

SLOVER & LOFTUS

ATTORNEYS AT LAW

1224 SEVENTEENTH STREET, N. W.

WASHINGTON, D. C. 20036-3003

WILLIAM L. SLOVER
C. MICHAEL LOFTUS
JOHN H. LE SEUR
KELVIN J. DOWD
ROBERT D. ROSENBERG
CHRISTOPHER A. MILLS
FRANK J. PERGOLIZZI
ANDREW B. KOLESAR III
PETER A. PFOHL
DANIEL M. JAFFE
STEPHANIE M. PISANELLI

OF COUNSEL
DONALD G. AVERY

April 16, 2007

TELEPHONE:
(202) 347-7170

FAX:
(202) 347-3619

WRITER'S E-MAIL:

BY HAND DELIVERY

The Honorable Vernon A. Williams
Secretary

Surface Transportation Board

Attn: STB Ex Parte No. 670

395 E Street, SW

Washington, D.C. 20423-0001

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Office of Proceedings

APR 16 2007

Part of
Public Record

Re: Ex Parte No. 670, *Establishment of the Rail
Energy Transportation Advisory Committee*

Dear Secretary Williams:

Please find an original and ten (10) copies of the Comments of Xcel Energy in response to the Board's Notice served on March 9, 2007 in the above-referenced proceeding.

We have enclosed an additional copy of these Comments. Please indicate receipt and filing by time-stamping this copy and returning it with our messenger.

Thank you for your attention to this matter.

Sincerely,



John H. LeSeur
An Attorney for Xcel Energy

Enclosures

219093

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

**ESTABLISHMENT OF THE
RAIL ENERGY
TRANSPORTATION ADVISORY
COMMITTEE**

Ex Parte No. 670

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**COMMENTS OF
XCEL ENERGY**

Of Counsel:

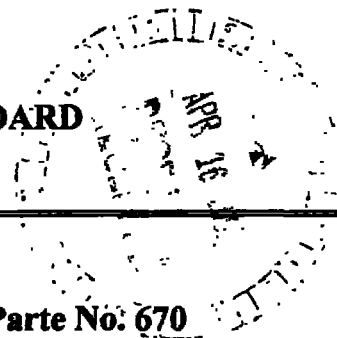
**Slover & Loftus
1224 Seventeenth Street, N.W.
Washington, D.C. 20036**

Dated: April 16, 2007

**By: John H. LeSeur
Peter A. Pfohl
Slover & Loftus
1224 Seventeenth Street, N.W.
Washington, D.C. 20036**

Attorneys & Practitioners

**BEFORE THE
SURFACE TRANSPORTATION BOARD**



**ESTABLISHMENT OF THE
RAIL ENERGY
TRANSPORTATION ADVISORY
COMMITTEE**

Ex Parte No: 670

**COMMENTS OF
XCEL ENERGY**

In accordance with the Notice served by the Board in this proceeding on March 9, 2007 ("Notice"), Xcel Energy submits these comments concerning the desirability of establishing a Rail Energy Transportation Advisory Committee ("RETAC"). Xcel Energy appreciates the opportunity to present its views on this matter.

IDENTITY AND INTEREST

Xcel Energy is a major electric and natural gas company, with annual revenues of \$10 billion. Based in Minneapolis, Minnesota, Xcel Energy operates in ten Western and Midwestern states. The company provides a comprehensive portfolio of energy related products and services to 3.3 million electricity customers. To meet its customers' needs, Xcel operates a large number of generating facilities that use a variety of fuel sources. Xcel's largest single electricity generating source is from its coal-fired generating facilities. Coal generation comprises approximately 60 percent to 85 percent

of Xcel's annual generation for its operating utilities. Almost all of Xcel Energy's coal generating stations are served exclusively by rail.

Xcel relies on the railroads to provide service in a timely and efficient manner to meet its generating facilities' fuel needs. Without timely and reliable coal deliveries, Xcel's ability meet its obligation to provide reliable energy to its customers is put in jeopardy. Maintaining reliable coal deliveries is also an important U.S. national security matter. Accordingly, Xcel has a direct and substantial interest in this proceeding and the proposed establishment of the RETAC.

I.

DISCUSSION

In its Notice, the proposed new RETAC is described by the Board as "a formal federal advisory committee to provide independent advice and policy recommendations to the Board on issues pertaining to the reliability of rail transportation of energy resources" including the rail transportation of coal. Notice at 1. The Board is seeking comments "on the utility of establishing such a [RETAC], and, if established, the appropriate scope and the optimum size and composition of such a committee so as to reflect an appropriate and balanced cross-section of interested and affected stakeholders."

Id. In particular, the Board states it is seeking comments in several areas:

- (1) What are the views of rail and energy industry stakeholders as to the potential utility of such a committee?
- (2) What would be the appropriate scope of such a committee's mandate – i.e., should it be limited to issues involving transportation of coal and ethanol, or constituted

more broadly to include, for example, the biofuel industry and/or others? How would the scope of the committee's mandate affect its utility? (3) Consistent with one's views on the answers to the previous questions, what would be the optimum size of such a committee, and how should the committee's membership be allocated among various stakeholder groups to achieve a fairly balanced "cross section of those directly affected, interested, and qualified," as required under the Federal Advisory Committee Act (FACA)?

Id. at 2. Xcel addresses each of these issues below.

A. The Potential Utility of Establishing the RETAC

Xcel respectfully submits that, properly constituted with meaningful participation from utility coal shippers, and with adequate resources and support, the RESTAC could provide significant assistance to the Board in helping to address the reliability problems in the transportation of coal that Xcel and other coal transportation consumers have faced.

1. The Essential Need for RETAC

Under the Federal Advisory Committee Act's ("FACA's")¹ governing rules, advisory committees such as the RETAC "may be established only when it is essential to the conduct of agency business and when the information to be obtained is not already available through another advisory committee or source within the Federal Government." 41 C.F.R. § 102-3.30(a). The reasons for deciding that an advisory committee is needed may include the following:

(1) Advisory committee deliberations will result in the creation or elimination of (or change in) regulations, policies, or guidelines affecting agency business;

(2) The advisory committee will make recommendations resulting in significant improvements in service or reductions in cost; or

(3) The advisory committee's recommendations will provide an important additional perspective or viewpoint affecting agency operations.

Id. Xcel respectfully submits that there is sufficient need for the establishment of the RETAC.

Coal transportation is essential to the nation's security because the generation of electricity is dependant on reliable delivery of coal fuel. Coal transportation is one of the most important commodities handled by the railroads by revenue and volume and there have been serious recurring service problems with respect to coal transportation service for which appropriate additional attention needs to be paid.

Under 49 U.S.C. § 11101, carriers have a fundamental "common carrier obligation" to serve their customers "on reasonable request." Section 11101 also provides that "[c]ommitments which deprive a carrier of its ability to respond to reasonable requests for common carrier service are not reasonable." Id. Congress intended through the Staggers Rail Act of 1980 to "provide a regulatory process that balances the needs of carriers, shippers, and the public." Pub. L. 96-448, 94 Stat. 1897.

¹ Pub. L. No. 92-463, 86 Stat. 770 (1972) (codified as amended at 5 U.S.C. App. 2).

In this respect, Congress was specifically concerned as a matter of National Rail Transportation Policy that reliable and cost-effective transportation of coal be made available under the "objective of energy independence":

[t]he conferees intend that (the Rail Transportation) policy include the encouragement and promotion of the transportation of coal by rail in accordance with the objective of energy independence at rates which do not exceed a reasonable maximum where there is an absence of effective competition.

Conference Report on the Staggers Rail Act of 1980, H.R. Rep. No. 96-1430 (1980) at 80.

While other governmental entities have conducted oversight of certain aspects of electric reliability issues relation to railroad performance, the STB is the principal regulatory authority over transportation of by rail carrier, and its jurisdiction over railroads generally is exclusive. See 49 U.S.C. § 10501. Therefore, the STB is the only regulatory agency that has sufficient statutory authority to address railroad industry service and reliability issues on a consistent basis throughout the country.

The Board has in the past been involved on rail service reliability matters. For example, the Board revised its rules to address service remedies in times rail service emergencies² and it has required the railroads to report annually on the carriers' fall "peak season" service plans. However, to Xcel's knowledge, the Board has not initiated

² See e.g., Expedited Relief for Rail Service Inadequacies, STB Ex Parte No. 628 (STB Served Dec. 21, 1998) (Board decides through a rulemaking to revise its

any formal review of the critical national issue of energy transportation service reliability. Xcel submits that the establishment of RETAC is an important start in this regard. The essential need for establishing the RETAC is to provide the STB with relevant information in a manner that would advise, inform, and make recommendations on matters pertaining to the railroads' reliable transportation of energy resources including coal.

a. The Establishment of the RETAC is Consistent with Other Recent Initiatives Related to Electricity Reliability

Xcel submits that the establishment of the RETAC is timely and is consistent with recently enacted federal legislation, and newly proposed federal legislation, addressing related reliability matters.

Under the Energy Policy Act of 2005,³ new electricity reliability standards were directed. Pursuant to the Act, the North American Electric Reliability Corporation ("NERC") was certified to develop mandatory and enforceable reliability standards, subject to Federal Energy Regulatory Commission ("FERC") review and approval. NERC subsequently developed and submitted for approval 107 reliability standards defining the acceptable performance with regard to the operation, planning, and design of the North American Bulk-Power System. The FERC recently issued a Final Rule in

regulations governing its authority to temporary direct rail service in times of service emergency).

³ Pub. L. No. 109-58, Title XII, Subtitle A, 119 Stat. 594, 941 (2005).

Order No. 693, Mandatory Reliability Standards for the Bulk-Power System, 118 FERC ¶ 61,218 (March 16, 2007), approving many of the proposed reliability standards.

The new electricity reliability standards brought about by the Energy Policy Act are substantial. Because of the importance of coal-generated electricity to the bulk-power system, it is obvious that maintaining system reliability depends on having a reliable system of rail transportation to move the coal from mine origins to electric generating stations. Accordingly, the new Energy Policy Act's electricity reliability standards provide another important reason for the establishment of the RETAC.

New legislation also has been introduced in Congress addressing railroad reliability. On March 1, 2007, Congressman Steny H. Hoyer introduced H.R. 1300, the Program for Real Energy Security Act (or the "PROGRESS Act"), which has 104 co-sponsors. Section 541 of that legislation would require the STB to issue regulations implementing railroad energy supply service reliability standards within 180 days after enactment, and the legislation would establish an advisory panel to make recommendations for the establishment of such standards. H.R. 1300 also would authorize the Board to order railroad compliance, as well as penalties for non-compliance, of implemented reliability standards.

Unlike under H.R. 1300, the STB has not publicly stated that it is interested in imposing new binding reliability standards on the railroads.⁴ However, the

⁴ Under FACA, established committees are by design "advisory only." 5 U.S.C. App. 2 at §2(b)(6).

establishment of the RETAC is consistent with the premise of the reliability provisions of H.R. 1300, which are designed to ensure “that the Nation’s rail carriers meet their common carrier obligations to deliver products and maintain infrastructure at a level which provides for the safe, efficient, and reliable delivery of passengers, energy supplies, and other goods and services.” Id. at § 541(a).

B. The Possible Scope of the RETAC’s Mandate

Xcel believes that, because of the vital importance of coal as a fuel source to the Nation, and the importance of the reliable transportation of coal to U.S. national security, any established committee should be principally directed to addressing issues relating to the efficient rail transportation of coal. Approximately one-half of the electricity generated in the country is derived from coal-fired generation and coal is a base load fuel source that cannot feasibly be replaced by substitute fuels. Also, as stated, the efficient transportation of coal by rail is of critical importance to electric reliability and there is a lack of any effective intermodal options to move the vast majority of the movements of this important commodity.

If the committee’s mandate were substantially broadened beyond coal, to encompass a broad range of other rail transportation issues, such expansion might affect the utility and effectiveness of the committee. Expansion of responsibilities might also cause conflict with the requirement that “new advisory committees should be established only when they are determined to be essential and their number should be kept to the minimum necessary.” Id., App. 2 at §2(b)(2).

C. The Optimum Size and Membership Allocation on the RETAC

Under FACA, advisory committees are required to have a “balanced membership.” 49 C.F.R. § 102.3.30(c). Xcel submits that a balanced membership should include a geographically diverse complement of investor-owned electric utilities, rural electric cooperatives, and public power providers. It would also be appropriate for coal supplier representatives to be committee members, as well as railroad representatives that meaningfully participate in the movement of coal.

Additionally, Xcel submits that the Board might consider whether the appointment of individuals with appropriate experience on energy reliability issues at other governmental agencies such as the Federal Energy Regulatory Commission, the U.S. Department of Energy, or NERC would be appropriate. The optimum size would appear to be dictated in part on the amount of issues to be considered by the committee, but if focused more narrowly on coal transportation issues, the size of the committee could probably be limited to approximately 18 or less. Whatever its ultimate size, if the RETAC is established, Xcel submits that the Board would need to help ensure that the committee is provided with sufficient resources (including the ability to hire experts and obtain information, as appropriate) it needs to be able to meaningfully and effectively carry out its responsibilities.

CONCLUSION

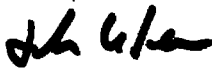
Xcel appreciates the opportunity to present these comments to the Board, and it urges the Board to take actions to establish the RETAC in the manner suggested in these comments.

Respectfully submitted,

Xcel Energy

Of Counsel:

Slover & Loftus
1224 Seventeenth Street, N.W.
Washington, D.C. 20036

By: John H. LeSeur 
Peter A. Pfohl
Slover & Loftus
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