

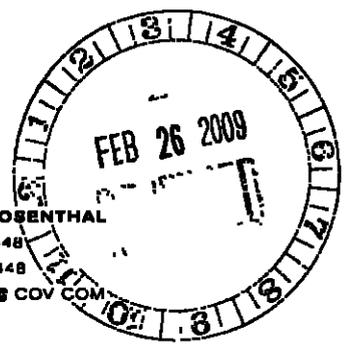
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February 26, 2009

**BY HAND**

The Honorable Anne K. Quinlan  
Acting Secretary  
Surface Transportation Board  
395 F Street, SW  
Washington, DC 20423

ENTERED  
Office of Proceedings  
FEB 26 2009  
Part of  
Public Record

Re: STB Docket No. 42111, *Oklahoma Gas and Electric Company v Union Pacific Railroad Company*

Dear Secretary Quinlan:

Enclosed for filing in the above-referenced matter are an original and ten copies of (i) Union Pacific Railroad Company's Petition for Leave to File a Reply to a Reply and (ii) Union Pacific's Reply.

Additional copies of these filings are also enclosed. Please return date-stamped copies to our messenger.

Thank you for your attention to this matter

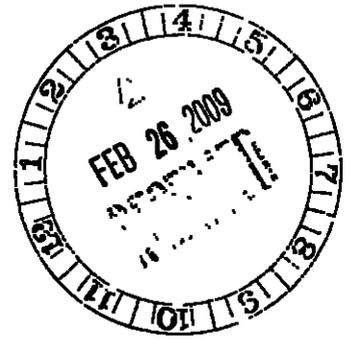
Sincerely,

Michael L. Rosenthal

Enclosures

cc: Counsel for OGE Energy Corporation

BEFORE THE  
SURFACE TRANSPORTATION BOARD



\_\_\_\_\_  
OKLAHOMA GAS & ELECTRIC COMPANY, )  
 )  
Complainant. )  
 )  
v. )  
 )  
UNION PACIFIC RAILROAD COMPANY, )  
 )  
Defendant. )  
\_\_\_\_\_

Docket No. 42111

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Public Record

UNION PACIFIC'S PETITION  
FOR LEAVE TO FILE A REPLY TO A REPLY

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February 26, 2009

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**



OKLAHOMA GAS & ELECTRIC COMPANY,	)	
	)	
Complainant.	)	
	)	
v.	)	Docket No 42111
	)	
UNION PACIFIC RAILROAD COMPANY,	)	
	)	
Defendant.	)	

**UNION PACIFIC'S PETITION  
FOR LEAVE TO FILE A REPLY TO A REPLY**

Union Pacific Railroad Company ("UP") hereby petitions the Board for leave to file a reply to the Reply Evidence filed on February 13, 2009, by Oklahoma Gas & Electric Company ("OG&E").

UP's reply corrects a significant misstatement of fact contained in OG&E's Reply Evidence. In its Reply Evidence, OG&E supported its argument that the Board should require UP to pay reparations based on indexed URCS variable costs rather than wait for actual URCS variable costs to become available by asserting that "this case should be no different than any other coal rate case," and suggesting that the parties had used indexed URCS variable cost to calculate the reparations in STB Docket No. 42095, *Kansas City Power & Light Company v. Union Pacific Railroad Company* ("KCPL"). See OG&E Reply Evidence at II-A-8.

In *KCPL*, however, the complainant has waited until UP's actual URCS variable costs (and the issue traffic's actual operating characteristics) become available before submitting its reparations calculations to UP, and the parties have used those actual

data in submitting their reparations statements to the Board. The parties thus did not submit their initial "Statement of Reparations" covering reparations for calendar year 2006, until August 21, 2008, and they did not submit their "Statement of 2007 Reparations." covering reparations for calendar year 2007, until January 22, 2009

OG&E is apparently confused about the timing of the submissions in *KCPL*.<sup>1</sup> OG&E is apparently under the mistaken impression that the parties filed their "Statement of 2007 Reparations" on January 22, 2008 – before 2007 URCS variable costs would have been available – rather than January 22, 2009. See *id* (misstating the date of parties' submission in *KCPL*).

UP's reply will assist the Board by correcting the record on this important issue. Accepting UP's short and focused reply should not delay the proceeding. Accordingly, UP submits that good cause exists to permit it to file a brief reply.

Respectfully submitted,



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February 26, 2009

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<sup>1</sup> UP is not alleging that OG&E intended to mislead the Board. Nor is UP claiming that Kansas City Power & Light has endorsed UP's position in this proceeding. UP's Reply is directed solely at making sure the record reflects the actual facts about the basis for the reparations calculations in the *KCPL* proceeding because OG&E's argument about prior practice rests on a misapprehension.

**CERTIFICATE OF SERVICE**

I, Michael I. Rosenthal, certify that on this 26th day of February, 2009, I caused a copy of Union Pacific's Petition for Leave to File a Reply to a Reply to be served by hand on

Thomas W. Wilcox, Esq.  
Sandra L. Brown, Esq.  
David E. Benz, Esq.  
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and by first-class mail, postage prepaid, on

Patrick D. Shore, Esq.  
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Oklahoma, OK 73101



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Michael I. Rosenthal