

EXPEDITED CONSIDERATION REQUESTED
SURFACE TRANSPORTATION BOARD

222542

Ex Parte No. 677 (Sub-No. 1)

**COMMON CARRIER OBLIGATION OF RAILROADS—
TRANSPORTATION OF HAZARDOUS MATERIALS**

**MOTION OF EDISON ELECTRIC INSTITUTE
FOR EXTENSION OF TIME**

Pursuant to the Notice of the Surface Transportation Board ("STB") served June 4, 2008, Edison Electric Institute ("EEI") submitted its notice of intent to participate in this proceeding and to appear at the hearing (now scheduled for July 16, 2008). EEI now moves for a one-week extension of time for all parties to file testimony, and to reschedule the hearing for no earlier than the week of July 28.¹

Interest of EEI

EEI is the association of U.S. shareholder-owned electric companies. Its members serve 95% of the ultimate customers in the shareholder-owned segment of the industry, and represent approximately 70% of the U.S. electric power industry. It also has as Affiliate members more than 65 International electric companies and, as Associate members, more than 170 industry suppliers and related organizations.

¹ EEI understands that other parties may request an extension of 60 days. EEI's requested extensions of the due dates for written testimony and for the hearings are the minimum necessary for it to participate adequately in the proceeding, but it would have no objection to a greater extension to accommodate the needs of other parties.

EEI's testimony will discuss the investor-owned electric utility industry's need for, and dependence on, the Nation's railroads to transport most of the coal used to generate electricity, and to transport other materials, such as anhydrous ammonia, chlorine, and radioactive materials, needed for the safe, reliable and environmentally acceptable operation of coal-fired or nuclear power plants. EEI also intends to discuss the Price-Anderson Act of 1957, as amended, and related efforts the nuclear industry has taken to promote and sustain safety, in response to the Board's Notice.

In the context of this proceeding, of particular importance to EEI and its member companies is that (1) there is an adequate rail transportation network in the United States, (2) that railroads continue to be required to carry safely various hazardous materials (such as anhydrous ammonia and radioactive materials) that are either necessary to operate pollution-control equipment or that are used at other types of power plants (e.g., nuclear facilities).

It is especially noteworthy that, in the 1970s, the STB's predecessor found that the rail mode was many times safer than the truck mode to move radioactive and other hazardous materials, and that remains the situation today. Many hazardous materials either cannot be transported by truck or are not transported by truck for various economic and safety reasons. Therefore, EEI believes it is in the public interest to require railroads to carry these vital materials safely for EEI member companies and the rest of American industry.

Reasons for an Extension

EEI and its undersigned counsel rarely seek a change in schedules of STB proceedings, because we recognize that there are various considerations that must be taken into account in scheduling. However, in this instance, EEI and the undersigned believe that there are several reasons that the Board should grant a one-week extension of time.

First, the STB's bar Association, the Association of Transportation Law Professionals, is holding its Annual Meeting June 29-July 1, 2008. Many of those who will be preparing testimony or advising clients in this proceeding will be attending that Annual Meeting. A due date of July 2, 2008 for testimony will, therefore, constitute an extreme inconvenience, or even mean that some persons may not be able to attend that Annual Meeting, despite the great value to the bar of those meetings. The undersigned, for example, is a moderator of one panel, and serves on ATLP's Executive Committee, and, therefore, it would constitute a considerable burden to attempt to both participate in ATLP's Annual Meeting and prepare testimony for filing on July 2, 2008.

Second, the Board's decision in E. I. Dupont de Nemours and Company. v. CSX Transportation, Inc., STB Docket Nos. 42099, 42100, and 42101 (Dupont v. CSX) are due to be served on July 3, 2008. Issues pertaining to transportation of chlorine and other hazardous materials have been raised in those proceedings, and presumably will be addressed by the Board in its decision(s). It would be valuable for participants in the instant proceeding if they had at least a few days to consider the Board's decision(s) in Dupont v. CSX to consider the implications of those decision(s) and to determine whether to discuss them in their written testimony submitted herein.

Third, the week of July 2, 2008 is likely a week that many people will take vacation, due to the July 4 holiday. (The undersigned is aware of members of the STB's bar who intend to take the remainder of the week after the ATLP Annual Meeting, which is being held in Williamsburg, Virginia, as vacation time with their families.)

Fourth, having only four weeks between the date on which the Board's Notice of Hearing was served (on June 4, 2008) and the July 2, 2008 date for submission of testimony is a very

accelerated schedule. Presumably, all parties would benefit from having an additional week to prepare and file their testimony.

Finally, the undersigned was EEI's witness at the April 24-25, 2008 hearing in Ex Parte No. 677, as the Board knows. EEI may request the undersigned to be its witness again, at the hearing in this proceeding, or he will at least serve as counsel to EEI and its witness. However, the undersigned and his family (including extended family) long ago scheduled the week of July 12-19, 2008 for their only family vacation of the summer. Non-refundable airline tickets have been purchased, and accommodations have been reserved that could not readily be changed during the busy vacation season. Because of the schedules of other family members, it is in fact not possible to reschedule that vacation, for a variety of reasons. Accordingly, if the hearing is not rescheduled, the undersigned may not be able to appear at the hearing

Mr. Linderman, EEI's Director of Energy Supply Policy, and who is the person responsible for railroad transportation issues at EEI, is scheduled to be at the NARUC Summer Committee meetings in Portland, Oregon the week of July 21, 2008, and therefore could not attend an STB hearing that week.

Accordingly, if the Board were to extend the deadline for filing testimony herein to July 9, 2008, and reschedule the hearing for the week of July 28, 2008, it would be useful in the development of the best record in this proceeding, and would be an accommodation to EEI and its undersigned counsel.

Conclusion

For the foregoing reasons, Edison Electric Institute hereby moves for a one-week extension for the filing of testimony herein, to July 9, 2008, and to reschedule the hearing for no earlier than the week of July 28, 2008.

Respectfully submitted,

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