

SURFACE TRANSPORTATION BOARD ACTS TO IMPROVE WAYS TO PROTECT CAPTIVE RAIL SHIPPERS FROM UNREASONABLE RATES

The Surface Transportation Board (Board) announced today two initiatives to explore ways to further protect captive shippers from unreasonable rail rates. First, the Board proposes to reform its rules on how it resolves rate disputes to ensure that all captive shippers have a meaningful way to challenge rates. Second, the Board is taking steps to consider a proposal submitted by The National Industrial Transportation League (NITL) to increase rail-to-rail competition.

The centerpiece of the Board's rate rules proposal removes the limitation on relief for cases brought under the Simplified-Stand Alone Cost alternative. "Our goal is to encourage shippers to use a simplified alternative to a Full-[Stand Alone Cost] analysis that is economically sound, yet provides a less complicated and less expensive way to challenge freight rates by discarding the requirement that shippers design a hypothetical railroad to judge a railroad's real world rates," the Board wrote in the decision issued today, in *Rate Regulation Reforms*, EP 715. The Board also proposes to double the relief available to shippers under its other simplified approach, the Three-Benchmark method; to make technical changes to the Full-SAC and simplified rate procedures; and to raise the interest rate that railroads must pay on reparations to shippers if the railroads are found to have charged unreasonable rates.

In addition to these immediate proposals, the Board is beginning a proceeding in *Petition for Rulemaking to Adopt Revised Competitive Switching Rules*, EP 711, to explore a competitive-access proposal submitted by NITL. "We continue," said the Board, "to explore whether there are policy changes the Board could adopt that would promote more rail-to-rail competition and thereby allow competition and the demand for services to establish reasonable rates for transportation by rail, and thus minimize the need for Federal regulatory control." Under NITL's proposal, certain shippers located in terminal areas that lack effective transportation alternatives would be granted access to a competing railroad, if there is a working interchange within 30 miles.

The Board continues to evaluate other competitive issues, including what actions to take in connection with commodity exemptions, the subject of a separate hearing in *Review of Commodity, Boxcar, and TOFC/COFC Exemptions*, EP 704, and how to improve its rules in transactions involving interchange commitments.

The Board's decisions, *Rate Regulation Reforms*, EP 715, and *Petition for Rulemaking to Adopt Revised Competitive Switching Rules*, EP 711, are available on the Board's website at www.stb.dot.gov. A fact sheet is attached.

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FACT SHEET

Petition for Rulemaking to Adopt Revised Competitive Switching Rules, EP 711
Rate Regulation Reforms, EP 715

Captive shippers have long stated that they do not bring rate disputes to the Board because of high litigation costs associated with the Board's complex Stand Alone Cost (SAC) test

traditionally used to resolve major rate cases. To provide rail customers with a lower-cost, expedited alternative to the SAC test, the Board created simplified evidentiary procedures. But because the methodologies used in the simplified procedures are less precise than those used in Full-SAC cases, the Board capped the amount of relief available under them. During the June 2011 hearing in *Competition in the Railroad Industry*, EP 705, the Board heard concerns from stakeholders that current limits on relief for simplified alternatives dissuaded parties from using those procedures to bring rate disputes to the agency.

The centerpiece of the Board's proposal in *Rate Regulation Reforms*, EP 715, is to remove the limitation on relief for cases brought under the Simplified-SAC alternative. The Board also proposes to double the relief available under its other simplified rate approach, the Three-Benchmark method; to make certain technical changes to the Full-SAC and simplified rate procedures; and to raise the interest rate that railroads must pay on reparations to shippers if the railroads are found to have charged unreasonable rates. The technical changes the Board proposes are: (1) curtailing the use of cross-over traffic in Full-SAC cases; (2) modifying the approach used to allocate revenue from cross-over traffic in Full-SAC and Simplified-SAC cases; and (3) improving the accuracy of the Road Property Investment component of the Simplified-SAC test. The Board proposes to modify the interest rate from the current T-bill rate (currently at 0.10%) to the U.S. Prime Rate (currently at 3.25%), as published in *The Wall Street Journal*. Opening comments are due October 23, 2012, replies are due December 7, 2012, and rebuttals are due January 7, 2013.

In *Petition for Rulemaking to Adopt Revised Competitive Switching Rules*, EP 711, the Board conducted a preliminary analysis of the rail-to-rail competition proposal and found that, before it could determine how to proceed, it would be in the public interest to obtain from interested parties empirical information to augment the Board's ongoing analysis of the proposal and to evaluate issues raised in the *Competition in the Railroad Industry* proceeding. Specifically, the public is invited to submit information on the following: (1) the impact on rates and service for shippers that would qualify under NITL's proposal; (2) the impact on rates and service for captive shippers who would not qualify under NITL's proposal; (3) the impact on the railroad industry, including its financial condition and network efficiencies; and (4) an access pricing proposal. Opening comments are due November 23, 2012 and replies are due February 21, 2013.

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