



ASSOCIATION OF
AMERICAN RAILROADS

Law Department
Louis P. Warchot
Senior Vice President-Law
and General Counsel

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Ms. Cynthia T. Brown
Chief, Section of Administration
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423

Re: STB Docket No. EP 715, *Rate Regulation Reforms*

Dear Ms. Brown:

Pursuant to the Board's order served on July, 25, 2012, attached please find the Rebuttal Comments of the Association of American Railroads for filing in the above proceeding.

Respectfully submitted,

Louis P. Warchot
*Counsel for the Association of
American Railroads*

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Ex Parte No. 715

RATE REGULATION REFORMS

REBUTTAL COMMENTS OF THE
ASSOCIATION OF AMERICAN RAILROADS

Of Counsel:

David L. Coleman
Paul A. Guthrie
Paul Hitchcock
James A. Hixon
Theodore K. Kalick
Jill K. Mulligan
Roger P. Nober
John P. Patelli
David C. Reeves
Louise A. Rinn
John M. Scheib
Peter J. Shudtz
Gayla L. Thal
Richard E. Weicher
W. James Wochner

Louis P. Warchot
Association of American Railroads
425 Third Street, S.W.
Suite 1000
Washington, D.C. 20024
(202) 639-2502

*Counsel for the Association of
American Railroads*

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BEFORE THE
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RATE REGULATION REFORMS

REBUTTAL COMMENTS OF THE
ASSOCIATION OF AMERICAN RAILROADS

Pursuant to the Notice of Proposed Rulemaking (“NPR”) served on July 25, 2012, by the Surface Transportation Board (“Board”), the Association of American Railroads (“AAR”) hereby submits these rebuttal comments.

In its opening comments filed on October 23, 2012, the AAR focused on the statutory framework established by Congress and the sound economic theory undergirding the Interstate Commerce Commission (“ICC”) and Board precedents and rules governing rail rate regulation. The AAR submitted that any changes to the Board’s rate reasonableness processes should be consistent with the statute and be grounded first upon the fundamental principle of rail rate regulation that railroads must be allowed to establish rates based on demand-based, differential pricing. With regard to the specific proposals in the NPR, the AAR opposed the removal the limit to relief for simplified stand-alone cost (“Simplified-SAC”) cases because such an action would violate 49 U.S.C. § 10701(d)(3). The AAR stated that if the Board is concerned about the levels of relief established in *Simplified Standards for Rail Rate Cases*, EP 646 (Sub-No. 1)

(STB served Sept. 5, 2007) (“*Simplified Standards*”),¹ the Board should follow the process it announced in that rulemaking proceeding of taking evidence regarding the cost of the next more accurate type of rate case. With regard to cross-over traffic in full stand-alone cost (“Full-SAC”) cases, the AAR noted that the Board had identified certain types of traffic where the Board’s revenue allocation methodology distorted the analysis and the AAR stated that, to the extent the Board is unwilling or unable to apportion revenues properly between the SARR and the residual incumbent for those types of traffic, the Board would be justified in limiting cross-over traffic in those contexts in the ways it has proposed. With regard to the revenue allocation methodology, the AAR urged the Board to consider the merits of its original Average Total Cost (“Original ATC”) methodology adopted by notice and comment rulemaking in *Major Issues in Rail Rate Cases*, EP 657 (Sub-No. 1) (STB served Oct. 30, 2006) (“*Major Issues*”) to allocate revenue from cross-over traffic. But to the extent the Board concludes that ATC must be modified due to the perceived problem discussed in *Western Fuels Association v. BNSF Railway*, NOR 42088 (STB served Sept. 10, 2007) (“*Western Fuels*”), the AAR supported the proposed rule (“Alternative ATC”) as the most reasonable methodology offered to date to solve the perceived problem. Finally, the AAR argued that the NPR’s results-oriented proposal regarding interest charged on reparations should not be adopted.

In contrast, the various reply comments filed by shippers and those organizations that advocate on behalf of shippers² made little effort to reconcile the statute and sound economics

¹ *Simplified Standards for Rail Rate Cases*, EP 646 (Sub-No. 1) (STB served Sept. 5, 2007), *aff’d sub nom. CSX Transportation, Inc. v. STB*, 568 F.3d 236 (D.C. Cir.), *vacated in part on reh’g on other grounds*, 584 F.3d 1076 (D.C. Cir. 2009).

² Reply comments were filed by Consumers United for Rail Equity (“CURE”), The Chlorine Institute, and the National Grain and Feed Association (“NGFA”). Joint reply comments were filed by the Alliance for Rail Competition, Montana Wheat & Barley Committee, Colorado Wheat Administrative Committee, Idaho Barley Commission, Idaho Wheat Commission, Montana Farmer Union, Nebraska Wheat

with their desire for lowered rail rates set by regulation. Instead, the Shipper Interests' reply comments begin from the premise that any action stemming from the Board's NPR should only be concerned with making it cheaper and easier for complaining shippers to win rate cases without regard for sound economic principles of ratemaking or the established statutory framework.³ Such requests warrant little response. Rather than focusing on which parties are likely to benefit from various changes, the Board should focus its resources on achieving a coherent, principled rate reasonableness process that comports with the Interstate Commerce Act, as amended, and allows all stakeholders to reasonably predict outcomes, which would foster private sector resolution of disputes.

In the discussion below, the AAR responds to the few substantive arguments made in the Shipper Interests' reply comments. Specifically, notwithstanding assertions to the contrary in various shipper comments, the Board does not, in fact, have the statutory authority to remove the limit on relief for Simplified-SAC cases or Three Benchmark cases and, as a matter of sound policy, should not remove reasonable limits on the cruder rate reasonableness methods. With regard to cross-over traffic, the NPR correctly characterized the disconnect between the application of the ATC revenue allocation methodology and the inclusion of carload and multi-carload crossover movements and the Board's proposed rule is a reasonable way to address the

Commission, South Dakota Wheat Commission, Texas Wheat Producers Board, and Washington Grain Commission ("ARC"), The American Chemistry Council, the Fertilizer Institute, the National Industrial Transportation League, Arkema, Inc., the Dow Chemical Company, Olin Corporation, and Westlake Chemical Corporation ("Joint Chemical Companies"), Western Coal Traffic League, Concerned Captive Copal Shippers, American Public Power Association, Edison Electric Institute, the National Rural Electric Cooperative Association, Western Fuels Association, Inc., and Basin Electric Power Cooperative, Inc. ("Joint Coal Shippers")(collectively, "Shipper Interests").

³ See, e.g., Joint Coal Shippers Reply Comments at 3 (citing STB News Release No. 12-13 (July 25, 2012)).

problem. Finally, the Shipper Interests' reply comments do not support the NPR's proposal to depart from the Board's well-reasoned existing rule on interest charges for reparation awards.

Discussion

I. **Unlimited Relief For All Complainants Based On A Cruder Methods Than Full SAC Would Not Comport With 49 U.S.C. § 10701(d)(3) Or Sound Regulatory Principles**

A. 49 U.S.C. § 10701(d)(3) Requires Limits on the Simplified Methodologies Based on the "Value of the Case."

Neither the rationales set forth in the NPR, nor the record established in this proceeding supports reworking the Board's limits-on-relief framework established in *Simplified Standards*. The Board adopted its existing two-tiered system of simplified methodologies for judging the reasonableness of rail rates to satisfy the mandate of 49 U.S.C. § 10701(d)(3) "to establish 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." Beginning in *Rate Guidelines - Non-Coal Proceedings*, 1 S.T.B. 1004 (1996), the Board struggled with developing an eligibility standard for using simplified and expedited methods of challenging rail rates.⁴ Despite concerns expressed by rail carriers that simplified, less accurate rate reasonableness procedures should be reserved for truly small shippers with limited resources, rather than allowing the necessarily less precise methodologies to become vehicles for large multinational corporations to seek regulatory intervention, the Board concluded that the statute required that the simplified methodologies be limited to small cases based on the value of the case.⁵ The Board adopted its small claims model of limits on relief to restrict its less accurate

⁴ See *Simplified Standards*, at 4, 26.

⁵ See *id.* at 5 & n.5.

methodologies to such small disputes and to avoid the inherent difficulties in trying to itself judge the value of a potential case before it is litigated.⁶ The Board noted that, “neither [a Simplified SAC or Three Benchmark case] offers as much precision and degree of confidence as a Full-SAC analysis,” but concluded that its approach would satisfy 49 U.S.C. § 10701(d)(3). In the NPR in this current proceeding, the Board proposed to eliminate any limit on relief for Simplified-SAC cases and to double the limit on Three Benchmark cases. On reply, some of the Shipper Interests not only endorse dropping any limit on relief in Simplified-SAC cases, but urge the Board to discard any limits on relief in Three Benchmark cases as well.⁷

The existing rules provide the shipper contemplating a rate case flexibility to choose the test that in the shipper’s judgment offers the most attractive reward relative to cost and risk while ensuring that the greater the value of the case, the more accurate the method for assessing the reasonableness of the rate. The Board’s goal pursuant to 49 U.S.C. § 10701(d)(3) was “to balance simplicity against the need to use the method that is best suited for the dispute” and the D.C. Circuit concluded the Board fairly balanced the competing interests in accuracy and simplicity.⁸ Nothing in the NPR or in two rounds of shipper comments explain why the Board can or should abandon its limit approach on simplified rate standards (as urged by some Shipper Interests’ comments) or how the Simplified-SAC procedure may now be judged to be accurate enough to warrant unlimited relief.

In its opening comments and reply comments, the AAR argued that 49 U.S.C. § 10701(d)(3) does not authorize the Board to rely on a Simplified-SAC alternative for all cases

⁶ *Id.* at 27.

⁷ Joint Chemical Companies Reply Comments at 8; CURE Reply Comments at 17-20.

⁸ *CSX Transportation Inc. v. STB*, 568 F.3d 236, 244 (D.C. Cir. 2009).

without limits on the relief.⁹ Though some of the Shipper Interests' reply comments recite that the AAR and some of its freight railroad members made this argument, none effectively counter the rail carriers' position.¹⁰ Some of the Shipper Interests' reply comments instead resort to mischaracterizing the statutory language of Section 10701(d)(3) to argue that it requires that the Board make simplified methodologies less expensive and more expedited regardless of the accuracy of the approach whenever a Full-SAC analysis is not "feasible."¹¹ Only the Joint Chemical Companies' reply comments explicitly attempt to reconcile the NPR's proposal to eliminate the limits on relief for Simplified SAC with the statutory language of 49 U.S.C § 10701(d)(3). By referencing their opening comments at pages 25, and 28-29, the Joint Chemical Companies maintain that the simplified methodologies "inevitably produce higher rate prescriptions than a Full-SAC case" and that "[b]ecause those simplifications reduce the value of the shipper's case, the shipper has ample incentive to select the Full-SAC methodology when the value of its case warrants the additional cost."¹² Though the cited Joint Chemical Companies opening comments reference a verified statement by Messrs. Crowley and Mulholland to try to prove that point, that verified statement offers only theoretical argument as to why those consultants believe that a Simplified-SAC analysis will always produce a higher maximum lawful rate than a Full-SAC analysis.¹³ As there have been no cases actually adjudicated under

⁹ The Joint Coal Shippers apparently agree with the AAR that Simplified-SAC was not intended to be a substitute for a Full-SAC analysis and that "Full-SAC is intended to be the 'most accurate procedure available for determining the reasonableness of rail rates where there is an absence of effective competition.'" Joint Coal Shippers Reply at 14 (internal citations omitted).

¹⁰ See, e.g., CURE Reply Comments at 13; NGFA Reply Comments at 6.

¹¹ Compare Chlorine Institute Reply Comments at 2 with 49 U.S.C. § 10701(d)(3).

¹² Joint Chemical Companies Reply Comments at 8.

¹³ See Crowley/Mulholland V.S. at 54.

the Board's Simplified-SAC procedures, it is difficult to predict how those procedures will function in practice.¹⁴

Moreover, even assuming *arguendo* that the Joint Chemical Companies' predictions were borne out in practice, the comparative maximum lawful rate would be the wrong comparison. Rather than focusing on the maximum rate level, *Simplified Standards* focused on allowing the complainant to evaluate the value of its claim under each methodology. If a complainant believes that the difference in the potential rate reduction under the current rules between the Full-SAC test and the Simplified-SAC test relative to the difference in cost warrants a Full-SAC case, the complainant always has the right to bring a Full-SAC case and can include as many movements as it chooses. Likewise, if a complainant believes a Simplified-SAC case would deliver rate levels sufficiently below a Three Benchmark case to justify the possibly higher cost, then it can invoke the relatively more accurate Simplified-SAC case rather than the cruder Three Benchmark case. Further, a complainant even has the right to change its mind after discovery by amending its complaint at any time prior to filing its opening evidence.¹⁵

B. Shipper Interests' Assertions Regarding the Comparative Relief Available Under the Three Benchmark Method Relative to the Relief Available Under Simplified SAC and Full SAC Are Unproven and Deeply Flawed.

As noted, some of the reply comments from the Shipper Interests went beyond calling for removal of any limits on relief under the Three Benchmark method (which, as discussed above, would violate 49 U.S.C. § 10701(d)(3)) and urged the Board to jettison the entire rate comparison approach altogether.¹⁶ Dropping the Three Benchmark test altogether is far beyond

¹⁴ See U.S. Magnesium Opening Comments at 8.

¹⁵ *Simplified Standards*, at 28.

¹⁶ See, e.g., Joint Coal Shippers Reply Comments at 21; CURE Reply Comments at 17-18.

the scope of this rulemaking, but the Board should be wary of relying on such reply comments as a justification to double the relief limit for Three Benchmark cases, as their underlying logic is deeply flawed. The Shipper Interests produce no analysis to support their contention that the Three Benchmark test will produce the highest maximum lawful rates of the Board's rate reasonableness methodologies.¹⁷ Though those Shipper Interests cite to the Joint Chemical Companies opening submission, at 27-29, which in turn relies on the verified statement of Messrs. Crowley and Mulholland,¹⁸ that statement sets forth no quantitative analysis underlying the assertion. Instead the Crowley/Mulholland statement offers only opinion and argument regarding how the results of the Three Benchmark method relate to Simplified SAC and Full SAC.¹⁹

Fundamentally, such a comparison is misguided. The Three-Benchmark test is, at its core, a rate comparison, with adjustments to account for rail carriers' need to earn adequate revenues and other relevant factors unique to the rate in question. As such, it is only tangentially related to the replacement cost analysis underlying the SAC-based methodology. It is impossible to make categorical assumptions about the outcomes of such radically different methodologies as applied to any commodity moving over any railroad over any part of its network at all times. It is entirely likely that for some shippers located on light density lines, a Three Benchmark analysis could result in a rate being found to be unreasonable, even though a Simplified-SAC or Full-SAC analysis would show the opposite.

¹⁷ See Joint Coal Shippers Reply Comments at 23 & n. 72;

¹⁸ See *id.* at 21 & n. 69.

¹⁹ Joint Chemical Companies Opening Comments at 27-29, Crowley/Mulholland V.S. at 58.

The two specific factors that the Crowley/Mulholland verified statement argue illustrate that a result from a Three-Benchmark analysis will always be higher than Simplified SAC or Full SAC fail to prove their point.²⁰ First, the Crowley/Mulholland verified statement points to the fact that comparison groups are limited to potentially captive traffic, i.e., traffic moving at 180% of variable costs or more, as evidence that Three-Benchmark results will be higher than the SAC-based methodologies. While some Full-SAC cases have set maximum rates at the jurisdictional floor of 180% of variable costs, that fact does not indicate that Three-Benchmark cases will always yield a higher maximum lawful rate. No party has provided the Board any evidence suggesting that, in all cases, the analysis of the same rates over the same routes for the same traffic will be higher for Three Benchmark than for Simplified-SAC and Full-SAC.

Second, the Crowley/Mulholland verified statement claims that by adjusting the revenue to variable cost (“R/VC”) ratios of the movements in the traffic group by the ratio of the $R/VC_{>180}$ benchmark over the Revenue Shortfall Allocation Method (“RSAM”) benchmark, somehow the test ensures “that the prescribed rate under the Three Benchmark model will reflect monopoly pricing whether or not the market will actually bear it.”²¹ Messrs. Crowley and Mulholland appear to contend that because that adjustment would be upward for carriers that have been judged to be revenue inadequate under the Board’s annual determinations – thus resulting in a presumptive maximum rate level that would be above the mean of comparable

²⁰ The Joint Chemical Companies also argue that the Board’s stated preference for comparison groups that do not contain contract rates creates an “upward bias” in the Three Benchmark test, though that contention is not supported by the verified statement. The Board’s reasoning for both its refusal to exclude contract movements from Three-Benchmark cases and its conclusion that common carrier rates provide a better comparison to a challenged rate are set forth in *Simplified Standards*, at 82. Whether or not contract rates are generally lower than common carrier rates is immaterial to how a Three Benchmark analysis would relate to a Simplified-SAC or Full-SAC analysis for the same challenged rate.

²¹ Crowley/Mulholland V.S. at 58.

traffic rates set in the marketplace – the outcome reflects “monopoly” pricing. Instead, the revenue need adjustment simply reflects the Board’s adherence to its statutory mandate to adopt policies that would encourage carriers to earn adequate revenues under 49 U.S.C. § 10704(a)(2). Setting maximum rate levels at the average rates being charged other traffic without such an adjustment when the carriers are not revenue adequate would make it impossible for them to achieve revenue adequacy. Rather than reflecting a “monopoly” price,²² the Board has concluded that the adjustment is necessary to allow the carrier to engage in the full extent of differential pricing the law permits.²³ Moreover, the revenue need adjustment is an adjustment from an average rate comparison. That comparison has only the most tenuous theoretical connection to the maximum lawful rate established by constrained market pricing theory and SAC. As such, the revenue need adjustment in no way suggests that the results of a Three Benchmark analysis will always be higher than a Simplified-SAC or Full-SAC analysis. In sum, the unfounded speculation put forth by the Shipper Interests does not provide any support for changing the limits on relief framework established in *Simplified Standards*.

II. The NPR Correctly Characterized the Disconnect Between the Application of the ATC Revenue Allocation Methodology And the Inclusion of Carload and Multi-Carload Cross-over Movements as Unit Trains in the Analysis

Consistent with the results-oriented approach to the Board’s simplified methodologies, some Shipper Interests’ reply comments regarding cross-over traffic in Full-SAC cases essentially focus on the ability of complainants to continue to exploit the Board’s revenue allocation methodology to obtain favorable results.²⁴ In so doing, they criticize the Board and

²² A rate that yields an R/VC ratio equal to or greater than 180% does not in and of itself indicate the presence of market power or that the rate is unreasonable. *See* 49 U.S.C. § 10707(d)(2).

²³ *Simplified Standards*, at 81.

²⁴ *See, e.g.*, Joint Coal Shippers at 5-7.

the railroad commenters for noting that the Board's cross-over revenue allocation methodology produces distorted results for carload and multi-carload traffic.²⁵ The Joint Chemical Companies and the Joint Coal Shippers erroneously claim that the Board's recognition of those distortions improperly focuses on the SARR's operations in relation to the allocation methodology. Instead, the NPR correctly recognizes that there is an evident disconnect between the portion of the incumbents' system being replicated by the SARR in recent cases and the application of a revenue allocation methodology based on system average costs generated by the Uniform Rail Costing System ("URCS").

As noted in the NPR, the cross-over traffic allowed in cases prior to *Major Issues* was predominantly trainload service.²⁶ Since the adoption of ATC in 2006, complainants have begun to rely heavily on the revenues generated by cross-over traffic that the defendants serve in carload or multi-carload service to prevail in rate cases.²⁷ The analyses posited by these complainants replicated only those portions of the defendants' networks over which the included movements are operated as complete trains. As such, application of ATC to that traffic relies on URCS costing that does not accurately reflect the defendants' costs for the relevant segments.

The Joint Chemical Companies focus only on URCS's treatment of inter- and intra- train ("I & I") switching as a source of distortions and conclude without support that "it is likely that

²⁵ Joint Coal Shippers Reply Comments at 7; Joint Chemical Companies Reply Comments at 3-4.

²⁶ NPR at 16.

²⁷ See, e.g., *Ariz. Elec. Power Coop., Inc. v. BNSF Ry.*, NOR 42113, slip op. at 35 (STB served Nov. 22, 2011) (noting concern that "while a majority of AEPCO's traffic group moves in trainload service, most of the variable costs calculated for that group were costed assuming it moved in carload and multi-car service"), *appeals docketed sub nom. Ariz. Elec. Power Coop., Inc. v. STB*, No. 12-1045 (D.C. Cir. Jan. 23, 2012); *BNSF Ry. v. STB*, No. 12-1042 (D.C. Cir. Jan. 23, 2012); *Union Pac. R.R. v. STB*, No. 12-1046 (D.C. Cir. Jan. 23, 2012).

I&I switching activities occur on both the on-SARR and off-SARR segments.”²⁸ But the NPR recognizes that there are broader concerns with how URCS reflects the relative differences between the higher costs involved in serving carload traffic and the lower costs of serving trainload traffic. URCS is designed to calculate the variable cost using system average service units and system average unit costs. It is not sufficiently refined to evaluate on a geographic or segment-by-segment basis service units such as switching activities or specific train characteristics such as train size. Such refinement is not necessary when evaluating shipments handled in trainload service by the defendant railroad because the characteristics of trainload shipment are uniform across the movement. Carload traffic however typically moves on several different trains as it progresses across the system. Some of these trains may be small and others large, yet URCS assumes that the through-train characteristics are uniform. This simplifying assumption within URCS creates an opportunity for shippers in SAC cases to define a stand-alone system that does not include facilities necessary to switch cars and build trains, and to include carload traffic moving in single large trains. Because URCS is not similarly refined, the process creates a disconnect between the geographic- and movement-specific design of the SARR and the system average costing assumptions in URCS. Under ATC, this disconnect results in an over allocation of revenue based on a system average costing model. Because the complainant controls the selection of the traffic and decides what portions of the defendant’s network to replicate, this effectively biases the analysis in favor of the complainant for certain types of traffic.

Faced with this problem, the Board made a measured proposal to limit cross-over traffic for those types of traffic that cause the disconnect in Full-SAC cases. Contrary to the

²⁸ Joint Chemical Companies Reply Comments at 4.

contentions of the Joint Coal Shippers,²⁹ the AAR and other railroad industry comments have not argued that the proposed rules to limit cross-over traffic was the only possible way to remedy the problem. Instead, the AAR simply pointed out that the Board would be justified in adopting its proposed rule as a reasonable way of addressing the problem that it has identified. Significantly, no party proposed a specific way for the Board to alleviate the identified problem without limiting cross-over traffic.

III. The Record In This Proceeding Does Not Support Departing From The Board's Established Rule Regarding Interest On Reparations

The NPR provided no rationale for the proposed change to replace the interest rate applicable to reparations from the 90-day Treasury bill to the U.S. Prime rate, other than that it is the Board's "responsibility to establish an interest rate that encourages compliance with [its] rules and correlates to market rates over a comparable time frame."³⁰ Those Shipper Interests' reply comments, which are supportive of a proposal that would unambiguously favor them similarly provide little justification for departing from the Board's established rule regarding the appropriate interest rate for reparation awards.³¹ The Board's existing rule reflects the reasoned conclusion that a successful complainant has not risked its capital and thus is entitled only to interest reflecting a risk-free rate.³² Though the 90-day Treasury bill is low in current market conditions, it is a market rate that reflects a risk free investment. Thus, the 90-day Treasury bill is the appropriate benchmark. Moreover, no party has established why the U.S. Prime Rate should be regarded as the appropriate benchmark, rather than some other risk-based interest rate.

²⁹ Joint Coal Shippers Reply Comments at 7.

³⁰ NPR at 18.

³¹ See, e.g., CURE Reply Comments at 24.

³² See AAR Opening Comments at 24 (citing *Procedures to Calculate Interest Rates*, 9 I.C.C.2d 528, 534 (1993)).

The Joint Chemical Companies stand the Board's rail rate regulatory regime on its head in an attempt to assert that complainants should receive a risk-based rate of return because they "typically must pay the defendant railroad a rate premium just for the opportunity to pursue a reasonable rate."³³ According to the Joint Chemical Companies, that "premium" is the difference between the tariff rate being challenged and the best contract offer that it rejected. As the Board has recognized, railroads are not obligated to enter into a rail transportation contract with shippers at terms the shipper demands and a contract rate may be lower than a common carrier rate for a variety of reasons.³⁴ Simply put, when a complainant believes that a common carrier rate established by a rail carrier is unreasonable, it may pursue a complaint at the Board. If the complainant proves its case, it is entitled to interest reflecting that there was no risk that it would ultimately receive reparations for overpayments as determined by the Board. If the complainant does not prove its case, it has simply paid the lawful rate. In short, there is no "premium."

Conclusion

Based on the record compiled in this proceeding, the Board should not adopt the NPR's proposal eliminating the limit on relief for Simplified-SAC cases and should also maintain reasonable limits on the Three Benchmark rate comparison method. If the Board is unable or unwilling to eliminate the ability of shippers to exploit distortions of the Board's cross-over revenue allocation methodology for certain types of traffic, it should limit cross-over traffic in Full-SAC cases in the ways it has proposed. The Board should return to the original ATC methodology to allocate cross-over traffic revenues that it adopted by rule in *Major Issues*, but if

³³ Joint Coal Companies Reply Comments at 9.

³⁴ See, e.g., *US Magnesium, L.L.C. v. Union Pacific Railroad Company*, NOR 42114, slip op. at 18 (Jan. 28, 2010).

it does not do so, the NPR's alternative ATC methodology would be a reasonable way to address the perceived issue discussed in *Western Fuels*. Finally, the Board should not depart from its well-reasoned existing rule on interest charges for reparation awards.

Respectfully Submitted,



Of Counsel:

David L. Coleman
Paul A. Guthrie
Paul Hitchcock
James A. Hixon
Theodore K. Kalick
Jill K. Mulligan
Roger P. Nober
John P. Patelli
David C. Reeves
Louise A. Rinn
John M. Scheib
Peter J. Shudtz
Gayla L. Thal
Richard E. Weicher
W. James Wochner

Louis P. Warchot
Association of American Railroads
425 Third Street, S.W.
Suite 1000
Washington, D.C. 20024
(202) 639-2502

*Counsel for the Association of
American Railroads*