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May 28, 2009

VIA ELECTRONIC MAIL

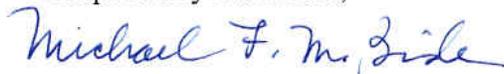
The Honorable Anne K. Quinlan
Acting Secretary
Surface Transportation Board
395 E Street, NW
Washington, DC 20423-0001

**RE: Ex Parte No. 680 (Sub-No 1) -- Reply Comments of the
Edison Electric Institute**

Dear Secretary Quinlan:

Enclosed for filing are the Reply Comments of the Edison Electric Institute.

Respectfully submitted,



Michael F. McBride
Attorney for Edison Electric Institute

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Ex Parte No. 680 (Sub-No. 1)

**REPLY COMMENTS OF THE
EDISON ELECTRIC INSTITUTE**

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REPLY COMMENTS OF EDISON ELECTRIC INSTITUTE

In its Notice served April 8, 2009, the Surface Transportation Board (“Board”) sought comments and reply comments on an independent study prepared by Christensen Associates, Inc. entitled *Supplemental Report (Report) to the U.S. Surface Transportation Board on Capacity and Infrastructure Investment*. The Edison Electric Institute submitted opening Comments in this docket and submits the following Reply Comments.

EEI’s opening Comments discussed the uncertainties inherent in long-run forecasts. We will not repeat that discussion here, but ask the Board to consider it again, in the context of these Reply Comments.

The Association of American Railroads (“AAR”), at page 7 of its opening Comments, quoted page 2-19 of the Supplemental Report: “Observed short-run capacity shortages (which need to be handled through capacity rationing) may be the economically rational response in the short-run to demand fluctuations.” (Note that the economists who authored the Supplemental Report referred to the “economically rational response,” rather than to the national interest or to the legal requirements imposed on interested parties.) AAR then continued (with emphasis added), “Thus the Report directly rebuts shipper groups that have wrongly alleged that railroads should always have on hand whatever assets might possibly be needed at any time by rail customers, even if those assets would sit idle most of the time.”

The AAR over-reaches in its conclusion that the *Report* rebuts shipper capacity concerns, because those same shippers, particularly electric utilities, size their electric supply, transmission, and distribution systems to meet any supply contingency and are legally required to do so by the regulatory commission in each State. In the electric utility industry, this is referred to as the “obligation to serve,” and is considered almost a religious vow to serve its customers. Frequently, the electric industry invests in assets that run only on the single hottest or coldest day of the year and otherwise remain idle as the means of meeting any supply contingency. It is imperative that a major component of the logistics chain in providing electric supply – the railroad industry -- be thoughtfully attuned to these legal requirements on its customers, if the supply chain is to function seamlessly.

Moreover, the well-known difficulties with accurate long-run forecasting of transportation needs – demonstrated forcefully by the economic downturn of the last year -- was also illustrated in two different stories on the United Transportation Union’s website that were posted on April 10 and May 14 of 2009. Both stories have to do with the same subject: the potential transportation by tank car by the Canadian National Railway (“CN”) of oil sands production from Northern Alberta either to U.S. refineries in the lower-48 States or to ports in British Columbia. Yet, there does not appear any discussion of this potential increase in rail demand in any of the current demand forecasts. “The railway will deliver the oil sands production through the use of insulated and heat able railcars or by reducing its viscosity by mixing it with condensates or diluents.” (4/10/2009, UTU Website, CN rolls out

pipeline on wheels).

Moreover, the passage of The American Clean Energy and Security Act of 2009, H.R. 2454, reported out last week by the House Energy & Commerce Committee could have a significant impact on the demands for transportation services in the economy in the years ahead, in ways that existing studies, including the Supplemental Report, have not contemplated.

In short, AAR's reliance on the Supplemental Report, for its conclusions about long-run forecasts of demand for railroad transportation, appears to be misplaced. In any event, AAR's members, as common carriers, must take into account the needs of their customers for rail service, and not just what is "economically rational," when planning capacity increases to meet demand.

Conclusion

Different network industries have different approaches to reliability and provisions of service. A major customer of the railroads, the electric industry, meets demands placed on it by having sufficient capacity designed to meet peak-day requirements, whereas the rail industry proposes to use price as the arbiter of available capacity. Rail decision-makers need to be ever-mindful of this difference as they make decisions that impact coal supply. Moreover, the reported interest of the CN in moving bitumen from Northern Alberta to markets elsewhere in North America needs to be incorporated into freight network models to properly account for all aspects of future demand. AAR's reliance on the Supplemental Report for long-run forecasts of demand for railroad transportation appears to be misplaced.

In any event, AAR's members, as common carriers, should take into the needs of their customers, and not just what is "economically rational," in planning increases in railroad capacity.

Respectfully submitted,



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