

**DEPARTMENT OF TRANSPORTATION****Surface Transportation Board****[STB Ex Parte No. 589]****Calculation of Variable Costs in Rate Complaint Proceedings Involving Non-Class I Railroads****AGENCY:** Surface Transportation Board, DOT.**ACTION:** Notice of Proposed Rulemaking.

**SUMMARY:** The Surface Transportation Board institutes a proceeding to settle how it will estimate the variable costs of non-Class I railroads in future rate complaint proceedings.

**DATES:** Comments are due by July 1, 2002. Replies, if any, are due July 31, 2002.

**ADDRESSES:** Send comments (an original and 10 copies) referring to STB Ex Parte No. 589 to: Office of the Secretary, Case Control Branch, 1925 K Street, NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Thomas J. Stilling, 202-565-1567. Federal Information Relay Service (FIRS) for the hearing impaired: 1-800-877-8339.

**SUPPLEMENTARY INFORMATION:** A user of rail transportation can file a complaint with the Board challenging the reasonableness of a rate charged for common carriage rail transportation. 49 U.S.C. 11701(b). However, the Board may only consider the reasonableness of a challenged rail rate if the carrier has "market dominance" over the traffic at issue. 49 U.S.C. 10701(d)(1). The statute precludes a finding of market dominance if the revenue produced by the shipment at issue is less than 180% of the defendant carrier's variable cost. 49 U.S.C. 10707(d)(1)(A). It also specifies that the variable cost calculation be developed "using the Uniform Rail Costing System [URCS] cost finding methodology (or an alternative methodology adopted by the Board in lieu thereof)." 49 U.S.C. 10707(d)(1)(B).

Non-Class I railroads, however, have traditionally not been required to maintain the necessary financial and operating data to enable development of variable costs using URCS. Historically, the average regional URCS variable costs for the Class I railroads have been used as a surrogate for a non-Class I carrier's variable costs. However, in *Minnesota Power, Inc. v. Duluth, M.&I.R. Ry.*, STB Docket No. 42038, we initially ordered the defendant non-Class I railroad to collect the necessary operational and financial data needed to develop variable cost information using URCS.

We later stayed that order in response to a petition for reconsideration, so that we could consider the industry-wide implications associated with the accounting/record-keeping order. Before we ruled on the petition, the parties settled that rate dispute.

The issue of whether, as a general matter, it is appropriate and administratively practical in rate cases involving non-Class I railroads to place a case in abeyance for an extended period of time and to subject a carrier to the expense of developing URCS-compatible data for a single case has therefore not been resolved. In this proceeding, we propose to return to a policy of estimating non-Class I carriers' variable costs using Class I regional average variable costs, and we seek comments of interested parties on this proposal and/or any alternative proposal they may wish to make.

Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, call, or visit the Board's contractor, Dā-To-Dā Legal, Suite 405, 1925 K Street, NW., Washington, DC 20006, phone (202) 293-7776. [Assistance for the hearing impaired is available through Federal Information Relay Service (FIRS) at 1-800-877-8339.] The full decision is also available on the Board's website: [www.stb.dot.gov](http://www.stb.dot.gov).

This action will not significantly affect either the quality of the human environment or energy conservation.

Pursuant to 5 U.S.C. 605(b), we conclude that our action will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Decided: April 22, 2002.

By the Board, Chairman Morgan and Vice Chairman Burkes.

**Vernon A. Williams,**  
Secretary.

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**BILLING CODE 4915-00-P**

**DEPARTMENT OF TRANSPORTATION****Bureau of Transportation Statistics****Advisory Council on Transportation Statistics; Notice of Meeting****AGENCY:** Bureau of Transportation Statistics (BTS), DOT.**ACTION:** Notice.

This notice announces, pursuant to Section 10(A)(2) of the Federal Advisory Committee Act (FACA) (Pub. L. 72-363; 5 U.S.C. app. 2), a meeting of the BTS Advisory Council on Transportation

Statistics (ACTS). The meeting will be held on Tuesday, May 14, 2002, from 10 a.m. to 4 p.m. The meeting will take place at the U.S. Department of Transportation, 400 Seventh Street, SW., Washington DC, on the 2nd Floor, in Conference Room 2230 of the Nassif Building.

The ACTS, established under Section 6007 of Public Law 102-240, Intermodal Surface Transportation Efficiency Act of 1991, December 18, 1991, and chartered on June 19, 1995, was created to advise the Director of BTS on transportation statistics and analyses, including whether or not the statistics and analysis disseminated by the BTS are of high quality and are based upon the best available objective information.

The following is a summary of the meeting's agenda: (1) Introduction and Director's Report; (2) Reauthorization Update; (3) BTS's 10th Anniversary Celebration; (4) TranStats demonstration; (5) Presentation on the Role of Transportation Statistics in National Security Policy; (6) Update on the BTS Confidentiality Policy; (7) Closing Remarks (Closing comments from ACTS members, discussion and agreement of date(s) and agenda items for subsequent meeting(s) and public comments).

Based on a recent General Services Administration rule (66 FR 37728) amending 41 CFR part 102-3, I am designating Ms. Phyllis Seville as the Committee Management Officer (CMO) and Ms. Laura McClure as Designated Federal Officer (DFO) for the ACTS.

Since access to the DOT building is controlled, all persons who plan to attend the meeting must notify Ms. Phyllis Seville, CMO at (202) 366-9510 prior to Friday, May 10, 2002.

Individuals attending the meeting must report to the SW. Lobby of the Nassif Building for admission to the building. Attendance is open to the public, but limited space is available. With the approval of the Chair, members of the public may present oral statements at the meeting. Non-committee members wishing to present oral statements or obtain information should also contact Ms. Seville.

Questions about the agenda or written comments may be submitted by U.S. Mail to: U.S. Department of Transportation, Attention: Ms. Laura McClure, Designated Federal Officer, BTS, Room 3103, 400 Seventh St. SW., Washington, DC 20590 or faxed to (202) 366-3640, Attention: Ms. Laura McClure. BTS requests that written comments be submitted prior to the meeting.

Persons with a disability requiring special services, such as an interpreter