



## **Board ignores concerns of some rail customers**

By Jeffrey L. Nelson  
February 9, 2008

The Surface Transportation Board, the federal regulatory agency charged with resolving railroad rate and service disputes, claims efforts are underway to eliminate railroad monopoly practices. But it seems it is business as usual at the STB.

In 1980 when the freight rail industry was deregulated under the Staggers Act, the intent was to retain a regulatory entity to ensure rail competition and to safeguard shippers that would be captive to a single rail carrier from abusive practices. Congressman Harley Staggers understood that in a deregulated market, the industry would consolidate, and eventually, "captive shippers" would be at the mercy of their freight railroad. That is why the Interstate Commerce Commission, which became the STB, was created to protect consumers from monopolistic practices.

Unfortunately for consumers, the captive rail situation is getting worse. Unreliable service at unreasonable rates continues to be the norm. The freight railroads have market power and use it to the detriment of our customers.

However, there is legislation pending designed to return the the Surface Transportation Board to its fundamental mission. Sens. Tim Johnson and John Thune's strong leadership on the Railroad Competition and Service Improvement Act of 2007 has helped to bring this issue to the table. This legislation would require the STB to be proactive instead of reactive when it has knowledge of unreasonable rail practices. It also would empower the agency to enforce railroads' obligation to serve their customers in a fair and consistent manner.

This legislation is vital to more than 85,000 farm, business, commercial and industrial consumers served by the cooperative owners of East River Electric Power Cooperative in eastern South Dakota and western Minnesota. Reliable rail service at reasonable rates is fundamental for delivery of coal for the electricity we provide.

But as customers continue to wait, the Surface Transportation Board continues to ignore rail customer concerns. Recent congressional testimony given by STB Chairman Chip Nottingham underscores the lack of attention that key rail customer issues are receiving from the STB.

During these hearings Nottingham indicated that he wasn't addressing the issue because it is addressed in the Railroad Competition and Service Improvement Act - legislation he later said he largely opposes. This simply is unacceptable.

To the further discomfort of rail customers, Nottingham repeatedly has defended the practices of the freight rail industry. When asked about the unfairness of differential pricing on individual rail customers, a system under which the railroads are allowed to charge much more than market rates to customers without access to competition, Nottingham indicated that for every rail customer that is paying a rate significantly above market rates, there is another shipper that is "paying less than market value." The chairman of the agency charged to protect rail customers from excessive pricing finds it perfectly acceptable for rail customers without access to competition to pay much higher rates.

When questioned why the Surface Transportation Board did not order refunds to shippers that were forced to pay fuel surcharge overcharges in the amount of \$6.4 billion, Nottingham said that no shipper had filed a formal complaint. Of course not. Rail customers that file such complaints bear all burdens of proof, must spend millions of dollars to prosecute their cases during a number of years and rarely win.

The Surface Transportation Board is broken. By enacting the Railroad Competition and Service Improvement Act, Congress can put it on the right track of protecting rail customers from railroad monopoly abuses.

We and our customers thank both Johnson and Thune for their leadership on this important issue. We need this legislation to be enacted in 2008. Our customers have waited long enough for relief from railroad monopoly abuse.