

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35305

ARKANSAS ELECTRIC COOPERATIVE CORPORATION—PETITION FOR
DECLARATORY ORDER

Decided: July 26, 2010

This decision denies the motion of Arkansas Electric Cooperative Corporation (AECC) to strike the notice of BNSF Railway Company (BNSF) that its Vice President—Transportation, Gregory Fox, will participate in the Thursday, July 29, 2010, hearing in this proceeding. The Board announced the hearing by a decision served on June 10, 2010, and the Board established June 18, 2010, as the deadline for persons wishing to speak at the hearing to advise the Board of their intent to participate and request a time allotment. BNSF filed a letter on July 21, 2010, notifying the Board that Mr. Fox would participate in the hearing. Subsequently, on July 21, 2010, the Board issued a decision setting the schedule of speakers for the hearing and included Mr. Fox as a participant.

On July 22, 2010, AECC filed a motion to strike BNSF's notice of Mr. Fox's participation. AECC argues that the notice is untimely and that Mr. Fox's participation is inappropriate, as he is a witness rather than counsel, and, therefore, the purpose of his participation must be to present new evidence. The Western Coal Traffic League and Concerned Coal Shippers submitted a letter in support of AECC's motion on July 23, 2010. American Power Association, Edison Electric Institute, and National Rural Electric Cooperative Association also submitted a joint letter on July 23, 2010, in support of the motion. On July 22, 2010, BNSF filed a letter stating that Mr. Fox will not present new evidence at the hearing.

The Board's objective in this hearing is to allow the participants to explain their views of the issues. While the Board's June 10 decision only refers to counsel for parties as potential speakers, it was not the Board's intent to restrict participation to counsel for parties as it does in cases set for oral argument. Mr. Fox is a Vice President at BNSF and submitted testimony in support of BNSF's opening evidence and argument. BNSF is allowed to present its views at this hearing in the manner it believes will best inform the Board. The Board also notes that BNSF did not request additional time to accommodate Mr. Fox's participation and that BNSF states that he will not present new evidence. Finally, although BNSF asked that Witness Fox be added to the list of witnesses after the deadline in the Board's June 10, 2010 order, neither AECC nor any other party has identified any injury it has suffered from the late addition of Mr. Fox to the witness list.

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

It is ordered:

1. AECC's motion to strike BNSF's notice of Mr. Fox's participation in the July 29, 2010 hearing is denied.

2. This decision is effective on its service date.

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