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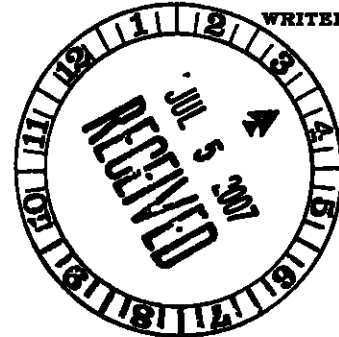
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July 5, 2007



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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

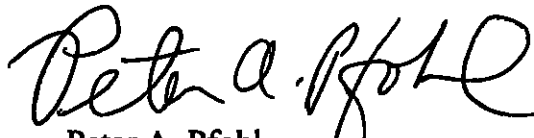
Dear Secretary Williams

Please find an original and ten (10) copies of the Statement of the Western Coal Traffic League 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.

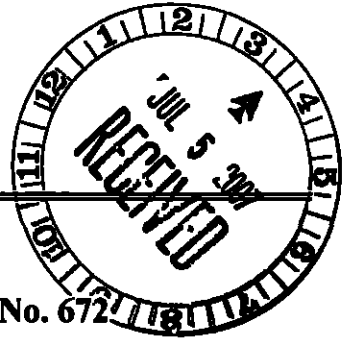
Thank you for your attention to this matter

Sincerely,


Peter A Pfohl
An Attorney for the Western
Coal Traffic League

Enclosures

**BEFORE THE
SURFACE TRANSPORTATION BOARD**



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

Ex Parte No. 672

**STATEMENT OF THE
WESTERN COAL TRAFFIC LEAGUE**

**ENTERED
Office of Proceedings**

JUL 05 2007

**Part of
Public Record**

Of Counsel

**Slover & Loftus
1224 Seventeenth Street, N W
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Dated July 5, 2007

**By: William L Slover
Christopher A Mills
Peter A. Pfohl
Slover & Loftus
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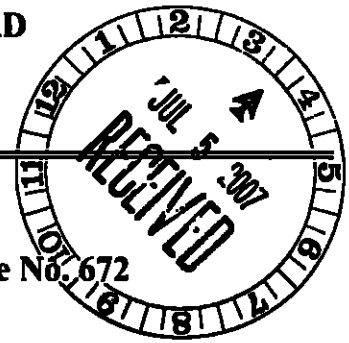
Attorneys & Practitioners

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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

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Ex Parte No. 672



**STATEMENT OF THE
WESTERN COAL TRAFFIC LEAGUE**

This statement is submitted by the Western Coal Traffic League ("WCTL") in response to the Surface Transportation Board's ("STB's" or "Board's") Notice served on June 6, 2007 in the above-referenced proceeding. The Notice initiated a public hearing at which interested parties were invited to address "issues related to the efficiency and reliability of rail transportation of resources critical to the nation's energy supply, including coal." This Statement supports and supplements the points that will be raised by WCTL's designated representative, David Laffere of Kansas City Power & Light Company, during the Board's hearing scheduled for July 18, 2007 in Kansas City, Missouri

IDENTITY AND INTEREST

WCTL is an association formed in 1976 whose membership is composed of shippers, receivers, and consumers of coal mined from sources west of the Mississippi River. WCTL members collectively consume as an electric generating fuel over 140 million tons of coal annually that is moved by rail. Its members include investor-owned

electric utilities, rural electric cooperatives, state power authorities, municipalities, and a non-profit fuel supply cooperative.¹ WCTL has a great interest in the subject matter of this proceeding as its members rely on the efficient and reliable movement of coal by rail as a critical component of electric system reliability

I.

COMMENTS

WCTL believes that the Board has a duty to help ensure the efficient and reliable transportation of energy supplies, and particularly coal. Approximately one-half of the Nation's electricity is derived from coal-fired generation, and most all the coal used as fuel for this generation is domestically produced. Most of this coal moves exclusively by rail. The predictable and reliable provision of coal transportation services is an essential component of electric system reliability and the fulfillment of U.S. national energy and national security policies.

A. The Board's Role in Ensuring Coal Transportation Reliability

The Board's authority to ensure the reliable transportation of coal is clear as part of the railroads' fundamental common carrier obligation. See 49 U.S.C. § 11101(a)

¹ WCTL's Members are Alliant Energy; Ameren Energy Fuels and Services, Arizona Electric Power Cooperative, Inc.; Arizona Public Service; CLECO Corporation; Austin Energy (City of Austin, Texas); CPS Energy, Kansas City Power & Light Company, Lower Colorado River Authority; MidAmerican Energy Company, Minnesota Power, Nebraska Public Power District, Omaha Public Power District; Texas Municipal Power Agency; Western Farmers Electric Cooperative, Western Fuels Association, Inc., Wisconsin Public Service Corporation, and Xcel Energy

(requiring common carriers to provide service “on reasonable request”) Applicable precedent supports the authority of the Board to enforce the duty of carriers under 49 U.S.C. § 11101 to provide adequate service on their lines. See Winnebago Farmers Elevator Co v Chicago & North Western Trans. Co., 354 I.C.C. 859 (1978) (ICC determined that a railroad’s duty to furnish transportation upon reasonable request and adequate car service required railroad to upgrade its line and supply equipment and provide upgraded service). The STB has further concluded in cases where a carrier has refused to provide common carrier service that:

[carriers] cannot lawfully make fulfilling their statutory obligations contingent upon whether they think it is “worth it” to do so. Rather, a carrier must adhere to its statutory obligations even if it suffers hardship in so doing. The only appropriate mechanisms a railroad may employ to excuse itself permanently or temporarily, from its common carrier obligations on a line of railroad are abandonment or embargo

Finance Docket No. 33989, Pejepscot Industrial Park, Inc. D/B/A Grimm Industries --
Petition for Declaratory Order, (STB served May 9, 2003) 2003 WL 21108198 *6-*7

Further, the Board’s jurisdiction over transportation by rail carriers and remedies with respect to rules, practices, services, routes, and facilities of such carriers is “exclusive,” and there is no other governmental entity capable of directly supervising rail transportation policies and programs affecting coal and other energy commodities. See 49 U.S.C. § 10501(b). Finally, Congressional guidance is clear that the Board should actively promote the efficient, reliable, and affordable transportation of coal by rail

[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

1. The Railroads' Recurring Service Problems

WCTL will not repeat here in detail the recurring rail service problems its members have experienced with the movement of coal, which it has outlined in detail in recent filings with the Board.² These problems are well-known to the Board. Some of the service interruptions over the years have been closely related to railroad consolidations, although a number of others were not merger-related

More recently in 2004-2006, the western railroads experienced significant service problems in delivering coal to their customers. Utility coal stockpiles dwindled and the carriers rationed service and curtailed new business. The Congress and Federal Energy Regulatory Commission held hearings in 2006 to address deficient railroad service and the impact of that poor service on electric system reliability.³ Also, the

² See Ex Parte No. 670, Establishment of the Rail Energy Transportation Advisory Committee, WCTL Comments filed Apr 16, 2007 at 6-7; Ex Parte No. 658, The 25th Anniversary of the Staggers Rail Act, WCTL Comments filed Oct. 12, 2005 at 26-28.

³ See Federal Energy Regulatory Commission Docket No. AD06-8-000, Discussions with Utility and Railroad Representatives on Market and Reliability Matters,

(continued)

National Energy Reliability Council examined and issued warnings about the situation,⁴ several state utility commissions explored the matter, and the national press widely reported on the substantial rail service problems and their impacts on electricity generation reliability. It is widely known that these railroad service failures resulted in significant system operations problems and added electric generation costs which were passed on to electricity consumers. See e.g., FERC Reliability Hearing, Statement of Glenn English, CEO of National Rural Electric Cooperative Association (filed June 15, 2006) (stating that expected railroad coal delivery shortfalls in 2006 were anticipated to result in approximately \$2.6 billion in added replacement power costs borne by consumers).

2. Railroad Representations on Service

With regard to coal service, the western railroads state that they closely monitor coal growth, have learned their lesson with regard to past service lapses, and have implemented all recommendations received from their expert planning consultants to ensure system reliability (including the allocation of an additional \$100 million for Powder River Basin ("PRB") Joint Line investments in 2006 and 2007). See, e.g., UP

³(continued)
June 15, 2006 Hearing ("FERC Reliability Hearing"), Hearing on Coal-Based Generation Reliability, Committee on Energy and Natural Resources, U.S. Senate, S. Hrg. 109-601 (May 25, 2006)

⁴ See 2006 Summer Assessment Reliability of the Bulk Power System in North America, North American Electric Reliability Council, May 2006, at 5-6

and BNSF Joint Release, "UP, BNSF Announce Southern Powder River Basin Joint Line \$100 Million Capacity Expansion Plan" (May 8, 2006) However, despite the railroads' repeated assurances over the years that their service problems have been or are being fixed, the carriers' service failures have recurred

The railroads have intimated that at least some of the recent service difficulties they experienced is attributable to unanticipated demand and/or unexpected events. However, that is certainly not the case for western coal traffic, as has been demonstrated in recent WCTL filings to the Board.⁵ This traffic growth has been expected and forecasted both by governmental entities such as the Department of Energy's Energy Information Administration (e.g., through EIA's 20-year Annual Energy Outlook forecasts), as well as by coal producers, the railroads themselves, and their expert consultants. See, e.g., Union Pacific Railroad Company ("UP") and BNSF Railway Company ("BNSF") Joint Release, "UP, BNSF Announce Southern Powder River Basin Joint Line \$100 Million Capacity Expansion Plan" (May 8, 2006) ("[f]or many years, CANAC, a Montreal-based rail engineering firm, has been evaluating [for UP and BNSF] PRB coal production forecasts and both railroad and mine infrastructure capacity needed to support forecasted production")⁶

⁵ Ex Parte No. 671, Rail Capacity and Infrastructure Requirements, WCTL Comments filed Apr. 4, 2007 at 4-6

⁶ Additionally, consistent with past trends, governmental forecasts continue to predict steady and consistent Wyoming PRB traffic growth well into the future

3. Railroads' Have Sufficient Incentives to Reinvest in Their Coal Business to Meet Customer Service Requirements

The railroads also have sufficient business incentives to reinvest in their coal infrastructure to meet growth.⁷ In his testimony before the United States Senate in 2001, UP's CEO stressed the importance of the carriers' coal corridor investments:

[A] good example of how capacity enhancements can improve the overall performance of a railroad is our recent investment of over \$300 million in upgrading and adding a third main line to our 110-mile route between North Platte and Gibbon, NE (which is the busiest section of railroad in the country).

* * *

[T]riple tracking this segment of line cost \$327 million. Was it worth it? Absolutely. . . . [P]rior to the triple-track project, we were able to get 107 trains a day over this segment of line, and our average speed was 23.8 mph. Today we are running over 140 trains a day over that line at an average speed of 36.4 mph. That is a 30% increase in trains and a 53% increase in speed. This also has allowed us to cut our recrew rate by 80%. (The recrew rate is how many times we have to change the crew on the locomotive.) This makes us more efficient, with our customers being the ultimate beneficiaries.

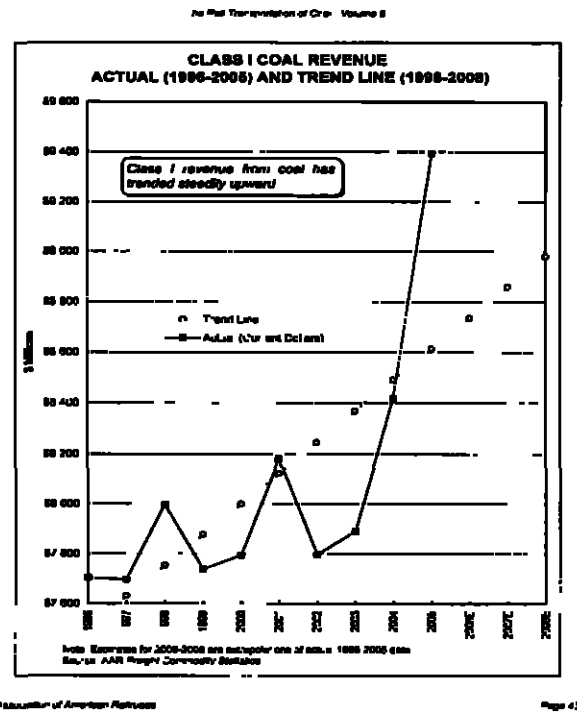
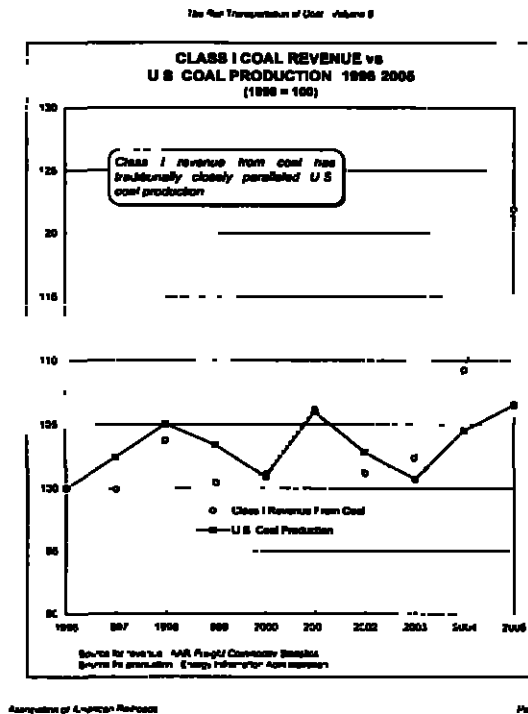
Id. at 6, 114. It is clear from the above railroad testimony that adequate coal corridor investments are "worth it" and are vital to the railroads' ability to run more efficient and productive railroad systems.

⁷ As stated by UP's CEO: "the real key to service is investment. Capital investment in the rail industry is like food to the human body. Without it we will wither and die." Oversight Hearing on the State of the Railroad Industry, Subcommittee on Surface Transportation and Merchant Marine, Committee on Commerce Science, and Transportation, U S Senate, S Hrg 107-1052 (May 9, 2001) at 6.

The railroads also have more than sufficient financial resources to undertake programs to meet their investment requirements and deliver reliable service to their customers, as widely evidenced in their recent financial reporting declaring record railroad earnings. As pertains specifically to the railroads' coal business, WCTL has demonstrated in its filings to the Board that coal shippers have been making significant annual profit contributions to the railroads See Ex Parte No. 671, Rail Capacity and Infrastructure Requirements, WCTL Comments filed Apr. 4, 2007 at 12-16 (showing that profit contributions from coal (revenues above costs) to UP and BNSF in 2006 reached \$2.84 billion) ^{*} Coal contributions are significant, and have been growing dramatically in recent years, attributable in major part to substantial rate increases, as even the railroads have admitted. For example, published Association of American Railroads' ("AAR")

^{*} Railroads frequently point out to regulators and Congress that their revenue per ton-mile has been falling over time -- intimating that they are losing ground financially, and that coal is not paying its "fair share." Such arguments are completely off base. The contribution per revenue ton-mile does not consider the relationship of revenues (rates) to the cost of providing service, which is critical to assessing the role played by a particular commodity in a railroad's financial strength. Unit-train coal shipments are the most efficient railroad traffic handled. Thus, even if the contribution per revenue ton-mile is low for coal shipments relative to other commodities, when compared with the cost of providing the service it is one of the highest contributors to the railroads' bottom lines. The metric of contribution per revenue ton-mile provides a very limited and biased picture for heavy, high volume bulk commodities such as coal, which contribute significantly to total Class I carrier revenues and profits. In addition, many investments in track and equipment (railcars) that have traditionally been made by the railroads have been shifted to shippers in the case of western coal movements. Most coal cars are provided by shippers, and the shippers (and the coal producers) have invested hundreds of millions of dollars in track at origin and destination to improve the loading and unloading of coal unit trains.

coal freight revenue statistics evidence the substantial coal revenues, and dramatic revenue increases, being enjoyed by the railroads



The Rail Transportation of Coal (Vol. No. 8), AAR's Policy and Economics Department (Aug, 2006) at 43-44 In sum, there is no financial reason for the railroads not to adequately plan and invest in their systems in order to provide reliable service to their coal customers.

B. Addressing Railroad Reliability Issues

Railroad energy service reliability clearly has not been a Board priority in the past. The Board has not utilized its jurisdictional authority over the railroads to meaningfully assess or engage in rail energy reliability matters, except indirectly and sporadically in isolated instances. These would include Board initiatives to revise its

regulations governing its authority to temporary direct rail service in times of service emergency,⁹ or requiring the railroads to report annually on the carriers' fall "peak season" service plans. Also, to the extent that the Board has looked into railroad service performance issues generally, it has failed to recognize serious problems or address them in any way.

In June 2005, WCTL wrote a detailed letter on this very subject to the Board Chairman. That letter stated, in relevant part, as follows:

We are . . . concerned that the Board is unaware of the serious problems confronting coal shippers even in advance of the fall peak season.

Of particular concern is the claim in your June 15, 2005 letter that the railroads handled the demands of the 2004 fall peak season "without any significant degradation of system fluidity and performance." That statement simply does not reflect the reality that coal shippers experienced. A number of League Members . . . suffered from impaired service in a variety of respects. Several members have had burnable stockpiles at power plants of ten days or less at times in the past year (and at least one is suffering from that condition currently). Some members have had their deliveries fall as much as 20% below targeted levels for all of 2004, and had even larger deficits in individual quarters. While the Board may not be aware, UP refused to allow coal shippers to bring additional trainsets onto its system last year, further confirming the impairment of fluidity and performance.

Members have tried to address the service problems in a variety of ways. Some Members have deferred dumper outages and altered schedules for planned outages in response

⁹ See e.g., Expedited Relief for Rail Service Inadequacies, STB Ex Parte No. 628 (STB Served Dec. 21, 1998).

to shortfalls in deliveries. A number of Members have also curtailed their coal burns, which entails a particularly high cost given current natural gas prices

...

The Board should understand that the problems have persisted into 2005 and have been exacerbated, even before we reach the fall season. For some Members, the railroads never fully recovered from the 2004 problems, even in the face of scheduled plant outages in the spring, and then recovery efforts were further undermined by the much-publicized derailments in the PRB. Just this week, the CEO of Arch Coal warned that some power plants could run out of coal this summer.

Letter from WCTL to STB (dated June 24, 2005) ("WCTL 2005 STB Letter"). WCTL also urged the Board to more closely monitor the situation and to require new railroad reporting in order to better evaluate the railroads' performance. *Id.* WCTL never received a response to this letter, and it is unaware of any specific follow-up actions taken by the Board on this matter.¹⁰

1. STB Actions that Would Help Promote Energy Transportation Reliability

As stated above, WCTL strongly believes that the issue of furthering and supporting rail service reliability for coal is an essential component of the Board's responsibilities. Such a focus is important for many reasons, including the critical importance of efficient coal transportation service to electric system reliability, to the

¹⁰ WCTL is aware that the Board requested and received another round of generic "fall peak" response letters from the railroads in the summer of 2006, but the Board's request did not specifically mention coal service reliability issues.

nation's energy policy, and to U.S. national security generally; the enormous volumes of coal that must be moved by rail that cannot be moved by other means (e.g., by truck, barge), and the wide-spread recurring service problems that the railroads have been experiencing pertaining to western coal transportation. Also, because the majority of the Nation's coal is produced in the western United States, with growth in western coal production expected to continue to expand significantly, particular attention should be paid to western coal transportation reliability

In a speech in May, 2006, STB Vice Chairman Buttrey remarked:

[C]oal helps keep us warm in winter, cool in summer, and keeps factory assembly lines and hospital operating rooms in business. The efficient movement of coal is essential to the economic health and national security of this country. The Board will use its authority, at least as long as I am there, to do whatever is within its power to do, to facilitate a steady supply of coal to the Nation's power grid.

W Douglas Buttrey, Remarks to the Chicago Traffic Club (May 18, 2006)

(www.stb.dot.gov/testandspeech.nsf/9c0ecd4a0be1c80f852570ff004b208a/ed1a8428e2fc2a598525717c0051b821?OpenDocument) WCTL agrees with this statement and is

pleased that Board members are interested in taking appropriate steps to ensure rail energy system reliability

With the passage by Congress of the Energy Policy Act of 2005¹¹ directing the implementation of new electricity reliability standards, it is more imperative than ever

¹¹ Pub L No 109-58, Title XII, Subtitle A, 119 Stat 594, 941 (2005)

that the Board do its part to ensure the efficient movement of coal traffic as a critical component in maintaining electric system reliability and protecting national security. Quite simply, electric utilities cannot meet their obligation to provide the electric power demands of their customers unless the railroads adequately meet the utilities' service needs.

In recent years, the western railroads have strongly resisted establishing meaningful service standards for their coal service. As a result, many rail customers have no, or very marginal, service performance standards. Also, it is clear that there has been a plethora of misinformation spread about coal service performance by the railroads, without any detailed or objective independent assessment of railroad service performance. For example, the western railroads stated that in 2005 they "moved more coal than ever before" – intimating that their service performance was adequate, but ignoring the fact that 15% to 20% delivery shortfalls occurred for individual customers costing consumers enormous sums of money in added electric generation costs. See, e.g., WCTL 2005 STB Letter

a. Railroad Reporting

WCTL respectfully submits that appropriate Board actions to more actively engage in railroad reliability oversight and enforcement are in order. In particular, the Board should require appropriate annual, quarterly, and monthly reporting on unit-train coal service performance, demand, and related subjects. Service metrics to be reported by the western railroads should include coal unit-train cycle times for (1) movements over

routes from each principal coal origin region (e g , PRB, Utah, Colorado, and Southern Illinois) to (a) northern tier destinations and (b) southern tier destinations, and further broken down by destination state For each of the above route categories, the following performance data should be included (i) actual tons of coal loaded, (ii) average number of trains and trainsets in service, broken down by railroad-supplied and shipper-supplied trainsets; and (iii) average total round-trip train cycle times. The railroads should also be required to report corresponding information on actual tons of coal requested to be loaded by shippers over the period and the average number of trains and trainsets requested to be placed in service by shippers over the period

The above and additional reporting information is necessary because the types of generic information voluntarily being reported today by the Class I railroads (e g , average coal train speeds) is not a reliable indicator of service performance Even metrics such as unit-train cycle times, if reported on a system-wide basis, is not a reliable indicator of service performance for individual shippers, especially if trains or trainsets are being taken out of service to improve cycle times. Nor do other generic system metrics such as average dwell times, total volumes delivered, and cars in service sufficient indicators of railroad performance As such, additional pertinent railroad reporting is in order

Pertinent additional reporting that should be provided by the railroads on their routes from each principal coal origin region (e g , PRB, Utah, Colorado, and Southern Illinois) includes. actual and forecasted demand; actual planned and completed

capital investment and maintenance programs to meet expected demand, capital investment and maintenance programs that still need to be performed, but that have not yet been undertaken (or have only been partially undertaken), planned and actual actions undertaken to minimize service disruptions as the result of capital investment and maintenance programs, the allocation of human, operating, and capital resources within and across traffic groups and operating budgets that might affect coal service, expected changes in operations or traffic group volumes that might affect coal service, and related subjects

The development of the elements of appropriate reporting is something on which a newly instituted Rail Energy Transportation Advisory Committee¹² could also provide assistance. This information would provide the public and the Board a clearer indication of how the railroads are actually performing and managing their coal business. The reporting could also help coal shippers, the Board, the public, and the railroads themselves to evaluate anticipated demand, better plan and evaluate past and expected future coal performance, and assist the carriers in efficiently serving customers. Such reporting is consistent with the National Transportation Policy "to ensure the development and continuation of a sound rail transportation system with effective competition among rail carriers . . . to meet the needs of the public and the national

¹² See Ex Parte No. 670, Establishment of the Rail Energy Transportation Advisory Committee.

defense,” and “to encourage honest and efficient management of railroads” 49 U S C § 10101(4), (9) ¹³

b. Reliability Standards

WCTI. further submits that, in order to facilitate a sufficient and economical supply of electricity to the Nation’s power grid, the Board should consider reasonable railroad reliability standards As explained above, the railroads today are refusing to provide reasonable service performance standards for unit-train coal transportation In the past, the western railroads were willing to commit to average train cycle-time performance standards, with appropriate penalties for failing to meet those standards, in contracts for transportation of PRB coal. Today, UP and BNSF are unwilling except in a few limited circumstances to offer contracts for PRB coal transportation, instead requiring customers to use “public pricing” circulars which have no meaningful performance standards The same is true of the few instances where UP and BNSF are willing to enter into transportation contracts The result is that utilities increasingly are unable to plan adequately for timely coal deliveries or to size their railcar fleets to reflect railroad service commitments

¹³ See, also, Ex Parte No 574, Regulations on Safety Integration Plans Governing Railroad Consolidations, Mergers, and Acquisitions of Control, and Procedures for Surface Transportation Board Consideration of Safety Integration Plans in Cases Involving Railroad Consolidations, Mergers, and Acquisitions of Control, (STB served March 8, 2002) (STB and FRA require carriers to provide detailed operating and other railroad program information in appropriate circumstances to help ensure performance goals are met)

The Board should consider the imposition of railroad service standards based on such factors including historical cycle times (e.g., over a three or five year period) for unit coal trains over the western railroads' principal coal routes; delivering the actual tons of coal requested to be delivered by individual shippers over an appropriate period (e.g., quarterly); and placing into service trains and trainsets requested by individual shippers over an appropriate period (e.g., quarterly). To ensure compliance, the Board should also impose appropriate remedies, such as the imposition of make-up service (e.g., requirements for railroads to make-up coal delivery deficits over a particular time in railroad-provided train sets) as a result of a railroad's failure to meet the service standard in any quarter, as well as the imposition of appropriate damages for utilities whose electric generation costs or other associated logistics costs increase above a threshold level (e.g., \$1 million) as a result of a railroad's failure to meet service standards.

WCTL emphasizes that the foregoing proposal does not request that the railroads be compelled to deliver on a real-time or just-in-time basis – which obviously would be unrealistic from a planning, operational, and cost perspective. However, new reliability standards are necessary that are reasonably based on the need for railroads to deliver enough coal at least on a quarterly basis. The benefit of such standards would be to help ensure that individual utilities are able to maintain coal stockpiles at reasonable levels and do not have to curtail their coal generation and engage in extensive replacement fuel or power-purchase initiatives to avoid depleting stockpiles beyond

reasonable levels, with appropriate remedies in place to promote compliance and protect consumers against railroad service failures.

CONCLUSION

WCTL appreciates this opportunity to submit this statement and respectfully requests that the Board take appropriate actions as addressed above to promote energy transportation reliability

Respectfully submitted,

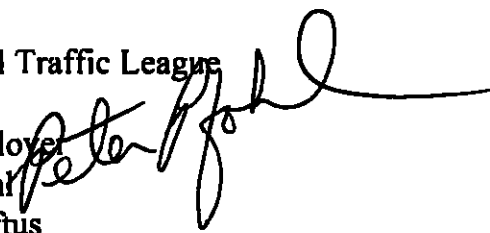
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Dated: July 5, 2007

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