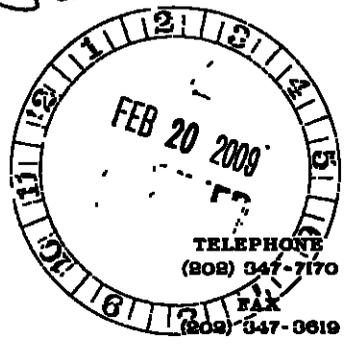


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February 20, 2009

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**BY HAND DELIVERY**

The Honorable Anne K. Quinlan  
Secretary  
Surface Transportation Board  
395 E Street, SW  
Washington, D C. 20423-0001

ENTERED  
Office of Proceedings  
FEB 20 2009  
Part of  
Public Record

Re: Docket No. 42113, Arizona Electric Power Cooperative, Inc. v. BNSF Railway Company and Union Pacific Railroad Company

Dear Acting Secretary Quinlan:

On January 30, 2009, Complainant Arizona Electric Power Cooperative, Inc. ("AEPCO"), filed an Amended Verified Complaint in the above-captioned proceeding that, among other things, challenges common carrier rates established by Defendants BNSF Railway Company ("BNSF") and Union Pacific Railroad Company ("UP") for coal shipments to AEPCO from mines located in Wyoming and Montana served exclusively by BNSF (the "Northern PRB").

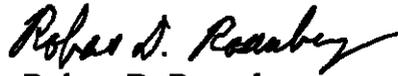
On February 19, 2009, BNSF published Common Carrier Pricing Authority BNSF 57988, copy enclosed as Attachment A, establishing common carrier rates for AEPCO's shipments of coal from the Northern PRB origins. AEPCO hereby amends its complaint to encompass BNSF 57988

AEPCO further notes that Defendants BNSF and UP each filed answers to AEPCO's Amended Verified Complaint on February 19, 2009, taking the position that the Northern PRB rates referenced in AEPCO's Amended Verified Complaint were not common carrier rates subject to challenge. That contention is mooted by BNSF's publication of BNSF 47988, particularly as there were no movements under the Northern PRB rates referenced in AEPCO's Amended Verified Complaint.

The Honorable Anne K. Quinlan  
February 20, 2009  
Page 2

AEPCO requests that this letter and Attachment A be included in the record for this proceeding.

Respectfully submitted,



Robert D. Rosenberg  
An Attorney for Arizona Electric Power  
Cooperative, Inc.

Enclosures

RDR:rlh

cc: Anthony J. LaRocca, Esq.--w/encl.  
Michael L. Rosenthal, Esq.--w/encl.

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p.

## Attachment A

**The Burlington Northern and Santa Fe Railway Company ("BNSF")  
Common Carrier Pricing Authority BNSF 57988**

**Effective Date:** February 19, 2009

**Commodity:** Raw Subbituminous Coal, STCC 11-21-series Not applicable for transportation of beneficiated, enhanced or synthetic coal, provided however, Coal treated with additives used exclusively for dust control or to reduce freezing shall not be considered "enhanced" or "beneficiated"

**Origins:** Spring Creek Mine – Nerco Jct, MT  
Decker Mine – Decker, MT  
BNSF Gillette Area Mines – Campbell County, WY  
Eagle Butte Mine – Eagle Butte Jct , WY  
Buckskin Mine – Buckskin Jct , WY  
Rawhide – Rawhide Jct , WY  
Clovis Point – Clovis Point Jct , WY  
Dry Fork – Dry Fork Jct , WY

**Destination:** Arizona Electric Power Cooperative, Inc Apache Generating Plant near Cochise, AZ

**Route:** BNSF Pueblo, CO - Union Pacific Railroad Company ("UP")

**Through Rates and Minimum Weights:** Weights stated in Net Tons Coal,  
Rates stated in U S Dollars Per Net Ton Coal

<u>Origin</u>	<u>Minimum Weight Per Carload</u>	<u>Shipper- provided Railcars</u>
Spring Creek - Nerco Jct, MT	118	\$ 39.15
Decker Mine - Decker, MT	118	\$ 39.15
Gillette Area Mines, WY	118	\$ 37.50
(Eagle Butte Jct , Buckskin Jct , Rawhide Jct , Clovis Point Jct , Dry Fork Jct )		

Freight Charges will be assessed on the basis of the applicable Minimum Weight per Trainload or the actual weight of Coal per Trainload whichever is greater

**Fuel Surcharge Application:** Transportation charges per shipment otherwise calculated by application of the freight rate and weight provisions herein shall also be subject to BNSF Coal Fuel Surcharge provisions specified by BNSF Rules Book 6100-series Item 3381 or successors thereto

**Railcar Supply and Tender Requirements:** Shipper-provided Railcars shall be aluminum open top rapid discharge hopper cars suitable for loading not less than 118 net tons Coal per carload, not subject to any private car mileage allowance and furnished at no cost to Railroads

The Minimum Tender for a train of Shipper-provided Railcars shall be one-hundred twenty (120) such Railcars In the event that Minimum Tender for a train of Shipper-provided Railcars is not met due to Railroads' failure to switch such Railcars into a train at such location where Railroads' have agreed to provide and Shipper has requested such service, the Minimum Weight per Trainload shall be reduced to the appropriate net tons for each Railcar (118 net tons for each Railcar), not so switched which results in a train of than Minimum Tender

**The Burlington Northern and Santa Fe Railway Company ("BNSF")  
Common Carrier Pricing Authority BNSF 57988**

Claims for damage to or destruction of either Shipper-provided or BNSF-provided Railcars shall be handled in accordance with the procedures set forth in the Field Manual and Office Manual of the Association of American Railroads Interchange Rules, as amended from time to time. Notwithstanding the foregoing, Railroads shall not be liable for loss or damage caused by defects in design, materials, or workmanship of Shipper-provided Railcars, or events of force majeure, or to improper loading or unloading performed by Shipper, its agent, its contractor, consignor or consignee.

**Weights:** Lading Weights shall be ascertained at Origin by Shipper, its agent, or the Coal mine operator, at no charge to BNSF, and will be provided to Railroads via either electronic data interchange or facsimile upon release of a loaded train. BNSF shall have the right to inspect and certify the Origin scales. The Minimum Weight per Trainload shall be the product of the Minimum Weight Per Carload times the Minimum Tender.

**Loading:** Shipper or its agent shall be responsible for the provision of appropriate loading facilities. All cars in each shipment shall be tendered to BNSF for loaded movement subject to the provisions of BNSF Price List 6041-series in effect on the date that service is provided.

**Unloading and Switching:** Shipper shall be responsible for the unloading of trains at Destination, including the operation of UP locomotives to unload the train, dumping of each railcar, switching, train movement and other related train handling required to accomplish the unloading and tender of the empty train to UP. Other related train handling events shall include, but is not limited to, switching of bad order cars, and switching repaired and spare cars into the train. Use of UP locomotives shall be subject to the execution of a locomotive operation agreement which will cover insurance and liability requirements. Shipper shall be allowed ten (10) hours of free time to unload the train and perform switching as described herein.

In the event Shipper elects to have UP operate the locomotives during the unloading process and perform switching as described above, then Shipper agrees to pay UP \$1,500 per train for such work. When UP crews operate the locomotives to unload, free time to unload shall be five (5) hours.

**Accessorial Services:** BNSF-provided services ancillary to the linehaul transportation of Coal shall be provided in accordance with BNSF Price List 6041-series in effect on the date such services are requested. UPRR-provided services ancillary to the linehaul transportation of coal shall be provided in accordance with UPRR Circular 6605-series in effect on the date such services are requested.

**Billing and Payment:** Freight Charges will be billed by BNSF and paid by Shipper within ten working days of receipt of a bill therefor. BNSF will bill each shipment under the terms of the Uniform Straight Bill of Lading. All railcars for each shipment are to be billed on one (1) Bill of Lading. This Common Carrier Authority BNSF 57988, correct address and patron code must be shown on the Bill of Lading to insure accurate billing. In the event Shipper does not make timely payment, or if adverse credit conditions occur, which in the judgment of either Railroad could affect Shipper's ability to meet payment terms, either Railroad may require Shipper to pay cash in advance of service for all amounts for which Shipper is liable under this Common Carrier Authority. Charge for Accessorial Services shall be billed by the Railroad providing such service. Shipper shall pay for such services within ten working days of receipt of a bill therefor.

**The Burlington Northern and Santa Fe Railway Company ("BNSF")  
Common Carrier Pricing Authority BNSF 57988**

**Other Provisions:** Shipments made under the provisions of this Common Carrier Authority are subject to the Uniform Freight Classification 6000-series or its successor, applicable tariffs, statutes, federal regulatory rules and regulations, AAR rules, and other accepted practices within the railroad industry as may be amended from time to time