WILLIAM L. BERG
President and CEO

DAIRYLAND POWER
COOPERATIVE

November 1, 2007

Senator Herb Kohl
Attention: Subcommittee on Antitrust,
Competition Policy and Consumer Rights
SH 308
Washington, D.C. 20510

Dear Senator Kohl:

Thank you again for giving me the opportunity to testify at the United States Senate Judiciary Committee hearing on S. 772, the Railroad Antitrust Enforcement Act. We at Dairyland are extremely appreciative of your efforts on this important issue, and I personally appreciated the honor of testifying before your committee. Your leadership on this issue has been outstanding, and our members certainly appreciate it as well.

I have enclosed written responses to the two questions you raised. If you have any questions or comments please feel free to contact me or Brian Rude, Director of External Relations, at 608-787-1320.

Sincerely,

DAIRYLAND POWER COOPERATIVE

William L. Berg / lae

William L. Berg
President and CEO

WLB:BDR:mkw

Enclosure

G:\ExtRel\Letters\2007\wlb110107.doc

Written Responses to the Senate

1. *How have increased rail rates impacted your customers?*

   As a cooperative, our customers are our owners and they end up paying for all our costs for supplying them electricity. We serve 255,745 meters in four states, representing power needs of 575,000 people. In 2005, we experienced a rate increase in our three rail contracts averaging 93%, which was the major factor in our Board's decision to increase rates by 20% in 2006, approximately $35 million. Since that time, we have continued to see increases in rail rates well above the rate of inflation. We have a heavy concentration of residential and agricultural members. Much of our utility system serves lower income areas. We believe this rate increase – the largest we have had to enact in two decades – negatively impacted the people who can least afford to pay higher rates, and was a significant issue for many of our members.

2. *In a recent letter to the editor of Roll Call newspaper, a representative of the railroad industry alleged that legislation such as the Railroad Antitrust Enforcement Act contains numerous provisions that the utilities "would never accept for themselves." We have also heard the railroads complain that being subject to both Department of Justice antitrust oversight and STB regulation would be too onerous. Yet, isn't it true that utilities such as yours are already subject to regulatory oversight from more than one agency? What state and federal regulatory bodies must utilities like Dairyland Power answer to? And isn't your industry subject to antitrust law as well?*

   Dairyland is a generation and transmission cooperative that supplies all of the wholesale electric power supply requirements of its 25 member distribution cooperatives, which are located in the states of Wisconsin, Minnesota, Iowa, and Illinois. Dairyland and many of its distribution cooperative members are borrowers from the United States Department of Agriculture Rural Utilities Service (RUS), as well as from other cooperative banking and financing sources. The RUS directly regulates Dairyland and its other borrowers through RUS regulatory programs as well as under lending agreements. Dairyland must obtain approval for significant new facilities and capital spending on power supply and transmission projects, and RUS regulates the requirements for Dairyland's business planning processes and the details of Dairyland's contracting practices for power-related projects. As a not-for-profit cooperative power supplier, Dairyland's rates are determined by its member cooperatives through their representatives on Dairyland's board of directors, subject to review by the RUS.

   Dairyland is subject to state public utility commission regulations over the siting and construction of major generation and transmission projects. As not-for-profit cooperative retail power suppliers, Dairyland's member distribution cooperatives are rate regulated by their boards of directors, which are elected from their electric cooperative member-consumers. The rates of Dairyland's members are not generally regulated by the state public utility commissions, but electric cooperatives in other states are commonly subject to state utility commission regulation over their rates and terms and conditions of service.

Dairyland remains generally subject to the federal and state antitrust laws in its operations. If and when Dairyland has excess power not needed to serve its members' needs, or when it needs to purchase additional power, it competes in the wholesale market and is subject to the same antitrust laws and restrictions as other competitors in that market. With the exception of the doctrine allowing the cooperative members to use the cooperative form of business for group purchasing or group marketing to serve member needs, there is no special antitrust exemption for cooperative forms of business. Dairyland's participation in the general wholesale power market remains generally subject to the antitrust laws. Due to a number of factors, including the strong policy of the Federal Energy Regulatory Commission (FERC) to push for a competitive power supply market, the vast majority of Dairyland's wholesale power transactions with persons other than its members are made at market-based rates in the competitive wholesale market. Moreover, under both FERC regulation and under the federal Energy Policy Act of 2005, commercial practices that involve price collusion or market manipulation in the electric power markets are strictly forbidden.

Dairyland's distribution cooperatives (and the other electric utilities in their respective states of operation) are generally subject to state regulation over service areas or electric service anti-duplication. For example, under the Wisconsin anti-duplication law, a retail electric supplier may not serve a retail customer if that prospective customer's facilities are already served by or are within a specified close distance to another electric supplier. However, where a customer's new facilities have not been previously served or are at a distance from competing suppliers, there is robust competition between the potential retail electric suppliers, and that competition is subject to the federal and state antitrust laws.