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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Ex Parte No. 677

COMMON CARRIER OBLIGATION OF RAILROADS

COMMENTS OF SOUTH CAROLINA ELECTRIC & GAS COMPANY

The Surface Transportation Board ("STB" or "Board") announced a public hearing and invited comments regarding the railroads' common carrier obligation in a decision served February 22, 2008 ("Decision") in the above-captioned docket. In lieu of addressing the Board in person at the hearing, the Board also invited interested parties to file written comments by April 17, 2008. South Carolina Electric and Gas Company ("SCE&G") hereby submits written comments in response to the invitation in the Board's Decision.

SCE&G is a regulated public utility engaged in the generation, transmission, distribution and sale of electricity to nearly 571,000 retail and wholesale electric customers in South Carolina. SCE&G is a subsidiary of SCANA Corporation, an energy-based holding company. SCE&G has six coal-fired generation facilities which can generate a total of approximately 2,500 megawatts. Five of the coal-fired plants are served by CSX Transportation ("CSXT"), while the other is served by both Norfolk Southern Railway Company ("NS") and CSXT

The Board's Decision stated that one of the issues to be addressed at the hearing is "service limitation[s] resulting from a capacity constrained environment." Under governing law, a railroad's failure to meet its common carrier obligation is not excused by having to operate in a "capacity constrained environment."

Pursuant to 49 USC § 11101(a), railroad service must be provided on reasonable request. The obligation of common carrier railroads to transport all commodities and goods, when reasonably requested, is not conditioned on the railroad having any certain level of "excess capacity" or otherwise not operating in a "capacity constrained" environment. The nation's major railroads are large and sophisticated business entities that have been enjoying record profits in recent years. The railroads have the expertise and financial ability to plan for and construct additional rail capacity as and where needed. Further, to the extent that any capacity improvements would require rail construction authority, the STB has acknowledged that Congress has provided railroads, over the past three decades, more freedom in when and where to add new track. *Tongue River Railroad Company, Inc. – Construction and Operation Exemption – Western Alignment*, Docket 30186 (Sub-No. 3) at page 13 (note 32) (served Oct. 9, 2007) (Board explains that public convenience and necessity review of new rail construction proposals is much more lenient today than before the Staggers Act). In short, the Board should reject any attempts by railroads to use alleged "capacity constraints" to justify inadequate service or refusals to provide service.

SCE&G appreciates this opportunity to express its views on the common carrier obligations of railroads. The Board must remain vigilant to protect the interests of captive shippers such as SCE&G.

Respectfully submitted,



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