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May 27, 2011

Ms. Cynthia T. Brown
Chief, Section of Administration
Surface Transportation Board
395 E Street, SW
Washington, DC 20423

Re: Reply Comments of PPL EnergyPlus, Inc. in
Ex Parte No. 705, Competition in the Railroad Industry

Dear Ms. Brown:

PPL EnergyPlus, LLC ("PPL") is a member of the Alliance for Rail Competition, and joined in ARC's opening comments in this proceeding, in which PPL was mentioned by name. PPL also supports reply comments being filed by ARC and other captive shipper interests in this proceeding, but submits this letter to highlight particular concerns.

PPL's coal-fired generating stations in Pennsylvania are served only by Norfolk Southern Railway ("NS"). Since those coal fired generating stations produce some 40% of all the electric power generated by PPL in Pennsylvania, NS market dominance over deliveries of millions of tons of coal is a significant concern for PPL. Like other captive shippers, PPL has limited recourse when NS rates and charges rise, or when NS service quality fails to satisfy PPL requirements.

In its opening comments in this proceeding, NS argues that the STB lacks legal authority to reconsider past decisions limiting or eliminating the extent to which NS faces competition from other railroads. PPL disagrees, and knows that other shipper groups will provide the necessary legal analysis.

However, PPL would note that ICC and STB policies insulating railroads like NS from effective rail competition were adopted at a time when the major railroads were generally seen as financially weak, and were consistently found to be revenue inadequate. Times have changed for the Class I railroads generally and for NS in particular. NS was

found revenue adequate in 2004, 2005, 2006, 2007 and 2008, and is likely to be found revenue adequate for 2010.¹ Moreover, NS has clearly demonstrated that it can earn significant revenues from non-captive customers, raising the question whether further differential pricing of traffic captive to NS is justifiable.

Plainly, when monopoly railroads that are far from revenue adequacy make decisions regarding pricing and service quality, the ICC and Board have needed to take into consideration the Act's directive that it is government policy "to promote a safe and efficient rail transportation system by allowing rail carriers to earn adequate revenues, as determined by the Board." 49 USC § 10101 (3). However, there is no basis for ascribing to Congress an intent that a railroad like NS should continue to enjoy legal protection against competition, or other regulatory advantages premised on revenue inadequacy, after having earned adequate revenues for many years.

NS goes on in its comments to argue that in any event, any increase in NS exposure to competition from other railroads would reduce efficiency, because of the need to optimize what NS calls "service design." By this reasoning, the breakup of Conrail should not have taken place. Conrail's ability to provide service throughout the northeast with minimal interchanges would, consistent with NS's argument, enable Conrail to optimize service, trumping all other considerations.

Of course, NS originally sought to acquire all of Conrail, but that was not the transaction the STB approved. At the time, PPL was involved in a rate case against NS, CSX and Conrail (Docket No. 41295), one of the Bottleneck cases, which was ultimately settled. PPL supported the breakup of Conrail, but believes that further competition among railroads in the Northeast would be in the public interest, just as further competition has been beneficial in other industries, including trucking, telecommunications and energy.

Moreover, the ICC and STB have adopted numerous policies, including trackage rights and access remedies, designed to preserve pre-existing competition (as defined under ICC and STB merger policies) when major rail merger proceedings have been approved. Evidently, NS believes these policies were erroneous, because making more shippers completely captive to a single railroad would enable railroads to operate more efficiently.

Ultimately, NS is arguing that competition among railroads is not desirable and should be minimized to enhance efficiency (for railroads if not for their customers and competitors). Whatever economic and operational arguments NS may proffer for this reasoning are superseded, as a matter of law, by the fundamental premise embodied in rail regulation since the enactment of the Staggers Rail Act of 1980, emphasizing that competition should govern rail rates and service "to the maximum extent possible," with regulatory remedies to be applied where effective competition is absent. 49 USC § 10101(1).

¹ See also NS's 2010 annual report, which contains the statement "For 2010, excluding the impact of increased consumption, the increase in fuel surcharge revenue was greater than the increase in fuel expense."

A railroad industry structured to NS's preference would be a railroad industry requiring far more regulation of rates and practices by the STB.

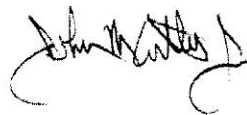
Moreover, a railroad industry structured to NS's preference might suit NS and its shareholders, but would create additional inefficiencies in the larger economy. The most efficient operations for NS could mean that PPL would be unable to acquire coal from mines served by CSX, BNSF or UP. NS might dictate to other captive and non-captive shippers where they could obtain raw materials or sell finished products, based on the most efficient flows of goods and equipment for the NS system.

For PPL and for other shippers whose choices were constrained to suit NS efficiency goals, the result would be less efficiency, as decisions made in Norfolk superseded the preferences of shippers and receivers of rail freight.

Competition is a fundamental part of US economic policy because experience teaches that competition reins in excessive pricing, leads to improved service, and rewards superior quality, initiative and responsiveness to the requirements of the marketplace. Letting NS or any other railroad or enterprise stack the deck in its favor, subject neither to competition nor to regulation, is bad law, bad economics and bad public policy.

In conclusion, PPL joins other shippers and shipper associations and governmental interests in urging the STB to initiate further proceedings to reconsider specific policies that hinder competition among railroads. At the same time, the Board should improve the effectiveness of its remedies for unreasonable rail rates, charges and practices.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'John M. Cutler, Jr.', with a stylized flourish at the end.

John M. Cutler, Jr.
Attorney for PPL EnergyPlus, LLC