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August 2, 2007

**VIA HAND DELIVERY**

The Honorable Vernon A. Williams  
Secretary  
Surface Transportation Board  
395 E Street, S.W.  
Washington, D. C. 20423-0001

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Re: STB Ex Parte No. 669, Interpretation  
of the Term "Contract" in 49 U.S.C. 10709

Dear Secretary Williams:

Enclosed for filing in the above-referenced proceeding please find an original and ten (10) copies of the Reply Comments of Dairyland Power Cooperative.

Please date stamp the extra copy of this cover letter and the enclosed pleading and return it to our messenger. Thank you for your attention to this matter.

Respectfully submitted,



John H. LeSeur  
An Attorney for Dairyland Power Cooperative

JHL:cef  
Enclosures

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BEFORE THE  
SURFACE TRANSPORTATION BOARD

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In the Matter of:

INTERPRETATION OF THE TERM  
"CONTRACT" IN 49 U.S.C. 10709

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STB Ex Parte No. 669

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**REPLY COMMENTS OF DAIRYLAND POWER COOPERATIVE**

DAIRYLAND POWER COOPERATIVE  
3200 East Avenue South  
LaCrosse, Wisconsin 54602

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By:

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Dated: August 2, 2007

Its Attorneys

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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In the Matter of: )

INTERPRETATION OF THE TERM )  
"CONTRACT" IN 49 U.S.C. 10709 )

STB Ex Parte No. 669 )  
)

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**REPLY COMMENTS OF DAIRYLAND POWER COOPERATIVE**

Dairyland Power Cooperative ("Dairyland") files these Reply Comments in response to the Surface Transportation Board's ("STB" or "Board") Notice of Proposed Rulemaking ("NPR") served on March 29, 2007.

1. In its Opening Comments, Dairyland asked the STB not to adopt its proposed rule defining the term "contract" for purposes of 49 U.S.C. § 10709. The vast majority of parties filing opening comments also urged the STB not to adopt the proposed rule. *See, e.g.*, Comments of Canadian Pacific Railway Company at 1; Opening Comments of CSX Transportation, Inc. at 20; Opening Comments of BNSF Railway Company ("BNSF") at 2; Comments of Union Pacific Railroad Company ("UP") at 2; Comments of Norfolk Southern Railway Company at 2; Opening Comments of the Western Coal Traffic League ("WCTL") at 34; Comments of Ameren Energy Fuels and Services Company at 6; Comments on Proposed Rulemaking of Edison Electric Institute

at 7; Comments of Arkansas Electric Cooperative Corporation at 8; Comments of National Grain and Feed Association at 19.

2. If the Board does adopt the proposed rule, Dairyland supports the Board's determination not to apply the new rule to carrier/shipper arrangements that pre-date April 5, 2007. *See* NPR at 6. These arrangements should be evaluated under pre-April 5, 2007 standards. *See* NPR at 3-4; *Kansas City Power & Light Co. v. Union Pacific R.R.*, STB Docket No. 42095 (STB served March 29, 2007).

3. In its NPR, the Board expressed concerns that the use of hybrid public pricing mechanisms "*could* create an environment where collusive ... anticompetitive price signaling *could* occur." *Id.* at 4 (emphasis added). Dairyland, and other western coal shippers filing opening comments, demonstrated that anticompetitive price signaling *was* occurring in the western coal transportation marketplace. *See* Dairyland Comments at 7; WCTL Comments at 9-12; and Opening Comments of Entergy Services, Inc. at 4-7.

4. BNSF argues that hybrid public pricing arrangements "benefit shippers." *See* BNSF Comments at 2. Similarly, UP argues that "[p]ublic pricing is a perfectly legitimate business practice." *See* UP Comments at 10. In fact, the advent of public pricing in the western coal transportation market place has led to an unprecedented increase in coal transportation prices. Public pricing hurts shippers and is not a legitimate business practice in the duopoly western coal transportation marketplace.

5. Dairyland appreciates the opportunity to present these Reply comments to the Board and requests that the Board decide this matter in conformance with Dairyland's comments in this proceeding.

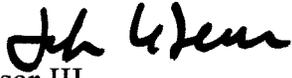
Respectfully submitted,

DAIRYLAND POWER COOPERATIVE

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