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October 21, 2009

Joe Rebein

The Honorable Anne K. Quinlan
Acting Secretary
Surface Transportation Board
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Washington, D.C. 20423

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Re: Surface Transportation Board Finance Docket No. 35305

Dear Secretary Quinlan:

Enclosed for filing in the above-referenced proceeding is an original and ten copies of Union Pacific Railroad Company's Petition to Intervene. We have also enclosed a check in the amount of \$250.00, the basic fee for STB adjudicatory services not otherwise covered.

An additional copy is enclosed for date stamp and return to our messenger. Please note that a CD-ROM is enclosed containing a PDF version of the document.

If you have any questions, please feel free to contact me.

Sincerely,

Joe Rebein

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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 35305

**PETITION OF UNION PACIFIC RAILROAD COMPANY
TO INTERVENE**

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Dated: October 21, 2009

**Attorneys for Union Pacific Railroad
Company**

**BEFORE THE
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TO INTERVENE**

Union Pacific Railroad Company ("Union Pacific") requests leave to intervene in this proceeding pursuant to 49 C.F.R. 1112.4 and any other applicable rule of the Board (e.g., 49 C.F.R. 1113.7). This proceeding was brought by Arkansas Electric Cooperative Corporation ("AECC") and alleges that BNSF Railway Company's ("BNSF") Tariff 6041-B (Items 100 and 101) represent an unreasonable rule or practice and constitute a refusal to provide service in violation of BNSF's common carrier obligations. Item 100 of Tariff 6041-B concerns coal car profiling and train coal dust emissions of shippers using the Joint Line, a rail line that AECC acknowledges is co-owned by Union Pacific.

Union Pacific's Interest and Position in the Proceeding

If the Board institutes the proceeding requested by AECC, Union Pacific's interests as a co-owner of the Joint Line, as a transporter of coal originating on the Joint Line for AECC and other customers, and as a rail carrier that operates and maintains its own lines that transport SPRB coal qualify Union Pacific to participate in such a proceeding to protect its interests under the Board's rules.

The Board may grant a petition to intervene in a modified proceeding if the intervention "will not unduly disrupt the schedule for filing verified statements" and will

“not unduly broaden the issues raised in the proceeding,” upon petitioner’s showing of its interest in and position regarding the proceeding, along with any request for relief. 49 C.F.R. 1112.4. Similarly, in non-modified proceedings, leave to intervene may be granted when the petitioner has “addressed issues reasonably pertinent to the issues already presented and which do not unduly broaden them.” 49 C.F.R. 1113.7.¹ Under either Rule, Union Pacific should be granted leave to intervene. Union Pacific has several interests that would be affected by the Board’s decisions on the issues raised by AECC and our intervention would not unduly broaden or delay the proceeding.

Union Pacific’s roles as a co-owner of the Joint Line, a rail carrier who operates over the Joint Line and a rail carrier who transports SPRB coal on its own lines confer rights and responsibilities that would be affected by the Board’s decision on AECC’s petitions. First, Union Pacific and BNSF each own 50% of the Joint Line, a 102-mile stretch of railroad used to serve eleven coal mines and transport coal from Wyoming’s Powder River Basin. Under the ICC-approved Joint Line Agreement entered into by BNSF’s and Union Pacific’s predecessors, BNSF is the operating carrier, and Union Pacific pays BNSF for its share of the cost of repair and maintenance on the Joint Line, including the costs of coal dust removal. As a co-owner of the Joint Line, Union Pacific has an interest in coal dust emissions and deposits on the Joint Line track and road bed.

Second, Union Pacific has an interest in the movement of rail coal cars over the Joint Line and any potential application of BNSF’s Tariff 6041-B Item 100 to trains operated by Union Pacific. Union Pacific transports coal from the SPRB to AECC’s

¹ A petition to intervene in non-modified proceedings generally should be filed prior to the hearing and must “set forth the grounds for the proposed intervention, the position and interest of the petitioner,” and the petitioner’s position with respect to the relief sought. 49 C.F.R. 1113.7(b).

destinations and other Union Pacific customers via the Joint Line. AECC suggests that BNSF may apply BNSF Tariff 6041-B Item 100 to Union Pacific operated trains, such as those transporting coal to AECC plants, by refusing to allow non-complying trains to move over the Joint Line. AECC Petition for Stay at 1. Union Pacific has an interest in the Board's resolution of those allegations. Union Pacific deserves to be heard on whether BNSF may use the Item 100 to stop trains operated by Union Pacific for its customers, whether under contract or tariff.

Third, coal dust problems extend beyond the Joint Line to rail lines that are owned, operated or managed by Union Pacific. This includes the track bed along Union Pacific's coal network running from Shawnee Junction in southeastern Wyoming to Fremont, Nebraska and south on its Marysville Subdivision to Topeka, Kansas, covering approximately 1,500 miles. The deposition of coal dust along the Joint Line and Union Pacific coal routes is a serious issue. Coal dust continues to accumulate on coal routes despite ongoing efforts to remove it. Given the pernicious characteristics of coal dust in the track bed and increasing evidence of deposition beyond the Joint Line, Union Pacific believes that preventing coal dust emissions is both necessary and appropriate. Union Pacific's various roles confer a real interest in the adoption of and compliance with reasonable coal dust mitigation measures for SPRB coal.

Finally, Union Pacific's intervention will neither unduly broaden the issues raised in the proceeding nor unduly disrupt the proceeding. AECC's Petition was filed on October 2, 2009, and no schedule has yet been entered that governs this proceeding. Due to the early stage of this proceeding, no party will be prejudiced by Union Pacific's intervention. Furthermore, Union Pacific's participation will not broaden the issues

raised by AECC in this proceeding, but will broaden the perspective submitted on the record available to the Board.

CONCLUSION

Because Union Pacific has a significant interest in the proceeding and our intervention will neither unduly broaden the issues presented nor contribute to any unnecessary delay in the resolution of those issues, Union Pacific's motion to intervene should be granted.

Dated: October 21, 2009

Respectfully submitted,

By:



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CERTIFICATE OF SERVICE

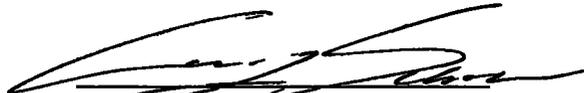
I hereby certify that on this 21st day of October 2009, I caused a copy of the foregoing document to be served by first class mail, postage prepaid, on the following:

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Corey Schaecher