



December 2009

## TRANSPORTATION UPDATE

**STB Institutes Proceeding on Coal Dust**

In a decision issued on December 1, the Surface Transportation Board (STB) instituted a declaratory order proceeding in response to a petition filed by Arkansas Electric Cooperative Corporation (AECC). AECC asked the STB to review BNSF Railway Company's Tariff 6041-B Items 100 and 101 ("Tariff") that would impose coal dust mitigation standards for coal shippers in the Powder River Basin using the Joint Line or the Black Hills Subdivision.

The STB seeks comments on the coal dust issue and notes the issues raised in the filings, including whether the Tariff provisions constitute an unreasonable rule or practice; whether BNSF may establish rules designed to inhibit the dispersion of coal dust from coal trains operating over its lines; and whether refusal to provide service for non-compliance with the Tariff provisions or other actions to enforce compliance would violate BNSF's common carrier obligation.

*Interested parties have until **Friday, December 11** to file a notice of intent to participate as a party of record in the coal dust proceeding.*

A 60-day discovery period will be permitted in the proceeding and a protective order was also issued on December 1 to cover discovery. In addition, the STB is assigning one of its employees to act as a discovery facilitator with special appellate procedures to aid in discovery.

The procedural schedule established by the STB is as follows:

December 11, 2009	Notices of intent to participate as a party of record (POR) due
February 1, 2010	Close of discovery
March 16, 2010	Opening evidence and argument due from all PORs
April 30, 2010	Reply evidence and argument due from all PORs
May 17, 2010	Rebuttal evidence and argument due from all PORs

**FOR MORE INFORMATION**

Please contact a member of our **Transportation** practice group with any questions:

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