

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

In the Matter of:

SIMPLIFIED STANDARDS FOR RAIL RATE CASES

)
)
)
) **STB Ex Parte No. 646**
) **(Sub-No. 1)**
)
)

**PETITION
OF
ARKANSAS ELECTRIC COOPERATIVE CORPORATION
FOR RECONSIDERATION**

Pursuant to 49 C.F.R. §1110.10, Arkansas Electric Cooperative Corporation (“AECC”)¹ hereby petitions for reconsideration of the Board’s decision in this proceeding served September 5, 2007 (“Decision”)² on the grounds that the Board’s findings regarding the eligibility criteria are contrary to law, Board precedent and policy.

In its Rebuttal Comments, AECC described how an eligibility threshold for use of the Simplified-SAC methodology established on the basis of one party’s SAC litigation costs (which, at that time, had been assumed by the Board to be \$3.5 million) would promote inefficient use of the parties’ resources, and create a situation where the Board’s rules could compel the parties to spend more in litigation costs than the amount at issue in the case.³ Those comments highlighted the inconsistency between such a practice and the methods used by the Board in other areas, such as merger analyses, which properly take

¹ A description of AECC and its interests in this proceeding was presented in AECC’s Opening Comments (Oct. 24, 2006).

² 72 Fed. Reg. 51375 (Sept. 7, 2007). The time for filing for reconsideration was extended to October 12, 2007 by Decision served Sept. 21, 2007.

³ Rebuttal Comments (Jan. 11, 2007) at pp. 6-7.

into account the public interest requirement that the economic impacts on all parties be considered. In its Supplemental Comments, AECC further clarified how this type of economically unsound practice would be inconsistent with the Board's mandate under Section 10101(5) of the ICC Termination Act of 1995.⁴ The statute, Board precedent and valid public interest considerations all should lead the Board to consider the total cost of the litigation - and not just the cost to the shipper - in setting the application thresholds for different methodologies.

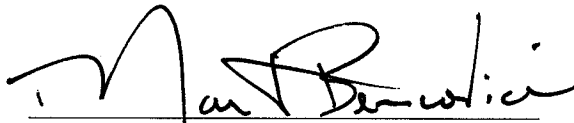
In the Decision, the Board changed the method it originally had contemplated for establishing the amount at issue in the case, and revised upward its estimate of a shipper's prospective litigation costs. However, the eligibility criteria embodied in the Decision do not reflect the eligibility issue raised by AECC.

The principle articulated by AECC is well-founded in public sector economics, supported by statute, and readily accepted and freely applied by the Board in other contexts. It does not depend on the method used to establish the amount at issue in the case, and has not been altered by the diversionary comments of other parties. On this basis, the Board should amend the rules adopted in the Decision to ensure that the eligibility criteria established by the Board do not compel economically unsound litigation that consumes more resources than it allocates.

⁴ Supplemental Comments (Feb. 26, 2007) at p. 9, note 13.

Respectfully submitted,

Arkansas Electric Cooperative Corporation

A handwritten signature in black ink, appearing to read "Martin W. Bercovici", written over a horizontal line.

Michael A. Nelson
131 North Street
Dalton, MA 01226
413-684-2044
mnelso6@berkshire.rr.com

Transportation Consultant

October 12, 2007

Martin W. Bercovici
Keller and Heckman LLP
1001 G Street, N.W., Suite 500W
Washington, DC 20001
202-434-4144
bercovici@khlaw.com

Attorney for Arkansas Electric Cooperative
Corporation

Certificate of Service

I, Cassandra Hall, a professional assistant in the law firm of Keller and Heckman LLP, hereby certify that a copy of the foregoing Petition for Reconsideration of Arkansas Electric Cooperative Corporation has been sent, first class mail, postage prepaid, to all Parties of Record on this 12th day of October, 2007.


Cassandra Hall