



Rail Transportation Issues and the Role of the Surface Transportation Board

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The Railroads and the Surface Transportation Board

Created by ICC Termination Act of 1995

Born out of the Deregulation Movement

Residual Economic Regulation of the Railroads

Far Smaller Staff and Scope of Authority



STB Mission

Exclusive authority to approve of rail mergers

Review rail rates and practices to ensure they are reasonable and not discriminatory

Approval, including environmental review, of

(i) construction of any new rail line or

(ii) abandonment of existing lines

Motor carrier collective ratemaking activities

Rates for non-contiguous domestic water trade

Rates for pipelines not carrying energy products



STB Merger Authority

- Urge to merge 1900-1970
- Mergers in post-Staggers era
- STB merger policy in the 1990s
- Merger moratorium and new guidelines
- Mergers and downstream impacts
- STB categories of merger transactions
(major, significant, and minor)



STB Responsibilities over Rates and Service

Oversee and Monitor Railroad Practices Nationally

Enforce the Railroads' Common Carrier Obligation

Ensure that Rates Charged Captive Shippers are Reasonable

Assist Railroads in Earning Adequate Revenues

Calculate the Railroads' Cost of Capital



Rate Case Resolution-Large Shipments

Determination of Market Dominance

Stand Alone Cost Test—*Fact-based approach rooted in economic reasoning and approved by the courts*

No Substitute for Preparing a Strong Case with Solid Evidence

Strive for a Balance between Railroad's Need to Earn Adequate Returns and Shipper's Need for Fair and Reasonable Rates



Alternative Approaches

SAC approach has been criticized as artificial
and overly complex

SAC approach is very costly and time consuming

Only feasible for large shippers

Is it time to look for alternative approaches?

- Recent Board decisions suggest openness to proposed rulemaking on SAC changes
- 4/26/05 hearing on the SAC process



Approaches to Small Rate Cases Twenty Years Without Resolution

1985 – ICC adopted and courts affirmed standards for large rate case proceedings but came to **no resolution on small rate case standards.**

1987 – ICC's first approach to small rate cases was struck down by the courts in McCarty Farms.

1987 - 1995 – ICC considered various small rate case standards, but adopted none.



Approaches to Small Rate Cases Twenty Years Without Resolution

- 1995** – Congress directed the STB to establish simplified guidelines for “those cases in which a full stand alone cost presentation is too costly, given the value of the case.”
- 1996** – STB adopted “Simplified Guidelines” pursuant to ICCTA directive but they have **never been used**.
- 1998** – Court challenge to Simplified Guidelines dismissed as unripe in AAR v. STB.



Approaches to Small Rate Cases Twenty Years Without Resolution

- 2002** – STB sought comments on arbitration as an approach to small rate cases; no consensus emerged.
- 2003** – STB held a general hearing on small rate cases.
- 2004** – STB held a general hearing on small rate cases.
- 2005** – BP v NS small rate case settled via confidential non-binding mediation using Board staff, but **no resolution on small rate case standards to date.**



Approaches to Small Rate Cases

What Do the Parties Want?

Railroads

- No need for change
- Would accept mandatory, non-binding arbitration
- Support staff-led technical/discovery conferences
- Bright-line test at \$300,000 max

Shippers

- Bright-line test at \$7.2 million with flexibility
- Oppose sub-class of “truly small shippers”



Approaches to Small Rate Cases

What Do the Parties Want?

Shippers Continued...

- Case management by ALJ
- Expedited and limited discovery
- Access to waybill sample
- Expedited decisions and appeals
- STB small shipper advocacy office



Rail Abandonments and New Construction

- Approval of new construction
 - DM&E
 - Yucca Mountain
- Abandonment cases
- Offers of Financial Assistance
- Line sales, leases, and paper barriers
- Environmental reviews



Recent Changes in STB Procedures

- Greater openness, more public meetings
- Increased reliance on mediation and technical conferences
- Expedited discovery procedures
- Greater shipper and carrier outreach



Past Year in Review

- Board at full strength with confirmation of two new members
- Agency worked off a significant backlog in year
- Held 19 Public meetings on significant issues:
 - Nine Voting Conferences
 - Five Oral Arguments
 - Five Hearings



Year in Review – Service Issues

- Board carefully performance metrics monitored rail trends and
- Facilitated communications between railroads and shippers via carrier/shipper meetings such as last week's in St. Louis
- Asked railroads to submit their fall peak plans
- Site visits by Board to PRB, shipper facilities



STB Agenda for Coming Year

Hearings on 25th Anniversary of Staggers Act

Oral argument on ocean rates to Guam

Nationwide Anti-Trust Immunity for Motor Carrier Collective Ratemaking

Continued monitoring of railroad performance and service

First Small Rate Case



Growing Capacity/ Congestion Problem

Traffic Congestion Problem is Multimodal

Ports dealing with larger vessels and rapidly expanding international trade

Rail capacity problem is of more recent vintage

Economic regulation fostered excess capacity, especially for the railroads



The Genesis of the RR Capacity Problem

Improved Earnings but Most Still not Revenue Adequate
Railroads “Punished” by Wall Street for Making
Capital Investments

Railroads Often Found that Infrastructure Investments
Failed to Generate Sufficient Income

Long term Strategy to Reduce Size of Workforce

Added Rail Infrastructure is Long-Lived While Demand
Increases can be Short-Lived



Short term Capacity Problems

Expanding Economy Led to Surge in Imports

Large Grain Harvests in 2003 and 2004

Growth in Export Coal Market

Crew Shortages due to Wave of Retirements

Equipment Shortages due to Reduced Purchases

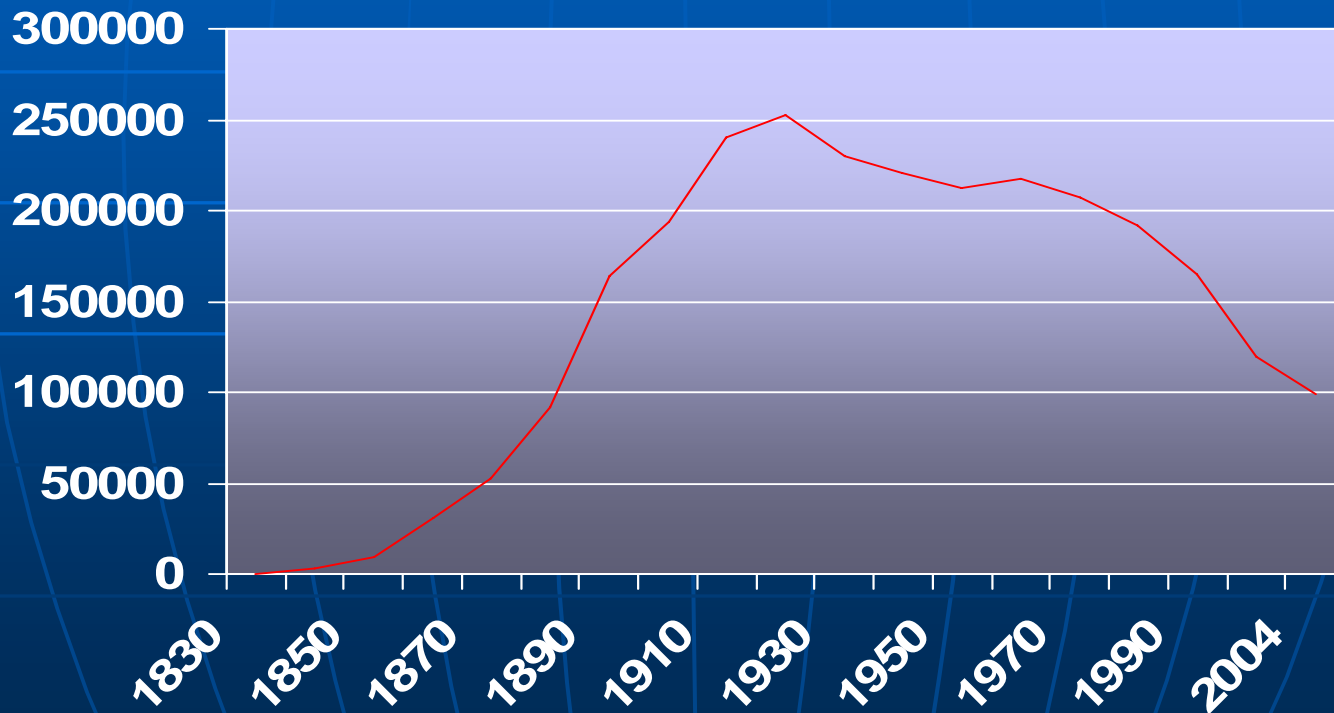
Cutbacks in Capital Spending Programs

Tight Capacity in Trucking Industry due to Driver

Shortages, Higher Fuel Costs, HOS Rules, etc.

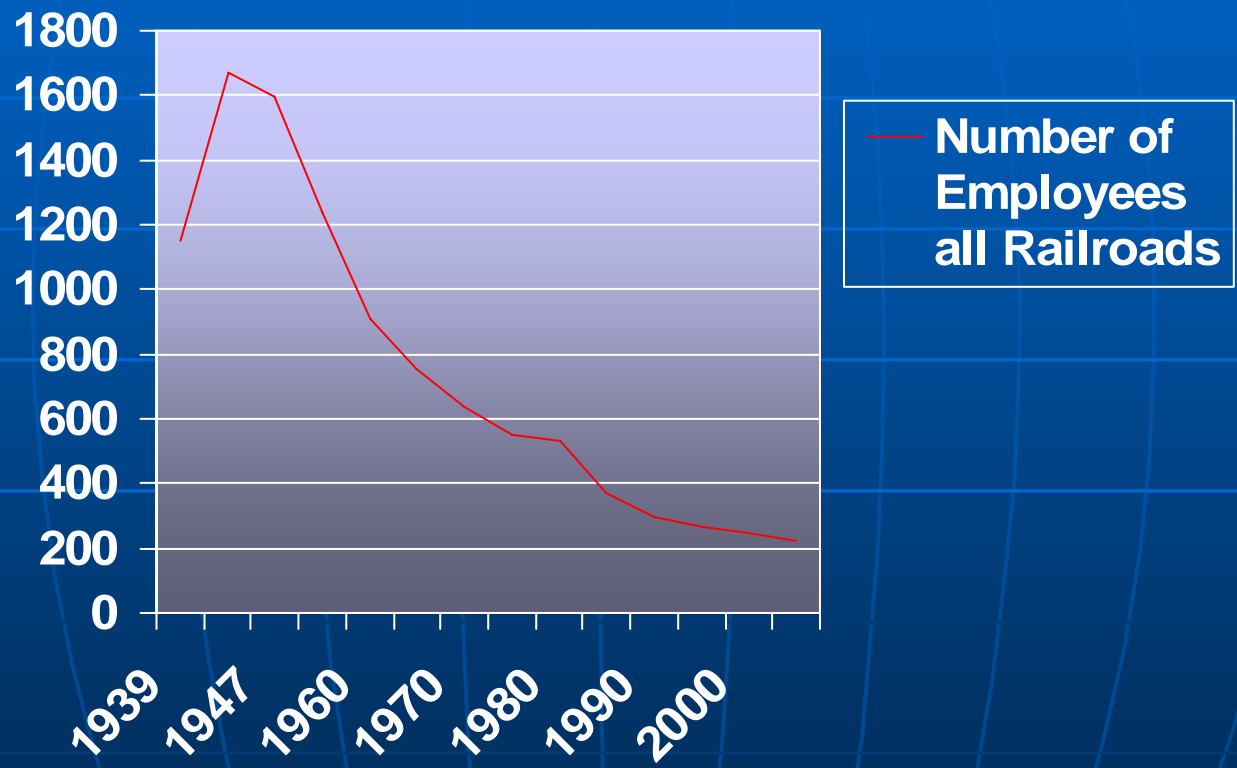


Growth and Decline of Railroad Mileage



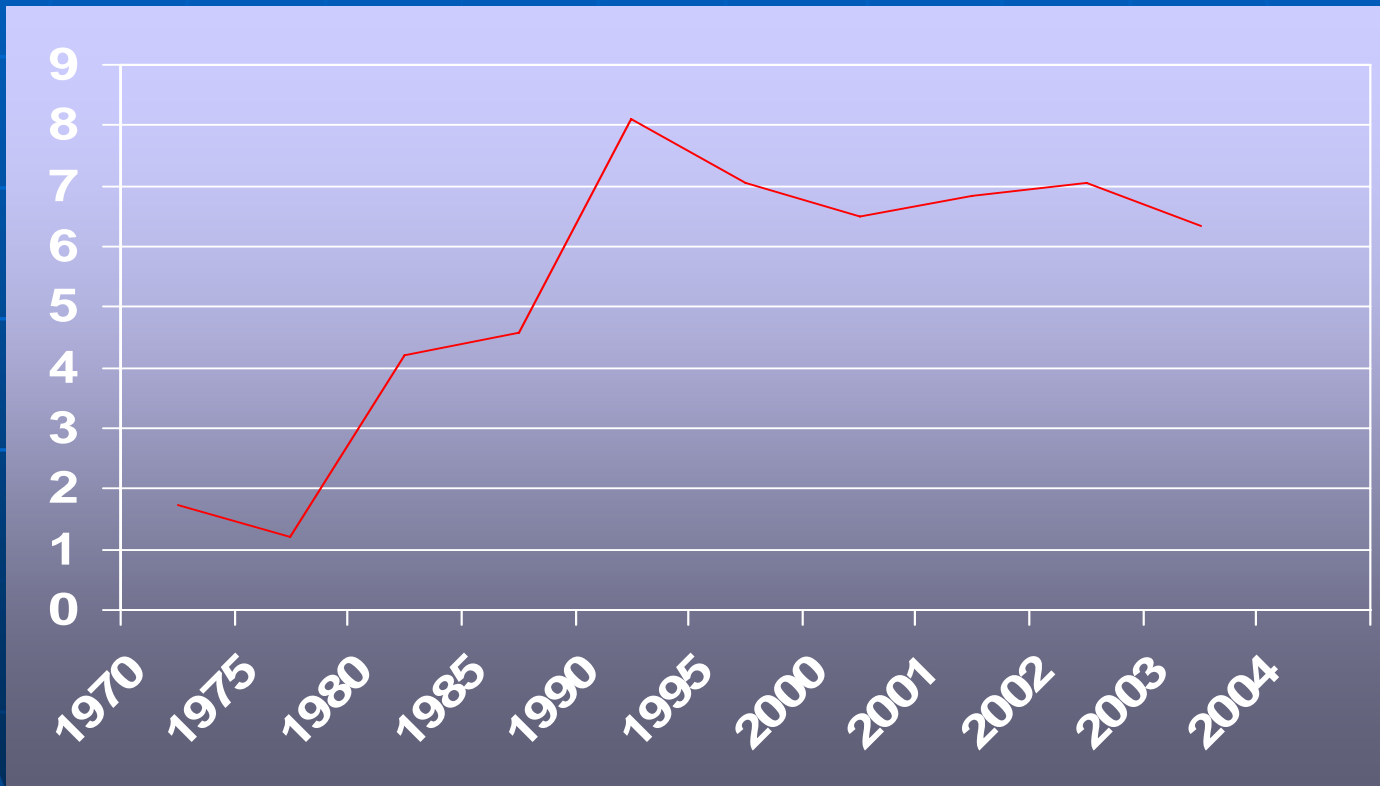


Railroad Employment 1939-2003 (in thousands)





Railroad ROI 1970-2003

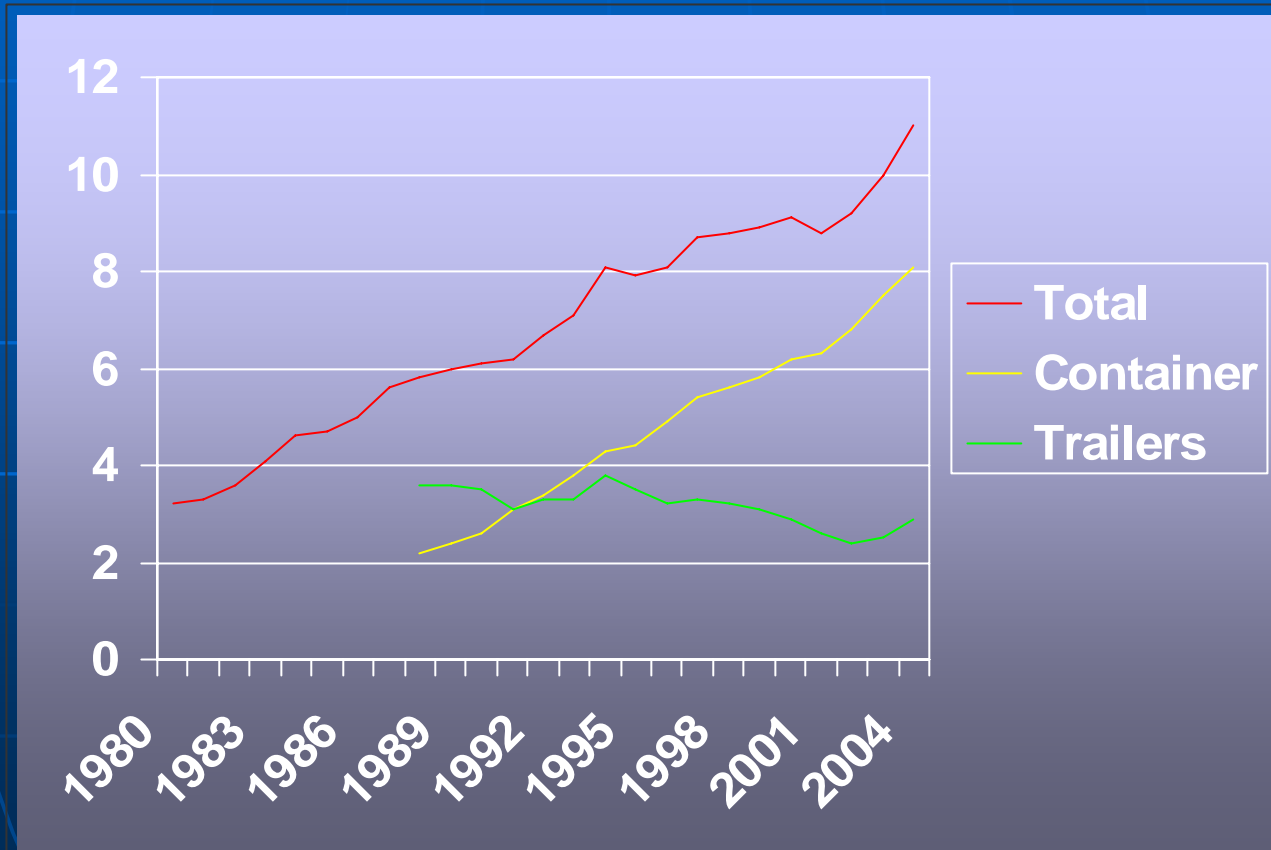


Railroad Cost of Capital and ROI

	Cost Of Capital	BNSF	CSXT	NS	UP	KCS	SOO	GT	IC
1996	11.9%	8.6%	8.9%	13.0 %	9.3%	7.2%	23.5%	0.0%	15.2 %
1997	11.8%	8.4%	9.8%	13.1 %	5.2%	3.6%	12.3%	5.2%	15.8 %
1998	10.7%	9.7%	8.1%	10.5 %	2.9%	9.1%	4.9%	3.0%	13.6 %
1999	10.8%	9.5%	3.8%	5.2%	6.8%	6.4%	2.5%	25.4 %	10.0 %
2000	11.0%	8.8%	3.6%	5.5%	6.9%	6.3%	5.6%	5.9%	5.9%
2001	10.2%	7.1%	4.6%	8.3%	7.6%	7.0%	5.9%	4.9%	4.9%
2002	9.8%	6.4%	5.2%	9.1%	8.6%	6.5%	5.7%	3.1%	3.1%
2003	9.4%	6.2%	4.0%	9.1%	7.3%	3.7%	.01%	4.5%	4.5%
2004	10.2%	5.8%	4.4%	11.6 %	4.5%	8.3%	3.3%	6.0%	6.0%



Intermodal Traffic 1980-2004





Class I Capital Expenditures (in billions of current \$)





Carrier Responses to Recent Capacity Problem

More Cars and Locomotives Bought and Leased

Accelerated Hiring and Training of Train Crews

Some Infrastructure Expansion Efforts

Price Rationing of Available Capacity

Railroads Choosing who they will Serve and the
Common Carrier Obligation



Long-Term Rail Capacity Constraint Factors

Demand for Freight Rail Transport Projected
to Grow by 60%-70% over Next Two Decades

Railroads' Inability to Earn Cost of Capital

Pressure from Wall Street to Reduce Capital Costs
and Improve ROI

Long-Term Contracts Limit Railroad
Pricing Flexibility

Railroads tend to Bid Long Term Contract
Rates Down to Long Run Marginal Costs



Approaches to the Transportation Congestion Problem

Build more Physical Infrastructure

Adopt technological innovations

Make better use of existing facilities

Promote shipper and traveler behavioral changes

All have potential but all limits



Infrastructure Capacity

- SAFETEA-LU– 2 years late and \$90 billion short
- \$286.5 billion over 6 years is 38% more than was provided for in TEA-21 but far short of \$375 billion estimated need
- Contains a rail title but far from intermodal legislation
- Expands the RIFF program to \$35 billion and makes shippers eligible



Rail Capacity Investment

Railroads Support Limited Public Sector Role
Public/Private Partnerships (Alameda Corridor,
CREATE)

Railroad Trust Fund Concept

Investment Tax Credits

- Short Lines and the 286K lb. Car Problem
- Class I Access and Limited Fiscal Capacity

Thank You, Any Questions?



