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U.S. Surface Transportation Board

The STB & the Nation's Railroads
Industrial Energy Consumers of America
Washington, DC, October 11, 2006

The Railroads and the Surface Transportation Board

- Created by the ICC Termination Act of 1995
- Born out of the deregulation movement
- Residual economic regulation of the railroads
- Far smaller staff and scope of authority



STB Mission

- Exclusive authority to approve of rail mergers
- Review rail rates and practices to ensure they are reasonable and not discriminatory
- Approval, including environmental review, of
 1. Construction of any new rail line or
 2. Abandonment of existing lines
- Motor carrier collective rate making activities
- Rates for non-contiguous domestic water trade
- Rates for pipelines not carrying energy products

STB Responsibilities over Rates and Service

- Oversee and monitor railroad practices nationally
- Enforce the RR's common carrier obligation
- Ensure that rates charged captive shippers are reasonable
- Assist railroads in earning adequate revenues
- Calculate the railroads' cost of capital

Railroads & Coal Transportation Issues

- Rail rates and rate cases
- Powder River Basin maintenance
- Fall Peak 2006 service



Coal Rate Cases

- Board currently has 3 pending coal rate cases on hold
- Revisiting our Large Rate Case processes in Ex Parte No. 657
- Regulatory responsibility to adjudicate cases on record before the agency
- Railroads feel commercially reasonable rates should govern

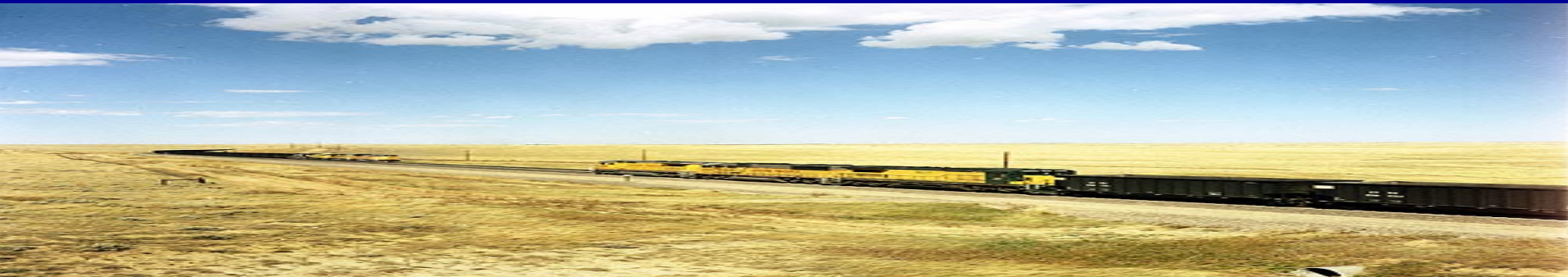


Coal Rate Case Resolution

- Determination of market dominance
- Stand Alone Cost (SAC) Test – *Fact-based approach rooted in economic reasoning and approved by the courts*
- No substitute for preparing a strong case with solid evidence
- Strive for a balance between the railroad's need to earn adequate returns and shippers need for fair and reasonable rates

Alternative Approaches

- SAC approach has been criticized as artificial and overly complex
- SAC approach is very costly and time consuming
- Only feasible for large shipments
- Is it time to look for alternative approaches?
 - Recent Board decisions suggest openness to proposed rulemaking on SAC changes
 - Held hearing on SAC process



The Powder River Basin

- Highest density rail lines in the world
- Utilities concerned about BNSF/UP ability to meet demand
- Recent BNSF/UP announcement of \$100 Million Joint Line expansion
- Focus of great deal of Board attention due to key role PRB coal plays in economy and regulatory schedule
- Agency made second trip to PRB earlier this year

PRB – STB Action Items

- Numerous meetings with utilities and other coal shippers to hear concerns about PRB service
- STB's Office of Compliance and Enforcement hosts weekly conference calls with BNSF and UP to address PRB and Joint Line issues
- Approved DM&E project to add a 3rd carrier to the PRB

Joint Line/PRB Status

- BNSF loaded an average of 808,900 tons of coal per day system wide in September, a monthly record
- Year-to-date through October 1, 2006, BNSF has loaded a total daily average of 49.3 trains in the PRB, up from 44.7 trains loaded through the same period in 2005
- During September of 2006, the UP loaded 34.3 trains, up from 32.9 for September of 2005
- Joint Line maintenance is on schedule, according to the carriers
- Not all transportation problems are the railroads – some lay with mines also

Joint Line Maintenance

- Railroads must determine causes and best way to treat fugitive coal dust
- Railroads, mines and utilities must all be part of the solution to prevent future coal dust related line failures
- STB will continue to focus on PRB as a core agency responsibility



Recent Board Initiatives

- Fuel surcharge proposed rulemaking
- Small rate cases
- Issues in large (coal) rate cases
- Paper barriers
- Rate of return calculation



Fuel Surcharges

- Proposal regarding fuel surcharge practices issued for public comment on August 3
 - RR's fuel surcharge computation should be more closely linked to its increased fuel costs attributable to that movement
 - Railroads would be prohibited from "double dipping"
 - Railroads would be required to use a single, uniform index, e.g. EIA's "U.S. No. 2 Diesel Retail Sales by All Sellers"
 - Each Class I would submit a monthly report to the agency
- Comments were due October 2

Small Rate Cases

- July 28 Issued NPR on simplified standards for rate cases
- Specifically STB proposes:
 1. Creation of a simplified SAC procedure to use in medium-size rate disputes
 2. Retaining the current "Three-Benchmark" method of the existing simplified guidelines for small rate disputes
 3. Establish eligibility presumptions based on the maximum value of the case to distinguish between large, medium, and small rail rate disputes

Large Rate Cases NPR on “Major Issues in Rail Rate Cases”

STB is addressing

1. Alternatives to the percent reduction method to determine maximum reasonable rates
2. Allocation of revenue from cross-over traffic
3. Changing how we account for productivity gains
4. Movement-specific adjustments to the Board's Uniform Railroad Costing System
5. Time frame for the SAC analyses and corresponding rate prescriptions
6. Standards for reopening and vacating a prior SAC decision

Paper Barriers & Rate of Return Calculation

- July 27 Hearing on Paper Barriers
- Rate of Return Calculation assessment



Transportation Supply

- Public Private Provision
 - Private: Rail, Pipelines
 - Public: Roads, Airports, Port facilities
- *Historic Pattern: Supply preceded and shaped demand*
- *Today: Respond to crises*



The Developing Rail Capacity Crisis

Shrinking workforce and infrastructure partially offset by productivity improvement but... continuous increase in traffic begins to absorb “excess capacity”

- Network becomes more vulnerable to stochastic events
- A “perfect storm” or the rail version of global warming

Carrier Responses to Recent Capacity Problem

- More railcars and locomotives purchased and leased
- Accelerated hiring and training of crews
- Some infrastructure expansion efforts
- Price rationing of available capacity
- RR's choosing who they will serve and the common carrier obligation



Long-term Rail Capacity Constraint Factors

- Demand for freight rail projected to grow by 60-70% over next two decades
- RR's inability to earn cost of capital
- Pressure from Wall Street to reduce capital costs and improve ROI
- Long-term contracts limit RR pricing flexibility
- RR's tend to bid L/T contract rates down to L/R marginal costs

Approaches to the Transportation Congestion Problem

- Build more physical infrastructure
- Adopt technological innovations
 - Can RR's do this and maintain profitability?
- Better utilize existing facilities
- Promote shipper/traveler behavioral changes
- Public/Private Partnerships

All have potential but all have limits

What can shippers do?

- Support infrastructure investment spending
- Work with carriers to alleviate bottlenecks and chokepoints
- Work with the STB's Office of Compliance and Enforcement when problems arise
- Continue dialog with other shippers & shipper groups, e.g. RSTAC
- Communicate traffic demand forecast to carriers

STB Rail Consumer Assistance Program

- Facilitates informal resolution of disputes with RR's
- Brings issues to RR's attention rapidly
- Solves problems without litigation
- Promotes rail service improvements
- 122 complaints handled in 2005, over 590 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
<http://www.stb.dot.gov/railconsumer.nsf/feedback?OpenForm>

Thank you. Questions?