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August 25, 2009



BY ELECTRONIC FILING

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

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

Dear Acting Secretary Quinlan:

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

By letter dated February 20, 2009, AEPCO amended its complaint to encompass Common Carrier Pricing Authority BNSF 57988, which established common carrier rates for AEPCO's shipments of coal from the Northern PRB origins.

By this letter, AEPCO further amends its complaint to encompass Common Carrier Pricing Authority BNSF 58039, copy attached as Attachment A, which establishes common carrier rates for AEPCO's shipments of coal from the Signal Peak Mine - Peaks, MT. AEPCO received Common Carrier Pricing Authority BNSF 58039 from BNSF on August 20, 2009.

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

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If there are any questions concerning this matter, please contact the undersigned.

Respectfully submitted,



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

Enclosure

RDR:rlh

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

Attachment A

**The Burlington Northern and Santa Fe Railway Company ("BNSF")
Common Carrier Pricing Authority BNSF 58039**

Effective Date: The later of: (a) September 1, 2009 or (b) the date on which the Signal Peak Mine commences unit train operations

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

Origins: Signal Peak Mine -Peaks, MT

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

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

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

| <u>Origin</u> | <u>Minimum Weight Per Carload</u> | <u>Shipper-provided Railcars</u> |
|-------------------------|-----------------------------------|----------------------------------|
| Signal Peak - Peaks, MT | 118 | \$44.23 |

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

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

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

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

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

**The Burlington Northern and Santa Fe Railway Company ("BNSF")
Common Carrier Pricing Authority BNSF 58039**

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

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

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

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

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

Billing and Payment: Freight Charges will be billed by BNSF and paid by Shipper within ten working days of receipt of a bill therefor. BNSF will bill each shipment under the terms of the Uniform Straight Bill of Lading. All railcars for each shipment are to be billed on one (1) Bill of Lading. This **Common Carrier Authority BNSF 58039**, correct address and patron code must be shown on the Bill of Lading to insure accurate billing. In the event Shipper does not make timely payment, or if adverse credit conditions occur, which in the judgment of either Railroad could affect Shipper's ability to meet payment terms, either Railroad may require Shipper to pay cash in advance of service for all amounts for which Shipper is liable under this Common Carrier Authority. Charge for Accessorial Services shall be billed by the Railroad providing such service. Shipper shall pay for such services within ten working days of receipt of a bill therefor.

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