

**Opening Statement of Rep. Tammy Baldwin**  
**Railroad Antitrust Enforcement Act of 2007, H.R. 1650**  
**Judiciary Committee**  
**Task Force on Antitrust and Competition Policy**  
**February 25, 2008**

Thank you Mr. Chairman for the opportunity to testify today. I am very appreciative of the Committee's consideration of HR 1650, the Railroad Antitrust Enforcement Act of 2007. This important bipartisan legislation will restore competition to the rail industry and provide relief to thousands of shippers across the nation who are dependent on freight rail.

First, let me begin with a little history. Our nation's railroad system was designed to serve our country – to transport goods to rural areas and distribution points across the nation. And over the years, they have seen good and bad times. Back in 1980, the railroad industry was in poor financial health. Seeking a remedy, Congress granted them an exemption from U.S. antitrust statutes and merger authority was placed under the industry's sole regulator – the Surface Transportation Board.

But, free from government oversight by the DOJ or the FTC, the rail industry has undergone dramatic consolidation, shrinking from over 40 major Class 1 railroads to four major carriers today carrying 90% of our nation's freight. This level of concentration and resulting lack of competition certainly were never envisioned by Congress in 1980.

And, over the years while the railroads have profited – record profits, in fact - the effect on shippers with little or no competition along their route has been striking, and largely ignored by the STB.

Specifically, shippers report spiking rail rates and unreliable service. Take Dairyland Power in my home state of Wisconsin, for example. This rural cooperative located in La Crosse represents the power needs of approximately 575,000 people in Wisconsin, Minnesota, Iowa, and Illinois. Their three coal-fired power plants consume 3.2 million tons of coal per year, with 75% of that coal coming from the Powder River Basin located in Wyoming. All of this coal is dependent on rail for transportation.

Over the years, Dairyland has reported deteriorating service quality; at times forcing them to cut back generation due to insufficient coal inventories.

But the real kicker came in the last few years when the supply chain railroad raised Dairyland's rates dramatically. The energy cooperative saw average rates increase 93% as of January 2006 for one year of rail transportation service. It now costs about \$75 million to ship by rail \$30 million worth of coal.

With increases this high, Dairyland and other captive utilities have no choice but to raise their electric rates. So it is consumers -- our constituents -- who bear the burden of this unwarranted antitrust exemption manipulated by the rail system. And, let me be clear, the costs passed on to consumers are not solely by the utility companies. Consumers also face increased rates from other captive shippers -- including chemical companies, the manufacturing industry, agricultural sector, forest and paper companies, among others. These sectors too can provide story after story of exorbitant rates, delayed service, and surcharge fees. I might mention that many of them (such as the American Chemistry Council, American Corn Growers, and the Steel Manufacturers Association) have endorsed the Railroad Antitrust Enforcement Act as a means for some future relief. And, you will be hearing some of their stories today.

To help ease the burden felt by consumers and shippers alike, Representatives Pomeroy, Alexander, Walz, and I introduced the Railroad Antitrust Enforcement Act in the House. Let me take a minute to explain what this bill does:

- First, it eliminates the antiquated railroad antitrust exemption that has no current public policy justification and is protecting anticompetitive conduct by the railroad industry. A November 2007 letter from 21 state Attorneys General to the House and Senate Leadership asking Congress to remove the railroad antitrust exemption reflects my belief that this provision is necessary-- and I ask that this letter be made a part of the record.
- Second, the bill permits the Justice Department and FTC to review railroad mergers under antitrust law
- And finally, the bill allows state Attorneys General and other private parties to sue for damages and to halt anticompetitive conduct, both of which are not currently allowable under federal law.

I might add that the companion bill, introduced by Mr. Kohl in the Senate, already passed out of the Senate Judiciary Committee by voice vote and is awaiting a vote on the floor.

Before I conclude, there is one big myth regarding the legislation that I would like to dispel. Opponents argue that by subjecting the railroads to our nation's antitrust laws, we will somehow be "reregulating them." Our legislation does nothing of the sort. Subjecting the railroads to antitrust laws is about competition...not reregulation. This bill simply places the rail industry under the same antitrust laws that every other industry such as telecommunications, energy, or even other forms of freight transportation - including trucking and aviation - faces.

This bill will not fix all of the problems with the railroad industry. But, it will be a starting point for good faith negotiations between the rails and shippers. And, it will restore some of the public interest responsibilities to our nation's rail system.

Again, thank you Mr. Chairman for the committee's consideration of this important legislation. I look forward to working with you and other members of this committee to ensure that this bill is passed into law in the remaining months of the 110<sup>th</sup> Congress.