

**BEFORE THE
SURFACE TRANSPORTATION BOARD
Washington, DC 20423**

In the Matter of:

**UNION PACIFIC RAILROAD
COMPANY—PETITION FOR
DECLARATORY ORDER**

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) **STB FINANCE DOCKET NO. 35021**
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)

**REPLY OF
ARKANSAS ELECTRIC COOPERATIVE CORPORATION**

Arkansas Electric Cooperative Corporation (“AECC”) respectfully submits this Reply in response to the petition for declaratory order submitted by Union Pacific Railroad Company (UP) on April 26, and the Board’s decision dated May 4.¹

UP describes a scenario in which PRB coal shippers made worse off by UP’s new fuel surcharge methodology seek to retain use of the prior methodology. While UP attempts to characterize the conduct of such shippers as cherry-picking, UP does not demonstrate that its new methodology establishes an improved or reasonable correspondence to actual fuel use. Indeed, UP has chosen not to publish its “methodology” for fuel surcharges on PRB coal shipments at all.² Instead, it simply notifies individual shippers of new surcharge levels without the benefit of any public disclosure or reference to any consistent methodology. As a result, neither shippers nor

¹ AECC and its interest in matters related to rail fuel surcharges are described its Comments in STB Ex Parte No. 661 (October 2, 2006).

² See, for example, <http://www.uprr.com/customers/updates/2007/0321.shtml>.

the Board can have any foundation for concluding that UP's new surcharges bear a closer correspondence to actual fuel use than did UP's original methodology.

This problem has been exacerbated by a unilateral action by the AAR to terminate public licensing of an important analytical tool. The "Train Energy Model" (TEM) is recognized throughout the industry as authoritative source of fuel use estimates for individual train movements. Its accuracy under various circumstances has been validated, and when properly run its use leaves little room for disagreement between railroads and customers regarding the actual fuel use to which a given surcharge should correspond.

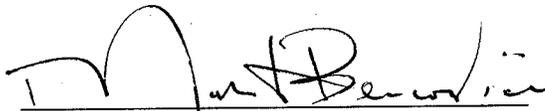
Despite the Board's establishment of actual fuel use as the primary standard against which the reasonableness of fuel surcharge procedures should be measured, the AAR recently stopped licensing the TEM to outside parties. This action has created a serious information vacuum, since most of the other valid fuel use estimation software is proprietary and resides in the computers of firms whose livelihood depends on work for the railroads.

The most ironic feature of the AAR's action is that it fosters the type of controversy that has precipitated UP's instant petition. In general, a rational shipper would not waste effort litigating a case in which the railroad could effectively defend a surcharge based on the benchmark of actual fuel use. However, without such a benchmark, a shipper will only know if its surcharge has gone up or down and will tend to react accordingly. The railroads apparently have concluded that the litigation risks associated with this scenario are outweighed by the latitude it provides for railroads to continue to apply surcharges that do not correspond to actual fuel use.

In addressing UP's petition, the Board should retain a proper focus on actual fuel use as the central determinant of the reasonableness of specific fuel surcharge practices. It should not prematurely endorse the validity of untested methodologies, and should continue to promote transparency and validity to the extent feasible.

Respectfully submitted,

Arkansas Electric Cooperative Corporation



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May 8, 2007

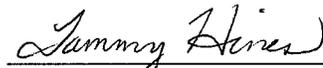
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Certificate of Service

I, Tammy Hines, a secretary in the law firm of Keller and Heckman, LLP, hereby certify that on this 8th day of May, 2007, I have served a copy of the foregoing Reply of Arkansas Electric Cooperative Corporation on the following by first class mail, postage prepaid:

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