



Railroad Market Power and the Role of the Surface Transportation Board

Robert G. Szabo¹
Van Ness Feldman
Washington, D.C.

Synopsis

- § 10.01. **Introduction** 261
- § 10.02. **Overview** 262
- § 10.03. **Evolution of the Law Governing the Relationship Between Railroads and Shippers** 263
 - [1] — Historical Development of Rail Rate Regulation. 263
 - [2] — Coal Rate Guidelines. 265
- § 10.04. **Shipper Rate Protections Under the Staggers Rail Act** 271
 - [1] — The Market Dominance Test. 271
 - [2] — Stand-Alone Costs. 272
- § 10.05. **Current Debate Between Railroads and Shippers** 273
 - [1] — S. 1429, the Railroad Shipper Protection Act of 1997. 273
 - [2] — Senate Commerce, Science and Transportation Committee. 274
 - [3] — House Transportation and Infrastructure Committee. 274
 - [4] — Surface Transportation Board. 275
- § 10.06. **Conclusion** 275

§ 10.01. Introduction.

Observers have noted that over the past century, a symbiotic relationship has developed between railroads and producers and consumers of coal.² Today, however, that symbiosis is at risk. Coal rail shippers face a number of obstacles in their attempt to obtain reasonable rates and reliable service from rail carriers. Chief among those are dwindling competitive options and a cumbersome administrative process that hinders the determination

¹ Robert G. Szabo is a member of Van Ness Feldman, Attorneys at Law, and is executive director and counsel for Consumers United for Rail Equity (C.U.R.E.). C.U.R.E. is a group of rail shippers that are “captive” to railroads for all or part of their rail movements. Mr. Szabo gratefully acknowledges the valuable assistance of Stephen M. Spina, associate of Van Ness Feldman, and Andrew B. Art, law clerk at Van Ness Feldman.

² See, e.g., James W. Freeman, “The Ties That Bind: Railroads, Coal, Utilities, the ICC, and the Public Interest,” 14 *Transp. L.J.* 1, 1 (1985).

of what transportation rates are appropriate for captive rail shippers to pay to railroads in the absence of competitive alternatives.

For its part, the railroad industry has experienced dramatic changes since the passage of the Staggers Rail Act of 1980. In 1980, there were more than 40 Class I rail carriers, whereas today, a mere five carriers transport 90 percent of the nation's rail traffic. Increasingly, therefore, the law governing the relationship between railroads and coal shippers is being examined, both for how well it protects market competition and whether it delivers reasonable and differentially priced rates for rail transportation of coal.

§ 10.02. Overview.

The coal industry uses several different means of transportation to handle the flow of coal, including the slurry pipeline, conveyor belts, trucks, barges/ships, and railroads. A majority of coal shipments, in fact, use a combination of these methods.

There is only one coal slurry pipeline, the Black Mesa line, stretching 273 miles from northern Arizona to southern Nevada, carrying approximately 4.5 million tons of coal annually. Conveyors, although used mainly to carry coal from mines to adjacent or nearby power plants, can span substantial distances. Like trucks, which are an important part of intermodal coal shipments, conveyors do not carry the bulk of transported coal. Although coal is the second-largest freight commodity moved by barges on the Nation's inland waterways, water transport is a distant second to railroads as a method of coal transportation.³

Roughly 60 percent of all coal shipped to domestic customers travels by rail.⁴ This dominance over coal transportation has proved extremely lucrative for the railroads. In fact, coal shipment accounts for 40 percent of railroad freight tonnage, and roughly 21 percent of railroad freight revenues.⁵ This overwhelming emphasis on rail transport of coal has had a profound impact on the rail industry, but even more importantly, on the mining and electric industries which constitute the major shippers of coal.

³ Energy Info. Admin., U.S. Dep't of Energy, *Coal Data: A Reference* 28 (1995).

⁴ *Id.*

⁵ *Id.*