



# RAIL REPORT

RAIL CUSTOMER NEWS AND INFORMATION FROM CURE

OCTOBER 2007

## REFORM SURFACE TRANSPORTATION BOARD NOW, RAIL CUSTOMERS TELL SENATE SUBCOMMITTEE

In the second railroad oversight hearing in a month on Capitol Hill, the Senate Commerce Subcommittee on Surface Transportation, Merchant Marine Infrastructure, Safety and Security held a hearing on October 23 entitled, "Oversight Hearing on the Surface Transportation Board and Regulation Related to the Railroads." Rail customers and their Congressional supporters agreed that the Senate hearing was the most successful airing of rail customer issues conducted in the chamber in a number of years.

### COSPONSORSHIP UPDATE

CURE is pleased to announce the following new cosponsors:

H.R. 2125, the Railroad Competition and Service Improvement Act of 2007 (52 total):

Rep. Perlmutter, Ed [D, CO-07]

H.R. 1650, the Railroad Antitrust Enforcement Act of 2007 (20 total):

Rep. Peterson, Collin C. [D, MN-07]

Rep. Perlmutter, Ed [D, CO-07]

Please contact your Members of Congress today to urge them to cosponsor rail customer legislation!

Many supporters of S. 953, the Railroad Competition and Service Improvement Act, were present and decisive in their call for legislative reform of the nation's freight rail policies. Senators John D. Rockefeller, IV (D-WV), Byron L. Dorgan (D-ND), David Vitter (R-LA) and Amy Klobuchar (D-MN), all cosponsors of S. 953, pressed the STB and railroad witnesses and did not waver in their support for rail customer legislation.

The rail customer witnesses all reiterated the call for legislative reform, each providing compelling testimony about the impact that the lack of competition and service problems are having on their industries. In one of the more memorable highlights, Robert Carlson, president of the North Dakota Farmers Union, apologized to the committee for being unable to bring a grain elevator operator to the

hearing due to the STB's lack of a "witness protection program." In his testimony, Mr. Carlson effectively highlighted customer concerns about railroad intimidation and retaliation.

Concluding the rail customer testimony was Glenn English, CURE Chairman and CEO of the National Rural Electric Cooperative Association. Always a compelling witness, Mr. English was passionate and assertive in attacking the STB's railroad bias. He argued that the practice of STB commissioners transitioning to the rail industry following their tenure has ruined the credibility of the agency with most rail customers. Mr. English made it very clear that rail customers have waited decades for justice on the captive rail issue, and if Congress does not intend to ensure that the customer protections at the STB work, then Congress should remove the "fig leaf" and repeal the authorization for those protections in the Staggers Act.

Interested in joining the CURE effort? Visit [www.railcure.org](http://www.railcure.org) or call us at (202) 298-1844.

The success of the hearing, which came less than a month after another successful hearing in the House Transportation & Infrastructure Committee on these same issues, laid further groundwork for advancing rail customer legislation in this Congress. We thank all of our witnesses and Congressional leaders for their continued support. To read the witnesses' full testimony or view an archived Webcast, please visit: [http://commerce.senate.gov/public/index.cfm?FuseAction=Hearings.Hearing&Hearing\\_ID=1910](http://commerce.senate.gov/public/index.cfm?FuseAction=Hearings.Hearing&Hearing_ID=1910).

## RAIL CUSTOMERS MAKE CASE FOR ANTITRUST REFORM BEFORE SENATE JUDICIARY COMMITTEE

As was reported in last month's edition of *Rail Report*, on September 20 the Senate Judiciary Committee passed, on a bipartisan voice vote without objection, S. 772, the Railroad Antitrust Enforcement Act of 2007. As a condition of the bill's passage, several senators requested that the committee hold a hearing on the legislation. On October 3, the Subcommittee on Antitrust, Competition Policy and Consumer Rights responded to that request by holding a hearing entitled, "An Examination of S. 772, the Railroad Antitrust Enforcement Act." Lasting just two hours and involving little controversy, rail customers presented a compelling case for repealing the railroads' antitrust exemptions.

In their opening statements, both Chairman Herb Kohl (D-WI) and Ranking Member Orrin Hatch (R-UT) clearly outlined the anticompetitive behavior of the railroads that S. 772 aims to rectify. Senator Dianne Feinstein (D-CA) also joined her colleagues in expressing concern over elements of railroad monopoly power, particularly the issue of "paper barriers." In response, the rail customer witnesses each presented a compelling case for passage of S. 772 and repeal of the railroads' antitrust exemptions. "Because the [Surface Transportation Board]'s role in the railroad industry has waned due to efforts to deregulate the industry," argued Dr. Darren Bush, Professor of Law at the University of Houston, "antitrust should step in to fill the void."

Also testifying on behalf of rail customers were: William Berg, President and CEO of Dairyland Power Cooperative; Ken Vander Schaaf, Director of Supply Chain Management for Alliant Techsystems Ammunition and Energetics Systems; and, Bob Szabo, Executive Director and Counsel of CURE. We would like to thank each of the witnesses for their testimony and participation in this successful hearing! S. 772 now awaits action on the Senate floor. To read the witnesses' full testimony, please visit: <http://judiciary.senate.gov/hearing.cfm?id=2971>.

## STB RULING ON "PAPER BARRIERS" OFFERS LITTLE RELIEF FOR RAIL CUSTOMERS

In a long-awaited ruling on contractual interchange commitments, or "paper barriers," the Surface Transportation Board decided on October 30 that each case will be decided individually, a limited ruling that provides little relief for rail customers wishing to challenge the practice. In its petition, the Western Coal Traffic League had sought a broad ruling deeming all paper barriers "unreasonable." Instead, the STB decided to consider each on a case-by-case basis, "given the variations in the terms of such contractual provisions and in the circumstances in which they arise." The STB is also proposing new disclosure rules for paper barrier agreements to aid rail customers in the challenge process as well as ensure that any future agreements are thoroughly reviewed. The decision, STB Ex Parte No. 575, can be viewed at <http://www.stb.dot.gov>. Click on "E-Library," then "Decisions & Notices," and the ruling is listed under the date "10/30/07."

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