

# RAILROAD ANTITRUST EXEMPTION

## Repeal it to Protect Consumers

### **Cooperative Rail Shippers Suffer Monopoly Abuse**

The nation's antitrust laws are meant to protect consumers and the overall public interest from anticompetitive behavior by businesses, but railroads are exempt and do not play by the same rules. The railroads' antitrust exemptions are antiquated, have no public policy justification and allow anticompetitive conduct. The resulting lack of competition, together with the Surface Transportation Board's ineffectiveness, has allowed freight railroads to reap huge profits from electric cooperatives and other industries with no marketplace consequences or legal accountability for their unreliable service and exorbitant rates and fees. Legislative reform is required.

### **Electric Cooperative Consumers Paying the Price**

At several generation and transmission co-ops, low coal stockpiles have threatened the reliability of the electric system. Some have even been forced to buy more expensive foreign coal because they can't rely on railroad deliveries from the Powder River Basin – the richest source of low-sulfur coal in the world. When replacement coal is unavailable, co-ops must rely on more expensive natural gas. Both alternatives drive up consumer bills.

### **What Experts are Saying**

“Rail customers who lack access to competitive rail transportation face higher rates and inadequate service. Ultimately, the price is passed on to all of us as consumers. The Railroad Antitrust Enforcement Act merits our support, because those who fail to remember the lessons of history are bound to repeat its mistakes.”

-Minnesota Attorney General Lori Swanson, January 2008

“Today, enactment of the Railroad Antitrust Enforcement Act would simply subject the railroads to the nation's antitrust laws like virtually every other industry in our economy, including both those that operate in deregulated as well as regulated markets.”

-Letter from seven U.S. senators to Senate Majority Leader Harry Reid, February 2008

“[The Railroad Antitrust Enforcement Act] would eliminate unwarranted and outmode antitrust exemptions enjoyed by freight railroads and provide needed protection to farmers, manufacturers, and electricity consumers. These rail customers across the country have suffered from increased prices and decreased quality of service caused in large part by the lack of competition among freight railroads.”

-Senator Herb Kohl, April 2009

### **A Solution – The Railroad Antitrust Enforcement Act (S. 146/H.R. 233)**

Under the Railroad Antitrust Enforcement Act, the railroads would be given six months to review their anticompetitive practices to bring them into compliance with the nation's antitrust laws. After that time, the railroads would be subject to the same penalties as other industries. This

would give allow electric cooperatives harmed by the railroads market manipulations the right to bring an antitrust action in federal district court to stop practices that violate the nation's antitrust laws.

The Railroad Antitrust Enforcement Act was reported out of the Senate Judiciary Committee on a vote of 14-0 and awaits a vote on the Senate floor. H.R. 233 is awaiting consideration by the House Judiciary Committee, where action is expected very soon. Twenty State Attorneys General and the American Bar Association's Section on Antitrust Law wrote House and Senate leadership strongly endorsing the Railroad Antitrust Enforcement Act and seeking the its passage.

S. 146/H.R. 233 is a first and fundamental step toward ensuring fair competition, guarding national economic and security interests, and protecting rail customers. Railroads must be covered by the nation's antitrust laws just like other industries. NRECA supports legislation that:

- Repeals railroad exemptions from antitrust statutes, making railroads fully covered like other industries.
- Permits the U.S. Justice Department and the Federal Trade Commission to review rail mergers under antitrust law.
- Allows state attorneys general and private parties to sue to halt anticompetitive conduct.

**NRECA thanks Sen. Herb Kohl (D-WI) and Rep. Tammy Baldwin (D-WI), lead sponsors and champions of the "Railroad Antitrust Enforcement Act." NRECA also thanks the Members of Congress who have signed on to both pieces of legislation.**

**NRECA Urges Members of Congress to:**

**In the U.S. Senate**

- **To vote for S. 146**, the Railroad Antitrust Enforcement Act.

**In the U.S. House of Representatives**

- **To cosponsor H.R. 233**, the Railroad Antitrust Enforcement Act.