



May 20, 2011

BY HAND DELIVERY

Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington, DC 20423

Re: STB Finance Docket No. 35506, Petition for Declaratory Order

Dear Ms. Brown:

The Edison Electric Institute (EEI), the National Rural Electric Cooperative Association (NRECA), the American Public Power Association (APPA), and the National Association of Regulatory Utility Commissioners (NARUC) respectfully urge the Board to give full and fair consideration of, and promptly act favorably upon, the above-referenced petition.

EEI, NRECA, and APPA represent virtually all of the U.S. companies (private, public, and non-profit) that provide electric power to the nation's businesses, farmers, and individual consumers. NARUC represents state public utility commissions serving all states and territories that regulate the retail rates and services of electric utilities. Coal remains a baseload fuel used to generate over 50% of the country's electricity supply, and most of that coal moves from mine origin to plant destination by railroad. EEI, NRECA, and APPA have consistently taken the position that for regulatory costing purposes and in determining revenue adequacy and other measures of railroad health, the value of railroad assets should not be increased to reflect any acquisition premium. The U.S. Department of Agriculture and the U.S. Department of Transportation have proclaimed in the *Study of Rural Transportation Issues* (Apr. 2010 at 263) that the railroads are the only regulated industry that is allowed to add merger premiums into its rate base. In the regulated portions of the electric utility industry, such premiums are excluded by general rule from being included in the rate base.

The Western Coal Traffic League recently filed a petition seeking a declaratory order that would bar the \$7,625,000,000 write-up in BNSF Railway Company's (BNSF) net investment base resulting from Berkshire Hathaway's acquisition of BNSF in 2010 (as recently reported in BNSF's financial filings) from being included in the Board's costing programs used to develop

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variable costs of service and maximum reasonable rates. We understand that the Berkshire-BNSF transaction and the acquisition premium issue were not subject to prior STB regulatory review.

We urge the STB to implement the approach of all other regulatory bodies and refuse to apply an acquisition premium for regulatory costing purposes, and to use all of its powers to ensure that rail consumers, and ultimately electric utility ratepayers, are protected against the prospect of any such acquisition premium pass-throughs. We thus urge the STB to grant this petition at this time.

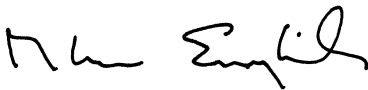
Sincerely,



Thomas R. Kuhn
President
Edison Electric Institute



Charles D. Gray
Executive Director
National Association of
Regulatory Utility Commissioners



Glenn English
Chief Executive Officer
National Rural Electric
Cooperative Association



Mark Crisson
President and Chief Executive Officer
American Public Power Association

cc: The Hon. Daniel R. Elliott III
The Hon. Ann D. Begeman
The Hon. Francis P. Mulvey