

Railroad Competition Act

Testimony before the NACo, EELU Committee

March 4, 2005

OPENING REMARKS

Mr. Chairman, members of the Energy subcommittee, I am John Prinkki, County Commissioner from Carbon County, Montana. I am hear before you today to ask for your consideration in the matter of supporting the Railroad Competition Act.

RAILROAD COMPETITION ACT

The Railroad Competition Act was introduced in both the U.S. Senate and House of Representatives in the 108th Congress to restore a measure of competition to the nations freight rail marketplace.

The Railroad Competition Act is about a lack of choice for rail customers in the marketplace, and the associated symptomatic problems of excessive rates and poor or erratic service practices.

The Railroad Competition Act is not re-regulation of the industry, it does not cap rates, nor does it mandate open trackage rights. The RCA does four major things;

1. The RCA reestablishes that the National Rail Policy is pro-competition to ensure and nurture competition in this vitally important industry.
2. The RCA restores several provisions that Congress established in 1980 in the Staggers Rail Act to their original intent and purpose. This is accomplished through the removal of the intervening agency interpretations of the Surface Transportation Board that have altered original Congressional language and intent. It will promote that railroads must quote rates between two points on their system, and removes the anti-trust provision for terminal area and switching.
3. The RCA establishes a final offer arbitration concept that was and continues to be successfully utilized in major league baseball, and is being utilized in Canada for resolutions of disputes on rates or service to rail customers.
4. The RCA recognizes that in order to establish competition in the rail industry, Congress will need to establish a concept called Areas of Inadequate Rail Competition with advocacy and oversight. This will serve to focus remedial attention to ensure more competitive

balance in the market place.

IMPORTANCE TO ENERGY

Both the American Public Power, and the National Rural Electric Cooperative Association support the adoption of the Railroad Competition Act. Mr. Terry Huval of Lafayette Utilities, Louisiana testified on behalf of the RCA representing the interests of APPA and CURE, the Consumers United for Rail Equity.

Approximately 50% of the electricity is generated from coal, the vast majority of which is shipped by rail. A substantial amount of the coal fired generation has a single railroad transportation option, for at least a portion of its shipment. Thus, a large amount of the coal used to generate electricity in this country is "captive" to a single railroad for transportation, and the transportation costs for shipping that coal are frequently unreasonably high.

During the Fall of 2004, another issue affecting electric utilities and rail contracts arose. Burlington Northern Santa Fe Corp. and Union Pacific Corp. announced a restructuring of their pricing policies resulting in the phase out of confidential long-term coal shipping contracts and a movement towards short-term contracts and market-based shipping rates. Electric utilities with existing rail contracts for western coal that will soon expire, or those in negotiations for new rail contracts for western coal will be impacted by this pricing change. This issue could invigorate activity on captive shipper issues in the 109th Congress.

In addition to serving as a Carbon County Commissioner, I also serve as the President of Beartooth Rural Electric Cooperative, and the Vice President of Southern Montana Electric Generation and Transmission Cooperative. SMEG&T is made up of five (5) rural electric coops and the City of Great Falls, the first municipal power utility in Montana. We have begun negotiations with the Burlington Northern Santa Fe railroad for deliveries of coal to our proposed 250mw CFB coal fired generation plant which will be located about 8 miles east of Great Falls. The preliminary indications of pricing for coal delivery are that the price will be determined not on the cost of service for delivery with a built in profit, but on the difference in the cost of coal generation compared to the cost of generation using natural gas. Natural gas is currently at about \$7 per mmBTU on average, and has peaked at times to \$10.00 per mmBTU. Our CFB plant which will utilize coal from southern Montana is estimated to produce electricity at a comparative \$3 per mmbtu, natural gas price. Utilizing the price structure suggested in preliminary discussions with BNSF, the cost of coal transportation will result in a mark-up which is three times the cost of service. This will result in astronomically large profits to the rail shipper. As a cooperative based organization, SMEG&T is established in providing cost based electricity to our consumers. The proposed transportation cost will have a significant and direct impact on the cost of electricity provided to the consumers of SMEG&T. This cost if not corrected will be over one third of the cost of electricity supplied to our consumers.

IMPORTANCE TO MONTANA

Affordable cost based electricity will provide an economic incentive to both local and national business development and growth. This statement has been proven in other documented materials. The utilization of coal in the production of electricity from mines located in southern Montana provides for local growth both in the local area of the mine, but as well at the generating station and the locations of consumption of the electricity. This long term stable supply of fuel and generation of cost based electricity will ensure a source of power for generations to come. The cost based pricing will support industries and farms and allow for their continued operation. Instead of losing jobs and industry to other states or countries, the State of Montana will grow with jobs and allow and entice our children and grandchildren to stay in Montana.

BENEFITS TO THE NATION

If the situation I described in Montana is true. It may very well be true for your county and state as well.

If the lack of rail competition affects the energy industry, it most likely impacts other industries as well.

If the lack of rail competition affects industry, it most likely affects all other businesses that rely on rail freight for delivery of products and services including retail, as well.

If your area is served by a single railroad and therefore 'captive' to freight services, your constituents, your businesses, your industries are most likely affected.

CLOSING REMARKS

Mr. Chairman, members of the committee, I hope that I have adequately address