



March 2009

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Cosponsor Update

[H.R. 233](#)

Rep. Marion Berry (D-AR)

Thank Rep. Berry for supporting H.R. 233 to restore fairness to the freight rail industry.

[S. 146](#)

Sen. Edward Kaufman (D-DE)

Thank Sen. Kaufman for supporting S. 146 to restore fairness to the freight rail industry.

Noted and Quoted

"In the monopoly game Bruce Wright and other grain farmers play, the money is real, there's no \$200 for passing Go, and the railroad runs the board."

"Landscape changing for farmers, railroads," Tom Lutey, Billings Gazette, February 11, 2009

Rail Customers Bring Case for Reform to Congress *Shippers to Meet with Lawmakers at Critical Juncture*

Rail-dependent customers will once again make the case for rail reform legislation when they gather in Washington to lobby Members of Congress later this month. The Fifth Annual Rail Customer Day on Wednesday, March 25, promises to be an especially productive event as rail shipper champions chair all four Congressional committees of jurisdiction over rail issues for the first time since 1980.

This year's Rail Customer Day will kick off with a breakfast rally in the Russell Senate Office Building after which rail-dependent shippers will hold a series of meetings with Members of Congress in both the Senate and House of Representatives. Shippers will tell Members their captive rail stories, and ask them to both cosponsor rail reform legislation and support the bills when they are brought to the floors of the House and Senate. The day ends with a reception in the Rayburn House Office Building for rail customers, Members and staff.

Until now, Members of Congress have been focused on the immediate problems of the national economy. They have passed the economic stimulus package and received from President Obama his proposed federal budget for FY2010. A related subject is the inequities in freight rail shipping rates, which are hurting American consumers, farmers and manufacturers. Recent steep rate increases have fed robust freight railroad profits and squeezed American families, even as the nation undergoes the deepest economic recession since the 1930s. Since the railroads seem insatiable when it comes to rate increases and the Surface Transportation Board, which has railroad oversight authority, is not restraining these steep price increases, rail customers must seek relief through Congress to achieve improved national rail policy.

Meanwhile, the freight rail industry, led by the American Association of Railroads (AAR), continued its lobbying push to maintain its special exemption from antitrust law and a passive federal oversight agency during its Railway Day on February 26. Their meetings follow on the heels of a massive, ongoing multi-million dollar campaign that includes lobbying, public relations, advertising and paid grassroots activities. The need for rail shippers to make their case in person with Members of Congress to set the record straight in this year of opportunity is greater than ever.

Rail-dependent shippers are encouraged to attend this year's Rail Customer Day to ensure lawmakers hear firsthand why it is critical for Congress to pass reform legislation this year. To participate in the events March 25, please contact Stuart Hall at (202) 298-1959 or sch@vnf.com.

Senate Judiciary Committee Vote on Antitrust Bill Imminent

*Action Needed This Week from CURE Members
to Assure Passage*

Senate Judiciary Committee Chairman Patrick Leahy (D-VT), a supporter and cosponsor of S. 146, the Railroad Antitrust Enforcement Act of 2009, slated S. 146 for full committee consideration on Thursday, March 5. This will be the first vote on rail reform legislation by a House or Senate committee in the current session of Congress.

The announcement - made only seven weeks into the 111th Congress - sets up the earliest vote on rail customer legislation in any congressional session by a full committee since 1980. The early vote shows the growing support for the antitrust legislation and the increasing awareness in Congress of rail customer problems.

"We're much farther ahead in this Congress than the last," said Glenn English, Chairman of CURE and CEO of the National Rural Electric Cooperative Association. "The difference is that all chairmen of the committees of jurisdiction are supporting the legislation on Capitol Hill, and these Congressional leaders, as well as more and more Members of Congress, are hearing about rail problems from consumers, manufacturers, farmers and regulators back home."

The [legislation](#), introduced by Sen. Herb Kohl (D-WI) on January 6, will remove the railroads' antitrust exemption, thus increasing competition and fairness in the freight rail industry. Legislation introduced in the last Congress passed the Judiciary Committee by a unanimous voice vote.

On March 5 at 10 a.m. ET, the committee is scheduled to consider the legislation, including any amendments that may be offered, and then vote on whether to report the legislation to the full Senate. The committee's business meeting will be broadcast live online via [webcast](#).

CURE members should contact their Senators on the Judiciary Committee before the markup, urging their support for S.146.

"We know this legislation received bipartisan support in the last Congress, but we can't take anything for granted," said Bob Szabo, executive director and counsel of CURE. "Any CURE members with ties to Senators on the committee, whether by residence or business location, should call their Senators today to ensure we have the necessary support for reporting this legislation to the full Senate."

The Railroad Antitrust Enforcement Act of 2009 will:

- Repeal the railroads' antitrust exemption;
- Permit the U.S. Department of Justice and the Federal Trade Commission to review rail mergers under antitrust law;
- Ensure that Surface Transportation Board (STB) rulings and regulations conform to the nation's antitrust laws; and
- Allow state Attorneys General and private parties to sue for treble damages and pursue court orders to halt anticompetitive conduct, both of which are not currently allowed under federal law.

A companion House bill (H.R. 233) authored by Rep. Tammy Baldwin (D-WI) is currently pending in the House Judiciary Committee. Action on that legislation could occur later this month.

Contact your Senators if they are members of the Judiciary Committee, to remind them of this important markup in the committee:

"The Railroad Antitrust Enforcement Act of 2009, (S. 146) will be marked up on Thursday, January 5. It is very important for Senator _____ to support this legislation, which was unanimously approved by this committee in the last Congress. It will end the railroads' unfair exemption from antitrust law."

U.S. Senate Judiciary Committee:

- Alabama - Jeff Sessions (R)
- Arizona - Jon Kyl (R)
- California - Dianne Feinstein (D)
- Delaware - Edward Kaufman (D)*
- Illinois - Richard Durbin (D)
- Iowa - Charles Grassley (R)
- Maryland - Benjamin Cardin (D)
- Minnesota - Amy Klobuchar (D)*
- New York - Charles Schumer (D)*
- Oklahoma - Tom Coburn (R)
- Oregon - Ron Wyden (D)
- Pennsylvania - Arlen Specter (R) - Ranking Member
- Rhode Island - Sheldon Whitehouse (D)
- South Carolina - Lindsey Graham (R)
- Texas - John Cornyn (R)
- Utah - Orrin Hatch (R)
- Vermont - Patrick Leahy (D) - Chairman*
- Wisconsin - Russell Feingold (D)*
- Wisconsin - Herb Kohl (D)**

*Indicates cosponsors of S. 146

**Indicates sponsor of S. 146

Lawmakers Committed to Introducing and Enacting STB Reform Legislation in the 111th Congress

Senate Commerce, Science and Transportation Committee Chairman John D. Rockefeller (D-WV) and House Transportation and Infrastructure Chairman James Oberstar (D-MN) are committed to the enactment of legislation in this Congress that will reform the rate challenge process of the Surface Transportation Board (STB) and make other improvements in rail policy. A major element of the proposed legislation is likely to be significant improvements in the discredited rate challenge process of the STB.

"The rate challenge process at the STB has been broken for years," said Don Kimball, President of CURE and CEO of Arizona Electric Power Cooperative, which once contested a rate case that took 10 years for regulators to resolve. "The deck is stacked against the shipper, who must bear all the burdens of proof. They must endure years of litigation and pay millions of dollars in fees, all while paying the unreasonable rate that is being challenged. As a result, many shippers with legitimate cases don't even file with the STB. We believe this legislation will help make the rate challenge process at the STB more effective."

The STB reform legislation would:

- Reverse several anti-competitive rulings by the STB that allow major railroads to prevent their customers from gaining access to competing rail systems;
- Improve the rate challenge process for captive rail customers;
- Empower the STB to ensure railroads provide adequate service for freight moved by tariff; and
- Empower and direct the STB to be proactive and vigilant to stop unreasonable rail practices.

Announcements on hearings on these bills or the rail customer problem in general are expected from these two committees in the very near future.

Rare STB Victory for Rail Customer Highlights Broken Rate Relief System

Captive rail customers earned a rare win in their fight against the monopoly pricing power of the major freight railroads when the Surface Transportation Board (STB) recently awarded \$345 million in relief to Western Fuels Association and Basin Electric Power Cooperative. The result was railroad coal haulage rate reductions of almost 60 percent, totaling roughly \$345 million in benefits to electricity consumers in nine states over a 20-year period.

The decision, announced February 20, is one of the rare times a rail customer has obtained meaningful relief from the STB since 2000. The victory came 1,582 days after the complaint was filed and after the complainants spent upwards of \$8 million prosecuting the case. \$100 million of the rate relief awarded was a repayment of the rates the complainants had overpaid since filing the rate case. Unfortunately, very few captive shippers have the ability to spend the time and resources required to bring a rate case to the STB.

"Out of a total of 16 contested rate cases brought by captive shippers to the STB since 2000, this is only the third time consumers have won meaningful relief," said Bob Szabo, executive director and counsel of Consumers United for Rail Equity (CURE). "Rate relief from the STB remains out of reach for the overwhelming majority of captive rail customers."

Senate Commerce Committee Chairman John Rockefeller (D-WV) and House Transportation and Infrastructure Committee Chairman James Oberstar (D-MN) are committed to improving the STB rate challenge process through STB reform legislation. Meaningful reform will provide all captive rail customers a legitimate chance to contest rates they believe are unreasonably high.