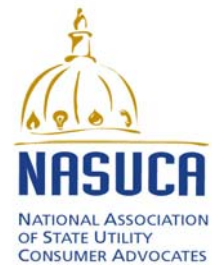




**Consumer Federation of America**



March 3, 2009

The Honorable Harry Reid  
Majority Leader  
U.S. Senate  
S-221 Capitol Building  
Washington, DC 20510

The Honorable Mitch McConnell  
Minority Leader  
U.S. Senate  
S-230 Capitol Building  
Washington, DC 20510

Dear Majority Leader Reid and Minority Leader McConnell:

We are writing in support of S. 146, the “Railroad Antitrust Enforcement Act of 2009”. This legislation will correct a public policy oversight that currently allows the railroad industry to operate outside the antitrust laws of the nation. We ask that you schedule floor time for its consideration and work for its passage.

In 1980, the Congress deregulated the competitive activities of the nation’s railroads and made it easier for the nation’s railroads to downsize their systems and merge. Since then, the forty major railroads in existence in 1980 have consolidated into four major railroad systems that move over 90% of the nation’s railroad freight. Today, few rail customers have access to more than one rail system and the federal agency that is charged with the responsibility of constraining railroad market power of single-served customers has chosen to exercise its responsibilities in a very passive manner.

According to an October 2006 report of the Government Accountability Office, the national railroad system suffers from a lack of competition and an increasing number of rail customers are being forced to pay prices that are three times and more the cost to the railroad of moving their freight. Some of these exorbitant rates are being paid by electric utilities to move coal to their generating facilities. These inflated prices, which electric generators without alternate means of coal transportation are powerless to restrain, are being passed along to electric customers in the form of higher electric bills. These higher electricity bills and inflated rail transportation costs of other commodities and finished products are driving up the prices consumers pay for a wide range of goods produced in our nation. Meanwhile, the railroads are enjoying a golden age of profitability at the expense of their customers, American consumers and the nation’s economy. Indeed, during the nation’s worst economic recession since the 1930s the four major freight railroads reported increased revenues and increased profits for the Fourth Quarter of 2008 on falling volumes of freight moved.

We believe very strongly that the railroad industry, like other private sector American industries, should be subject to the nation’s antitrust laws. Investor owned electric utility companies are subject to the nation’s antitrust laws, even though they are also subject to wholesale rate regulation by the Federal Energy Regulatory Commission and most are subject to retail rate regulation by state public service commissions. We see no good public policy reason that the railroads should continue to enjoy immunity from the nation’s antitrust laws.

On December 10, 2008, the Section on Antitrust Law of the American Bar Association sent strong comments to Congress endorsing the Railroad Antitrust Enforcement Act and encouraging its adoption at the earliest possible time.

We ask that you support Senate consideration and passage of S. 146 so that rail customers may receive relief from railroad monopoly pricing during this Congress. Thank you for your attention to this important matter.

Sincerely,



Frederick F. Butler  
Commissioner, New Jersey  
Board of Public Utilities  
President, National Association of  
Regulatory Utility Commissioners



David Springe  
Consumer Counsel, Citizens Utility  
Ratepayer Board of Kansas  
President, National Association of  
State Utility Consumer Advocates



Stephen Brobeck  
Executive Director,  
Consumer Federation  
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