The Forest Products Industry and the Nation’s Railroads

STB Vice Chairman Francis P. Mulvey

American Forest & Paper Association
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The RR’s & the Surface Transportation Board

- Created by ICC Termination Act of 1995
- Born out of Deregulation Movement
- Residual economic regulation of railroads
- Far smaller staff and scope of authority than the ICC
STB Mission

• Exclusive authority to approve of rail mergers

• Review rail rates and practices to ensure they are reasonable and not discriminatory

• Industry entry and exit
  (i) construction of any new rail line or
  (ii) abandonment of existing lines

• Enforcement of common carrier obligation
Rate Case Resolution for Large Shipments: The SAC Process

• SAC approach has been criticized as artificial and overly complex
• SAC approach is very costly and time consuming
• Only feasible for large shippers
• Currently being reviewed in STB Ex Parte No. 657 (Sub-No. 1)
Approaches to Small Rate Cases
Twenty Years Without Resolution

Paper products would be considered small rate cases

• 1985 – ICC adopted and courts affirmed standards for large rate case proceedings but came to no resolution on small rate case standards

• 1987 – ICC’s first approach to small rate cases was struck down by the courts in McCarty Farms
Approaches to Small Rate Cases
Twenty Years Without Resolution

• 1987 – 1995 – ICC considered various small rate case standards, but adopted none

• 1995 – Congress directed the STB to establish simplified guidelines for
  
  "those cases in which a full stand alone cost presentation is too costly, given the value of the case"

• 1996 – STB adopted “Simplified Guidelines” pursuant to ICCTA directive but they have never been used
Approaches to Small Rate Cases
Twenty Years Without Resolution

• 1998 – Court challenge to Simplified Guidelines dismissed as unripe in AAR v. STB
• 2002 – STB sought comments on arbitration as an approach to small rate cases; no consensus emerged
• 2003 – STB held a general hearing on small rate cases
Approaches to Small Rate Cases Twenty Years Without Resolution

- 2004 – STB held a general hearing on small rate cases
- 2005 – BP v. NS small rate case settled via confidential non-binding mediation using Board staff, but no resolution on small rate case standards to date
- Present – Potential small rate case from state of North Dakota
Approaches to Small Rate Cases

What Do the Parties Want?

Railroads
- No need for change
- Would accept mandatory, non-binding arbitration
- Support staff-led technical/discovery conferences
- Bright-line test at $300,000 max

Shippers
- Bright-line test at $7.2 million with flexibility
- Oppose sub-class of “truly small shippers”
Approaches to Small Rate Cases
What Do the Parties Want?

Shippers Continued…

• Case management by ALJ
• Expedited and limited discovery
• Access to waybill sample
• Expedited decisions and appeals
• STB small shipper advocacy office
Pursuant to 49 CFR § 1039.11 the following commodities are exempt from Board jurisdiction

- Lumber or wood products
- Pulp, paper or allied products
  - With exceptions – Pulp or pulp mill products, Newsprint, Printing paper, etc.)
- Paper waste or scrap
- Intermodal at 49 CFR §1090
Forest Products Industry Concerns

• Most common concerns
  – Substantial rate increases
  – Car supply & car auction programs
  – Service issues
  – Fuel Surcharge

• Informal complaints from FP Industry
  – 2005 – 13
  – YTD 2006 – 5
STB Rail Consumer Assistance Program

- Facilitates information resolution to disputes with RR’s
- Brings issues to RR’s rapidly
- Solves problems without litigation
- Promotes rail service improvements
- 121 complaints handled in 2005, over 580 handled since program began in 2000
Rail Consumer Assistance Program Contact Information

- Toll-free telephone 866-254-1792
- Written statement of the problem
  - Email: railconsumer@stb.dot.gov
  - FAX: 202-565-9011
- Web form at