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May 1, 2007

VIA E-FILE

The Honorable Vernon A. Williams  
Secretary  
Surface Transportation Board  
395 E Street, S.W.  
Washington, D.C. 20024

RE: STB Finance 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

Edison Electric Institute ("EEI") hereby responds to the letter filed by Keokuk Junction Railway Co. d/b/a Peoria & Western Railway ("KJRY") in this proceeding on April 27, 2007. KJRY's letter asks the Board to reject and not consider a three-page letter in which the EEI expressed its views on the Lease Transaction. EEI is not and has not requested to become a party to the proceeding and EEI's public comments will not delay the proceeding nor prejudice any party. Thus, KJRY's request is unwarranted and should be denied.

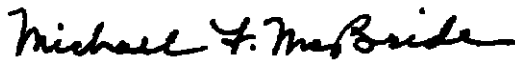
First, KJRY misconstrues the Board's statement in its March 6<sup>th</sup> decision that it would not require additional *evidence* before ruling on the merits of KJRY's petition for exemption. The statement plainly applies to the parties— *not the public*— and reflects the extensive record that has been developed by the parties. Second, KJRY's position contradicts the Board's rules for exemption proceedings, which provide that "the Board *may consider* during its deliberation *any public comment* filed in response to a petition for exemption." 49 C.F.R. § 1121.4 [emphasis added]. The March 6<sup>th</sup> decision does not indicate that the Board suspended this rule, especially since the Board's decision applies expressly to *evidence* as opposed to *public comment*. The Board often accepts and considers public comments in order to have a full and complete record, especially when, as is true in this proceeding, no party will be prejudiced by the comments. See STB Docket No. 34917, STB Docket No. AB-878, STB Docket No. AB-1066X, *Pioneer Industrial Railway Co. - Alternative Rail Service - Central Illinois Railroad Co., City of Peoria and the Village of Peoria Heights, IL - Adverse Discontinuance - Pioneer Industrial Railway*

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*Co., Central Illinois Railroad Co. Discontinuance of Service Exemption In Peoria County, IL*, 2007 STB LEXIS 9 (Served Jan. 12, 2007) ("PIRY/CIRY"); STB Docket No. 34890, *SIB Docket No. 34922, Pyco Industries, Inc. - Feeder Line Application Lines of South Plains Switching, Ltd Co., Keokuk Junction Railway Co. Feeder Line Application - Lines of South Plains Switching, Ltd Co.*, 2006 STB LEXIS 42 and 2006 STB LEXIS 453 (Served Jan. 25, 2006 and Aug. 16, 2006); STB Docket No. 34435, *Ameren Energy Generating Co. - Construction and Operation - in Coffeen and Walshville, IL*, 2004 STB LEXIS 418 (Served July 9, 2004) ("Coffeen"). Third, the Board has often ruled against similar motions to strike or reject a filing on the basis that the objection really goes to the weight that the Board should afford the comments and not on the admissibility of such comments. See STB Docket No. 34421 and 34421 (Sub-No. 1), *HolRail, LLC - Construction and Operation Exemption - In Orangeburg and Dorchester Counties, SC*, *HolRail LLC Petition for Crossing Authority under 49 U.S.C. § 10901(d)*, 2007 STB LEXIS 56 (Served Feb. 12, 2007) ("HolRail"); PIRY/CIRY, *supra*, Coffeen, *supra*, STB Docket No. AB-33 (Sub-No. 132X) *Union Pacific Railroad Co. Abandonment Exemption - In Rio Grande and Mineral Counties, CO*, 2004 STB LEXIS 378 (Served June 22, 2004). Even if EEI's letter were considered "late-filed," the Board's predecessor has accepted public comments filed after the end of the comment period from Senators, Congressmen and other members of the public particularly because of, as here, the importance of the issues considered. See *Withdrawal of Antitrust Immunity for Collective Ratemaking on Small Shipments*, Ex Parte No. MC-172 (Served Nov. 27, 1984); see also *HolRail, supra* (accepting *amicus curiae* comments because of the industry-wide significance). Accordingly, KJRY's reliance upon the March 6<sup>th</sup> decision in an attempt to exclude EEI's letter is misplaced.

Finally, KJRY's "slippery-slope" argument is unconvincing as a basis for rejecting EEI's comments. As the Board knows, industry associations, like EEI, often watch proceedings that are of special interest to its members. When the Board has not established a procedural schedule for public participation, comments typically flow into the Board at various times during the proceeding. EEI is unaware that this kind of *ad hoc* participation by an industry association or other public entity has ever impeded the Board's decision-making processes. On the contrary, EEI understands that the Board welcomes such public participation because the comments often yield a "big-picture" perspective on a particular transaction. KJRY is undoubtedly also aware of the spirit of openness with which the Board conducts its proceedings. Thus, KJRY's opposition to EEI's comments must only be because EEI has questioned the merits of the Lease Transaction. Because KJRY's request is contrary to the Board's approach to public comments, the Board should deny the request to reject EEI's letter.

Respectfully submitted,

  
Michael F. McBride  
Attorney for Edison Electric Institute

cc: All Parties of Record