

Honorable Roger Nober
Opening Statement
Hearing on Rail Rate Challenges in Small Cases
(Rail Rate Challenges in Small Cases, STB Ex Parte No. 646)
STB Hearing Room July 21, 2004

Today we are holding a hearing on one of the most longstanding and significant matters before the Board – how the Board should determine the reasonableness of the rates railroads charge customers in small cases.

In 1995, the Congress told the Board to complete its nearly 10-year proceeding on this subject, directing it "to establish a simplified and expedited method for determining the reasonableness of challenged rail rates in those cases in which a full stand alone cost presentation is too costly, given the value of the case", and to do so by January 1, 1997.

The Board met that mandate and has had a standard and procedures in place since December 1996. As we all know, however, no shipper has ever filed such a case. Meanwhile, the guidelines have been challenged in Court.

When I became Chairman in November of 2002, I committed to move expeditiously to understand and address the problems with our small rate case procedures. On April 22, 2003, we held a hearing on the matter. But soon after that hearing, I became the only Member of the Board. It was my policy that as a single Member, I would decide only the matters that had deadlines and needed resolution for the industry to function, but would defer decisions on significant policy matters – such as the subject of today's hearing – until a full Board was in place.

Two months ago, the Senate confirmed my two fellow Commissioners, and we are now restarting our work on this subject.

I can state with certainty that there is no subject that the Board has spent more time on in the nearly two years since I became Chairman. And before we begin the hearing today, I would like to take a moment to outline what has occurred during that time, and what to expect going forward.

In the past two years, we have worked hard to better understand the situation. In that time, we have met formally and informally with numerous interested groups, testified before and heard from Congress on the subject, and had our staff visit with other agencies to learn how they deal with smaller rate matters.

I have personally visited all of the U.S. based Class I carriers, as well as the facilities of many shippers of the type represented here today, including power plants, plastic and chemical producers, automobile and construction equipment manufacturers, large and small grain elevators and ports. I have attended broad-based customer forums and spoken to shipping groups of all types.

I have tried hard to understand the concerns of both railroads and their customers about these small rate cases, and have thought long and hard about all the information that has been gathered and the comments that have been heard. It is a very difficult issue.

On the one hand, I understand the core concerns of shippers, who have spoken about the unworkable nature of our current small rate case standards, while at the same time being precluded by our Interstate Commerce laws from resolving these matters in any other forum. These concerns are particularly compelling at a time of declining manufacturing employment.

On the other hand, I understand the needs of railroads to attain revenue adequacy, and the critical importance of the revenue from small shipments to these carriers. These concerns have become all the more important considering that capacity constraints which arise from insufficient capital investment in our rail system are affecting rail service and economic growth, a problem which I hear about daily.

In light of these important overall concerns, there are a few principles that I think must guide our actions on this subject.

First, as I have said many times in speeches and testimony before Congress, the status quo is unacceptable and has to be changed. By statute, the Board is the only venue for resolution of disputes over the reasonableness of rates for rail transportation. But in practice, only a small number of shippers have access to the agency, and we must address this.

Second, any change must be legal and permissible under the strictures of the Interstate Commerce Act. It therefore must balance the requirement that shippers' rates be reasonable with the need to assist railroads to attain revenue adequacy, and we all know that no Class I railroad is currently revenue adequate. At the same time, we must not exacerbate the problems railroads face in meeting growing demands.

Third, I will keep an open mind and fully explore the issues. That my mind is wide open after a year of careful consideration is a testament to how difficult this subject is.

Finally, in moving forward we must not let the perfect be the enemy of the good, meaning that steps to improve the situation are more important than total reform, or no action at all.

As for the Board, we will work together to develop a proposal. Although we do not have any specific timeframes for action, once we issue a proposal, we will provide time for parties to comment on the proposal, and hold a hearing on that proposal before taking final action, since it is more important to act correctly than quickly. Today's hearing is the first step in that process.

I want to thank my fellow Commissioners for their interest in this subject and for their cooperation in scheduling this hearing. I also want to thank all of the witnesses who will testify today for their thoughtful presentations and look forward to their comments.