

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35305

ARKANSAS ELECTRIC COOPERATIVE CORPORATION—PETITION FOR  
DECLARATORY ORDER

Decided: June 9, 2010

The Surface Transportation Board will hold a hearing on Thursday, July 29, 2010, at 9:30 a.m., in the Board's hearing room at the Board's headquarters located at 395 E Street, S.W., Washington, DC. The hearing will be open for public observation, but only parties of record who have notified the Board of their intent to participate will be permitted to speak.

In response to a petition filed by Arkansas Electric Cooperative Corporation on October 2, 2009, and the reply of BNSF Railway Company (BNSF) on October 21, 2009, the Board instituted a declaratory order proceeding under 49 U.S.C. § 721 and 5 U.S.C. § 554(e) on December 1, 2009. The issues before the Board include whether provisions of a BNSF tariff constitute an unreasonable practice, whether BNSF may establish rules regarding coal dust dispersion from coal trains operating over its lines, and whether refusal to provide service to shippers not in compliance with the provisions would violate BNSF's common carrier obligation. Tariff 6041-B Items 100 and 101, the provisions at issue, require that Powder River Basin (PRB) coal shippers using the Joint Line<sup>1</sup> or the Black Hills Subdivision ensure that the emission of coal dust from the cars does not exceed the coal dust emissions standards set by BNSF.

Any party of record wishing to participate at the hearing should file with the Board a notice of intent to participate (identifying the counsel who will be speaking, the party counsel will be representing, and the time requested) as soon as possible, but no later than June 18, 2010. No additional written comments may be filed in connection with the hearing, as an extensive written record on the issues to be addressed has already been developed in this proceeding. Each party is encouraged to use its hearing time to call attention to the points it believes are particularly important. Parties should present a short oral statement of their comments and be prepared to answer questions from the Board. The purpose of the hearing is to emphasize a party's key points and to provide an opportunity for questions that the Board may have regarding any issue in the proceeding.

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<sup>1</sup> The Joint Line is the rail line serving the southern PRB that is jointly owned by BNSF and the Union Pacific Railroad Company, and operated and maintained by BNSF.

Counsel for the parties should check in with Board staff in the hearing room prior to the hearing.

A video broadcast of the hearing will be available via the Board's website at <http://www.stb.dot.gov>, under "Information Center"/"Webcast"/"Live Video" on the home page.

Instructions for Attendance at Hearing

The STB requests that all persons attending the hearing use the Patriots Plaza Building's main entrance at 395 E Street, S.W. (closest to the northeast corner of the intersection of 4th and E Streets). There will be no reserved seating, except for those scheduled to present comments. The building will be open to the public at 7:00 a.m., and participants are encouraged to arrive early. There is no public parking in the building.

Upon arrival, check in at the 1st floor security desk in the main lobby. Be prepared to produce valid photographic identification (driver's license or local, state, or Federal government identification); sign-in at the security desk; receive a hearing room pass (to be displayed at all times); submit to an inspection of all briefcases, handbags, etc.; then pass through a metal detector. Persons choosing to exit the building during the course of the hearing must surrender their hearing room passes to security personnel and will be subject to the above security procedures if they choose to re-enter the building. Hearing room passes likewise will be collected from those exiting the hearing upon its conclusion.

Laptops and recorders may be used in the hearing room, but no provision will be made for connecting personal computers to the Internet. Cellular telephone use is not permitted in the hearing room; cell phones may be used quietly in the corridor surrounding the hearing room, or in the building's main lobby.

The Board's hearing room complies with the Americans With Disabilities Act, and persons needing such accommodations should call (202) 245-0245, by the close of business on July 19, 2010.

For further information regarding the hearing, contact Amy Ziehm at (202) 245-0391. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at (800) 877-8339.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. A public hearing in this proceeding will be held on Thursday, July 29, 2010, at 9:30 a.m., in the Surface Transportation Board Hearing Room, at 395 E Street, S.W., Washington, DC, as described above.

2. By June 18, 2010, parties of record wishing to participate at the hearing should file with the Board a notice of intent to participate identifying the counsel who will be speaking, the party counsel will be representing, and the time requested.

3. This decision is effective on the date of service.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.