

227480

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Finance Docket No. 35305

**PETITION OF ARKANSAS ELECTRIC COOPERATIVE CORPORATION
FOR A DECLARATORY ORDER**

**MOTION OF
ARKANSAS ELECTRIC COOPERATIVE CORPORATION
TO STRIKE BNSF RAILWAY'S
DESIGNATION OF GREGORY FOX TO ARGUE**

**ENTERED
Office of Proceedings**

JUL 22 2010

**Part of
Public Record**

Arkansas Electric Cooperative Corporation (AECC) objects to and moves to strike the untimely 1/ notice of BNSF Railway Company (BNSF) that its Vice President-Transportation will argue on its behalf at the hearing scheduled by the Board on July 29, 2010.

The evidentiary record in this case is closed. The Board has made clear that the purpose of the July 29 hearing is for the Board to receive oral argument from counsel regarding the existing record, not to provide a particular party an opportunity to present additional evidence. The Board's notice of this hearing, served June 10, 2010 repeatedly referred to "counsel who will be arguing". The Board also said that:

1/ The Board's decision served June 10, 2010 required that each party file a notice "identifying counsel who will be arguing" by no later than June 18, 2010. BNSF's notice was filed July 21, 2010, more than a month after the deadline.

No additional written comments may be filed in connection with the hearing, as an extensive written record on the issues to be addressed has already been developed in this proceeding.

STB Decision, Served June 10, 2010, at 1.

Mr. Fox is not counsel, he is a witness. He testified on BNSF's behalf in its Opening Evidence. Adding him to the list of two BNSF counsel who are already scheduled to argue can only be an attempt by BNSF to gain an opportunity to add final and unrebuttable evidence to its case, and to circumvent the Board's prohibition of "additional written comments". This would be unfair and prejudicial to AECC and to all other parties to this proceeding who have observed the rules set by the Board.

AECC respectfully requests that Mr. Fox's name be stricken from the list of counsel who will be arguing.

Respectfully submitted,



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Counsel for Arkansas Electric Cooperative
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Dated: July 22, 2010

CERTIFICATE OF SERVICE

I hereby certify that on this 22d day of July, 2010, I caused a copy of the foregoing to be served via electronic service on all parties of record on the service list in this action.

A handwritten signature in black ink, consisting of stylized, overlapping loops and lines, positioned above a horizontal line.

Alex Menendez