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April 27, 2007

VIA E-FILE

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423-0001

Re: Finance Docket No. 34974
Keokuk Junction Railway Co. d/b/a/ Peoria & Western Railway – Lease And
Operation Exemption – BNSF Railway Company

Dear Secretary Williams:

On April 23, 2007, Edison Electric Institute ("EEI") filed a letter intended to "express EEI's views" concerning the transaction that is the subject of the above-referenced petition for exemption proceeding. For the reasons discussed below, Keokuk Junction Railway Co. d/b/a Peoria & Western Railway ("KJRY") hereby requests that this filing be rejected as untimely and redundant of the issues already presented in this proceeding by Ameren Energy Fuels and Services Company ("Ameren"), which, as a subsidiary of Ameren Corporation, is a member of EEI.

It is unnecessary to revisit the entire procedural history of this matter at this juncture, but suffice to say that, as the Board's decision served on March 6, 2007 instituting a proceeding ("March 6 Decision") made clear, the record in this case has been closed for sometime. The March 6 Decision specifically stated that:

We will not provide for the submission of additional evidence because the issues have been extensively argued and Ameren was given extra time to prepare its reply to [KJRY's] petition for exemption

March 6 Decision, slip op. at 2. EEI's late arrival on the scene here is patently in opposition to that statement, and given that the record has been closed, there is no basis for submitting

comments at this late date, nearly two months after the Board stated that it already possessed sufficient evidence and argument to proceed to a decision on KJRY's petition.¹

EEI's unwarranted and untimely attempt to participate in this proceeding offers nothing new or different than what the record already reflects. EEI offers no specific evidence or analysis of its own and instead simply parrots what it incorrectly assumes are competitive concerns; using such phrases as "EEI understands" and "the subject transaction appears to . . ." As such, it is of no value to the Board, and, thus, should be rejected on both procedural and substantive grounds. Cf. WTL Rail Corporation – Petition for Declaratory Order and Interim Relief, STB Docket No. 42092 (STB served June 23, 2005), slip op. at 2 (rejecting a party's reply to a reply, prohibited under the Board's rules, because it "essentially repeats arguments previously made"); Union Pacific Railroad Company – Abandonment – In Saline, Ottawa, Russell, Osborne, and Rooks Counties, KS, Docket No. AB-33 (Sub-No. 78) (ICC served Jan. 19, 1994), 1994 ICC LEXIS 3, *7 (same); Union Pacific Railroad Company – Abandonment – In Freemont and Teton Counties, ID, Docket No. AB-33 (Sub-No. 56) (ICC decided Oct. 31, 1989) 1989 ICC LEXIS 316, *7 n. 3. (same).

Board acceptance of EEI's untimely filing would serve to simply reward parties for their failure to follow the Board's rules and encourage undisciplined and politicized processes. For example, if EEI's comments are accepted, then should KJRY and BNSF also solicit the American Short Line and Regional Railroad Association and the Association of American Railroads and perhaps other potentially interested parties to submit policy-oriented comments at this late date? If EEI's filing were for some reason to be allowed into the record, then, by the same logic, KJRY, BNSF, and other proponents of this transaction should be entitled to further weigh in through the use of trade associations and advocacy groups sharing their views on the benefits of this transaction. KJRY submits that such a politicized process, occurring three and half months or more after the record has closed, is not in the public interest nor is it consistent with the longstanding traditions and precedents of this Board and its predecessor agency.

Under the circumstances, it is unclear why EEI has elected to file its redundant comments at this time. KJRY suspects that Ameren, perhaps realizing the weaknesses of its own far-fetched arguments, determined that it would make one last attempt to persuade the Board by politicizing the process, rather than relying upon its own evidence. Alternatively, Ameren may be hoping that such a filing might serve to further delay the Board's handling of this matter, which, as KJRY has previously indicated, appears to be part of Ameren's *modus operandi* in this case. Nonetheless, it seems obvious that EEI's very late-filed comments were not independently motivated, but rather were filed at the urging of Ameren, one of EEI's largest members.

¹ EEI provides no explanation or justification for its late filing nor does it even request permission to intervene. EEI does state that it has "followed this proceeding with interest," but if that is so, then one wonders why it has waited so long, nearly three-and-a-half months after the due date for filed comments, to file its "concerns" and to do so in direct contravention of the language from the March 6 Decision.

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Regardless of EEI's and Ameren's motivations, the bottom line is that EEI's comments are procedurally defective, untimely, and add nothing to the Board's analysis. Accepting them would also serve to drag out the Board's handling of the matter. Accordingly, EEI's comments should be rejected out-of-hand and must not be made a part of the record in this proceeding.

Sincerely,

A handwritten signature in black ink, appearing to read "William A. Mullins", written in a cursive style.

William A. Mullins

cc: Chairman Nottingham
Vice Chairman Buttrey
Commissioner Mulvey
Parties of Record