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May 1, 2007

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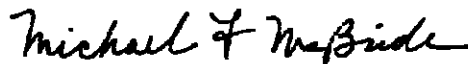
Mr. Vernon A. Williams, Secretary
Surface Transportation Board
395 L Street, S.W.
Washington, DC 20423-0001

Re: STB Ex Parte No. 671 – Rail Capacity and Infrastructure Requirements

Dear Mr. Williams

In accordance with the Board's Decision issued March 6, 2007, in the above-referenced proceeding, enclosed for filing is the Supplemental Statement of William M. Mohl, Vice President, Commercial Operations, Entergy Services, Inc., on behalf of Edison Electric Institute

Respectfully submitted,



Michael F. McBride

Attorney for Edison Electric Institute

Enclosure

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Ex Parte No. 671

RAIL CAPACITY AND INFRASTRUCTURE REQUIREMENTS

SUPPLEMENTAL STATEMENT

OF

William M. Mohl

Vice President, Commercial Operations

Entergy Services, Inc.

On Behalf of the

Edison Electric Institute

Entergy Services and the Edison Electric Institute ("EEI") submit these supplementary comments to clarify a response to a question from Chairman Nottingham regarding potential federal legislation to provide tax credits or other incentives to encourage investment in railroad capacity and infrastructure and to provide further information in response to a statement by Vice Chairman Buttrey regarding fuel diversity in electricity generation.

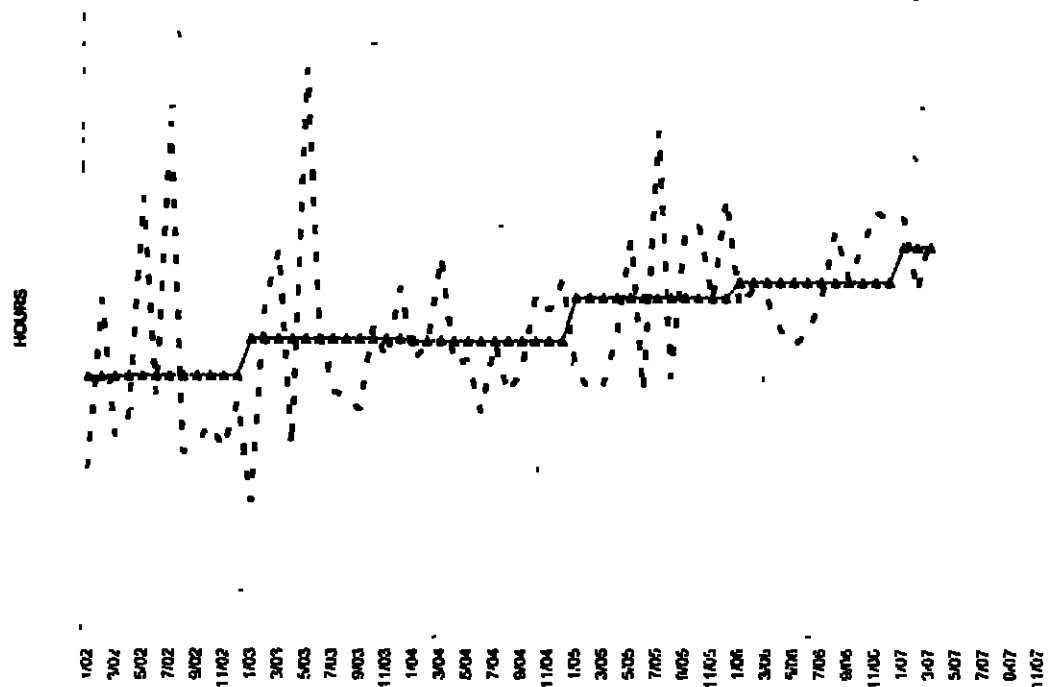
Railroad Investment Incentives

Based on the testimony presented in this proceeding, there is an obvious, if not urgent, need for improved rail service, additional rail capacity, and overall rail infrastructure improvements in the United States. From the electric utilities' perspective, there is also a need to ensure that resources such as coal, which are critical for the Nation's energy supply, are transported safely and reliably. If the public is to support railroad infrastructure investments, there needs to be some control on how and where these supported investments are made to ensure that the benefits from the support accrue to the public and not primarily to the railroads.

Electric utilities and other industries that depend heavily on rail service support legislation to help improve rail service and capacity as long as this legislation provides shippers necessary protection from market power abuse and improves service to existing customers. One of the reasons that electric utilities and other rail-dependent industries are pursuing the current legislative initiatives is the continuing deterioration of the railroads' service levels, which is, to some extent, caused by the inadequate amount, or poor condition, or both, of rail infrastructure in certain regions. To illustrate the railroad

service level deterioration, please see Figure 1 below showing historical cycle times to one of Entergy's coal-fired plants, and note the increase in cycle time every year, with the exception of 2004. Increases in gross¹ cycle-time (the interval between gridlines) often results in the need for utilities to add train-set capacity, at the approximate cost of 6-7 million dollars per train-set per year, in order to transport the same amount of coal. This is simply another example of utility shippers having to bear increased costs due to the inadequacy of rail infrastructure and the lack of competition that exists in many regions in today's market.

Figure 1 – Gross Cycle times Jan 2002 through Mar 2007



¹ Gross cycle time captures the time for the entire cycle, from loading at the mine, until the train is ready for the next loading. It thus includes time that is the shipper's responsibility such as loading and unloading.

The legislative initiatives currently pursued include bills (1) to implement reforms at the Surface Transportation Board ("STB"), which also, in the spirit of the Staggers Rail Act of 1980, reinforces the need for rail competition and effective price and service controls when such competition does not exist, (2) to clarify and enforce railroads' common carrier obligation to serve, and (3) to eliminate the railroad industry's outdated anti-trust exemptions

EEI does not have a formally approved policy position on a railroad investment tax credit ("ITC"), nor is the rail ITC one of EEI's tax legislative priorities. However, if Congress considers tax incentives proposed by the railroads to encourage expansions in rail capacity, and is able to deal with the budget implications of such a proposal, those incentives should be targeted to address the most critical needs first. This could be accomplished by focusing on adding or improving capacity to deliver critical domestic shipments, such as coal and other energy-critical commodities, and other steps to improve the plight of captive shippers currently without access to competitive rail options.

The railroads are seeking legislation to provide them with a 25 percent ITC for investments in railroad infrastructure. As indicated by testimony in this proceeding, some incentives for infrastructure investment may be sound national policy, but only if it is part of a comprehensive solution to problems related to rail reliability and accountability. Consideration of a railroad tax credit could give Congress, for the first time in decades, an opportunity to address both the concerns of the major railroads and the legitimate concerns of rail customers in a manner that will result in a strengthened national rail system. If the railroads want a special tax credit for infrastructure improvements, the only reason public policy should support such a tax credit is if there

are public benefits to providing the credit. There are such public benefits, but it follows that the Congress should be the entity to determine how the tax credit should be targeted to ensure that the public benefits are actually achieved by providing the credit.

To be effective, any railroad ITC must be focused and coupled with provisions that

- (1) address the concerns of the shipping public including coal-dependent electric utilities,
- (2) restore rail competition as the primary mechanism for achieving efficiency and price reasonableness; and
- (3) ensure accountability of the railroads and provide protection to shippers when competition does not exist

Now that the rail industry is in a better financial position than it has been in decades, it is time to change the governing principles to be more responsible to the Nation's need as a whole. This requires a comprehensive overhaul of the STB's current interpretations of the Staggers Rail Act, which have resulted in the virtual elimination of effective competition for large segments of rail traffic, including coal. In order to focus the proposed ITC and to address the concerns of rail customers, potential policy options include the following

- The investment tax credit should be coupled with a provision that removes the railroad industry's exemptions from anti-trust law.
- The investment tax credit should be coupled with a defined, mandatory and enforceable "obligation to serve," together with established reliability standards, overseen and enforced by the STB under an overhauled regulatory framework

- The investment tax credit should be premised on facilitating and promoting healthy rail competition as the primary mechanism to encourage efficiency and achieve rate reasonableness as assumed by the Staggers Act. To this end, it should provide a mechanism to review and, if appropriate, overturn STB rulings allowing the railroads to block rail customer access to competing rail service, which we consider anti-competitive and contrary to the Staggers Act.
- In any circumstances where effective competition still cannot reasonably be relied on to achieve rate reasonableness, the investment tax credit should be coupled with requirements to establish a new rate reasonableness standard based on the railroad's cost of providing service for the movement in question, require STB filing fees in line with filing fees in U.S. District Court, and require the railroad to justify a rate when the complainant has proved that it has no access to transportation competition and the rate is within the jurisdiction of the STB.
- The investment tax credit should also be available to non-railroad companies that make investments in railroad infrastructure. The electric generation sector has made frequent investments in railroad infrastructure such as loop track at power plants, rail cars to transport coal, car repair shops to assist in meeting the capital needs of the railroads, and build-outs to create competition between railroads.
- The investment tax credit should be focused on providing railroad infrastructure that
 - Ensures timely delivery at competitive prices, or in the absence of effective competition, fair prices for transporting domestic energy supplies within the U.S. for ultimate consumption in the U.S. ,

- Ensures reliable service under reasonable enforcement measures,
- Reinforces the common carrier mandate to serve,
- Is operated in a pro-competitive manner and does not enhance railroad monopoly power over specific movements, and
- Does not favor imports into the nation over domestic coal and other traffic generated within the nation for delivery either into U.S. or foreign markets

Fuel Diversity in Electricity Generation

Also at the April 11 hearing, Vice Chairman Buttrey applauded the electric industry for our collective efforts to achieve fuel diversity, and we appreciated the Vice Chairman's sentiments. However, it is not clear that everyone understands the concept of fuel diversity as it relates to coal-fired generation and the practical implications of achieving fuel diversity by electric utilities. Therefore, I would like to further elaborate on this basic tenet of power production.

Historically, electric utilities have generally designed their coal fired generating units to burn one type of coal, often one available locally (i.e. PRB, Illinois Basin, Appalachian, Lignite, etc.) and have been able to rely on the railroads or other modes of transportation to consistently deliver the required fuel. It is important to note that achieving fuel diversity for coal-fired generating units which were designed to burn a specific type of fuel is a very complex and expensive undertaking. The burning of alternate fuels can result in the need for significant design and engineering changes to the boiler and/or the fuel handling infrastructure, changes to environmental permits, additional operations and maintenance requirements, reductions in unit capacity and

higher overall costs. In addition, it is typically difficult to completely convert a facility to burn a different fuel, the most likely outcome results in the ability to blend a small percentage of alternate fuels with the primary fuel for which the facility was designed. Therefore, it is very difficult to achieve complete independence from the railroads for the delivery of the primary fuel; at best, a utility can only partially substitute its fuel deliveries with alternate fuels.

Every electric company strives for as much fuel diversity as economically or technically possible through the selection of a specific generating technology as well as a specific fuel for each unit in the design of their overall generation portfolio. A key to understanding the role diversity plays in the electric industry is portfolio management and risk theory. A utility relying solely on a single fuel source or supplier may be exposing itself to a greater level of risk than is warranted by its reliability requirements. That is one of the theories behind the large integrated electric transmission system which spreads the risk of either mechanical or electrical failure more widely and actually helps create a more reliable electric system.

In the last month, Entergy took a major step to further diversify its generation portfolio by adding a new solid fuel to its supply portfolio with the announcement that Entergy Louisiana LLC plans to repower an existing 538 megawatt, natural gas-fired generating plant with circulating fluidized bed combustion technology, which will use petroleum coke as the primary fuel. Petroleum coke is a carbonaceous solid waste by-product of oil refineries. The same generating technology works with coal as well. However, with the ready availability of petroleum coke on the Gulf Coast, it is a wiser course of action to use this local fuel than to further add to our difficulties by relying on

the railroads to transport resources from other regions, such as PRB coal, to the Gulf Coast

This approach, to create fuel diversity on a portfolio basis by optimizing fuel supply to each individual plant in the portfolio, is more cost-effective than the fuel diversity initiatives coal-burning power producers such as Entergy have been forced to implement lately due to under-deliveries by the railroads. As I have indicated in previous testimony, we have been forced to supplement our PRB deliveries with various foreign and domestic alternative fuels due to the inability of the railroads to reliably and consistently deliver PRB coal to our generating units in Louisiana and Arkansas. The burning of foreign coals in lieu of the domestic coal for which existing generating units were designed to burn is hurting the U.S. electric customers—and, in turn, the U.S. economy—in the form of higher electricity rates to cover the capital expenditures, higher operation and maintenance costs, higher commodity costs, and reduced utilization and employment of domestic resources. In addition, it hurts the U.S. coal producers in the form of lost revenues and profits, because utilities and other power producers can not trust the reliability of domestic rail deliveries. Some of the failure to perform by the railroads appears to be the result of the recent large increase in PRB coal sales to eastern utilities, as the railroads can extract significantly higher rates for the movements for these customers. Yet, when there is a transportation disruption, the railroads can reduce the shipments ratably across all customers without any consideration for meeting their commitments to long-term customers with whom they entered into long-term contracts in the 1980's and 1990's.

EEI certainly wants and needs the railroad industry to be healthy and profitable and is simply asking that the railroads be required to develop the appropriate infrastructure to reliably transport the solid fuels required to run our baseload generation, and be held accountable for this obligation. It is worth noting that the railroads have not suffered from a financial perspective during the periods of disruptions over the last few years, but rather they have been able to significantly increase income during the same period. For example, the Union Pacific Railroad reported 2005 earnings of \$296 million, up 384% over 2004 earnings, while BNSF reported \$4.01 per share earnings for 2005, up 191% from 2004, all during the year that the railroads failed to deliver 15% of the PRB demand. We recite these statistics not to argue that the railroads and other entities should not get a targeted investment tax credit for railroad infrastructure improvements that include public benefits, but rather to point out that the lack of adequate infrastructure and competition hurts shippers and the economy more than the railroads.

We appreciate the opportunity to submit these supplementary comments.