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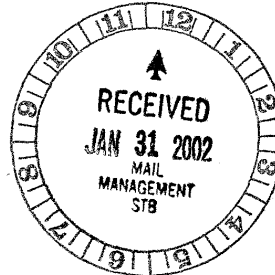
WRITER'S E-MAIL:

January 31, 2002

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BY HAND

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423



Re: Docket No. 42058, Arizona Electric Power
Cooperative, Inc. v. The Burlington Northern
and Santa Fe Railway Company and Union Pacific
Railroad Company

Dear Secretary Williams:

Enclosed for filing are an original and ten copies of
the Reply of Arizona Electric Power Cooperative, Inc., to UP's
Motion for Extension of Time.

If there are any questions concerning this matter,
please contact the undersigned.

Respectfully submitted,

Robert D. Rosenberg

Robert D. Rosenberg
An Attorney for Arizona
Electric Power Cooperative,
Inc.

RDR:kaw
Enclosures

cc: Service List
Patricia E. Cooper, Esq.

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Office of the Secretary

FEB 01 2002

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BEFORE THE
SURFACE TRANSPORTATION BOARD



ARIZONA ELECTRIC POWER
COOPERATIVE, INC.
Complainant,

v.

Docket No. 42058

THE BURLINGTON NORTHERN AND
SANTA FE RAILWAY COMPANY and
UNION PACIFIC RAILROAD COMPANY
Defendants.

AEPCO'S REPLY TO UP'S MOTION FOR EXTENSION OF TIME

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ARIZONA ELECTRIC POWER
COOPERATIVE INC.

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Dated: January 31, 2002

ARIZONA ELECTRIC POWER	)	
COOPERATIVE, INC.	)	
Complainant,	)	
	)	
v.	)	Docket No. 42058
	)	
THE BURLINGTON NORTHERN AND	)	
SANTA FE RAILWAY COMPANY and	)	
UNION PACIFIC RAILROAD COMPANY	)	
Defendants.	)	
	)	

Arizona Electric Power Cooperative, Inc. ("AEP CO"),
hereby replies to UP's Motion for Extension of Time filed January
30, 2002.

First, when UP's and BNSF's counsel jointly called to seek their extension, they premised their request on a claim of substantive uncertainty as to what rates were the subject of AEPCO's discovery and even its complaint, which somehow prevented them from responding in a timely manner. The claim makes no sense, and UP's motion is naturally silent as to this matter. Nonetheless, to the extent any uncertainty exists, it arises because UP and BNSF only late yesterday (the same date as UP's motion) established the PRB rates required by the STB's December

31, 2001 Order. Under 49 C.F.R. § 1300.3, the rate should have been established, at the latest, within ten business days of the Board's Order, i.e., by January 15, 2002. AEPCO was deeply concerned by the Railroads's reliance on their own noncompliance with a Board order as a basis for their request for additional time.

Second, UP should not need additional time. The Board issued its order denying the motion to dismiss on December 31, 2001; the Railroads have had AEPCO's previous discovery for over ten months; AEPCO's current discovery is considerably narrower than the previous discovery; and AEPCO's requests do not differ substantially from that in other rate cases, including UP's past case with WP&L. UP also did not need to actually produce the materials by January 31, 2001; it merely needed to state what it would and would not produce. UP had more than enough time, and if it needed any more, it did not need to wait until three days before its response was due to request ten more days.

Third, UP's representations regarding its commitment to actually producing the requested materials invite skepticism. During the discussion among counsel, AEPCO asked if the carriers would commit to producing traffic tapes, which are vital for developing the configuration and traffic group for the stand-alone railroad, within two weeks, four weeks, or any date certain. Railroad counsel refused to make any such commitment

(just as they refused to commit to when the PRB rates would be established). They even took offense at the mere request for a specific commitment and threatened to employ "hardball" tactics. There is little reason to think that the delay will stop at the ten days.

AEPCO's case has already been substantially delayed. AEPCO filed its complaint on December 29, 2001, over thirteen months ago. AEPCO amended its complaint on March 16, 2001, to include Colorado and PRB origins. Discovery then essentially came to a halt as the Railroads pursued their motion to dismiss, notwithstanding the Board's admonition in Ex Parte No. 347 (Sub-No. 3) that motions to dismiss should not stall cases. While UP claims to have already been forthcoming in discovery, its actual production has been measly. In particular, the 6,000 pages of production referenced in its motion consist almost entirely of track charts and timetables. Significantly, UP has not even produced the essential traffic tapes for movements between New Mexico and Arizona, which are needed regardless of the fate of the non-New Mexico origins.

UP's references to the Northern States Power and Western Resources litigation are also inappropriate. The pendency of other proceedings regarding the unreasonableness of UP's rates and its failure to honor its contractual commitments cannot entitle it to delay AEPCO's case. If anything, UP and its

counsel should know more, not less, about what information exists and what they are willing (or unwilling) to produce.

AEPCO reiterates that it is not the ten-day delay per se that is of concern. Instead, it is the fact that AEPCO has already been waiting over a year, as exacerbated by the Railroads' sustained practice of ignoring their common carrier and other obligations to AEPCO, their reliance on their own noncompliance with the Board's order and the pendency of other cases as grounds for delay, their refusal to make specific discovery commitments, and their threat to employ additional tactics that deeply concern AEPCO.

AEPCO's counsel considered UP's request in light of these factors and concluded that it simply could not, in good conscience, consent to the extension. The sad reality is that, given past history, the ten days (and more) will likely pass before the Board rules on UP's motion, and even if it is eventually denied, UP will still effectively have its extension.

Accordingly, AEPCO cannot consent to the extension under the circumstances. AEPCO does submit that the Board should consider appointing some representative or officer to oversee the procedural aspects of the case so as to minimize any further delay.

Respectfully submitted,

ARIZONA ELECTRIC POWER
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Dated: January 31, 2002

CERTIFICATE OF SERVICE

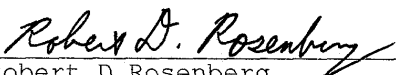
I hereby certify that I have today, January 31, 2002,
served copies of the foregoing AEPCO's Reply to UP's Motion for
Extension of Time, as follows:

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