




**National Rural Electric  
Cooperative Association**

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BEFORE THE

**U.S. House of Representatives Committee on Small Business**

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**Rail Transportation Access for Small Businesses and Family  
Farmers**

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TESTIMONY OF

Nelle P. Hotchkiss  
Senior Vice President of Corporate Relations  
North Carolina Electric Membership Corporation

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**Thursday, May 1, 2008  
10:00 a.m.  
1539 Longworth House Office Building**

Madame Chairwoman and Members of the Committee:

My name is Nelle Hotchkiss and I am the Senior Vice President of Corporate Relations for the North Carolina Electric Membership Corporation (NCEMC) and the North Carolina Association of Electric Cooperatives (NCAEC). Our membership consists of 26 electric cooperatives serving over 2.5 million consumers in 93 counties in North Carolina. I appreciate the opportunity to speak before you today about the issue of rail transportation and the importance of adequate rail competition in my state and across this nation.

As member-owned, not-for-profit organizations the obligation of rural electric cooperatives is to provide a reliable supply of electricity to all consumers in our service areas at affordable rates. We take our obligation to serve very seriously – the personal and economic health of our members, our communities, and our nation depends on it.

### **Our National Rail Policy is Broken**

Electric Cooperatives are dependent on the railroads for the transportation and delivery of coal. Simply put, we do not believe that America's four major railroads are meeting our transportation needs in the most efficient and dependable manner. Electric cooperatives and other rail customers do not receive reliable rail service at reasonable rates. The Surface Transportation Board (STB), the government agency charged with the regulatory responsibility of for the nation's railroads, is not addressing crucial rail customer rate and service problems.

Some utilities are being 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.

Electric cooperative consumers in North Carolina and around the country have experienced deteriorating rail service and sharply increased rates. For example, from 2002 to 2007, North Carolina's electric cooperatives experienced a 45% increase in the coal freight component of our energy cost which, in turn, was reflected in the wholesale rate for power. That increase calculates to over \$8.7 million dollars in higher costs during this time frame that have been borne by our end consumers; residents, small farmers and small businesses. Service problems and high rail costs occur primarily in areas where shippers are captive – meaning they have no transportation option but to use a single railroad.

### **The Captive Rail Customer**

Captive rail customers are shippers who must rely on a single railroad to deliver their products. These customers usually move bulk commodities such as coal, grain or lumber, or certain materials that, due to size or characteristics, cannot be moved on our nation's highways.

Historically, 20-30 percent of the nation's rail movements have been "captive," with many of these movements covering rural America. Today, in a capacity-constrained rail system, a majority of rail movements may lack competition.

### **Captive Shippers Suffer Monopoly Abuse**

The nation's antitrust laws are meant to protect consumers and the overall public interest from anti-competitive behavior by businesses. The railroads are exempt from antitrust laws 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 ineffectiveness of the STB, have allowed

freight railroads to reap huge profits – with no marketplace consequences or legal accountability for their unreliable service and exorbitant rates and fees.

### **How Did We Get Here**

Since the mid-20th century, freight railroads have been exempt from the nation's antitrust laws; but, until 1980 they were subject to tight regulation by the Interstate Commerce Commission. By the late 1970s, the industry was in poor financial condition with an excess of capacity. In an effort to revive the rail industry, Congress in 1980 deregulated competitive rail service and allowed the railroads to shed their excess capacity. Railroads were free to shed marginal routes and enter into long-term shipping contracts.

Unfortunately, in 1980, Congress failed to remove the industry's antitrust exemptions.

The intent of the legislators was to replace government regulation of the railroads with market competition, while ensuring that those rail customers without access to transportation competition receive reliable rail transportation at reasonable rates.

Unfortunately, today, rail customers:

- Lack access to competitive rail transportation;
- Lack access to a fair and workable process for challenging rail rates for movements that lack access to competition;
- Are paying steeply higher rail rates while suffering unreliable rail transportation;
- Are without adequate remedies for unreliable rail transportation; and
- Are concerned about the ability of the rail industry to provide both current and future transportation needs.

Without abandoning the 1980 deregulation of competitive rail activities, a refined and improved national rail policy for the twenty-first century is needed to ensure effective rail transportation competition, protect “captive” rail customers from monopoly abuse and ensure the reliable delivery of the nation's freight at reasonable rates.

## **Why Captive Rail Is A Problem**

With no competitive options, no antitrust protection, and a passive STB that is failing to provide effective oversight, freight rail customers face unrestrained shipping costs and unreliable service. The resulting cost increases are passed on to consumers who buy their products and use their services.

While the major railroad companies log record profits and stock prices on Wall Street, delays in coal deliveries have caused higher electricity prices on Main Street. Skyrocketing transportation costs are forcing chemical and paper companies to consider moving American jobs overseas. Already a handful of utilities are importing coal from Columbia and Indonesia in order to meet consumer demand because the railroads are not delivering adequate supplies of U.S. coal.

U.S. taxpayers helped build the rail routes and the companies that operate them. A reliable and reasonably priced freight rail system is critical to the American economy and infrastructure. While railroads are enjoying record profits, rail customers are paying more and getting less.

The end result is unreliable rail transportation, unreasonably high rail rates, concerns about inadequate rail capacity, and concerns about whether the nation's major railroads have the ability, both now and in the future, to serve the nation's transportation needs. In the end, it is consumers that must pay the price for the inadequacies of the current rail system.

## **Rail Competition Issues**

In 1980, Congress adopted legislation to replace government regulation with market competition. This, of course, only works if there is competition. (This entire

debate concerns those rail customers who cannot use any other mode of transportation; those that can use trucks or barges have long ago escaped rail captivity via those routes.) Despite the rhetoric of the railroad industry, the current debate is only about how partial railroad deregulation is working for “captive rail customers” – those without access to competition.

Currently, 20 percent of all rail traffic is captive. The best way to reduce this percentage is to increase access to competition. Since the notion of building an entire new rail system is out of the question, the only means to increase access to rail competition is to remove the artificial barriers to competition. No one knows how much the universe of captives will decrease if these competition issues are addressed, but at least some will escape captivity and be governed by market conditions.

### **Legislative “Reform” is not Railroad “Re-regulation”**

The STB is not meeting its regulatory responsibility to balance the needs of rail shippers and the public interest against the monopoly power of the railroads. Over the years, STB decisions and interpretations have actually increased the monopoly power and anti-competitive practices of the nation’s railroads. Only the Congress can ensure proper accountability by reforming the sole agency that oversees the railroads.

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

The railroads must be covered by the nation’s antitrust laws just like other industries, and the STB must be more responsive to the public interest and concerns of rail customers. Legislative activity in the 110th Congress has moved to give America the railroad system it needs for the 21st Century, and to correct current railroad abuses.

Specific suggestions include the following:

## **First: Restore Antitrust Laws to the Railroads – Stop Anti-competitive Abuse**

Electric Cooperatives support legislation (S. 772, H.R. 1650) that:

- Repeals the railroad exemptions from the antitrust and transportation statutes, so that antitrust law fully covers railroads like other industries.
- Permits the 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 not currently permitted under rail exemptions.

The Senate Judiciary Committee unanimously voted to pass S.772 out of committee. It was the first time that a congressional panel had sided with shippers over the railroads in nearly 30 years.

## **Second: Reform the Surface Transportation Board – Make It Perform**

Electric Cooperatives support legislation (S. 953, H.R. 2125) that:

- Reverses anticompetitive STB rulings and requires pro-active procedures and pro-competitive policies.
- Installs the same rate challenge process at the STB that other agencies use to protect the public interest and oversee industries with limited competition.
- Creates a pro-active STB that will suspend and investigate unreasonable rail practices.
- Makes the railroad “obligation-to-serve” shippers and the public interest clear in law, with the STB empowered and directed to enforce that legal obligation.
- Lowers STB filing fees to bring these (costs?) in line with filing fees in U.S. District Court.

## **Conclusion**

Madame Chairwoman, thank you for conducting this hearing today. We look forward to working with this committee and with all of the other stakeholders involved to resolve these critical rail transportation issues in an objective and constructive manner.