

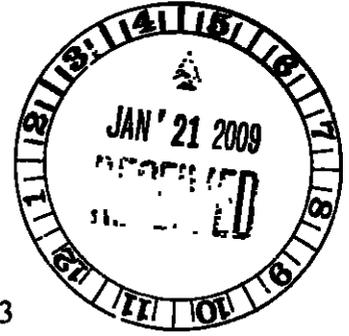
224377

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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ARIZONA ELECTRIC POWER )  
 COOPERATIVE, INC. )  
 )  
 Complainant. )  
 )  
 v )  
 )  
 BNSF RAILWAY COMPANY and )  
 )  
 UNION PACIFIC RAILROAD )  
 COMPANY. )  
 )  
 Defendants )

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Docket No. 42113

**ENTERED**  
 Office of Proceedings  
 JAN 21 2009  
 Part of  
 Public Record

**UNION PACIFIC'S ANSWER**

Defendant Union Pacific Railroad Company ("UP") hereby answers the Complaint filed by Arizona Electric Power Cooperative, Inc ("AEP CO") in this proceeding UP responds to the allegations in each separately numbered paragraph of the Complaint as follows.

1. UP admits that AEP CO is a customer-owned electric generating company UP denies the remaining allegations in Paragraph 1 of the Complaint because it lacks knowledge or information sufficient to form a belief as to their truth

2 UP admits that AEP CO operates the Apache Generating Station, which includes two coal-fired units UP denies the remaining allegations in Paragraph 2 of the Complaint because it lacks knowledge or information sufficient to form a belief as to their truth

3 UP admits that it provides common carrier and contract service and that it engages in the transportation of property in interstate and intrastate commerce UP further admits that it is subject to certain provisions of the ICC Termination Act and that it is subject, in

certain circumstances, to the jurisdiction of the Surface Transportation Board. but the scope of the ICC Termination Act and the Surface Transportation Board's jurisdiction are questions of law as to which no response is required, to the extent a response is deemed to be required, UP denies the allegations UP denies the remaining allegations in Paragraph 3 of the Complaint because it lacks knowledge or information sufficient to form a belief as to their truth

4. UP admits that AEPCO has previously obtained coal from mines served by either or both BNSF Railway Company and UP, and that UP operates the only rail line that directly serves the Apache Generating Station. UP denies the remaining allegations in Paragraph 4 of the Complaint because it lacks knowledge or information sufficient to form a belief as to their truth.

5. UP denies the allegations in Paragraph 5 of the Complaint, except that UP admits that Common Carrier Pricing Authority BNSF 90044 expired on December 31, 2008, and that a confidential coal transportation agreement between AEPCO and UP expired on December 31, 2008.

6. UP denies the allegations in Paragraph 6 of the Complaint. UP further avers by way of further response that AEPCO never sought to negotiate a contract with UP governing the terms and conditions for AEPCO coal shipments from New Mexico to Cochise after December 31, 2008

7 UP denies the allegations in Paragraph 7 of the Complaint because it lacks knowledge or information sufficient to form a belief as to their truth UP avers by way of further response that, since December 31, 2008, AEPCO has shipped coal to the Apache Generating Station using Common Carrier Pricing Authority BNSF 57966.

8. UP denies the allegations in Paragraph 8 of the Complaint.

9. UP denies the allegations in Paragraph 9 of the Complaint, except that UP admits that it could not prevail on the issue of whether there is qualitative evidence of effective competition from other carriers or modes of transportation for the movements of coal from the New Mexico origins of McKinley Mine, Lee Ranch Mine and El Segundo Mine to Cochise under the standards currently being applied by the Board.

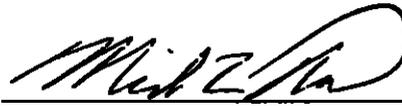
10. UP denies the allegations in Paragraph 10 of the Complaint.

11. UP denies the allegations in Paragraph 11 of the Complaint, except that UP admits that, if this case is not dismissed on the basis of lack of market dominance or other grounds, the reasonableness of the challenged rates should be examined using the constrained market pricing principles adopted in *Coal Rate Guidelines Nationwide*, 1 I.C.C.2d 520 (1985), as further refined and applied in subsequent decisions by the Interstate Commerce Commission and the Surface Transportation Board

12. Paragraph 12 of the Complaint states a legal conclusion to which no response is required. to the extent that a response is deemed to be required, UP denies the allegations in this Paragraph.

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

Respectfully submitted.



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*Attorneys for Union Pacific Railroad Company*

January 21, 2009

CERTIFICATE OF SERVICE

I, Michael I. Rosenthal, certify that on this 21st day of January, 2009, I caused copies of Union Pacific's Answer to be served by hand and by e-mail on.

William L. Slover  
Robert D. Rosenberg  
Christopher A. Mills  
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and by overnight mail and e-mail on:

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Michael L. Rosenthal