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October 30, 2009

BY E-FILING

The Honorable Anne K. Quinlan
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 Secretary Quinlan:

Enclosed for filing in the referenced proceeding is Complainant Arizona Electric Power Cooperative, Inc.'s Second Unopposed Motion to Extend Procedural Schedule. As stated in the Motion, the Defendants do not oppose the relief requested therein.

Because the current due date for AEPCO's opening evidence (November 13, 2009) is just two weeks away, AEPCO requests that the Board take **EXPEDITED ACTION** on the enclosed Motion.

Please provide electronic receipt of this filing. Thank you.

Respectfully submitted,



Christopher A. Mills

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Enclosure

cc (w/enclosure): Counsel for Defendants per Certificate of Service

EXPEDITED ACTION REQUESTED

**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 ARIZONA ELECTRIC POWER COOPERATIVE, INC.’S
SECOND UNOPPOSED MOTION TO EXTEND PROCEDURAL SCHEDULE**

Pursuant to 49 C.F.R. §§ 1104.7(b) and 1115.5(a), Complainant Arizona Electric Power Cooperative, Inc. (“AEPCO”), respectfully requests that the Board extend the remaining due dates under the procedural schedule for this proceeding, as follows:

	<u>Current Due Date</u>	<u>Proposed Due Date</u>
Complainant’s opening evidence	November 13, 2009	January 15, 2010
Defendants’ reply evidence	February 25, 2010	April 28, 2010
Complainant’s rebuttal evidence	April 9, 2010	June 11, 2010
Closing briefs	April 30, 2010	July 2, 2010

Both defendants, BNSF Railway Company (“BNSF”) and Union Pacific Railroad Company (“UP”), have authorized AEPCO to advise the Board that they do not oppose the requested extension.

This is the second time AEPCO has had to ask for an extension of the procedural schedule in this case. The first request, made in AEPCO's Unopposed Motion to Extend Procedural Schedule filed May 20, 2009 ("First Motion to Extend"), was occasioned by the general complexity of the case and discovery disputes that were not resolved until relatively late in the original discovery period.

Discovery in this case closed in mid-July 2009, but AEPCO and both defendants have engaged in numerous follow-up communications to assist AEPCO's consultants in interpreting and using data produced by the railroads and to address requests for supplemental data. In addition, the traffic and revenue data that UP initially produced omitted UP intermodal traffic and had to be re-produced at a later date.

The process used to designate and produce relevant rail transportation contracts and other pricing authorities ("pricing documents") has caused further delay. In their responses to AEPCO's discovery requests both railroads asked AEPCO to designate the pricing documents it wished them to produce after reviewing their traffic and revenue data. AEPCO designated the pricing documents to be produced in early September (coal traffic) and mid-September (non-coal traffic) of 2009. All parties understood that the railroads then had to advise their customers (in the case of the many pricing documents with confidentiality provisions) of the request for production and give them an opportunity to object to the production under the terms of the Protective Order in this case. (While one BNSF shipper objected to production of its transportation contract, it appears that the objection will be resolved shortly.)

On October 7, 2009, counsel for BNSF advised AEPCO's counsel that BNSF objected to producing a number of the pricing documents requested by AEPCO, as well as certain requested forecasts. The parties have recently resolved their differences with respect to the scope of pricing document production, but the upshot is that BNSF has just begun the production of non-coal pricing documents and will likely complete their production by the end of the first week in November.¹

The sequence described above does not leave any time to complete the iterative process leading to the finalization of the SARR system and operating plan described in AEPCO's First Motion to Extend. In particular, the traffic group cannot be completed, and the peak-period train list used for the RTC Model simulation of the SARR's operations prepared, until after the relevant pricing documents have been received and reviewed. It will take a minimum of 10 days after receipt of all of the pricing documents to finalize the peak train list, which then must be input into the RTC Model. Only after the RTC Model simulation has been completed can the SARR system configuration and traffic group be finalized, and many of its annual operating expenses developed.

The foregoing demonstrates that AEPCO cannot possibly finalize opening evidence by the current due date of November 13, 2009. To provide time for BNSF (and UP) to complete the production of relevant pricing documents, and then for AEPCO to complete its opening evidence, an extension of about six weeks would be needed under

¹ UP began producing transportation contracts and pricing authorities in mid-October of 2009, but its production is not complete as of this writing.

ordinary circumstances. Allowing for the upcoming Thanksgiving and Christmas/New Years holidays, AEPCO requests an extension of the due date for its opening evidence of two months, to January 15, 2010. A comparable extension of the due dates for reply and rebuttal evidence has been provided. The proposed schedule has also been crafted to avoid conflict with the remaining procedural schedule in *Seminole Electric Cooperative v. CSXT* (Docket No. 42110) and to minimize conflict with other pending Board litigation in which UP is involved.

The revised schedule proposed herein has been agreed to by AEPCO and both defendants. AEPCO has been authorized to represent to the Board that both BNSF and UP do not oppose the relief requested herein.

CONCLUSION

For the foregoing reasons, good cause exists to modify the procedural schedule in this case as requested in this Motion .

Respectfully submitted,

ARIZONA ELECTRIC POWER
COOPERATIVE, INC.

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Dated: October 30, 2009

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CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of October, 2009, I caused copies of the foregoing Second Motion to Extend be served by email upon counsel for Defendants, as follows:

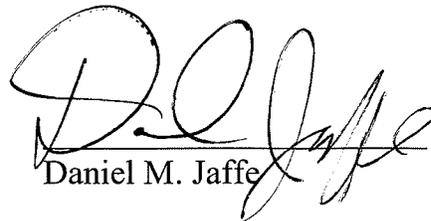
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