

SERVICE DATE – LATE RELEASE NOVEMBER 5, 2009

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. 42113

ARIZONA ELECTRIC POWER COOPERATIVE, INC.

v.

BNSF RAILWAY COMPANY AND
UNION PACIFIC RAILROAD COMPANY

Decided: November 5, 2009

This decision modifies the procedural schedule in this proceeding.

The Board established a procedural schedule for this proceeding in a decision served on February 3, 2009. By a decision served on March 16, 2009, the Board modified that schedule at the request of all parties as it pertained to a staff-supervised discovery conference. By a decision served on June 1, 2009, the Board modified and extended the procedural schedule at the request of Arizona Electric Power Cooperative, Inc. (AEPCO) with the concurrence of both defendants, BNSF Railway Company and Union Pacific Railroad Company (UP).

On October 30, 2009, AEPCO filed its second unopposed motion to modify the procedural schedule. AEPCO details a series of past and ongoing issues that will prevent it from finalizing its opening evidence by November 13, 2009, the current due date. AEPCO asserts that since the close of discovery in July of this year, it has been engaged in follow-up communications with the defendants to assist AEPCO's consultants in interpreting and using the data produced during discovery. AEPCO also states that UP had to reproduce traffic and revenue data to include intermodal traffic. AEPCO explains that the process for obtaining the relevant rail transportation contracts and other pricing documents from the defendants is ongoing, though it expects the process to conclude shortly. AEPCO seeks to extend the remaining due dates of the procedural schedule by approximately two months. AEPCO states that it has been authorized to represent that the defendants do not oppose the requested extension.

AEPCO's motion to extend the procedural schedule will be granted. While repeated requests to modify or extend the procedural schedule are generally disfavored, the Board recognizes that the circumstances detailed above preclude AEPCO from finalizing its opening evidence by the current due date. In light of the additional time provided here and by the previous extension, the Board expects the parties' incoming evidence to be accurate and complete so that the Board may adjudicate this proceeding in a timely fashion.

It is ordered:

1. AEPCO's second motion to modify the procedural schedule is granted.

2. The procedural schedule in this proceeding is revised as follows:

January 15, 2010	Complainant's opening evidence
April 28, 2010	Defendants' reply evidence
June 11, 2010	Complainant's rebuttal evidence
July 2, 2010	Closing briefs

3. This decision is effective on its service date.

By the Board, Anne K. Quinlan, Acting Secretary.

Anne K. Quinlan
Acting Secretary