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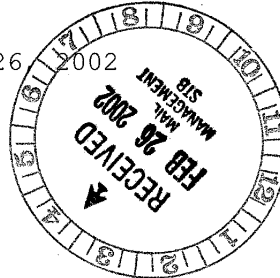
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February 26, 2002



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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
Defendants' Petition for an Order Requiring Separate Evidentiary
Submissions for Each Rate Challenged by AEPCO.

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

Respectfully submitted,

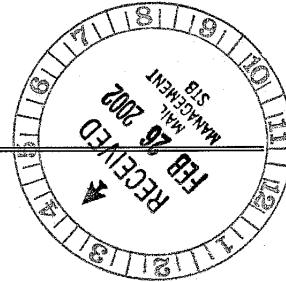
Robert D. Rosenberg

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

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Enclosures

cc: Service List
Patricia E. Cooper, Esq.

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 DEFENDANTS' PETITION FOR
AN ORDER REQUIRING SEPARATE EVIDENTIARY
SUBMISSIONS FOR EACH RATE CHALLENGED BY AEPCO

ARIZONA ELECTRIC POWER
COOPERATIVE INC.

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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 DEFENDANTS' PETITION FOR
AN ORDER REQUIRING SEPARATE EVIDENTIARY
SUBMISSIONS FOR EACH RATE CHALLENGED BY AEPCO

Arizona Electric Power Cooperative, Inc. ("AEPCO"),
hereby replies in opposition to Defendants' Petition for an Order
Requiring Separate Evidentiary Submissions for Each Rate
Challenged by AEPCO that BNSF and UP (jointly, the "Railroads")
filed on February 15, 2002 ("RR Pet.").

I. INTRODUCTION AND SUMMARY

Throughout this proceeding, the Railroads have repeatedly sought to obstruct AEPCO's efforts to prosecute its rate case. Specifically, the Railroads first contested AEPCO's ability to challenge only the New Mexico rates on the grounds that AEPCO would need to burn coals from other areas, withdrew the PRB rates as soon as AEPCO tried to include them in its rate case, refused AEPCO's requests to make PRB shipments, moved to dismiss the PRB portion of AEPCO's complaint, filed a "Notice of

Compliance" that demonstrated they had not complied with the Board order requiring them to establish a PRB rate, unsuccessfully sought to partially consolidate AEPCO's case with three other complaints, waited twice the period allowed by the Board's rules to reestablish PRB rates as ordered by the Board, and, at the last moment, granted themselves a ten-day extension to respond to discovery.

Now, without having produced a single traffic tape in the fourteen months that this proceeding has been pending, the Railroads have taken it upon themselves to have the Board order AEPCO to make three separate evidentiary submissions. Moreover, their brazen request rests on the same cross-subsidy concerns as their earlier motions to dismiss and for partial consolidation, which caused so much prior delay before they were denied.

The core substance of the Railroads' petition is easily answered. AEPCO has read the December 31, 2001 decision, and is fully aware of the need to avoid cross-subsidization, which the Board and the Railroads define as having the SARR rely on non-issue traffic that shares common facilities with the issue traffic.

Since AEPCO has not received any traffic tapes from either carrier, it is obviously premature to expect or require AEPCO to specify the parameters of its SARR. However, AEPCO knows enough to state that the Railroads' tripartite approach of

requiring three entirely separate evidentiary presentations would be very inefficient and burdensome since each submission would likely have to duplicate some facilities covered by the other submissions.

A far more logical and efficient approach, which AEPCO is contemplating,¹ is for a three-part SARR, the first part covering New Mexico and Arizona (although traffic may be routed through West Texas to take advantage of traffic densities), the second part covering Colorado, and the third part covering the PRB to Colorado. New Mexico rates would be judged by the first part, Colorado rates by a combination of the first and second parts, and PRB rates by a combination of all three parts. In each case, SAC would be determined by traffic that shares common facilities with the particular issue traffic, thus mooting any cross-subsidy concerns. The approach is far more simple, logical, and efficient than that envisioned by the Railroads, which would involve massive duplication, cost, and delay.

The Railroads' other claims are equally unfounded. Under the Coal Rate Guidelines, shippers are to select traffic

¹AEPCO reiterates that it has not yet committed to its three-part approach and that the entire discussion is premature until AEPCO receives information from discovery and submits its evidence. AEPCO's purpose in stating its possible approach is to demonstrate the fallacies in the Railroads' approach. AEPCO also expects that the approach described here will prove relevant for considering discovery issues that are likely to require Board resolution.

and routes for their SARRs that minimize cost and maximize efficiency. Particularly when the carriers have opted to provide service under joint through rates, there can be no prohibition on combining the traffic of both defendants. Despite the Railroads' assertions, there can also be no restriction on having the SARR for UP's single-line rate for Colorado coal also include BNSF traffic. UP's Colorado movement to AEPCO passes over several portions of the BNSF system,² and in years past, ATSF (BNSF's predecessor) served as the bridge carrier on AEPCO's Colorado movements that were originated and delivered by SP (UP's predecessor). To prevent AEPCO from utilizing BNSF traffic and facilities for the SAC analysis of its Colorado coal shipments would thus impose an artificial entry barrier and reward UP for its inefficiency, directly contravening SAC principles.

BNSF/UP's efforts to prevent AEPCO from shipping PRB coal have also limited the amount of variable cost data for costing AEPCO's PRB movements. However, AEPCO can rely on the data that does exist, and supplement it as needed with system-average data. AEPCO also submits that its PRB shipments, even if they are sporadic, still constitute unit train movements, but assuming arguendo that they do not, the SAC analysis should still

²BNSF has overhead traffic rights between Bond and Denver, CO, the rail line between Denver and Pueblo, CO is jointly owned by BNSF and UP, and UP operates between Pueblo and Stratford, TX using trackage rights over BNSF.

be undertaken. The jurisdictional threshold can still be calculated as if a unit train were involved, and, if needed, that analysis can be revisited when AEPCO's PRB shipments do achieve unit train status. Indeed, throughout the late 1970s, the Board's predecessor regularly calculated movement costs in advance of actual shipments.

In no event should AEPCO be required to submit separate evidentiary presentations, either now or in the future. Such a burden is utterly inappropriate for a nonprofit, consumer-owned utility that burns a maximum of about 1.5 million tons of coal a year. AEPCO "suffered the arcane rigors of the regulatory process long enough" under the Board's predecessor. AEPCO v. United States, 816 F.2d 1366, 1368 (9th Cir. 1987). This Board should be able to do much better. AEPCO again calls on the Board to end the Railroads' pattern of delay in this case, of which the Railroads' Petition is merely the latest episode.

II. BACKGROUND

AEPCO filed its original Verified Complaint in this case on December 29, 2000, over fourteen months ago. While AEPCO originally challenged only the New Mexico rates, the Railroads quickly engaged in extensive discovery against AEPCO and its New Mexico coal suppliers seeking to establish the proposition, which AEPCO has never contested, that the McKinley Mine (which is

nearing its end) and Lee Ranch Mine in New Mexico are unlikely to be the exclusive long-term sources for AEPCO's coal.³

Accordingly, AEPCO amended its complaint on March 9, 2001, to add the Colorado and PRB origins. AEPCO's objective was to avoid the burden and inefficiencies of piecemeal litigation and obtain rates that covered all of its long-term coal supply options. AEPCO thus sought to make the process as efficient as possible for all concerned.

As noted supra, the Railroads then employed a series of escalating maneuvers (withdrew the PRB rates, moved to dismiss and later to consolidate, refused to respond to discovery, refused to reestablish PRB rates as ordered by the Board) all serving to impede and obstruct AEPCO's rate case.⁴ Even now, fourteen months into the rate case, AEPCO does not have a procedural schedule, nor has it received a single traffic tape,

³AEPCO's coal sourcing decisions are, not surprisingly, driven by market forces, including coal transportation costs. Since AEPCO does not know what its coal rates are or will be, it is patently unreasonable to require it to state exactly where it will obtain its coal over the next 19 years.

⁴Most of the Railroads' factual discussion attempts to justify their failure to maintain their PRB rates. Nowhere do they acknowledge their duty as common carriers to hold out to provide service upon reasonable request. AEPCO is certainly entitled to the option to ship coal from the PRB, which it has exercised in the past and anticipates exercising again shortly. Sadly, UP has indicated that AEPCO will need to go through the same process to obtain Colorado rates after August 2002, even though AEPCO will likely have shipped over 650,000 tons of coal from Colorado over the past seventeen months by that time.

not even for the movements for New Mexico coal covered by the original complaint. Yet, AEPCO now finds itself having to respond to a third attempt by the Railroads to have AEPCO's rate case rejected before evidence is even filed because of alleged cross-subsidy problems.⁵

The Board already addressed the Railroads' cross-subsidy contentions in its December 31 decision. That decision clearly recognized AEPCO's right to challenge all three sets of rates. To the extent the Railroads wanted to impose any additional evidentiary obligations on AEPCO, they should have raised them eleven months ago in their Motion for Partial Dismissal. What the Railroads should be doing -- and what the Board should be affirmatively requiring of them -- is producing the data that AEPCO requires to make its evidentiary filing, not arguing the merits of evidence yet to be presented.

In any event, AEPCO has read the Board's December 31 decision. AEPCO agrees with the Railroads that cross-subsidy has

⁵With all due respect, AEPCO feels compelled to observe that the Board itself shares some responsibility for this delay. The Board took a very extended period of time to resolve the motion to dismiss (as well as to order the Railroads to establish PRB rates for the long term). It would be one thing if the Board's subsequent December 31 decision had provided definitive guidance that eliminated the Railroads' ability to engage in subsequent delay. However, later events (e.g., the Railroads' petition) demonstrate otherwise. AEPCO again urges the Board not to sit idly by, but to become actively involved so that AEPCO does not suffer further abuse. One approach is to appoint a staff member from the Office of Proceedings to supervise the Railroads' discovery responses.

been defined as including in the SARR non-issue traffic that does not share common facilities with issue traffic.⁶ However, the Railroads' tripartite approach is a particularly poor way of meeting that criterion.

III. AEPCO'S PROPOSED SARR APPROACH

The Railroads' claim that AEPCO intends to submit a single, unified SARR (RR Pet. at 7) rests on a contrived reading of AEPCO's revised discovery requests, which AEPCO submitted in direct response to the Board's December 31 decision. In any event, AEPCO is mindful of the Board's instruction (discussed in RR Pet. at 9-10) that SAC be calculated based on SARR traffic that shares common facilities with the issue traffic.

The three-part SARR that AEPCO is considering would do precisely that. AEPCO's New Mexico coal would be handled by a SARR that moves traffic between New Mexico and Arizona. To take advantage of available densities, AEPCO may elect to route the

⁶AEPCO does not concede that the Board's ruling (which was interlocutory as to AEPCO) was necessarily correct, and AEPCO reserves the right to challenge it later. The Board should also understand that the Railroads are attempting to ensnare it in a Catch-22: expanding the SARR to capture additional traffic creates a cross-subsidy, but not expanding the SARR invites disputes as to the divisions on cross-over traffic. Shippers, not railroad defendants, are supposed to have complete flexibility to design their SARRs.

traffic through west Texas or some other alternative to the existing routing.⁷

The second part of the SARR would serve the route between the Colorado origins and a junction point with the Arizona-New Mexico part of the SARR. As AEPCO has not determined the configuration of the first part of the SARR (AEPCO reiterates that it still has not received one traffic tape), it is not able to specify the route for the second part or the interchange point with the first part. However, one possible configuration is that the second part of the SARR would include the joint BNSF/UP line between Denver and Pueblo (which is also part of the existing route for AEPCO's PRB movements). The SAC for AEPCO's Colorado movements would be determined through a combination of the revenues and costs associated with the first and second parts of the SARR.

⁷Such rerouting is specifically contemplated and encouraged under the Coal Rate Guidelines:

In selecting the route of a SAC railroad, for instance, an overriding factor may be the effort to lower costs by taking advantage of economies of density. Generally, a stand-alone railroad would attempt to fully utilize plant capacity, adding other profitable traffic in order to reduce the average cost of operation. Thus, the stand-alone railroad may not represent the shortest route for the shipper, but the one with the highest traffic densities.

Coal Rate Guidelines, 1 I.C.C.2d 520, 543-44 (1985).

The third part of the SARR would serve the route between the PRB origins and a junction point with the second part of the SARR, perhaps Denver. The SAC for AEPCO's PRB movements would be determined through a combination of the revenues and costs associated with all three parts of the SARR.

The three-part approach would avoid cross-subsidy issues (RR Pet. at 7, 9-10, 13-15) since the SAC analysis for each origin would be based on traffic that shares common facilities. Under the three-part approach, New Mexico movements would not be subsidized by Colorado or PRB movements, and Colorado movements would not be subsidized by PRB movements, thus meeting the concerns expressed in the December 31 decision.⁸

The three-part approach delineated above is far superior to that envisioned by the Railroads. Under the BNSF/UP approach, AEPCO would have to make three different SAC presentations of the Arizona-New Mexico segment (one for the New Mexico movements, a second for the Colorado movements, and a third for the PRB movements) and two for the Colorado segment (one for the Colorado movements, and another for the PRB

⁸Of course, the Arizona-New Mexico segment may include the local portion of any Colorado or PRB traffic (and prorated revenues), and the Colorado segment may include the local portion of PRB traffic moving south of Denver. Some local traffic on the Colorado part of the SARR moving just between Denver and the Colorado origins may need to be excluded from the PRB SAC analysis, but (subject to receiving the traffic tapes) AEPCO does not expect such traffic to be very significant.

movements). The Railroads' approach simply imposes massive additional costs and burdens without yielding any cognizable benefits (except for the delay and burden that the Railroads have successfully sought and obtained). The Railroads' approach should thus be rejected.

IV. USE OF NON-UP TRAFFIC FOR SAC ANALYSIS OF COLORADO RATES

The Railroads contend at length (Mot. at 7-10) that the SAC analysis for UP's rates for the Colorado movements must be UP-specific, i.e., the SAC analysis must exclude BNSF traffic.

The Railroads' contention fails on a number of levels. First, the simple fact is that UP presently routes AEPCO's Colorado over three line segments that are also utilized by BNSF. First, BNSF has overhead traffic rights between Bond and Denver as a result of the UP/SP merger. Second, the rail line between Denver and Pueblo is jointly owned by BNSF and UP. Third, UP itself operates between Pueblo and Stratford using trackage rights over BNSF that were obtained as a result of the BNSF/UP merger. Since the track owners on the present routing recoup their costs using the traffic of both railroads, it is absurd (and an impermissible entry barrier) to prevent the SARR from doing the same thing.

Second, UP's decision to route the coal in circuitous UP single-line service is a voluntary decision on UP's part

(although BNSF may have some involvement). Under equitable as well as SAC principles, AEPCO should not be required to pay a higher rate because UP has chosen a particular routing or made the movement more inefficient. Indeed, when AEPCO shipped Colorado coal in the past under contract, ATSF served as a bridge carrier for traffic that was originated and delivered by SP. To prevent AEPCO from realizing an efficiency that has actually been utilized by UP is to impose an impermissible entry barrier and to force AEPCO to cross-subsidize UP's other shippers.

Third, and more fundamentally, the Railroads' assertion (Mot. at 8) that "[t]he Coal Rate Guidelines clearly contemplate a defendant-specific analysis in a case involving a single-line rate" is simply wrong. The Railroads introduce no real support for their assertion.⁹ In fact, the least-cost, most-efficient

⁹The Railroads do cite WTU (Mot. at 8 and n.5) for the proposition that the SARR "step(s) into the shoes" of the defendant. West Texas Utilities Co. v. Burlington N.R.R. Co., 1 S.T.B. 638, 657 (1996). The shipper in that case chose that approach (and the resulting SAC was below the jurisdictional threshold), but the choice was not dictated by SAC theory. Indeed, the shipper attempted to include revenues for one movement that BNSF later largely lost to UP. The Board excluded those revenues, but the result rested not on SAC theory, but instead on the lack of evidence as to UP's rates for the movement. Id. at 661 ("WTU has not presented sufficient evidence about the portion of this traffic that is handled by UPRR to include it in the SAC analysis.") & n.5 ("We have no evidence as to the revenues that should be attributed to the UPRR portion of this traffic."). WTU thus provides no support for the Railroads' interpretation of SAC theory. Moreover, AEPCO is seeking data as to both BNSF and UP revenues.

That the Railroads feel compelled to refer (Mot. at 9 n.7)

nature of the SAC tests requires that there not be "any restrictions on the traffic that may potentially be included in a stand-alone group." Coal Rate Guidelines, 1 I.C.C.2d at 544. Moreover, "[t]he theory of contestability would be undermined by any arbitrary limitation on efficient alternatives to the existing system." Id. at 543 n.61.

The basic text on stand-alone theory also makes clear that a multi-firm analysis is not merely possible, but is intended:

We define a perfectly contestable market as one that is accessible to potential entrants and has the following two properties: First, the potential entrants can, without restriction, serve the same market demands and use the same productive techniques as those available to the incumbent firms.... Second, the potential entrants evaluate the profitability of entry at the incumbent firms' pre-entry prices.

We show (in Chapters 2, 8, 9, and 11) that an industry configuration can be sustainable only if the firms involved produce the total industry outputs at the least possible industry cost....

Moreover, in a sustainable industry configuration, total industry output must be distributed among firms in a way that minimizes total industry cost. If some rearrangement of output among firms could

to a libel case, McFarlane v. Esquire Magazine, 74 F.3d 1296, 1303 (D.C. Cir.), cert. denied, 519 U.S. 809 (1996), only shows how unfounded their position is. SAC analysis rests of economic efficiency, not fault or culpability. To the extent UP seeks protection from its inefficiencies, it has ample, if not excessive, ability to look to the jurisdictional threshold.

reduce total cost, then an entrant whose size was consistent with that rearrangement could earn a positive profit at prices below those held previously. Thus frictionless entry has the power to enforce an efficient industry structure....

Baumol, Panzar, and Willig, Contestable Markets and the Theory of Industry Structure at 5, 350-51 (Rev. ed. 1988) (emphasis added).

Even a casual review of rail lines in the Western portion of the United reveals substantial duplication of rail lines and thus inherent inefficiencies. The BNSF line in New Mexico running between Belen and Deming¹⁰ largely parallels the UP line running between Vaughn and El Paso, TX. The BNSF line in Colorado and New Mexico running from Trinidad to Belen, the UP line running from Dalhart (Texas) to Vaughn, and the BNSF line running from Amarillo to Farwell are also generally parallel.

¹⁰AEPCO reluctantly notes another issue that may require the Board's attention. BNSF has recently divested the Rincon-Deming segment of its route to a short-line railroad. STB F.D. No. 34072, Southwestern Railroad Company, Inc. - Acq., Lease, and Op. Exempt. - The Burlington N. and S.F. Ry. Co., (STB served Sept. 21, 2001). Even though the SWRR is now the operating common carrier over that segment, BNSF claims that the SWRR is only a subcontractor for AEPCO's movement, the practical import of which is that BNSF will likely claim that whatever compensation SWRR receives should be marked up by 180% for jurisdictional threshold purposes. BNSF presumably entered into the arrangement because it cost the BNSF more to operate the segment itself. (Again, AEPCO has not received the BNSF variable cost data.) Accordingly, the Railroads may be using the transaction as a means to reduce their actual costs, but increase their regulatory costs, a result that is patently inequitable and unreasonable. While AEPCO may be able to rely on the existing SWRR/BNSF agreement for SAC analysis, it may thus need access to the underlying costs of service for variable cost analysis.

Moreover, BNSF and UP share lines in the PRB and between Bond and Dalhart, as well as in various other areas (e.g., Houston) that are not likely to be incorporated into in AEPCO's SAC analysis. Some of these shared use arrangements are the results of railroad mergers (or their aftermath), which are also a means of rationalizing resources and eliminating redundancies and inefficiencies, while supposedly maintaining, if not increasing, competition. Moreover, shared use has occurred on a substantially larger (albeit temporary) scale in response to such events as the flooding that occurred in the 1990s as well as the Western railroad service crisis that followed the UP/SP merger.

Accordingly, it should be apparent that there are ample opportunities for a SARR to combine aspects of the BNSF and UP systems so as to reduce costs and increase efficiencies of scale, scope, and density. Such combinations have occurred before in the real world and will likely continue to occur. There are no insurmountable barriers to such combinations, and, even if there were, their application to a least-cost, most-efficient SARR would be an impermissible entry barrier.¹¹

There is thus no sound reason for preventing AEPCO from calculating the SAC for its Colorado movements by using a SARR that routes the Colorado traffic over railroad lines that also

¹¹Again, UP has chosen to use BNSF as a bridge carrier for AEPCO's Colorado coal movements in the past. Such combined routings are another means of achieving joint efficiencies.

handle BNSF traffic. A fortiori, AEPCO is free to combine BNSF and UP for its New Mexico and PRB movements, which the carriers have chosen to undertake through a joint through rate, meaning that they share common carrier responsibility.

III. NO DIFFERENT TREATMENT IS REQUIRED BECAUSE OF THE PRB RATES

The Railroads also contend that their tripartite approach is required because of various alleged infirmities as to volume and/or data for the AEPCO's PRB movements. The Railroads claim that the carriers may lack market dominance for the PRB movements (Mot. at 11-12), that there is insufficient data on which to calculate the variable costs for the PRB movements (id. at 15-17), and/or that the Board's December 31 decision requiring the Railroads to establish PRB rates will be set aside on appeal (id. at 18-19). They claim that these alleged infirmities (none of which has yet been demonstrated) will somehow require that the PRB movements be excluded from AEPCO's SAC analysis and that, without them, the entire analysis will fall.

As noted below, AEPCO believes that each of the Railroads' premises is defective. However, even if they had any validity, they would not justify adoption of the Railroads' tripartite approach as opposed to, for example, the approach AEPCO has under consideration. In other words, if there is no cross-subsidization (and the Railroads' approach is not required

to avoid cross-subsidization), then elimination of one part of the system on market dominance, variable cost, or procedural grounds does not cause the other parts of the analysis to fail.

Even if there were found to be, for example, a lack of market dominance for AEPCO's PRB movements, AEPCO would still be entitled to include allocable divisions of those projected movements on the Colorado and Arizona-New Mexico segments of its SARR (just as AEPCO could include any local portions of the movements of other PRB shippers as cross-over traffic). Moreover, the fact that traffic has a R/VC ratio of less than 180%, or has not moved in large volumes in the past, does not in any sense constitute a basis for automatically excluding it from a SAC analysis.

The Railroads' petition appears to suggest that they will contend that AEPCO's PRB movements lack sufficient repetitive volume to constitute unit train movements and that the variable costs of whatever trainload movements have occurred will be so high that the rates fall below the jurisdictional threshold. AEPCO strongly disagrees.¹² The fact that AEPCO's trains may be routed to the PRB only sporadically (for now) does

¹²The Railroads' suggestion that AEPCO's PRB rate falls below the jurisdictional threshold because it involves a long, two-line movement (Mot. at 12 n.9) is nonsensical. These factors (as well as AEPCO's captivity) might cause the rate to be high, but they provide no basis for concluding that the rate is low relative to the costs.

not cause them to cease to be integrated unit train movements, i.e., a block of railcars (in this case, shipper-supplied) moving largely intact in relative continuous service between various origin(s) and destination(s), over time transporting a substantial volume of coal.

Indeed, throughout the 1970s, there was extensive litigation over the costs of unit train movements that had not begun, or had not occurred in substantial volumes, as the power plants themselves had not come on line. AEPCO itself was involved in such litigation. See, e.g., Incentive Rate on Coal - Gallup, New Mexico to Cochise, Arizona, 357 I.C.C. 683 (1977). There is no sound reason for adopting a different approach here.

However, even if the Board eventually resolves this issue otherwise, the Board should still perform the SAC analysis for AEPCO's PRB rates.¹³ It would be a waste of the resources of the Board as well as AEPCO to force AEPCO to file a separate SAC rate case in the near future when the additional effort required to perform the SAC analysis for the PRB rates in this case will

¹³Moreover, even if AEPCO's PRB movements do not presently rise to unit train status, and even if the variable costs cause the movement to fall below the jurisdictional threshold, the movement could still be costed as a unit train movement, so that a prescribed rate would be available at the time unit train movements commence. Moreover, the possibility that the variable costs might have to be redetermined in the future is not fatal to the SAC analysis. In that regard, the Board has permitted annual variable cost redeterminations in cases such as WTU. Variable cost determinations are obviously far less complex, and entail much lower burdens, than SAC calculations.

be much, much less. Requiring parties to file even more rate cases cannot possibly be a sound response on the Board's part to the number of cases that are currently pending. Moreover, AEPCO is entitled to a reparations analysis for those movements that will have occurred by the time a decision is rendered.¹⁴

The Railroads' contentions regarding the lack of variable cost data suffer from the same as well as additional deficiencies. Having made it so difficult for AEPCO to move PRB coal, the Railroads should be estopped from relying on any lack of PRB train movement data. In addition, AEPCO can use what data does exist and supplement it, as needed, with system average operating parameters and/or unit costs.¹⁵ AEPCO can also rely on system average data to determine costs to additional PRB origins, thus avoiding the problems in the WPL and Minnesota Power cases (cited in RR Pet. at 11 n.8). However, even if there is some

¹⁴Similarly, even if BNSF and UP are successful in their pending petition for review, AEPCO is still entitled a reparations calculation for the movements that did occur, particularly for the movement that occurred in 2001 pursuant to the Board order that the Railroads did not challenge in court.

¹⁵Another possibility is to allow AEPCO to supplement the data for its own movements with surrogate data from PRB movements to other Arizona shippers, with adjustments to be made for any differences in train size, locomotive consist, etc. AEPCO sought to obtain such information in its earlier discovery, but the Board denied the discovery in its December 31, 2001 decision. The Board may not have understood the need for the data, and it may have ignored the ability of the parties to submit additional variable cost data once AEPCO's PRB movements reached a higher volume.

infirmity in the variable cost data, it would still be more efficient and equitable for the Board to perform the full SAC analysis now, rather than require essentially all of it to be replicated and revised at some point in the near future.

IV. CONCLUSION

The Railroads' petition is merely their latest attempt to obstruct rather than allow AEPCO's rate case to proceed. The three-part SARR that AEPCO is considering is a demonstrably superior mechanism for addressing the cross-subsidy issues than the Railroads' approach of requiring three entirely separate SAC cases, which would only add confusion, cost, and delay. UP is not entitled to have the SAC analysis of its Colorado movements undertaken without regard to available BNSF lines and traffic. Any possible infirmities in the PRB movements do not preclude performing the SAC (as well as variable cost) analysis in AEPCO's current rate case, as opposed to some future rate case, and requiring AEPCO to submit SAC evidence at some future time would necessarily increase the burdens on all concerned.

Accordingly, the Railroads' petition should be denied. The Board should also take action to require the rate case to proceed expeditiously rather than languish, particularly as a result of motions that should have never been filed in the first place.

Respectfully submitted,

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COOPERATIVE INC.

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Dated: February 26, 2002

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CERTIFICATE OF SERVICE

I hereby certify that I have today, February 26, 2002
served copies of the foregoing AEPCO'S Reply to Defendants'
Petition for an Order Requiring Separate Evidentiary Submissions
for Each Rate Challenged by AEPCO, as follows:

By hand:

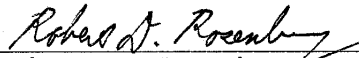
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