

Potential Impacts of the STB's Busy 2016 Agenda on Coal Shippers

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OVERVIEW

- STB Reauthorization Act of 2015 Implementation
- Key Pending Proceedings
- CP-NS Merger Activity
- Potential Effect on Coal Rates and Service

STB Reauthorization Act of 2015 - Rates

- Rail rate case processes
 - Stand Alone Cost case schedule in Act adopted 3/9/16
 - Meetings with stakeholders and internal analyses of processes
 - One year to adopt rules establishing “a voluntary and binding arbitration process to resolve rail rate and practice complaints”
- Rate reasonableness standards
 - Ongoing rate regulation study started in 2014 has been folded into Reauthorization Act reporting requirement
 - Original revenue adequacy provision (49 U.S.C. §10704) amended to add “for the infrastructure and investment needed to meet the present and future demand for rail services” to the items the STB’s rules are take into account

STB Reauthorization Act of 2015 - Service

- New Investigative Authority – 49 U.S.C §11701(a)
 - STB may now initiate investigations on its own initiative (previously, only upon complaint)
 - Directly related to 2013-14 service issues and STB's response (hearings; data gathering)
 - Limitations/Parameters
 - Act-set procedures and time limits
 - Only “issues of national or regional significance”
 - Separation of staff functions

STB Reauthorization Act of 2015 - Other

- STB is now independent agency outside of DOT
- Authorized Board size has been increased from three to five members
 - Three or more: knowledge in fields of transportation, transp. regulation, or economic regulation
 - Two or more: professional or business experience in private sector
 - Timing of expansion is an issue
- Authority of majority of members to discuss ongoing proceedings

Key Pending Proceedings- Rates

- EP 431, *Review of the General Purpose Costing System (URCS)*
- EP 661 (Sub-No.2), *Rail Fuel Surcharges (Safe Harbor)*
- EP 665 (Sub-No.1), *Rail Transportation of Grain, Rate Regulation Review*
- EP 664 (Sub- No. 2), *Petition of WCTL to Institute Rulemaking to Abolish the use of the Multi-Stage Discounted Cash Flow Model in Determining the Railroad's Cost of Capital*
- EP 722, *Railroad Revenue Adequacy*
- NOR 42142, *Consumers Energy Co. v. CSX Transp., Inc.*
- Ongoing study of the STB's railroad rate regulation practices

Key Pending Proceedings- Service

- EP 724 (Sub-No. 4), *U.S. Rail Service Issues – Performance Data Reporting*
- EP 711, *Petition for Rulemaking to Establish Competitive Switching Rules*

Possible Timeline for Actions in 2016

◎ April

- EP 431 (Sub – No. 4) – URCS changes
- EP 724 (Sub – No. 4) – Service Data Reporting

◎ June

- EP 711 – Competitive switching proposal
- Start proceeding to examine how to expedite STB rate cases

◎ August

- EP 665 (Sub – No.1) – Rate regulations as applied to grain

Possible Timeline for STB Action

- September
 - EP 661 (Sub – No.2) – Fuel surcharges (HDF safe harbor)
- October
 - EP 664 (Sub- No. 2) – Multi-Stage cash flow methodology
 - EP 722 – Revenue Adequacy test and rate methodology
- December
 - Final rules on arbitration of rates and practice disputes
 - Final rules on implementing new STB investigative authority
 - Final report produced from ongoing rate regulation study

Potential CP-NS Merger

- CP made several proposals to merge with NS, all of which were rejected
- CP asked the STB to rule expeditiously on two aspects of a hypothetical “voting trust”
- Coal shippers affected because CP-NS likely would have triggered consolidation of RR industry into two or three major railroads
- Would have overtaken pending proceedings and might have resulted in changes to existing law
 - Competitive switching and access, service commitments, rate reasonableness/processes
 - Bottleneck rate rules

2001 *Major Rail Consolidation Procedures*

- Based on STB's conclusion in 2001 that next major merger would trigger consolidation into two transcon RRs
- Require a greater showing of "public interest" by applicants
- Service Assurance Plans - to "ensure adequate service and to provide improved service"
- Emphasis on "enhancing competition"
 - Bottleneck rates and routings
 - Access by third parties over merged railroad's tracks
 - Elimination of "Paper Barriers"
- Great uncertainty: The service assurances and competitive enhancements that would come out of a merger and their application industrywide

What to expect?

- Short term (remainder of 2016)
 - URCS changes and service metric data final rules
 - HDF Safe Harbor decision
 - No changes to existing rate rule standards
 - Numerous opportunities to weigh in on critical policy issues and makeup of Board
 - Continued transparency by STB
- Longer term (2017 and beyond)
 - Expansion of STB to 5 members
 - Development of STB's use of investigative authority
 - More clarity on Revenue Adequacy rules and policies
 - Changes to rate rule standards and processes
 - Promotion of arbitration to resolve rate and service disputes
 - Revised access/switching rules

The Wild Card

- A Major Railroad Merger Proposal

Thank You – Questions?



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