



March 6, 2012

PLEASE SUPPORT THE KOHL RAILROAD ANTITRUST AMENDMENT

Dear Senator:

We are writing to encourage you to support an amendment Senator Kohl and several colleagues will offer to S.1813 to remove most of the freight railroad industry exemptions from the nation's antitrust laws. We ask your affirmative votes to ensure that the amendment has the necessary support to be considered and to ensure final adoption of the amendment. The amendment that Senator Kohl will offer is S.49, the Railroad Antitrust Enforcement Act of 2011, that was ordered reported by the Senate Judiciary Committee on March 5, 2011 by a bipartisan

vote of 14 – 1. S.49 is itself virtually identical to similar legislation that was reported by the Senate Judiciary Committee in 2009 on a recorded bipartisan vote with no negative votes recorded.

The freight railroad industry obtained exemptions from the nation’s antitrust laws during the period before 1980 when the industry was subject to extensive and strenuous regulation. Indeed, during this period, the freight railroad industry could take virtually no action without prior approval of its regulator, the Interstate Commerce Commission. In 1980, Congress enacted the Staggers Rail Act which provides that most freight railroad activities are not subject to regulation unless a rail customer can prove, through an expensive and burdensome process, the need for protection by the federal regulator. Unfortunately, Congress did not remove the exemptions from the antitrust laws that were previously granted the freight rail industry. In 1995, Congress abolished the Interstate Commerce Commission, removed some of the remaining regulatory authority over the freight railroads and created a new federal regulator, the Surface Transportation Board, to oversee the freight railroads.

Today, the freight railroad industry has consolidated to seven major railroads, with the four largest railroads providing over 90% of the freight rail transportation in the nation. In addition to enjoying a presumption of deregulation, the freight railroad industry also enjoys the broadest exemption from the antitrust laws of any American industry except major league baseball.

The purpose of the nation’s antitrust laws is to ensure competitive markets. The latest studies by the Surface Transportation Board show that rail customers shipping approximately 35% of the nation’s rail freight by weight have no viable transportation option except to use one railroad. This railroad market power often results in unreasonably high rail rates that are reflected in the electricity bills of consumers and in higher food prices, unreasonably high rail rates for domestically produced goods that are competing in American markets with foreign products that enjoy lower rail rates inside the United States and unreasonably high rail rates for American exports that disadvantage American products in the global market.

We believe that removing the current railroad exemptions from the nation’s antitrust laws could result in more competition in the national rail system. We understand that the Kohl amendment is prospective in nature, does not reopen past railroad mergers and places the nation’s freight railroads on the same footing as their customers with respect to the nation’s antitrust laws.

As our national economy struggles to create more American jobs and to thrive in the new global market place, we encourage you to vote for the Kohl amendment to ensure that the nation’s freight railroads operate under the same antitrust laws as other American companies.

Sincerely,

Alliance for Rail Competition
American Chemistry Council
American Forest and Paper Association
American Public Power Association

Arizona Electric Power Cooperative, Inc.
Badger-CURE
BASF
Basin Electric Power Cooperative

Central Iowa Power Cooperative
CoBank
Colorado Association of Wheat Growers
Colorado Rural Electric Association
Consumer Federation of America
Consumers United for Rail Equity
Dairyland Power Cooperative
East River Electric Power Cooperative
Edison Electric Institute
Electric Cooperatives of Arkansas
Glass Producers Transportation Council
GopherCURE
Heartland Consumers Power District
Iowa Association of Electric Cooperatives
Lafayette Utilities System
Large Public Power Council
Manufacture Alabama
Minnesota Power
Minnesota Rural Electric Association
Missouri River Energy Services
Municipal Electric Utilities of Wisconsin
National Association of Regulatory Utility Commissioners
National Association of State Utility Consumer Advocates
National Association of Wheat Growers
National Barley Growers Association
National Farmers Union
National Industrial Transportation League
National Rural Electric Cooperative Association
Nebraska Wheat Board
North Carolina Electric Membership Corporation
North Dakota Association of Rural Electric Cooperatives
Ohio Chemistry Technology Council
Oregon Wheat Growers League
Portland Cement Association
South Mississippi Electric Power Association
Texas Municipal Power Agency
Tri-State Generation and Transmission Association, Inc.
Tucson Electric Power
UniSource Energy Corporation
Washington State Potato Commission
We Energies
Western Coal Traffic League