

# COMPREHENSIVE FREIGHT RAILROAD TRANSPORTATION REFORM

## A Solution At Hand

### **Cooperative Rail Shippers Suffer Monopoly Abuse**

The nation's antitrust laws are meant to protect consumers and the overall public interest from anticompetitive behavior by businesses, but railroads are exempt and do not play by the same rules. The railroads' antitrust exemptions are antiquated, have no public policy justification and allow anticompetitive conduct. The resulting lack of competition, together with the Surface Transportation Board's ineffectiveness, has allowed freight railroads to reap huge profits from electric cooperatives and other industries with no marketplace consequences or legal accountability for their unreliable service and exorbitant rates and fees. Legislative reform is required.

### **Electric Cooperative Consumers Paying the Price**

At several generation and transmission co-ops, low coal stockpiles due to poor freight rail service have threatened the reliability of the electric system. Some have even been forced to buy more expensive foreign coal because they can't rely on railroad deliveries from the Powder River Basin – the richest source of low-sulfur coal in the world. When replacement coal is unavailable, co-ops must rely on more expensive natural gas. Both alternatives drive up consumer bills.

“[The Railroad Antitrust Enforcement Act] would eliminate unwarranted and outmode antitrust exemptions enjoyed by freight railroads and provide needed protection to farmers, manufacturers, and electricity consumers. These rail customers across the country have suffered from increased prices and decreased quality of service caused in large part by the lack of competition among freight railroads.”

-Senator Herb Kohl, April 2009

### **A Solution to Unfair Treatment of Rail Shippers**

#### **Part 1: S. 2889, the Surface Transportation Board Reauthorization Act of 2009**

**S. 2889 was reported by the Senate Commerce Committee on a voice vote December 17, 2009.** The measure gives captive rail customers two of the three major improvements they sought:

- S. 2889 expands the size of the Surface Transportation Board (STB) from 3 to 5 Board members, increases the funding level of the STB and ensures that the Board will become more pro-active and more focused on and responsive to captive rail customer problems;
- S. 2889 improves rail customer access to competing rail systems through reciprocal switching, mandatory quoting of bottleneck rates to captive rail customers, a process at the STB for removing existing paper barriers and a ban on future paper barriers. Paper barriers are “tying” agreements between a major railroad and a short line railroad requiring all traffic on the short line to use the major railroad even if the short line has access to a competing major railroad.

Captive rail customers' third major objective was improving the rate challenge process. S. 2889 contains some minor improvements for large captive rail customers and significant improvements for small captive rail customers. Rail customers will work to improve the rate challenge process portion of S. 2889 if the opportunity arises.

Significantly, S.2889 does not contain antitrust provisions from S.146, the Railroad Antitrust Enforcement Act of 2009. Chairman Rockefeller announced at December 17<sup>th</sup> markup that he intends to work with Senator Herb Kohl (R-WI) and Senator Amy Klobuchar (D-MN) to negotiate strong antitrust provisions into S.2889 before it is considered by the full Senate.

## **Part 2: The Railroad Antitrust Enforcement Act (S. 146/H.R. 233)**

NRECA supports legislation that:

- Repeals railroad exemptions from antitrust statutes, making railroads fully covered like other industries.
- Permits the U.S. Justice Department and the Federal Trade Commission to review rail mergers under antitrust law.
- Allows state attorneys general and private parties to sue to halt anticompetitive conduct.

Under S. 146, the Railroad Antitrust Enforcement Act, the railroads would have six months to review their anticompetitive practices to bring them into compliance with the nation's antitrust laws. After that time, the railroads would be subject to the same penalties as other industries. This would allow electric cooperatives harmed by the railroads' market manipulations the right to bring an antitrust action in federal district court to stop practices that violate the nation's antitrust laws.

The Railroad Antitrust Enforcement Act was reported out of the Senate Judiciary Committee on a vote of 14-0 and awaits a vote on the Senate floor. The House Judiciary Committee passed H.R. 233. Twenty state attorneys general and the American Bar Association's Section on Antitrust Law wrote House and Senate leadership strongly endorsing the Railroad Antitrust Enforcement Act and seeking the its passage. These two bills are a first and fundamental step toward ensuring fair competition, guarding national economic and security interests, and protecting rail customers. Railroads must be covered by the nation's antitrust laws just like other industries.

NRECA thanks Sen. Herb Kohl (D-WI) and Rep. Tammy Baldwin (D-WI), lead sponsors and champions of S. 146 and H.R. 233, the "Railroad Antitrust Enforcement Act." NRECA also thanks Chairman Rockefeller, Ranking Member Hutchison and Senators Thune, Dorgan, and Klobuchar for their leadership on S. 2889. Finally, NRECA thanks the many Members of Congress who have co-sponsored these three bills.

**NRECA Urges Members of Congress to take the following actions.**

**In the U.S. Senate:**

- Co-sponsor and support the bi-partisan Rockefeller/Hutchison/Thune Surface Transportation Board Reauthorization Act, S. 2889.
- Co-sponsor and support S. 146, the Kohl Railroad Antitrust Enforcement Act.

**In the U.S. House of Representatives:**

- Co-sponsor H.R. 233, the Railroad Antitrust Enforcement Act and urge its prompt consideration.
- Support S. 2889 when it appears from the Senate for House consideration.