

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. EP 431 (Sub-No. 4)
REVIEW OF THE GENERAL PURPOSE COSTING SYSTEM

OPENING COMMENTS OF

ALLIANCE FOR RAIL COMPETITION
MONTANA WHEAT & BARLEY COMMITTEE
COLORADO WHEAT ADMINISTRATIVE COMMITTEE
IDAHO BARLEY COMMISSION
IDAHO GRAIN PRODUCERS ASSOCIATION
IDAHO WHEAT COMMISSION
MONTANA FARMERS UNION
NEBRASKA WHEAT BOARD
OKLAHOMA WHEAT COMMISSION
SOUTH DAKOTA WHEAT COMMISSION
TEXAS WHEAT PRODUCERS BOARD
WASHINGTON GRAIN COMMISSION
WYOMING WHEAT MARKETING COMMISSION
NATIONAL ASSOCIATION OF WHEAT GROWERS
U.S. CLAY PRODUCERS TRAFFIC ASSOCIATION, INC.
USA DRY PEA & LENTIL COUNCIL

Terry C. Whiteside
Registered Practitioner
Whiteside & Associates
3203 Third Avenue North, Suite 301
Billings, MT 59102
(406) 245-5132

John M. Cutler, Jr.
McCarthy, Sweeney & Harkaway, P.C.
Suite 700
1825 K Street, N.W.
Washington, DC 20006
(202) 775-5560

Dated: June 20, 2013

I. INTRODUCTION

Alliance for Rail Competition (“ARC”) and the other shipper groups identified on the cover of these Opening Comments (collectively “ARC, et al.”), welcome the opportunity to address the Board’s proposal to update its Uniform Railroad Costing System (“URCS”). ARC, et al. have attempted to analyze and comment on the Board’s proposal, which appears likely to deregulate large volumes of agricultural and other rail shipments made by shippers without competitive transportation alternatives. However, this effort has been hindered by the lack of detail in the Board’s NPR, and by restrictions imposed by the Board on cost data made available to parties to this proceeding.

These Opening Comments are accompanied by the Opening Verified Statement of G.W. Fauth, III, an experienced cost consultant highly knowledgeable about URCS issues.

II. INTEREST OF ARC, ET AL.

ARC is an association of shippers of freight, most of which are captive to a railroad for most if not all of their transportation requirements. ARC members include large utility coal shippers (PPL, Western Fuels and Otter Tail), shippers of sand (including sand for hydraulic fracturing) and glass, and shippers and producers of agricultural commodities, mostly located in the West. Montana Wheat & Barley Committee, NAWG, and the other wheat, grain, barley and farmer groups filing jointly with ARC represent producer and farmer interests as to a broad range of issues, including but not limited to rail transportation issues. ARC, et al. have filed comments in many recent STB rulemaking proceedings affecting the interests of captive shippers by rail.

ARC, et al. recognize the importance of a healthy, financially sound, competitive railroad industry, and the importance of rail transportation of coal, sand, grain, corn, soybeans, barley and other bulk commodities, especially for large volume bulk shipments over long distances. How-

ever, as major railroads achieve or approach revenue adequacy, and demonstrate that they can earn revenues from competitive shippers, it becomes increasingly important to ensure that railroads do not abuse their market power over captive shippers.

Joining in these comments is the U.S. Clay Producers Traffic Association, Inc. (“Clay Producers”), a non-profit association of member companies engaged in producing and shipping in bulk, clay, minerals, aggregates and related commodities (most of which have not been exempted from regulation) in all modes of transportation from a relatively concise geographic rural area in Georgia, South Carolina, Kentucky and Tennessee, where the mineral deposits are found, to numerous industries throughout the United States, Canada, Mexico, and the world. In addition, the Clay Industry is a major factor in the economy of the small geographic area where these commodities are produced.

III. ARGUMENT

The Board’s interest in modernizing URCS comes as no surprise. In May 2010, the Board produced its Report to Congress Regarding the Uniform Rail Costing System. In that Report, the Board noted that URCS is now more than 30 years old, and that it is used in determining quantitative market dominance based on R/VC percentages, and in determining maximum reasonable rates in cases under the SAC, SSAC and Three Benchmark approaches. Report at 7-8. URCS Costing is also recognized to be relevant to access remedies under 49 U.S.C. § 11102 (id.), an issue currently before the Board in EP No. 711.

Of particular importance to ARC, et al., and the smaller shippers of agricultural commodities we represent, was the Report’s discussion of the need to revisit the “make-whole” adjustment, which has had the effect in the past of allocating significant costs to smaller and single-car shipments. As the Board explained (Report at 18):

Because more traffic moves in volume shipments, there are ever-fewer single-car shipments left to absorb the “shortfall,” a value that increases with the number of volume shipments. Accordingly, a study of this issue might reveal that the current method for allocating the “shortfall” and modern shipment practices results in an upward distortion of the single-car shipment variable costs. In an extreme hypothetical, if only one shipment were transported as a single car shipment, resulting in a large shortfall, all of the shortfall costs would be added to that line single-car shipment, providing a nonsensical result.

Should the Board determine that the make-whole adjustment warrants revision, one potential change could be to allocate the shortfall to all shipments, not just the single-car shipments. This would result in smaller cost reductions for the volume shipments (as they get some of the shortfall added back to them) and smaller cost additions to the single-car shipments (because a portion of the shortfall is set aside and added back to the volume shipments instead). Therefore, if unit trains constitute the overwhelming majority of a carrier’s traffic, they will closely resemble the system average and URCS will not overly burden the few single-car movements with a large cost allocation.

The Board’s desire for a more linear progression in cost allocation appears sound, but analysis by Witness Fauth reveals a problem. Due to railroad accounting practices of questionable validity, there appear to be far more single-car shipments reported than is likely to accurate. As Mr. Fauth reports, for grain shipments, “almost 90% of 2011 Public Waybill Sample records (530,852 out of 599,284 records) included in the Waybill Sample are single-car (1 car) shipments, whereas less than 1% of the records (2,103) are two-car shipments.” (V.S. at 10.)

There are shippers among those represented by ARC, et al. that are true single car shippers. Examples include shippers of pulse crops – peas, lentils, beans, etc. – that often move as single-car shipments, small multiple car lots, and in containers transported by rail. However, there is an obvious anomaly in almost 90% of Waybill Sample shipments being reported as single-car shipments. Many of these shipments must have been multiple car shipments designated

for accounting or other purposes as single-car. At pages 10-11 of his VS., Witness Fauth explains that, based on his experience with shipments of grain and clay, multiple-car shipments are the rule, not the exception.

Mr. Fauth's research took place in the context of his analysis of switching costs related to switch engine minutes. However, his finding also raises questions about the apparent mismatch between the Board's assumption that single car shipments are rare and the reported data reflected in the Board's Waybill Sample. Did the Board come across this problem in researching these issues prior to publication of its NPR? Does the Board have access to data that enables it to distinguish between "real" single car shipments and multi-car shipments that are reported in the Waybill Sample as single-car shipments?

Without underestimating this concern, there is a more fundamental problem, also addressed by Mr. Fauth. This proceeding is self-evidently about STB rail costing issues and the fundamental costing system underlying jurisdictional (R/VC) threshold determinations, SAC, SSAC and Three Benchmark results, and access remedies. The issues in this proceeding are therefore also fundamental to all of the most important aspects of regulatory recourse for the nation's captive rail shippers, encompassing regulatory and competitive remedies such shippers might look to for relief from abuses by market dominant railroads.¹

Accordingly, this proceeding presents captive shippers with the need to address highly technical costing issues which may mean they keep or lose recourse to remedies available only from the STB. And yet shippers lack the data they need to assess the validity of Board's pro-

¹ This proceeding may be less relevant to the Board's exercise of its unreasonable practice jurisdiction, due in large part to the fact that the Board in such cases generally declines to consider challenges to the level of charges imposed by railroads or cost burdens shifted to shippers.

posals, and the potential impact of those proposals on their rail rates and potential access remedies.

To some extent, the data in question should be available to major railroads (at least as to their own systems) but is not available to shippers (absent successful discovery in an adjudicatory proceeding). This imbalance plainly imposes greater disadvantages on shipper parties than are borne by railroad parties to this proceeding.

One example is information on shipments loaded and terminated, which shipper parties need to analyze the effects of the Board's proposal to allocate switching costs on a per shipment basis (see *Fauth V.S.* at 9). The need for accurate shipment data is particularly acute in light of the apparent inaccuracies in Waybill Sample data. Another example is data on inter-train and intra-train (I&I) switching mileage (*Fauth V.S.* at 14-15). There is also an imbalance in available data as to ratios of empty to loaded miles, or E/L Ratio (*Fauth V.S.* at 13-14).

Other data shortages result from the Board's own actions in limiting the extent to which Waybill Sample data has been made available in this proceeding. It is difficult to understand why the Board refused to make the most recent confidential Waybill Sample available to parties, under customary protective orders, in this proceeding, when confidential Waybill data was made available in the Board's contemporaneous proceeding in EP No. 711, Petition for Rulemaking to Adopt Revised Competitive Switching Rules, decision served July 25, 2012 at 2.

In this proceeding, in contrast, the Board's original Notice of Proposed Rulemaking made no provision for Waybill Sample access by commenting parties, even though the NPR explicitly bases several proposals, such as the proposal to define a trainload as 80-cars rather than 50-cars, on the 2011 Waybill Sample. NPR at 9. See also NPR at 2, where the Board explains that

“URCS is used ... to cost the Board’s Car Load Waybill Sample to develop industry cost information.”

It should come as no surprise that various groups, including ARC, WCTL, NGFA and AAR, sought access to Waybill Sample data. However, it was not until after these requests were received that the Board acted, and the access it provided was less than the access many (including ARC) had sought. Instead of the confidential Waybill Sample made available in EP No. 711, parties to this proceeding, in which key URCS modifications are at issue, were provided access only to the uncosted Waybill Sample, along with certain ancillary information. Decision served April 25, 2013.

The Decision states that information needed to calculate costs using current make-whole adjustment procedures was withheld “to protect the customer and rate information of both shippers and railroads” (Decision at 2, n. 4). However, it is not clear why the confidential sample was not provided upon request, as it was in EP No. 711, or why the normal protective orders were considered inadequate.

More fundamentally, the Board’s restrictions on Waybill Sample data made available in this proceeding, which apparently led to the decision by the Office of Economics to deny ARC’s request for access to the confidential waybill data, was prejudicial to the interests of ARC, et al. and the shippers represented by ARC, et al.

Among the issues of greatest concern to captive shippers in STB rulemaking proceedings is how the proposals under consideration may affect such shippers’ ability to defend themselves against unreasonable rail rates. Will shippers currently able to invoke regulatory remedies lose that ability because of URCS changes that move their R/VCS from above 180% to below 180%? If it appears that such shippers’ rates will remain jurisdictional, will changes to variable costs

mean that rate case remedies are effectively eliminated, because the R/VC percentages fall from, say, 300% to 200%?

Access to the costed Waybill Sample, as originally requested by ARC and others, would help answer these questions. The limited Waybill data provided by the Board, in contrast, does not. As a consequence, ARC, et al. do not know which of their members and constituents are potentially affected by the Board's proposals, or to what degree.²

Put another way, what do shippers (and railroads) gain and lose if the Board's changes are adopted? Which of the Board's proposed changes have the greatest positive or negative effects on affected shippers? Without knowing the answers to these questions, commenting parties are prevented from performing the analyses and preparing the comments that administrative due process calls for.

With limited resources available for any individual STB proceeding, ARC, et al. need to understand the impacts of proposals at issue in order to be able to allocate their resources. A full understanding of proposals and their impacts is also important because shippers are certain to have knowledge of facts that are available to a lesser degree, or not at all, to the STB and its Staff. If a Board proposal has differing impacts on shippers of different sizes, shipping different commodities via different railroads, comments explaining in detail why proposals are or are not sound are important to reasoned decision-making.

Under the Administrative Procedure Act, agencies conducting rulemaking proceedings are required to provide the public notice that is adequate to enable those potentially affected to assess new rules and their impacts. Adequate notice also requires disclosure of data upon which

² Though Waybill Sample data appears flawed as to the number of shipments recorded as single car shipments, other data would be highly useful, and if other apparent data anomalies exist in the costed Waybill Sample, they are more likely to be discovered if access is provided than if it is withheld.

the agency relies. See, e.g., Solite v EPA, 952 F.2d 473, 484 (D.C. Cir. 1991) (“Integral to the notice requirement is the agency’s duty to identify and make available technical studies and data that it has employed in reaching the decisions to propose particular rules... An agency commits serious procedural error when it fails to reveal portions of the technical basis for a proposed rule in time to allow for meaningful commentary. Connecticut Light and Power Co. v NRC, 673 F.2d 525, 530-31 (D.C. Cir.), cert. denied, 459 U.S. 835, 103 S. Ct. 79, 74 L.Ed.2d 76 (1982)”). See also Chamber of Commerce v SEC, 443 F.3d 890 (D.C. Cir. 2006).

Here, the Board has restricted shipper access to Waybill Sample data on which the Board itself apparently relies. In addition, railroad data that is relevant to the issues presented is available neither to shippers nor to the Board, and even railroads, with access to data as to their own systems, are hampered by not knowing how other railroads operate.

Under the circumstances, ARC, et al. question the Board’s haste to go forward with its proposed changes. We must ask why relevant railroad data was not gathered and made part of the record before public comment was sought, and why the costed Waybill Sample was not made available (subject to appropriate protective orders) to those requesting it. Obviously, the Board believes URCS costing can be improved, but the likelihood of real improvement is undermined when key information is either not yet available or is withheld.

The stakes here are high. The Board recently found that a major railroad had used shipment size limits to influence URCS variable costs to the detriment of mid-sized Montana grain elevators, in Docket No. NOR 42124, State of Montana v BNSF Railway Co., decision served April 26, 2013. The Board declined to find an unreasonable practice, holding that elevators could add orders for single cars and base rate challenges on total shipment size despite BSNF’s publication of 48-car rates in place of the former 52-car rates.

That case involved the current URCS definition of unit trains as consisting of 50-cars or more, rather than the Board's new proposal to raise that break point to 80-cars, discussed above. However, a new version of gaming could occur around the 80-car shipment size if the Board's proposed URCS changes fall short of its expressed desire to avoid a significant step function change in going from one side of the new break point to the other. NPR at 3-4. As things now stand, ARC, et al. cannot be certain that this goal will be met. And as Witness Fauth shows (VS at 16 and Table 4), almost 1.2 million carloads generating over \$2 billion in freight charges are accounted for by trains that are 50-79 cars long.

Also of concern is whether large numbers of smaller shippers with no effective transportation alternative will see their URCS variable costs rise enough to deprive them of any recourse to remedies under the Act. There is an established process under the statute for exempting large numbers of shippers from regulation where certain conditions, including no need for protection from abuse of market power, are present. See 49 USC § 10502.

If revisions to URCS costs were likely to produce a similar result, with no finding that protection against abuses of market power is unnecessary, the Board would need to take great care to ensure that it is properly performing its duties under the Act. No such certainty is possible when decisions are based on inadequate or questionable data.

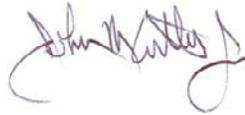
When formerly captive shippers are suddenly deemed "competitive" despite having no access to effective competition, the result is likely to be higher rates and poorer service. Small shippers are already disproportionately vulnerable to these risks, and are already at a disproportionate disadvantage when attempting to negotiate private sector solutions to disputes with major railroads. These handicaps could be exacerbated by the Board's proposed URCS changes.

For the foregoing reasons, and the reasons set forth in the attached Fauth V.S., the Board should modify the procedural schedule in this proceeding to permit additional critical data to be gathered and analyzed, and then renew its request for comments. Without such data, ARC, et al. have done their best to respond to the technical issues raised in the NPR in the attached V.S. of Witness Fauth.

Respectfully submitted,



Terry C. Whiteside
Registered Practitioner
Whiteside & Associates
3203 Third Avenue North, Suite 301
Billings, MT 59102
(406) 245-5132
Representing ARC, et al.



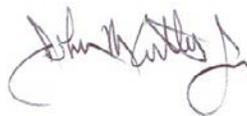
John M. Cutler, Jr.
McCarthy, Sweeney & Harkaway, P.C.
Suite 700
1825 K Street, N.W.
Washington, DC 20006
(202) 775-5560
Attorney for ARC, et al.

/s/ Vincent P. Szeligo
Vincent P. Szeligo
WICK, STREIFF, MEYER,
O'BOYLE, & SZELIGO, P.C.
1450 Two Chatham Center
Pittsburgh, PA 15219-3427
(412) 765-1600

*Attorneys for The U.S. Clay Producers
Traffic Association, Inc.*

CERTIFICATE OF SERVICE

I hereby certify that I have this 20th day of June, 2013, caused copies of the foregoing document to be served on all parties of record by first-class mail.



John M. Cutler, Jr.

S:\ARC\EP 431 (Sub-No. 4) Opening Comments

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB DOCKET NO. EP 431 (SUB-NO. 4),
REVIEW OF THE GENERAL PURPOSE COSTING SYSTEM

OPENING VERIFIED STATEMENT
OF
GERALD W. FAUTH III

My name is Gerald W. Fauth III. I am President of G. W. Fauth & Associates, Inc., an economic consulting firm with offices at 116 South Royal Street, Alexandria, Virginia 22314. A statement describing my background, experience and qualifications is attached hereto as Appendix GWF-1.

I have been asked by the Alliance for Rail Competition, Montana Wheat & Barley Committee, Colorado Wheat Administrative Committee, Idaho Barley Commission, Idaho Wheat Commission, Montana Farmers Union, Nebraska Wheat Board, Oklahoma Wheat Commission, South Dakota Wheat Commission, Texas Wheat Producer Board, And Washington Grain Commission, Wyoming Wheat Marketing Commission, National Association of Wheat Growers and U.S. Clay Producers Traffic Association, Inc. (ARC, et al.) to submit these comments in this Surface Transportation Board (STB or Board) proceeding concerning recently proposed changes by the STB to its general purpose costing system, known as the Uniform Railroad Costing System or URCS.

As indicated in Appendix GWF-1, I have over 35 years of hand-on experience working with URCS and its predecessor, Rail Form A (RFA). My experience includes the developing URCS and RFA unit cost data for Class I railroads and applying this unit cost data in the development of the costs associated with many thousands of individual railroad movements. I have previously testified in other STB and Interstate Commerce Commission (ICC) proceedings concerning URCS.¹ I also worked on many proceedings which involved the use and application of URCS costs during my time working at STB as an expert and staff advisor. As a result, I have developed a thorough and comprehensive understanding about the problems associated with the development and application of URCS.

The Board is proposing to adjust the method by which it calculates certain URCS system-average unit costs for individual Class I railroads and to make other changes related to URCS. The STB maintains that the proposed changes to URCS “would result in more accurate movement costs” and would “better reflect railroad operations” by automatically reflecting “economies of scale as shipment size increases.”² The STB’s proposed changes to URCS are summarized below:

¹ For example, I submitted expert testimony concerning URCS in ICC Ex Parte No. 431 (Sub-No. 1), Adoption of the Uniform Railroad Costing System as a General Purpose Costing System for Regulatory Purposes and, more recently, in STB Docket No. 431 (Sub-No.3), Review of the Surface Transportation Board’s General Costing System.

² STB Docket No. 431 (Sub-No.4), Review of the General Purpose Costing System, served February 4, 2013, pages 1 and 4.

Summary Of STB's Proposed Changes To URCS

- **“Make-Whole” Adjustments** - The STB has proposed eliminating the use and application of upward “*make-whole*” adjustments to non-trainload movements (currently less than 50 cars per shipment).³
- **Switching Costs Related to Switch Engine Minutes** - The STB has proposed changing the method by which URCS switching costs are developed by calculating URCS Switch Engine Minute (SEM) cost on a “per shipment” basis rather than on a “per-car” basis. In connection with this proposal, the STB has also proposed a change to the Class I railroad reporting requirements to require information regarding shipments loaded and terminated.
- **Station Clerical Costs** - The STB has also proposed changing the method by which URCS station clerical costs on a “per shipment” basis rather than on a “per-car” basis.
- **Empty/Loaded Ratio (E/L Ratio)** - Currently, URCS applies an empty return ratio of 2.0 to all trainload movements, which assumes all trainloads (50 or more cars per shipment) are dedicated unit trains, which return empty to the same location. For example, a trainload moving 100 loaded miles would assume to have 100 empty miles. The STB has proposed using the carriers’ system average E/L ratios to all trainload movements, which may be greater than or less than 2.0.
- **I&I Switching Mileage** - The STB has proposed increasing the distance between I&I switching from every 200 miles to every 320 miles.
- **Definition of Trainload** - For decades, a trainload, for regulatory purposes, has been defined by the STB and ICC as a shipment consisting of 50 or more cars. The STB has proposed changing this trainload definition from 50 to 80 or more cars per shipment.
- **Locomotive Unit Mile** - The STB has proposed changing the way that URCS allocated locomotive unit mile (LUM) costs. For trainload shipments (80 or more cars), the STB has proposed allocating 100% of the trains’ LUM costs. For single car and multiple car shipments, the allocation would be based on the cars per shipment relative to the minimum trainload size (i.e., 80 cars).

³ According to the STB’s May 27, 2010 Report to Congress concerning URCS, the make-whole adjustments “redistribute the efficiency savings that a railroad obtains in higher-volume shipments across all of that carrier’s lower-volume shipments. The make-whole adjustment maintains the same total sum of variable costs across all of the carrier’s shipments, while recognizing the efficiency in the carrier’s higher-volume movements.” (page 4) The adjustments are developed by using the STB’s Waybill Sample data and by making separate downward “270” volume shipment adjustments to trainload (50 or more cars) and multiple-car shipments (6 to 49 cars) and then re-allocating the savings in the form of upward adjustments to multiple-car and single car (1 to 5 cars) shipments.

Make-Whole Adjustments

The STB has proposed certain adjustments to URCS which it believes would eliminate the need for so-called separate upward “*make-whole*” adjustments to single-car and multiple car movements. The STB has described various concerns associated with make-whole adjustments. As indicated in the following table, these make-whole adjustments can be significant (e.g., \$992.04 per car for single-car BNSF movements) and vary significantly (i.e., \$8.79 to \$992.04 per car) depending on the railroad and the type of movement:

Table 1
Comparison of 2011 URCS Make-Whole Add-On’s Per Car
For Single-Car and Multiple Car Grain Movements
Moving 1,000 Miles In Class I Single-Line Direct Service⁴

| Railroad | Single (1 to 5) Car | | Multiple (6 to 49) Cars | |
|----------|---------------------|-------------|-------------------------|-------------|
| | Railroad Car | Private Car | Railroad Car | Private Car |
| BNSF | \$992.04 | \$696.15 | \$360.04 | \$254.17 |
| CN | \$131.08 | \$58.34 | \$21.58 | \$8.79 |
| CP | \$374.62 | \$179.22 | \$90.59 | \$50.64 |
| CSX | \$592.38 | \$408.82 | \$150.70 | \$101.59 |
| KCS | \$238.74 | \$141.92 | \$105.90 | \$46.72 |
| NS | \$427.42 | \$276.33 | \$118.94 | \$61.60 |
| UP | \$756.68 | \$552.90 | \$335.10 | \$241.65 |

Given the significant amounts and wide variations of these figures, the Board has every reason to be concerned about the URCS make-whole adjustments.

⁴ Joint line movements involve an interchange(s) and incur an additional make-whole add on. Multiple car movements also involve the application of the downward “270” adjustments (e.g., 50% of the industry switching cost), therefore, the net increase for multiple car movements would be lower.

Such significant upward cost adjustments to the system-average URCS variable cost can easily make the difference in determining whether or not the railroad traffic is subject to STB jurisdiction. For example, a 1,000-mile single-car captive grain movement in railroad cars via CN-direct (which would have a make-whole adjustment of \$131.08 per car) may be subject to STB jurisdiction, whereas similarly-situated 1,000-mile captive grain movements on BNSF (which dominates the grain market, but has a make-whole adjustment of \$992.04 per car) may not be subject to STB jurisdiction. BNSF's higher URCS make-whole variable cost could make the movement's R/VC percentage lower than 180%.

In my 2009 STB testimony, I recommended that the STB make changes to the make-whole adjustments and the STB, in a subsequent 2010 report to Congress, suggested changes needed to be made to the URCS make-whole adjustments.⁵ I generally applaud the Board's proposal to eliminate the need for these significant upward "make-whole" adjustments by attempting to "more accurately calculate the system-average unit costs." However, it may prove difficult to completely eliminate these or similar accounting adjustments.

For example, if the STB adopts the proposed changes to URCS at issue here and then applies the revised URCS data in the STB's costing of the Waybill Sample records (which the STB currently does and the resulting "Costed" Waybill Sample is used for many purposes), the total variable cost assigned to each Class I railroad will be obviously be different from the total URCS variable cost for that carrier. Depending on the URCS adjustments that are made, the STB's proposals could over or under-allocate URCS costs to the carriers' movements. Obviously, the "devil is in the details."

⁵ See STB Report to Congress Regarding the Uniform Rail Costing System, dated May 27, 2010.

If the Board's logic, rationale and reasoning associated with the URCS proposals prove correct (which cannot be determined until the railroads submit additional information), the differences (and any associated make-whole adjustments) would be minimal. Of course, the opposite could also be true and the proposed URCS changes could result in significant over or under URCS variable cost allocations. For this reason, the STB's URCS proposals should be thoroughly tested before they are formally adopted by the Board.

The Board recognized this cost allocation problem in its Report to Congress Regarding the Uniform Rail Costing System, dated May 27, 2010 (page 19):

There is some concern among stakeholders that the make-whole adjustment does not accurately reflect current railroad operations. Railroads have been encouraging shippers to move product in longer trains, which the railroads can move more cost-effectively and thus better utilize assets. This is particularly true in coal, grain, and intermodal markets.

Because more traffic moves in volume shipments, there are ever-fewer single-car shipments left to absorb the "shortfall," a value that increases with the number of volume shipments. Accordingly, a study of this issue might reveal that the current method for allocating the "shortfall" and modern shipments practices results in an upward distortion of the single-car shipment variable costs. In an extreme hypothetical, if only one shipment were transported as a single car shipment, resulting in a large shortfall, all of the shortfall costs would be added to that lone single-car shipment, providing a nonsensical result.

Should the Board determine that the make-whole adjustment warrants revision, one potential change could be to allocate the shortfall to all shipments, not just the single-car shipments. This would result in smaller cost reductions for the volume shipments (as they get some of the shortfall added back to them) and smaller cost additions to the single-car shipments (because a portion of the shortfall is set aside and added back to the volume shipments instead). Therefore, if unit trains constitute the overwhelming majority of a carrier's traffic, they will closely resemble the system average and URCS will not overly burden the few single-car movements with a large cost allocation.

Switching Costs Related to Switch Engine Minutes

The largest component associated with the STB's make-whole adjustments is related to URCS switching costs. URCS develops "switch engine minute" or SEM unit costs and allocates this SEM unit costs based on the average switch engine minutes for the type of switching (i.e., industry, inter-train & intra-train (I&I), interchange, intra-terminal and inter-terminal switching) and the number of loaded and empty cars switched.

The STB maintains that SEM costs are "better accounted for on a per-shipment basis rather than per-car basis."⁶ Whether this statement is true or not, such a change to URCS could have a significant impact on the variable cost of a movement, especially for shippers with smaller shipments in terms of the number of cars per shipment. Smaller shippers have to switch more shipments in order to move the same number of cars as large shippers. For example, 100 single-car shipments and a single 100-car shipment both equal 100 cars shipped. Therefore, it is very likely that more URCS variable switching costs will be allocated to smaller shipments if switching cost is allocated on a per shipment basis. This is demonstrated in the following table:

⁶ STB Docket No. 431 (Sub-No.4), served February 4, 2013, page 5.

Table 2

**Example of The Potential Impact Associated With
The Proposed Change in URCS SEM Cost Development
From a “Per Car” to a “Per Shipment” Basis**

| Ln. | Item | Amount |
|---------------------------------------------------------------------------|------------------------------------------------------------------------|---------------|
| 1 | Total Railroad Switching Cost (Assumed - Crew, Locomotive, Fuel, etc.) | \$1,000,000 |
| 2 | Total Number of Switches (Assumed) | 500 |
| 3 | Total Cost Per Switch (L.1 / L.2) | \$2,000.00 |
| 4 | Total Railroad Cars Handled (Assumed) | 25,100 |
| 5 | Total Cost Per Car Handled (L.1 / L.4) | \$39.84 |
| Origin A – 1 Car Per Switch, 100 Switches and 100 Total Cars | | |
| 6 | Origin A - Switching Cost Based on Number of Switches (L.3 x 100) | \$200,000 |
| 7 | Origin A - Switching Cost Based on Cars Handled (L.5 x 100) | \$3,984 |
| Origin B – 25 Cars Per Switch, 100 Switches and 2,500 Total Cars | | |
| 8 | Origin B - Switching Cost Based on Number of Switches (L.3 x 100) | \$200,000 |
| 9 | Origin B - Switching Cost Based on Cars Handled (L.5 x 2,500) | \$99,602 |
| Origin C – 50 Cars Per Switch, 100 Switches and 5,000 Total Cars | | |
| 10 | Origin C - Switching Cost Based on Number of Switches (L.3 x 100) | \$200,000 |
| 11 | Origin C - Switching Cost Based on Cars Handled (L.5 x 5,000) | \$199,203 |
| Origin D – 75 Cars Per Switch, 100 Switches and 7,500 Total Cars | | |
| 12 | Origin D - Switching Cost Based on Number of Switches (L.3 x 100) | \$200,000 |
| 13 | Origin D - Switching Cost Based on Cars Handled (L.5 x 7,500) | \$298,805 |
| Origin E – 100 Cars Per Switch, 100 Switches and 10,000 Total Cars | | |
| 14 | Origin E - Switching Cost Based on Number of Switches (L.3 x 100) | \$200,000 |
| 15 | Origin E - Switching Cost Based on Cars Handled (L.5 x 10,000) | \$398,406 |
| Total– 500 Switches and 25,100 Cars | | |
| 16 | Total - Switching Cost Based on Switches (L.6+L.8+L.10+L.12+L.14) | \$1,000,000 |
| 17 | Total - Switching Cost Based on Cars Handled (L.7+L.9+L.11+L.13+L.15) | \$1,000,000 |

Table 2 illustrates that a change in the development of URCS SEM cost to a “per shipment” basis could significantly reduce the switching cost allocated to larger shippers (e.g., see Origin E, L.14 and L.15) while significantly increasing the switching costs allocated to shippers with small shipment sizes (e.g. see Origin A, L.6 and L.7). Consequently, such a change could further reduce number of shippers who may be subject to STB rate jurisdiction and, thus, should be adequately tested before it is formally adopted by the Board.

Unfortunately, the STB’s proposal to adjust URCS SEM costs cannot be adequately tested since it requires additional reporting requirements. In order to calculate the SEM unit costs on a per-shipment basis, the STB has proposed to adjust the Class I reporting requirements of both the Annual Report of Cars Loaded and Cars Terminated (Form STB-54) and the Quarterly Report of Freight Commodity Statistics (Form QCS) in order to require information on the number of shipments loaded and terminated.

The railroads are already in possession of this shipment data and should, without too much effort, be able to provide shipment data for the last three years (2010, 2011 and 2012) which could then be used by the STB and other parties to test the Board’s proposal in regard to the proposed URCS SEM adjustments. As indicated by the STB, these proposed reporting requirements “should not pose a significant burden on the Class I rail carriers because it is likely that they are already tracking this information.”⁷

Aside from the problem of inadequate data to test the Board’s proposed change as to switching costs, the Board’s reasoning is incorrect and misplaced. Specifically, the decision states:

⁷ *Ibid*

Operationally, a shipment of rail cars is generally connected into a contiguous block of cars prior to loading, and is handled as a contiguous block from origin to destination. As such, the costs to switch a shipment of a four-car block should be the same as the costs to switch a shipment of an eight-car block. For this reason, the costs for each type of SEM switching are better accounted for on a per-shipment basis rather than a per-car basis. This change would not only better reflect actual operating costs, but the per-car cost of switching would drop as shipment size increases, thus properly reflecting economies of scale. (page 5)

The Board maintains that most shipments are handled and switched individually and this is true in many cases, such as large, multiple-car and trainload shipments. In fact, many large shipments, such as BNSF's 110-car shuttle-train grain movements and many unit train coal movements, essentially involve and incur no (zero) switching costs since the locomotives and crews remain with trains and often involve "loop" tracks. The Board states that "the costs to switch a shipment of a four-car block should be the same as the costs to switch a shipment of an eight-car block." The total switching costs may be nearly the same, but, for example, the 4-car block could contain 4 single-car shipments or the 8-car block could contain two 4-car shipments. Therefore, the allocation of the switching costs may not always be equal.

This appears to be especially true for grain shipments. For example, the 2011 Public Waybill Sample indicates that 407,240 STCC 01 carloads (which represent over 22% of the total STCC 01 carloads) moved in single-car (1 car) shipments. However, it is likely that only a very small minority of these single-car shipments were actually switched as single cars. In fact, almost 90% of the 2011 Public Waybill Sample records (530,852 out of 599,284 records) included in the Waybill Sample are single-car (1 car) shipments, whereas, less than 1% of the records (2,103 records) are two-car shipments. This demonstrates that the railroads (presumably for accounting purposes) currently treat as single-car shipments many shipments that involve more than 1 car per switch.

The same is true for many other commodities. For example, over the years I have observed and conducted many studies of the origin and destination switching associated with railroad clay shipments from Georgia. Although this traffic predominantly moves under one shipment/car per waybill, this traffic is rarely, if ever, switched or handled by the railroad as a single car. The single-car clay shipments are usually placed in multiple-car blocks of single-car shipments at the origin by the shipper, then are switched or handled by the railroad in multiple-car blocks, and then delivered by the railroad to the destination in multiple car blocks, which often include other blocks of cars/shipments to the same destination (such as export clay shipments to Savannah).

I have conducted numerous studies using the STB's Confidential Waybill Sample in a wide-variety of STB proceedings. Based on my previous studies, I believe that there are many thousands of shipments included in the Waybill Sample as single shipments which moved via the same railroad with other shipments from the same facility on the same day. In most such cases, it would be extremely doubtful, very rare and inefficient if the railroads would switch one car and come back to the same location later to switch another single car.

It should be noted that ARC requested access to the Confidential Waybill for use in this proceeding, however, the Board provided only limited access which excluded information related to the origin, destination and railroads (see STB decision in EP 431 (Sub-No. 4), served April 25, 2013). It is not clear why the Board imposed such restrictions on access to the Costed Waybill Sample in a proceeding in which costing and the impacts of costing changes are so clearly at issue. These restrictions are far more disadvantageous to shipper parties like ARC, et al. than to railroad parties. As a result of the inadequate data made available by the Board, ARC has been unable to develop data that might clarify the extent to which the single-car designation is used by railroads in a way that appears to produce inaccurate switching cost data.

In order to account for this problem, the STB should consider requiring information from the railroads relating to the number of shipments per switching event or block. The railroads could produce information relating to the number of shipments per switch based on car ownership, car type and commodity and this data could be used by the STB to develop URCS adjustments to the SEM cost per shipment. For example, most coal movements and many shuttle trains of grain involve one shipment per switch, whereas other commodities may have a ratios of, say, 1.25 or 30 shipments per switch, which could be used to adjust the URCS SEM cost.

Station Clerical Costs

The STB has also proposed to change the way in which URCS station clerical cost are calculated by also developing these costs on a “per shipment” basis. Based on modern electronic waybilling, the Board may be correct in assuming that “there is little difference in the administrative costs between shipments of different sizes.”⁸ However, the Board’s proposal also requires additional information on the number of shipments in order to be adequately analyzed and tested.⁹ Again, the railroads possess this data and should be able to provide shipment data for the last three years (2010, 2011 and 2012) which could then be used by the STB and other parties to analyze and test the Board’s proposal in regard to the proposed URCS Station Clerical cost adjustments.

Empty/Loaded Ratio (E/L Ratio)

Currently, the STB’s URCS Phase III costing program applies an empty return ratio of 2.0 to all trainload movements (currently 50 or more cars per shipment), which assumes all

⁸ STB Docket No. EP 431 (Sub-No. 4), served February 4, 2013, page 7.

⁹ I note that the current “270” adjustments to multiple car, trainload and unit train movements assume the 75% of the station clerical cost is associated with the shipment and 25% is related to the number of carloads.

trainloads are dedicated unit trains and return empty to the same location. For example, a trainload moving 100 loaded miles would be assumed to also move 100 empty miles. The STB has proposed using the carriers' system average E/L ratios to all trainload movements, which may be greater than or less than 2.0. The following table shows the 2011 E/L ratios for the Class I railroads:

Table 3
2011 URCS E/L Ratios For
Railroad and Private Covered Hoppers

| Railroad | Railroad Cars | Private Cars |
|----------|---------------|--------------|
| BNSF | 1.97101 | 2.01601 |
| CN | 2.10721 | 2.10293 |
| CP | 1.94370 | 2.02312 |
| CSX | 2.03691 | 1.84734 |
| KCS | 1.99723 | 2.00841 |
| NS | 2.09281 | 2.03287 |
| UP | 2.03525 | 1.97275 |

As can be seen, in most cases (9 out of 14), the E/L ratios for covered-hoppers are higher than 2.0. In these cases, there are more empty than loaded miles allocated to the movements. The STB's proposed approach would treat trainloads and dedicated unit trains the same, which could have an adverse costing impact on efficient shuttle train grain movements.

In recent years, BNSF (which dominates the grain market), has significantly increased the number of shuttle train grain elevators and terminals which are capable of handling at least 110-car dedicated shuttle trains. BNSF states that "BNSF's Dedicated Train service is the most efficient and economical way to move high-volumes of single commodities from a single origin

to a single destination.”¹⁰ For URCS costing of such dedicated unit train service, the STB should allow parties to use a 2.0 E/L Ratio. The STB may also want to consider requiring the railroads to identify such dedicated shuttle and unit trains in the waybill sample reporting. This would allow the STB to properly use and apply the 2.0 E/L Ratio to dedicated unit and shuttle trains in its costing of the waybill sample records.

I&I Switching Mileage

The STB has proposed increasing the distance between I&I switching from every 200 miles to every 320 miles. The STB developed this figure “Based on a comparison of the average length of haul for the Class I railroads in 1990 (pre-mergers) and 2011 (post-mergers).” The Board “observed a 60% increase in the overall length of haul” and therefore has proposed “to increase the distance between I&I switches by 60%, from 200 miles to 320 miles.” The Board acknowledged that “the actual average distance between I&I switches may be greater than 320 miles” and encouraged interested parties to submit data and comments on whether 60% is an appropriate increase, or whether the Board should consider an alternative distance between I&I switches that more accurately reflects railroad operations.”¹¹

ARC and other interested shipper parties have no way to determine “whether 60% is an appropriate increase.” The railroads maintain this I&I switching data and have provided it in the past.¹² Rather than using a number such as 320 miles, for which no support has been provided, the STB should require the railroads to submit data concerning I&I switching and allow parties to comment of the railroads data.

¹⁰ <http://www.bnsf.com/customers/how-can-i-ship/dedicated-train-service/#%23subtabs-2>
¹¹ STB Docket No. EP 431 (Sub-No. 4), served February 4, 2013, page 8.

¹² STB Docket No. EP 431 (Sub-No.2), Review of the General Purpose Costing System, decided December 5, 1997, 2 S.T.B 755, indicates that the AAR submitted data which showed that TOFC/COFC incurred I&I switching every 4,163 miles.

Definition of Trainload

For decades, a trainload, for regulatory purposes, has been defined by the STB and ICC as a shipment consisting of 50 or more cars. The STB has proposed changing this long-held trainload definition from 50 to 80 or more cars per shipment. Based on the current and proposed URCS methodologies, this change in the URCS trainload default value will likely result in significant increases in variable cost for shipments ranging from 50 to 79 cars per shipments. The following table summarizes the numbers of carloads moving in shipment sizes ranging from 50 to 79 cars for the major commodity (STCC) traffic groups:

Table 4

Summary of 2011 Rail Carloads Moving in Shipments Ranging from 50 to 79 Carloads

| STCC | Description | Total | |
|-------------------------------------|-----------------------------------------|------------------|----------------|
| | | Carloads | % |
| 01 | Farm Products | 251,005 | 21.20% |
| 10 | Metallic Ores | 78,944 | 6.67% |
| 11 | Coal | 370,449 | 31.29% |
| 13 | Crude Petroleum, Natural Gas or Gas | 9,696 | 0.82% |
| 14 | Non-Metallic Ores | 271,203 | 22.90% |
| 20 | Food or Kindred Products | 14,768 | 1.25% |
| 24 | Lumber or Wood Products | 1,140 | 0.10% |
| 28 | Chemicals or Allied Products | 93,784 | 7.92% |
| 29 | Petroleum or Coal Products | 17,872 | 1.51% |
| 32 | Clay, Concrete, Glass or Stone Products | 19,282 | 1.63% |
| 33 | Primary Metal Products | 33,623 | 2.84% |
| 35 | Machinery, Excl. Electrical | 1,502 | 0.13% |
| 37 | Transportation Equipment | 9,274 | 0.78% |
| 40 | Waste of Scrap Materials | 872 | 0.07% |
| 41 | Misc. Freight Shipments | 9,484 | 0.80% |
| 48 | Waste Hazardous Materials | 1,155 | 0.10% |
| Total 50 to 79 Car Shipments | | 1,184,053 | 100.00% |

As can be seen, 1,184,053 million carloads moved in shipments ranging from 50 to 79 carloads per shipment in 2011. These large shipments carried approximately 124 million tons and generated over \$2.1 billion in annual railroad freight charges. This demonstrates that the STB's proposed change in the definition of a trainload could impact a significant amount of rail traffic. Shippers of Farm Products (STCC 01) would be among the largest traffic groups impacted by the STB's proposed change, as over 250,000 carloads moved in shipments ranging from 50 to 79 cars per shipments. Corn shipments make up the largest STCC 01 group. In 2011, approximately 174,000 rail carloads of corn moved in shipments ranging from 50 to 79 cars per shipment.

It should be noted that NS initiated a 75-car shuttle trains program in 2000 to enable NS "to deliver higher volumes of grain with fewer cars and less congestion on our rail lines. Features of the shuttle program include assigned power, improved transit times, and faster loading at origin and unloading at destination."¹³ However, NS's efficient 75-car grain shuttle trains would not be considered trainloads under the Board's proposal.

The number of 50 to 79 car shipments by BNSF dropped significantly in recent years as a result of BNSF's 2009 change in certain grain tariffs from "52-car minimum" rate to "48-car cars." This change was the subject to an unreasonable practice complaint case before the STB in STB Docket No. 42124, State of Montana v. BNSF Railway Company. It is clear from the evidence in that proceeding that BNSF made this change to take advantage of the URCS 50-car trainload default value, which is are issue in this proceeding.¹⁴ As a result of BNSF's change, the number of 50 to 79-car grain shipments decreased significantly.

¹³ <http://www.nscorp.com/nscportal/nscorp/Customers/Industrial-Products/Agriculture/>

¹⁴ I submitted expert testimony on behalf of the State of Montana in STB Docket No. 42124.

Currently, the majority of 50 to 79-car rail traffic moves at R/VC ratios which are equal to or above the STB's jurisdictional threshold of 180%. However, there is a great risk that the STB's proposed change in the definition of a trainload from 50 to 80 cars will result in the *de facto* deregulation of this 50 to 79 car traffic. ARC (and others) requested access to the STB's Confidential Costed Waybill Sample data in order to evaluate the jurisdictional impact on traffic, but the STB denied ARC's request to access this data.¹⁵

The STB recognizes that under the STB's current URCS approach there is a significant difference in the URCS variable cost associated with 49-car shipment and a 50-car shipment, which is a result of the current definition of a trainload 50 or more cars per shipment. Under the current approach, shipments with less than 50 cars are impacted by the upward make-whole adjustments (which the STB now proposes to eliminate), whereas shipments with 50 or more cars per shipment receive the downward "270" adjustments. The proposed elimination of the make-whole adjustment could impact that difference, but it will not completely eliminate the differences resulting from the costing methodology used for trainload and non-trainload movements. In addition, if the Board's proposal allocates significantly more costs to 79-car shipments than to 80-car shipments, the Board must recognize the danger that railroads might attempt to prevent shippers from reaching the 80-car shipment threshold for lower URCS costs. The Board has said it hopes to avoid a significant costing break point at 80 cars, but its success in that effort cannot be tested based on currently available data.

¹⁵ See STB decision in EP 431 (Sub-No.4), served April 25, 2013.

Locomotive Unit Mile

One of the major differences in URCS costing of trainload (currently 50 or more cars) and non-trainload (currently less than 50 cars) shipments is in the development of URCS Locomotive Unit-Mile (LUM) cost. This is demonstrated in the in the following table:

Table 5
Comparison of 2011 URCS LUM URCS Cost Per Car
For Non-Trainloads (49-Cars) and Trainloads (50-Cars) Movements
Moving 1,000 Miles In Class I Single-Line Direct Service

| Railroad | 49-Cars LUM | 50-Cars LUM |
|-----------------|------------------------|------------------------|
| BNSF | \$748.64 | \$461.56 |
| CSX | \$723.52 | \$415.09 |
| NS | \$740.15 | \$412.17 |
| UP | \$614.16 | \$364.52 |

These differences in trainload and non-trainload URCS LUM costing result from the fact that that LUM costs are allocated based on the system average gross-ton-miles for trainloads and non-trainloads (which are based on system average gross-ton-miles for way-trains and through trains). The average gross-ton-miles are generally smaller than way trains and through trains. Therefore, the LUM costs for way and through trains are generally higher. The following table summarizes the 2011 URCS system average trailing gross-tons for unit trains, way trains and through trains:

Table 6

**Comparison of 2011 URCS Average Trailing Gross-Tons
For Unit Trains, Way Trains and Trainloads**

| Railroad | Unit Trains / Trainloads | Way Trains | Through Trains |
|-----------------|-------------------------------------|-----------------------|---------------------------|
| BNSF | 9,440.36 | 2,044.79 | 5,616.91 |
| CN | 8,341.12 | 3,118.05 | 7,809.21 |
| CP | 7,734.63 | 1,794.89 | 5,593.91 |
| CSX | 7,481.13 | 1,198.86 | 4,937.98 |
| KCS | 6,228.26 | 3,648.87 | 8,553.21 |
| NS | 7,994.21 | 1,997.82 | 4,603.06 |
| UP | 9,695.41 | 2,110.47 | 5,809.36 |

The STB has proposed changing the way that URCS allocates locomotive unit mile (LUM) costs. For trainload shipments (80 or more cars), the STB has proposed allocating 100% of the trains' LUM costs. For single car and multiple car shipments, the allocation would be based on the cars per shipment relative to the minimum trainload size (i.e., 80 cars). The STB describes the proposed changes as follows:¹⁶

We therefore propose two modifications to how URCS currently allocates LUM costs. First, the entire train's LUM costs would be allocated to the trainload shipment, regardless of the gross tons of the trainload shipment relative to the average gross tons of a particular train. This should be more accurate than the current approach because, by definition, a trainload shipment has no other shipments that should share the LUM costs of that train.

¹⁶ STB Docket No. EP 431 (Sub-No. 4), served February 4, 2013, pages 9 and 10.

Second, the allocation of LUM costs for single and multi-car shipments would be based on the number of cars in the shipment relative to the minimum number of cars in a trainload shipment, which, as described above, we propose to be 80 cars. For example, a 20-car shipment would be allocated 25% (20/80) of the LUM costs. While the current allocation of LUM costs to single and multi-car shipments is based on the gross tons of the shipment relative to the average gross tons of way trains and through trains, basing the allocation on the number of cars in the shipment should be sufficiently precise, particularly if most cars are homogenously loaded at or near the maximum weight. Moreover, whenever practical, we seek a smooth cost function, such that there is no large cost discrepancy between a 79-car multi-car movement and an 80-car trainload movement. Basing this allocation on the number of cars in the shipment should assign LUM costs consistently on a prorated share of the total LUM costs and produce a smooth cost function across all shipment sizes, including trainload shipments.

The following table compares the current and proposed LUM costs per car differences for the major Class I railroads:

Table 7

**Comparison of Current and Proposed
2011 URCS LUM URCS Cost Per Car For
50-Car, 79-Car, 80-Car and 110-Car Shipments
Moving 1,000 Miles in Class I Single-Line Direct Service**

| Railroad | Cars/ Shipment | Current LUM/Car | Proposed LUM/Car | Difference LUM/Car |
|-----------------|---------------------------|----------------------------|-----------------------------|-------------------------------|
| BNSF | 50 | \$461.56 | \$594.96 | \$133.40 |
| BNSF | 79 | \$461.56 | \$594.96 | \$133.40 |
| BNSF | 80 | \$461.56 | \$621.25 | \$159.69 |
| BNSF | 110 | \$461.56 | \$451.82 | (\$9.74) |
| CSX | 50 | \$415.09 | \$508.91 | \$93.82 |
| CSX | 79 | \$415.09 | \$508.91 | \$93.82 |
| CSX | 80 | \$415.09 | \$457.56 | \$42.47 |
| CSX | 110 | \$415.09 | \$332.77 | (\$82.32) |
| NS | 50 | \$412.17 | \$494.75 | \$82.58 |
| NS | 79 | \$412.17 | \$494.75 | \$82.58 |
| NS | 80 | \$412.17 | \$498.82 | \$86.66 |
| NS | 110 | \$412.17 | \$362.78 | (\$49.39) |
| UP | 50 | \$364.52 | \$513.79 | \$149.27 |
| UP | 79 | \$364.52 | \$513.79 | \$149.27 |
| UP | 80 | \$364.52 | \$520.32 | \$155.80 |
| UP | 110 | \$364.52 | \$378.42 | \$13.90 |

As indicated, 1,184,053 million carloads moved in shipment sizes ranging from 50 to 79 carloads. As indicated in the previous table, the LUM costs for these shipments are likely to increase. However, the URCS LUM costs for some large trainload shipments (110 cars) may decrease slightly.

Summary

Depending on the URCS adjustments that are made, the STB's proposals could over or under-allocate URCS costs to the carriers' movements. For this reason, the STB's URCS proposals should be thoroughly tested before they are formally adopted by the Board. The railroads should be required to provide shipment data for the last three years (2010, 2011 and 2012), which could then be used by the STB and interested parties to test the Board's proposed URCS SEM adjustments.

For URCS costing of dedicated train service, such as shuttle and unit train movements, the STB should allow parties to use a 2.0 E/L Ratio. The STB should also require the railroads to identify such dedicated shuttle and unit trains in the waybill sample reporting. This would allow the STB to properly use and apply the 2.0 E/L Ratio to dedicated unit and shuttle trains in its costing of the waybill sample records.

**STATEMENT
OF
BACKGROUND, QUALIFICATIONS AND EXPERIENCE
OF
GERALD W. FAUTH III**

My name is Gerald W. Fauth III. I am President of G. W. Fauth & Associates, Inc. (GWF), an economic consulting firm with offices at 116 S. Royal Street, Alexandria, Virginia 22314. I am a recognized expert on transportation issues with over 30 years experience in the private sector and in the Federal government.

This statement generally describes my background, qualifications and experience. The majority of experience has involved economic, regulatory, public policy and legislative issues primarily associated with, or related to, the U. S. railroad industry. Most of my work has involved regulatory proceedings and related projects before, or related to, the U.S. Surface Transportation Board (STB) and its predecessor, the Interstate Commerce Commission (ICC).

I have extensive experience in working in regulatory and other proceedings and projects involving railroad mergers, transactions, acquisitions, rail line construction, rail line abandonments, rate reasonableness and other railroad related issues. These matters have involved railroad issues on a nation-wide, system-wide and individual railroad line basis.

GWF has been engaged in the economic consulting business for over 50 years. My part time affiliation with GWF began in 1972. I began working for GWF on a full-time basis on May 15, 1978 and was employed by GWF continuously until November 1, 1999 at which time I took a leave of absence in order to take a position with the STB.

At the STB, I served as Chief of Staff for one of the three Board Members appointed by the President, Vice Chairman Wayne O. Burkes. I returned to GWF and consulting work effective June 23, 2003 after Mr. Burkes resigned his position to run for a political office.

Over the years, I have submitted expert testimony before ICC, STB, state regulatory commissions, courts and arbitration panels on a wide-variety of issues in numerous proceedings. In addition, I worked for 3½ years at the STB where I reviewed, analyzed and made recommendations on over 600 written formal decisions that were decided by the entire Board. These proceedings and decisions involved all matters of STB jurisdiction and had an impact on the transportation industry and the national economy.

Railroad transactions have long been the subject of ICC and STB regulatory proceedings and other matters involving: railroad merger and acquisition approval and oversight proceedings; railroad line abandonment proceedings; line sales; feeder line application proceedings; and other railroad transaction-related proceedings. I have been involved in numerous such proceedings and projects as an expert witness and as an STB staff advisor.

For example, I was an expert witness in the last two major Class I railroad merger proceedings: STB Finance Docket No. 32760, Union Pacific Corporation, et al. – Control and Merger – Southern Pacific Rail Corporation, et al. and STB Finance Docket No. 33388, CSX Corporation, et al., Norfolk Southern Corporation, et al. – Control and Operating Leases / Agreements – Conrail, Inc., et al. My testimony in these major merger proceedings concerned the potential adverse competitive impact of these mergers on two key areas.

In addition to my work in major railroad merger proceedings, I have submitted expert testimony in other railroad finance docket and abandonment proceedings before the ICC and STB. In these proceeding, I have developed and submitted evidence relating to the impacted railroad traffic and the valuation and economics of the railroad line at issue (such as: going concern and net liquidation values; freight revenues and traffic; operating costs; maintenance costs; right-of-way valuation; etc).

In addition to my testimony in railroad mergers and other rail finance and transaction proceedings, I served as an original member of the Conrail Transaction Council, which was established by the Board in Finance Docket No. 33388. This council consisted of representatives of the CSX, NS and shipper organization and provided a forum for timely and efficient communication of information and problems concerning the transaction. I was one of the original members of the Conrail Transaction Council and attended every meeting of the council until my employment with the Board.

During my time at the Board, I was actively involved in the STB merger oversight proceedings associated with the UP/SP and Conrail transactions. Perhaps the most significant merger-related proceedings that I was involved in during my time at the Board were STB Ex Parte No. 582, Public Views on Major Rail Consolidations and STB Ex Parte No. 582 (Sub-No.1), Major Rail Consolidation Procedures. These STB major rulemaking proceedings involved extensive oral hearings and written testimony from hundreds of witnesses.

The Board concluded that its existing rules governing railroad mergers and consolidations, which had been developed nearly 20 years earlier, were not adequate for addressing the broad concerns expressed and initiated a major rulemaking proceeding which resulted in a major revision to the Board's railroad merger rules.

I have a significant amount of experience in issues involving railroad rate reasonableness. I was actively involved in the initial ICC regulatory proceedings over 30 years ago in which the ICC first proposed and established guidelines which have since evolved into the STB's current railroad rate reasonableness guidelines. I was actively involved in several of the first cases to test the ICC's then proposed guidelines. For example, I was the primary expert witness in ICC Docket No. 40073, South-West Railroad. Car Parts Co. v. Missouri. Pacific Railroad, which was the *first* case to test the ICC's proposed simplified guidelines, which have since evolved into STB's Three-Benchmark approach.

More recently, I submitted extensive written and oral testimony in STB Ex Parte No. 646 (Sub-No. 1), Simplified Standards For Rail Rate Cases, on behalf of a group of 30 major stakeholders and my testimony was cited by the Board in its decision served September 5, 2007. My work and testimony in these ICC/STB proceedings has helped shape the STB's current railroad rate reasonableness guidelines.

Many of our projects have involved the development of railroad variable cost analyses based on the application of URCS and its predecessor, Rail Form A (RFA). URCS is used to determine STB jurisdiction and is an integral component of the STB's Full-SAC method, new Simplified-SAC standard and recently modified Three-Benchmark approach. I have an extensive working knowledge of the development and application of URCS and RFA. I have prepared URCS cost analyses for thousands of individual railroad movements. I also submitted expert testimony in ICC Ex Parte No. 431 (Sub-No.1), Adoption of the Uniform Railroad Costing System as a General Purpose Costing System for Regulatory Costing Purposes and more recently in STB Ex Parte No. 431 (Sub-No. 3), Review of the Surface Transportation Board's General Costing System.

Proceedings before the Board often involve traffic and market analyses using the Board's Waybill Sample, which is a computer database of approximately 600,000 records of sampled railroad movements. I am extremely familiar with this railroad traffic database. Over the years, I have performed hundreds of analyses using this data which has been used as evidence in merger and other proceedings before the Board.

I am a 1978 graduate of Hampden-Sydney College in Hampden-Sydney, Virginia where I earned a Bachelor of Arts degree. My major areas of study were history and government. My senior paper in college dealt with the History of Railroad Deregulation. I am a 1974 graduate of St. Stephen's School for Boys (now St. Stephen's and St. Agnes School), located in Alexandria, Virginia. My senior project and paper in high school dealt with the ICC and the Energy Crisis of 1973.

My professional memberships included the Transportation Research Forum and the Association of Transportation Law Professionals.

VERIFICATION

The foregoing statement is true and accurate to the best of my belief and knowledge.



Gerald W. Fauth, III

Subscribed and sworn to before me this 18 day of June 2013.



Notary Public

My commission expires: 7-31-13

Howard Spratt
NOTARY PUBLIC
Commonwealth of Virginia
Reg. # 362921
My Commission Expires 7/31/2013