

Ex Parte 705 - Opening Statement - Commissioner Francis P. Mulvey

This hearing has been a long time coming. It will address issues that are at the core of the Board's mission: How to ensure that an industry that is characterized by a certain degree of monopoly and duopoly is sufficiently competitive – either via market forces or regulation – to promote reasonable rates and service; and how to ensure that this capital intensive industry, with most of that capital coming from private sources rather than the government, has access to capital markets.

Over the years, the Board, and the ICC before it, have used many different tools to address competitive issues, with varying degrees of success. Pre-Staggers, the ICC tried to balance the interests of the competing modes and to promote the inherent advancement of each. Post-Staggers and deregulation, the focus has shifted more toward reliance on market forces and less regulatory intervention. The ICC adopted our current competitive access standards - requiring a showing of competitive abuse - in the mid-1980s. The result: railroads and shippers have spent 25 years arguing about it.

In the late 1990s, the Board decided the Bottleneck cases, finding that a shipper cannot ordinarily require a carrier to short-haul itself by quoting a rate to

less than the full origin to destination movement if the carrier is capable of providing origin to destination transportation. In 1998, the Board invited shippers and carriers to discuss competitive access issues with the assistance of a Board Administrative Law Judge. The result: no progress was made in crafting a new competitive access standard that shippers believed they could use and the railroads believed they could continue to prosper under.

Despite these setbacks, the Board has not given up on trying to address the fundamental competitive issues affecting shippers and carriers. Today, we will try again with fresh perspectives and open minds. The filings in this proceeding suggest that railroads and shippers are as far apart on these issues as ever.

However, I believe that the Board has a responsibility to examine its competitive access regulations, especially given the sea change in the railroad industry since the current policies were first adopted. My hope is that the parties today will put some of their entrenched rhetoric aside to explore mutually agreeable solutions to these thorny issues, rather than promoting only winner/loser scenarios. My hope is also that the Board will keep moving after this hearing, taking the necessary hard look at the options and then finding the right solutions for today's industry and competitive environment.

This country depends on a healthy rail industry to move the massive amount of freight that ends up in our stores, our farms, our homes. We also depend on the shippers of those goods not paying inflated transportation rates and or enduring poor service, two distinct possibilities in non-competitive markets. When I meet with shippers, they often complain of a take-it or leave-it attitude by the railroads, a problem that can impact everything from rates, to routes, to car-supply and even demurrage. When I meet with railroads, they are concerned about having the revenue to invest in their extraordinarily capital intensive networks and to make the business decisions that are right for their companies. Neither side has a monopoly on being right.

Finally, I want to note that I value thoughtful pleadings from all sources, whether it is a 3-sentence letter from a small company that ships 10 carloads per year or a 25-page submission from a Fortune 50 company accompanied by 6 expert verified statements. Many of the pleadings we received on both sides of these issues appeared to be standardized, identical letters, in volumes I have not seen in my 7 years at the Board. Although I am pleased about the great interest in the proceeding, I hope that dueling form letters will not become a precedent for every major proceeding going forward. The nation's trees deserve better.

Thank you to all who are participating these next two days and sharing their ideas with us. I look forward to this important discussion.