



# RAIL REPORT

RAIL CUSTOMER NEWS AND INFORMATION FROM CURE

AUGUST 2007

## HOUSE TRANSPORTATION COMMITTEE TO HOLD HEARING ON RAIL COMPETITION ISSUES

As announced earlier, House Transportation & Infrastructure Committee Chairman James L. Oberstar (D-MN) will convene a hearing to examine rail competition issues on September 20. The full committee hearing, entitled "Rail Competition and Service," will lay the foundation for moving the Chairman's Railroad Competition and Service Improvement Act of 2007 (H.R. 2125) through the committee and to the House floor.

### COSPONSORSHIP UPDATE

CURE is pleased to announce the following new cosponsors:

H.R. 2125, the Railroad Competition and Service Improvement Act of 2007 (48 total):

Rep. Hooley, Darlene [D, OR-05]

Please contact your Members of Congress today to urge them to cosponsor this important legislation!

As Congress returns from the August recess, this hearing will be an important opportunity to further educate members of the committee and attract new cosponsors for H.R. 2125. CURE is working with rail customer advocates in Washington, D.C., to ensure that the hearing focuses on the challenges customers face with the current freight rail transportation system and to present a compelling case for policy reform.

Although not yet finalized, the witness list will likely include rail customers, government officials, independent analysts and railroad

representatives. **Please contact your Representatives who serve on the House Transportation & Infrastructure Committee and urge them to support H.R. 2125 today!**

## FREIGHT RAIL RATES SKYROCKETED IN 2005, CUSTOMERS BEAR ADDITIONAL COSTS, GAO SAYS

According to a new report issued by the Government Accountability Office (GAO), rail customers in 2005 saw the largest annual rate increases since 1987. The report, "Freight Railroads: Updated Information on Rates and Other Industry Trends," provides an update on the GAO's October 2006 report that examined the overall rail transportation system. The new report, which incorporates 2005 data that had not previously been made available by the Surface Transportation Board (STB), affirms the findings of the 2006 report that there is a lack of competition and effective oversight in the rail transportation system.

The report also notes that, in addition to increasing rates, the railroads are shifting other costs to customers. For example, many rail customers are now required to own and maintain rail cars and other equipment, responsibilities that were typically held by the railroads. "In 2005, freight railroad companies continued a 20-year trend of shifting other costs to shippers," the report states. "With the addition of the 2005 data, our analysis shows a 20 percent shift in rail care ownership (measured in tons carried) since 1987... freight railroad company railcars no longer carry the majority of tonnage."

In addition, the report found that the railroads' so-called "miscellaneous" revenue, which includes railroad fuel surcharges, tripled between 2004 and 2005. In January of this year, the STB found that the railroads had indeed been over-collecting fuel surcharges from their customers, yet the agency refused to order the railroads to refund any of the fuel surcharge payments to customers. To read the full report, please visit <http://www.gao.gov/new.items/d07291r.pdf>.

## DUPONT FILES THREE RATE CASES WITH STB; ALLEGES UNREASONABLE RATES

On August 21, DuPont filed three small rate cases with the STB, alleging that CSX charged “unreasonable and excessive” rates since the recent expiration of their contract with the chemical company. CSX has imposed rate increases of more than 175 percent over previous rates, with an average increase of 30 percent. Despite months of negotiations, DuPont decided to file the cases in an attempt to highlight the continued pattern of railroads charging excessive rates to their customers. It is unclear when the STB will take up the DuPont cases; the agency is currently reviewing its rules for small rate cases.

## STB PROPOSES REVISION TO COST-OF-CAPITAL CALCULATION

On August 14, the STB announced a proposal to revise its method for calculating railroad cost of capital, a figure the agency uses in deciding many rate cases. Specifically, the Board proposes to use a Capital Asset Pricing Model (CAPM) as opposed to the discounted cash flow method it currently uses. The Board is proposing to use the CAPM – the method most commonly used in the private sector to calculate capital costs – based on its advance notice of proposed rulemaking issued on September 20, 2006. To read the proposed rule, please visit: <http://www.stb.dot.gov/decisions/readingroom.nsf/WebDecisionID/37949?OpenDocument>.

## STB IS REVOLVING DOOR FOR RAILROADS; SHIPPERS’ PERCEPTION OF BIAS JUSTIFIED, WILNER SAYS

In an article in the August 27 issue of *Argus Rail Business*, Frank Wilner, Public Relations Director of the United Transportation Union, asserts that rail customers are justified in their perception that the STB is biased toward the railroads. Wilner, an economist and former chief of staff at the STB, notes the following facts when profiling the agency that is charged with oversight of the nation’s railroads:

- The two previous chairpersons of the STB were hired by the railroads: Linda Morgan became Union Pacific’s principal outside legal counsel at Covington & Burling; Roger Nober became outside legal counsel for BNSF at Steptoe & Johnson, and was then directly hired by BNSF to lead its legal department.
- CSX Transportation hired former Interstate Commerce Commission (predecessor to the STB) head Reese Taylor as a consultant.
- The Association of American Railroads (AAR) hired ICC acting secretary Nancy Wilson.
- Current STB Chairman Charles “Chip” Nottingham hired as his chief legal advisor Scott Zimmerman, former outside regulatory counsel for Norfolk Southern.

Wilner further points out that it has been over 50 years since an individual with a shipper background has been confirmed as head of the ICC/STB. With such favor given to the railroads, it is not surprising that rail customers have been so unsuccessful when seeking relief from the oversight agency. As Wilner notes, it is this lack of effectiveness that rail customers are aiming to change through rail competition legislation now moving forward in Congress.

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