

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

ARIZONA ELECTRIC POWER)	
COOPERATIVE, INC.)	
)	
Complainant,)	
)	
v.)	Docket No. 42113
)	
BNSF RAILWAY COMPANY and)	
UNION PACIFIC RAILROAD COMPANY)	
)	
Defendants.)	

ANSWER OF BNSF RAILWAY COMPANY

Defendant BNSF Railway Company (“BNSF”) hereby answers the Verified Complaint filed by complainant Arizona Electric Power Cooperative, Inc. (“AEPCO”) in this proceeding.

COMPLAINT

BNSF responds to the allegations of each separately numbered paragraph of the Verified Complaint as follows:

1. BNSF lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 1 of the Complaint and BNSF therefore denies those allegations.
2. BNSF lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 2 of the Complaint and BNSF therefore denies those allegations, except that BNSF admits that AEPCO operates the electric generating facility (“Apache Generating Station”) at Cochise, Arizona.
3. BNSF admits the allegations in paragraph 3 of the Complaint, except that BNSF denies that it is subject to the jurisdiction of the Board with respect to all of its interstate rail transportation.

4. BNSF admits the allegations in the first sentence in paragraph 4 of the Complaint. BNSF lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the second sentence of paragraph 4 of the Complaint and BNSF therefore denies those allegations, except that BNSF admits that Union Pacific Railroad Company (“UP”) operates the only rail line that directly serves the Apache Generating Station at Cochise, Arizona. The term “Bottleneck Shipper” used in the third sentence of paragraph 4 is ambiguous and undefined and therefore BNSF denies the allegations in the third sentence of paragraph 4.

5. BNSF admits that as of December 30, 2008, when AEPCO filed its Complaint, AEPCO had moved some coal to Cochise pursuant to Common Carrier Pricing Authority 90044, Amendment No. 11, which at that time was set to expire on December 31, 2008. BNSF lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the second sentence of paragraph 5 of the Complaint and BNSF therefore denies those allegations.

6. BNSF denies the allegations in paragraph 6 of the Complaint, except that BNSF admits that there is no current contract involving AEPCO, BNSF and UP for the transportation of coal to Cochise, Arizona after December 31, 2008.

7. BNSF lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 7 of the Complaint and BNSF therefore denies those allegations, except that BNSF admits that since January 1, 2009, AEPCO has shipped coal from mines located in New Mexico pursuant to Common Carrier Pricing Authority BNSF 57966.

8. BNSF denies the allegations in paragraph 8 of the Complaint.

9. BNSF denies the allegations in paragraph 9 of the Complaint.

10. BNSF denies the allegations in paragraph 10 of the Complaint.

11. The allegations in paragraph 11 of the Complaint are ambiguous and BNSF therefore denies those allegations, except that BNSF admits that if this case is not dismissed on the basis of lack of market dominance or other grounds, it would be appropriate to examine the reasonableness of the challenged rate using the constrained market pricing principles adopted in *Coal Rate Guidelines – Nationwide*, 1 I.C.C.2d 520 (1985).

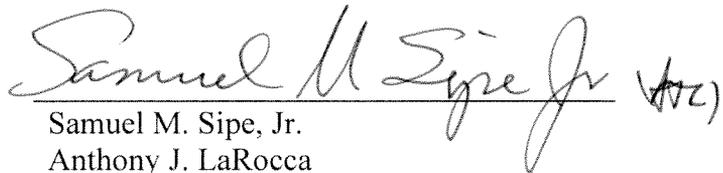
12. Paragraph 12 of the Complaint states a legal conclusion, and therefore no response from BNSF is required; to the extent a response is required, BNSF denies the allegations of paragraph 12.

AEPCO'S PRAYER FOR RELIEF

BNSF denies that an order granting any relief sought by AEPCO in this proceeding would be appropriate.

WHEREFORE, BNSF requests that the Complaint be dismissed with prejudice and that no relief of any kind be awarded to AEPCO, that BNSF be awarded its costs, and that the Board grant BNSF such other and further relief as may be appropriate.

Respectfully submitted,



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January 21, 2009

CERTIFICATE OF SERVICE

I hereby certify that on January 21, 2009, a true and correct copy of the foregoing Answer of BNSF Railway Company was served by hand and e-mail on:

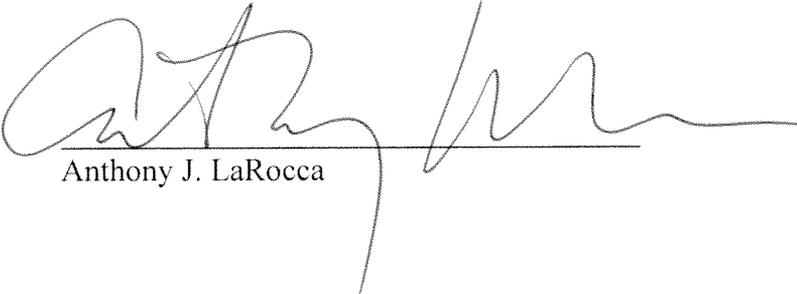
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