

Surface Transportation Board Announces Results of September 24 Voting Conference

Surface Transportation Board Chairman Roger Nober today announced the results of the voting conference held today, September 24, 2004 by the STB.

The list of cases on which Chairman Nober, Vice Chairman Mulvey, and Commissioner Buttrey voted, and the outcome of the voting, are attached as a fact sheet.

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ATTACHMENT

Fact Sheet

VOTING RESULTS OF SURFACE TRANSPORTATION BOARD'S SEPTEMBER 24, 2004 VOTING CONFERENCE

• ***Texas Municipal Power Agency v. The Burlington Northern and Santa Fe Railway Company*, STB Docket No. 42056.**

In this case, the Texas Municipal Power Agency (TMPA) challenged the reasonableness of a Burlington Northern and Sante Fe Railway Company (BNSF) rate for the transportation of coal from certain mines in the Powder River Basin of Wyoming to TMPA's electricity-generating station at Iola, Texas. In its March 24, 2003 decision in this case, the STB found that BNSF has market dominance over the transportation at issue and that the challenged rate was unreasonably high, and prescribed maximum reasonable rates and awarded reparations to TMPA. Subsequently, both TMPA and BNSF filed petitions requesting the STB's reconsideration of various aspects of its March 2003 decision.

The STB Members voted unanimously to make some minor adjustments to the March 2003 decision, find that the challenged rates remain unreasonably high, prescribe maximum reasonable rates, and order recalculation of the reparations award in this proceeding.

• ***Granite State Concrete Co., Inc. and Milford-Bennington Railroad Company, Inc. v. Boston and Maine Corporation and Springfield Terminal Railway Company*, STB Docket No. 42083.**

At issue in this case is a complaint filed jointly by the Milford-Bennington Railroad Company, Inc. (M-B) and Granite State Concrete Co., Inc. (Granite State), alleging that the "landlord" railroad, the Boston and Maine Corp. and its subsidiary, the Springfield Terminal Railroad Co. (jointly, BM/ST) unreasonably interfered with the ability of the M-B, the "tenant" railroad," to serve its customer, Granite State.

The Members voted unanimously to find that M-B and Granite State have not shown that BM/ST unreasonably interfered with M-B's transportation operations.

• ***Engelhard Corporation--Petition for Declaratory Order--Springfield Terminal Railway Company and Consolidated Rail Corporation*, STB Docket No. 42075.**

The matter before the STB in this proceeding involves two questions referred to the agency the U.S. District Court for the District of Massachusetts involving a proceeding begun by the agency on April 1, 2003, to address questions concerning industry-wide mileage allowance provisions applicable to privately own railroad tank cars.

The Members voted unanimously to find that (1) a claim accrues, for purposes of the statute of limitations, when a

private car owner is informed that it will not receive compensation for its car movements, or four months from the date of the submission of a claim, whichever comes first; and (2) the pertinent tariff permits the owner of a rail car's reporting marks to assign the right to receive mileage-allowance payments to a lessee of the car.

• ***Ohio Valley Railroad Company--Acquisition and Operation Exemption--Harwood Properties, Inc., STB Finance Docket No. 34486.***

In this case, the Ohio Valley Railroad Company (OVR) filed a notice of exemption from STB regulation to acquire and operate certain trackage in Evansville, Indiana. The Indiana Southwestern Railway Co. (ISW) requested that the agency reject the notice, revoke the exemption, or, alternatively, stay the exemption's effective date.

The Members voted unanimously to deny ISW's petition to reject or revoke OVR's notice of exemption. Because it voted to deny ISW's petition to reject or revoke, the Members also dismissed as moot ISW's petition to stay the effective date of OVR's exemption.

• ***City of Peoria IL, d/b/a Peoria, Peoria Heights and Western Railroad--Construction of Connecting Track Exemption--in Peoria County, IL, STB Finance Docket No. 34395.***

In February 2004, the City of Peoria, Illinois, doing business as the Peoria, Peoria Heights & Western Railroad (PPHW), filed a verified notice of exemption from STB regulation to construct approximately 1,800 feet of connecting track in Peoria, Peoria County, IL, over land it owns or over which it has an easement for railroad purposes.

The Members voted unanimously to grant final approval for an exemption allowing PPHW to construct the connecting track, subject to environmental mitigation.

• ***Climate Master Inc. and International Environmental, Inc.--Petition for Declaratory Order--Certain Rates and Practices of Trans Tech Solutions, Inc., F&M Bank, and Midland Transportation Co., STB Docket No. 42085.***

In this proceeding, Climate Master, Inc. (Climate Master) asked the STB to declare that it would be unlawful for Trans Tech Solutions, Inc. (Trans Tech), and F&M Bank (F&M) to collect additional freight charges for interstate truck shipments of freight provided for Climate Master by a trucking company that is now in Chapter 11 bankruptcy. F&M and Trans Tech did not respond to Climate Master's evidence that it had fully paid for the services it had received.

The Members voted unanimously to find that Trans Tech and F&M could not lawfully collect the additional freight charges at issue.

• ***Regulations Governing Fees for Services Performed in Connection with Licensing and Related Services--2004 Update, STB Ex Parte No. 542 (Sub-No. 11).***

The Members voted unanimously to adopt the agency's latest annual update of its user fees, as required by law.

• ***Procedures to Expedite Resolution of Rate Challenges to be Considered Under the Stand-Alone Cost Methodology, STB Ex Parte No. 638.***

The Members voted unanimously to amend the agency's discovery regulations to restore language inadvertently deleted in an earlier decision.

• ***Revision of Exemption Authority Citations, STB Ex Parte No. 652.***

The Members voted unanimously to amend the STB's regulations to change incorrect citations or references, and to make changes to its authority citations.

• ***Semiannual Regulatory Agenda, STB Ex Parte No. 536 (Sub-No. 17).***

The Members voted unanimously to accept the contents of, and to submit to the U.S. Office of Management and Budget, its Semiannual Regulatory Agenda (Agenda). The Agenda contains information regarding current and projected

rulemakings and existing regulations being reviewed to determine whether the agency should propose modifications through rulemaking.

The STB provides the above summaries as a courtesy to the public and the media. The actions of the agency in these cases, however, are its written decisions. Those decisions will be forthcoming, and will be available for viewing (under "E-Library/"Decisions & Notices") and downloading via the STB's Web site at <http://www.stb.dot.gov>. Printed copies of the decisions also will be available for a fee by contacting **ASAP Document Solutions, 9332 Annapolis Rd., Suite 103, Lanham, MD 20706, telephone (301) 577-2600**, or via asapmd@verizon.net.

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