

**Association of Transportation Law Professionals
(ATLP) Fall Transportation Forum**

Simplified Standards for Rail Rate Cases

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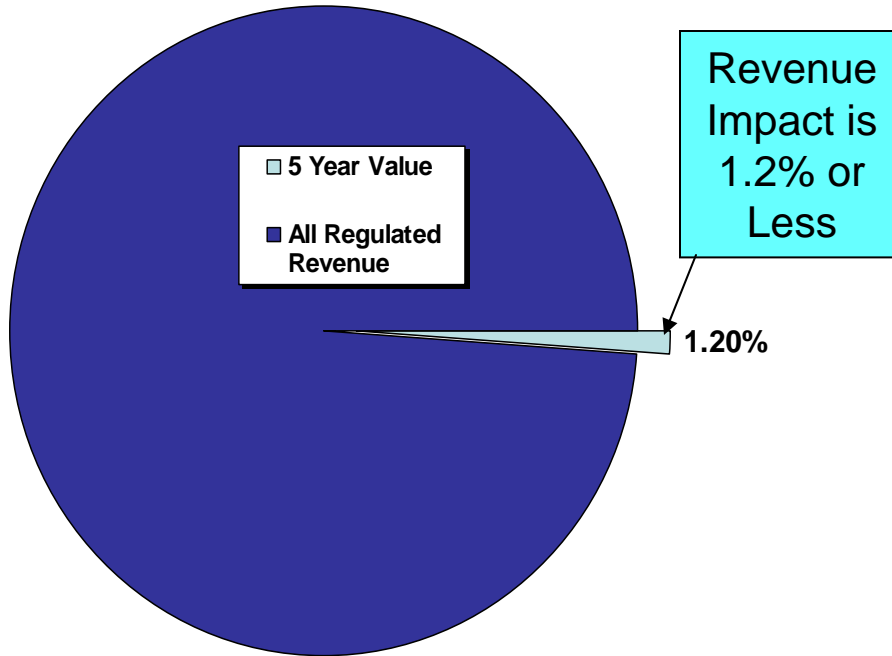
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Key Elements of a Sustainable Solution

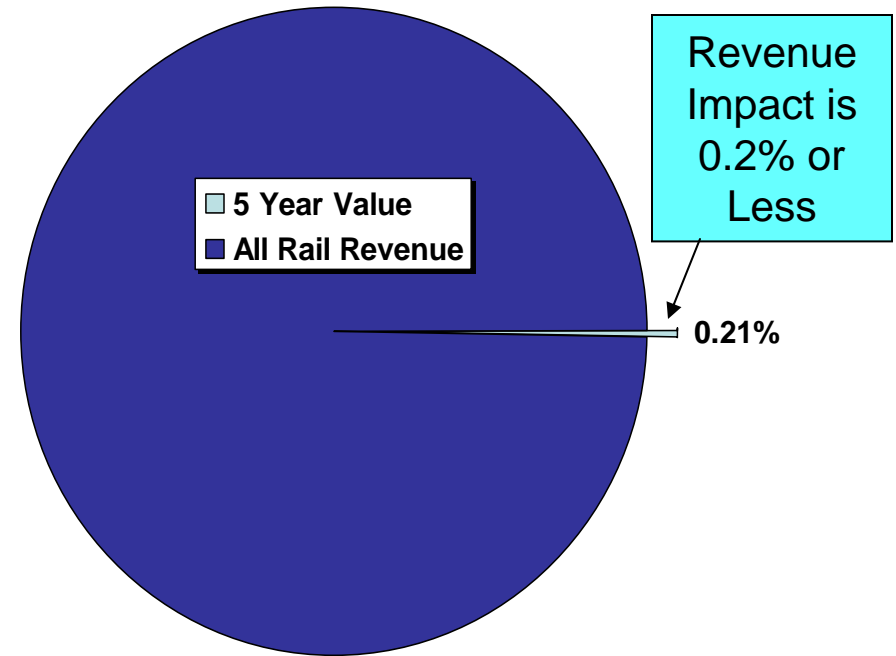
- Build on market place dynamics
- Increase opportunities for mediation
- Realize that the effectiveness of mediation depends upon a fair and equitable litigation rate reasonableness option
 - Integrate Staggers Rail Act Long-Cannon factors
 - Develop remedies for captive shipper issues
 - Ensure carriers have the opportunity to earn adequate revenues
 - adequate to cover costs, allow replacement of needed assets and provide a fair return.
- Learn from and resolve limitations in existing methods as they surface.

Revenue Impact of New Small and New SSAC Simplified SAC Rate Cases is Relatively Minor

50 Small and 10 SSAC Cases as Percent of Regulated Revenue (2005)



50 Small and 10 SSAC Cases as Percent of All Revenue (2005)



	Number of Cases	Maximum Value	Total
Three Benchmark	50	\$ 1,000,000	\$ 50,000,000
Simplified SAC	10	\$ 5,000,000	\$ 50,000,000
Total 5 Year Revenue Impact			\$ 100,000,000
Total Regulated Revenue			\$ 8,333,245,000
Total Rail Revenue (2005)			\$ 46,706,375,000

Improvements in the New Guidelines

- Mediation
 - Mandatory mediation is beneficial to both parties and the STB.
 - Relies on market place solutions to reach a confidential agreement.
 - Encourages parties to maintain and build commercial relationships and solutions
- Improved Procedural Schedule
- Access to the Unmasked Waybill Sample
 - Representatives of both shippers and railroads now have access to the unmasked waybill sample under Board approved confidentiality agreements

Some Remaining Issues

Maximum Value of the Case and Eligibility

- The maximum value of the case for small and medium cases should be increased and could be combined into a single threshold.
- Proposed eligibility criteria should enable access to both medium and small shipment rate cases. The new maximum value of the case is still too low.
- Ongoing need for the Three Benchmark Approach since neither SAC nor medium-sized simplified SAC is feasible for rail distribution pattern of few origins to numerous and widely distributed destinations.
- Commodities like chemicals and many others are an inherently poor fit for SAC due to their “one to many” star shaped distribution pattern
- A predictable path of development of the medium sized SSAC could converge on SAC. This could bring increasingly complex SSAC procedures applicable to a small and decreasing base of users.

Remaining Technical Issues with New Guidelines

- **Development of Comparison groups and use of Confidence Interval**
 - **Scope of the Waybill Sample data - Defendant or All traffic**
 - **Available data population may be small in some instances**
- **Revenue Short Fall Allocation Method (RSAM) and $RVC_{>180}$ Benchmarks**
 - **Some anomalous data problems have been corrected**
 - **Others remain**
- **Simplified SAC**
 - **Data availability and Applicability**

Key Elements of a Sustainable Solution

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- Increase opportunities for mediation
- Realize that the effectiveness of mediation depends upon a fair and equitable litigation rate reasonableness option
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Long-Cannon Factors

- Under the Interstate Commerce Act, as revised by the ICCTA, the ICC and its successor agency the STB were charged with protecting individual captive shippers from unreasonably high and unfair rate levels. In doing so, the STB was specifically directed to consider three so-called Long-Cannon factors, set forth in 49 U.S.C. 10701(d)(2). These factors are:
- **Long-Cannon- 1; the amount of traffic transported at revenues which do not contribute to going concern value** and the efforts made to minimize such traffic
- **Long-Cannon- 2 the amount of traffic which contributes only marginally to fixed costs** and the extent to which, if any, rates on such traffic can be changed to maximize the revenues from such traffic; and
- **Long-Cannon- 3 the carrier's mix of rail traffic to determine whether one commodity is paying an unreasonable share** of the carrier's overall revenues.
- The STB is also directed to ensure that carriers have the opportunity to earn revenues that are adequate to cover costs, allow replacement of needed assets, and provide a fair return on investment.

About Snavely King

- Snavely King Majoros O'Connor & Lee has provided consulting services to shippers, railroads, transportation companies, government agencies and hundreds of other clients in transportation, telecommunications and utilities in the US, Canada and Overseas.
- For more than three decades SK has built its success on developing and applying practical market and economic solutions for its clients.
- The firm's financial and strategic advice is backed by the professional staff's wide experience in designing and applying business solutions, evaluating corporate transactions, analyzing start-up companies, and in providing strategic planning services to commercial, institutional and government clients.
- In more than 2,000 projects, the analyses and expert advice provided by Snavely King have significantly assisted both private and public sector clients.