

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Ex Parte 646 (Sub-No. 1)

SIMPLIFIED STANDARDS FOR RAIL RATE CASES

PETITION FOR RECONSIDERATION
and
SUGGESTION FOR EXPEDITED ORAL ARGUMENT

of

American Chemistry Council, American Forest and Paper Association, American Soybean Association, Agricultural Retailers Association, Colorado Wheat Administrative Committee, Colorado Wheat Growers Association, Corn Refiners Association, The Fertilizer Institute, Glass Producers Transportation Council, Idaho Barley Commission, Idaho Grain Producers Association, Idaho Wheat Commission, Institute of Scrap Recycling Industries, Iowa Soybean Association, Montana Wheat and Barley Committee, Montana Grain Growers Association, National Association of Wheat Growers, National Barley Growers Association, National Corn Growers Association, National Council of Farmers Cooperatives, National Farmers Union, National Grain and Feed Association, National Sorghum Producers, The National Industrial Transportation League, National Oilseed Processors Association, National Petrochemical & Refiners Association, Nebraska Wheat Board, Nebraska Wheat Growers Association, North American Millers Association, North Dakota Grain Dealers Association, North Dakota Public Service Commission, North Dakota Wheat Commission, Oklahoma Wheat Commission, Paper and Forest Industry Transportation Committee, PPL EnergyPlus, LLC, South Dakota Wheat Commission, South Dakota Wheat Inc., Texas Wheat Producers Association, Texas Wheat Producers Board, USA Rice Federation, Washington Wheat Commission, Alliance for Rail Competition, Consumers United for Rail Equity

and

The Honorable Brian Schweitzer, Governor, State of Montana

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The parties listed on the cover (“Interested Parties”) respectfully submit this Petition for Reconsideration to the Board pursuant to 49 C.F.R. §1115.3.¹ On September 5, 2007, the Board issued its Decision in this case, implementing major changes in the procedures used “for determining the reasonableness of challenged rail rates in those cases in which a full stand-alone cost presentation is too costly, given the value of the case.” 49 U.S.C. §10701(d)(3). Although the Interested Parties support a number of the changes implemented by the Board, some aspects of the Decision remain extremely troubling and should be reconsidered.

Unless reconsidered, the Decision: (1) significantly and unlawfully restricts relief under non-SAC procedures for a significant percentage of movements; (2) discourages the pre-complaint settlement of Three-Benchmark disputes; (3) unjustifiably requires complaints against rates published by Class II and III carriers to be litigated under the Simplified-SAC (“SSAC”) procedure; (4) unreasonably and arbitrarily increases the level of maximum reasonable rates under the Three-Benchmark procedures through use of a “confidence interval”; (5) implements an

¹ Pursuant to 49 C.F.R. § 1115.3(c), the Interested Parties ask the Board to accept the evidence in the attached Appendix. That evidence demonstrates the ramifications of the risk factors and maximum relief caps that the Board adopted in the September 5th Decision and thus could not have been previously adduced. Furthermore, it is an important visual aid to help the Board to fully understand the arguments presented in Part A of this Petition.

RSAM calculation that fails to take into account the requirements of 49 U.S.C. 10701(d)(2); and, (6) implements SSAC procedures for medium cases that are inconsistent with both the requirements of the statute and SAC principles, and without necessary testing. Therefore, the Interested Parties respectfully request the Board to reconsider its Decision.

A. The Limits for Relief Set Forth in the Decision Are Internally Inconsistent With the Board’s Own Analysis of the Need for an Appropriate Risk Factor and Eliminate Relief for a Significant Number of Potential Complainants.

In its Notice of Proposed Rulemaking, the Board suggested a “maximum value of the case” eligibility criterion, with cliff-like eligibility limits of \$200,000 over five years for small cases and \$1 million over five years for medium cases.² However, in its Decision the Board discarded its “eligibility limit” approach and instead adopted an approach originally suggested by the railroad industry, in which the concept of “eligibility limits” based on the “Maximum Value of the Case” (“MVC”), was replaced by a “limit to relief” approach. Decision, p. 27. Under the “limit to relief” approach adopted by the Board, a complainant might elect to use either the Three-Benchmark procedures or SSAC procedures, but with the total available relief capped at \$1 million and \$5 million respectively. *Id.*

The Interested Parties strongly support the Board’s use of the “limit to relief” approach for non-SAC cases. That approach is far more flexible than an “eligibility limit” and mitigates (but, as noted below, does not cure) significant problems with the cliff-like effect of the “eligibility limit” approach.

In commenting upon the “eligibility limit” approach and the \$200,000 and \$1 million limits that the Board had proposed in its NPR, the Interested Parties urged the Board to drastically revise its proposed eligibility limits upward, to a level of \$10.5 million for small cases

² The eligibility limits were “cliff-like” because relief of just one dollar over the prescribed eligibility limit would have precluded a complainant from using a non-SAC methodology.

and \$13.5 million for medium cases.³ This increase, the Interested Parties argued, was necessary to preserve a reasonable “risk factor” under the small and medium case procedures. Although the Board agreed that a risk factor is a necessary consideration, in its Decision, the Board rejected the \$10.5 million and \$13.5 million figures urged by the Interested Parties, indicating that the Interested Parties had approached the risk factor question from the “wrong direction,” by basing a risk factor on the cost of a case in the next higher category. Decision, p. 32.

The Interested Parties do not agree that they approached the risk factor issue from the “wrong direction.”⁴ Nevertheless, the Board’s adoption of the “limit to relief” approach reduces the need for an eligibility limit at a level of \$10.5 million for Three-Benchmark cases and \$13.5 million for SSAC cases as previously urged by the Interested Parties. This is because, instead of denying a complainant whose value of the case is just over the Three-Benchmark or SSAC relief cap the ability to use those procedures at all (i.e. the “cliff”), a “limit to relief” approach permits that complainant to still use the Three-Benchmark or SSAC procedure, subject to relief caps.

However, even in light of the improvements wrought by the “limit to relief” approach, the relief caps set forth in the Decision are still substantially and unlawfully too low. While the Board notes that “[t]here may be instances where a complainant will be faced with a difficult choice between foregoing some of the potential value of a dispute or pursuing greater relief despite increased costs . . .”, the Interested Parties believe that the Board has not thought through

³ Interested Parties' Rebuttal Comments, January 11, 2007, pp. 9-10.

⁴ For example, under the Board’s originally proposed eligibility limits, the only way to maintain an appropriate risk factor for all complainants below the Three-Benchmark eligibility limit was to set the limit at three times the cost of the SSAC methodology. Otherwise, a complainant with a case value just over the Three-Benchmark eligibility limit (which would require use of the SSAC procedure) would never be able to attain a risk factor that would justify a SSAC complaint. That would create a void in which case values within a certain range above the Three-Benchmark eligibility threshold would be ineligible to use the Three-Benchmark procedures even though the value of the case would not justify using the next higher SSAC procedure. The same concerns exist between the SSAC and Full-SAC procedures. As noted in the narrative, above, the “limit to relief” approach to eligibility partially cures this problem, but still leaves significant voids in which the value of the case does not justify using the next higher procedure.

the full implications of the relief caps that it has chosen. Specifically, the Board's selection of its \$1 million and \$5 million relief caps for Three-Benchmark and SSAC cases is internally inconsistent with its risk factor analysis; eliminates relief for a significant number of potential complainants; and, as currently structured, is arbitrary and capricious. But, the problem can be largely cured by increasing the relief caps, while still keeping the caps well below the \$10.5 million and \$13.5 million eligibility limit figures urged by the Interested Parties in their Rebuttal Comments at the Notice of Proposed Rulemaking stage.

1. **The Board's Selection of a \$1 Million and \$5 Million Relief Caps for Three-Benchmark and SSAC Cases Is Internally Inconsistent with the Board's Risk Factor Analysis, Unlawfully Eliminates Relief for a Significant Number of Complainants and Is Arbitrary and Capricious**

As noted above, the Board in its Decision indicated that a potential complainant could be faced with a "difficult choice" between foregoing some of the value of a case or pursuing greater relief despite increased costs. But the Board never analyzed or discussed the consequences of its decision to cap relief at \$1 million for Three-Benchmark cases and at \$5 million for SSAC cases *across the entire range* of the overlap between Three-Benchmark and SSAC cases, and between SSAC and SAC cases. But as described in detail below and in the Tables attached in the Appendix to this Petition, the Board cannot ignore the problem.

Appendix Table 1A sets forth, in Column A, for a complainant who might elect to pursue the Three-Benchmark procedure, the potential relief across a wide range of case values -- \$750,000 to \$4,000,000, in \$100,000 increments. For *each* such value, Table 1A also sets forth:

- Column B: the maximum relief permitted, or the relief cap, for Three-Benchmark cases adopted by the Board (\$1,000,000, to apply regardless of the case value) where applicable;

- Column C: the Board’s assumption for the cost of a Three-Benchmark case (\$250,000)⁵;
- Column D: the net relief, which is the difference between the lesser of either the case value set forth in Column A or the maximum relief in Column B where the maximum relief applies, and the cost of a Three-Benchmark case listed in Column C;
- Column E: the risk factor, calculated by dividing Column A (or Column B, where the maximum relief applies) by Column C; and,
- Column F: the relief foregone, where the relief cap causes a Three-Benchmark complainant to forego relief, calculated as the difference between Column A and Column B.

Table 1A shows that, as the potential relief (i.e., the value of the case) increases from \$750,000 to \$1 million, the “risk factor” increases to 4.0, the figure noted with approval in the Board’s decision. Decision, p. 32; see Table 1A, lines 1 through 4. Above a \$1 million case value level, however, the risk factor plateaus, since the \$1 million relief cap applies. Also, above a \$1 million case value, the “relief foregone” begins to rise, and above a case value of \$1.750 million, the relief foregone exceeds the relief obtained.⁶ In other words, the Board’s restrictions on small rate case relief permit a defendant railroad to retain more than half the amount by which the challenged rates exceed maximum reasonable levels.

Table 1B examines the *same* factors as Table 1A, but this time from the point of view of a complainant deciding to pursue a SSAC case, again across a wide range of values, from \$1 million⁷ to \$4 million. For example, Table 1B shows that, if a complainant decided to bring a

⁵ In its decision, the Board notes that its assumed figure of \$250,000 for the cost of a Three-Benchmark case is “conservative,” implying that the cost might actually be smaller. Such an assumption would be wrong in light of actual facts. In the very first cases under the new rules (see STB Docket Nos. 42099, 42100, 42101), it took the defendant carrier just ten days to file a Motion to Dismiss, immediately driving up the cost of those cases. It would appear that such tactics, which have been a regular part of Stand-Alone Cost cases in recent years (see, e.g., *Pub. Serv. Co. of Colorado d/b/a Xcel Energy v. The Burlington Northern and Santa Fe Ry. Co.*, STB Docket No. 42057, (served Sept. 25, 2002)) are destined to become a fixture in non-SAC cases as well.

⁶ The highlighted area in Table 1A shows where the relief foregone exceeds the net relief obtained, i.e., the complainant is leaving more “on the table” than it is obtaining in a successful case.

⁷ This starting figure that assumes that no potential complainant would bring an SSAC case if the potential relief were less than \$1 million, since that complainant would rationally pursue a Three-Benchmark case.

SSAC case worth \$4 million, it could obtain net relief of \$3 million, after accounting for the \$1 million cost of the SSAC case. At this value, no maximum relief limit would apply, and no relief would be foregone. (Table 1B, line 31).

The key to the analysis, however, is Table 1C, which *combines* the analyses in Table 1A and 1B, to show the consequences of the *choice* that a rational complainant would make in deciding whether to pursue a Three-Benchmark or SSAC case across this *entire range* of case values. At the lower case values, a rational complainant would pursue Three-Benchmark relief as long as the relief that it would obtain from the Three-Benchmark procedures is greater than the relief available under SSAC at an acceptable risk factor. However, once the potential relief in a SSAC case *exceeds* the potential relief in a Three-Benchmark case, a rational complainant most likely would use the SSAC procedure. Tables 1A, 1B and 1C show that a rational complainant will likely use Three-Benchmark relief as long as its case has potential relief (value of case) up to \$1.750 million. (Table 1C, line 12). Above that point (i.e., above a case value of \$1.750 million), the complainant can obtain *more relief* by bringing a SSAC case (as shown in Table 1B, line 9, column D) than by bringing a Three-Benchmark case (as shown in Table 1A, line 13, Column D).⁸ Thus, Table 1C is constructed by using the values from Table 1A up to a case value of \$1.750 million (i.e., lines 1 through 12), and the values from Table 1B for case values higher than \$1.750 million (i.e., lines 13 through 35).

For example, when there is potential relief of \$2.1 million, a complainant bringing a successful Three-Benchmark case would obtain \$750,000 in net relief but will have to forego

⁸ It should also be noted that, at a case value above \$1.750 million, the relief foregone *exceeds* the relief obtained if the complainant brings a Three-Benchmark case (see Table 1A, line 13 Columns D and F). Thus, with a relief cap at \$1.0 million, a complainant with a case value over \$1.750 million will likely bring a SSAC case rather than a Three-Benchmark case, not only because the relief that the complainant obtains will be greater if it brings a SSAC case, but also because the relief that it foregoes under a Three-Benchmark case will exceed the relief that it obtains.

\$1.1 million in relief. (See Table 1A, line 16 Columns D and F). However, if the same complainant uses the SSAC procedure, that complainant would obtain net relief of \$1.1 million, or much more than the net relief that it could possibly obtain in a Three-Benchmark case. (See Table 1B, line 12). Thus, if a rational complainant with potential relief of \$2.1 million considers (as it certainly will) the level of relief available under both procedures, the limits to relief adopted by the Board rationally require such a complainant to bring a SSAC case.⁹

But look what happens to the risk factors if a complainant with a case value of \$2.1 million brings a SSAC case. Because SSAC will (according to the Board) cost \$1 million,¹⁰ the risk factor in such a SSAC case is only 2.1¹¹ – far below the risk factor of 5 that the Board has identified in its Decision as the risk factor associated with SSAC procedures. Decision, p. 32.

The graph following Table 1C in the Appendix illustrates the problem. A complainant in a Three-Benchmark case may experience a risk factor of 4 up to a case value of \$1.750 million (although it will forego increasing levels of relief beyond a \$1 million case value). But, a complainant with a case value above that level will see its risk factor plummet precipitously if it brings a SSAC case. In fact, between a case worth \$1.750 million and a case worth \$2.9 million, a complainant's risk factor falls below 3, which the Interested Parties have identified as the level necessary to rationally justify a SSAC case.

Of course, there is another "choice." For a case worth between \$1.750 million and \$4.0 million, a potential complainant *could* decide to bring a Three-Benchmark case, in order to have

⁹ Column C in Table 1C highlights the case values (between \$1.1 and 1.7 million) where a rational complainant will bring a Three-Benchmark case even though the case value exceeds the \$1 million relief cap, since a SSAC case at these levels will provide the complainant with *less* relief than a Three-Benchmark case (compare Table 1A, Column D lines 5 through 11 with Table 1B, Column D lines 2 through 8).

¹⁰ In its Decision, the Board concluded that a SSAC presentation will cost approximately \$1 million in legal and consulting fees. While the Interested Parties still believe that this figure is far too low (especially given the extreme uncertainties of the procedure), the Interested Parties utilize this figure for purposes of illustrating the problem with the relief cap chosen by the Board.

¹¹ See Table 1C, line 16 Column F.

a risk factor that would make it worthwhile to pursue the complaint. But if a complainant makes that “choice,” *it must forego up to \$2.250 million in relief*, or up to *three times* the relief that it is obtaining. In that case, the shipper cannot in fact obtain a “reasonable” rate at the level prescribed under the Three-Benchmark procedures, but must be “content” with a rate far above a reasonable level.

Thus, the Board’s cavalier reference to the “difficult choice” faced by a complainant in reality amounts to a Hobson’s choice. Over a significant range of case values applicable to Three-Benchmark and SSAC cases (\$1.750 million to \$4.0 million) a complainant can “choose” *either* (1) to forego *up to three quarters of its potential relief* and its right to a reasonable rate at the level produced by the Board’s procedures, *or* (2) it can file a case with a risk factor that *does not even come close* to justifying the risk that the complainant is undertaking and that the Board has stated is applicable to the Three-Benchmark and SSAC procedures. The Interested Parties strongly believe that this Hobson’s choice is unlawful, arbitrary and capricious.

The first path – to force a complainant to forego up to three quarters of its potential relief – is inconsistent with the statute’s command that rates be “reasonable.” The second path – to bring a SSAC case at risk levels that do not justify it – is inconsistent with the Board’s *own* conclusion that a non-SAC presentation “would not be cost-effective unless the potential relief exceeds the expected cost of obtaining the remedy by a sufficient margin to make it worthwhile to pursue the complaint.” In addition, it is inconsistent with the risk factors identified by the Board as providing an “ample cushion between the cost to bring a case and the potential relief available.” Decision, p. 32. *The fact of the matter is that, across a significant range of case values, there is not an “ample cushion” for the risk of bringing a complaint, contrary to the Board’s declaration in its Decision.*

Together, the “difficult choice” which is at the heart of the “limit to relief” levels adopted by the Board will in practical terms eliminate relief for a significant percentage of complainants contrary to the statute. The problem is particularly acute at levels between about \$1.75 million and \$3.0 million because it is at just these levels where movements are large enough to justify a complaint in absolute dollar terms.

The same problem exists at the juncture between the SSAC and SAC procedures, as Tables 2A, 2B and 2C demonstrate. Although the risk factors are acceptable while potential relief is in the \$4.0 to \$9.0 million range, the risk factor drops precipitously at levels above \$9.0 million. See Appendix, Table 2C and the graph of Table 2C. The problem is perhaps slightly less acute at the juncture between SSAC and SAC procedures compared to the situation between Three-Benchmark and SSAC cases, because there is at least the prospect of significant monies and thus more room for error. For example, if a case has potential relief worth \$10 million, the risk factor is only 2 if a SAC case is brought (based on the cost of a SAC case at \$5.0 million), but at least the complainant has the potential for \$5.0 million in net relief, a not-insignificant sum.

Finally, the Board’s decision to set relief caps at the \$1 million and \$5 million levels is *particularly* arbitrary and capricious because the problem can be fixed (now that the Board has wisely adopted a “limit to relief” approach), by increasing the relief caps for Three-Benchmark and SSAC cases to levels substantially *less* than those urged by the Interested Parties at the NPR stage. It is to this matter that we now turn.

2. The Problem With the Limits to Relief Adopted by the Board Can Be Ameliorated By Moving the Limits to Relief Modestly Upward

The Board might believe that the risk factor “dropoff” problem explained above will occur even if the limits to relief are moved upward. But this is not true. Although there is a

“dropoff” in the risk factor if the limits to relief are moved upward, by its decision to move to a “limit to relief” approach, a relatively modest increase in the relief caps will prevent the risk factors *across the range* of potential cases from dropping to levels that are inadequate.

Specifically, the Interested Parties urge the Board to raise the relief cap for Three-Benchmark cases to \$3 million, and the relief cap for SSAC cases to \$10 million. At these levels, the limit to relief will result in a risk factor no less than a risk factor of 4, which is the lowest risk factor identified by the Board in its Decision. Decision, p. 32.

Indeed, even a more modest increase in the relief cap, particularly for Three-Benchmark cases, would at least ameliorate the problem, even if the resulting risk factor would be less than the risk factor of 4 set forth in the Decision. For example, Table 1D sets forth the results if the relief cap in a Three-Benchmark case were raised to \$2.25 million. At that level, Table 1D shows that a rational complainant would bring a Three-Benchmark case up to a case value of \$2.9 million, since the net relief that such a complainant could obtain in a Three-Benchmark case at that level (\$1.95 million) would still be more than the relief that the same complainant could obtain by bringing a SSAC case (\$1.90 million). However, at the very next highest level (i.e., a case worth \$3 million), Table 1D shows that the same complainant would be able to bring a SSAC case with a risk factor of 3, with a net recovery of \$2.0 million. (Table 1D, line 27, columns E and F). Although a risk factor of 3 is lower than the risk factors of 4 or 5 identified by the Board in its Decision (see Decision p. 32), at least such a risk factor may be cost-effective. When Board procedures fail to make cost effective relief available, rail rate on captive traffic are essentially deregulated in violation of the statute.

Table 1D shows that an increase in the relief cap above \$1 million for Three-Benchmark cases and \$5 million for SSAC cases would raise the risk factor for some cases above the risk

factor of 4 for Three-Benchmark cases and 5 for SSAC cases identified by the Board. See Decision, p. 32. But an increase in the limit of relief for Three-Benchmark cases as suggested above would *not* raise the applicable risk factors even close to the risk factors of 12 or 15 identified by the Board as the problem with the Interested Parties' prior suggestion at the NPR stage. *Id.* For example, Table 1D shows that, if the limit for relief for Three-Benchmark cases were raised only to \$2.25 million, the risk factor for Three-Benchmark cases would increase to nine only for cases between \$2.25 million and \$2.9 million. (See Table 1D, Column F, lines 19 through 26). If the relief cap for a Three-Benchmark case were raised to \$2.25 million, the risk factor would generally be in the range of 4 to 8, or at or not much higher than the risk factor of 5 identified by the Board as applicable to SSAC cases. (See Table 1D, Column F, lines 4 through 16).¹²

There is nothing wrong with risk factors at these levels. Risk factors will rise in any type of case with increases in the value of the case. The importance of risk factors in this proceeding is that they not fall below a *minimum* level that would render the simplified standards useless to shippers with small cases, thus leaving them without an effective regulatory remedy for unreasonable rates. As demonstrated in Appendix Table 1D, lines 26 & 27, an increase in the Three-Benchmark relief cap to \$2.25 million (Col. B) is necessary to preserve a *minimum* risk factor of just 3 (Col. F) for SSAC cases, which is below even the risk factor of 5 identified by the Board as applicable to SSAC cases. The fact that the Three-Benchmark risk factors rise up to 9 at the highest case values (Lines 19-26, Col F) is merely a function of the difference between the cost of bringing a Three-Benchmark case compared to a SSAC case. This is not a legitimate basis to deny shippers within a certain range of case values a meaningful remedy.

¹² Table 2D, Column F shows the risk factors that would result from increasing the SSAC limit on relief to \$10 million across the range of values of potential relief from \$4 million to \$20 million.

Therefore, the Interested Parties request the Board to reconsider its Decision and set the relief cap for Three-Benchmark cases at \$3 million, and for SSAC cases at \$10 million.

B. In View of the Board's Decision That Only Traffic on the Defendant Carrier Be Permitted in the Comparison Group, the Board Should Permit Pre-Complaint Access to the Unmasked Waybill Sample

Because of the Board's decision to exclude non-defendant traffic from the Three-Benchmark comparison group, the Interested Parties ask the Board to reconsider its decision not to grant shippers pre-complaint access to the unmasked waybill sample. Throughout their comments in this rulemaking, the Interested Parties have asserted that pre-complaint access to the unmasked waybill sample is necessary for a shipper to evaluate the merits of a potential Three-Benchmark complaint. The Board's decision to exclude non-defendant traffic from the comparison group has turned a bad situation into an impossible one, because the public waybill sample does not identify the carriers that handle each movement. Before the Board's decision to exclude non-defendant traffic, at least shippers could identify the potential universe of comparable traffic, even if they could not know the unmasked rates. The exclusion of non-defendant traffic, however, now makes it impossible even to identify a potential comparable group from the public waybill sample.

This elimination of a shipper's ability to perform any kind of pre-complaint merits assessment will have two significant consequences. First, it will increase the number of complaints, since shippers will be required to file a complaint before obtaining the unmasked waybill data that they need to evaluate their case. Second, it will discourage private contractual solutions, since shippers will not be able to evaluate their negotiating position prior to filing a complaint. This will undermine one important value of regulation, which is the application of

consistent and predictable standards that allow shippers and carriers to negotiate rates without regulatory intervention.

Thus, the Interested Parties ask the Board to grant shippers access to the confidential unmasked waybill sample upon filing a certification with the Board that the shipper is considering filing a small rate case under the Three-Benchmark standard. The Board could require a shipper submitting such a certification to return the waybill sample after a reasonable period (e.g., 90 days) if a complaint is not filed, unless the carrier consents to a longer period of time.

C. The Board Should Not, A Priori, Eliminate Even the Possibility of Procedures Other than SSAC and SAC for Class II and III Rail Carriers

The Board's Decision concludes that the Three-Benchmark methodology cannot be used against Class II or Class III railroads to challenge the reasonableness of rates on "a purely local movement." Decision, pp. 101-102. The rationale relied upon in reaching this conclusion is that:

[t]wo of the three benchmarks needed for that approach would not be available without analyzing the traffic tapes of the short line (to calculate the $R/VC > 180$ benchmark) and performing a revenue adequacy inquiry (to derive RSAM benchmark). We see no way to modify this three-benchmark method to render it suitable for purely local short line movements without increasing the cost to near that of a Simplified-SAC presentation. For a purely local movement of a Class II or Class III carrier, the complainant may use the Simplified-SAC approach.

This conclusion leaves shippers without an effective maximum rate remedy against local rates of Class II and Class III railroads. The Board has acknowledged that there must be a Three-Benchmark remedy in order to allow challenges to be brought effectively where potential recovery is up to \$1 million over a 5-year span, and that the cost of pursuing a Simplified-SAC presentation, which the Board offers as the sole "simplified" statutory remedy against the Class II and Class III carriers, is \$1 million per case. Therefore, wherever a maximum rate dispute

with a Class II or Class III carrier regarding its local rates involves \$1 million or more in damages, only a Simplified-SAC case is available; and the Board's analysis of Simplified-SAC recognizes that that type of case is impractical to bring unless substantially more than \$1 million is at stake. The Board's Decision thus creates a significant remedial void.

While there may be practical problems of the type adverted to in the Decision in applying the Three-Benchmark methodology to Class II and Class III railroads, the remedial void created by the Decision with respect to these carriers amounts to a failure of statutory compliance. The statute demands a "simplified and expedited" remedy in the case of *all* market dominant movements with rates that are unreasonably high, and the Board has acknowledged that the Three-Benchmark methodology is an appropriate if not essential component of that mandate. There are several Class II and Class III carriers serving important commercial markets, and there is an increasing trend toward the publication of charges by those carriers for their own account. Indeed, the Board's decision could encourage that trend in order to discourage challenges to Class II and Class III rail rates by increasing the cost and complexity of such challenges.

The Interested Parties propose that, rather than foreclosing a shipper from using the Three-Benchmark test to challenge the reasonableness of local rates on Class II and Class III railroads, the Board permit a shipper finding it necessary to mount such a challenge to suggest an appropriate approach for meeting the Three-Benchmark criteria. For example, the Board currently recognizes the use of "surrogate" costs to develop the variable costs of Class II and Class III carriers in the form of regional Class I system average costs calculated under the URCS system. Perhaps a shipper would wish to propose the use of a surrogate for a given Class II or Class III railroad's $R/VC > 180$ and RSAM methodologies or suggest some other approach. The Board should entertain such a request on a case-by-case basis rather than precluding the use of

the three-benchmark methodology altogether where challenges need to be brought against local Class II or Class III rates.

D. Use of a Confidence Interval is Arbitrary and Capricious and Should Be Eliminated

In its decision, the Board has adopted a “one-sided” hypothesis test in the Three-Benchmark procedures, indicating that it will use a 90% confidence interval to determine whether the challenged rate exceeds a reasonable norm, and will prescribe a rate at the boundary level. Decision, p. 21. But the use of the confidence interval arbitrarily skews the results of the Three-Benchmark comparison upward.

The construction of a confidence interval implies that the sample to which it is applied was drawn randomly from the respective population. But this is not the case.

The Three-Bench Mark approach is implicitly attempting to identify the average, or mean, rate for all movements on a particular railroad with the same movement characteristics, i.e., commodity, distance traveled, car type, etc. The mean rate is an unknown parameter of a railroad’s rate population that the STB is attempting to identify through the use of data contained in its waybill sample. Because the true population average rate is unknown, the STB must statistically infer the true average by use of random sample data.

The STB is attempting to make this inference using a confidence interval around the average rate from waybill sample data. The problem is a confidence interval for a population parameter, such as the average rate for movements with the same characteristics, is by definition an interval with an associated probability that is generated from a random sample of the underlying population. But the sample data used in the Three-Benchmark method is not close to being randomly selected. It is questionable if the waybill sample itself is a true random sample of a railroad’s rates. Notwithstanding this fact, the comparable traffic sub-group selected by

parties is purposefully not random in nature. It is in fact purposely chosen in a non-random manner by each party based on each party's own selection criteria. Without a random selection process, there is no statistical basis for the use of a confidence interval as defined by the STB.

Moreover, the use of a confidence interval to prescribe a rate at the boundary level is particularly problematic, since a confidence interval by its nature simply indicates the level of confidence as to the range, or interval, in which the true population mean may fall. The meaning of a 90% confidence interval is that, in the long run, 90% of the intervals computed can be expected to include the true average for the population. This does not infer that the true population average rate is above the upper boundary. The "reasonable rate level" as defined as the population mean rate for all moves with similar movement characteristics could in fact be below the sample average calculated by the STB. The confidence interval does nothing to tell you what the true reasonable rate is, and, accordingly, the Board should eliminate the use of the confidence interval to prescribe the boundary of a maximum reasonable rate.

E. The Board's Recalculation of the RSAM Does Not Meet the Requirements of the Statute

The Board has committed material error by eliminating the RSAM with efficiency adjustment on the basis of an incorrect assertion that no party opposed that proposal. Decision at 19. The RSAM proposed by the Board, and addressed in the comments, was based upon a railroad's total traffic, not just traffic above the 180% R/VC level. That is not the RSAM measure adopted by the Board, however. Rather, the Board merely made minor modifications to the existing RSAM measure based upon traffic above the 180% R/VC level. No party had the opportunity to address that proposal.

The Board's elimination of the RSAM with efficiency adjustment ignores the so-called "Long-Cannon" requirement that the Board "give due consideration to...the amount of traffic

which is transported at revenues which do not contribute to going concern value and the efforts made to minimize such traffic.” 49 U.S.C. § 10701(d)(2)(A). The RSAM with efficiency adjustment addresses this factor by excluding from the RSAM calculation traffic that is below the 100% R/VC level.

The Board has attempted to justify elimination of the RSAM with efficiency adjustment on grounds that there is no longer significant excess capacity in the rail industry. If this is true, however, then there should be even less justification for a railroad to handle traffic at less than 100% R/VC. In other words, there is an even greater need for an efficiency adjustment.

The Interested Parties ask the Board to preserve the RSAM with efficiency adjustment, and to allow the parties to present particularized evidence to demonstrate which RSAM measure is more appropriate in each case. In refusing even to consider an efficiency adjustment, the Board writes Long-Cannon requirements out of the statute in cases too small for Full-SAC.

F. SSAC is Inconsistent with Both the Statute and SAC Principles, and It Requires Testing

SSAC still does not meet the statutory requirement for a “simplified and expedited method for determining the reasonableness of challenged rail rates in those cases in which a full stand-alone cost presentation is too costly, given the value of the case.” 49 U.S.C. § 10701(d)(3). The Board’s justification for a procedure as long and complex as SSAC is that it is still shorter and simpler than Full-SAC, and thus satisfies the statute. But Congress directed the Board to adopt a simplified and expedited method, not merely a simpler and faster method. Under the Board’s rationale, it could satisfy the Congressional mandate by adopting the Full-SAC methodology less a single simplifying change.

In addition, with SSAC, the Board has gutted Full-SAC to the extent that it does not even pretend to serve the primary objectives of the Full-SAC methodology. A stand-alone system is a

system “in which the plant size and traffic base are designed to maximize the efficiencies and production economies.” *Coal Rate Guidelines*, 1 ICC.2d 520, 542 (1985). Yet SSAC denies complainants the ability to eliminate inefficiencies in the railroad’s system. In addition, “[t]he ability to group traffic of different shippers is essential to [the] theory of contestability” that underlies Full-SAC. *Id.* at 544. But SSAC denies complainants this essential element, because they are required to use the defendant carrier’s existing traffic base. Consequently, SSAC is SAC in name only.

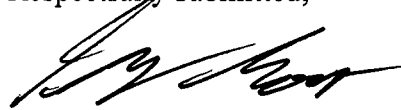
The Interested Parties asked the Board to test SSAC to measure how closely it truly reflected Full-SAC results and to ascertain how simplified the procedure truly is. In denying this request, the Board declared that, “Even if we only tested a single movement, the time, cost, and complexity of the endeavor would render it impractical.” Decision, p. 55. This statement belies any claim that SSAC is simplified and expedited, as required by the statute. At best, the Board can only claim that SSAC is simpler and faster than Full-SAC. But this does not mean that SSAC is simple or expedited, or that it is consistent with SAC principals.

G. Suggestion for Expedited Oral Argument

Because of the importance and complexity of this matter, the Interested Parties respectfully suggest that the Board consider an expedited oral argument, so that the issues can be fully explored. The Interested Parties are extremely aware of the importance of this matter and the need for a final decision, and suggest that such an oral argument be held sometime between November 15 and November 30. This schedule would provide time for this Petition and a Reply to be considered by the Board and its Staff, while not materially delaying a decision on this matter.

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Dated: October 12, 2007

APPENDIX

TABLE 1A

**Value, Cost, Net Relief and Risk Factor for Small Rate Cases
(\$750,000 to \$4 Million)**

	A	B	C	D	E	F
	Case Value (Potential Relief) (000)		Cost of Case (000)	Net Relief	Risk Factor	Relief Forgone
	(1)	Max Relief				
1	750	N/A	250	500	3.0	
2	800	N/A	250	550	3.2	
3	900	N/A	250	650	3.6	
4	1000	N/A	250	750	4.0	
5	1100	1000	250	750	4.0	100
6	1200	1000	250	750	4.0	200
7	1300	1000	250	750	4.0	300
8	1400	1000	250	750	4.0	400
9	1500	1000	250	750	4.0	500
10	1600	1000	250	750	4.0	600
11	1700	1000	250	750	4.0	700
12	1750	1000	250	750	4.0	750
13	1800	1000	250	750	4.0	800
14	1900	1000	250	750	4.0	900
15	2000	1000	250	750	4.0	1000
16	2100	1000	250	750	4.0	1100
17	2200	1000	250	750	4.0	1200
18	2300	1000	250	750	4.0	1300
19	2400	1000	250	750	4.0	1400
20	2500	1000	250	750	4.0	1500
21	2600	1000	250	750	4.0	1600
22	2700	1000	250	750	4.0	1700
23	2800	1000	250	750	4.0	1800
24	2900	1000	250	750	4.0	1900
25	3000	1000	250	750	4.0	2000
26	3100	1000	250	750	4.0	2100
27	3200	1000	250	750	4.0	2200
28	3300	1000	250	750	4.0	2300
29	3400	1000	250	750	4.0	2400
30	3500	1000	250	750	4.0	2500
31	3600	1000	250	750	4.0	2600
32	3700	1000	250	750	4.0	2700
33	3800	1000	250	750	4.0	2800
34	3900	1000	250	750	4.0	2900
35	4000	1000	250	750	4.0	3000

TABLE 1B

**Value, Cost, Net Relief and Risk Factor for Medium Rate Cases
(\$1 Million to \$4 Million)**

	A	B	C	D	E	F
	Case Value (Potential Relief) (000) (1)	Max Relief	Cost of Case (000)	Net Relief	Risk Factor	Relief Forgone
1	1000	N/A	1000	0	1.0	N/A
2	1100	N/A	1000	100	1.1	N/A
3	1200	N/A	1000	200	1.2	N/A
4	1300	N/A	1000	300	1.3	N/A
5	1400	N/A	1000	400	1.4	N/A
6	1500	N/A	1000	500	1.5	N/A
7	1600	N/A	1000	600	1.6	N/A
8	1700	N/A	1000	700	1.7	N/A
9	1800	N/A	1000	800	1.8	N/A
10	1900	N/A	1000	900	1.9	N/A
11	2000	N/A	1000	1000	2.0	N/A
12	2100	N/A	1000	1100	2.1	N/A
13	2200	N/A	1000	1200	2.2	N/A
14	2300	N/A	1000	1300	2.3	N/A
15	2400	N/A	1000	1400	2.4	N/A
16	2500	N/A	1000	1500	2.5	N/A
17	2600	N/A	1000	1600	2.6	N/A
18	2700	N/A	1000	1700	2.7	N/A
19	2800	N/A	1000	1800	2.8	N/A
20	2900	N/A	1000	1900	2.9	N/A
21	3000	N/A	1000	2000	3.0	N/A
22	3100	N/A	1000	2100	3.1	N/A
23	3200	N/A	1000	2200	3.2	N/A
24	3300	N/A	1000	2300	3.3	N/A
25	3400	N/A	1000	2400	3.4	N/A
26	3500	N/A	1000	2500	3.5	N/A
27	3600	N/A	1000	2600	3.6	N/A
28	3700	N/A	1000	2700	3.7	N/A
29	3800	N/A	1000	2800	3.8	N/A
30	3900	N/A	1000	2900	3.9	N/A
31	4000	N/A	1000	3000	4.0	N/A

TABLE 1C

**Choosing a Small Versus a Medium Case
(\$750,000 to \$4 Million) On the Basis of the Greatest Net Relief**

	A	B	C	D	E	F	G
	Case Value (Potential Relief) (000) (1)	Max Relief (000) (2)	Type of Case (3)	Cost of Case (000) (4)	Net Relief (000) (5)	Risk Factor (6)	Relief Forgone (000) (7)
From Table 1A	1	750	N/A	3B	250	500	3.0
	2	800	N/A	3B	250	550	3.2
	3	900	N/A	3B	250	650	3.6
	4	1000	N/A	3B	250	750	4.0
	5	1100	1000	3B	250	750	4.0
	6	1200	1000	3B	250	750	4.0
	7	1300	1000	3B	250	750	4.0
	8	1400	1000	3B	250	750	4.0
	9	1500	1000	3B	250	750	4.0
	10	1600	1000	3B	250	750	4.0
	11	1700	1000	3B	250	750	4.0
	12	1750	1000	3B	250	750	4.0
From Table 1B	13	1800	N/A	SSAC	1000	800	1.8
	14	1900	N/A	SSAC	1000	900	1.9
	15	2000	N/A	SSAC	1000	1000	2.0
	16	2100	N/A	SSAC	1000	1100	2.1
	17	2200	N/A	SSAC	1000	1200	2.2
	18	2300	N/A	SSAC	1000	1300	2.3
	19	2400	N/A	SSAC	1000	1400	2.4
	20	2500	N/A	SSAC	1000	1500	2.5
	21	2600	N/A	SSAC	1000	1600	2.6
	22	2700	N/A	SSAC	1000	1700	2.7
	23	2800	N/A	SSAC	1000	1800	2.8
	24	2900	N/A	SSAC	1000	1900	2.9
	25	3000	N/A	SSAC	1000	2000	3.0
	26	3100	N/A	SSAC	1000	2100	3.1
	27	3200	N/A	SSAC	1000	2200	3.2
	28	3300	N/A	SSAC	1000	2300	3.3
	29	3400	N/A	SSAC	1000	2400	3.4
	30	3500	N/A	SSAC	1000	2500	3.5
	31	3600	N/A	SSAC	1000	2600	3.6
	32	3700	N/A	SSAC	1000	2700	3.7
	33	3800	N/A	SSAC	1000	2800	3.8
	34	3900	N/A	SSAC	1000	2900	3.9
	35	4000	N/A	SSAC	1000	3000	4.0

GRAPH OF TABLE 1C RISK FACTORS

—◆— Risk Factor

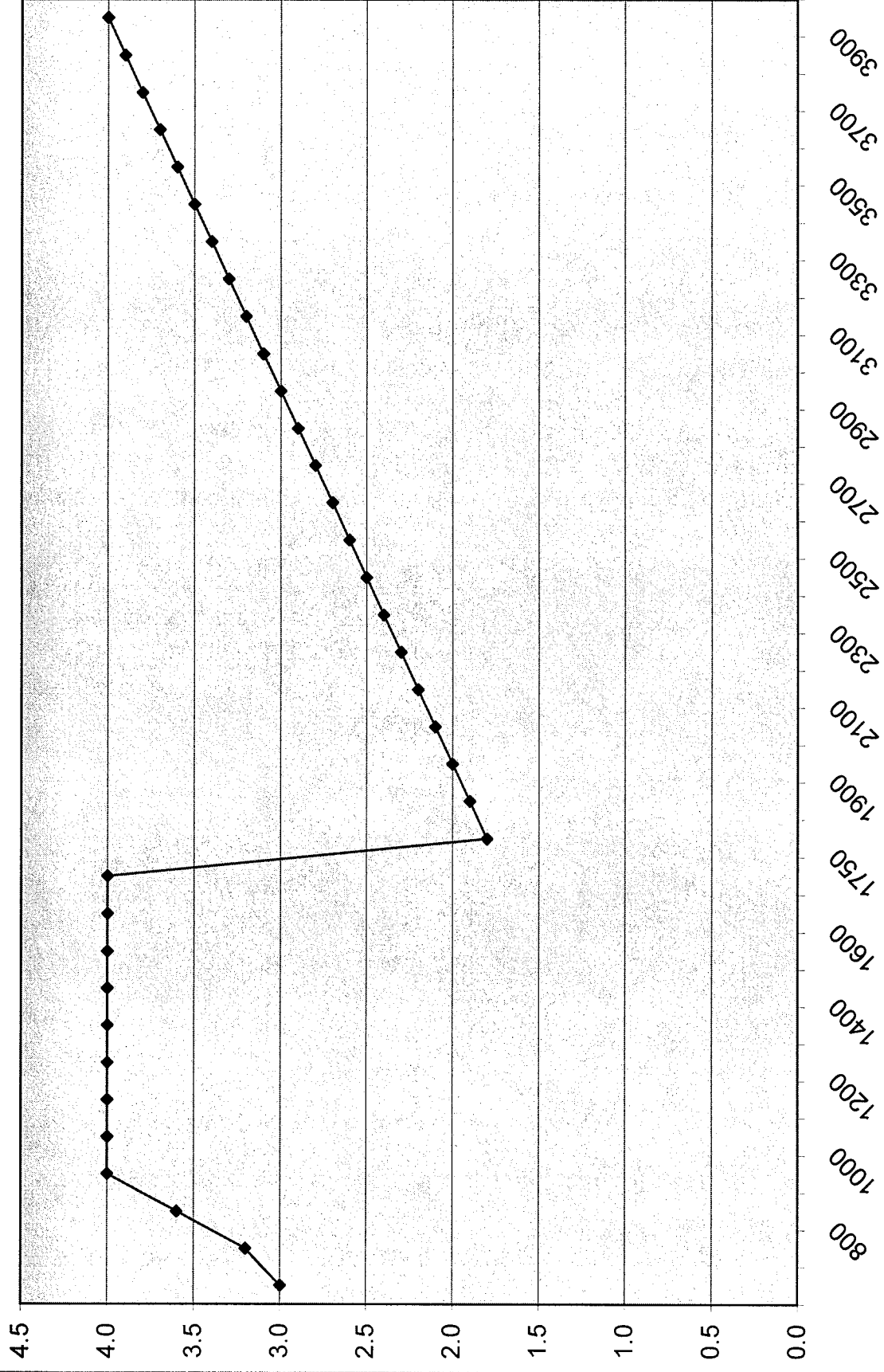


TABLE 1D

Choosing a Small Versus a Medium Case (\$750,000 to \$4 Million)
Selecting Greatest Net Relief, But With Small Case Relief Limit Set at \$2.25 Million

	A	B	C	D	E	F	G
	Case Value (Potential Relief) (000) (1)	Max Relief	Type of Case	Cost of Case (000)	Net Relief	Risk Factor	Relief Forgone
1	750	N/A	3B	250	500	3.0	
2	800	N/A	3B	250	550	3.2	
3	900	N/A	3B	250	650	3.6	
4	1000	N/A	3B	250	750	4.0	
5	1100	N/A	3B	250	850	4.4	
6	1200	N/A	3B	250	950	4.8	
7	1250	N/A	3B	250	1000	5.0	
8	1300	N/A	3B	250	1050	5.2	
9	1400	N/A	3B	250	1150	5.6	
10	1500	N/A	3B	250	1250	6.0	
11	1600	N/A	3B	250	1350	6.4	
12	1700	N/A	3B	250	1450	6.8	
13	1750	N/A	3B	250	1500	7.0	
14	1800	N/A	3B	250	1550	7.2	
15	1900	N/A	3B	250	1650	7.6	
16	2000	N/A	3B	250	1750	8.0	
17	2100	N/A	3B	250	1850	8.4	
18	2200	N/A	3B	250	1950	8.8	
19	2250	N/A	3B	250	2000	9.0	
20	2300	2250	3B	250	1950	9.0	50
21	2400	2250	3B	250	1950	9.0	150
22	2500	2250	3B	250	1950	9.0	250
23	2600	2250	3B	250	1950	9.0	350
24	2700	2250	3B	250	1950	9.0	450
25	2800	2250	3B	250	1950	9.0	550
26	2900	2250	3B	250	1950	9.0	650
27	3000	N/A	SSAC	1000	2000	3.0	
28	3100	N/A	SSAC	1000	2100	3.1	
29	3200	N/A	SSAC	1000	2200	3.2	
30	3300	N/A	SSAC	1000	2300	3.3	
31	3400	N/A	SSAC	1000	2400	3.4	
32	3500	N/A	SSAC	1000	2500	3.5	

GRAPH OF TABLE 1D RISK FACTORS

—◆— Risk Factor

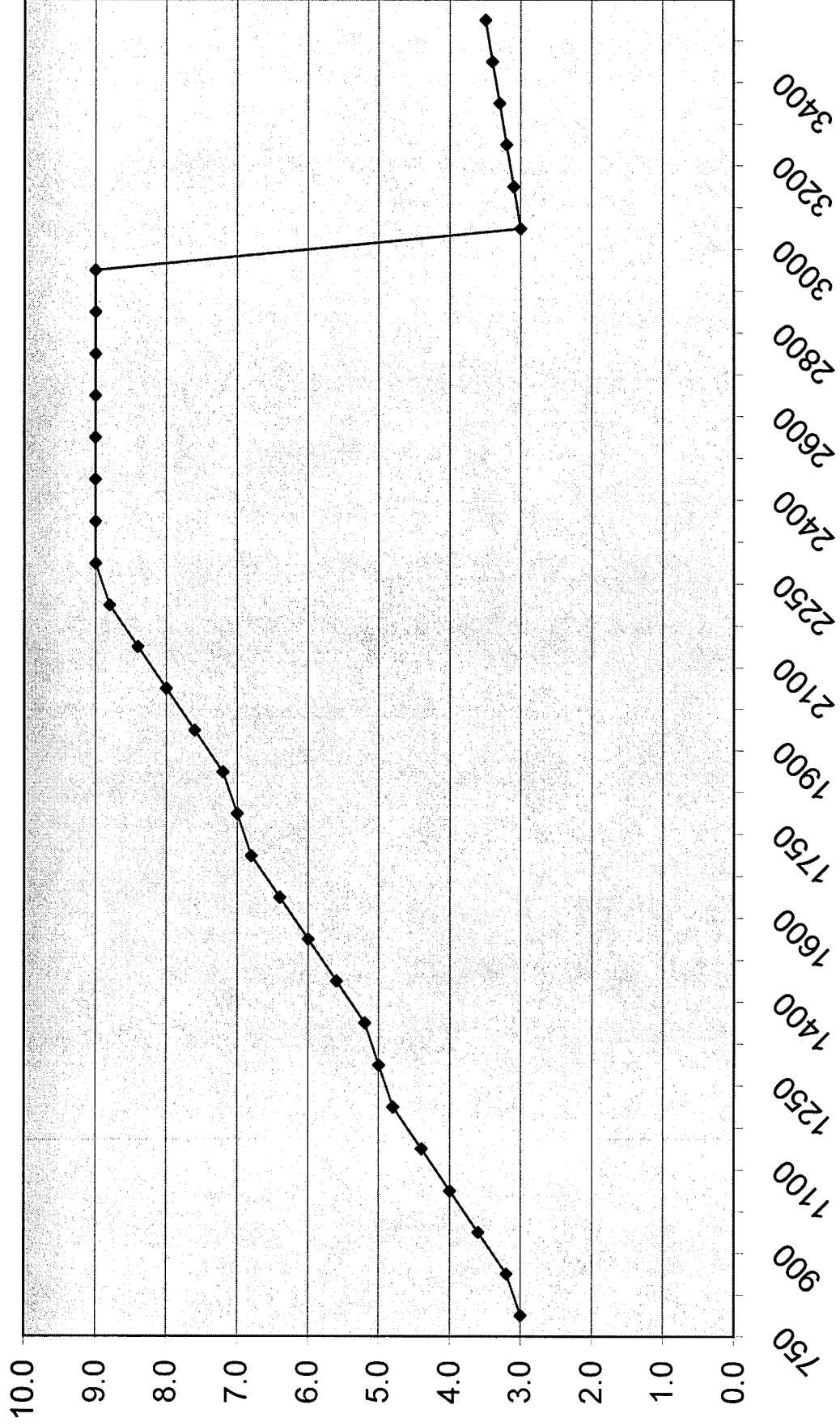


TABLE 2A

**Value, Cost, Net Relief and Risk Factor for Medium Rate Cases
(\$4 Million to \$15 Million)**

	A	B	C	D	E	F
	Case Value (Potential Relief)		Cost of Case		Risk	Relief
	(000)	(1)	(000)	Net Relief	Factor	Forgone
1	4000	N/A	1000	3000	4.0	
2	4500	N/A	1000	3500	4.5	
3	5000	N/A	1000	4000	5.0	
4	5500	5000	1000	4000	5.0	
5	5600	5000	1000	4000	5.0	
6	6000	5000	1000	4000	5.0	1000
7	6500	5000	1000	4000	5.0	1500
8	7000	5000	1000	4000	5.0	2000
9	7500	5000	1000	4000	5.0	2500
10	8000	5000	1000	4000	5.0	3000
11	8500	5000	1000	4000	5.0	3500
12	9000	5000	1000	4000	5.0	4000
13	9500	5000	1000	4000	5.0	4500
14	10000	5000	1000	4000	5.0	5000
15	10500	5000	1000	4000	5.0	5500
16	11000	5000	1000	4000	5.0	6000
17	11500	5000	1000	4000	5.0	6500
18	12000	5000	1000	4000	5.0	7000
19	12500	5000	1000	4000	5.0	7500
20	13000	5000	1000	4000	5.0	8000
21	13500	5000	1000	4000	5.0	8500
22	14000	5000	1000	4000	5.0	9000
23	14500	5000	1000	4000	5.0	9500
24	15000	5000	1000	4000	5.0	10000

TABLE 2B

**Value, Cost, Net Relief and Risk Factor for Large Rate Cases
(\$5 Million to \$20 Million)**

	A	B	C	D	E	F	
	Case Value (Potential Relief) (000)		Max Relief (1)	Cost of Case (000)		Relief Forgone	
	(1)			Net Relief	Risk Factor		
1	5000		N/A	5000	0	1.0	N/A
2	5500		N/A	5000	500	1.1	N/A
3	6000		N/A	5000	1000	1.2	N/A
4	6500		N/A	5000	1500	1.3	N/A
5	7000		N/A	5000	2000	1.4	N/A
6	7500		N/A	5000	2500	1.5	N/A
7	8000		N/A	5000	3000	1.6	N/A
8	8500		N/A	5000	3500	1.7	N/A
9	9000		N/A	5000	4000	1.8	N/A
10	9500		N/A	5000	4500	1.9	N/A
11	10000		N/A	5000	5000	2.0	N/A
12	10500		N/A	5000	5500	2.1	N/A
13	11000		N/A	5000	6000	2.2	N/A
14	11500		N/A	5000	6500	2.3	N/A
15	12000		N/A	5000	7000	2.4	N/A
16	12500		N/A	5000	7500	2.5	N/A
17	13000		N/A	5000	8000	2.6	N/A
18	13500		N/A	5000	8500	2.7	N/A
19	14000		N/A	5000	9000	2.8	N/A
20	14500		N/A	5000	9500	2.9	N/A
21	15000		N/A	5000	10000	3.0	N/A
22	15500		N/A	5000	10500	3.1	N/A
23	16000		N/A	5000	11000	3.2	N/A
24	16500		N/A	5000	11500	3.3	N/A
25	17000		N/A	5000	12000	3.4	N/A
26	17500		N/A	5000	12500	3.5	N/A
27	18000		N/A	5000	13000	3.6	N/A
28	18500		N/A	5000	13500	3.7	N/A
29	19000		N/A	5000	14000	3.8	N/A
30	19500		N/A	5000	145000	3.9	N/A
31	20000		N/A	5000	15000	4.0	N/A

TABLE 2C

**Choosing a Medium Versus a Large Rate Case (\$4 Million to \$20 Million)
On the Basis of the Greatest Net Relief**

		A	B	C	D	E	F	G
		Case Value (Potential Relief) (000) (1)	Max Relief (000)	Type of Case	Cost of Case (000)	Net Relief (000)	Risk Factor	Relief Forgone (000)
From Table 2A	1	4000	N/A	SSAC	1000	3000	4.0	
	2	4500	N/A	SSAC	1000	3500	4.5	
	3	5000	N/A	SSAC	1000	4000	5.0	
	4	5500	5000	SSAC	1000	4000	5.0	500
	5	6000	5000	SSAC	1000	4000	5.0	1000
	6	6500	5000	SSAC	1000	4000	5.0	1500
	7	7000	5000	SSAC	1000	4000	5.0	2000
	8	7500	5000	SSAC	1000	4000	5.0	2500
	9	8000	5000	SSAC	1000	4000	5.0	3000
	10	8500	5000	SSAC	1000	4000	5.0	3500
	11	9000	5000	SSAC	1000	4000	5.0	4000
From Table 2B	12	9500	N/A	SAC	5000	4500	1.9	
	13	10000	N/A	SAC	5000	5000	2.0	
	14	10500	N/A	SAC	5000	5500	2.1	
	15	11000	N/A	SAC	5000	6000	2.2	
	16	11500	N/A	SAC	5000	6500	2.3	
	17	12000	N/A	SAC	5000	7000	2.4	
	18	12500	N/A	SAC	5000	7500	2.5	
	19	13000	N/A	SAC	5000	8000	2.6	
	20	13500	N/A	SAC	5000	8500	2.7	
	21	14000	N/A	SAC	5000	9000	2.8	
	22	14500	N/A	SAC	5000	9500	2.9	
	23	15000	N/A	SAC	5000	10000	3.0	
	24	15500	N/A	SAC	5000	10500	3.1	
	25	16000	N/A	SAC	5000	11000	3.2	
	26	16500	N/A	SAC	5000	11500	3.3	
	27	17000	N/A	SAC	5000	12000	3.4	
	28	17500	N/A	SAC	5000	12500	3.5	
	29	18000	N/A	SAC	5000	13000	3.6	
	30	18500	N/A	SAC	5000	13500	3.7	
	31	19000	N/A	SAC	5000	14000	3.8	
	32	19500	N/A	SAC	5000	14500	3.9	
	33	20000	N/A	SAC	5000	15000	4.0	

GRAPH OF TABLE 2C RICK FACTORS

—◆— Risk Factor

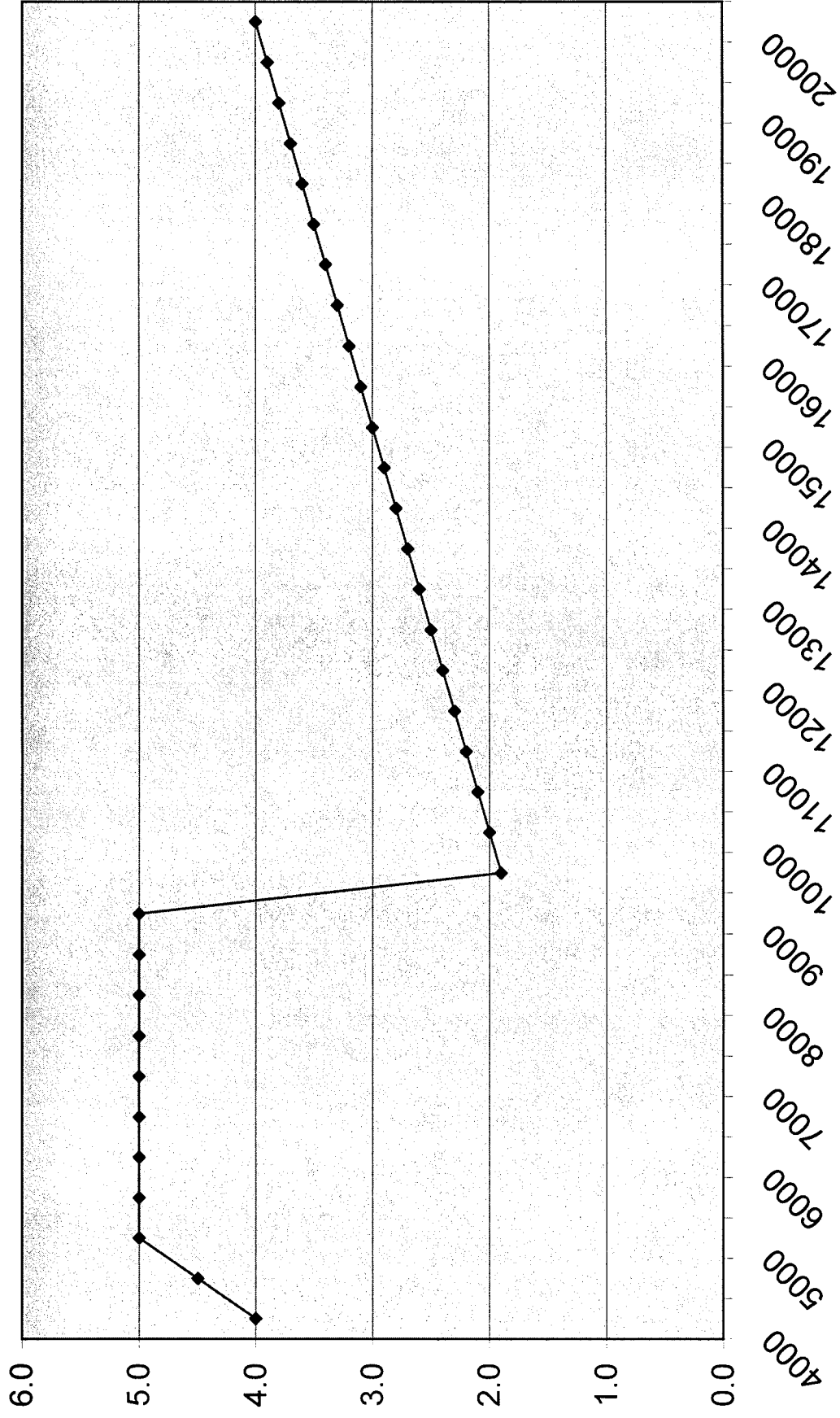
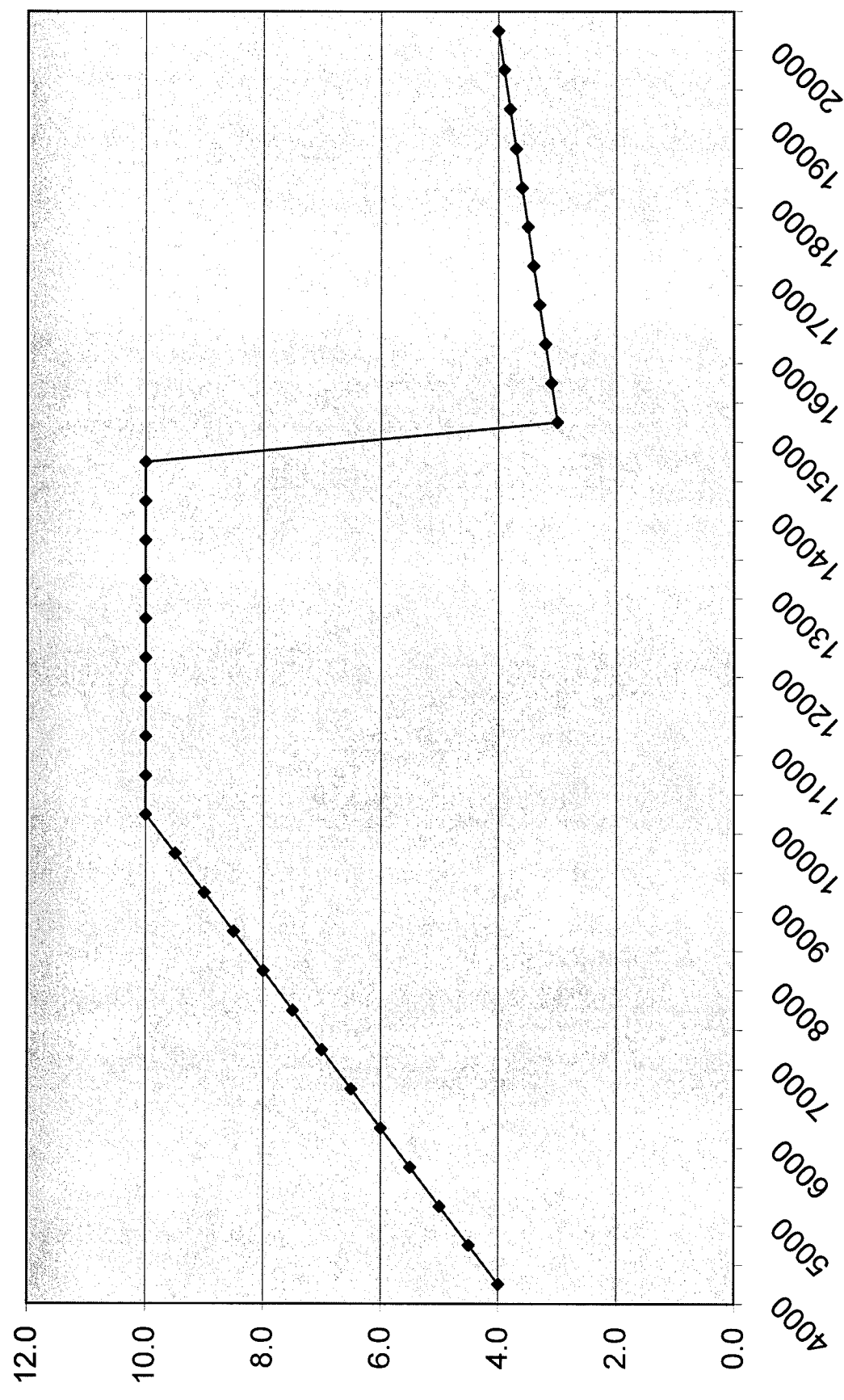


TABLE 2D
**Choosing a Medium Versus a Large Rate Case (\$4 Million to \$20 Million) on the
Basis of the Greatest Net Relief But With Medium Case Relief Limit Set at \$10
Million**

	A	B	C	D	E	F	G
	Case Value (Potential Relief) (000) (1)	Max Relief	Type of Case	Cost of Case (000)	Net Relief	Risk Factor	Relief Forgone
1	4000	N/A	SSAC	1000	3000	4.0	
2	4500	N/A	SSAC	1000	3500	4.5	
3	5000	N/A	SSAC	1000	4000	5.0	
4	5500	N/A	SSAC	1000	4500	5.5	
5	6000	N/A	SSAC	1000	5000	6.0	
6	6500	N/A	SSAC	1000	5500	6.5	
7	7000	N/A	SSAC	1000	6000	7.0	
8	7500	N/A	SSAC	1000	6500	7.5	
9	8000	N/A	SSAC	1000	7000	8.0	
10	8500	N/A	SSAC	1000	7500	8.5	
11	9000	N/A	SSAC	1000	8000	9.0	
12	9500	N/A	SSAC	1000	8500	9.5	
13	10000	N/A	SSAC	1000	9000	10.0	
14	10500	10000	SSAC	1000	9000	10.0	500
15	11000	10000	SSAC	1000	9000	10.0	1000
16	11500	10000	SSAC	1000	9000	10.0	1500
17	12000	10000	SSAC	1000	9000	10.0	2000
18	12500	10000	SSAC	1000	9000	10.0	2500
19	13000	10000	SSAC	1000	9000	10.0	3000
20	13500	10000	SSAC	1000	9000	10.0	3500
21	14000	10000	SSAC	1000	9000	10.0	4000
22	14500	10000	SSAC	1000	9500	10.0	4500
23	15000	N/A	SAC	5000	10000	3.0	
24	15500	N/A	SAC	5000	10500	3.1	
25	16000	N/A	SAC	5000	11000	3.2	
26	16500	N/A	SAC	5000	11500	3.3	
27	17000	N/A	SAC	5000	12000	3.4	
28	17500	N/A	SAC	5000	12500	3.5	
29	18000	N/A	SAC	5000	13000	3.6	
30	18500	N/A	SAC	5000	13500	3.7	
31	19000	N/A	SAC	5000	14000	3.8	
32	19500	N/A	SAC	5000	14500	3.9	
33	20000	N/A	SAC	5000	15000	4.0	

GRAPH OF TABLE 2D RISK FACTORS

—◆— Risk Factor



CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of October, 2007, a copy of the foregoing "Petition for Reconsideration and Suggestion for Expedited Oral Argument" was served by first class mail upon all parties of record.



Aimee DePew