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BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34435

AMEREN ENERGY GENERATING COMPANY
- CONSTRUCTION AND OPERATION EXEMPTION -
IN COFFEEN AND WALSHVILLE, IL

COFFEEN AND WESTERN RAILROAD COMPANY'S
REPLY TO COMMENTS
OF NORFOLK SOUTHERN RAILWAY COMPANY
ON THE DRAFT ENVIRONMENTAL ASSESSMENT
SERVED MAY 25, 2005

James A. Sobule
AMEREN SERVICES
P.O. Box 66149 (MC-1310)
St. Louis, Missouri 63166-6149
(314) 554-2276 (Telephone)
(314) 554-4014 (Facsimile)

Sandra L. Brown
Thomas W. Wilcox
Rebecca Roback
TROUTMAN SANDERS LLP
401 Ninth Street, N.W., Suite 1000
Washington, D.C. 20004
(202) 274-2950 (Telephone)
(202) 274-2994 (Facsimile)

Attorneys for Ameren Energy Generating
Co. and Coffeen and Western
Railroad Company.

July 13, 2005

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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On June 30, 2005, the Norfolk Southern Railway Company ("NS") submitted comments on the Draft Environmental Assessment ("Draft EA") served in this proceeding on May 25, 2005. ("NS Comments"). The Coffeen and Western Railroad Company ("CWRC") hereby submits this reply to NS's comments. As an overall point, the NS Comments do not address any of the environmental impacts of the project discussed in the Draft EA. As stated more fully below, NS's position that (1) there are "apparent inconsistencies" that "may undermine" the facts upon which the Draft EA is based (NS Comments at 3); and (2) that the Draft EA fails to adequately consider alternatives in compliance with the National Environmental Policy Act,¹ should be rejected, and are offered solely for the purpose of delaying the Board's approval of this rail construction project, which would create rail-to-rail competition at the Ameren Energy Generating Company's ("AEGC") Coffeen Power Plant.

¹ 42 U.S.C. §§ 4321-4370f ("NEPA").

I. NS's Claims Regarding the Entities That Will Construct and Operate the Proposed New Line

NS has selected passages from two preliminary decisions in this proceeding, a footnote in the Draft EA and its executive summary, and filings before Illinois state agencies to manufacture an argument that there are “factual inconsistencies” regarding the entities involved in this proceeding. NS inflates these purported “inconsistencies” to the level of “fundamental flaws in the information relied upon by the regulators.” NS Comments at 9. This argument is factually incorrect and must be rejected. The plain language of the Petition for Exemption² and other filings by CWRC in this proceeding clearly describe the proposed project and roles of the respective entities. Specifically, the Petition for Exemption explains that AEGC submitted the petition on behalf of itself and a railroad subsidiary that was in the process of being formed, which the Petition for Exemption collectively referred to as “AEGC.” Petition for Exemption at 3; *see, e.g., Entergy Arkansas and Entergy Rail – Construction and Operation Exemption – White Bluff to Pine Bluff, AR*, STB Finance Docket No. 33782, n.1 (STB served Oct. 28, 1999) (construction petition filed by “Entergy Arkansas and a railroad to be formed”). The formation of CWRC was completed on February 11, 2004. Moreover, the Petition for Exemption explained,

[t]he new railroad subsidiary will be a Class III carrier. Ameren [Corporation] will finance the construction of the line. The rail line will be operated as a common carrier rail line and other shippers may request service as applicable. At this time, Ameren is still contemplating whether the railroad subsidiary will operate the line or whether Ameren will contract with another carrier to operate

² *Petition For An Exemption From 49 U.S.C. § 10901 To Construct and Operate a Rail Line Coffeen and Walshville Illinois*, F.D. No. 34435 (filed Feb. 5, 2004) (“Petition for Exemption”).

the line. Ameren acknowledges that if another carrier operates the line, the railroad subsidiary will retain a residual common carrier obligation for the line.

See Petition for Exemption at 7 and Verified Statement of Robert K. Neff at 4.

On May 26, 2004, NS filed a "Notice of Appearance" in response to the Petition for Exemption, which commented generally on the Board's licensing exemption procedures, as applied to two transactions related to this proceeding. CWRC replied to NS's initial filing on June 2, 2004 and identified itself in that filing as "the railroad that will receive the construction authority in this Build-out proceeding."³ Moreover, the Petition for Exemption was preceded and followed by other submissions by CWRC to the Board's Section on Environmental Analysis ("SEA") confirming that (1) CWRC would be receiving authority to construct the line (even though such construction would likely be financed by Ameren Corporation) and (2) that CWRC would either provide rail service to shippers along the line or retain the common carrier obligation to provide service over the line. See NS Comments at n.1. NS submitted no other filings in this proceeding until its comments on the Draft EA, indicating that NS had no objections to or questions about the structure of the overall project proposal and the respective roles of AEGC and CWRC.

Consequently, the record in this proceeding is clear that CWRC is to receive authority from the Board to construct the new line and to assume the common carrier obligation to supply or provide for rail operations over the line. Regardless of whether CWRC or another rail entity actually provides operations over the line, CWRC will, at all times, retain a residual common carrier obligation to provide rail service. To the extent the Draft EA incorrectly characterizes the

³ *Ameren Energy Generating Co - Construction and Operation Exemption - in Coffeen and Walshville, IL, F.D. No. 34435, "Coffeen and Western Railway Company's Reply to Initial Comments of Norfolk Southern," at 5 (filed June 2, 2004).*

proposed project and the role of CWRC set out in the Petition for Exemption and related materials, the final environmental assessment can correct such errors.

As NS well knows, the Petition for Exemption in this case seeks authority for a rail construction project that is virtually identical to numerous such rail build-outs proposed by rail shippers and/or their railroad subsidiaries and approved by the Board. As the Board stated in *Midwest Generation, L.L.C.*,⁴

We have a well-established policy of granting requests for authority to construct rail lines where the constructing entity would not operate the line. In these cases, we have determined that the constructing entity holds itself out to fulfill the common carrier obligation that attaches to the line. That obligation remains with the constructing entity even though its fulfillment may be undertaken by operating railroads under trackage rights, leases, or similar arrangements.

See id. at 13 (citing *Big Stone - Grant Industrial Development and Transportation, LLC - Construction Exemption - Ortonville, MN and Big Stone City, SD*, F.D. No. 32645 (ICC served Sept. 26, 1995)). The Board has approved other petitions for exemption to construct in which one entity retains the common carrier obligation despite operation over the line by another entity.⁵ The use of another operator while retaining the underlying common carrier obligation is consistent with the fact that the Board's authority is permissive and not mandatory.⁶

The NS Comments regarding the purported relevance of the pending proceedings before the Illinois Commerce Commission ("ICC") to the Draft EA are incomprehensible. NS

⁴ *Midwest Generation, LLC - Exemption From 49 U.S.C. 10901 - For Construction in Will County, IL*, F.D. No. 34060 (STB served Mar. 21, 2002).

⁵ *See Public Service Co. of Colorado - Construction Exemption - Pueblo County, Colorado*, F.D. No. 33862 (STB served Aug. 23, 2000); *Southern Elec. Railroad Co. - Construction Exemption - Effingham County, GA*, F.D. No. 32195 (STB served Jan. 12, 1993).

⁶ *See Kansas City Southern Railway Co. - Trackage Rights Exemption - Gateway Western Railway Co. and Gateway Eastern Railway Co.*, F.D. No. 33780 (STB served Sept. 16, 1999) ("Our view in this respect is consistent with longstanding precedent holding that authority granted by the Board is permissive, not mandatory."); *see also Western Fuels Service Corp. v. Burlington Northern and Santa Fe Railway Co.*, F.D. No. 33321 (STB served July 28, 1997) ("Our grants of authority . . . are permissive.").

Comments at 5-6. The short answer is that the ICC is well aware of the fact that CWRC, while it will maintain the responsibility to provide rail service over the new line and to maintain the line, may not conduct actual rail operations over the line. The Petition for Exemption was submitted to the ICC (by NS)⁷ in April of 2005, so the ICC is fully aware of the proposal before the Board. Additional facts outlining CWRC's role are set out in a reply by CWRC to another filing made by NS before the ICC in which NS raised arguments similar to those found in the NS Comments.⁸ Finally, the possibility that carriers other than CWRC will operate over the new line has been discussed in hearings before the ICC on matters related to the project under its jurisdiction. For example, Robert K. Neff, Vice President of Coal Supply of Ameren Energy Fuels & Services ("AFS") and President of CWRC, stated that the proposed line "would extend from the plant trackage approximately 13 miles to an intersection of Union Pacific and the Burlington Northern Santa Fe Railroads" and that the new line "will provide the Coffeen Plant with two alternative rail suppliers."⁹

Finally, the NS Comments point out that the entity which appears on the IDOT utility permit related to the Illinois Route 127 grade crossing is AFS, not CWRC. NS Comments at 6. NS advances no coherent reason how this fact has any relevance to the Draft EA on which NS is commenting. AFS, like CWRC is an indirect, wholly owned subsidiary of Ameren Corporation. *See* Petition for Exemption, Verified Statement of Robert K. Neff at 20. The fact that AFS obtained a permit for CWRC within its role as an Ameren service subsidiary, (which permit

⁷ *See Coffeen and Western Railroad Co. v. Montgomery County, IL*, "Intervenor Norfolk Southern Railway Company's Response to Coffeen and Western Railroad Company's Amended Petition," Docket No. T04-0084 (filed April 7, 2005).

⁸ *See Coffeen and Western Railroad Co. v. Montgomery County, IL*, "Reply to Norfolk Southern's Response," Docket No. T04-0084 (filed April 15, 2005), copy attached for the Board's convenience.

⁹ *See* ICC Docket No. T04-0084, Hearing Transcript, at 43 (May 2, 2005).

which can easily be assigned to CWRC or reissued in its name, if necessary) has no bearing on the Draft EA. To the extent that such assignment or reissuance is necessary to implement the mitigation measures for this crossing imposed by the final environmental assessment, AEGC and CWRC fully expect that such assignment or reissuance will be made.

In summary, NS protests too much by stating that it is raising points that are not a distinction without a meaningful difference. NS Comments at 7. Contrary to NS's strenuous efforts to manufacture an issue that does not exist, the respective roles of AEGC and CWRC are clearly set out in the Petition for Exemption and other materials in this record, and both the Board and the ICC have a consistent set of facts before them. There is absolutely no reason whatsoever to revise the Petition for Exemption in any way, let alone refile it.

II. NS's Assertions Regarding the Draft EA's Consideration of Alternatives

NS also asserts that the EA is flawed because Route B is not a "true alternative" that can be analyzed by SEA. The basis for this assertion is NS's statement that Route B requires NS to grant access over some of its track, and that NS has no intention of granting such access. NS Comments at 10. This argument is self-serving and must be rejected in any event because it misstates the requirements of NEPA. In the first place, NS has known about the build options for this project since February 5, 2004, when the Petition for Exemption was filed. The petition noted that Ameren proposed to purchase the NS track included in Route B. Petition for Exemption at 7. This proposal has not been accepted by NS. In addition to being self-serving, the statement in the NS Comments that NS has "no intention of permitting AEGC or CWRC rights over its line" (NS Comments at 10) is merely evidence of a continuing commercial issue that has nothing to do with the operational feasibility of the route or its environmental impact. The Board has routinely granted construction authority for proposed routings despite unresolved

commercial and legal issues that could affect whether the permissive authority granted by the Board could eventually be exercised.¹⁰ Therefore, the EA was correct to contain an evaluation of Route B as an alternative to the preferred routing.

In any event, NS misstates the applicable law. Under NEPA requirements, there is no specific requirement for the number of alternatives which must be evaluated in an environmental review process. The CEQ regulations provide that an Environmental Impact Statement (“EIS”) must “explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated.”¹¹ Despite this statement, the regulations provide no requirement for a specific number of alternatives which must be examined. In *Tongass Conservation Society v. Cheney*,¹² the United States Court of Appeals for the District of Columbia found that the EIS at issue met all relevant CEQ regulations despite discussing only one recommended site and a no action alternative in the evaluation. There are a plethora of other decisions reiterating such a finding and concluding there is no prescribed number of alternatives which need to be examined to satisfy NEPA requirements.¹³

Moreover, where preparation of an EA is involved rather than an EIS “[t]he range of

¹⁰ See *Big Stone - Grant Industrial Development and Transportation, L.L.C. - Construction Exemption - Ortonville, MN and Big Stone City, SD*, F.D. No. 32645 (STB served Sept. 26, 1995) (approving a construction project for two miles of track despite unsettled trackage rights issues); *New England Transrail, L.L.C., d/b/a/ Wilmington and Woburn Terminal Road Co. - Construction, Acquisition, and Operation Exemption - In Wilmington and Woburn, MA*, F.D. No. 34391 (STB served March 2, 2004) (granting exemption even where all of land needed for track was not yet acquired).

¹¹ 40 C.F.R. § 1502.14(a) (2004).

¹² 924 F.2d 1137, 1140-42 (D.C. Cir. 1991).

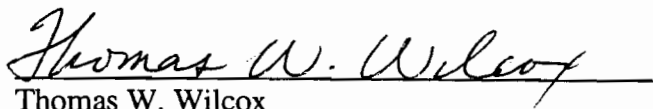
¹³ See *The Laguna Greenbelt, Inc. v. U.S. Department of Transportation*, 42 F.3d 517 (9th Cir. 1994) (stating there is no minimum number of alternatives that must be discussed under NEPA); *Citizens Against Burlington, Inc. v. Busey*, 938 F.2d 190, 198 (D.C. Cir. 1991) (indicating that an EIS detailing the preferred alternative and a no-action alternative complied with NEPA requirements).

alternatives that reasonably must be considered decreases as the environmental impact of the proposed action becomes less and less substantial.” See *Olmstead Citizens for a Better Community v. United States*, 793 F.2d 201, 209 (8th Cir. 1986); *River Road Alliance, Inc. v. Corps of Engineers of the U.S. Army*, 764 F.2d 445, 452 (7th Cir. 1985), *cert. denied*, 475 U.S. 1055 (1986). Accordingly, even if it could be concluded that Route B is not a plausible alternative, the Draft EA complies with NEPA requirements regarding the consideration of alternatives.

III. Conclusion

For the foregoing reasons, CWRC respectfully submits that the NS Comments do not provide any basis for delaying the Board’s issuance of a final Environmental Assessment, or otherwise delaying the Board’s consideration of the underlying Petition for Exemption.

Respectfully submitted,



Thomas W. Wilcox
Sandra L. Brown
Rebecca Roback
TROUTMAN SANDERS LLP
401 Ninth Street, N.W., Suite 1000
Washington, D.C. 20004
(202) 274-2950 (Telephone)
(202) 274-2994 (Facsimile)

James A. Sobule
AMEREN SERVICES
P.O. Box 66149 (MC-1310)
St. Louis, Missouri 63166-6149
(314) 554-2276 (Telephone)
(314) 554-4014 (Facsimile)

Attorneys for Ameren Energy Generating Co.
and Coffeen and Western Railroad Company

CERTIFICATE OF SERVICE

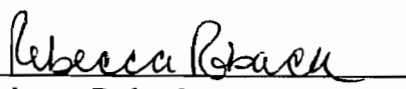
This is to certify that on this 13th day of July, 2005, I served a true and accurate copy of the CWRC's Reply to Comments of Norfolk Southern on the Draft Environmental Impact Statement Served May 25, 2005 via overnight courier upon the following:

John V. Edwards
General Attorney
Norfolk Southern Corporation
Three Commercial Place
Norfolk, VA 23510

Constance A. Sadler
Sidley Austin Brown & Wood, LLP
1501 K Street N.W.
Washington, D.C. 20005

And by regular mail upon the following:

The Honorable Dean W. Jackson
Chief Administrative Law Judge
Review & Examination Program
State of Illinois
Illinois Commerce Commission
527 East Capitol Avenue, 6th Floor
Springfield, Illinois 62701


Rebecca Roback

ATTACHMENT

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

**COFFEEN AND WESTERN RAILROAD
COMPANY,**

Petitioner,

v.

**MONTGOMERY COUNTY, ILLINOIS,
EAST FORK TOWNSHIP, ILLINOIS,
GRISHAM TOWNSHIP, ILLINOIS,
WALSHVILLE TOWNSHIP, ILLINOIS,
AND ILLINOIS DEPARTMENT OF
TRANSPORTATION,**

Respondents.

**NORFOLK SOUTHERN RAILWAY
COMPANY AND ILLINOIS COAL
ASSOCIATION,**

Intervenors.

**Petition for an Order authorizing the
construction of at-grade crossings in and
around Coffeen, Illinois.**

Docket No. T04-0084

REPLY TO NORFOLK SOUTHERN'S RESPONSE

In this docket, the Coffeen and Western Railroad Company ("CWRC" or "Petitioner"), an affiliate of Ameren Corporation ("Ameren"), petitions for Commission approval of proposed at-grade crossings, pursuant to 83 Ill. Adm. Code 1535 *et seq.* Yet the Norfolk Southern Railway Company's ("NSRC's") Response to the Amended Petition raises no argument bearing any relevance to the legal issues to be determined in this docket. In fact, NSRC cites no law or Commission Rules or standards throughout its entire brief. To lay to rest the non-issues raised in NSRC's Response, CWRC replies to each in turn, as follows:

Authority to Construct the Proposed Rail Line

1) NSRC is wrong in stating that Ameren Energy Generating Company, the Ameren affiliate that owns and operates the Coffeen Plant, "is seeking STB [Surface Transportation Board] authority to construct the proposed new rail line, and not CWRC." (NSRC Response, p. 2.) To the contrary, a careful reading of the STB Petition, attached as Exhibit A to NSRC's Response, shows that the term "AEGC" is collectively defined to include both Ameren Energy Generating Company and "its soon to be formed railroad subsidiary," *i.e.*, CWRC. (NSRC Response Exhibit A, p. 1.) Thus, any mention of "AEGC" throughout the STB petition necessarily includes CWRC. Consequently, the Amended Petition's statement that "AEGC filed a petition on behalf of CWRC with the STB on February 5, 2004, for common carrier authority to construct and operate a proposed new rail line" is irrefutably correct. (Amended Petition, p. 2, ¶ 2.)

2) CWRC further notes that there is nothing unusual about the practice of referring to a parent utility company and a "yet-to-be-formed" subsidiary railroad collectively as one entity. The STB has clearly accepted it in other cases. *See, e.g., Entergy Arkansas and Entergy Rail - Construction and Operation Exemption - White Bluff to Pine Bluff, AR*, F.D. No. 33782, n.1 (STB served Oct. 28, 1999) ("Petitioners will be referred to collectively as Entergy."); *and* Petition of Entergy Arkansas, No. 33782 (filing petition as "Entergy Arkansas and a railroad to be formed (hereinafter "Entergy Rail") (Excerpts attached as Exhibit A). This is a non-issue.

3) NSRC also wrongly states that "AEGC's Petition before the STB also clearly reveals that the construction authority being sought is not in furtherance of Petitioner's request for common carrier status" (NSRC Response, p. 2) In the second full paragraph of Page 22 of the Verified Statement of Robert Neff, filed with Ameren Energy Generating Company's STB

Petition and attached as Exhibit A to NSRC's Response, Mr. Neff testifies that AEGC will benefit from the construction of the new rail line, but that CWRC will be a Class III common carrier and will provide service to other shippers as requested. While CWRC may decide in the future to contract with another carrier to provide service on the new line, CWRC would still remain a common carrier and hold "residual common carrier" authority even in that event. This is common practice, as NSRC is well aware. For example, in the STB decision in *Midwest Generation, LLC - Exemption From 49 U.S.C. 10901 - For Construction in Will County, IL*, F.D. No. 34060 (STB served March 21, 2002) (attached as Exhibit B), the STB stated:

We have a well-established policy of granting requests for authority to construct rail lines where the constructing entity would not operate the line. In these cases, we have determined that the constructing entity holds itself out to fulfill the common carrier obligation that attaches to the line. That obligation remains with the constructing entity even though its fulfillment may be undertaken by operating railroads under trackage rights, leases, or similar arrangements.

Id. at 7, n.15 (citing *Big Stone - Grant Industrial Development and Transportation, LLC - Construction Exemption - Ortonville, MN and Big Stone City, SD*, F.D. No. 32645 (Interstate Comm. Comm'n served Sept. 26, 1995)). NSRC's argument here is exceptionally curious, given the fact that it has availed itself of this practice in the past. *See, e.g., Southern Elec. R.R. Co. - Constr. Exemption - Effingham County, GA*, F.D. No. 32195 (Interstate Comm. Comm'n served Jan. 12, 1993) (attached as Exhibit C).

4) CWRC does not need and is not seeking authority from its affiliate Ameren Energy Generating Company to construct the proposed rail line, as is suggested in the last paragraph of page 2 of the Response. CWRC will obtain construction and operation authority from the STB pursuant to Ameren Energy Generating Company's request for authority from the STB, on

behalf of CWRC and itself, as stated in the first paragraph of the STB petition and in the Amended Petition. (NSRC Response Exhibit A, p. 1; Amended Petition, p. 2, ¶ 2.)

5) The fact that CWRC obtained common carrier authority from the STB pursuant to a lease of existing track from Ameren Energy Generating Company¹ is completely irrelevant to the public safety and design issues to be determined in this docket, for the proposed build-out. As noted above, and as is consistent with other STB cases, CWRC will obtain additional common carrier authority from the STB for the proposed rail line that is the subject of this docket.

Construction of the Proposed Rail Line

6) CWRC has successfully negotiated agreements to obtain property rights for 29 of the 31 tracts of land over which its proposed rail line would run. CWRC is currently in diligent pursuit of obtaining agreement with respect to the two remaining tracts of land necessary to the proposed build-out.

7) The applicable Commission Rules neither require CWRC to allege that all necessary property rights have been obtained prior to filing, nor require the Commission to make such a finding. NSRC can cite to no legal authority stating otherwise. In fact, it is common for a petitioner in a docket such as this to conduct negotiations for necessary property rights while concurrently seeking Commission authority. *See, e.g., City of North Chicago v. Union Pac. RR Co.*, T03-0024 (Ill. Comm. Comm'n Nov. 10, 2004) (finding Union Pacific would grant easements to the City of North Chicago that had yet to be negotiated at the time the City filed its petition). To forbid this practice would force a petitioner to acquire land for a construction

¹ *See Coffeen and Western Railroad Company - Lease and Operation Exemption - near Coffeen, IL*, STB F.D. No. 34497 (STB served May 10, 2004) (Attached as Exhibit D).

project that might never receive Commission approval, a result that would defy principles of fairness and common sense.

8) CWRC acknowledges that it will be required to obtain all necessary property rights in order to construct the proposed rail line, both as a practical matter and as a condition upon which the permits required by a Commission order in this docket would be based. The Commission also has the discretion to condition an order in this docket upon CWRC's ability to obtain all property rights at issue. In any event, the fact that CWRC has yet to obtain agreement for property rights on two remaining tracts of land should in no way delay these proceedings.

Crossing of Norfolk Southern's Mainline Track

9) As NSRC surely knows, federal law provides that a rail carrier may not "block any construction or extension authorized by such certificate by refusing to permit the carrier to cross its property," except under very limited and unusual circumstances specified by statute, once STB approval to construct a proposed rail line is obtained. 49 U.S.C. 10901(d). This law was enacted "to provide a way to overcome the ability of existing carriers to block the construction of new rail lines by refusing to allow potential competitors to cross their existing lines," as NSRC obviously attempts to do here. *WFEC Railroad Company - Construction and Operation Exemption - Choctaw and McCurtain Counties, OK*, Finance Docket No. 32607, 196 STB LEXIS 56, *6 (served Feb. 23, 1996) (attached as Exhibit E). The decisive authority of this statute is indicated by the fact that the STB will allow construction of the crossing to begin before all of the terms of such negotiations are resolved between parties. *See Pub. Serv. Co. of Colorado - Petition for Crossing Authority Under 10901(d)*, STB F.D. No. 33862 (Sub-No 1) (STB served March 22, 2001) (attached as Exhibit F).

10) Because NSRC has now revealed that it will not consent to CWRC's intended crossing of the existing rail line, CWRC will file with the STB for authority to cross the NSRC line pursuant to Section 10901(d). Due to the well-settled authority of this statute, CWRC had, until this point, expected that amicable negotiations with NSRC would have avoided such a filing.

Authority to Construct the Proposed Rail Line

11) CWRC has every reason to believe that it will soon obtain the STB authority that it has requested to construct the proposed rail line. The STB's Section of Environmental Analysis has determined that an Environmental Assessment is the appropriate environmental review in this case. The Section of Environmental Analysis and the STB have been working toward completing the Environmental Assessment for the proposed build-out.

12) There is no meaningful doubt that CWRC will obtain the requested authority. The STB will "issue a certificate [to construct] . . . unless the Board finds that such activities are inconsistent with the public convenience and necessity." 49 U.S.C. 10901(c). The STB has stated that "in enacting the ICC Termination Act of 1995 . . . Congress intended to facilitate rail construction by changing the statutory standard from requiring approval if the agency finds that a project is consistent with the public convenience and necessity (PC&N) to requiring approval unless the agency finds the project is inconsistent with the PC&N. Under this new standard, proposed rail construction projects are to be given the benefit of the doubt." *The Burlington Northern and Santa Fe Railway Company - Construction and Operation Exemption - Seadrift and Kamey, TX*, Finance Docket No. 34003, slip op., p. 5 (STB served June 19, 2001) (citations omitted) (attached as Exhibit G). The STB has also held that as a result of the ICC Termination Act, "there is now a presumption that construction projects will be approved." *Class Exemption*

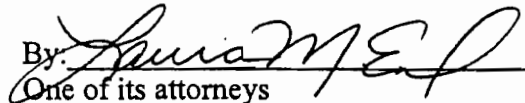
for the Construction of Connecting Tracks Under 49 U.S.C. § 10901, 1 S.T.B. 75, 79 (1996)
(attached as Exhibit H).

13) CWRC's coordination of filings in proceedings before the STB and the Commission is standard practice, and is necessary to ensure the timely completion of the proposed project. CWRC has diligently pursued resolution in each proceeding at every step. The Commission has the authority to condition an order in this docket upon the project's receipt of STB approval in CWRC's pending proceedings. CWRC thus respectfully submits that its Amended Petition is ripe for review.

CONCLUSION

NSRC's Response suggests that NSRC's true motive behind intervening in this docket is to delay these proceedings, frustrate competition for coal delivery and maintain its current monopoly power over the Coffeen Power Plant – results that federal law prohibits NSRC from obtaining at the STB. As demonstrated above, each argument set forth in NSRC's Response is either incorrect, irrelevant, or both. The Response has no basis in applicable law and, notably, does not contain a single citation to legal authority. CWRC therefore requests that the ALJ disregard NSRC's Response to the Amended Petition in its entirety, and deny NSRC's baseless request to dismiss the Amended Petition. CWRC also requests that NSRC not be allowed to confuse, muddy, and/or delay these proceedings by raising similar irrelevant arguments and issues in this docket's future proceedings.

COFFEEN AND WESTERN RAILROAD
COMPANY

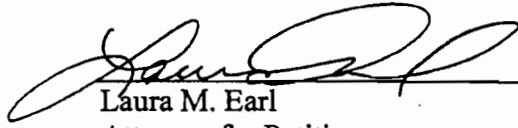
By: 
One of its attorneys

Christopher W. Flynn
Laura M. Earl
Jones Day
77 W. Wacker, Suite 3500
Chicago, Illinois 60601
(312) 782-3939 (voice)
(312) 782-8585 (fax)
cflynn@jonesday.com
learl@jonesday.com

Thomas Byrne
Associate General Counsel
Ameren Services Company
One Ameren Plaza
1901 Chouteau Avenue
St. Louis, Missouri 63103
(314) 554-2514 (voice)
(314) 554- 4014 (fax)
tbyrne@ameren.com

PROOF OF SERVICE

I, Laura M. Earl, certify that on April 15, 2005, I caused to be served a copy of the foregoing Amended Petition by depositing same in the U.S. Mail depository located at 77 W. Wacker Drive, Chicago, Illinois, certified-return receipt requested, postage prepaid to the individuals on the Commission's Service List for this docket.



Laura M. Earl
Attorney for Petitioner