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**GLENN ENGLISH
CHAIRMAN, CONSUMERS UNITED FOR RAIL EQUITY
CEO, NATIONAL RURAL ELECTRIC COOPERATIVE ASSOCIATION**

Mr. Chairman and Members of the Board, I am Glenn English, Chief Executive Officer of the National Rural Electric Cooperatives Association. I also serve as Chairman of Consumers United for Rail Equity ("CURE"). I appear here today on behalf of both the rural electric cooperatives of America and the rail-dependent shippers who are members of CURE. I am accompanied by CURE's Executive Director and Counsel, Bob Szabo and Mike McBride, both of Van Ness Feldman, whom I may ask to respond to some of your questions if they are legal in nature.

Mr. Chairman, I would like to congratulate Vice Chairman Begeman on joining the Board. We appreciate the work, Madam Vice Chairman, you have done on the rail issue while serving as staff in the United States Senate, particularly during the development of S.2889, the STB Reauthorization Act of 2009. I am also pleased to know that your roots are in a good rural electric coop state: South Dakota.

Mr. Chairman and Commissioners, the community I represent is very pleased that you have initiated this proceeding. The entire theory behind the Staggers Rail Act of 1980, and the later ICC Termination Act of 1995, is that market competition should replace government regulation as the dominant force that defines the relationships

between the freight railroads and their customers, “to the maximum extent possible.” After a decade or so of robust competition that benefitted many rail customers – but never the “captive rail customers” – railroad consolidations and some of the regulatory rulings of the Board and its predecessor diminished that initial burst of competition to the point that rail-to-rail competition is rare in the current national rail system. For many rail customers in our community, truck transportation is not economically viable and water transportation is not available. Thus, rail dependent shippers have access to transportation competition only when there is rail-to-rail competition. Yet, members of our community report that rail-to-rail competition seems to have virtually ceased, beginning in about 2003, even in many situations where a rail customer has direct, physical access to two rail carriers. We believe the current lack of rail-to-rail competition in the national rail system is not what the promoters and supporters of the Staggers Rail Act had in mind in 1980.

For most of the time since the enactment of the Staggers Act, the justification for tilting the regulatory regime in favor of the freight railroads has been the poor financial health of the freight railroads. If any of us have forgotten the financial condition of the freight railroads in the 1970s, the freight railroads will remind us quickly – and attribute all of their problems during that period to the regulatory regime that governed their activities prior to 1980. To my membership, any representation that the freight railroads are not in robust health today simply is not credible. The fact that your annual “revenue adequacy” determination continues to only episodically find one or a few of the Class I railroads to be financially healthy is simply not believable to most rail customers in light of all the countervailing railroad financial performance information that is available.

For these reasons, we believe your inquiry about competition in the freight rail industry is most timely.

INCREASED RAIL-TO-RAIL COMPETITION IS CRITICAL TO RAIL DEPENDENT SHIPPERS

Adequate rail-to-rail competition in the national freight rail system is extremely important to the members of NRECA and CURE for several reasons. First, our members move freight for which truck transportation or water transportation is not a viable competitive option. The freight must move by rail. Normally, our members have access to only one railroad at their origin or destination. If they have access to two railroads, their experience since 2003 is that one of the railroads will not compete for their business. Thus, in a network industry, a consumer that must use railroad services simply has no access to meaningful transportation competition unless that consumer can have access to a second railroad for part of its freight movement. We recognize that we can not undo the mergers and acquisitions that have limited rail transportation choices and we recognize that developing a new competing rail system in the nation is virtually impossible today. Thus, the time has come for the Board to address its regulatory policies that allow the freight railroads to avoid rail-to-rail competition.

The initial adverse impact of the lack of rail-to-rail competition of concern to me is the electricity rate increases that occur for our rural electric cooperative members through captive rail rates for the movement of coal to our generating plants. Nine hundred not-for-profit, democratically elected rural electric cooperatives in 47 states provide electricity to 42 million Americans. Captive rail rates have soared in recent years as existing transportation contracts have expired. Removing the regulatory barriers to

rail-to-rail competition – the bottleneck rule and the heavy burden of proof on reciprocal switching in particular, as well as the “paper barriers” problem that the Board has not included in this inquiry – would allow some of our electric generators access to competition for at least part of their coal transportation movements, but would not remove all of the rail captivity that negatively affects rural electricity prices.

Nevertheless, we believe that the intent of Congress in both its 1980 and 1995 legislation is that rail customers should have access to rail-to-rail competition where possible.

We believe removing the current regulatory barriers to competition would save consumers served by rural electric cooperatives millions of dollars annually in their electricity bills. This is equally true for the millions of consumers who receive their electricity from public power utilities and investor-owned utilities. In each case, the cost of the coal transportation moves directly to the monthly bills received by electricity consumers. Remember, despite the negative public policy rhetoric concerning burning coal to generate electricity, nearly 50% of the nation’s electricity is currently generated from coal, a very high percentage of that coal moves to generators by rail and a significant percentage of coal hauled by rail is captive to a single railroad.

INCREASED RAIL-TO-RAIL COMPETITION IS IMPORTANT TO AGRICULTURE

Second, as indicated in the comments filed in this proceeding by the United States Department of Agriculture and in the excellent joint study released by the United States Department of Transportation and the United States Department of Agriculture on April 27, 2010, entitled “Study of Rural Transportation Issues”, unreasonably high rail rates and, often, the poor rail service that can result from captivity, adversely affect both the

“input” costs of agriculture in rural America as well as the cost of moving agricultural products to market, including the export market that is the focus of so much attention as the nation attempts to grow jobs and jump start our economy. When agriculture spends an unreasonable amount of money on inputs, such as unreasonably high captive transportation rates for moving fertilizer to agricultural areas, and an unreasonable amount of money on transporting agricultural products to market, the American farmer inevitably ends up with less money in his pocket. Reduced farm income and increased electricity rates are a difficult combination in any economy, but particularly so today. The problem of rail captivity is likely to become even more pressing in the farm community if crop supports and other federal assistance for rural America succumb to the current focus on reducing federal domestic spending. The best solution for keeping rail rates at reasonable levels for the benefit of rural America is market competition – meaning rail-to-rail competition – which can occur if the Board removes the current regulatory barriers to competition that are in place today.

**INCREASED RAIL-TO-RAIL COMPETITION CAN INCREASE JOBS
CREATION BY THE AMERICAN ECONOMY**

Finally, Mr. Chairman and Commissioners, captive rail rates are a substantial negative with respect to job creation and economic development in rural America. You have probably seen the television ads that I have seen touting the jobs the freight rail industry intends to create over the next few years. That is a positive development, of course, but I understand that the entire Class I freight rail industry has less than 200,000 employees. Those industries that the freight rail industry holds captive, due to the lack of rail-to-rail competition, employ millions of Americans and have the ability to create

many more jobs but are often being thwarted by the lack of rail-to-rail competition in our national rail system. This is why the President's Export Council listed "STB reform" as one of the top five actions that could spur American exports and American jobs in their March 11th letter to the President. (A copy of the letter is attached to our reply comments in this proceeding.) Your records in this proceeding and the Ex Parte No. 704 proceeding concerning exemptions contain very specific examples of problems American manufacturers and producers are encountering due to the lack of rail-to-rail competition – problems that are reducing our exports, compromising the ability of companies in this country to compete effectively in our own markets against some imported products and costing America jobs.

In short, as you know, your decisions in this proceeding will have a profound effect not only on individual rail customers and localities and on the freight railroads themselves, but also on the national economy. We believe that it is time that the regulatory program be balanced so as to achieve more robust rail-to-rail competition, one of the original goals of the Staggers Rail Act.

To achieve rail-to-rail competition in this consolidated network industry, we believe your regulations should be modified to provide that railroads must provide captive rail customers a rate to the point where the customer can obtain service from a competing railroad (bottleneck rate), rail customers must have the right to have their cars moved across a switching facility to the competing railroad (reciprocal switching), rail customers must have the right for their rail carrier to access the terminal facilities of another carrier where that access is crucial to rail-to-rail competition (terminal access), the "access fee" for using the facilities of another railroad must be cost-based and

reasonable and, for rail customers served by a short-line railroad, the exclusive service arrangements between the short-line railroad and the Class 1 railroads (paper barriers) must not be allowed to continue perpetually into the future. Unless current regulatory policy is modified on all of these subjects, we do not know how meaningful rail-to-rail competition could occur in the current national freight rail system.

Finally, Mr. Chairman and Commissioners, I would like to share with you a few additional thoughts, particularly on some of the arguments from the railroad community against the Board taking further action on this subject.

1. The STB has the Authority to Revise Its Regulations To Address Current Conditions in the National Rail System

As this Board is well aware, when Congress entrusts an agency with the implementation of a statute, that agency has broad authority to interpret and apply the statute, so long as the agency can articulate a rational reason for its actions and its actions are consistent with the statute. We recognize the need for a stable and reliable regulatory program upon which the railroads, investors, rail customers, communities and the general public can rely. However, stability in this program must include adjustment in regulations to reflect current conditions in the national freight rail system. Rail customers believe this Board has broad authority with respect to the issues raised in this proceeding and that regulatory adjustments are needed based on the lack of rail-to-rail competition in the national rail system.

2. The STB has the Responsibility to Seek Additional Authority from Congress

As a former Member of Congress who served on committees with jurisdiction over the operations of government, I believe this Board also has the responsibility to seek from Congress the authority it needs to achieve the objectives entrusted to it by Congress.

If you believe that more rail-to-rail competition is needed in the national freight rail system, but you believe you lack sufficient authority to address that issue, I believe your responsibility is to seek appropriate authority from Congress. Normally, I would suggest, you should approach Congress only after you have interpreted your authority to address the problems entrusted to you and been rebuffed by the federal courts. Nonetheless, I believe you have that duty.

3. Congressional Intent in Enacting Staggers and the ICC Termination Act

As a former Member of Congress, the very notion of “Congressional intent” is interesting. We are all being reminded daily of how difficult it is for Congress to take any action. Attributing any motive or judgment to a failure of Congress to act is absolutely impossible. However, some notion of intent can be discerned when Congress does pass legislation, particularly major legislation like the Staggers Rail Act of 1980.

As a serving Member when the Staggers Act passed the United States House of Representatives, I can report that the theory of the bill was that competition would regulate the railroads better than a government agency. The case made by the railroad industry was that they were dying under federal regulation and they had to be released to compete. The legislation passed overwhelmingly, with just a few of us voting in the negative.

I voted against Staggers because I feared that the expected rail-to-rail competition would not occur, particularly in rural America; that trucks and water transportation would not always prove to be economically viable transportation options, particularly in rural America, such as my western Oklahoma Congressional District; and some “captive” rail

customers would suffer at the hands of a single rail carrier when railroad transportation was their only economically viable option.

Mr. Chairman and Commissioners, I am sorry to say that the situation thirty years later justifies my vote. However, I would like to be proven wrong with respect to that vote. You have the power to allow the rail-to-rail competition in the national rail system that could prove my vote wrong. I encourage you to take those actions and deliver the rail system that the sponsors and supporters of the Staggers Rail Act, including the freight railroads, promised in 1980.

Thank you, Mr. Chairman and Commissioners, for the opportunity to speak before you today.