

FOUNDATION ENERGY SALES, INC.

999 Corporate Boulevard, Suite 300
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April 4, 2007

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

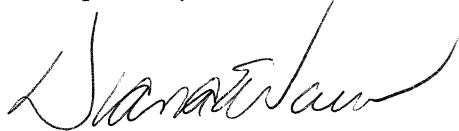
Re: STB Ex Parte No. 671, Rail Capacity and Infrastructure Requirements - Comments

Dear Secretary Williams,

Foundation Energy Sales, Inc. (FES) hereby submits their Comments for the above referenced proceeding.

Questions regarding these Comments or FES's participation in this proceeding should be directed to Betsy Monseu at (410) 689-7659.

Respectfully submitted,



Diana E. Walker
Senior Analyst, Transportation

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Ex Parte No. 671

Rail Capacity and Infrastructure Requirements

Comments of Foundation Energy Sales, Inc.

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BEFORE THE SURFACE TRANSPORTATION BOARD

Ex Parte No. 671

Rail Capacity and Infrastructure Requirements

Comments of Foundation Energy Sales, Inc.

Interest of Foundation Energy Sales, Inc.

Foundation Energy Sales, Inc. ("FES") is a wholly-owned subsidiary of Foundation Coal Holdings, Inc. ("FCL"), a publicly traded company whose operating subsidiaries own and operate a diverse group of thirteen mines located in Wyoming, Pennsylvania, and West Virginia. FES acts as FCL's sales agent and also provides its mine operating companies with contract administration and other services, including assistance with transportation and logistics. (FES, FCL, and their operating affiliates are hereinafter collectively and individually referred to as "Foundation Coal").

Foundation Coal is a major U.S. coal company. In calendar year 2006, we sold 73.9 million tons of coal, including 71.6 million tons produced at our operations. Our coal is primarily supplied to U.S. utilities for use in generating electricity, and we also sell coal to domestic steel producers and other industrial users. Additionally, we ship coal to the export market. In 2006, well over three-fourths of our produced coal was transported from our mines to destination plants, terminals, and ports for our customers by rail, with the remainder shipped by barge and by truck. Thus, Foundation Coal has a keen interest in efficient, reliable, and cost-effective rail transportation service. In fact, our ability to survive and grow our business is dependent upon adequate and competitive rail transportation.

COMMENTS

Coal companies rely on railroads to transport coal from our mines to domestic markets and to export terminals for access to international markets. For the great majority of all coal moved by rail, there is no practical transportation alternative to rail due to the high volumes and long distances involved. In most cases, it is the customer who pays the freight on coal shipments.¹ This structure of freight agreements between the railroads and our customers requires coal companies to rely heavily on railroads to ship our products efficiently and effectively. However, this arrangement leaves us to manage those shipments without the leverage of any direct commercial transportation agreements with the railroads.

Coal producers, coal consumers, and railroads are partners in serving some of the most fundamental needs of the American economy including electricity, steel, cement, paper, and chemicals. Coal has long been the single largest commodity carried by the Class I railroads from a volume standpoint. According to the American Association of Railroads (“AAR”), the nation’s railroads originated over 7.2 million carloads of coal in 2006, which accounted for over 40% of their total volume for the year. Investments in future rail infrastructure and capacity for coal must be commensurate with the particular reliance of coal producers and consumers on the rail network and its importance as the core business commodity of the railroads.

Railroads have seen sustained traffic growth during the 1990’s and early 2000’s, a trend that has accelerated strongly since the latter part of 2004. An expanding economy and continued increases in international imports to the U.S. accounted for record volumes of goods being moved by rail in 2006. Coal carloads for 2006 increased by 4.7% on all Class I railroads in 2006 versus 2005, according to AAR statistics. Total commodity

¹ An exception to this is coal for export, where a coal company often pays the freight to rail the coal to the export terminal.

carloads increased by 1.5% and total intermodal carloads increased by 5% during the same period as reported by AAR.

The Class I railroads have added infrastructure, railcars, locomotive power, and crews to handle greater volumes of business but they have also become more selective about the business they haul. Railroads had not previously experienced such high growth and were challenged to manage those increases in traffic. Although near-term volume growth may not be as great or may even decline for a few commodities, forecasters over the longer term are predicting a doubling or even tripling of freight volumes. Questions remain about the ability, willingness, and obligation of railroads to handle more business. How can the railroads' common carrier obligation be reconciled against a high-growth scenario that causes them to turn away business or price it so high that it will never move? Moreover, although railroads have an underlying common carrier obligation to serve in the case of coal movements, what does this obligation really mean when the large majority of coal movements take place under contracts that are exempt from that obligation, and when those contracts often have few if any service requirements? How can coal producers and consumers obtain assurance that they will be effectively served in the future?

As noted by the Congressional Budget Office ("CBO") in its January, 2006 paper on freight rail transportation, the number of track miles of the Class I railroads decreased annually from 1980 until 2003 in conjunction with rail mergers, consolidation, and rationalization, but since has stabilized. Also according to the CBO, during the same period, the number of train miles is increasing, a trend that has accelerated in recent years. This has resulted in increasing congestion in some locations. Average train speed, a measure of railroad performance, has generally been declining over recent years. With the Class I railroads having operated at or near their thresholds of capacity for much of the past two years, when an unplanned event such as weather or a derailment occurs, or even when there is planned rail maintenance, it generally takes longer for rail networks to recover due to their more limited operational flexibility. This points to the need for

railroads to have additional infrastructure and resource capability in order to provide consistent and reliable service.

The nation's electric generation infrastructure is largely coal-fired, and approximately 70% of coal deliveries to power plants are made by rail, according to the AAR. For electric generation, coal as a fuel source has consistently maintained a 49% to 53% market share during the past 10 years, principally because of its reliability, abundance, and relatively low cost compared to other fuels. Over the past quarter century, total annual coal consumption for all uses in the U.S. has nearly doubled to approximately 1.2 billion tons in 2006. The Energy Information Administration ("EIA") expects total coal consumption to grow 1.2% to 1.8% annually for the period through 2025.

The U.S. is one of the world's largest producers of coal, having approximately 27% of the world's coal reserves. Foundation Coal is the only U.S. producer with significant operations and major reserve blocks in both the Powder River Basin ("PRB") and Northern Appalachia, two U.S. coal production regions for which future demand is expected to increase significantly. Coal delivered by rail from our PRB operations is transported by BNSF Railway and Union Pacific Railroad Company, while coal delivered by rail from our Northern Appalachian and other eastern operations is shipped by Norfolk Southern Railway Company and CSX Transportation. Thus, the rail infrastructure and capacity as well as other resources such as locomotive power, railcars, and train crew personnel of each of these railroads in the future is of utmost importance to Foundation Coal.

America today is on the verge of potentially significant coal sourcing shifts by the utility sector, as implementation of additional air quality regulations occurs for emissions from electric generating plants, primarily affecting those utilities located east of the Mississippi River. This could cause significant changes with respect to both the utilization of existing rail infrastructure and the need for new rail infrastructure. Utilities have announced plans to add technology to reduce sulfur dioxide emissions on 89,000 megawatts of coal-fired generation by 2010. This technology will largely consist of the

use of scrubbers, which will require the transportation of additional raw materials such as lime and limestone into the plants, and waste products such as gypsum out. In the post-2015 period, additional scrubbers may be built.

With respect to coal shipments, railroads are attempting to plan for the future while some utilities build scrubbers as well as new coal-fired plants and evaluate their options for future coal sourcing. Most railroads have indicated a lead time of one to three years for needed infrastructure and resource additions to adjust to significant coal sourcing shifts. The use of scrubbers at earmarked facilities will allow utilities the flexibility to take some different quality coals than they have in the past and this is likely to cause some sourcing shifts among coal-producing regions. Overall, as indicated earlier, both coal requirements and scrubber-related requirements in terms of rail transportation services will increase. The Northern Appalachian region, and the Illinois Basin to a lesser extent, are forecast to grow due to these changes, and the routes of haul to the scrubbed facilities may be different. The PRB region is also forecast to have major growth with increased generation at existing plants consuming PRB coal, additional conversions from other coal sources at other plants, and the addition of some planned new coal-fired facilities. By 2012, our internal forecast shows that total PRB coal production could increase by 100 million tons annually or 20 percent above the 2006 production level of 472 million tons. Nearly all of the PRB production will move by rail. Our internal forecast also shows that Pittsburgh Seam coal production from the Northern Appalachian region could increase by 20 million tons annually, or 24 percent above the 2006 production level of 82 million tons. We estimate that two-thirds of the 2012 Pittsburgh Seam production will move by rail, with the remainder by barge. The combination of the current lack of meaningful excess capacity on the rails combined with sourcing changes and new coal plant additions without adequate lead time for rail infrastructure changes increases the likelihood that rail efficiency and timeliness of service will be negatively impacted.

Thus, Foundation Coal is concerned about the availability of adequate transportation capacity and infrastructure in the future. Rail tracks and yards, coal mines, and electric generating plants are all long-lived investments. Just as the railroads have fixed or sunk

cost in the tracks that they lay, we have sunk investments in mining operations at fixed locations. We cannot move those operations, and in some cases we are reliant on a single railroad to ship our coal to our customers. Therefore, we are also concerned with competitive transportation pricing. Transportation costs represent a significant portion of the total cost of coal for our customers, and in many instances the cost of transportation exceeds the cost of the coal. As a result, the cost of transportation is a critical factor in a customer's purchasing decision. Major increases in transportation costs could make coal a less competitive source of energy or could make our coal less competitive than coal produced from other sources - especially so in situations where either our mine or a customer's plant or both are captive to a single railroad.

The U.S. Class I railroads have shown that they have the ability and the financial wherewithal to expend capital to add infrastructure. Although they have been spending record amounts of capital, they have also been generating record profits. And, according to the CBO, the stock prices of the four major Class I's have outperformed the S&P 500 index for the past five years. The infrastructure and capacity questions and concerns for the future have to do with the locations where infrastructure will be needed, how much will be needed, and the amount and timing of such investments. With respect to coal, railroads need to have a good understanding of likely future coal sourcing and consumption patterns, but this is easier said than done due to the myriad environmental and regulatory issues facing the coal and utility industries. Nonetheless, it is imperative that coal mining companies, railroads, and utilities work together in a very deliberate way to address these issues, and time is of the essence.

According to the AAR, the U.S. Department of Transportation forecasts that by 2020, overall freight tonnage moved in this country will increase by 70% from 1998 levels. With various acknowledgements of concern by the Board, the CBO, the General Accounting Office, and the Federal Highway Administration, consensus-building efforts need to be made toward the development of a national transportation policy. There are issues and many complexities with respect to who should bear the burden of America's future infrastructure needs for rails, waterways, and roads and the public benefits must be

adequately captured in assessments of such. Innovation and open-mindedness with respect to ways to achieve added infrastructure and capacity needs will be required, as will more private and public coordination. It is critical to the American economy and vital to our future quality of life that we begin to comprehensively address transportation policy now.

Respectfully submitted,

Betsy B. Monseu

Vice President Transportation

Foundation Energy Sales, Inc.