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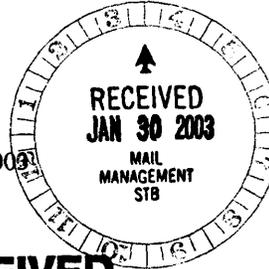
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January 30, 2003

VIA HAND DELIVERY

**FEE RECEIVED**

The Honorable Vernon A. Williams  
Secretary  
Surface Transportation Board  
1925 K Street, N.W.  
Washington, DC 20423-0001

JAN 30 2003

**SURFACE  
TRANSPORTATION BOARD**

Re: STB Docket No. 42077, Arizona Public Service Company and  
PacifiCorp v. The Burlington Northern and Santa Fe Railway Company

Dear Secretary Williams:

Enclosed for filing in the above-referenced docket, please find an original and ten copies of the Verified Complaint of Arizona Public Service Company and PacifiCorp against The Burlington Northern and Santa Fe Railway Company.

Enclosed is a check in the amount of \$61,400.00 made out to the Board to cover the required filing fees for processing of formal complaints filed under the Coal Rate Guidelines.

Please date stamp the extra copy of this cover letter and the filing and return them to our messenger.

ENTERED  
Office of Proceedings

JAN 30 2003

Part of  
Public Record

**FILED**

JAN 30 2003

Respectfully submitted,

C. Michael Loftus  
An Attorney for Arizona Public  
Service Company and PacifiCorp

Enclosures

cc: Samuel M. Sipe, Jr.  
Jeffery R. Moreland

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

ARIZONA PUBLIC SERVICE COMPANY  
400 North 5<sup>th</sup> Street  
Phoenix, AZ 85004

and

PACIFICORP  
825 N.E. Multnomah Street  
Portland, OR 97232

Complainants

v.

THE BURLINGTON, NORTHERN AND  
SANTA FE RAILWAY COMPANY  
2500 Lou Menk Drive  
Fort Worth, TX 76131-2828

Defendant.



Docket No. 42077

**VERIFIED COMPLAINT**

ARIZONA PUBLIC SERVICE COMPANY  
400 North 5<sup>th</sup> Street  
Phoenix, AZ 85004

PACIFICORP  
825 N.E. Multnomah Street  
Portland, OR 97232

OF COUNSEL:

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Frank J. Pergolizzi  
Karen H. Herren  
1224 Seventeenth Street, N.W.  
Washington, D.C. 20036  
(202) 347-7170

DATED: January 30, 2003

ATTORNEYS FOR COMPLAINANTS

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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400 North 5<sup>th</sup> Street  
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Defendant.



Docket No. 42077

**VERIFIED COMPLAINT**

COMES NOW the Arizona Public Service Company (“APS”) and PacifiCorp, and file this Verified Complaint under 49 U.S.C. §§10701 and 11701, seeking the establishment of reasonable rates and other terms for unit train coal transportation service between Lee Ranch Mine, New Mexico and the Cholla Electric Steam Generation Station (“Cholla Station”), located near Joseph City, Arizona. In support thereof, Complainants show:

1. Complainant APS is an Arizona corporation engaged in the generation, transmission, distribution and sale of electricity and energy-related products to wholesale and

retail customers in the western United States. APS provides retail electric service in 11 of Arizona's 15 counties and has approximately 874,000 customers.

2. Complainant PacifiCorp is an Oregon corporation engaged in the production, transmission, distribution and sale of electric power at wholesale and at retail to approximately 1.5 million customers throughout parts of Oregon, Washington, California, Wyoming, Utah and Idaho.

3. Defendant The Burlington Northern and Santa Fe Railway Company ("BNSF") is a Class I common and contract carrier by railroad engaged in the transportation of property in interstate and intrastate commerce. BNSF is subject to the Revised Interstate Commerce Act, as amended by the Interstate Commerce Commission Termination Act of 1995 (49 U.S.C. §§ 10101 *et seq.*), and to the jurisdiction of this Board with respect to its interstate rail transportation service.

4. The Cholla Station is located at or near Joseph City, Arizona. Cholla Station is comprised of four coal-fired units with a total net output of approximately 1000 MW and coal consumption of approximately 3.5 to 4 million tons per year. Cholla Station Units 1, 2 and 3 are owned and operated by APS. Cholla Station Unit 4 is owned by PacifiCorp, but is operated by APS.

5. The coal burned at Cholla Station comes primarily from mines located in New Mexico. This coal includes coal that is supplied from the Lee Ranch Mine ("Lee Ranch"). The Lee Ranch Mine is owned and operated by the Lee Ranch Coal Company, a subsidiary of Peabody Energy Company. Coal from Lee Ranch is supplied to APS pursuant to a coal supply agreement between APS and Peabody Coal Sales, acting for and on behalf of Lee Ranch Coal

Company.

6. BNSF owns and operates the only line of railroad in the vicinity of the Lee Ranch Mine and is the only rail carrier that currently originates, and is capable of originating, coal from that mine origin.

7. BNSF owns and operates the only line of railroad in the vicinity of the Cholla Station and is the only rail carrier that currently serves, and is capable of delivering coal to, APS' and PacifiCorp's facilities at Cholla Station.

8. For four years prior to January 1, 2003, all coal from Lee Ranch was delivered by BNSF to Cholla Station pursuant to the terms of a confidential rail transportation contract between APS and BNSF (BNSF-C-12203). That contract expired on December 31, 2002.

9. On December 16, 2002, BNSF issued BNSF Common Carrier Pricing Authority 90040-A, Supplement No. 4, which provides, common carrier rates for movements of coal from Lee Ranch to Cholla Station that were to become effective January 1, 2003. A copy of BNSF Common Carrier Pricing Authority 90040-A, Supplement No. 4 is attached hereto as Exhibit A, and is incorporated by reference as though set forth in full herein.

10. The common carrier rates for movements from Lee Ranch to Cholla Station set forth in Exhibit A are significantly higher than the rates that had been charged under Contract BNSF-C-12203. Exhibit A provides for rates of \$8.75 per net ton for shipments in steel railcars and \$8.62 per net ton in shipments in aluminum railcars.

11. The rates published in Exhibit A for railroad transportation services between Lee Ranch and Cholla Station greatly exceed 180 percent of BNSF's variable service

costs. Therefore, the Board has jurisdiction over the challenged rates pursuant to 49 U.S.C. § 10707(d)(1)(A) and the rules and regulations promulgated thereunder.

12. BNSF enjoys market dominance over the movements of coal between Lee Ranch and Cholla Station. Rail is the only practical means of moving this coal to Cholla Station.

13. The common carrier rates supplied by BNSF for coal transportation services between Lee Ranch and Cholla Station (ranging from \$8.62 per ton to \$8.75 per ton, depending on the type of carrier-supplied railcar provided) are unreasonably high in violation of 49 U.S.C. §§ 10701(d)(1) and 10702 and the Board's Constrained Market Pricing standards.

14. APS' and PacifiCorp's Complaint raises issues common to coal rate cases generally and, accordingly, the reasonableness of the rates should be examined using the Constrained Market Pricing, in particular stand-alone cost analysis, as adopted in Ex Parte No. 347 (Sub-No. 1), *Coal Rate Guidelines, Nationwide*, 1 I.C.C.2d 520 (1985), as further refined and applied in decisions issued by the Interstate Commerce Commission and the Board in ensuing coal rate cases.

15. This Verified Complaint covers any changes or adjustments in any of the assailed common carrier rates or charges, or changes in any service or other terms, that may be established by BNSF in the course of this proceeding (including any new or replacement rates, charges or other terms) for railroad transportation services described herein.

16. Neither this proceeding nor the granting of the relief requested will constitute a major federal action significantly affecting the quality of the human environment or the conservation of energy resources.

WHEREFORE, APS and PacifiCorp pray that BNSF be required to answer the

charges herein; that after due hearing and investigation the Board find that the common carrier rates applicable to the transportation of APS's and PacifiCorp's coal from Lee Ranch to Cholla Station are unreasonably high; that the Board issue an order or orders pursuant to 49 U.S.C. §§ 10704(a)(1) and 11701(a) prescribing the maximum reasonable rates that BNSF may assess and collect from APS and PacifiCorp for the described transportation; that the Board award APS and PacifiCorp reparations for unlawful charges assessed by BNSF from and after January 1, 2003; and that the Board grant to APS and PacifiCorp such other relief as the Board may deem proper.

Respectfully submitted,

ARIZONA PUBLIC SERVICE COMPANY  
400 North 5<sup>th</sup> Street  
Phoenix, AZ 85004

PACIFICORP  
825 N.E. Multnomah Street  
Portland, OR 97232

OF COUNSEL:

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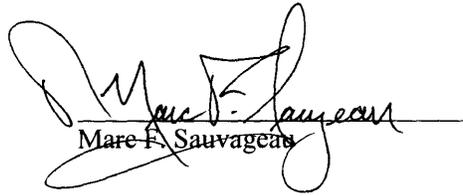
By: C. Michael Loftus   
Christopher A. Mills  
Frank J. Pergolizzi  
Karen H. Herren  
1224 Seventeenth Street, N.W.  
Washington, D.C. 20036  
(202) 347-7170

DATED: January 30, 2003

ATTORNEYS FOR COMPLAINANTS

**VERIFICATION**

I, Marc F. Sauvageau, Director, Fuel Procurement for Arizona Public Service Company, verify under penalty of perjury that I have read the foregoing Verified Complaint, that I know the contents thereof, and that the same are true and correct. Further, I certify that I am qualified and authorized to file this statement.



Marc F. Sauvageau

Executed on: January 28, 2003

**CERTIFICATE OF SERVICE**

Pursuant to 40 C.F.R. § 1113.3, I hereby certify that this 30<sup>th</sup> day of January, I served a copy of the foregoing Verified Complaint by overnight express courier on the senior legal officer for the Defendant Burlington Northern & Santa Fe Railway Company ("BNSF") at the following address:

Jeffery R. Moreland, Esq.  
Senior Vice President and General Counsel  
The Burlington Northern &  
Santa Fe Railway Company  
2650 Lou Menk Drive  
P.O. Box 961057  
Fort Worth, TX 76161-0057

and by hand delivery on designated outside counsel for BNSF, as follows:

Samuel M. Sipe, Jr.  
Anthony J. LaRocca  
Linda S. Stein  
Steptoe & Johnson, L.L.P.  
1330 Connecticut Avenue, N.W.  
Washington, D.C. 20036-1795

  
Karen H. Herren  
An Attorney for Complainant

REDUCTION	
BNSF 90040-A	Original Title Page
	
THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY	
BNSF PRICE LIST 90040-A (Cancels BNSF 90040)	
-----	
LOCAL ALL-RAIL RATES	
ON	
RAW SUBBITUMINOUS COAL	
(STCC 11-21)	
BETWEEN STATIONS IN THE CONTINENTAL UNITED STATES	
THIS TARIFF ALSO APPLIES ON INTRASTATE TRAFFIC	
Governed, except as otherwise provided herein: By UFC 6000-Series and Tariff ICC BN 6041-Series	
For explanation of abbreviations and reference marks, see Item 100.	
ISSUED December 16, 20002	EFFECTIVE January 1, 2003
Issued by Paul M. Anderson, P.O. Box 961069, Ft. Worth, TX 76161-0069	

The Burlington Northern and Santa Fe Railway Company  
Common Carrier Pricing Authority BNSF 90040-A  
Supplement No.4

**Effective Date:** January 1, 2003.

**Expiration Date:** Effective until superceded or cancelled.

**Commodity:** Raw coal used for steam purposes, as described in Standard Transportation Commodity Code Tariff ("STCC") 6001 series, with a STCC number of 11-211 series, 11-212 series and 11-221 series (including bituminous, sub-bituminous and lignite), not including beneficiated, enhanced, processed or synthetic coal ("Coal"). Coal treated with additives used exclusively for dust control or for protection against freezing shall not be considered "beneficiated, enhanced or processed".

**Origins:** 1. Lee Ranch Mine, NM ("LRM")  
2. Spring Creek Mine, (Nerco Jct.), MT ("SCM")

**Destinations:** 1. Coronado Generating Station located near St. John's, AZ ("Coronado")  
2. Cholla Generating Station located near Joseph City, AZ ("Cholla")

**Route:** BNSF direct.

**Shipper:** The Party tendering Coal for movement under this publication.

**Freight Rates:** Weights stated in terms of Net Tons (2,000 pounds). Rates stated in U.S. Dollars Per Net Ton Coal:

Origin	Destination	Min Weight Per Carload	Shipper Provided Private Railcars	BNSF Provided Railcars
LRM	Coronado	95 Net Tons	\$7.65	\$8.69
		119 Net Tons	\$7.52	\$8.56
LRM	Cholla	95 Net Tons	...	\$8.75
		116 Net Tons	...	\$8.62
SCM	Cholla	116 Net Tons	...	\$19.87

**Fuel Surcharge Application:** Freight Rates herein shall be subject to fuel cost recovery surcharges, if any, applied by BNSF as specified by BNSF Rules 6100 series.

**Trainload and Railcar Weights:** Weight shall be determined at Origin by Shipper, its agent, or the Coal mine operator, at no charge to BNSF, and will be provided to BNSF 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. Minimum Weight per Trainload shall be the product of the applicable Minimum Weight per Carload times the Minimum Tender. 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. For trains consisting of BNSF provided Railcars, in the event BNSF furnishes fewer than the Minimum Tender specified herein, Minimum Weight per Trainload shall be reduced by the applicable Minimum Weight per Carload for each BNSF provided railcar not furnished which results in a train of less than Minimum Tender.

**Railcar Supply and Tender Requirements:**

**Coronado:**

- (A) BNSF provided Railcars shall be, at BNSF's sole option, either steel or aluminum open top rotary gondolas or rotary or open top hopper cars suitable for loading not less than 95 Net Tons of Coal per carload. The Minimum Tender for a train of BNSF provided Railcars is one hundred fifteen (115) such Railcars.
- (B) Shipper provided Railcars shall be steel or aluminum open top rotary gondolas suitable for loading not less than 95 Net Tons per carload, not subject to any private car mileage allowance and furnished at no cost to BNSF. The Minimum Tender for a train of Shipper provided Railcars is one hundred fifteen (115) such Railcars.

**Cholla:**

- (A) BNSF provided Railcars shall be, at BNSF's sole option, either steel or aluminum open top rapid discharge hopper cars suitable for loading not less than 95 Net Tons of Coal per carload. The Minimum Tender for a train of BNSF provided Railcars is ninety nine (99) such Railcars.

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. Unless otherwise provided, BNSF 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 the Shipper, its agents, contractors, consignors or consignee.

**BNSF Railcar Out of Route Charge:** BNSF provided Railcars requested by the Shipper for loading at Lee Ranch Mine will be furnished at no additional charge when an immediately preceding train of such Railcars has been unloaded at Destination. In the event that an immediately preceding train of such Railcars has not been unloaded at Destination, not less than a Minimum Tender of BNSF provided Railcars shall be positioned to Lee Ranch Mine subject to the Out-of-Route Charge For Transporting Empty Coal Cars as specified in BNSF Price List 6041 series. Appropriate Railcars for this service shall be designated at BNSF's sole discretion. Mileage used for calculation of a BNSF Railcar Out-of-Route Charge shall be via the route of movement to Lee Ranch Mine from the BNSF point where such Railcars are located when they are designated for loading pursuant to this Common Carrier Pricing Authority.

**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 within four (4) hours of Actual or Constructive Placement for loading at Origin ("Loading Free Time").

Loading Free Time shall be extended for a period of time equivalent to that by which loading is delayed or prevented as a result of a Loading Disability or any occurrence attributable to BNSF which prevents or impedes loading. A Loading Disability includes any of the following which directly results in the inability to load a train at Origin: (1) an Act of God; (2) a strike or other labor disturbance; (3) a riot or other such civil disturbance; (4) unusual snow or ice accumulation sufficient to prevent or delay loading of a train; or (5) mechanical or electrical breakdown, explosion, or fire affecting the loading facilities at Origin.

Actual Placement is made when an empty train arrives at the designated loading point at Origin and the Train crew requests loading instructions. If Actual Placement is prevented due to any cause attributable to the Shipper, its agents, or the mine operator, BNSF may Constructively Place the train at any available holding point. In the event of Constructive Placement, Loading Free Time shall begin when BNSF notifies the Shipper, its agents, or the mine operator that the train has arrived at the holding point and shall end when the train is Actually Placed at Origin.

In the event that the total time from Actual or Constructive Placement to release of a loaded train exceeds Loading Free Time, Shipper shall pay such charges as specified in BNSF Price List 6041 series for holding a train in excess of Loading Free Time.

**Unloading:**

**Coronado:** Shipper or its agent shall be responsible for the provision of appropriate unloading facilities. Actual Placement for Unloading is made when a loaded train arrives at the designated unloading point at Destination and the train crew requests unloading instructions. All cars in each shipment shall be tendered to BNSF for empty movement; (1) within five (5) hours for a train of steel railcars or (2) six (6) hours for a train of aluminum cars, of Actual or Constructive Placement for unloading at Destination ("Coronado Unloading Free Time").

**Cholla:** Shipper or its agent shall be responsible for the provision of appropriate unloading facilities. Actual Placement for Unloading is made when a loaded train is placed on Shipper's tracks at Destination. All cars in each shipment shall be tendered to BNSF for empty movement within twenty-four (24) hours of Actual or Constructive Placement for unloading at Destination ("Cholla Unloading Free Time").

Unloading Free Time at Destination shall be extended for a period of time equivalent to that by which unloading is delayed or prevented as a result of an Unloading Disability or any occurrence attributable to BNSF which prevents or impedes unloading. An Unloading Disability is any of the following events which directly results in the inability to unload a train at Destination: (1) an Act of God; (2) a strike or other labor disturbance; (3) a riot or other such civil disturbance; (4) unusual snow or ice accumulation sufficient to prevent or delay unloading of a train; or (5) mechanical or electrical breakdown, explosion, or fire affecting the unloading facilities at Destination.

If Actual Placement at Destination is prevented due to any cause attributable to Shipper or its agents, BNSF may Constructively Place the train at any available holding point. In the event of Constructive Placement, Unloading Free Time shall begin when BNSF notifies Shipper or its agent that the train has arrived at the holding point and shall end when the train is Actually Placed at Destination. In the event that the total time from Actual or Constructive Placement to release of a loaded train exceeds Unloading Free Time, Shipper shall pay such charges as specified in BNSF Price List 6041 series for holding a train in excess of Unloading Free Time.

**Accessorial Services:** Coal unit train accessorial services and charges therefore, other than specified in this Common Carrier Pricing Authority, shall be as described in BNSF Price List 6041 series or successors thereto, except that no change in destination shall be permitted.

**Billing and Payment:** 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 Pricing Authority BNSF 90040-A, correct address and patron code must be shown on the Bill of Lading to insure accurate billing. Freight charges will be billed by BNSF and paid by the Shipper by electronic transfer of funds within fifteen (15) calendar days of receipt of BNSF's invoice. In the event that the Shipper does not make timely payment, or if adverse credit conditions occur, which in BNSF's judgement could affect the Shipper's ability to meet payment terms, BNSF may require Shipper to pay cash in advance of service for all amounts for which Shipper is liable under this Common Carrier Pricing Authority.

**Other Provisions:** Shipments made under the provisions of this Common Carrier Pricing Authority are subject to the Uniform Freight Classification 6000 series or its successor, BNSF Rules 6100 series, 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.