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STATEMENT OF CONSUMERS UNITED FOR RAIL EQUITY (C.U.R.E.)

**Surface Transportation Board
United States Department of Transportation
October 19, 2005**

The 25th Anniversary of the Staggers Rail Act of 1980: A Review and Look Ahead

STB Ex Parte No. 658

Twenty-five years after the enactment of railroad deregulation, we encourage the Surface Transportation Board (STB) to take this opportunity to make some mid-course adjustments to its implementation of deregulation. Those rail customers dependent on a single railroad for service believe very strongly that their concerns are being ignored in favor of over-emphasis on railroad profitability. With rail rates soaring and Wall Street touting both the financial health of the major railroads and their "pricing power", we think the time is right to focus on the concerns of captive rail customers.

Consumers United for Rail Equity (C.U.R.E.) is an organization of rail customers that are dependent on a single railroad for at least some of their movements. Our members include chemical companies, forest and paper interests and coal-based electricity generators. Our mission is to advocate policies that will protect the interests of these captive customers in their relationships with their major rail carriers.

We were active in the mid-to-late 1980s when the early implementation plans of the Staggers Rail Act by the Interstate Commerce Commission (ICC) raised concerns among captive rail customers. We were able to generate sufficient interest in Congress that the Interstate Commerce Commission modified some of its implementation plans, most concerned captive customers obtained favorable long term contracts and C.U.R.E. moved into a period of remission beginning in 1989. By 1995, when Congress replaced the ICC with the STB, the concerns of captive rail customers were again on the rise due to the consolidation of the major railroad industry and some decisions by the ICC and the STB that denied captive rail customers access to competitive rail service. The concerns of captive rail customers have continued to rise as captives experience significant rate increases, fewer and fewer opportunities to generate leverage in negotiations with their carriers, uneven service and continued disappointment when they approach the STB for relief.

By definition, captive rail customers have little or no bargaining leverage with their major rail carriers. This is true despite the size of the captive rail customers. The Board is the exclusive forum for captive rail customers that are encountering difficulties in their relationship with their rail carriers. By law, rail matters arising under the

Interstate Commerce Act, as amended by both the Staggers Rail Act of 1980 and the ICC Termination Act of 1995, are exclusively jurisdictional to the STB. Moreover, the railroad industry is exempt from most provisions of the nation's anti-trust laws. Thus, when captive rail customers cannot obtain acceptable service arrangements from their rail carriers and cannot obtain relief from the Board, their options are to "grin and bear it" or to escape captivity by relocating their businesses or even, in a worse case scenario, going out of business.

As you probably are aware, rail captivity is a costly and negative factor when a company is considering developing a major new industrial facility that requires rail transportation and even, in some cases, when a company considers whether to continue operations at a particular site or even re-locate its facilities overseas. In some instances, it can be the determining factor. So, the decisions you make in implementing the Staggers Rail Act define the "rules of the road" and are of utmost importance to captive rail customers as they attempt to achieve acceptable commercial arrangements with their rail carriers. In fact, your decisions are of utmost importance to the nation.

In the immediate future, we would like to see the Surface Transportation Board review and adopt changes in three major areas of your implementation of the Staggers Rail Act.

First, we encourage you to adopt a more realistic methodology for measuring the financial condition of the nation's major railroads. Even while the Board still has not found any of the nation's major railroads to be financially healthy, Wall Street is issuing buy advisories on railroad stock, touting the "pricing power" of the nation's railroads and even talking about a "golden age" of railroading. When the major railroads achieve "revenue adequacy" under the Board's methodology, they will be financially healthy indeed. Captive rail customers believe that an unduly pessimistic assessment of railroad financial health tends to cloud the Board's focus on the concerns of captive rail customers.

Second, we encourage you to adopt pro-competitive policies with respect to reciprocal switching agreements and access to terminal areas; "paper barriers" in any future transfer or lease of track from a major rail carrier to a short line or regional carrier and those paper barriers that exist today; and the lack of rates across "bottleneck" facilities that prevents captive rail customers from gaining access to competitive rail service for that portion of their rail movement where rail competition exists. Current policies with respect to these three issues are restricting rail customer access to rail competition and the benefits of the deregulated market. We believe that Congress intended in 1980 that deregulation extend as far as possible in the rail industry.

Finally, we encourage you to revisit the entire rate reasonableness process that has evolved over the first twenty-five years of railroad deregulation. Chairman Nober has testified before Congress quite effectively regarding the difficulties of the current rate reasonableness process and its inaccessibility to those captive rail customers that are not involved in "unit train" movements. We encourage the Board to revisit the primary rate

reasonableness standard, "stand alone cost". If this standard was appropriate during an era of excess rail capacity, is it appropriate in an era of rail capacity constraint? Even if this standard makes sense from an economic perspective, can it be implemented in a way that doesn't require the complaining rail customer to bear most burdens of proof, spend two years or more in litigation and spend \$3 million or more in litigation costs?

We commend you for conducting this hearing. Captive rail customers are not satisfied with the current implementation of the Staggers Rail Act of 1980. We are not ready to abandon the Act, but we encourage you in the strongest terms to change the implementation of this Act so that captive rail customers can achieve meaningful relief from the Board. A financial healthy and competitive rail system is essential not only to captive rail customers dependent on that system, but also to the economy of our nation.

Thank you,

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