

Railing Against Captive Shippers

By Ken Silverstein
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Some utilities are going full steam ahead. They are going after rail carriers, saying that those enterprises are exploiting their market power and causing captive shippers to pay inflated prices.

As such, 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. 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 paying the price. 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 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 General 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 transportation options.

"The railroads cannot be deregulated and then not be expected to compete," says Bob Szabo, executive director of Consumers United for Rail Equity. "We all agree they have to make 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.

The railroads collectively argue that re-regulation would come back to haunt consumers. 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 by 70 percent by 2020 and require billions of dollars to achieve that. Union Pacific and Burlington Northern, Santé 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.

Deserved Scrutiny

Utility advocate Szabo challenges those assertions. He acknowledges that 75 percent of the industry is competitive but emphasizes that the remaining 25 percent has largely been ignored. In competitive markets, he says that prices have come down. In essence, those shipping consumer goods into population centers can use rail or trucks and if they choose the former, they can pick among carriers.

But the remaining 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 and \$23 a ton. That compared to more than \$9 a ton to transport coal for those companies that have choices.

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 has the authority to regulate rates. The bills now winding their way through the House and Senate committee process would ensure a 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 where 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.

That is what irks utility interests. "The private interests of the railroad industry -- but not the public interests of the nation -- continue to be protected by the Surface Transportation Board that is unwilling to provide adequate oversight of the railroad industry or to restrain their 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.

Any industry that gets a pass from the laws governing competition deserves scrutiny. Utilities and coal shippers are rightly concerned about spiking rail rates and the subsequent result on consumer electricity prices. But they face a daunting task when it comes to removing the anti-trust 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 futuristic and integral to the American economy.