

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

ARKANSAS ELECTRIC COOPERATIVE) CORPORATION – PETITION FOR) DECLARATORY ORDER)	Finance Docket No. 35305
--	--------------------------

**MOTION FOR A HOUSEKEEPING STAY BY
COAL SHIPPER ORGANIZATIONS**

The Western Coal Traffic League (“WCTL”), American Public Power Association (“APPA”), Edison Electric Institute (“EEI”), and National Rural Electric Cooperative Association (“NRECA”) (collectively, “Coal Shipper Organizations”) respectfully file this Motion For A Housekeeping Stay and in support hereof state as follows:

(1) BNSF Railway Company’s (“BNSF”) Coal Dust Tariff Items (BNSF Price List 6041-B, Items 100 and 101) are scheduled to go into effect on October 1, 2010.

(2) BNSF has denied a request made by affected rail shippers to extend the October 1, 2010 effective date until the effective date of the Board’s anticipated merits decision in this case (*see* appended correspondence in Attachment 1).

(3) In light of BNSF's refusal to take voluntary action (and assuming that the Board does not decide the merits of this case by October 1, 2010), Coal Shipper Organizations hereby respectfully request that the Board issue a housekeeping order directing that the effective date of the Coal Dust Tariff Items be stayed pending further order of the Board.¹

(4) Granting the requested housekeeping stay is fully supported by Board precedent. *See, e.g., Minnesota Power, Inc. v. Duluth, Missabe and Iron Range Ry.*, STB Docket No. 42038 (STB served April 18, 2000) (Board issues housekeeping stay “[i]n light of the substantial startup costs” to comply with the stayed action and “to permit the orderly consideration of the arguments raised” by the parties in the proceeding); *ABC & D Recycling, Inc. – Lease and Operation Exemption – A Line of Railroad in Ware, Mass.*, STB Finance Docket No. 35397 (STB served Aug. 26, 2010) (Board issues housekeeping stay “to provide the Board sufficient time to fully consider the issues presented” by the parties). Here, as in the cited cases, the “startup costs” affected shippers face to comply with BNSF's proposed Coal Dust Tariff Items are “substantial” and will be unnecessarily incurred if the Board finds BNSF's publication of the Items constitutes an unreasonable practice, as Coal Shipper Organizations and other

¹ Coal Shipper Organizations are aware of a separate motion for stay in this matter by Arkansas Electric Cooperative Corporation. While Coal Shipper Organizations believe a housekeeping matter of the nature involved here does not require the type of showing advanced in that motion, Coal Shipper Organizations support the relief requested.

shipper parties in this proceeding have requested. Similarly, “orderly consideration” of the issues of industry-wide importance raised in this case requires that the Board first decide the case on the merits, before the challenged rules go into effect, because the Board’s merits decision will determine whether these Items can become lawfully effective.

(5) Finally, granting the requested housekeeping stay is consistent with BNSF’s prior representations to the Board tying the effective date, if any, of the Coal Dust Tariff Items to the issuance of the Board’s final merits decision. *See, e.g.,* BNSF’s Rebuttal Evidence and Argument at 5 n.1 (filed June 4, 2010) (“BNSF has extended its suspension of the effective date of the challenged rules until October 1, 2010, to give the Board sufficient opportunity to address the issues raised by the commenting parties.”).

WHEREFORE, for the reasons set forth above, Coal Shipper Organizations respectfully request that the Board grant this Motion.

Respectfully submitted

By: /s/ John H. LeSeur
William L. Slover
John H. LeSeur
Peter A. Pfohl
Slover & Loftus LLP
1224 Seventeenth St., N.W.
Washington, D.C. 20036
(202) 347-7170

*Attorneys for Western Coal
Traffic League*

/s/ Michael F. McBride
Michael F. McBride
Van Ness Feldman, PC
1050 Thomas Jefferson Street, N.W.
Suite 700
Washington, D.C. 20007-3877
(202) 298-1800

*Attorney for American Public Power
Association, Edison Electric Institute,
and National Rural Electric
Cooperative Association*

Dated: September 30, 2010

CERTIFICATE OF SERVICE

I hereby certify that this 30th day of September, 2010, I have caused the forgoing Motion For A Housekeeping Stay by Coal Shipper Organizations to be served electronically on counsel for BNSF and Arkansas Electric Cooperative Corporation, and by first-class mail on all other parties of record.

/s/ Peter A. Pfohl

Peter A. Pfohl

STEPTOE & JOHNSON LLP

ATTORNEYS AT LAW

Attachment 1

Page 1 of 3

Samuel M. Sipe Jr.
202.429.6486
ssipe@steptoe.com

1330 Connecticut Avenue, NW
Washington, DC 20036-1795
Tel 202.429.3000
Fax 202.429.3902
steptoe.com

September 29, 2010

Eric Von Salzen
McLeod, Watkinson & Miller
One Massachusetts Ave., NW
Suite 800
Washington, DC 20001-1401

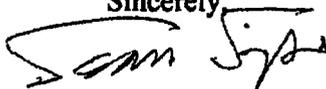
RE: Petition of Arkansas Electric Cooperative Corporation For A
Declaratory Order, STB Finance Docket No. 35305

Dear Eric:

I am responding to your September 27, 2010 letter in which you request that BNSF Railway Company ("BNSF") suspend its coal dust emissions standards until the effective date of a decision by the STB in the above-referenced Finance Docket.

BNSF does not believe that any further delay in the effective date of its coal dust standards beyond October 1, 2010 is necessary or appropriate. The evidentiary record in this proceeding has been closed for almost 4 months, and we expect that the Board will issue a decision soon. In addition, as you know, BNSF has not established any specific measures to enforce compliance with its coal dust emissions standards. BNSF has also committed to provide at least 60 days notice before applying enforcement measures against any common carrier shipper that is not in compliance with the standards. If BNSF determines that it needs to establish or publish enforcement measures to ensure compliance with its standards, there will be ample opportunity for any affected shippers to seek the Board's intervention if they wish to do so.

Sincerely,



Samuel M. Sipe, Jr.

cc: Alex Menendez
Sandra L. Brown
Kelvin J. Dowd
John H. LeSeur
C. Michael Loftus
Frank J. Pergolizzi

LAW OFFICE

Attachment 1

Page 2 of 3

MCLEOD, WATKINSON & MILLER

MICHAEL R. MCLEOD
WAYNE R. WATKINSON
MARC E. MILLER
RICHARD T. ROSSIER
DEVARIESTE CURRY
RICHARD PASCO
ALEX MENENDEZ
AMY B. JONES
CHRISTOPHER J. SALISBURY
LIS KIDDER
NATHANIEL GORDON-CLARK

ONE MASSACHUSETTS AVENUE, N.W.
SUITE 800
WASHINGTON, DC 20001-1401
(202) 842-2345
TELECOPY (202) 408-7763

ROBERT RANDALL GREEN
LAURA L. PHELPS
DAVID R. GRAVES
WILLIAM E. O'CONNOR, JR.
GOVERNMENT RELATIONS

ERIC VON SALZEN
OF COUNSEL

September 27, 2010

Via email to ssipe@steptoe.com

Samuel M. Sipe, Jr., Esq.
Steptoe & Johnson LLP
1330 Connecticut Avenue, N.W.
Washington, DC 20036-1795

RE: Petition of Arkansas Electric Cooperative Corporation For a
Declaratory Order, STB Finance Docket No. 35305

Dear Sam,

BNSF Railway (BNSF) has announced that its coal dust tariff will take effect on October 1, 2010, unless disapproved by the Surface Transportation Board (STB) before then. Given that the Board has yet to issue its ruling, Arkansas Electric Cooperative Corporation (AECC) requests that BNSF voluntarily suspend the effective date of its tariff until the effective date of the STB's decision ruling on the merits.

We would appreciate your prompt response to this request. AECC reserves the right to ask the STB to stay the tariff if BNSF does not suspend it voluntarily.

I am authorized to say that Ameren and Western Coal Traffic League join in this request.

You can reach me by email at vonsalz@aol.com or by telephone at (910) 235-5274 (home/office), or (910) 986-1513 (mobile).

Thank you for your prompt attention.

Samuel M. Sipe, Jr., Esq.

September 27, 2010

Page 2

Sincerely,

A handwritten signature in black ink, consisting of a stylized, cursive 'E' followed by 'V' and 'S'.

Eric Von Salzen

cc: Mr. Steve Sharp, AECC
Alex Menendez, Esq.
Sandra L. Brown, Esq.
Kelvin J. Dowd, Esq.
John H. Leseur, Esq.
C. Michael Loftus, Esq.,
Frank J. Pergolizzi, Esq.

Anthony J. LaRocca, Esq. (alarocca@steptoe.com)

Kathryn J. Gainey, Esq. (kgainey@steptoe.com)