

Riding the Rails

UTILITIES RAISE CONCERNS

BY KEN SILVERSTEIN

■ ■ ■ **IT'S FULL STEAM AHEAD FOR SOME**

■ ■ ■ in the utility world. They are going after rail carriers, saying that those enterprises are exploiting their market power and causing captive shippers to pay inflated prices for their transportation services – costs that are eventually passed through to consumers.

Utility associations and coal operators say that railroads' exemptions from federal antitrust laws must be deleted. While they have strong support, those interest groups face an uphill fight. In fact, rail transportation is gaining appeal from those who say its energy and environmental advantages are the wave of the future.

Nevertheless, critical questions are being raised and hinge on the issue of economic fairness. Before deregulation of the rail sector in 1980, roughly 40 railroads existed. But now, only four Class 1 companies operate, providing 90 percent of all rail service. Isolated power systems such as Lafayette Utilities' in Boyce, La. are hurting as a result of this predicament. The utility, for instance, relies on Union Pacific for the last 20 miles of track leading to its plant. That stranglehold forces it to pay exorbitant fees, some say.

Some officials are taking notice. Currently, bills are circulating through both the U.S. House and Senate to eliminate some market advantages that rails hold on service in rural areas. At the state level, 17 state attorneys general have asked Congress

to re-think parts of the federal law that pertain to such "monopolistic" powers. The Government Accountability Office, furthermore, recently concluded that the rail industry was insufficiently competitive. That has resulted in an increasing number of rail customers that now pay three times more than those that have other transportation options.

"The railroads cannot be deregulated and then not be expected to compete," said Bob



Szabo, executive director of Consumers United for Rail Equity. "We all agree they have to make a profit. But you cannot exploit a captive shipper."

The rail industry, however, says that current regulations are working. The sector has evolved from one that was in disarray before deregulation to one that is now investing in the future to accommodate a huge influx of rail traffic. Building such infrastructure is expensive, particularly in rural regions. But the rail industry says that it is committed and is re-investing an average of \$6 billion a year. American commerce is the benefactor, it adds, noting that coal shipments are up nearly 5 percent from a year ago.

Szabo, though, draws a clear distinction between the rates where there are competitive services and those where the rail carriers have monopolies. Three-quarters of the industry is competitive, he notes, although the remaining quarter has largely been ignored. He acknowledges that in competitive markets the prices have come down. In essence, those shipping consumer goods into population

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NEW TEXAS TRANSMISSION

A subsidiary of Babcock & Brown plans to create a regulated utility business to build, own and operate new transmission lines in Texas.

The company is developing 2,000 megawatts of wind generation in Texas in addition to facilities it now operates. The company made the filing in Public Utility Commission of Texas Competitive Renewable Energy Zone proceedings.



centers can use rail or trucks and if they choose the former, they can choose among carriers.

But the remaining 25 percent of shippers lack that opportunity. A coal mine, for example, is at the mercy of the rail system. The end result, says Szabo, is that the average 2007 rate that customers paid to move coal by one of the major carriers was \$21 to \$23 a ton. That compared with more than \$9 a ton to transport coal for those companies that have choices. Some utilities have therefore been forced to rely on foreign coal imports, which according to Hill and Associates, are expected to grow from the current rate of 31 million metric tons to 45 million metric tons by 2010.

THE BARRIERS

Under the current system, the railroads are given an exemption from certain rules of competition by the U.S. Surface Transportation Board. In areas of the country where the infrastructure is inadequate, the board is given the authority to regulate rates. The bills

now winding their way through the House and Senate committee process would ensure a workable rate challenge process for those rail customers without access to transportation competition and empower the transportation board to be pro-active when it has knowledge of unreasonable railroad practices.

Specifically, proponents of the legislation want to correct what they say are two inequities. The first is to eliminate restrictive contracts whereby the smaller rail companies are obligated to use the lines of the four major carriers. Those competitive enterprises can avoid making lease payments to the big carriers if they contract with them to use their networks for their business. The second applies to cases in which two lines intersect. There, the rail company providing long-haul service will not give shippers an option to use the alternate rail line.

In a letter to lawmakers who expressed concern over those barriers to competition, the U.S. Department of Justice says that the immediate oversight authority, the Surface Transportation Board, has accepted those practices. Therefore, it may not be a violation of anti-trust laws that ensure adequate competition and prevent price gouging.

“The private interests of the railroad industry – but not the public interests of the nation – continue to be protected by the Surface Transportation Board, which is unwilling to provide adequate oversight of the railroad industry or to restrain that industry’s unbridled exercise of market power over captive customers,” says Glenn English, head of the National Rural Electric Cooperative Association whose members use coal to fire 80 percent of their electric generation.

The railroads collectively argue that re-regulation would not only prevent them from making enough to adequately maintain their existing systems, but would also put a stop to the future investment necessary to expand the rail system. Rail lines are pricey, they say, requiring them to earn fair returns to recoup their capital cost. Projections are that rail service is expected grow 70 percent by 2020 and require billions of dollars to achieve that. Union Pacific and Burlington Northern Santa Fe, for example, say that they are investing in new infrastructure in Wyoming’s Powder River Basin. The result is a record number of coal shipments from the region.

“In situations where railroads have market dominance – situations in which there is an absence of effective competition from other rail carriers or modes of transportation – railroads must establish rates that are reasonable,” says Paul Moates, a lawyer representing the Association of American

Railroads, who notes that average rail rates have declined by 55 percent since 1980. "The Surface Transportation Board will award reparations and prescribe appropriate rates if a railroad's rates are determined to be unreasonably high."

INADEQUATE NETWORKS

For their part, coal shippers acknowledge that the competitive rail system has resulted in increased service for consumer goods. But they are quick to add that the network remains constrained for some industrial customers including those transporting coal products. They go on to say that the only reason rates have come down for certain shippers is that fuel charges have been shifted from rail carriers to customers.

Captive shippers say that the threshold by which current law allows them rate relief is too high to qualify. The standard by which cases are judged is the price that such customers would have to pay if they built their own lines and moved their own goods. As a result, they say that they have been unable to win a rate case since 2001. "The system is so rigged we can't win a case," says Szabo, with the coal shippers' group.

Certainly, all parties recognize that the system is imperfect. While the rail carriers say they are plowing profits into new infrastructure, the coal shippers are dubious. They say that rail shortages and the subsequent market power that such a dynamic creates go straight to their bottom lines. The subsequent stronghold means that coal developers are unable to reach their full potential.

Take the Laramie River Station in Wyoming. In the spring of 2005, two derailments on the tracks coming from the Powder River Basin occurred.

Those accidents reduced rail deliveries of coal by 80–85 percent.

The Arkansas Electric Cooperative that relies on the system there has turned to alternate forms of energy production that have raised its recent cost by \$100 million.

"This is the third time in the last 12 months that we have had to place burn restrictions on our coal-fired power plants due to an inability on the part of the railroads to satisfy their contractual



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or common carrier obligations," wrote Gary Voigt, chair of the cooperative, in a letter to regulators. The problem, he adds, remains today.

Any industry that gets a pass from the laws governing competition deserves scrutiny. Utilities and coal shippers are concerned about spiking rail rates and the certain effect that such volatility will have on consumer electricity prices. But they face a daunting task when it comes to removing the antitrust exemptions given to the transport sector. Similar measures have faltered in the past. The reality now is that lawmakers generally view the rail industry as integral to the American economy.

NewsFlash

CHILE DAM FOES

Environmental groups are attempting to block construction of a major hydro project in Chile, according to a report by IPS/GIN.

The groups said that the proposed five dams, which would generate 2,750 megawatts of power, would flood a large wilderness area in southern Chile. The project is backed by Endesa, of Spain, and a Chilean firm.



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