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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

ARIZONA ELECTRIC POWER)	
COOPERATIVE, INC.)	
)	
Complainant,)	
)	
v.)	Docket No. NOR 42113
)	
BNSF RAILWAY COMPANY)	
)	
and)	
)	
UNION PACIFIC RAILROAD)	
COMPANY)	
)	
Defendants.)	

**REPLY OF ARIZONA ELECTRIC POWER COOPERATIVE, INC.
TO UP'S PETITION FOR CLARIFICATION OR RECONSIDERATION**

ARIZONA ELECTRIC POWER
COOPERATIVE, INC.

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Dated: June 12, 2015

Attorneys & Practitioners

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**REPLY OF ARIZONA ELECTRIC POWER COOPERATIVE, INC.
TO UP’S PETITION FOR CLARIFICATION OR RECONSIDERATION**

Complainant Arizona Electric Power Cooperative, Inc. (“AEPCO”), hereby replies in opposition to the Petition for Clarification or Reconsideration that Defendant Union Pacific Railroad Company (“UP”) filed on May 29, 2015 (“Petition” or “Pet.”), regarding the decision that the Surface Transportation Board (“STB” or “Board”) served in the above-captioned proceeding on May 14, 2015 (“Decision”).

UP seeks recalculation of its portion of the joint through rates for 2011 using its 2011 URCS costs, rather than indexed 2010 URCS costs, based on the Board’s Decision addressing the premium that Berkshire Hathaway Inc. paid to acquire co-Defendant BNSF Railway Company (“BNSF”) in *W. Coal Traffic League -- Pet. for*

Declaratory Order, FD 35506 (STB served July 25, 2013) (“Declaratory Order”).

However, UP’s costs have nothing to do with, and are unaffected by, the Decision and the Declaratory Order. Nothing in the Board’s Decision purported to grant UP’s request. There is nothing to clarify, and there is also no material error or other basis for granting UP’s alternative request for reconsideration. UP’s Petition should thus be denied.

AEPCO further states as follows.

1. Nothing in the Board’s Decision purported to grant UP’s request for adjustment to its 2011 rates, even though the Decision displays ample awareness of UP’s position. *See, e.g.*, Decision at 6 (“UP notes that its interest in these issues is limited to the time period when BNSF and UP charged joint rates, which was through 2011.”). Furthermore, the Board explicitly considered whether the basis for modifying the treatment of BNSF’s costs and associated rates, namely, the flaws in the R-1 data used to derive the original URCS costs, also extended to UP. The Board found that it did not because UP’s errors in its original R-1 reports for 2010-2012 were irrelevant for URCS purposes. *Id.* at 4 n.7 and 8; Pet. at 3 n.1. The Board thus eliminated any predicate for revising the treatment of UP. Having found no basis for altering the UP treatment, the Board had no need to address further “whether actual 2011 UP URCS or indexed 2010 UP URCS should be used.” Pet. at 3 n.1. The only permissible conclusion is that the Board considered, but then denied, UP’s request.

2. UP’s concession that “the Decision did not expressly address Union Pacific’s argument” (Pet. at 3) is an incomplete acknowledgement of this reality. The truth is that nothing in the Decision gives any support for UP’s position. UP’s attempt to

frame its Petition as one for “Clarification” is simply a contrivance to make its efforts to extract more funds from AEPCO appear more palatable. UP’s efforts to blame AEPCO or its counsel for not agreeing with UP’s “understanding” or its view that “the Decision plainly contemplates use of 2011 UP URCS” (Pet. at 2, 3) are similarly contrived. UP is seeking relief that the Decision did not grant, and there is no basis for UP’s requested “clarification.”

3. UP also has not shown any material error that could warrant reconsideration so as to entitle UP to additional funds from AEPCO. The prescription was lifted, and the Board’s decision was entered, to address the treatment of the BNSF acquisition premium and BNSF’s failure “to obtain required Board approvals.” Decision at 4. Those considerations, which the Board deemed “unique” (*id.*), have nothing to do with UP and its costs. Indeed, UP does not mention either the Declaratory Order or the premium in its Petition. Again, the Board considered whether UP’s circumstances might be similar enough to warrant equivalent treatment, but found that they did not.

4. The Board states in its Decision that “we are not establishing a true-up mechanism here; rather, we are using the corrected data to give the appropriate effect to the acquisition premium.” Decision at 6. UP turns both statements on their head. What UP seeks is indeed a true-up, but one that has nothing to do with the acquisition premium. UP’s references to the use of its 2011 URCS costs in the 2011 Western Regional URCS (Pet. at 4, 5) are makeweight because those URCS costs are used to calculate the variable costs for the Southwestern Railroad segment, which is part of BNSF’s portion of the movement, not UP’s.

5. UP's Petition is thus at odds with the language, purpose, and logic of the Board's Decision. Beyond that, the notion that UP should extract additional compensation from AEPCO because BNSF did not follow the Board's rules is perverse.

For the reasons stated, UP's Petition should be denied.

Respectfully submitted,

ARIZONA ELECTRIC POWER
COOPERATIVE, INC.

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Dated: June 12, 2015

Attorneys & Practitioners

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of June, 2015, I caused copies of the foregoing filing to be served on counsel for Defendants Union Pacific Railroad Company and BNSF Railway Company by email and first-class mail as follows:

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