
RAIL REPORT

RAIL CUSTOMER NEWS AND INFORMATION FROM C.U.R.E.

AUGUST 2005

RAILS CAUSE UTILITY FUEL SHORTAGES, ELECTRICITY RATE HIKES

The U.S. has enough coal to last two centuries, yet some electric utilities today are facing coal shortages, with some utilities having only a 15-day supply of coal available. Coal supplies about half of the nation's electricity. The Powder River Basin (PRB) in Wyoming supplies approximately 40 percent of the coal that is used by the nation's electricity generating facilities. Unfortunately only one primary rail line, shared by the Union Pacific and Burlington Northern Santa Fe railroads, is available to move coal east from the Powder River Basin. This spring, this line suffered major damage that is disrupting the delivery of coal until repairs can be made to the track later this year or even next spring.

The recent shortfall in the delivery of PRB coal, which is attributable to this damaged track, has led to electricity cost increases of up to 15 percent in some parts of the country. With the demand for electricity increasing through the summer months and rail service decreasing, utilities that depend on Powder River Basin coal have been forced to turn to alternative fuel supplies, including more expensive natural-gas-fired electricity generators, to provide service and an adequate supply of electricity. According to Gary Voigt, President and Chief Executive Officer, Arkansas Electric Cooperative Corporation (AECC), the cooperative is being forced to look at alternative fuel supplies that do not involve railroads. In a recent letter to the Chairman of the Surface Transportation Board, Voigt said "actions by the railroads that push users of America's most abundant and economical energy resource to convert to more expensive imported fuels cannot be viewed as being consistent with the public interest."

"The best hope for consumers lies in more competition" (Christopher Helman, "The Next Energy Crisis," *Forbes*, September 5, 2005). The privately owned Dakota, Minnesota & Eastern Railroad currently is seeking approval to build a 280-mile track into the Powder River Basin. This competition would provide shippers with an alternative rail route that might assist rail customers to defeat the anti-competitive practices of the current railroads servicing the Basin. Only through truly competitive policies, like those included in pending federal rail legislation S. 919 and H.R. 2047, will American utilities be able to ensure their continued use of the country's most accessible natural resource at reasonable rates and practices.

RAILROADS BLAME WEATHER FOR PRB SERVICE PROBLEMS

A wet April and a deluge in May washed out gravel supporting the Joint Line leading from the Powder River Basin east to most of the utilities that use Powder River Basin coal. According to the UP and BNSF railroads, the cause of the Powder River Basin Joint Line crisis this year was "unusual" and "unprecedented" amounts of rainfall and snow acting upon coal dust. However, according to the National Oceanic and Atmospheric Administration (NOAA), data for this area shows that for the precipitation cycle beginning October 1, 2004, there appears to be no portion of this

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Joint Line that received abnormal precipitation levels. In fact, the historical average in May for Douglas, WY (near the south end of the Joint Line) is 2.95 inches. The area received just 2.55 inches of precipitation in May 2005.

In his letter to the STB, AECC President Gary Voigt noted that given that the weather really was neither “unusual” nor “unprecedented,” the problem can properly be seen as the failure of the railroads to maintain the Joint Line roadbed in useable condition. C.U.R.E. President Mark Schwirtz, President and Chief Operating Officer of Arizona Electric Power Cooperative, notes, “I find it interesting that coal dust in the ballast of a railroad track that carries nothing but coal is a new issue for the railroads. Utilities have incorporated the regular removal of coal dust from their rail spurs and coal loop tracks in their own maintenance programs for years.”

As for the argument that the railroads cannot do maintenance without proper return guarantees, the STB has found that the Joint Line generates traffic that “pays its own way” in terms of covering operating costs and providing a market rate of return on capital for this portion of the rail network.

FEDERAL OFFICIALS EXAMINE DELAYS

The North American Electric Reliability Council has been charged by the Department of Energy with examining the impact the delays in the rail delivery of Powder River Basin are having on utility operations.

FOREST AND PAPER INDUSTRY SUPPORTS RAIL REFORM LEGISLATION

Sharply rising costs, decreased service and deteriorating equipment are all factors significantly impacting captive rail customers in the forest products industry. According to Patrick Shillinger, President of Wisconsin Paper Council, “the paper industry in Wisconsin is being crippled by double and in some cases triple percentage rate increases by railroads” (Pete Bach, “Paper Industry Wants Rail Update,” Post-Crescent, August 17, 2005). The American Forest & Paper Association, which represents over 200 wood and paper companies and allied organizations, reports that, in addition to sharp rate increases, decreased access to quality equipment and unreliable service further threaten the competitiveness of the U.S. wood and paper industry. Currently, railroads enjoy practically unfettered power to dictate rates and service terms to their captive rail customers, which has led many industries, including the forest products industry, to support captive rail legislation that is pending in both the House and Senate (H.R. 2047 and S. 919), as well as the recently introduced antitrust legislation by **Representatives Mark Green (R-8th, WI)** and **Earl Pomeroy (D-At Large, ND)**. The Green-Pomeroy legislation (H.R. 3318, The Railroad Antitrust and Competition Act of 2005) removes the railroads exemption from the nation’s antitrust laws, thereby encouraging competition and curbing monopolistic rail practices.

MOVING ON

John Scheib, until recently Chief of Staff and Counsel to STB Chairman Roger Nober, has joined the law department of the Norfolk Southern Railroad in Norfolk Virginia. Prior to his service with the Board, Mr. Scheib was an associate attorney at Wilmer Cutler and Pickering in Washington, D.C., where he represented the Union Pacific Railroad, and majority staff counsel to the Railroad Subcommittee of the House Transportation and Infrastructure Committee.

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