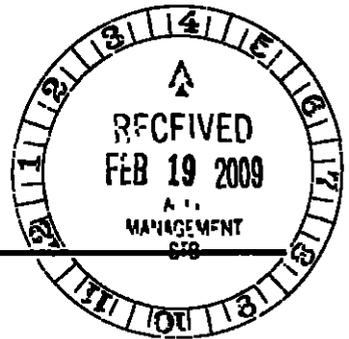


BEFORE THE  
SURFACE TRANSPORTATION BOARD



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

Docket No. 42113

224557

**ANSWER OF BNSF RAILWAY COMPANY TO AMENDED COMPLAINT**

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

**AMENDED COMPLAINT**

BNSF responds to the allegations of each separately numbered paragraph of the Amended 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 Amended 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 Amended Complaint and BNSF therefore denies those allegations, except that BNSF admits that AEPCO operates the electric generating facility ("Apache Generating Station") at Cochise, Arizona

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3 BNSF admits the allegations in paragraph 3 of the Amended 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 lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the first and second sentences of paragraph 4 of the Amended 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 until December 31, 2008, AEPCO moved a portion of the coal that it purchased for use at the Apache generating Station to Cochise pursuant to Common Carrier Pricing Authority 90044, Amendment No 11, which expired 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 Amended Complaint and BNSF therefore denies those allegations.

6 To the extent the allegations of paragraph 6 of the Amended Complaint relate to coal transportation provided by UP without BNSF's participation, BNSF lacks knowledge or information sufficient to form a belief as to the truth of the allegations and BNSF therefore denies those allegations To the extent the allegations of paragraph 6 of the Amended Complaint relate to transportation provided jointly by BNSF and UP, BNSF denies the allegations, 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 admits the allegations in the first sentence of paragraph 7 of the Amended Complaint BNSF denies the allegations in the second sentence of paragraph 7 of the Amended Complaint and further states that the rates for Wyoming and Montana origins listed in Attachment B to the Amended Complaint are not in effect, have never been used to transport coal and cannot be used to transport coal in the future BNSF admits the allegations in the third sentence of paragraph 7 of the Amended Complaint

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

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

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

11 BNSF lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 11 of the Amended Complaint and therefore BNSF denies those allegations

12 The first sentence of paragraph 12 of the Amended Complaint states a legal conclusion that relates only to UP, and therefore no response from BNSF is required, to the extent a response is required, BNSF denies the allegations in the first sentence of paragraph 12 BNSF lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the second sentence of paragraph 12 of the Amended Complaint and therefore BNSF denies those allegations

13 The allegations in paragraph 13 of the Amended Complaint are ambiguous and BNSF therefore denies those allegations, except that BNSF admits that if the allegations relating to the rates for New Mexico origins set out in Attachment A to the Amended Complaint are not dismissed on the basis of lack of market dominance or other grounds, it would be appropriate to examine the reasonableness of the challenged New Mexico rates using the constrained market

pricing principles adopted in *Coal Rate Guidelines – Nationwide*, 11 C C 2d 520 (1985). To the extent the allegations in paragraph 13 of the Amended Complaint relate to the rates for Wyoming and Montana origins set out in Attachment B to the Amended Complaint, BNSF denies that the Board has the authority to carry out any rate reasonableness analysis as to those rates since the rates have never been used and are not in effect. BNSF further states that the Amended Complaint should be dismissed to the extent it relates to the rates for Wyoming and Montana origins set out in Attachment B to the Amended Complaint. To the extent the allegations in paragraph 13 of the Amended Complaint relate to the rates for transportation provided by UP without BNSF's participation, those allegations are directed to UP and no response from BNSF is required, to the extent a response is required, BNSF denies the allegations.

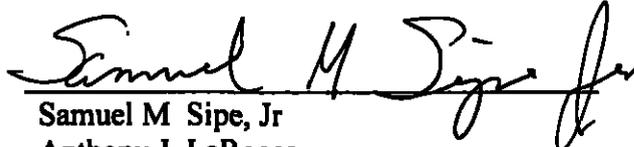
14 Paragraph 14 of the Amended Complaint states a legal conclusion, and therefore no response from BNSF is required, to the extent a response is required, BNSF denies the allegations of paragraph 14.

#### **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 Amended 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,

 (A/L)

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Attorneys for BNSF Railway Company

February 19, 2009

**CERTIFICATE OF SERVICE**

I hereby certify that on February 19, 2009, a true and correct copy of the foregoing  
Answer of BNSF Railway Company to Amended Complaint was served by hand and e-mail on.

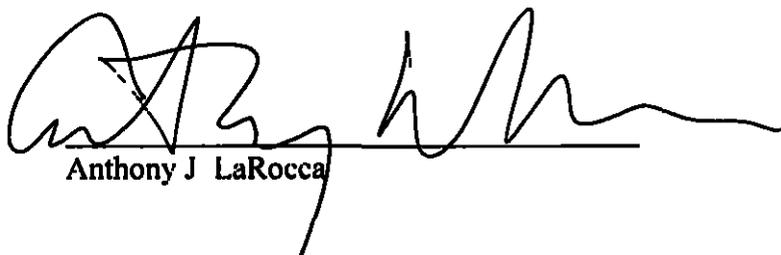
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