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July 31, 2002

VIA HAND DELIVERY

205964

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
Case Control Unit
1925 K Street, N.W.
Washington, D.C. 20423-0001

ENTERED
Office of Proceedings

JUL 31 2002

Part of
Public Record

Re: STB Ex Parte No. 589, Calculation of Variable Costs in Rate
Complaint Proceedings Involving Non-Class I Railroads

Dear Secretary Williams:

Enclosed for filing in the above-referenced proceeding please find an original and ten (10) copies of the Reply Comments of Western Coal Traffic League.

We have enclosed an additional hard copy of these Reply Comments to be date-stamped and returned to the bearer of this letter. Thank you for your attention to this matter.

Sincerely,

John H. LeSeur
An Attorney for
Western Coal Traffic League

Enclosures

BEFORE THE
SURFACE TRANSPORTATION BOARD



CALCULATIONS OF VARIABLE COSTS
IN RATE COMPLAINT PROCEEDINGS
INVOLVING NON-CLASS I RAILROADS

STB Ex Parte No. 589

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REPLY COMMENTS OF
WESTERN COAL TRAFFIC LEAGUE

OF COUNSEL:

Slover & Loftus
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Dated: July 31, 2002

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Attorneys for the
Western Coal Traffic League

BEFORE THE
SURFACE TRANSPORTATION BOARD

CALCULATIONS OF VARIABLE COSTS
IN RATE COMPLAINT PROCEEDINGS
INVOLVING NON-CLASS I RAILROADS

STB Ex Parte No. 589

REPLY COMMENTS OF
WESTERN COAL TRAFFIC LEAGUE

The Western Coal Traffic League's ("WCTL") reply comments respond to comments filed in response to the Board's notice ("Notice") served in this proceeding on April 30, 2002.

I.

BACKGROUND

There is no service list in this proceeding. The Board's website provides copies of comments submitted by the following parties: U.S. Department of Transportation ("DOT"); Transtar, Inc. ("Transtar"); Duluth Missabe & Iron Range Railway Company and Bessemer & Lake Erie Railroad Company ("DMIR/BLE"); RailAmerica, Inc. ("RailAmerica"); American Short Line & Regional Railroad Association ("ASLRRA"); and Association of American Railroads.

II.

REPLY

A. Accurate Cost Calculations

The railroad commentors generally support the Board's proposal as set forth in its Notice. This proposal calls for the development of non-Class I carrier URCS unit costs in maximum rate cases using "available regional URCS cost data of Class I carriers." Notice at 7. Significantly, however, none of the railroad commentors argue that use of such unit costs produces accurate results. Indeed, in the Board's only recent decision concerning these matters, the Board concluded that using regional Class I carrier URCS unit costs to calculate the involved non-Class I carrier's costs did not produce accurate results.¹

The Congressionally-mandated rate regulatory system depends upon an accurate calculation of the involved carriers' variable costs.² As WCTL explained in its opening comments, the Board should not strip a shipper of its right to obtain accurate cost calculations without the shipper's consent.

B. "Small" Railroad Issues

The railroads, along with DOT, generally support the Board's regional cost proposal on grounds that it would impose an undue burden on "small" railroads. However, the individual railroads participating in this case are hardly small railroads.

¹ See Minnesota Power, Inc. v. Duluth, Missabe and Iron Range Ry., STB Docket No. 42038, slip op. at 5 (STB served March 6, 2000) ("Minnesota Power").

² See, e.g., 49 U.S.C. §10707(d)(1) (STB cannot make a market dominance finding where involved carrier's assailed rate is less than 180 percent of the carrier's variable service costs); Wisconsin Power and Light Co. v. Union P. R.R., STB Docket No. 42051 (STB served Sept. 13, 2001) (STB prescribed maximum rates at 180 percent of the defendant carrier's variable costs for the challenged movements) ("Wisconsin").

RailAmerica reportedly owns forty-nine shortline and regional railroads in the United States and other countries. In a filing it made with the STB in November of 2000, RailAmerica stated that its "subsidiary railroads consolidated annual railroad revenues in the United States are about 210 million."³ Similarly, Transtar and DMIR/BLE have reported that their combined operating revenues exceed 250 million (in 1991 dollars).⁴ These large conglomerate carriers cannot credibly argue that they lack sufficient financial resources to collect necessary data needed to generate carrier-specific URCS unit costs, if required to do so in a particular case.

C. ICC Accounting Decisions

The ASLRRA cites the existence of only one recent maximum rate case involving a non-Class I railroad (the Minnesota Power case). It argues that the existence of only one case "does not come close to establishing a record for a need for imposing additional accounting reporting burdens on all 425 Class II and III railroads." ASLRRA Comments at 2. WCTL agrees with ASLRRA that there is no need to reinstate R-1 reporting requirements across-the-board. These requirements were eliminated by Interstate Commerce Commission ("ICC") decisions issued in the 1980's. However, these ICC decisions made clear that in eliminating the reporting requirements, the ICC did not eliminate the requirement that non-Class I railroads produce similar accounting information in individual cases, including maximum rate cases. See Minnesota Power, slip op. at 4. The ASLRRA, along with the individual carriers, disregard the ICC's clear pronouncements.

³ Consolidated Railroad Reporting, STB Ex Parte No. 634, Comments of RailAmerica, Inc. at 1 (dated Nov. 27, 2000).

⁴ Id. Comments of Transtar, Inc. at 1 (dated Oct. 24, 2000).

D. DMIR/BLE Proposal

The DMIR/BLE ask the Board to increase the jurisdictional threshold in cases involving non-Class I railroads to 200 percent of the involved carrier's variable costs. DMIR/BLE Comments at 5-7. The Board should summarily reject this request. Congress has set the jurisdictional threshold at 180 percent of the involved carriers costs⁵ and, in one recent major coal rate case,⁶ the STB established the maximum rates at 180 percent of the involved carrier's costs. From a shipper's standpoint it does not make any difference what size carrier is overcharging it. An overcharge is an overcharge.

In support of its request, DMIR/BLE makes some representations about the cost evidence the parties submitted in the Minnesota Power litigation. DMIR/BLE Comments at 5-7. DMIR was the defendant in that litigation. DMIR and Minnesota Power entered into a protective order in the Minnesota Power case. Pursuant to that protective order, all cost evidence was filed under seal. Because the evidence was filed under seal, WCTL requests that the Board ignore DMIR's characterizations of it.⁷

III.

WCTL'S ALTERNATIVE PROPOSAL

WCTL respectfully requests that the Board adopt the proposal set forth in WCTL's opening comments. That proposal would allow a shipper to choose the type of unit cost data to be submitted in a maximum rate involving a non-Class I railroad. As

⁵ See 49 U.S.C. §10707(d)(1)(A).

⁶ Wisconsin, *supra*.

⁷ The Board's Minnesota Power decision does publically disclose that Minnesota Power's variable cost calculations (using DMIR-specific costs) produced substantially lower cost calculations than DMIR's variable cost calculations (which were based on Class I carrier regional costs). *Id.*, *slip op.* at 6.

WCTL explained in its opening comments, the Board should not require a shipper to present its case using what may be severely inaccurate cost data, unless the shipper first consents to use of this data.

Respectfully submitted

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Dated: July 31, 2002

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