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February 27, 2004

FEB 27 2004
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VIA HAND DELIVERY

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W., Room 711
Washington, D.C. 20423-0001

Re: Docket No. 41185, *Arizona Public Service Company and PacifiCorp v. The Burlington Northern & Santa Fe Railway*

Dear Secretary Williams:

Enclosed for filing in the above referenced proceeding please find an original and 16 copies of the Highly Confidential Version of Complainants Arizona Public Service Company's and PacifiCorp's Opening Evidence and Argument on Reopening. Additionally, please find a compact disc containing the filing in electronic form (along with accompanying electronic workpapers). Also, enclosed for filing are the original and 16 copies of the Public Version of this filing, along with a compact disk containing the public filing.

An extra copy of the Opening Evidence and Argument on Reopening also is enclosed. Kindly indicate receipt and filing by time-stamping this copy and returning it to the bearer of this letter.

Thank you for your attention to this matter.

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Sincerely,

C. Michael Loftus

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

CML/jck
Enclosures
cc: Samuel M. Sipe, Jr., Esq.

210187

PUBLIC

BEFORE THE
SURFACE TRANSPORTATION BOARD

ARIZONA PUBLIC SERVICE COMPANY, and PACIFICORP,	)	
Complainants,	)	
v.	)	Docket No. 41185
THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY,	)	
Defendant.	)	

COMPLAINANTS ARIZONA PUBLIC SERVICE COMPANY'S AND PACIFICORP'S OPENING EVIDENCE AND ARGUMENT ON REOPENING

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DATED: February 27, 2004

ATTORNEYS FOR COMPLAINANTS

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COMPLAINANTS ARIZONA PUBLIC SERVICE COMPANY'S AND PACIFICORP'S OPENING EVIDENCE AND ARGUMENT ON REOPENING

PREFACE

In accordance with the Board's December 8, 2003 Order establishing a procedural schedule, Complainants Arizona Public Service Company and PacifiCorp (collectively referred to as "APS/PacifiCorp") hereby submit this Opening Evidence and Argument on Reopening addressing the appropriate levels for rates for the unit-train transportation of coal by Defendant The Burlington Northern and Santa Fe Railroad Company ("BNSF") from the McKinley Mine, located near Gallup, New Mexico, to the Cholla Station, located near Joseph City, Arizona.

APS/PacifiCorp's Opening Evidence and Argument is comprised of the Argument and Summary of Evidence, as well as the following verified statements addressing the specified subjects:

Witness:	Subject:
Kenneth S. Nordlander Fossil Fuel Procurement Manager Arizona Public Service Company	Historic and Projected Fuel Supply Requirements for Cholla Station For the Years 1994-2013
Brian Durning Manager, Fuel Administration/ Fuel Resources PacifiCorp	Historic and Projected Fuel Supply Requirements for Cholla Station For the Years 1994-2013
M. William Dix, Jr. Senior Vice President The Pittsburgh & Midway Coal Mining Co.	Coal Production at McKinley Mine
Paul H. Reistrup Consultant	Rail Operations for Stand Alone Railroad
Thomas D. Crowley President L.E. Peabody & Associates, Inc.	Stand-Alone Costs; Restated DCF Analysis; and Reparations

ARGUMENT

BEFORE THE
SURFACE TRANSPORTATION BOARD

ARIZONA PUBLIC SERVICE COMPANY, and PACIFICORP,	)	
Complainants,	)	
v.	)	Docket No. 41185
THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY,	)	
Defendant.	)	

COMPLAINANTS ARIZONA PUBLIC SERVICE COMPANY'S AND PACIFICORP'S ARGUMENT AND SUMMARY OF EVIDENCE

I. INTRODUCTION

In this reopened proceeding the Board is reconsidering its SAC analysis in *Arizona Pub. Serv. Co. et al. v. Atchison, T. & S.F. Ry.*, 2 S.T.B. 367 (*"1997 Decision"*), *modified, Arizona Pub. Serv. Co., et al. v. Atchison, T. & S.F. Ry.*, 3 S.T.B. 70 (*"1998 Decision")*[1] in order to redetermine the appropriate rate levels for rail transportation of

[1]The original defendant in this proceeding, The Atchison, Topeka and Santa Fe Railway Company ("ATSF"), merged with the Burlington Northern Railroad Company to form The Burlington Northern and Santa Fe Railway Company ("BNSF"). All references herein to BNSF are intended to include its predecessor company ATSF.

coal between the McKinley Mine, located near Gallup, New Mexico, and APS/PacifiCorp's Cholla Electric Steam Generation Station ("Cholla" or "Cholla Station").

The *1997 Decision* was the product of the Board's careful consideration of a comprehensive and detailed evidentiary record under its Stand-Alone Cost ("SAC") methodology. In calculating SAC, the Board, *inter alia*, performed a detailed analysis of forecasted coal traffic volumes to be transported by the Stand-Alone Railroad ("SARR"), known as the Arizona & Gallup Railroad ("AGRR"), from the McKinley Mine to the two shippers in the AGRR's traffic group. A central dispute in the proceeding related to whether the McKinley Mine would have sufficient reserves to supply coal to the two shippers in the AGRR's traffic group: APS/PacifiCorp's Cholla Station; and the Salt River Project Agricultural Improvement and Power District's ("Salt River") Coronado Station, located at Coronado, Arizona. While the Board ultimately concluded that the reserves then controlled by The Pittsburgh & Midway Coal Mining Co. ("P&M"), the owner of the McKinley mine, in combination with other reserves P&M was trying to acquire, should be sufficient to last through the 20 year life of the Discounted Cash Flow ("DCF") analysis, it recognized that its conclusion could prove inaccurate over time. The Board noted that in such event "we can reopen this proceeding . . . and, if necessary, determine what a reasonable rate would be under the changed circumstances." *1997 Decision,* 2 S.T.B. at 385.

BNSF submitted a petition to reopen the *1997 Decision* shortly after it was issued, claiming, *inter alia*, that actual shipments to the Cholla and Coronado Stations from the McKinley Mine for 1995 to 1997 were below the tonnage levels relied upon by the Board in its SAC calculations. BNSF also suggested that the Board was overly optimistic in concluding that P&M would be successful with its efforts to obtain additional mineable reserves for McKinley from the Navajo Nation. *1998 Decision,* 3 S.T.B. at 79. The Board subsequently reopened the proceeding and made minor revisions to its rate prescription. Although the Board rejected BNSF's claim that McKinley would lack adequate reserves, it again noted that it could respond to any changes in McKinley's ability to supply coal if and when they occurred. In that event, the Board noted: "the parties can and should have this proceeding reopened and the SAC analysis revised appropriately." *Id.* n. 42.

After the issuance of the *1998 Decision,* the parties entered a coal transportation contract covering the transportation of coal to the Cholla Station for the years 1999 through 2002 (the "1999 Agreement"). *See* Workpapers pp. 7-37. The 1999 Agreement contemplated, and in fact required, that APS/PacifiCorp would ship tonnage from both the McKinley Mine and other sources, including the nearby Lee Ranch Mine. The parties agreed that the rates for transportation from McKinley would be those prescribed by the Board in the *1998 Decision.*

On December 26, 2002, BNSF published new rates and terms for service between the McKinley Mine and Cholla. BNSF Common Carrier Pricing Authority 90069[2] purported to increase the rate for service between these two points from the $4.21 per ton rate prescribed in the Board's *1998 Decision*, to $6.91 per ton, effective January 1, 2003, contingent on the Board's vacation of the existing rate prescription.[3] This rate would constitute a 64% increase in APS/PacifiCorp's transportation cost for service from McKinley to Cholla Station.

On January 10, 2003, BNSF filed its Petition to Reopen Docket No. 41185 and sought a vacation of the rate prescriptions entered in the Board's *1997 and 1998 Decisions.* That same day, BNSF filed a Petition for Interim Relief seeking to impose retroactively its 64% rate increase to tons moved prior to vacation of the Board's prescribed rates. In support of these requests, BNSF relied upon "substantially changed circumstances and new evidence" relating to traffic and revenue projections underlying the Board's original prescription. BNSF Petition to Reopen at 4. In particular, BNSF

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[2]A copy of BNSF Common Carrier Pricing Authority 90069 appears as Exhibit KSN-4 to the Verified Statement of Kenneth S. Nordlander. The Verified Statements of APS/PacifiCorp's witnesses will be referred to herein as "V.S. [witness name]."

[3]BNSF 90069 also contains a new minimum volume requirement of 3,500,000 tons per calendar year. APS/PacifiCorp advised the Board in its January 30, 2003 Reply to Petition to Reopen and Vacate Rate Prescription that they were trying to address this volume requirement, which they believe is inconsistent with the Board's rate prescription in the *1997* and *1998 Decisions*, through discussions with BNSF. *See, id.* at 9 and V.S. Sauvageau at 6, and Exhibit 8. BNSF has never responded to APS/PacifiCorp on this issue and it may become necessary to raise this matter with the Board. Nordlander V.S. at 15-16.

relied upon changed circumstances at the McKinley Mine with regard to the volumes of coal that P&M will be able to produce over the mine's remaining life.

APS/PacifiCorp filed replies to BNSF's petitions on January 30, 2003. APS/PacifiCorp agreed that circumstances had changed at the McKinley Mine and supported reopening for consideration of all relevant changes in circumstances. They opposed reopening on the limited basis sought by BNSF, and opposed any action to vacate the Board's rate prescription until after an evidentiary hearing on all the relevant facts and circumstances. APS/PacifiCorp also filed a new complaint case, styled *Arizona Pub. Serv. Co. v. The Burlington Northern and S.F. Ry.*, Docket No. 42077, challenging the reasonableness of BNSF's common carrier rate for the transportation of coal from the Lee Ranch Mine to Cholla, and sought consolidation of Docket Nos. 41185 and 42077. APS/PacifiCorp proposed that the Board receive evidence on a SAC analysis for a SARR that would serve directly both the McKinley Mine and the Lee Ranch Mine and a traffic group that was expanded to include other destinations in addition to the Cholla and Coronado Stations.

On May 12, 2003 the Board served a decision granting BNSF's Petition to Reopen and defining the scope of the reopened proceeding. (*"May 2003 Decision"*).[4] In support of the reopening, the Board noted that the parties do not dispute that "circumstances have changed with regard to the volume levels that are expected to be transported from the McKinley [m]ine in the final years of the original 20 year DCF analysis." *Id.* at 4. The Board reopened the proceeding to consider: "a more developed record on how Arizona and Salt River will re-source their coal needs once McKinley shuts down, what portion of that traffic could flow over the SARR, and what revenues the SARR could reasonably expect to earn from that coal traffic." *May 2003 Decision,* at 5. The *May 2003 Decision* makes clear that in presenting their recalculations of SAC, "the parties may update the record regarding any forecasts made in our prior decisions, such as inflation indexes, cost of rail equity, and revenue forecasts for the Salt River traffic, that proved to be inaccurate." *Id.* at 5-6.

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[4]The Board also granted the motion to vacate the rate prescription. *May 2003 Decision* at 8. The decision further provided that BNSF was not to increase the current rate during the pendency of the rate proceeding. *Id.* Instead, both parties were instructed to keep account of the amounts paid and to make the other whole at the conclusion of the proceeding, with respect to the amounts paid during the interim, depending on the rate level ultimately determined to be the maximum reasonable rate. *Id.* at 8-9.

On October 14, 2003 the Board served a decision (*"October 2003 Decision"*)[5] denying APS/PacifiCorp's Petition for Reconsideration of certain aspects of the *May 2003 Decision*.[6] In this decision, the Board provided further definition of the scope of the reopened proceeding:

> . . . Arizona may submit evidence on how the two shippers in the original traffic group will re-source their coal needs once McKinley shuts down, what portion of that traffic could move over the SARR, and the revenues that the SARR could reasonably expect from that re-sourced traffic. Both parties may also update the record regarding any forecasts used in the original SAC analysis that have since proved to have been inaccurate, but they may not reargue or recalculate the base figures to which forecasts were applied.

October 2003 Decision at 3.

II. SUMMARY OF EVIDENCE AND ARGUMENT

Consistent with the Board's directions, APS/PacifiCorp herewith provide evidence concerning how APS/PacifiCorp and Salt River have re-sourced, and will re-source, their coal needs as a result of the depletion of the McKinley Mine reserves. In addition, APS/PacifiCorp have updated the record to correct traffic, revenue and inflation forecasts, and the cost of rail equity. Because APS/PacifiCorp have identified a

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[5]APS/PacifiCorp believe the Board committed material errors in its *May 2003 Decision* and *October 2003 Decision* in, *inter alia,* limiting the scope of this reopened proceeding and in "remov[ing] the prescriptive effect" of its 1998 rate order. Accordingly, APS/PacifiCorp reserve all rights to seek judicial review of these decisions upon the issuance of a final decision in this reopened proceeding.

[6]The *May 2003 Decision* and *October 2003 Decision* are sometimes collectively referred to herein as the *2003 Decisions.*

formula error in the Board's application of its DCF Model in the *1998 Decision*, we also present a correction of that error which we believe is fully consistent with the Board's *2003 Decisions* explaining the scope of this reopening.

APS/PacifiCorp have developed updated SAC calculations based upon the same assumptions and methodologies relied upon by the Board in the *1997* and *1998 Decisions*. Thus, to the extent that the Board calculated SAC differently (*i.e.,* from a methodological standpoint) in the *1997* and *1998 Decisions* than it would today, APS/PacifiCorp have not altered the application of the Board's DCF Model. To the extent that the recalculation of SAC here raises issues not considered by the Board in its previous calculations, however, APS/PacifiCorp applies the Board's most recent rulings to its recalculation.

A. AGRR System

1. Route System

In its *1997 Decision*, the Board recognized that the AGRR would follow the BNSF line from the McKinley Mine to the Cholla Station. *1997 Decision,* 2 S.T.B. at 381, 398 (Appendix A). In addition, in order to serve Salt River's Coronado Station, the AGRR system connected to an existing 42-mile private spur line running from East Coronado Jct., Arizona to Coronado Station. *Id.* The AGRR system also included an interchange with the BNSF at Defiance, New Mexico, for exchange of empty cars owned by Salt River and utilized elsewhere by BNSF on its system. *Id.* Additional tracks to store bad-ordered cars were also included in the original configuration. *Id.* System track miles for the AGRR included 115.4 miles of mainline track and 0.8 miles of track for bad order cars, for a total of 116.2 miles of track. *Id.* at 398, Appendix A.

Consistent with the Board's earlier decisions, as well as the *2003 Decisions* defining the scope of reopening, APS/PacifiCorp have not altered the basic configuration of the AGRR. *See* Verified Statements of Paul H. Reistrup at 6-9, and Thomas D. Crowley at 7. However, as explained in Mr. Reistrup's testimony, a minor modification to the AGRR system is necessary to accommodate the re-resourcing of coal that is clearly contemplated by the Board on reopening. V.S. Reistrup at 6-9.

As a result of the depletion of McKinley's reserves and other factors such as production problems at McKinley, rail delivery problems and an extended work stoppage at McKinley, both Cholla and Coronado have received, and will receive, coal that originates at points off the AGRR system that are served by the residual BNSF. The AGRR will receive this traffic in interchange from BNSF and deliver it to Cholla and Coronado. *See* V.S. Crowley at 7; V.S. Reistrup at 5. The interchange point from the BNSF to the AGRR is at Defiance, New Mexico. V.S. Reistrup at 5. Defiance is a point located on the AGRR route, as described in the parties' 1995 evidence and the *1997 and 1998 Decisions*. *Id.* As Mr. Reistrup explains, the original trackage included a turnout connection at Defiance between the AGRR and BNSF that allows for the interchange of cross-over traffic that originates on BNSF and is destined for Cholla and/or Coronado.

Id. Accordingly, it is not necessary for APS/PacifiCorp to alter the AGRR's basic configuration to provide for an interchange point that did not exist in the original route.

The original AGRR design did not, however, contemplate the volumes of re-sourced coal from non-McKinley sources that will now move to Cholla and Coronado. Based on the volumes of cross-over traffic and increased train sizes relating to PRB coal movements, the AGRR's interchange facilities at Defiance must be modestly upgraded to permit the efficient movement of trains onto and off of the AGRR. V.S. Reistrup at 6-9. Mr. Reistrup has, accordingly, included a new siding that is located just west of the turnout at Defiance. *Id.* at 7. The new siding would not be necessary until 2000, the point at which cross-over coal traffic reaches a level at which the additional facilities are necessary to maintain efficient operations. *Id.* All costs developed for the new siding are based on unit costs from the existing record in Docket No. 41185, as indexed for inflation. *Id.* at 8; V.S. Crowley at 18.

APS/PacifiCorp recognize that the Board's *October 2003 Decision* states that "it is not necessary to alter the configuration of the SARR or its traffic mix (other than to reflect the re-sourced coal traffic) . . ." *October 2003 Decision* at 5. The change recommended by Mr. Reistrup, however, is required to enable the AGRR to transport the re-sourced coal traffic. Unlike the addition of new origins and destinations that the Board rejected in the *2003 Decisions* – the addition of this new siding suggested by Mr. Reistrup is a minor change that does not require substantial construction or additional investment. It does not result in the type of "new and considerably more complex SAC case" that the Board cautioned would not be allowed. *See October 2003 Decision* at 6. This revision would increase total AGRR system track miles from 116.2 to 117.9. V.S. Reistrup at 7, *c.f. 1997 Decision*, 2 S.T.B. at 398, App A.

Indeed, this minor change proposed by APS/PacifiCorp is entirely consistent with the Board's *1997 Decision*. As this decision explained:

> Our SAC constraint may be sufficiently flexible to accommodate a change in suppliers. Because coal from other origins might move over the same routes as the AGRR (except for the spur from the McKinley Mine to the mainline at Defiance) in order to reach new coal source(s), it is neither necessary nor appropriate, on the record before us, to assume (as Santa Fe does) that the entire AGRR system would be rendered obsolete if the P&M contracts were not renewed or if reserves at the McKinley Mine were exhausted. The reasonable rates to be charged under the new circumstances could be determined by examining any additional costs to the AGRR to serve the new movement(s).

1997 Decision, 2 S.T.B. at 385, n. 51. The Board clearly recognized that re-sourcing of coal could carry with it the need for adjustments in the SAC analysis to accommodate the shifting traffic patterns.

2. <u>Traffic Group</u>

The Board's SAC analysis in the *1997 and 1998 Decisions* based historic volumes (*i.e.,* 1994 and the first three quarters of 1995), on BNSF's actual waybill records. *1997 Decision,* 2 S.T.B. at 382. Volumes for the remaining years in the DCF model were based on APS/PacifiCorp's average annual coal tonnage for the preceding 5 years (1990-1994) and the expectation that coal usage at Cholla would continue at this level. *Id.* at 382-384. Coronado's future tonnage levels were also based on historic volumes and the assumption that Salt River would continue to require that same amount each year going forward. *Id.* at 383-384. APS/PacifiCorp have accordingly, updated volumes here to reflect historical coal deliveries to Cholla and Coronado.

a. Historic Volumes (1994-2003)

APS/PacifiCorp's SAC calculations have been updated to reflect the use of historical volume data for the years 1994 through 2003. V.S. Crowley at 8-9. APS/PacifiCorp's volume data for this historic period differ from the Board's *1997 and 1998 Decisions* in two respects. First, the Board assumed that the AGRR would move a constant amount of 3.5 million tons on an annual basis to Cholla Station and a constant amount of 2.5 million tons per year to Coronado Station for all years after 1995. It was also assumed that all of this tonnage would come from the McKinley Mine. These assumptions have proved to be inaccurate in two respects: both plants have received varying, generally { }, volumes than those assumed by the Board in its *1997and 1998 Decisions*, and both plants have received coal shipments from non-McKinley Mine sources.

As recognized in the *1997 Decision*, the Board's projection of 6 million tons per year (for both Cholla and Coronado) was "conservative because it does not provide for population growth and growth in the regional economy. Such growth would increase the general demand for power from all sources, including Cholla and Coronado." *1997 Decision,* 2 S.T.B. at 384, n. 45. In fact, demand for power from Cholla has increased. As a result, APS/PacifiCorp's coal deliveries to Cholla have exceeded 3.5 million tons in 1998, 1999, 2001 and 2002, and would have done so in 2000 and 2003, but for problems at McKinley. V.S. Nordlander at 9. Similarly, demand for power from Salt River's Coronado Station has grown and its deliveries have also generally { } tons per year forecast by the Board in 1997. V.S. Crowley at Exhibit TDC-2; electronic workpapers "copy of SRP1995-2000data.xls". Accordingly, APS/PacifiCorp have revised the AGRR traffic group for the historic period to reflect the actual volume of shipments received.[7]

At the time the Board made its traffic forecast findings for Cholla and Coronado Stations, the assumption was that both APS/PacifiCorp and Salt River would continue to acquire all of their coal requirements for the plants from the McKinley Mine. This assumption, like the underlying volume forecast, has proven to be inaccurate. Due to a variety of problems at the McKinley Mine during the 1997 through 2003 time period, both APS/PacifiCorp and Salt River have looked to non-McKinley sources to meet a portion of their coal requirements. V.S. Nordlander at 4-5; V.S. Crowley at Exhibit TDC-2. For example, in 2000 the McKinley Mine experienced a three-month

[7] In calculating these historic volumes, APS/PacifiCorp used records produced by BNSF in discovery in this matter. *See* V.S. Nordlander at 6 n.4.

long labor strike. V.S. Nordlander at 9-10. APS purchased substantial volumes of coal from non-McKinley sources including the nearby Lee Ranch Mine to replace volumes that had been scheduled for delivery from McKinley. *Id.* Significant operating problems at the McKinley Mine also required APS/PacifiCorp to obtain coal elsewhere in 1997, 1998 and 2003. *Id.* at 4. APS/PacifiCorp have included these coals from other mine origins in their calculation of historic volumes for purposes of recalculating SAC. A detailed summary of the coal volumes received at Cholla and Coronado from each mine source is contained at Exhibit TDC-2 to Mr. Crowley's Verified Statement. *See also* V.S. Nordlander at 7.

As APS/PacifiCorp explained to the Board in their Reply to Petition to Reopen and Vacate Rate Prescription, it is improper to rely on the actual coal volumes delivered to Cholla from McKinley for the years 1999 through 2002 for purposes of this proceeding. *See id.* at 10-11, V.S. Sauvageau at 3-4, V.S. Nordlander at 5, 7, and V.S. Durning at 3. In recognition of this fact, the parties entered into a stipulation concerning the volumes of coal delivered to Cholla from McKinley that the Board should rely upon for purposes of this proceeding. A copy of that stipulation appears at V.S. Nordlander, Exhibit KSN-1.

Pursuant to the Stipulation, APS/Pacificorp have included 3.5 million tons of McKinley Coal to Cholla for each of the years 1999, 2001 and 2002. For 2000, the year in which a three-month miner's strike occurred at McKinley, the stipulated volume figure is 2,625,000. *Id.*, *see* also Crowley V.S. at 8-9. In order to reconcile these stipulated amounts with actual delivery tonnages to Cholla from non-McKinley origins, such tonnages were reduced proportionately to an aggregate amount equal to the BTU difference between the stipulated deliveries from McKinley and the total actual deliveries for each year. Crowley V.S. at 9.

b. Forecasted Volumes (2004-2013)

As with the volumes for 1996 through 2003, the Board's *1997 Decision* forecasted volumes for the 2004 through 2013 time period at a total of 6 million tons per year (i.e., 3.5 million tons per year to Cholla and 2.5 million tons per year to Coronado). *1997 Decision,* 2 S.T.B. at 384. Again, this forecast was based on APS/PacifiCorp's and Salt River's forecasted long-term coal requirements produced in the ordinary course and the twin assumptions that the AGRR would transport all of the coal required at these two plants and that all of the required coal would be sourced from the McKinley Mine. *Id.* at 382-85.

In its *October 2003 Decision*, the Board made clear that the parties could "submit evidence on how the two shippers in the original traffic group will re-source their coal needs once McKinley shuts down," and "may also update the record regarding any forecasts used in the original SAC analysis that have since proved to have been inaccurate . . ." *Id.* at 3. As detailed in the attached Verified Statements, the Board's forecasted volumes to Cholla and Coronado for 2004 through 2013 need to be revised for both reasons. The parties are in agreement that the McKinley Mine will deplete its reserves before the end of the original 20 year DCF period. P&M estimates that there are approximately { } tons of recoverable reserves remaining at the McKinley Mine.

Mr. M. William Dix, Senior Vice President of P&M, estimates that, based on P&M's most current information, the McKinley Mine will produce these { } tons for sale over the next 5 years. V.S. Dix at 7. APS/PacifiCorp are committed by contract to take { }. They also have the right to purchase { }. *Id.*; V.S. Nordlander at 10-11. Based on information provided by Salt River in discovery, it will receive a total of { } V.S. Crowley, Exhibit TDC-2.

APS/PacifiCorp's forecast also relies upon the best available information about the other mine sources for coal that will be delivered to Cholla and to Coronado for each of the years 2004 to 2013 as well as the amounts of coal from each such source by year.[8] For Cholla, { } coals will replace McKinley coals. V.S. Nordlander at 11, 13-14. For Coronado, { } will replace McKinley coals after { }. V.S. Crowley at Exhibit TDC-2; Workpaper pp. 79-182. For both

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[8]In response to APS/PacifiCorp's discovery requests, BNSF only produced { }.

plants, { } than the volumes assumed by the Board in the *1997* and *1998 Decisions*.

As explained by Mr. Nordlander and Mr. Durning of PacifiCorp, demand for electricity from Cholla has increased significantly above what had been forecast when the evidence relied upon by the Board in the *1997* and *1998 Decisions* was developed. This increased demand has resulted in greater consumption of coal at the plant and is projected to continue to do so. V.S. Nordlander at 5; V.S. Durning at 3-4. The other factor causing increases in the volumes of coal projected to be delivered is the lower BTU content of coals from other mines as compared to McKinley coal. V.S. Nordlander at 5. PRB coal, in particular, has a substantially lower BTU content per pound than McKinley Mine coal, which has an average BTU/lb. content of approximately 9800. PRB coal typically ranges from between 8,350-8,800 BTU/lb. Thus, to replace the same number of BTUs in McKinley Mine coal, you would need approximately 15% more PRB coal (assuming an average btu/lb. content of 8,575).

APS/PacifiCorp have recalculated the volumes to be handled by the AGRR for the years 2004-2013 to reflect the internal APS/PacifiCorp and Salt River forecasts. *See* V.S. Crowley at 9-10. APS/PacifiCorp have based their updated SAC calculation on the expected tonnage levels and sources reflected in the forecasts. This approach is consistent with the *2003 Decisions*, as it reflects the expected shifts in coal sources to supplement and eventually supplant coal deliveries from McKinley as the reserves at that mine are depleted. Further, these forecasts, which were made in the ordinary course of business and were produced in discovery in this proceeding, represent the best evidence of these two shippers' future coal requirements for Cholla and Coronado Station. *See McCarty Farms, Inc. v. Burlington Northern, Inc.*, 2 S.T.B. 460, 474 (1997) ("we favor the forecasts that are most directly related to the traffic that would use the [SARR]").

3. <u>Revenues</u>

In its *1997 Decision,* the Board calculated revenues by using the actual revenues for 1994 and the first half of 1995. 2 S.T.B. at 389-390. The Board then applied the RCAF-A to forecast revenues for shipments to Cholla for the remaining period of the DCF model, subject to the assumption that the minimum rate that would be charged would never go below the jurisdictional threshold. *Id.* at 390-391. In forecasting the revenues for the Salt River traffic to Coronado, the Board relied upon the contract adjustment procedures for the period through 2006. *Id.* at 390. Since there was no cross-over traffic included in the original traffic group, the Board had no occasion to address how it would forecast/allocate the AGRR's divisions from joint-line movements in its *1997* or *1998 Decisions.*

a. <u>Historic Revenues (1994-2003)</u>

APS/PacifiCorp have recalculated the revenues for the historic traffic in accordance with the *2003 Decisions*. First, APS/PacifiCorp revised the SAC calculation to include revenues for the single-line McKinley movements to Coronado Station based on the actual revenues reflected for that movement in BNSF's accounting records. V.S. Crowley at 11.

Second, for movements from McKinley to Cholla, APS/PacifiCorp updated the challenged rate levels contained in the *1998 Decision* to reflect actual RCAFA values for the period 1Q95 through 1Q04. V.S. Crowley at 13. The challenged rates are the proper basis for defining the revenue stream for shipments from the McKinley Mine because this reopened proceeding is reexamining the Board's *1997* and *1998* SAC analysis to determine whether consideration of changed circumstances warrants changing the Board's rate prescriptions in the *1998 Decision*. Those rate prescriptions were, of course, based upon the revenues for APS/PacifiCorp's McKinley to Cholla traffic that would be generated by the challenged rates.

Third, as noted above, the AGRR delivers traffic from mine origins other than McKinley to both Cholla and Coronado. This traffic moves over the AGRR as cross-over traffic received in interchange from BNSF at Defiance. APS/PacifiCorp have calculated revenues from cross-over traffic to the AGRR using the "modified, straight-mileage prorate" ("MSP") approach recently adopted by the Board in Docket 42069, *Duke Energy Corp. v. Norfolk Southern Ry. Co.,* at 24 (STB served November 6, 2003). *See also,* Docket No. 42070, *Duke Energy Corp. v. CSX Transportation Inc.,* at 20-22 (STB served February 4, 2004); Docket No. 42072, *Carolina Power & Light Company v. Norfolk Southern Ry. Co.,* at 20-21 (STB served December 23, 2003). As Mr. Crowley explains, the MSP approach is applied to the actual revenue data for the non-McKinley shipments that was provided by BNSF in its accounting records. V.S. Crowley at 11-12.

b. <u>Forecasted Revenues (2004-2013)</u>

APS/PacifiCorp have updated revenues for the 2004 through 2013 period based on the forecasting methodology used by the Board in its *1997* and *1998 Decisions*. Specifically, APS/PacifiCorp forecast future revenues based on an historical trend line for the change in the RCAF from 1Q90 to 1Q04. *1997 Decision*, 2 S.T.B. 2d at 390, 391.

In addition, as with the historic volumes, APS/PacifiCorp have applied the MSP approach to allocate revenues associated with cross-over traffic received in interchange from BNSF.

B. <u>DCF Analysis</u>

In performing their recalculation of SAC to account for the changed circumstances discussed above, APS/PacifiCorp have utilized the same DCF model applied by the Board in its *1997 and 1998 Decisions*. APS/PacifiCorp have, however, made the following adjustments to the model -- each of which is appropriate under the *2003 Decisions*.

1. <u>Correction of Error in DCF Model</u>

In the course of recalculating SAC, APS/PacifiCorp have discovered a formula error contained in the DCF model used by the Board in the *1998 Decision.* V.S. Crowley at 15, *citing,* file "MOD_DCFE.WK4". As a result of this error, the Board's model produced an incorrect calculation of the cumulative net present value of the discounted cash flow of the AGRR for the fourth quarter of 2013. *Id.*

The authority of the Board to correct its technical errors and mistakes is well established. *See American Trucking Ass'ns v. Frisco Transp. Co.,* 358 U.S. 133, 145 (1958). In various past proceedings under the *Coal Rate Guidelines,* the Board has addressed and remedied technical errors in its decisions where a party brings the existence of such errors to the Board's attention. *See 1998 Decision,* 3 S.T.B. at 86; Docket No. 41191, *West Texas Utilities Co. v. The Burlington N. and Santa Fe Ry.,* (S.T.B. served May 29, 2003).

In the *1998 Decision*, the Board explained that the type of technical error which it would correct upon notification by a party could either be "computational errors" or an error arising from the "inadvertent misapplication of our stated procedures." 3 S.T.B. at 71, 86. In the instant matter, the formula error constitutes both a "computational error" and an "inadvertent misapplication of [the Board's] stated procedure." V.S. Crowley at 15. This error should be corrected to produce a proper application of the DCF model adopted. Accordingly, APS/PacifiCorp have corrected this error in their restatement of the DCF model. *Id.*

2. Construction Expenses

As noted above, and explained in Mr. Reistrup's testimony, the re-sourcing of McKinley coal necessitates the construction of a new interchange siding near Defiance to facilitate the interchange of cross-over traffic with the residual BNSF. Reistrup V.S. at 6-9. APS/PacifiCorp have modified the original SAC calculation to include the costs of construction of this additional siding. As explained by Mr. Crowley, the unit costs used to calculate the necessary investment in this facility are based solely on costs found in the existing record. V.S. Crowley at 16-17.

3. <u>Operating Expenses</u>

The Board's DCF model in the *1997 and 1998 Decisions* assumed that the SARR's tonnages remained flat through the life of the model. Accordingly, the Board had no need to adjust the operating expenses (*e.g.*, fuel expenses, crew expenses, locomotive expenses, *etc.*) that might otherwise be impacted by fluctuating tonnage levels as the number of trains on the AGRR system increased of decreased. Instead, the only adjustment made to operating expenses was to adjust the aggregate operating expenses for future time periods using the RCAF-U. V.S. Crowley at 20-21.

In the instant reopening, APS/PacifiCorp have continued to adjust future operating expenses using the RCAF-U, even though the Board has recently recognized that this approach overstates expenses by failing to recognize the reality that the SARR would enjoy some, though perhaps not all, of the productivity enhancements experienced by other railroads. *See e.g.*, Docket No. 42072, *Carolina Power & Light Company v. Norfolk Southern Ry.,* at 27-28. While APS/PacifiCorp believe that adjustment of future operating expenses should recognize productivity enhancements, they have followed the Board's approach in the DCF model used by the Board in its *1997 and 1998 Decisions.*

Because the Board did not employ any approach for adjusting operating expenses for changes in annual AGRR volumes (since it was assumed that volumes were a uniform six million tons per year), Mr. Crowley has developed an appropriate adjustment to reflect the impact on operating expenses of fluctuating traffic volumes. V.S. Crowley at 14-16. Consistent with the Board's *2003 Decisions*, Mr. Crowley did not add any new type of costs or recalculate any unit costs, but simply made appropriate revisions to the tonnages used in the calculations. *Id.* at 16[9]

4. <u>Updated Inflation Indexes</u>

In its *1997 and 1998 Decisions* the Board applied the RCAF indexes to adjust the asset base for inflation. *See 1998 Decision,* 3 S.T.B. at 82. As the Board explained: "Before issuing the *'97 Decision*, we updated the RCAF to take account of more current data that became available after the close of the record but prior to service of the decision." *Id.* Consistent with this approach, and the Board's endorsement of the parties' submission of updated inflation estimates for purposes of this reopening in the *2003 Decisions,* APS/PacifiCorp have incorporated the actual RCAF indexes for each quarter from the first quarter of 1997 through the first quarter of 2004. V.S. Crowley at

[9] Mr. Reistrup concluded after evaluating the impact of the new volume forecasts that the AGRR would not require additional locomotives, cars or T/E crew personnel to handle the traffic that moves from non-McKinley origins. V.S. Reistrup at 9-12.

20. APS/PacifiCorp have then forecast the RCAF indexes for the years 2004 through 2013, based on the historical trend in the change in the actual RCAF index from 1994 through the first quarter of 2004. *Id.* This approach comports with the approach used by the Board in its *1998 Decision*, 3 S.T.B. at 82, and is consistent with the Board's *2003 Decisions.*

Mr. Crowley applies the same approach to recalculation of the actual change in the RCAF indexes to his calculation of the AGRR's operating expenses for the historical period from 1994 through the first quarter of 2004. V.S. Crowley at 20-21. Future operating expenses are then adjusted based on the same forecast of the RCAF indexes. *Id.*

5. Railroad Cost of Capital

In calculating cost of capital in the *1997 Decision*, the Board relied upon the average ICC-determined industry cost of capital for 1993, 1994 and 1995, and applied that average to the full DCF period. 2 S.T.B. at 438. Consistent with the *1997 Decision,* and the *2003 Decisions,* APS/PacifiCorp have incorporated the actual annual railroad industry cost of capital for each of the years 1996 through 2002. V.S. Crowley at 21. The cost of capital for future years was then forecast by applying the average actual railroad industry cost of debt and equity for the 1993 through 2002 period to the remaining years in the DCF model. *Id.*

6. **Federal and State Tax Rates**

In its *1997 and 1998 Decisions,* the Board forecast federal and state tax rates for each year in the DCF model based on the then-applicable actual Federal tax rates and a weighted average of the then-applicable actual State tax rates[10] experienced in Arizona and New Mexico. *1997 Decision*, 2 S.T.B. at 415. APS/PacifiCorp have updated this forecast to reflect the actual tax experience for the years 1994 through 2003. V.S. Crowley at 19-20. APS/PacifiCorp have forecast tax rates for 2004-2013 by applying the 2003 Federal and State tax rates for each of the remaining years in the DCF model. *Id.* at 20.

7. **Adjustment for Value of McKinley Mine Spur**

As noted above, the principal changed circumstance giving rise to the need for reopening is the depletion of reserves at the McKinley Mine. As confirmed by Mr. Dix, the current expectation is that McKinley will cease coal production at the end of 2008. V.S. Dix at 7. As a natural consequence of this event, the various AGRR rail facilities used to provide service to the AGRR shippers between Defiance and the McKinley Mine will no longer be necessary after 2008, and may be sold or salvaged. V.S. Crowley at 18-19. These items include, but are not limited to, rail trackage, land and ties. *Id.*

---

[10]The state tax average is weighted based on the AGRR mileage in each state. V.S. Crowley at 19-20.

In keeping with these circumstances, APS/PacifiCorp have revised the DCF model to allow for the sale and salvage of the McKinley Mine spur assets at the conclusion of 2008. As explained by Mr. Crowley, the salvage value was calculated at $4.2 million, net of removal costs and taxes. Id., at 17. Removal costs were premised on prior Board precedent. Id. The DCF model was adjusted to exclude any replacement or residual value for these assets.

The recovery of the value of these assets is entirely consistent with the *2003 Decisions,* as the spur's obsolescence is a direct consequence of the early depletion of McKinley's reserves giving rise to the need to re-source coal supplies. Requiring the AGRR to carry these unnecessary assets, and/or continue to incur costs associated with their upkeep would be contrary to the *Coal Rate Guidelines.*

8. Jurisdictional Threshold

In its *1997 Decision*, the Board's calculation of the maximum reasonable rates included a comparison of the SAC-based maximum rates to the revenue to variable cost (r/vc) jurisdictional floor. 2 S.T.B. at 442-443, Appendix F, Table F-1. As the Board explained, the use of the percentage rate reduction method "produces some overpayments in quarters which cannot be further reduced because of our use of the 180% r/vc rate." *Id.* at 442. To calculate the 180% r/vc rate floor, the Board used the same inflation and forecast assumptions used elsewhere in its SAC model that APS/PacifiCorp are updating in accordance with the directives in the *2003 Decisions.*

Thus, in order to compare apples to apples, any updates to the inflation indexes used in the SAC analysis must be coordinated with updates to the inflation indexes used to calculate the jurisdictional threshold. V.S. Crowley at 21-22. Towards that end, APS/PacifiCorp have updated the Railroad Cost Recovery Indexes ("RCR") used in the Board's jurisdictional threshold model to reflect the actual RCR's for the years 1997 through 2003. *Id. citing* file "REV_180.WK4" from the Board's 1998 model. Consistent with the methodology employed by the Board's *1997 Decision*, APS/PacifiCorp based their forecast of the RCR indexes for the years 2004-2013 upon the historical trend of the change in the actual RCR index for the 1994-2003 period. V.S. Crowley at 21.

C. DCF Results

Based on the foregoing necessary modifications and updates to the Board's DCF model from the *1997* and *1998 Decisions* APS/PacifiCorp have recalculated SAC and maximum reasonable rate levels. The results of this calculation are set forth in the following table which compares them to the maximum rates as calculated in the Board's *1998 Decision*.

Comparison of Recalculated Maximum Rates to Prescribed Rates From 1998 Decision

Year (1)	Board's 1998 Decision [1/] (2)	Recalculated Results [2/] (3)	Difference [3/] (4)
2003	$4.21	$4.04	($0.17)
2004	4.30	4.12	(0.18)
2005	4.75	4.60	(0.15)
2006	4.49	4.47	(0.02)
2007	4.59	4.38	(0.21)
2008	4.69	4.27	(0.42)
2009	4.82	xxx	xxx
2010	4.99	xxx	xxx
2011	5.15	xxx	xxx
2012	5.33	xxx	xxx
2013	5.51	xxx	xxx

1/ Board's *1998 Decision* at 56.
2/ Exhibit (TDC-3) Column (17).
3/ Column (3) minus Column (2).

V.S. Crowley, at 22.

As this Table reflects, the maximum rate levels based upon consideration of the limited changed circumstances within the scope of the *2003 Decisions* exceed the maximum rate levels prescribed by the Board in its *1998 Decision.* Accordingly, under the keep-account arrangement ordered by the Board in the *May, 2003 Decision*, APS/Pacific are entitled to reparations for amounts paid to BNSF in excess of the recalculated rate levels since May 22, 2003.

D. Reparations

APS PacifiCorp have calculated the reparations that are due and owing in the same manner employed by the Board in its *1997 and 1998 Decision*s. Consistent with these decisions, APS/PacifiCorp have compared the $4.21 rate it has been paying to BNSF to the recalculated maximum rates. *Id.* at 22, Table 1. As shown above, the $4.21 rate is greater than the recalculated maximum rate in both 2003 and 2004. As calculated by Mr. Crowley, APS/PacifiCorp are entitled to reparations in the amount of $273,084, representing the difference between the recalculated maximum rate for 2003, $4.04 per ton, and the $4.21 per ton that APS/PacifiCorp paid from May 22, 2003 through December 31, 2003. V.S. Crowley at 22. Additional reparations will be due on tonnage from McKinley moved to Cholla between January 1, 2004 and the effective date of the Board's decision on reopening, along with interest.[11]

III. CONCLUSION AND REQUEST FOR PRESCRIPTIVE RELIEF AND REPARATIONS

As demonstrated above, and in the attached Verified Statements, the maximum reasonable rates prescribed by the Board in its *1998 Decision* should be revised based upon changed circumstances. The Board should prescribe new maximum rate

[11]APS/PacifiCorp submit that the rate levels reflected in the Table above would have been lower had the Board correctly allowed evidence on all changed circumstances affecting the SAC analysis.

levels for the years 2003 through 2008 in the amounts produced by the recalculations described above.

Accordingly, the maximum reasonable rate should be prescribed at $4.02 as of the first quarter of 2003. In addition, the Board should find that APS is entitled to reparations in the amount of $305,212, and an additional amount for shipments from January 1, 2004 until the effective date of the new maximum reasonable rates prescribed by the Board plus interest.

Finally, APS/PacifiCorp request that the Board grant such other and further relief as it may determine to be appropriate under the circumstances.

Respectfully submitted,

ARIZONA PUBLIC SERVICE
COMPANY
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Phoenix, Arizona 85004

PACIFICORP
825 N.E. Multnomah
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DATED: February 27, 2004

NORDLANDER

BEFORE THE
SURFACE TRANSPORTATION BOARD

ARIZONA PUBLIC SERVICE COMPANY, and PACIFICORP, Complainants	)	
v.	)	Docket No. 41185
THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY, Defendant.	)	

VERIFIED STATEMENT OF KENNETH S. NORDLANDER

I. INTRODUCTION

My name is Kenneth S. Nordlander. I am the Fossil Fuel Procurement Manager for Arizona Public Service Company ("APS"). My office address is 400 North 5th Street, Phoenix, Arizona 85004. I have been employed at APS since 1985. In my current position, I am responsible for procurement of the coal and related transportation, used in generating electricity at power plants operated by APS including the Cholla Electric Steam Generation Station ("Cholla Station" or "Cholla").

APS is an Arizona corporation engaged in generating, transmitting, and distributing electric power at wholesale and at retail to approximately 904,000 residential, commercial, industrial, and agricultural customers located primarily in a 50,000 square mile area of Arizona. APS provides retail and wholesale electric service to substantially all of the State of Arizona, with the exception of the Tucson metropolitan area and approximately one-half of the Phoenix metropolitan area.

One of APS's major electric generating facilities is the Cholla Station located near Joseph City, Navajo County, Arizona. The Cholla Station consists of four coal-fired units. The total net output of these units is approximately 1,000 MW. APS operates all four units, and owns Cholla Units 1, 2, and 3. Cholla Unit 4 is owned by PacifiCorp.[1] APS's share of the Cholla units combined capacity - about 615 MW - represents approximately 36 percent of APS's total system coal-fired capacity of 1,712 MW. The Cholla Station is, and for the foreseeable future will continue to be, a major part of APS's generation system. It is of critical importance to APS that the delivered cost of coal to Cholla be maintained at reasonable levels. APS' coal transportation rates are, of course, a major component of the delivered cost of fuel at Cholla.

The purpose of this Verified Statement is to provide the Surface Transportation Board ("STB" or "Board") information concerning Cholla's coal requirements and sourcing for the 20 year DCF period (1994-2013) addressed in the Board's 1997 and 1998 decisions in this case. In particular, I will provide updated

---

[1] PacifiCorp is an Oregon corporation engaged in the production, transmission, distribution and sale of electric power to customers in parts of California, Idaho, Utah, Oregon, Washington and Wyoming. Unless the context indicates otherwise, references in my testimony to APS include PacifiCorp.

information concerning APS' coal deliveries at Cholla Station for 1994-2003, and explain how factors relating to production at Pittsburgh & Midway Coal Company's ("P&M's") McKinley Mine have impacted those deliveries. I will also provide APS' latest forecasts for coal requirements for the years 2004 through 2013, and our plans for coal acquisition during the remaining life of the McKinley Mine and thereafter up until 2013, the end of the DCF period. Finally, I will describe an ongoing concern APS has with regard to BNSF Common Carrier Pricing Authority 90069.

II. HISTORIC COAL DELIVERIES (1994-2003)

{

}

At the time APS filed its evidence in the initial phase of this rate litigation, it was our assumption that all of the coal required to meet Cholla's generating needs through { } would be supplied from the McKinley Mine pursuant to the P&M contract, and that we would enter into a new contract with P&M for Cholla's requirements for subsequent years. At that time, APS expected it would require approximately 3.5 million tons of coal per year and we used that figure for forecasting future coal deliveries to the Cholla Station from McKinley. These assumptions were accepted by the Board in its 1997 and 1998 decisions.

A. Actual Coal Receipts

Due to a number of factors, however, both the source and amount of coal delivered to Cholla since 1995 has differed from our and the Board's assumptions. For example, in 2000, there was a miner's strike at McKinley that required us to obtain coal from other sources. There were also operating problems at McKinley in several years, including 1997 and 1998, that resulted in {

}

In 2003 there were significant unexpected dragline failures, and other production problems. As a result, Cholla received only { } tons[2] from McKinley during the year -- well below the { } tons called for under APS's coal supply agreement with P&M. As a part of recent negotiations over future McKinley Mine coal deliveries, {

[2]This figure is from BNSF's records, which, as I explain later, we have adopted for purposes of this proceeding.

}

APS has also required more coal to fuel Cholla than we had anticipated in 1995 because demand for electricity in the 1995-2003 period has generally exceeded what we forecast. As a consequence of this increased demand, APS has generally required more coal than the 3.5 million tons of coal forecast by APS in 1995. When APS had to acquire coal from other sources, it was mindful both of ongoing production difficulties at McKinley and of the concern about the longevity of the mine. As a result, we have tried coals from both the Southern and Northern portions of the Powder River Basin ("PRB"), Colorado, and New Mexico to evaluate their suitability for use in the Cholla units boilers. The utilization of these replacement coals to date has helped APS evaluate the sources from which Cholla's future requirements will be obtained.

Because McKinley Mine coal has a higher Btu content than alternative PRB coals and other nearby San Juan Basin coals, the purchase of these alternative coals with corresponding lower btu values requires APS to move larger coal volumes in order to meet the Cholla Plant's expected fuel requirements. For example, McKinley coal generally averages 9,800 btus/lb., as compared to the average of 8,800 btus/lb. found in the southern PRB coal of the Black Thunder Mine (or 8,400 btus/lb. found in the northern PRB mines). Thus, if APS were to replace McKinley coal with southern PRB coal, it will need approximately 11.36% more coal in order to produce the same total number of btus.

This phenomenon is reflected in the tables below showing historic coal receipts at Cholla, as well as the forecasts for the future time period.

I have reviewed APS' internal records and BNSF's records produced in discovery concerning the historic traffic data applicable to Cholla from 1994 through 2003. Based on this data, I have confirmed that APS received coal at Cholla from the following sources and in the following amounts for the years 1994[3] through 2003[4]:

[3] The 1994 tons are based on the Board's 1997 Decision. 1997 Decision, 2 S.T.B. at 452.

[4] The 1995 to 2003 historic traffic volume data provided by each of the parties in discovery does not match exactly. However, because of the closeness of the parties' data, and in order to narrow remaining factual differences, APS has accepted BNSF's historic tonnage figures as the actual volumes for purposes of this proceeding.

Year	Mine Origin	Delivered Tons
1994	McKinley	3,535,384
1995	{ }	{ }
1996	{ }	{ }
1997	{ }	{ }
1998	{ }	{ }
1999	{ }	{ }
2000	{ }	{ }
2001	{ }	{ }
2002	{ }	{ }
2003	{ }	{ }

1. Stipulated Coal Receipts for 1999-2002

Subsequent to the Board's entry of a rate prescription in its 1997 and 1998 Decisions, the parties disagreed over some of the service terms that applied to the prescribed common carrier rate. As a result of discussions concerning those issues, the parties negotiated and ultimately executed, in March of 1999, Rail Transportation Agreement BNSF-C-12203 ("1999 Contract") covering BNSF's rail transportation of our coal requirements for the Cholla Station. See Workpapers pp. 7-37. {

}

Under the terms of the 1999 Contract, APS was obligated to ship 3 million net tons of coal each year from the McKinley Mine and/or the York Canyon Mine, and 500,000 net tons of coal from other coal origins including the Lee Ranch Mine.[5] As explained in the Verified Statement of Marc Sauvageau (at paragraphs 4, 5, and 6) contained in APS/PacifiCorp's Reply To Petition To Reopen And Vacate Rate

[5] {

—

—

—

—

}

Prescriptions dated January 30, 2003, {

} In the absence of the 1999 Contract our deliveries from McKinley would likely have been at least 3.5 million tons per year during 1999-2002. See id. V.S. Nordlander at p. 7; V.S. Sauvageau at p. 4. In recognition of this fact, the parties have signed a Joint Stipulation, dated January 22, 2004 that provides:

> The parties . . . hereby stipulate for purposes of the stand-alone cost analyses submitted by the parties in this proceeding, the volume levels for coal shipments originating at the McKinley Mine and destined to Cholla shall be deemed to be 3.5 million tons for each of the years 1999, 2001 and 2002 and 2,625,000 for the year 2000.

Joint Stipulation at 3. See Exhibit KSN-1.

As shown in the above table, actual coal deliveries to Cholla in 1999, 2001 and 2002 { }. In 2000, the tonnages delivered to Cholla were { }. This aberration, however, was the product of an extended labor outage at McKinley that halted production for approximately three months. As a result of these production issues at McKinley in 2000, APS/PacifiCorp purchased significant replacement volumes of Lee Ranch and other coals as reflected in the above historical table.

III. CHOLLA 2004-2013 PROJECTED COAL VOLUMES

APS's most recent forecasts of coal requirements for Cholla (when adjusted to reflect the btu adjustment described above) call for approximately { } tons per year for the ten years 2004 through 2013. {

}

Further details concerning APS' future coal needs were produced to BNSF in discovery. These materials included APS' most recent 10-year coal forecast prepared in the ordinary course of business, { }. <u>See</u> Exhibit KSN-3. This forecast sets forth anticipated coal receipts, by origin, for Cholla between 2003 and 2012. {

}[6] {

} 10-year Cholla forecast is a product of this process.

APS has not yet updated its 10-year forecast to reflect 2003 receipts or the impact of { }. However, in the { } forecast, APS projected

---

[6] {

}.

the coal volumes for {

}

Based upon developments occurring since APS's { } forecast was prepared, the coal volumes reflected in that forecast from certain mine origins have changed for the years 2004-2008. APS's most recently revised projections for 2004-2013, are set forth in the following table:

Year	Forecasted Origin	Tons
2004	{ }	{ }
2005	{ }	{ }
2006	{ }	{ }
2007	{ }	{ }
2008	{ }	{ }
2009	{ }	{ }
2010	{ }	{ }
2011	{ }	{ }
2012	{ }	{ }
2013	{ }	{ }

The above table reflects the following adjustments to the {

} forecast:

- {

}

- {

}

- {

}[7]

APS projects that { } tons of { } coal will be received annually at Cholla in 2009-2013. The remainder of the coal volumes, amounting to { } annually, will come from { }. On a total delivered btu basis, the total coal deliveries for 2009 through 2013 are comparable to the forecasted deliveries for 2004-2008.

---

7 {

}.

IV. BNSF COMMON CARRIER PRICING AUTHORITY 90069

As explained in the Verified Statement of Marc Sauvageau (at paragraphs 9 and 10) contained in APS/PacifiCorp's Reply To Petition To Reopen And Vacate Rate Prescriptions dated January 30, 2003, BNSF Common Carrier Pricing Authority 90069 (see Exhibit KSN-5) was provided to APS on or about December 26, 2002. BNSF 90069 purported to establish, effective January 1, 2003, a rate of $6.91 per ton for the McKinley traffic (a rate 64% higher than the Board's prescribed rate for 2003). BNSF 90069 also purported to impose a minimum annual volume obligation of 3,500,000 tons per calendar year. Finally, BNSF 90069 contains terms that call for APS/PacifiCorp to pay large (and entirely unreasonable) amounts for any annual volume shortfalls below 3,500,000 tons.

Mr. Sauvageau brought this matter to BNSF's attention in a letter dated January 24, 2003. See id. at paragraph 10. This letter is reproduced at Exhibit KSN-6 to this statement. The letter disputed the validity of the proposed freight rate and accompanying service terms (including the minimum annual volume requirements) contained in BNSF 90069 as inconsistent with the Board's 1997 and 1998 Decisions in this docket, and it requested a response from BNSF. However, APS is not aware of any response made by BNSF to Mr. Sauvageau's letter.

APS/PacifiCorp continue to dispute the validity of BNSF 90069. The proper level of the rail rate is, of course, before the Board for decision on reopening. However, other terms of BNSF 90069, in particular the minimum volume and associated penalty payments, are clearly invalid under the Board's decisions in this docket. APS/PacfiCorp bring this matter to the Board's attention again at this time to notify the Board that this issue has not been resolved and may need to be addressed by the Board unless the parties are able to resolve it directly.

VERIFICATION

I, Kenneth S. Nordlander, verify under penalty of perjury that I have read the foregoing Verified Statement of Kenneth S. Nordlander, 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.

Kenneth Nordlander

Kenneth Nordlander

Executed on: February 18, 2004

1

STEPTOE & JOHNSON LLP

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January 23, 2004

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Via HAND DELIVERY

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, NW
Washington, D.C. 20423-0001

Re: **Arizona Public Service Co. and PacifiCorp v. The Burlington Northern and Santa Fe Railway Company, STB Docket No. 41185**

Dear Secretary Williams:

Enclosed for filing in the captioned docket, please find the original and ten copies of a Joint Stipulation of the parties.

Please date stamp the extra copy of the referenced pleading and return it with our messenger. If you have any questions regarding this matter, please contact the undersigned.

Sincerely,

Linda S. Stein

Linda S. Stein
Counsel for Defendant

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BEFORE THE
SURFACE TRANSPORTATION BOARD

ARIZONA PUBLIC SERVICE COMPANY and PACIFICORP Complainants, v. THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY, Defendant.	Docket No. 41185

JOINT STIPULATION

Complainants Arizona Public Service Company and PacifiCorp (collectively referred to as "APS/PacifiCorp") and Defendant The Burlington Northern and Santa Fe Railway Company ("BNSF") hereby represent and stipulate as follows:

1. On January 26, 1999 the parties executed a Confidential Memorandum of Understanding ("MOU") in which they agreed to enter into a confidential rail transportation agreement to govern transportation of coal to APS/PacifiCorp's Cholla Generating Station.

2. Consistent with the MOU, the parties thereafter entered Rail Transportation Agreement BNSF-C-12203 ("1999 Contract") in March, 1999.

3. The volume terms of the 1999 Contract required APS/PacifiCorp to ship coal both from the Pittsburgh & Midway Mining Company's ("P&M") McKinley Mine and from other coal mines.

4. The minimum annual volume required under the 1999 Contract was set at three million tons for shipments from P&M's McKinley Mine and York Canyon Mine, and the minimum annual volume from other coal sources was set at 500,000 tons.

5. But for the MOU or 1999 Contract, APS/PacifiCorp's shipments from the McKinley Mine to Cholla could have been 3.5 million tons of coal per year for each of the years 1999, 2001 and 2002.

6. In the year 2000, APS/PacifiCorp's ability to ship from the McKinley Mine to Cholla was impacted by a Force Majeure Event. The Force Majeure event related to a strike and lasted from May 15, 2000 through August 13, 2000. Effectively, this strike halted coal shipments from the McKinley Mine to Cholla for three months. But for this strike, the MOU and the 1999 Contract, APS/PacifiCorp shipments from the McKinley Mint to Cholla could have been 3.5 million tons of coal on an annual basis, or an average of 291,667 tons of coal on a monthly basis. Accordingly, assuming APS/McKinley shipped their monthly average over the nine-month period that the McKinley Mine was operational in 2000, shipments from the McKinley Mine to Cholla could have been 2,625,000 tons (291,667 x 9) of coal but for the MOU and 1999 Contract.

7. The parties, accordingly, hereby stipulate for purposes of the stand-alone cost analyses submitted by the parties in this proceeding, the volume levels for coal shipments originating at the McKinley Mine and destined to Cholla shall be deemed to be 3.5 million tons for each of the years 1999, 2001 and 2002 and 2,625,000 for the year 2000. Total tonnage shipped to Cholla from all mine origins in each of the years 1999 through 2002 exceeded the tonnages specified in the prior sentence. The parties do not agree with regard to the propriety of including in the stand-alone railroad's traffic group coal delivered to Cholla during these years from mine origins other than McKinley Mine. APS reserves the right to seek to include additional tonnages from mine origins other than McKinley Mine in its stand-alone traffic group and BNSF reserves the right to seek to exclude tonnages from mine origins other than McKinley Mine from its stand-alone traffic group for the years 1999 through 2002.

8. The parties also stipulate that any difference between the stipulated deliveries and the actual deliveries to Cholla from the McKinley Mine for the period 1999 through 2002 should, for purposes of the stand-alone cost analyses submitted by the parties, proportionately reduce the tons shipped from the McKinley Mine during each such year to other coal purchasers, on the assumption that the coal would not have been available for purchase by others if APS/PacifiCorp had contracted to buy it. Each coal purchaser's McKinley tons for any year in this period shall be reduced by a number of tons calculated by taking the difference in tons between the stipulated tonnage and the

actual deliveries to Cholla from the McKinley Mine for that year and multiplying that difference by the purchaser's percentage of actual non-APS/PacifiCorp McKinley tons for the same year.

AGREED TO:

BY: Samuel M. Sipe, Jr.
Samuel M. Sipe, Jr.
Anthony L. LaRocca
Linda S. Stein
STEPTOE & JOHNSON
1330 Connecticut Avenue, N.W.
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ATTORNEYS FOR DEFENDANT

C. Michael Loftus
C. Michael Loftus
Christopher A. Mills
Frank J. Pergolizzi
Peter A. Pfohl
SLOVER & LOFTUS
1224 17th Street, N.W.
Washington, D.C. 20036

ATTORNEYS FOR COMPLAINANTS

DATED: January 22, 2004

2

Exhibit KSN-2

Pages 1 to 4 (of 4)

(REDACTED – PAGES CONTAIN CONFIDENTIAL AND HIGHLY CONFIDENTIAL INFORMATION SUBJECT TO PROTECTIVE ORDER)

3

Exhibit KSN-3

Page 1 (of 1)

(REDACTED – PAGES CONTAIN CONFIDENTIAL AND HIGHLY CONFIDENTIAL INFORMATION SUBJECT TO PROTECTIVE ORDER)

4

Exhibit KSN-4

Page 1 (of 1)

(REDACTED – PAGES CONTAIN CONFIDENTIAL AND HIGHLY CONFIDENTIAL INFORMATION SUBJECT TO PROTECTIVE ORDER)

5

REDUCTION

BNSF 90069 | Original Title Page

BNSF

THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY

BNSF PRICE LIST 90069

LOCAL ALL-RAIL RATES

ON

RAW SUBBITUMINOUS COAL

STCC 11-211 series, 11-212 series, and 11-221 series

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 26, 2002 | 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 90069

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: McKinley Mine (North Tipple), NM.

Destinations: Cholla Generating Station located near Joseph City, AZ.

Route: BNSF direct.

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

Freight Rates: Rates stated in U.S. Dollars Per Net Ton (2,000 pounds avoirdupois) Coal:

STB Prescribed Freight Rate	BNSF Proposed Freight Rate*
$4.21	$6.91

* Contingent on vacation of rate prescription in STB Docket 41185. The difference in transportation charges resulting from application of the BNSF proposed and STB prescribed Freight Rates shall be paid into escrow beginning January 1, 2003.

Minimum Tender and Weights: Weights are stated in terms of Net Tons (2,000 pounds avoirdupois). 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 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 Carload shall be ninety-five (95) Net Tons. Minimum Tender shall be sixty (60) Railcars. Minimum Weight per Trainload shall be the product of the 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. In the event that fewer than sixty (60) Railcars are furnished by BNSF for loading, the Minimum Weight per Trainload shall be reduced by 95 Net Tons for each Railcar not furnished which results in a train of less than Minimum Tender.

Minimum Volume: The STB prescribed Freight Rate applicable to Coal shipments shall be subject to a Minimum Volume of 3,500,000 Net Tons per Calendar Year. In the event that the Minimum Volume is not shipped, a Tonnage Shortfall shall exist. In the event of a Tonnage Shortfall, Shipper shall pay BNSF a Balance Due equal to the difference between $14,735,000 and the total amount otherwise paid by Shipper for transportation service provided pursuant to this Common Carrier Pricing Authority. This Minimum Volume provision shall not apply to coal shipments moving under the BNSF proposed Freight Rate.

Railcar Supply and Tender Requirements: BNSF shall provide open top rapid discharge hopper cars ("Railcars") suitable for loading not less than 95 Net Tons of Coal per carload. Claims for damage to or destruction of BNSF provided Railcars while Loading at Origin or Unloading at Destination 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.

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 means any of the following events 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 Shipper, its agents, or the mine operator, BNSF may Constructively Place the train at any available hold point. In the event of Constructive Placement, Loading Free Time shall begin when BNSF notifies Shipper or its agent that a train has arrived at the hold point and shall end when the train is Actually Placed at Origin.

In the event that 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: Shipper or its agent shall be responsible for the provision of appropriate unloading facilities, and shall be responsible for unloading of railcars at Destination. All cars in each shipment shall be tendered to BNSF for empty movement within twelve (12) hours of Actual or Constructive Placement for unloading at Destination ("Unloading Free Time").

Unloading Free Time 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 means 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.

Actual Placement for Unloading is made when a loaded train is placed on Shipper's tracks at Destination. If Actual Placement is prevented due to any cause attributable to Shipper or its agent, BNSF may Constructively Place the train at any available hold point. In the event of Constructive Placement, Unloading Free Time shall begin when BNSF notifies Shipper or its agent that a train has arrived at the hold point and shall end when the train is Actually Placed at Destination.

In the event that total time from Actual or Constructive Placement to release of an empty 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 provided by BNSF and charges therefor, other than specified in this Common Carrier Authority, shall be as described in BNSF Authority 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. For purposes of determining compliance with the Minimum Volume provision herein, BNSF Waybill Date shall be the date a shipment is made pursuant to this Common Carrier Pricing Authority. All railcars for each shipment are to be billed on one (1) Bill of Lading. This **Common Carrier Authority, BNSF 90069,** 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 Shipper by electronic transfer of funds within fifteen (15) calendar days of receipt of BNSF's invoice. In the event that Shipper does not make timely payment, or if adverse credit conditions occur, which in BNSF's judgement could affect 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 Authority.

Other Provisions: Shipments made under the provisions of this Common Carrier 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.

6

Exhibit KSN-6

Pages 1 to 3 (of 3)

(REDACTED – PAGES CONTAIN CONFIDENTIAL AND HIGHLY CONFIDENTIAL INFORMATION SUBJECT TO PROTECTIVE ORDER)

DURNING

BEFORE THE
SURFACE TRANSPORTATION BOARD

ARIZONA PUBLIC SERVICE COMPANY, and PACIFICORP, Complainants v. THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY, Defendant.	Docket No. 41185

VERIFIED STATEMENT OF BRIAN DURNING

My name is Brian Durning. I am the Manager, Fuel Administration/Fuel Resources for PacifiCorp. My office is located at 201 South Main Street, Suite 2100, Salt Lake City, Utah. I began working for PacifiCorp in June, 1983. In my current position, I am responsible for the administration of coal supply and coal transportation contracts, which includes responsibility for the coal supply and coal transportation arrangements for PacifiCorp's Unit 4 of the Cholla Electric Steam Generation Station ("Cholla Station" or "Cholla").

PacifiCorp is an Oregon corporation engaged in the production, transmission, distribution and sale of electric power to approximately 1.5 million retail customers in a service territory comprising approximately 135,000 square miles in parts of California, Idaho, Utah, Oregon, Washington, and Wyoming.

The purpose of this Verified Statement is to provide the Surface Transportation Board with factual background concerning PacifiCorp and its relationship with APS and the actual and projected coal volume receipts at Cholla for the years 1994 through 2013. This statement is offered in support of APS/PacifiCorp's Opening Evidence and Argument on Reopening.

I have reviewed the Verified Statement being submitted in this matter on reopening by Kenneth S. Nordlander of APS. ("Nordlander Statement"). The factual statements contained in the Nordlander Statement are true and accurate to the best of my knowledge and belief, and in particular as addressed in further detail below.

As stated in the Nordlander Statement, the Cholla Station is located near Joseph City, Navajo County, Arizona. The Cholla Station consists of four coal-fired units. Although APS operates all of the units, Cholla Unit 4 is owned by PacifiCorp. Thus, it is also important to PacifiCorp that the delivered cost of coal used as fuel at Cholla be maintained at reasonable levels. The rates APS/PacifiCorp pay for rail transportation of this coal are, of course, a major component of the delivered cost of fuel at Cholla.

As the managing operator of all the Cholla units (including PacifiCorp's Unit No. 4), APS maintains all the coal receipt records for Cholla. The actual Cholla coal receipts experienced since 1994 as reflected in the Nordlander Statement (pp. 4- 10) are accurate, to the best of my understanding and knowledge, based on data that is regularly shared by the APS fuel department with PacifiCorp in the ordinary course.

The Nordlander Statement accurately describes the anticipated remaining life of the McKinley Mine, and the quantity of coal to be received at Cholla from McKinley through 2008, {

} The projected future Cholla coal receipts for all units through 2013 as reflected in the Nordlander Statement (pp. 11-15) are accurate, to the best of my understanding and knowledge, based upon our discussions with APS concerning Cholla's anticipated future coal supply, and our internal projections for Unit No. 4. Following the closure of the McKinley Mine, we anticipate Cholla, Unit No. 4 will burn { }

{

}

Cholla Unit #4 Historical Capacity Factor

1996	{ }	2000	{ }
1997	{ }	2001	{ }
1998	{ }	2002	{ }
1999	{ }	2003	{ }
Avg	{ }	Avg	{ }

{

}

Our most recent forecast for the ten-year period 2004 through 2013 projects average annual coal burn at this unit of {

}

DIX

Affidavit of M. William Dix, Jr.
Senior Vice President
The Pittsburg & Midway Coal Mining Co.
Regarding Recoverable Reserves at the McKinley Mine

My name is M. William Dix, Jr., Senior Vice President of The Pittsburg & Midway Coal Mining Co. ("P&M"), with offices at 4601 DTC Blvd, Sixth Floor, Denver, CO, 80237.

I previously submitted a Rebuttal Verified Statement on December 13, 1995 in this proceeding ("Dix R.V.S.") and an additional Verified Statement on September 8, 1997 in support of Arizona Public Service Company ("APS") and PacifiCorp's reply to a request for reopening in this case. My background and qualifications are set forth in my 1995 testimony.

The purpose of this statement is to provide current information to the STB regarding the operations and recoverable reserves at P&M's McKinley Mine in the San Juan Basin of northwestern New Mexico. I am aware that the level of these reserves was at issue during the initial processing of this case.

I. Background

A. P&M/McKinley

P&M is a wholly owned subsidiary of ChevronTexaco Corporation, and owns four surface mines and one underground mine in the United States, one of which is the McKinley Mine in New Mexico.

McKinley is a surface mine operation that produces subbituminous coal that is higher in heat content (9,850 Btu's per pound) than coal from other mines in the San Juan Basin and, in addition, it qualifies as compliance coal due to its low sulfur content (less than 1.2 pounds of SO_2 per million Btu's). McKinley's production of coal in the years 1994 to 2003 has been as follows:

1994	{ }
1995	{ }
1996	{ }
1997	{ }
1998	{ }
1999	{ }
2000	{ }
2001	{ }
2002	{ }
2003	{ }

B. Prior P&M Testimony

In my Rebuttal Verified Statement that was submitted on December 13, 1995, I identified the level of recoverable reserves that P&M expected to produce as of that date, and explained that P&M was engaged in an effort to obtain additional reserves through negotiations with the Navajo Nation.

With respect to the quantity of recoverable reserves and the anticipated life of the mine, I reported that {

}

I understand that in its 1997 decision on the merits of APS/PacifiCorp's Complaint, the STB found that it was "quite likely that coal would continue to be available from P&M at the McKinley Mine site through 2013 . . . making it unnecessary for Arizona and Salt River to switch to other coal sources. . . ." Ariz. Pub. Serv. Co. and PacifiCorp v. Atchison, Topeka and Santa Fe Ry., 2 S.T.B. 367, 384 (1997). I further understand that in May of 2003, the STB agreed to reopen its APS decision, stating that it was "clear that McKinley will deplete its coal reserves sooner than anticipated." Docket No. 41185, Ariz. Pub. Serv. Co. and PacifiCorp. v. BNSF, Decision served May 12, 2003, at 3. The balance of my testimony will update the Board with respect to the McKinley Mine and will discuss changes that we anticipate making to our operations that will impact our production volume.

II. Current Status of Operations at McKinley

Since I provided P&M's estimate of recoverable reserves as of January 1, 1996 (i.e., { }), we have produced { } of coal from the mine. {

} we currently estimate that the remaining recoverable reserves at

McKinley are just over { }. Of those { }

are now committed for sale. Based upon our best estimates we expect to produce the following number of tons per year from McKinley over its remaining life:

2004	{ }
2005	{ }
2006	{ }
2007	{ }
2008	{ }

III. P&M's Contract with APS

{

}

IV. P&M Sales (1999-2002)

APS has requested information from P&M concerning a breakdown of our McKinley Mine sales for the years 1999 through 2002. {

} A summary of the total coal sales, by year and customer for the years 1999-2002 is as follows:

1999	**Tons (000)**
{	
	}

2000	**Tons (000)**
{	
	}

2001	**Tons (000)**
{	
	}

2002	Tons (000)
{	}

The above sales numbers differ from the "production" numbers for 1999-2000, as referenced above. These differences reflect the fact that coal that is produced is not necessarily sold in the same year of its production.

Further Affiant sayeth not.

Dated: ______________________________

Subscribed and sworn to before
me this 24th day of February, 2004.

Barbara A. Betty
Notary Public in and for the
State of Colorado.

BARBARA A. BETTY
NOTARY
PUBLIC
STATE OF COLORADO

My commission expires 7/20/06

BEFORE THE
SURFACE TRANSPORTATION BOARD

ARIZONA PUBLIC SERVICE COMPANY, and PACIFICORP, Complainants	)	
v.	)	Docket No. 41185 (Reopened)
THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY, Defendant.	)	

VERIFIED STATEMENT OF
PAUL H. REISTRUP

My name is Paul H. Reistrup. I am a consultant on rail operations and engineering matters. My address is 8614 Brook Road, McLean, VA 22102.

I. <u>Background and Qualifications</u>

I have 45 years of experience in railroad operations and engineering, largely with CSX Transportation, Inc. ("CSXT") and its predecessors and also as President of the Monongahela Railway, an eastern coal-carrying railroad. I have also served as President of Amtrak and as a consultant on rail operations and management matters, including service with R.L. Banks & Associates, Inc. and as Vice President of the rail division of the international engineering firm Parsons Brinckerhoff.

I am the same Paul H. Reistrup who submitted testimony on behalf of Arizona Public Service Company and PacifiCorp ("APS/PacifiCorp") in an earlier phase of this proceeding. Specifically, I sponsored Verified Statements submitted with APS/PacifiCorp's Opening Statement of Facts and Argument filed August 1, 1995 ("Opening VS"), and with APS PacifiCorp's Rebuttal Statement of Facts and Argument filed December 13, 1995 ("Rebuttal VS"). In those submissions I developed and defended the system configuration and operating plan for the Arizona & Gallup Railroad ("AGRR"), the SARR presented by APS/PacifiCorp in the original proceedings before the Board that led to the Board's decision in Arizona Public Service Co. and PacifiCorp v. Atchison, T. & S.F. Ry. Co., 2 S.T.B. 367 (1997) ("1997 Decision"). During the course of that assignment I inspected the route traversed by coal trains operating between McKinley Mine and the Cholla Generating Station, and rode in the locomotive of such a coal train over an entire round-trip cycle. My SARR system configuration and operating plan were largely adopted by the Board in its 1997 Decision.

My qualifications and experience are set forth in more detail at pages 1-4 of my Opening VS. After that testimony was prepared, I spent two additional years at Parsons Brinckerhoff, during which, *inter alia,* I developed the system configuration and operating plan for the stand-alone railroad presented by the shipper in Potomac Electric Power Co. v. CSXT Transportation, Inc., STB Docket No. 41989. That case was settled in mid-1998, shortly before the Board's decision on the merits was due to be issued.

On July 1, 1997, I left Parson Brinckerhoff and re-joined CSXT as Vice President-Passenger Integration, with offices in Washington, D.C. In this position I was responsible for overseeing CSXT's relations with all public and quasi-public rail transportation agencies (including but not limited to Amtrak, VRE, MARC, SEPTA, NJ Transit, MBTA and Metro North) that operate passenger and commuter trains on CSXT's lines and vice versa. I was also responsible for negotiating settlements with these entities on behalf of CSXT during the Conrail Control proceeding, and for the successful integration of CSXT's freight and passenger operations on the Northeast Corridor (which was new territory for CSXT) following consummation of Conrail's acquisition by CSXT and Norfolk Southern.

I retired from CSXT at the end of February, 2003, and returned to my consulting work. At that time I entered a six-month consulting agreement with CSXT under which I was also on call to furnish consulting services relating to passenger and commuter rail issues and provide advice as requested by CSXT's chief executive and senior officers. That agreement terminated on August 31, 2003.

I am the author of an article in the Fall 2002 issue of the *Journal of Transportation Law, Logistics and Policy* (Vol. 70, Number 1, p. 57), entitled "Passenger Trains on Freight Railroads: A View From Both Sides of the Track" in which I discussed freight/passenger train use of the same lines during my entire career, including my recent tenure as Vice President for Passenger Integration at CSXT.

II. Purpose and Scope

I have been requested by APS/PacifiCorp to address and explain some very minor changes in the rail trackage, operating plan and operating expenses for the AGRR as presented by APS/PacifiCorp in the initial phase of this proceeding. These changes are necessary to accommodate the phasing out of coal production from (and ultimate closure of) the McKinley Mine north of Gallup, NM, which heretofore has been the principal coal supply source for the two shippers (APS/PacifiCorp and Salt River Project) and power plants (Cholla and Coronado) included in the AGRR's traffic group, and the transportation by the AGRR of replacement coal from other sources.

As the Board noted in its Decisions in this proceeding served May 12, 2003 and October 14, 2003 ("2003 Decisions"), due to the phasing out and ultimate closure of McKinley Mine, APS/PacifiCorp and Salt River Project have been and will be changing coal sources for the Cholla and Coronado power plants. This means that the AGRR's coal traffic moving to these plants is changing (and ultimately will completely change) from single-line traffic to "cross-over traffic," that is, coal traffic that originates at off-SARR points served by the residual BNSF[1] and which the AGRR delivers to the two destination power plants which it continues to serve.

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[1] The original defendant in this case was The Atchison, Topeka and Santa Fe Railway Company ("ATSF"), which merged with Burlington Northern Inc. in 1995 to form The Burlington Northern and Santa Fe Railway Company ("BNSF").

The non-McKinley Mine traffic will be interchanged from BNSF to the AGRR at Defiance, NM, which is the point of connection between BNSF's (and the AGRR's) east-west main line and the 19.6-mile Defiance Spur which serves McKinley Mine. Defiance is a point located on the AGRR's present route, as described in the parties' 1995 evidence and by the Board in its 1997 Decision. Its location is shown on Exhibit PHR-1 attached hereto. Exhibit PHR-1 is a copy of the track diagram of the AGRR appended as Exhibit RKP-1 to the initial Verified Statement of Robert K. Pattison filed on August 1, 1995 as part of APS/PacifiCorp's opening evidence during the initial phase of this proceeding. I have marked the location of Defiance on this diagram.

I understand that, in the 2003 Decisions, the Board ruled that APS/ PacifiCorp may not change either the original traffic group or the system configuration for the AGRR. I take these rulings to mean that, for example, APS/PacifiCorp are prohibited from changing the AGRR's route by, *e.g.*, extending it to the Lee Ranch Mine in New Mexico or mines in the Wyoming Powder River Basin ("PRB") that presently serve as sources for some of the coal consumed at Cholla and Coronado, or extending it to serve other power plants. In order to move the replacement coal that the Board contemplates will be added to the AGRR system, APS/PacifiCorp must make a minor track adjustment at Defiance (adding one interchange siding) to accommodate the shift of the AGRR's coal traffic from originated to interline – a shift which the Board has clearly included as a subject to be addressed on reopening. Similarly, the changes in the AGRR's coal traffic projections and coal sources (also proper subjects of inquiry under the 2003 Decisions) result in some minor changes in the AGRR's train movements and thus in its operating plan and annual operating expenses.

The purpose of this Verified Statement is to describe these minor changes and their impact on the AGRR's road property investment (construction) costs and annual operating expenses.

III. Trackage Change at Defiance, NM

In my earlier testimony in this proceeding I provided for a turnout (switch) connection between the AGRR and the ATSF (now BNSF) at Defiance. See my Rebuttal VS on behalf of APS/PacifiCorp filed December 13, 1995, at pp. 5-6.[2] Thus the original configuration for the AGRR (as adopted by the Board in its 1997 Decision with the concurrence of all parties) allows for the interchange at Defiance of cross-over coal traffic originated by BNSF and terminated by the AGRR at the Cholla and Coronado power plants.

Based on the AGRR coal traffic information (historical and future projections) by origin provided to me by APS/PacificCorp Witness Thomas D. Crowley,

---

[2] The cost of constructing this turnout was included in the revised road property investment (construction) costs for the AGRR presented in the Rebuttal Verified Statement of APS/PacifiCorp's principal engineering witness, Robert K. Pattison, which was also filed on December 13, 1995. Mr. Pattison's turnout construction costs were accepted by the Board and incorporated in the SAC analysis underlying the 1997 Decision.

and information provided in discovery by BNSF and Salt River Project concerning train sizes for movements from the "cross-over" origins (Lee Ranch Mine in New Mexico and BNSF-served mines in the PRB), I have reviewed whether any additional facilities are needed at Defiance to permit the efficient, uninterrupted movement of trains interchanged to and from BNSF at that location. I have concluded that, in addition to the turnout connection to BNSF which is already provided for, the AGRR should also construct one siding just west of the interchange turnout. This siding should be 1.7 miles in length, which is long enough to accommodate the longest train that would be interchanged between the AGRR and BNSF.[3] It would be located between Mileposts 166.93 and 168.63. The addition of this siding enables two trains at a time to be interchanged (one moving in each direction) on the few occasions when the AGRR would have an empty coal train ready to deliver to BNSF and BNSF would simultaneously (or nearly simultaneously) have a loaded train ready to deliver to the AGRR.

The new interchange siding is not needed until at least 2000. Prior to that year, cross-over coal trains are interchanged between the AGRR and BNSF at Defiance

---

[3] Information provided by BNSF in discovery indicates that the {

}

with such infrequency that the likelihood that two opposing trains would arrive in the vicinity of Defiance at nearly the same time is minuscule. For example, in 1999 a total of { } loaded trains from non-McKinley origins would be interchanged from BNSF to the AGRR at Defiance. *See* Workpapers pp. 530-533. { }

2000 is the first year in which significant quantities of coal from mines other than McKinley moved to the Cholla and Coronado plants. In that year { } tons moved from origins other than McKinley to Cholla and Coronado. *See* Electronic Workpaper files "copy of APS 1995-2000 data.xls"; "copy of SRP 1995-2000 data.xls". Based on { } While the likelihood of train meets at Defiance is not great even at this train frequency, I have conservatively provided for construction of the interchange siding at Defiance in the fourth quarter of 1999, so that it will be in service as of January 1, 2000.

The cost of constructing the new interchange siding at Defiance is { } million according to Mr. Crowley's Verified Statement.

I would note that this minor change (the addition of one interchange siding at Defiance) is the *only* change from the 1995 track system presented in my original testimony and that of Mr. Pattison that is necessitated by the change in mine origins for Cholla and Coronado coal. In all other respects the original track system is satisfactory to enable the AGRR to handle its historical and projected coal traffic, and it has been left "as is."

IV. Affect of Conversion of Single-line Coal Traffic to Cross-over (Interline) Coal Traffic on the AGRR's Operating Plan

The original AGRR traffic group presented in the original phase of this case assumed that Cholla would receive 3.5 million tons and Coronado would receive 2.5 million tons of coal from McKinley Mine each year during the 20-year DCF period used to calculate stand-alone costs. {

} In addition, the longer, heavier PRB trains now being received by Salt River Project, in particular, involve different locomotive power compared with the power I provided for in my 1995 Opening VS in this proceeding.

In my Opening VS, I based the AGRR locomotive requirements on trains comprised of { } cars (railroad-provided) for the Cholla movement and { } cars (shipper-provided) for the Coronado movement. Based on these parameters I provided for three GE C40-8 locomotives to power each Cholla train and five C40-8 locomotives to power each Coronado train.

These train sizes and locomotive consists continue to be appropriate for trains originating at McKinley Mine (and Lee Ranch Mine), but different train sizes are being used for movements from PRB mines. At present, PRB trains moving to Cholla normally consist of { } cars with a lading weight of { } tons. This translates to a gross trailing weight of { } tons per train. I understand that BNSF is presently using AC locomotives to transport this traffic. Three AC locomotives such as the EMD model SD70MAC would be sufficient to handle these trains.

Larger train sizes are being used for the PRB coal movements to Coronado. According to documents produced by BNSF in discovery,[4] {

}

BNSF will move Cholla and Coronado coal trains interchanged with the AGRR at Defiance in run-through service. This means that the same locomotives will remain with the train for its entire movement. This, in turn, means that both railroads will contribute an appropriate number of locomotives to a pool to be used for these trains.

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[4] See Workpapers p. 211.

In my original (1995) testimony in this proceeding, I equipped the AGRR with General Electric C40-8 locomotives, since the "Dash-8" was commonly used in western coal service at that time. Today, BNSF and other western coal-hauling railroads (*i.e.*, UP) use AC locomotives such as the SD70MAC in western coal service, particularly from the PRB.[5] However, the AGRR can still contribute Dash-8's to the pool of locomotives used for its cross-over coal traffic. BNSF is free to equip the cross-over trains entirely with SD70MACs or any other locomotive type(s) of its choosing, and the AGRR would operate them in run-through service between Defiance and the Cholla or Coronado plants. BNSF could use the Dash-8 locomotives provided by the AGRR in other service that does not involve the AGRR, such as general freight service on its transcontinental main line (the same line that passes through Defiance).

Notwithstanding the { } trains used for the PRB coal movements, these trains travel a shorter distance on the AGRR than the McKinley trains and the use of AC power in a DP configuration allows the trains to be moved with less total horsepower than would otherwise be the case.

The Dash-8 has the same horsepower as the SD70MAC, and although the Dash-8 is a DC unit rather than an AC unit, the { } AC locomotive consists that can be used for the PRB trains moving to Coronado, in particular, mean that fewer

[5] In connection with another matter I had occasion to observe BNSF's coal operations in and south of the PRB in October-November 2003, and confirmed that the predominant locomotive type used by BNSF on PRB coal trains is the SD70MAC.

horsepower hours are consumed by these locomotives while on the TNR than by the { } consists employed on the McKinley trains. The bottom line is that the AGRR does not need to provide any additional locomotives (or cars) to handle the larger PRB trains.

The shift in the AGRR's traffic from 100% local traffic to { } cross-over traffic would also affect the AGRR's crew districts for the cross-over trains (but not the McKinley Mine trains, which would continue to operate with turnaround crews as provided in my original, 1995 operating plan). The crews operating the cross-over trains would continue to be based at the destination power plants, and would start their runs from those points. On most occasions they would operate in turnaround service (just as they do for the McKinley Mine trains), except that the crew arriving at Defiance with an empty train would switch to a loaded train for the return trip to the power plant. The crew would simply detrain from the empty at Defiance and board the load for the reverse movement.[6]

There may be some occasions when, because of the unavailability of a loaded cross-over train at or near Defiance when an AGRR crew arrives there with an

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[6] The crews on the cross-over trains would not have to operate between Defiance and McKinley Mine, load the train, and return to Defiance. This means that approximately five additional hours of on-duty time would be available for each crew. In other words, when a crew on an empty cross-over train arrives at Defiance, it can return with a loaded train on the same tour of duty if the load arrives at Defiance within five hours after arrival of the last empty train. The AGRR would schedule most empty train departures from the power plants to coincide with the arrival of loaded trains at Defiance.

empty train, the crew on the empty train would end its trip at Defiance. In this situation the crew would be taxied to a motel near Gallup, NM for rest, and, after receiving at least eight hours rest, be taxied back to Defiance to board a loaded train for the run to the power plant. No additional crew members would be needed due to such occurrences.

VERIFICATION

I, Paul H. Reistrup, verify under penalty of perjury that I have read the foregoing Verified Statement on behalf of APS/PacifiCorp in this proceeding, 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.

Paul H. Reistrup

Executed on: February 20, 2004

1

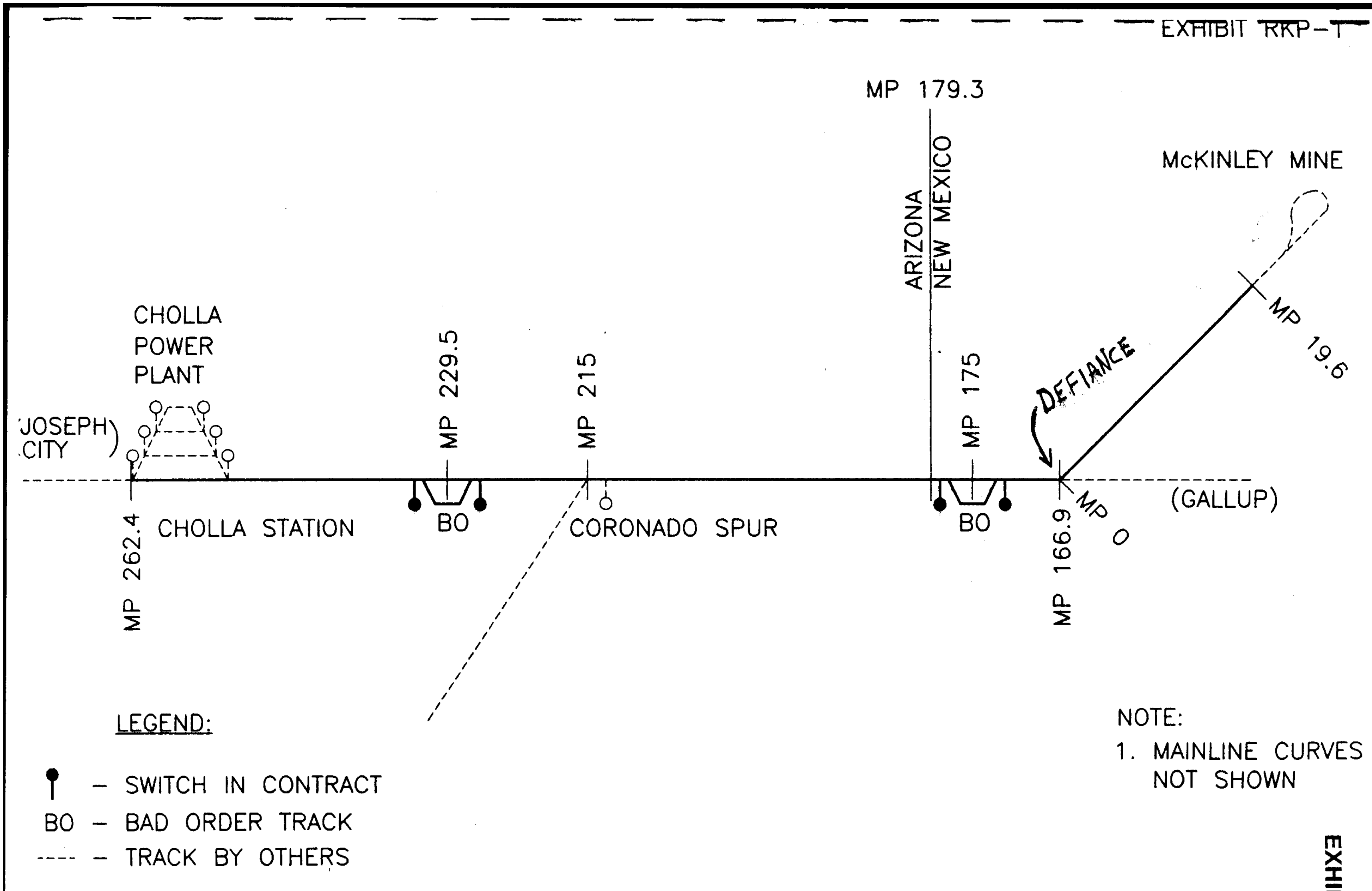

EXHIBIT PHR-1

ARIZONA & GALLUP RAILROAD

NOT TO SCALE

CROWLEY

BEFORE THE
SURFACE TRANSPORTATION BOARD

ARIZONA PUBLIC SERVICE COMPANY and PACIFICORP	)	
	)	
Complainants,	)	
	)	
v.	)	**Docket No. 41185**
	)	
THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY	)	
	)	
Defendant.	)	

**VERIFIED STATEMENT
OF
THOMAS D. CROWLEY**

I. INTRODUCTION

My name is Thomas D. Crowley. I am an economist and President of L. E. Peabody & Associates, Inc., an economic consulting firm with offices located in Alexandria, Virginia and Chicago, Illinois. I have devoted a substantial portion of my professional career to railroad transportation matters. I have presented testimony on variable and stand-alone costs in numerous rail rate cases involving the Surface Transportation Board's ("Board") Constrained Market Pricing

("CMP") principles, including every coal rate case filed since CMP was adopted in 1985 by the Interstate Commerce Commission. My experience and expertise in the area of rail economics and costing are described in detail in my Statement of Qualifications, a copy of which is attached to this Verified Statement as Exhibit (TDC-1).

I previously submitted Verified Statements in this proceeding on August 1, 1995, December 13, 1995 and September 8, 1997. These statements addressed a variety of issues, including various aspects of Stand-Alone Costs ("SAC"), including issues relating to traffic identification for the Stand-Alone Railroad ("SARR"), road property investment costs, annual operating and maintenance expenses, and application of the Discounted Cash Flow ("DCF") model to the SARR. I also submitted testimony concerning reparations. I am intimately familiar with the Board's SAC analysis prepared in connection with the rate prescription orders it entered in this matter in *Arizona Pub. Serv. Co., et al. v. Atchison, T. & S.F., Ry.*, 2 S.T.B 367 (1997), *modified*, *Arizona Pub. Serv. Co., et al. v. Atchison, T. & S.F., Ry.*, 3 S.T.B 70 (1998) (referred to respectively as the "*1997 Decision*" and "*1998 Decision*"), as well as the underlying assumptions (including traffic and revenue forecasts) utilized in those analyses.

I also submitted a Verified Statement in this proceeding on January 30, 2003. My January 30, 2003 Verified Statement was submitted in support of Arizona Public Service Company's and PacifiCorp's ("APS/PacifiCorp") Reply in Opposition to The Burlington Northern and Santa Fe Railway Company's ("BNSF") Petition to Reopen and Vacate Rate Prescription ("BNSF Petition to Reopen"), APS/PacifiCorp's Reply in Opposition to BNSF's Petition for Interim Relief, and APS/Pacificorp's Petition for Consolidation of the proceedings in Docket Nos. 41185 and 42077.

This Verified Statement responded to the SAC analysis that BNSF submitted in support of its Petition to Reopen. In particular, my January 30, 2003 Verified Statement identified numerous errors in BNSF's SAC analysis that resulted in BNSF's significant overstatement of SAC. Given the short time frame and lack of discovery, my analysis at that time was preliminary and did not reflect the complete analysis of changed circumstances that would be appropriate on reopening.

Since BNSF's Petition to Reopen was filed, the Board has issued two separate decisions that have addressed the scope of issues that are appropriate for this reopened proceeding. The first of these two decisions was decided on May 9, 2003 ("*May 2003 Decision*"). The *May 2003 Decision* granted BNSF's Petition to Reopen and lifted the rate prescription orders entered by the Board in its *1997 Decision* and *1998 Decision*. The *May 2003 Decision* noted that the Board's earlier decisions had contemplated that there might be a premature shutdown of Pittsburg & Midway Coal Mining Company's ("P&M") McKinley Mine in New Mexico. The McKinley Mine was the sole coal source for the two shippers in the SARR traffic group - APS/PacifiCorp's Cholla Generating Station ("Cholla") and Salt River Project Agricultural Improvement and Power District's ("Salt River") Coronado Generation Station ("Coronado") at the time the initial evidence was developed in this case. Given that the parties do not dispute that "circumstances have changed with regard to volume levels that are expected to be transported from the McKinley [m]ine in the final years of the original 20 year DCF analysis," the Board reopened the proceedings in this docket to consider "a more developed record on how Arizona and Salt River will re-source their coal needs once McKinley shuts down, what portion of that traffic could flow over the SARR, and what revenues the SARR could reasonably expect to earn from that coal traffic." *May 2003 Decision*, at 4-5. The *May 2003 Decision* further guides that:

> Both parties may, however, update the record regarding any forecasts made in our prior decisions, such as inflation indexes, cost of rail equity, and revenue forecasts for the Salt River traffic, that proved to be inaccurate. *Id. at 5-6.*

On October 10, 2003, the Board decided ("*October 2003 Decision*") to deny APS/PacifiCorp's Petition for Reconsideration of certain aspects of the *May 2003 Decision*. In this decision, the Board provided further definition of the scope of the reopened proceeding:

> ...Arizona may submit evidence on how the two shippers in the original traffic group will re-source their coal needs once McKinley shuts down, what portion of that traffic could move over the SARR, and the revenues that the SARR could reasonably expect from that re-sourced traffic. Both parties may also update the record regarding any forecasts used in the original SAC analysis that have since proved to have been inaccurate, but they may not reargue or recalculate the base figures to which forecasts were applied. *October 2003 Decision* at 3.

The purpose of this Verified Statement is to provide a SAC analysis that considers the changed circumstances referenced in the Board's *May 2003 Decision* and *October 2003 Decision* (collectively the "*2003 Decisions*"). Specifically, I have recalculated the SAC and DCF model to reflect how these changed circumstances impact the maximum reasonable rate levels that are appropriate for the movement of coal between McKinley Mine and Cholla, and to update the record as to the items identified in the Board's *2003 Decisions*. In addition, consistent with the *2003 Decisions*, I have calculated the reparations that APS/PacifiCorp is entitled to as a result of overpayments due to the difference between the $4.21 per ton rate that the Board ruled should be maintained during the pendency of the reopening and the maximum reasonable rate reflected in my SAC analysis. *October 2003 Decision*, at 3, n.4.

II. SUMMARY AND CONCLUSIONS

As explained below, and as detailed in the Exhibits to this Verified Statement, the updated and recalculated SAC analyses show that the rates challenged by APS/PacifiCorp in this proceeding for coal traffic from McKinley Mine to Cholla still exceed maximum reasonable levels. The SAC analyses also show that, even at the rate levels prescribed by the Board in the *1997 Decision* and *1998 Decision*, APS/PacifiCorp have been overpaying since May 22, 2003 i.e., the effective date of the May *2003 Decision*. Accordingly, I have calculated the reparations that are due and owing to APS/PacifiCorp as a result of these overpayments.

III. SAC ANALYSIS

The purpose of this Verified Statement is to provide a SAC analysis that considers changed circumstances in accordance with the Board's *2003 Decisions*. The starting point for my analysis is the SAC analysis and 20 year (1994 to 2013) DCF model that support the *1998 Decision*. With the underlying assumptions and model as a starting point, I revised the DCF model to reflect how the changed circumstances associated with the closure of the McKinley Mine impact the maximum reasonable rate levels that are appropriate for the movement of coal from the McKinley Mine to Cholla.

I have based my analysis on the same assumptions and methodology relied upon by the Board in the *1997* and 1998 *Decisions*. Where a new issue is incorporated into my analysis that was not addressed by the Board in the *1997* and *1998 Decisions*, I incorporated the Board's most current rulings on that issue. I discuss each of the issues considered and the approach that I utilized in the SAC analysis in the remainder of my Verified Statement.

A. Stand-Alone Railroad Design

The calculation of the maximum rate under the SAC constraint of the Guidelines[1] is based upon a hypothetical rail carrier which APS/PacifiCorp named the Arizona & Gallup Railroad ("AGRR"). As described in the *1997 Decision* and the *1998 Decision*, the AGRR was designed to follow the existing BNSF[2] line from Pittsburgh & Midway Coal Company's ("P&M") McKinley Mine to the Cholla Station with a connection to an existing 42-mile private spur line running from East Coronado Jct., Arizona to serve Salt River's Coronado Station. The design of the AGRR also provided for an interchange with BNSF at Defiance, New Mexico for the exchange of empty cars owned by Salt River and utilized elsewhere on the BNSF system. The AGRR's design was based on many factors including, but not limited to, the traffic APS/PacifiCorp selected to be included in the AGRR and the volume of that traffic.

The design of the AGRR was based on the shipment of traffic to two destinations (APS/PacifiCorp's Cholla Station and Salt River's Coronado Station) from a single origin (the

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[1]Ex Parte No. 347 (Sub No. 1), Coal Rate Guidelines, Nationwide, 1 I.C.C. 2d, 520 (1985) ("Guidelines").

[2]In 1997, the rail carrier was the Atchison, Topeka and Santa Fe Railway, one of the BNSF predecessor railroads.

McKinley Mine) which was, at the time the evidence was developed, the sole source of coal for Cholla and Coronado. As the Board noted in its *1997 Decision* and its *1998 Decision*, there were concerns that the phase-out and ultimate closure of the McKinley Mine could potentially cause APS/PacifiCorp and Salt River to switch coal sources for their Cholla and Coronado Stations in the future. In that event, the parties were encouraged to seek reopening of these decisions. As demonstrated later in my Verified Statement, circumstances at McKinley have indeed changed and both APS/PacifiCorp and Salt River have re-sourced coal requirements supplied from McKinley to mine origins located in New Mexico, Colorado, Wyoming and Montana that are not served directly by the AGRR. As a result, the AGRR now handles both "cross-over" traffic to Cholla and Coronado received in interline service from the BNSF at Defiance, New Mexico and the single-line McKinley coal traffic.

Based on the volume of issue traffic that is re-sourced from McKinley Mine to other off-SARR origins, I understand that APS/PacifiCorp Witness Paul H. Reistrup has determined that a minor addition of an interchange siding at Defiance, New Mexico is necessary. I also understand that this minor adjustment, which is necessitated to accommodate the shift of the AGRR's coal traffic from single-line service to interline service, is consistent with the Board's *2003 Decisions*. With this change, the stand-alone rail network can efficiently handle the subject traffic. In addition, the closure of the McKinely Mine in 2008 renders the AGRR track segment between Defiance, New Mexico and the McKinley Mine useless. As a result, I have adjusted the DCF model to reflect the value associated with abandoning this trackage in 2008.

I have incorporated these two minor changes into the SAC analysis. Consistent with the Board's instruction, I have not incorporated any other changes to the route or configuration of the AGRR.

B. The AGRR Stand-Alone Railroad System - SAC Analysis

1. Traffic Group

According to the Board, the primary purpose of this reopened proceeding is to develop the record concerning the re-sourcing of APS/PacifiCorp's and Salt River's coal needs associated with the early closure of the McKinley Mine. In addition, the Board is interested in determining what portion of the re-sourced traffic could flow over the AGRR and what revenues the SARR could reasonably expect to earn from that coal traffic. In this section of my Verified Statement, I describe the calculation of historical and forecasted traffic volumes and revenues for the AGRR.

a. Historical Volumes

Historical traffic volumes for 1994 are based on the actual coal traffic volumes shown in the *1998 Decision*. For the period from 1995 through 2003, historical Cholla and Coronado traffic volumes that would originate and move over all or part of the AGRR system were identified utilizing actual BNSF accounting data. Exhibit (TDC-2) shows the origin, destination, on-SAC location, off-SAC location, net tons and AGRR revenues for each movement on the AGRR from 1994 through 2013.

Coal shipments from McKinley Mine to APS/PacifiCorp's Cholla Station in 1999, 2000, 2001 and 2002 are based on the agreement of the parties as outlined in the Joint Stipulation dated January

22, 2004. Coal shipments from McKinley Mine to Salt River's Coronado Station for these years are based on Salt River's prorata share of the remaining total coal sales (i.e., the total coal sales minus the stipulated tons for APS/PacifiCorp times Salt River's prorata share of the balance). These adjustments, as explained in the stipulation reflect: (1) the recognition that but for the 1999 Contract, APS/PacifiCorp would likely have taken at least 3.5 million tons from McKinley Mine in each of these years; and (2) McKinley coal that APS/PacificCorp would have purchased would not have been available for sale to others.

In order to reconcile the stipulated tonnages with deliveries to Cholla from McKinley Mine with deliveries to Cholla from other sources for the years 1999-2002, I have also adjusted the actual non-McKinley coal shipments downward on a proportionate calorific value basis to yield the same total British Thermal Units ("BTU") each year as the BTU's actually delivered to Cholla.[3]

b. Forecasted Volumes

Beginning in 2004, the volumes of coal handled each year by the AGRR are projected to fluctuate moderately through the remainder of the 20-year DCF period, reaching their peak in 2009 when total tons moving over the AGRR system are projected to be approximately 8.1 million tons.

The forecast of the tonnages to be handled by the AGRR over the 20-year DCF model life is based upon the Verified Statements of APS/PacifiCorp Witnesses Kenneth Nordlander and Brian

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[3]The total tons delivered in APS/PacifiCorp SAC calculations for 1999-2002 differ slightly from the actual tons delivered because of the different calorific values of the various coals received. Accordingly, in calculating the proportionate share of the non-McKinley coal sources APS/PacifiCorp have made an adjustment that assures that the total btu's per pound delivered under the Stipulation approach are equivalent to the total historic btu's delivered in each year of the Stipulation. See, electronic workpaper "AGR_Traffic and Revenue_A1.xls".

Durning and documents provided by Salt River in discovery. These witnesses and documents represent the best evidence available on the re-sourcing of APS/PacifiCorp's and Salt River's coal requirements associated with the early shut down of the McKinley Mine. These forecasts also reflect the impact on coal tonnages resulting from the lower calorific value of replacement coals, updated estimates of the demand for electricity from Cholla and Coronado and resulting increases in the volumes of coal these plants will burn from 2004 through 2013.

c. Historical and Projected Revenues

The coal traffic handled by the AGRR system falls into two categories: 1) traffic that originates and terminates on the AGRR that replicates a BNSF single-line route; and 2) traffic that terminates on AGRR lines that is received in interchange from BNSF. This latter category of traffic is referred to as "cross-over" traffic.

Historical revenues for shipments on the AGRR in 1994 are based on the actual revenues shown in the *1998 Decision*. Historical revenues for shipments on the AGRR from 1995 thorough 2003 were developed from BNSF's accounting data provided in this proceeding with one exception. The historical revenues for coal shipments from McKinley Mine to the Cholla Station are based on the challenged rates that were the basis of the revenues on the issue traffic in the Board's *1997 Decision*[4] and *1998 Decision*. The challenged rates have been recalculated using actual RCAF-A index values for the period from 1Q95 through 1Q04. Since this reopened proceeding is examining whether certain changed circumstances would justify a departure from the rate levels prescribed by the Board

[4]The challenged rates are produced by tariff ICC ATSF 4009-B series, supplement 14, item 1051-D, rate base 817-B. See *1997 Decision* at 3, n.4.

in its *1998* Decision, the rates challenged in this proceeding must define the DCF revenue stream for shipments from the McKinley Mine. The rates prescribed in the Board's decisions are a result of, not a part of, the DCF analysis.

i. Single Line Revenues

The AGRR completely replaces the existing BNSF both on the movement of coal from McKinley to the Cholla Station and the movement of coal from McKinley to the Coronado Station. The revenues available to the AGRR for this traffic in 1994 are based on the Board's *1998 Decision*. The revenues available to the AGRR for this traffic over the period from 1995 through 2003 are equal to the revenue shown in BNSF's accounting data with the exception of the revenues for coal shipments from McKinley Mine to the Cholla Station which are based on the challenged rates consistent with the DCF analyses in the Board's *1997 Decision* and *1998 Decision*. Projected revenues for BNSF single-line traffic are explained in iii. below.

ii. Division of Revenues - "Cross-over" Traffic

There was no "cross-over" traffic in the Board's *1997* or *1998 Decisions*. However, both Cholla and Coronado have received coal from mine origins other than McKinley due to the increasing probability, then certainty, that P&M would not be successful in increasing its minable reserves at McKinley as well as other causes including McKinley production and labor problems.

The first year that non-McKinley Mine coal was shipped to Cholla was 1997. In 1997, Cholla shipped 230,591 tons of coal from the Black Thunder and Antelope Mines located in the Powder River Basin, Wyoming ("PRB"). In the years between 1997 and 2003, the AGRR shipped non-

McKinley Mine coal to Cholla and Coronado from a number of other origins.[5] For this category of traffic, BNSF's actual revenues must be divided between BNSF and AGRR. "Cross-over" traffic was not addressed in the Board's *1997* and *1998 Decisions* and therefor there is no established approach in this case for the division of revenues. As a result, I incorporated the Board's most current ruling on the division of revenues for "cross-over" traffic. The revenues available to the AGRR for "cross-over" traffic over the period from 1997 through 2003 are calculated based on the application of the modified straight-mileage prorate ("MSP")[6] to the revenue shown in BNSF's accounting data.[7] The revenues available to the AGRR for "cross-over" traffic over the period from 2004 through 2013 are based on the application of the MSP to the projected revenue for these "cross-over" movements. Projected revenues for AGRR "cross-over" traffic are explained below.

iii. Projected Revenues

The revenues for coal handled each year by the AGRR are projected to change throughout the 20-year DCF period. In its *1997* and *1998 Decisions*, the Board forecasted the single-line revenues for coal shipments from McKinley Mine to the Cholla Station and the Coronado Station based on

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[5]These non-McKinley Mine origins include the York Canyon and Lee Ranch Mines in New Mexico; the Black Thunder, Antelope, Cordero, Rochelle, North Antelope, Eagle Butte and Jacobs Ranch Mines in Wyoming; the Spring Creek Mine in Montana; and the Colowyo and Twentymile Mines in Colorado.

[6]MSP was first adopted by the Board to calculate the division of revenue between the stand-alone railroad and the residual incumbent railroad in STB Docket No. 42069, Duke Energy Corporation v. Norfolk Southern Railway Company, decided November 5, 2003 ("Duke/NS"). See Duke/NS at 22-25. MSP was subsequently utilized by the Board in STB Docket No. 42072, Carolina Power & Light Company v. Norfolk Southern Railway Company, decided December 22, 2003 ("CPL/NS") and STB Docket No. 42070, Duke Energy Corporation v. CSX Transportation, Inc., decided February 3, 2004 ("Duke/CSX"). See CPL/NS at 20-21and Duke/CSX at 20-22.

[7]BNSF revenue accounting data includes total movement revenues including connecting carrier revenue, in those limited situations where another carrier was involved in the actual movement.

applicable contract/tariff terms and conditions and the average actual change in the appropriate Rail Cost Adjustment Factor ("RCAF") from 1990-1996, i.e. an historical trend line. Coal shipments from McKinley Mine to Cholla were assumed to be made under the terms of tariff ICC-ATSF-4009-B series and rates were adjusted quarterly based on 100% of the change in the RCAF-A. Coal shipments from McKinley Mine to Coronado were assumed to be made under the terms of Salt River's contract with BNSF through { }[8] and rates were adjusted semi-annually utilizing the contract adjustment mechanism which is based on { }

In my updated analysis, I revised the DCF model to incorporate actual railroad inflation indexes for the period from 1Q97 to 1Q04 (actual indexes were already incorporated for the period from 1Q90 through 4Q96) and then applied the Board's forecast methodology (based on the historical change in the actual RCAF from 1Q90 to 1Q04) for periods after 1Q04.

The Board's *1997* and *1998 Decisions* did not address projected revenues for "cross-over" traffic since no "cross-over" traffic was included on the AGRR system. However, as noted above, the Board did apply a methodology for forecasting revenues in the *1997* and *1998 Decision*s. I forecasted "cross-over" revenues for coal shipments from off-SARR origins to the Cholla Station and the Coronado Station based on applicable contract/tariff terms and conditions and the average actual change in the appropriate RCAF from 1Q90-1Q04. Coal shipments from Wyoming origins to Coronado are made under the terms of the { } Coal shipments from

[8] { }

New Mexico origins to Coronado and New Mexico, Wyoming and Montana origins to Cholla are made under the terms of BNSF tariff 90040-A, (Supplement 7) and rates are assumed to change quarterly based on 100% of the change in the RCAF-U.

Accordingly, in this updated SAC analysis, I apply the Board's forecast methodology (based on the historical change in the actual RCAF from 1Q90 to 1Q04) for periods after 1Q04 to the specific tariff/contract terms in order to forecast revenues for "cross over" traffic.

2. <u>Operating Expenses</u>

In its *1997* and *1998 Decisions*, the Board utilized a model that held future SARR tonnage constant over the 20-year life of the DCF model. Because the tonnage in the future years of the SARR was held constant, annual SARR operating expenses in the future years of the SARR (which were based on tonnage) were adjusted only for inflation over the 20-year life of the DCF model. The growth in AGRR tonnage due to increased electricity demand and the re-sourcing of McKinley Mine traffic to New Mexico, Wyoming, Montana and Colorado coal origins results in changes to operating expenses that I have reflected in the DCF model as explained in the following section of my Verified Statement.

3. <u>DCF Analysis</u>

The starting point for my SAC analysis is the DCF model utilized by the Board in its *1998 Decision*. I revised the DCF model to reflect the use of actual values for historical periods, use of updated trend-line forecasts for future periods, other adjustments appropriate to the changed circumstances associated with the closure of the McKinley Mine and the Board's other guidance provided in the *2003 Decisions*. In particular, I made the following adjustments to the DCF model that the Board utilized in its *1998 Decision*.

a. Correct Formula Error Made by Board

The first adjustment that I made to the Board's DCF model was a correction to a formula error contained in the model itself. This formula error was identified as a result of my preliminary review of the Board's DCF model in anticipation of the changes that were considered in this proceeding. Specifically, the formula error is located on level "Investment SAC" in cell "K139" of the Board's DCF model.[9] The formula results in an incorrect calculation of the cumulative net present value of the discounted cash flow of the AGRR in 4Q13.

b. Adjust Operating Expenses to Recognize Changes in Tonnage

The next adjustment I made to the Board's DCF model was to permit the DCF model to recognize changes in operating expenses as a result of changes in annual SARR tonnage. In the Board's DCF model, the SARR tonnage for Coronado shipments was flat from 1Q94 to 4Q13 while Cholla tonnage changed moderately from 1Q94 to 4Q95 and remained flat from 1Q96 to 4Q13.[10] Because stand-alone tonnage did not change over the DCF model life, operating expenses were not impacted by volume changes.

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[9]See file "MOD_DCFE.WK4" from the Board's *1998 Decision*.

[10]See the Board's DCF model in its *1998 Decision*, "MOD_DCFE.WK4" at worksheet "Rates_Tons_RCAF" for the quarterly stand-alone tonnages utilized by the Board.

In this proceeding, SARR tonnage is changing annually over the entire 20-year DCF model life and therefore the DCF model was adjusted to reflect the changing operating expenses associated with these changes in SARR tonnage. The SARR operating expense categories impacted by the volume adjustment include locomotive lease, fuel and maintenance expenses, crew wages, maintenance-of-way expenses, car lease and maintenance expenses and all other operating expenses included in the *1998 Decision*.

The procedures I followed are consistent with the STB's recognition of the direct relationship between changes in volumes handled and changes in operating expenses. Mathematically, I identified the 1994 base year operating expenses associated with handling the 1994 annual volume (tons). In each year subsequent to 1994, I adjusted the base year total operating expenses by the ratio of the total tons handled in each calendar year to the 1994 total tons handled. This annual adjustment captures the change in SAC operating expenses associated with handling different levels of volume.

c. Value of McKinley Mine Line Segment

The predicate for the Board's reopening of this proceeding is the changed circumstances associated with the early closure of the McKinley Mine. In the Board's *1998 Decision* DCF model, it was assumed that the McKinley Mine would continue to produce coal for the infinite life of the DCF model. In my updated SAC analysis, I assume that the McKinley Mine ceases production in 2008. At the end of 2008, the mine is closed and various railroad items from the rail trackage between the mine and Defiance will be sold, salvaged or inventoried by the SARR. These items include, but are not limited to, rail trackage, land, ties and other track materials (turnouts, spikes, plates and anchors).

I revised the Board's DCF model to reflect the value of these items in 2008 less removal costs. To develop the net value of the McKinley Mine spur, I first calculated the depreciated value of the McKinley Mine spur assets at 2008 levels and then subtracted the estimated cost of removing these assets. To calculate the depreciated value of the McKinley Mine spur, I used the following three step approach:

- First, I identified the AGRR construction costs for the McKinley Mine spur by account at 1Q94 levels from the original investment amounts in the *Board's 1998 Decision* and summed the amounts shown for rail, land, ties and other track materials;[11]

- Second, I adjusted these amounts for asset inflation from 1Q94 levels to 4Q08 levels based on the actual changes in RCR indexes from 1994 to 2003 and forecasted changes in RCR indexes (based on a historical trend of the change in the actual RCR indexes from 1994 through 2003)[12] from 2004 to 2008; and

- Third, in order to account for that portion of the assets that have already been consumed, the inflated value (from 1994) of the McKinley Mine spur assets as of 4Q08 was multiplied by a fraction with the numerator equal to the remaining asset life and the denominator equal to the total asset life as set forth in the Board's DCF model.

Using this approach, I calculated the depreciated value of the McKinley Mine spur assets at $4.37 million at 2008 levels. From the depreciated value of the McKinley Mine spur assets I subtracted the estimated cost to remove these assets. I calculated the removal costs for the McKinley Mine spur assets at $107,367 at 2008 levels.[13] In addition, I calculated Federal tax associated with

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[11]See electronic workaper "INVEST_DEF.wk4".

[12]This methodology is consistent with the approach utilized by the Board in its *1997 Decision* and *1998 Decision*.

[13]I estimated removal costs at $4,059 per mile for rail removal (including other track material) and tie pick-up from past decisions of the Board. See STB Docket No. AB-33 (Sub-No. 112X), Union Pacific Railroad Company - Abandonment Exemption - In Lancaster County, NE, served December 1,1997 and STB Docket No. AB-33 (Sub No. 170), Union Pacific Railroad Company - Abandonment - In Polk County, IA, served January 16, 2002. I indexed removal costs to 2008 levels based on the annual trended change in the RCR labor index. I multiplied these indexed removal

the capital gain on the value of land sold. In total, I included net value of $4.25 million in 2008 into the DCF model for the segment of AGRR track from Defiance, New Mexico to McKinley Mine.[14] In addition, I revised the Board's DCF model to exclude any replacement or residual value for the McKinley Mine spur and the assets identified above from the DCF model calculations.

d. Capital Investment For Interchange Siding at Defiance, New Mexico

Based on the volume of AGRR traffic that is re-sourced from McKinley Mine to off-SARR origins, I understand that APS/PacifiCorp Witness Paul H. Reistrup has determined that a minor addition of an interchange siding at Defiance, New Mexico is necessary.[15] According to Mr Reistrup, this interchange siding is 1.7 miles in length, is located between mileposts 166.93 and 168.63 and is needed to facilitate AGRR shipments beginning 1Q00.[16]

I revised the Board's DCF model to incorporate the capital investment associated with the construction of this interchange siding in 4Q99. The total cost of constructing the new interchange siding was calculated to equal $2.3 million and was developed entirely from information already included in the record in this proceeding. To develop the construction cost for the new interchange siding, I divided the AGRR investment amounts by account shown in the Board's *1998 Decision* DCF model by the total mileage of the AGRR of 116.2 miles. I then multiplied these per mile investment costs by the length of the new interchange siding, i.e., 1.7 miles.[17] I then indexed the

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costs per mile by the mileage of the McKinley Mine spur track to determine total removal costs.

[14]See electronic workpaper "DCF.123" for the calculation of net salvage value in 2008.

[15]See V.S. of Reistrup at 7.

[16]Id at 7-8.

[17]Because the new interchange trackage is built within the existing AGRR right-of-way, I excluded the per mile costs associated with the purchase of land and additional fencing. In all other

resulting construction costs for the 1.7 mile interchange siding to 4Q99 levels based upon actual values for the inflation indexes in the Board's DCF model.

In order to develop the capital recovery stream associated with the cost of constructing the new interchange siding, I ran a separate DCF model for the period from 4Q99 to 4Q13 and included only the construction cost for the new interchange siding.[18] The quarterly capital carrying charges associated with the new interchange trackage are indexed for inflation beginning 1Q00 and continuing through 4Q13. From 1Q00 through 4Q03 the quarterly capital carrying charges are indexed based on the actual change in RCR indexes. From 1Q04 through 4Q13 the quarterly capital carrying changes are indexed based on a forecast of RCR indexes equal to the historical trend of the actual RCR index from 1990 through 2003.[19] The resulting stream of capital recovery amounts produced from this DCF model was incorporated each quarter into the capital investment amount already included in the Board's DCF model beginning in 1Q00 and continuing through 4Q13.[20]

e. Federal and State Tax Rates

I incorporated actual Federal and State tax rates into the DCF model for each of the years 1994-2003. The Board utilized a Federal tax rate of 35% and a weighted average State tax rate of 6.6% (9.00% for Arizona and 0.75% for New Mexico weighted on AGRR mileage in each state) for each year of the DCF model. The actual Federal tax rate I utilized is unchanged at 35% for the period

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aspects, this investment amount comports with the investment shown in the Board's 1998 *Decision.*

[18]The railroad's 1999 cost of capital was used to calculate the return on the capital investment amounts for the new interchange trackage.

[19]This methodology is consistent with the approach utilized by the Board in its *1997 Decision* and *1998 Decision*.

[20]See, electronic workpapers, at "DCF.123".

from 1994-2003. I utilized actual weighted average State tax rates of 6.62% for 1994-1998, 5.91% for 1999, 5.89% for 2000 and 5.18% for 2001- 2003.[21] I assumed that Federal and State tax rates for the years 2004-2013 are equal to 2003 Federal and State tax rates. This methodology is consistent with the approach utilized by the Board in its *1997* and *1998 Decisions*.

f. <u>RCR Indexes for Capital Expenses</u>

The Board's DCF model adjusts the prices for all AGRR capital assets, including land and various road property assets, for inflation beginning 1Q94 and continuing over the 20-year DCF model life. I incorporated actual Railroad Cost Recovery ("RCR") indexes[22] for each of the years from 1997-2003. I forecasted RCR indexes for the years 2004-2013 based on a historical trend of the change in the actual RCR index from 1990 through 2003 This methodology is consistent with the approach utilized by the Board in its *1997* and *1998 Decisions*.

g. <u>RCAF Indexes for Operating Expenses</u>

The Board's DCF model adjusts quarterly AGRR operating expenses (including car expenses for the Cholla shipments) for inflation beginning 1Q94 and continuing over the 20-year DCF model life. I incorporated actual RCAF[23] indexes for each of the periods from 1Q97-1Q04 (actual indexes were already incorporated for the period from 1Q90 through 4Q96). Projected changes in quarterly

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[21]See, electronic workpapers, at "DCF.123" at level "Investment SAC", Cells B168..J180. The actual State tax rate for Arizona decreased to 8.00% in 1999, 7.97% in 2000 and 6.97% in 2001. The actual State tax rate for New Mexico remained unchanged from 1994 through 2001.

[22]The RCR indexes used to inflate capital assets include the Material Prices, Wages and Supplements Combined (excluding fuel) Index, Materials and Supplies Index, and the Wages and Supplements Index.

[23]In its *1998 Decision*, the Board utilized the RCAFU to calculate quarterly changes in AGRR operating expenses. Consistent with the Board's *1998 Decision*, I continue to use the RCAFU to adjust AGRR operating expenses.

AGRR operating expenses for the period from 1Q04-4Q13 are based on a historical trend of the change in the actual RCAF index from 1Q90 through 1Q04. This methodology is consistent with the approach utilized by the Board in its *1997* and *1998 Decisions*.

h. Railroad Cost of Capital

I incorporated the actual annual railroad industry cost of capital for each of the years 1996-2002 (the actual industry cost of capital was already incorporated for the period from 1993 through 1995). I forecasted annual railroad industry cost of capital for the years 2003-2013 to equal the average actual railroad industry cost of debt and equity over the 1993 to 2002 time period. This methodology is consistent with the approach utilized by the Board in its *1997* and *1998 Decisions*.

i. RCR Indexes for the Board's Jurisdictional Threshold Model

I incorporated actual Railroad Cost Recovery ("RCR") indexes for each of the years 1997-2003 into the Board's model that calculates the annual variable cost of service (and ultimately the jurisdictional threshold) for McKinley shipments to Cholla over the 1994-2013 time period.[24] I forecasted RCR indexes for the years 2004-2013 based on the historical trend of the change in the actual RCR index from 1990 through 2003. This methodology is consistent with the approach utilized by the Board in its *1997* and *1998 Decisions*.

Each of the changes identified above was made to the DCF model from the *1998 Decision*. Table 1, Column (3) below summarizes the recalculated maximum rate values following the

[24] See file "REV_180.WK4" from the Board's *1998 Decision*.

methodology utilized by the Board in its *1998 Decision*. For comparative purposes, I have also included the maximum rate calculations included in the Board's *1998 Decision*.

Table 1
Comparison of APS/PacifiCorp Recalculated
Rates For McKinley Shipments To Cholla
to the Rates Prescribed In The Board's 1998 Decision

Year (1)	Board's 1998 Decision [1/] (2)	Recalculated Maximum Rates [2/] (3)	Difference [3/] (4)
2003	$4.21	$4.04	($0.17)
2004	4.30	4.12	(0.18)
2005	4.75	4.60	(0.15)
2006	4.49	4.47	(0.02)
2007	4.59	4.38	(0.21)
2008	4.69	4.27	(0.42)
2009	4.82	xxx	xxx
2010	4.99	xxx	xxx
2011	5.15	xxx	xxx
2012	5.33	xxx	xxx
2013	5.51	xxx	xxx

1/ Board's *1998 Decision* at 56.
2/ Exhibit (TDC-3) Column (17).
3/ Column (3) minus Column (2).

As shown in Table 1 above, the rates prescribed in the Board's *1998 Decision* for coal traffic from McKinley Mine to Cholla exceed maximum reasonable levels based upon the changed circumstances considered in accordance with the Board's *2003 Decisions*.

C. Reparations

In its *May 2003 Decision*, the Board instructed both BNSF and APS/PacifiCorp to

> "keep account of the amounts paid during the pendency of the proceeding on reopening and , at the conclusion, to make the other party whole for what it would be entitled to but for this direction to maintain the status quo while we recalculate the maximum reasonable rate." See *May 2003 Decision* at 7.

This section of my Verified Statement addresses the amount of reparations that BNSF owes APS/PacifiCorp for coal shipments to Cholla from May 22, 2003 through December 31, 2003 (the latest available).

Following the ICC's decision in Guidelines [25] and the Board's decisions in WTU and APS, I calculated the principal amount of reparations using the recalculated maximum rate level of $4.04 per ton shown in Table 1 above. A summary of these calculations is shown in Column (2) of Table 2 below for the May 22, 2003 through December 31, 2003 period.

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[25] 1 I.C.C. 2d at 524-525 and 548.

Table 2
Principal Amount of Reparations
Due APS/PacifiCorp through 4Q03 [1]

	Quarter (1)	Amount [2] (2)
1.	2Q 2003	$50,044
2.	3Q 2003	$113,302
3.	4Q 2003	$109,738
4.	Total	$273,084

[1] Beginning May 22, 2003.
[2] Exhibit (TDC-4) and electronic workpaper "APS Reparations1.123."

Table 2 above shows for the period from May 22, 2003 through December 31, 2003, that BNSF owes APS/PacifiCorp $273,084 in principal reparations payments. Reparations for the period between January 1, 2004 and the date of the Board's decision, and interest on these reparations should be calculated at the time of the decision.

VERIFICATION

COMMONWEALTH OF VIRGINIA)
)
CITY OF ALEXANDRIA)

I, THOMAS D. CROWLEY, verify under penalty of perjury that I have read the foregoing Verified Statement of Thomas D. Crowley, 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.

Thomas D. Crowley

Sworn to and subscribed
before me on February 27, 2004.

Anthony V. Evanshaw III
Notary Public for the Commonwealth of Virginia

My commission expires: September 30, 2007

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STATEMENT OF QUALIFICATIONS

My name is Thomas D. Crowley. I am an economist and President of the economic consulting firm of L.E. Peabody & Associates, Inc. The firm's offices are located at 1501 Duke Street, Suite 200, Alexandria, Virginia 22314 and 5901 N. Cicero Avenue, Suite 504, Chicago < Illinois 60646..

I am a graduate of the University of Maine from which I obtained a Bachelor of Science degree in Economics. I have also taken graduate courses in transportation at George Washington University in Washington, D.C. I spent three years in the United States Army and since February 1971 have been employed by L.E. Peabody & Associates, Inc.

I am a member of the American Economic Association, the Transportation Research Forum, and the American Railway Engineering and Maintenance-of-Way Association.

The firm of L.E. Peabody & Associates, Inc. specializes in solving economic, marketing and transportation problems. As an economic consultant, I have organized and directed economic studies and prepared reports for railroads, freight forwarders and other carriers, for shippers, for associations and for state governments and other public bodies dealing with transportation and related economic problems. Examples of studies I have participated in include organizing and directing traffic, operational and cost analyses in connection with multiple car movements, unit train operations for coal and other commodities, freight forwarder facilities, TOFC/COFC rail facilities, divisions of through rail rates, operating commuter passenger service, and other studies dealing with markets and the transportation by different modes of various commodities from both

STATEMENT OF QUALIFICATIONS

eastern and western origins to various destinations in the United States. The nature of these studies enabled me to become familiar with the operating practices and accounting procedures utilized by railroads in the normal course of business.

Additionally, I have inspected and studied both railroad terminal and line-haul facilities used in handling various commodities, and in particular unit train coal movements from the Powder River Basin to various utility destinations in the midwestern and western portions of the United States. These operational reviews and studies were used as a basis for the determination of the traffic and operating characteristics for specific movements of coal, both inbound raw materials and outbound paper products to and from paper mills, crude and pelletized iron ore, crushed stone, soda ash, aluminum, fresh fruits and vegetables, TOFC/COFC traffic and numerous other commodities handled by rail.

I have frequently been called upon to develop and coordinate economic and operational studies relative to the acquisition of coal and the rail transportation of coal on behalf of electric utility companies. My responsibilities in these undertakings included the analyses of rail routes, rail operations and an assessment of the relative efficiency and costs of railroad operations over those routes. I have also analyzed and made recommendations regarding the acquisition of railcars according to the specific needs of various coal shippers. The results of these analyses have been employed in order to assist shippers in the development and negotiation of rail transportation contracts which optimize operational efficiency and cost effectiveness.

STATEMENT OF QUALIFICATIONS

I have presented evidence before the Interstate Commerce Commission ("ICC") in Ex Parte No. 347 (Sub-No. 1), Coal Rate Guidelines - Nationwide which is the proceeding that established the methodology for developing a maximum rail rate based on stand-alone costs. I have submitted evidence applying the ICC's stand-alone cost procedures in every proceeding before the ICC and its successor the Surface Transportation Board ("STB").[1]

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[1]ICC Docket No. 36180, San Antonio, Texas, Acting By and Through Its City Public Service Board v. Burlington Northern Railroad Company, et al.; ICC Docket No. 37029, Iowa Public Service Company v. Burlington Northern, Inc.; ICC Docket No. 37038, Bituminous Coal - Hiawatha, Utah to Moapa, Nevada; ICC Docket No. 37437, Arizona Electric Power Cooperative, Inc. v. The Atchison, Topeka and Santa Fe Railway Company, et. al.; ICC Docket No. 37809, McCarthy Farms, Inc. et. al. v. Burlington Northern, Inc.; ICC Docket No. 38025S, The Dayton Power and Light Company v. Louisville and Nashville Railroad Company; ICC Docket No. 38301S, Coal Trading Corporation v. Baltimore & Ohio Railroad, et al.; ICC Docket No. 38301S (Sub-No. 1), Westmoreland Coal Sales Company v. Denver and Rio Grande Western Railroad Company, et al.; ICC Docket No. 38783, Omaha Public Power District v. Burlington Northern Railroad Company; ICC Docket No. 39002, Utility Fuels Inc. v. The Burlington Northern Railroad Company, et. al.; ICC Docket No. 39386, The Kansas Power and Light Company v. Burlington Northern Railroad Company and Union Pacific Railroad Company; ICC Docket No. 40155, Lower Colorado River Authority and City of Austin, Texas v. Missouri-Kansas-Texas Railroad Company; ICC Docket No. 40224, Iowa Power and Light Company v. Burlington Northern Railroad Company; ICC Docket No. 41528, Kansas City Power & Light Company v. Missouri Pacific Railroad Company; ICC Docket No. 41685, CF Industries, Inc. v. Koch Pipeline, L.P.; STB No. 41185, Arizona Public Service Company and PacifiCorp v. The Atchison, Topeka And Santa Fe Railway Company; STB Docket No. 41191, West Texas Utilities Company v. Burlington Northern Railroad Company; STB Docket No. 41295, Pennsylvania Power & Light Company v. Consolidated Rail Corporation, CSX Transportation Inc. and Norfolk Southern Railway Company; STB Docket No. 41989, Potomac Electric Power Company v. CSX Transportation Inc.; STB Docket No. 42006, Omaha Public Power District v. Union Pacific Railroad Company; STB Docket No. 42012, Sierra Pacific Power Company, Idaho Power Company v. Union Pacific Railroad Company; STB Docket No. 42022, FMC Wyoming Corporation and FMC Corporation v. Union Pacific Railroad Company; STB Docket No. 42051, Wisconsin Power and Light Company v. Union Pacific Railroad Company; STB Docket No. 42054, PPL Montana LLC v. The Burlington Northern and Santa Fe Railway Company; STB Docket No. 42056, Texas Municipal Power Agency v. The Burlington Northern and Santa Fe Railway Company; STB Docket No. 42057, Public Service Company of Colorado D/B/A Xcel Energy v. The Burlington Northern and Santa Fe Railway Company; STB Docket No. 42058, Arizona Electric Power Cooperative, Inc.

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Moreover, I have developed numerous variable cost calculations utilizing the various formulas employed by the ICC/STB for the development of variable costs for common carriers, with particular emphasis on the basis and use of Rail Form A and its replacement costing formula the Uniform Railroad Costing System ("URCS"). I have utilized Rail Form A/URCS costing principles since the beginning of my career with L. E. Peabody & Associates Inc. in 1971.

I have frequently presented both oral and written testimony before the Interstate Commerce Commission, Surface Transportation Board, Federal Energy Regulatory Commission, Railroad Accounting Principles Board, Postal Rate Commission and numerous state regulatory commissions, federal courts and state courts. This testimony was generally related to the development of variable cost of service calculations, rail traffic and operating patterns, fuel supply economics, contract interpretations, economic principles concerning the maximum level of rates, implementation of maximum rate principles, and calculation of reparations or damages, including interest. I presented testimony before the Congress of the United States, Committee on Transportation and Infrastructure on the status of rail competition in the western United States. I have also presented testimony in a number of court and arbitration proceedings concerning the

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v. The Burlington Northern and Santa Fe Railway Company and Union Pacific Railroad Company; STB Docket No. 42069, Duke Energy Corporation v. Norfolk Southern Railway Company; STB Docket No. 42070, Duke Energy Corporation v. CSX Transportation, Inc.; STB Docket No. 42071, Otter Tail Power Company v. The Burlington Northern and Santa Fe Railway Company; STB Docket No. 42072, Carolina Power & Light Company v. Norfolk Southern Railway Company; STB Docket No. 42077, Arizona Public Service Company & PacifiCorp v. The Burlington Northern and Santa Fe Railway Company.

STATEMENT OF QUALIFICATIONS

level of rates, rate adjustment procedures, rail operating procedures and other economic components of specific contracts.

Since the implementation of the *Staggers Rail Act of 1980*, which clarified that rail carriers could enter into transportation contracts with shippers, I have been actively involved in negotiating transportation contracts on behalf of coal shippers. Specifically, I have advised utilities concerning coal transportation rates based on market conditions and carrier competition, movement specific service commitments, specific cost-based rate adjustment provisions, contract reopeners that recognize changes in productivity and cost-based ancillary charges.

I have been actively engaged in negotiating coal supply contracts for various users throughout the United States. In addition, I have analyzed the economic impact of buying out, brokering, and modifying existing coal supply agreements. My coal supply assignments have encompassed analyzing alternative coals to determine the impact on the delivered price of operating and maintenance costs, unloading costs, shrinkage factor and by-product savings.

I have developed different economic analyses for over sixty (60) electric utility companies located in all parts of the United States, and for major associations, including American Paper Institute, American Petroleum Institute, Chemical Manufacturers Association, Coal Exporters Association, Edison Electric Institute, Mail Order Association of America, National Coal Association, National Industrial Transportation League, the Fertilizer Institute and Western Coal

STATEMENT OF QUALIFICATIONS

Traffic League. In addition, I have assisted numerous government agencies, major industries and major railroad companies in solving various economic problems.

I have participated in various proceedings involved with the division of through rail rates. For example, I participated in ICC Docket No. 35585, *Akron, Canton & Youngstown Railroad Company, et al. v. Aberdeen and Rockfish Railroad Company, et al*. which was a complaint filed by the northern and midwestern rail lines to change the primary north-south divisions. I was personally involved in all traffic, operating and cost aspects of this proceeding on behalf of the northern and midwestern rail lines. I was the lead witness on behalf of the Long Island Rail Road in ICC Docket No. 36874, *Notice of Intent to File Division Complaint by the Long Island Rail Road Company*.

2

Exhibit (TDC-2)

Pages 1 to 2 (of 2)

(REDACTED – PAGES CONTAIN CONFIDENTIAL AND HIGHLY CONFIDENTIAL INFORMATION SUBJECT TO PROTECTIVE ORDER)

3

Exhibit (TDC-3)

Page 1 (of 1)

(REDACTED – PAGES CONTAIN CONFIDENTIAL AND HIGHLY CONFIDENTIAL INFORMATION SUBJECT TO PROTECTIVE ORDER)

4

Exhibit (TDC-4)

Pages 1 to 4 (of 4)

(REDACTED – PAGES CONTAIN CONFIDENTIAL AND HIGHLY CONFIDENTIAL INFORMATION SUBJECT TO PROTECTIVE ORDER)

CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of February, 2004, I served a copy of the foregoing Opening Evidence and Argument on Reopening by hand upon counsel for Defendant, as follows:

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