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BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Ex Parte No. 705

COMPETITION IN THE RAILROAD INDUSTRY

<u>TESTIMONY OF AMEREN CORPORATION</u>

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AMEREN CORPORATION **Competition in the Railroad Industry**	))))))	**Ex Parte 705**

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Good morning, Chairman Elliott, Vice Chairman Begeman and Commissioner Mulvey. My name is James A. Sobule, and I am Vice President and Deputy General Counsel for Ameren Services Company, a subsidiary of Ameren Corporation which I will refer to as "Ameren." Ameren Services Company provides legal and other services to all of Ameren's affiliates including its generating affiliates, and therefore represents all such affiliates with this Testimony.

In response to the Board's January 11, 20011 decision, Ameren filed comments in this docket on April 12, 2011. Ameren is testifying today in response to the Board's decision to conduct a public hearing on competition in the railroad industry. On behalf of Ameren, I would like to thank the Board for taking comments and holding a hearing on competition in the railroad industry.

Ameren Corporation is a public utility holding company headquartered in St. Louis, Missouri and provides energy service to 2.4 million electric customers and 1.0 million natural gas customers. Ameren's subsidiaries have an electric generating capacity of 16,400 MW and generate 85% of its electricity from coal. Ameren's operating subsidiaries collectively own eleven coal fired generating stations.

Ameren is the 5th largest consumer of coal in the United States, consuming approximately 39 million tons annually, and is the largest purchaser of Powder River Basin Coal. As a result, Ameren is a very large shipper of coal by rail, operating approximately 55 trainsets in continuous service, and spends approximately $650 million annually on rail transportation.

Ameren began spending millions of dollars converting its power plants from high sulfur Illinois Basin coal to low sulfur Powder River Basin coal in the early 1990's in response to the Clean Air Act. While the Powder River Basin is roughly ten times further from Ameren plants than the Illinois Basin coal fields, the competition among railroads at that time provided competitive rail rates that resulted in the use of Powder River Basin coal being more economical than using Illinois Basin coal with the required emission controls.

As Ameren expanded its use of Powder River Basin coal, the rail rates continued to drop as a result of competition between the western rail carriers until about 2004. At that time, there was a marked change in the competitiveness of the western rail carriers which resulted in rates dramatically increasing.

Prior to 2004, Ameren found that the western carriers were interested in securing additional business and would compete vigorously to maintain or be awarded new traffic. Rail rates gradually decreased from the time that Ameren commenced using Powder River Basin coal in 1990 largely due to the non-incumbent competing railroad taking contracts as they came due by offering lower rates, or the incumbent carrier reducing its rates to keep the business. As shown on the graph in our written testimony, Ameren's rail rates increased dramatically after 2004.

Starting in 2004, Ameren found a very different competitive environment among the western railroads. Railroads appeared to be no longer interested in acquiring coal traffic that was already being hauled by a competing carrier. In every instance from 2004 to 2010 when Ameren issued bids for rail rate quotes for their UP and BNSF competitive rail-supplied plants, not a single one of the plants primarily using Powder River Basin coal at the time changed carriers as a result of these requests for new rates. In other words, the railroad that was shipping the Powder River Basin coal at the time of contract renewal retained the business. The non-incumbent railroad, at the time of the quote or pricing tariff, quoted a rate, on average, that was 43% higher than the rate of the incumbent railroad.

Because the non-incumbent rate or pricing tariff, on average, was 43% higher than the incumbent rate, the incumbent railroad rate was able to consistently impose a substantial increase from the prior rate. Through the period 2004-2010, the incumbent carrier was able to propose rate increases to Ameren that were up to an 87% increase at contract renewal.

Another phenomenon which began occurring after 2004 was what Ameren terms "non-responsive bidding." These are carrier responses to rate requests which clearly indicate that the carrier is not interested in the business. This type of bid includes no responses, responses which impose extreme one-sided contract conditions which make the quote unacceptable, or varying from Ameren's material bid parameters. During the 2004 to 2010 timeframe, Ameren received five non-responsive bids of these types.

Another type of non-responsive bid is the refusal to quote to a non-physical point. Prior to 2004, Ameren was very active in building and acquiring competitive rail access to its power plants. Ameren has fully supported self-help measures and shipper investment in the rail transportation infrastructure to assist in fostering alternative opportunities for fuel transportation. In fact, Ameren believes it has been one of the most active shippers in undertaking such self-help measures. Since 1990, Ameren constructed four build-outs at plants to allow second rail carrier access, and also formed three short line railroads. Ameren also purchased a rail line and built barge facilities to allow competitive access to three additional plants. These facilities were often built by obtaining a favorable rate prior to construction from the competing carrier which justified investment in physical facilities. However, after 2004, Ameren found that both western carriers had adopted the policy of not quoting to "non-physical" points. In other words, railroads would not quote a rate if the physical track had not already been constructed. This further stifled competitive alternatives as a shipper is unlikely to invest in new facilities if the rate at the connection is unknown. During the 2004 to 2010 timeframe, Ameren received three non-responsive bids of this type.

I also want to respond to a few comments made in the May 27 reply comments. The UP stated[1] that shippers have stopped pursuing build-outs because they believe the Board will provide regulatory benefits at a lower cost than a build-out. I can state emphatically that is not the reason that Ameren stopped pursing build-outs. UP's reply comments also addressed the Duck Creek build-out, which as the Board is aware, Ameren built in 2005. While the UP did receive some traffic after the build-out was completed, the UP refused to quote a rate until the physical turnout was installed. Then in 2007, Ameren had to fight to protect its build-out investment at Duck Creek in a proceeding before the Board when the BNSF sought to undermine Ameren's benefits of this build-out by leasing the BNSF track to the same carrier to which the

[1] "In other words, if coal shippers are not pursuing viable build-outs, it is because they believe the Board will provide benefits through regulation at a lower cost than if they follow a market-based approach and construct a new line." UP Reply Comments at page 11.

build-out was made. Fortunately the Board agreed with Ameren and prohibited the proposed railroad transaction.[2]

Ameren would also like to provide its experience in relation to BNSF's witness statement that "assertions of some coal shippers ... that after 2004 no coal business has shifted between BNSF and UP are categorically false."[3] Obviously, Ameren cannot speak for all shippers and I cannot view UP's highly confidential material submitted in this case. However, Ameren's experience is that from 2004 to 2010, Ameren issued bids for rail rate quotes for ten of its competitive rail-supplied plants and not a single one of these plants changed carriers as a result of these requests for new rates.

In addition to the increases in rates, the railroads began imposing fuel surcharges. Ameren has since filed comments in the STB proceeding on Rail Fuel Surcharges in Ex Parte 661. And, Ameren still believes that diesel fuel surcharges, in combination with the fuel amount imbedded in rates, are allowing for over recovery of fuel costs for the railroads.

Ameren also notes that both UP and BNSF addressed as part of their reply comments that no regulatory changes are needed because shippers who believe that they are being charged unreasonable rates have an avenue of relief at the Board.[4] This is exactly what Ameren would

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[2] STB Finance Docket No. 34974, Keokuk Junction Railway Company D/B/A Peoria and Western Railway – Lease and Operation Exemption – BNSF Railway Company; STB Finance Docket No. 34918, Keokuk Junction Railway Company D/B/A Peoria & Western Railway – Lease and Operation Exemption – BNSF Railway Company Between Vermont And Farmington, IL, STB served December 6, 2007.

[3] BNSF Reply Comments, Verified Statement of John Lanigan at 13.

[4] "[S]hippers can seek relief if they believe that their rates exceed a reasonable maximum." UP Reply Comments at 5. "If a shipper believes that it is being charged an unreasonably high rate

like for all shippers, including Ameren at its plants where it has invested in self-help infrastructure investments such as build-outs or barging facilities- the right to have a backstop of relief at the Board to challenge unreasonable rates.

Ameren respectfully offers the following suggestions for alternative policy at the STB:

1. Competitive shippers are currently not protected by STB statute under the assumption that competition among carriers will protect shippers with competitive options. However, since 2004, this has not been the case, as competitive shippers rates have often approached or surpassed the 180% of variable cost jurisdictional threshold set for captive shippers. The STB should move to interpret the statute so that if <u>any</u> rate exceeds this threshold, that rate prima facia demonstrates that there is a clear lack of effective competition and can be challenged under the STB rate guidelines.

2. The bar for revenue adequacy is currently set too high to provide meaningful guidance to rail rate issues. This is demonstrated by the fact that railroad financial performance, and stock price have remained high despite the recession. Privatization of BNSF is another indicator of railroad financial success.

3. Railroad fuel surcharge recovery should be transparent. The STB should use the cost data collected from the railroads to determine if fuel surcharges are allowing accurate recovery of the railroads fuel costs.

Thank you again, Chairman Elliott, Vice Chairman Begeman and Commissioner Mulvey, for the opportunity for Ameren to provide testimony today on competition in the railroad industry.

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for the through service it receives, then its remedy lies in the Board's rate reasonableness standards." BNSF Reply Comments at 7.