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BEFORE THE

House Committee on Transportation & Infrastructure

Subcommittee on Railroads

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The U.S. Rail Capacity Crunch

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TESTIMONY OF

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2167 Rayburn House Office Building

Mr. Chairman, my name is Glenn English. I am the Chief Executive Officer of the National Rural Electric Cooperative Association. I also serve as Chairman of Consumers United for Rail Equity (C.U.R.E.), a captive rail customer advocacy group representing a broad array of vital industries – chemical manufacturers and processors; paper, pulp and forest products; agricultural commodities producers and processors; cement and building materials suppliers; and many more.

I appreciate the invitation to appear before you today to discuss an issue that has rapidly risen to the top of the policy agenda for members of NRECA, a trade association consisting of nearly 1,000 cooperatives providing electricity to more than 39 million consumers living in 47 states. As member-owned, not-for-profit organizations the obligation of cooperatives is to provide a reliable supply of electricity to all consumers in our service areas at the lowest possible price. We take our obligation to serve very seriously – the personal and economic health of our members, our communities and our nation depends on it. Co-ops serve primarily the more sparsely populated parts of our nation, but cover roughly 74 percent of the land mass of the nation.

### **The Captive Shipper/Railroad Monopoly Problem**

Mr. Chairman, about 50% of the nation's electricity is generated from coal. In the electric cooperative community, about 80% of the electricity generated by our plants is from coal. Very few of our generating facilities are located at coal mine sites, so most of the coal consumed by our plants is delivered by rail.

Co-ops buy the coal at the mine site and arrange for its transportation, so the shipping agreements are between the railroad companies and the cooperative. Generally, our co-ops provide and maintain the "train sets" – the unit trains that today normally number from 120 to 130 cars. We also provide unloading facilities and make other capital investments related to rail transportation of coal to our plants. In the movement of coal to our plants, the railroads provide the locomotives, the tracks, the crews and the fuel.

Increasingly, our members are must deal with poorer service and higher costs for their coal transportation than ever before. Horror stories abound. Consolidation of the rail industry has resulted in many of our generators being held "captive" to one single railroad for coal transportation. As a result, a great many of our electric generators are subject to railroad monopoly power over price and service with no access to competition. The railroads have extensive exemptions from the nation's antitrust laws. Under the Staggers Rail Act, the ICC (now Surface Transportation Board) was to deregulate competitive rail traffic, while also preventing railroad monopoly abuse of "single served" or "captive" traffic. That protection is not being provided.

The STB has interpreted Staggers in a manner that allows railroads to deny shippers access to competing railroads, and has a rate challenge process so complex, costly and time consuming as to provide virtually no protection to rail customers. Recently captive rail rates have increased steeply for Dairyland Generation and

Transmission Co-op in Wisconsin, where freight rates doubled this year, resulting in 45% higher consumer electric bills. We recognize that rail traffic is growing and there is a need for investment in rail infrastructure. That need for investment, however, is not an excuse for the unfair practices that are now standard operating procedures for the railroads.

I want to recognize the Ranking Member of the full committee, Mr. Oberstar, for his keen interest in resolving both of the issue areas before us today – the U.S. railway “capacity crunch,” and the need to mandate reforms in the industry at the same time we seek to provide mechanisms to encourage adequate infrastructure investment.

Along with Congressman Baker of Louisiana and 13 others, Mr. Oberstar introduced H.R.2047, the Railroad Competition Improvement and Reauthorization Act, on May 4<sup>th</sup> last year. He clearly articulated “the rest of the railroad story” in his introductory statement, citing the anti-competitive stranglehold of the remaining four major Class I railroads over captive shippers in “entire States, regions, and industries.” Today there are 30 cosponsors for that legislation.

The situation facing us today goes far beyond just the very high prices being charged captive shippers. Currently, the nation faces a situation wherein the railroads are either unable or unwilling to deliver reliable supplies of coal to our generators in a timely fashion. So, in a very real sense, our members are paying much more and receiving far less when it comes to rail transportation. Policies must be changed to address a rapidly worsening situation that is harming critical industries.

### **Current Coal Delivery Problems Adversely Impact Electricity**

April 17<sup>th</sup>, we were reminded what happens if there is a shortage of electric generating capacity. One-hundred degree temperatures in Texas sent folks scurrying for air conditioners, overwhelming the available electricity generating capacity. According to the Electric Reliability Council of Texas (ERCOT), significant generating capacity on the system was down for maintenance prior to the summer air conditioning season. Thus, the transmission system was short of electricity resulting in forced 15-minute rolling blackouts. This incident illustrates what happens when – for any reason – there is not enough generation, and it serves as a warning. The fact is that electric generation is now threatened by the railroads’ poor performance and their lack of reliability.

The delivery system for half the nation’s electricity consists of coal mines, rail transportation, generators, and transmission and distribution systems. Due to rail transportation problems, many of the electric cooperative generators are extremely low on coal supply as we enter the summer cooling season. Some generating facilities are dangerously close to the point where continued operation cannot be sustained. If these units are forced to reduce their production of electricity, our co-ops would either have to use natural gas generators – at fuel costs as much as 5 to 7 times as high as the cost of coal – or buy excess electricity on the grid, if there is any. If the gas or excess electricity is not available, certain areas of the nation could be short of generating capacity and brown outs or rolling black outs just like those experienced last week in Texas could occur.

In a world suffering from shortages of energy supplies, our nation is blessed with enormous reserves of coal that can provide for electricity and other uses for many decades in the future. Our coal resources are sufficient to meet our energy needs for more than 250 years. Some have referred to the United States as the Saudi Arabia of coal. In a 2001 speech, Vice-President Dick Cheney pointed out that the overall demand for electric power is expected to rise by 43-percent over the next 20 years, and that just meeting the demand would require between 1,300 and 1,900 new power plants. That averages to more than one new power plant per week, every week, for the next 20 years. “We all speak of the new economy and its marvels,” he said, “sometimes forgetting that it all runs on electric power.”

Coal is still the most plentiful source of affordable energy in the country, and by far the primary source of electric power generation. What the Vice-President might not have recognized at the time of his speech was that the railroads responsible for moving this strategically important fuel supply were already in the process of making America’s most abundant and affordable energy supply scarce and expensive. When electric co-ops are looking to South America and other foreign coal sources because the railroads cannot make timely domestic deliveries, we know the *status quo* cannot stand.

Let me focus on the coal delivery problem confronting just one very large coal-fired electric generator in Wyoming – the Laramie River Station. In the spring of 2005, there were two derailments on tracks coming from the Powder River Basin (PRB), the source of the nation’s largest supply of low sulfur coal. This reduced rail deliveries of coal by 80 to 85 percent, and deliveries have not yet recovered.

The three unit (1650 MW) Laramie River Station in Wheatland, Wyoming, located only 170 miles from the coal source, is down to a 6 day supply of coal, even with its coal conservation plan. This plant is operated by Basin Electric Power Cooperative for 6 not-for-profit utilities. Other co-ops are experiencing similar problems securing sufficient coal to run the generators and have had to cut production at those plants that are normally the least expensive to operate. Electricity generators have resorted to burning more expensive natural gas, purchasing higher cost electricity from the grid, or purchasing more expensive and higher sulfur local coal. Arkansas Electric Cooperative has estimated that alternate-fuel power generation costs for its customers have increased by \$100-million because of the shortage of coal deliveries over the past 12 months to its power plants.

The shortfall in rail coal deliveries has many far-reaching consequences. In order to replace an expected 20-million ton shortfall of PRB coal deliveries in 2006, it will require the use of about 340-billion cubic feet of natural gas costing about \$2.6-billion more than the coal. The additional use of natural gas to generate instead of coal has also significantly driven up the price of gas across the country, and – again illustrating the adverse impacts on many of our other industrial sectors – has increased the costs to those using natural gas as a feed-stock for manufacture of their products. Restriction in the supply of PRB coal has also resulted in a tripling of the coal spot market price, increasing those prices from roughly \$6.00 per ton to more than \$20 per ton.

## **Railroad Obligation to Serve – Wall Street vs. Main Street**

Mr. Chairman, we believe that an overriding national public interest applies to the railroad industry. Clearly, as with our electric utility industry, there is a national interest in the operation of the rail system. No electric utility – whether a rural electric cooperative, a municipal power system or an investor owned utility – is free to conduct business in any manner it likes, including “maximizing” profits. City officials overseeing municipal utilities are subject to the vote of the people; rural electric co-op boards must earn election by their member-owners; and investor owned utilities are subject to the oversight of both state public service commissions and the Federal Energy Regulatory Commission.

Railroad companies want to tell the Congress only one side of the story, emphasizing the status and effects of freight railroad traffic “constraints” – the “capacity crunch – while alleging there is a crying need for financial incentives to lure the level of investments needed to provide additional capital necessary to modernize and expand America’s rail infrastructure and capacity.

There is no question that the infrastructure and the capacity of our railroads needs significant expansion and capacity improvement if we as a nation are going to continue to grow our economy, provide new and better jobs, and compete for business in a global marketplace. However, Mr. Chairman, there is a dark side to the story about how America’s railroads are operating. There is an honest question of how really sincere they are about reducing “constraints” in capacity when those very same constraints – coupled with their exercise of monopoly power over captive customers – have led to ever growing profit levels for the major rail corporations. The railroads and Wall Street have been focused on making large profits while Main Street Americans are focused on the “big picture” of growing and expanding our overall economy – not just one sector.

We contend that the railroad industry should – like electric utilities – also have an obligation to serve the national public interest. This obligation may sometimes be called a “common carrier” obligation, but in the end it is an obligation to serve. Further, this obligation to serve means the obligation to provide reliable transportation service to all customers at fair and reasonable prices. Without mandating an obligation to serve by the railroads, the economy of this nation cannot move forward. Adequate, dependable, and reasonably priced rail service is almost as critical to our national and economic security interests as electricity, and the public interest cries out for the imposition of an “obligation to serve” in order to correct the current abusive tendencies of the railroads.

The Surface Transportation Board asserts little jurisdiction over railroad service issues and has been completely passive during the current coal delivery problems. When the CEO of Arkansas Electric Cooperative sent a letter on this subject to the STB last August, not only did he never receive a response from the STB, his letter was answered by a Vice President of the Burlington Northern Railroad – the railroad about whom he was complaining! Today, there is effectively no government agency to which rail customers can turn for redress even when severe railroad service problems are being experienced.

Some tell us that the economic self-interest of the railroads will solve the railroad service and capacity problems over time. That certainly was the premise of the Staggers Rail Act – deregulate the railroads and they will become healthy and provide the rail service needed by the nation at fair and reasonable prices. Railroad customers have good reason to doubt that assertion.

In the absence of strong signals from the government about service and capacity to meet the needs of “Main Street” America, the railroads will take their signals only from “Wall Street.” Financial analysts today rate railroad stocks high because the railroads possess “pricing power” based on the fact that demand for rail transportation exceeds capacity. Moreover, Wall Street tends to grade railroad stocks down when the railroads make heavy investments in their systems. So, Mr. Chairman, there is significant concern among the rail customer community that actually providing sufficient capacity and reliable service for them will be perceived by Wall Street as adverse to the economic interests of the rail industry.

Questions about future reliable rail service at fair prices is a significant concern to the electricity industry as it attempts to provide the additional coal-fired power plants the nation will need in the future. Can we depend on reliable rail transportation of coal in the future at a fair and reasonable price?

### **Assistance Helps Ensure Profits – Requires an Obligation to Serve**

Finally, Mr. Chairman, we understand that legislation may be introduced to provide a 25% investment tax credit for investments in railroad infrastructure. We may very well support such a federal incentive, so long as it was part of a package of legislation that also addressed the concerns of rail customers that find themselves subject to railroad monopoly power, and so long as the tax credit is also available to rail customers when they make similar investments in infrastructure to improve overall rail capacity.

Moreover, there should be certain conditions imposed on the investments eligible for the tax credit. For example, the investments that qualify for this tax credit should be limited to first improving the infrastructure that currently provides insufficient service to captive or single-served rail customers. Investments eligible for the tax credit should be focused first on infrastructure that benefits the movement of domestic products and commodities as opposed to infrastructure that benefits imported container traffic. Finally, any infrastructure that benefits from the tax credit should be deployed in a pro-competitive manner as suggested in H.R.2047, as opposed to further expanding the monopoly power of the railroads.

But I remind the subcommittee again that the rationale for providing any level of assistance to the railroads is because of the important role they play in our nation’s overall economy. Electric utilities are viewed as absolutely critical not only to the economy, but also indispensable in helping to ensure our homeland security. Railroads obviously

occupy a similar role, and thus Congress and the American people are willing to provide all reasonable assistance to ensure the rail transportation system is robust and efficient, but with those benefits to help ensure the profitability of the rail industry also should come an obligation to serve the best interests of Main Street America – not just Wall Street.

## **Conclusion**

Mr. Chairman, thank you for conducting this hearing today. We support a strong and viable rail industry that will provide reliable service to its customers at fair and reasonable prices. The status quo in the industry will not result in this type of rail system for the nation. Those kinds of reforms and changes from current law as suggested in H.R.2047 must be adopted as federal policy, and the public benefits that result from competition in the marketplace must be applied to the rail transportation system by removing the rail industry's exemptions from the nation's antitrust laws.

I can assure the subcommittee that the 39-million consumer-owners of the NRECA electric cooperative family look forward to working with you, and with all of the other stakeholders involved, in resolving these critical rail transportation issues in an objective and constructive manner.

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