The U.S. Surface Transportation Board (STB), the freight rail industry’s economic regulator, issued a Notice of Proposed Rulemaking (NPRM) on September 11, 2019, to propose a new process for rail customers to contest the reasonableness of an individual rail rate. The FORR proposal significantly departs from the current processes required by statute by replacing careful deliberation about rates with a single binary decision.

Historically, if — after a full hearing — the STB found the reasonableness of a challenged rate unlawful, it prescribed a maximum rate a railroad could charge based on established methodologies that replicate market outcomes. Under FORR, a complainant can simply propose a rate, which the STB can then choose on the sole basis that it is perceived to be relatively more reasonable than the rate proposed by the carrier.

Railroads serve shippers in a highly competitive market and set rates based on market conditions. FORR would allow rail customers to effectively set their own rates wholly independent of actual market conditions. The STB’s proposal lacks standards for determining rate reasonableness and replaces the longstanding practice of careful deliberation with a single binary decision.

**FORR is for professional baseball, not railroad economics.**

Final offer arbitration is best known for its use in salary arbitrations for major league baseball players. It is not suited for evaluating railroad economics consistent with governing statutory provisions. In the case of baseball, final-offer arbitration involves negotiation and counter-proposals.

The STB’s proposal is predicated on simply choosing between two proposed rates, neither of which is necessarily the maximum reasonable rate. The STB proposal abdicates the agency’s responsibility to exercise its expert judgment and does a disservice to railroads and shippers by eliminating regulatory predictability.

**FORR would not help small shippers.**

The STB argues that its proposal would provide a “quick and dirty” option for railroad customers to bring “small” rate challenges. The proposed rule, however, does not limit the FORR route to small shippers or even small disputes. Instead, the STB proposed to cap the available relief at $4 million per case, which large shippers are free to pursue. Nothing prevents large companies with abundant resources for litigation from bringing multiple FORR cases simultaneously.

**KEY TAKEAWAY**

The STB should withdraw its FORR proposal because it would harm small shippers and railroads. No other federal government agency reviews regulated rates in this manner.
**FORR would undermine rail's ability to invest in the nation's rail network.**

Rate review without uniform standards and divorced from market outcomes would produce natural repercussions the STB did not even consider. For example, below market rates would undermine the industry’s ability to earn the necessary revenues to invest in the privately financed rail network. Consistent spending on the rail network helps increase safety, efficiency and reliability.