

BEFORE THE  
SURFACE TRANSPORTATION BOARD



ARIZONA ELECTRIC POWER  
COOPERATIVE, INC.

Complainant,

v.

UNION PACIFIC RAILROAD COMPANY,

Defendant.

Docket No. 42113 (Sub-No. 1)

225057

**NOTICE OF FILING OF VERIFIED NOTICE OF COMPLIANCE**

Pursuant to 49 C.F.R. § 1119.1, attached is a Verified Notice of Compliance with the Board's Order served April 23, 2009, in the above-captioned proceeding. The Order directed Union Pacific Railroad Company to establish, within ten business days, common carrier rates and service terms to apply to Arizona Electric Power Cooperative, Inc's Colorado and Southern Powder River Basin coal traffic in the event that the U.S. District Court for the District of Arizona rules that Union Pacific and AEPCO have not entered into an enforceable contract that governs the transportation of that traffic.

Respectfully submitted,

LINDA J. MORGAN  
MICHAEL L. ROSENTHAL  
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1201 Pennsylvania Avenue, N.W.  
Washington, DC 20004  
(202) 662-6000

J. MICHAEL HEMMER  
LOUISE A. RINN  
TONYA W. CONLEY  
Union Pacific Railroad Company  
1400 Douglas Street  
Omaha, NE 68179  
(402) 544-3309

*Attorneys for Union Pacific Railroad Company*

May 6, 2009

ENTERED  
Office of Proceedings

MAY 06 2009

Part of  
Public Record

ARIZONA ELECTRIC POWER  
COOPERATIVE, INC.

Complainant,

v.

UNION PACIFIC RAILROAD COMPANY,

Defendant.



Docket No. 42113 (Sub-No. 1)

**VERIFIED NOTICE OF COMPLIANCE**

I, Louise A. Rinn, verify under penalty of perjury that Union Pacific Railroad Company has complied with the Board's order served April 23, 2009, in the above-captioned proceeding by establishing common carrier rates and service terms to apply to Arizona Electric Power Cooperative, Inc's Colorado and Southern Powder River Basin coal traffic in the event that the U.S. District Court for the District of Arizona rules that Union Pacific and AEPCO have not entered into an enforceable contract that governs the transportation of that traffic. The common carrier rates and service terms established by Union Pacific are described in the correspondence and document attached to this Verified Notice. Simultaneously with the filing of this Verified Notice of Compliance with the Board, a copy of this Verified Notice will be served on counsel for AEPCO. I further certify that I am qualified and authorized to file this Verified Notice of Compliance

Louise A. Rinn  
Associate General Counsel  
Union Pacific Railroad Company  
1400 Douglas Street  
Omaha, NE 68179  
(402) 544-3309

Dated: May 6, 2009



**VIA ELECTRONIC MAIL AND  
OVERNIGHT DELIVERY**

May 5, 2009

Patrick Ledger, Esq.  
Corporate Counsel  
Arizona Electric Power Cooperative, Inc.  
P.O. Box 670  
Benson, Arizona 85602-0670

Re: STB Docket No. 42113 (Sub-No. 1)

Dear Mr. Ledger:

In a decision served April 23, 2009, in the above-referenced proceeding, the Surface Transportation Board ordered Union Pacific to establish within ten business days "common carrier rates and service terms to apply to AEPCO's Colorado and SPRB traffic in the event that the [U.S. District Court for the District of Arizona] rules that the parties have not entered into an enforceable contract." Under the Board's decision, such common carrier rates and service terms "will apply only if the court rules or the parties agree that no contract exists between the parties that governs that traffic at issue."

In compliance with the Board's order, Union Pacific has established as provisional common carrier rates and service terms the rates and service terms set forth in the document that Union Pacific transmitted to AEPCO on June 26, 2008 (including Appendix A and B).<sup>1</sup> To eliminate any confusion or uncertainty, I have attached a copy of that document to this letter.

As provided by the Board's order, these common carrier rates and service terms will apply only if the U.S. District Court for the District of Arizona rules that Union Pacific and AEPCO have

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<sup>1</sup> Because these provisional rates would be common carrier rates subject to change upon 20-days' notice, the "Term," "Reference," "Termination," "Rate Adjustment," and "Confidentiality" provisions set forth in that document would not apply. In addition, shipments would not be subject to the provisions of Rules Circular UP 113-Series, but they will be subject to UP Circular 6602-series for Colorado-originated shipments and UP Circular 6603-series for Wyoming-originated shipments. The UP Circulars can be found at <http://www.uprr.com/customers/energy/circulars.shtml>.

Louise Anne Rinn  
Associate General Counsel

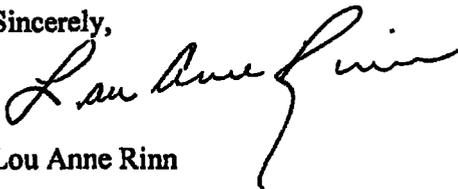
UNION PACIFIC RAILROAD  
1400 Douglas St., Stop 1580, Omaha, NE 68179-1580  
ph (402) 544-3309 fx. (402) 501-0129  
larinn@up.com

not entered into an enforceable contract that governs the transportation by Union Pacific of AEPCO's Colorado and SPRB traffic.

Union Pacific reserves the right to increase the provisional common carrier rates or change the provisional common carrier service terms upon 20-days' notice. *See* 49 C.F.R. § 1300.4.

Union Pacific's compliance with the Board's order does not reflect a concession (a) that the Board has jurisdiction to order Union Pacific to establish provisional common carrier rates and service terms in the present circumstances, or (b) that a transportation service contract applicable to shipments from these origins does not exist. Union Pacific has established provisional common carrier rates to avoid unnecessary litigation at this stage of the administrative proceeding.

Sincerely,

A handwritten signature in cursive script, appearing to read "Lou Anne Rinn". The signature is written in black ink and is positioned above the printed name.

Lou Anne Rinn

cc: Jeff Maier

Enclosures



UP-C-53173

## UNION PACIFIC RAILROAD COMPANY

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# Signed Contract

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**Issued:**

**Effective:**  
January 1, 2009

**Rates printed as of (June 26, 2008)**

**Issued by:**  
Union Pacific Railroad Company  
1400 Douglas Street  
Omaha, NE 68179



Please use this number in all correspondence.	ZZV
UP-C-53173	

**CONFIDENTIAL RAIL TRANSPORTATION CONTRACT  
PURSUANT TO 49 U.S.C. SECTION 10709**

**Agreement:** This Agreement is made between ARIZONA ELECTRIC POWER COOPERATIVE INC (Customer) and the following participating carriers (together referred to as Railroad): UNION PACIFIC RAILROAD COMPANY (UP).

This CONTRACT is made pursuant to 49 U.S.C. 10709. No subsequent agreement amending, supplementing, modifying, or terminating this Agreement shall be binding on Railroad or Customer unless in writing and executed by their respective authorized representatives.

**Term:** The Effective Date of this Agreement shall be January 1, 2009 and it shall expire on December 31, 2011 (Expiration Date).

**Reference:** All shipping Documents must make reference to UP-C-53173 as well as the seven digit STCC (where applicable), Origin, Destination and Equipment Identification Number on their face when tendered to the Origin Carrier.

**Subject To:** Except as otherwise specifically provided herein, this Agreement is subject to the provisions of Rules Circular UP 113-Series. In addition, shipments originating in Colorado or Utah are subject to UP 6602-Series, shipments originating in Wyoming are subject to UP 6603-Series, and shipments originating in states other than Colorado, Utah or Wyoming are subject to UP 6605-Series.

**Termination:** If no shipments are tendered for movement pursuant to this Agreement for ninety (90) consecutive days, exclusive of any Force Majeuro periods, Railroad reserves the right to terminate this Agreement by giving Shipper not less than twenty (20) days advance written notice of such termination, which notice shall include the intended date of termination. Termination of this Agreement for any reason shall not release any party from any obligations that may have accrued prior to such termination.

**Maximum Volume:** The maximum volume that Railroad will transport under this Agreement is 1,500,000 Net Ton(s) of Commodity shipped from Origin(s) to Destination(s) for each twelve month(s) period, beginning January 1, 2009 through December 31, 2009 and each twelve month(s) period thereafter, if any, during the term of this Agreement. The number of maximum volume periods shall be limited to the number of such periods occurring during the Term of this Agreement, and Railroad is under no obligation to transport volumes following the end of the Term of this Agreement.

**Equipment:** Not more than 4 trains(s) may be placed in service under this Agreement at any one time, unless prior written permission is granted by UP.

**Service:** Railroad shall use reasonable efforts to transport Coal based on the circumstances when the transportation occurs. Railroad shall not be responsible for delays due to weather, track maintenance or construction, equipment failures, embargoes, Acts of God, labor activities, including strikes, denial of or limitation of access to track controlled by any party other than Railroad, excessive demand, or events outside the control of the Railroad. Railroad intends to use reasonable efforts to deliver the Annual Volume Estimate and the Monthly Coal Tonnage Forecast furnished by Shipper but has no binding obligation to comply with these planning estimates.

**Liquidated Damages Service:** The rate(s) in this Agreement apply in return for limited liability terms as follows: Shipper agrees that except for freight loss and damage, and damage to equipment, in no event will Railroad's responsibility for damages exceed five dollars (\$5.00) per net ton as compensation for obtaining an alternative fuel supply or any other damages incurred by Shipper. Said damages of five dollars (\$5.00) per net ton are not a penalty, but are agreed upon as reasonable, and are intended by the parties to be Shipper's sole and exclusive remedy for any damages caused by Railroad. In no event shall Railroad be liable for any service guarantee. Further, to the extent allowed by law, under no circumstances will Railroad be liable for any direct, indirect, actual or consequential damages or any other liability, or additional costs of any kind arising out of or caused by service interruptions, reductions, or excessive demand.

**Other Applicable Provisions:**

**Coal Dust:** In the event that UP adopts a rule or rules regarding coal dust emissions applicable to the shipment of coal from Origin(s) (Coal Dust Standards) during the term of this Agreement, UP shall notify Shipper in writing at least ninety days before such Standards would apply to transportation under this Agreement if it intends to apply such standards to Coal transported under this Agreement pursuant to Subject To.

After receiving notice that Coal Dust Standards will apply to transportation under this Agreement, Shipper may seek to renegotiate the Agreement by sending written notice to Railroad stating what modifications it seeks in light of the application of the Coal Dust Standards. Within 15 days, the parties will schedule a meeting to discuss possible contract modifications and negotiate in good faith. If the parties fail to reach agreement on modifications within 60 days of Railroad receiving Shipper's renegotiation notice, and UP reaffirms its intention to apply Coal Dust Standards to transportation under this Agreement, the Shipper shall have the right to terminate the Agreement effective the same day the Coal Dust Standards would apply.

**Confidentiality:** No party hereto shall disclose any information regarding any part of this Agreement except; (i) upon the written consent of all parties to this Agreement, or (ii) to the extent that in the opinion of counsel disclosure is required by law. Where such disclosure is required, notice shall be given to all other parties, and to the extent possible, such notice shall be given in advance of disclosure. The parties hereto will make every effort to protect the confidentiality of the rates and other charges under this Agreement.

**Rate Adjustments:** Beginning January 1, 2010, the Contract Rate(s) will be adjusted Annually, by a ratio, rounded to 3 decimal places, equal to the January 1, 2010 quarter All Inclusive Index Less Fuel (AIIILF) with Forecast Error Adjustment as published by the Association of American Railroads (AAR) or successor organization, divided by the January 1, 2009 quarter AIIILF. Similarly, subsequent annual January 1 adjustments will be calculated by dividing the then current AIIILF by the AIIILF from the same quarter of the immediately preceding year. In no event will the Contract Rate(s) be decreased below the January 2009 quarter level.

If the AAR rebases the AIIILF, the rebased values will be used in the adjustment calculations. If the previous period's AIIILF value was not restated by the AAR, the parties will restate it with a linking factor. If no methodology is recommended by the AAR, the linking factor will be calculated as the ratio of the AIIILF as rebased divided by the AIIILF on the old base for the first period in which the AIIILF is published on both bases. This ratio will be the linking factor which will be multiplied by the previous period's value in need of restatement before making the current adjustment calculations.

In the event the AAR ceases to publish the AIIILF, the parties shall determine an appropriate substitute index that most closely matches the structure of the AIIILF. The substitute index shall be used for the remainder of the contract. If the parties cannot agree on a substitute index within 90 days after the cancellation of the index, any party may submit the matter to be determined by binding arbitration.

**Surcharge:** In the event the average price of Retail On-Highway Diesel Fuel (as set forth below, the "HDP Average Price"), calculated monthly based on prices reported on the U.S. Department of Energy Website ([eia.doe.gov](http://eia.doe.gov)) equals or exceeds \$2.30 per gallon, UP will add a mileage-based fuel surcharge to the freight charges under this Agreement. The fuel surcharge shall be applied to each shipment having a waybill dated on or after the 1st day of the second calendar month following the calendar month of a given HDP Average Price (e.g., a fuel surcharge applied beginning July 1 would be based on May's HDP Average Price).

The HDP Average Price for a given calendar month will be determined by adding the weekly Retail On-Highway Diesel Fuel prices reported on the U.S. Department of Energy Website (eia.doe.gov), and dividing the result by the number of weeks so reported. The result will be rounded to the nearest tenth of a cent. If the Department of Energy ceases reporting of the price of Retail On-Highway Diesel Fuel, UP will employ a suitable substitute source of price or measure. Schedule reflects the applicable fuel surcharges within the HDP Average Price ranges noted below:

HDP Average Price (Per Gallon)	Fuel Surcharge (Cents Per Mile Per Car)
\$0.00 to \$2.299	\$0.00
\$2.30 to \$2.349	\$0.05
\$2.35 to \$2.399	\$0.06
\$2.40 to \$2.449	\$0.07
\$2.45 to \$2.499	\$0.08
\$2.50 to \$2.549	\$0.09
\$2.55 to \$2.599	\$0.10
\$2.60 to \$2.649	\$0.11
\$2.65 to \$2.699	\$0.12
\$2.70 to \$2.749	\$0.13
\$2.75 to \$2.799	\$0.14
\$2.80 to \$2.849	\$0.15
\$2.85 to \$2.899	\$0.16
\$2.90 to \$2.949	\$0.17
\$2.95 to \$2.999	\$0.18
\$3.00 to \$3.049	\$0.19
\$3.05 to \$3.099	\$0.20
\$3.10 to \$3.149	\$0.21
\$3.15 to \$3.199	\$0.22
\$3.20 to \$3.249	\$0.23
\$3.25 to \$3.299	\$0.24
\$3.30 to \$3.349	\$0.25
Each \$0.05 per gallon increase thereafter	Additional 1 cent per mile

AIK Technologies' PC\*Miller Mail Fuel Surcharge (FMI), as amended from time-to-time, will be used to calculate total miles. If interline price routing is involved, mileages will be calculated via the revenue route junction(s) of the price used to rate the shipment.

Exhibit/Rider: This Agreement hereby incorporates the terms and conditions of any Appendix, Exhibit, Segment or Rider attached hereto. In the event of a conflict between this Agreement's printed words and the Appendix, Exhibit, Segment or Rider the Appendix, Exhibit, Segment or Rider shall govern.

THIS AGREEMENT, consisting of the terms and conditions set forth above, the Appendix, Exhibit, Segment or Rider, has been executed by the authorized officials of the parties hereto and may not be modified or amended in whole or in part, except by a supplemental agreement that is executed by all parties.

UP-C-33173 cont'd.

**ARIZONA ELECTRIC POWER COOPERATIVE INC**

**By:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**UNION PACIFIC RAILROAD COMPANY**

**By:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Date Signed:** \_\_\_\_\_

STCC Code	Description
11	Coal
<p>1. Applies in shipper owned or leased equipment.</p> <p>2. Mileage allowance payment on private equipment will not apply.</p>	

APPLICATION AND RATES	
Column 1	Column 2
1.	<p>Rates are in U.S. dollars Per Net Ton.</p> <p>Subject to a minimum lading weight of 115 tons per car.</p> <p>Applies if minimum tender per shipment is 105 Car(s) and maximum not greater than 115 Car(s).</p>
<p>STCC: 11 Coal</p> <p>From: ENERGY CRAIG BRANCH MINES GROUP</p> <p>To: AZ, COCHISE</p>	
	37.60 UP

APPLICATION AND RATES	
Column 1	Column 2
1.	<p>Rates are in U.S. dollars Per Net Ton.</p> <p>Subject to a minimum lading weight of 115 tons per car.</p> <p>Applies if minimum tender per shipment is 100 Car(s) and maximum not greater than 104 Car(s).</p>
<p>STCC: 11 Coal</p> <p>From: ENERGY NORTH FORK MINES GROUP</p> <p>To: AZ, COCHISE</p>	
	43.21 UP

APPLICATION AND RATES	
Column 1	Column 2
1.	<p>Rates are in U.S. dollars Per Net Ton.</p> <p>Subject to a minimum lading weight of 115 tons per car.</p> <p>Applies if minimum tender per shipment is 115 Car(s) and maximum not greater than 120 Car(s).</p>
<p>STCC: 11 Coal</p> <p>From: ENERGY SPRING MINES GROUP</p> <p>To: AZ, COCHISE</p>	
	41.23 UP

**APPENDIX A  
ORIGIN AND DESTINATION GROUPS**

**GROUP NAME  
LOCATIONS**

**ENERGY CRAIG BRANCH MINES GROUP  
CO, AXIAL  
CO, ENERGY**

**ENERGY NORTH FORK MINES GROUP  
CO, ARCO  
CO, BOWIE  
CO, SOMERSET**

**ENERGY SPRING MINES GROUP  
WY, ANTELOPE MINE  
WY, BELLE AYE MINE  
WY, BLACK THUNDER MINE  
WY, BLACK THUNDER SOUTH  
WY, CABALLO MINE  
WY, CABALLO ROJO MINE  
WY, COAL CREEK MINE  
WY, CORDERO MINE  
WY, JACOBS RANCH MINE  
WY, N ANTELOPE MINE  
WY, ROCKHILL MINE**

**UP-C-53173 cont'd.**

**APPENDIX B  
UNLOADING/SWITCHING**

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

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

Shipper shall notify UP on an annual basis as to whether Shipper crews or UP crews will be operating the locomotives to unload trains and perform the switch work during each annual period. Shipper agrees that such notice will be communicated by October 1, 2008 for the 2009 annual period and by October 1 thereafter for the subsequent annual period(s). For communication and logistical purposes, once Shipper provides notice to UP that Shipper's crews will operate locomotives, etc., then Shipper agrees to perform such work during that entire annual period.

**CERTIFICATE OF SERVICE**

I, Michael L. Rosenthal, certify that on this 6th day of May, 2009, I caused copies of the foregoing Verified Notice of Compliance to be served by hand on:

William L. Slover  
Robert D. Rosenberg  
Christopher A. Mills  
Daniel M. Jaffe  
Slover & Loftus  
1224 Seventeenth Street, N.W.  
Washington, DC 20036

and by overnight mail on:

Patrick F. Ledger  
Arizona Electric Power Cooperative, Inc.  
Corporate Counsel  
1000 S. Highway 80  
Benson, AZ 85602



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Michael L. Rosenthal