

AMERICA'S RAILROAD POLICY NEEDS REFORM

Our National Rail Policy is Broken

America's four major railroads are not meeting the nation's transportation needs. When Congress passed the Staggers Rail Act of 1980, it designed the Surface Transportation Board (STB) to oversee the nation's railroads and check monopolistic practices. However, nearly 30 years later, railroads' monopoly over "captive shippers" is often unchecked and customers, including electric cooperatives, often do not receive reliable rail service at reasonable rates. The STB, the sole government agency charged with the responsibility of supervising the nation's railroads, has failed to address crucial rail customer rate and service problems. Legislative reform is required.

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 STB's ineffectiveness, have 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. Again, legislative reform is required.

Electric Cooperative Consumers Paying the Price

At several generation and transmission co-ops, low coal stockpiles 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.

Surface Transportation Board Revolving Door

History has shown that shippers are unlikely to get a fair hearing at the STB, where there is a significant "revolving door" between the agency and the railroads. The previous two STB chairmen were hired by the railroads they regulated. So were numerous other key personnel. The U.S. Senate has never confirmed someone with a shipper background to the STB, and decisions favorable to shippers are nearly as rare. There is a long history of bias toward the railroad monopolies in the agency's decision making process.

What Experts are Saying

"[The Surface Transportation Board's] rate relief processes are largely inaccessible and rarely used."

-Government Accountability Office Report, October 2006

"Rail customers who lack access to competitive rail transportation face higher rates and inadequate service. Ultimately, the price is passed on to all of us as consumers. The

Railroad Antitrust Enforcement Act merits our support, because those who fail to remember the lessons of history are bound to repeat its mistakes.”

-Minnesota Attorney General Lori Swanson, January 2008

“Today, enactment of the Railroad Antitrust Enforcement Act would simply subject the railroads to the nation’s antitrust laws like virtually every other industry in our economy, including both those that operate in deregulated as well as regulated markets.”

-Letter from seven U.S. senators to Senate Majority Leader Harry Reid, February 2008

Make the Surface Transportation Board Fulfill its Purpose

The STB is not meeting its responsibility to balance rail shippers’ needs and the public interest against railroads’ monopoly power. Over the years, STB decisions have actually increased railroads’ monopoly power and anticompetitive practices. Only Congress can ensure proper accountability by reforming and strengthening the sole agency that oversees railroads. The railroads claim that any legislation strengthening the STB is essentially “reregulation.” This is absolutely false. Rather than increasing regulation over railroads, the legislation we support makes the existing regulatory structure work.

Two Solutions: Restore Antitrust Laws to Railroads and Strengthen the STB

Railroads must be covered by the nation’s antitrust laws just like other industries, and the STB must become more responsive to the public interest and concerns of rail customers. To give America the railroad system it needs for the 21st Century, Congress must start by correcting current railroad abuses.

First: Restore Antitrust Laws to the Railroads – Stop Anticompetitive Abuse

- Electric Cooperatives support 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.

Second: Reform the Surface Transportation Board – Make It Perform

- Electric Cooperatives support legislation that:
 - Reverses anticompetitive STB rulings; requires proactive procedures and procompetitive policies.
 - Installs the same rate challenge process at the STB that other agencies use to protect the public interest while overseeing industries with limited competition.

- Creates a proactive STB that will suspend and investigate unreasonable rail practices.
- Creates a railroad “obligation to serve” and directs the STB to enforce this obligation.
- Lowers STB filing fees to bring these in line with filing fees in U.S. District Court.

NRECA Urges Members of Congress to:

In the U.S. Senate:

- **Co-sponsor S. 772**, the Railroad Antitrust Enforcement Act, introduced by Sens. Kohl (D-WI), Coleman (R-MN), Feingold (D-WI), Vitter (R-LA), and Rockefeller (D-WV).
- **Co-sponsor S. 953**, the Railroad Competition and Service Improvement Act, introduced by Sens. Rockefeller (D-WV), Craig (R-ID), Dorgan (D-ND), and Vitter (R-LA).

In the U.S. House of Representatives:

- **Co-sponsor H.R. 1650**, the Railroad Antitrust Enforcement Act introduced by Representative Baldwin (D-WI).
- **Co-sponsor H.R. 2125**, the Railroad Competition and Service Improvement Act, introduced by Representative Oberstar (D-MN).