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April 17, 2014
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Statement for the Record
Consumers United for Rail Equity Paul Gutierrez
Surface Transportation Board Hearing on United States Rail Service Issues
395 E Street SW
Washington, DC 20423-0001

April 10, 2014

Thank you Chairman Elliott and Vice Chairman Begeman for scheduling this hearing on rail service issues. I appreciate the expedited hearing to listen to the concerns of shippers and hear directly from the railroads about service issues. I also commend the STB for sending staff to North Dakota to meet with entities, on the ground, that have been impacted by poor rail service the past several months. It is important to get out of DC to hear from constituents in their home states.

My name is Paul Gutierrez. I work for the National Rural Electric Cooperative Association, but I appear here today on behalf of Consumers United for Rail Equity, or CURE, of which NRECA is a member.

CURE represents over two dozen major individual rail shippers of various commodities, and also includes large trade associations that represent more than 3,500 electric, utility, chemical, manufacturing, agriculture and forest and paper companies and their consumers. CURE is concerned with undue exercises of freight rail market power over rail dependent shippers.

This morning you have heard from a number of entities that have had similar experience as many of our CURE members related to service problems that have prompted the need for this hearing. As another example, Dairyland Power Cooperative has not been able to get rail delivery of the coal needed for generating electricity. The increased cost of trucking coal or supplementing with natural gas generation will be ultimately be borne by their consumers. Our utility members are required to keep the lights on and the power flowing. They don't have the luxury of not delivering power. They are required to have contingency plans in place to make sure power is delivered to their consumers. As you have heard, many other commodity groups such as agricultural products, chemical products and paper and forest products are being similarly affected by poor rail service.

CURE submits that the service problems we're discussing today reflect impacts of rail market power because of the lack of market competition. It is not a secret that firms

holding a lot of market power may not invest in capacity or respond to service problems as would firms facing market competition.

To respond effectively to such harms, CURE believes the Board needs to take into account the broader context in which these harms have arisen. Just a couple of weeks ago, at the public hearing in EP 711, the Board heard the railroads repeat their longstanding claim that they basically don't keep capacity available to absorb the new traffic they might obtain from NITL's competitive switching proposal. At the same hearing, CURE member AECC demonstrated that the Big 4 Class I railroads as a group in recent years have achieved earnings above the Board's revenue adequacy level, now reaching over \$1 billion of excess profits annually. A new study done by Escalation Consultants for the American Chemistry Council shows by commodity group, how much revenue over the 180% R/VC threshold the railroads are now collecting. The evidence clearly shows that the railroads now are exercising too much market power over rail dependent shippers.

In the past, the Board routinely has declined to rely on competitive forces to remedy service problems. Arkansas Electric Cooperative Corporation, another CURE member, has service problems experienced at two different major power plants. When the White Bluff plant at Redfield, Arkansas experienced major delivery problems in the aftermath of the UP-SP merger, the Board denied a request for emergency service from another carrier. Likewise, for the Independence plant at Newark, AR, the Board denied a request for a competitive through route to remedy chronic service problems.

With the achievement of revenue adequacy by the major railroads, the Board now faces a new paradox of how a revenue-adequate carrier or group of carriers, with access to all of the capital they need, elect to operate their systems in a way that produces inadequate service in the absence of any type of market competition. We hope that by initiating this hearing and the pending competitive switching hearing decision, that the Board would carefully consider competitive access provisions that have not been available in the past.

Across the country, CURE members in many different industries sectors experience the daily rigors of competition, and effective regulation where needed to prevent excessive market control or profits. CURE and its members urge the Board to view the current service issues as another symptom of excessive rail market power, and to apply without undue reservation the competitive access remedies Congress long ago provided for inadequate service. Service problems stemming from market power can't be solved solely by competitive switching but that is a good place to start. The current state of rail consolidation and lack of competition is upping the ante for poor rail performance that this Board can guide the rail industry to make decisions and operate their systems in ways that are less myopic, and more consistent with a "sound rail transportation system with effective competition among rail carriers" envisioned by Congress.

CURE would recommend the STB take the following actions:

1. Take actions to increase competitive forces in the freight rail industry
2. Initiate a proceeding on EP -711 Competitive Switching Proposal
3. Use Emergency orders prudently and as needed especially for coal, agricultural commodities and other commodities critical to the economy
4. Require carriers to make data available to the public on service disruptions and their plans to address those disruptions
5. Require carriers to submit long term plans to address rail shipment growth and ensure reliable rail service
6. Require carriers to submit emergency/contingent plans in preparation for the next severe winter or other crisis

Thank you for this opportunity to address you regarding this issue that is so crucial to rail dependent shippers, and is critical to responsible regulation of the rail industry.