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TRANSPORTATION UPDATE

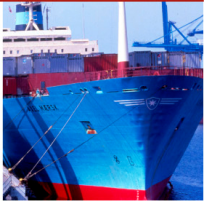
STB to Reexamine Its Rail Competition Policies

The Surface Transportation Board (STB) will hold a public hearing on May 18 and 19, 2009, to examine issues related to access and competition in the rail industry. In a Notice of Public Hearing issued on April 14, 2009, in STB Ex Parte No. 688, *Policy Alternatives to Increase Competition in the Railroad Industry*, the STB solicits comments from interested parties on both “bottleneck” and “competitive access” issues. Persons wishing to speak at the hearing must file a notice of intent to participate as well as written testimony by May 11, and written submissions by those who do not want to appear in person are also due by May 11.

Many bulk commodity shippers are captive to a single railroad by virtue of a “bottleneck” segment of track that serves the origin and/or destination points. In certain cases, although a competing rail carrier is only a short distance away, the shipper is not able to access that carrier. Over the years, shippers have sought to circumvent such bottlenecks through a variety of regulatory remedies that either would grant them access to a nearby competing rail carrier through trackage rights or reciprocal switching arrangements, or if that was not possible, would entitle them to obtain a rate from the monopoly carrier for just the bottleneck segment of the route, which could be combined with a rate from a competing carrier serving the non-bottleneck portion of the movement. However, through a series of ICC and STB decisions in the 1980s and 1990s, shippers have been unsuccessful in increasing rail competition through such regulatory remedies based on the agency’s interpretation of the applicable legal standards.

The STB’s notice acknowledges the passage of time since it last conducted a comprehensive analysis of these issues and that its policies should be reexamined in light of changes in the rail industry and in transportation markets. Through this hearing, the STB asks interested parties to comment on current issues stemming from its bottleneck and competitive access policies, the continuing propriety of those policies, the effects those policies have had on rail rates and service and the possible implications of changing those policies. In order to guide participants, the STB has posed a series of questions in 10 categories that encompass factual, economic, policy and legal issues.

This notice is the first sign of willingness by the STB to reconsider its competition policies. The hearings will provide shippers with an opportunity to influence the scope and direction of any changes to the STB’s competition policies that may be adopted in the future. Substantial participation by the shipping community also would send a clear signal to both the STB and Congress that changes to rail competition policy are a high priority.



FOR MORE INFORMATION

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