BEFORE THE
SURFACE TRANSPORTATION BOARD

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DOCKET NO. EP 711

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PETITION FOR RULEMAKING TO ADOPT REVISED
COMPETITIVE SWITCHING RULES

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**ARKANSAS ELECTRIC COOPERATIVE CORPORATION'S
NOTICE OF INTENT TO PARTICIPATE
IN PUBLIC HEARING**

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Dated: September 23, 2013

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Pursuant to the Board's notice served August 13, 2013, Arkansas Electric Cooperative Corporation (AECC) 1/ gives notice of its intent to participate in the public hearing scheduled for October 22, 2013. At the public hearing, AECC's views will be presented by its counsel, Eric Von Salzen, and by Michael A. Nelson, Transportation Consultant. AECC requests

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1/ AECC is a membership-based generation and transmission cooperative that provides wholesale electric power to electric cooperatives, which in turn serve over 500,000 customers, or members, located in each of the 75 counties in Arkansas and in surrounding states. In order to serve its 17 member distribution cooperatives, AECC has entered into arrangements with other utilities within the state to share generation and transmission facilities. For example, AECC holds ownership interests in the White Bluff plant at Redfield, AR and the Independence plant at Newark, AR, each of which typically uses in excess of 6 million tons of Powder River Basin (PRB) coal each year. In addition, AECC holds ownership interests in the Flint Creek plant at Gentry, AR and the Turk plant at Fulton, AR, each of which typically uses on the order of 2 million tons of PRB coal each year. Because of the large volume of coal consumed by these plants, the need for long-distance rail transportation to move this coal, and the rail captivity of three of these plants, AECC has a direct interest in the Board's competitive access policies and their impacts on coal transportation options.

that the Board allow 20 minutes for its comments. A brief summary of AECC's testimony is attached.

Respectfully submitted,

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Counsel for Arkansas Electric Cooperative Corporation

Dated: September 23, 2013

**BRIEF SUMMARY OF**
**ARKANSAS ELECTRIC COOPERATIVE CORPORATION'S**
**TESTIMONY REGARDING REVISED COMPETITIVE SWITCHING RULES**

The Board's revenue adequacy determination for 2011 establishes that the "Big 4" railroads as a group have achieved revenue adequacy. This is a watershed moment that requires that the Board reassess and reorient many of its past practices. The Board and its predecessor have operated for over 30 years with an explicit mandate to assist carriers to achieve revenue adequacy, a mandate rooted in the industry's marginal financial condition at the time of the Staggers Act. With this goal achieved, the Board now needs to redirect its efforts toward more conventional regulatory responsibilities.

Near or at the top of a list of such responsibilities is the need to curb the exercise of railroad market power so that industry earnings do not systematically exceed the level required to provide a market rate of return. A failure to exercise this responsibility would lead to harmful and unnecessary economic distortions and harms. Thus it is appropriate -- indeed, necessary -- for the Board to develop tools to control and rein in differential pricing as needed. The same economic theory that permits differential pricing requires that constraints on the overall level of differential pricing be applied disproportionately to the highest-rated (i.e., least elastic) traffic flows. Such limits on differential pricing cannot be accomplished through thousands of rate cases or other Board proceedings; instead, the Board must broadly increase competitive and regulatory pressure on higher-rated traffic. Adoption of the NITL proposal would do that, and by reducing supracompetitive carrier earnings would provide a very important public benefit.

In developing and applying a new posture to curb supracompetitive earnings in a revenue-adequate industry, the Board can safely disregard the industry's standard claims -- repeated by many rail parties here -- that anything the Board does to hinder its earnings will prevent it from making needed investments. Earnings that produce adequate revenues are, by definition, sufficient to provide a market rate of return on needed assets. Reducing <u>supracompetitive</u> earnings therefore cannot and will not impair the railroads' ability to make required investments. Furthermore, the Christensen study showed that increasing traffic volumes tend to reduce the amount of differential pricing needed to sustain revenue adequacy. This means that increasing rail volumes should be accompanied by an increased effort by the Board to reel in differential pricing on higher-rated traffic.

In this new, revenue-adequate environment, the Board needs to reassess its restrictive posture on competitive access. Supracompetitive earnings form a new and dangerous form of "competitive abuse" that should cause much greater use of competitive access remedies, including reciprocal switching, to achieve the balance between market forces and regulatory protection envisioned in the statutes.

Competitive access also can and should be used to promote efficiency. The railroads complain that interswitching may be inefficient compared to single-line service, but they're using the wrong basis for comparison: If the Board determines that additional competition is appropriate, interswitching is a more efficient way to provide it than constructing redundant rail facilities for the use of a second carrier (as the railroads concede outright in their discussion of the Canadian experiences). For U.S. carriers, the Christensen study already has illustrated some of the inefficiencies that were created in the mega-mergers, which the incumbents now seek to preserve by preventing even the limited introduction of competition proposed by NITL. Especially for unit train traffic, the characteristics of the route generally are far more important than the effort associated with interchange, so providing alternate routes through competitive access is plainly supportive of public interest efficiency objectives.

Likewise, competitive access can and should be used to ensure that adequate service levels are provided, even for captive traffic. The railroads complain that interchange causes poorer service, but overlook the fact that captive traffic may experience poor service because a monopolist faces fewer incentives to provide good service than a carrier faces when it has competition, and that an alternate carrier might provide better service even if some extra handling is required. The Canadian railroads have already indicated (in EP 705) that they are able to provide effective service competition using interswitching. The Board should take the view that competitive access can be a useful tool for supporting the provision of adequate service.

Overall, the NITL proposal provides a method through which the Board can permit a limited introduction of market forces to rein in some of the higher levels of differential pricing, and provide opportunities for market forces – rather than the choices of a monopolist – to guide efficiency and service toward competitive market levels. These changes are appropriate, if not overdue, in light of the industry's current and foreseeable robust health.