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www.railcure.org

Contact: Tad Segal (202) 884-7328
tad.segal@widmeyer.com

Senate Hearing Spotlights Need for Railroad Antitrust Coverage

Rail customers testify on monopoly abuses at Senate Judiciary Subcommittee hearing

Washington, D.C (October 3, 2007).—Removing the railroads' exemptions from federal antitrust laws will help bring competition and fairness to an industry that abuses its monopoly powers and market dominance, rail customers said today at a Senate hearing.

The Senate Antitrust Subcommittee heard rail customers testify in support of S. 772, the Railroad Antitrust Enforcement Act of 2007, legislation to subject the railroad industry to the nation's antitrust and competition laws, and to place it on an equal footing with all other American industries. Witnesses including Bill Berg, CEO of Dairyland Electric Cooperative; Ken Vander Schaaf, Director of Supply Chain at ATK; and Bob Szabo, Executive Director of Consumers United for Rail Equity (CURE) informed the Subcommittee about the impacts of massive rail price increases and unreliable rail service on American consumers and the national economy.

“The railroads continue to overcharge customers, refuse service and shift more costs over to rail customers,” Szabo said. “This type of behavior isn't tolerated in any other industry, and the railroad industry should be no exception. It's one of the reasons 17 States Attorneys General have written to Congress asking that the railroads' antitrust exemption be removed. This legislation shines the light on railroad monopoly abuses that leave both rail customers and consumers ultimately paying the price.”

This “Rail World” behavior has “Real World” consequences. In Louisiana for instance, the Lafayette Utilities System's power plant in Boyce, LA, is captive to the Union Pacific for the last 20 miles of track leading to the plant. Taking advantage of an unfair practice codified by the Surface Transportation Board (STB) called a “bottleneck,” the UP charges an outrageous monopoly rate to ship coal to the plant from the Powder River Basin in Wyoming. The impact of this monopoly rate is felt by LUS' customers, including the Lafayette school system, which pays \$1.3 million more annually because of captive rail coal rates.

“Since 1980, when Congress deregulated the rail industry, consolidation and mergers have left just a handful of Class I railroads that operate as regional monopolies,” said Szabo. “Just prior to deregulation there were over 40 railroads and not one monopoly. Today's consolidated landscape begs for the removal of this unfair shield to competition.”

In October 2006, the General Accountability Office reported that there is insufficient competition in the rail industry. Customers who have no competitive transportation alternatives

have seen steady increases in prices while service levels continue to erode. For example, captive coal shipping rates can reach \$23 a ton, while competitive rates are about \$10 per ton, according to Escalation Consultants. Meanwhile, the STB, the federal regulatory agency charged with protecting captive rail shippers, has been in fact enabled the concentration of the rail industry and increased its monopoly power.

“Consumers should not be left footing the bill for a dysfunctional and industry-friendly Surface Transportation Board,” Szabo said. “If we really want a freight rail system that works for America, the railroads need to operate under the free market principles of fairness, competition and service. This legislation will help bring the industry into the real world and provide the kind of checks and balances that apply to virtually every other industry.”

The Railroad Antitrust Enforcement Act of 2007, cosponsored by Senate Judiciary Committee Chairman Sen. Patrick Leahy (D-VT), Sen. Herb Kohl (D-WI) and Sen. Norm Coleman (R-MN), would:

- Repeal the railroad antitrust exemptions;
- Permit the U.S. Department of Justice and the Federal Trade Commission (FTC) to review mergers under antitrust law; and
- Allow State Attorneys General and other private parties to sue for treble damages and sue for court orders to halt anticompetitive conduct, both of which are not currently allowable under federal law

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Consumers United for Rail Equity (CURE) represents a wide variety of rail customers including public utilities, rural electric coops, agriculture; chemical, ethanol, cement and other manufacturers, forest and paper companies, and their customers.