

Southwest Association of Rail Shippers -- “Executing in DC in ‘24”

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General Observations

- Presidential primaries affect policymaking (e.g. border)
- Debt over \$34 trillion, annual deficit approx. \$2 trillion
- Interest on debt will be approximately \$870 billion, exceeding Defense and Medicare, and keeps growing
- Trump on ballot; if convicted, he can still run
- Biden's "poor memory" means no charges
- There may be 3-4 independent candidates
- "Swing States:" AZ, GA, MI, PA, WI, NC, NH, NV, NE-2

General Observations

- No independent candidate has won electoral votes since 1968, but ...?
- Senate 51-49, under Democratic control, but three are independents, Sen. Manchin acting like one
- Narrow Republican control of House – 219-213
- AAR President Ian Jeffries: Congress is dysfunctional
- But – Judges confirmed, spending resolutions (CRs), maybe Ukraine and Israel aid, but tax deal unlikely
- Will Congress enact Railroad Safety Act? – DOT pushing to require two-person crews

General Observations

- STB Chairman Marty Oberman is leaving this Spring
- Any successor not likely to get confirmed, so Board may be 2-2 for several months at least
- Patrick Fuchs has been renominated
- Major policy battles in court: “Final Offer Rate Review,” revenue-adequacy constraint, cost-of-capital standard
- STB abandoned other major policy changes – but adopted rules for service emergencies, likely reciprocal switching rules for service failures

Congress Is Dysfunctional

- Speaker Johnson -- same problem Speaker McCarthy had with House “Freedom Caucus” – House is one-half of one branch of government
- One casualty – Senate “supplemental” appropriations bill? House may introduce its own, smaller version
- President Biden ran on bringing opposing sides together, mostly has not, but did get bipartisan infrastructure, CHIPS bills. Wants a border deal, given polls
- President Trump did not bring opposing sides together, either

Congress Is Dysfunctional

- So Speaker Johnson, Senate Leaders Schumer and McConnell are the deal-makers, because Senate needs 60 votes to act
- CRs keep government open, but only for now; March 8 deadline
- Railroad Safety Act seems unlikely to pass in 2024, unless another big derailment, but OH Senator Vance thinks he has the votes in the Senate, and AAR says it is a “coin flip”
- DOT is attempting to require two-person crews -- railroads will fight any such rule
- Congress may enact legislation to strip DOE of authority over natural gas exports so as to allow planned LNG projects

What Will Come Next?

- Some funding likely for Ukraine, Israel, Taiwan
- Deal on border funding? No substantive border legislation
- “Must-pass” bills – FAA, FISA Section 702 authorizations
- Lots of grant money for freight railroads, ports, Amtrak spending
- Highway Trust Fund – insolvent by 2028
- Social Security Old Age Trust Fund – insolvent by 2033
- Even if House impeaches President Biden, no Senate conviction
- Lame-duck session after election could produce legislation
- Tax rates go up on Jan. 1, 2026 unless Congress acts
- NTSB will issue East Palestine, OH report on June 25, 2024

What About the STB?

- Policy battles in the courts:
- Revenue adequacy (EP 766) – WCTL seeking “to compel agency action unreasonably delayed” (oral argument scheduled for March 18, 2024)
- Cost of capital (EP 664) -- WCTL petition denied (Feb. 21, 2024)
- FORR (either/or rate decision) argued in Eighth Circuit on Dec. 13, 2023
- At the STB:
- Emergency service regulations revised (EP 762)
- Rail competition (EP 711 (Sub-No. 1)) is off the table – for now?
- Reciprocal switching (EP 711 (Sub-No. 2)) is under consideration
- CP/KCS merger approved – DC Cir. review sought by Chicago Metra, Coalition to Stop the CPKC – both seek to vacate and remand to STB
- So, most ongoing STB matters are case-by-case, not policy proceedings

Notable Adjudicatory STB Cases

- **Evergy recently filed a complaint against BNSF for damages for delays in delivering coal; in abeyance. NOR 42180 (damages); in settlement discussions**
- **Navajo Transitional Energy Co., LLC – Ex Parte Petition for Emergency Service Order (June 23, 2023) – NOR 42178 (common carrier obligation); settled with BNSF**
- **Sanimax previously filed a complaint against Union Pacific for reducing service from 5 days to 3 days/week; NOR 42171 (common carrier obligation); settled**
- **Lake Providence Port Commission in LA, and other entities, including the North Louisiana and Arkansas Railroad, filed an amended “feeder line” application to take a line of railroad from Delta Southern Railroad. FD 36447**

Notable Adjudicatory STB Cases

- **Shipper associations (North American Freight Car Ass'n, et al.) -- long-standing complaints against UP for charging for delivery of empty tank cars to/from repair facilities. NOR 42144, et al.**
- **Amtrak cases involving restoration of service along the Gulf Coast, "Southwest Limited" on-time performance. FD 36496, NOR 42175**
- **Approval of new 88-mile rail line in Utah overturned by DC Circuit on environmental grounds, remanded. No. 22-1019 (D.C. Cir. Aug. 22, 2023), FD 36284**

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