

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 35305

230878

ARKANSAS ELECTRIC COOPERATIVE CORPORATION --
PETITION FOR A DECLARATORY ORDER

**UNION PACIFIC RAILROAD COMPANY'S REPLY TO
THE WESTERN COAL TRAFFIC LEAGUE'S PETITION TO
REOPEN AND FOR INJUNCTIVE RELIEF
PENDING BOARD-SUPERVISED MEDIATION**

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PENDING BOARD-SUPERVISED MEDIATION**

Union Pacific Railroad Company hereby replies to the Western Coal Traffic League's Petition to Reopen and for Injunctive Relief Pending Board-Supervised Mediation to address WCTL's request that the Board order mediation and "encourage all parties" to this proceeding "to have company representatives participate in the mediation." Petition at 11.

Union Pacific supports the Board's mediation process, but we do not believe that mediation would be appropriate here. WCTL's main concern appears to be the allocation of costs associated with coal dust mitigation. *See* Petition at 7 & Richards V.S. at 3-4. However, as we have explained to WCTL and the Board, participating in group negotiations on this topic would create unacceptable antitrust risks for Union Pacific. *See* Petition, Attachments 2 & 4.¹

While Union Pacific cannot participate in group negotiations on commercial issues related to coal dust mitigation, we are addressing these issues in one-on-one discussions

¹ Mr. Richards professes not to believe that Union Pacific's concerns are genuine. *See* Richards V.S. at 3. But Mr. Richards himself recently accused Union Pacific and BNSF of engaging in anticompetitive conduct involving coal and noted that the two railroads are defendants in two pending antitrust cases. *See* Written Testimony of Duane Richards at 2-3, *Competition in the Railroad Industry*, STB Ex Parte No. 705 (June 10, 2011).

with our customers, nearly all of whom are parties to confidential contracts. WCTL has no place in those discussions.

In addition, the Board should not credit WCTL's claim that railroads have not involved their customers in addressing coal dust issues. Union Pacific has worked actively with BNSF, coal shippers, and mining companies to develop and test sustainable solutions, including load profiling, surfactants, compaction, and car covers. We have regularly communicated with our customers in a variety of settings to keep them informed of developments.² Claims that Union Pacific is unwilling to engage customers in discussions of these issues are false.

Finally, Union Pacific urges the Board *not* to issue the stay requested by WCTL. Union Pacific believes that application of topping agents will significantly reduce the coal dust that is affecting lines in the Powder River Basin and beyond. Further, as clarified by BNSF's reply filed August 23, the challenged tariff appropriately responds to the Board's concerns as reflected in its decision served March 3, 2011.³

² For example, Union Pacific addressed coal dust issues at the National Coal Transportation Association's Western Logistics and Planning Committee Meeting on February 17, 2011. *See* <http://www.nationalcoaltransportation.org/events/Schroder%20WLP%202%2017%202011.pdf>. Also, Union Pacific presented an update on coal dust issues to our coal customers during inspection trips to the Southern Powder River Basin in June 2011.

³ Moreover, contrary to WCTL's claim, Union Pacific never said that BNSF lacks the authority to establish an operating rule that would require Union Pacific to ensure that its trains operating on the Joint Line comply with BNSF's coal dust mitigation standards. *See* Petition at 22. Union Pacific said that any operating rule must apply equally to both railroads, and that Union Pacific would seek relief if BNSF were to modify the Joint Line operating rules to provide that it can interfere with train operations solely because a train is emitting too much coal dust, and then apply the rules in a manner that interferes with Union Pacific's contractual or common carrier obligations to its customers. *See* Opening Evidence and Argument of Union Pacific Railroad Company at 19-20.

Respectfully submitted,

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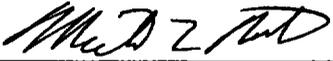
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August 26, 2011

CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of August, 2011, I have caused the foregoing
Notice to be served by first-class mail, postage prepaid, on all parties of record.



Michael L. Rosenthal