

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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STB Finance Docket No. 35305

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PETITION OF  
ARKANSAS ELECTRIC COOPERATIVE CORPORATION  
FOR A STAY

**ENTERED**  
**Office of Proceedings**

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**Public Record**

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Dated: October 2, 2009

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**INTRODUCTION**

Arkansas Electric Cooperative Corporation ("AECC"), pursuant to 49 USC § 721(b)(4) and 49 CFR § 1117.1, petitions the Board to issue an order enjoining BNSF Railway Company ("BNSF") from enforcing Tariff 6041-B, Items 100 and 101 (the "Tariff") (attached hereto as Exhibit A), pending the resolution of AECC's Petition for a Declaratory Order, filed today.

The Tariff would unilaterally impose on Powder River Basin ("PRB") coal shippers using the Joint Line <sup>1/</sup> or the BNSF Black Hills Subdivision an obligation to ensure that the emission of coal dust from the cars does not exceed an arbitrary level established by the Tariff. Effective November 1, 2009, if a shipper fails to meet BNSF's coal dust emission standard, BNSF threatens to refuse to allow trains handling the shipper's cars to operate over these lines or otherwise penalize the shippers.

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<sup>1/</sup> The rail line serving the southern PRB, which is jointly owned by BNSF and Union Pacific Railroad ("UP") and operated and maintained by BNSF, is referred to as the "Joint Line".

BNSF's refusal to transport cars that fail to satisfy the arbitrary requirements of the Tariff would violate BNSF's obligations as a common carrier and would cause irreparable injury to coal shippers like AECC that rely on the Joint Line or the Black Hills Subdivision for transportation of PRB coal to their power-generating plants.

### **STATEMENT OF FACTS**

AECC is a membership-based generation and transmission cooperative that provides wholesale electric power to electric cooperatives, which in turn serve approximately 490,000 customers located in each of the 75 counties in Arkansas. In order to serve its member distribution cooperatives, AECC is a co-owner with other utilities of generation and transmission facilities. 2/ During normal operations, all of the PRB coal used by these plants is transported over the Joint Line.

Effective November 1, 2009, BNSF will require all coal shippers using the Joint Line or the Black Hills Subdivision to take "all steps necessary to ensure that Trains handling cars loaded with Coal from any mine origin...shall not emit more than an Integrated Dust Value (IDV.2) of" 300 units in the case of the Joint Line or 245 units in the case of the Black Hills Subdivision. If a shipper fails to meet the emission standard, BNSF will be able to refuse to allow trains handling the shipper's cars to operate over the line.

### **ARGUMENT**

Pursuant to 49 USC § 721(b)(4), the Board may issue a preliminary injunction "when necessary to prevent irreparable harm." To obtain an injunction, a petitioner must show: "(1) substantial likelihood of success on the merits; (2) irreparable harm in the absence of the

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2/ Additional information about AECC is contained in the Petition for a Declaratory Order.

requested relief; (3) issuance of the order will not substantially harm other parties; and (4) granting the relief is in the public interest.” DeBruce Grain Inc. v. Union Pacific RR, 2 S.T.B. 773, 775 n.3 (1997) (citing Wash. Metro Area Transit Comm’n v. Holiday Tours, Inc., 559 F.2d 841, 843 (D.C. Cir. 1977)).

There is a substantial likelihood that AECC will prevail on the merits of its Petition for a Declaratory Order that the Tariff constitutes an unreasonable rule or practice in violation of 49 U.S.C. § 10702 and a refusal to provide service in violation of 49 U.S.C. § 11101. As a common carrier BNSF is required to provide transportation or service on reasonable request. 49 U.S.C. § 11101. Rules and practices imposed by BNSF must be reasonable. 49 U.S.C. § 10702. Therefore, BNSF may not lawfully refuse to transport a conventional coal car unless it is unreasonable for a customer to request that BNSF transport the conventional coal car without the implementation of the Tariff.

The Board recently held that, as a common carrier, a railroad could not refuse to transport hazardous chemicals through populated areas. Union Pacific RR – Petition for Declaratory Order, STB Fin. Dkt. 35219, served June 11, 2009. Earlier, the Board’s predecessor held that railroads could not refuse to handle spent nuclear fuel and other nuclear waste, a decision upheld by the federal appellate court. U.S. Energy Res. & Development Admin. v. Akron, 359 I.C.C. 639 (1978), *aff’d sub nom. Akron C. & Y.R. Co. v. I.C.C.*, 611 F.2d 1162 (6th Cir. 1979), *cert. denied*, 449 U.S. 830 (1980). Yet BNSF asserts the right to refuse to transport coal in conventional coal cars unless the shippers comply with the requirements of the Tariff.

In support of the Tariff, BNSF has asserted that “coal or coal dust that is emitted from coal cars during transit can have adverse effects on rail roadbeds, and thus overall rail

operations”, 3/ and has even claimed that coal dust emissions caused derailments on the Joint Line in 2005. Yet BNSF has provided no facts to support these claims, and there is strong reason to believe that substandard construction and failure to perform routine track maintenance are the primary causes of the problems BNSF blames on coal dust.

For example, a photograph taken shortly after the 2005 Joint Line derailments showed that a problem area identified by the railroads on the Reno Subdivision (the line serving the Black Thunder and Jacobs Ranch mines) was laid with less than 3 inches of ballast under the ties:



*See Union Pacific Railroad Company, June 9, 2005 – Reno Subdivision – Bridge MP 1.75 Track 2, Lack of Ballast, at [http://www.uprr.com/customers/energy/sprb/slideshow/reno\\_mp175\\_3.shtml](http://www.uprr.com/customers/energy/sprb/slideshow/reno_mp175_3.shtml) (last visited Sept. 30, 2009).*

Upon information and belief, the engineering standards normally applied by UP and BNSF for such concrete ties call for a minimum ballast depth of 12 inches, plus a minimum subballast depth of 6 inches.

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3/ BNSF Railway Marketing News, 05/29/2009, copy attached as Exhibit B.

Likewise, an authoritative independent investigation has ascribed BNSF rail infrastructure problems to flaws in BNSF maintenance practices. In April 2005, slightly over a month before the derailments on the Joint Line, an Amtrak train derailed on a BNSF line near Home Valley, Washington. This line is laid with CWR on concrete ties, as is the Joint Line. Investigation by the National Transportation Safety Board (the "NTSB") concluded that the probable cause of the Home Valley derailment "was the BNSF Railway Company's inadequate response to multiple reports of rough track conditions that were subsequently attributed to excessive concrete crosstie abrasion, which allowed the outer rail to rotate outward and create a wide gage track condition." <sup>4/</sup> The NTSB report describes several specific defects in BNSF's maintenance practices. Photographic evidence indicates the presence on the Joint Line of excessive crosstie degradation in the vicinity of the rail seat (i.e., near the ends of the ties), apparently the same type of problem that the NTSB identified as the physical cause of the Home Valley derailment:

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<sup>4/</sup> See National Transportation Safety Board, Railroad Accident Brief, Accident No. DCA-05-FR-010 (October 18, 2006), as presented at <http://www.nts.gov/publicn/2006/RAB0603.pdf>.



Source: [http://www.uprr.com/customers/energy/sprb/slideshow/reno\\_mp175\\_2.shtml](http://www.uprr.com/customers/energy/sprb/slideshow/reno_mp175_2.shtml).

As a common carrier, BNSF is required to maintain its track and other facilities. BNSF has presented no evidence that coal dust emissions prevent it from doing so.

Furthermore, the specific standard that the Tariff would impose, an “Integrated Dust Value (IDV.2) of [300 or 245] units” per train, is entirely arbitrary. It has not been established that coal dust emissions in excess of this standard would cause the “adverse effects” that supposedly justify the Tariff, or even that BNSF’s coal dust monitoring equipment can reliably measure the actual emissions from a particular train.

Moreover, the coal shipper does not have exclusive control over the amount of coal dust emitted from a train. There are parameters within the exclusive control of the railroad operating the coal train that largely determine coal dust emissions. BNSF’s own dust contractor has previously documented how dust emissions are highly (and non-linearly) related to train

speed. <sup>5/</sup> Other research has suggested that the placement of locomotives at the trailing end of the train can reduce the effects of air turbulence on dust emissions from coal cars. <sup>6/</sup> Coal shippers cannot know the extent of dust control that needs to be provided if BNSF retains control over – and makes no disclosure of – key determinants of coal dust emissions.

In addition, although various methods have been proposed and are being studied by coal shippers to reduce coal dust emissions from trains, there is no generally-accepted technology for reducing coal dust emissions from trains to the level required by the Tariff. Indeed, vendors of the various products being offered to mitigate coal dust emissions uniformly decline to offer any guarantee that use of the product will achieve compliance with the BNSF standard.

Technologies to reduce coal-dust emissions are likely to be very expensive. Vendors of the various products being offered to mitigate coal dust emissions have declined to specify firm pricing commitments. In the absence of pricing commitments from vendors, informal estimates commonly anticipate that costs for chemical toppings will be approximately \$30 per car, or \$0.25 per ton. At PRB volumes in excess of 400 million tons annually, this translates to annual shipper expenditures in excess of \$100 million. Thus, if BNSF is allowed to enforce the Tariff, it will force shippers to pay large sums to third party vendors with no guarantee that these expenditures will result in compliance with the Tariff, because (a) the technology may not work adequately, or (b) BNSF's monitors may not accurately measure the reduction in emissions.

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<sup>5/</sup> Simpson Weather Associates Inc, Norfolk Southern Rail Emission Study (1993).

<sup>6/</sup> McGilvray, M., "QRN Literature Review on Coal Dust Lift Off and Drag Reduction on Coal Wagons" (October 2006).

The Tariff imposes on coal shippers the entire obligation to develop the technology and the entire risk that the technology will not succeed in meeting BNSF's arbitrary standard.

In contrast, there may be little or no additional cost incurred if the effect (if any) of coal dust on rail roadbeds is addressed through proper routine maintenance and, if needed, repair of original construction defects, performed by BNSF.

Coal shippers like AECC are completely dependent on rail service to transport PRB coal to their power-generation plants. If the Tariff is imposed under current circumstances -- that is, with no generally-accepted standard for acceptable levels of coal dust emissions, no generally-accepted methodology for reducing coal dust emissions, and no confidence in BNSF's ability to monitor accurately the amount of coal dust emissions from a train -- it will cause (and is already causing) tremendous uncertainty regarding whether required volumes of PRB coal can be delivered to the power plants that rely on the Joint Line or the Black Hills Subdivision for delivery.

Such a situation not only causes irreparable injury to power generators, but is harmful to the public interest as well. If the Tariff causes the flow of coal from the PRB to be interrupted, the huge segment of the public that depends on electricity from PRB coal would be directly injured. However, even the threat that the flow of PRB coal could be interrupted compels power generators to consider responsive actions, including expanding coal stockpiles and developing alternative sources of fuel, that would be economically inefficient and irrational absent the uncertainty created by the Tariff. In this way, the threat of an interruption to PRB coal supply posed by the Tariff can produce the same types of adverse impacts on power generators, their customers, the cost of producing electricity, the competitiveness of U.S.

industries, and the economy in general as would an actual interruption. A stay of the Tariff would prevent such injury and would be in the public interest.

BNSF would not be substantially harmed if the Board were to enter a preliminary injunction under 49 U.S.C. § 721(b)(4) enjoining BNSF from implementing the Tariff, pending the resolution of AECC's Petition for a Declaratory Order. An injunction would simply maintain the status quo, requiring BNSF to continue to provide transportation service for conventional coal cars as it has been doing for decades. As explained above, there is no evidence that coal dust causes extraordinary operational burdens, particularly if routine track maintenance is performed.

**CONCLUSION**

WHEREFORE, the Board should issue an order enjoining BNSF Railway Company from enforcing Tariff 6041-B, Items 100 and 101, pending the resolution of AECC's Petition for a Declaratory Order.

Respectfully submitted,



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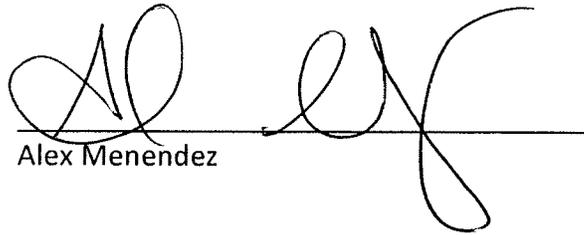
Counsel for Arkansas Electric Cooperative  
Corporation

Dated: October 2, 2009

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of October 2009, I caused a copy of  
the foregoing document to be served by first class mail, postage prepaid, on:

Richard E. Weicher  
BNSF Railway Company  
2500 Lou Menk Drive  
Forth Worth, TX 76131

  
Alex Menendez

PETITION OF  
ARKANSAS ELECTRIC COOPERATIVE CORPORATION  
FOR A STAY

STB Finance Docket No. 35305

# EXHIBIT A

BNSF RAILWAY COMPANY TARIFF 6041-B



**BNSF PRICE LIST 6041-B  
(Cancels BNSF Freight Tariff 6041-A)**

**PROVIDING**

**RULES AND REGULATIONS GOVERNING UNIT TRAIN AND VOLUME ALL-RAIL**

**COAL SERVICE, ALSO ACCESSORIAL SERVICES AND CHARGES THEREFOR**

**APPLYING AS PROVIDED IN PRICE LIST**

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**RULES AND OTHER GOVERNING PROVISIONS****ITEM 20  
AAR INTERCHANGE RULES**

The rules and regulations developed by the AAR, prescribing certain standards for freight car mechanical specifications, repair and damage liability, and the administrative procedures related thereto. These rules are published in the Field Manual and Office Manual of AAR Interchange Rules, as in effect from time-to-time.

**ITEM 30  
COAL**

Bituminous, Sub-bituminous and Lignite Coal with a Standard Transportation Commodity Code (STCC), that with the digits 11-211 series, 11-212 series and 11-221 series. This tariff shall not cover beneficiated, enhanced, or synthetic coal; PROVIDED, HOWEVER, coal treated with additives used exclusively for dust control or to mitigate freezing shall not be considered "enhanced".

**ITEM 40  
LOADING FACILITY**

The equipment necessary to load coal into Trains at origins and any support facilities used in the handling of coal including rail trackage, raw coal hopper, crusher, processing and/or preparation plants, coal storage facilities, load-out silos, and conveyor systems used for moving the coal from the raw coal hopper through all intermediate phases to the storage facilities and/or loading chute.

**ITEM 50  
COAL CARS OR CARS**

An open-top gondola or bottom dump hopper or bottom dump rapid discharge railcar with a designation by The Official Railway Equipment Register of GT or HT.

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**RULES AND OTHER GOVERNING PROVISIONS****ITEM 60  
TRAIN OR UNIT TRAIN**

Any assemblage of coal cars with BNSF supplied locomotives and end-of-train devices necessary for the movement of coal.

**ITEM 80  
UNLOADING FACILITY**

The equipment necessary to unload Unit Trains of coal at a destination, and all support facilities necessary for the unloading of coal to storage, including rail trackage, coal car positioner, rotary dumper or bottom dump unloading system, feeders and hopper, dust collector or dust suppression and conveyor systems.

**ITEM 100  
COAL DUST MITIGATION REQUIREMENTS  
POWER RIVER BASIN JOINT LINE**

Shipper shall ensure that all cars loaded with coal from any mine origin that move over the Joint Line in the Powder River Basin ("PRB") shall be profiled in accordance with BNSF's published template entitled "Redesigned Chute Diagram" located in Appendix A to this publication. The template may also be found on the BNSF website ([www.bnsf.com](http://www.bnsf.com)) using the following tabs: Customer Tools, Equipment Information, Loading Diagrams, Coal.

Effective November 1, 2009, Shipper shall take all steps necessary to ensure that Trains handling cars loaded with Coal from any mine origin that move over the Joint Line shall not emit more than an Integrated Dust Value (IDV.2) of 300 units in order to enhance retention of coal in rail cars. An IDV.2 unit is a measure of the volume of coal dust coming off of the coal train over its entire length. Profiling and any products or appurtenances shall be applied or installed in accord with manufacturer's recommendations, where appropriate.

Any product, device or appurtenance utilized by Shipper or Shipper's mine agents to control the release of coal dust shall not adversely impact railroad employees, property, locomotives or owned rail cars.

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## RULES AND OTHER GOVERNING PROVISIONS

**ITEM 101  
COAL DUST MITIGATION REQUIREMENTS  
BLACK HILLS SUB-DIVISION**

Shipper shall ensure that all cars loaded with coal from any mine origin that move over milepost 558.2 on the Black Hills Subdivision in Wyoming shall be profiled in accordance with BNSF's published template entitled "Redesigned Chute Diagram" located in Appendix A to this publication. The template may also be found on the BNSF website ([www.bnsf.com](http://www.bnsf.com)) using the following tabs: Customer Tools, Equipment Information, Loading Diagrams, Coal.

Effective November 1, 2009, Shipper shall take all steps necessary to ensure that Trains handling cars loaded with Coal from any mine origin that move over the Black Hills Subdivision shall not emit more than an Integrated Dust Value (IDV.2) of 245 units in order to enhance retention of coal in rail cars. An IDV.2 unit is a measure of the volume of coal dust coming off of the coal train over its entire length. Profiling and any products or appurtenances shall be applied or installed in accord with manufacturer's recommendations, where appropriate.

Any product, device or appurtenance utilized by Shipper or Shipper's mine agents to control the release of coal dust shall not adversely impact railroad employees, property, locomotives or owned rail cars.

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## RULES AND OTHER GOVERNING PROVISIONS

**ITEM 110  
LOADING OR UNLOADING FREE TIME**

Shipper shall provide for the efficient loading of coal into Unit Trains at origin and for the efficient unloading of coal from Unit Trains at destination at no expense to BNSF. Upon arrival of a Unit Train at origin, BNSF or the mine's loading crew will move empty Unit Trains through the origin loading facilities at a controlled speed which allows for the full and uniform loading of each coal car. Upon arrival of a Unit Train at destination, BNSF or the destination's unloading crew will move loaded Unit Trains through the unloading system at a controlled speed, or place the Unit Train in proper position as to allow for full unloading of each coal car.

Four (4) hours free time will be allowed to load all coal cars in a Unit Train. The free time at origin shall begin at the time of Actual Placement or Constructive Placement (as defined herein) of the Unit Train for loading ("Loading Free Time"). Shipper will be assessed **\$600 per hour** (or any fraction of an hour) that the completion of loading of a Unit Train and its release for movement is delayed in excess of the Loading Free Time.

Six (6) hours free time will be allowed to unload all coal cars in a Unit Train. Free time at destination shall begin at the time of Actual Placement or Constructive Placement (as defined herein) of the Unit Train for unloading ("Unloading Free Time"). Shipper will be **\$600 per hour** (or for any fraction of an hour) that the completion of unloading of a Unit Train and its release for movement is delayed in excess of the Unloading Free Time.

## RULES AND OTHER GOVERNING PROVISIONS

**ITEM 120**  
**ACTUAL AND CONSTRUCTIVE PLACEMENT**  
**OF A UNIT TRAIN AT ORIGIN OR AT DESTINATION**

“Actual Placement” is made when the Unit Train arrives at the point where BNSF can not proceed without authorization from the mine operator at origin or unloading operator at the destination and the Train crew has requested loading or unloading instructions. If Actual Placement is prevented due to any cause attributable to shipper (or its agent) or shipper (or its agent) is otherwise unable to accept a Unit Train or Unit Trains for loading or unloading upon arrival, the Unit Train may be Constructively Placed.

“Constructive Placement” shall begin once it is determined that Actual Placement cannot be made and shall end when the shipper (or its agent) notifies BNSF that Actual Placement has become possible. Time accrued under Constructive Placement shall apply against Loading Free Time or Unloading Free Time, as the case may be. The time elapsed between the release of a Constructively Placed Unit Train for movement to origin or destination and the Actual Placement of the Unit Train at origin or destination will not be included in the computation of Loading or Unloading Free Time.

Any delay directly attributable to BNSF which prevents a Unit Train from being loaded or unloaded will not be included in the computation of Loading Free Time or Unloading Free Time.

When the total number of unit trains in Actual Placement, Constructive Placement and otherwise held in route for loading at an origin mine exceeds the number of available loading slots/berths by 20% for a period of 5 days or more, BNSF may place unit trains destined for that origin mine on BNSF track for storage and remove the locomotive power. When BNSF determines that (i) the number of unit trains in Actual Placement, Constructive Placement and otherwise held in route for such origin mine no longer exceeds 20%, and (ii) reintroduction of the unit train into the system will not raise the number of trains in Actual Placement, Constructive Placement or otherwise held in route for loading to a point where the number exceeds the available loading slots/berths by 20%, BNSF will remove the coal cars from stored status. At shipper's request and subject to BNSF's consent, BNSF may forward a stored unit train to another available origin mine for loading. Shipper shall pay to BNSF a switch charge of **\$600 per hour** (or any fraction of an hour) for switching unit trains into and out of storage and a storage charge of \$75.00 per coal car per day. In addition, release and pick-up of locomotive power charges shall be paid by the shipper.

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## RULES AND OTHER GOVERNING PROVISIONS

## ITEM 125

## HOLDING OF A LOADED OR EMPTY UNIT TRAIN IN ROUTE

If for reasons not attributable to BNSF a loaded or empty Unit Train must be held in transit due to congestion, mechanical breakdown, planned or unplanned outage or other issue at shipper or shipper's agent's loading or unloading facility, shipper will be assessed **\$600 per hour** (or for any fraction of an hour) commencing at the time that BNSF either determines or is informed that a loaded or empty Unit Train cannot be further advanced and concluding at the time that BNSF is informed by shipper or shipper's agent or BNSF otherwise determines that a Unit Train so held may be advanced. For this purpose, shipper's agent shall include, but is not limited to, a rail carrier other than BNSF which controls train dispatching over a line of railroad serving Origin or Destination.

In the event that in BNSF's sole judgment the locomotive power of a Unit Train so held must be removed shipper shall pay BNSF a release and pick up of power charge of **Item 160 herein**.

If holding the Unit Train requires an out-of-route movement, shipper shall pay out-of-route charges (and Fuel Surcharge) as applicable under **Item 170 herein**.

## ITEM 130

## WEIGHING OF UNIT TRAINS

The weight of the coal in the coal cars will be determined at the origin by shipper (or its agent). BNSF shall not be responsible for such weight determinations. Unless otherwise stipulated, the weights ascertained shall be used for the assessment of the freight charges. Weighing shall be performed on scales inspected in accordance with the then-current NIST Scale Handbook specifications for such scales, and subject to supervision and verification by BNSF (or its agent).

## RULES AND OTHER GOVERNING PROVISIONS

**ITEM 140  
DIVERSION OF A LOADED UNIT TRAIN  
TO AN ALTERNATE DESTINATION.**

At any time following departure of a loaded coal Unit Train from an origin, the shipper that tendered or caused its mine operator to tender such Unit Train to BNSF for subsequent transportation may request that BNSF divert such Unit Train ("Diverted Loaded Train") to an alternative destination identified by shipper. BNSF shall fulfill such request at its sole option, and, where BNSF assents to the request, the following diversion charges will be invoiced to shipper:

1. Shipper shall pay an administration fee of **\$1,000 per occurrence**.
2. When shipper, at the time of a diversion request, is not able to identify the alternative destination for a Diverted Loaded Train, shipper shall pay **\$600 per hour** (or fraction of an hour) that a Diverted Loaded Train is held in transit pending shipper's identification of the alternative destination.
3. Shipper shall pay **\$0.025 per ton** of lading ("Net Ton") for each additional mile that a Diverted Loaded Train actually moves beyond the total miles it would have moved had the Diverted Loaded Train traveled directly from the origin to its alternative destination (for example: 100 miles x 13,000 Net Tons x \$0.025 cents = \$32,500), and a Mileage-Based Coal Fuel Surcharge pursuant to BNSF Rules Book 6100-series, Item 3381.

Payment of the diversion fees identified in this Item shall not release tendering shipper from any existing obligation to pay the freight charges that applied upon tender of the loaded Unit Train to BNSF; provided, however, that where a third-party consignor has agreed to accept delivery of a Diverted Loaded Train and to pay applicable freight charges for delivery to the identified alternative destination, BNSF will not seek payment of applicable underlying freight charges from the original shipper.

## RULES AND OTHER GOVERNING PROVISIONS

**ITEM 150  
DIVERSION OF AN EMPTY UNIT TRAIN  
TO AN ALTERNATE ORIGIN**

Unit trains shall be deemed to be in service between the origin and destination of the immediately preceding coal shipment made, provided however, diversion to any other applicable origin will be authorized by BNSF without additional charge to the shipper provided that notice of such requested diversion is received by designated BNSF personnel prior to release of empty Unit Train at the destination. When shipper's requested diversion is received by designated BNSF personnel subsequent to the release of empty Unit Train at the destination ("Diverted Empty Train"), BNSF shall fulfill such request at its sole option, and, where BNSF assents to the request, BNSF reserves the right to invoice the shipper for the following diversion charges:

1. Shipper shall pay an administration fee of **\$1,000 per occurrence**.
2. When shipper, at the time of a diversion request, is not able to identify the alternative origin for a Diverted Empty Train, shipper shall pay **\$600 per hour** (or fraction of an hour) that a Diverted Empty Train is held in transit pending shipper's identification of the alternative origin).
3. Shipper shall pay out-of-route charges (and Fuel Surcharge) as applicable under Item 170 herein.

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## RULES AND OTHER GOVERNING PROVISIONS

**ITEM 160  
RELEASE AND/OR PICK-UP OF  
LOCOMOTIVE POWER AND CREWS**

Upon reasonable request by shipper, or as required by other items herein, BNSF will deliver a Unit Train to a maintenance facility, storage track, interchange point or other location on the route-of-movement. If release of locomotive power is required, shipper shall pay BNSF a release of power charge of **\$2,000 per occurrence** plus any miscellaneous switching charges that may apply.

Upon reasonable request by shipper, or as required by other items herein, BNSF will pick-up a Unit Train from a maintenance facility, storage track, interchange point or other location on the route-of-movement. If BNSF supplies locomotive power, shipper shall pay BNSF a pick-up of power charge of **\$2,000 per occurrence** plus any miscellaneous switching charges that may apply.

If BNSF arrives with locomotive power at an interchange point, maintenance facility, storage track or other location on the route-of-movement to drop-off or pick-up a Unit Train and the location or Unit Train is not available for any reason an additional charge of **\$2,000 per occurrence** shall apply.

**ITEM 170  
"OUT-OF-ROUTE" CHARGES FOR  
TRANSPORTING EMPTY COAL CARS.**

Movement of new or empty coal cars that are out-of-route from an existing transportation agreement or other rate authority will be rated using the prevailing rates published in BNSF 90020. Pricing information can be retrieved at [www.bnsf.com](http://www.bnsf.com) under the following link:

[http://www.bnsf.com/bnsf.was6/epd/EPDController?FCGCODE=21&FCGDESC=Goverment%2FMachinery&BUCODE=04&PAGE=PRC\\_AUTH&EPDACTION=DisplayPriceAuthority](http://www.bnsf.com/bnsf.was6/epd/EPDController?FCGCODE=21&FCGDESC=Goverment%2FMachinery&BUCODE=04&PAGE=PRC_AUTH&EPDACTION=DisplayPriceAuthority)

New rail cars move under Standard Transportation Commodity Code ("STCC") 37-422-13 and used empty railcars move under STCC 37-422-14.

In BNSF 90020, the minimum charge per car is listed in Item 1000 and the rate per mile is listed in Item 1020. (For example, on January 1, 2009 the minimum charge for 0 to 354 miles was \$505 per car (Item 1000 p. 5) and the rate per mile from 355 to 9999 miles was \$1.45 per mile (Item 1020 p. 5). Consult these cited items for the current charge.)

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## RULES AND OTHER GOVERNING PROVISIONS

**ITEM 190  
PLACEMENT AND PICK-UP OF LOADED  
OR EMPTY PRIVATE COAL CARS ON SHIPPER SUPPLIED TRACKS**

Upon request by the shipper and if shipper or privately owned track is available at origin, destination or within the route-of-movement, BNSF will place loaded or empty coal cars on such tracks. Upon subsequent request by the shipper, BNSF will remove the coal cars from such storage and return it to service. Shipper shall pay BNSF a charge **\$600 per hour** (or for any fraction of an hour) for such switching services plus any applicable release or pick-up of locomotive power, out-of-route charges or miscellaneous switching charges.

**ITEM 200  
PLACEMENT, STORAGE AND PICK-UP OF LOADED  
OR EMPTY PRIVATE COAL CARS ON BNSF SUPPLIED TRACKS**

Upon request by the shipper and if BNSF track is available, BNSF will place empty shipper coal cars (single coal cars or small blocks of coal cars less than a Unit Train) on BNSF track for storage. Upon subsequent request by the shipper, BNSF will remove the empty coal cars from such storage and return them to service. Shipper shall pay to BNSF a switch charge of **\$600 per hour** (or any fraction of an hour) for switching coal cars into and out of storage and a storage charge of **\$75.00 per coal car per day**.

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## RULES AND OTHER GOVERNING PROVISIONS

**ITEM 210  
SWITCHING OF OVERLOADED CARS**

The maximum gross weight for any coal car transported pursuant to this price list, including lading and coal car tare weight, shall be the maximum gross weight of the coal car as listed in the UMLER file but not to exceed the gross weight on rail ("GWOR") of 286,000 pounds. When the weight of any loaded coal car is in the excess of the maximum gross weight of the car, it will be the responsibility of the shipper to remove the excess coal from the coal car.

If overloaded coal cars are discovered at the origin, shipper (or its agent) will unload the excess coal for the coal cars and shipper will be assessed a switching charge of \$600 per hour (or for any fraction of an hour) in addition to any other applicable charges.

If overloaded coal cars are discovered in route then BNSF shall remove the overloaded cars from the unit train and notify the shipper by any reasonable means. Shipper (or its agent), shall arrange to remove the excess coal at the shipper's expense. If an overloaded coal car is removed from the unit train, shipper shall pay to BNSF a switch charge of **\$600 per hour** (or for any fraction of an hour) for removal and **\$75 per car per day** (or fraction of a day) for storage on BNSF tracks. Such switching fee shall be assessed upon the return of the coal car for movement to its destination.

BNSF has the right to refuse to accept or refuse to transport an overloaded coal car. If the overloaded coal car is not reasonably accessible to shipper, BNSF shall assist shipper in arranging access to the overloaded coal car.

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## RULES AND OTHER GOVERNING PROVISIONS

**ITEM 220  
MISCELLANEOUS HANDLING OF COAL CARS**

BNSF will provide the following handling services at no charge to the shipper: (a) Switching required to remove coal cars for routine repairs performed pursuant to the AAR Interchange Rules, including both switching out of coal cars needing such repair and/or switching in of spare empty coal cars in substitution for coal cars in need of such routine repair and (b) Switching of coal cars that BNSF placed in a Unit Train with the rotary end misaligned. All other miscellaneous services performed that are not required for normal Train operation (including but not exclusive of; stripe alignment of coal cars when misalignment is not due to BNSF, connecting and disconnecting dump line hoses, gagging and un-gagging rapid discharge coal car hot shoes, etc.) shall be subject to a charge of **\$600 per hour** (or for any fraction of an hour).

**ITEM 230  
RESIDUAL COAL PROVISIONS**

Residual coal is coal which remains in a coal car after the completion of the unloading process at destination, including coal which remains in a coal car after the shipper has attempted to loosen or thaw frozen coal.

Shipper will be responsible for the complete unloading of coal cars and securing of coal car doors prior to departure of an empty Unit Train from its destination. If BNSF discovers residual coal in any coal car in the Unit Train after such Unit Train has departed destination, and such residual coal results in an unsafe condition (for example, residual coal accumulated on one side or end of the car causing the car to become unbalanced), BNSF may remove such coal car from the Unit Train. Shipper shall pay to BNSF a charge **\$600 per hour** (or fraction of an hour) for switching services required to set out and pick up any such coal car plus for storage of the coal car in **Item 200** plus any applicable out-of-route charges in **Item 170**. Shipper will be responsible for the removal of the residual coal.

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## RULES AND OTHER GOVERNING PROVISIONS

**ITEM 250  
SCALE TESTING AT ABSALOKA MINE**

The scale test for Absaloka Mine, Kuehn, MT is initiated by moving a consist of empty coal cars from Forsyth, MT to Colstrip, MT and weighing them empty. The cars will then be transported empty to Absaloka (via Forsyth, MT) for loading. Once loaded the coal cars will be taken back to Colstrip for re-weighing and then taken to Forsyth for eventual entrainment to Shipper's destination. For transporting coal cars into and out of Colstrip, into and out of Absaloka, and into and out of Colstrip, MT again, Shipper shall pay to BNSF a charge of **\$1,000 per car (with a minimum charge of \$10,000 per occurrence)**.

**ITEM 260  
COAL UNIT TRAIN FORECASTING PROTOCOL**

In order to help coordinate the transportation of unit trains, shipper shall provide all coal tonnage projections and origin mine, as shipper's agent, shall supply all coal loading projections that are required by the program known as BNSF's "Coal Forecasting Tool" or any successor program and shall adhere to the mine slotting/berthing protocol contained therein.

**ITEM 270  
PRE-RELEASE FOR EMPTY COAL TRAINS**

Shipper or Shipper's agent at Destination shall pre-release empty Coal trains using the Pre-Release Web feature at [www.bnsf.com](http://www.bnsf.com) and following the attached Pre-Release Web instructions. The "Pre-Release" feature allows Shippers to notify BNSF of an estimated time when the train will be unloaded, several hours in advance of completion the train's unloading and release. Shipper or Shipper's agent can register by clicking on the "Register/Login Customer" link on the BNSF Home Page. Shipper or Shipper's agent can also access the Pre-Release Web feature through BNSF's Voice Customer Recognition (VCR) phone system. To access the VCR system, please call 888-428-2673, Option 2, and follow the Pre-Release VCR instructions. Please Note: Item 270 Pre-Release For Empty Coal Trains is only applicable to customers directly served by BNSF.

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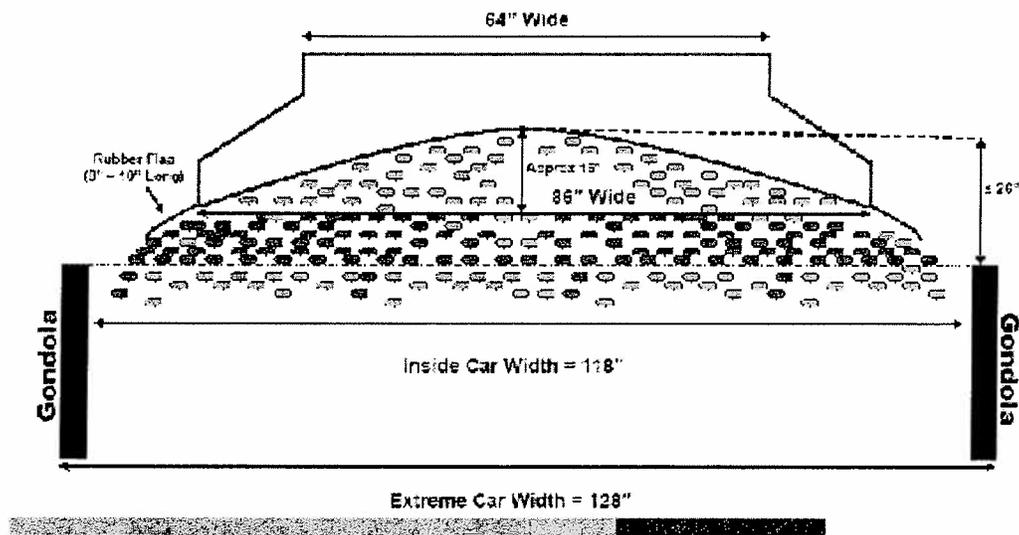
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RULES AND OTHER GOVERNING PROVISIONS

APPENDIX A

REDESIGNED CHUTE DIAGRAM

# Redesigned Chute Diagram

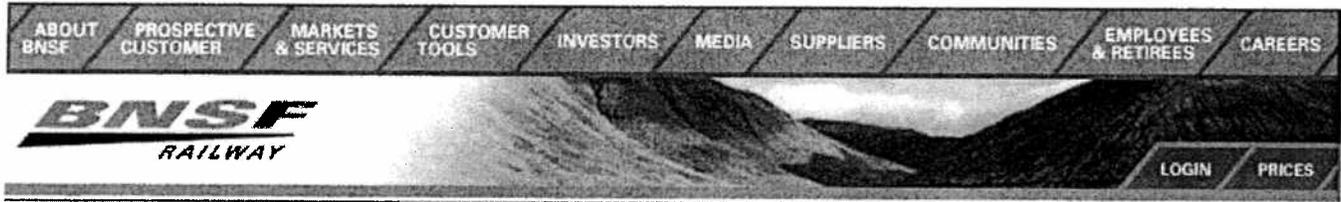


PETITION OF  
ARKANSAS ELECTRIC COOPERATIVE CORPORATION  
FOR A STAY

STB Finance Docket No. 35305

# EXHIBIT B

BNSF RAILWAY MARKETING NEWS (MAY 29, 2009)



# MarketingNews

[Back](#) / [Customer Updates Home](#)

Customer Updates are designed to inform BNSF customers of new developments or changes relating to BNSF products, services, tools, prices or facilities.

To: **BNSF Coal Customers**

05/29/2009

## Coal Dust Mitigation Requirements For Black Hills Subdivision Effective November 1, 2009

As advised in *Marketing News* on May 15, 2009, BNSF has imposed limits on the amount of coal dust that can be emitted from coal cars that traverse the Powder River Basin Joint Line. **Effective November 1, 2009**, BNSF will also impose coal dust limits for shipments along the **Black Hills Subdivision** in Wyoming.

As you may be aware, coal or coal dust that is emitted from coal cars during transit can have adverse effects on rail roadbeds, and thus overall rail operations. BNSF is imposing these limits in order to help mitigate its negative effects.

This rule has been added to [BNSF Tariff 6041-B](#), Item 101, Coal Dust Mitigation Requirements:

*"Shipper shall ensure that all cars loaded with coal from any mine origin that move over milepost 558.2 on the Black Hills Subdivision in Wyoming shall be profiled in accordance with BNSF's published template entitled "Redesigned Chute Diagram" located in Appendix A to this publication. The template may also be found on the BNSF website ([www.bnsf.com](http://www.bnsf.com)) using the following tabs: Customer Tools, Equipment Information, Loading Diagrams, Coal.*

*Effective November 1, 2009, Shipper shall take all steps necessary to ensure that Trains handling cars loaded with Coal from any mine origin that move over the Black Hills Subdivision shall not emit more than an Integrated Dust Value (IDV.2) of 245 units in order to enhance retention of coal in rail cars. An IDV.2 unit is a measure of the volume of coal dust coming off of the coal train over its entire length. Profiling and any products or appurtenances shall be applied or installed in accord with manufacturer's recommendations, where appropriate.*

*Any product, device or appurtenance utilized by Shipper or Shipper's mine agents to control the release of coal dust shall not adversely impact railroad employees, property, locomotives or owned rail cars."*

BNSF's TrackSide Monitor (TSM) technology will measure the amount of dustfall and BNSF coal customers will be notified if their coal dust exceeds the amount designated in the tariff to help with prevention.

If you have any questions, please contact your BNSF Marketing Representative.

Your business is important to us. Thank you for choosing BNSF Railway as your transportation service provider.

If you have any questions, please send an email to [Customer.Notifications@bnsf.com](mailto:Customer.Notifications@bnsf.com)

Report railroad emergencies: [BNSF Resource Protection Team \(800.832.5452\)](#)

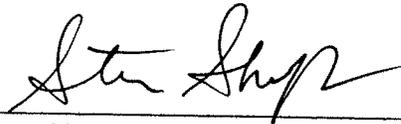
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## VERIFICATION

My name is Steve Sharp. I am Principal Engineer – Fuels & Civil for Arkansas Electric Cooperative Corporation.

I declare under penalty of perjury that the facts set forth in the foregoing document are true and correct. Further, I certify that I am qualified and authorized to file this document.



Steve Sharp

Executed on SEPT. 30, 2009