

Kansas Administrative Regulations

Kansas Corporation Commission

Article 9.—Railroad Rates

82-9-6. Reasonableness.

(a) Except for nonferrous recyclables, the reasonableness of a rate shall be evaluated by the commission only after market dominance has been established. Authority to determine and prescribe reasonable rules, classifications and practices may not be used directly or indirectly to limit the rates that rail carriers are otherwise authorized to establish. Unless prohibited by specific statutory provision, any reasonable rate may be established. The standards set out in 1 I.C.C.2d 520 (1985) and ex parte no. 347 (Sub-No. 2) (unpublished) as served April 8, 1987, are hereby adopted by reference. In determining whether a rate is reasonable, evidence of the following shall be considered:

(1) The amount of traffic that is transported at revenues which do not contribute to going concern value and the efforts made to minimize that traffic;

(2) the amount of traffic which contributes only marginally to fixed costs and the extent to which, if any, rates on the traffic can be changed to maximize the revenues from the traffic; and

(3) the carrier's mix of rail traffic, to determine whether one commodity is paying an unreasonable share of the carrier's overall revenues.

(b) Any rate on nonferrous recyclable material shall be presumed to be unreasonable when it is set at a revenue to variable cost ratio greater than 147.7 percent.

(c) Revenue adequacy standards as set out in standards for railroad revenue adequacy, 364 I.C.C. 803 (1981) shall be established by the commission. Where there is a prior interstate commerce commission ruling on revenue adequacy of a particular carrier, a certified state agency is bound by the ICC ruling and may not determine revenue adequacy independently. The return on investment/cost of capital standards as set out in 3 I.C.C.2d 261 (1986) are also adopted by reference.

(d) Intrastate rates in existence on October 1, 1980, shall be conclusively presumed reasonable unless a complaint that was filed under § 229 of the staggers rail act of 1980 with the interstate commerce commission not later than March 31, 1981, was submitted to the commission for disposition.

(1) The cost adjustment factor determined by the interstate commerce commission on a quarterly basis shall be used by the commission to determine the adjusted base rate.

(2) Complaints on adjustments to the base rate which cover inflation will not be investigated, suspended or accepted.

(3) Increases within the zone will not be suspended or investigated unless the increases produce ratios exceeding the year's market dominance threshold plus 20%, or 190%, whichever is less. In deciding whether to investigate, the following shall be considered by the commission:

(A) The amount of traffic below going concern value and efforts to minimize it;

(B) amount of traffic contributing marginally to fixed costs;

(C) traffic impact on revenue adequacy and energy; and

(D) cross subsidization of traffic.

(e) The protestant shall have the burden of justifying an investigation.

(f) A rail carrier may petition the interstate commerce commission to review a decision regarding intrastate rates pursuant to 49 U.S.C. § 11501(c).

(Authorized by K.S.A. 66-106; implementing K.S.A. 1989 Supp. 66-146; effective May 1, 1984; amended May 1, 1985; amended May 1, 1986; amended Oct. 29, 1990.)

***** Authenticated Kansas Administrative Regulation *****