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November 18, 2008

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BY HAND

The Honorable Anne K. Quinlan, Esq.  
Acting Secretary  
Surface Transportation Board  
395 F. Street, SW  
Washington, D.C. 20423-0001



Re SIB Finance Docket No. 35081  
Canadian Pacific Railway Co., et al -- Control --  
Dakota, Minnesota & Eastern Railroad Corp., et al

Dear Secretary Quinlan

Inclosed for filing in the above-referenced proceeding are an original and ten copies of Arkansas Electric Cooperative Corporation's Motion for Leave. Please note that only a Public Version of the brief is being filed; the brief contains no confidential or highly confidential information.

If you have any questions or I can be of any assistance, please let me know.

Respectfully,

George W. Mayo, Jr.

cc: All Parties of Record

Enclosures

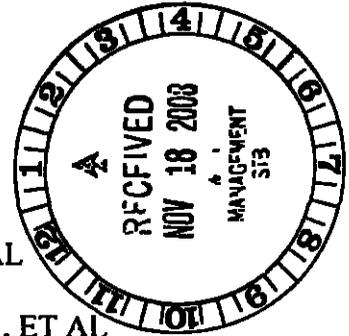
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BEFORE THE  
SURFACE TRANSPORTATION BOARD

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FINANCE DOCKET NO 35081

CANADIAN PACIFIC RAILWAY COMPANY, ET AL  
- CONTROL -  
DAKOTA, MINNESOTA & EASTERN RAILROAD CORP, ET AL.



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**ARKANSAS ELECTRIC COOPERATIVE CORPORATION'S  
MOTION FOR LEAVE**

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Dated November 18, 2008

**PUBLIC AND ONLY VERSION**

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**ARKANSAS ELECTRIC COOPERATIVE CORPORATION'S  
MOTION FOR LEAVE**

Arkansas Electric Cooperative Corporation ("AECC") respectfully requests leave to call to the attention of the Board material appearing in the "Christensen Study" <sup>1/</sup> that directly supports AECC's Petition For Reconsideration (AECC-6)

A central issue in AECC's petition is whether the Board was correct in its Decision No 11 (the "Decision") that "it is not 'particularly pertinent' in a control proceeding whether the change of control makes the PRB line construction more or less likely" Decision at p 16 See AECC's Petition, at pp 1-3, and Applicants' Reply (CPR-17, DME-17), at pp 5-6

The Board gave public notice of the Christensen Study on November 6, 2008, Ex Parte No 680, after AECC's petition for reconsideration was filed On pp 12-8 to 12-9, the Christensen Study discusses the competitive effect of the introduction of a third rail carrier into a coal origin market – like the Powder River Basin currently served by only two railroads Christensen finds that, for the most recent period studied

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<sup>1/</sup> Laurits R Christensen Associates, Inc . A Study Of Competition In The U S Freight Railroad Industry And Analysis Of Proposals That Might Enhance Competition (Final Report, November 2008)

(2004-2006), introduction of a third carrier in such a market would cause rates to decrease by three percent. This is equivalent to the impact of introducing a second railroad of limited size (compared to the incumbent railroad) into a coal origin market previously served by only one railroad. <sup>2/</sup>

According to Christensen's model, Board action that inhibits entry by a new PRB carrier will convey over \$136 million/year to the profits of the incumbent railroads by preventing the reduction in revenue levels that would be associated with a new entrant. <sup>3/</sup> Given Christensen's additional finding that the rail industry as a whole has achieved adequate profitability since 2001, <sup>4/</sup> the Christensen Study indicates that the Board's treatment of PRB issues in the CP-DME merger case has the effect of undermining the competitive process of new entry in favor of preserving substantial supra-competitive profits of the incumbent railroads.

Thus, the Christensen Study supports AECC's argument on reconsideration that the effect of the CP-DME merger on the prospects for a third carrier in the PRB market is "particularly pertinent" to the Board's decision whether or not to impose the conditions proposed by AECC.

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<sup>2/</sup> The Board has requested public comments on the Christensen Study by December 22, 2008, AECC has not yet completed its review of the study and may have other or different comments to offer by December 22.

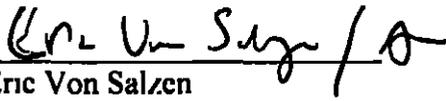
<sup>3/</sup> This figure is calculated on the assumption that 435 million tons of coal originate annually in the relevant portion of the PRB, and that 95% of that coal moves an average of 1,100 miles by rail at an average rate of \$0.010/ton-mile. Of course, the incumbent railroads might face additional profit reductions from the losses of contribution on traffic that a new PRB entrant might divert, and Board action that inhibits new entry would shelter those supra-competitive profits as well.

<sup>4/</sup> As shown in Figure 8-23 on page 8-35 of the Christensen Study, the rail industry return on shareholder equity exceeded the level indicated by the Board's CAPM methodology in 2002 and every year thereafter.

Accordingly, AECC requests that the Board consider the Christensen Study in deciding AECC's petition for reconsideration

Respectfully submitted,

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Dated November 18, 2008

## CERTIFICATE OF SERVICE

I hereby certify that I have caused the foregoing Arkansas Electric Cooperative Corporation's Motion for Leave to be served by first-class mail, postage pre-paid, this 18<sup>th</sup> day of November, 2008. on all parties of record and the following persons specified in the Board's Decision dated December 27, 2007

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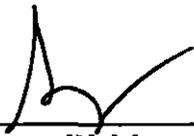
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