

“Policy and Politics in Transportation”

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Overview of Presentation

- the interplay between regulatory policy and politics in rail transportation
- in particular, sale of Conrail to Norfolk Southern and CSX;
- the adoption of new rail merger rules; and
- current challenges of constrained capacity

Why This Topic?

- a different perspective
- always important to keep in mind that transportation policy is not set in a vacuum
- also important to be reminded of the various and often conflicting influences on transportation
- a perspective based on my own experience in the legislative, regulatory and private sector arenas

What to Keep in Mind Throughout

- freight rail transportation a good sector study of conflicting interests – social policy, economic policy
- still viewed as a public utility in many quarters – even though regulatory reform
- only noticed when there is a problem – even though key to economy
- the public perception must be managed – politics can dictate policy
- a regulatory body has an important role in ensuring well-thought out policy in the face of strong political forces

The Freight Rail Authority of the STB

- the statutory authority of the agency – involvement only where the marketplace is imperfect
- specifically rates and service
- focus on adequate revenues
- history of excess capacity
- balance of carrier and shipper interests

Challenges of STB Implementation

- sounds easy, but is not
- rail an infrastructure-intensive network industry
- different marketplace treatment of customers
- merger activity in recent years and service problems
- more recently constrained capacity and rate changes
- the STB has been tested

The Role of an Independent Regulatory Agency

- arm of Congress
- implementation of the law
- on-the-record decision making – not a political body
- however, should try to take care of problems so that Congress does not need to
- common-sense government – promote private sector resolution whenever possible

Backdrop for Presentation Examples

- implementation of the law – seemingly right policy
- still concern among stakeholders
- how the agency responds within its authority to deal with the concerns
- the challenge of preserving the appropriate policy in the face of strong political forces

The Sale of Conrail to Norfolk Southern and CSX

- history of Conrail
- expectation that would not stay as it was
- mergers in the West as catalyst
- original proposal by CSX
- opposition from Norfolk Southern

Path to Split of Conrail

- private sector bidding war that was costly
- a proposal that would have been hard to deny outright and would have had the agency doing the restructuring
- role of labor and the shippers – differing perspectives
- interview with the Washington Post about the western mergers
- a new proposal based on private sector negotiations

Comments on Ultimate Result

- private sector produces a business proposal
- stakeholders line up for or against
- the law might dictate a certain process
- but common-sense government is about using authority in a sensible way
- the result here

The New Rail Merger Rules

- mergers in the West and then in the East
- service problems in implementation
- BNSF/CN merger proposal
- concerns raised about another major merger

Path to New Rules

- four days of STB hearings
- clear that concern about next round of mergers
- 15-month moratorium in order to promulgate new rules
- focus on changed circumstances – no excess capacity, would be last round
- new rules – clear benefits, enhanced competition, service quality
- no major mergers since – focus on service

Comments on Ultimate Result

- one outcome if existing law implemented as in other circumstances
- however, concerns that might have resulted in legislative action
- instead, agency handled the matter aware of the existing environment
- improved policy as a result

The Constrained Capacity Challenge

- history of excess freight rail capacity
- regulatory framework based on excess capacity
- commercial interactions between carriers and shippers based on excess capacity
- no more excess capacity, and growth as far as the eye can see

The Situation Today

- contract renegotiations and rates at more compensatory levels, and service not where it should be
- more infrastructure needed but will take time and money
- political noise increasing
- the notion of railroads as a public utility ever present

What to Do?

- education – but environment of concern
- need for more infrastructure – but “not in my backyard” and “not with my money”
- different type of governmental involvement – investment tax credit, public/private partnerships
- STB efforts to make rail rate case review process more user-friendly – but maybe not enough
- reregulatory legislation more of a danger than before
- stay tuned

Other Examples of Policy and Politics

- today's presentation has focused on a transaction, a set of new rules, and a changing condition
- the handling of the service crisis on the UP system after the UP/SP merger – government should not act to take away from one and give to another
- the challenge of hazardous materials transportation – must be carried but how to manage risk
- all examples of how transportation policy is set and implemented in an environment in which the political forces are ever present

Summary Comments

- freight rail transportation has a clear political component
- in setting policy, must be attentive to the political component
- while freight railroads were deregulated, still viewed as a public utility
- to ensure that the marketplace continues to dictate wherever possible, need to implement existing policy with an eye on that risk
- the capacity constraints of today will challenge that

Questions or Discussions?

- on my comments, or on any other transportation issue of interest