

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 35305

**ARKANSAS ELECTRIC COOPERATIVE CORPORATION --
PETITION FOR DECLATORY ORDER**

Verified Statement

Of

Thomas D. Crowley
President
L.E. Peabody & Associates, Inc.

On behalf of

Western Coal Traffic League
And Concerned Captive Coal Shippers

Redacted, Public Version

Date: March 16, 2010

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LIST OF EXHIBITS

<u>EXHIBIT NO.</u>	<u>EXHIBIT DESCRIPTION</u>
(1)	(2)
__(TDC_1)	Statement of Qualifications
__(TDC_2)	Stipulation Between BNSF and WCTL
__(TDC_3)	Coal Dust Remediation Considerations

I. INTRODUCTION

& Associates, Inc., an economic consulting firm that specializes in solving economic, financial, transportation, marketing, and fuel supply problems. I have spent most of my career of over thirty-nine (39) years evaluating fuel supply issues and railroad operations, including railroad costs, accounting, prices, financing, cost of capital, capacity and equipment planning issues. My assignments in these matters were commissioned by railroads, producers, and shippers of different commodities. A copy of my credentials is included as Exhibit_(TDC_1) to this Verified Statement.

I have been requested by the Western Coal Traffic League and the Concerned Citizens

II. SUMMARY AND FINDINGS

After a review of the documents produced by the BNSF and UP in this proceeding as well as other publicly available data, I conclude that BNSF's problems with coal dust began long before the crisis created by the 2005 derailments on the joint line utilized by BNSF and UP in the Orin Subdivision. Also, in setting rail rates to transport PRB coal, the railroads have included the costs associated with the treatment of coal dust through traditional maintenance practices. BNSF's position is that spraying dust inhibitors on the loaded rail cars at the mines will result in less dust on the roadway. However, the costs of the spraying will be paid by either the coal company or the shipper which will constitute a double payment as the coal shippers already pay the costs of dealing with coal dust through normal maintenance which is included in the rates coal shippers pay to BNSF (and UP) for coal transportation. My understanding is that the BNSF (or UP) have not offered any rate relief to coal shippers to offset the reductions in maintenance costs that the railroads anticipate spraying would generate.

My specific observations and conclusions, as discussed in more detail in the remaining sections of this Verified Statement, are as follows:

1. {

}

2. BNSF's normal maintenance costs include the costs for cleaning ballast including removal of coal dust;

3. BNSF has acknowledged that the rates it charges coal shippers include the cost of roadway maintenance and, therefore, include the costs of removing coal dust;

4. Based on data provided by BNSF, {

}

5. UP-provided data, as well as other materials, show that {

} and

6. BNSF determined that {

}

The details supporting my conclusions are discussed in the remainder of this Verified Statement.

III. COSTS TO SPRAY COAL CARS

BNSF documents present numerous scenarios which {

}² {

}³ {

}⁴ {

4.

}⁵

5. {

}⁶ {

}

Based on a coal volume of { } million tons,⁷ the {

}⁸

² See BNSF_Coaldust_0033558.

³ See BNSF_Coaldust_0033560.

⁴ See BNSF_Coaldust_0033653.

⁵ See, e.g., BNSF_Coaldust_0019651. {
}

⁶ See BNSF_Coaldust_0021542.

⁷ { }

⁸ See BNSF_Coaldust_0020969 through 0020991. {

{

}⁹ {

⁹ See BNSF_Coaldust_0020972.

}¹⁰ {

}¹¹ {

}

¹⁰ See BNSF_Coaldust_0020990.

¹¹ Ultimately the shipper must bear any increased costs related to spraying. Even if the coal mines are required to pay for the cost of spraying, the coal mines will eventually be forced to pass these costs on to the shippers.

IV. MAINTENANCE COSTS RECOVERED IN RATES PAID BY SHIPPERS

While BNSF and UP portray the coal dust issue as involving increased and unexpected coal dust and associated maintenance costs, coal dust and such costs have always been an integral part of operating and maintaining a railroad in the normal course of business. Maintaining a sound roadbed requires that ballast and switches must be cleaned, undercutting must be performed and other normal maintenance functions addressed, which tasks entail significant costs.

As part of their discovery in this proceeding, the Coal Shippers requested the information from BNSF that would allow shippers to calculate the amount of maintenance costs BNSF recovers through its PRB transportation rates. BNSF objected to producing such information. To

resolve this discovery dispute, BNSF counsel provided a letter that addressed the components included in coal rates set by BNSF. Specifically, this letter states that in setting rates:

“...BNSF attempts generally to cover its variable costs, which include maintenance costs relating to ballast cleaning, undercutting and shoulder cleaning, and to generate contribution that will assist in covering fixed costs”.¹²

BNSF’s rates are compensating BNSF for the maintenance costs associated with ballast cleaning, undercutting and shoulder cleaning due to coal dust and other ballast contaminants. I now turn to a discussion of the amount of BNSF’s roadway maintenance costs in the PRB.

¹² BNSF’s letter is attached to this Verified Statement as Exhibit __ (TDC- 2).

V. MAINTENANCE COSTS RELATED TO COAL DUST

My review of BNSF's maintenance practices and costs associated with its rail lines that originate the bulk of BNSF (and UP) coal traffic, is discussed under the following topics:

- A. Causes of Contamination
- B. BNSF Roadway Maintenance Costs
- C. BNSF Deferred Maintenance

A. CAUSES OF CONTAMINATION

The contamination of ballast results from a number of causes. {

6. }¹³
{

¹³ See BNSF_Coaldust_0020545.

}¹⁴ {

}¹⁵ {

}¹⁶

{

¹⁴ See BNSF_Coaldust_0034270.

¹⁵ See BNSF_Coaldust_0028396.

¹⁶ See BNSF_Coaldust_0052031. {

}

}

**B. BNSF ROADWAY
MAINTENANCE COSTS**

Documents produced by BNSF in discovery contain {

}

**1. Actual, Budgeted And
Normalized Roadway
Maintenance Costs**

{

}¹⁷ {

}¹⁸ {

}

**2. BNSF Calculation Of Coal
Dust Maintenance Costs**

{

¹⁷ See BNSF_Coaldust_0023672 through 0023675 and BNSF_Coaldust_0025225 through 0025228.

¹⁸ See BNSF_Coaldust_0025225-27.

}¹⁹ {

}

3. Zeta-Tech Maintenance Studies

In addition to developing its own analysis of coal dust related maintenance costs, BNSF retained Zeta-Tech Associates, Inc. (“Zeta-Tech”) {

}²⁰ {

¹⁹ See BNSF_Coaldust_0022781-82.

²⁰ See BNSF_Coaldust_0021333.

}²¹ {

}²² {

²¹ See BNSF_Coaldust_0021342. {

}

²² See BNSF_Coaldust_0022782.

²³ {

}

}²¹ {

}²² {

²¹ See BNSF_Coaldust_0021342. {

²² See BNSF_Coaldust_0022782. }

}²³

**4. Appropriate Coal Dust
Maintenance Cost Figure For
Comparison To Spraying Costs**

{

²³ {

}

}²⁴ {

}

²⁴ See UP-AECCBN-007212 to 0007213.

**C. BNSF DEFERRED
MAINTENANCE**

{ }²⁵ {

}²⁶ {

}²⁷

{

}²⁸ {

}²⁹ {

}³⁰ {Table 1 below summarizes BNSF's modified maintenance plan.

²⁵

{

²⁶ See BNSF_Coaldust_0025220.

²⁷ See BNSF_Coaldust_0025220.

²⁸ {

²⁹ See UP-AECCBN-0006774.

³⁰ See BNSF_Coaldust_0025760.

Table 1
Summary of Planned Maintenance Activity for 2005 to 2009
 (Orin Subdivision)

<u>Item</u> (1)	<u>2005</u> (2)	<u>2006</u> (3)	<u>2007</u> (4)	<u>2008</u> (5)	<u>2009</u> (6)
1. Undercutting – Miles	{ }	{ }	{ }	{ }	{ }
2. Ballast Shoulder Cleaning - Track Miles	{ }	{ }	{ }	{ }	{ }
3. Switches Cleaned	{ }	{ }	{ }	{ }	{ }

Source: BNSF_Coaldust_0025760

{

}³¹

{

}³²

³¹ See BNSF_Coaldust_0079575-649.

³² As shown in Column (4) of Exhibit__(TDC-3).

VI. CONCLUSION

Based on my analysis of the costs of dealing with coal dust through spraying PRB coal

} and the cost of maintaining BNSF's PRB lines in good operating conditions by dealing with coal dust through normal maintenance practices { }, it is clear that the spraying option is not economically sound. Although spraying would presumably reduce coal dust in some unknown and undemonstrated amount, and BNSF would achieve reduced maintenance of way costs to maintain its ballast, the additional costs forced upon utilities and their customers would far outweigh the amount of any savings to BNSF, and the overall societal costs of dealing with coal dust would be greatly increased.

STATEMENT OF QUALIFICATIONS

My name is Thomas D. Crowley. I am an economist and President of the economic consulting firm of L. E. Peabody & Associates, Inc. The firm's offices are located at 1501 Duke Street, Suite 200, Alexandria, Virginia 22314, and 10445 N. Oracle Road, Suite 151, Tucson, Arizona 85737, and 21 Founders Way, Queensbury, New York 12804.

I am a graduate of the University of Maine from which I obtained a Bachelor of Science degree in Economics. I have also taken graduate courses in transportation at George Washington University in Washington, D.C. I spent three years in the United States Army and since February 1971 have been employed by L. E. Peabody & Associates, Inc.

I am a member of the American Economic Association, the Transportation Research Forum, and the American Railway Engineering and Maintenance-of-Way Association.

The firm of L. E. Peabody & Associates, Inc. specializes in analyzing matters related to the rail transportation of coal. As a result of my extensive economic consulting practice since 1971 and my participating in maximum-rate, rail merger, service disputes and rule-making proceedings before various government and private governing bodies, I have become thoroughly familiar with the rail carriers that move coal over the major coal routes in the United States. This familiarity extends to subjects of railroad service, costs and profitability, railroad capacity, railroad traffic prioritization and the structure and operation of the various contracts and tariffs that historically have governed the movement of coal by rail.

STATEMENT OF QUALIFICATIONS

As an economic consultant, I have organized and directed economic studies and prepared reports for railroads, freight forwarders and other carriers, for shippers, for associations and for state governments and other public bodies dealing with transportation and related economic problems. Examples of studies I have participated in include organizing and directing traffic, operational and cost analyses in connection with multiple car movements, unit train operations for coal and other commodities, freight forwarder facilities, TOFC/COFC rail facilities, divisions of through rail rates, operating commuter passenger service, and other studies dealing with markets and the transportation by different modes of various commodities from both eastern and western origins to various destinations in the United States. The nature of these studies enabled me to become familiar with the operating practices and accounting procedures utilized by railroads in the normal course of business.

Additionally, I have inspected and studied both railroad terminal and line-haul facilities used in handling various commodities, and in particular unit train coal movements from coal mine origins in the Powder River Basin and in Colorado to various utility destinations in the eastern, mid-western and western portions of the United States and from the Eastern coal fields to various destinations in the Mid-Atlantic, northeastern, southeastern and mid-western portions of the United States. These operational reviews and studies were used as a basis for the determination of the traffic and operating characteristics for specific movements of coal and numerous other commodities handled by rail.

STATEMENT OF QUALIFICATIONS

I have frequently been called upon to develop and coordinate economic and operational studies relative to the acquisition of coal and the rail transportation of coal on behalf of electric utility companies. My responsibilities in these undertakings included the analyses of rail routes, rail operations and an assessment of the relative efficiency and costs of railroad operations over those routes. I have also analyzed and made recommendations regarding the acquisition of railcars according to the specific needs of various coal shippers. The results of these analyses have been employed in order to assist shippers in the development and negotiation of rail transportation contracts which optimize operational efficiency and cost effectiveness.

I have developed property and business valuations of privately held freight and passenger railroads for use in regulatory, litigation and commercial settings. These valuation assignments required me to develop company and/or industry specific costs of debt, preferred equity and common equity, as well as target and actual capital structures. I am also well acquainted with and have used the commonly accepted models for determining a company's cost of common equity, including the Discounted Cash Flow Model ("DCF"), Capital Asset Pricing Model ("CAPM"), and the Farma-French Three Factor Model.

Moreover, I have developed numerous variable cost calculations utilizing the various formulas employed by the Interstate Commerce Commission ("ICC") and the Surface Transportation Board ("STB") for the development of variable costs for common carriers,

STATEMENT OF QUALIFICATIONS

with particular emphasis on the basis and use of the Uniform Railroad Costing System ("URCS") and its predecessor, Rail Form A. I have utilized URCS/Rail form A costing principles since the beginning of my career with L. E. Peabody & Associates Inc. in 1971.

I have frequently presented both oral and written testimony before the ICC, STB, Federal Energy Regulatory Commission, Railroad Accounting Principles Board, Postal Rate Commission and numerous state regulatory commissions, federal courts and state courts. This testimony was generally related to the development of variable cost of service calculations, rail traffic and operating patterns, fuel supply economics, contract interpretations, economic principles concerning the maximum level of rates, implementation of maximum rate principles, and calculation of reparations or damages, including interest. I presented testimony before the Congress of the United States, Committee on Transportation and Infrastructure on the status of rail competition in the western United States. I have also presented expert testimony in a number of court and arbitration proceedings concerning the level of rates, rate adjustment procedures, service, capacity, costing, rail operating procedures and other economic components of specific contracts.

Since the implementation of the Staggers Rail Act of 1980, which clarified that rail carriers could enter into transportation contracts with shippers, I have been actively

STATEMENT OF QUALIFICATIONS

involved in negotiating transportation contracts on behalf of coal shippers. Specifically, I have advised utilities concerning coal transportation rates based on market conditions and carrier competition, movement specific service commitments, specific cost-based rate adjustment provisions, contract reopeners that recognize changes in productivity and cost-based ancillary charges.

I have been actively engaged in negotiating coal supply contracts for various users throughout the United States. In addition, I have analyzed the economic impact of buying out, brokering, and modifying existing coal supply agreements. My coal supply assignments have encompassed analyzing alternative coals to determine the impact on the delivered price of operating and maintenance costs, unloading costs, shrinkage factor and by-product savings.

I have developed different economic analyses regarding rail transportation matters for over sixty (60) electric utility companies located in all parts of the United States, and for major associations, including American Paper Institute, American Petroleum Institute, Chemical Manufacturers Association, Coal Exporters Association, Edison Electric Institute, Mail Order Association of America, National Coal Association, National Industrial Transportation League, North America Freight Car Association, the Fertilizer Institute and Western Coal Traffic League. In addition, I have assisted numerous government agencies, major industries and major railroad companies in solving various transportation-related problems.

STATEMENT OF QUALIFICATIONS

In the two Western rail mergers that resulted in the creation of the present BNSF Railway Company and Union Pacific Railroad Company and in the acquisition of Conrail by Norfolk Southern Railway Company and CSX Transportation, Inc., I reviewed the railroads' applications including their supporting traffic, cost and operating data and provided detailed evidence supporting requests for conditions designed to maintain the competitive rail environment that existed before the proposed mergers and acquisition. In these proceedings, I represented shipper interests, including plastic, chemical, coal, paper and steel shippers.

I have participated in various proceedings involved with the division of through rail rates. For example, I participated in ICC Docket No. 35585, *Akron, Canton & Youngstown Railroad Company, et al. v. Aberdeen and Rockfish Railroad Company, et al.* which was a complaint filed by the northern and mid-western rail lines to change the primary north-south divisions. I was personally involved in all traffic, operating and cost aspects of this proceeding on behalf of the northern and mid-western rail lines. I was the lead witness on behalf of the Long Island Rail Road in ICC Docket No. 36874, *Notice of Intent to File Division Complaint by the Long Island Rail Road Company.*

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February 26, 2010

Via E-Mail

Frank Pergolizzi, Esq.
Slover & Loftus LLP
1224 17th St., N.W.
Washington, D.C. 20036

Re: **Arkansas Electric Cooperative Corporation – Petition for Declaratory Order**
Finance Docket No. 35305

Dear Frank:

I am writing in response to your February 11, 2010 letter to me regarding BNSF's responses to WCTL's discovery requests. In your February 11, 2010 letter, you raised questions about BNSF's objections to producing information relating to BNSF's internal management cost information or methodology. To address your concerns, I can state, as BNSF's counsel in Finance Docket No. 35305, that BNSF sets coal rates based on market conditions. In setting market-based rates, BNSF attempts generally to cover its variable costs, which would include maintenance costs relating to ballast cleaning, undercutting and shoulder cleaning, and to generate contribution that will assist in covering fixed costs.

Sincerely,

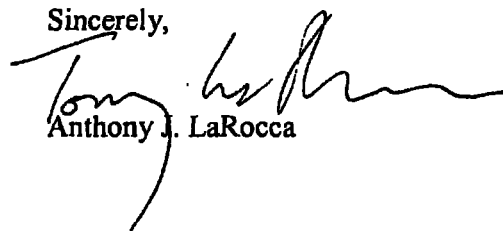

Anthony J. LaRocca

Exhibit TDC-3

REDACTED