

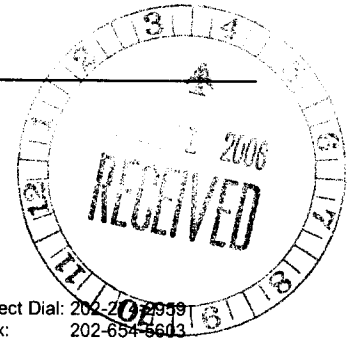
TROUTMAN SANDERS LLP

ATTORNEYS AT LAW
A LIMITED LIABILITY PARTNERSHIP

401 9TH STREET, N.W. - SUITE 1000
WASHINGTON, D.C. 20004-2134
www.troutmansanders.com
TELEPHONE: 202-274-2950

Sandra L. Brown
sandra.brown@troutmansanders.com

Direct Dial: 202-274-2950
Fax: 202-654-5603



May 1, 2006

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VIA HAND DELIVERY

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

ENTERED
Office of Proceedings

MAY 1 2006

U.S. OF
S. RECORD

Re: STB Ex Parte No. 657 (Sub-No. 1)
Major Issues In Rail Rate Cases

Dear Secretary Williams:

Enclosed for filing in the above-referenced proceeding are an original and 20 copies of the Comments of South Carolina Electric & Gas Company ("SCE&G").

Please date stamp the enclosed extra copy, and give to the messenger for my file. If you have any questions regarding this letter or need further information, please do not hesitate to call me at (202) 274-2959.

Sincerely,

Sandra L. Brown
Counsel for South Carolina Electric
and Gas Company

Enclosures

cc: All Parties on Official Service List

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Ex Parte No. 657 (Sub-No. 1)

MAJOR ISSUES IN RAIL RATE CASES

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COMMENTS OF SOUTH CAROLINA ELECTRIC & GAS COMPANY

I. INTRODUCTION.

The Surface Transportation Board's ("STB" or "Board") instituted a rulemaking and made several rule proposals in a decision served February 27, 2006 ("Decision") in the above-captioned docket. The Board requested that a notice of intent to participate should be filed by March 20, 2006 and that initial submissions are due May 1, 2006. South Carolina Electric and Gas Company ("SCE&G") filed a notice of intent to participate in this proceeding with the Board on March 20, 2006. SCE&G hereby submits comments in response to the Board's request for submissions on the Board's rulemaking to address major issues regarding the proper application of the stand-alone cost ("SAC") test in rail rate cases and the proper calculation of the floor for any rail rate relief.

SCE&G is a regulated public utility engaged in generation, transmission, distribution and the sale of electricity to nearly 571,000 retail and wholesale electric customers in South Carolina. SCE&G is a subsidiary of SCANA Corporation, an energy-based holding company. SCE&G has six coal-fired generation facilities which can produce approximately 2,500+ megawatts and typically represent 70-percent of

SCE&G's annual generation. Five of the coal-fired plants are serviced by CSX Transportation ("CSXT") and one is served by Norfolk Southern Railway Company ("NS") and CSXT.

SCE&G has not been actively involved in past or pending rate cases at the Board and thus SCE&G is not in a position to comment on the six specific proposals advanced by the Board in its February 27, 2006 decision. SCE&G would like to make some comments about rate reasonableness generally. In particular, SCE&G believes that the rate reasonableness standards should provide a maximum rate constraint in prices offered by railroads in response to shipper requests. However, it appears that the result of the past rate complaint cases has been to support the railroads exponential rate increases. In light of this, the Board should seriously consider whether SAC remains a viable rate reasonableness methodology. Rate relief using SAC is nearly impossible now, and there are real questions regarding whether the proposals announced by the Board would materially change the prospects of potential complainants.

In lieu of expending all of its energy on the SAC test, SCE&G recommends that the Board consider if the SAC test is even workable. The structural flaws of the SAC test are discussed more in Section II below. Secondly, given the impending revenue adequacy of the nations' Class I railroads, the Board should consider how the revenue adequacy constraint of the *Coal Rate Guidelines* should be implemented.

Of even greater concern at this time to SCE&G are the rail service problems that SCE&G has experienced at its coal-fired generation plants which can directly impact generation reliability. Rail service reliability is a growing frustration for SCE&G and the STB should take note of the service-related problems that exist for many coal generation

facilities throughout the country. The STB needs to undertake whatever measures are necessary to ensure that railroads are working to alleviate existing capacity constraints with the intent to provide more reliable rail service.

II. THE SAC METHODOLOGY IS OVERLY CUMBERSOME AND LIMITED.

A. SAC is currently unworkable due to time and cost barriers.

SAC cases are notoriously expensive and time-consuming. Recent cases have taken three, four, or more years from complaint to final Board decision. In the unlikely event that the complainant obtains rate relief from the Board, a court appeal is almost sure to follow. With the virtually infinite array of interconnected and inter-related details involved in a SAC case, reopening of the case by the Board is also a distinct possibility. When all the legal proceedings are added together, some rate cases have lasted a decade or more.

Furthermore, these proceedings do not come cheaply. Costs include attorney fees, expert consultant fees, document review, filing fees, and usage rights for complex rail operations software. It is now estimated that rate cases cost \$4 to \$6 million dollars or more for the complainant just during the initial Board proceedings. In fact, the complainant must pay a filing fee of \$140,000 just for to begin the multi-year ordeal of a SAC case. 49 CFR § 1002.2. The cost has continued to rise sharply in recent years as cases have gotten more complex.

B. Potential relief is only provided to a small class of shippers.

As currently configured, only large-scale shippers on densely-used mainlines with relatively simple operations in the Western U.S. even have the possibility of having their transportation rates constrained by the SAC model. Recent Board precedent shows that

cases in the Eastern U.S. are operationally unworkable. Eastern coal operations can include dozens of mine origins for a single generating station, and these mine origins often fluctuate from year to year. A key mine one year may cease operations the next, to be replaced by a mine recently put back in production. In short, the complex and fluid nature of coal supply patterns in the East do not lend themselves to establishment of a static and repetitive stand-alone railroad ("SARR") operating plan that can be modeled on the Rail Traffic Controller ("RTC") software, as seems to be required by Board precedent.

For both Western and Eastern shippers, Board precedent shows that potential complainants who are located on lightly used rail lines have no opportunity for relief or rate constraint. Under the Board's *PPL* test, as expanded in the *Otter Tail* case, when a SARR is built with a lightly-used segment of track serving the complainant, an allegedly impermissible "cross-subsidy" exists and no recovery is possible. See Docket No. 42054, *PPL Montana, LLC V. The Burlington Northern And Santa Fe Railway Company* (STB served Aug. 20, 2002) and Docket No. 42071, *Otter Tail Power Company V. Bnsf Railway Company* (STB served Jan. 27, 2006 and Mar. 28, 2006).

For all potential complainants, SAC is only advisable for shippers of large quantities – preferably over two million tons of coal shipped per year. Theoretically, smaller shippers may be able to use the Board's "small rate case guidelines," but these guidelines are untested and of uncertain applicability. In short, the SAC method seems only to reward frequent and repetitive rail operations. Shippers with more complex operations, such as those in the East, and shippers with insufficient annual volume are left without rate reasonableness options.

C. SAC standards keep changing.

The *Coal Rate Guidelines* were developed with the intent to make rate litigation less likely because parties were supposed to be able to privately estimate a reasonable SAC rate using the established guidelines. 1 ICC2d 520, 524 (1985). Thus, the shipper and the railroad would create a contract based on this "reasonable rate" they developed from the SAC guidelines. *Id.* However, this sort of certainty has not been created by the *Guidelines*. Each new decision of the Board changes preexisting standards, such as the creation of the *PPL* cross-subsidy test. This creates havoc for potential complainants and further limits any restraint that the Guidelines might have on rates set by the railroads. A shipper considering bringing a SAC case can only evaluate its situation based on existing rules and standards. If a case is brought, however, it will be several years before the Board finally issues a decision. Not only may the Board set some new SAC standards in the decision, but Board decisions in other rate cases in the intervening years may also have changed the SAC test. Hence, by the time a Board decision is issued, the original complainant will be faced with a new set of standards that did not exist when its complaint was originally contemplated and filed.

D. SAC rewards railroad efforts to make cases more complex.

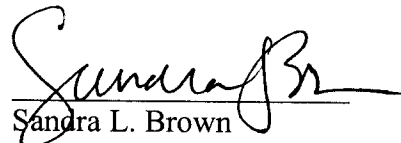
SAC cases have become dramatically more complex in recent years, thereby contributing to their rise in cost and the time required. In fact, the complex and changing nature of the SAC methodology encourages the defendant railroads to make the cases as complex as possible. It appears that one of the main goals of the defendant railroads in each succeeding case is to increase the number of alleged deficiencies in the shippers opening filing. Extending the length of the proceeding and increasing the costs appears

to have rewarded railroads by the fact that few complaints are filed and of the ones that are, they are predominantly decided in favor of the railroad.

III. CONCLUSION.

SCE&G appreciates the opportunity to express its views of the stand-alone cost methodology. Nevertheless, SCE&G strongly believes that there are inherent problems in SAC that cannot be fixed in this rulemaking. SCE&G requests that the Board take a critical look at SAC and how it effectively limits possible rate relief to a very small class of railroad shippers. Furthermore, the Board should do what it can to address rail service reliability problems.

Respectfully submitted,



Sandra L. Brown
David E. Benz
TROUTMAN SANDERS, LLP
401 9th Street, NW, Ste 1000
Washington, DC 20004-2134
Phone: (202) 274-2959
Fax: (202) 654-5603

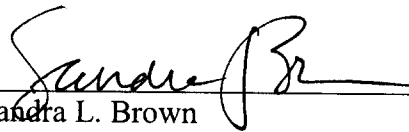
Catherine D. Taylor
Patricia Banks Morrison
SOUTH CAROLINA ELECTRIC
& GAS COMPANY
1426 Main Street
Legal Department, Mail Code 130
Columbia, SC 29201
Phone: (803) 217-7880
Fax: (803) 217-7931

*Counsel for South Carolina Electric
& Gas Company*

May 1, 2006

CERTIFICATE OF SERVICE

I hereby certify that I have this 1st day of May 2006 caused copies of the foregoing Comments of South Carolina Electric and Gas Company to be served by United States Mail upon counsel for all parties of record in STB Ex Parte No. 657 (Sub-No. 1).


Sandra L. Brown