



## ***STB Update***

**Daniel M. Jaffe**

**NATIONAL COAL TRANSPORTATION ASSOCIATION**

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**Slover & Loftus LLP**

## PTC Extension and Railroad Shutdown?

- Railroads have pressured Congress to extend the PTC implementation deadline of December 31, 2015.
- Pending legislation would grant three additional years to comply with the mandate (H.R. 22).
- If the legislation is not enacted, railroads are threatening that they may be forced to halt some or all of their rail services without the extension.
- STB Chairman Elliott has told Congress that the carriers may be excused from their common carrier obligation in this circumstance.

## Transportation Research Board Report

- TRB conducted a study of Post-Staggers Act rail performance; ability to handle projected future demand; effectiveness of public policy balancing railroad and shipper needs; future role of the STB.
- TRB held hearings in 2014 and issued its report in June 2015
- TRB report sharply criticized the current regulatory regime on many fronts.

## Transportation Research Board Report

- URCS is fundamentally flawed and, as a result, so is the rate relief mechanism the STB uses
- Allow reciprocal switching as a method of rate relief
- Revenue adequacy determination is outdated. Instead, the STB should perform periodic reviews of the industry as whole and related competitive conditions
- Transfer merger authority to traditional authorities and use customary antitrust principles

## Rail Fuel Surcharges – EP 662 (Sub-No. 2)

### *Rail Fuel Surcharges (Safe Harbor), Ex Parte 662 (Sub-No. 2)*

- Background
  - EP 661, *Rail Fuel Surcharges*, STB bans percent-of-price fuel surcharges on regulated traffic as of April 25, 2007; states that if any shipper wants further relief it can file an unreasonable practice complaint
  - 2 cases brought, *Dairyland* (settled 2008) and *Cargill v. BNSF* (relief denied 2013)
- STB-initiated proceeding to consider whether the “safe harbor” that the STB established in 2007 for railroad percentage-based fuel surcharges tied to highway diesel fuel (HDF) should be removed or modified
- Outgrowth of *Cargill* where Cargill showed that the surcharge produces substantial over recovery, but STB was unwilling to order any relief because BNSF had followed the STB’s rules
- Opening comments filed Aug. 4, 2014, Reply comments filed Oct. 15, 2014

## Rail Fuel Surcharges – EP 662 (Sub-No. 2)

- Shippers' position
  - Surcharges should accurately reflect changes in costs, nothing more
  - Safe harbor produces over recovery by overstating the spread between the railroads' actual price and the strike price
  - The formula overstates fuel consumption by ignoring improved efficiency
  - Low strike prices lead to double recovery (base rate reflects a higher fuel costs)
  - STB should eliminate safe harbor, require carriers to use changes in actual fuel prices and actual consumption, eliminate double recoveries, and certify and demonstrate accuracy in surcharges
- Recent Developments
  - Falling fuel prices
  - On December 16, BNSF announced it would end fuel surcharge for carload traffic in February, going with all-in rate (AG shippers then complain about the “largest freight rate increases in wheat freight rates in recent history”)
  - Upcoming increases in base rates to reflect decreasing surcharge revenues?

# Railroad Revenue Adequacy

## *Railroad Revenue Adequacy, Ex Parte No. 722*

- Background
  - STB reconsidering its standard for measuring railroad revenue adequacy
  - STB also considering implementation for railroads of Revenue Adequacy Constraint under *Coal Rate Guidelines*
- Why It Matters
  - Rebalance rights of railroads and captive shippers
  - Sharper scrutiny of captive coal rates assessed by revenue adequate railroads
  - Correct false impression that railroads are not earning enough to be sustainable for the long-term

## Railroads' Historical Revenue Adequacy, Using STB Cost of Capital

| Year | Cost of Capital | BNSF          | UP            | NS            | CSX    |
|------|-----------------|---------------|---------------|---------------|--------|
| 2004 | 10.10%          | 5.84%         | 4.54%         | <b>11.64%</b> | 4.43%  |
| 2005 | 12.20%          | 10.32%        | 6.34%         | <b>13.21%</b> | 6.23%  |
| 2006 | 9.94%           | <b>11.43%</b> | 8.21%         | <b>14.36%</b> | 8.15%  |
| 2007 | 11.33%          | 9.97%         | 8.90%         | <b>13.55%</b> | 7.61%  |
| 2008 | 11.75%          | 10.51%        | 10.46%        | <b>13.75%</b> | 9.34%  |
| 2009 | 10.43%          | 8.67%         | 8.62%         | 7.69%         | 7.30%  |
| 2010 | 11.03%          | 10.28%        | <b>11.54%</b> | 10.96%        | 10.85% |
| 2011 | 11.57%          | <b>12.39%</b> | <b>13.11%</b> | <b>12.87%</b> | 11.54% |
| 2012 | 11.12%          | <b>13.47%</b> | <b>14.69%</b> | <b>11.48%</b> | 10.81% |
| 2013 | 11.32%          | <b>14.01%</b> | <b>15.39%</b> | <b>12.07%</b> | 10.00% |
| 2014 | 10.65%          | <b>12.88%</b> | <b>17.35%</b> | <b>11.69%</b> | 10.18% |



## Railroad Revenue Adequacy

- Shippers' position:
  - Railroads are strong financially
  - Additional factors should be considered in measuring health
  - Implementation of the Revenue Adequacy Constraint is overdue
- Railroads' position:
  - Railroads remain far from achieving long-term revenue adequacy
  - Financial improvement has not come at expense of captive shippers
  - Measure revenue adequacy using replacement costs
  - No separate Revenue Adequacy Constraint should be developed
  - The STB should instead rely on stand-alone (replacement) cost as the "gold standard"
- STB Hearings held in July 2015

## Cost of Capital

*Petition of the Western Coal Traffic League to Institute a Rulemaking Proceeding to Abolish the Use of the Multi-Stage Discounted Cash Flow Model in Determining the Railroad Industry's Cost of Equity Capital, EP 664 (Sub-No. 2)*

- Filed in 2013
- The COC is a critical input for calculating variable costs, the associated jurisdictional threshold, and stand-alone costs.
- MSDCF-CAPM Hybrid overstates the COE
- In turn, overstates COC
- Hearings held in July 2015

## CAPM v. MSDCF COE

| Year    | CAPM COE | MSDCF COE | Difference |
|---------|----------|-----------|------------|
| 2008    | 10.39%   | 15.95%    | 5.56%      |
| 2009    | 11.39%   | 13.34%    | 1.95%      |
| 2010    | 11.84%   | 14.13%    | 2.29%      |
| 2011    | 11.31%   | 15.83%    | 4.52%      |
| 2012    | 10.27%   | 16.53%    | 6.26%      |
| Average | 11.04%   | 15.16%    | 4.12%      |

MSDCF increased the COE by a substantial amount, an average of 206 basis points during 2008-2012

## Maximum Reasonable Rate Proceedings

- Several coal (SAC) rate cases have been adjudicated/filed:
  - *WFA v. BNSF* (No. 42088)(2009, settled/dismissed 2015)
  - *AEPCO v. BNSF & UP* (No. 42113) (STB served Nov. 22, 2011) – Rate Relief at JT Level
  - *Consumers Energy v. CSXT* (No. 42142) (filed Jan. 2015) (includes Rev. Adeq. Count)
- Recently – chemical rate cases:
  - *TPI v. CSXT* (No. 42121) – Pending
  - *M&G Polymers v. CSXT* (No. 42123) (Settled)
  - *DuPont v. NS* (No. 42125) – Rate Found Reasonable
  - *SunBelt v. NS & UP* (No. 42130) – Rate Found Reasonable
  - *Canexus v. BNSF Chemical* (Three-Benchmark) (No. 42132) (Settled)
- SAC chemical rate case issues – enormous complexity/costs
  - Multiple commodities
  - Multiple Origins/Destinations
  - Massive stand alone railroad systems
  - Massive burdens/expenses to litigate

## Terminal Switching – EP 711

*Petition for Rulemaking to Adopt Revised Competitive Switching Rules, EP 711; Op. (filed Mar. 1, 2013), Reply (filed May 30, 2013)*

- Offshoot of NITL petition raised in STB Ex Parte No. 705, addressing terminal access
- STB asks for empirical information/study on shipper rate impacts, railroad industry impacts, and access pricing
- Requires detailed waybill sample analysis; matter in initial “study” stages
- NITL generally argues that proposal will have a modest impact on competition (affect only 4% of all carloads), but will result in meaningful competitive benefits to qualifying shippers, with a limited RR revenue impacts
- Railroads generally argue that proposal will have significant impact and will unreasonably disrupt rail service/operations
- STB holds hearings in March 2014

## Questions?

**Daniel M. Jaffe**  
**Slover & Loftus LLP**  
**1224 17<sup>th</sup> Street N.W.**  
**Washington, D.C. 20036**

**(202) 347-7170**