



Rail Competition

Support 'Railroad Competition' Legislation

Issue. Seventy-five percent of cooperative electric generation is coal-based and 50 percent of the nation's total power supply is fueled by coal. Rail is frequently the only viable mode of transportation and often there is no choice among rail carriers, making coal shippers "captive" to the railroads. With increasing concerns over the nation's reliance on foreign energy sources and seemingly unchecked increases in petroleum and natural gas prices, exorbitant rates charged by the railroads and delays in transporting the coal are driving up costs for electricity produced from the country's most abundant and reliable domestic fuel. In some recent cases, rail transportation is costing more than the coal itself.

Since "deregulation" in 1980, the railroads remain largely exempt from most antitrust laws, because it was assumed the Surface Transportation Board (STB) would provide effective regulation over the rail monopoly. For rail customers having no other options, the half dozen major operators of the nation's consolidated rail system use their market power to impose "take-it-or-leave-it" rates many times higher than rates charged where competition exists. Making matters worse, service levels and delivery times have dramatically deteriorated due to the lack of investment in lines used to move coal and other heavy cargoes. When a railroad is unable to deliver the coal that it has contracted to deliver, electricity must be generated from another fuel, often obtained on the open market at top prices.

An example of the impact on utilities and the consequences occurred in 2006 to Basin Electric Cooperative in North Dakota. Basin Electric, a generation and transmission cooperative, (G&T) generally requires 24,000 tons of coal daily to maintain full generation at its Laramie River Station; at the end of March 2006, Basin had a coal reserve of less than six days. With coal deliveries continuing to lag, Basin faced a 20 percent generation reduction to prevent the possibility of depleting its stockpile completely, shutting down the plant and curtailing service to customers.

Electric cooperatives, along with other sectors of the electric industry, are increasingly facing similar situations: dangerously low coal reserves that could lead to curtailments, more and larger price increases for consumers, and electric service disruptions that could cascade throughout an entire region of the country.

Rates charged rail customers in captive situations far exceed competitive rates. Transportation costs are a major component of the overall cost of coal-based generation. Captive shippers of coal and other key commodities pay rail rates up to 450 percent above railroads' costs of operation.

The railroads, meanwhile, have been vigorously opposed changes to their operations, arguing that they must not be "re-regulated" if they are to "provide high quality service at competitive rates." Yet, two of the four railroads that hold utilities and other commodity shippers captive – Burlington Northern and Norfolk Southern – have realized such dynamic sales and earnings to merit rankings in the 50 top performers of Standard & Poor's 500-stock index. According to a Business Week report in 2006, BNSF ranked 12th in profitability and earnings for 2006, doubling its net income this year to \$1.5 billion. Norfolk Southern ranked 46th for 2006 with \$1.3 billion net income.

The Surface Transportation Board (STB) provides no relief for cost or delivery problems. As a regulator, the STB was charged by Congress to (1) implement rail deregulation where competition exists and (2) restrain rail monopoly power over captive rail customers.

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Unfortunately, the regulators have consistently rendered decisions that favor the carriers' practices of monopolistic and anti-competitive abuse of rail customers.

Status. A bipartisan group of legislators are seeking to address the U.S. railroad industry's inability to meet its coal-shipping obligations, which cost power companies an estimated \$3 billion in 2006. In March 2007, Sens. Herb Kohl (D-WI), Norm Coleman (R-MN), Russ Feingold, (D-WI), David Vitter (R-LA) and John Rockefeller (D-WV) introduced the **Railroad Antitrust Enforcement Act (S. 772)** to restore antitrust laws over railroad monopolies. Under this bill, rail customers, the U.S. Attorney General and state attorneys general will be able to litigate anti-competitive rail actions under the nation's antitrust laws. The Senate Judiciary Committee cleared S. 772 in a voice vote on September 20, 2007. Rep. Tammy Baldwin (D-WI) also introduced the **Railroad Antitrust Enforcement Act (H.R. 1650)** to increase railroad compliance with U.S. antitrust laws.

Sens. John Rockefeller (D-WV), Larry Craig (R-ID), Byron Dorgan (D-ND) and David Vitter (R-LA) introduced the **Railroad Competition and Service Improvement Act (S. 953)** to address inadequacies in the STB's rate setting process, improve service to rail customers, and provide new remedies for rail carriers. House Transportation and Infrastructure Committee Chairman James Oberstar (D-MN) and Rep. Richard Baker (R-LA) introduced the **Rail Competition and Service Improvement Act (H.R. 2125)** to require the STB to reform "captive shipper" practices and allow fair and reasonable opportunities for rail shippers to challenge monopolistic rail freight rates and practices. NRECA supports these bills.

NRECA strongly urges Congress to pass legislation that will level the playing field by providing captive rail customers access to rail competition and some relief from monopoly practices:

- Require railroads to make public and quote rates to their customers;
- Provide the STB with the explicit authority to perform its duties as they relate to the protection of captive shippers;
- Provide arbitration of certain rail rate and service disputes and other claims;
- Allow the STB, on petition of a state, to declare all or part of a state to be an area of inadequate rail competition. Special rail customer remedies would apply in such areas;
- Reduce the STB filing fee for rate challenges (recently increased to more than \$140,000) to an amount equivalent to federal district court filings (about \$150).

The recent monopolistic pricing policies of the major rail carriers have raised questions about their seeming immunity from the nation's antitrust laws. Legislators are also seeking to reign in the railroads' unbridled abuse of their market power.

NRECA position. NRECA urges members of Congress to support S. 772, H.R. 1650, S. 953 and H.R. 2125 to ensure that effective competition exists within the rail industry and that rail customers have an effective mechanism to challenge unreasonable rates. A close examination by the Congress of the antitrust immunity enjoyed by the freight rail carriers is in order. As recent rulings have demonstrated, the STB clearly is not performing its duties to protect rail customers from monopolistic business practices of freight rail carriers as prescribed by the Congress and enacted into law.

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