



Railroad Legal Developments

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Overview

- Surface Transportation Board Reauthorization
- Terminal Switching Rulemaking

STB Reauthorization

- Pub. L. 114-110, Surface Transportation Board Reauthorization Act of 2015
- Signed December 18, 2015
- First Reauthorization of the STB in its 20-year history

Key Points of Reauthorization

- STB becomes independent
- Expands STB from 3 to 5 Members
- Sunshine Act relief
- Provides STB with investigatory authority
- Minor adjustments to rate case timelines
- New rulemaking on arbitration procedures
- New wrinkles for revenue adequacy?

New STB Members

- Opportunity for two new appointments
- One Republican, one Democrat
- Private sector experience for two positions
- Transportation or economic experience
- White House often runs silent

Terminal Switching – EP 711

- Existing law: Board can compel switching when “necessary to provide competitive rail service”
- Practical application: In 30 years, the Board has never issued an order – used a “competitive abuse” standard
- Petition filed on July 7, 2011 by NITL
- Aim of the Petition:
 - Require Switching within 30 miles of a working interchange

Conditions

- Facility must be served by a single, Class I railroad
- Carrier must have market dominance over the move
- Only available where there is, or can be, a working interchange between two or more railroads
- Not available if carrier can show it is infeasible, unsafe, or would hamper its ability to service existing shippers

STB Reacts

- STB institutes proceeding on July 25, 2012
- 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
- STB holds hearings in March 2014

Positions of the Stakeholders

- 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 limited revenue impacts
- Railroads generally argue that proposal will have significant impact and will unreasonably disrupt rail service/operations

Panel Debate

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