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January 2, 2003

BY HAND DELIVERY

206 984

The Honorable Vernon A. Williams  
Secretary  
Surface Transportation Board - Case Control Unit  
1925 K Street, N.W.  
Washington, D. C. 20423

ENTERED  
Office of Proceedings

JAN 02 2003

Part of  
Public Record

Re: Docket No. 42058, Arizona Electric Power Cooperative, Inc. v.  
The Burlington Northern and Santa Fe Ry and Union Pacific R.R.

Dear Secretary Williams:

Enclosed for filing in the above-referenced proceeding please find an original and ten copies of Complainant's Reply to Defendants' Motion to Compel.

We have enclosed an additional copy of this Reply to be date-stamped and returned to the bearer of this letter. Thank you for your attention to this matter.

Sincerely,

A handwritten signature in cursive script that reads "Andrew B. Kolesar III".

Andrew B. Kolesar III  
An Attorney for Arizona Electric  
Power Cooperative, Inc.

Enclosures

cc: Counsel for Defendants

BEFORE THE  
SURFACE TRANSPORTATION BOARD



ARIZONA ELECTRIC POWER )  
COOPERATIVE, INC. )

Complainant, )

v. )

Docket No. 42058

THE BURLINGTON NORTHERN AND )  
SANTA FE RAILWAY COMPANY and )  
UNION PACIFIC RAILROAD COMPANY, )

Defendant. )

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Public Record

COMPLAINANT'S REPLY TO DEFENDANTS'  
MOTION TO COMPEL

ARIZONA ELECTRIC POWER  
COOPERATIVE, INC.

By: Patricia E. Cooper  
Chief Legal Officer  
1000 S. Highway 80  
Benson, Arizona 85602

OF COUNSEL:

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Andrew B. Kolesar III  
Daniel M. Jaffe  
Slover & Loftus  
1224 Seventeenth Street, N.W.  
Washington, D.C. 20036

Dated: January 2, 2003

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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ARIZONA ELECTRIC POWER	)	
COOPERATIVE, INC.	)	
	)	
Complainant,	)	
	)	
v.	)	Docket No. 42058
	)	
THE BURLINGTON NORTHERN AND	)	
SANTA FE RAILWAY COMPANY and	)	
UNION PACIFIC RAILROAD COMPANY,	)	
	)	
Defendant.	)	

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**COMPLAINANT’S REPLY TO DEFENDANTS’  
MOTION TO COMPEL**

Complainant Arizona Electric Power Cooperative, Inc. (“AEPCO”) hereby replies to the Motion to Compel that Defendants The Burlington Northern and Santa Fe Railway Company (“BNSF”) and Union Pacific Railroad Company (“UP”) filed on December 16, 2002 (“Motion”). AEPCO will provide the response sought by the Defendants and therefore requests that the Board dismiss the Motion as moot.

Defendants’ Motion seeks an order compelling AEPCO to “respond to a discovery request seeking information about AEPCO’s possible future sources of coal that may be contained in documents relating to the financing of its new coal blending facility.” See Motion at 1. As the Defendants recount (see Motion at 4-5), the Motion is

based upon a modified version of Request No. 1 from the Defendants' August 27, 2002

Third Set of Discovery Requests:

REQUEST FOR PRODUCTION NO. 1

Please produce all documents relating to the financing of the new blending facility referred to in Attachment 1 to Defendants' Third Set of Discovery Requests.

AEPCO objected to this Request on grounds of relevance and burden.

As modified, Defendants' Request No. 1 only seeks information about AEPCO's possible future sources of coal that may be contained in documents that are responsive to Request No. 1. See Motion at 1. Defendants' modified version of Request No. 1 also is set forth in Defendant BNSF's December 5, 2002 letter to AEPCO:

Finally, in AEPCO's response to Defendants' Third Set of Discovery Requests, it objected based on relevance and burden grounds to providing any documents relating to the financing of its new blending facility. Defendants are only interested in those documents to the extent they indicate the assumptions that AEPCO is making about possible future sources of coal and the type of coal to be burned at the Apache Station.

See Motion at Exhibit H, page 2 of 2 (emphasis added).

In order to resolve this dispute, AEPCO hereby agrees to produce (as soon as practicable) any non-privileged documents that are responsive to Defendants' Third

Request No. 1, as modified. AEPCO therefore requests that the Board dismiss the Defendants' Motion as moot.

Respectfully submitted,

ARIZONA ELECTRIC POWER  
COOPERATIVE, INC.

By: Patricia E. Cooper  
Chief Legal Officer  
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Dated: January 2, 2003

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CERTIFICATE OF SERVICE

I hereby certify that I have today, January 2, 2003, served copies of the

foregoing Reply as follows:

By hand: Samuel M. Sipe, Jr., Esq.  
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