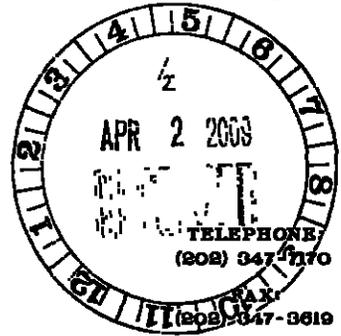


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STEPHANIE P LYONS
JOSHUA M HOFFMAN

April 2, 2009

OF COUNSEL
DONALD G AVERY

VIA HAND DELIVERY

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

ENTERED
Office of Proceedings

APR - 2 2009

Part of
Public Record

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

Dear Secretary Quinlan:

Enclosed for filing in the above-referenced proceeding, please find an original and ten copies of Complainant Arizona Electric Power Cooperative, Inc.'s First Motion to Compel Discovery From Defendant Union Pacific Railroad Company.

Kindly indicate receipt and filing by time-stamping this extra copy and returning it to the bearer of this letter

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "D. M. Jaffe". The signature is fluid and cursive, with the first letter of each name being capitalized and prominent.

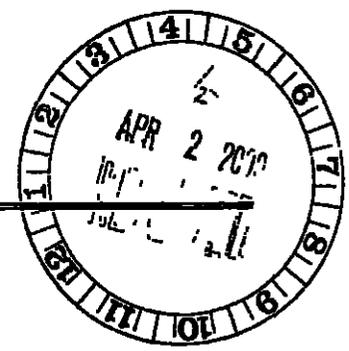
Daniel M. Jaffe
An Attorney for Arizona Electric Power
Cooperative, Inc.

Enclosures

cc: Counsel for Defendant Union Pacific Railroad Company
Counsel for Defendant BNSF Railway Company

224820

**BEFORE THE
SURFACE TRANSPORTATION BOARD**



**ARIZONA ELECTRIC POWER
COOPERATIVE, INC.**

Complainant,

v.

Docket No. 42113

BNSF RAILWAY COMPANY

and

UNION PACIFIC RAILROAD COMPANY

Defendants.

**ENTERED
Office of Proceedings**

APR - 2 2009

**Part of
Public Record**

**COMPLAINANT ARIZONA ELECTRIC POWER COOPERATIVE, INC.'S
FIRST MOTION TO COMPEL DISCOVERY FROM
DEFENDANT UNION PACIFIC RAILROAD COMPANY**

**ARIZONA ELECTRIC POWER
COOPERATIVE, INC.**

**By: Patrick F. Ledger
Corporate Counsel
1000 S. Highway 80
Benson, AZ 85602**

OF COUNSEL:

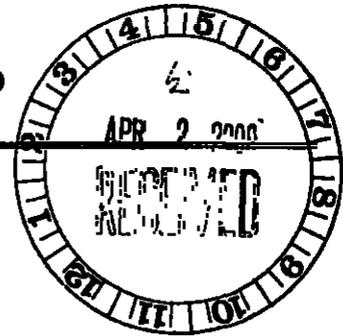
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Dated: April 2, 2009

Attorneys for Complainant

BEFORE THE
SURFACE TRANSPORTATION BOARD



ARIZONA ELECTRIC POWER
COOPERATIVE, INC.

Complainant,

v.

BNSF RAILWAY COMPANY

and

UNION PACIFIC RAILROAD COMPANY

Defendants.

Docket No. 42113

**COMPLAINANT ARIZONA ELECTRIC POWER COOPERATIVE, INC.'S
FIRST MOTION TO COMPEL DISCOVERY FROM
DEFENDANT UNION PACIFIC RAILROAD COMPANY**

Pursuant to 49 C.F.R. Part 1114.31, Complainant Arizona Electric Power Cooperative, Inc. ("AEPCO") moves the Board for an order compelling Defendant Union Pacific Railroad Company ("UP") to promptly produce documents and information responsive to AEPCO's First Requests for Admissions, Interrogatories and Requests for Production of Documents ("First Requests"), as identified herein. A copy of the First Requests, which were served on February 19, 2009, is attached hereto as Exhibit No. 1. A copy of UP's Responses and Objections to the First Requests ("UP Responses"), which

were served on March 23, 2009, is attached hereto as Exhibit No. 2.¹ In support hereof, AEPCO shows as follows:

BACKGROUND

This proceeding concerns a challenge by AEP/PCO to the reasonableness of certain common carrier rates established by Defendant(s) for the rail transportation of coal in unit trains from mine origins in New Mexico, Colorado, Wyoming and Montana to AEPCO's Apache Electric Generating Station located at Cochise, Arizona. The Amended Complaint requests that the Board examine the reasonableness of the rates at issue using its Constrained Market Pricing methodology as set forth in *Coal Rate Guidelines – Nationwide*, 1 I.C.C.2d 520 (1985), *aff'd sub nom. Consolidated Rail Corp v United States*, 812 F.2d 1444 (3rd Cir. 1987) ("*Coal Rate Guidelines*"), and as subsequently interpreted and applied in various coal rate proceedings

A central feature of *Coal Rate Guidelines* is the stand-alone cost ("SAC") test, pursuant to which, *inter alia*, a party in AEPCO's position is entitled to design a hypothetical, optimally efficient substitute transportation system adequate to handle the issue traffic, and other traffic currently handled by Defendant(s) which reasonably may be "grouped" with the issue traffic. *Id.*, 1 I.C.C.2d at 544. In assembling such a traffic group, complainants in coal rate proceedings typically identify a subset of the defendants' traffic base, and assemble data relevant to the costs of the assets, facilities and personnel needed to handle that traffic, as well as the revenues that the hypothetical transporter

¹ While the requests were served on the Defendants collectively, each Defendant provided its own, and in many cases inconsistent, objections to AEPCO's First Requests.

could earn in exchange. *See Pub Serv Co of Colo d/b/a/ Xcel Energy v The Burlington N. & Santa Fe Ry.*, STB Docket No. 42057, slip op. at 2-3 (STB served January 19, 2005).

In this case, AEPCO is designing a stand-alone railroad ("SARR") that would replicate some of the infrastructure and related assets and services used by Defendants to serve customers whose traffic shares the Defendants' lines used, in whole or in part, to serve the Apache Station. In particular, AEPCO sought typical stand-alone cost data from the Defendants, such as traffic and train movement data and track charts, for its potential "SARR States" defined as Arizona, California, New Mexico, Texas, Oklahoma, Colorado, Nebraska, Wyoming, and South Dakota.

In response to AEPCO's requests, UP objected to producing any information relating to the transportation of coal from UP-served mines in Colorado and the Wyoming Powder River Basin ("PRB"), citing its pending Motion to Hold Proceedings in Abeyance filed on February 24, 2009, to which AEPCO replied on March 16, 2009. *See* UP's General Objection No. 15. UP also lodged a General Objection, a General Response, and an Additional General Definition (applicable, where appropriate, to all requests and interrogatories) to producing data for line segments or routes other than UP's route between Pueblo, CO and El Paso, TX and UP's route between El Paso, TX and Tucson, AZ. *See* UP General Response No. 5, General Objection Nos. 14 and 15, and Additional General Definition No. 1. UP also objected specifically to AEPCO's

definition of SARR States insofar as Nebraska and Wyoming are included.² Thus, through its objections UP has effectively walled off AEPCO from any meaningful discovery associated with lines used for movements from Colorado or PRB origins -- origins clearly at issue in this case.

AEPCO's and UP's counsel conferred by telephone on March 31, 2009, concerning UP's objections. UP's counsel indicated that UP would not withdraw its objections to producing data related to movements from the Colorado and PRB mine origins served by UP. Consequently, AEPCO is filing the instant motion.³ As shown

² AEPCO notes that the definition of SARR States includes a state where BNSF provides, or could provide, coal transportation services for AEPCO (South Dakota), but where UP does not provide any such services. As AEPCO's requests were served collectively on the Defendants, AEPCO did not intend that UP would provide data for states that it does not operate in for purposes of this case. AEPCO, therefore, accepts UP's objection with respect to South Dakota.

³ While AEPCO and UP were unable to come to an accommodation on the Colorado and PRB mine origin data, the parties continue to negotiate other geographic scope objections raised by UP. In particular, the objections noted above also have the effect of limiting AEPCO's potential discovery of relevant information for other line segments that the SARR might use in states such as Texas and California. AEPCO and UP are also continuing to work on resolving specific objections raised by UP in its responses.

Similarly, AEPCO's and BNSF's counsel are also attempting to negotiate a resolution to BNSF's geographic scope objections wherein BNSF objects to producing documents for line segments in California (in total) and in (unspecified) parts of Oklahoma and Texas that it believes are "unlikely" to be used by AEPCO's SARR. AEPCO and BNSF are also continuing to work on resolving specific objections raised by BNSF in its responses.

As counsel for AEPCO and Defendants are currently working toward an accommodation with respect to the various geographic scope objections raised by the Defendants as well as the other discovery requests where one or both of the Defendants have refused to produce any responsive documents, a motion to compel documents in response to certain document requests that are still the subject of negotiations is premature. However, AEPCO reserves the right to pursue any needed motion(s) to

below, the objections noted above are without merit, and should be overruled. AEPCO, therefore, requests that the Board order the prompt production of all documents and data sought in AEPCO's First Requests pertaining to movements over the UP's lines that serve the Colorado and PRB mine origins.

**UP Cannot Unilaterally Halt Discovery of Colorado
and Wyoming Data While a Motion to
Hold Proceedings in Abeyance is Pending**

The Board's discovery rules accord AEPCO the right to "obtain discovery . . . regarding any matter, not privileged, which is relevant to the subject matter involved in a proceeding." 49 C.F.R. § 1114.21(a). A complainant has broad discovery rights under the Board's rules,¹ which follow the policies reflected in the Federal Rules of Civil Procedure.⁵ In particular, in rate cases brought by rail shippers under the Constrained Market Pricing methodology, the Board and its predecessor repeatedly have held that defendant railroads are subject to broad discovery. *See, e.g., Coal Rate Guidelines*, I.C.C.2d at 548 ("We recognize that shippers may require substantial discovery to litigate a case under CMP, and we are prepared to make that discovery available to them."); *Procedures to Expedite Resolution of Rail Rate Challenges to be Considered Under the Stand-Alone Cost Methodology*, STB Ex Parte No. 638, slip op. at 4 (STB served Apr. 3,

compel in the event that an acceptable accommodation cannot be reached through negotiations.

¹ *See Coal Rate Guidelines*, 1 I.C.C.2d at 548 (1985).

⁵ *See, e.g., Simplified Standards for Rail Rate Cases*, STB Ex Parte No. 646 (Sub-No. 1), slip op. at 68-69 (STB served Sept. 5, 2007) ("[o]ur discovery rules follow generally those in the FRCP").

2003) (“shippers need substantial discovery to put together a SAC presentation”); *Increased Rates on Coal, L & N RR, Oct 31, 1978, The Dayton Power & Light Co v. Louisville & Nashville R R* . ICC Docket Nos. 37063 and 38025S, (ICC decided Nov. 30, 1990) (1990 WL 300638), at *4 (“Parties presenting stand-alone cost evidence under the constrained market pricing concept adopting *Coal Rate Guidelines* . . . depend on the broad discovery that we announced in that proceeding would be available.”). The documents requested by AEPSCO in its First Requests are entirely appropriate in the context of this rate reasonableness case. Indeed, most of its First Requests seek the basic building blocks needed to make a SAC presentation.

The Board’s rules of procedure also state that the “[t]he filing of motions or other pleadings will not automatically stay or delay the established procedural schedule.” 49 C.F.R. § 1112.2. In adopting this rule, the Board specifically noted that discovery was an element of the rate case process that would not be halted by the filing of any such motion. See *Expedited Procedures for Processing Rail Rate Reasonableness, Exemption and Revocation Proceedings*, 1 S.T.B. 859, 864 (1996) and 1 S.T.B. 754, 763-764 (1996) (“*Expedited Procedures*”). The Board has generally rejected attempts to stay or avoid discovery while motions such as UP’s Motion to Hold Proceedings in Abeyance are pending. See *AEP Tex N. Co v The Burlington N & Santa Fe Ry* . STB Docket No. 41191 (Sub-No. 1), slip op. at 2 (STB served Sept. 11, 2003) (“*AEP Texas*”) (denying a defendant carrier’s request asking the Board to withhold issuance of a procedural schedule until the Board decided the carrier’s motion to dismiss). *Accord Seminole Elec.*

Coop., Inc. v. CSX Transp., Inc., SIB Docket No. 42110, slip op. at 1-2 (STB served Oct. 21, 2008) (defendants' request to stay procedural schedule pending mediation denied).

Through its General Response No. 5, its General Objection Nos. 14 and 15, and its Additional General Definition No. 1, UP has unilaterally elected to not produce any responsive information that relates to the transportation of coal from UP-served Colorado and PRB mine origins or the lines used for such transportation north of Pueblo, CO, because it apparently believes that the mere filing of its Motion to Hold Proceedings in Abeyance allows it to resist such document production. UP's relevant objections and definitions are set forth below:

General Response No. 5: UP responses and production of line segments and or routes will be sufficient to show responsive information for its own trains and for foreign trains and for foreign railroads' trains while operating on UP owned lines to the extent reasonably available from Pueblo, Colorado to El Paso, Texas and El Paso, Texas to Tucson, Arizona ("the Route").

General Objection No. 14: UP objects to the definition of "SARR States" [sic] should exclude California, Nebraska, South Dakota and Wyoming as applied to UP because UP provides no transportation services at issue in this proceeding within any of these states. Further the burden associated with producing information for California, Nebraska and Wyoming would not [sic] be substantial.

General Objection No. 15: UP objects to the production of, and is not producing, information or documents relating to the transportation of coal from UP-served [sic] in Colorado of [sic] Wyoming's Southern Power [sic] River Basin to the Apache Generating Station. See Union Pacific's Motion to Hold Proceedings in Abeyance, February 24, 2009.

Additional General Definition No. 1: "Route" means the line segments that UP transports the issue AEPCO traffic over and includes lines from Pueblo, Colorado to El Paso, Texas and El Paso, Texas to Tucson, Arizona.

UP's position in the above objections and definitions is inconsistent with the Board's governing discovery standards. Indeed, UP's position would allow any party to bring the discovery process to a grinding halt by filing obstructionist motions – a result plainly at odds with the Board's intent in *Expedited Procedures*. On that basis alone, UP's objections should be overruled. *See AEP Texas*, slip op. at 2 (pending motion will be "addressed in due course." but the parties should meet as soon as possible to discuss discovery matters).

Besides being at odds with the Board's procedures, UP's refusal to produce Colorado or PRB data would, as a practical matter, all but dismiss AEPCO's case with respect to movements from these origins. Simply put, AEPCO would be unable to present a supportable SAC case without critical data such as traffic data, car and train movement data, and the other standard facility, operating and road property data included in AEPCO's First Requests. *See Expedited Procedures*, slip op. at 9-10 (STB served July 22, 1996) ("[W]e recognize that certain cases, principally rail rate cases, have unique and extensive data requirements that often can only be satisfied through discovery.").⁶ Moreover, UP's refusal to produce such data, even if left unchecked by the Board for a

⁶ AEPCO also notes that the required data is not available through any public means.

brief time, would insure that AEPCO could not reasonably meet the procedural schedule established in this case.

AEPCO is also deeply concerned that UP's refusal to provide the requested data now will increase its costs for this proceeding by *many hundreds of thousands of dollars*. Indeed, UP's objection presents a serious impediment to the orderly processing of the case by AEPCO's consultants and counsel. In particular, AEPCO expects that the traffic data, as well as the train and car movement data will require substantial and complex analysis, especially in light of the Board's adoption of ATC, which adds a requirement for an origin-to-destination analysis of any potential cross-over traffic movement that AEPCO might consider including in its traffic group -- and by extension this analysis could implicate the physical plant of the SARR. If UP's production of such data is incomplete due to its unilateral refusal to provide such data now, when it is ultimately produced AEPCO will be forced to repeat many of the processing steps that are required to analyze the data thereby creating more delay and expense.⁷ The traffic analysis steps alone can require hundreds of man-hours. If UP's responses to AEPCO's requests are delayed long enough, this could also significantly impact the costs to assemble and develop the operating and road property cost elements of AEPCO's SAC evidence. For example, the RTC modeling that AEPCO intends to do in this proceeding might have to be delayed or even redesigned from scratch. Given the major cost and time delays that could arise if UP continues to resist production of Colorado and PRB data,

⁷ Indeed, AEPCO suspects that UP would also be burdened by having to collect data from the same databases twice.

AEPCO submits that the potential harm outweighs UP's unilateral insistence that these origins are not relevant – a matter which is for the Board to decide, not UP.

The need for data related to UP-served mine origins in Colorado and the PRB is indisputable – AEPCO cannot pursue its case for those origins without the data. Moreover, considerations of efficiency and cost-minimization, and the existing procedural schedule, support simultaneous production of all traffic and train and car movement data, as well as other data sought in AEPCO's First Requests. Finally, UP's position is untenable in light of the Board's procedural rules. As such, AEPCO's Motion to Compel should be granted.

CONCLUSION

For the foregoing reasons, the Board should overrule UP's objections and compel substantive responses to AEPCO's First Requests with respect to data relating to the traffic, train movements and physical characteristics of the lines use by UP in transporting the issue traffic from UP-served mine origins in Colorado and the PRB.

RESPECTFULLY SUBMITTED.

ARIZONA ELECTRIC POWER
COOPERATIVE, INC.

By. Patrick F. Ledger
Corporate Counsel
1000 S. Highway 80
Benson, AZ. 85602

OF COUNSEL:

Slover & Loftus LLP
1224 Seventeenth Street, N.W.
Washington, D.C. 20036
(202) 347-7170

Dated: April 2, 2009

William L. Slover
Robert D. Rosenberg
Christopher A. Mills
Daniel M. Jaffe 
1224 Seventeenth Street, N.W.
Washington, D.C. 20036
(202) 347-7170
Attorneys for Complainant

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of April 2009, I caused copies of Complainant Arizona Electric Power Cooperative, Inc.'s First Motion to Compel Discovery from Defendant Union Pacific Railroad Company, to be served by hand upon counsel for Defendants, as follows:

Anthony J. LaRocca, Esq.
Steptoe & Johnson, LLP
1330 Connecticut Avenue, N.W.
Washington, D.C. 20036

Linda J. Morgan, Esq.
Michael L. Rosenthal, Esq.
Covington & Burling
1201 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

and by FedEx as follows:

J. Michael Hemmer, Esq.
Louise A. Rinn, Esq.
Tonya W. Conley, Esq.
Union Pacific Railroad Company
1400 Douglas Street
Omaha, Nebraska 68179


Daniel M. Jaffe

EXHIBIT 1

SLOVER & LOFTUS LLP

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February 19, 2009

Via E-Mail and Hand Delivery

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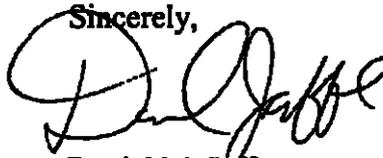
Re: Docket No. 42113, Arizona Electric Power Cooperative, Inc. v.
BNSF Railway Company and Union Pacific Railroad Company

Dear Counsel:

Enclosed are Complainant's First Requests for Admissions, Interrogatories and Requests for Production of Documents to Defendants. Please note that Defendants' responses to these first discovery requests are due 30 days from the date hereof, or on March 23, 2009.

Please contact us if you have any questions with respect to the enclosed first discovery requests.

Sincerely,



Daniel M. Jaffe

Enclosure

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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

**COMPLAINANT'S FIRST REQUESTS
FOR ADMISSIONS, INTERROGATORIES,
AND REQUESTS FOR PRODUCTION OF
DOCUMENTS TO DEFENDANTS**

Complainant Arizona Electric Power Cooperative, Inc. ("AEPCO"), pursuant to 49 C.F.R. Part 1114.30, hereby submits its First Requests for Admissions, Interrogatories, and Requests for Production of Documents to Defendants BNSF Railway Company ("BNSF") and Union Pacific Railroad Company ("UP").

Responses to AEPCO's Requests for Admissions, answers to Interrogatories, and copies of documents responsive to AEPCO's Requests for Production should be delivered to the offices of Slover & Loftus LLP, 1224 Seventeenth Street, N.W., Washington, D.C. 20036, within thirty (30) days from the date hereof,

unless otherwise agreed by the parties. AEPCO is prepared to cooperate with Defendants to facilitate the expeditious production of documents with the minimum practical burden.

I. DEFINITIONS

The following defined terms are used herein:

1. "AEPCO route(s)" means the railroad line segments over which BNSF and UP move or could reasonably move loaded and empty coal trains between Origins and Destination.
2. "AEPCO train(s)" or "AEPCO service" means the trains containing loaded or empty coal cars moving to and from Cochise, AZ over the AEPCO route(s).
3. "BNSF" means BNSF Railway Company, its present or former employees, agents, counsel, officers, directors, advisors, consultants, divisions, departments, predecessor, parent and/or holding companies, subsidiaries, or any of them, and all other persons acting (or who have acted) on its behalf
4. "Challenged Rate(s)" means the rate(s) for common carrier rail transportation service that are the subject of AEPCO's Amended Verified Complaint in this proceeding, including any such rate(s) that may be established after the date hereof.
5. "Coal train" means any train that transports primarily loaded or empty coal cars, including a mine gathering or distribution run, a train carrying coal cars for more than one customer, a train carrying coal cars from more than one origin to a single or more than one destination, and a unit train in which all cars in the train move

between a single origin and a single destination on one bill of lading or other shipping document.

6. "Defendants" means BNSF as defined in this section and UP as defined in this section.

7. "Destination" means AEPCO's Apache Generating Station located at Cochise, Arizona.

8. "Distributed power" means a train configuration in which one or more locomotives are positioned at the front of the train and one or more locomotives are positioned at an intermediate point in the train and/or at the rear of the train, with the intermediate or rear locomotives remotely controlled from the lead locomotive on the train.

9. "Document(s)" means all writings or visual displays of any kind, whether generated by hand or mechanical means, including, without limitation, photographs, lists, memoranda, reports, notes, letters, electronic mail, phone logs, contracts, drafts, workpapers, computer print-outs, computer tapes, telecopies, newsletters, notations, books, affidavits, statements (whether or not verified), speeches, summaries, opinions, studies, analyses, evaluations, statistical records, proposals, treatments, outlines, any electronic or mechanical records or representations (including physical things such as, but not limited to, computer disks), and all other materials of any tangible medium or expression, in BNSF's or UP's current or prior possession, custody

or control. A draft or non-identical copy is a separate document within the meaning of this term.

10. "Identify," when referring to a document, means to give, to the extent known, the (i) type of document; (ii) general subject matter; (iii) date of the document; and (iv) author(s), addressee(s) and/or recipient(s).

11. "Identify," when referring to information, means to list or produce documents containing the specified information.

12. "Interchange" means Deming, New Mexico or any other point at which BNSF and UP interchange AEPCO trains moving between Origins and Destination.

13. "Origins" means the mines and transshipment point identified in Paragraph 10 of AEPCO's Amended Verified Complaint.

14. "Person" means natural persons, corporations, institutions, partnerships, firms, joint ventures, associations, political subdivisions or other legal entities, as the case may be.

15. "Possession, custody, or control" refers to and includes documents actually within the possession, custody or control of BNSF and/or UP or any other person acting for or in concert with BNSF and/or UP; and refers to and includes documents prepared by, obtained, or placed in the possession, custody, or control of any such person within the scope of his or her duties or relationship to BNSF and/or UP; and further refers to and includes documents having been placed in the temporary possession, custody, or

control of any third party by any of the foregoing or BNSF and/or UP. Documents are deemed to be in the possession, custody, or control of BNSF and/or UP if BNSF and/or UP have the right to secure the document, or a copy thereof, from another person or entity, whether public or private, having such actual physical possession, custody, or control thereof.

16. "Price" or "prices" mean the price per ton or other unit of measure, and whether it is f o b. or f.a s. a railroad car, vessel, destination, port or other conveyance.

17. "Related," "related to," and "relating to" mean and include making a statement discussing, describing, referring to, reflecting, explaining, analyzing, or in any way pertaining to, in whole or in part, the subject matter of the Interrogatory or Request.

18. "SARR States" means the States of Arizona, California, Colorado, New Mexico, Nebraska, Oklahoma, South Dakota, Texas and Wyoming.

19. "And," "or," and/or "each" shall be construed in the disjunctive or conjunctive as necessary in order to bring within the scope of each Interrogatory or Request all responsive information or documents which otherwise might be construed as outside the scope of the Interrogatory or Request. All use of the masculine gender shall be deemed to include the feminine.

II. INSTRUCTIONS

BNSF and UP are requested to conform to the following instructions in responding to these Requests and Interrogatories.

- 1. Each paragraph shall operate and be construed independently.**

Unless otherwise indicated, no paragraph limits the scope of any other paragraph.

- 2. Where these discovery requests seek data in a computer-readable format:**

- a. For each computer file supplied provide:**
 - i. The name and description of the source database or other file from which the records in the computer file were selected,**
 - ii. A description of how the records in the file produced were selected; and**
 - iii. Each computer program (in native software and text file) and intermediate file used in deriving the files produced.**
- b. For each field in each computer database file provide:**
 - i. The name of the field;**
 - ii. The starting and ending positions of the field;**
 - iii. A detailed definition of the field;**
 - iv. A detailed description of the data in the field, including an explanation of what they are used for;**
 - v. The type of data in the field, i.e., whether numeric, character, alphanumeric, number of digits, number of significant digits, whether signed or unsigned (i.e., negatives allowed),**

- vi. If the values in a field are terms or abbreviations, a list of all terms or abbreviations used with detailed definitions of each;
- vii. An indication of whether the data in the field are packed or compressed; and
- viii. If the data in the field are packed or compressed, the type of packing or compression:
 - (1) Zoned with low-order sign;
 - (2) Binary with LSB first;
 - (3) Binary with MSB first;
 - (4) Packed with high-order sign;
 - (5) Packed with low-order sign;
 - (6) Packed with no sign; and
 - (7) Other (specify and provide detailed instructions for unpacking).

3. If an answer or the production of any responsive document is withheld under 49 C.F.R. § 1114.30(a)(1) on the basis of a claimed privilege or attorney work product, then for each such answer or document, provide the following information: its date, type (e.g., letter, meeting, notes, memo, etc.), author (note if author is an attorney), addressee(s)/recipient(s) (note if addressee(s) or recipient(s) is an attorney), general subject matter, and basis for withholding the information.

4. If the answer to any Interrogatory or the production of any responsive document is withheld on claimed grounds other than privilege or attorney work product, state with specificity the basis for such withholding.

5. Defendants are requested to supplement their production in the manner provided in 49 C.F.R. § 1114.29.

6. All documents should be produced or made available for inspection in the form in which they are retained by BNSF and/or UP in their usual course of business (e.g., if the documents are in a file, the file containing the documents should be produced), unless otherwise agreed by AEPCO and BNSF and/or UP. All files containing responsive documents should be identified by the file name and number.

7. Please organize or number the documents produced in such a manner that AEPCO may readily determine which documents are being produced in response to each specific Request for Production. If no document is produced in response to any specific Request, please so indicate in the response.

8. AEPCO reserves the right to file supplemental or follow-up Interrogatories, Requests for Production, and other discovery, as necessary or appropriate.

III. REQUESTS FOR ADMISSIONS

REQUEST FOR ADMISSION NO. 1

Admit that the Challenged Rates exceed 180 percent of the variable costs of providing the transportation to which the Challenged Rates apply.

REQUEST FOR ADMISSION NO. 2

Admit that Defendants face no effective intramodal competition for the transportation of coal from Origins to Destination.

REQUEST FOR ADMISSION NO. 3

Admit that Defendants face no effective intermodal competition for the transportation of coal from Origins to Destination.

IV. INTERROGATORIES

INTERROGATORY NO. 1

If your response to Request for Admission No. 1 was anything other than an unqualified admission, please explain in detail the legal basis for your response, provide the revenue-variable cost percentages that Defendants claims the Challenged Rates produce, and identify all documents that support your response.

INTERROGATORY NO. 2

If your response to Request for Admission No. 2 was anything other than an unqualified admission, please describe the effective intramodal competition that Defendants claims exists for the transportation to which the Challenged Rates apply, the annual volume of coal subject to such competition, and why such competition is effective.

INTERROGATORY NO 3

If your response to Request for Admission No. 3 was anything other than an unqualified admission, please describe the effective intermodal competition that Defendants claims exists for the transportation to which the Challenged Rates apply, the volume of coal subject to such competition, and why you think such competition is effective.

INTERROGATORY NO. 4

Please provide a complete description of the movement of AEPCO trains by Defendants from Origins to Destination and from Destination to Origins, including but not limited to a description of all transportation-related activities (including transloading or transshipping activities) at Origins, at Destination, and at all intermediate stations or other points between Origins and Destination.

INTERROGATORY NO 5

Please provide the maximum permissible gross weight on rail ("GWR") per railcar for each BNSF and/or UP line segment in the SARR States.

INTERROGATORY NO 6

Please identify any computer programs or models that arc or within the past three years have been used by BNSF and/or UP to simulate a locomotive's and/or a train's performance while moving over a particular route.

INTERROGATORY NO. 7

Please identify any computer programs or models that are or within the past three years have been used by BNSF and/or UP to (a) download locomotive event recorder data from locomotives along any line segment in the SARR States, and/or (b) process locomotive event recorder data for purposes of determining locomotive throttle position and/or fuel consumption.

INTERROGATORY NO. 8

Please identify, by name, title and address, the person(s) who prepared each answer to these Interrogatories and each response to the foregoing Requests for Admissions, and who reviewed and selected the documents to be produced in response to each of the following Requests for Production.

INTERROGATORY NO. 9

Please describe BNSF's and UP's plans for complying with the provisions of the Rail Safety and Improvement Act of 2008 (Pub. Law No. 110-432) related to the implementation of positive train control (Section 104) and hours-of-service reform (Section 108).

V. DOCUMENT PRODUCTION REQUESTS

Request for Production No. 1

Please produce all documents related to the establishment of the Challenged Rates, including but not limited to all documents used and/or relied upon in determining the formula for calculating the rates.

Request for Production No. 2

Please produce all studies and analyses conducted by or for UP and/or BNSF or from January 1, 2003 to date related to (a) the profitability of UP or BNSF's coal traffic; and (b) the profitability of coal transportation service provided by Defendants for the account of AEPCO.

Request for Production No. 3

Please produce documents or data, in a computer-readable format to the extent available, which provide the following information for each AEPCO train movement from Origins to Destination and from Destination to Origins for each crew district in the SARR States:

- a. Each crew district identified by "from" and "to" stations;
- b. The route miles in each such crew district; and
- c. The number of locomotive units per train in the loaded direction by train type (i.e., coal, general freight, intermodal, automotive, etc.), and the extent to which the locomotive units are in a distributed power configuration.

Request for Production No. 4 (BNSF Only)

Please produce all agreements, and all supplements or amendments thereto, between BNSF and Southwestern Railroad Company, Inc. ("SWRR") which relate to the operation of trains in either direction over the lines between Rincon and Deming, NM.

Request for Production No. 5 (BNSF Only)

Please produce documents sufficient to show all compensation (whether in the form of payments or credits) paid by BNSF to SWRR for the transportation of trains and/or trainsets of coal cars on a per car or per train (as the case may be) basis as well as on annual basis for each of the three years ending December 31, 2008.

Request for Production No. 6 (BNSF Only)

Please produce all documents related to BNSF's consideration of the abandonment of the Belen to Deming, NM line segment or any portion thereof, including the Rincon to Deming, NM line segment. If BNSF has not considered abandoning any such segment(s), please so indicate in response to this Request.

Request for Production No. 7

Please produce any studies, analyses and other documents in BNSF's and/or UP's possession from January 1, 2003 to present analyzing or related to the transportation of coal to Destination from Origins (a) by a rail carrier(s) other than BNSF and/or UP, and (b) by any mode of transportation other than rail. If no such documents exist, please confirm same in the response to this Request.

Request for Production No. 8

Please provide the following density information for UP's and BNSF's entire systems for each year or partial year 2006 to the present in a machine readable database or electronic spreadsheet, including all field descriptions, data definitions and data dictionaries required to utilize the data. The density database or spreadsheet should include, at a minimum, the following data:

- a. Identification of the unique railroad divisions, subdivisions, and individual line segments for each unique density segment;
- b. Station name at the beginning of a unique density segment and at the end of a unique density segment;
- c. Beginning and ending milepost for each unique density segment;
- d. Rail mileage for each unique density segment;
- e. (i) Total density (both directions including empty and loaded trains by segment expressed in net ton-miles, or in the alternative, (ii) total density (both directions including empty and loaded trains) by segment expressed in gross ton-miles plus appropriate factors that can be used to convert gross ton-miles to net ton-miles on each unique density segment; and
- f. Density information (i) for segments that BNSF and/or UP utilizes via trackage rights (or other joint facility or joint use arrangements) on another railroad, and (ii) for segments where another railroad(s) operates by trackage rights (or other joint facility or joint use arrangements) over BNSF or UP segments.

Request for Production No. 9

For each BNSF and/or UP line segment and for any other railroad's line segments which UP and/or BNSF utilize via trackage rights agreements, please produce documents, in a computer-readable format to the extent available, which contain

operating statistics and density data (including but not limited to train miles, train hours, locomotive unit miles, loaded car-miles, empty car-miles, net ton-miles, gross ton-miles (both including and excluding locomotives), number of trains, etc.) for all traffic for each year or partial year 2006 to the present.

Request for Production No. 10

Please produce the data bases and computer programs (with all documentation related to these data bases and computer programs), in a computer-readable format, that include the information listed below for each movement handled by BNSF and/or UP as originating, terminating, overhead or single-line carrier that traveled in any of the SARR States for each year or partial year 2006 to the present:

- a. Commodity (seven-digit Standard Transportation Commodity Code "STCC");
- b. Origin city and state;
- c. Destination city and state;
- d. For shipments that originated on BNSF's or UP's system(s), the date and time the shipment was originated;
- e. For shipments BNSF or UP received in interchange, the on junction location and station number;
- f. For shipments BNSF or UP received in interchange, the road received from;
- g. For shipments BNSF or UP received in interchange, the date and time the shipment was interchanged,
- h. For shipments given in interchange, off junction location and station number,
- i. For shipments given in interchange, the road given to;

- j. For shipments given in interchange, the date and time the shipment was interchanged;**
- k. For shipments terminated on BNSF's and/or UP's system(s), the date and time the shipment was terminated;**
- l. Origin Freight Station Accounting Code ("FSAC");**
- m. Destination FSAC;**
- n. Origin Standard Point Location Code ("SPLC");**
- o. Destination SPLC,**
- p. Number of cars;**
- q. Tons (Net),**
- r. Tare weight;**
- s. Total freight revenues from Origin to Destination, including any adjustments thereto;**
- t. BNSF's and/or UP's share or division of the total freight revenues, including any adjustments thereto;**
- u. Total revenues from surcharges (including but not limited to fuel surcharges), and whether such revenue from surcharges is included in the total freight revenues and BNSF's and/or UP's division thereof provided in response to Subparts (s) and (t) above;**
- v. The contract, agreement, tariff, or other pricing authority that the shipment is billed under:**
- w. Waybill number and date;**
- x. TOFC/COFC plan,**
- y. Car/trailer/container initial for each car/trailer/container used to move the shipment;**

- z. Car/trailer/container number for each car/trailer/container used to move the shipment;**
- aa. If a trailer or container is used to move the shipment, the car initial and number used to move the trailer or container;**
- bb. The train identification number of all trains used to move the shipment;**
- cc. The number of locomotives, by train identification, by segment, used to move the shipment,**
- dd. The total horsepower, by train identification, by line segment, used to move the shipment,**
- ec. Total loaded movement miles;**
- ff. Total loaded miles on BNSF's and/or UP's system(s);**
- gg. AAR car-type code; and**
- hh. Provider of car (BNSF and/or UP-owned, BNSF and/or UP-leased, shipper or foreign road).**

Request for Production No. 11

Please produce documents, in a computer readable format to the extent available, which contain information tracking and describing car, locomotive and train movements from origin to destination for each car, locomotive and train moving on BNSF and/or UP lines to, from or through the SARR States for each year or partial year 2006 to the present.

Request for Production No. 12

Please provide copies of train dispatcher sheets (and the data recorded in such sheets in a computer readable format, to the extent available), or other documents (e g , conductor wheel reports) that record train movement data in a computer readable

format to the extent available, from origin to destination for all BNSF and/or UP car and train movements and yard and hub operations to, from or through the SARR States for each year or partial year 2006 to the present.

Request for Production No. 13

Please provide all documents, including programs, decoders, and instructions, necessary to link the data produced in response to Request for Production No. 10, Request for Production No. 11, and Request for Production No. 12.

Request for Production No. 14

Please produce all transportation contracts, including amendments and supplements thereto (or letters of understanding with appendices or attachments), and all tariffs, common carrier pricing authorities or other documents containing common carrier rate and service terms, entered into, agreed to or established or provided by BNSF and/or UP which govern(ed) shipments handled by BNSF and/or UP as originating, terminating, overhead or single-line carrier to, from or through any of the SARR States in any of the years 2006 to the present.

Request for Production No. 15

Please produce all documents related to forecasts or projections prepared by or for BNSF and/or UP from 2006 through the present, or in BNSF or UP's possession, of future traffic volumes and/or revenues for (a) coal and (b) other freight traffic (including any breakdowns of any such forecasts or projections whether by commodity classification, geographic region, line segment, or any other category) moving over any portion of the BNSF and/or UP system(s) located in any of the SARR States. Documents

responsive to this request include, but are not limited to, traffic projections prepared in connection with engineering studies or authorization for expenditures or marketing studies or operating expense budgets or capital budgets or mergers with or acquisitions of other carriers.

Request for Production No. 16 (BNSF Only)

Please produce all documents related to forecasts or projections prepared by or for BNSF from 2004 through the present, or in BNSF's possession of future traffic volumes and/or revenues for rail traffic originating and/or terminating on BNSF's rail line between North Tipple, NM to Defiance, NM, excluding rail traffic to and from the McKinley Mine.

Request for Production No. 17 (UP Only)

Please produce the traffic forecasts supporting the comment made by UP Spokeswoman Zoe Richmond in the May 31, 2008 issue of the Arizona Daily Star that the number of trains per day along the UP's Sunset Route will nearly double by 2016.

Request for Production No. 18

Please produce any studies or analyses (including any documents, computer models and inputs to run the model, supporting databases and manuals used in any such study or analysis) of transit and/or cycle times for any BNSF and/or UP train movements originating, terminating or passing through any of the SARR States for each year or partial year from 2006 to the present. Included in this Request are documents containing the following information for each movement, in a computerized format to the extent available.

- a. Waybill number and date;
- b. Car/trailer initial and number;
- c. Origin location, *i.e.*, city, state, FSAC and SPLC;
- d. Destination location, *i.e.*, city, state, FSAC and SPLC;
- e. Transit time from origin to destination and (if applicable) return from destination to origin;
- f. Location (*i.e.*, city, state, FSAC and SPLC) where shipment enters the states identified above;
- g. Location (*i.e.*, city, state, FSAC and SPLC) where shipment departs from or terminates in the states identified above, and
- h. Cycle time while movement is within the states identified above.

Request for Production No. 19

Please provide documents, in a computer-readable format to the extent available, sufficient to show the projected and actual transit and/or cycle times, and the standard or expected or contractual transit and/or cycle time for each BNSF and/or UP movement originating, terminating or passing through any of the SARR States for each year or partial year 2006 to the present.

Request for Production No. 20

Please produce documents which contain the computer model, supporting databases and supporting manuals that are used by BNSF and/or UP to calculate the expected transit and/or cycle time for a movement, including all necessary inputs required to run the model for each movement originating, terminating, or passing through any of the SARR States for each year or partial year 2007 to the present.

Request for Production No 21

Please produce current operating timetables (including special instructions and/or operating rule books), station lists, station books, track charts and “condensed profiles” (including schematics which provide the number, length, and ownership status (*i.e* , whether railroad-owned or privately-owned) of the tracks at the Origins and all destinations), which are applicable to BNSF and UP lines in the SARR States. Please provide the requested documents in machine-readable format to the extent available (including all necessary documentation) If current versions of any of the requested documents are not available, please produce the most recent versions that are available.

Request for Production No. 22

To the extent not included in the track charts or condensed profiles produced in response to Request for Production No. 21, please produce documents, in a computer-readable format to the extent available, that show the following for all BNSF and UP line segments in the SARR States:

- a. The gradient or grade profile for each line segment;
- b. The elevation and elevation changes (in feet above sea level) for each line segment; and
- c. The locations of all curves on each line segment and all information maintained by BNSF or UP pertaining to such curves, including but not limited to the beginning milepost, ending milepost, and degree of curvature.

Request for Production No. 23

Please produce documents which contain the following information for all coal mines that BNSF and/or UP served or from which BNSF or UP transported coal as an originating, intermediate or terminating carrier that moved in one or more of the SARR States for each year or partial year 2006 to the present:

- a. Geographic location, *i.e.*, city, county and state;
- b. Railroad location, *i.e.*, railroad station name and milepost;
- c. Railroad mine identification number corresponding to the identification numbers contained in Defendants' computerized traffic data, *e.g.*, SPLC, FSAC or any other numbering system BNSF or UP uses;
- d. Annual tonnages that BNSF or UP transported from that mine;
- e. Track capacity in feet at each location;
- f. The track configuration at each mine, with both the track that BNSF or UP or another rail carrier owns (or jointly owns) and the mine-owned track clearly identified;
- g. Annual weeks of mine operation;
- h. Average tons per car loaded; and
- i. Loading capacity (tons per hour).

Request for Production No. 24

Please produce all studies and analyses conducted by or for BNSF and/or UP related to implementation of and/or compliance with the provisions of the Rail Safety and Improvement Act of 2008 described in Interrogatory No. 9 above.

Request for Production No. 25

Please produce documents which provide the following information for all of BNSF's and/or UP's helper services operated in the SARR States, separately for each helper service location, for each year or partial year 2007 to the present:

- a. "From" and "To" stations and mileposts where trains are actually helped,
- b. Number and type of locomotives (model and horsepower) involved per help;
- c. Round-trip mileage each locomotive travels per help;
- d. Number of total trains helped per crew assignment;
- e. Minimum train size/weight requiring helper service; and
- f. Crew size per crew assignment.

Request for Production No. 26

Please produce documents which contain the following information for BNSF and UP for each year or partial year 2007 to present:

- a. The location(s) where car inspectors inspect trains in the SARR States,
- b. A description of the procedures followed by the car inspectors in preparing for and inspecting the trains;
- c. The total number of car inspections per tour of duty (by day of the week) and the total number of trains inspected per tour of duty (by day of the week), separated between coal trains and other than coal trains, for each location identified in response to (a) above;
- d. The number of car inspectors inspecting each train at each location identified in response to (a) above and the time spent by each inspector during each inspection;

- e. The daily or hourly rates of pay, including all additives, for the inspectors identified in response to (d) above;
- f. The number of trains each car inspector identified in response to (a) above inspects during his tour of duty;
- g. The other duties performed by the car inspectors identified in response to (d) above while on duty and not inspecting trains;
- h. The percentage of time the car inspectors identified in response to (d) above spend inspecting trains versus other assignments during their tour of duty;
- i. The materials and supplies used by the car inspectors at each of the locations identified in response to (a) above;
- j. The purchase price of each item identified in response to (i) above; and
- k. The total number of trains and cars inspected at each location identified in response to (a) above.

Request for Production No. 27

Please produce any studies or analyses conducted by BNSF and/or UP during the past three (3) years which model and evaluate rail operations over all or any part of the BNSF and/or UP rail system(s) using the Rail Traffic Controller (“RTC”) computer model. In addition to the results of such studies or analyses, please produce documents sufficient to show the following information for each study or analysis:

- a. The version of the RTC model utilized in each study or analysis;
- b. All electronic files input into the RTC model, including track input files, train input files, Form A and Form B files (or similar files showing track, operating or other outages or failures that affected train operations); and
- c. All electronic files generated as output from the RTC model.

Request for Production No. 28

Please produce the train list(s) and train profile(s) showing the scheduled horsepower per ton ("HPT") for (a) all BNSF and/or UP trains operating to and from Origins, and (b) all other trains operating to, from or within the SARR States. If the train list(s) or train profile(s) are not available, please provide other documents sufficient to show the scheduled HPT for the trains identified in (a) and (b) above.

Request for Production No. 29

Please produce copies of the following documents:

- a. Documents which identify the locomotive tonnage ratings (*e.g* horsepower per trailing ton) by line segment for BNSF's and/or UP's lines in the SARR States; and
- b. Tractive effort tables or other documents sufficient to show the tractive effort produced by the locomotives used to transport trains through all or any portion of the SARR States.

Request for Production No. 30

Please produce documents which describe and explain how BNSF and UP assign locomotives to each train on BNSF's and/or UP's system(s). If BNSF or UP uses a computer readable model for this purpose, please produce the model and all supporting data bases and operating manuals.

Request for Production No. 31

Please produce any locomotive and/or railcar spare margin study performed by BNSF and/or UP from January 1, 2003 to date that includes (in whole or in part) locomotives used (a) in coal service and/or (b) in other service to, from or through the

SARR States. In addition, please produce the underlying databases that were used to perform these studies.

Request for Production No. 32

Please produce any computer programs or models BNSF and/or UP uses or has used since January 1, 2003 to determine the number and types of railcars required to move its normally expected coal traffic volumes and the incremental or above-normal coal volumes moving in peak periods.

Request for Production No. 33

Please identify all origins where BNSF and/or UP pays or since January 1, 2006 has paid an outside contractor or third party to load coal trains, and with respect to each such origin, please produce the following:

- a. Copies of all third party loading crew contracts/agreements, including negotiated rates and associated rate escalation clauses and operating provisions, as well as a description of the service performed by the contractor; and
- b. All records in BNSF's and/or UP's or its loading contractor's possession relating to the contractor's handling of the trains, including but not limited to the time when each train was in the possession or under the control of the loading contractor

Request for Production No. 34

Please produce documents, in a computer-readable format to the extent available, which describe (a) how BNSF and UP determine the dispatch priority given to each train type (e.g., doublestack, priority intermodal, through, general freight, coal, etc.), and (b) BNSF's and/or UP's methodology for scheduling all trains by train type.

Request for Production No. 35

Please produce all documents related to unplanned track-related and operating-related incidents or outages that affected BNSF and/or UP train operations in 2007 and to date in 2008 in the SARR States. If the information requested would require a special study, please produce random failure, outage or incident reports or similar documents, as kept in the ordinary course of business by BNSF and/or UP, from which the requested data could be extracted

Request for Production No. 36

Please produce any studies performed by or for you from January 1, 2003 to the present related to the increase in locomotives and/or railcars required to handle shipments during seasonal peak traffic periods for (a) BNSF and/or UP's coal traffic, and (b) all BNSF and/or UP traffic. In addition, please provide the underlying databases that were used to perform each study.

Request for Production No. 37

Please produce documents for each year or partial year 2007 to the present which list by initial and unit number: (a) locomotives used in the AEPCO service between Origins and Destination and in any other coal service between Origins and any destination; and (b) if such locomotives were drawn from a pool(s), all the locomotives in the pool(s) from which the locomotives used in the AEPCO or other coal service are drawn

Request for Production No. 38

Please produce documents, in a computer-readable format to the extent available, which provide the following information for each of the locomotives contained in each of the listings produced in response to Request for Production No. 37:

- a. The locomotive initial and number;
- b. The manufacturer, if purchased;
- c. The lessor, if leased or rented;
- d. Model or type (*e.g.*, SD-40-2);
- e. Horsepower;
- f. Capacity of its fuel tanks (gallons);
- g. Weight;
- h. Date of purchase or lease,
- i. Date first placed into service;
- j. The original cost plus the cost of any additions and betterments;
- k. Financing vehicle (*e.g.*, equipment trust);
- l. Debt rate as a percent;
- m. Financing terms (in years),
- n. Annual depreciation;
- o. Annual depreciation as a percent;
- p. Current salvage value as a percent,
- q. Accrued depreciation;

- r. If leased, the type of lease (i.e., capital, operating, “power by the hour”, etc.);
- s. If a capital lease, the capitalized value of the lease by locomotive or group of locomotives (if a group of locomotives, the number of locomotives (by initial and number) and aggregate dollars);
- t. If an operating lease, the quarterly, semi-annual, etc., lease payment by locomotive or group of locomotives covering the term of the lease (if a group of locomotives, the number of locomotives (by initial and number) and aggregate dollars);
- u. If leased or rented under a short-term or “power by the hour” agreement, the minimum annual fixed payment and the use payment (e.g., per kilowatt/hour, per diesel unit mile, etc.) per locomotive, the average annual payment per locomotive, and the annual locomotive unit-miles for each such locomotive, stated separately for coal service and other service; and
- v. The diesel unit-miles traveled each year or partial year from 2005 to the present:
 - i. In coal service; and
 - ii. In all types of service.

Request for Production No. 39

Please produce all lease or rental agreements, including all supplements and copies of all billings, applicable to each leased or rented locomotive identified in response to Request for Production No 37 and Request for Production No. 38.

Request for Production No. 40

Please produce all locomotive maintenance and repair records and/or reports and related documents for each year or partial year 2006 to the present, which provide BNSF and/or UP locomotive maintenance, repair and overhaul expenses by locomotive or locomotive type or series (or by other basis in which records are kept) and

the total locomotive unit-miles corresponding to these maintenance, repair and overhaul expenses for the locomotives identified in response to Request for Production No. 37. To the extent that these records and/or reports do not include all locomotive repair, maintenance and overhaul amounts reported in R-1 Schedule 410, please identify those expenses that are not included.

Request for Production No. 41

Please produce all locomotive maintenance agreements, including all supplements, attachments, exhibits and schedules, with outside contractors and provide, for each year or partial year 2006 to the present for all locomotives in BNSF's and/or UP's fleet under such maintenance agreements, (a) the amount paid for each locomotive or by locomotive type in total and broken down by each service performed under the agreement and (b) the number of locomotive unit miles corresponding to the amounts listed above.

Request for Production No. 42

Please produce documents sufficient to show the following information for BNSF and UP for the most recent 12 calendar months:

- a. The location(s) where locomotives are fueled in the SARR States;**
- b. The actual amount of fuel used by the locomotives identified in response to Request for Production No. 37, by individual locomotive;**
- c. The total number of diesel unit miles generated by the locomotives for which fuel consumption data was provided in response to (b) above during the same time period used in response to (b) above;**

- d. The method by which BNSF and/or UP accounts for or records fuel usage for locomotives,
- e. Computer-readable versions (both compiled and non-compiled), including all supporting databases and necessary documentation, of any and all computer programs in BNSF's and/or UP's possession used to estimate the fuel usage of locomotives; and
- f. The same information for all road locomotives on the BNSF and/or UP systems in the same format as that given in the responses to (b), (c), and (e) above.

Request for Production No. 43

Please produce all studies, analyses and related documents (including summaries, computer programs and all supporting databases and data), in a computer-readable format to the extent available, pertaining to the fuel consumption or the measurement of the fuel consumption by BNSF's or UP's trains (or the locomotives used on BNSF's or UP's trains) moving through any portion of the SARR States during the period from January 1, 2006 to the present.

Request for Production No. 44

For each year or partial year 2007 to the present, please produce documents which contain the following information, in a computer-readable format to the extent available, for each of the end-of-train telemetry devices ("EOTD") used on any BNSF and/or UP trains that traverse any portion of the SARR States:

- a. The date of purchase;
- b. The original cost and the cost of any additions and betterments;
- c. The debt rate as a percent;
- d. The financing terms (in years);

- e. The annual depreciation;
- f. The annual depreciation rate as a percent;
- g. The salvage value as a percent, and
- h. The accumulated depreciation

Request for Production No. 45

Please produce documents for each year or partial year 2003 to the present which contain the following, in a computer readable format, for each freight car purchased or leased by BNSF or UP (including freight cars currently on order and privately-owned freight cars leased by BNSF or UP that maintain the private owner's car initial and number) that has been or could be used to transport coal.

- a. Initial and number;
- b. Manufacturer;
- c. Lessor, if leased;
- d. AAR car type;
- e. Tare weight;
- f. Purchase or order date, if purchased,
- g. Lease or order date, if leased;
- h. Total purchase price, if purchased;
- i. If leased, the type of lease (c.g., capital, operating, etc.) and term;
- j. If leased, the amount and frequency of lease payments;
- k. If purchased, the AFE applicable to each purchased freight car; and

1. If leased, the lease agreement including all supplements, amendments, exhibits and applicable schedules.

Request for Production No. 46

Please produce all railcar repair and maintenance records, reports, databases and related documents which include or record rail car repair and maintenance expenses for each year or partial year 2006 to the present, including but not limited to all input data to schedules 415 and 755 of BNSF's and UP's R-1, and the total rail car-miles corresponding to these repair and maintenance expenses, in a computer readable format to the extent possible, for all freight cars in BNSF's and UP's systems To the extent that these records, reports and databases do not include all car repair and maintenance amounts reported in R-1 Schedule 410, please identify the expenses that are excluded.

Request for Production No. 47

Under *Alternative Methods of Accounting for Railroad Track Structures*, 367 I.C.C. 157, 180 (1983), BNSF and UP are required to submit a standard "unit of property" that distinguishes between when a certain cost should be expensed or capitalized. Please produce BNSF's and UP's most recent, STB approved property units and the supporting information and data for those units.

Request for Production No. 48

Please produce all documents that relate to the development of the methodology for the calculation and imposition of the "fuel surcharges" described in BNSF's Rules Book 6100-series Item 3381 and in UP Circular 6602 Series, Item 695 and UP Circular 6603 Series, Item 694, including but not limited to:

- a. Documents related to the selection of the Retail On-Highway Diesel Fuel average price as the benchmark for the calculation of the surcharges;
- b. Documents related to the determination of how to (i) base and (ii) calculate the surcharges based upon the length of a linehaul movement; and
- c. All analyses, studies or other documents which address the relationship, if any, between the application of the surcharges to any specific coal movement(s) and changes in the actual cost to BNSF and/or UP of the fuel consumed by the locomotives used in that (those) movement(s).

Request for Production No. 49

Please identify all locations in the SARR States where BNSF and/or UP or a third party contractor acting for or on behalf of BNSF or UP performs fueling of locomotives, and produce documents sufficient to show the following information with respect to locomotive fueling at each location:

- a. The source(s) of the fuel, including the name and location of the vendor(s) who provide the fuel to BNSF or UP and the refinery(ies) or other location from which the fuel is obtained;
- b. The method and cost of transporting and dispensing the fuel from the refinery(ies) or other locations from which the fuel is obtained to the location where the fueling of locomotives is performed;
- c. The method by which fuel is dispensed into locomotives, *i e* from fixed fueling facilities or by direct-to-locomotive (tanker truck) service; and
- d. A description of all facilities and equipment (including but not limited to fuel storage tanks) at each location where BNSF or UP has fixed fueling facilities; and
- e. The cost per gallon paid (including any applicable taxes) on a weekly basis in 2008.

Request for Production No. 50

Please produce copies of all contracts/agreements with third parties related to the performance of locomotive fueling functions for all road locomotives that are used on any portion of the BNSF and/or UP system(s) located in the SARR States.

Request for Production No. 51

Please produce a copy of BNSF's and UP's rules and instructions pertaining to train handling, including but not limited to measures for conserving fuel.

Request for Production No. 52

Please produce documents, in a computer readable format to the extent available, which show locomotive utilization and locomotive performance (*e.g.*, locomotive unit-miles, locomotive hours running, locomotive hours switching, locomotive hours out-of-service for repairs and locomotive hours stored uscable) for each locomotive that BNSF and UP owned or leased for each year or partial year 2006 to the present and that BNSF and UP used in providing transportation service in the SARR States.

Request for Production No. 53

For each year or partial year 2006 to the present, please produce documents which contain the following information (in a computer-readable format, if available) with respect to each shipper-owned and shipper-leased railcar and each intermodal and automotive railcar provided by a third party moving over any part of the BNSF and/or UP system(s) located in the SARR States:

- a. Identification number of the car;

- b. The type of the car;
- c. The length and tare weight of the car (for intermodal and automotive cars only),
- d. The cost to BNSF or UP for use of the car;
- e. The terms of any mileage allowance agreement covering the car;
- f. Whether the car is subject to a zero-based mileage agreement;
- g. Whether the car hire paid on the car is subject to refund of the payments under certain contractual conditions; and
- h. The year of manufacture of the car.

Request for Production No. 54

Please produce all railcar maintenance agreements with outside contractors, including all supplements, attachments, exhibits and schedules, in effect during all or any portion of each year or partial year 2006 to the present, for all the cars on BNSF's and/or UP's systems, and documents providing (a) the amount paid for each car or by car or by car type total and broken down by each service performed under the agreement, and (b) the number of car-miles corresponding to the amounts referenced above.

Request for Production No. 55

Please produce copies of all contracts/agreements with third parties (including but not limited to shippers or receivers) in effect during all or any portion of the period from January 1, 2006 to the present related to the performance of car inspection functions with respect to (a) BNSF and UP coal trains and (b) other BNSF and UP trains traversing all or a portion of the SARR States.

Request for Production No. 56

Please produce the following for all joint facility or joint use agreements (including but not limited to trackage rights agreements, joint or common ownership agreements and lease agreements) between BNSF and UP or between BNSF or UP and another rail carrier or other entity applicable to any of the railroad lines and/or facilities in the SARR States and that were in effect during all or any portion of the period from January 1, 2006 to the present:

- a. Copies of all agreements (including amendments and supplements);
- b. Copies of all bills from 2006 to the present (including all supporting documents and data);
- c. The BNSF and/or UP density (in gross or net ton-miles) over the joint facility for each year 2006 to the present; and
- d. The density (in gross or net ton-miles) of all other rail carriers or other entities over the joint facility for each year 2006 to the present

Request for Production No. 57

For each year or partial year 2006 to the present, please produce BNSF's and UP's detailed annual and quarterly Wage Forms A and B that support the summary Wage Forms A and B provided to the STB.

Request for Production No. 58

Please provide documents showing the amounts paid by BNSF and UP for training employees, including but not limited to training employees hired for the following positions, in each of the year 2006 to the present:

- a. Experienced locomotive engineers;
- b. Experienced locomotive conductors;

- c. Locomotive conductors training to become engineers;
- d. Novice conductors,
- e. Train dispatchers;
- f. Information technology programmers;
- g. Supervisors of maintenance operations;
- h. Maintenance crew members; and
- i. Equipment inspectors.

The training information requested includes, but is not limited to, wages paid during classroom training, wages paid during field or on the job training, fringe benefits paid during classroom training, fringe benefits paid during field or on the job training, costs for classroom training, costs for on the job training or field training, expenses for room and board during classroom training and during field training, the number of weeks of classroom training required for each type of employee, and the number of weeks of on the job or field training required for each type of employee.

Request for Production No. 59

Please produce documents showing the amount(s) paid by BNSF and/or UP to a recruitment firm or firms for executive search services in each year or partial year 2006 to the present. The documents should include the amount paid by individual, the position of the individual hired and the basis for the recruitment firm's fee schedule. As used in this Request, the term "executive" means those employees so defined or grouped in BNSF's and/or UP's Wage Forms A and B.

Request for Production No. 60

Please produce documents sufficient to show the applicable wage rates for BNSF's and/or UP's maintenance of way employees by job classification for each year or partial year 2006 to the present.

Request for Production No. 61

Please provide documents sufficient to show the maintenance-of-way districts and/or crews employed by each of the Defendants to maintain the (a) track, (b) signals and communications facilities, and (c) bridges and other facilities in the SARR States, the number of BNSF and UP employees by job classification presently assigned to each maintenance-of-way district or crew on both a permanent and a seasonal basis, and any changes in the maintenance districts, crews, and number and classification of employees that have occurred since January 1, 2003.

Request for Production No. 62

Please produce documents sufficient to show the maintenance-of-way equipment owned or leased by BNSF and/or UP whose value per unit exceeded \$500 when acquired, and how such equipment is assigned to the respective maintenance-of-way districts identified in response to Request for Production No. 61 of AEPCO's First Requests. In addition, please provide documents sufficient to show the unit costs for such equipment, if purchased, or the annual lease cost if leased, and the annual cost of ownership including information on maintenance and fueling costs during each year or partial year 2006 to the present.

Request for Production No. 63

For maintenance of way and/or construction on BNSF and/or UP lines in the SARR States performed by contractors for the period from 2005 to the present, please produce copies of all bills for services, documents which contain a description of the line location of the contract repairs and/or construction, and the details of the work

performed, including labor and materials. If BNSF and/or UP do not maintain copies of any of these documents, produce whatever documents BNSF and/or UP do maintain or have available to it describing the costs incurred by BNSF and/or UP and the details of the work performed, in a computer readable form if applicable (including all necessary documentation)

Request for Production No. 64

Please produce documents for each year or partial year from 2006 to the present sufficient to show (a) the frequency of ultrasonic rail testing and track geometry testing and (b) the costs per mile, or other applicable unit of measure, incurred by BNSF and/or UP for ultrasonic rail testing and track geometry testing for each BNSF and/or UP line segment in the SARR States.

Request for Production No. 65

Please produce documents for each year or partial year 2006 to the present which provide BNSF's and UP's loss and damage costs and annual tonnage separately for all commodities BNSF and UP carry on a system-wide basis.

Request for Production No. 66

Please produce documents showing the ad valorem taxes that BNSF and/or UP paid for each year or partial year 2005 to the present to each of the SARR States, together with documents showing the total route-miles and total track-miles BNSF and/or UP owned or owns in the SARR States for each year 2005 to the present.

Request for Production No. 67

Please produce all documents relating to any contribution by any governmental or quasi-governmental entity (including, without limitation, AMTRAK) to construction, upgrading, maintenance and/or operating expenses on any of BNSF's and/or UP's lines located in the SARR States.

Request for Production No. 68

Please produce copies of the most current land valuation maps for BNSF and/or UP rail lines located in the SARR States, and all documents (including but not limited to deeds or other instruments of grant or conveyance) related to the parcels identified on those maps.

Request for Production No. 69

Please produce documents identifying all donated rights of way and/or land grants (including easements) obtained by BNSF and/or UP or BNSF's and/or UP's predecessors in connection with the construction of any rail lines or facilities located in the SARR States.

Request for Production No. 70

Please produce all documents related to any sale, appraisal, abandonment or acquisition of land (improved and unimproved) that BNSF and/or UP completed in the SARR States, including but not limited to documents showing the location of the parcel, size of the parcel, the valuation of the parcel by BNSF and/or UP, the sale or acquisition price, a description of any improvements to the parcel, the date of sale, and any characteristics of the parcel such as land use, utilities, access and topography.

Request for Production No. 71

Please produce documents sufficient to show the following with respect to grading construction activities undertaken or proposed at any time, or currently ongoing, on any portion of BNSF's and/or UP's system(s) located in SARR States, including the line of rail known as the Defiance Spur (Defiance to North Tipple, NM):

- a. Number of cubic yards of excavation of:
 - i. Common earth;
 - ii. Loose rock; and
 - iii. Solid rock;
- b. Number of cubic yards of borrow of:
 - i. Common earth,
 - ii. Loose rock; and
 - iii. Solid rock;
- c. Grading construction data for each construction specification measured by BNSF and/or UP including without limitation, roadbed width, side slope ratio, track center distance, presence of access roads, impact of grading activities on right-of-way width, use of geotextiles, use of water, soil stabilization, and width and depth of side ditches;
- d. Number of route miles, separated between single track main, double track main, triple track main, etc , corresponding to the cubic yard information described in paragraphs (i) through (iii) of Subparts (a) and (b) of this Request;
- e. Number of track-miles corresponding to the cubic yards in paragraphs (i) through (iii) of Subparts (a) and (b) of this Request;
- f. All of the different types of equipment (and the associated tasks) used to:
 - i. Excavate common earth;
 - ii. Excavate loose rock;
 - iii. Excavate solid rock, and

- iv. Obtain borrow material;
- g. Linear feet of pipe installed for lateral drainage;
- h. Number of cubic yards of rip-rap placed for the protection of the roadway;
- i. Location, type and quantity of retaining walls;
- j. Construction method, including but not limited to the number of cubic yards of masonry or other similar material used for retaining walls,
- k. Number of acres cleared;
- l. Number of acres grubbed; and
- m. Number of acres seeded.

Request for Production No. 72

To the extent BNSF and/or UP incurred any of the following expenses during the years 2006 to the present, please produce documents sufficient to show the costs BNSF and/or UP incurred during each year for the following:

- a. BNSF's and/or UP's cost per cubic yard of excavation for:
 - i. Common earth;
 - ii. Loose rock; and
 - iii. Solid rock;
- b. BNSF's and/or UP's cost per cubic yard of borrow for:
 - i. Common earth;
 - ii. Loose rock; and,
 - i. Solid rock;
- c. BNSF's and/or UP's cost per cubic yard of rip-rap (installed), separated between material and labor:

- d. BNSF's and/or UP's unit cost for each material used for retaining walls, separated between material and labor;
- e. BNSF's and/or UP's gross cost per acre for clearing timber;
- f. Any adjustments to BNSF's and/or UP's cost per acre for clearing timber or for clearing by burning;
- g. BNSF's and/or UP's cost per acre for grubbing;
- h. BNSF's and/or UP's cost per acre for seeding,
- i. BNSF's and/or UP's cost per acre for weed spray (including necessary chemicals);
- j. BNSF's and/or UP's cost per hour or per mile for brush cutting; and
- k. BNSF's and/or UP's cost per square yard for geotextile fabric.

Request for Production No. 73

Please produce documents sufficient to show culvert/drainage pipe locations (*i.e.*, railroad milepost), size (diameter), length, height of cover, number of tracks crossed, type, and cost of material and installation for each, for BNSF's and/or UP's lines located in the SARR States

Request for Production No 74

Please produce documents sufficient to show the following for construction projects that BNSF and/or UP has undertaken since January 1, 2005:

- a. Standard construction project specifications, including but not limited to: track structures and designs; bridges; culverts; yard and roadway buildings; fueling facilities; maintenance facilities and waste water treatment facilities;
- b. Standard estimating procedures for track construction projects; and
- c. Standard estimating procedures for non-track construction projects.

Request for Production No. 75

Please produce all of BNSF's and/or UP's price list books governing prices for construction and maintenance materials (including but not limited to weights of rail from 115 to 141 pounds per yard, turnouts, ties, fasteners, lubricators, plant and field welds, fencing, roadway signs, track geometry cars, hot bearing and dragging equipment detectors, and related tools), or other documents utilized by BNSF's and/or UP's engineering personnel for estimating costs of maintenance and construction projects for each year or partial year 2005 to the present. To the extent that the charges for transportation and delivery of materials are not included in the prices shown, please produce documents sufficient to show such charges for all materials.

Request for Production No. 76

Please produce documents sufficient to show the following information with respect to ballast or sub-ballast used on BNSF's and/or UP's system(s) for each year or partial year 2005 to the present:

- a. The average cost per cubic yard for ballast, by type;
- b. The average cost per cubic yard for the transportation and handling of ballast;
- c. The average length of haul represented by the value(s) in (b) above;
- d. The average cost per cubic yard for sub-ballast, by type;
- e. The average cost per cubic yard for transportation and handling of sub-ballast;
- f. The average length of haul represented by the value(s) in Subpart (e) above;

- g. The names and locations of all quarries supplying such ballast or sub-ballast; and
- h. The unit prices from all quarries listed in response to Subpart (g).

Request for Production No. 77

Please produce documents sufficient to show the tunnels or former tunnels that have been constructed or removed (by daylighting or other means) by BNSF and/or UP, including tunnels constructed or removed, detailing location (line segment and milepost), length, number of tracks in the tunnel, method and time period of construction, and the cost per linear foot to construct or remove the tunnel, for any tunnels located on BNSF's and/or UP's system(s) in the SARR States. If no cost data is available for any such tunnels, please produce documents sufficient to show the cost per linear foot of any tunnel construction or removal performed anywhere on BNSF's and/or UP's system(s) since January 1, 2003.

Request for Production No. 78

Please produce bridge lists or other documents detailing location, a description of what is being crossed (*e.g.*, river, interstate highway, navigable waterway *etc.*), type, length, number of tracks and height for all bridges located on BNSF's and/or UP's system(s) in the SARR States.

Request for Production No. 79

For each of the types of bridges identified in the documents produced in response to Request for Production No. 78, please produce documents sufficient to show the standard design for the bridge type and the unit costs (*e.g.*, cost per foot or other

appropriate measure), for single track open deck and ballast deck construction and double track open deck and ballast deck construction, from January 1, 2003 to the present.

Request for Production No. 80

Please produce documents sufficient to show the following information related to the construction or replacement, in part or in whole, of each bridge on BNSF's and/or UP's system(s) in the SARR States from January 1, 2003 to the present:

- a. The location of the bridge, by line segment and milepost;
- b. An itemized listing of the bridge components being constructed or replaced (including quantities);
- c. The estimated cost, by component, for each of the components (identified in response to Subpart (b) above) being constructed or replaced; and
- d. The actual cost, by component, for each of the components (identified in response to Subpart (b) above) being constructed or replaced.

Request for Production No. 81

Please produce documents listing the items, the cost of each item and the quantity of each item installed on BNSF's and/or UP's system(s) related to the construction and (during each year or partial year 2005 to the present) operation of the centralized traffic control signal system(s) or any other traffic control system in use on the BNSF and/or UP system(s). Please indicate whether the costs include additional services such as installation, design planning, electrical drops for utilities, and/or transportation.

Request for Production No 82

For each year or partial year 2005 to the present, please produce documents containing the following information with regard to BNSF's and/or UP's hot bearing and dragging/failed equipment detectors ("FED"):

- a. The criteria for determining the appropriate spacing of the devices along BNSF's and/or UP's main lines; and
- b. The location of FEDs for the portion of BNSF's and UP's systems in the SARR States.

Request for Production No 83

Please produce documents containing the following information for each BNSF and/or UP communications site (defined as a location with a microwave tower, a land mobile radio ("LMR") tower, a tower used for both purposes, or a location where communications equipment (microwave or LMR) is located that does not include a tower) located in the SARR States:

- a. The number of microwave towers, LMR towers, combined towers, or other communications equipment location (shown separately for each category),
- b. The latitude and longitude coordinates of each tower or other communications equipment location;
- c. The height of each tower in (i) feet above the ground and (ii) feet above sea level;
- d. The number of microwave antennae on each tower and the status of each antenna (*i.e.*, whether it is operational);
- e. The number of LMR antennae on each tower and the status of each antenna (*i.e.*, whether it is operational);

- f. The latitude and longitude coordinates of other communications sites that can link via microwave or radio from this site or a topological map of the communication system; and
- g. The acres of land owned or leased by BNSF and/or UP for these sites and the cost of purchase or lease.

Request for Production No. 84

Please produce documents sufficient to show:

- a. BNSF's and/or UP's specifications for the construction of communications sites (as defined in Request for Production No. 83 above);
- b. The total number of BNSF and/or UP route miles in the SARR States that are covered by microwave communications;
- c. The total number of BNSF and/or UP route miles in the SARR States that are not covered by microwave communications;
- d. The cost, manufacturer and model number of each item and the quantities used for the construction and operation of the microwave radio and/or land mobile radio communications system(s) on the BNSF and/or UP system(s) during each of the years 2005 to the present; and
- e. The annual spot maintenance costs incurred by BNSF and/or UP for the microwave and/or land mobile radio tower communications system(s) per tower and by device type, in the SARR States, as well as the overall spot maintenance costs systemwide.

Request for Production No. 85

Please produce documents sufficient to describe the specifications, functions, operation and costs, during each year or partial year 2005 to the present, of any communications system equipment other than microwave towers used to transmit data from devices such as mobile two-way radios, portable (hand-held) two-way radios, FEDs, AEI scanners and EOTDs across all or any part of the BNSF and/or UP system(s).

Request for Production No. 86

Please produce documents sufficient to show:

- a. The locations and quantities of fiber optic cabling installed on BNSF and/or UP rights-of-way in the SARR States;
- b. The bandwidth capacity of the fiber optic cabling identified in Subpart (a);
- c. The entity that owns and operates the fiber optic cabling identified in Subpart (a),
- d. The costs to BNSF and/or UP, if any, for installing the fiber optic cable identified in Subpart (a);
- e. Whether BNSF and/or UP is permitted to use the fiber optic cable identified in Subpart (a);
- f. The amount, if any, BNSF and/or UP pays the carriers for use of the fiber optic cable identified in Subpart (e); and
- g. The revenues or other payments BNSF and/or UP receive from the carriers for the use of the railroad's right-of-way.

Request for Production No. 87

If BNSF and/or UP utilizes the fiber optic cable(s) identified in response to

Request for Production No. 86, please provide documents sufficient to show:

- a. The total number of BNSF and/or UP route miles in the SARR States that are covered by fiber optic backbone communications;
- b. The cost, manufacturer and model number of each item and the quantities used for the construction and operation of the fiber optic communications system on the BNSF and/or UP system(s) during each of the years 2005 to the present; and
- c. The annual spot maintenance costs incurred by BNSF and/or UP for the fiber optic communications system and by device type, in the SARR States, as well as the overall spot maintenance costs systemwide.

Request for Production No. 88

Please produce documents sufficient to show the location, size (including square footage, number and lengths of tracks, capacity, etc.), components (such as equipment and machinery), and original cost of each facility located on any portion of BNSF's and/or UP's system(s) in the SARR States that falls within each of the following categories of facilities:

- a. Roadway maintenance facilities;
- b. Locomotive maintenance facilities;
- c. Locomotive servicing facilities (including fueling facilities);
- d. Administrative facilities;
- e. Rail yards;
- f. Dispatch centers;
- g. Freight car repair and maintenance facilities;
- h. Scales;
- i. Wastewater treatment plants;
- j. Landslide/rockslide detection/protection devices or facilities;
- k. Snowshed facilities, and
- l. Train, yard and engineman facilities.

Request for Production No. 89

For each year or partial year 2005 to the present, please produce documents which contain the following information with regard to BNSF and/or UP highway and railroad at-grade crossings:

- a. The various sizes, compositions and costs per linear foot (installed) of a one-lane private road crossing over a single line of track;
- b. The various sizes, compositions and costs per linear foot (installed) of a two-lane public highway crossing over a single line of track;
- c. The various sizes, compositions and costs per linear foot (installed) of a four-lane public highway crossing over a single line of track;
- d. The installed cost of signs for a private road crossing (if necessary);
- e. The installed cost of signs for a public highway crossing;
- f. The installed cost of each of the different types of protective devices identified in the response to Subpart (g) below,
- g. A list identifying each component required for an automatic type interlocking (assuming a diamond crossing);
- h. The cost of each of the components identified in response to Subpart (g) above and the cost of installation for each year or partial year 2005 to the present;
- i. The costs for a 16-foot and 24-foot cattle guard and the cost of installation for each year or partial year 2005 to the present; and
- j. Any additional costs incurred.

Request for Production No. 90

Please produce documents in a computer readable format, if available, containing the following information for each BNSF and/or UP at-grade and grade-

separated highway crossing on the portion of the BNSF and/or UP system(s) in the SARR States.

- a. Geographic location, *i e* , city, county and state;
- b. Rail location, *i e.*, railroad. line name and milepost;
- c. Width;
- d. Length;
- e. Type of construction;
- f. Number of tracks;
- g. Type of protective devices;
- h. Date of initial installation at the location;
- i. Total cost of the initial installation and the amount borne by BNSF and/or UP, if any; and
- j. Identification of the party responsible for ongoing maintenance of any such structures.

Request for Production No. 91

Please produce documents sufficient to show the location, linear feet, and type of fencing (*e.g.*, snow fence) for all fencing currently in place on the portion of the BNSF and/or UP system(s) in the SARR States.

Request for Production No. 92

Please produce all documents relating to any contribution by any governmental or quasi-governmental entity (including, without limitation, AMTRAK) to the construction or maintenance of at-grade or grade separated crossings located in the SARR States.

Request for Production No. 93

Please produce documents sufficient to show the following for each construction and rehabilitation project which exceeded \$500,000 in cost and was completed by BNSF and/or UP, or an outside contractor acting on BNSF's and/or UP's behalf, since January 1, 2005:

- a. The date the project was started;
- b. The date the project was completed;
- c. A complete copy of the Authorization For Expenditure ("AFE") and description of all columns and data contained with the AFEs;
- d. A complete copy of the Roadway Completion Report or any successor document, and
- e. All invoices underlying each AFE and/or Roadway Completion Report.

Request for Production No 94

Please produce documents, including but not limited to AFE, construction plans, engineering estimates, bid tabs, contractor invoices, and construction specifications for the any projects that a carrier other than BNSF and/or UP has undertaken in the SARR States for which BNSF and/or UP paid for some or all of the project.

Request for Production No. 95

For the CTC or other traffic control system, signal devices, powered grade crossing protective/warning devices, and/or other powered devices such as switches on any portion of the BNSF and or/UP system located in the SARR States, please produce documents sufficient to show the source of electricity powering each device, and whether

BNSF and/or UP paid for the connection to the source of electricity. In addition, please produce documents sufficient to show BNSF's and/or UP's costs for an electrical drop to any powered on-track or trackside device in each SARR State during the period from January 1, 2006 to the present.

Request for Production No. 96 (UP Only)

Please produce all documents related the development, construction and operation of a new yard facility at Santa Teresa, NM, including, but not limited to, potential operational and/or physical changes in or to UP's El Paso Yard.

Request for Production No. 97

Please produce all studies or analysis conducted by or for UP and/or BNSF from January 1, 2006 to date related to the STB's annual revenue adequacy determination, including, but not limited to, any studies or analysis considering whether BNSF and/or UP will be considered revenue adequate for 2008 or otherwise earn a return that covers its cost of capital.

Request for Production No. 98

Please produce all inflation and/or rail cost adjustment estimates or calculations in BNSF's and/or UP's possession or that BNSF or UP prepared or caused to be prepared or purchased for each year or partial year 2006 to the present, including, but not limited to, any estimates relating to:

- a. The cost of acquiring equity,
- b. The cost of acquiring debt;

- c. General expenses, including, but not limited to, asset, equipment, materials and supplies, fuel and labor expense;
- d. Railroad productivity, including but not limited to commodity-specific productivity, asset productivity and expense productivity;
- e. Gross Domestic Product/Implicit Price Deflator;
- f. Producer Price Index - All Commodities; and
- g. The U.S. Department of Energy's U.S. average price of Retail On-Highway Diesel Fuel.

Request for Production No. 99 (BNSF Only)

Please produce all studies or analysis conducted by BNSF from January 1, 2004 to date related to the closing of the McKinley Mine, including, but not limited to, any studies or analysis developing the costs to abandon and salvage BNSF's rail line from North Tipple, NM to Defiance, NM.

Request for Production No. 100 (BNSF Only)

Please produce all studies or analysis conducted by BNSF from January 1, 2004 to date related to industrial development on property owned or accessible to BNSF's rail line between North Tipple, NM and Defiance, NM.

**ARIZONA ELECTRIC POWER COOPERATIVE INC.
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Benson, Arizona 85606**

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Dated. February 19, 2009

EXHIBIT 2

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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

**UNION PACIFIC'S OBJECTIONS AND RESPONSES TO COMPLAINANT'S
FIRST REQUESTS FOR ADMISSIONS, INTERROGATORIES,
AND REQUESTS FOR PRODUCTION OF DOCUMENTS**

Defendant Union Pacific Railroad Company ("UP") responds to the First Requests for Admissions, Interrogatories, and Requests for Production of Documents of Complainant Arizona Electric Power Cooperative, Inc ("AEPCO") served on February 19, 2009, as follows:

GENERAL RESPONSES

The following General Responses apply to each of AEPCO's interrogatories and requests for production of documents:

1. UP is conducting a reasonable search for information and documents responsive to the interrogatories and document requests. Subject to the specific and general objections that follow, responsive documents are being made available, or will as soon as practicable be made

available, for inspection and copying at the office of Covington & Burling LLP in Washington, D.C., at the office of UP in Omaha, Nebraska, or at the office of FTI Consulting in Washington, D.C., unless otherwise noted. Copies of documents will be supplied upon payment of duplication costs (including, in the case of computer tapes, costs for programming, tapes, and processing time).

2. Production of information or documents does not necessarily imply that they are relevant to or admissible in this proceeding and is not to be construed as waiving any objection stated herein.

3. In line with past practice in cases of this nature, UP has not secured verifications of the answers to interrogatories herein. UP is prepared to discuss the matter with AEPCO if this is of concern with respect to any particular answer.

4. UP responses and productions will be limited to information and data regarding lines it owns and trains that it operates, unless specifically stated otherwise.

5. UP responses and production of line segments and or routes will be sufficient to show responsive information for its own trains and for foreign railroads' trains while operating on UP owned lines to the extent reasonably available from Pueblo, Colorado to El Paso, Texas and El Paso, Texas to Tucson, Arizona ("the Route").

GENERAL OBJECTIONS

The following General Objections are made with respect to all of the discovery requests. Any additional specific objections are stated at the beginning of the response to each request for admission, interrogatory, or document request.

1. UP objects to production of, and is not producing, documents or information subject to the attorney-client privilege, work-product doctrine, joint defense privilege, or any other applicable privilege or protection.

2. UP objects to production of, and is not producing, documents prepared in connection with, or information relating to, possible settlement of this or any other proceeding.

3. UP objects to the production of documents that constitute or disclose confidential or proprietary or sensitive nonpublic information. Subject to and without waiving this objection, UP will produce such information, if not otherwise objectionable, designated "Confidential" or "Highly Confidential," subject to the terms of the Protective Order in this case. UP reserves the right to seek additional protection as needed.

4. UP objects to production of, and in general is not producing, public documents that are readily available, including but not limited to documents on public file at the Surface Transportation Board ("the Board"), the Securities and Exchange Commission, or in the Interstate Commerce Commission Archives, or clippings from newspaper or other public media. Any production by UP of documents in this category shall not be considered a waiver of this objection.

5. UP objects to producing, and in general is not producing, information or documents that are readily obtainable by AEPCO from its own files. Any production by UP of information or documents in this category shall not be considered a waiver of this objection.

6. UP objects on grounds of burden and relevance to producing, and in general is not producing, documents or information from prior to 2006 or after March 31, 2009. Any production by UP of documents or information in this category shall not be considered a waiver of this objection.

7. UP objects to the discovery requests to the extent that they call for the preparation of compilations, documents, summaries, analyses, or other special studies of any sort not already in existence, and UP by its responses does not, unless otherwise noted, undertake to prepare or produce any special studies. If UP does undertake a special study to answer a AEPCO request, it expects to be compensated by AEPCO. Any production by UP of information or documents in this category shall not be considered a waiver of this objection.

8. UP objects to the definition of "identify" as unduly burdensome.

9. UP objects to the definitions of "possession, custody, or control" as overbroad, and as attempting to reach documents that are not in fact within UP's possession, custody or control.

10. UP objects to the definitions of "related," "related to," and "relating to" as unduly vague.

11. UP objects to Instruction Nos. 3, 6 and 7 as unduly burdensome, and to the extent that these Instructions seek to impose obligations on UP beyond those in the Board's rules.

12. UP objects on the grounds of undue burden to the production of certain information from UP which, to UP's knowledge, complainants have not used in their evidentiary submissions when previously produced.

13. UP objects on the grounds of undue burden to the extent document requests seek the production of "all documents" regarding an evidentiary point when the information necessary for complainants' evidentiary submissions could be obtained through a request for documents "sufficient to show" that evidentiary point.

14. UP objects to the definition of "SARR States" should exclude California, Nebraska, South Dakota and Wyoming as applied to UP because UP provides no transportation

services at issue in this proceeding within any of these states. Further the burden associated with producing information for California, Nebraska and Wyoming would not be substantial.

15. UP objects to the production of, and is not producing, information or documents relating to the transportation of coal from UP-served in Colorado of Wyoming's Southern Power River Basin to the Apache Generating Station. See Union Pacific's Motion to Hold Proceedings in Abeyance, February 24, 2009.

ADDITIONAL GENERAL DEFINITIONS

1. "Route" means the line segments that UP transports the issue AEPCO traffic over and includes lines from Pueblo, Colorado to El Paso, Texas and El Paso, Texas to Tucson, Arizona.

REQUESTS FOR ADMISSIONS

REQUEST FOR ADMISSION NO. 1

Admit that the Challenged Rates exceed 180 percent of the variable costs of providing the transportation to which the Challenged Rates apply.

UP RESPONSE:

UP objects to this request for admission on the grounds that it is premature in that the parties have not exchanged operating characteristics and not submitted their evidentiary submissions in this proceeding. In addition, URCS reliable variable cost data for 2009 traffic movements does not exist yet. UP objects to supplementing its response on grounds that AEPCO can just easily supplement these calculations. UP further objects that such request for admission is a violation of attorney-client privilege.

REQUEST FOR ADMISSION NO. 2

Admit that Defendants face no effective intramodal competition for the transportation of coal from Origins to Destination.

UP RESPONSE:

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 movement of coal to the Apache Generating Station under the standards currently being applied by the Board. See Union Pacific's Answer to AEPCO's Amended Complaint, paragraph 9, filed February 19, 2009.

REQUEST FOR ADMISSION NO. 3

Admit that Defendants face no effective intermodal competition for the transportation of coal from Origins to Destination.

UP RESPONSE:

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 movement of coal to the Apache Generating Station under the standards currently being applied by the Board. See Union Pacific's Answer to AEPCO's Amended Complaint, paragraph 9, filed February 19, 2009.

INTERROGATORIES

INTERROGATORY NO. 1

If your response to Request for Admission No. 1 was anything other than an unqualified admission, please explain in detail the legal basis for your response, provide the revenue-variable cost percentages that Defendants claims the Challenged Rates produce, and identify all documents that support your response.

UP RESPONSE:

UP objects to this interrogatory on the grounds that it is unduly burdensome and that it is premature in that the parties have not completed discovery and their evidentiary submissions in this proceeding and that no reliable URCS cost data for 2009 exists yet.

INTERROGATORY NO. 2

If your response to Request for Admission No. 2 was anything other than an unqualified admission, please describe the effective intramodal competition that Defendants claims exists for the transportation to which the Challenged Rates apply, the annual volume of coal subject to such competition, and why such competition is effective.

UP RESPONSE:

UP objects to this interrogatory on the grounds that it is unduly burdensome and that it is premature in that the parties have not completed discovery and their evidentiary submissions in this proceeding.

INTERROGATORY NO. 3

If your response to Request for Admission No. 3 was anything other than an unqualified admission, please describe the effective intermodal competition that Defendants claims exists for the transportation to which the Challenged Rates apply, the volume of coal subject to such competition, and why you think such competition is effective.

UP RESPONSE:

UP objects to this interrogatory on the grounds that it is unduly burdensome and that it is premature in that the parties have not completed discovery and their evidentiary submissions in this proceeding

INTERROGATORY NO. 4

Please provide a complete description of the movement of AEPCO trains by Defendants from Origins to Destination and from Destination to Origins, including but not limited to a description of all transportation-related activities (including transloading or transshipping activities) at Origins, at Destination, and at all intermediate stations or other points between Origins and Destination.

UP RESPONSE:

UP objects to this interrogatory on the grounds that it is unduly burdensome, is vague, is overbroad, seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and seeks information that would require a special study. UP further objects that to the extent it seeks information on how trains would move from origins that AEPCO has not used to ship coal under the challenged rates because responding would require speculation. UP further objects to the extent that responding to this Interrogatory would require it to undertake an investigation of how AEPCO trains move beyond UP's lines. Subject to and without waiving its objections, UP will provide a brief written narrative describing UP's handling of the complaint traffic.

INTERROGATORY NO. 5

Please provide the maximum permissible gross weight on rail ("GWR") per railcar for each BNSF and/or UP line segment in the SARR States.

UP RESPONSE:

UP objects to this interrogatory to the extent that it seeks information that is within the possession, custody, or control of BNSF.

Subject to and without waiving its objections, UP will produce responsive information to the extent reasonably available.

INTERROGATORY NO. 6

Please identify any computer programs or models that are or within the past three years have been used by BNSF and/or UP to simulate a locomotive's and/or a train's performance while moving over a particular route.

UP RESPONSE:

UP objects to this interrogatory on the grounds that it is unduly burdensome, is vague, is overbroad, and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. UP further objects to the extent the Request seeks confidential, proprietary, and/or trade secret information of third-parties or information that may be subject to confidentiality agreements with persons or entities not party to this lawsuit.

Subject to and without waiving its objections, UP states that it will produce responsive information to the extent reasonably available with respect to locomotive and/or train performance for coal trains moving on the Route.

INTERROGATORY NO. 7

Please identify any computer programs or models that are or within the past three years have been used by BNSF and/or UP to (a) download locomotive event recorder data from locomotives along any line segment in the SARR States, and/or (b) process locomotive event recorder data for purposes of determining locomotive throttle position and/or fuel consumption.

UP RESPONSE:

UP objects to this interrogatory on the grounds that it is unduly burdensome, is vague, is overbroad, and seeks information that is neither relevant nor reasonably calculated to lead to the

discovery of admissible evidence. UP further objects to the extent the Request seeks confidential, proprietary, and/or trade secret information of third-parties or information that may be subject to confidentiality agreements with persons or entities not party to this lawsuit. Subject to and without waiving its objections, UP states that it will produce responsive information to the extent reasonably available with respect to computer programs or models used by UP to (a) download locomotive event recorder data used to determine fuel consumption, and (b) process locomotive event recorder data for purposes of determining locomotive throttle position and/or fuel consumption limit to trains moving over route.

INTERROGATORY NO. 8

Please identify, by name, title and address, the person(s) who prepared each answer to these Interrogatories and each response to the foregoing Requests for Admissions, and who reviewed and selected the documents to be produced in response to each of the following Requests for Production.

UP RESPONSE:

UP objects to this interrogatory on the grounds that it is unduly burdensome, is vague, is overbroad, and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. In line with past practice in cases of this nature, UP has not secured verifications of the answers to interrogatories herein. UP is prepared to discuss the matter with AEPCO if this is of concern with respect to any particular answer.

INTERROGATORY NO. 9

Please describe BNSF's and UP's plans for complying with the provisions of the Rail Safety and Improvement Act of 2008 (Pub. Law No. 110-432) related to the implementation of positive train control (Section 104) and hours-of-service reform (Section 108)

UP RESPONSE:

UP objects to this interrogatory on the grounds that it is unduly burdensome, is vague, is overbroad, and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Notwithstanding these objections, UP invites AEPCO to

clarity the nature of the information it is seeking so that UP can determine whether there is some that is responsive available data.

DOCUMENT PRODUCTION REQUESTS

REQUEST FOR PRODUCTION NO.1

Please produce all documents related to the establishment of the Challenged Rates, including but not limited to all documents used and/or relied upon in determining the formula for calculating the rates.

UP RESPONSE:

UP objects to this request on the grounds that it is unduly burdensome, is vague, is overbroad, and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. UP further objects to communications between BNSF and UP or documents that would reveal the division of revenue or that would reveal its internal costs on grounds that the Board has previously rated such information irrelevant and denied. See Docket No. 42058, Arizona Electric Power Cooperative, Inc. v The Burlington Northern and Santa Fe Railway Company and Union Pacific Railroad Company, Decision served December 31, 2001.

REQUEST FOR PRODUCTION NO.2

Please produce all studies and analyses conducted by or for UP and/or BNSF or from January 1, 2003 to date related to (a) the profitability of UP or BNSF's coal traffic; and (b) the profitability of coal transportation service provided by Defendants for the account of AEPCO.

UP RESPONSE:

UP objects to this request on the grounds that it is unduly burdensome, is vague, is overbroad, and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. UP specifically objects to the extent that this request seeks documents related to UP's internal costing system on the grounds that its internal costing system is irrelevant in STB rate cases and is therefore non-discoverable. See Docket No. 42058,

Arizona Electric Power Cooperative, Inc. v. The Burlington Northern and Santa Fe Railway Company and Union Pacific Railroad Company, Decision served December 31, 2001.

UP further objects that this seeks proprietary and commercially sensitive information regarding its settlement and transportation services agreements.

REQUEST FOR PRODUCTION NO.3

Please produce documents or data, in a computer-readable format to the extent available, which provide the following information for each AEPCO train movement from Origins to Destination and from Destination to Origins for each crew district in the SARR States:

- a. Each crew district identified by "from" and "to" stations;
- b. The route miles in each such crew district; and
- c. The number of locomotive units per train in the loaded direction by train type (i.e., coal, general freight, intermodal, automotive, etc.), and the extent to which the locomotive units are in a distributed power configuration

UP RESPONSE.

UP objects to this request on the grounds that it is unduly burdensome, is vague, is overbroad, seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. UP further objects to the extent this request seeks documents related to AEPCO's shipments that moved or would move under contract. Subject to and without waiving its objections, UP will produce data sufficient to show responsive information for its own trains and for foreign railroads' trains while operating on UP owned lines to the extent reasonably available for Pueblo, Colorado to El Paso, Texas and El Paso, Texas to Tucson, Arizona. UP also refers AEPCO to its response to Interrogatory 4.

REQUEST FOR PRODUCTION NO.4 (BNSF Only)

Please produce all agreements, and all supplements or amendments thereto, between BNSF and Southwestern Railroad Company, Inc. ("SWRR") which relate to the operation of trains in either direction over the lines between Rincon and Deming, NM.

UP RESPONSE:

This request is not directed at UP.

REQUEST FOR PRODUCTION NO.5 (BNSF Only)

Please produce documents sufficient to show all compensation (whether in the form of payments or credits) paid by BNSF to SWRR for the transportation of trains and/or trainsets of coal cars on a per car or per train (as the case may be) basis as well as on annual basis for each of the three years ending December 31, 2008

UP RESPONSE:

This request is not directed at UP.

REQUEST FOR PRODUCTION NO.6 (BNSF Only)

Please produce all documents related to BNSF's consideration of the abandonment of the Belen to Deming, NM line segment or any portion thereof, including the Rincon to Deming, NM line segment. If BNSF has not considered abandoning any such segment(s), please so indicate in response to this Request.

UP RESPONSE:

This request is not directed at UP.

REQUEST FOR PRODUCTION NO.7

Please produce any studies, analyses and other documents in BNSF's and/or UP's possession from January 1, 2003 to present analyzing or related to the transportation of coal to Destination from Origins (a) by a rail carrier(s) other than BNSF and/or UP, and (b) by any mode of transportation other than rail. If no such documents exist, please confirm same in the response to this Request.

UP RESPONSE:

UP objects to this request on the grounds that it is unduly burdensome, is vague, is overbroad, seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and seeks information that would require a special study. UP further objects to the extent this request seeks documents related to line segments beyond UP's route of service under the rates at issue and to the extent it seeks documents related to shipments from non-complaint origins.

REQUEST FOR PRODUCTION NO.8

Please provide the following density information for UP's and BNSF's entire systems for each year or partial year 2006 to the present in a machine readable database or electronic spreadsheet, including all field descriptions, data definitions and data dictionaries required to utilize the data. The density database or spreadsheet should include, at a minimum, the following data:

- a. Identification of the unique railroad divisions, subdivisions, and individual line segments for each unique density segment,

- b. Station name at the beginning of a unique density segment and at the end of a unique density segment;
- c. Beginning and ending milepost for each unique density segment;
- d. Rail mileage for each unique density segment;
- e. (i) Total density (both directions including empty and loaded trains by segment expressed in net ton-miles, or in the alternative, (ii) total density (both directions including empty and loaded trains) by segment expressed in gross ton-miles plus appropriate factors that can be used to convert gross ton-miles to net ton-miles on each unique density segment; and
- f. Density information (i) for segments that BNSF and/or UP utilizes via trackage rights (or other joint facility or joint use arrangements) on another railroad, and (ii) for segments where another railroad(s) operates by trackage rights (or other joint facility or joint use arrangements) over BNSF or UP segments.

UP RESPONSE:

UP objects to this request on the grounds that it is unduly burdensome, is vague, is overbroad and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and seeks information that would require a special study.

Subject to and without waiving its objections, UP will produce its density charts from 2006 through 2008, which show gross tons including locomotives, current timetables and TUC data.

UP further objects to the extent this request seeks documents related to line segments beyond the Route, and to the extent it seeks documents related to shipments from non-complaint origins and densities of foreign carriers for segments where UP has trackage rights. Subject to and without waiving its objections, UP will produce responsive information to the extent reasonably available.

REQUEST FOR PRODUCTION NO.9

For each BNSF and/or UP line segment and for any other railroad's line segments which UP and/or BNSF utilize via trackage rights agreements, please produce documents, in a computer-readable format to the extent available, which contain operating statistics and density data (including but not limited to train miles, train hours, locomotive unit miles, loaded car-miles, empty car-miles, net ton-miles, gross ton-miles (both including and excluding locomotives), number of trains, etc.) for all traffic for each year or partial year 2006 to the present.

UP RESPONSE:

UP objects to this request on the grounds that it is unduly burdensome, is vague, is overbroad and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and seeks information that would require a special study.

Subject to and without waiving its objections, UP will produce data sufficient to show responsive information for its own trains and for foreign railroads' trains while operating on UP owned lines to the extent reasonably available for the Route.

REQUEST FOR PRODUCTION NO.10

Please produce the data bases and computer programs (with all documentation related to these data bases and computer programs), in a computer-readable format, that include the information listed below for each movement handled by BNSF and/or UP as originating, terminating, overhead or single-line carrier that traveled in any of the SARR States for each year or partial year 2006 to the present:

- a. Commodity (seven-digit Standard Transportation Commodity Code "STCC");
- b. Origin city and state;
- c. Destination city and state;
- d. For shipments that originated on BNSF's or UP's system(s), the date and time the shipment was originated;
- e. For shipments BNSF or UP received in interchange, the on junction location and station number;
- f. For shipments BNSF or UP received in interchange, the road received from;
- g. For shipments BNSF or UP received in interchange, the date and time the shipment was interchanged;
- h. For shipments given in interchange, off junction location and station number;
- i. For shipments given in interchange, the road given to;
- j. For shipments given in interchange, the date and time the shipment was interchanged;
- k. For shipments terminated on BNSF's and/or UP's system(s), the date and time the shipment was terminated;
- l. Origin Freight Station Accounting Code ("FSAC");
- m. Destination FSAC;
- n. Origin Standard Point Location Code ("SPLC");
- o. Destination SPLC;
- p. Number of cars;
- q. Tons (Net);
- r. Tare weight;

- s. Total freight revenues from Origin to Destination, including any adjustments thereto;
- t. BNSF's and/or UP's share or division of the total freight revenues, including any adjustments thereto;
- u. Total revenues from surcharges (including but not limited to fuel surcharges), and whether such revenue from surcharges is included in the total freight revenues and BNSF's and/or UP's division thereof provided in response to Subparts (s) and (t) above;
- v. The contract, agreement, tariff, or other pricing authority that the shipment is billed under:
- w. Waybill number and date,
- x. TOFC/COFC plan;
- y. Car/trailer/container initial for each car/trailer/container used to move the shipment;
- z. Car/trailer/container number for each car/trailer/container used to move the shipment;
- aa. If a trailer or container is used to move the shipment, the car initial and number used to move the trailer or container;
- bb. The train identification number of all trains used to move the shipment;
- cc. The number of locomotives, by train identification, by segment, used to move the shipment,
- dd. The total horsepower, by train identification, by line segment, used to move the shipment;
- ee. Total loaded movement miles;
- ff. Total loaded miles on BNSF's and/or UP's system(s);
- gg. AAR car-type code; and
- hh. Provider of car (BNSF and/or UP-owned, BNSF and/or UP-leased, shipper or foreign road).

UP RESPONSE:

UP objects to this request on the grounds that it is unduly burdensome, is vague, is overbroad, seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and seeks information that would require a special study.

UP also objects to producing databases, although it will provide AEPCO with the selection criteria and the record layout for any information UP produces. UP further objects to subpart(s) (s) & (t) on the ground that division data is irrelevant in STB rate cases and therefore non-discoverable. See Docket No. 42058, Arizona Electric Power Cooperative, Inc. v. The Burlington Northern and Santa Fe Railway Company and Union Pacific Railroad Company,

Decision served December 31, 2001. UP will produce its net revenue including any fuel surcharge revenue.

UP objects to producing divisions on AEPCO shipments as irrelevant and will provide total through revenue.

Subject to and without waiving its objections, UP will produce responsive information for all of its traffic moving over the Route including its operations over trackage rights on other rail carriers. However, UP has no responsive information regarding subpart (ff).

UP objects to producing other carriers' revenue on our interline movements for non AEPCO traffic as irrelevant. In addition, UP will not have information about foreign carriers' separate adjustments to revenue.

REQUEST FOR PRODUCTION NO.11

Please produce documents, in a computer readable format to the extent available, which contain information tracking and describing car, locomotive and train movements from origin to destination for each car, locomotive and train moving on BNSF and/or UP lines to, from or through the SARR States for each year or partial year 2006 to the present.

UP RESPONSE.

UP objects to this request on the grounds that it is unduly burdensome, is vague, is overbroad, seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and seeks information that would require a special study. Subject to and without waiving its objections, UP will produce data sufficient to show responsive information for its own trains and for foreign railroads' trains while operating on UP owned lines to the extent reasonably available for the Route.

REQUEST FOR PRODUCTION NO.12

Please provide copies of train dispatcher sheets (and the data recorded in such sheets in a computer readable format, to the extent available), or other documents (e.g., conductor wheel reports) that record train movement data in a computer readable format to the extent available, from origin to destination for all BNSF and/or UP car and train movements and yard and hub operations to, from or through the SARR States for each year or partial year 2006 to the present.

UP RESPONSE:

UP objects to this request on the grounds that it is unduly burdensome, is vague, is overbroad, seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and seeks information that would require an unduly burdensome and costly special study. UP also states that it does not maintain "train dispatcher sheets." Subject to and without waiving its objections, UP will produce responsive information the extent reasonably available.

REQUEST FOR PRODUCTION NO.13

Please provide all documents, including programs, decoders, and instructions, necessary to link the data produced in response to Request for Production No. 10, Request for Production No. 11, and Request for Production No. 12.

UP RESPONSE:

UP objects to the extent the Request seeks confidential, proprietary, and/or trade secret information of third-parties or information that may be subject to confidentiality agreements with persons or entities not party to this lawsuit. Subject to and without waiving its objections, UP will provide materials sufficient for AEPCO consultants to determine how UP derived the data UP produced in response to Requests 10-12 and to link the data to the extent reasonably available.

REQUEST FOR PRODUCTION NO.14

Please produce all transportation contracts, including amendments and supplements thereto (or letters of understanding with appendices or attachments), and all tariffs, common carrier pricing authorities or other documents containing common carrier rate and service terms, entered into, agreed to or established or provided by BNSF and/or UP which govern(ed) shipments handled by BNSF and/or UP as originating, terminating, overhead or single-line carrier to, from or through any of the SARR States in any of the years 2006 to the present.

UP RESPONSE:

UP objects to this request on the grounds that it is unduly burdensome, is vague, is overbroad, seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible of evidence, and seeks information that would require a special study.

Moreover, these agreements are generally subject to confidentiality provisions that prevent disclosure without the consent of or notice to the other party or parties to the agreement. Subject to and without waiving its objections, UP is willing to negotiate with AEPCO in an attempt to agree upon a reasonable number of price documents and will produce them after appropriate notice is affected non-parties as required by the contracts.

REQUEST FOR PRODUCTION NO.15

Please produce all documents related to forecasts or projections prepared by or for BNSF and/or UP from 2006 through the present, or in BNSF or UP's possession, of future traffic volumes and/or revenues for (a) coal and (b) other freight traffic (including any breakdowns of any such forecasts or projections whether by commodity classification, geographic region, line segment, or any other category) moving over any portion of the BNSF and/or UP system(s) located in any of the SARR States. Documents responsive to this request include, but are not limited to, traffic projections prepared in connection with engineering studies or authorization for expenditures or marketing studies or operating expense budgets or capital budgets or mergers with or acquisitions of other carriers.

UP RESPONSE:

UP objects to this request on the grounds that it is unduly burdensome, is vague, is overbroad, and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. UP also specifically objects to the request to the extent it seeks forecasts or projections that are not used by UP in operations and capital planning. Subject to and without waiving its objections, UP states that it will negotiate with AEPCO in an attempt to agree upon a scope of request to which UP can reasonably respond, provided that AEPCO and any consultant that AEPCO uses to present stand-alone cost evidence relating to the issues of traffic and revenue projections also produce responsive forecasts of similar scope. UP will produce Prophecy data relied on for 2009 AOP and AFEs for capacity projects along the Route and for locomotives for 2006 forward

REQUEST FOR PRODUCTION NO.16 (BNSF Only)

Please produce all documents related to forecasts or projections prepared by or for BNSF from 2004 through the present, or in BNSF's possession of future traffic volumes and/or

revenues for rail traffic originating and/or terminating on BNSF's rail line between North Tipple, NM to Defiance, NM, excluding rail traffic to and from the McKinley Mine.

UP RESPONSE:

This request is not directed at UP.

REQUEST FOR PRODUCTION NO.17 (UP Only)

Please produce the traffic forecasts supporting the comment made by UP Spokeswoman Zoe Richmond in the May 31, 2008 issue of the Arizona Daily Star that the number of trains per day along the UP's Sunset Route will nearly double by 2016.

UP RESPONSE:

Subject to and without waiving its objections, UP will produce responsive data to the extent reasonably available

REQUEST FOR PRODUCTION NO 18

Please produce any studies or analyses (including any documents, computer models and inputs to run the model, supporting databases and manuals used in any such study or analysis) of transit and/or cycle times for any BNSF and/or UP train movements originating, terminating or passing through any of the SARR States for each year or partial year from 2006 to the present. Included in this Request are documents containing the following information for each movement, in a computerized format to the extent available.

- a. Waybill number and date;
- b. Car/trailer initial and number;
- c. Origin location, *i e* , city, state, FSAC and SPLC;
- d. Destination location, *i e* , city, state, FSAC and SPLC;
- e. Transit time from origin to destination and (if applicable) return from destination to origin;
- f. Location (*i e.*, city, state, FSAC and SPLC) where shipment enters the states identified above;
- g. Location (*i e* , city, state, FSAC and SPLC) where shipment departs from or terminates in the states identified above; and
- h. Cycle time while movement is within the states identified above.

UP RESPONSE:

UP objects to this request on the grounds that it is unduly burdensome, is vague, is overbroad, seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and seeks information that is not maintained in the format requested and/or that would require UP to undertake a burdensome special study.

UP states that it does not in the ordinary course of business maintain cycle time information in the requested format but will provide data sufficient to show transit time for UP trains operating over the Route. Subject to and without waiving its objections, UP will produce responsive data to the extent reasonably available.

REQUEST FOR PRODUCTION NO.19

Please provide documents, in a computer-readable format to the extent available, sufficient to show the projected and actual transit and/or cycle times, and the standard or expected or contractual transit and/or cycle time for each BNSF and/or UP movement originating, terminating or passing through any of the SARR States for each year or partial year 2006 to the present.

UP RESPONSE:

UP objects to this request on the grounds that it is unduly burdensome, is vague, is overbroad, seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and seeks information that is not maintained in the format requested and/or that would require UP to undertake a burdensome special study.

UP states that it does not in the ordinary course of business maintain cycle time information in the requested format but will provide data sufficient to show transit time for UP trains operating over the Route. Subject to and without waiving its objections, UP will produce responsive data to the extent reasonably available.

REQUEST FOR PRODUCTION NO.20

Please produce documents which contain the computer model, supporting databases and supporting manuals that are used by BNSF and/or UP to calculate the expected transit and/or cycle time for a movement, including all necessary inputs required to run the model for each movement originating, terminating, or passing through any of the SARR States for each year or partial year 2007 to the present.

UP RESPONSE:

UP objects to this request on the grounds that it is unduly burdensome, is vague, is overbroad, seeks information that is neither relevant nor reasonably calculated to lead to the

discovery of admissible evidence, and seeks information that is not maintained in the format requested and/or that would require UP to undertake a burdensome special study.

Subject to and without waiving its objections, UP will produce responsive data to the extent reasonably available.

REQUEST FOR PRODUCTION NO.21

Please produce current operating timetables (including special instructions and/or operating rule books), station lists, station books, track charts and "condensed profiles" (including schematics which provide the number, length, and ownership status (*i e*, whether railroad-owned or privately-owned) of the tracks at the Origins and all destinations), which are applicable to BNSF and UP lines in the SARR States. Please provide the requested documents in machine-readable format to the extent available (including all necessary documentation). If current versions of any of the requested documents are not available, please produce the most recent versions that are available

UP RESPONSE:

UP objects to this request on the grounds that it is unduly burdensome, is vague, is overbroad, and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving its objections, UP will produce responsive information to the extent reasonably available for the Route.

REQUEST FOR PRODUCTION NO.22

To the extent not included in the track charts or condensed profiles produced in response to, please produce documents, in a computer-readable format to the extent available, that show the following for all BNSF and UP line segments in the SARR States:

- a. The gradient or grade profile for each line segment;
- b. The elevation and elevation changes (in feet above sea level) for each line segment; and
- c. The locations of all curves on each line segment and all information maintained by BNSF or UP pertaining to such curves, including but not limited to the beginning milepost, ending milepost, and degree of curvature.

UP RESPONSE:

UP objects to this request on the grounds that it is unduly burdensome, is vague, is overbroad, and seeks information that is neither relevant nor reasonably calculated to lead to the

discovery of admissible evidence. Subject to and without waiving its objections, UP will produce responsive information for the Route to the extent reasonably available.

REQUEST FOR PRODUCTION NO.23

Please produce documents which contain the following information for all coal mines that BNSF and/or UP served or from which BNSF or UP transported coal as an originating, intermediate or terminating carrier that moved in one or more of the SARR States for each year or partial year 2006 to the present:

- a. Geographic location, *i.e.*, city, county and state;
- b. Railroad location, *i.e.*, railroad station name and milepost;
- c. Railroad mine identification number corresponding to the identification numbers contained in Defendants' computerized traffic data, *e.g.*, SPLC, FSAC or any other numbering system BNSF or UP uses;
- d. Annual tonnages that BNSF or UP transported from that mine;
- e. Track capacity in feet at each location;
- f. The track configuration at each mine, with both the track that BNSF or UP or another rail carrier owns (or jointly owns) and the mine-owned track clearly identified;
- g. Annual weeks of mine operation;
- h. Average tons per car loaded; and
- i. Loading capacity (tons per hour).

UP RESPONSE:

UP objects to this request on the grounds that it is unduly burdensome, is vague, is overbroad, seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and seeks information that would require a special study. UP further objects to the extent it seeks documents related to complaint origins those mines are not served by UP and to the extent it seeks documents related to mines served by UP. Shipments from those mines are not within the scope of this complaint.

Subject to and without waiving its objections, UP will produce information responsive to (d) to the extent that coal moved over UP lines used to transport issue traffic for AEPCO.

REQUEST FOR PRODUCTION NO.24

Please produce all studies and analyses conducted by or for BNSF and/or UP related to implementation of an/or compliance with the provisions of the Rail Safety Improvement Act of 2008 described in Interrogatory No. 9 above.

UP RESPONSE:

UP objects to this request on the grounds that it is unduly burdensome, is vague, is overbroad, seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and seeks information that would require a special study.

Subject to and without waiving its objections, UP will produce responsive information to the extent reasonably available.

REQUEST FOR PRODUCTION NO.25

Please produce documents which provide the following information for all of BNSF's and/or UP's helper services operated in the SARR States, separately for each helper service location, for each year or partial year 2007 to the present:

- a. "From" and "To" stations and mileposts where trains are actually helped;
- b. Number and type of locomotives (model and horsepower) involved per help;
- c. Round-trip mileage each locomotive travels per help;
- d. Number of total trains helped per crew assignment;
- e. Minimum train size/weight requiring helper service; and
- f. Crew size per crew assignment.

UP RESPONSE:

UP states that there are no helpers services locations on the Route

REQUEST FOR PRODUCTION NO.26

Please produce documents which contain the following information for BNSF and UP for each year or partial year 2007 to present:

- a. The location(s) where car inspectors inspect trains in the SARR States,
- b. A description of the procedures followed by the car inspectors in preparing for and inspecting the trains;
- c. The total number of car inspections per tour of duty (by day of the week) and the total number of trains inspected per tour of duty (by day of the week), separated between coal trains and other than coal trains, for each location identified in response to (a) above;
- d. The number of car inspectors inspecting each train at each location identified in response to (a) above and the time spent by each inspector during each inspection;

- e. The daily or hourly rates of pay, including all additives, for the inspectors identified in response to (d) above;
- f. The number of trains each car inspector identified in response to (a) above inspects during his tour of duty;
- g. The other duties performed by the car inspectors identified in response to (d) above while on duty and not inspecting trains;
- h. The percentage of time the car inspectors identified in response to (d) above spend inspecting trains versus other assignments during their tour of duty;
- i. The materials and supplies used by the car inspectors at each of the locations identified in response to (a) above;
- j. The purchase price of each item identified in response to (i) above; and
- k. The total number of trains and cars inspected at each location identified in response to (a) above.

UP RESPONSE:

UP objects to this request on the grounds that it is unduly burdensome, is vague, is overbroad, seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and seeks information that would require a special study.

Subject to and without waiving its objections, UP will produce responsive information for the complaint traffic to the extent reasonably available. UP states that it does not maintain in the ordinary course of business any responsive information concerning individual inspectors and their specific duties at each location.

REQUEST FOR PRODUCTION NO.27

Please produce any studies or analyses conducted by BNSF and/or UP during the past three (3) years which model and evaluate rail operations over all or any part of the BNSF and/or UP rail system(s) using the Rail Traffic Controller ("RTC") computer model. In addition to the results of such studies or analyses, please produce documents sufficient to show the following information for each study or analysis:

- a. The version of the RTC model utilized in each study or analysis;
- b. All electronic files input into the RTC model, including track input files, train input files, Form A and Form B files (or similar files showing track, operating or other outages or failures that affected train operations); and
- c. All electronic files generated as output from the RTC model.

UP RESPONSE:

UP objects to this request on the grounds that it is unduly burdensome, is vague, is overbroad, seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and seeks information that would require a special study.

Subject to and without waiving its objections, UP will produce responsive information involving movements over the Route to the extent reasonably available.

REQUEST FOR PRODUCTION NO.28

Please produce the train list(s) and train profile(s) showing the scheduled horsepower per ton ("HPT") for (a) all BNSF and/or UP trains operating to and from Origins, and (b) all other trains operating to, from or within the SARR States. If the train list(s) or train profile(s) are not available, please provide other documents sufficient to show the scheduled HPT for the trains identified in (a) and (b) above.

UP RESPONSE:

UP objects to this request on the grounds that it is unduly burdensome, is vague, is overbroad, and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving its objections, UP will produce responsive data to the extent reasonably available for the Route.

REQUEST FOR PRODUCTION NO.29

Please produce copies of the following documents:

- a. Documents which identify the locomotive tonnage ratings (*e g* horsepower per trailing ton) by line segment for BNSF's and/or UP's lines in the SARR States; and
- b. Tractive effort tables or other documents sufficient to show the tractive effort produced by the locomotives used to transport trains through all or any portion of the SARR States.

UP RESPONSE:

UP objects to this request on the grounds that it is unduly burdensome, is vague, is overbroad, and seeks information that is neither relevant nor reasonable calculated to lead to the discovery of admissible evidence, and seeks information that would require a special study.

Subject to and without waiving its objections, UP will produce responsive information to the extent reasonably available. Such response will be limited to rail lines compromising the Route.

REQUEST FOR PRODUCTION NO.30

Please produce documents which describe and explain how BNSF and UP assign locomotives to each train on BNSF's and/or UP's system(s). If BNSF or UP uses a computer readable model for this purpose, please produce the model and all supporting data bases and operating manuals.

UP RESPONSE:

UP objects to this request on the grounds that it is unduly burdensome, is vague, is overbroad, seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and seeks information that would require a special study. UP specifically objects that it would be literally impossible to produce the requested databases.

Subject to and without waiving its objections, UP will produce criteria used in assigning locomotives to trains moving over the Route.

REQUEST FOR PRODUCTION NO.31

Please produce any locomotive and/or railcar spare margin study performed by BNSF and/or UP from January 1, 2003 to date that includes (in whole or in part) locomotives used (a) in coal service and/or (b) in other service to, from or through the SARR States. In addition, please produce the underlying databases that were used to perform these studies.

UP RESPONSE:

UP objects to this request on the grounds that it is unduly burdensome, is vague, is overbroad, seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and seeks information that would require a special study.

Subject to and without waiving its objections, UP will produce responsive information, if any, regarding traffic over the Route to the extent reasonably available.

REQUEST FOR PRODUCTION NO.32

Please produce any computer programs or models BNSF and/or UP uses or has used since January 1, 2003 to determine the number and types of railcars required to move its

normally expected coal traffic volumes and the incremental or above-normal coal volumes moving in peak periods.

UP RESPONSE:

UP objects to this request on the grounds that it is unduly burdensome, is vague, is overbroad, and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. UP further objects that its coal origins are far beyond the lines that UP transports coal for AFPCO under the common carrier rates at issues this proceeding. UP further objects that few coal trains move over the Route relative to the intermodal auto and manifest trains.

REQUEST FOR PRODUCTION NO.33

Please identify all origins where BNSF and/or UP pays or since January 1, 2006 has paid an outside contractor or third party to load coal trains, and with respect to each such origin, please produce the following:

- a. Copies of all third party loading crew contracts/agreements, including negotiated rates and associated rate escalation clauses and operating provisions, as well as a description of the service performed by the contractor; and
- b. All records in BNSF's and/or UP's or its loading contractor's possession relating to the contractor's handling of the trains, including but not limited to the time when each train was in the possession or under the control of the loading contractor.

UP RESPONSE:

UP objects to this request on the grounds that it is unduly burdensome, is vague, is overbroad, and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. UP states that it serves no origin mines for the rates at issue.

REQUEST FOR PRODUCTION NO.34

Please produce documents, in a computer-readable format to the extent available, which describe (a) how BNSF and UP determine the dispatch priority given to each train type (e.g., doublestack, priority intermodal, through, general freight, coal, *etc*); and (b) BNSF's and/or UP's methodology for scheduling all trains by train type.

UP RESPONSE:

UP objects to this request on the grounds that it is unduly burdensome, is vague, is overbroad, seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and seeks information that would require a special study.

Subject to and without waiving its objections, UP will produce responsive information to the extent reasonably available.

REQUEST FOR PRODUCTION NO.35

Please produce all documents related to unplanned track-related and operating-related incidents or outages that affected BNSF and/or UP train operations in 2007 and to date in 2008 in the SARR States. If the information requested would require a special study, please produce random failure, outage or incident reports or similar documents, as kept in the ordinary course of business by BNSF and/or UP, from which the requested data could be extracted.

UP RESPONSE:

UP objects to this request on the grounds that it is unduly burdensome, is vague, is overbroad, seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and seeks information that would require a special study.

Subject to and without waiving its objections, UP will produce responsive information to the extent reasonably available.

REQUEST FOR PRODUCTION NO.36

Please produce any studies performed by or for you from January 1, 2003 to the present related to the increase in locomotives and/or railcars required to handle shipments during seasonal peak traffic periods for (a) BNSF and/or UP's coal traffic, and (b) all BNSF and/or UP traffic. In addition, please provide the underlying databases that were used to perform each study.

UP RESPONSE:

UP objects to this request on the grounds that it is unduly burdensome, is vague, is overbroad, and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. UP further objects that its coal origins are far beyond the lines that UP transports coal for AEPCO under the common carrier rates at issues this proceeding. UP

further objects that few coal trains move over the Route relative to the intermodal auto and manifest trains.

Subject to and without waiving its objections, UP will produce responsive data to the extent reasonably available.

REQUEST FOR PRODUCTION NO.37

Please produce documents for each year or partial year 2007 to the present which list by initial and unit number: (a) locomotives used in the AEPCO service between Origins and Destination and in any other coal service between Origins and any destination; and (b) if such locomotives were drawn from a pool(s), all the locomotives in the pool(s) from which the locomotives used in the AEPCO or other coal service are drawn.

UP RESPONSE:

UP objects to this request on the grounds that it is unduly burdensome, is vague, is overbroad, seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and seeks information that would require a special study.

Subject to and without waiving its objections, UP states it will produce responsive information for UP locomotives used to move the complaint traffic or other coal trains over the Route to the extent reasonably available.

UP states that there is no locomotive "pool" from which UP locomotives in AEPCO service are drawn.

REQUEST FOR PRODUCTION NO.38

Please produce documents, in a computer-readable format to the extent available, which provide the following information for each of the locomotives contained in each of the listings produced in response to 37:

- a. The locomotive initial and number;
- b. The manufacturer, if purchased;
- c. The lessor, if leased or rented;
- d. Model or type (*e.g* , SD-40-2);
- e. Horsepower;
- f. Capacity of its fuel tanks (gallons);
- g. Weight;
- h. Date of purchase or lease;
- i. Date first placed into service;
- j. The original cost plus the cost of any additions and betterments;

- k. Financing vehicle (e.g., equipment trust);
- l. Debt rate as a percent;
- m. Financing terms (in years),
- n. Annual depreciation;
- o. Annual depreciation as a percent;
- p. Current salvage value as a percent;
- q. Accrued depreciation;
- r. If leased, the type of lease (i.e., capital, operating, "power by the hour", etc.);
- s. If a capital lease, the capitalized value of the lease by locomotive or group of locomotives (if a group of locomotives, the number of locomotives (by initial and number) and aggregate dollars);
- t. If an operating lease, the quarterly, semi-annual, etc., lease payment by locomotive or group of locomotives covering the term of the lease (if a group of locomotives, the number of locomotives (by initial and number) and aggregate dollars);
- u. If leased or rented under a short-term or "power by the hour" agreement, the minimum annual fixed payment and the use payment (e.g., per kilowatt/hour, per diesel unit mile, etc.) per locomotive, the average annual payment per locomotive, and the annual locomotive unit-miles for each such locomotive, stated separately for coal service and other service; and
- v. The diesel unit-miles traveled each year or partial year from 2005 to the present:
 - i. In coal service; and
 - ii. In all types of service.

UP RESPONSE:

UP objects to this request on the grounds that it is unduly burdensome, is vague, is overbroad, seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and seeks information that would require a special study.

Subject to and without waiving its objections, UP will produce responsive information for the UP locomotives used to move the complaint traffic to the extent reasonably available from 2006.

REQUEST FOR PRODUCTION NO.39

Please produce all lease or rental agreements, including all supplements and copies of all billings, applicable to each leased or rented locomotive identified in response to 37 and 38.

UP RESPONSE:

UP objects to this request on the grounds that it is unduly burdensome, is vague, is overbroad, seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and seeks information that would require a special study. UP also specifically objects to producing bills. Moreover, these agreements are generally subject to confidentiality provisions.

Subject to and without waiving its objections, UP will produce a list of responsive lease or rental agreements for the UP locomotives used to move the complaint traffic and it will make available for a reasonable number of responsive agreements selected by AEPCO to the extent reasonably available.

UP states that it does not have such agreements for non-UP units used for AEPCO's service.

REQUEST FOR PRODUCTION NO.40

Please produce all locomotive maintenance and repair records and/or reports and related documents for each year or partial year 2006 to the present, which provide BNSF and/or UP locomotive maintenance, repair and overhaul expenses by locomotive or locomotive type or series (or by other basis in which records are kept) and the total locomotive unit-miles corresponding to these maintenance, repair and overhaul expenses for the locomotives identified in response to 37. To the extent that these records and/or reports do not include all locomotive repair, maintenance and overhaul amounts reported in R-1 Schedule 410, please identify those expenses that are not included.

UP RESPONSE:

UP objects to this request on the grounds that it is unduly burdensome, is vague, is overbroad, seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and seeks information that would require a special study.

Subject to and without waiving its objections, UP states that it is willing to negotiate with AEPCO regarding this request, but it will expect AEPCO to compensate UP for any production subsequently undertaken by agreement. UP also refers AEPCO to UP's R-1 reports.

UP states that it does not maintain locomotive unit-miles by individual unit and that its locomotive maintenance shops do not consistently record maintenance and repair expenses by locomotive unit, type, or series. Thus, there may be no information at all recorded for some units, only one activity recorded for other units, and more (but not all) activities recorded for yet other units. It is therefore not possible to determine from UP's regular maintenance and repair expense records the total maintenance cost associated with any particular unit or type.

REQUEST FOR PRODUCTION NO.41

Please produce all locomotive maintenance agreements, including all supplements, attachments, exhibits and schedules, with outside contractors and provide, for each year or partial year 2006 to the present for all locomotives in BNSF's and/or UP's fleet under such maintenance agreements, (a) the amount paid for each locomotive or by locomotive type in total and broken down by each service performed under the agreement and (b) the number of locomotive unit miles corresponding to the amounts listed above.

UP RESPONSE:

UP objects to this request on the grounds that it is unduly burdensome, is vague, is overbroad, seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and seeks information that would require a special study.

Subject to and without waiving its objections, UP will produce responsive information to the extent reasonably available.

REQUEST FOR PRODUCTION NO.42

Please produce documents sufficient to show the following information for BNSF and UP for the most recent 12 calendar months:

- a. The location(s) where locomotives are fueled in the SARR States;
- b. The actual amount of fuel used by the locomotives identified in response to 0, by individual locomotive;
- c. The total number of diesel unit miles generated by the locomotives for which fuel consumption data was provided in response to (b) above during the same time period used in response to (b) above;
- d. The method by which BNSF and/or UP accounts for or records fuel usage for locomotives;
- e. Computer-readable versions (both compiled and non-compiled), including all supporting databases and necessary documentation, of any and all computer programs in BNSF's and/or UP's possession used to estimate the fuel usage of locomotives; and

f. The same information for all road locomotives on the BNSF and/or UP systems in the same format as that given in the responses to (b), (c), and (e) above.

UP RESPONSE:

UP objects to this request on the grounds that it is unduly burdensome, is vague, is overbroad, and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. UP also objects to this request to the extent it seeks internal costing information. See Docket No. 42058, Arizona Electric Power Cooperative, Inc. v. The Burlington Northern and Santa Fe Railway Company and Union Pacific Railroad Company, Decision served December 31, 2001.

UP further objects to the extent the Request seeks confidential, proprietary, and/or trade secret information of third-parties or information that may be subject to confidentiality agreements with persons or entities not party to this lawsuit

Subject to and without waiving its objections, UP will produce responsive information for the complaint traffic to the extent reasonably available. Such request will be limited to rail lines comprising the Route.

UP also refers AEPCO to UP's R-1 reports.

REQUEST FOR PRODUCTION NO.43

Please produce all studies, analyses and related documents (including summaries, computer programs and all supporting databases and data), in a computer-readable format to the extent available, pertaining to the fuel consumption or the measurement of the fuel consumption by BNSF's or UP's trains (or the locomotives used on BNSF's or UP's trains) moving through any portion of the SARR States during period from January 1, 2006 to the present.

UP RESPONSE:

UP objects to this request on the grounds that it is unduly burdensome, is vague, is overbroad, seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and seeks information that would require a special study.

Subject to and without waiving its objections, UP will produce responsive information to the extent reasonably available.

REQUEST FOR PRODUCTION NO.44

For each year or partial year 2007 to the present, please produce documents which contain the following information, in a computer-readable format to the extent available, for each of the end-of-train telemetry devices ("EOTD") used on any BNSF and/or UP trains that traverse any portion of the SARR States:

- a. The date of purchase;
- b. The original cost and the cost of any additions and betterments;
- c. The debt rate as a percent;
- d. The financing terms (in years);
- e. The annual depreciation;
- f. The annual depreciation rate as a percent,
- g. The salvage value as a percent; and
- h. The accumulated depreciation.

UP RESPONSE:

UP objects to this request on the grounds that it is unduly burdensome, is vague, is overbroad, seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and seeks information that would require a special study. UP specifically objects to the extent this request seeks documents related to non-complaint traffic.

Subject to and without waiving its objections, UP will produce responsive information to the extent reasonably available. Such request will be limited to rail lines comprising and trains that transverse the Route.

UP states that it does not maintain information responsive to subpart (h).

REQUEST FOR PRODUCTION NO.45

Please produce documents for each year or partial year 2003 to the present which contain the following, in a computer readable format, for each freight car purchased or leased by BNSF or UP (including freight cars currently on order and privately-owned freight cars leased by BNSF or UP that maintain the private owner's car initial and number) that has been or could be used to transport coal:

- a. Initial and number;
- b. Manufacturer;
- c. Lessor, if leased;
- d. AAR car type;
- e. Tare weight;

- f. Purchase or order date, if purchased;
- g. Lease or order date, if leased,
- h. Total purchase price, if purchased;
- i. If leased, the type of lease (e.g., capital, operating, etc.) and term;
- j. If leased, the amount and frequency of lease payments;
- k. If purchased, the AFE applicable to each purchased freight car; and
- l. If leased, the lease agreement including all supplements, amendments, exhibits and applicable schedules.

UP RESPONSE:

UP objects to this request on the grounds that it is unduly burdensome, is vague, is overbroad, seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and seeks information (e.g., subpart (k)), that would require a special study.

Subject to and without waiving its objections, UP will produce responsive information to the extent reasonably available.

UP states that, with respect to subpart (l), UP will produce a list of lease agreements and make available for review a reasonable number of leases that AEPCO selects from the list.

REQUEST FOR PRODUCTION NO.46

Please produce all railcar repair and maintenance records, reports, databases and related documents which include or record rail car repair and maintenance expenses for each year or partial year 2006 to the present, including but not limited to all input data to schedules 415 and 755 of BNSF's and UP's R-1, and the total rail car-miles corresponding to these repair and maintenance expenses, in a computer readable format to the extent possible, for all freight cars in BNSF's and UP's systems. To the extent that these records, reports and databases do not include all car repair and maintenance amounts reported in R-1 Schedule 410, please identify the expenses that are excluded.

UP RESPONSE:

UP objects to this request on the grounds that it is unduly burdensome, is vague, is overbroad, seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and seeks information that would require a special study. UP further states that it does not maintain the requested car-miles information.

Subject to and without waiving its objections, UP is willing to negotiate with AEPCO over this request, also refers AEPCO to UP's R-1 reports.

REQUEST FOR PRODUCTION NO.47

Under *Alternative Methods of Accounting for Railroad Track Structures*, 367 I.C.C. 157, 180 (1983), BNSF and UP are required to submit a standard "unit of property" that distinguishes between when a certain cost should be expensed or capitalized. Please produce BNSF's and UP's most recent, STB approved property units and the supporting information and data for those units.

UP RESPONSE:

UP objects to this request on the grounds that it is unduly burdensome, is vague, is overbroad, seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and seeks information that would require a special study.

Subject to and without waiving its objections, UP will produce responsive information to the extent reasonably available.

REQUEST FOR PRODUCTION NO.48

Please produce all documents that relate to the development of the methodology for the calculation and imposition of the "fuel surcharges" described in BNSF's Rules Book 6100-series Item 3381 and in UP Circular 6602 Series, Item 695 and UP Circular 6603 Series, Item 694, including but not limited to:

- a. Documents related to the selection of the Retail On-Highway Diesel Fuel average price as the benchmark for the calculation of the surcharges;
- b. Documents related to the determination of how to (i) base and (ii) calculate the surcharges based upon the length of a linehaul movement; and
- c. All analyses, studies or other documents which address the relationship, if any, between the application of the surcharges to any specific coal movement(s) and changes in the actual cost to BNSF and/or UP of the fuel consumed by the locomotives used in that (those) movement(s).

UP RESPONSE:

UP objects to this request on the grounds that it is unduly burdensome, is vague, is overbroad, and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. UP also objects to this request to the extent it seeks internal

costing information. See Docket No. 42058, Arizona Electric Power Cooperative, Inc. v. The Burlington Northern and Santa Fe Railway Company and Union Pacific Railroad Company, Decision served December 31, 2001.

REQUEST FOR PRODUCTION NO.49

Please identify all locations in the SARR States where BNSF and/or UP or a third party contractor acting for or on behalf of BNSF or UP performs fueling of locomotives, and produce documents sufficient to show the following information with respect to locomotive fueling at each location.

- a. The source(s) of the fuel, including the name and location of the vendor(s) who provide the fuel to BNSF or UP and the refinery(ies) or other location from which the fuel is obtained;
- b. The method and cost of transporting and dispensing the fuel from the refinery(ies) or other locations from which the fuel is obtained to the location where the fueling of locomotives is performed;
- c. The method by which fuel is dispensed into locomotives, *i.e.* from fixed fueling facilities or by direct-to-locomotive (tanker truck) service; and
- d. A description of all facilities and equipment (including but not limited to fuel storage tanks) at each location where BNSF or UP has fixed fueling facilities; and
- e. The cost per gallon paid (including any applicable taxes) on a weekly basis in 2008.

UP RESPONSE:

UP objects to this request on the grounds that it is unduly burdensome, is vague, is overbroad, seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and seeks information that would require a special study.

Subject to and without waiving its objections, UP will produce responsive information for fueling locations along the Route to the extent reasonably available.

REQUEST FOR PRODUCTION NO.50

Please produce copies of all contracts/agreements with third parties related to the performance of locomotive fueling functions for all road locomotives that are used on any portion of the BNSF and/or UP system(s) located in the SARR States.

UP RESPONSE:

UP objects to this request on the grounds that it is unduly burdensome, is vague, is overbroad, seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and seeks information that would require a special study.

Subject to and without waiving its objections, UP will produce responsive information for fueling locations along the Route to the extent reasonably available.

REQUEST FOR PRODUCTION NO.51

Please produce a copy of BNSF's and UP's rules and instructions pertaining to train handling, including but not limited to measures for conserving fuel.

UP RESPONSE

UP objects to this request on the grounds that it is unduly burdensome, is vague, is overbroad, and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving its objections, UP will produce responsive data to the extent reasonably available.

REQUEST FOR PRODUCTION NO.52

Please produce documents, in a computer readable format to the extent available, which show locomotive utilization and locomotive performance (e g , locomotive unit-miles, locomotive hours running, locomotive hours switching, locomotive hours out-of-service for repairs and locomotive hours stored useable) for each locomotive that BNSF and UP owned or leased for each year or partial year 2006 to the present and that BNSF and UP used in providing transportation service in the SARR States.

UP RESPONSE:

UP objects to this request on the grounds that it is unduly burdensome, is vague, is overbroad, seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and seeks information that would require a special study.

Subject to and without waiving its objections, UP will provide responsive information to the extent reasonably available.

REQUEST FOR PRODUCTION NO.53

For each year or partial year 2006 to the present, please produce documents which contain the following information (in a computer-readable format, if available) with respect to each shipper-owned and shipper-leased railcar and each intermodal and automotive railcar provided by a third party moving over any part of the BNSF and/or UP system(s) located in the SARR States:

- a. Identification number of the car,
- b. The type of the car;
- c. The length and tare weight of the car (for intermodal and automotive cars only);
- d. The cost to BNSF or UP for use of the car;
- e. The terms of any mileage allowance agreement covering the car;
- f. Whether the car is subject to a zero-based mileage agreement;
- g. Whether the car hire paid on the car is subject to refund of the payments under certain contractual conditions; and
- h. The year of manufacture of the car.

UP RESPONSE:

UP objects to this request on the grounds that it is unduly burdensome, is vague, is overbroad, seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and seeks information that would require a special study. UP will provide information responsive to subparts (a) through (c) for cars that moved over the Route.

REQUEST FOR PRODUCTION NO.54

Please produce all railcar maintenance agreements with outside contractors, including all supplements, attachments, exhibits and schedules, in effect during all or any portion of each year or partial year 2006 to the present, for all the cars on BNSF's and/or UP's systems, and documents providing (a) the amount paid for each car or by car or by car type total and broken down by each service performed under the agreement, and (b) the number of car-miles corresponding to the amounts referenced above.

UP RESPONSE:

UP objects to this request on the grounds that it is unduly burdensome, is vague, is overbroad, and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving its objections, UP will produce responsive information to the extent reasonably available.

REQUEST FOR PRODUCTION NO.55

Please produce copies of all contracts/agreements with third parties (including but not limited to shippers or receivers) in effect during all or any portion of the period from January 1, 2006 to the present related to the performance of car inspection functions with respect to (a) BNSF and UP coal trains and (b) other BNSF and UP trains traversing all or a portion of the SARR States.

UP RESPONSE:

UP objects to this request on the grounds that it is unduly burdensome, is vague, is overbroad, and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving its objections, UP will produce responsive information to the extent reasonably available.

REQUEST FOR PRODUCTION NO.56

Please produce the following for all joint facility or joint use agreements (including but not limited to trackage rights agreements, joint or common ownership agreements and lease agreements) between BNSF and UP or between BNSF or UP and another rail carrier or other entity applicable to any of the railroad lines and/or facilities in the SARR States and that were in effect during all or any portion of the period from January 1, 2006 to the present:

- a. Copies of all agreements (including amendments and supplements);
- b. Copies of all bills from 2006 to the present (including all supporting documents and data);
- c. The BNSF and/or UP density (in gross or net ton-miles) over the joint facility for each year 2006 to the present; and
- d. The density (in gross or net ton-miles) of all other rail carriers or other entities over the joint facility for each year 2006 to the present.

UP RESPONSE:

UP objects to this request on the grounds that it is unduly burdensome, is vague, is overbroad, seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and seeks information that would require a special study.

Subject to and without waiving its objections, UP will produce agreements and bills for those joint facilities with BNSF where UP owns the track and BNSF will provide for facilities that they own.

REQUEST FOR PRODUCTION NO.57

For each year or partial year 2006 to the present, please produce BNSF's and UP's detailed annual and quarterly Wage Forms A and B that support the summary Wage Forms A and B provided to the STB.

UP RESPONSE:

UP objects to this request on the grounds that it is unduly burdensome, is vague, is overbroad, seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and seeks information that would require a special study.

Subject to and without waiving its objections, UP will produce its Wage Forms A and B for 2006 through first quarter 2009.

REQUEST FOR PRODUCTION NO.58

Please provide documents showing the amounts paid by BNSF and UP for training employees, including but not limited to training employees hired for the following positions, in each of the year 2006 to the present.

- a. Experienced locomotive engineers;
- b. Experienced locomotive conductors;
- c. Locomotive conductors training to become engineers,
- d. Novice conductors;
- e. Train dispatchers;
- f. Information technology programmers;
- g. Supervisors of maintenance operations;
- h. Maintenance crew members; and
- i. Equipment inspectors.

The training information requested includes, but is not limited to, wages paid during classroom training, wages paid during field or on the job training, fringe benefits paid during classroom training, fringe benefits paid during field or on the job training, costs for classroom training, costs for on the job training or field training, expenses for room and board during classroom training and during field training, the number of weeks of classroom training required for each type of employee, and the number of weeks of on the job or field training required for each type of employee.

UP RESPONSE:

UP objects to this request on the grounds that it is unduly burdensome, is vague, is overbroad, seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and seeks information that would require a special study.

Subject to and without waiving its objections, UP will produce responsive information to the extent reasonably available.

REQUEST FOR PRODUCTION NO.59

Please produce documents showing the amount(s) paid by BNSF and/or UP to a recruitment firm or firms for executive search services in each year or partial year 2006 to the present. The documents should include the amount paid by individual, the position of the individual hired and the basis for the recruitment firm's fee schedule. As used in this Request, the term "executive" means those employees so defined or grouped in BNSF's and/or UP's Wage Forms A and B.

UP RESPONSE:

UP objects to this request on the grounds that it is unduly burdensome, is vague, is overbroad, seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and seeks information that would require a special study.

Subject to and without waiving its objections, UP will produce responsive information to the extent reasonably available.

REQUEST FOR PRODUCTION NO.60

Please produce documents sufficient to show the applicable wage rates for BNSF's and/or UP's maintenance of way employees by job classification for each year or partial year 2006 to the present.

UP RESPONSE:

UP objects to this request on the grounds that it is unduly burdensome, is vague, is overbroad, and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving its objections, UP will produce responsive information to the extent reasonably available.

REQUEST FOR PRODUCTION NO.61

Please provide documents sufficient to show the maintenance-of-way districts and/or crews employed by each of the Defendants to maintain the (a) track, (b) signals and communications facilities, and (c) bridges and other facilities in the SARR States, the number of BNSF and UP employees by job classification presently assigned to each maintenance-of-way district or crew on both a permanent and a seasonal basis, and any changes in the maintenance

districts, crews, and number and classification of employees that have occurred since January 1, 2003

UP RESPONSE:

UP objects to this request on the grounds that it is unduly burdensome, is vague, is overbroad, seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and seeks information that would require a special study.

Subject to and without waiving its objections, UP will produce responsive information to the extent reasonably available.

REQUEST FOR PRODUCTION NO.62

Please produce documents sufficient to show the maintenance-of-way equipment owned or leased by BNSF and/or UP whose value per unit exceeded \$500 when acquired, and how such equipment is assigned to the respective maintenance-of-way districts identified in response to 61 of AEPCO's First Requests. In addition, please provide documents sufficient to show the unit costs for such equipment, if purchased, or the annual lease cost if leased, and the annual cost of ownership including information on maintenance and fueling costs during each year or partial year 2006 to the present.

UP RESPONSE:

UP objects to this request on the grounds that it is unduly burdensome, is vague, is overbroad, and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. UP further objects to the extent the Request seeks confidential, proprietary, and/or trade secret information of third-parties or information that may be subject to confidentiality agreements with persons or entities not party to this lawsuit.

Subject to and without waiving its objections, UP will produce responsive information, if any, to the extent reasonably available.

REQUEST FOR PRODUCTION NO.63

For maintenance of way and/or construction on BNSF and/or UP lines in the SARR States performed by contractors for the period from 2005 to the present, please produce copies of all bills for services, documents which contain a description of the line location of the contract repairs and/or construction, and the details of the work performed, including labor and materials. If BNSF and/or UP do not maintain copies of any of these documents, produce whatever documents BNSF and/or UP do maintain or have available to it describing the costs incurred by

BNSF and/or UP and the details of the work performed, in a computer readable form if applicable (including all necessary documentation).

UP RESPONSE:

UP objects to this request on the grounds that it is unduly burdensome, is vague, is overbroad, seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and seeks information that would require a special study.

Subject to and without waiving its objections, UP will produce responsive information for the Route, to the extent reasonably available for Colorado, Texas, New Mexico and Arizona for 2006 through 2008.

REQUEST FOR PRODUCTION NO.64

Please produce documents for each year or partial year from 2006 to the present sufficient to show (a) the frequency of ultrasonic rail testing and track geometry testing and (b) the costs per mile, or other applicable unit of measure, incurred by BNSF and/or UP for ultrasonic rail testing and track geometry testing for each BNSF and/or UP line segment in the SARR States.

UP RESPONSE:

UP objects to this request on the grounds that it is unduly burdensome, is vague, is overbroad, seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and seeks information that would require a special study.

Subject to and without waiving its objections, UP will produce responsive information for the Route, to the extent reasonably available.

REQUEST FOR PRODUCTION NO.65

Please produce documents for each year or partial year 2006 to the present which provide BNSF's and UP's loss and damage costs and annual tonnage separately for all commodities BNSF and UP carry on a system-wide basis.

UP RESPONSE:

UP objects to this request on the grounds that it is unduly burdensome, is vague, is overbroad, seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and seeks information that would require a special study.

Subject to and without waiving its objections, UP will produce responsive information for the Route, to the extent reasonably available.

REQUEST FOR PRODUCTION NO.66

Please produce documents showing the ad valorem taxes that BNSF and/or UP paid for each year or partial year 2005 to the present to each of the SARR States, together with documents showing the total route-miles and total track-miles BNSF and/or UP owned or owns in the SARR States for each year 2005 to the present.

UP RESPONSE:

UP objects to this request on the grounds that it is unduly burdensome, is vague, is overbroad, seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and seeks information that would require a special study.

Subject to and without waiving its objections, UP will produce responsive information for Colorado, Texas, New Mexico and Arizona from 2006 through 2008.

REQUEST FOR PRODUCTION NO.67

Please produce all documents relating to any contribution by any governmental or quasi-governmental entity (including, without limitation, AMTRAK) to construction, upgrading, maintenance and/or operating expenses on any of BNSF's and/or UP's lines located in the SARR States.

UP RESPONSE:

UP objects to this request on the grounds that it is unduly burdensome, is vague, is overbroad, seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and seeks information that would require a special study.

Subject to and without waiving said objections, UP will produce responsive documents for the Route to the extent reasonably available.

REQUEST FOR PRODUCTION NO.68

Please produce copies of the most current land valuation maps for BNSF and/or UP rail lines located in the SARR States, and all documents (including but not limited to deeds or other instruments of grant or conveyance) related to the parcels identified on those maps.

UP RESPONSE:

UP objects to this request on the grounds that it is unduly burdensome, is vague, is overbroad, seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and seeks information that would require a special study. UP specifically objects to the production of deeds.

Subject to and without waiving its objections, UP will produce responsive valuation maps concerning land parcels for the Route, to the extent reasonably available.

REQUEST FOR PRODUCTION NO.69

Please produce documents identifying all donated rights of way and/or land grants (including easements) obtained by BNSF and/or UP or BNSF's and/or UP's predecessors in connection with the construction of any rail lines or facilities located in the SARR States.

UP RESPONSE:

UP objects to this request on the grounds that it is unduly burdensome, is vague, is overbroad, seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and seeks information that would require a special study.

Subject to and without waiving its objections, UP will produce responsive information concerning the land parcels along the Route, to the extent reasonably available.

REQUEST FOR PRODUCTION NO.70

Please produce all documents related to any sale, appraisal, abandonment or acquisition of land (improved and unimproved) that BNSF and/or UP completed in the SARR States, including but not limited to documents showing the location of the parcel, size of the parcel, the valuation of the parcel by BNSF and/or UP, the sale or acquisition price, a description of any improvements to the parcel, the date of sale, and any characteristics of the parcel such as land use, utilities, access and topography.

UP RESPONSE:

UP objects to this request on the grounds that it is unduly burdensome, is vague, is overbroad, seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and seeks information that would require a special study.

Subject to and without waiving its objections, UP will produce responsive information concerning the land parcels for UP lines along the Route for transactions that occurred during 2006 through 2008, to the extent reasonably available.

REQUEST FOR PRODUCTION NO. 71

Please produce documents sufficient to show the following with respect to grading construction activities undertaken or proposed at any time, or currently ongoing, on any portion of BNSF's and/or UP's system(s) located in SARR States, including the line of rail known as the Defiance Spur (Defiance to North Tipton, NM):

- a. Number of cubic yards of excavation of:
 - i. Common earth;
 - ii. Loose rock; and
 - iii. Solid rock;
- b. Number of cubic yards of borrow of:
 - i. Common earth;
 - ii. Loose rock; and
 - iii. Solid rock;
- c. Grading construction data for each construction specification measured by BNSF and/or UP including without limitation, roadbed width, side slope ratio, track center distance, presence of access roads, impact of grading activities on right-of-way width, use of geotextiles, use of water, soil stabilization, and width and depth of side ditches;
- d. Number of route miles, separated between single track main, double track main, triple track main, etc., corresponding to the cubic yard information described in paragraphs (i) through (iii) of Subparts (a) and (b) of this Request;
- e. Number of track-miles corresponding to the cubic yards in paragraphs (i) through (iii) of Subparts (a) and (b) of this Request;
- f. All of the different types of equipment (and the associated tasks) used to:
 - i. Excavate common earth;
 - ii. Excavate loose rock;
 - iii. Excavate solid rock; and
 - iv. Obtain borrow material,
- g. Linear feet of pipe installed for lateral drainage;
- h. Number of cubic yards of rip-rap placed for the protection of the roadway;
 - i. Location, type and quantity of retaining walls;
 - j. Construction method, including but not limited to the number of cubic yards of masonry or other similar material used for retaining walls;
 - k. Number of acres cleared;
 - l. Number of acres grubbed; and
 - m. Number of acres seeded.

UP RESPONSE:

UP objects to this request on the grounds that it is unduly burdensome, is vague, is overbroad, seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and seeks information that would require a special study.

Subject to and without waiving its objections, UP will produce responsive information for the Route, to the extent reasonably available.

REQUEST FOR PRODUCTION NO.72

To the extent BNSF and/or UP incurred any of the following expenses during the years 2006 to the present, please produce documents sufficient to show the costs BNSF and/or UP incurred during each year for the following:

- a. BNSF's and/or UP's cost per cubic yard of excavation for:
 - i. Common earth;
 - ii. Loose rock; and
 - iii. Solid rock;
- b. BNSF's and/or UP's cost per cubic yard of borrow for:
 - i. Common earth;
 - ii. Loose rock; and,
 - iii. Solid rock;
- c. BNSF's and/or UP's cost per cubic yard of rip-rap (installed), separated between material and labor;
- d. BNSF's and/or UP's unit cost for each material used for retaining walls, separated between material and labor,
- e. BNSF's and/or UP's gross cost per acre for clearing timber;
- f. Any adjustments to BNSF's and/or UP's cost per acre for clearing timber or for clearing by burning;
- g. BNSF's and/or UP's cost per acre for grubbing;
- h. BNSF's and/or UP's cost per acre for seeding,
- i. BNSF's and/or UP's cost per acre for weed spray (including necessary chemicals);
- j. BNSF's and/or UP's cost per hour or per mile for brush cutting;
and
- k. BNSF's and/or UP's cost per square yard for geotextile fabric.

UP RESPONSE:

UP objects to this request on the grounds that it is unduly burdensome, is vague, is overbroad, seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and seeks information that would require a special study.

Subject to and without waiving its objections, UP will produce responsive information for work performed in Colorado, Western Texas, Arizona and New Mexico to the extent reasonably available.

REQUEST FOR PRODUCTION NO.73

Please produce documents sufficient to show culvert/drainage pipe locations (*i.e.*, railroad milepost), size (diameter), length, height of cover, number of tracks crossed, type, and cost of material and installation for each, for BNSF's and/or UP's lines located in the SARR States.

UP RESPONSE:

UP objects to this request on the grounds that it is unduly burdensome, is vague, is overbroad, seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and seeks information that would require a special study.

Subject to and without waiving its objections, UP will produce responsive information for the portions of its system located in the Route, to the extent reasonably available.

REQUEST FOR PRODUCTION NO.74

Please produce documents sufficient to show the following for construction projects that BNSF and/or UP has undertaken since January 1, 2005:

- a. Standard construction project specifications, including but not limited to: track structures and designs; bridges; culverts; yard and roadway buildings; fueling facilities; maintenance facilities and waste water treatment facilities;
- b. Standard estimating procedures for track construction projects; and
- c. Standard estimating procedures for non-track construction projects.

UP RESPONSE:

UP objects to this request on the grounds that it is unduly burdensome, is vague, is overbroad, seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and seeks information that would require a special study.

Subject to and without waiving its objections, UP will produce responsive information for projects along the Route undertaken since January 1, 2006 to the extent reasonably available.

REQUEST FOR PRODUCTION NO.75

Please produce all of BNSF's and/or UP's price list books governing prices for construction and maintenance materials (including but not limited to weights of rail from 115 to 141 pounds per yard, turnouts, ties, fasteners, lubricators, plant and field welds, fencing, roadway signs, track geometry cars, hot bearing and dragging equipment detectors, and related tools), or other documents utilized by BNSF's and/or UP's engineering personnel for estimating costs of maintenance and construction projects for each year or partial year 2005 to the present. To the extent that the charges for transportation and delivery of materials are not included in the prices shown, please produce documents sufficient to show such charges for all materials.

UP RESPONSE:

UP objects to this request on the grounds that it is unduly burdensome, is vague, is overbroad, seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and seeks information that would require a special study.

Subject to and without waiving its objections, UP will produce responsive information from 2006 to the extent reasonably available.

REQUEST FOR PRODUCTION NO.76

Please produce documents sufficient to show the following information with respect to ballast or sub-ballast used on BNSF's and/or UP's system(s) for each year or partial year 2005 to the present:

- a. The average cost per cubic yard for ballast, by type;
- b. The average cost per cubic yard for the transportation and handling of ballast;
- c. The average length of haul represented by the value(s) in (b) above;
- d. The average cost per cubic yard for sub-ballast, by type;
- e. The average cost per cubic yard for transportation and handling of sub-ballast;
- f. The average length of haul represented by the value(s) in Subpart (e) above;
- g. The names and locations of all quarries supplying such ballast or sub-ballast; and
- h. The unit prices from all quarries listed in response to Subpart (g).

UP RESPONSE:

UP objects to this request on the grounds that it is unduly burdensome, is vague, is overbroad, seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and seeks information that would require a special study. UP

further objects to providing the cost for transportation to the extent it requires revelation of non-discoverable internal management cost data. Subject to and without waiving its objections, UP will produce responsive information with respect to ballast or sub-ballast used in Colorado, Western Texas, New Mexico and Arizona from 2006 through 2008 to the extent reasonably available.

REQUEST FOR PRODUCTION NO.77

Please produce documents sufficient to show the tunnels or former tunnels that have been constructed or removed (by daylighting or other means) by BNSF and/or UP, including tunnels constructed or removed, detailing location (line segment and milepost), length, number of tracks in the tunnel, method and time period of construction, and the cost per linear foot to construct or remove the tunnel, for any tunnels located on BNSF's and/or UP's system(s) in the SARR States. If no cost data is available for any such tunnels, please produce documents sufficient to show the cost per linear foot of any tunnel construction or removal performed anywhere on BNSF's and/or UP's system(s) since January 1, 2003.

UP RESPONSE:

UP objects to this request on the grounds that it is unduly burdensome, is vague, is overbroad, seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and seeks information that would require a special study.

Subject to and without waiving its objections, UP will produce responsive information to the extent reasonably available

REQUEST FOR PRODUCTION NO.78

Please produce bridge lists or other documents detailing location, a description of what is being crossed (*e g*, river, interstate highway, navigable waterway *etc.*), type, length, number of tracks and height for all bridges located on BNSF's and/or UP's system(s) in the SARR States.

UP RESPONSE:

UP objects to this request on the grounds that it is unduly burdensome, is vague, is overbroad, seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and seeks information that would require a special study.

Subject to and without waiving its objections, UP will produce responsive information for bridges located along the Route to the extent reasonably available.

REQUEST FOR PRODUCTION NO.79

For each of the types of bridges identified in the documents produced in response to 0, please produce documents sufficient to show the standard design for the bridge type and the unit costs (*e.g.* , cost per foot or other appropriate measure), for single track open deck and ballast deck construction and double track open deck and ballast deck construction, from January 1, 2003 to the present.

UP RESPONSE:

UP objects to this request on the grounds that it is unduly burdensome, is vague, is overbroad, seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and seeks information that would require a special study.

Subject to and without waiving its objections, UP will produce responsive information for standards in place during 2006 through 2008 to the extent reasonably available.

REQUEST FOR PRODUCTION NO.80

Please produce documents sufficient to show the following information related to the construction or replacement, in part or in whole, of each bridge on BNSF's and/or UP's system(s) in the SARR States from January 1, 2003 to the present:

- a. The location of the bridge, by line segment and milepost;
- b. An itemized listing of the bridge components being constructed or replaced (including quantities);
- c. The estimated cost, by component, for each of the components (identified in response to Subpart (b) above) being constructed or replaced; and
- d. The actual cost, by component, for each of the components (identified in response to Subpart (b) above) being constructed or replaced.

UP RESPONSE:

UP objects to this request on the grounds that it is unduly burdensome, is vague, is overbroad, seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and seeks information that would require a special study.

Subject to and without waiving its objections, UP will produce responsive information for bridges along the Route to the extent reasonably available.

REQUEST FOR PRODUCTION NO.81

Please produce documents listing the items, the cost of each item and the quantity of each item installed on BNSF's and/or UP's system(s) related to the construction and (during each year

or partial year 2005 to the present) operation of the centralized traffic control signal system(s) or any other traffic control system in use on the BNSF and/or UP system(s). Please indicate whether the costs include additional services such as installation, design planning, electrical drops for utilities, and/or transportation.

UP RESPONSE:

UP objects to this request on the grounds that it is unduly burdensome, is vague, is overbroad, seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and seeks information that would require a special study. UP specifically objects to the extent this request seeks documents related to non-complaint traffic.

Subject to and without waiving its objections, UP will produce responsive information to the extent reasonably available for locations along the Route.

REQUEST FOR PRODUCTION NO.82

For each year or partial year 2005 to the present, please produce documents containing the following information with regard to BNSF's and/or UP's hot bearing and dragging/failed equipment detectors ("FED"):

- a. The criteria for determining the appropriate spacing of the devices along BNSF's and/or UP's main lines, and
- b. The location of FEDs for the portion of BNSF's and UP's systems in the SARR States.

UP RESPONSE:

UP objects to this request on the grounds that it is unduly burdensome, is vague, is overbroad, seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and seeks information that would require a special study.

Subject to and without waiving its objections, UP will produce responsive information for locations along the Route to the extent reasonably available.

REQUEST FOR PRODUCTION NO.83

Please produce documents containing the following information for each BNSF and/or UP communications site (defined as a location with a microwave tower, a land mobile radio ("LMR") tower, a tower used for both purposes, or a location where communications equipment (microwave or LMR) is located that does not include a tower) located in the SARR States:

- a. The number of microwave towers, LMR towers, combined towers, or other communications equipment location (shown separately for each category);

- b. The latitude and longitude coordinates of each tower or other communications equipment location;
- c. The height of each tower in (i) feet above the ground and (ii) feet above sea level;
- d. The number of microwave antennae on each tower and the status of each antenna (*i.e.*, whether it is operational);
- e. The number of LMR antennae on each tower and the status of each antenna (*i.e.*, whether it is operational);
- f. The latitude and longitude coordinates of other communications sites that can link via microwave or radio from this site or a topological map of the communication system; and
- g. The acres of land owned or leased by BNSF and/or UP for these sites and the cost of purchase or lease.

UP RESPONSE:

UP objects to this request on the grounds that it is unduly burdensome, is vague, is overbroad, seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and seeks information that would require a special study. UP specifically objects to the extent this request seeks documents related to non-complaint traffic.

Subject to and without waiving its objections, UP will produce responsive information for locations along the Route to the extent reasonably available.

REQUEST FOR PRODUCTION NO.84

Please produce documents sufficient to show:

- a. BNSF's and/or UP's specifications for the construction of communications sites (as defined in Request for Production No. 83 above),
- b. The total number of BNSF and/or UP route miles in the SARR States that are covered by microwave communications;
- c. The total number of BNSF and/or UP route miles in the SARR States that are not covered by microwave communications;
- d. The cost, manufacturer and model number of each item and the quantities used for the construction and operation of the microwave radio and/or land mobile radio communications system(s) on the BNSF and/or UP system(s) during each of the years 2005 to the present; and
- e. The annual spot maintenance costs incurred by BNSF and/or UP for the microwave and/or land mobile radio tower communications system(s) per tower and by device type, in the SARR States, as well as the overall spot maintenance costs systemwide.

UP RESPONSE:

UP objects to this request on the grounds that it is unduly burdensome, is vague, is overbroad, seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and seeks information that would require a special study. UP specifically objects to the extent this request seeks documents related to non-complaint traffic.

Subject to and without waiving its objections, UP will produce responsive information for locations along the Route to the extent reasonably available.

REQUEST FOR PRODUCTION NO.85

Please produce documents sufficient to describe the specifications, functions, operation and costs, during each year or partial year 2005 to the present, of any communications system equipment other than microwave towers used to transmit data from devices such as mobile two-way radios, portable (hand-held) two-way radios, FEDs, AEI scanners and EOTDs across all or any part of the BNSF and/or UP system(s).

UP RESPONSE:

UP objects to this request on the grounds that it is unduly burdensome, is vague, is overbroad, seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and seeks information that would require a special study. UP specifically objects to the extent this request seeks documents related to non-complaint traffic.

Subject to and without waiving its objections, UP will produce responsive information beginning with 2006 to the extent reasonably available.

REQUEST FOR PRODUCTION NO.86

Please produce documents sufficient to show:

- a. The locations and quantities of fiber optic cabling installed on BNSF and/or UP rights-of-way in the SARR States;
- b. The bandwidth capacity of the fiber optic cabling identified in Subpart (a);
- c. The entity that owns and operates the fiber optic cabling identified in Subpart (a);
- d. The costs to BNSF and/or UP, if any, for installing the fiber optic cable identified in Subpart (a);
- e. Whether BNSF and/or UP is permitted to use the fiber optic cable identified in Subpart (a);
- f. The amount, if any, BNSF and/or UP pays the carriers for use of the fiber optic cable identified in Subpart (e); and

g The revenues or other payments BNSF and/or UP receive from the carriers for the use of the railroad's right-of-way.

UP RESPONSE:

UP objects to this request on the grounds that it is unduly burdensome, is vague, is overbroad, seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and seeks information that would require a special study

Subject to and without waiving its objections, UP will produce responsive information for location along the Route to the extent reasonably available.

REQUEST FOR PRODUCTION NO 87

If BNSF and/or UP utilizes the fiber optic cable(s) identified in response to 0, please provide documents sufficient to show:

- a The total number of BNSF and/or UP route miles in the SARR States that are covered by fiber optic backbone communications;
- b. The cost, manufacturer and model number of each item and the quantities used for the construction and operation of the fiber optic communications system on the BNSF and/or UP system(s) during each of the years 2005 to the present; and
- c. The annual spot maintenance costs incurred by BNSF and/or UP for the fiber optic communications system and by device type, in the SARR States, as well as the overall spot maintenance costs systemwide.

UP RESPONSE:

UP objects to this request on the grounds that it is unduly burdensome, is vague, is overbroad, seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and seeks information that would require a special study.

Subject to and without waiving objections will provide responsive information for the locations along the Route from 2006 through 2008.

REQUEST FOR PRODUCTION NO.88

Please produce documents sufficient to show the location, size (including square footage, number and lengths of tracks, capacity, etc.), components (such as equipment and machinery), and original cost of each facility located on any portion of BNSF's and/or UP's system(s) in the SARR States that falls within each of the following categories of facilities:

- a. Roadway maintenance facilities;
- b. Locomotive maintenance facilities;

- c. Locomotive servicing facilities (including fueling facilities);
- d. Administrative facilities;
- e. Rail yards,
- f. Dispatch centers;
- g. Freight car repair and maintenance facilities;
- h. Scales;
- i. Wastewater treatment plants;
- j. Landslide/rockslide detection/protection devices or facilities,
- k. Snowshed facilities; and
- l. Train, yard and engineman facilities.

UP RESPONSE:

UP objects to this request on the grounds that it is unduly burdensome, is vague, is overbroad, seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and seeks information that would require a special study.

Subject to and without waiving its objections, UP will produce responsive information for the states of Colorado, West Texas, New Mexico and Arizona to the extent reasonably available.

REQUEST FOR PRODUCTION NO.89

For each year or partial year 2005 to the present, please produce documents which contain the following information with regard to BNSF and/or UP highway and railroad at-grade crossings:

- a. The various sizes, compositions and costs per linear foot (installed) of a one-lane private road crossing over a single line of track;
- b. The various sizes, compositions and costs per linear foot (installed) of a two-lane public highway crossing over a single line of track;
- c. The various sizes, compositions and costs per linear foot (installed) of a four-lane public highway crossing over a single line of track;
- d. The installed cost of signs for a private road crossing (if necessary);
- e. The installed cost of signs for a public highway crossing;
- f. The installed cost of each of the different types of protective devices identified in the response to Subpart (g) below;
- g. A list identifying each component required for an automatic type interlocking (assuming a diamond crossing);
- h. The cost of each of the components identified in response to Subpart (g) above and the cost of installation for each year or partial year 2005 to the present;
- i. The costs for a 16-foot and 24-foot cattle guard and the cost of installation for each year or partial year 2005 to the present; and
- j. Any additional costs incurred.

UP RESPONSE:

UP objects to this request on the grounds that it is unduly burdensome, is vague, is overbroad, seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and seeks information that would require a special study.

Subject to and without waiving its objections, UP will produce responsive information for locations along the Route to the extent reasonably available.

REQUEST FOR PRODUCTION NO.90

Please produce documents in a computer readable format, if available, containing the following information for each BNSF and/or UP at-grade and grade-separated highway crossing on the portion of the BNSF and/or UP system(s) in the SARR States:

- a. Geographic location, *i.e.*, city, county and state;
- b. Rail location, *i.e.*, railroad, line name and milepost;
- c. Width;
- d. Length;
- e. Type of construction;
- f. Number of tracks,
- g. Type of protective devices;
- h. Date of initial installation at the location;
- i. Total cost of the initial installation and the amount borne by BNSF and/or UP, if any; and
- j. Identification of the party responsible for ongoing maintenance of any such structures.

UP RESPONSE:

UP objects to this request on the grounds that it is unduly burdensome, is vague, is overbroad, seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and seeks information that would require a special study.

Subject to and without waiving its objections, UP will produce responsive information for locations along the Route to the extent reasonably available.

REQUEST FOR PRODUCTION NO 91

Please produce documents sufficient to show the location, linear feet, and type of fencing (*e.g.*, snow fence) for all fencing currently in place on the portion of the BNSF and/or UP system(s) in the SARR States.

UP RESPONSE:

UP objects to this request on the grounds that it is unduly burdensome, is vague, is overbroad, seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and seeks information that would require a special study.

Subject to and without waiving its objections, UP will produce responsive information for locations along the Route to the extent reasonably available.

REQUEST FOR PRODUCTION NO.92

Please produce all documents relating to any contribution by any governmental or quasi-governmental entity (including, without limitation, AMTRAK) to the construction or maintenance of at-grade or grade separated crossings located in the SARR States.

UP RESPONSE:

UP objects to this request on the grounds that it is unduly burdensome, is vague, is overbroad, seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and seeks information that would require a special study. Subject to and without waiving its objections, UP will produce responsive information for locations along the Route to the extent reasonably available.

REQUEST FOR PRODUCTION NO.93

Please produce documents sufficient to show the following for each construction and rehabilitation project which exceeded \$500,000 in cost and was completed by BNSF and/or UP, or an outside contractor acting on BNSF's and/or UP's behalf, since January 1, 2005:

- a. The date the project was started;
- b. The date the project was completed;
- c. A complete copy of the Authorization For Expenditure ("AFE") and description of all columns and data contained with the AFEs;
- d. A complete copy of the Roadway Completion Report or any successor document; and
- e. All invoices underlying each AFE and/or Roadway Completion Report

UP RESPONSE:

UP objects to this request on the grounds that it is unduly burdensome, is vague, is overbroad, seeks information that is neither relevant nor reasonably calculated to lead to the

discovery of admissible evidence, and seeks information that would require a special study. Subject to and without waiving its objections, UP will produce a list of AFEs and/or work orders for construction and rehabilitation projects that exceeded \$500,000 in cost and were completed since January 1, 2006, and will make available to AEPCO the AFEs and/or work orders that AEPCO identifies from that list to the extent reasonable

UP states that it does not produce Roadway Completion Reports or any successor document.

REQUEST FOR PRODUCTION NO 94

Please produce documents, including but not limited to AFE, construction plans, engineering estimates, bid tabs, contractor invoices, and construction specifications for the any projects that a carrier other than BNSF and/or UP has undertaken in the SARR States for which BNSF and/or UP paid for some or all of the project.

UP RESPONSE:

UP objects to this request on the grounds that it is unduly burdensome, is vague, is overbroad, seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and seeks information that would require a special study. Subject to and without waiving its objections, UP will produce a list of AFEs and/or work orders for construction and rehabilitation projects that exceeded \$500,000 in cost and were completed since January 1, 2006, and will make available to AEPCO the AFEs and/or work orders that AEPCO identifies from that list to the extent reasonable.

UP states that it does not produce Roadway Completion Reports or any successor document.

REQUEST FOR PRODUCTION NO.95

For the CTC or other traffic control system, signal devices, powered grade crossing protective/warning devices, and/or other powered devices such as switches on any portion of the BNSF and or/UP system located in the SARR States, please produce documents sufficient to show the source of electricity powering each device, and whether BNSF and/or UP paid for the connection to the source of electricity. In addition, please produce documents sufficient to show

BNSF's and/or UP's costs for an electrical drop to any powered on-track or trackside device in each SARR State during the period from January 1, 2006 to the present.

UP RESPONSE:

UP objects to this request on the grounds that it is unduly burdensome, is vague, is overbroad, seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and seeks information that would require a special study. UP specifically objects to the extent this request seeks documents related to non-complaint traffic.

Subject to and without waiving its objections, UP will produce responsive information to the extent reasonably available.

REQUEST FOR PRODUCTION NO 96 (UP Only)

Please produce all documents related the development, construction and operation of a new yard facility at Santa Teresa, NM, including, but not limited to, potential operational and/or physical changes in or to UP's El Paso Yard

UP RESPONSE:

UP objects to this request on the grounds that it is unduly burdensome, is vague, is overbroad, and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. UP further objects to the extent the Request seeks confidential, proprietary, and/or trade secret information of third-parties or information that may be subject to confidentiality agreements with persons or entities not party to this lawsuit.

Subject to and without waiving its objections, UP will produce responsive information, if any, to the extent reasonably available.

REQUEST FOR PRODUCTION NO.97

Please produce all studies or analysis conducted by or for UP and/or BNSF from January 1, 2006 to date related to the STB's annual revenue adequacy determination, including, but not limited to, any studies or analysis considering whether BNSF and/or UP will be considered revenue adequate for 2008 or otherwise earn a return that covers its cost of capital.

UP RESPONSE:

UP objects to this request on the grounds that it is unduly burdensome, is vague, is overbroad, and seeks information that is neither relevant nor reasonably calculated to lead to the

discovery of admissible evidence. UP further objects to communications between BNSF and UP or documents that would reveal the division of revenue or that would reveal its internal costs on grounds that the Board has previously rated such information irrelevant and denied discovery. See Docket No. 42058, Arizona Electric Power Cooperative, Inc. v. The Burlington Northern and Santa Fe Railway Company and Union Pacific Railroad Company, Decision served December 31, 2001.

REQUEST FOR PRODUCTION NO.98

Please produce all inflation and/or rail cost adjustment estimates or calculations in BNSF's and/or UP's possession or that BNSF or UP prepared or caused to be prepared or purchased for each year or partial year 2006 to the present, including, but not limited to, any estimates relating to:

- a. The cost of acquiring equity;
- b. The cost of acquiring debt;
- c. General expenses, including, but not limited to, asset, equipment, materials and supplies, fuel and labor expense;
- d. Railroad productivity, including but not limited to commodity-specific productivity, asset productivity and expense productivity;
- e. Gross Domestic Product/Implicit Price Deflator;
- f. Producer Price Index - All Commodities; and
- g. The U.S. Department of Energy's U.S. average price of Retail On-Highway Diesel Fuel.

UP RESPONSE:

UP objects to this request on the grounds that it is unduly burdensome, is vague, is overbroad, seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and seeks information that would require a special study.

Subject to and without waiving its objections, UP will produce responsive information responsive to subparts (a) and (b) to the extent reasonably available.

REQUEST FOR PRODUCTION NO.99 (BNSF Only)

Please produce all studies or analysis conducted by BNSF from January 1, 2004 to date related to the closing of the McKinley Mine, including, but not limited to, any studies or analysis developing the costs to abandon and salvage BNSF's rail line from North Tipple, NM to Defiance, NM.

UP RESPONSE:

This request is not directed at UP.

REQUEST FOR PRODUCTION NO.100 (BNSF Only)

Please produce all studies or analysis conducted by BNSF from January 1, 2004 to date related to industrial development on property owned or accessible to BNSF's rail line between North Tipple, NM and Defiance, NM.

UP RESPONSE:

This request is not directed at UP.

Respectfully submitted,

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March 23, 2009

CERTIFICATE OF SERVICE

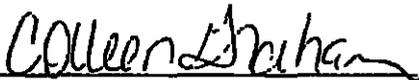
I, Michael L. Rosenthal, certify that on this 23rd day of March, 2009, I caused copies of Union Pacific's Responses to AEPSCO's Interrogatories, Request for Production or Documents and Request for Admissions to be served by US Mail to:

William L. Slover
Robert D. Rosenberg

Christopher A. Mills
Daniel M. Jaffe
Slover & Loftus
1224 Seventeenth Street, NW
Washington D.C., 20036

and

Patrick A. Ledger
Arizona Electric Power Cooperative Inc.
Corporate Counsel
1000 S. Highway 80
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Colleen K. Graham