

**SURFACE TRANSPORTATION BOARD ANNOUNCES SECOND FAVORABLE APPEALS COURT RULING IN  
"BOTTLENECK" CASES**

Surface Transportation Board (Board) Chairman Linda J. Morgan announced today that the United States Court of Appeals for the D.C. Circuit has issued a decision affirming the Board's requirement that railroads must file separately challengeable rates for "bottleneck" segments when shippers obtain contracts for service over the "non-bottleneck" segments of through routes. The D.C. Circuit's opinion was issued in response to a challenge by the railroad industry. Recently, the Eighth Circuit Court of Appeals, in response to shipper challenges, affirmed the Board's decision not to require separately challengeable local rates for bottleneck segments absent a contract over the non-bottleneck segment. The two court decisions, taken together, thoroughly uphold the Board's decisions issued in 1996 in the "Bottleneck" rail rate cases.

In a rail bottleneck case, more than one railroad may be involved in providing service from an origin to a destination, but only one--the "bottleneck" carrier--can serve either the origin or the destination. In its Bottleneck decisions, the Board addressed the desire of certain shippers to break up through movements into pieces so that they could obtain a rate prescription for the small, bottleneck portion of the movement, and combine it with a rate set by head-to-head rail competition for the larger, non-bottleneck segment. The Board found that a shipper can obtain separate review of a bottleneck rate segment--under what the D.C. Circuit in its decision called "a significant exception to" the "longstanding policy that a shipper ordinarily is only entitled to challenge the reasonableness of rates on a through basis"--if the shipper has obtained a rail contract for the non-bottleneck segment of the movement. The Board's contract exception was based on the Congressional action in the Staggers Rail Act of 1980 providing that the agency has no authority to regulate the reasonableness of contract rates. Reviewing a through rate that includes a contract segment, the Board found, would indirectly constitute review of the contract rate itself.

Shippers appealed the Board's rulings in the Eighth Circuit, arguing that the Board should have provided for bottleneck rate review as a matter of course. The court rejected the shippers' position, concluding that "[t]he Board . . . properly reconciled the competing policies of the Act when it deferred to carrier discretion in setting routes and rates and held that carriers are not [routinely] required to provide separately challengeable bottleneck rates." The railroad industry also appealed the Board's rulings in the Eighth Circuit, arguing that they contravened the requirement that rates be challenged on an origin-to-destination basis, and that, even if a shipper has a contract for the non-bottleneck service, bottleneck rate relief would contravene the rate and routing discretion that the statute gives the carriers. The Eighth Circuit found that the railroad appeal was premature, because none of the parties in the cases before it had obtained such contracts.

The case before the D.C. Circuit arose when the Board required Union Pacific Railroad Company (UP) to file a tariff setting forth a separately challengeable bottleneck rate that could be used by FMC Corporation (FMC) in connection with contracts FMC had entered into with CSX Transportation, Inc. (CSXT) over non-bottleneck segments of certain UP/CSXT through routes. After thoroughly reviewing the Board's order directing UP to file a rate, as well as the decisions in the Bottleneck cases, the D.C. Circuit affirmed the Board's actions. The court recognized the tension in the various statutory directives that the Board implements, and specifically between the contract provisions of the law and the longstanding through-rate review practices of the agency. The court found that the Board acted reasonably in permitting bottleneck rate review under the circumstances of the case, concluding that the Board provided a "well-reasoned explanation of the conflicting mandates of" the statute, and that it "resolved the tension between these mandates in a reasonable fashion."

In summarizing its view of the case, the D.C. Circuit stated:

As our colleagues in the Eighth Circuit noted in affirming the Bottleneck cases' non-contract holdings, the Board is required to implement statutes that express competing and occasionally conflicting policy objectives. . . . We think that the

Board adequately reconciled the particular statutory tensions raised by the Bottleneck cases; confronting the unenviable task of balancing the rail carriers' rate and route prerogatives and the shippers' contract rights, the Board produced what is, on balance, a reasonable policy. Cf. Bottleneck II at 14 (Morgan, Chairman, commenting) ("Rather than choosing between the [] two diametrically opposed positions [of the railroads and shippers]--a result which the statute did not envision--our decisions in these bottleneck cases have concluded that Congress intended that these goals be implemented in a balanced and complementary way."). We deny the [railroads'] petition.

The Board's decisions in the Bottleneck cases were issued on December 31, 1996, and April 30, 1997, in *Central Power & Light Company v. Southern Pacific Transportation Company*, STB Docket No. 41242, and consolidated cases. The Board's decision in the "FMC" case was issued on December 16, 1997, in *FMC Wyoming Corp. V. Union Pacific R.R.*, STB Docket No. 33467. The decisions are available on the Board's web site at [www.stb.dot.gov](http://www.stb.dot.gov). The court's decision was issued on February 15, 2000, in *Union Pacific Railroad Company v. Surface Transportation Board*, No. 98-1058 (D.C. Cir.), and is available on the court's web site at <http://www.cadc.uscourts.gov>.

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