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EDWARD H. COMER
Vice President & General Counsel

February 16, 2005

The Honorable Vernon A. Williams, Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423

213310

Re: Petition of CSX Transportation, Inc. for Declaratory Order,
Finance Docket No. 34662

Dear Secretary Williams:

Pursuant to the February 8, 2005 order of the Board in the above proceeding, Edison Electric Institute (EEI) herewith comments on and responds to the Petition of CSX Transportation, Inc. (CSX) initiating this proceeding. EEI is the premier trade association for U.S. shareholder-owned electric companies, and serves international affiliates and industry associates worldwide. Our U.S. members serve almost 95 percent of the ultimate customers in the shareholder-owned segment of the industry and nearly 70 percent of all electric utility ultimate customers in the nation, and generate over 70 percent of the electricity produced by U.S. electric utilities. EEI has on many prior occasions appeared before this Board representing the interests of its members.

EEI's members are some of the largest customers of the Nation's railroads. In addition to shipping vast quantities of coal by rail, or members also often ship by rail various chemicals necessary to the safe, reliable, and environmentally sound operation of our generation facilities – some of which could be subject to the restrictions under the DC City Council ordinance – as well as a variety of other fuels and equipment. Our members require, safe, secure, reliable, and timely rail transportation at reasonable costs to provide electric service to the nation. Should other political bodies attempt to pass similar – or more onerous – versions of such legislation, EEI's members could be adversely impacted to a serious degree.

EEI is sensitive to the desire of the City Council of the District of Columbia (DC City Council) to address issues regarding the safety of the citizens, residents and workers in the District. However, EEI believes that Congress has determined that the DC City Council may not address these matters itself. Rather, it must bring them before the appropriate Federal forums for addressing such considerations.

Congress recently vested the Transportation Safety Administration (TSA) within the Department of Homeland Security (DHS) with sole authority to address all transportation security issues, including those relating to rail. (*See, e.g.*, 49 U.S.C. §§114[d][2] & [f][4].) Thus, there is no "security" area pertaining to transportation that remains unoccupied by the Federal government which might therefore still be subject to local regulation. Moreover, it has long been recognized that Congress vested in the Department of Transportation primary responsibility for addressing the safety of interstate transportation. (*See, e.g.*, Consolidated Rail Corporation, et al. v. Interstate Commerce Commission, et al., 646 F.2d 642, 648-649, 207 U.S.App.D.C. 307, 313-314, *cert. den.*, 454 U.S. 1047, 102 S.Ct. 587, 70 L.Ed.2d 488 [1981].) Thus, this Board (jointly with TSA) is the proper forum for such matters, not the DC City Council.

For these reasons, this Board and TSA are the only venues where it is appropriate for the DC City Council to raise security concerns regarding the transportation of hazardous materials by rail through any portion of the District of Columbia, in particular the "zone" that they have "defined as an area within 2.2 miles of the U.S. Capitol Building." The U.S. Court of Appeals for the District of Columbia reached a similar decision when finding that safety standards already found appropriate by the Department of Transportation (DOT) and the Nuclear Regulatory Commission (NRC) could not be second-guessed. (Consolidated Rail Corporation, supra, 646 F.2d 649-653, 207 U.S.App.D.C. 314-318) That case held that the Interstate Commerce Commission might supplement the DOT/NRC determination using certain additional evidence, but none was presented in that case. Such evidence is also not before the Board in this proceeding.

As noted above, EEI is sympathetic to the concerns of the DC City Council. However, the DC City Council does not have the same expertise available to this Board, DOT, or TSA to fully address all relevant considerations, including possible methods other than the prohibition at issue herein. (*See* pp. 6-7 of the CSX Petition.) For all of the above reasons, we urge the Board to support the Petition of CSX, and we also urge the Board to be sensitive to all of the relevant factors regarding the seat of the National government. (*Id.*) Thank you for this opportunity to submit comments.

Respectfully yours,



Edward H. Comer,
Vice President & General Counsel

cc: Service List