



*The Forest Products Industry  
and  
the Nation's Railroads*

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American Forest & Paper Association  
129<sup>th</sup> Annual Paper Week  
New York, New York  
April 11, 2006



# The RR's & the Surface Transportation Board

- Created by ICC Termination Act of 1995
- Born out of Deregulation Movement
- Residual economic regulation of railroads
- Far smaller staff and scope of authority than the ICC



# STB Mission

- Exclusive authority to approve of rail mergers
- Review rail rates and practices to ensure they are reasonable and not discriminatory
- Industry entry and exit
  - (i) construction of any new rail line or
  - (ii) abandonment of existing lines
- Enforcement of common carrier obligation



# Rate Case Resolution for Large Shipments: The SAC Process

- SAC approach has been criticized as artificial and overly complex
- SAC approach is very costly and time consuming
- Only feasible for large shippers
- Currently being reviewed in STB Ex Parte No. 657 (Sub-No. 1)



# Approaches to Small Rate Cases Twenty Years Without Resolution

*Paper products would be considered small rate cases*

- 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



# Approaches to Small Rate Cases Twenty Years Without Resolution

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



# Approaches to Small Rate Cases Twenty Years Without Resolution

- 1998 – Court challenge to Simplified Guidelines dismissed as unripe in AAR v. STB
- 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



# Approaches to Small Rate Cases Twenty Years Without Resolution

- 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**
- Present – Potential small rate case from state of North Dakota





# 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



# STB Commodity Exemptions Forest Products

Pursuant to 49 CFR § 1039.11 the following commodities are exempt from Board jurisdiction

- Lumber or wood products
- Pulp, paper or allied products
  - With exceptions – Pulp or pulp mill products, Newsprint, Printing paper, etc.)
- Paper waste or scrap
- Intermodal at 49 CFR §1090



# Forest Products Industry Concerns

- Most common concerns
  - Substantial rate increases
  - Car supply & car auction programs
  - Service issues
  - Fuel Surcharge
- Informal complaints from FP Industry
  - 2005 – 13
  - YTD 2006 – 5



# STB Rail Consumer Assistance Program

- Facilitates information resolution to disputes with RR's
- Brings issues to RR's rapidly
- Solves problems without litigation
- Promotes rail service improvements
- 121 complaints handled in 2005, over 580 handled since program began in 2000



# Rail Consumer Assistance Program Contact Information

- Toll-free telephone 866-254-1792
- Written statement of the problem
  - Email: [railconsumer@stb.dot.gov](mailto:railconsumer@stb.dot.gov)
  - FAX: 202-565-9011
- Web form at  
[http://www.stb.dot.gov/railconsumer.nsf/  
feedback?OpenForm](http://www.stb.dot.gov/railconsumer.nsf/feedback?OpenForm)