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BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET FD 35557

REASONABLENESS OF BNSF RAILWAY COMPANY
COAL DUST MITIGATION TARIFF PROVISIONS

DOCKET FD 35305

PETITION OF ARKANSAS ELECTRIC COOPERATIVE CORPORATION
FOR A DECLARATORY ORDER

ARKANSAS ELECTRIC COOPERATIVE CORPORATION'S CONSENT MOTION
TO MODIFY PROTECTIVE ORDER TO PERMIT USE IN FD 35557 OF
DOCUMENTS PRODUCED BY UNION PACIFIC RAILROAD COMPANY IN FD 35305

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Dated: April 19, 2012

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FOR A DECLARATORY ORDER**

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Arkansas Electric Cooperative Corporation ("AECC"), with the consent of Union Pacific Railroad Company ("UP"), moves to amend the Protective Order to permit AECC to use in FD 35557 confidential and highly confidential documents produced or filed by UP in FD 35305.

This Motion is sought in order to resolve a dispute regarding UP's responses to AECC's discovery requests in FD 35557. See Decision served in this docket March 19, 2012 ("March 19 Decision"). See, also, Arkansas Electric Cooperative Corporation's Motion To Compel Discovery From Union Pacific Railroad Company (filed Feb. 27, 2012) ("AECC Motion To Compel"), and Union Pacific Railroad Company's Reply

To Arkansas Electric Cooperative Corporation's Motion To Compel (filed Mar. 8, 2012) ("UP Reply").

Background

Generally, AECC's discovery requests asked for documents covering the period from January 1, 2005 to the Close of Discovery. UP, however, objected to producing materials generated before November 1, 2009. UP Reply at 13. In the March 19 Decision, the Board said that it was "likely" that there were relevant documents that predate November 1, 2009. Therefore:

The parties should negotiate to determine a reasonable date that balances the likelihood of uncovering relevant information with burden on the parties. As AECC suggests in its motion, it is likely that UP produced a large amount of relevant material in the Coal Dust I proceeding. To reduce the burden of duplicating prior efforts, the parties are free to negotiate, and to seek any required Board authority, [1/] for the use of that information in this proceeding. [at 3]

Discussion

As suggested by the Board, counsel for AECC and UP have negotiated and resolved all outstanding discovery disputes, subject only to the entry of a Board order allowing AECC to use in FD 35557 classified UP documents produced in FD 35305.

Accordingly, in order to resolve the discovery dispute regarding AECC's requests for the pre-November 2009 documents and UP's objections thereto, AECC is

1/ In the Board's January 13, 2012 Decision in FD 35557, the Board said: Should parties wish to use confidential or highly confidential materials filed by other parties in Docket No. FD 35305, they must first seek the Board's approval to extend the prior protective order to those parties.

asking the Board's approval to extend the protective order to permit AECC to use in FD 35557 confidential and highly confidential documents produced by UP in FD 35305.

In making this Motion, AECC is mindful that the scope of FD 35557 is not the same as the scope of FD 35305. Not all documents that were relevant to the issues in FD 35305 are relevant to the issues in FD 35557, and vice versa. However, there are substantial overlaps in the issues in the two cases, and this Motion represents a reasonable compromise to provide AECC with documents that relate to the issues in this case, while not unduly burdening UP.

AECC is authorized to state that UP consents to this request. 2/

Respectfully submitted,

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2/ It may not be necessary for the Board to enter orders in both FD 35557 and FD 35305 to grant the relief requested in this Motion. However, AECC has filed a similar motion regarding BNSF documents in both dockets, for reasons explained in that motion, and out of an abundance of caution is filing this Motion in both dockets, too.

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of April 2012, I caused a copy of the foregoing to be served electronically on all parties of record on the service lists in FD 35305 and FD 35557.



Eric Von Salzen