING COMMENTS OF THE KANSAS CITY SOUTHERN RAILWAY COMPANY

The Kansas City Southern Railway Company ("KCSR") respectfully submits these Opening Comments as a party of record in accordance with the Surface Transportation Board's ("STB") notice of proposed rulemaking in Ex Parte No. 646 (Sub-No. 1), *Simplified Standards for Rail Rate Cases* (served July 28, 2006). KCSR does not ordinarily submit individual comments in STB proceedings regarding stand alone cost methodologies or use of the Uniform Rail Costing System ("URCS") because, since the Staggers Act and the agency's subsequent adoption of coal rate guidelines, KCSR has never been a defendant in a stand alone rate reasonableness complaint.¹ Unfortunately, the Board's proposed simplified guidelines, while admirable in their intent to foster easier resolution of disputes between shippers and carriers, will likely increase the frequency of rate complaints filed against smaller Class I's and regional and shortline railroads, and will shift a significant part of the burden of proof from the complainant to the railroad defendant. These features of the Board's proposal concern KCSR, necessitating these brief opening comments.

¹ KCSR was involved in two rate unreasonableness cases in the mid-1980's before the adoption of the SAC standards. KCS was a co-defendant because it was an interline carrier for the movements at issue. In those cases, KCSR was able to settle its differences with the shipper.

The Board has proposed two basic methods applicable to rate complaint cases involving small shipments: (1) Simplified-SAC; and (2) the “Three Benchmark” method. Both of these methods depend upon use of URCS. In the case of Simplified-SAC, the Board would, with some modifications, use system-average URCS costs to develop the total operating and equipment expenses of the proposed stand alone railroad (“SARR”). In the Three Benchmark approach, the Board has proposed to use unadjusted URCS to calculate the variable cost of the issue movement and the comparison group movements. Finally, under either approach, the Board would use unadjusted URCS to derive the variable costs of the contested movement in connection with its jurisdictional inquiry. Parties would be prevented from making “movement-specific” adjustments to URCS.

KCSR has three concerns regarding the various uses of URCS in rate reasonableness proceedings for small shipments. First, the proposed rules unfairly presume that all carriers are sufficiently well-versed in URCS to be able to respond quickly to rate cases that turn upon URCS analysis. That may be a fair presumption when it comes to large Class I carriers, all of which have been involved in rate reasonableness proceedings in which URCS is a factor, but that is not the case when it comes to smaller carriers, such as KCSR, that have seldom or never been confronted with URCS-based litigation.

KCSR does not use URCS for any costing purposes. Some KCSR personnel would therefore have to spend time familiarizing themselves with URCS solely to be ready, if needed, to respond to potential rate complaints. While learning the URCS based program itself is not a significant burden, KCSR is concerned about the rule’s requirements to produce underlying documents as necessary to respond to discovery issues and to produce URCS based information regarding a customer specific movement or a set of “issue traffic.” KCSR simply does not, in

the ordinary course of its business, organize its data based on URCS requirements, and changing KCSR's existing costing program to be capable of producing URCS based information as required by the rules would be expensive and burdensome. In effect, KCSR believes it would have to design and implement, at considerable expense, a secondary costing system based upon URCS so as to be able to comply with the proposed rules. The Board's proposed rules fail to address the impact of such compliance costs on carriers like KCSR that do not use URCS for any operational purpose and do not have recordkeeping systems designed around an URCS-based system.

While KCSR can become more familiar with the URCS program and could develop database systems that would be capable of producing the required data once a complaint was brought against KCSR, KCSR believes that it may still be difficult for KCSR to comply with the Board's proposed short time frames due to the difficulty of producing the underlying documents and data that KCSR would have to produce to support its URCS calculations. The problem would be exacerbated to the extent a rate complaint also involved KCSR's short line connecting carriers who, KCSR believes, probably do not use URCS or maintain data in the fashion that is necessary to create URCS inputs. The Board must therefore consider the impacts of imposing its URCS requirements on carriers that do not normally use URCS or organize their data in formats based on URCS.

Second, the URCS methodology disadvantages smaller rail systems that have shorter lengths of haul and a higher proportion of expenses derived from switching, pickup, and delivery of freight. Again, while KCSR does not employ URCS in any of its normal operations, KCSR's understanding of the system is that it is mileage-centric. That is, KCSR's inquiries thus far have indicated that URCS does not accurately allocate costs for shorter hauls and for cost-intensive

activities like switching, pickup, and delivery. If KCSR is correct, the Board's proposal to increase its reliance on unadjusted URCS would prejudice a system like KCSR, 80% of whose traffic is interlined with other carriers and which often functions as the short haul originating or terminating carrier for a long haul on another railroad. Such costs on systems like KCSR's could be accounted for if carriers such as KCSR were free to make movement-specific adjustments, as in a full blown SAC case, but the proposed rules would eliminate the possibility of overriding potentially disproportionate URCS assumptions.

KCSR also believes, at present, that URCS may similarly disadvantage carriers like KCSR which have a higher proportion of single car merchandise shipments than do larger roads. KCSR's examination of these issues thus far suggests another reason why the Board should reevaluate its blanket prohibition on movement specific adjustments to URCS. While KCSR recognizes the Board's desire for simplicity in handling smaller cases, KCSR respectfully suggests that the Board should not embark upon a procedure that disadvantages smaller carriers and can be used to compel them to transport shipments at inadequately compensatory rates.

Finally, KCSR is concerned that the Board's proposal to require the defendant railroad to assemble a comparison group and develop modified URCS costs for that traffic, imposes a disproportionate share of the burden on railroads KCSR's size and smaller. Because the proposed procedures would be available to shippers of all sizes, these so-called small rate cases may even be brought by large multi-national corporations. It is not clear why such shippers should not share in the cost burdens associated with discovery. They should.

In conclusion, KCSR is reluctant to involve itself in this proceeding when it has had limited exposure and experience with rate complaint proceedings. However, KCSR's exploration to date of the issues involved in the Board's proposals has raised concerns that

increased use of unadjusted URCS and the shifting of the burden of producing evidence from the complaining party to the defendant railroad could prejudice KCSR if the Board's rules increase the frequency of rate complaints, as the Board apparently intends.

KCSR looks forward to reviewing the comments submitted by other parties in this proceeding to assist it in determining whether others share these concerns that are presently apparent to KCSR. KCSR also joins in the initial comments of the Association of American Railroads ("AAR") expressing several industry-wide concerns with the Board's proposal. If necessary, KCSR will address its own issues, as well as any other issues, in the reply and rebuttal comments. KCSR appreciates the opportunity to provide these initial opening comments.

Respectfully submitted,

Robert B. Terry
W. James Wochner
David C. Reeves
THE KANSAS CITY SOUTHERN
RAILWAY COMPANY
P.O. Box 219335
Kansas City, MO 64121-9335
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