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BEFORE THE  
SURFACE TRANSPORTATION BOARD

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STB Finance Docket No. 35305

PETITION OF ARKANSAS ELECTRIC COOPERATIVE  
CORPORATION FOR A DECLARATORY ORDER

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ARKANSAS ELECTRIC COOPERATIVE CORPORATION'S  
MOTION TO COMPEL DISCOVERY FROM  
BNSF RAILWAY COMPANY

ENTERED  
Office of Proceedings

FEB 12 2010

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Public Record

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Dated: February 11, 2010

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Pursuant to 49 C.F.R. Part 1114.31, Arkansas Electric Cooperative Corporation ("AECC") moves for an order compelling BNSF Railway Company ("BNSF") to produce documents and information responsive to AECC's First Interrogatories and Request for Production of Documents ("Discovery Requests"). A copy of the Discovery Requests is attached hereto as Exhibit A. A copy of BNSF's Responses and Objections to the Discovery Requests is attached hereto as Exhibit B.

**BACKGROUND**

The Board instituted this proceeding on December 1, 2009 in response to a petition by AECC. AECC seeks a declaratory order regarding Tariff 6041-B Items 100 and 101 (the "Tariff"), issued by BNSF Railway Company ("BNSF") on May 27, 2009. The Tariff would unilaterally impose on coal shippers using the Joint Line <sup>1/</sup> or the BNSF Black Hills Sub-Division an obligation to ensure that fugitive coal dust does not exceed arbitrary levels established in the Tariff. AECC's Petition for a Declaratory Order

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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".

requests that the Board declare that the Tariff constitutes an unreasonable rule or practice and an illegal refusal to provide service, and order BNSF to permit shippers to transport coal on the Joint Line and Black Hills Sub-Division without such restrictions.

In its order instituting this proceeding, the Board expressly recognized that the nature of the dispute in this proceeding made it appropriate to allow discovery; indeed, both AECC and BNSF asked the Board to permit discovery. The Board said:

While the legal nature of a declaratory order proceeding might not always necessitate discovery, due to the factually intense nature of the dispute here we will permit discovery among BNSF, AECC, and any other shippers potentially affected by the tariff, including shipper organizations that represent those shippers.

STB Decision served Dec. 1, 2009, at p. 3-4.

Nevertheless, BNSF has refused to respond to AECC's interrogatories and requests for production of documents regarding crucial issues in this case, including the two derailments on the Joint Line that BNSF has repeatedly cited to justify the Tariff.

#### **THE ISSUES ON THIS MOTION**

A. **BNSF Improperly Refused To Provide Requested Information About The Joint Line Derailments**

BNSF has repeatedly claimed that two derailments that reportedly occurred on the Joint Line between Coal Creek Junction and Shawnee Junction on May 14 and May 15, 2005 (the "Joint Line Derailments") were caused by fugitive coal dust, and has cited those events to justify its imposition on shippers of an obligation to control fugitive coal dust. If the derailments were not caused by fugitive coal dust, but by other factors (e.g., inadequate maintenance of the roadbed), that would undermine BNSF's rationale for

the Tariff. AECC propounded discovery requests to BNSF to obtain information regarding the cause(s) of the Joint Line Derailments.

As detailed in Exhibit A, Interrogatory No. 22 asks for information related to the numbers and positions of cars and locomotives in the trains during the derailments. Interrogatory Nos. 24 and 25 asks for information related to the track and operating conditions at the time of the derailments. RFP No. 4 requests information retrieved from locomotive event recorders and communications involving crew members involved in the derailments. RFP No. 7 requests photographs and video recordings of the location of the Joint Line Derailments during the 7-day period prior to and including the Joint Line Derailments. RFP Nos. 8-11 and 27-28 request documents relating to engineering specifications for the track and drainage system at the locations of the derailments. RFP No. 20 relates to irregular operating conditions at the locations of the derailments during the 30-day period preceding the derailments. RFP No. 30 requests the schedule of ballast cleaning at the locations of the derailments from January 1, 1995 to the present. RFP No. 31 requests all reports, studies, analyses and documents relating to the Joint Line Derailments. RFP No. 57 requests inspection reports and data created during the two year period prior to the derailments.

BNSF refused to respond to the above identified interrogatories and requests for production, alleging the following:

1. AECC's requests are "overly broad unduly burdensome in light of the nature of this proceeding, including the highly compressed discovery period." Int. Nos. 22, 24, 25; RFP Nos. 4, 7, 8, 9, 10, 11, 20, 27, 28, 30, 31, 57.

2. AECC's request would require BNSF to undertake a special study. Int. No. 22; RFP No. 11.
3. The requested information is neither relevant nor likely to lead to the discovery of admissible evidence. RFP Nos. 4, 27, 28.

As explained below, BNSF's objections are without merit and should be overruled.

**B. BNSF Improperly Refused To Provide Requested Information About Other Important Issues In This Case**

BNSF has also refused to respond to other interrogatories and requests for production that relate to important issues in this case. These include Interrogatory Nos. 3 and 4 (studies and facts supporting the tariff requirements), Interrogatory No. 12 (BNSF rules regarding use of open-top cars); RFP No. 21 (causal relationship between coal particles and ballast degradation), RFP No. 24 (support for tariff holding shippers responsible for limiting emissions), RFP No. 35 (communications between BNSF and Simpson Weather Associates), RFP No. 37 (current or future studies of fugitive coal dust emissions), RFP No. 40 (previous BNSF tariffs related to dust from other commodities), RFP No. 44 (standards applied by BNSF to coal cars operating on the subject lines), and RFP No. 45 (communications between BNSF and any agency or organization regarding changing standards for coal cars operating on such lines). BNSF alleges the following as justification for its refusal to respond to these requests:

1. AECC's requests are "overly broad unduly burdensome in light of the nature of this proceeding, including the highly compressed discovery period." Int. Nos. 3, 4, 12; RFP Nos. 24, 35, 37, 40, 44, 45.
2. AECC's requests are "premature." Int. Nos. 3, 4.

3. AECC's request would require BNSF to undertake a special study. RFP No. 21.
4. The requested information is neither relevant nor likely to lead to the discovery of admissible evidence. Int. No. 12; RFP Nos. 44, 45.
5. AECC's request is not "valid" and is "outside the scope of permissible discovery." RFP No. 21.
6. AECC's requests are vague. RFP Nos. 24, 37.

As explained below, BNSF's objections are without merit and should be overruled.

By letter dated February 8, 2010, AECC requested that BNSF fully comply with its discovery obligations. Counsel for BNSF responded by letter dated February 10, 2010, to which counsel for AECC replied by letter the same day. Copies of the letters are attached hereto as Exhibit C. The parties were unable to reach a resolution of this matter prior to the filing deadline. Consequently, AECC is filing the instant motion. The Board should order BNSF to fully answer AECC's interrogatories and promptly produce all documents sought in the Discovery Requests.

#### **LEGAL STANDARD**

The standards governing the Board's discovery rules generally follow those established by the Federal Rules of Civil Procedure. *Simplified Standards for Rail Rate Cases*, STB Ex Parte No. 646 (Sub-No. 1), 2007 STB LEXIS 516, at \*150 (STB served Sept. 5, 2007) ("[o]ur discovery rules ... follow generally those in the FRCP"). The scope of discovery is very broad. *Ocean Logistics Mgmt, Inc. v NPR, Inc. and Holt Cargo Sys.*, STB Docket No WCC-102, at 2 (STB served Jan 14, 2000); see also *Edgar v. Finley*, 312 F.2d 533, 535 (8th Cir. 1963) ("it is no longer open to debate that the discovery rules should

be given a broad, liberal interpretation”) (citing *Hickman v. Taylor*, 329 U.S. 495 (1947)). A party may obtain discovery “regarding any matter, not privileged, which is relevant to the subject matter involved in a proceeding.” 49 CFR 1114.21. Relevance is established if the information sought might affect the outcome of a proceeding. *Canadian Pacific Railway Company, et al.--Control--Dakota, Minnesota & Eastern Railroad Corp., et al.*, STB Finance Docket No. 35081, 2008 STB LEXIS 162, at \*2 (STB served Mar. 27, 2008) (citing *Canadian Pac Ry Co\ Waterloo Railway Company – Adverse Abandonment - Lines of Bangor and Aroostook Railroad Company and Van Buren Bridge Company in Aroostook County, Maine*, STB Docket No AB-124 (Sub-No 2) (STB served Nov 14, 2003). “It is not grounds for objection that the information sought will be inadmissible as evidence if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.” *Id.* The Board has made clear that it expects parties to comply with discovery requests “in a prompt and forthright manner.” *Ocean Logistics*, STB Docket No WCC-102 at 2. “Failure to answer or boilerplate, generalized responses are not sufficient to satisfy a party’s discovery obligations.” *Trailer Bridge, Inc. v. Sea Star Lines, LLC*, STB Docket No. WCC-104, 2000 STB LEXIS 627, at \*19 (STB served Oct. 27, 2000).

Parties are required to act diligently in responding to discovery requests. *Palm Bay Int'l, Inc. v. Marchesi Di Barolo S.P.A.*, No. 09-601, 2009 U.S. Dist. LEXIS 104020, at \*27 (E.D.N.Y. Nov. 9, 2009) (finding that party had failed to comply with its discovery obligations and compelling party to make a thorough search for documents); *Advanced Card Techs. LLC v. Harvard Label Inc.*, No. 07-1269, 2009 U.S. Dist. LEXIS 118779, at \*2

(W.D. Okla. Dec. 21, 2009) (upholding award of expenses for failure fully answer interrogatories and conduct a thorough search for documents); *DL v. District of Columbia*, 251 F.R.D. 38, 48 (D.D.C. 2008) (compelling the District to perform "a complete and thorough search for responsive documents" consistent with the requirements of the Federal Rules); *D'Onofrio v. Sfx Sports Group, Inc.*, 247 F.R.D. 43, 50 (D.D.C. 2008) (party is expected to search diligently for documents responsive to discovery requests).

Although discovery may be denied if it would be unduly burdensome in relation to the likely value of the information sought, conclusory objections relating to burden will not be sufficient to overcome a party's showing of relevance. *Arizona Electric Power Cooperative, Inc. v. The Burlington Northern and Santa Fe Railway Company and Union Pacific Railroad Company*, STB Docket No. 42058, 2002 STB LEXIS 527, \*7-8 (STB served Sept. 11, 2002) (granting motion to compel extensive information pertaining to BNSF coal movements).

## **ARGUMENT**

### **I. The Discovery Requests seek relevant information.**

BNSF objects to Interrogatory No. 12 and Requests for Production Nos. 4, 27, 28, 44, 45 on the grounds that the requested information is neither relevant nor likely to lead to the discovery of admissible evidence. As noted above, relevance is established if the information might affect the outcome of a proceeding. *Canadian Pacific*, 2008 STB LEXIS 162, at \*2. Certain of these requests (RFP Nos. 4, 27, 28) relate to BNSF's assertion that coal dust was a causal factor in the Joint Line Derailments, which is

relevant to the question of whether there is a reasonable justification for the Tariff. The remaining requests relate to the standards and requirements applied to coal cars (Int. No. 12; RFP No. 44, 45) which are relevant to the Board's evaluation of the reasonableness of the restrictions imposed by the Tariff. BNSF should be compelled to produce the requested information.

**II. The Discovery Requests are not unduly burdensome.**

BNSF has asserted that many of the Discovery Requests are "unduly burdensome in light of the nature of this proceeding, including the highly compressed discovery period." Exhibit B (BNSF Resp. to Int. Nos. 3, 4, 12, 22, 24, 25; RFP Nos. 4, 7-11, 20, 24, 27, 28, 30, 31, 35, 37, 40, 44, 45, 57). BNSF has failed to explain how the Discovery Requests are burdensome in nature. BNSF's boilerplate objections as to burden are insufficient to overcome AECC's strong showing of relevance.

By way of example, BNSF asserts that AECC's seventh request for production is unduly burdensome. The request seeks "[a]ll reports, photographs and video recordings relating to the Joint Line infrastructure, operating conditions and ambient circumstances at the Joint Line Derailments Location during the 7-day period prior to and including the Joint Line Derailments." This request is not unduly burdensome. BNSF undoubtedly investigated these derailments, and collected the information that AECC is seeking. As explained above, information relating to the Joint Line Derailments is directly relevant to this proceeding.

Similarly, RFP No. 20 seeks "[a]ll documents relating to 'trouble tickets' or other reports of irregular operating conditions for the Joint Line Derailment Location during

the 30-day period preceding and including the Joint Line Derailments.” BNSF’s objection that this limited request is unduly burdensome is without merit for the same reasons. 2/

The other Discovery Requests to which BNSF objects are also narrowly focused and seek information directly related to important issues in this proceeding. Exhibit A (Int. Nos. 3, 4, 12, 22, 24, 25; RFP Nos. 4, 7-11, 20, 24, 27, 28, 30, 31, 35, 37, 40, 44, 45, 57). BNSF’s conclusory objections relating to burden are not sufficient to outweigh the likely value of the information sought by the Discovery Requests. BNSF should be compelled to produce the requested information.

**III. The Discovery Requests do not require a “special study”**

BNSF objects to Interrogatory No. 22 and RFP Nos. 11 and 21 to the extent the requests would require BNSF to undertake a “special study” to respond. As explained above, Interrogatory No. 22 asks for information related to the numbers and positions of the cars and locomotives in the trains during the derailments. RFP No. 11 seeks documents relating to changes BNSF made to the thickness of and materials constituting the ballast and sub-ballast layers of the track at the locations of the Joint Line Derailments. RFP No. 21 seeks documents relating to the causal relationship between

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2/ Furthermore, BNSF’s assertion of undue burden contradicts representations that BNSF has made elsewhere. In response to an NTSB inquiry regarding a BNSF derailment, BNSF made a commitment to modify its information systems specifically to test for and identify cases where multiple reports of irregular operating conditions for a given segment of track are received during a 30-day period. See NTSB, Railroad Accident Brief (Oct. 18, 2006), available at <http://www.nts.gov/publicctn/2006/RAB0603.pdf> (“BNSF has reported that it is ... enhancing technology to identify when multiple problem reports (‘trouble tickets’) are submitted within a 30-day period.”). Having acknowledged the importance of such information – which BNSF undoubtedly already assembled in its assessment of the Joint Line Derailments – BNSF’s assertion of undue burden rings hollow.

coal dust and degradation of ballast performance. Each of these requests seeks relevant information created by BNSF in the ordinary course of business, including its investigation of the Joint Line Derailments. As such, the information and documents should be readily accessible to BNSF and would not require BNSF to undertake a special study to respond to the requests. BNSF should be compelled to produce the requested information.

**IV. The Discovery Requests are not vague.**

BNSF objects to RFP Nos. 24 and 37 on the grounds that the requests are vague. RFP No. 24 seeks production of “documents relating to the requirement in the Joint Line Tariff and/or in the Black Hills Subdivision Tariff that shippers be held responsible to ensure that trains not emit more than the Integrated Dust Value (IDV.2) stated in the tariff.” This request is not vague. It requests documents directly relating to BNSF’s justification for imposing on shippers the obligation to ensure that fugitive coal dust does not exceed the level established in the Tariff.

RFP No. 37 seeks production of “documents relating to future or current studies regarding fugitive coal dust emissions from railcars.” BNSF objects that the reference to “studies regarding coal dust emissions” is “vague and undefined.” There is nothing vague about this request. BNSF has already announced publicly its intent to conduct further studies regarding fugitive coal dust emissions from railcars, and stated that it has begun to perform such studies. Information relating to such current or planned studies is clearly relevant to the subject matter of this proceeding. The Board should overrule BNSF’s objections and compel BNSF to produce the requested information.

**V. BNSF should be ordered to fully respond to the Discovery Requests.**

As an initial matter, it is not clear from BNSF's responses whether it is withholding information on the basis of BNSF's General Objections 2, 7 and 9:

2. BNSF objects to AECC's First Set of Discovery Requests to the extent they seek documents that contain confidential and proprietary information relating to third parties, including information that, if produced, could result in the violation of any contractual obligation to third parties or could violate 49 U.S.C. § 11904.

7. BNSF objects to AECC's First Set of Discovery Requests to the extent they seek information or documents created before January 1, 2005 on grounds that such requests are overly broad, unduly burdensome, and seek information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

9. BNSF objects to the definitions of "document" and "relating to," "relates to," "referring to," or "refers to" on grounds that they are overly broad, unduly burdensome, and beyond the scope of permissible discovery to the extent they require BNSF to search files where there is not a reasonable likelihood of finding responsive documents or include materials that are not in BNSF's possession, custody, or control, including information about or documents from Union Pacific Railroad Company ("UP").

Exhibit B at 2-4. These objections are invalid to the extent that they relate to Union Pacific, which is BNSF's partner in the Joint Line, and BNSF should produce all responsive information in its possession regardless of UP's involvement.

In many instances, although BNSF has not refused outright to respond to a discovery request, it has nevertheless not committed to producing responsive information. Instead, BNSF has responded by indicating that it will "conduct a search ... that is commensurate with the nature and expedited schedule of this proceeding." Exhibit B (BNSF Resp. to Int. Nos. 5, 8-10, 13-21, 23, 27-33; RFP Nos. 3, 5, 6, 12-18, 22, 23, 25, 26, 29, 32-34, 36, 41-43, 46-56). The Board should not permit BNSF to be less

than diligent in complying with its discovery obligations. *DL*, 251 F.R.D. at 48; *D'Onofrio*, 247 F.R.D. at 50. BNSF should be ordered to conduct a thorough search for information.

In response to other requests, BNSF's response indicates that it will only partially respond to the Discovery Requests. For example, Interrogatory No. 5 asks BNSF for information relating to its inspection requirements and maintenance standards both before and after the Joint Line Derailments. Exhibit A (Int. No. 5). In response to Interrogatory No. 5, BNSF states that (subject to its "commensurate" qualification) it will produce "materials sufficient to show BNSF's current inspection and maintenance standards." Exhibit B (BNSF Resp. to Int. No. 5). BNSF's response impermissibly narrows the scope of this request. *See also* Exhibit B (BNSF Resp. to Int. No. 13, 15, 16, 26, 28-33). BNSF should be compelled to fully respond to the Discovery Requests.

#### **CONCLUSION**

For the foregoing reasons, the Board should overrule BNSF's objections and compel BNSF to produce the requested information immediately.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Eric Von Salzen', written over a horizontal line.

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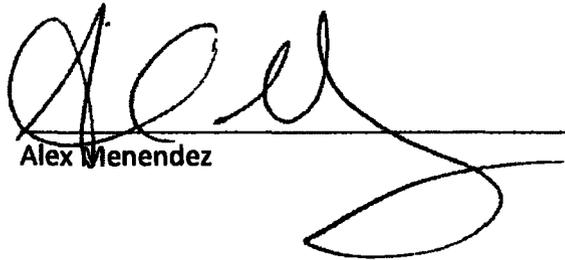
Dated: February 11, 2010

**CERTIFICATE OF SERVICE**

I hereby certify that on this 11th day of February 2010, I caused a copy of the foregoing to be served by first class mail, postage prepaid, to:

Thomas W. Wilcox  
Gkg Law, P.C.  
Canal Square, 1054 31st Street, N. W, Suite 200  
Washington, DC 20007-4492  
*Counsel for Tuco Inc and National Coal Transportation Association*

I further certify that I caused a copy of the foregoing to be served electronically on all other parties of record on the service list in this action.

  
Alex Menendez

# EXHIBIT A

**BEFORE THE  
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**ARKANSAS ELECTRIC COOPERATIVE CORPORATION'S  
FIRST SET OF INTERROGATORIES AND REQUESTS  
FOR PRODUCTION OF DOCUMENTS  
TO  
BNSF RAILWAY COMPANY**

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**Counsel for Arkansas Electric Cooperative  
Corporation**

**Dated: January 11, 2010**

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FOR PRODUCTION OF DOCUMENTS  
TO  
BNSF RAILWAY COMPANY**

**Arkansas Electric Cooperative Corporation ("AECC") requests that BNSF Railway Company ("BNSF") answer the following Interrogatories, permit entry on the following property for inspection and produce the following documents within 20 days after service (that is, by February 1, 2010) by delivering them to the offices of McLeod, Watkinson & Miller, Suite 800, One Massachusetts Avenue, N.W., Washington, D.C. 20001. The Interrogatories and requests for production of documents set forth below shall be deemed continuing in nature so as to require supplementary responses promptly to be furnished if and when BNSF obtains further or different information.**

**Part I sets forth the Interrogatories, Part II sets forth the documents to be produced and Part III sets out the property to be inspected; Parts IV and V set forth the Definitions and Instructions, respectively.**

**I. INTERROGATORIES**

**INTERROGATORY NO. 1**

Please describe all facts, and identify all studies, analyses, reports, and documents on which you rely to support the Integrated Dust Value (IDV.2) of 300 units used in the Joint Line Tariff.

**INTERROGATORY NO. 2**

Please describe all facts, and identify all studies, analyses, reports, and documents on which you rely to support the Integrated Dust Value (IDV.2) of 245 units used in the Black Hills Subdivision Tariff.

**INTERROGATORY NO. 3**

Please describe all facts, and identify all studies, analyses, reports, and documents on which you rely to support the requirement in the Joint Line Tariff that shippers be held responsible to ensure that trains moving over the Joint Line not emit more than an Integrated Dust Value (IDV.2) of 300 units.

**INTERROGATORY NO. 4**

Please describe all facts, and identify all studies, analyses, reports, and documents on which you rely to support the requirement in the Black Hills Subdivision Tariff that shippers be held responsible to ensure that trains moving over the Black Hills Subdivision not emit more than an Integrated Dust Value (IDV.2) of 245 units.

**INTERROGATORY NO. 5**

With respect to BNSF's inspection requirements, maintenance standards and engineering standards, please describe:

**(a) BNSF inspection requirements and maintenance standards applicable to the Joint Line Derailment Locations at the time of the Joint Line Derailments. Describe whether those requirements and standards have changed subsequent to the Derailments, and, if so, describe the current requirements and standards;**

**(b) BNSF inspection and maintenance standards and practices applicable to concrete cross-ties. Indicate whether those standards and practices have changed subsequent to the Joint Line Derailments, and, if so, describe the current standards and practices;**

**(c) for the period from January 1, 1995 through May 15, 2005, all dates when each of the following maintenance activities were performed on the Joint Line Derailment Locations: (i) undercutting and ballast cleaning; (ii) ballast replacement; (iii) programmed replacement of cross-ties; (iv) replacement of rail; and (v) clearing of ditches, culverts and other drainage infrastructure;**

**(d) for the period from January 1, 1995 through May 15, 2005, the type(s) of infrastructure inspections performed on the Joint Line Derailment Locations, and the frequency with which each type of inspection was performed. For track inspections report separately inspections performed on foot, in hi-rail vehicles, by track geometry cars, and through other means;**

**(e) for the period from May 16, 2005 through December 31, 2009, the type(s) of infrastructure inspections performed on the Joint Line Derailment Locations, and the frequency with which each type of inspection was performed. For track inspections report separately inspections performed on foot, in hi-rail vehicles, by track geometry cars, and through other means; and**

(f) if any of the inspections referenced in your answer to part (d) of this Interrogatory were performed using track geometry cars: (i) describe the specific tests performed by the track geometry cars in the last test prior to or on May 13, 2005; (ii) identify the training materials provided to track inspectors as of May 13, 2005 regarding the content and proper interpretation of reports and data from track geometry cars; and (iii) indicate whether any of the responses called for in parts (i) and (ii) would be different if the referenced date were May 13, 2009, and, if so, describe the responses as of May 13, 2009;

(g) BNSF engineering standards applicable at the time of the Joint Line Derailments to rail lines with the same traffic volume and composition as the lines at the Joint Line Derailment Locations. Describe whether those standards have changed subsequent to the Derailments, and, if so, describe the current standards.

**INTERROGATORY NO. 6**

Please describe BNSF's plans, if any, for further study of railcar emissions of coal dust on the Joint Line or elsewhere and/or methods for addressing or mitigating the possible effects of such emissions including (a) who will be invited to participate; (b) a detailed description of contemplated study testing procedures, methods and protocols; and (c) the goal(s) of such further study.

**INTERROGATORY NO. 7**

Please identify all previous tariff provisions contemplated or implemented by BNSF on dust related to railcars: (a) carrying Powder River Basin coal, (b) carrying other coal, or (c) carrying other commodities. For each contemplated tariff provision which was not implemented, describe your reasons for not implementing such tariff provision.

**INTERROGATORY NO. 8**

Please identify all standards related to the limit of how much coal dust emitted from railcars is acceptable issued by any organization or agency, including but not limited to ASTM International (formerly American Society for Testing and Materials) and the Association of American Railroads, that BNSF used or consulted in developing the Joint Line Tariff and/or the Black Hills Subdivision Tariff. If BNSF did not use or consult any such standard, your answer should so state.

**INTERROGATORY NO. 9**

Please identify all standards related to the measurement of coal dust emitted from railcars issued by any organization or agency, including but not limited to ASTM International (formerly American Society for Testing and Materials) and the Association of American Railroads that BNSF used or consulted in developing the Joint Line Tariff and/or the Black Hills Subdivision Tariff. If BNSF did not use or consult any such standard, your answer should so state.

**INTERROGATORY NO. 10**

Please identify and describe in detail any and all environmental concerns expressed to BNSF by any person or raised by BNSF itself related to coal dust emitted by railcars carrying Powder River Basin coal.

**INTERROGATORY NO. 11**

Please identify when BNSF or any of its corporate predecessors began hauling coal.

**INTERROGATORY NO. 12**

Identify all rules, requirements and/or standards relating to the use of open-top hoppers or gondolas, imposed by BNSF on railcars moving coal over the Joint Line and/or the Black Hills

Subdivision, which were in effect on or subsequent to January 1, 2000. Identify all documents related to such rules, requirements and/or standards.

**INTERROGATORY NO. 13**

Please describe all facts, and identify all studies, analyses, reports, and documents relating to:

(a) the mitigating effects on coal dust emissions of load vibration, including but not limited to the effects of manganese frogs on observed dust emissions, and the possible use of car vibrators (normally used to assist in unloading of bulk materials) to move fines down in the load;

(b) use of pressurized water to move fines down in the load;

(c) use of pneumatic methods to remove fines from the top of the load;

(d) the potential detrimental effects of chemical toppings on the functionality of railcars, including but not limited to corrosive effects and "buildup" of topping residue after repeated applications;

(e) the potential detrimental effects of chemical toppings on utility coal handling equipment;

(f) the potential detrimental effects of chemical toppings on air pollution control equipment and performance; and

(g) any other potential adverse impact and/or safety concern relating to implementation of the Joint Line Tariff and/or the Black Hills Subdivision Tariff.

**INTERROGATORY NO. 14**

Please describe all facts, and identify all studies, analyses, reports, and documents relating to the purpose and importance of ballast cleaning.

**INTERROGATORY NO. 15**

**Please identify all tests, if any, recommended by AREMA, AAR or any other authoritative source to determine if ballast needs to be cleaned or reconditioned. Describe whether BNSF routinely performs such tests on the Joint Line or the Black Hills Subdivision and describe in detail the results of any such tests performed in the time period January 1, 2000 to the present.**

**INTERROGATORY NO. 16**

**Please indicate when BNSF (or any of its predecessor railroads):**

**(a) became aware that there was coal dust accumulating on (i) the Joint Line and (ii) the Black Hills Subdivision; and**

**(b) first came to believe that fugitive coal dust causes operating difficulties or costs on the Joint Line or elsewhere that warrant remediation.**

**Identify all documents related to such awareness or belief.**

**INTERROGATORY NO. 17**

**For the period since BNSF first became aware that there was coal dust accumulating on the Joint Line or the Black Hills Subdivision, until the date of your response, please describe all facts, and identify all studies, analyses, reports, and documents relating to the presence of coal dust on the Joint Line and/or the Black Hills Subdivision.**

**INTERROGATORY NO. 18**

**Please describe all facts, and identify all studies, analyses, reports and documents relating to the actual or potential reduction or elimination of coal dust emissions due to, in whole or in part, changes in profiling and particle size implemented by the mines and shippers.**

**INTERROGATORY NO. 19**

**Please describe all facts, and identify all studies, analyses, reports and documents relating to the development of the load profile included in the Joint Line Tariff and the Black Hills Subdivision Tariff ("BNSF Load Profile").**

**INTERROGATORY NO. 20**

**Please describe all facts, and identify all studies, analyses, reports and documents supporting the decision and/or rationale to include the BNSF Load Profile in the Joint Line Tariff and the Black Hills Subdivision Tariff.**

**INTERROGATORY NO. 21**

**Please describe all facts, and identify all studies, analyses, reports and documents relating to the BNSF Load Profile including but not limited to any discussions, decisions and/or evaluations of the potential modification of the BNSF Load Profile in the future.**

**INTERROGATORY NO. 22**

**For each Joint Line Derailment:**

**(a) describe the number of cars in the train, the number and model designation of locomotives, the position of each locomotive in the train and the positions of all equipment that derailed;**

**(b) describe the distance(s) from mileposts or specific points identifiable on the current Joint Line track chart associated with the point of initial derailment, any track over which equipment was dragged and the track on which the train came to rest;**

**(c) confirm that the derailment occurred on the easternmost track, or specify the track on which the derailment occurred; and**

**(d) describe the number of main line tracks at the milepost on the Joint Line where the initial derailment occurred and the date each such track was placed in service.**

**INTERROGATORY NO. 23**

**Please describe all facts, and identify all studies, analyses, reports and documents relating to the role of coal dust emissions as a causal factor in the Joint Line Derailments.**

**INTERROGATORY NO. 24**

**With regard to the Joint Line Derailment Locations, please describe all facts, and identify all studies, analyses, reports and documents relating to:**

- (a) the location and thickness in the roadbed of scoria;**
- (b) deviations between “as-built” conditions and final preconstruction engineering plans and specifications for each track;**
- (c) deviations between “as-built” conditions and final preconstruction engineering plans and specifications for the drainage system (including but not limited to track ditches, intercepting ditches and culverts) for each track;**
- (d) slow orders in effect during the 30-day period preceding and including the Joint Line Derailments; and**
- (e) “trouble tickets” or other reports of irregular operating conditions during the 30-day period preceding and including the Joint Line Derailments.**

**INTERROGATORY NO. 25**

Identify all documents regarding:

(a) the thickness under ties of and material(s) constituting the ballast between the initial point of each derailment and a point 0.25 rail miles north of the initial point of each derailment at the time of the given derailment;

(b) the thickness of and material(s) constituting the sub-ballast between the initial point of each derailment and a point 0.25 rail miles north of the initial point of each derailment at the time of the given derailment;

(c) the material(s) constituting the subgrade between the initial point of each derailment and a point 0.25 rail miles north of the initial point of each derailment at the time of the given derailment; and

(d) the thickness and condition of any scoria that previously was used in the construction or maintenance of the line, between the initial point of each derailment and a point 0.25 rail miles north of the initial point of each derailment at the time of the given derailment.

**INTERROGATORY NO. 26**

For each calendar year from 1995 to 2005 inclusive, please identify and describe the most accurate estimates available to BNSF of:

(a) MGT and net tons of coal passing the milepost on the Joint Line where each initial derailment occurred; and

(b) MGT and net tons of coal passing over the track where each derailment occurred.

**INTERROGATORY NO. 27**

**With regard to potential actions to remediate fugitive coal dust emissions:**

**(a) identify potential remedial actions that BNSF has concluded would not be feasible, effective or advisable, and identify all studies, analyses, reports and documents regarding such determinations;**

**(b) identify the potential actions that BNSF has concluded would be feasible, effective and advisable, and supply available documentation regarding such determinations; and**

**(c) identify the potential actions BNSF has identified but for which BNSF has not made a determination regarding feasibility, effectiveness and/or advisability, and supply available documentation regarding the attributes of those potential actions.**

**INTERROGATORY NO. 28**

**Please describe or identify the most accurate estimate available to BNSF of the annual quantity of coal loaded into railcars at mines on the Joint Line ("PRB Coal") that, while in-transit:**

**(a) leaks from the bottom doors of hopper cars;**

**(b) falls over the side or end sills of railcars;**

**(c) leaves railcars as airborne dust;**

**(d) leaves railcars through any other means before the destination of the rail movement is reached; and**

**(e) remains in the railcar until the destination of the rail movement is reached.**

**Your answer is to include the most current estimates available to BNSF of the quantities described in parts (a)-(e), and also estimates for the period immediately preceding the Joint**

**Line Derailments. Identify all documents that support these estimates and/or alternative estimates of the same values.**

**INTERROGATORY NO. 29**

**For PRB Coal that leaks from the bottom doors of hopper cars while in-transit, please describe or identify the most accurate estimate available to BNSF of:**

**(a) the percentage of such coal (by weight) that lands on track ballast;**

**(b) the percentage distribution (by weight) of the sizes of the particles of such coal that lands on track ballast; and,**

**(c) the percentage distribution (by weight) of the distance from the loading point at which such coal lands on track ballast.**

**Identify all documents that support these estimates or alternative estimates of the same values.**

**INTERROGATORY NO. 30**

**For PRB Coal that falls over the side or end sills of railcars while in-transit, please describe or identify the most accurate estimate available to BNSF of:**

**(a) the percentage of such coal (by weight) that lands on track ballast;**

**(b) the percentage distribution (by weight) of the sizes of the particles of such coal that lands on track ballast; and,**

**(c) the percentage distribution (by weight) of the distance from the loading point at which such coal lands on track ballast.**

**Identify all documents that support these estimates or alternative estimates of the same values.**

**INTERROGATORY NO. 31**

**For PRB Coal that leaves railcars as airborne dust while in-transit, please describe or identify the most accurate estimate available to BNSF of:**

**(a) the percentage of such coal (by weight) that lands on track ballast;**

**(b) the percentage distribution (by weight) of the sizes of the particles of such coal that lands on track ballast; and,**

**(c) the percentage distribution (by weight) of the rail distance from the loading point at which such coal lands on track ballast.**

**Identify all documents that support these estimates or alternative estimates of the same values.**

**INTERROGATORY NO. 32**

**For PRB Coal that leaves railcars through any means other than leaking from the bottom doors of hopper cars, falling over the side or end sills of railcars or leaving railcars as airborne dust, please-describe or identify the most accurate estimate available to BNSF of:**

**(a) the percentage of such coal (by weight) that lands on track ballast;**

**(b) the percentage distribution (by weight) of the sizes of the particles of such coal that lands on track ballast; and,**

**(c) the percentage distribution (by weight) of the distance from the loading point at which such coal lands on track ballast.**

**Identify all documents that support these estimates or alternative estimates of the same values.**

**INTERROGATORY NO. 33**

Please describe all facts, and identify all studies, analyses, reports and documents relating to the effect(s) of the following on IDV.2 readings and/or the deposition of fugitive coal dust emissions from the tops of loaded rail cars on track ballast:

- (a) the rail distance from the mine to the monitoring point;
- (b) the speed of the train approaching and/or passing the monitoring point;
- (c) the disturbance by the passage of the train being monitored of coal dust deposited by previous trains;
- (d) the contemporaneous or recent passage of loaded coal trains other than the train being monitored;
- (e) the contemporaneous or recent passage of empty coal trains;
- (f) the distributed power configuration of the train being monitored and the effects of locomotive exhaust;
- (g) the presence of headwinds, tailwinds or crosswinds of different speeds at the monitoring point for the train being monitored; and,
- (h) rain, fog, snow or other weather conditions.

Your answer is to include, but is not to be limited to, inaccuracies such conditions may introduce in IDV.2 readings and the effects of such conditions on the tendency of coal dust to become airborne from moving trains.

**II. DOCUMENTS TO BE PRODUCED**

1. All documents referred to, used in preparation of, or identified in your answers to these interrogatories.

2. **The current track chart for the Joint Line.**
3. **All documents relating to observations made at the locations of the derailments in the immediate aftermath of the derailments, including but not limited to photographs, video recordings and inspection and derailment reports.**
4. **All information retrieved from locomotive event recorders and audio or other recordings (including transcripts of such recordings or other written records) of communications involving train and engine crew members between the time each train involved in the Joint Line Derailments departed the mine and the time debriefing of the crew regarding each derailment was completed.**
5. **All documents relating to the role of coal dust emissions as a causal factor in the Joint Line derailments.**
6. **All documents relating to the cause(s) of the Joint Line derailments.**
7. **All reports, photographs and video recordings relating to Joint Line infrastructure, operating conditions and ambient circumstances at the Joint Line Derailment Locations during the 7-day period prior to and including the Joint Line Derailments.**
8. **For the Joint Line Derailment Locations, as-built engineering drawings and specifications for each track.**
9. **For the Joint Line Derailment Locations, all documents relating to (a) deviations between "as-built" conditions and final preconstruction engineering plans and specifications for each track; and (b) the location and thickness in the roadbed of scoria.**
10. **For the Joint Line Derailment Locations, all documents relating to (a) "as-built" engineering drawings and specifications for the drainage system (including but not limited to**

track ditches, intercepting ditches and culverts) for each track; and (b) engineering drawings and specifications for the current drainage system for each track.

11. All documents relating to changes made from the time of the Joint Line Derailments to the present in the thickness of and materials constituting the ballast and sub-ballast layers, and in any other engineering specifications relating to the Joint Line Derailment Locations.

12. All documents relating to potential actions, or the need for such actions, to remediate fugitive coal dust emissions.

13. All documents relating to the mitigating effects on fugitive coal dust emissions of load vibration, including but not limited to the effects of manganese frogs on observed dust emissions, and the prospective use of car vibrators (normally used to assist in unloading of bulk materials) to move fines down in the load.

14. All documents relating to the current or prospective use of pressurized water to move fines down in the load.

15. All documents relating the current or prospective use of pneumatic methods to remove fines from the top of the load.

16. All documents relating to the potential detrimental effects of chemical toppings on the functionality of railcars, including but not limited to corrosive effects and "buildup" of topping residue after repeated applications.

17. All documents relating to the potential detrimental effects of chemical toppings on utility coal handling equipment.

**18. All documents relating to the potential detrimental effects of chemical toppings on utility air pollution control equipment and performance.**

**19. All documents relating to slow orders in effect for the Joint Line Derailment Locations during the 30-day period preceding and including the Joint Line Derailments.**

**20. All documents relating to "trouble tickets" or other reports of irregular operating conditions for the Joint Line Derailment Locations during the 30-day period preceding and including the Joint Line Derailments.**

**21. All documents relied upon by BNSF to substantiate the existence of causal relationships between the presence of specific quantities of coal particles of specific sizes in or on track ballast on the one hand, and specific degradations of ballast performance on the other hand.**

**22. All documents relating to the effect(s) of the following on IDV.2 readings and/or the deposition of fugitive coal dust emissions from the tops of loaded rail cars on track ballast: (a) the rail distance from the mine to the monitoring point; (b) the speed of the train approaching and/or passing the monitoring point; (c) the disturbance by the passage of the train being monitored of coal dust emissions deposited by previous trains; (d) the contemporaneous or recent passage of loaded coal trains other than the train being monitored; (e) the contemporaneous or recent passage of empty coal trains; (f) the distributed power configuration of the train being monitored and the effects of locomotive exhaust; (g) the presence of headwinds, tailwinds or crosswinds of different speeds at the monitoring point for the train being monitored; and/or (h) rain, fog, snow or other weather conditions.**

**23. All documents relating to specification of the Integrated Dust Value (IDV.2) in the Joint Line Tariff and/or in the Black Hills Subdivision Tariff.**

**24. All documents relating to the requirement in the Joint Line Tariff and/or in the Black Hills Subdivision Tariff that shippers be held responsible to ensure that trains not emit more than the Integrated Dust Value (IDV.2) stated in the tariff.**

**25. All agenda, notes, presentation materials and documents used during and/or in preparation for the October 1, 2009 BNSF coal customer meeting and/or all documents prepared after the meeting regarding the meeting and/or BNSF's planned actions in response to the meeting, as well as all documents constituting or related to customer responses to the meeting.**

**26. All documents identifying the persons and/or entities in attendance at the October 1, 2009 BNSF customer meeting.**

**27. All engineering records, drawings and documents depicting or identifying the Joint Line Derailment Locations from January 1, 2000 to the present.**

**28. All engineering records, drawings and documents depicting or identifying the drainage system (including but not limited to track ditches, intercepting ditches and culverts) for the Joint Line Derailment Locations from January 1, 2000 to the present.**

**29. All documents relating to the recommended frequency of ballast cleaning.**

**30. With regard to the Joint Line Derailment Locations, all documents relating to the schedule of ballast cleaning from January 1, 1995 to the present.**

**31. All reports, studies, analyses and documents relating to the Joint Line Derailments.**

**32. All documents identifying the planned and contemplated locations of trackside coal dust monitors.**

**33. All documents relating to coal dust monitoring equipment, including but not limited to equipment manufacturer's instructions, guidelines and recommendations.**

**34. All communications regarding coal dust control systems and methods between BNSF and any person, including but not limited to consultants, equipment manufacturers, and coal dust suppressant manufacturers, suppliers and applicers.**

**35. All communications between BNSF and Simpson Weather Associates Inc. from January 1, 2000 to the present.**

**36. All documents relating to the NCTA Study or its results.**

**37. All documents relating to future or current studies regarding fugitive coal dust emissions from railcars.**

**38. All documents relating to previous tariff provisions considered or implemented by BNSF regarding coal dust emissions from railcars carrying Powder River Basin coal.**

**39. All documents relating to previous tariff provisions implemented by BNSF regarding coal dust emissions from railcars carrying coal from mines other than those located in the Powder River Basin region.**

**40. All documents relating to previous tariff provisions implemented by BNSF regarding dust from railcars carrying commodities other than coal.**

**41. All documents relating to standards for the measurement of coal dust emitted from railcars issued by any organization or agency, including but not limited to ASTM International (formerly American Society for Testing and Materials) and the Association of**

**American Railroads, that BNSF used or consulted in developing the Joint Line Tariff and/or the Black Hills Subdivision Tariff.**

**42. All documents relating to standards for the limit of how much coal dust emitted from railcars is acceptable issued by any organization or agency, including but not limited to ASTM International and the Association of American Railroads, that BNSF used or consulted in developing the Joint Line Tariff and/or the Black Hills Subdivision Tariff.**

**43. All documents relating to environmental concerns expressed to BNSF by any person or raised by BNSF itself related to coal dust emissions coming from railcars carrying Powder River Basin coal.**

**44. All documents relating to requirements and/or standards BNSF has applied since January 1, 2000 for coal cars operating over the Joint Line and/or the Black Hills Subdivision, whether such standards were developed by BNSF, AAR or any other organization or agency.**

**45. All communications between BNSF and any organization or agency relating to changing the standards for coal cars operating over the Joint Line and/or the Black Hills Subdivision.**

**46. All documents relating to safety concerns associated with implementation of the Joint Line Tariff and/or the Black Hills Subdivision Tariff.**

**47. All documents relating to the purpose and/or importance of ballast cleaning.**

**48. All documents relating to any test used to determine whether ballast needs to be cleaned and/or reconditioned.**

**49. All documents relating to any test performed by BNSF on the Joint Line and/or the Black Hills Subdivision to determine whether ballast needs to be cleaned and/or reconditioned for the time period January 1, 1995 to the present.**

**50. All documents relating to BNSF's identification of any problem associated with fugitive coal dust falling onto the track ballast.**

**51. All documents relating to BNSF's awareness of coal dust accumulating on the Joint Line and/or the Black Hills Subdivision.**

**52. All documents relating to documentation of the presence of fugitive coal dust on the Joint Line and/or the Black Hills Subdivision by BNSF, the STB or any other organization or agency.**

**53. All documents relating to the reduction or elimination of fugitive coal dust due to, in whole or in part, changes in profiling and particle size implemented by the mines and shippers.**

**54. All documents regarding the development of the load profile included in the Joint Line Tariff and the Black Hills Subdivision Tariff ("BNSF Load Profile").**

**55. All documents relating to the decision and/or rationale to include the BNSF Load Profile in the Joint Line Tariff and the Black Hills Subdivision Tariff.**

**56. All documents relating to the BNSF Load Profile, including but not limited to any discussions, decisions and/or evaluations of the potential need to modify BNSF Load Profile in the future.**

57. If not produced in response to a previous request, all track inspection reports, reports and data from track geometry cars, photographs and video recordings originally created during the period from May 15, 2003 to the time of each Joint Line Derailment.

**III. REQUEST TO PERMIT ENTRY ON PROPERTY FOR INSPECTION**

AECC requests that BNSF permit AECC and/or AECC's representatives to enter upon BNSF's premises, including but not limited to the Joint Line Derailment Locations and each location at which BNSF plans to conduct or is considering conducting trackside monitoring of coal dust emissions, at a mutually convenient date and time to be arranged, and subject to appropriate liability releases and safety and operating considerations, for purposes of inspecting the rail infrastructure and ambient conditions at those locations.

**IV. DEFINITIONS**

The following definitions form an integral part of these Interrogatories, Requests for Production of Documents and Request to Permit Entry on Property for Inspection:

1. "AECC" means Arkansas Electric Cooperative Corporation, and any affiliates or predecessors thereof.

2. The connectives "and" and "or", as used herein, shall be construed either disjunctively or conjunctively as necessary to bring within the scope of each discovery request all responses that might otherwise be construed to be outside of its scope.

3. "BNSF" means BNSF Railway Company, and any affiliates or predecessors thereof.

4. "Black Hills Subdivision" means the rail line covered by the Black Hills Subdivision Tariff.

5. **“Black Hills Subdivision Tariff” means item 101 of BNSF’s Coal Rules publication denominated as Price List 6041-B.**

6. **The term “communication” means the transmittal or exchange of information of any kind in any form.**

7. **The term “document” is employed in the broadest possible sense under 14 CFR § 1114.30 and includes any written, recorded, or graphic matter however stored, produced or reproduced and all copies (except identical copies) and drafts thereof within your actual or constructive possession, custody or control, (including the possession, custody or control of your attorney), including but not limited to leases, contracts, letters, correspondence, notes, memoranda, minutes, ledgers, photographs, audio recordings, video recordings, plans, blueprints, e-mails, and computer-generated documents, and other paper or electronic communications.**

8. **Unless otherwise indicated, the terms “identify” or “identification” and “describe” or “description,” as used herein, include the following meanings:**

a. **When used in reference to a natural person shall mean to state his or her full name, present or last-known residence and business address (by street, city, state, and zip code), and present or last known residence and business phone number.**

b. **When used in reference to any entity other than a natural person shall mean to state the entity’s legal name, any other names commonly used to denote it, its present or last-known address, its present or last-known telephone number, and the name and the title of your contact at the entity.**

**c. When used in reference to a document shall mean to state the type of document, the date, author, addressee, title, its present location, the name and address of its custodian, and the substance of its contents.**

**d. When used in reference to any act, occurrence, occasion, meeting, oral communication, discussion, fact, transaction, or conduct (an "act") shall mean to set forth the event or events constituting such act, its location (including mile posts or similar locational information if applicable), and the date and time of each such event, and to identify persons participating, present, or involved, and to identify documents relating or referring in any way thereto.**

**9. "Joint Line" means the rail line covered by the Joint Line Tariff.**

**10. "Joint Line Derailments" means the two derailments that reportedly occurred on the Joint Line between Coal Creek Junction and Shawnee Junction on May 14 and May 15, 2005.**

**11. "Joint Line Derailment Locations" means for each of the two derailments the Joint Line right-of-way between the following two points: (a) the point 2.00 rail miles north of the point of initial derailment (i.e., toward Caballo Junction and away from Shawnee Junction); and, (b) the point 1.00 rail miles south of the southernmost point on which the train came to rest after the derailment.**

**12. "Joint Line Tariff" means Item 100 of BNSF's Coal Rules publication denominated as Price List 6041-B.**

**13. "NCTA" means the National Coal Transportation Association.**

14. "NCTA Study" means the railcar coal loss and coal dust suppressant effectiveness study conducted under the auspices of the National Coal Transportation Association issued on or about August 3, 2009 and identified as project number 0701515.

15. The terms "relating to", "relates to", "referring to", or "refers to" mean consisting of, making reference to, describing, discussing, reflecting, citing, constituting, containing, pertaining to, regarding, evidencing, concerning, summarizing, or analyzing, whether directly or indirectly, the matter discussed.

16. The terms "you", "your", and "BNSF", as used herein, refer to BNSF, including its agents, employees, officers, directors, representatives, investigators, contractors, subcontractors, advisors, any person or firm acting on its behalf, and unless privileged, its attorneys or their agents, employees, investigators and representatives.

#### **IV. INSTRUCTIONS**

1. In producing the documents requested, you are instructed to furnish all documents within your possession, custody, or control.

2. If any of the Interrogatories cannot be answered in full, answer to the extent possible, specifying the reasons for your inability to answer the remainder and stating whatever information, knowledge, or belief you do have concerning the unanswered portion.

3. If you withhold any information responsive to an Interrogatory, describe the information and state the grounds for withholding it, including any claim of privilege. If you withhold any document responsive to a request, indicate the grounds for withholding it, including any claim of privilege, and identify each such document in writing on or before the date specified for production by providing the following information: the type of document

**(e.g., letter, memorandum, etc.); the date or your best approximation of the date on which the document was prepared; the author(s); the subject matter; the names, addresses, and organization of all persons to whom such document was directed and/or addressed, and/or by whom it was received; and the paragraph number of the request to which such document responds.**

**4. If you do not have the information to answer an Interrogatory, but you know of person(s) or organization(s) who may have all or any portion of such information, then all such information, including names, addresses, and telephone numbers, shall be disclosed in the answers. If you do not have a document responsive to a request, but you know of person(s) or organization(s) who may have all or any portion of the document, then all such information, including names, addresses, and telephone numbers, shall be disclosed in the response to the request.**

**5. If you choose to physically produce documents rather than identify them as required in these Interrogatories, note in the upper right hand corner of each such document the number of each Interrogatory to which the document responds or refers.**

Respectfully submitted,



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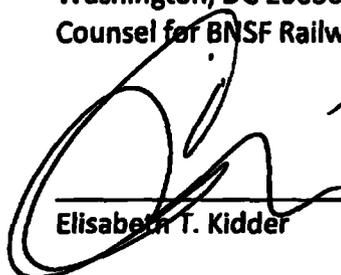
Transportation Consultant

Dated: January 11, 2010

**CERTIFICATE OF SERVICE**

I hereby certify that on this 11 day of January 2010, I caused a copy of the foregoing document to be served by hand delivery on:

Samuel M. Sipe, Jr., Esq.  
Anthony J. LaRocca, Esq.  
Steptoe & Johnson LLP  
1330 Connecticut Avenue, N.W.  
Washington, DC 20036  
Counsel for BNSF Railway Company



Elisabeth T. Kidder

# EXHIBIT B

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**STB Finance Docket No. 35305**

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

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**BNSF RAILWAY COMPANY'S RESPONSES AND OBJECTIONS  
TO THE FIRST SET OF INTERROGATORIES AND  
REQUESTS FOR PRODUCTION OF DOCUMENTS OF  
ARKANSAS ELECTRIC COOPERATIVE CORPORATION**

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BNSF Railway Company ("BNSF"), pursuant to 49 C.F.R. §§ 1114.26 and 1114.30, hereby responds and objects to the First Set of Interrogatories and Requests for Production of Documents served by Arkansas Electric Cooperative Corporation on January 11, 2010 ("AECC's First Set of Discovery Requests").

**GENERAL OBJECTIONS AND  
OBJECTIONS TO DEFINITIONS AND INSTRUCTIONS**

The following general objections and objections to definitions and instructions are made with respect to AECC's First Set of Discovery Requests.

1. BNSF objects to AECC's First Set of Discovery Requests on grounds that they are overly broad and unduly burdensome. AECC's First Set of Discovery Requests are excessive and repetitive and in many cases seek information that is far outside the scope of this proceeding. Responding to AECC's numerous and unfocused requests imposes a substantial burden on BNSF that is not justified by the nature of this proceeding, including the highly compressed discovery period.

2. BNSF objects to AECC's First Set of Discovery Requests to the extent they seek documents that contain confidential and proprietary information relating to third parties, including information that, if produced, could result in the violation of any contractual obligation to third parties or could violate 49 U.S.C. § 11904.

3. BNSF objects to AECC's First Set of Discovery Requests to the extent they seek disclosure of documents that are protected by the attorney-client privilege, work product doctrine, and/or any other appropriate privilege or doctrine. Any production of privileged or otherwise protected documents is inadvertent and shall not constitute a waiver of any claim of privilege or other protection.

4. BNSF objects to AECC's First Set of Discovery Requests to the extent they seek production of "all documents," "all communications," "all facts," "all information," "all reports, photographs and video recordings," "all engineering records, drawings and documents," or "all studies, analyses, reports, and documents" relating to subjects specified-in-particular requests on grounds that those requests are overly broad and unduly burdensome in light of the nature of this proceeding, including the highly compressed discovery period. BNSF will conduct a file search that is commensurate with the nature and expedited schedule of this proceeding.

5. BNSF objects to AECC's First Set of Discovery Requests to the extent they seek production of information or documents in computer-readable format to the extent that production in such format would be an unduly burdensome and oppressive task.

6. BNSF objects to AECC's First Set of Discovery Requests to the extent they request that BNSF continue to produce responsive materials that are created beyond the

close of discovery as set out in the Surface Transportation Board's order served on December 1, 2009.

7. BNSF objects to AECC's First Set of Discovery Requests to the extent they seek information or documents created before January 1, 2005 on grounds that such requests are overly broad, unduly burdensome, and seek information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

8. BNSF objects to the definitions of "BNSF," "you," and "your" on the basis that it is overly broad, unduly burdensome, and beyond the scope of permissible discovery to the extent it seeks information or requires the production of documents that are not in the possession, custody, or control of BNSF, including, for example, documents in the possession of former employees, directors, consultants, and all other persons acting (or who have acted) on BNSF's behalf. BNSF further objects to the definition of "BNSF" to the extent it seeks information or documents in the possession of "agents . . . investigators, contractors, subcontractors, advisors, any person or firm acting on its behalf" or "any affiliates." Subject to this objection, BNSF will produce information or documents that are reasonably available from its two primary coal dust consulting firms, Simpson Weather Associates ("SWA") and Conestoga-Rovers & Associates ("CRA"), that relate to the principal consulting activities that those firms performed for BNSF.

9. BNSF objects to the definitions of "document" and "relating to," "relates to," "referring to," or "refers to" on grounds that they are overly broad, unduly burdensome, and beyond the scope of permissible discovery to the extent they require

BNSF to search files where there is not a reasonable likelihood of finding responsive documents or include materials that are not in BNSF's possession, custody, or control, including information about or documents from Union Pacific Railroad Company ("UP").

10. BNSF objects to the definitions of "identify," "identification," "describe," and "description" on grounds that it is overly broad and unduly burdensome and beyond the scope of permissible discovery.

11. BNSF objects to the definition of "NCTA Study" as vague.

12. BNSF objects to AECC's First Set of Discovery Requests to the extent they seek information that is not maintained by BNSF in the normal course of business, that is not maintained by BNSF in the format requested, or that would require a special study to compile or to report in the format requested on grounds that such requests are overly broad, unduly burdensome, and beyond the permissible scope of discovery.

13. BNSF objects to Instruction Number 3 on grounds that it is overly broad and unduly burdensome to the extent it seeks information that is not necessary to enable AECC to assess the grounds for withholding of a document. BNSF further objects to Instruction Numbers 2 and 4 on grounds that it is overly broad, unduly burdensome, and beyond the scope of permissible discovery.

14. BNSF objects to Instruction Number 5 on grounds that it is overly broad and unduly burdensome to the extent it requires BNSF to identify each discovery request to which a document may be partially responsive.

15. BNSF incorporates these General Objections and Objections to Definitions and Instructions into each Response below as if fully set forth therein.

### **RESPONSES AND OBJECTIONS TO INTERROGATORIES**

#### **Interrogatory No. 1**

Please describe all facts, and identify all studies, analyses, reports, and documents on which you rely to support the Integrated Dust Value (IDV.2) of 300 units used in the Joint Line Tariff.

**BNSF Response:** BNSF objects to this Interrogatory to the extent it requests that BNSF identify “all facts . . . studies, analyses, reports, and documents” on which BNSF relies to support the Integrated Dust Value (IDV.2) of 300 units used in the Joint Line Tariff on grounds that such a request is overly broad and unduly burdensome in light of the nature of this proceeding, including the highly compressed discovery period. BNSF further objects to this Interrogatory on grounds that it is premature to the extent it requests that BNSF identify evidence that will be submitted in accordance with the evidentiary schedule in this proceeding. Subject to and without waiving its specific and general objections, BNSF states that it will produce documents from which information responsive to this Interrogatory can be obtained.

#### **Interrogatory No. 2**

Please describe all facts, and identify all studies, analyses, reports, and documents on which you rely to support the Integrated Dust Value (IDV.2) of 245 units used in the Black Hills Subdivision Tariff.

**BNSF Response:** BNSF objects to this Interrogatory to the extent it requests that BNSF identify “all facts . . . studies, analyses, reports, and documents” on which BNSF relies to support the Integrated Dust Value (IDV.2) of 245 units used in the Black Hills

Subdivision Tariff on grounds that such a request is overly broad and unduly burdensome in light of the nature of this proceeding, including the highly compressed discovery period. BNSF further objects to this Interrogatory on grounds that it is premature to the extent it requests that BNSF identify evidence that will be submitted in accordance with the evidentiary schedule in this proceeding. Subject to and without waiving its specific and general objections, BNSF states that it will produce documents from which information sought in this Interrogatory can be obtained.

**Interrogatory No. 3**

Please describe all facts, and identify all studies, analyses, reports, and documents on which you rely to support the requirement in the Joint Line Tariff that shippers be held responsible to ensure that trains moving over the Joint Line not emit more than an Integrated Dust Value (IDV.2) of 300 units.

**BNSF Response:** BNSF objects to this Interrogatory to the extent it requests that BNSF identify “all facts . . . studies, analyses, reports, and documents” on which BNSF relies to support the requirement in the Joint Line Tariff that shippers be held responsible to ensure that trains moving over the Joint Line not emit more than an Integrated Dust Value (IDV.2) of 300 units on grounds that such a request is overly broad and unduly burdensome in light of the nature of this proceeding, including the highly compressed discovery period. BNSF further objects to this Interrogatory on grounds that it is premature to the extent it requests that BNSF identify evidence and argument that will be submitted in accordance with the evidentiary schedule in this proceeding.

**Interrogatory No. 4**

Please describe all facts, and identify all studies, analyses, reports, and documents on which you rely to support the requirement in the Black Hills Subdivision Tariff that

shippers be held responsible to ensure that trains moving over the Black Hills Subdivision not emit more than an Integrated Dust Value (IDV.2) of 245 units.

**BNSF Response:** BNSF objects to this Interrogatory to the extent it requests that BNSF identify “all facts . . . studies, analyses, reports, and documents” on which BNSF relies to support the requirement in the Black Hills Subdivision Tariff that shippers be held responsible to ensure that trains moving over the Joint Line not emit more than an Integrated Dust Value (IDV.2) of 245 units on grounds that such a request is overly broad and unduly burdensome in light of the nature of this proceeding, including the highly compressed discovery period. BNSF further objects to this Interrogatory on grounds that it is premature to the extent it requests that BNSF identify evidence and argument that will be submitted in accordance with the evidentiary schedule in this proceeding.

**Interrogatory No. 5**

With respect to BNSF’s inspection requirements, maintenance standards and engineering standards, please describe:

- (a) BNSF inspection requirements and maintenance standards applicable to the Joint Line Derailment Locations at the time of the Joint Line Derailments. Describe whether those requirements and standards have changed subsequent to the Derailments, and, if so, describe the current requirements and standards;
- (b) BNSF inspection and maintenance standards and practices applicable to concrete crossties. Indicate whether those standards and practices have changed subsequent to the Joint Line Derailments, and, if so, describe the current standards and practices;
- (c) for the period from January 1, 1995 through May 15, 2005, all dates when each of the following maintenance activities were performed on the Joint Line Derailment Locations: (i) undercutting and ballast cleaning; (ii) ballast replacement; (iii) programmed replacement of crossties; (iv) replacement of rail; and (v) clearing of ditches, culverts and other drainage infrastructure;

- (d) for the period from January 1, 1995 through May 15, 2005, the type(s) of infrastructure inspections performed on the Joint Line Derailment Locations, and the frequency with which each type of inspection was performed. For track inspections report separately inspections performed on foot, in hi-rail vehicles, by track geometry cars, and through other means;
- (e) for the period from May 16, 2005 through December 31, 2009, the type(s) of infrastructure inspections performed on the Joint Line Derailment Locations, and the frequency with which each type of inspection was performed. For track inspections report separately inspections performed on foot, in hi-rail vehicles, by track geometry cars, and through other means; and
- (f) if any of the inspections referenced in your answer to part (d) of this Interrogatory were performed using track geometry cars: (i) describe the specific tests performed by the track geometry cars in the last test prior to or on May 13, 2005; (ii) identify the training materials provided to track inspectors as of May 13, 2005 regarding the content and proper interpretation of reports and data from track geometry cars; and (iii) indicate whether any of the responses called for in parts (i) and (ii) would be different if the referenced date were May 13, 2009, and, if so, describe the responses as of May 13, 2009;
- (g) BNSF engineering standards applicable at the time of the Joint Line Derailments to rail lines with the same traffic volume and composition as the lines at the Joint Line Derailment Locations. Describe whether those standards have changed subsequent to the Derailments, and, if so, describe the current standards.

**BNSF Response:** BNSF objects to this Interrogatory on grounds that it is overly broad and unduly burdensome in light of the nature of this proceeding, including the highly compressed discovery period. Subject to and without waiving its specific and general objections, BNSF will conduct a search that is commensurate with the nature and expedited schedule of this proceeding for materials sufficient to show BNSF's current inspection and maintenance standards.

**Interrogatory No. 6**

Please describe BNSF's plans, if any, for further study of railcar emissions of coal dust on the Joint Line or elsewhere and/or methods for addressing or mitigating the possible effects of such emissions including (a) who will be invited to participate; (b) a detailed description of contemplated study testing procedures, methods and protocols; and (c) the goal(s) of such further study.

**BNSF Response:** BNSF objects to this Interrogatory to the extent it calls for speculation about future coal dust studies that have not been undertaken. Subject to and without waiving its specific and general objections, BNSF states that it advised its shippers in October 2009 that it was initiating a large scale trial of mitigation measures. BNSF further states that it will produce materials that describe the trial.

**Interrogatory No. 7**

Please identify all previous tariff provisions contemplated or implemented by BNSF on dust related to railcars: (a) carrying Powder River Basin coal, (b) carrying other coal, or (c) carrying other commodities. For each contemplated tariff provision which was not implemented, describe your reasons for not implementing such tariff provision.

**BNSF Response:** BNSF objects to this Interrogatory on grounds that it is overly broad and unduly burdensome since it seeks information about all prior tariffs that were contemplated relating to dust from railcars regardless of when the tariff was contemplated, how seriously the tariff was contemplated, by whom the tariff was contemplated or the relevance of the tariff to the issues raised in this proceeding. BNSF further objects to this Interrogatory to the extent it seeks information about tariffs contemplated or implemented that relate to commodities other than coal on grounds that it is overly broad and unduly burdensome in light of the nature of this proceeding, including the highly compressed discovery period. BNSF further objects to this

Interrogatory to the extent it seeks information prior to January 1, 2005 on grounds that such information is neither relevant nor likely to lead to the discovery of admissible evidence. Subject to and without waiving its specific and general objections, BNSF states that prior to the implementation of the Joint Line and Black Hills Subdivision Tariffs, no previous coal dust tariffs were implemented.

**Interrogatory No. 8**

Please identify all standards related to the limit of how much coal dust emitted from railcars is acceptable issued by any organization or agency, including but not limited to ASTM International (formerly American Society for Testing and Materials) and the Association of American Railroads, that BNSF used or consulted in developing the Joint Line Tariff and/or the Black Hills Subdivision Tariff. If BNSF did not use or consult any such standard, your answer should so state.

**BNSF Response:** BNSF objects to this Interrogatory to the extent it seeks information about standards that BNSF “used or consulted” regardless of the context in which those standards were “used or consulted.” Subject to and without waiving its general objections, BNSF will conduct a search that is commensurate with the nature and expedited schedule of this proceeding for materials relating to the methodology used to develop the Joint Line Tariff and/or the Black Hills Subdivision Tariff, and information responsive to this Interrogatory may be contained in those materials.

**Interrogatory No. 9**

Please identify all standards related to the measurement of coal dust emitted from railcars issued by any organization or agency, including but not limited to ASTM International (formerly American Society for Testing and Materials) and the Association of American Railroads that BNSF used or consulted in developing the Joint Line Tariff and/or the Black Hills Subdivision Tariff. If BNSF did not use or consult any such standard, your answer should so state.

**BNSF Response:** BNSF objects to this Interrogatory to the extent it seeks information about standards that BNSF “used or consulted” regardless of the context in which those standards were “used or consulted.” Subject to and without waiving its general objections, BNSF will conduct a search that is commensurate with the nature and expedited schedule of this proceeding for materials relating to the methodology used to develop the Joint Line Tariff and/or the Black Hills Subdivision Tariff, and information responsive to this Interrogatory may be contained in those materials.

**Interrogatory No. 10**

Please identify and describe in detail any and all environmental concerns expressed to BNSF by any person or raised by BNSF itself related to coal dust emitted by railcars carrying Powder River Basin coal.

**BNSF Response:** BNSF objects to this Interrogatory to the extent it seeks information about “any and all environmental concerns” expressed to BNSF by “any” person or raised by BNSF related to coal dust on grounds that such request is overly broad and unduly burdensome in light of the nature of this proceeding, including the highly compressed discovery period. BNSF further object to this Interrogatory on grounds that the reference to “environmental concerns” is vague and undefined. Subject to and without waiving its specific and general objections, BNSF will conduct a search that is commensurate with the nature and expedited schedule of this proceeding for materials relating to the effect of coal dust on the environment, and information responsive to this Interrogatory may be contained in those materials.

**Interrogatory No. 11**

Please identify when BNSF or any of its corporate predecessors began hauling coal.

**BNSF Response:** BNSF objects to this Interrogatory on grounds that it seeks information that is neither relevant nor likely to lead to the discovery of admissible evidence.

**Interrogatory No. 12**

Identify all rules, requirements and/or standards relating to the use of open-top hoppers or gondolas, imposed by BNSF on railcars moving coal over the Joint Line and/or the Black Hills Subdivision, which were in effect on or subsequent to January 1, 2000. Identify all documents related to such rules, requirements and/or standards.

**BNSF Response:** BNSF objects to this Interrogatory on grounds that the request for information about all rules, requirements and/or standards relating to the use of open-top hoppers or gondolas is overly broad and unduly burdensome and seeks information that is neither relevant nor likely to lead to the discovery of admissible evidence.

**Interrogatory No. 13**

Please describe all facts, and identify all studies, analyses, reports, and documents relating to:

- (a) the mitigating effects on coal dust emissions of load vibration, including but not limited to the effects of manganese frogs on observed dust emissions, and the possible use of car vibrators (normally used to assist in unloading of bulk materials) to move fines down in the load;
- (b) use of pressurized water to move fines down in the load;
- (c) use of pneumatic methods to remove fines from the top of the load;
- (d) the potential detrimental effects of chemical toppings on the functionality of railcars, including but not limited to corrosive effects and “buildup” of topping residue after repeated applications;

- (e) the potential detrimental effects of chemical toppings on utility coal handling equipment;
- (f) the potential detrimental effects of chemical toppings on air pollution control equipment and performance; and
- (g) any other potential adverse impact and/or safety concern relating to implementation of the Joint Line Tariff and/or the Black Hills Subdivision Tariff.

**BNSF Response:** BNSF objects to this Interrogatory on grounds that it is overly broad and unduly burdensome in light of the nature of this proceeding, including the highly compressed discovery period, to the extent it seeks information about all facts, studies, analyses, reports and documents on the enumerated topics. Subject to and without waiving its specific and general objections, BNSF will conduct a search that is commensurate with the nature and expedited schedule of this proceeding for materials relating to coal dust remedial actions, and information responsive to this Interrogatory may be contained in those materials.

**Interrogatory No. 14**

Please describe all facts, and identify all studies, analyses, reports, and documents relating to the purpose and importance of ballast cleaning.

**BNSF Response:** BNSF objects to this Interrogatory on grounds that it is overly broad and unduly burdensome in light of the nature of this proceeding, including the highly compressed discovery period, to the extent it seeks information about all facts, studies, analyses, reports and documents relating to ballast cleaning. Subject to and without waiving its specific and general objections, BNSF will conduct a search that is commensurate with the nature and expedited schedule of this proceeding for materials sufficient to describe BNSF's standards and/or procedures for the appropriate frequency

and/or basis for cleaning ballast, and information responsive to this Interrogatory may be contained in those materials.

**Interrogatory No. 15**

Please identify all tests, if any, recommended by AREMA, AAR or any other authoritative source to determine if ballast needs to be cleaned or reconditioned. Describe whether BNSF routinely performs such tests on the Joint Line or the Black Hills Subdivision and describe in detail the results of any such tests performed in the time period January 1, 2000 to the present.

**BNSF Response:** BNSF objects to this Interrogatory to the extent it seeks information that is available from public sources on grounds that the information is equally available to AECC. BNSF further objects to this Interrogatory to the extent it requests a description of any tests to determine if ballast needs to be cleaned or reconditioned on grounds that such request is overly broad and unduly burdensome in light of the nature of this proceeding, including the highly compressed discovery period. Subject to and without waiving its specific and general objections, BNSF will conduct a search that is commensurate with the nature and expedited schedule of this proceeding for materials sufficient to describe BNSF's standards and/or procedures for the appropriate frequency and/or basis for cleaning ballast, and information responsive to this Interrogatory may be contained in those materials.

**Interrogatory No. 16**

Please indicate when BNSF (or any of its predecessor railroads):

- (a) became aware that there was coal dust accumulating on (i) the Joint Line and (ii) the Black Hills Subdivision; and
- (b) first came to believe that fugitive coal dust causes operating difficulties or costs on the Joint Line or elsewhere that warrant remediation.

Identify all documents related to such awareness or belief.

**BNSF Response:** BNSF objects to this Interrogatory on grounds that it seeks information relating to events that occurred before 2005. BNSF further objects to this Interrogatory to the extent it requests that BNSF identify all documents related to the enumerated issues on grounds that such request is overly broad and unduly burdensome in light of the nature of this proceeding, including the highly compressed discovery period. Subject to and without waiving its specific and general objections, BNSF will conduct a search that is commensurate with the nature and expedited schedule of this proceeding for materials relating to the impact of coal dust on rail infrastructure on the Joint Line and the Black Hills Subdivision, and information responsive to this Interrogatory may be contained in those materials.

**Interrogatory No. 17**

For the period since BNSF first became aware that there was coal dust accumulating on the Joint Line or the Black Hills Subdivision, until the date of your response, please describe all facts, and identify all studies, analyses, reports, and documents relating to the presence of coal dust on the Joint Line and/or the Black Hills Subdivision.

**BNSF Response:** BNSF objects to this Interrogatory to the extent it seeks information relating to events that occurred before 2005. BNSF further objects to this Interrogatory to the extent it requests that BNSF identify all facts, studies, analyses, reports and documents related to the presence of coal dust on the Joint Line and/or the Black Hills Subdivision on grounds that such request is overly broad and unduly burdensome in light of the nature of this proceeding, including the highly compressed discovery period. Subject to and without waiving its specific and general objections,

**BNSF will conduct a search that is commensurate with the nature and expedited schedule of this proceeding for materials relating to the presence of coal dust on the Joint Line and the Black Hills Subdivision, and information responsive to this Interrogatory may be contained in those materials.**

**Interrogatory No. 18**

**Please describe all facts, and identify all studies, analyses, reports and documents relating to the actual or potential reduction or elimination of coal dust emissions due to, in whole or in part, changes in profiling and particle size implemented by the mines and shippers.**

**BNSF Response: BNSF objects to this Interrogatory to the extent it requests that BNSF identify all facts, studies, analyses, reports and documents related to the actual or potential reduction or elimination of coal dust emissions due to, in whole or in part, changes in profiling and particle size implemented by the mines and shippers on grounds that such request is overly broad and unduly burdensome in light of the nature of this proceeding, including the highly compressed discovery period. Subject to and without waiving its specific and general objections, BNSF will conduct a search that is commensurate with the nature and expedited schedule of this proceeding for materials relating to the actual or potential reduction or elimination of coal dust emissions due to, in whole or in part, changes in profiling and particle size implemented by the mines and shippers, and information responsive to this Interrogatory may be contained in those materials.**

**Interrogatory No. 19**

Please describe all facts, and identify all studies, analyses, reports and documents relating to the development of the load profile included in the Joint Line Tariff and the Black Hills Subdivision Tariff (“BNSF Load Profile”).

**BNSF Response:** BNSF objects to this Interrogatory to the extent it seeks information relating to efforts carried out by or on behalf of persons other than BNSF. BNSF further objects to this Interrogatory to the extent it requests that BNSF identify all facts, studies, analyses, reports and documents related to the development of the BNSF Load Profile on grounds that such request is overly broad and unduly burdensome in light of the nature of this proceeding, including the highly compressed discovery period. Subject to and without waiving its specific and general objections, BNSF will conduct a search that is commensurate with the nature and expedited schedule of this proceeding for materials relating to the BNSF Load Profile, and information responsive to this Interrogatory may be contained in those materials.

**Interrogatory No. 20**

Please describe all facts, and identify all studies, analyses, reports and documents supporting the decision and/or rationale to include the BNSF Load Profile in the Joint Line Tariff and the Black Hills Subdivision Tariff.

**BNSF Response:** BNSF objects to this Interrogatory to the extent it requests that BNSF identify all facts, studies, analyses, reports and documents related to the decision and/or rationale to include the BNSF Load Profile in the Joint Line Tariff and the Black Hills Subdivision Tariff on grounds that such request is overly broad and unduly burdensome in light of the nature of this proceeding, including the highly compressed discovery period. Subject to and without waiving its specific and general objections,

BNSF will conduct a search that is commensurate with the nature and expedited schedule of this proceeding for materials relating to the BNSF Load Profile, and information responsive to this Interrogatory may be contained in those materials.

**Interrogatory No. 21**

Please describe all facts, and identify all studies, analyses, reports and documents relating to the BNSF Load Profile including but not limited to any discussions, decisions and/or evaluations of the potential modification of the BNSF Load Profile in the future.

**BNSF Response:** BNSF objects to this Interrogatory to the extent it seeks information relating to efforts carried out by or on behalf of persons other than BNSF. BNSF further objects to this Interrogatory to the extent it requests that BNSF identify all facts, studies, analyses, reports and documents related to the BNSF Load Profile on grounds that such request is overly broad and unduly burdensome in light of the nature of this proceeding, including the highly compressed discovery period. Subject to and without waiving its specific and general objections, BNSF will conduct a search that is commensurate with the nature and expedited schedule of this proceeding for materials relating to the BNSF Load Profile, and information responsive to this Interrogatory may be contained in those materials.

**Interrogatory No. 22**

For each Joint Line Derailment:

- (a) describe the number of cars in the train, the number and model designation of locomotives, the position of each locomotive in the train and the positions of all equipment that derailed;
- (b) describe the distance(s) from mileposts or specific points identifiable on the current Joint Line track chart associated with the point of initial derailment, any track over which equipment was dragged and the track on which the train came to rest;

- (c) confirm that the derailment occurred on the easternmost track, or specify the track on which the derailment occurred; and
- (d) describe the number of main line tracks at the milepost on the Joint Line where the initial derailment occurred and the date each such track was placed in service.

**BNSF Response:** BNSF objects to this Interrogatory on grounds that it is overly broad and unduly burdensome in light of the nature of this proceeding, including the highly compressed discovery period. BNSF further objects to this Interrogatory on grounds that it requires that BNSF undertake a special study.

**Interrogatory No. 23**

Please describe all facts, and identify all studies, analyses, reports and documents relating to the role of coal dust emissions as a causal factor in the Joint Line Derailments.

**BNSF Response:** BNSF objects to this Interrogatory on grounds that it is overly broad and unduly burdensome in light of the nature of this proceeding, including the highly compressed discovery period. Subject to and without waiving its specific and general objections, BNSF will conduct a search that is commensurate with the nature and expedited schedule of this proceeding for materials relating to the Joint Line Derailments, and information responsive to this Interrogatory may be contained in those materials.

**Interrogatory No. 24**

With regard to the Joint Line Derailment Locations, please describe all facts, and identify all studies, analyses, reports and documents relating to:

- (a) the location and thickness in the roadbed of scoria;
- (b) deviations between “as-built” conditions and final preconstruction engineering plans and specifications for each track;
- (c) deviations between “as-built” conditions and final preconstruction engineering plans and specifications for the drainage system (including but

not limited to track ditches, intercepting ditches and culverts) for each track;

- (d) slow orders in effect during the 30-day period preceding and including the Joint Line Derailments; and
- (e) "trouble tickets" or other reports of irregular operating conditions during the 30-day period preceding and including the Joint Line Derailments.

**BNSF Response:** BNSF objects to this Interrogatory on grounds that it is overly broad and unduly burdensome in light of the nature of this proceeding, including the highly compressed discovery period.

**Interrogatory No. 25**

Identify all documents regarding:

- (a) the thickness under ties of and material(s) constituting the ballast between the initial point of each derailment and a point 0.25 rail miles north of the initial point of each derailment at the time of the given derailment;
- (b) the thickness of and material(s) constituting the sub-ballast between the initial point of each derailment and a point 0.25 rail miles north of the initial point of each derailment at the time of the given derailment;
- (c) the material(s) constituting the subgrade between the initial point of each derailment and a point 0.25 rail miles north of the initial point of each derailment at the time of the given derailment; and
- (d) the thickness and condition of any scoria that previously was used in the construction or maintenance of the line, between the initial point of each derailment and a point 0.25 rail miles north of the initial point of each derailment at the time of the given derailment.

**BNSF Response:** BNSF objects to this Interrogatory on grounds that it is overly broad and unduly burdensome in light of the nature of this proceeding, including the highly compressed discovery period.

**Interrogatory No. 26**

For each calendar year from 1995 to 2005 inclusive, please identify and describe the most accurate estimates available to BNSF of:

- (a) MGT and net tons of coal passing the milepost on the Joint Line where each initial derailment occurred; and
- (b) MGT and net tons of coal passing over the track where each derailment occurred.

**BNSF Response:** BNSF objects to this Interrogatory on grounds that it requests BNSF to undertake a special study. Subject to and without waiving its specific and general objections, BNSF states that it will produce information relating to the volume of BNSF traffic on the Joint Line to the extent such information is reasonably available.

**Interrogatory No. 27**

With regard to potential actions to remediate fugitive coal dust emissions:

- (a) identify potential remedial actions that BNSF has concluded would not be feasible, effective or advisable, and identify all studies, analyses, reports and documents regarding such determinations;
- (b) identify the potential actions that BNSF has concluded would be feasible, effective and advisable, and supply available documentation regarding such determinations; and
- (c) identify the potential actions BNSF has identified but for which BNSF has not made a determination regarding feasibility, effectiveness and/or advisability, and supply available documentation regarding the attributes of those potential actions.

**BNSF Response:** BNSF objects to this Interrogatory on grounds that it is overly broad and unduly burdensome in light of the nature of this proceeding, including the highly compressed discovery period. Subject to and without waiving its specific and general objections, BNSF will conduct a search that is commensurate with the nature and

expedited schedule of this proceeding for materials relating to potential actions to remediate fugitive coal dust emissions, and information responsive to this Interrogatory may be contained in those materials.

**Interrogatory No. 28**

Please describe or identify the most accurate estimate available to BNSF of the annual quantity of coal loaded into railcars at mines on the Joint Line ("PRB Coal") that, while in-transit:

- (a) leaks from the bottom doors of hopper cars;
- (b) falls over the side or end sills of railcars;
- (c) leaves railcars as airborne dust;
- (d) leaves railcars through any other means before the destination of the rail movement is reached; and
- (e) remains in the railcar until the destination of the rail movement is reached.

Your answer is to include the most current estimates available to BNSF of the quantities described in parts (a)-(e), and also estimates for the period immediately preceding the Joint Line Derailments. Identify all documents that support these estimates and/or alternative estimates of the same values.

**BNSF Response:** BNSF objects to this Interrogatory to the extent it requests that BNSF undertake a special study. Subject to and without waiving its specific and general objections, BNSF will conduct a search that is commensurate with the nature and expedited schedule of this proceeding for materials relating to the amount of coal dust that is emitted from coal cars in transit, and information responsive to this Interrogatory may be contained in those materials.

**Interrogatory No. 29**

For PRB Coal that leaks from the bottom doors of hopper cars while in-transit, please describe or identify the most accurate estimate available to BNSF of:

- (a) the percentage of such coal (by weight) that lands on track ballast;
- (b) the percentage distribution (by weight) of the sizes of the particles of such coal that lands on track ballast; and,
- (c) the percentage distribution (by weight) of the distance from the loading point at which such coal lands on track ballast.

Identify all documents that support these estimates or alternative estimates of the same values.

**BNSF Response:** BNSF objects to this Interrogatory to the extent it requests that BNSF undertake a special study. Subject to and without waiving its specific and general objections, BNSF will conduct a search that is commensurate with the nature and expedited schedule of this proceeding for materials relating to the amount of coal dust that is emitted from coal cars in transit, and information responsive to this Interrogatory may be contained in those materials.

**Interrogatory No. 30**

For PRB Coal that falls over the side or end sills of railcars while in-transit, please describe or identify the most accurate estimate available to BNSF of:

- (a) the percentage of such coal (by weight) that lands on track ballast;
- (b) the percentage distribution (by weight) of the sizes of the particles of such coal that lands on track ballast; and,
- (c) the percentage distribution (by weight) of the distance from the loading point at which such coal lands on track ballast.

Identify all documents that support these estimates or alternative estimates of the same values.

**BNSF Response:** BNSF objects to this Interrogatory to the extent it requests that BNSF undertake a special study. Subject to and without waiving its specific and general objections, BNSF will conduct a search that is commensurate with the nature and

expedited schedule of this proceeding for materials relating to the amount of coal dust that is emitted from coal cars in transit, and information responsive to this Interrogatory may be contained in those materials.

**Interrogatory No. 31**

For PRB Coal that leaves railcars as airborne dust while in-transit, please describe or identify the most accurate estimate available to BNSF of:

- (a) the percentage of such coal (by weight) that lands on track ballast;
- (b) the percentage distribution (by weight) of the sizes of the particles of such coal that lands on track ballast; and,
- (c) the percentage distribution (by weight) of the rail distance from the loading point at which such coal lands on track ballast.

Identify all documents that support these estimates or alternative estimates of the same values.

**BNSF Response:** BNSF objects to this Interrogatory to the extent it requests that BNSF undertake a special study. Subject to and without waiving its specific and general objections, BNSF will conduct a search that is commensurate with the nature and expedited schedule of this proceeding for materials relating to the amount of coal dust that is emitted from coal cars in transit, and information responsive to this Interrogatory may be contained in those materials.

**Interrogatory No. 32**

For PRB Coal that leaves railcars through any means other than leaking from the bottom doors of hopper cars, falling over the side or end sills of railcars or leaving railcars as airborne dust, please describe or identify the most accurate estimate available to BNSF of:

- (a) the percentage of such coal (by weight) that lands on track ballast;

- (b) the percentage distribution (by weight) of the sizes of the particles of such coal that lands on track ballast; and,
- (c) the percentage distribution (by weight) of the distance from the loading point at which such coal lands on track ballast.

Identify all documents that support these estimates or alternative estimates of the same values.

**BNSF Response:** BNSF objects to this Interrogatory to the extent it requests that BNSF undertake a special study. Subject to and without waiving its specific and general objections, BNSF will conduct a search that is commensurate with the nature and expedited schedule of this proceeding for materials relating to the amount of coal dust that is emitted from coal cars in transit, and information responsive to this Interrogatory may be contained in those materials.

**Interrogatory No. 33**

Please describe all facts, and identify all studies, analyses, reports and documents relating to the effect(s) of the following on IDV.2 readings and/or the deposition of fugitive coal dust emissions from the tops of loaded rail cars on track ballast:

- (a) the rail distance from the mine to the monitoring point;
- (b) the speed of the train approaching and/or passing the monitoring point;
- (c) the disturbance by the passage of the train being monitored of coal dust deposited by previous trains;
- (d) the contemporaneous or recent passage of loaded coal trains other than the train being monitored;
- (e) the contemporaneous or recent passage of empty coal trains;
- (f) the distributed power configuration of the train being monitored and the effects of locomotive exhaust;
- (g) the presence of headwinds, tailwinds or crosswinds of different speeds at the monitoring point for the train being monitored; and,

(h) rain, fog, snow or other weather conditions.

Your answer is to include, but is not to be limited to, inaccuracies such conditions may introduce in IDV.2 readings and the effects of such conditions on the tendency of coal dust to become airborne from moving trains.

**BNSF Response:** BNSF objects to this Interrogatory on grounds that it is overly broad and unduly burdensome in light of the nature of this proceeding, including the highly compressed discovery period. BNSF further objects to this Interrogatory to the extent it requests that BNSF undertake a special study. BNSF further objects to this Interrogatory to the extent it requests that BNSF identify all facts, studies, analyses, reports and documents related to the enumerated issues on grounds that such request is overly broad and unduly burdensome in light of the nature of this proceeding, including the highly compressed discovery period. Subject to and without waiving its specific and general objections, BNSF will conduct a search that is commensurate with the nature and expedited schedule of this proceeding for materials relating to BNSF's methodology for measuring coal dust emissions from the tops of loaded rail cars, and information responsive to this Interrogatory may be contained in those materials.

### **RESPONSES AND OBJECTIONS TO DOCUMENT REQUESTS**

#### **Request for Production Number 1:**

All documents referred to, used in preparation of, or identified in your answers to these interrogatories.

**BNSF Response:** See BNSF's responses to the Interrogatory Numbers 1-33.

#### **Request for Production Number 2:**

The current track chart for the Joint Line.

**BNSF Response:** BNSF will produce documents sufficient to show the track chart of the Joint Line to the extent those documents are reasonably available.

**Request for Production Number 3:**

All documents relating to observations made at the locations of the derailments in the immediate aftermath of the derailments, including but not limited to photographs, video recordings and inspection and derailment reports.

**BNSF Response:** BNSF objects to this Request to the extent it seeks “[a]ll documents” related to observations made at the locations of the derailments in the immediate aftermath of the derailments observations on grounds that the Request is overly broad and unduly burdensome in light of the nature of this proceeding, including the highly compressed discovery period. Subject to and without waiving its specific and general objections, BNSF will conduct a search for responsive, non-privileged materials that is commensurate with the nature and expedited schedule of this proceeding.

**Request for Production Number 4:**

All information retrieved from locomotive event recorders and audio or other recordings (including transcripts of such recordings or other written records) of communications involving train and engine crew members between the time each train involved in the Joint Line Derailments departed the mine and the time debriefing of the crew regarding each derailment was completed.

**BNSF Response:** BNSF objects to this Request on grounds that it is overly broad and unduly burdensome in light of the nature of this proceeding, including the highly compressed discovery period. BNSF further objects to this Request on grounds that it seeks information that is neither relevant nor likely to lead to the discovery of admissible evidence.

**Request for Production Number 5:**

All documents relating to the role of coal dust emissions as a causal factor in the Joint Line derailments.

**BNSF Response:** BNSF objects to this Request to the extent it seeks “[a]ll documents” related to the role of coal dust emissions as a causal factor in the Joint Line derailments on grounds that the Request is overly broad and unduly burdensome in light of the nature of this proceeding, including the highly compressed discovery period. Subject to and without waiving its specific and general objections, BNSF will conduct a search for responsive, non-privileged materials that is commensurate with the nature and expedited schedule of this proceeding.

**Request for Production Number 6:**

All documents relating to the cause(s) of the Joint Line derailments.

**BNSF Response:** BNSF objects to this Request to the extent it seeks “[a]ll documents” related to the cause(s) of the Joint Line derailments on grounds that the Request is overly broad and unduly burdensome in light of the nature of this proceeding, including the highly compressed discovery period. Subject to and without waiving its specific and general objections, BNSF will conduct a search for responsive, non-privileged materials that is commensurate with the nature and expedited schedule of this proceeding.

**Request for Production Number 7:**

All reports, photographs and video recordings relating to Joint Line infrastructure, operating conditions and ambient circumstances at the Joint Line Derailment Locations during the 7-day period prior to and including the Joint Line Derailments.

**BNSF Response:** BNSF objects to this Request on grounds that the Request is overly broad and unduly burdensome in light of the nature of this proceeding, including the highly compressed discovery period.

**Request for Production Number 8:**

For the Joint Line Derailment Locations, as-built engineering drawings and specifications for each track.

**BNSF Response:** BNSF objects to this Request on grounds that the Request is overly broad and unduly burdensome in light of the nature of this proceeding, including the highly compressed discovery period.

**Request for Production Number 9:**

For the Joint Line Derailment Locations, all documents relating to (a) deviations between “as-built” conditions and final preconstruction engineering plans and specifications for each track; and (b) the location and thickness in the roadbed of scoria.

**BNSF Response:** BNSF objects to this Request on grounds that the Request is overly broad and unduly burdensome in light of the nature of this proceeding, including the highly compressed discovery period.

**Request for Production Number 10:**

For the Joint Line Derailment Locations, all documents relating to (a) “as-built” engineering drawings and specifications for the drainage system (including but not limited to track ditches, intercepting ditches and culverts) for each track; and (b) engineering drawings and specifications for the current drainage system for each track.

**BNSF Response:** BNSF objects to this Request on grounds that the Request is overly broad and unduly burdensome in light of the nature of this proceeding, including the highly compressed discovery period.

**Request for Production Number 11:**

All documents relating to changes made from the time of the Joint Line Derailments to the present in the thickness of and materials constituting the ballast and sub-ballast layers, and in any other engineering specifications relating to the Joint Line Derailment Locations.

**BNSF Response:** BNSF objects to this Request on grounds that the Request is overly broad and unduly burdensome in light of the nature of this proceeding, including the highly compressed discovery period. BNSF further objects to this Request on grounds that it requests that BNSF undertake a special study.

**Request for Production Number 12:**

All documents relating to potential actions, or the need for such actions, to remediate fugitive coal dust emissions.

**BNSF Response:** BNSF objects to this Request to the extent it seeks “[a]ll documents” related to potential actions, or the need for such actions, to remediate fugitive coal dust emissions on grounds that the Request is overly broad and unduly burdensome in light of the nature of this proceeding, including the highly compressed discovery period. Subject to and without waiving its specific and general objections, BNSF will conduct a search for responsive, non-privileged materials that is commensurate with the nature and expedited schedule of this proceeding.

**Request for Production Number 13:**

All documents relating to the mitigating effects on fugitive coal dust emissions of load vibration, including but not limited to the effects of manganese frogs on observed dust emissions, and the prospective use of car vibrators (normally used to assist in unloading of bulk materials) to move fines down in the load.

**BNSF Response:** BNSF objects to this Request to the extent it seeks “[a]ll documents” related to the mitigating effects on fugitive coal dust emissions of load vibration on grounds that the Request is overly broad and unduly burdensome in light of the nature of this proceeding, including the highly compressed discovery period. Subject to and without waiving its specific and general objections, BNSF will conduct a search for responsive, non-privileged materials that is commensurate with the nature and expedited schedule of this proceeding.

**Request for Production Number 14:**

All documents relating the current or prospective use of pressurized water to move fines down in the load.

**BNSF Response:** BNSF objects to this Request to the extent it seeks “[a]ll documents” related to the current or prospective use of pressurized water to move fines down in the load on grounds that the Request is overly broad and unduly burdensome in light of the nature of this proceeding, including the highly compressed discovery period. Subject to and without waiving its specific and general objections, BNSF will conduct a search for responsive, non-privileged materials that is commensurate with the nature and expedited schedule of this proceeding.

**Request for Production Number 15:**

All documents relating the current or prospective use of pneumatic methods to remove fines from the top of the load.

**BNSF Response:** BNSF objects to this Request to the extent it seeks “[a]ll documents” related to the current or prospective use of pneumatic methods to remove fines from the top of the load on grounds that the Request is overly broad and unduly

burdensome in light of the nature of this proceeding, including the highly compressed discovery period. Subject to and without waiving its specific and general objections, BNSF will conduct a search for responsive, non-privileged materials that is commensurate with the nature and expedited schedule of this proceeding.

**Request for Production Number 16:**

All documents relating to the potential detrimental effects of chemical toppings on the functionality of railcars, including but not limited to corrosive effects and “buildup” of topping residue after repeated applications.

**BNSF Response:** BNSF objects to this Request to the extent it seeks “[a]ll documents” related to the potential detrimental effects of chemical toppings on the functionality of railcars on grounds that the Request is overly broad and unduly burdensome in light of the nature of this proceeding, including the highly compressed discovery period. Subject to and without waiving its specific and general objections, BNSF will conduct a search for responsive, non-privileged materials that is commensurate with the nature and expedited schedule of this proceeding.

**Request for Production Number 17:**

All documents relating to the potential detrimental effects of chemical toppings on utility coal handling equipment.

**BNSF Response:** BNSF objects to this Request to the extent it seeks “[a]ll documents” related to the potential detrimental effects of chemical toppings on utility coal handling equipment on grounds that the Request is overly broad and unduly burdensome in light of the nature of this proceeding, including the highly compressed discovery period. BNSF further objects to this Request on grounds that the information

sought is more likely to be in the possession of utilities rather than BNSF. Subject to and without waiving its specific and general objections, BNSF will conduct a search for responsive, non-privileged materials that is commensurate with the nature and expedited schedule of this proceeding.

**Request for Production Number 18:**

All documents relating to the potential detrimental effects of chemical toppings on utility air pollution control equipment and performance.

**BNSF Response:** BNSF objects to this Request to the extent it seeks “[a]ll documents” related to the potential detrimental effects of chemical toppings on utility air pollution control equipment and performance on grounds that the Request is overly broad and unduly burdensome in light of the nature of this proceeding, including the highly compressed discovery period. BNSF further objects to this Request on grounds that the information sought is more likely to be in the possession of utilities rather than BNSF. Subject to and without waiving its specific and general objections, BNSF will conduct a search for responsive, non-privileged materials that is commensurate with the nature and expedited schedule of this proceeding.

**Request for Production Number 19:**

All documents relating to slow orders in effect for the Joint Line Derailment Locations during the 30-day period preceding and including the Joint Line Derailments.

**BNSF Response:** BNSF objects to this Request to the extent it seeks “[a]ll documents” related to slow orders in effect for the Joint Line Derailment Locations during the 30-day period preceding and including the Joint Line Derailments on grounds

that the Request is overly broad and unduly burdensome in light of the nature of this proceeding, including the highly compressed discovery period.

**Request for Production Number 20:**

All documents relating to “trouble tickets” or other reports of irregular operating conditions for the Joint Line Derailment Locations during the 30-day period preceding and including the Joint Line Derailments.

**BNSF Response:** BNSF objects to this Request to the extent it seeks “[a]ll documents” related to “trouble tickets” or other reports of irregular operating conditions for the Joint Line Derailment Locations during the 30-day period preceding and including the Joint Line Derailments on grounds that the Request is overly broad and unduly burdensome in light of the nature of this proceeding, including the highly compressed discovery period.

**Request for Production Number 21:**

All documents relied upon by BNSF to substantiate the existence of causal relationships between the presence of specific quantities of coal particles of specific sizes in or on track ballast on the one hand, and specific degradations of ballast performance on the other hand.

**BNSF Response:** BNSF objects to this Request to the extent it would require a special study to respond. BNSF further objects to this Request on grounds that it is not a valid request for documents and is outside the scope of permissible discovery.

**Request for Production Number 22:**

All documents relating to the effect(s) of the following on IDV.2 readings and/or the deposition of fugitive coal dust emissions from the tops of loaded rail cars on track ballast: (a) the rail distance from the mine to the monitoring point; (b) the speed of the train approaching and/or passing the monitoring point; (c) the disturbance by the passage of the train being monitored of coal dust emissions deposited by previous trains; (d) the contemporaneous or recent passage of loaded coal trains other than the train being

monitored; (e) the contemporaneous or recent passage of empty coal trains; (f) the distributed power configuration of the train being monitored and the effects of locomotive exhaust; (g) the presence of headwinds, tailwinds or crosswinds of different speeds at the monitoring point for the train being monitored; and/or (h) rain, fog, snow or other weather conditions.

**BNSF Response:** BNSF objects to this Request to the extent it seeks “[a]ll documents” related to the enumerated issues on grounds that the Request is overly broad and unduly burdensome in light of the nature of this proceeding, including the highly compressed discovery period. BNSF further objects to this Request to the extent it requests that BNSF undertake a special study. Subject to and without waiving its specific and general objections, BNSF will conduct a search that is commensurate with the nature and expedited schedule of this proceeding for materials relating to BNSF’s methodology for measuring coal dust emissions from the tops of loaded rail cars.

**Request for Production Number 23:**

All documents relating to specification of the Integrated Dust Value (IDV.2) in the Joint Line Tariff and/or in the Black Hills Subdivision Tariff.

**BNSF Response:** BNSF objects to this Request to the extent it seeks “[a]ll documents” related to specification of the Integrated Dust Value (IDV.2) in the Joint Line Tariff and/or in the Black Hills Subdivision Tariff on grounds that the Request is overly broad and unduly burdensome in light of the nature of this proceeding, including the highly compressed discovery period. BNSF further objects to this Request on grounds that the reference to “specification of the Integrated Dust Value” is vague and undefined. Subject to and without waiving its specific and general objections, BNSF will conduct a search that is commensurate with the nature and expedited schedule of this proceeding

for materials relating to BNSF's methodology for measuring coal dust emissions from the tops of loaded rail cars.

**Request for Production Number 24:**

All documents relating to the requirement in the Joint Line Tariff and/or in the Black Hills Subdivision Tariff that shippers be held responsible to ensure that trains not emit more than the Integrated Dust Value (IDV.2) stated in the tariff.

**BNSF Response:** BNSF objects to this Request on grounds that it is vague, overbroad and unduly burdensome.

**Request for Production Number 25:**

All agenda, notes, presentation materials and documents used during and/or in preparation for the October 1, 2009 BNSF coal customer meeting and/or all documents prepared after the meeting regarding the meeting and/or BNSF's planned actions in response to the meeting, as well as all documents constituting or related to customer responses to the meeting.

**BNSF Response:** Subject to and without waiving its general objections, BNSF will conduct a search for responsive, non-privileged materials that is commensurate with the nature and expedited schedule of this proceeding.

**Request for Production Number 26:**

All documents identifying the persons and/or entities in attendance at the October 1, 2009 BNSF customer meeting.

**BNSF Response:** Subject to and without waiving its general objections, BNSF will conduct a search for responsive, non-privileged materials that is commensurate with the nature and expedited schedule of this proceeding.

**Request for Production Number 27:**

All engineering records, drawings and documents depicting or identifying the Joint Line Derailment Locations from January 1, 2000 to the present.

**BNSF Response:** BNSF objects to this request on grounds that the Request is overly broad and unduly burdensome in light of the nature of this proceeding, including the highly compressed discovery period. BNSF further objects to this Request on grounds that the information it seeks is neither relevant nor likely to lead to the discovery of admissible evidence.

**Request for Production Number 28:**

All engineering records, drawings and documents depicting or identifying the drainage system (including but not limited to track ditches, intercepting ditches and culverts) for the Joint Line Derailment Locations from January 1, 2000 to the present.

**BNSF Response:** BNSF objects to this request on grounds that the Request is overly broad and unduly burdensome in light of the nature of this proceeding, including the highly compressed discovery period. BNSF further objects to this Request on grounds that the information it seeks is neither relevant nor likely to lead to the discovery of admissible evidence.

**Request for Production Number 29:**

All documents relating to the recommended frequency of ballast cleaning.

**BNSF Response:** BNSF objects to this request on grounds that the Request is overly broad and unduly burdensome in light of the nature of this proceeding, including the highly compressed discovery period. Subject to and without waiving its specific and general objections, BNSF will conduct a search that is commensurate with the nature and expedited schedule of this proceeding for materials sufficient to describe BNSF's standards and/or procedures for the appropriate frequency and/or basis for cleaning ballast.

**Request for Production Number 30:**

With regard to the Joint Line Derailment Locations, all documents relating to the schedule of ballast cleaning from January 1, 1995 to the present.

**BNSF Response:** BNSF objects to this request on grounds that the Request is overly broad and unduly burdensome in light of the nature of this proceeding, including the highly compressed discovery period.

**Request for Production Number 31:**

All reports, studies, analyses and documents relating to the Joint Line Derailments.

**BNSF Response:** BNSF objects to this request on grounds that the Request is overly broad and unduly burdensome in light of the nature of this proceeding, including the highly compressed discovery period.

**Request for Production Number 32:**

All documents identifying the planned and contemplated locations of trackside coal dust monitors.

**BNSF Response:** BNSF objects to this Request to the extent it seeks “[a]ll documents” identifying the planned and contemplated locations of trackside coal dust monitors on grounds that the Request is overly broad and unduly burdensome in light of the nature of this proceeding, including the highly compressed discovery period. Subject to and without waiving its specific and general objections, BNSF will conduct a search for responsive, non-privileged materials that is commensurate with the nature and expedited schedule of this proceeding.

**Request for Production Number 33:**

All documents relating to coal dust monitoring equipment, including but not limited to equipment manufacturer's instructions, guidelines and recommendations.

**BNSF Response:** BNSF objects to this Request to the extent it seeks "[a]ll documents" relating to coal dust monitoring equipment, including but not limited to equipment manufacturer's instructions, guidelines and recommendations on grounds that the Request is overly broad and unduly burdensome in light of the nature of this proceeding, including the highly compressed discovery period. Subject to and without waiving its specific and general objections, BNSF will conduct a search for responsive, non-privileged materials that is commensurate with the nature and expedited schedule of this proceeding.

**Request for Production Number 34:**

All communications regarding coal dust control systems and methods between BNSF and any person, including but not limited to consultants, equipment manufacturers, and coal dust suppressant manufacturers, suppliers and appliers.

**BNSF Response:** BNSF objects to this Request to the extent it seeks "[a]ll communications" regarding coal dust control systems and methods between BNSF and "any person" on grounds that the Request is overly broad and unduly burdensome in light of the nature of this proceeding, including the highly compressed discovery period. Subject to and without waiving its specific and general objections, BNSF will conduct a search for responsive, non-privileged materials that is commensurate with the nature and expedited schedule of this proceeding.

**Request for Production Number 35:**

All communications between BNSF and Simpson Weather Associates Inc. from January 1, 2000 to the present.

**BNSF Response:** BNSF objects to this Request on grounds that it is overbroad and unduly burdensome.

**Request for Production Number 36:**

All documents relating to the NCTA Study or its results.

**BNSF Response:** BNSF objects to this Request to the extent it seeks “[a]ll documents” relating to the NCTA Study or its results on grounds that the Request is overly broad and unduly burdensome in light of the nature of this proceeding, including the highly compressed discovery period. Subject to and without waiving its specific and general objections, BNSF will conduct a search for responsive, non-privileged materials that is commensurate with the nature and expedited schedule of this proceeding.

**Request for Production Number 37:**

All documents relating to future or current studies regarding fugitive coal dust emissions from railcars.

**BNSF Response:** BNSF objects to this Request on grounds that the reference to “studies regarding coal dust emissions” is vague and undefined. BNSF further objects to this Request on grounds that it is overly broad and unduly burdensome in light of the nature of this proceeding, including the highly compressed discovery period.

**Request for Production Number 38:**

All documents relating to previous tariff provisions considered or implemented by BNSF regarding coal dust emissions from railcars carrying Powder River Basin coal.

**BNSF Response:** BNSF objects to this Request on grounds that it is overly broad and unduly burdensome since it seeks information about all prior tariffs that were contemplated relating to dust from railcars regardless of when the tariff was contemplated, how seriously the tariff was contemplated, by whom the tariff was contemplated or the relevance of the tariff to the issues raised in this proceeding. BNSF further objects to this Interrogatory to the extent it seeks information prior to January 1, 2005 on grounds that such information is neither relevant nor likely to lead to the discovery of admissible evidence. Subject to and without waiving its specific and general objections, BNSF states that prior to the implementation of the Joint Line and Black Hills Subdivision Tariffs, no previous coal dust tariffs were implemented.

**Request for Production Number 39:**

All documents relating to previous tariff provisions implemented by BNSF regarding coal dust emissions from railcars carrying coal from mines other than those located in the Powder River Basin region.

**BNSF Response:** BNSF objects to this Request on grounds that it seeks information that is neither relevant nor likely to lead to the discovery of admissible evidence. BNSF further objects to this Interrogatory to the extent it seeks information prior to January 1, 2005 on grounds that such information is neither relevant nor likely to lead to the discovery of admissible evidence. Subject to and without waiving its specific and general objections, BNSF states that prior to the implementation of the Joint Line and Black Hills Subdivision Tariffs, no previous coal dust tariffs were implemented.

**Request for Production Number 40:**

All documents relating to previous tariff provisions implemented by BNSF regarding dust from railcars carrying commodities other than coal.

**BNSF Response:** BNSF objects to this Request to the extent it seeks information about tariffs regarding commodities other than coal on grounds that it is overly broad and unduly burdensome in light of the nature of this proceeding, including the highly compressed discovery period.

**Request for Production Number 41:**

All documents relating to standards for the measurement of coal dust emitted from railcars issued by any organization or agency, including but not limited to ASTM International (formerly American Society for Testing and Materials) and the Association of American Railroads, that BNSF used or consulted in developing the Joint Line Tariff and/or the Black Hills Subdivision Tariff.

**BNSF Response:** BNSF objects to this Request to the extent it seeks information about standards that BNSF “used or consulted” regardless of the context in which those standards were “used or consulted.” Subject to and without waiving its general objections, BNSF will conduct a search that is commensurate with the nature and expedited schedule of this proceeding for materials relating to the methodology used to develop the Joint Line Tariff and/or the Black Hills Subdivision Tariff.

**Request for Production Number 42:**

All documents relating to standards for the limit of how much coal dust emitted from railcars is acceptable issued by any organization or agency, including but not limited to ASTM International and the Association of American Railroads, that BNSF used or consulted in developing the Joint Line Tariff and/or the Black Hills Subdivision Tariff.

**BNSF Response:** BNSF objects to this Request to the extent it seeks information about standards that BNSF “used or consulted” regardless of the context in which those standards were “used or consulted.” Subject to and without waiving its general objections, BNSF will conduct a search that is commensurate with the nature and expedited schedule of this proceeding for materials relating to the methodology used to develop the Joint Line Tariff and/or the Black Hills Subdivision Tariff.

**Request for Production Number 43:**

All documents relating to environmental concerns expressed to BNSF by any person or raised by BNSF itself related to coal dust emissions coming from railcars carrying Powder River Basin coal.

**BNSF Response:** BNSF objects to the request for “all documents” relating to environmental concerns expressed to BNSF by “any” person or raised by BNSF related to coal dust on grounds that such request is overly broad and unduly burdensome in light of the nature of this proceeding, including the highly compressed discovery period. BNSF further object to this Request on grounds that the reference to “environmental concerns” is vague and undefined. Subject to and without waiving its specific and general objections, BNSF will conduct a search that is commensurate with the nature and expedited schedule of this proceeding for materials relating to the effect of coal dust on the environment.

**Request for Production Number 44:**

All documents relating to requirements and/or standards BNSF has applied since January 1, 2000 for coal cars operating over the Joint Line and/or the Black Hills Subdivision, whether such standards were developed by BNSF, AAR or any other organization or agency.

**BNSF Response:** BNSF objects to this Request on grounds that it is overly broad, unduly burdensome and does not seek information that is relevant or likely to lead to the discovery of admissible evidence.

**Request for Production Number 45:**

All communications between BNSF and any organization or agency relating to changing the standards for coal cars operating over the Joint Line and/or the Black Hills Subdivision.

**BNSF Response:** BNSF objects to this Request on grounds that it is overly broad, unduly burdensome and does not seek information that is relevant or likely to lead to the discovery of admissible evidence.

**Request for Production Number 46:**

All documents relating to safety concerns associated with implementation of the Joint Line Tariff and/or the Black Hills Subdivision Tariff.

**BNSF Response:** BNSF objects to the request for “all documents” relating to safety concerns associated with implementation of the Joint Line Tariff and/or the Black Hills Subdivision Tariff on grounds that such request is overly broad and unduly burdensome in light of the nature of this proceeding, including the highly compressed discovery period. Subject to and without waiving its specific and general objections, BNSF will conduct a search for responsive, non-privileged materials that is commensurate with the nature and expedited schedule of this proceeding.

**Request for Production Number 47:**

All documents relating to the purpose and/or importance of ballast cleaning.

**BNSF Response:** BNSF objects to this request on grounds that the Request is overly broad and unduly burdensome in light of the nature of this proceeding, including the highly compressed discovery period. BNSF further objects to the request for “all documents” relating to the purpose and/or importance of ballast cleaning on grounds that the Request is overly broad and unduly burdensome in light of the nature of this proceeding, including the highly compressed discovery period. Subject to and without waiving its specific and general objections, BNSF will conduct a search that is commensurate with the nature and expedited schedule of this proceeding for materials sufficient to describe BNSF’s standards and/or procedures for the appropriate frequency and/or basis for cleaning ballast.

**Request for Production Number 48:**

All documents relating to any test used to determine whether ballast needs to be cleaned and/or reconditioned.

**BNSF Response:** BNSF objects to this request on grounds that the Request is overly broad and unduly burdensome in light of the nature of this proceeding, including the highly compressed discovery period. BNSF further objects to the request for “all documents” relating to any test used to determine whether ballast needs to be cleaned and/or reconditioned on grounds that the Request is overly broad and unduly burdensome in light of the nature of this proceeding, including the highly compressed discovery period. Subject to and without waiving its specific and general objections, BNSF will conduct a search that is commensurate with the nature and expedited schedule of this

proceeding for materials sufficient to describe BNSF's standards and/or procedures for the appropriate frequency and/or basis for cleaning ballast.

**Request for Production Number 49:**

All documents relating to any test performed by BNSF on the Joint Line and/or the Black Hills Subdivision to determine whether ballast needs to be cleaned and/or reconditioned for the time period January 1, 1995 to the present.

**BNSF Response:** BNSF objects to this request on grounds that the Request is overly broad and unduly burdensome in light of the nature of this proceeding, including the highly compressed discovery period. BNSF further objects to the request for "all documents" relating to any test performed by BNSF on the Joint Line and/or the Black Hills Subdivision to determine whether ballast needs to be cleaned and/or reconditioned on grounds that the Request is overly broad and unduly burdensome in light of the nature of this proceeding, including the highly compressed discovery period. BNSF further objects to this Request to the extent it seeks documents created before January 1, 2005. Subject to and without waiving its specific and general objections, BNSF will conduct a search that is commensurate with the nature and expedited schedule of this proceeding for materials sufficient to describe BNSF's standards and/or procedures for the appropriate frequency and/or basis for cleaning ballast.

**Request for Production Number 50:**

All documents relating to BNSF's identification of any problem associated with fugitive coal dust falling onto the track ballast.

**BNSF Response:** BNSF objects to the request for "all documents" relating to BNSF's identification of any problem associated with fugitive coal dust falling onto the

track ballast on grounds that the Request is overly broad and unduly burdensome in light of the nature of this proceeding, including the highly compressed discovery period.

Subject to and without waiving its specific and general objections, BNSF will conduct a search for responsive, non-privileged materials that is commensurate with the nature and expedited schedule of this proceeding.

**Request for Production Number 51:**

All documents relating to BNSF's awareness of coal dust accumulating on the Joint Line and/or the Black Hills Subdivision.

**BNSF Response:** BNSF objects to the request for "all documents" relating to BNSF's awareness of coal dust accumulating on the Joint Line and/or the Black Hills Subdivision on grounds that the Request is overly broad and unduly burdensome in light of the nature of this proceeding, including the highly compressed discovery period. Subject to and without waiving its specific and general objections, BNSF will conduct a search for responsive, non-privileged materials that is commensurate with the nature and expedited schedule of this proceeding.

**Request for Production Number 52:**

All documents relating to documentation of the presence of fugitive coal dust on the Joint Line and/or the Black Hills Subdivision by BNSF, the STB or any other organization or agency.

**BNSF Response:** BNSF objects to the request for "all documents" relating to documentation of the presence of fugitive coal dust on the Joint Line and/or the Black Hills Subdivision by BNSF, the STB or any other organization or agency on grounds that the Request is overly broad and unduly burdensome in light of the nature of this

proceeding, including the highly compressed discovery period. Subject to and without waiving its specific and general objections, BNSF will conduct a search for responsive, non-privileged materials that is commensurate with the nature and expedited schedule of this proceeding.

**Request for Production Number 53:**

All documents relating to the reduction or elimination of fugitive coal dust due to, in whole or in part, changes in profiling and particle size implemented by the mines and shippers.

**BNSF Response:** BNSF objects to the request for “all documents” relating to the reduction or elimination of fugitive coal dust due to, in whole or in part, changes in profiling and particle size implemented by the mines and shippers on grounds that the Request is overly broad and unduly burdensome in light of the nature of this proceeding, including the highly compressed discovery period. Subject to and without waiving its specific and general objections, BNSF will conduct a search for responsive, non-privileged materials that is commensurate with the nature and expedited schedule of this proceeding.

**Request for Production Number 54:**

All documents regarding the development of the load profile included in the Joint Line Tariff and the Black Hills Subdivision Tariff (“BNSF Load Profile”).

**BNSF Response:** BNSF objects to this Request to the extent it seeks information relating to efforts carried out by or on behalf of persons other than BNSF. BNSF further objects to this Request to the extent it seeks “all documents” regarding the development of the BNSF Load Profile on grounds that such request is overly broad and unduly

burdensome in light of the nature of this proceeding, including the highly compressed discovery period. Subject to and without waiving its specific and general objections, BNSF will conduct a search that is commensurate with the nature and expedited schedule of this proceeding for materials relating to the BNSF Load Profile.

**Request for Production Number 55:**

All documents relating to the decision and/or rationale to include the BNSF Load Profile in the Joint Line Tariff and the Black Hills Subdivision Tariff.

**BNSF Response:** BNSF objects to the request for “all documents” relating to the decision and/or rationale to include the BNSF Load Profile in the Joint Line Tariff and the Black Hills Subdivision Tariff on grounds that such request is overly broad and unduly burdensome in light of the nature of this proceeding, including the highly compressed discovery period. Subject to and without waiving its specific and general objections, BNSF will conduct a search that is commensurate with the nature and expedited schedule of this proceeding for materials relating to the BNSF Load Profile.

**Request for Production Number 56:**

All documents relating to the BNSF Load Profile, including but not limited to any discussions, decisions and/or evaluations of the potential need to modify BNSF Load Profile in the future.

**BNSF Response:** BNSF objects to the request for “all documents” relating to the BNSF Load Profile on grounds that such request is overly broad and unduly burdensome in light of the nature of this proceeding, including the highly compressed discovery period. Subject to and without waiving its specific and general objections, BNSF will

conduct a search that is commensurate with the nature and expedited schedule of this proceeding for materials relating to the BNSF Load Profile.

**Request for Production Number 57:**

If not produced in response to a previous request, all track inspection reports, reports and data from track geometry cars, photographs and video recordings originally created during the period from May 15, 2003 to the time of each Joint Line Derailment.

**BNSF Response:** BNSF objects to this Request on grounds that the Request is overly broad and unduly burdensome in light of the nature of this proceeding, including the highly compressed discovery period.

**RESPONSE AND OBJECTIONS TO REQUEST TO PERMIT ENTRY ON  
PROPERTY FOR INSPECTION**

**Request for Entry Number 1:**

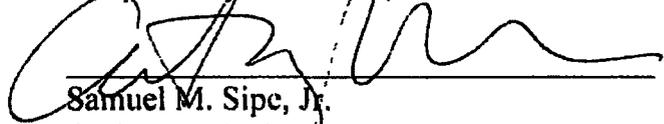
AECC requests that BNSF permit AECC and/or AECC's representatives to enter upon BNSF's premises, including but not limited to the Joint Line Derailment Locations and each location at which BNSF plans to conduct or is considering conducting trackside monitoring of coal dust emissions, at a mutually convenient date and time to be arranged, and subject to appropriate liability releases and safety and operating considerations, for purposes of inspecting the rail infrastructure and ambient conditions at those locations.

**BNSF Response:** BNSF objects to this Request to the extent it seeks permission to enter BNSF property for the purpose of inspecting the sites where derailments occurred almost five years ago on grounds that any information obtained from such an inspection would not be relevant or likely to lead to the discovery of admissible evidence. BNSF further objects to this Request to the extent it seeks permission to inspect each location at which BNSF plans to conduct or is considering conducting trackside monitoring of coal dust emissions on grounds that such a request is overly broad and

unduly burdensome. BNSF further objects to this Request to the extent it seeks permission for anything other than a visual inspection. Subject to and without waiving its objections, BNSF would be willing to grant permission for two representatives of AECC to conduct a visual inspection of the general area near milepost 90.6 on the Joint Line subject to the direct supervision of a BNSF representative and subject to all liability releases and safety and operating considerations that BNSF requires for such an entry onto the rail property.

Richard E. Weicher  
Jill K. Mulligan  
BNSF RAILWAY COMPANY  
2500 Lou Menk Drive  
Fort Worth, TX 76131  
(817) 352-2353

Respectfully submitted,



Samuel M. Sipe, Jr.  
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Kathryn J. Gaines  
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Washington, DC 20036  
(202) 429-3000

ATTORNEYS FOR  
BNSF RAILWAY COMPANY

February 1, 2010

**CERTIFICATE OF SERVICE**

I hereby certify that on January 21, 2010, I caused a copy of foregoing to be served (1) by hand delivery on the following parties of record in this case:

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evonsalzen@mwmlaw.com

*Counsel for Arkansas Electric Cooperative Corporation*

and (2) by first class mail postage prepaid on the following parties of record to this case:

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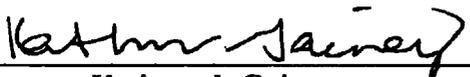
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Kathryn J. Gainey

# EXHIBIT C

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ERIC VON SALZEN  
OF COUNSEL

February 8, 2010

Via email to [ssipe@steptoe.com](mailto:ssipe@steptoe.com)

Samuel M. Sipe, Jr.  
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,

I was happy to hear that BNSF has agreed to comply with AECC's request under 49 C.F.R. § 1114.30 (a) (2) to inspect the sites of the Joint Line Derailments. However, I find that there are many other instances in which BNSF has refused to respond to AECC's discovery, or is limiting its disclosures in an unacceptable way.

BNSF has refused to respond at all to many of AECC's interrogatories and requests for production that relate to the Joint Line Derailments; these include interrogatories 22, 24, and 25; requests for production 4, 7, 8, 9, 10, 11, 20, 27, 28, 30, 31, and 57. The derailments are important to the Board's evaluation of this case. BNSF has repeatedly cited them as justification for the requirements that Items 100 and 101 of its Tariff BNSF 6041-B would impose on coal shippers. AECC has the right to conduct discovery regarding these events. Therefore, BNSF's General Objection 7, with respect to requests for information prior to 2005, is invalid; AECC is properly seeking information regarding actions and conditions before 2005 that may have contributed to the derailments.

BNSF has also refused to respond at all to other interrogatories and requests for production that relate to important issues in this case; these include interrogatories 3 (studies, etc., that support the tariff), 4 (facts supporting the tariff requirements), and 12 (BNSF rules regarding use of open-top cars); requests for production 21 (causal relationship between coal particles and ballast degradation), 24 (support for tariff holding shippers responsible for limiting

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emissions), 35 (communications between BNSF and Simpson, Weather Associates), 37 (current or future studies of fugitive coal dust emissions), 40 (previous BNSF tariffs related to dust from other commodities), 44 (standards applied by BNSF to coal cars operating on the subject lines), and 45 (communications between BNSF and any agency or organization regarding standards for coal cars operating on such lines). BNSF's objections do not justify its refusal to provide the information AECC has requested.

Furthermore, in many instances although BNSF has not refused outright to respond to a discovery request, it has nevertheless not committed to producing responsive information; it has stated only that it will "conduct a search that is commensurate with the nature and expedited schedule of this proceeding". AECC has no idea what that boiler-plate phrase means, but clearly BNSF has no right to make a unilateral decision about how diligent it will be in complying with its discovery obligations. It is particularly inappropriate for BNSF to complain that the "expedited schedule" in this case should excuse its full compliance with its discovery obligations, in light of the fact that the Board adopted the schedule proposed by BNSF. Even worse, in some instances BNSF not only recites the "commensurate" boiler plate, it also narrows the scope of its responses to less than what AECC asked for; for example, in interrogatory 5, AECC asked about BNSF's maintenance both before and after the Joint Line Derailments, but BNSF says that (subject to its "commensurate" qualification) it will only produce "materials sufficient to show BNSF's current inspection and maintenance standards." This is only one example of a problem that recurs repeatedly in BNSF's responses.

It is not clear from BNSF's responses whether it is withholding any information on the basis of General Objections 2 and 9. Those objections are invalid to the extent that they relate to Union Pacific, which is BNSF's partner in the Joint Line, and BNSF should produce all responsive information in its possession regardless of UP's involvement.

BNSF should produce the information requested by AECC forthwith, or state unequivocally that it will do so promptly. If BNSF fails to do so, AECC will have no choice but to file a motion to compel.

If you would like to discuss this matter with me, please call me at my home office, (910) 235-5274, or if you don't reach me there, then on my cellphone, (910) 986-1513.

Sincerely,



Eric Von Salzen

**MCLEOD, WATKINSON & MILLER**

**February 8, 2010**

**Page 3**

**cc: Mr. Steve Sharp, AECC  
Alex Menendez, Esq.**

**Anthony J. LaRocca, Esq. (alarocca@steptoe.com)  
Kathryn J. Gainey, Esq. (kgainey@steptoe.com)**

# STEPTOE & JOHNSON<sup>LLP</sup>

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□ □

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February 10, 2010

**VIA E-MAIL**

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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 February 8, 2010 letter to Mr. Sipe regarding AECC's discovery requests. In my experience, it would have been more effective to address the discovery issues you raise in a meet and confer session, and we continue to be prepared to meet with you to discuss these issues if you wish. In the meantime, let me address the specific issues you raise in your February 8 letter.

Your primary concern appears to be with BNSF's objections to specific requests relating to the derailments that occurred in 2005 on the Joint Line. Your claim that "AECC has the right to conduct discovery regarding" the derailments suggests that you have misunderstood BNSF's responses to your discovery requests. BNSF is producing an extensive volume of materials regarding the 2005 derailments. Your client participated in the litigation *Union Pacific R.R. Co. v. Entergy Arkansas, Inc., et al.*, No. CV2006-2711 (Pulaski Co., Ark. Cir. Ct.), which focused on the 2005 derailments. The plaintiff and defendants in that case obtained broad discovery from BNSF on the causes of the derailments, and BNSF used its document production in the *Entergy* case as one source for its production of documents in this proceeding. This enabled BNSF to respond to the massive discovery requests that have been made in this proceeding in the compressed time period that has been provided for discovery, particularly on issues relating to the 2005 derailments. BNSF produced in this proceeding all documents from its document production in the *Entergy* case relating to the causes of the 2005 derailments, including materials generated before 2005. If you are interested in analyzing the causes of the 2005 derailments, you will find, when you review the documents BNSF has produced, that the discovery record is more than adequate for that purpose.

Eric Von Salzen, Esq.  
February 10, 2010  
Page 2

Your February 8 letter also complains about BNSF's objections to a number of other requests that you claim relate to important issues in the case. As to most of the requests you identify, you are incorrect in claiming that BNSF has refused to provide the information sought. BNSF's document production includes extensive materials relating to "studies, etc., that support the tariff," "facts supporting the tariff requirement," "causal relationship between coal particles and ballast degradation," "support for tariff holding shippers responsible for limiting emissions," "communications between BNSF and Simpson, Weather Associates," and "current or future studies of fugitive coal dust emissions." While BNSF objected to the unreasonable breadth of your client's requests as drafted, we have not refused to provide responsive information that we were able to locate in our document collection efforts. BNSF continues to question the relevance of some of the requests you identify. Please explain why you believe that your broad requests regarding rules relating to the use of open top cars or general operating rules relating to dust or to coal cars operating on the Joint Line are relevant in this proceeding.

As to your concerns about the scope of BNSF's efforts to locate and produce responsive documents, you are no doubt aware that a party responding to discovery requests is required only to undertake reasonable efforts to locate responsive materials. AECC's status as a party in this proceeding does not give it the right to impose unlimited discovery burdens on BNSF. In this proceeding, BNSF has made very extensive efforts in a short time period to collect and produce materials relating to the problem of coal dust emissions. In addition to the extensive materials from the *Entergy* case described above, BNSF has collected files and produced materials from key BNSF employees in the engineering, maintenance, marketing, research and environmental groups working on coal dust issues. We have also produced extensive materials from BNSF's two primary consultants – SWA and CRA. Through these efforts, BNSF has created a comprehensive discovery record on which to evaluate the issues raised in this proceeding.

Your concerns about BNSF's production of materials relating to Union Pacific Railroad Company ("UP") are also unfounded. We are not withholding any documents relating to UP on the basis of a confidentiality or non-disclosure agreement (Objection 2). Similarly, the thrust of our Objection 9 was that we cannot be compelled to produce documents from UP simply because UP is a co-owner of the Joint Line. BNSF has produced materials in BNSF's custody relating to communications with UP on the coal dust issue and other materials relating to UP that are responsive to your discovery requests.

I am confident that when you have reviewed the extensive materials we have produced, you will see that BNSF's discovery responses provide a more than adequate basis for addressing issues that may be raised in this proceeding. In just a few weeks, BNSF undertook extensive efforts to respond to over one hundred discovery requests (and far more than one hundred counting subparts) that have been served by the parties, and BNSF produced nearly 30,000 documents totaling over 75,000 pages. BNSF's document production in this case dwarfs the discovery that is normally produced in STB

Eric Von Salzen, Esq.  
February 10, 2010  
Page 3

proceedings, notwithstanding the expedited schedule that was established for discovery and the fact that discovery is often not pursued at all in declaratory order proceedings.

I hope this addresses your concerns.

Sincerely,

/s/ Anthony J. LaRocca

cc: Richard Weicher  
Jill K. Mulligan  
Samuel Sipe, Jr.

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February 10, 2010

Via email to [alarocca@step toe.com](mailto:alarocca@step toe.com)

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

Dear Tony,

I'm perplexed by your letter (received this evening) in response to mine of the 8th to Sam Sipe. Are you saying that BNSF has in fact provided the information requested in many of AECC's discovery requests, even though BNSF's formal written responses indicated that it was not doing so? If that's what you mean, then BNSF can resolve (or at least reduce) this problem by filing amended responses.

Until BNSF amends its responses, AECC must proceed on the basis of the responses we received from BNSF last week. We will therefore file our motion to compel. We remain willing to discuss (preferably by telephone) a resolution of these issues at a mutually convenient time.

Sincerely,

*ERIC*

Eric Von Salzen

**MCLEOD, WATKINSON & MILLER**

**February 10, 2010**

**Page 2**

**cc: Mr. Steve Sharp, AECC  
Alex Menendez, Esq.**

**Samuel Sipe, Esq. (ssipe@step toe.com)  
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