

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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Canadian Pacific Railway Company, *et al.* -- Control  
Dakota, Minnesota & Eastern Railroad Corp., *et al.*  
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) Finance Docket No. 35081  
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APPLICANTS' REPLY TO  
ARKANSAS ELECTRIC COOPERATIVE CORPORATION'S  
MOTION FOR LEAVE

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Dated: November 21, 2008

Canadian Pacific Railway Company ("CPR"); Soo Line Holding Company ("SOO Holding"); Dakota, Minnesota & Eastern Railroad Corporation ("DM&E"); and Iowa, Chicago & Eastern Railroad Corporation ("IC&E") (collectively "Applicants") submit this Reply to the Motion for Leave filed in the above-captioned proceeding on November 18, 2008 by Arkansas Electric Cooperative Corporation ("AECC's Motion"). AECC's Motion requests leave to "call to the attention of the Board material appearing in the 'Christensen Study' that [according to AECC] directly supports AECC's Petition for Reconsideration." AECC's Motion at 1.

Applicants do not object to AECC's Motion to the extent that it seeks to call to the Board's attention certain excerpts from the Christensen Study. However, contrary to AECC's assertion, neither those excerpts, nor anything else in the Christensen Study, supports AECC's request that the Board reconsider its decision to reject the conditions sought by AECC in this proceeding.

The excerpts from the Christensen Study referenced by AECC's Motion (at 2) do not specifically address the Powder River Basin ("PRB") or the potential entry of DM&E as a rail service provider to the PRB. Rather, the cited pages present certain mathematical calculations that stand for the unremarkable proposition that the introduction of a third rail carrier at a coal origin could have a beneficial competitive effect by causing a modest reduction in coal transportation rates. AECC's Motion at 2 (citing Christensen Study at 12-8 – 12-9). Relying upon this conceptual material, AECC argues that "Board action that inhibits entry by a new PRB carrier will convey over \$136 million/year to the profits of the incumbent railroads," and that "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" to the PRB. AECC's Motion at 2 (emphasis added).

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The fundamental problem with AECC's argument (and its Petition for Reconsideration) is that AECC has utterly failed to demonstrate that the Board's *September 30 Decision*, or CPR's acquisition of control of DM&E, would in any way "inhibit entry" into the PRB by DM&E or by any other hypothetical future carrier. To the contrary, in the *September 30 Decision*, the Board considered – and rejected – each of AECC's claims regarding the supposed chilling effect of the proposed control transaction on the PRB Project. Specifically, the Board held that "AECC does not provide evidence that contingency payment arrangements have had a negative effect on the PRB line prospects or adequately explain why CPRC would want to terminate the effort." *September 30 Decision* at 16. See CPR-17/DME-17, Applicants' Reply To Arkansas Electric Cooperative Corporation's Petition For Reconsideration, filed November 5, 2008 at 3-4, 6-8. The Board likewise explicitly considered, and rejected, AECC's contention that CPRC's relationships with UP and BNSF create a disincentive for it to pursue the PRB Project:

We believe that AECC's argument does not fully acknowledge that all railroads are interdependent with other railroads. In a physically networked industry like railroads, it is necessary to have such relationships. This fact alone does not mean that CPRC would refrain from entering into a new market to compete when it is in its economic interest to do so."

*September 30 Decision* at 16.

Finally, in rejecting AECC's request that the Board force Applicants to divest any land that DM&E may have acquired for a PRB corridor in the event that Applicants do not decide by September 1, 2009 to go forward with the PRB Project, the Board explicitly held that there was no evidence that the land Applicants had acquired was the only route into the PRB from Kansas City and that, if DM&E acquired property that it did not use for rail purposes, another potential entrant could seek to acquire that property from DM&E pursuant to state eminent domain law

(just as DM&E is currently attempting to acquire land under eminent domain statutes).

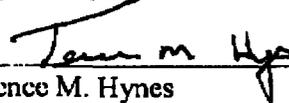
*September 30 Decision* at 16.

Neither AECC's Motion, nor its Petition for Reconsideration, provide any new evidence that would support different findings by the Board, nor has AECC demonstrated any material error in the *September 30 Decision*. To the contrary, ignoring the explicit findings supporting the Board's rejection of its requested conditions, AECC's Petition for Reconsideration simply restated the same evidence that it previously submitted (and the Board already rejected). Nor do the excerpts from the Christensen Study referenced in AECC's Motion provide any legal or factual basis for reconsideration of the *September 30 Decision*. Accordingly, even if the Board chooses to grant AECC's Motion for leave to bring the cited excerpts from the Christensen Study to the Board's attention in this proceeding, AECC's pending Petition for Reconsideration should be denied.

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Respectfully submitted,



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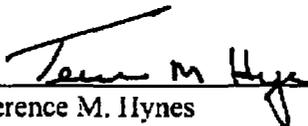
**CERTIFICATE OF SERVICE**

I hereby certify that I have caused the Applicants' Reply to Arkansas Electric Cooperative Corporation's Motion for Leave to be served by first class mail, postage prepaid, this 21st day of November 2008, on all parties of record and the following persons:

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