

SURFACE TRANSPORTATION BOARD

Ex Parte No. 717

233675
ENTERED
Office of Proceedings
January 14, 2013
Part of
Public Record

PETITION OF THE ASSOCIATION OF AMERICAN RAILROADS
TO INSTITUTE A RULEMAKING PROCEEDING TO
REINTRODUCE INDIRECT COMPETITION AS A
FACTOR CONSIDERED IN MARKET DOMINANCE DETERMINATIONS FOR
COAL TRANSPORTED TO UTILITY GENERATION FACILITIES

REPLY IN OPPOSITION OF CONSUMERS UNITED FOR RAIL EQUITY
(CURE)

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Summary of Position

Consumers United for Rail Equity (CURE) hereby replies in opposition to the “Petition of the Association of American Railroads to Institute a Rulemaking Proceeding to Reintroduce Indirect Competition as a Factor Considered in Market Dominance Determinations for Coal Transported to Utility Generation Facilities” (“Petition”) filed herein on November 19, 2012. CURE supports the reply filed jointly by the American Public Power Association, the Edison Electric Institute and the National Rural Electric Cooperative Association.

The Board should not institute a rulemaking proceeding in response to the Petition. Indirect competition in the wholesale electricity market may constrain the price that an electric generator may obtain for the electricity it generates, but there are many factors beyond rail rates for the movement of coal that dictate the price a coal generator charges for its electricity. The AAR has shown no instance in which the wholesale electricity market has constrained the existing rate a railroad charges for moving coal to a captive coal-fired electricity generator. In fact, our members who are owners of such facilities indicate that they have not experienced a reduction of rail rates to captive coal-fired electricity generators that are disadvantaged in the wholesale electricity market. Many report just the opposite experience.

Moreover, the notion that the theory that the AAR sets forth in the petition provides a simple standard for determining whether indirect competition restrains rail rates on coal movements to utilities is undercut by the complexity and length of the very petition itself.

Interest of CURE

CURE is an organization of rail dependent shippers that advocates improved public policy for rail customers. APPA, EEI, NRECA and a number of their member organizations are members of CURE.

The Board Is Not Confronted With Multiple Coal Rate Challenges That Are Found to Lack Railroad Market Dominance

The petition by the AAR in Ex Parte 717 is surprising because the Board is not confronted with numbers of coal rate challenges where the petitioner is not subject to railroad market dominance. In fact, we believe that there is only one coal rate even being challenged before the Board today. As the Board is aware, the costs of its rate challenge process are so daunting that no rail customer with access to competition that constrains its rail rates is likely to bring a case to the Board just because it wants to get a little bit better rate. Simply stated, the AAR proposes to add an enormous amount of complexity to the Board's market dominance determination and its overall rate challenge process to address a problem that does not exist.

Conclusion

The AAR petition addresses a problem that does not exist and sets forth a theory with no showing that the wholesale price of electricity constrains the rates that railroads can charge coal fired generators for moving coal to their facilities. Thus, CURE encourages the Board not to institute a rulemaking as requested by the AAR. Such a rulemaking would waste the resources of the Board and the electric utility community for no good public policy

Respectfully submitted,



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Certificate of Service

I hereby certify that I have served, this 14th day of January 2013, a copy of
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