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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Finance Docket No. 35557

**REASONABLENESS OF BNSF RAILWAY COMPANY
COAL DUST MITIGATION TARIFF PROVISIONS**

**SUPPLEMENTAL REPLY
IN OPPOSITION TO PETITION FOR SUBPOENAS**

Ameren Energy Fuels and Services Company (“AFS”), pursuant to 49 CFR § 1104.13(a), hereby provides its Supplemental Reply in opposition to the Petition for Subpoenas (“Petition”) filed by BNSF Railway Company (“BNSF”) on January 27, 2012. As described below, the Petition is ineffectual, moot, and not necessary to the extent that it seeks a subpoena directed to AFS. The Board should deny the Petition.

AFS is terming this document a “Supplemental Reply” because AFS is joining in, and supports, the Joint Reply filed by the sixteen Western Coal Traffic League members. In this Supplemental Reply, AFS addresses the unique issues applicable to it. In support hereof, AFS states as follows:

I. IDENTITY AND INTEREST OF AFS

AFS is a subsidiary Ameren Energy Resources Company, LLC, which is a subsidiary of Ameren Corporation, a public utility holding company. AFS participated in the original proceeding regarding the reasonableness of the BNSF coal dust tariff. Arkansas Electric

Cooperative Corporation – Petition for a Declaratory Order, STB Docket No. 35305. During its participation in the prior proceeding, AFS participated in discovery and produced over 10,000 pages of documents to BNSF. Although AFS is not participating in the current proceeding, AFS was named by the BNSF as one of the sixteen third parties that would be the object of subpoenas sought by BNSF.

AFS has been an inactive entity since early 2011. In order to comply with anticipated rules of the Federal Energy Regulatory Commission, the employees, duties, and resources of AFS were transferred to other entities. This corporate reorganization was completed very early in 2011. In other words, AFS only currently exists as a empty corporate entity. Effective early in 2011, all of the vendors which provided coal to the Ameren companies were provided notice that AFS would no longer be the agent for any Ameren entity. Although AFS has corporate officers, it does not have any employees, computers, documents, or any access to information.

II. GOVERNING LAW

The Board “may” subpoena witnesses and records “related to” a proceeding before the Board. 49 USC § 721(c). See also Wisconsin Power and Light Company v. Union Pacific Railroad Company, STB Docket No. 42051, slip op. at 2-3 (served June 21, 2000) (“WPL”). The Board’s subpoena authority is not simply ministerial, but involves a determination of whether the information sought is relevant and otherwise discoverable. Application of the National Railroad Passenger Corporation under 49 U.S.C. 24308(a) – Springfield Terminal Railway Company, Boston and Maine Corporation, and Portland Terminal Company, STB Docket No. 33381, slip op. at 2 (served June 26, 1997). “Thus, whether the issuance of a particular subpoena is appropriate requires a case-by-case examination.” WPL, slip op. at 3.

III. ARGUMENT

A. The Petition is moot to the extent Ameren Missouri is participating in this proceeding

BNSF's Petition is moot to the extent that Ameren Missouri, a direct operating subsidiary of Ameren Corporation, is already participating in this proceeding. Ameren Missouri responded to BNSF's discovery requests with objections and written responses on January 25, 2012, and Ameren Missouri was served with a Motion to Compel by BNSF on February 6, 2012.¹ During the 2011 corporate reorganization of the Ameren Corporation, the responsibilities, employees, and documents of AFS that were related to the Ameren Missouri facilities and transportation were transferred to Ameren Missouri. To the extent that Ameren Missouri is participating in this proceeding, serving a subpoena on AFS would be redundant and should be rejected by the Board. FMC Wyoming Corporation and FMC Corporation v. Union Pacific Railroad Company, STB Docket No. 42022, slip op. at 5 (served Feb. 5, 1998) (Board denies motion to compel because requests are "redundant" and "unnecessary"). The nine Requests for Production that BNSF seeks to issue to AFS with the subpoena are virtually identical to discovery requests that have already been served upon Ameren Missouri in this case. A subpoena would serve no purpose and, consequently, the Petition should be denied to the extent that Ameren Missouri is participating in this proceeding.

B. The Petition is ineffectual because AFS is inactive.

The Petition should be denied because a corporate reorganization has transformed AFS into an empty subsidiary. AFS has no employees, no offices, no computers, and no access to documents. It would be futile for the Board to issue a subpoena to AFS, which cannot

¹ Ameren Missouri is also responding today to a BNSF Motion to Compel discovery from Ameren Missouri which is overbroad and unduly burdensome particularly in the light of the nature of this proceeding.

meaningfully respond. FMC Wyoming, slip op. at 5 (Board denies motion to compel where the materials sought are not even in the possession of the responsive party). The Petition should be denied as to AFS.

C. The Petition should be denied to the extent that the information sought is irrelevant and/or the requests are overly broad and unduly burdensome.

The Petition seeks to serve a wide range of requests upon AFS, but the broad sweep of information sought from AFS is not relevant to the narrow topic at issue in this proceeding – the reasonableness of the safe harbor provision in the BNSF coal dust tariff. The many topics covered by BNSF’s discovery requests greatly exceed the scope of this proceeding, especially given the expedited procedural schedule.

IV. CONCLUSION

For all the reasons described herein, the Board should deny the Petition as to AFS.

Respectfully submitted,



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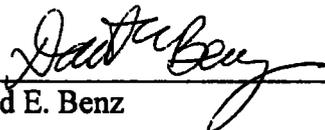
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February 16, 2012

CERTIFICATE OF SERVICE

I hereby certify that this 16th day of February 2012, I served a copy of the foregoing upon all parties of record.

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