

219705

SLOVER & LOFTUS

ATTORNEYS AT LAW

1224 SEVENTEENTH STREET, N.W.
WASHINGTON, D.C. 20036-3009

WILLIAM I. 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
JOSHUA M. HOFFMAN

OF COUNSEL
DONALD G. AVERY

TELEPHONE
(202) 347-7170

FAX
(202) 347-3619

WRITER'S E-MAIL

July 5, 2007

jhl@sloverandloftus.com

VIA HAND DELIVERY

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
Attn: STB Ex Parte No. 672
395 E Street, SW
Washington, D.C. 20423-0001



ENTERED
Office of Proceedings

JUL 05 2007

Part of
Public Record

Re: Ex Parte No. 672, Rail Transportation of Resources
Critical to the Nation's Energy Supply

Dear Secretary Williams:

Please find an original and ten (10) copies of the Statement of Xcel Energy in the above-referenced proceeding.

We have enclosed an additional copy of this Statement. 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,

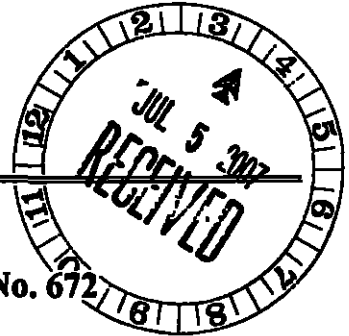
John H. LeSeur
An Attorney for Xcel Energy

Enclosure

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

**RAIL TRANSPORTATION OF
RESOURCES CRITICAL
TO THE NATION'S ENERGY
SUPPLY**

Ex Parte No. 672



**STATEMENT OF
XCEL ENERGY**

**ENTERED
Office of Proceedings**

JUL 05 2007

**Part of
Public Record**

OF COUNSEL:

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

**By: John H. LeScur
Peter A. Pfohl
Slover & Loftus
1224 Seventeenth Street, N.W.
Washington, D C. 20036
(202) 347-7170**

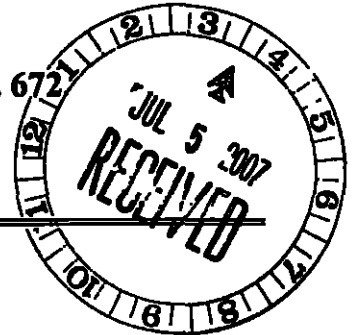
Dated: July 5, 2007

Attorneys for Xcel Energy -

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

**RAIL TRANSPORTATION
OF RESOURCES CRITICAL
TO THE NATION'S ENERGY
SUPPLY**

Ex Parte No. 6721



**STATEMENT OF
XCEL ENERGY**

In accordance with the notice served by the Surface Transportation Board ("STB" or "Board") in this proceeding on June 6, 2007 ("Notice"), Xcel Energy submits this statement on the transportation of resources critical to the nation's energy supply. Xcel Energy recommends that the Board take proactive measures to address the transportation of coal by rail. This proactive approach should include consideration of mandatory federal rail reliability standards.

IDENTITY AND INTEREST

Xcel Energy is a major electric and natural gas company. 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 Energy operates a large number of generating facilities. Xcel Energy's largest single electricity generating source is its coal-fired generating facilities. Coal generation comprises

approximately 60 percent to 85 percent of Xcel Energy's annual generation for its operating utilities. Almost all of Xcel Energy's coal generating stations are served exclusively by rail.

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

I.

COMMENTS

In its Notice instituting this proceeding, the Board correctly acknowledges both the importance of electric generation to our nation's economy and the critical role that coal transportation plays in the electric generation supply chain

The Board views the reliability of the nation's energy supply as crucial to the Nation's economic and national security, and transportation by rail of coal and other energy resources as a vital link in the energy supply chain.

(Notice at 2).

Well-known statistics support the Board's conclusions. Approximately fifty percent of the nation's electricity is currently produced by coal-fired generators.¹

¹ See Energy Information Administration ("EIA"), Annual Energy Outlook 2007

Most of this coal is currently transported by rail from coal origins to utility generating stations.² EIA projects that these trends will continue over the next twenty years: coal will continue to be the principal base load fuel for electric utility generation³ and most of this coal will continue to move by rail.⁴

Xcel Energy's coal supply and coal transportation arrangements generally mirror these national statistics. In 2006, Xcel Energy purchased, and arranged for the transportation of, approximately 32 million tons of coal. Over 92% of this coal was transported from origin to destination by western railroads. 83% of the coal purchased by Xcel Energy originated in the Powder River Basin ("PRB") of Wyoming. The remainder originated in Colorado coal fields.

The Board's Notice asks parties "to provide views and information about issues relating to the efficiency and reliability of rail transportation of resources critical to the nation's energy supply." (Notice at 2) In response, Xcel Energy presents the following proposals for the Board's consideration.

- The STB, and other pertinent government regulators (including the Federal Energy Regulatory Commission ("FERC")) should be proactive, rather than reactive, in addressing railroad reliability issues.

(Feb. 2007) at 82.

² Id. at 54.

³ Id. at 56, 98.

⁴ Id.

- The STB, in collaboration with FERC and other pertinent federal agencies, should consider promulgating national rail reliability standards.
- Public input on national rail reliability standards can come from the Board's proposed new Rail Energy Transportation Advisory Committee ("RETAC") and other sources, including public comment on proposed reliability standards.
- Rail reliability standards that can be considered include establishing route or corridor-specific unit train cycle time standards; establishing route or corridor-specific capacity monitoring and reliability measures; and establishing meaningful independent oversight of the nation's key rail infrastructure.

Each proposal is addressed below.

A. Federal Reliability Policy Should Be Proactive Not Reactive

Federal policies concerning rail reliability have been reactive rather than proactive. Since the STB was created in 1995, there have been several major rail service disruptions, including the following:

<u>Event</u>	<u>Time Period</u>
UP/SP Service Crisis	1997-1998
"Perfect Storm"	2003-2004
PRB Derailments & Subsequent Heavy Maintenance	2005-2006

Typically these events have been followed by after-the-fact investigations by federal officials addressing, among other things, the substantial adverse impacts the events have had on the electric utility supply chain. The adverse impacts are set forth fully in the records in proceedings before the Board, FERC and Congress, and need not

be repeated here.⁵ However, it is clear from these records that as rail service deteriorates, the ability of electric utilities to meet their customers' service needs has been severely tested, and the cost to utilities, and their customers, of railroad service deficiencies has been extraordinarily high.⁶

For example, the western railroads have responded to the 2005-2006 PRB service problems by making substantial new infrastructure investments on the PRB Joint Line. Xcel Energy commends the railroads for these investments. Nevertheless, serious questions remain whether these investments should have been made earlier to avoid the 2005-2006 service problems and whether the carriers' current planning practices will be sufficient to avoid similar problems in the years ahead.

The interest of all stakeholders (including utilities, the railroads and the general public) would be better served by a federal rail reliability policy that is proactive rather than reactive. Instead of waiting for the next service crisis to occur, the federal government should consider the adoption of measures designed to proactively prevent, or minimize, the impact of rail service failures that threaten the coal delivery supply chain.

⁵ See, e.g., Rail Service in the Western United States, STB Ex Parte No. 573 (1998); Rail Capacity and Infrastructure Requirements, STB Ex Parte No. 671 (2007) ("STB 2007 Hearing"); Discussions with Utility and Railroad Representatives On Market and Reliability Matters, FERC Docket No. AD06-8-000 (2006) ("FERC 2006 Hearing"); Coal-Based Generation Reliability, Hearing Before the Senate Energy and Natural Resources Committee ("Senate 2006 Hearing"); U.S. Rail Capacity, Hearing Before the House Subcommittee on Railroads (Apr. 27, 2006).

⁶ See, e.g., FERC 2006 Hearing, Statement of Glenn English, C.E.O. National Rural Electric Cooperative Association (June 15, 2006) at 5 (rail service failures in 2006 projected to add over \$2.6 billion to electric utility generating costs).

**B. National Rail Reliability
Standards Should Be Considered**

The STB, in conjunction with FERC and other federal agencies (e.g., the Federal Railroad Administration (“FRA”)), should consider the adoption of mandatory federal rail reliability standards governing the transportation of coal by rail. Simply stated, there have been too many crises, or near-crises, for federal regulators to continue to leave it up to the rail industry to self-regulate rail reliability. The time has come for federal regulators, including the STB, to take a proactive role in determining what additional federal oversight in the form of binding rail reliability standards is needed to protect and advance the national interest in reliable, safe and cost-effective rail transportation of coal.

Xcel Energy’s suggested approach is not new. The National Association of Regulatory Utility Commissioners (“NARUC”) supports the development of federal reliability standards for energy transportation.⁷ Legislation has also been proposed in the current Congress calling for the promulgation of federal rail reliability standards. This legislation, entitled the Program for Real Energy Securities Act (“PROGRESS Act”), directs the STB to approve standards “to provide for reliable and timely operation of

⁷ See NARUC Resolution (adopted Feb. 15, 2006) (NARUC supports “mandatory reliability standards for the nation’s railroad system, enforced by the Surface Transportation Board”).

railroad transportation of ... energy supplies” including standards addressing the “operation and maintenance of the railroad system.”⁸

Consideration of the mandatory rail reliability standards is also consistent with recent Congressional directives involving electric utility reliability. In the Energy Policy Act of 2005,⁹ Congress directed the North American Electric Reliability Corporation (“NERC”) to develop mandatory and enforceable electric reliability standards, subject to FERC review and approval. NERC subsequently developed and submitted to FERC proposed reliability standards defining the acceptable levels of performance for the operation, planning, and design of the North American Bulk-Power System. FERC recently issued a final Rule in Order No. 693, Mandatory Reliability Standards for the Bulk-Power System, 118 FERC 61,218 (March 16, 2007), approving 83 of these proposed reliability standards. The FERC-approved reliability standards became effective June 18, 2007. These standards were designed and intended to ensure utilities provide reliable electric service to their customers. If a covered entity fails to comply with these standards, the entity is subject to non-monetary sanctions and monetary penalties up to \$1 million per violation per day.

⁸ H.R. 1300, §541(c), 110th Cong. 1st Sess (2007).

⁹ Pub. L. No. 109-58, Title XII, Subtitle A, 119 Stat. 594, 941 (2005).

C. Input On Rail Reliability Standards Could Be Solicited From The RETAC And Others

National rail reliability standards can best be developed after the Board seeks input from all pertinent stakeholders, including the following:

- **RETAC.** The STB has proposed the creation of the RETAC – a new committee to advise the Board on “issues related to the reliability of rail transportation of resources critical to the nation’s energy supply.”¹⁰ Xcel Energy has filed comments supporting the creation of the RETAC. This new committee could devise, or review, proposed federal rail reliability standards. A similar proposal is set forth in the pending PROGRESS bill. That bill calls for the creation of an advisory panel to “make recommendations [to the STB] for the establishment of standards for rail operations to ensure timely and efficient transportation of fuels.”¹¹

- **Other Federal Agencies.** The STB could also enlist other federal agencies to participate in the consideration of federal rail reliability standards. These agencies would include FERC and FRA. FERC should be included because it is both an economic regulator and mandatory reliability standards enforcer. Indeed, as part of its broad mandate, FERC held hearings last year on the impact of rail reliability on electric generation reliability.¹² Similarly, FRA exercises jurisdiction over many rail safety and

¹⁰ Establishment of the Rail Energy Transportation Advisory Committee, STB Ex Parte No. 670 (STB served March 9, 2007) at 1.

¹¹ H.R. 1300, §541(d).

¹² See FERC 2006 Hearing.

maintenance issues.¹³ Consultation with FRA would be useful in connection with the study of reliability standards related to current rail maintenance standards and practices.

- General Public Input. Input from general members of the public could be obtained via notices of proposed rulemaking soliciting the public's views on such issues as the need for federal rail reliability standards, the contents of proposed federal rail reliability standards, and related issues.

D. Reliability Standards That Can Be Studied

There are a number of potential rail reliability standards that the STB can consider, including the following.

- Service Failure Reporting. FERC recently approved a mandatory EOP-004-1 "Disturbance Reporting" standard. This standard requires all generation owners and operators to report fuel supply emergencies that could impact electric power system adequacy or reliability.¹⁴ A fuel supply emergency is defined as fuel inventory or hydro storage levels becoming less than or equal to 50% of normal levels. This standard applies to generator operators and owners but not to railroad transporters. The STB could consider imposing corresponding notice requirements on railroads, requiring railroads to inform the STB and FERC of service delays and failures that could impact their rail system service adequacy or reliability to provide coal transportation to their utility customers.

¹³ See 49 C.F.R. Pt. 200 et seq.

¹⁴ http://www.nerc.com/pub/sys/all_updl/standards/rs/EOP-004-1.pdf

- **Cycle Times.** In the west, virtually all coal traffic moves in dedicated unit train service. This service involves trains cycling as a unit between coal origins and utility destinations and interchanges. Maintaining satisfactory cycle times is a critical component of any coal transportation reliability program. Stakeholders could consider and address the promulgation of corridor-specific, or route-specific, cycle time standards, as well as penalties should those standards not be met. Promulgation of such standards would be particularly useful in light of current marketplace developments. For years, western railroads typically offered cycle time guarantees to utility contract customers. However, these railroads are now pushing utility shippers away from contracts to public pricing documents that contain no cycle time commitments or ineffective ones.¹⁵

- **Capacity Issues.** The railroad industry continually claims that it is experiencing overall system capacity constraints. However, these claims are usually of the bumper-sticker variety with little hard evidence provided as to what specific parts of the railroad's system is constrained, or what specific factors are causing the constraints (e.g., shortage of crews, shortage of equipment, lack of track facilities, etc.). Federal policymakers, as well as coal shippers, need specific, verifiable and detailed capacity data in order to address, and make, informative decisions on capacity-related rail reliability standards. Indeed, calls for the collection of this data have already been made by a wide

¹⁵ For example, BNSF's principal public pricing document for coal transportation service, BNSF Rate Authority 90068 (Revision 48), states "service commitments previously offered ... will not be accepted."

cross section of the shipping community in comments recently filed in related STB proceedings.¹⁶ If specific data is produced, federal policymakers, and coal shippers, can consider the development of corridor-specific or route-specific capacity reliability standards.

- Maintenance Issues. The reliability of rail transportation of coal requires well-maintained railroads. Federal reliability standards could address the state of current maintenance on major rail corridors used to transport coal; the need for maintenance practices and standards that address the specific reliability factors of the nation's coal transportation corridors; and the need for independent third party oversight of these maintenance practices.

CONCLUSION

Xcel Energy appreciates the opportunity to present this Statement for the Board's consideration.

Respectfully submitted,

OF COUNSEL:

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

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

Dated: July 5, 2007

Attorneys for Xcel Energy

¹⁶ See e.g., STB 2007 Hearing, Comments of the National Industrial Transportation League ("NITL") (Apr. 4, 2007) at 16-17 (NITL asks the Board to direct rail carriers to provide more detailed rail capacity data); STB 2007 Hearing, Comments of the Concerned Captive Coal Shippers ("CCCS") (Apr. 4, 2007) at 13 (CCCS asks the Board to direct rail carriers to provide more detailed rail capacity and rail demand data)