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**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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

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**JOINT PETITION FOR EXTENSION OF TIME  
TO FILE REBUTTAL EVIDENCE AND ARGUMENT**

**ENTERED  
Office of Proceedings**

**MAY 05 2010**

**– EXPEDITED CONSIDERATION REQUESTED –**

**Part of  
Public Record**

Pursuant to 49 C.F.R. §§ 1104.7(b) and 1115.5(a), Western Coal Traffic League (“WCTL”), Concerned Captive Coal Shippers (“Coal Shippers”), Arkansas Electric Cooperative Corporation (“AECC”), American Public Power Association (“APPA”), Edison Electric Institute (“EEI”), National Rural Electric Cooperative Association (“NERCA”), National Coal Transportation Association (“NCTA”), Ameren Energy Fuels and Services Company (“AFS”), TUCO, Inc. (“TUCO”), and Texas Municipal Power Agency (“TMPA”) (collectively referred to herein as “Shipper Interests”), who represent all shippers participating in this proceeding, jointly petition the Board to extend the current due date for the submission of Rebuttal Evidence and Argument under the current schedule for this proceeding from May 17, 2010 to June 4, 2010. In support thereof, the Shipper Interests state as follows:

1. BNSF filed voluminous and highly detailed Reply Evidence and Argument. BNSF’s Reply filing consists of 241 total pages, including a 38-page

Argument; two appendices; and five Verified Statements. BNSF's Verified Statements include a statement from a new witness, Mr. Terry D. Smith, which addresses issues concerning the impacts of increased coal dust maintenance on railroad operating capacity.

2. UP likewise filed voluminous and highly detailed Reply Evidence and Argument. UP's Reply filing consists of 157 total pages, including a 55-page Argument and three Verified Statements. UP's Reply filing introduces two new witnesses, Mr. Dexter N. McCulloch and Mr. Rex Beck. Mr. McCulloch is a retained consultant who presents highly technical testimony concerning the qualities of coal dust as a ballast foulant. Mr. Beck is the General Manager-Freight Car Mechanical Department of UP. Mr. Beck's statement purports to address the relative loss of coal dust from the bottom versus the top of coal cars – an issue that is addressed by UP for the first time in its Reply filing.

3. The BNSF and UP Reply filings raise many contested factual and highly technical issues that will require review by experts in order for the Shipper Interests to file responsive Rebuttal Evidence. For example, BNSF's expert witness George D. Emmitt, Ph.D., has presented testimony regarding studies conducted in April 2010 that have yet to be analyzed. Dr. Emmitt also introduces new testimony concerning the use of filters on E-samplers that is not supported by discovery provided by BNSF to date, and also submits unverified statements from third parties that are unsupported by any documentation provided in this matter.

4. The current two weeks allotted for Rebuttal do not permit an adequate timeframe for review of the many issues raised in these filings.

5. On April 28, 2010, just two days before its Reply filing was due, BNSF served a supplemental document production on WCTL and Concerned Shippers consisting of 1,351 pages of documents. Shipper Interests are in the process of reviewing that supplemental production and need additional time to consider these new documents and data. BNSF also did not complete its production of documents in response to AECC's discovery requests (which were served on January 11, 2010) until April 9, 2010 (when the documents were made available for review in the offices of BNSF's counsel), and copies of identified documents were not delivered to counsel for AECC until April 27, 2010.

6. Shippers Interests have conferred with Counsel for BNSF regarding this request for an extension. BNSF has indicated that it would not object to an extension of the due date for rebuttal evidence to May 27, 2010, but objects to an extension until June 4, 2010.

7. BNSF will not be prejudiced if the Board grants the entire 18-day extension requested. Conversely, given the huge amounts of shipper dollars at stake in this proceeding, as demonstrated in Shipper Interests' evidence, Shipper Interests should be afforded sufficient time to permit an appropriate rebuttal.

8. For all the foregoing reasons, Shipper Interests believe that the additional 8 days<sup>1</sup> that they are seeking through this Petition will not cause undue delay and will assure that the participants in this proceeding have a fair opportunity to address

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<sup>1</sup> The additional 8 days include the Memorial Day Holiday and weekend.

all of the contested legal, factual and technical issues that have been raised by BNSF and UP.

**CONCLUSION**

For the foregoing reasons, good cause exists to extend the due dates for Rebuttal Evidence and Argument from May 17, 2010 to June 4, 2010.

Respectfully submitted,

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Dated: May 5, 2010

## **CERTIFICATE OF SERVICE**

I hereby certify that this 5th day of May, 2010, I have caused the forgoing to be served via first-class mail, postage prepaid upon all parties of record in this proceeding. In addition, given the expedited consideration requested, I certify that I have caused the foregoing to be served via email on counsel for BNSF Railway Company, Union Pacific Railroad Company, Norfolk Southern Railway Company, and CSX Transportation, Inc.

/s/ Andrew B. Kolesar III  
Andrew B. Kolesar III