

Chapter 5

When the Trains Don't Come: Suing the Railroad

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§ 5.01. Introduction and Overview.

[1] — Introduction.

Energy companies, especially coal companies, rely heavily on railroads to get their product to market. If the railroad fails to provide adequate service to an energy company, then there can be severe negative consequences for the energy company, from lost or upset customers to reduced production. Similarly, railroads imposing unfair pricing on captive customers can harm an energy company’s bottom line. This chapter addresses problems that energy companies can encounter in their dealings with railroads and explores possible claims energy companies can bring against the railroads.

[2] — Railroads and Energy Companies.

Energy companies often rely on rail service to ship their product to customers. Coal companies, in particular, frequently use railroads to ship coal. For example, railroads ship steam coal to power plants and metallurgical coal to steel plants. Railroads also ship coal to the coast for export overseas. Historically, oil companies did not use railroads very often to ship oil or related products. According to the Association of American Railroads (“AAR”), however, oil companies now rely more on railroads to ship oil.² Largely due to the recent increase in production in the United States, oil production at times has surpassed pipeline capacity and railroads have “helped fill this gap.”³ Similarly, natural gas companies have not historically used railroads to ship natural gas. More recently, however, natural gas companies have expressed an interest in using rail transport. In October 2015, the Federal Railroad Administration (“FRA”) granted a permit to Alaska Railroad to transport liquefied natural gas (“LNG”) by rail.⁴ In January

² See *U.S. Rail Crude Oil Traffic 1-2*, ASSOCIATION OF AMERICAN RAILROADS, (May 2017), <https://www.aar.org/data/u-s-rail-crude-oil-traffic/>.

³ *Id.* at 2.

⁴ See *LNG Transport Demonstration*, ALASKA RAILROAD, (Sept. 14, 2016), https://www.alaskarailroad.com/sites/default/files/Communications/2016_LNG_Transport_Demo_Project.pdf.