



"We need to fix the system."

PUSH FOR RAIL REFORM INTENSIFIES

Basin Electric, together with its member cooperatives, other captive rail consumers in the Midwest and its employees, is sending a strong message to members of Congress and the U.S. Surface Transportation Board: The U.S. rail system is deeply flawed, and rural America is paying the price.

The Surface Transportation Board (STB) announced Sept. 10 its decision on the Basin Electric and Western Fuels Association rate case against BNSF Railway, a case that was initially filed in October 2004. The STB ruled against Basin Electric and Western Fuels, saying "the shipper had not shown that the challenged rates are unreasonable under the Board's 'stand-alone cost' (SAC) rate test."

Ron Harper, Basin Electric CEO and general manager, says the ruling is deeply disappointing. "This ruling demonstrates that the STB and its process are completely broken. We need to fix that system, and Congress needs to make that a high priority. Unrestrained monopoly power has brought record profits to the rail industry, while our member-owners pay the price – \$1 billion over the next 20 years, to be precise."

At the forefront of those impacted is the Basin Electric-operated Laramie River Station in Wheatland, WY, which is entirely dependent on BNSF for its Powder River Basin coal. After a 20-year coal-purchase contract expired, BNSF dramatically doubled its rates. Compounding this were severe service lapses, causing the power plant's stockpile of coal to dwindle to dangerously low levels.

With the STB's unfavorable ruling, Basin Electric had the option of revising key portions of its case in light of the STB's changes to the SAC methodology made after the initial case was filed. Under SAC, a

The rate case against BNSF Railway has required more than five feet of paperwork since it was initially filed in October 2004.

railroad may not charge a shipper more than what a hypothetical new, optimally efficient carrier, referred to as a 'stand-alone railroad,' would need to charge the shipper if such a carrier were to design, build and operate a new railroad.

The STB granted a request Sept. 26 made by Western Fuels and Basin Electric for an extension of the date that they must file for reconsideration of their rail rates case. The date has been moved from Oct. 1 to Oct. 22. The request also asked to extend the filing of supplemental SAC evidence to Oct. 22.

Basin Electric has been working closely with national groups leading the charge for rail reform, such as Consumers United for Rail Equity (CURE) and the Alliance for Rail Competition, and will continue to engage others impacted by adverse rail practices.

"We have the 125 member cooperatives who own Basin Electric actively involved in this issue. We plan to carry our message to Washington, D.C., in a variety of ways—letters, phone calls, e-mails and in person. We're going to keep fighting to reform this broken system, and are extremely pleased that Representative Earl Pomeroy and Senator Byron Dorgan (both of North Dakota) are leading the way," Harper says.

Harper delivered his message in person on Sept. 25 before the U.S. House Transportation and Infrastructure Committee's hearing on rail competition and service. Chaired by U.S. Rep. James Oberstar (D-MN), the committee heard testimony on H.R. 2125, a bill designed to ensure competition in the rail industry, enable rail customers to obtain reliable rail service, and provide those customers with a reasonable process for challenging rate and service disputes.

In his testimony, Harper said Congress needs to take measures to ensure the regulators are not controlled by the industry they are supposed to regulate. "STB claims it is an effective regulator that protects the rights of rail customers. However, the STB's actions don't match its words. Railroads

win. Customers lose. If you do not have dedicated public servants who are willing to adhere to their statutory responsibility and protect the public interest, the process or

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~ Ron Harper

standards in place do not matter," Harper said. "Congress must take action and do something immediately to restore balance and fairness in decision-making."

Pomeroy, along with Reps. Tammy Baldwin (D-WI) and Rodney Alexander (R-LA), also introduced The Railroad Antitrust Enforcement Act of 2007 (H.R. 1650), which repeals the railroad antitrust exemptions in antitrust and transportation statutes so antitrust law fully covers railroads. The bill will permit the Justice Department and Federal Trade Commission to review railroad mergers under antitrust law, and it will eliminate antitrust exemptions for mergers, acquisitions, collective ratemaking and coordination among railroads. The bill also will allow state attorneys general and other private parties to sue for treble damages and to sue to halt anticompetitive conduct, both of which are not currently allowed under federal law.

"Representative Pomeroy and Senator Dorgan are looking out for the end-use consumer in their state, and so are we. We encourage others within the cooperative family and in Washington, D.C., to get behind H.R. 2125 and H.R. 1650 and start making a difference," Harper says.

Shippers saw some progress on Sept. 20 when S. 772, which is identical to H.R. 1650, was ordered to the full Senate by the Senate Judiciary Committee. Mike Eggl, Basin Electric senior vice president of External Relations and Communications, says this is the first time any type of legislation the railroads have strongly opposed has made it to a vote in quite some time. "And it's the first time since 1980 that any committee of Congress has reported legislation that changes national rail policy. This is a fundamental change that will benefit all rail customers," Eggl says. "The railroads' antitrust exemption is one of the broadest remaining antitrust exemptions. It has no public policy justification and simply protects the railroad industry's anti-competitive conduct."

Several members of the committee, while speaking in favor of S.772, requested a hearing on the legislation before the Subcommittee on Antitrust, Competition Policy and Consumer Rights. That hearing was held Oct. 3.

Bob Szabo, executive director of CURE, testified in support of the bill, saying it will refocus the STB on its original congressional intent—ensuring competition and protecting consumers.

The bipartisan bill is sponsored by Sens. Herb Kohl (D-WI), Norm Coleman (R-MN), Russ Feingold (D-WI), David Vitter (R-LA), John D. Rockefeller (D-WV), Tom Harkin (D-IA) and committee chairman Patrick Leahy (D-VT).

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