LUS
LAFAYETTE UTILITIES SYSTEM

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TESTIMONY BEFORE THE

RAILROAD SUBCOMMITTEE

OF THE

HOUSE TRANSPORTATION AND INFRASTRUCTURE COMMITTEE

STATUS OF THE SURFACE TRANSPORTATION BOARD
AND
RAILROAD ECONOMIC REGULATION

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SUBMITTED BY

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ON BEHALF OF

CONSUMERS UNITED FOR RAIL EQUITY
LOUISIANA ENERGY AND POWER AUTHORITY
AMERICAN PUBLIC POWER ASSOCIATION

Mr. Chairman and members of the Subcommittee, thank you for the opportunity and the invitation to appear before you today to discuss captive rail shipper concerns.

My name is Terry Huval, Director of Lafayette Utilities System in Lafayette, Louisiana. I am appearing today on behalf of Lafayette Utilities System, Louisiana Energy and Power Authority (LEPA), American Public Power Association (APPA) and Consumers United for Rail Equity (C.U.R.E.).

Our customers are paying unnecessarily high electricity prices because our coal-fired generating facility is served by a single railroad. That railroad is denying us access to existing railroad competition that is located only 19 miles away. Astoundingly, the Surface Transportation Board policy is that the railroad is within its right to deny us access to railroad competition. Mr. Chairman, this is a senseless national rail policy and must be corrected by this Congress.

LAFAYETTE UTILITIES SYSTEM (LUS)

LUS was established in 1896 and provides electric, water, and wastewater services to the citizens of Lafayette, Louisiana. Today we provide electricity to households and businesses in a community of over 110,000 people. As a customer-owned and operated utility, subject to the jurisdiction of our City Council and, ultimately, the people, we establish our rates, control our standards of service and, of course, retain all of the proceeds of our sales to provide substantial financial support to the remainder of our local government functions. LUS is committed to providing electricity to our customers at the lowest possible cost and the highest reliability of service.

OUR COAL FIRED GENERATING FACILITIES

The LUS system generates approximately 588.5 Megawatts of electricity, 327 Megawatts through three gas fired units and 261.5 Megawatts through its 50 percent ownership share of the coal-fired Rodemacher Power Station Unit No. 2 located in Boyce, Louisiana.

Rodemacher Unit No. 2 is a 523 Megawatt unit that also provides 104.5 Megawatts of power to LEPA. LEPA is a joint action agency that collectively represents 18 Louisiana municipalities that also own and operate their own electric distribution systems. The third co-owner of the remainder of the plant's capacity is responsible for plant operations and for obtaining coal transportation.

The Rodemacher co-owners collectively purchase coal from mines in the Wyoming Powder River Basin. The only practical way to transport this coal from Wyoming to Rodemacher (a distance of over 1500 miles) is by rail. To facilitate our rail deliveries, the Rodemacher co-owners have obtained and maintain, at our own expense, four train sets of coal cars (over 500 cars).

OUR RAIL CAPTIVITY PROBLEM

Now, Mr. Chairman, let me share with you our experience as a captive rail customer – one served by a single railroad at our plant.

A.) LUS is a Bottleneck Captive Shipper

I have appended a schematic to my testimony to help illustrate our situation. Two different railroad companies serve our Powder River Basin mine origin. Thus, we enjoy a choice of railroads at our coal origin. Alternative rail providers can transport our Powder River Basin coal deliveries to Alexandria, Louisiana, a distance of approximately 1506 miles. (The Official Railroad Station List shows railroad interchange traffic between our existing rail provider and an alternative rail provider in Alexandria, Shreveport, and other points in Louisiana. Alexandria is the nearest listed interchange point to Rodemacher). So, as you can see, there are competitive options for rail transportation for the entire length of the movement to Alexandria.

Beyond that point, our current rail provider owns the only rail line between Alexandria and our Rodemacher plant -- a distance of approximately 19 miles. As a consequence, the Rodemacher owners are "captive" to our current provider since it is the only rail carrier serving this plant. Under the Surface Transportation Board's current interpretation of the law, the current rail provider's control of the last 19 miles allows it to push its pricing monopoly all the way back to the Powder River Basin -- turning a 19 mile monopoly into a 1500+ mile monopoly.

Obviously, our current rail provider has no interest in allowing us to escape its monopoly power and maintains that power by simply quoting us rates only from the Powder River Basin-to-Rodemacher. It has no incentive to allow us access to existing rail competition by quoting a rate to the exchange point in Alexandria, then quoting us a rate from there to our plant. If it quoted us such rates, our carrier would face competition from the Power River Basin to Alexandria and would be forced to provide much lower rates for this portion of our coal movement. The carrier would still maintain its monopoly power over the last 19 miles and could extract maximum reasonable rates across that segment, but overall, the total transportation costs for the entire length of our transportation likely would be reduced. Thus, the Rodemacher co-owners face a transportation monopoly from our existing rail provider.

I might say, Mr. Chairman, that we understand why our rail carrier would not wish to allow us access to existing rail competition. Frankly, however, we don't understand why the Surface Transportation Board, would allow our carrier to block our access to rail competition.

B. Our Customers Are Paying Higher Electricity Rates Because of our Railroad Captivity

Due to this monopoly, LUS pays substantially higher coal transportation prices than other western coal transportation customers that enjoy effective origin-to-destination rail competition. In common with most rail contracts, the Rodemacher co-owner's current transportation contract with its rail carrier precludes us from disclosing our actual transportation prices, or getting into the details concerning our freight rate levels. However, publicly available information suggests our current transportation prices are at least 50% higher, on a mileage-adjusted basis, than rates where there is rail-to-rail competition for long-haul western coal train deliveries.

For the Rodemacher owners, and their customers, this lack of competition translates into millions of dollars per year in "captivity payments" – the difference between what we pay our existing rail carrier compared to what we would pay if we enjoyed railroad competition. Specifically, for the case of Lafayette, Louisiana, the annual cost of these captivity payments is about $5 to $6 million. These higher payments are included in monthly electric bills of LUS customers and cause higher utility bills both for individuals and for the businesses in Lafayette. Please note in this regard, that the cost of coal transportation is one of the single largest cost items included in our electric generation costs.

C. Our Limited Options

What can we do to obtain transportation competition? Our options under current STB interpretations of the law are limited.

- Quote a Rate to the Interchange in Alexandria. One option would be to ask the alternative rail providers to contract with us for a competitive market price for service between the Powder River Basin and Alexandria. Under the Surface Transportation Board's 1996 "Bottleneck Decision," if LUS were to secure such a contract, our existing provider would be required to provide us with a reasonable price to transport this alternatively transported coal traffic the 19 miles from Alexandria to Rodemacher.

However, experience has shown that getting a transportation contract from a competitive provider under such a scenario does not occur. As we understand it, the large western rail carriers generally refuse to provide such bids. Their collective concern appears to us to be if Carrier A "poaches" Carrier B's captive customers by providing such contracts, Carrier B will then retaliate by "poaching" Carrier A's captive shippers. So unless either the Surface Transportation Board changes its interpretation of the law, or Congress changes the law to require railroads to quote rates across railroad "bottlenecks" to points of competition, this option simply is not available.

- Build-Out Relief. A second option is to look at rail construction. Several utilities in the west and south have broken their captivity to a single rail-delivery carrier by constructing new access lines to obtain service from a second rail carrier. Mr. Platz is testifying before you today about an $80 million build-out that four chemical companies are attempting near Houston to obtain access to rail competition. When access can be obtained to a second rail carrier, shippers usually report that they can obtain origin-to-destination competitive rail service and competitive rail prices.

In general, these "build-outs" are quite expensive, when they can be accomplished at all, and they result in the unnecessary duplication of existing rail facilities. In the past, LUS and its Rodemacher co-owners have explored constructing facilities that would allow direct alternative rail providers access to Rodemacher. In our case, any such access would most likely entail construction of a rail bridge or conveyor system across the Red River and Interstate 49. It seems absurd that current federal transportation policy would require small municipal entities like LUS to even study such projects when other alternatives make much more sense, such as, for example, requiring our existing carrier to transport our coal from Alexandria to Rodemacher at a fair price. With such a legal requirement, there would be no need for us to consider construction of costly, duplicative second carrier access facilities at a cost that would be passed on to our electric customers. While we would remain captive over that final 19 mile segment, we would enjoy the benefits of competition for the next 1500 miles of our coal movement. Under such a scenario, our overall transportation costs likely would be reduced.

- Origin-to-Destination Rate Case Relief. A third option is to obtain origin-to-destination common carrier rates from our existing rail provider to apply after our transportation contract expires. Obtaining these rates would allow us to initiate a maximum rate complaint with the Surface Transportation Board. Such a complaint could result in a maximum rate prescription order from the Surface Transportation Board for our Powder River Basin-to-Rodemacher transportation. This option cannot, however, produce competitive pricing under current law.

By law, the Surface Transportation Board cannot set maximum rates at less than 180 percent of a railroad's variable costs (including capital costs). However, I am advised that in competitive coal transportation markets, the transportation rates should be substantially less than 180 percent of the railroads' costs (while still ensuring the railroads earn a healthy profit margin). As a result, the Surface Transportation Board relief simply cannot give us a competitive market rate for the competitive segment of our rail transportation (Powder River Basin-to-Alexandria).

I am also advised that the STB in its recent round of maximum coal rate decisions has approved carrier rates, or prescribed rates, in origin-to-destination cases that are substantially in excess of 180% of the carrier's service costs.

WHAT CAN CONGRESS DO TO HELP US?

Mr. Chairman, we have one simple request of Congress: require the railroads to provide rates to their customers to interchanges where the customer can gain access to existing rail competition. This leaves the railroad with monopoly power to or from the point of interchange, but prevents the railroad from extending that monopoly power to the entire length of our movement. This seems fair to the railroads and to the captive rail customer.

Two bills are pending in Congress that would require the railroads to provide rates to points where rail customers can gain access to competition: H.R. 2924, the Railroad Competition Act of 2003, whose principal cosponsor is Congressman Richard Baker (R-LA) and H.R. 2192, the Surface Transportation Board Reform Act of 2003, whose principal cosponsor is Congressman Jim Oberstar (D-MN), Ranking Democrat on this committee. Both bills require carriers to quote reasonable rates to or from the point of access to existing rail competition. Again, Mr. Chairman, this seems fair to both the railroads and to us, their customers.

Mr. Chairman, thank you for your attention to this important matter. Our electric ratepayers are suffering a daily injustice. This Congress can and should correct that injustice this year!

Selected Routes For PRB Coal Moving to Rodemacher