

STATEMENT OF CHAIRMAN NOBER

Arizona Public Service Co. & PacifiCorp v. The Burlington Northern and Santa Fe Railway Company

The Board granted a reopening in this case to examine the impact of the now certain closure of the McKinley mine. Both parties submitted new evidence that shows the shutdown will cause a precipitous drop in revenues three years from now. As a result, the challenged rates would be insufficient for the stand-alone railroad to serve Arizona and still recover its costs.

BNSF originally requested that we vacate the rate. On reopening, however, BNSF asked the Board to authorize rates well above the rates challenged in this proceeding. The higher rates would permit BNSF to make up the difference between the rates already prescribed, and the rates that we would have prescribed had we known then what we know now.

APS, having benefited from the low rate in the past, contends that any upward adjustment to the current rate to make up for past mistakes would be unlawful. But its own solution would ignore the impact of the shutdown of McKinley. It would allocate any new under-recovery into the past and thus keep the current rate prescription basically the same.

We explored both positions at an oral argument this past September, and neither party's solution is fair or lawful. I am concerned that BNSF's proposal exceeds our statutory authority, and would violate Supreme Court precedent. APS's solution, however, simply ignores the fact that the new analysis shows under-recovery in future years.

Vacating a rate prescription at a carrier's request is not something done lightly. I know that it would be a burden on both parties to litigate a new rate case. But I think the best solution is to restore rate making power to the railroad, and to provide APS the opportunity to challenge the rate.