



Rail Antitrust Gains Force

By Ari Natter
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It may not be moving at the speed of a freight train, but legislation seeking to create stronger antitrust standards for railroads appears to be picking up steam. The latest boost comes for Rep. Tammy Baldwin, D-Wis., who urged members of the House Judiciary Committee to approve legislation she introduced in March 2007 that aims to stem "spiking rail rates and unreliable service."

"Over the years while the railroads have profited - record profits, in fact - the effect on shippers with little or no competition along their routes has been striking, and largely ignored by the (Surface Transportation Board)," Baldwin told the committee Feb. 25.

An energy cooperative in her home state, Dairyland Power, has seen its average rail rates skyrocket, and it costs the company \$75 million to ship \$30 million worth of coal, Baldwin testified.

"Dairyland and other captive utilities have no choice but to raise their electric rates," Baldwin told the committee. "So it is consumers - our constituents - who bear the burden of this unwarranted antitrust exemption manipulated by the rail system."

Her bill, the Railroad Antitrust Enforcement Act, is a companion to legislation approved last September by the Senate Judiciary Committee.

Backers say that both bills would repeal railroad antitrust exemptions granted to railroads when the flailing industry was deregulated in 1980.

If approved, the legislation would permit the Department of Justice and the Federal Trade Commission to review mergers under antitrust law and allow state attorneys general and others to sue for triple damages and to issue court orders to stop anticompetitive conduct.

The railroad industry vehemently opposes the legislation, which they have billed "re-regulation," and contends railroads already are subject to antitrust laws as well as "extensive regulation" by the STB.

"This legislation is a solution looking for a problem," said G. Paul Moates, testifying on behalf of the Association of American Railroads. "A few statutory antitrust exemptions apply to railroads, but they are very limited and narrowly applied."

Not surprisingly, most shippers - more than 80 percent, according to a recent Bear Stearns survey - support the legislation.

One is Massachusetts-based cement shipper Holcim, which moves 4.5 million tons of cement a year by rail, to the tune of \$60 million last year.

"Inconsistent and unreliable service from the Class I railroads is one of the most serious problems Holcim faces in its efforts to bring an affordable and essential product to market," said Susan M. Diehl, the company's senior vice president of logistics and supply chain management.

She suggested Congress expand the Surface Transportation Board's "authority to promote transparency around rail service" and require the STB to submit annual reports regarding rail service complaints and what was done to resolve them.

"The STB has not fostered competition and improved service during its tenure and has not responded well to the needs of shippers," Diehl said.

She testified the board ordered them to pursue a more costly and environmentally damaging route "without legal basis" for a common carrier rail line Holcim seeks to construct for a facility in South Carolina.

The STB, which was not invited to testify, declined to comment.

The Senate's version of the legislation also got a boost recently.

Seven senators recently penned a letter to Senate Majority Leader Harry Reid, D-Nev., asking him to bring the bill to the floor. This follows an earlier letter from 21 state attorneys general throwing support behind the legislation as well.

And progress is being made on a potential roadblock posed by the Senate Commerce, Science and Transportation Committee, whose members were apparently angered when the legislation was approved without their oversight, according to Bob Szabo.

Szabo, the executive director of Consumers United for Rail Equity, a lobbying group assembled by rail shippers, said the two committees have worked out their differences, though a spokeswoman for the Senate Commerce Committee said their view hasn't changed.

"The Commerce Committee has a bill they want to get on the floor as well," Szabo said, referring to the Senate's Rail Safety Bill. "When two committees have bills they both want to pass, they have something they want to talk about."

A spokesman for Sen. Herb Kohl, D-Wis., the Senate bill's sponsor, said they hope to bring the legislation to the floor sometime this year.