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

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In the Matter of:	)	
	)	
Review of Rail Access and Competition Issues—	)	STB Ex Parte No. 575
Renewed Petition of The Western Coal Traffic	)	
League	)	
	)	

**SUMMARY OF PRESENTATION OF STEVE SHARP
ON BEHALF OF
ARKANSAS ELECTRIC COOPERATIVE CORPORATION**

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**SUMMARY OF PRESENTATION OF STEVE SHARP
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- I. INTRODUCTION
- II. AECC's INTEREST IN PAPER BARRIERS – Missouri and Northern Arkansas Railroad ("MNA") & Independence Steam Electric Station ("ISES")
- III. AECC SUPPORTS RAIL COMPETITION BY:
 - Identifying and pursuing opportunities in current competitive environment
 - Working with other coal users on group actions to strengthen competition
 - Participating in relevant legislative initiatives
 - Participating in Board proceedings that relate to the "ground rules" for rail competition
- IV. AECC WELCOMES BOARD REVIEW OF THE PAPER BARRIER ISSUE, AND SUPPORTS WCTL'S EFFORTS
- V. LOSS OF TRANSPORTATION OPTIONS AT ISES
 - A. MNA does not provide several of the important competitive options that would have been provided by MP, the prior operator of the line. These include:
 - Ability to receive PRB coal originated by UP or BNSF (found to be critically important when UP can't perform adequately)

- Limitation of destination rent for PRB movements based on the possibility of efficient interchange via Hoxie, AR¹
 - Unfettered ability to receive substitute coal from numerous online origins including IL, KS, MO, TX, LA
 - Unfettered ability to receive substitute coal in interline movements from KCS, IC (CN) and even the eastern railroads.
- B. UP has argued that these competitive options were lost prior to the creation of MNA (and thus were not caused by the paper barriers).²
- C. Even if UP is correct on this point, AECC does not believe the Board should view that as a satisfactory closure of the issue.
- D. AECC has been unable to locate any Board, ICC or other authoritative decision that approved the losses of transportation options that ISES has experienced.
- E. AECC has reviewed carefully the ICC decision approving the UP/MP/WP merger. Holding aside the situations where remedial conditions were imposed, the ICC's approval was premised on a belief that "... (t)he proposed transactions present no other significant competitive problems in any transportation markets, including coal transportation markets..." If a carrier's post-merger ability to transport traffic results from the exercise of market power rather than improved service, the ICC recognized the possibility that this "may result in inefficiency, the ability to achieve monopoly profits, reduced competition and harm to essential services."

The ICC did consider the public interest aspects of potential diversions to UP of BN-originated PRB traffic terminated by MP. "Although BN may lose some, or even all, of the traffic it now handles in joint-line service with MP, this is not a public interest concern *unless the traffic diversion would have a detrimental impact on the users of the transportation services.*"³

¹ Even though BNSF is substantially more circuitous than UP for movements to the Kansas City gateway, a BNSF route to ISES via Hoxie would be shorter than the route normally utilized by UP (via Sallisaw, OK and Little Rock, AR) for PRB loads moving to this plant. While BNSF may have originally interchanged with MNA at Kansas City, AECC believes the proliferation of longer, heavier PRB coal trains has reduced the relative route efficiency of the northern portion of MNA. The same factors that have caused UP to prefer its current route for loaded movements would also cause BNSF to prefer a route via Hoxie. This is corroborated by BN's unsuccessful application in UP/MP/WP (ICC FD 30000 (Sub-No. 41)) for trackage rights from Hoxie to the plant.

² See, for example, "Reply Comments of Union Pacific Railroad Company" (March 28, 2006), Reply Verified Statement of F. M. "Rick" Gough at 2.

³ ICC Finance Docket No 30000, Decision dated September 24, 1982 at 54 (emphasis added).

- F. Even UP does not seem to dispute that MNA no longer offers transportation options that would have been offered by an independent MP, and AECC and Entergy have demonstrated the resulting “detrimental impacts”. The question that remains unanswered is how could these effects have occurred without ICC or Board approval?
- G. Testimony sponsored by AECC in EP 658 (Staggers Act Review) last year highlighted how methodological refinements during the wave of rail mergers created better recognition of problems associated with, among other things, gateway closures, source competition and “cross-over” effects, and how some such problems may inadvertently have been overlooked in the early merger cases.⁴
- H. We see elements of each of these issues at ISES – closure of Hoxie gateway; restricted ability to source substitute coal; cross-over between UP/MP/WP and the Joint Line and Connector Line cases.
- I. Even if the problems we now have at ISES weren’t created by the paper barriers, they are reinforced and maintained by the paper barriers which limit the ability of a supposedly independent railroad to provide service under its statutory obligations. Therefore, they can be at least partially ameliorated by modifying or lifting the MNA paper barriers. This would provide relief (at least until the lease expires).

VI. RELIEF REQUESTED

- A. To the extent competition has been lost due to an original merger analysis that time has proven to have omitted particular impacts, one solution would be to reopen UP/MP/WP to permanently restore the lost competition that now is held back by the paper barriers.
- B. In the meantime AECC fully endorses any action the Board might take regarding paper barriers that would give us at least a portion of the rail options that we should have had all along.

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⁴ See Written Testimony of Michael A. Nelson (October 12, 2005) at 5-9, especially 7-8.