

**CHAIRMAN ROGER NOBER'S OPENING STATEMENT**  
**AEPCO v. BNSF and UP Oral Argument**  
**November 2, 2004**

Good morning.

Today we will hear argument in a rail rate reasonableness case, *Arizona Electric Power Cooperative, Inc. v. BNSF and UP*. We have had quite an active docket this fall--this is our second rate case argument--and I want to thank my fellow commissioners for their assistance in scheduling this argument and the staff for all of their hard work.

This rate case presents a number of unique features. It is the first stand alone cost case involving a joint rate. It also presents a novel use of trackage rights over the Vaughan to El Paso line. Here, AEPCO's stand alone cost presentation assumes the stand-alone railroad would use BNSF trackage rights over UP lines. In addition, 89% of the traffic group consists of non-coal traffic, which may raise the issue of appropriate revenue divisions. I also understand that the parties intend to raise a number of issues including the operating plans relied upon, operating expenses, and capital costs.

Procedurally, each side has been given 40 minutes. AEPCO has indicated that it will reserve some of its time for rebuttal and BNSF and UP have indicated that they will divide their time. And, as a final matter of

procedure, let me remind everyone to please turn off your cell phones.

Again, thank you for being here, and I look forward to your presentations.