FOR RELEASE
02/11/99 (Thursday)
No. 99-4

Contact: Dennis Watson
(202) 565-1596
FIRS 1 (800) 877-8339
www.stb.gov

SURFACE TRANSPORTATION BOARD ANNOUNCES FAVORABLE APPEALS COURT RULING AFFIRMING "BOTTLENECK" DECISIONS

Surface Transportation Board (Board) Chairman Linda J. Morgan announced today that the United States Court of Appeals for the Eighth Circuit has issued a decision affirming the Board's decisions issued in 1996 in the "Bottleneck" rail rate cases. The court agreed with the Board that "Nothing in the Act explicitly requires carriers to provide separate local rates for" the bottleneck portion of through service, and that requiring rail carriers to provide such rates would undermine "the national railroad policy of deferring to carrier discretion in setting routes and rates."

A rail bottleneck arises when 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. The Bottleneck cases involved attempts by certain utility companies to require railroads to establish local rates for the bottleneck so that they could separately challenge as unreasonable the rates for only the short bottleneck segments of rail carrier through service, rather than the origin-to-destination rates in their entirety. The utilities wanted to break up the through rates because their total charges would in many cases be lower if they could obtain a governmentally set rate prescription for a small portion of the movement, and a rate set by head-to-head rail competition for the bulk of the movement, than they would be with a rate prescription for the entire movement. Because the cases raised issues of broad importance, the Board provided for extensive public input, and held a lengthy oral argument.

In its decisions, the Board found that under the law, a bottleneck carrier generally cannot refuse to accept from other carriers traffic originating at sources that the bottleneck carrier does not serve, even if the bottleneck carrier can carry the identical commodity in its own single-line service from another source. As to traffic originating at sources that the bottleneck carrier does serve, the Board held that a shipper can force an alternative routing, in particular a routing over the line of the non-bottleneck carrier, if it shows, under the Board's "competitive access" rules, that there will be sufficient benefits associated with the new routing. And the Board provided that, as to all multi-carrier railroad services, the reasonableness of a bottleneck carrier's rate will be viewed separately whenever the shipper obtains a transportation contract for the non-bottleneck segment. The Board did not, however, find that shippers could, in all circumstances, direct a bottleneck carrier that could provide "end-to-end" authority to "short-haul" itself by routing traffic over the lines of the non-bottleneck carrier; similarly, it found that shippers could not, in the absence of a rail contract for the non-bottleneck segment, obtain separate review of a bottleneck rate segment of a through movement for which the railroad publishes a through rate.

The court affirmed the Board's rulings. It held that the statute currently on the books does not permit shippers to dictate rail rates and routings as a matter of course. It pointed out that, before Congress passed the Staggers Rail Act of 1980, the Board's predecessor, the Interstate Commerce Commission, had broad authority over carrier rates and routings, but that "[t]his legislative approach resulted in an industry chronically plagued by capital shortfalls and service inefficiencies." It found that the Staggers Act, which fundamentally changed this approach, "has been largely successful," and "has led to more efficient routes, increased profits, better service, and an enhanced ability to attract capital investment." Noting that the Staggers Act generally gives carriers the initial discretion as to how they will route their traffic and set their rates, and generally protects carriers from having to give up traffic to another carrier when they can handle the traffic in through service themselves, the court found that "[n]othing in the Act explicitly requires carriers to provide separate local rates for bottleneck services."

Although the Board's decisions were premised entirely on these legal grounds, the court also discussed the practical and policy implications of the Bottleneck decisions. Recognizing that carriers need to earn adequate revenues, and are expected to price their traffic "differentially" by charging more for their captive traffic than for traffic that is competitive, the court found that allowing bottleneck rate challenges in all cases could have a serious effect on railroads' financial health. It noted that the rate reasonableness provisions of the statute would never allow carriers to "exploit bottleneck segments [beyond] the extent needed to achieve revenue adequacy," and that the Bottleneck decisions themselves provided shippers with several benefits: separate bottleneck rate review for shippers that first obtain contracts over the

non-bottleneck segments; fully adequate through-rate review for shippers that do not obtain such contracts; and routing relief under the competitive access rules. Concluding that "the Act protects both shippers and carriers [by guaranteeing] that shippers will receive rail service at reasonable rates, and [allowing] carriers to provide such service in a manner that achieves revenue adequacy," it found 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 required to provide separately challengeable bottleneck rates."

The railroads had also sought review of the Board's determination in the Bottleneck decisions that a shipper could separately challenge a bottleneck rate simply by first obtaining a contract over the non-bottleneck segment. The court found that the railroads' challenge was premature, because none of the parties in these cases had obtained such contracts. Thus, although the Board has, in subsequent cases, allowed bottleneck rate challenges by shippers that obtained contracts over non-bottleneck routing segments, the court dismissed the railroads' petition for review.

The Board's decisions were issued on December 31, 1996, and April 30, 1997, in *Central Power & Light Company v. Southern Pacific Transportation Company*, Docket No. 41242, and consolidated cases. The decisions are available on the Board's web site at **www.stb.dot.gov**. The court's decision was issued on February 10, 1999, in *MidAmerican Energy Company, et al. v. Surface Transportation Board*, Nos. 97-1081, et al. (8th Cir.), and is available on the court's web site at **http://ls.wustl.edu/8th.Cir**.

####