



Rail Rate Cases at the STB

Conference on Actions Management Can
Take in Controlling Rail Expenses

Commissioner Francis P. Mulvey

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Toronto, Ontario



STB Background

- Three member board, again at full strength
- Dan Elliott became Chairman in August
- Railroad rate and service disputes
- Railroad mergers and acquisitions
- Abandonments and new construction
- Limited jurisdiction over other modes



Rail Rate Cases at the STB

- Much railroad traffic exempt from STB regulation—traffic moving under contracts, commodity exemptions
- Many shippers claimed that rate cases took too long and cost too much to adjudicate
- Many shippers felt they had no access to STB's processes for rate relief
- Congress 20 years ago directed the Board to develop procedures to handle small rate cases



Rail Rate Cases at the STB (1996 to Present)

Case Name:	Commodity:	Guidelines Used:	Date of Decision:	Decision:
West Texas v. BNSF	Coal	SAC	5/3/1996	Rates Unreasonable
McCarty Farms v. BN	Grain	SAC	8/20/1997	Rates Reasonable
APS v. ATSF	Coal	SAC	4/17/1998	Rates Unreasonable
FMC v. UP	Minerals	SAC	5/12/2000	Rates Unreasonable
WPL v. UP	Coal	SAC	5/14/2002	Rates Unreasonable
PPL v. BNSF	Coal	SAC	8/20/2002	Rates Reasonable
TMPA v. BNSF	Coal	SAC	9/27/2004	Rates Unreasonable
Duke v. NS	Coal	SAC	10/20/2004	Rates Reasonable
Duke v. CSXT	Coal	SAC	10/20/2004	Rates Reasonable
Carolina Power v. NS	Coal	SAC	10/20/2004	Rates Reasonable
Xcel v. BNSF	Coal	SAC	12/14/2004	Rates Unreasonable
AEPCO v. BNSF	Coal	SAC	3/15/2005	Rates Reasonable
Otter Tail v. BNSF	Coal	SAC	1/27/2006	Rates Reasonable
KCPL v. UP	Coal	Stipulated R/VC	5/19/2008	Rates Unreasonable
Western Fuels v. BNSF	Coal	SAC	2/18/2009	Rates Unreasonable
AEP Texas v. BNSF	Coal	SAC	5/15/2009	Rates Reasonable
Oklahoma Gas v. UP	Coal	Stipulated R/VC	7/24/2009	Rates Unreasonable
Western Fuels v. BNSF	Coal	SAC	7/27/2009	Rate Prescript. Guidelines
Pending before STB:				
Seminole Electric v. CSX	Coal	SAC		TBD
AEPCO v. BNSF & UP	Coal	SAC		TBD
AEPCO v. UP	Coal	SAC		TBD
U.S. Magnesium v. UP	Chemical	Three-Benchmark		TBD
U.S. Magnesium v. UP	Chemical	Simplified SAC		TBD



New STB Procedures for Handling Rate Cases

In October 2006 STB issued decision that called for a “streamlined” approach to large rate cases

In September 2007 STB issued new guidelines for small rate cases, giving access to the roughly 73 percent of shippers for whom the large case procedures are impractical

Courts have upheld the new procedures



Streamlined Approaches to Handling Large Rate Cases

STB October 2006 Decision called for:

1. Replacing of the percent reduction approach for calculating maximum lawful rates to eliminate gaming
2. Adopting of an "average total cost" method to allocate revenue
3. Shortening the analysis period to 10 years
4. Changing the method of forecasting operating expenses to account for future productivity improvement
5. Eliminating most cost adjustments
6. Adopting new standards to govern when to reopen rate cases



Experience with Streamlined Process for Large Rate Cases

- First large rate cases handled under new guidelines—AEP Texas North, Western Fuels, KCPL
- Major shipper win in Western Fuels
- Major case involving DuPont and CSX resolved through STB facilitated mediation



New Standards for Small Rail Rate Cases

- Allows rail customers to choose the methodology that is most appropriate for consideration of their complaint:
 - A rail customer choosing the simplest approach, the “Three-Benchmark” methodology, is eligible to recover up to \$1 million over a 5-year period
 - A rail customer choosing the “Simplified Stand-Alone Cost” methodology is eligible to recover up to \$5 million over a 5-year period



Experience with Small Rate Case Guidelines

- First cases brought by DuPont
- Six lines of traffic found market dominant; rate relief ordered
- Cases were appealed; court docket held in abeyance while STB considered correction
- Cases have settled via STB mediation
- Two US Magnesium vs. UP chlorine cases currently before STB



Board Activities on the Common Carrier Obligation

- By statute railroads must provide “transportation or service on reasonable request”
- Bedrock principle of transportation, especially rail freight transportation
- But: what does it mean? How absolute is it? What constitutes a reasonable request?



Board Activities on the Common Carrier Obligation

- April 2008 hearing on Common Carrier Obligation led to comments on a variety of issues including:
 - Effect of capacity constraints on the common carrier obligation
 - Economically motivated service restrictions
 - Use of embargoes (Coos Bay case)
- TIH issues dominated proceeding



Board Activities on the Common Carrier Obligation

- At July 2008 hearing on TIH, STB sought comments on: What is a reasonable request? Are there unique costs associated with TIH movements and who should bear them? Are there any solutions to address railroads' concerns about ruinous liability?
- Shippers want assured access; AAR wants policy statement approving rail right to require liability sharing
- Still pending at the Board



Changes in the STB's Practices and Procedures

- Rail Cost of Capital Methodology Revision and Adoption of Capital Asset Pricing Model
- Inclusion of Multi-Stage Discounted Cash Flow Model
- Creation of Rail Energy Transportation Advisory Council
- Reorganization of Consumer Protection and Enforcement and Public Affairs Sections
- Hearing on Uniform Railroad Costing System April 30, 2009—staff examining how to update/improve URCS



US Railroad Restructuring

- STB's revised merger guidelines
- The Board's classification of railroad mergers (major, significant and minor)
- Canadian Pacific's acquisition of the DM&E—first “significant” case
- Canadian National's acquisition of the EJ&E—“minor” transaction but full EIS
- Patriot Corridor



Environmental Reviews

- Responsibility for environmental review of railroad construction and abandonments
- DM&E Powder River Basin expansion project and the IC&E
- Yucca Mountain
- The acquisition of the EJ&E by CN
- Pan Am/NS Patriot Corridor project
- New Alaska Railroad construction



Changes in STB's Responsibilities

- Changes incorporated in Clean Railroads Act
- Requirements to mediate commuter/freight rail access disputes
- Requirements to decide causes of intercity passenger train delays and prescribe remedial actions



Pending Legislation Involving the STB

- House and Senate Committees (Oberstar & Rockefeller) drafting legislation that would
 - Reauthorize the STB
 - Change how the railroad industry is regulated
- Proposed changes to railroad antitrust exemptions would have
 - Given DOJ shared authority over rail mergers and acquisitions
 - Removed railroad immunity from antitrust laws for anti-competitive actions
 - Allowed states and private parties to sue for injunctive relief
 - Might be considered in STB Reauthorization bill
- Rail infrastructure tax credits



Thank you
Any Questions?

