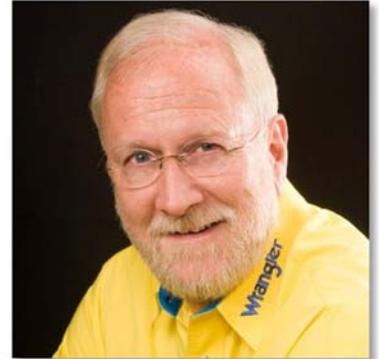


STB HEARING REPORT

From: Terry Whiteside

Date: March 24, 2016



SURFACE TRANSPORTATION BOARD SEEKS COMMENT ON PROPOSED REVOCATION OF COMMODITY EXEMPTIONS



Surface Transportation Board

The Surface Transportation Board today announced that it is seeking public comment on its proposal to revoke existing class exemptions from railroad-transportation regulations for certain commodities. This decision comes as part of the Board's ongoing examination of its current regulations in light of the many changes in the rail industry over recent decades. In the nearly quarter-century since the Board adopted these exemptions, this is the first decision the Board has issued proposing complete revocation of one or more commodity exemptions.

RAIL CUSTOMER COALITION INCLUDING THE ALLIANCE FOR RAIL COMPETITION MEET WITH STB ON MARCH 22ND

A full room of shipper representatives met separately with Chairman Elliott, Vice Chairman Deb Miller and Commissioner Ann Begemen on March 22, 2016, to talk about the upcoming year of STB activities and to present several shipper issues.

The group specifically talked about the need for Rail customer viewpoints to be included in the required report on rate case methodologies. Specifically, the RCC provided useful data and insight into the overly burdensome, costly, lengthy and complex rate case process. One of the principal functions of the STB is to ensure that rates charged to customers remain reasonable when no other service options are available. The lack of a realistic and well-functioning rate review process has contributed to an environment where rail rate increases have nearly tripled the rate of inflation for decades.

The RCC urged the Board to complete work on key proceedings, including a rulemaking to provide shippers with access to competitive switching, grain rate regulatory methodology, reporting, arbitration, economic regulatory methodology and the Board's thinking and approach on more pro-active regulatory oversight.. The legislation calls on the STB to provide regular reporting and updates on pending agency actions. There are many dockets at the STB that have been sitting for many years with no final action taken by the Board.

The Board should prioritize adherence to the new rate review timeline requirements, which are an important component of the legislation. Rail shippers expect these new timelines will provide for a more useful rate review process.

The STB should appropriately utilize its authority to initiate investigations into railroad practices that impact rail shippers on a national or regional scale, and order remedies based on the result of these investigations. The Rail Customer Coalition would support the establishment of an

independent office at the STB tasked with investigations of railroad industry practices. The STB is required to issue rules related to its new investigatory authority within one year, and the RCC looks forward to engaging with the STB as needed on these new rules.

The Board should move quickly to promulgate regulations for the expansion of existing STB arbitration capabilities.

Meeting Report

(Courtesy of Rick Meyers, Meyers and Associates, Washington DC – ARC's Washington Representatives)

Although the commissioners now can officially meet together with a group that did not happen in the March 22nd meetings. However, they did have their first "Section 5" meeting, as it is called, on data reporting recently and another is scheduled tomorrow (3-23-16) on arbitration. By the end of the meetings it became apparent why there continues to be hesitance to meet together even though the commissioners sound as though they want to. The reason appears to be the STB attorneys and the Sunshine Act. The STB inside attorneys are concerned that any question posed by a member could be interpreted to be a "give-away" to a member's position on an issue. Or, even a statement made during one of the meetings could potentially do the same. There continues to be a good deal of frustration by the shippers over this issue.

Chairman Elliott said their main report as required by Senate bill S808 will be issued on time which will be April 1. Their second report on arbitration will be issued in a "month or 2".

The Chairman also mentioned that Ex Parte 711 – Competitive Switching report should be out in a month or 2. He said twice that he "still needs one more vote" before it can be released.

Competitive Switching was discussed quite a bit by several members of the coalition led by ACC (Cal Dooley). Another topic mentioned several times was in regard to rate case methodologies and how it must be made a lot simpler with significant less cost and timelier with shippers feeling confident they have real potential to prevail. The consensus is that a simple tweaking will not work. Major change is required.

The Chairman talked more about their internal budget issues and how they need to hire about six more people which would bring them up to about 145 total staff, but even that is very difficult given the limited amount of funds they have. He also mentioned that their lease is up and if they have to move they don't have the money built into their budget to afford to move. Not sure what's going to happen. He also talked about the separation between DOT and the STB is causing problems and increasing workloads on the existing staff at the STB and he had indicated in our January, 2016 meeting that the separation between DOT and STB will be a lengthy process.

He was asked about timing for the new commissioners to come on board. He doesn't see that happening until after the elections this fall and that it takes 6 months to get a new commissioner cleared and on the job.

Commissioner Begemen basically echoed the same thoughts. Ann Begemen with her SD farm roots has been very open to listening to agricultural shipper concerns. She is also sympathetic to critique by shippers of how slow the STB processes cases and how the STB operates. She is in her "hold-over" period as her term has expired, December 31, 2015.

Commissioner Miller prove to be very interesting. She has in the past and in this meeting came across as someone who really wants to think outside the box and looks forward to seeing real and workable change as a result of S808. She spoke quite a bit about the problems and frustrations they are experiencing in the separation from DOT. She suggests that the STB may need to hire outside consultants to help them

think through the big picture to better anticipate what the separation really means and how it would affect the STB.

She expressed great interest and support about the commissioners now being able to meet together in a public forum, but expressed concern about advice from their attorneys about creating an “informal vote” in such a setting. She said that creates a very awkward environment in such meetings.

She requested input from groups like RCC and ARC, etc. regarding input for alternatives for SAC cases. She mentioned a consultant was hired some time back to come up with suggestions but that report has not yet come out.

She said she has been floating the idea of using some kind of model market rate that could help forecast a rate for a specific region (rather than use the current 180 % model). She thinks such a model should include labor costs from around the country and not just track rates from truck or barge. Several comments from the group were made that there is no true market based rate due to the fact there is no competition. She doesn't see how the current board can come up with the solution due to their small size and staff and hopes that outside groups will take on the task of coming up with ideas and suggestions and share them with the Board.