



Recent Developments at the STB and the Movement of TIH and Hazmat Materials

Chlorine Institute—Fall Meeting
Commissioner Francis P. Mulvey

October 5, 2009

Charlotte, North Carolina



STB Background

- Successor to the ICC
- Three member board—non-partisan
- Railroad rate and service disputes
- Railroad mergers and acquisitions
- Abandonments and new construction
- Limited jurisdiction over other modes



Rail Rate Cases at the STB

- Much railroad traffic exempt from STB regulation—traffic moving under contracts, commodity exemptions
- Many shippers claimed that rate cases took too long and cost too much to adjudicate
- Many shippers felt they had no access to STB's processes for rate relief
- Congress directed the Board to develop procedures to handle small rate cases



New STB Procedures for Handling Rate Cases

In October 2006, STB issued decision that called for a “streamlined” approach to large rate cases

In September 2007, STB issued new guidelines for small rate cases, giving access to the roughly 73 percent of shippers for whom the large case procedures are impractical

Courts have upheld the new procedures



Experience with Streamlined Process for Large Rate Cases

- First large rate cases handled under new guidelines—AEP North Texas, Western Fuels, KCPL
- Major shipper win in Western Fuels
- Major case involving DuPont and CSX resolved through STB facilitated mediation



New Standards for Small Rail Rate Cases

- Allows rail customers to choose the methodology that is most appropriate for consideration of their complaint:
 - A rail customer choosing the simplest approach, the “Three-Benchmark” methodology, is eligible to recover up to \$1 million over a 5-year period
 - A rail customer choosing the “Simplified Stand-Alone Cost” methodology is eligible to recover up to \$5 million over a 5-year period



Experience with Small Rate Case Guidelines

- First cases brought by DuPont
- Six lines of traffic found market dominant; rate relief ordered
- Cases were appealed; court docket held in abeyance while STB considered correction
- Cases have settled via STB mediation
- Two US Magnesium vs. UP chlorine cases currently before STB



Board Activities on the Common Carrier Obligation

- By statute railroads must provide “transportation or service on reasonable request”
- Bedrock principle of transportation, especially rail freight transportation
- But: what does it mean? How absolute is it? What constitutes a reasonable request?



Board Activities on the Common Carrier Obligation

- April 2008 hearing on Common Carrier Obligation led to comments on a variety of issues including:
 - Effect of capacity constraints on the common carrier obligation
 - Economically motivated service restrictions
 - Use of embargoes (Coos Bay case)
- High participation at hearing by chemical industry, including the Chlorine Institute
- TIH issues dominated proceeding



Board Activities on the Common Carrier Obligation

- At July 2008 hearing on TIH, STB sought comments on: What is a reasonable request? Are there unique costs associated with TIH movements and who should bear them? Are there any solutions to address railroads' concerns about ruinous liability?
- Shippers want assured access; AAR wants policy statement approving rail right to require liability sharing
- Still pending at the Board



Recent STB Activities on Hazmat Transportation

- March 2005—Declaratory order on Washington, DC government ban on hazmat movements in the city
- January 2009--ANPR sought comments on updating STB cost system to address costs of transporting hazmats
- February 2009--Decision on preemption of local restrictions on transloading ethanol in Alexandria, VA
- June 2009--Declaratory order requiring UP to quote a rate for moving chlorine through high threat areas



Informal STB Activities Involving TIH/Hazmat Issues

- STB staff closely monitor informal complaints involving TIH movements
- STB's Rail Consumer Protection Program handled 25 complaints in 2008 involving chemicals including TIH materials
- So far in 2009 staff have handled 27 complaints involving chemicals including TIH materials



Pending Legislation Involving the STB

- House and Senate Committees (Oberstar & Rockefeller) drafting legislation that would
 - Reauthorize the STB
 - Change how the railroad industry is regulated
- Proposed changes to railroad antitrust exemptions would have
 - Given DOJ shared authority over rail mergers and acquisitions
 - Removed railroad immunity from antitrust laws for anti-competitive actions
 - Allowed states and private parties to sue for injunctive relief
 - Might be considered in STB Reauthorization bill
- Rail infrastructure tax credits



State of the Railroad Industry

- After several years of constrained capacity, railroads again have excess capacity
- Traffic is down for virtually every commodity hauled by rail
- Overall rail traffic flat this year
- Nearly one-half million railcars idled as are thousands of locomotives
- Capital expansion plans are on hold and thousands of workers have been furloughed



State of the Railroad Industry

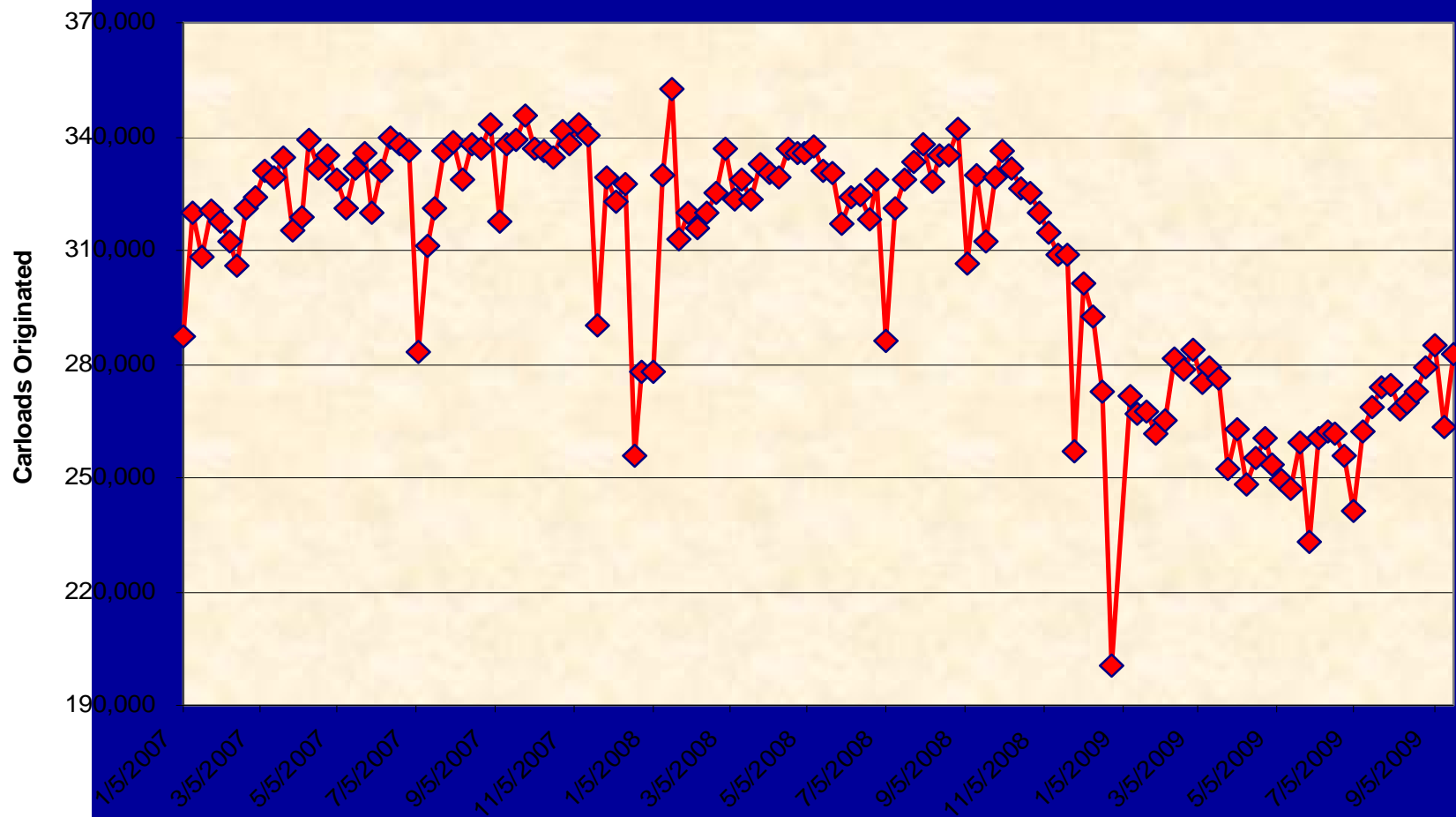
- When will railroads recover?
- Rail carloadings have generally been considered a leading economic indicator
- Some signs that the decline in traffic has bottomed out.
- Rail's long run capital needs might be less than forecast earlier
- New study for STB by Christensen Associates takes into account economic downturn and the trends in composition of rail traffic



Class Rail I Carloads 1/07- Present

Total Traffic

U.S. Class I Railroads 2007- Present





Thank you
Any Questions?

