

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 35305



MOTION OF ARKANSAS ELECTRIC COOPERATIVE CORPORATION
FOR A PROTECTIVE ORDER

ENTERED
Office of Proceedings

OCT 02 2009

Part of
Public Record

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Counsel for Arkansas Electric Cooperative
Corporation

Dated: October 2, 2009

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

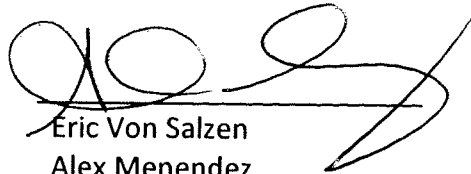
STB Docket No. 35305

**MOTION OF ARKANSAS ELECTRIC COOPERATIVE CORPORATION
FOR A PROTECTIVE ORDER**

Arkansas Electric Cooperative Corporation ("AECC") hereby moves for entry of a protective order in substantially the form attached as Appendix A. The order is required to permit AECC and other parties to submit to the Board proprietary and highly sensitive information.

The proposed protective order is necessary to protect this highly confidential information from public disclosure. Such disclosure could be very damaging as it could divulge sensitive competitive or proprietary information. The proposed protective order will enable AECC and other parties to present this information to the Board while protecting its confidentiality. Accompanying this motion are a draft protective order and an undertaking similar to those issued by the Board in other proceedings.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Eric Von Salzen', with a long horizontal stroke extending to the right.

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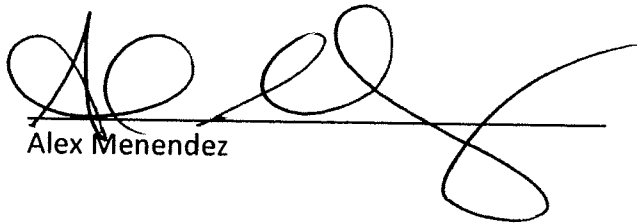
Counsel for Arkansas Electric Cooperative
Corporation

Dated: October 2, 2009

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of October 2009, I caused a copy of
the foregoing document to be served by first class mail, postage prepaid, on:

Richard E. Weicher
BNSF Railway Company
2500 Lou Menk Drive
Forth Worth, TX 76131



Alex Menendez

APPENDIX A

PROTECTIVE ORDER

1. For purposes of this Protective Order

(a) "Confidential Documents" means documents and other tangible materials containing or reflecting Confidential Information.

(b) "Confidential Information" means confidential, commercial, financial, operational, proprietary, or personal information.

(c) "Designated Material" means any documents designated or stamped as "HIGHLY CONFIDENTIAL" in accordance with paragraph 2 of this Protective Order, and any Confidential Information contained in such materials.

(d) "Proceeding" means (i) the proceeding before the Surface Transportation Board ("STB" or the "Board") in STB No. 35305 and (ii) any judicial review proceedings arising from (i).

(e) "Parties" means those entities shown as "Parties of Record" on the service list for this Proceeding available on the Board's website.

2. If any Party to this Proceeding determines that any part of (i) a document it submits, (ii) a discovery request it propounds, (iii) a discovery response it produces, (iv) a transcript of a deposition or a hearing in which it participates, or (v) a pleading or other paper to be submitted, filed, or served in this Proceeding contains Confidential Information or consists of Confidential Documents, then that Party may designate and stamp such Confidential Information and Confidential Documents as "HIGHLY CONFIDENTIAL". Any information or documents designated or stamped as "HIGHLY CONFIDENTIAL" shall be handled as provided for hereinafter.

3. Information and documents designated or stamped as "HIGHLY CONFIDENTIAL" may not be disclosed in any way, directly or indirectly, to any employee of a Party to this Proceeding, or to any other person or entity except to an outside counsel or outside consultant of a Party who, before receiving access to such information or documents, has received and has read a copy of this Protective Order and has agreed to be bound by its terms by signing a confidentiality undertaking in the form set forth in the Undertaking for Highly Confidential Material.

4. Any Party to this Proceeding may challenge the designation by the other Party of information or documents as "HIGHLY CONFIDENTIAL" by filing a motion with the Board or with an administrative law judge or other officer to whom authority has been lawfully delegated by the Board to adjudicate such challenges.

5. Designated Material may not be used for any purposes other than the preparation and presentation of evidence and argument in this Proceeding, as defined herein. Such proscribed purposes include without limitation, business, commercial, operational, and/or competitive purposes.
6. Any Party who receives Designated Material in discovery shall destroy such materials and any notes or documents reflecting such materials, other than file copies of pleadings or other documents filed with the Board and retained by outside counsel for a Party to this Proceeding, at the earlier of (i) such time as the Party receiving the materials withdraws from this Proceeding, or (ii) the completion of this Proceeding, including any petitions for reconsideration, appeals, or remands.
7. No Party may include Designated Material in any pleading, brief, discovery request or response, or other document submitted to the Board, unless the pleading or other document is submitted under seal, in a package clearly marked on the outside as "Confidential Materials Subject to Protective Order." All pleadings and other documents so submitted shall be kept confidential by the Board and shall not be placed in the public docket in this Proceeding, except by order of the Board or of an administrative law judge or other officer in the exercise of authority lawfully designated by the Board.
8. No Party may include Designated Material in any pleading, brief, discovery request or response, or other document submitted to any tribunal other than the Board in this Proceeding, unless (i) the pleading or other document is submitted under seal in accordance with a protective order that requires the pleading or other document to be kept confidential by that tribunal and not be placed in the public docket in the proceeding; or (ii) the pleading or other document is submitted in a sealed package clearly marked "Confidential Materials Subject to Request for Protective Order", and is accompanied by a motion to that tribunal requesting issuance of a protective order that would require the pleading or other document be kept confidential and not be placed in the public docket in the proceeding and requesting that, if the motion for protective order is not issued by that tribunal, the pleading or other document be returned to the filing Party.
9. No Party may present or otherwise use any Designated Material at a Board hearing in this Proceeding, unless that Party has previously submitted, under seal, all proposed exhibits and other documents containing or reflecting such Designated Material to the Board, to an administrative law judge, or to another officer to whom relevant authority has been lawfully delegated by the Board, and has accompanied such submission with a written request that the Board, administrative law judge, or other officer (a) restrict attendance at the hearing during any discussion of such Designated Material, and (b) restrict access to any portion of the record or briefs reflecting discussion of such Designated Material in accordance with this Protective Order

10. If any Party intends to use any Designated Material in the course of any deposition in this Proceeding, that Party shall so advise counsel for the Party producing the Designated Material, counsel for the deponent, and all other counsel attending the deposition. Attendance at any portion of the deposition at which any Designated Material is used or discussed shall be restricted to persons who may review that material under the terms of this Protective Order. All portions of deposition transcripts or exhibits that consist of, refer to, or otherwise disclose Designated Material shall be filed under seal and be otherwise handled as provided in paragraph 7 of this Protective Order.
11. To the extent that materials reflecting Confidential Information are produced by a Party in this Proceeding, and are held and/or used by the receiving person in compliance with this Protective Order, such production, disclosure, holding, and use of the materials and of the data that the materials contain are deemed essential for the disposition of this Proceeding and will not be deemed a violation of 49 U S C § 11323 or § 11904, or any other relevant provision of the ICC Termination Act of 1995.
12. All Parties must comply with all of the provisions of this Protective Order unless the Board or an administrative law judge or other officer exercising authority lawfully delegated by the Board determines that good cause has been shown warranting suspension of any of the provisions herein.
13. Nothing in this Protective Order restricts the right of any Party to disclose voluntarily any Confidential Information originated by that Party, or to disclose voluntarily any Confidential Documents originated by that Party, if such Confidential Information or Confidential Documents do not contain or reflect any Confidential Information originated by any other Party.

UNDERTAKING

HIGHLY CONFIDENTIAL MATERIAL

I, _____, am outside [counsel] [consultant] for [Party to Proceeding], for whom I am acting in this Proceeding. I have read the Protective Order served on October _____, 2009, governing the production and use of Highly Confidential Information and High Confidential Documents STB No. _____, understand the same, and agree to be bound by its terms. I agree not to use or to permit the use of any Highly Confidential Information or Highly Confidential Documents obtained pursuant to that Protective Order, or to use or to permit the use of any methodologies or techniques disclosed or information learned as a result of receiving such data or information, for any purpose other than the preparation and presentation of evidence and argument in STB No. _____, before the Surface Transportation Board ("Board"), or any judicial review proceedings in connection with STB No. _____. I further agree not to disclose any Highly Confidential Information, Highly Confidential Documents, methodologies, techniques, or data obtained pursuant to the Protective Order except to persons who are also bound by the terms of the Order and who have executed Highly Confidential Undertakings in the form hereof.

I also understand and agree, as a condition precedent to my receiving, reviewing, or using copies of any information or documents designated or stamped as "HIGHLY CONFIDENTIAL", that I will take all necessary steps to assure that said information or documents be kept on a confidential basis by any outside counsel or outside consultants working with me, that under no circumstances will I permit access to said materials or information by employees of my client or its subsidiaries, affiliates, or owners. At the conclusion of this Proceeding (including any proceeding on administrative review, judicial review, or remand), I agree to promptly destroy any documents containing or reflecting information or documents designated or stamped as "HIGHLY CONFIDENTIAL", other than file copies, kept by outside counsel, of pleadings and other documents filed with the Board.

I understand and agree that money damages would not be a sufficient remedy for breach of this Undertaking and that the Parties or other parties producing Highly Confidential Information or Highly Confidential Documents shall be entitled to specific performance and injunctive and/or other equitable relief as a remedy for any such breach. I further agree to waive any requirement for the securing or posting of any bond in connection with such remedy. Such remedy shall not be deemed to be the exclusive remedy for breach of this Undertaking, but shall be in addition to all remedies available at law or equity.

Signed _____

Date _____