

Watching Washington

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CURE focus shifting to STB

The late federal appellate court Judge Learned Hand opined that regulatory commissions “fall into grooves ... and when they get into grooves, then God save you to get them out of the grooves.”

Washington attorney Bob Szabo, a 30-year enduring pain in the buttocks for freight railroads in his role representing Consumers United for Rail Equity (CURE), is imaginatively close to that “god,” agitating how regulators have too long been in a groove by failing to recognize that railroads today are not the dirt-poor share croppers of pre-Staggers Act days, and that adjustments in regulatory freedoms are appropriate.

Szabo protests that CURE-represented electric utility, farm, and chemicals shippers, with no effective transportation alternatives, pay more than necessary for railroads to be revenue adequate. He cites post-Staggers Act consolidations reducing competing major railroads from 30 to seven; the disappearance of neutral belt railroads that ringed large cities, allowing shippers options among competing line haul railroads; improved rail stock prices and dividends; and the railroads’ ease in attracting investment capital.

He asks why phone companies and electric utilities must allow rate-regulated competition over their “transportation” assets while railroads are insulated from rail-to-rail competition absent evidence of competitive abuse. Increasingly, to the consternation of railroads, their investors, and many shippers not in agreement, Szabo’s voice has been heard in Congress and at the Surface Transportation Board (STB).

Fact is that some shippers and railroads have brawled since railroads were infants and “cheap transportation” organizations demanded from Congress laws to corral the iron horse.

Inflexibility of those laws and subsequent restrictive regulation sent railroads hurtling toward bankruptcy and nationalization until the Staggers Act delivered partial deregulation.

Notwithstanding bitter lessons of history, CURE, with Szabo as its perennial face, has come uncomfortably close to turning back the clock, and is a consequential reason for a responsive multimillion “Freight Rail Works” campaign directed at opinion leaders and lawmakers.

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That CURE this year is shelving its legislative attack by ending its relationship with Szabo is said a strategy change, occasioned by recognition that the rail-friendly Republican House majority is not at risk in 2014 elections, and CURE’s Senate rail stalker-in-chief, Commerce Committee Chairman Jay Rockefeller (D-W.Va.), is retiring.

CURE insiders imply its legislative effort has made the STB more responsive and its shipper members will redirect their resources to regulatory initiatives. Szabo says he will continue advising rail shippers.

The direction of the STB surely has changed since the arrival of Chairman Dan Elliott. CURE previously viewed the agency as in a groove of regulatory capture by railroads, with the agency

derided as “a wholly owned subsidiary” of the rail industry, especially when its predecessor Interstate Commerce Commission advanced a proposal to allow coal rates to rise by 15% annually (which, until its rejection, even caused former Burlington Northern Chairman Walter Drexel to call the proposal “excessive and unwarranted”).

Make no mistake that CURE’s congressional effort was successful, even though its proposed legislation to amend the Staggers Act never reached a House or Senate floor vote. CURE-encouraged congressional oversight made railroads wary that too aggressive actions in a less regulated environment could precipitate sudden adverse legislative action. Passage in 1887 of the Interstate Commerce Act occurred within months of railroads being overconfident they had it blocked.

Szabo—no relation to Federal Rail Administrator Joe Szabo—cites as CURE successes the railroads’ willingness to be more flexible in negotiating new shipper contracts; an increase in STB decisions favoring captive shippers; STB refusal to consider product and geographic competition when ruling on rate-reduction petitions; STB easing of shipper evidentiary requirements; STB introduction of alternative dispute resolution methods to reduce the number and cost of rate challenges; a new method for evaluating market dominance; and STB willingness to hold hearings on railroad competition, rate regulation reforms, revenue adequacy determination, and mandated reciprocal switching.

Szabo has a proven talent for charming lawmakers. Whether the CURE legislative endeavor resumes depends on whether the STB embraces a new groove. As for railroads, uneasy lies the head that wears the crown.