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April 23, 2007

## VIA ELECTRONIC FILING

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

Re: STB Docket No. 34974, Keokuk Junction Railway Co. d/b/a Peoria & Western  
Railway – Lease and Operation Exemption – BNSF Railway Company between  
Vermont and Farmington, Illinois

Dear Secretary Williams:

I am writing to you on behalf of the Edison Electric Institute (“EEI”) to express EEI’s views regarding the lease transaction that is the subject of the above-referenced proceeding. Because the lease transaction implicates the competitive rail transportation options of a coal-fired electricity generating station, EEI has followed this proceeding with interest. EEI is very concerned by the lease transaction because it appears to substantially impair a coal shipper’s competitive rail options. It is our firm belief that the Staggers Rail Act’s goals were to have competition resolve market behavior and market-power issues to the maximum extent possible, and that any actions by any class of rail carrier that impede or limit competition, no matter how presented, are contrary to the goals of the Staggers Act.

EEI is the association for U.S. shareholder-owned electric companies, and its U.S. 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. We also have as Affiliate members more than 65 International electric companies, and as Associate members more than 170 industry suppliers and related organizations. Coal is responsible for over 50 percent of the nation’s electricity, and EEI’s members consume hundreds of millions of tons of coal annually to generate electricity. Approximately 70 percent of this coal moves by railroad, and, EEI has a keen interest in competitive conditions in the railroad industry, as the Board well knows from EEI’s active participation in STB proceedings.

EEI is particularly troubled by the fact that the subject transaction appears to negate a shipper's successful effort to free itself from rail captivity through private investment in rail infrastructure (*i.e.*, "build-outs") — something that this Board, and its predecessor, the Interstate Commerce Commission have strongly advocated and actively encouraged, and that the Staggers Act expressly permits.

To summarize the relevant facts as EEI understands them, Ameren Duck Creek generating station was formerly captive by rail to the BNSF Railway Company ("BNSF") for the transportation of coal in unit trains. EEI understands that Ameren established rail-to-rail competition at Duck Creek by seizing the initiative to construct a private spur track to a rail line owned by the Keokuk Junction Railway Company ("KJRY") — at substantial monetary expense to Ameren — which ultimately created access to the Union Pacific Railroad Company ("UPRR"). EEI further understands that the lease transaction will essentially return Duck Creek to captivity by making KJRY the sole destination carrier for both UPRR and BNSF routings.

As a trade association representing electric utilities that have undertaken similar efforts to establish rail-to-rail competition at captive generating facilities, or that are contemplating such efforts in the future, EEI is deeply troubled by both the transaction itself, and the possibility that such an anticompetitive arrangement might receive STB approval. In particular, EEI is very concerned that the Board's sanction of the lease transaction would have a severe chilling effect on the ability of EEI's members to obtain competition through such "build-outs" at a time when private rail construction represents perhaps the only meaningful avenue of relief for captive utilities.

EEI believes that the Board's authorization of the transaction would be viewed by all captive rail shippers as a reversal of the Board's pro-construction policy—a policy that has greatly contributed to the revitalization of the rail industry. This message would be particularly ill-timed, given the Board's clearly expressed viewpoint that shippers and railroads should — indeed, perhaps must — work together to solve the daunting infrastructure, competition, and capacity problems that now face the industry. As the Board knows, EEI stands ready to work with the railroads to attempt to solve such problems, but cannot do so effectively if a "chilling effect" is created with respect to the only competitive option most captive coal shippers have.

In addition, EEI believes that the lease transaction contravenes several tenets of the Rail Transportation Policy at 49 U.S.C. § 10101, which direct the Board to support and enhance effective competition in the rail industry. In particular, EEI believes that the lease transaction contradicts Congress's policy as codified at 49 U.S.C. § 10101(1), (2), (4), (5) and (12) because it diminishes, rather than fosters competition.

The Honorable Vernon A. Williams  
April 23, 2007  
Page 3

Accordingly, EEI urges the Board to deny exemption authority for the lease transaction.

Respectfully submitted,

A handwritten signature in black ink, reading "Michael F. McBride". The signature is written in a cursive, flowing style.

Michael F. McBride  
*Attorney for Edison Electric Institute*

cc: Chairman Charles D. Nottingham  
Vice Chairman W. Douglas Buttrey  
Board Member Francis P. Mulvey  
All Parties of Record