Update on STB Coal Dust Proceeding and other Rail Regulatory Issues

National Coal Transportation Association
2010 Fall Meeting

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AECC asked STB in 10/09 to declare that coal dust emission standards in BNSF Tariff 6041, items 100 and 101 are an “unreasonable practice” under 49 U.S.C. 10702.

Remedy sought is to prohibit BNSF from imposing the standards on coal shippers.

Emission standards are the “Integrated Dust Value” (IDV.2), the successors to the IDV standard that was first revealed by BNSF at NCTA’s 2005 Fall meeting.

At request of the parties and others, STB opened up proceeding to wider participation.
Coal Dust Proceeding – Overview

Cont’d

- 19 named “Parties of Record”
  - Virtually entire utility industry either individually or through groups/associations
  - NCTA is a POR and submitted an opening statement that included parts of Exponent Coal Suppressant Study; Also participated in the oral hearing on 7/29/10
  - USDOT, UP, CSX, and NS also PORs
- No other affected parties: communities, state agencies, environmental groups, coal mines, railcar manufacturers, surfactant or other suppression manufacturers
- BNSF preferred implementation date moved from August 1, 2010 to October 1, 2010
STB 7/29/10 Public Hearing

- Procedural Format
  - Three panels; DOT, BSNF & UP; Coal shipper groups and NCTA
- NCTA oral statement
  - NCTA’s attempt in 2005-07 to facilitate an industry solution
  - Usefulness of Exponent coal dust study to the proceeding
  - Concerns and problems with IDV.2 standard identified by Exponent in NCTA study are still present
- The hearing lasted 5.5 hours; videos, PowerPoints, charts, graphs etc.
- Hearing video can be viewed at http://www.stb.dot.gov/stb/audiomee.nsf
- Transcript being finalized
Key Board Points and Questioning

- **Elliott**
  - Why the sudden urgency to control PRB coal dust after decades of service?
  - Is this a matter that can be resolved by the industry or via mediation, including STB-administered?
  - If the science behind the standard is admittedly insufficient, then why is the standard before the STB?
  - Would BNSF be amenable to a “safe harbor,” where spraying would be deemed in compliance with the standard in the short term?
  - Why should the STB approve BNSF’s standard if UP may adopt a different standard?

- **Mulvey**
  - Pursued explanation of what is the IDV.2 standard
  - Would shippers and railroads agree to jointly fund a binding study conducted by an independent entity?

- **Nottingham**
  - Would rail shipper witnesses stipulate that significant coal leaks from railcars and that this causes “negative externalities?”
  - How will the standard be enforced if tariff contains no specific penalties? (“hammer” of stopping service)
  - Railroads should be able to refuse to transport “leaking” railcars after “safe harbor,” sufficient advance notice, and time to stop leaks
What’s Next?

- Mediation or STB-supervised mediation unlikely
  - Not much interest at the hearing from testifying parties
  - WCTL subsequently filed in support; BNSF and UP opposed
  - STB has not followed up publicly

- Industrywide negotiated solution also not likely in short term

- STB decision on the merits of the petition – seems most likely
  - One outcome: Allow standards to go into effect; leave cost shifting issues for rate cases and contract negotiations; or
  - Another: Declare BNSF emissions standards to be an “unreasonable practice”
    - Declare no emissions standard can be “reasonable” right now; or
    - Provide guidance for modified standard(s)

- UP is waiting for outcome to take its own steps
  - UP stated that UP would do something different than BNSF (including “pricing incentives” to encourage compliance)
Other STB Matters Relating to Coal Transportation

- Review of URCS costing system is on horizon
  - Drives STB rate jurisdiction and maximum rate levels
  - Influences analysis of potential rate relief
  - Potentially huge undertaking but important to coal shippers

- Oral argument is a staple in Elliott STB
  - AECC “paper barrier”/bottleneck proceeding (NOR 42104) 10/26
  - Arizona Electric Power coal rate case (NOR 42113) 9/28

- Little other action on coal rate case front
  - NRG v. CSX and Seminole v. CSX recently settled
  - Western Fuels v. BNSF remanded in part to STB on 5/11 to take another look at application of “Average Total Cost” methodology
Also Emanating from Inside the Beltway

- Railroads are doing well under the Obama administration
  - JOC Report: US Railroad bulk railcar and intermodal shipments highest in August since Fall of 2008
  - Freight railroads are receiving hundreds of millions from DOT through American Recovery and Reinvestment Act
    - Beneficiaries of Obama/DOT $8 billion high speed rail obsession
    - TIGER grants that benefit freight railroads
  - Newly proposed $50 billion transportation infrastructure proposal (paid for in part by energy taxes?)
- 25% rail investment tax credit is moving through Congress (S. 3749 introduced on August 5)
- Rail shippers are still waiting on 111th Congress
  - S. 2889, STB Reauthorization Act
    - Last public Senate action was in December, 2009
    - No House bill despite “optimistic” Oberstar in June
    - Rumors about bill language troubling for shippers
  - Railroad antitrust exemption repeal also in limbo
  - But: Senate Commerce Committee hearing on 9/15 (“Federal Role in National Rail Policy”)
Questions?

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