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March 20, 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 in the above-captioned proceeding are an original and ten copies of the Second Motion to Compel of Arizona Electric Power Cooperative, Inc. Three diskettes containing the electronic text of the motion in WordPerfect format are also enclosed.

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

Respectfully submitted,

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

RDR:kaw
Enclosures
cc: Service List
Patricia E. Cooper, Esq.

BEFORE THE
SURFACE TRANSPORTATION BOARD

ARIZONA ELECTRIC POWER
COOPERATIVE, INC.
Complainant,

v.

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

Docket No. 42058



AEPCO'S SECOND MOTION TO COMPEL

ARIZONA ELECTRIC POWER
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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 SECOND MOTION TO COMPEL

Complainant Arizona Electric Power Cooperative, Inc. ("AEPCO"), hereby moves for an order compelling Defendant The Burlington Northern and Santa Fe Railway Company ("BNSF") to produce information sought in AEPCO's Third Amended Interrogatories and Requests for Production of Documents served on BNSF and co-Defendant Union Pacific Railroad Company ("UP") (jointly, "Railroads") by AEPCO on January 7, 2002 ("amended discovery requests").¹

AEPCO brings this second motion to compel² to overcome BNSF's latest effort to delay and obstruct this proceeding. The

¹A copy of AEPCO's Third amended discovery requests is attached as Exhibit A. A copy of BNSF's Responses and Objections, served February 11, 2002, is attached as Exhibit B.

²AEPCO's first motion to compel was filed on April 16, 2001, and was directed to both Defendants. The Board ruled on that motion in its decision served December 31, 2001, discussed infra.

Board specifically denied the Railroads' Motion to Dismiss in its Decision served in this proceeding and in F.D. No. 34041 on December 31, 2001, and instructed the Railroads to establish rates from Wyoming and Montana origins in the Powder River Basin ("PRB") on a continuing basis. Despite the Board's clear instruction that AEPCO's PRB rate case should be allowed to proceed, BNSF is refusing to produce information essential for challenging the PRB rates. BNSF is also refusing to produce information needed for challenging UP's Colorado rates on the apparent grounds that the traffic moves in single-line UP service, even though a major portion of UP's movement occurs over lines that BNSF either owns or operates over. Even as to the New Mexico rates, BNSF still has produced very little of what it has promised, and is outright refusing to produce some information (such as rail transportation contracts and fuel data) that AEPCO requires.

Accordingly, AEPCO has no recourse but to request the Board's intervention to enable its rate case to proceed. AEPCO asks that the Board expeditiously enter an order compelling BNSF to produce the following specific information:

- (1) Variable cost and stand-alone cost ("SAC") information for the PRB rates;
- (2) SAC information for the Colorado rates;
- (3) Transportation contracts;

- (4) SAC information on non-coal movements; and
- (5) Internal information related to locomotive fuel consumption.

AEPCO requests that the Board not only order BNSF to produce the information, but that the Board also specify a deadline for the production. The specification of a deadline is more than justified by the extensive delay that has plagued AEPCO's rate case to date, as well as by BNSF's past and continued obstinacy in this proceeding (for which there has never been a procedural schedule). BNSF should be given no more than three weeks from the date of the Board's order to produce the requested information. AEPCO recognizes that its deadline request is unusual, but believes that it is necessary, and more than justified, in view of BNSF's intransigence and the lack of progress that has occurred in the case to date.

AEPCO expects that it will shortly file an additional motion to compel against BNSF to obtain road property information once AEPCO receives a letter explaining BNSF's refusal to produce that information. AEPCO may also need to file a limited motion to compel against UP. However, resolution of the matters raised in this motion to compel should not be delayed pending developments on those other issues.

I. BACKGROUND

A. Events Culminating in the Board's December 31 Decision

AEPCO has detailed the factual and procedural background in this proceeding in numerous pleadings filed during the period -- now, over fourteen months -- that its rate case has been pending, most recently in its "Reply to Defendants' Petition for an Order Requiring Separate Evidentiary Submissions for Each Rate Challenged by AEPCO" that AEPCO filed on February 26, 2002.

AEPCO has repeatedly explained that while it originally challenged only the Railroads' New Mexico rates, the Railroads soon sought to establish that AEPCO would likely need to burn non-New Mexico coals over time, and AEPCO responded by amending its complaint to include rates for Colorado and PRB coal so as to avoid piecemeal litigation. The Railroads then attempted to withdraw their PRB rates on the grounds of an alleged cross-subsidy, and numerous motions ensued, culminating in the Board's December 31 decision.

The December 31 decision squarely denied the Railroads' motion to dismiss AEPCO's complaint as to the PRB rates. The decision also ruled on the first motion to compel that AEPCO filed on April 16, 2001, against both Railroads seeking information needed for challenging the PRB and Colorado rates. The decision encouraged AEPCO to narrow its discovery so as to avoid cross-subsidy problems.

B. Narrowed Scope of AEPCO's Amended Discovery Requests

In response to the Board's decision, AEPCO substantially narrowed the scope of its discovery in the amended discovery requests (copy attached as Exhibit A) it served on the Railroads on January 7, 2002 (seven days after the Commission's decision) in several major respects.

In particular, AEPCO is no longer seeking information on all traffic in a ten-state area (although AEPCO's original requests were not as broad as depicted). Instead, AEPCO's SAC discovery is now directed to specific BNSF and UP line segments that it anticipates that its SARR will need to replace in order to move traffic to AEPCO from New Mexico, Colorado, and PRB origins. AEPCO's SAC requests to BNSF are confined to traffic moving along specific coal-carrying lines in Montana, Wyoming, Colorado, Nebraska, Texas, and New Mexico.³

³AEPCO also restricted its discovery to UP. In particular, AEPCO has eliminated virtually all of its PRB-related discovery against UP based on the statement in footnote 13 on page 6 of the Board's December 31 decision that "because we are clarifying here that revenues from PRB traffic may not be used to cover the costs of a portion of a SAC system over which traffic would not move, we doubt that seeking to combine the PRB traffic of both defendants would be helpful to AEPCO's rate challenge."

However, AEPCO respectfully submits that the Board's statement makes no sense. Any cross-subsidy issues can be resolved in other ways, e.g., using a three-part SAC analysis that ignores PRB traffic moving north of Denver except for purposes of evaluating PRB rates (as delineated in AEPCO's February 26, 2002 filing), or even using the entirely separate SAC evidentiary submissions that the Railroads proposed in their February 15, 2002 filing. Under either of those approaches,

AEPCO continues to seek SAC information for non-coal traffic, but has narrowed the geographic area for which information is requested, i.e., AEPCO seeks information on non-coal traffic that moves or can move over the coal-carrying lines so that it can determine if it should include such traffic in its SARR.

As noted, AEPCO also seeks additional information to calculate the variable costs for the PRB movement.

As amended in response to the Board's decision, AEPCO's requests do not differ in kind or degree from what has been requested and produced (for the most part, without need to resort to a motion to compel) in other recent rate cases.

C. BNSF's Objections

Notwithstanding the substantial narrowing of AEPCO's discovery, BNSF stated in its Responses and Objections to AEPCO's amended discovery requests that it served on February 11, 2002

combining BNSF and UP PRB traffic should lower the PRB SAC result (i.e., produce a greater percentage reduction) without cross-subsidizing AEPCO's other movements. Combining the BNSF and UP lines north of Denver may be of no practical value if the SAC result using BNSF-only PRB traffic falls below the jurisdictional threshold, but that cannot be known in advance.

While the Board's statement thus lacks logic, AEPCO has nonetheless complied with it and not pursued discovery of UP PRB-related traffic north of Denver so as to minimize the prospect for further delay and disruption. AEPCO does reserve the right to pursue the issue on appeal.

(Exhibit B), that it would be producing very little of the information that AEPCO has requested.⁴

In particular, BNSF has made clear that it does not intend to produce the following: (1) information (such as, but not limited to, traffic tapes and transportation contracts) needed for challenging the PRB rates (apart from some limited (e.g., maintenance of way-related) information on its overall system that is needed for challenging the New Mexico rates); (2) information needed for challenging UP's Colorado rates; (3) transportation contracts, even for coal movements from New Mexico origins; (4) traffic tape and other information for non-coal movements;⁵ and (5) information on locomotive fuel consumption.

⁴AEPCO's amended discovery requests specified that responses were due January 31, 2001. On January 30 and 31, UP and BNSF, respectively, sought ten-day (actually, twelve and eleven-day) extensions of time to respond to AEPCO's amended discovery requests. AEPCO filed prompt oppositions to both motions. As expected, the Board has not ruled on the motions, meaning that the carriers effectively granted themselves their own extensions.

AEPCO has subsequently engaged in a meet-and-confer conference with UP and expects to receive most of the information that it has requested from UP (albeit only after substantial delay) without recourse to a motion to compel. AEPCO has also consulted and met with BNSF, but has made only limited progress. AEPCO is not moving to compel production of some items based on BNSF's representations that it is searching for responsive information. As AEPCO is unsure as to what BNSF will ultimately produce in these areas, AEPCO reserves the right to file additional motions to compel as needed.

⁵BNSF has recently indicated that its New Mexico traffic tapes will include data on non-coal as well as coal movements (and overhead as well as local traffic), but BNSF still refuses to provide a date certain for their production.

Each of these matters is noted briefly below and addressed more extensively later in the motion.

1. PRB-related Information

As to the PRB-related information, BNSF's refusal to produce any of the requested information (e.g., traffic tapes)⁶ is tantamount to dismissal of AEPCO's PRB rate case since, without the requested information, AEPCO cannot present a meaningful variable cost or SAC analysis. BNSF's position borders on the contemptuous since its earlier motion to dismiss AEPCO's amending of its complaint to include the PRB rates was squarely denied by the Board's December 31 decision.

BNSF's primary justification for its position is the pendency of the petition for review of the December 31 decision that it and UP filed with the D.C. Circuit. However, the mere pendency of a petition for review -- unaccompanied by any request for, much less grant of, a stay of the decision by the agency or court -- cannot justify a failure to proceed with the rate case.

⁶BNSF has produced a limited amount of system-wide information that includes PRB data, but the information does not begin to be sufficient to present variable cost or SAC evidence for AEPCO's PRB movements.

2. Colorado-related Information

BNSF's basis for refusing to produce information needed for challenging the Colorado rates is apparently that BNSF data is irrelevant for challenging a UP single-line movement. BNSF and UP raised this contention most recently in their Petition for an Order Requiring Separate Evidentiary Submissions for Each Rate Challenged by AEPCO that they filed on February 15, 2002, to which AEPCO replied on February 26, 2002.

AEPCO explained that the UP single-line service for the Colorado movements involves three major line segments that are also utilized (including one that is actually owned solely) by BNSF, that UP is free to use BNSF as a bridge carrier (as it has done in the past), and that SAC theory and precedent support combining the traffic of two carriers to improve economies of scale, scope, and density so as to optimize the least-cost, most-efficient nature of a captive shipper's SARR.

3. Transportation Contracts

As for transportation contracts, BNSF's insistence on a motion to compel is traditional, but unnecessary. In particular, UP has indicated that it has started obtaining voluntary consents from its coal contract customers and that it expects a formal motion to compel will be needed in only a few instances. In any

event, AEPCO's entitlement to confidential transportation contracts for SAC purposes is clear.

At this time, AEPCO is seeking contracts only on coal moving in trainload and greater quantities over the possible routes of its SARR. AEPCO reserves the right to seek contract information for other coal and non-coal movements after it receives traffic tape information. AEPCO does not expect to be requesting data on a large number of such other contracts.

4. SAC Information on Non-Coal Movements

BNSF's objections and responses also indicate that it refuses to produce information regarding non-coal movements that AEPCO might seek to include in its SAC analysis (although BNSF has recently stated that it intends to produce traffic tape data on non-coal movements through New Mexico). The area of primary dispute at this time involves traffic tapes, although AEPCO may seek some additional information (e.g., contracts and forecasts for highly-rated movements) after it receives the traffic tapes.

BNSF appears to base its position on language in the December 31 decision regarding AEPCO's pursuit of non-coal traffic information in a ten-state area. However, AEPCO has amended its discovery to seek non-coal SAC data only for traffic that moves over specific coal-moving lines that its SARR is reasonably likely to replace. The practical import of BNSF's

position is thus to foreclose AEPCO from including any non-coal traffic in any part of its SAC presentation (other than New Mexico).

5. Locomotive Fuel Consumption

In Interrogatory No. 11, AEPCO sought information regarding how BNSF "determine[s] locomotive fuel consumption for purposes of determining internal management costs for unit-train coal service." In Request for Production No. 38, AEPCO requested documents sufficient to show the inputs used to determine various operating costs, including locomotive fuel costs, associated with providing coal unit train transportation service. Other requests (such as Interrogatories Nos. 18-20 and 22) sought other data regarding fuel consumption. BNSF objected to these requests on a range of grounds (broadness, burden, lack of relevance, and beyond the scope of permissible evidence).

Notwithstanding its general objections, BNSF has represented on several occasions (most recently in late May of 2001) that it is "investigating whether there is data from which fuel consumption information can be derived for locomotives used on AEPCO trains." In a meeting to discuss discovery issues on March 12, 2002, AEPCO's counsel followed up on this and other requests pertaining to locomotive fuel consumption. BNSF responded that, at this time, it has no additional data related

to locomotive fuel consumption other than data that BNSF may use in calculating its internal management costs, which BNSF continues to refuse to provide to AEPCO.

AEPCO can readily appreciate that BNSF does not want to expose its management cost system to discovery. However, BNSF is not, and should not be, entitled to refuse to produce data concerning its internal estimate of the amount of fuel consumed by AEPCO trains and to describe its general methodology so that AEPCO can determine if it is reasonable in this case. While management cost information has been protected from disclosure in various prior cases, that protection is directed primarily to the unit costs and associated pricing policies and is premised on the notion that the management costs are not reflective of regulatory costs. Neither proposition is applicable in the case of locomotive fuel consumption, and BNSF's objection amounts to an assertion that it is entitled to hide what may be accurate cost data from a complaining shipper. The need for the management cost inputs is especially acute when, as here, the defendant refuses to investigate whether it has other information regarding locomotive fuel consumption, much less produce it.

D. Need to Impose Production Deadlines on BNSF

AEPCO's rate case has now pending for over fourteen months. During that time, AEPCO has received very little

production from either railroad, even though AEPCO's basic ability to challenge the New Mexico rates has never been challenged. For example, as of February 15, 2002, BNSF's production consisted of only 1,244 pages (consisting primarily of joint facility agreements, material relating to the Southwestern Railroad ("SWRR"), and locomotive ownership) and 858.31 megabytes (relating to track data, density data, timetables, track charts, and locomotive ownership).⁷ AEPCO has received no additional information since that time, and BNSF has not provided any dates certain by which additional information will be produced. Indeed, when AEPCO requested BNSF to specify a date certain for production of the traffic tape information at the time when BNSF requested AEPCO's consent to an extension for the time for responding to AEPCO's discovery, BNSF took offense at AEPCO's request.

Given all the delay that has occurred, and the fact that there has never been any reason for BNSF to delay production of information needed for challenging the New Mexico rates, AEPCO finds it necessary to request a specific deadline for BNSF's production of responsive data. AEPCO believes that three additional weeks from the service date of a Board order (an order

⁷While UP's production to date has been little better, UP has represented that it is in the process of producing most of what AEPCO has requested. Nonetheless, as noted supra, AEPCO may need to file a more limited motion to compel against UP.

that AEPCO hopes will be issued expeditiously) is a reasonable period in light of all of the antecedent delay.

II. DISCUSSION

The Board and its predecessor have repeatedly held that railroad records are subject to broad discovery. See, e.g., Coal Rate Guidelines, Nationwide, 5 I.C.C.2d 520, 548 (1985), aff'd sub nom. Consolidated Rail Corp. v. U.S., 812 F.2d 1444 (3d Cir. 1987) ("Coal Rate Guidelines") ("We recognize that shippers may require substantial discovery to litigate a case under CMP, and we are prepared to make that discovery available to them."). The Board's Rules of Practice reinforce this policy, permitting "discovery ... regarding any matter, not privileged, which is relevant to the subject matter involved in a proceeding" 49 C.F.R. Part 1114.21(a). It is also well-settled that the Board's discovery rules are to be liberally construed. See, e.g., STB F.D. No. 32821, Bar Ale, Inc. v. California Northern RR. Co., (STB served March 15, 1996) at 2.

The information that AEPCO seeks from BNSF through discovery is all needed to enable AEPCO to proceed with its rate case. Withholding the information severely disadvantages AEPCO. In most cases, AEPCO will be essentially precluded from proceeding with respect to major elements of its rate case.

Accordingly, BNSF should be compelled to produce the information that AEPCO reasonably needs.

A. BNSF Should be Required to
Produce PRB-Related Information

BNSF's basic justification for its refusal to produce PRB-related SAC and variable cost information requested by AEPCO is that the Board has no jurisdiction to consider AEPCO's challenge to the PRB rates and that any determination by the Board to the contrary is irrelevant since BNSF has appealed the matter to the D.C. Circuit:

BNSF objects to AEPCO's Discovery Requests to the extent they seek information about states other than Arizona and New Mexico on the grounds that such information is overly broad, unduly burdensome, premature and is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. BNSF further objects to providing this information on grounds that the information as to other states would be relevant only if the Board has jurisdiction to consider AEPCO's challenge to rates from Powder River Basin ("PRB") origins. BNSF does not believe the Board has jurisdiction to consider such claims and it has appealed to the United States Court of Appeals for the District of Columbia Circuit that portion of the Board's order in this proceeding served on December 31, 2001 requiring BNSF and defendant Union Pacific Railroad Company ("UP") to establish rates for PRB transportation, which is the predicate for the Board's exercise of jurisdiction over AEPCO's PRB claims. BNSF also states that the PRB rates that are the subject of AEPCO's Amended Complaint were never used and are no longer in effect, and

therefore cannot be the subject of a rate reasonableness challenge. BNSF also objects to AEPCO's Discovery Requests to the extent they seek information about states other than Arizona and New Mexico on the ground that those requests are not in compliance with the Board's December 31st Order that AEPCO narrow the scope of discovery to correspond to a SAC analysis that does not rely on impermissible cross-subsidies. BNSF also objects to AEPCO's requests for information relating to BNSF's PRB traffic on grounds that any consideration of the reasonableness of PRB rates is premature at this time.

BNSF's Responses and Objections (Exhibit B) at 3-4.⁸

Each and every element of BNSF's objection is legally and/or factually erroneous. Information about the PRB variable costs and SAC costs is essential for AEPCO to challenge the PRB rates. In denying the Railroads' Motion to Dismiss in the December 31 decision, the Board plainly found that it had jurisdiction to consider AEPCO's challenge to the PRB rates. The fact that BNSF and UP have appealed the December 31 decision is irrelevant unless and until the court grants their petition for review. Since they have not sought, much less obtained, a stay

⁸ This general objection (which embraces the objections to information related to AEPCO's Colorado movements and BNSF's non-coal traffic) appears to apply to a large number of AEPCO's amended discovery requests, e.g., Interrogatories Nos. 1, 3-4, and 6, and Document Production Requests Nos. 3-5, 9, 11, 23-29, 31-33, 35, 37, 42, 45-47, 49, 53-55, 62, 65, 66, 68, 70, 72, 74-83, 85, 88-90, 92, 95-96, and 99. Given the sweeping nature of BNSF's objections, AEPCO sees no need for present purposes to address the requests individually. Suffice it to say that BNSF has recognized the legitimacy of the individual requests for the New Mexico rates, but not for the other movements at issue.

from the Board or the court, their appeal has no effect on the pending proceeding (see, e.g., 49 C.F.R. § 1115.3), and it is an affront to the Board for BNSF to suggest otherwise.

The only reason that AEPCO did not ship under the PRB rates BNSF originally established in BNSF 90044 is that the Railroads withdrew them in April 2001, shortly after AEPCO amended its complaint in March 2001 to include them. Moreover, AEPCO did ship under the PRB rates that Defendants established in BNSF 90052 in response to the Board's May 8, 2001 decision. The PRB rates in BNSF 90052 expired, by their terms, after 48 days, but the December 31 decision ordered the Railroads to establish PRB rates on a continuing basis. BNSF and UP have now established a third set of PRB rates in BNSF 90049 in belated compliance with the December 31 decision, and AEPCO is preparing to ship under those rates. AEPCO's Amended Complaint must reasonably be construed as including the successor PRB rates, and any requirement that a complainant amend its complaint whenever the defendant complied (or, in this case, failed to comply) with a Board order would impose a hardship on the complainant and reward the defendant for its wrongdoing, an approach that is directly contrary to the interests of both justice and efficiency.⁹

⁹In that regard, the Board's website treats AEPCO's February 1, 2002 filing of Defendants' current PRB rates as an "amendment

Additionally, AEPCO objects to the Railroads' contention that a complainant is required to ship under a rate before it can seek or obtain a rate prescription. A number of ICC coal rate decisions rendered in the mid and late-1970s involved power plants (including AEPCO's) that had not yet gone on line. See, e.g., Incentive Rate on Coal -- Gallup, New Mexico to Cochise, Arizona, 357 I.C.C. 683 (1977). Defendants are common carriers that have a duty to "hold out" to provide service, which duty entails establishing common carrier rates, upon reasonable request. 49 U.S.C. § 11101. They should not be permitted to evade that responsibility until the moment before a shipper has an immediate need to utilize their services on a sustained, long-term basis.

Despite BNSF's claims, AEPCO has narrowed its discovery requests considerably so that they now cover only traffic moving along the lines that AEPCO reasonably expects that its SARR will replace. Additionally, as AEPCO explained in its February 26, 2002 response to the Railroads' February 15, 2002 motion to require separate evidentiary presentations, the SAC presentation it is considering would eliminate any cross-subsidy of New Mexico or Colorado traffic by PRB traffic. Indeed, even in the perverse

to prior filing," indicating that AEPCO's complaint has already been effectively amended. Of course, Defendants should have submitted the rates to the STB themselves as a notice of compliance under 49 C.F.R. § 1119.1.

event that AEPCO was required to follow the tripartite presentation approach sought in the Railroads' February 15 motion in order to eliminate cross-subsidy concerns, AEPCO would still need the PRB information in order to make its separate PRB evidentiary submission. The Railroads' reference to cross-subsidy issues is thus makeweight at best.

Accordingly, BNSF has presented no legitimate ground for refusing to produce the PRB information. To the contrary, the effect of BNSF's refusal to produce the information is essentially to prevent AEPCO from proceeding with its challenge to the PRB rates. Since the Board denied the Railroads' motion to dismiss AEPCO's challenge to the PRB rates, any collateral attempt by the Railroads to prevent AEPCO's rate case from proceeding on the merits against those rates should be rejected.

B. Use of BNSF Traffic for SAC Analysis of Colorado Rates

BNSF also objects to producing information that could be used for the variable cost and SAC analysis for AEPCO's Colorado rate on the grounds that the Colorado movements occur in single-line UP service. This objection is somewhat obscured in its February 11, 2002 Objections and Responses to AEPCO's amended discovery responses (since BNSF frames its objections in terms of not producing information for anything but the New Mexico coal movements). However, the position is stated at length in the

Railroads' February 15, 2002 petition to require separate evidentiary presentations, and BNSF has confirmed that the objection applies to discovery regarding the Colorado movements.

AEPCO addressed the propriety of including BNSF traffic in the SAC analysis of the Colorado rates at some length in its February 26, 2002 reply to the Railroads' February 15, 2002 petition. AEPCO sees no reason to repeat that discussion herein its totality, and instead refers the Board to its February 26 filing, which is hereby incorporated by reference. Nonetheless, AEPCO wishes to highlight the salient points.

First, the first part of UP's "single-line" Colorado movement occurs over segments where BNSF has trackage rights (Bond-Denver, CO as well as Stratford-El Paso, TX), where BNSF owns the line jointly with UP (Denver-Pueblo, CO), and where BNSF is the actual owner and UP merely has trackage rights (Pueblo-Stratford, TX). Even under the existing routing, these segments benefit from joint BNSF-UP economies of density, and a SARR is entitled to benefit from those same economies, a result that is essentially precluded if AEPCO is denied discovery as to BNSF's traffic and costs over those segments.¹⁰

¹⁰Under the Coal Rate Guidelines, 1 I.C.C.2d at 543 n.60 (1985), as well as general SAC theory, AEPCO has the option of deciding whether it wishes to rely on UP's Pueblo-Dalhart trackage rights or construct the line (or some alternative routing) itself. The choice lies with the shipper, not the railroad.

Second, in the "real world," nothing prevents UP and BNSF from combining their operations to operate in a more efficient manner, so long as competition is not compromised (and, by definition, competition is not compromised in the least-cost, most-efficient world of the SARR). To prevent a combination of UP and BNSF lines and traffic that lowers costs and increases efficiency would thus constitute an impermissible entry barrier. In fact, in years past, AEPCO's Colorado traffic moved over the same route in joint-line service with BNSF (ATSF) serving as UP's (SP's) bridge carrier.¹¹ Moreover, joint operating agreements and trackage rights are a normal result of mergers as well as more conventional, mutually-beneficial cooperation and coordination among carriers. Precluding such a combination (which is the effect of the Railroads' position) is thus inconsistent with real-world as well as SAC economics.

Third, the Coal Rate Guidelines make clear that shippers are allowed to reroute traffic so as increase densities and eliminate duplicative and wasteful facilities:

If the current carrier is [not] fully efficient and realizes economies of scale, scope and density ... [then] a captive shipper can have its rates based on the lower cost of an alternate, "stand-alone" system in

¹¹The Defendants' letter of March 12, 2002 confirms both that UP utilizes the former joint routing, and that two ostensibly separate and competing carriers can combine their routes.

which plant size and traffic are designed to maximize the efficiencies and production economies."

1 I.C.C.2d at 542 (footnote omitted). "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," and "[t]he ability to group traffic of different shippers is essential to theory of contestability" since "[i]t allows the captive shipper to identify areas where ... traffic is divertible to a hypothetical competitor." Id. at 543, 544. For that reason, there is "no need for any restriction on the traffic that may potentially be included in a stand-alone group," provided "the potential traffic draw and attendant costs and revenues" are justified, and discovery is essential for that purpose. Id. at 544.¹²

Fourth, a cursory review of the alignment of the BNSF and UP lines in the Colorado, New Mexico, and West Texas areas reveals substantial overlap and redundancy. If the rail lines

¹²The ICC's 1983 pronouncement that preceded the final Coal Rate Guidelines, stated that:

The "stand-alone cost" to any given shipper (or shipper group) is the cost of serving that shipper alone, as if it were isolated from the railroads' other shippers.

Ex Parte No. 347 (Sub-No. 1), Coal Rate Guidelines, Nationwide (ICC decision served Feb. 8, 1983), at 11 (emphasis added). The ability of a SARR to replace more than one carrier was thus contemplated early in the process.

were being redesigned from scratch today (which is precisely what lies at the core of SAC analysis), the existing lines would be combined so as to increase operating densities and lower construction costs.

Fifth, as explained in AEPCO's February 26 reply, the basic text on stand-alone theory (the primary authors of which have long served as expert witnesses on behalf of the railroad industry) makes clear that stand-alone principles are to apply on a multi-firm, industry-wide basis, and are not to be used merely on an individual firm basis or solely for eliminating cross-subsidies, as opposed to maximizing efficiency. Baumol, Panzar, and Willig, Contestable Markets and the Theory of Industry Structure at 5, 350-51 (Rev. ed. 1988).

Sixth, in the one case where the question of whether the SAC analysis of one carrier's rates could include traffic captured by another carrier, the Board's concerns went only to evidence of the other carrier's rates, not the eligibility of the traffic itself. West Texas Utilities Co. v. Burlington N.R.R. Co., 1 S.T.B. 638, 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.") (1996). AEPCO's discovery is obviously directed at obtaining the rates for the other carriers'

traffic, thus eliminating the evidentiary omission in the West Texas Utilities case.

There is thus no reason to prevent AEPCO from obtaining discovery as to BNSF traffic and rate information on the ground that the information may be used for challenging UP's Colorado rates. Indeed, most portions of AEPCO's SARR that would be used for challenging UP's Colorado rates would also be for challenging the PRB rates, as explained in AEPCO's February 26, 2002 reply to the Railroads' February 15, 2002 petition to require AEPCO to make separate evidentiary filings.

C. BNSF Contracts

BNSF has objected to AEPCO Production Request No. 43, which seeks copies of BNSF's transportation contracts, on the grounds of confidentiality (as well as breadth, burden, and relevance).

The Board has routinely held in a number of recent rate cases, some specifically involving BNSF, that transportation contracts are discoverable for purposes of developing the traffic volumes and associated revenues for a shipper's SARR. See, e.g., STB Docket No. 42057, Public Service Company of Colorado D/B/A Excel Energy v. The Burlington Northern and Santa Fe Railway Company, (STB served Feb. 1, 2002); STB Docket No. 42056, Texas Municipal Power Agency v. The Burlington Northern and Santa Fe

Railway Company, (STB served Feb. 9, 2001); STB Docket No. 42054, PPL Montana, LLC v. Burlington Northern and Santa Fe Ry. Co., (STB served Nov. 9, 2000); STB Docket No. 42069, Duke Energy Corporation v. Norfolk Southern Ry. Co., (STB served March 4, 2002); and STB Docket No. 42070, Duke Energy Corporation v. CSX Transportation, Inc., (STB served March 4, 2002). The last two cited decisions specifically rejected railroad requests for affected shippers to have an opportunity to present their own claims as to why production of their confidential contracts should not be required. Accordingly, there is no reason to afford BNSF or its other shippers an opportunity to seek further delay in the production of contracts.

AEPCO notes that UP has not required or requested a similar order before it seeks to obtain consents for production of its customers' contracts. AEPCO submits that it would be more expeditious in future rate cases for the Board to make it part of the standard procedure that an order requiring production of contracts be issued at the same time as the protective order, rather than requiring shippers to come back to the Board to obtain an order requiring contract production at a later time.

AEPCO further notes that it is requesting the immediate production only of coal transportation contracts for trainload and larger quantities moving over the designated BNSF coal-carrying routes. AEPCO reserves the right to request other

transportation contracts (including contracts for commodities other than coal) moving over these routes after it has had an opportunity to examine BNSF's traffic tapes, as discussed infra.

D. Information on Non-Coal Transportation,
Including Traffic Tapes

BNSF also objects to producing information on non-coal movements. See, e.g., BNSF Objections to AEPCO's Requests Nos. 28, 35, 37, 42, 43, 45-47, 49, 53-55, 62, 68, 70, 72, 74, 75, 77-81, 83, 85, 88, 89, 95, 96, and 99. BNSF's objection originally extended to even non-coal traffic tape information for local and overhead New Mexico movements, but BNSF has since agreed to produce that narrow category of information (although no traffic tapes have been received, and no date certain for production has been specified).

The practical effect of BNSF's objection, if sustained, is to prevent AEPCO from including non-coal traffic on the non-New Mexico portions of its SARR. Such a restriction is inimical to both the Coal Rate Guidelines and stand-alone theory. BNSF plainly uses its lines to transport coal and non-coal traffic and to prevent AEPCO from also transporting that traffic constitutes an impermissible entry barrier.

The Board's December 31 decision did criticize AEPCO for seeking information on non-coal movements in a broad ten-

state area. While AEPCO believes that the Board's characterization exaggerates the scope of AEPCO's earlier requests, AEPCO's amended requests seek information only for lines that actually carry coal and are reasonably likely to be incorporated in AEPCO's SARR. As amended, AEPCO's discovery requests can no longer be considered overly broad.

As for non-coal movements themselves, AEPCO needs to have the traffic tapes in order to select which movements to include in its SARR. Again, the refusal to produce any non-coal information precludes AEPCO from including any non-coal movements in its SARR, which constitutes an impermissible entry barrier.

Accordingly, BNSF should be compelled to produce information regarding its non-coal as well as coal movements over the lines in question.

E. Fuel Consumption

BNSF has objected to a number of AEPCO's amended discovery requests that seek information concerning locomotive fuel consumption (e.g., Interrogatories Nos. 11, 12, 16-19 and 24, and Document Production Request Nos. 38 and 104-106).

AEPCO seeks to compel production of several categories of information related to fuel consumption. In particular, AEPCO seeks to obtain the figures, input data, and methodology description of what BNSF uses for calculating fuel consumption

for planning and/or internal management costing purposes. For example, if BNSF uses a fuel train performance simulation program to estimate fuel consumption based on actual or projected throttle settings, AEPCO wishes to obtain the results of such studies for AEPCO's movements (and other potential movements, as fuel consumption is relevant for SAC as well as variable costs), the throttle setting and other inputs (such as grade, speed, locomotive, and train weight) for the program, and the program itself.¹³ AEPCO wishes to obtain this information (or whatever information BNSF does maintain and utilize), whether or not it is part of BNSF's management cost system.¹⁴

AEPCO recognizes, as BNSF will surely contend, that production of management cost data is normally not required. However, the justification for protecting such information from production is not the fact that the information is used for management costing per se, but instead that management costing is thought to rely on different principles than are used in regulatory costing, such that the management costing information

¹³The vagueness of BNSF's discovery responses prevents AEPCO from being more specific.

¹⁴During the parties' discovery conference on March 12, 2002, BNSF objected to producing any train performance simulation program it may have on the additional ground that AEPCO had not specifically used that terminology in its discovery requests. This objection elevates form over substance. AEPCO's fuel-related requests, taken together, clearly sought any information in BNSF's possession that can be used to estimate or calculate locomotive fuel consumption.

is deemed to lack relevance. See, e.g., STB Docket No. 42038 Minnesota Power, Inc. v. D.M.I.R. Ry. Co., (STB served May 11, 1999) at 9 (finding a management costing system was not discoverable because it was "not likely to produce URCS-compatible variable costs"), citing STB Docket No. 41989 et al., Potomac Electric Power Co. v. CSX Transportation, Inc., (STB served May 27, 1997).

This rationale ceases to apply where the discovery is directed to service units (in this case, gallons of fuel consumed) that are the same as those used in regulatory costing. In Minnesota Power, supra, the Board noted that "inputs to that costing system may well be relevant" and ordered production of "the operating and financial data used in [the] costing system" to the extent the carrier had not already produced the data. Fuel consumption constitutes precisely such an input. Moreover, the fact that a carrier regularly relies on such data for business purposes suggests it believes data is more reliable than a system-average figure or some alternative (such as a special study) that is devised especially for litigation purposes.¹⁵

AEPCO further wishes to explain that it hopes to avoid the burdens that a special study of locomotive fuel consumption

¹⁵If BNSF's management cost system simply uses the system-average fuel consumption figure, it can so state and thus resolve this aspect of AEPCO's motion to compel.

data using fuel gauges or event recorder data might impose on both sides.¹⁶ However, to avoid such a special study, it is necessary to obtain the information that is reasonably available to BNSF, rather than allow BNSF to hide behind statements that it deems some approaches to be reliable and others not so, without divulging what data it actually has and actually relies upon for its decisions. AEPCO notes in that regard that UP has agreed to produce its train performance simulation program, which can be used to calculate locomotive fuel consumption without the need for a special study. In other words, AEPCO is obtaining what appears to be equivalent information from UP without need for a motion to compel.

F. Need to Specify a Deadline for BNSF Production

In addition to the areas addressed supra where BNSF has outright refused to produce needed information, there are also a large number of areas where BNSF has promised to produce responsive information (at least for its segment that serves the New Mexico mines), but actual production has been limited or non-existent and/or needs updating through the end of 2001. This description applies to Document Production Requests Nos. 4-11,

¹⁶A shipper request to engage in such a fuel study was granted in a recent rate case (Docket No. 42056, Texas Municipal Power Agency v. BNSF).

19-33, 35-37, 42, 45-47, 49, 53-60, 65-81, 83-85, 87-90, 92-93, 95-96, 99, and 112-113. The requests where production is not complete comprise over two-thirds of AEPCO's total document production requests. Indeed, there are very few requests where BNSF has produced information and its production is complete.

BNSF's paltry production would be of concern even under the best of circumstances. Here, however, it must be considered in conjunction with (a) BNSF's refusal to produce relevant information where its motion to dismiss has already been denied, (b) the extensive delay that has already occurred, (c) the continued absence of any sort of procedural schedule, and (d) the Board's stated reluctance to set a procedural schedule until discovery matters have been resolved.

Under these circumstances, the Board should specify a deadline for BNSF to complete its production. Failure to do so will expose AEPCO to even more inexcusable delay, which should not be tolerated. Under normal conditions, the Board would have set a complete procedural schedule that included a deadline for completing discovery as well as due dates for filings. In the December 31 decision, the Board indicated that it would defer setting such a schedule until discovery matters were resolved. However, it is the absence of any such schedule that is contributing to the discovery delay. Only by setting a deadline

for the completion of discovery production can further delay be limited.

AEPCO submits that a period of no more three weeks from the service date of the Board's order compelling production should be a sufficient period. Given the time that it will take BNSF to respond to AEPCO's motion and the Board to rule, BNSF will have more than ample time to complete its production. Nonetheless, AEPCO recognizes that there may be a few discrete items where modest additional time may be required for production, and AEPCO is prepared to discuss such items with BNSF in good faith.

III. CONCLUSION

For the reasons stated above, the Board should enter an order compelling BNSF to produce the information that AEPCO has requested regarding the following: (1) variable cost and SAC information for AEPCO's PRB coal movements, (2) SAC information for AEPCO's Colorado coal movements, (3) transportation contracts, (4) information on non-coal transportation, including traffic tapes, and (5) locomotive fuel consumption. In addition, the Board should order BNSF to complete its production of the requested information should be completed within three weeks of the service date of the Board's order.

Respectfully submitted,

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EXHIBIT A

AEPCO'S THIRD AMENDED DISCOVERY REQUESTS

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

ARIZONA ELECTRIC POWER
COOPERATIVE, INC.

Complainant,

v.

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

Defendants.

Docket No. 42058

**COMPLAINANT'S THIRD SUPPLEMENTAL INTERROGATORIES
AND REQUESTS FOR PRODUCTION OF DOCUMENTS**

Complainant Arizona Electric Power Cooperative, Inc. ("AEPCO"), pursuant to 49 C.F.R. § 1114.30, hereby submits its Third Supplemental Interrogatories and Requests for Production of Documents ("third supplemental discovery requests") to Defendants The Burlington Northern and Santa Fe Railway Company ("BNSF") and Union Pacific Railroad Company ("UP").

These third supplemental discovery requests respond to the Board's decision in this proceeding served December 31, 2001 ("December 31 Decision"), directing AEPCO to revise its Amended Interrogatories and Requests for Production of Documents served on March 9, 2001 ("Amended Discovery Requests") so as to narrow their scope and "avoid obvious cross-subsidies." To accomplish this, AEPCO has herein amended several of the definitions in its Amended Discovery Requests and added one instruction to those in its Amended Discovery Requests.¹

¹ The definitions and instructions set forth in AEPCO's Amended Discovery Requests otherwise continue to apply except to the extent modified herein.

Responses to AEPCO's Amended Discovery Requests (as well as outstanding items in its first and second supplemental discovery requests), including copies of responsive documents, that have not heretofore been provided by BNSF and/or UP, and that are in accordance with the amended definitions and additional instruction set forth below, should be delivered to the offices of Slover & Loftus, 1224 Seventeenth Street, N.W., Washington, D.C. 20036, by January 31, 2002, unless otherwise agreed by the parties. AEPCO is prepared to cooperate with Defendants to facilitate the expeditious production of these documents with the minimum practicable burden.

I.

AMENDED DEFINITIONS

5. "AEPCO route(s)" means the railroad line segments over which BNSF and UP, or UP alone, move(s) or has moved loaded and empty coal trains between Origin(s) and Destination.

7. "Challenged Rates" means the rates for common carrier rail transportation service that are the subject of AEPCO's Amended Verified Complaint in this proceeding; in BNSF's Common Carrier Pricing Authority No. BNSF 90044 as amended or supplemented; BNSF's Common Carrier Pricing Authority No. BNSF 90052 as amended or supplemented; any reinstated, replacement or new common carrier pricing authority covering service from Powder River Basin origins in Wyoming and/or Montana to Apache established in compliance with the December 31 Decision; the letter from G.C. Dixon of UP to Mark W. Schwartz of AEPCO dated December 18, 2000; and UP Tariff 4244 as amended or supplemented.

18. "SARR States" means the portions of the states of Montana, Wyoming, South Dakota, Nebraska, Colorado, Oklahoma, Texas, New Mexico and Arizona in which the

following BNSF and UP lines are located (and which are the lines that AEPCO anticipates that its stand-alone railroad is reasonably likely to replace):

BNSF: Dutch, MT to Donkey Creek, WY, including branches to Decker and Spring Creek, MT

All other BNSF lines in Wyoming excluding the line extending west from Orin to and through Casper, Bonneville and Greybull

All BNSF lines in Nebraska from Alliance west, including the lines from Alliance to Edgemont, SD, from Alliance to Guernsey, WY, and from Alliance through Northport to Sterling, CO

All BNSF lines in South Dakota north and west of Alliance, NE

All BNSF lines in Colorado except the lines extending from Brush east toward McCook, NE and from Trinidad east to La Junta

Trinidad, CO to Amarillo, TX

Springfield, CO to Amarillo, TX via Boise City, OK and Stratford, TX

Amarillo to Vaughn, NM

All other BNSF lines in New Mexico (including, for purposes of AEPCO's discovery requests, the line between Rincon and Deming which has recently been leased to The Southwestern Railroad Company) except the line from Clovis, NM to Rustler Springs, TX

Rincon, NM to El Paso, TX;

UP: Bond to Denver, CO

Axiel to Bond, CO including branch serving Energy, CO

Denver to Walsenburg, CO

Walsenburg to Allen Mine, CO via Trinidad, CO

Pueblo, CO to Stratford, TX

Stratford, TX to El Paso, TX via Dalhart, TX and Tucumcari, NM

El Paso, TX to Benson, AZ

II.

ADDITIONAL INSTRUCTIONS

9. In responding to requests for documents or information pertaining to the SARR States, you should provide documents or information pertaining to the portions of the SARR States in which your lines (as identified in the revised definition of the SARR States) are located, except that with respect to Request for Production No. 45, you should produce forecasts or projections involving the movement of coal originated by you in any of the eight SARR States. For example, UP should produce forecasts or projections related to the volume of coal it expects to transport from the Wyoming Powder River Basin even though Wyoming is not a SARR State for UP.

10. Given the narrowed scope of the SARR States as re-defined above, you are requested to provide documents related to non-coal traffic as well as coal traffic moving to, from or through (i.e., moving overhead in) the SARR States, as requested in AEPCO's Amended Discovery Requests.

ARIZONA ELECTRIC POWER
COOPERATIVE, INC.

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Dated: January 7, 2002

Attorneys for Complainant

CERTIFICATE OF SERVICE

I hereby certify that I have this 7th day of January, 2002, served copies of the foregoing Complainant's Third Supplemental Interrogatories and Requests for Production of Documents upon counsel for Defendants, as follows:

By hand:

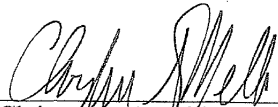
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Christopher A. Mills
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EXHIBIT B

BNSF'S RESPONSES AND OBJECTIONS TO
AEP CO'S THIRD AMENDED DISCOVERY REQUESTS

**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.)

**DEFENDANT THE BURLINGTON NORTHERN AND SANTA FE RAILWAY
COMPANY'S RESPONSES AND OBJECTIONS TO
COMPLAINANT'S THIRD SUPPLEMENTAL INTERROGATORIES AND REQUESTS
FOR PRODUCTION OF DOCUMENTS AS WELL AS THE AMENDED, FIRST AND
SECOND SUPPLEMENTAL DISCOVERY REQUESTS**

Defendant, The Burlington Northern and Santa Fe Railway Company ("BNSF"), by its attorneys Steptoe & Johnson LLP, hereby objects and responds to Complainant's Third Supplemental Interrogatories and Requests for Production of Documents and AEPCO's Amended, First, and Second Supplemental Discovery Requests, including corrections submitted on April 18, 2001 (collectively "AEPCO's Discovery Requests").

I.

**GENERAL OBJECTIONS AND OBJECTIONS
TO DEFINITIONS AND INSTRUCTIONS**

1. BNSF objects to AEPCO's Discovery Requests to the extent that they are overly broad and unduly burdensome.

2. BNSF objects to AEPCO's Discovery Requests to the extent that they seek documents that constitute or disclose confidential or proprietary information, including third party proprietary information, or other sensitive nonpublic information. Notwithstanding this objection, BNSF will produce or make available confidential documents that are not otherwise objectionable, subject to the terms of an appropriate protective order.
3. BNSF objects to AEPCO's Discovery Requests to the extent they seek documents that, if produced, would result in the violation of any contractual obligation to third parties.
4. BNSF objects to AEPCO's Discovery Requests to the extent they seek disclosure of documents that are protected by the attorney-client privilege, attorney work product doctrine, the joint defense privilege, and/or any other appropriate privilege or doctrine. Any production of privileged or otherwise protected documents is inadvertent and shall not constitute a waiver of any claim of privilege or other protection.
5. BNSF objects to AEPCO's Discovery Requests to the extent they seek documents or information in a form not maintained by BNSF in the regular course of business or not readily available in the form requested by AEPCO, where such documents or information could be developed, if at all, only through a special study that BNSF objects to performing.
6. BNSF objects to AEPCO's Discovery Requests seeking production of documents or information in computer-readable format to the extent that production in such format would be an unduly burdensome and oppressive task.

7. BNSF objects to AEPCO's Discovery Requests to the extent they request production or identification of all documents that provide the source or bases of, or backup for, information sought in particular Requests.
8. BNSF objects to AEPCO's Discovery Requests to the extent that they seek information about matters occurring prior to January 1, 1999. BNSF further objects to AEPCO's Discovery Requests to the extent they seek operating data before January 1, 2001, for use in determining variable costs on the grounds that such data are obsolete and relate to a period during which AEPCO's traffic was transported under contract. BNSF also objects to AEPCO's Discovery Requests to the extent that they seek information "to the present" on the ground that it is vague. Except as otherwise stated above, BNSF will provide information for calendar years 1999 through 2001.
9. BNSF objects to AEPCO's Discovery Requests to the extent they seek information about states other than Arizona and New Mexico on the grounds that such information is overly broad, unduly burdensome, premature and is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. BNSF further objects to providing this information on grounds that the information as to other states would be relevant only if the Board had jurisdiction to consider AEPCO's challenge to rates from Powder River Basin ("PRB") origins. BNSF does not believe the Board has jurisdiction to consider such claims and it has appealed to the United States Court of Appeals for the District of Columbia Circuit that portion of the Board's order in this proceeding served on December 31, 2001 requiring BNSF and defendant Union Pacific Railroad Company ("UP") to establish rates for PRB transportation, which is the predicate for the Board's

exercise of jurisdiction over AEPCO's PRB claims. BNSF also states that the PRB rates that are the subject of AEPCO's Amended Complaint were never used and are no longer in effect, and therefore cannot be the subject of a rate reasonableness challenge. BNSF also objects to AEPCO's Discovery Requests to the extent they seek information about states other than Arizona and New Mexico on the ground that those requests are not in compliance with the Board's December 31st order that AEPCO narrow the scope of discovery to correspond to a SAC analysis that does not rely on impermissible cross-subsidies. BNSF also objects to AEPCO's requests for information relating to BNSF's PRB traffic on grounds that any consideration of the reasonableness of PRB rates is premature at this time.

10. BNSF objects to AEPCO's Discovery Requests on the grounds that they are overly broad and unduly burdensome to the extent they seek information that has not been previously relied upon by a complainant in supporting its stand-alone cost evidentiary submissions.
11. BNSF objects to the definition of "AEPCO route" to the extent it includes routes in states other than Arizona and New Mexico for the reasons stated in paragraph 9, above.
12. BNSF objects to the definition of "AEPCO train(s)" and "AEPCO service" on the basis that it is overly broad and unduly burdensome to the extent it requests information on traffic other than the complainant's traffic. BNSF further objects to those definitions to the extent they include trains or service in states other than Arizona and New Mexico for the reasons stated in paragraph 9, above.

13. BNSF objects to the definition of "BNSF" on the basis that it is overly broad, unduly burdensome and beyond the scope of permissible discovery to the extent it requests production of documents that are not in the possession, custody or control of BNSF, including, for example, documents in the possession of former employees, directors and all other persons acting (or who have acted) on BNSF's behalf.
14. BNSF objects to the definition of "Challenged Rates" to the extent it includes rates under which no actual traffic has moved or that are not the subject of AEPCO's Amended Complaint served March 9, 2001.
15. BNSF objects to the definition of "document" to the extent it includes materials "in [BNSF's] . . . prior possession, custody or control" on grounds that such a request is overly broad, unduly burdensome and beyond the scope of legitimate discovery.
16. BNSF objects to the definitions of "identify" on the basis that they are overly broad and unduly burdensome to the extent they seek information that is not maintained by BNSF in the normal course of business, that is not maintained by BNSF in the format requested, or that would require a special study to compile or to report in the format requested.
17. BNSF objects to the definition of "origin" or "origins" to the extent those terms are intended to apply to any coal mines in states other than New Mexico for the reasons identified in paragraph 9, above.
18. BNSF objects to the definition of "Other Arizona Destinations" as beyond the scope of permissible discovery.

19. BNSF objects to the definition of "price" or "prices" on the basis that it is unduly burdensome to the extent it requires the identification of price per unit and whether such price/prices are f.o.b. or f.a.s. railroad car, vessel, destination, port or other conveyance for each.
20. BNSF objects to the definition of "related," "related to" and "relating to" on the basis that it is overly broad and unduly burdensome to the extent it requires BNSF to search files where there is not a reasonable likelihood of finding responsive documents.
21. BNSF objects to the definition of "SARR States" to the extent it is vague and lacks specificity. BNSF further objects to providing information regarding transportation in any state other than Arizona and New Mexico for the same reasons set forth in paragraph 9, above.
22. BNSF objects to Instruction No. 3 on grounds that it is overly broad, unduly burdensome and beyond the scope of permissible discovery to the extent it requires BNSF to provide detailed information or descriptions about data produced in computer-readable format.
23. BNSF objects to Instruction No. 6 on grounds that it is overly broad, unduly burdensome and beyond the scope of permissible discovery to the extent it seeks a description of the disposition of any responsive document that was, but is no longer in BNSF's possession, custody or control.
24. BNSF objects to Instruction No. 9 on grounds that it is overly broad, unduly burdensome, beyond the scope of permissible discovery, and neither relevant nor reasonably calculated to lead to the discovery of admissible evidence to the extent it requires BNSF to produce

forecasts or projections involving transportation outside of Arizona or New Mexico for the reasons set forth in paragraph 9, above.

25. BNSF objects to Instruction No. 10 on grounds that it is overly broad, unduly burdensome, and neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. BNSF further objects to Instruction No. 10 on grounds that it is vague, unclear as to which individual Discovery Requests it applies, and impossible to implement as drafted. Accordingly, none of BNSF's responses below should be construed to indicate that BNSF is collecting or will produce information relating to the transportation of commodities other than coal.
26. BNSF objects to AEPCO's Discovery Requests to the extent they do not comply with the Board's December 31, 2001 order.

II.

RESPONSES

Subject to the General Objections and Objections to Definitions and Instructions stated above, which are incorporated into each of the following responses, BNSF responds to AEPCO's Discovery Requests as follows:

INTERROGATORIES

Interrogatory No. 1:

Please provide a complete description of your portion of the AEPCO service and your coal service to any Other Arizona Destinations, including, but not limited to, a description of all transportation-related activities at Origin, Interchange, Destination, and all intermediate stations on the AEPCO routes.

BNSF RESPONSE: BNSF objects to Interrogatory No. 1 as overly broad and unduly burdensome to the extent it requests information related to all transportation-related activities at Origin, Interchange, Destination, and all intermediate stations. BNSF further objects to this interrogatory on the grounds that it is beyond the scope of permissible discovery to the extent it seeks information regarding mine origins in states other than New Mexico and other Arizona Destinations. Subject to these objections, BNSF will make available documents from which the information about the movement of AEPCO trains from New Mexico origins to AEPCO's Apache Generating Station may be derived.

Interrogatory No. 2:

Please provide a complete description of the information that you use in determining the maintenance and operating costs associated with the movement of coal in unit trains over your rail lines (both in general and for individual coal movements), including but not limited to costs related to equipment that you own, lease, operate and/or use in providing coal service involving unit trains.

BNSF RESPONSE: BNSF objects to Interrogatory No. 2 on grounds that it is overly broad, unduly burdensome, seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and is beyond the scope of permissible discovery.

Interrogatory No. 3:

Please provide the maximum permissible gross weight on rail ("GWR") per railcar for each line segment on your system that constitutes a portion of the AEPCO route(s) and the routes used for coal trains moving to Other Arizona Destinations.

BNSF RESPONSE: BNSF objects to Interrogatory No. 3 on grounds that it is overly broad and unduly burdensome to the extent it seeks information that is not maintained by BNSF in the normal course of business, that is not maintained by BNSF in the format requested, or that would require a special study to compile or to report in the requested format. BNSF further objects to

this interrogatory on the grounds that it is beyond the scope of permissible discovery to the extent it seeks information regarding transportation from mine origins in states other than New Mexico and transportation to Other Arizona Destinations. Subject to these objections, BNSF will produce or make available responsive data or other materials from which responsive information may be derived to the extent such data and other materials are reasonably available.

Interrogatory No. 4:

With respect to any of your line segments on the AEPCO route(s) and the routes used for coal trains moving to Other Arizona Destinations for which the maximum GWR per railcar is less than 286,000 pounds, please provide the following information:

- a. The reason(s), including any physical limitation(s) by specific location, why the maximum GWR is less than 286,000 pounds per railcar; and
- b. Any plans to increase the maximum GWR to 286,000 pounds per railcar in 2001, 2002 or 2003.

BNSF RESPONSE: BNSF objects to Interrogatory No. 4 on grounds that it is overly broad and unduly burdensome to the extent it seeks information that is not maintained by BNSF in the normal course of business, that is not maintained by BNSF in the format requested, or that would require a special study to compile or to report in the requested format. BNSF further objects to Interrogatory No. 4 on the grounds that it is beyond the scope of permissible discovery to the extent it seeks information regarding transportation from mine origins in states other than New Mexico and transportation to Other Arizona Destinations. Subject to this objection, BNSF will produce or make available materials from which responsive information can be derived to the extent such materials are reasonably available.

Interrogatory No. 5:

Please identify the division (as a percentage) of the total rate paid by AEPCO that you receive for the movement of the AEPCO trains under any of the Challenged Rates that are joint rates.

BNSF RESPONSE: BNSF objects to Interrogatory No. 5 on grounds that it is beyond the scope of permissible discovery.

Interrogatory No. 6:

Please describe any run-through, horsepower equalization, or other arrangements, contractual or otherwise, that relate to the locomotives used to move the AEPCO trains between Origin and Destination in both the loaded and empty directions.

BNSF RESPONSE: BNSF objects to Interrogatory No. 6 to the extent it seeks information relating to transportation from mine origins outside of New Mexico. Subject to this objection, BNSF will produce or make available responsive materials to the extent such materials are reasonably available.

Interrogatory No. 7:

Please identify and describe any equipment in your possession (including but not limited to locomotive event recorders) that can be used to identify the throttle positions for locomotives while in AEPCO or other coal service.

BNSF RESPONSE: BNSF's SD70MAC locomotives used in AEPCO's service contain locomotive event recorders that can be used to identify the throttle positions while providing service on particular movements. This data, however, is not maintained in the ordinary course of business.

Interrogatory No. 8:

With respect to any equipment identified in your answer to Interrogatory No. 7, please indicate (a) whether such equipment identifies throttle positions on a time and/or location (e.g., milepost) basis, and (b) whether you consider throttle settings to be a reliable indicator of locomotive fuel consumption.

BNSF RESPONSE: (a) BNSF's SD70MAC locomotives identify throttle positions on a time basis; (b) BNSF believes that the throttle settings can be used, if interpreted properly, to make reliable measurements of locomotive fuel consumption.

Interrogatory No. 9:

Please indicate whether you maintain records of or otherwise keep track of fuel consumption at various throttle settings for any of the locomotives (or types of locomotives) used to move AEPCO trains or any other coal trains, and if not, whether you have ever had any information concerning such fuel consumption since any such locomotives were first acquired and/or placed in revenue service.

BNSF RESPONSE: BNSF does not maintain records or otherwise keep track of fuel consumption at various throttle settings for any of the locomotives (or types of locomotives) used to move AEPCO trains or any other coal trains. BNSF has performed locomotive fuel consumption studies in the context of litigation with PPL Montana in PPL Montana, LLC v. BNSF, STB Docket No. 42054 and with Texas Municipal Power Agency in Texas Municipal Power Agency v. BNSF, STB Docket No. 42056. BNSF also has data compiled in tests performed by Southwest Research Institute on fuel consumption for some SD70MAC locomotives.

Interrogatory No. 10:

If the answer to any part of Interrogatory No. 8 is "yes," please identify and describe such records and/or information.

BNSF RESPONSE: See response to Interrogatory No. 9, above.

Interrogatory No. 11:

Please describe how you determine locomotive fuel consumption for purposes of determining internal management costs for unit-train coal service.

BNSF RESPONSE: BNSF objects to Interrogatory No. 11 on grounds that it is overly broad, unduly burdensome, seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and is beyond the scope of permissible discovery.

Interrogatory No. 12:

With respect to coal trains originating at or destined to mines in the Wyoming Powder River Basin, please indicate whether your locomotive engineers or conductors record the level of fuel in the locomotive fuel tanks (using the CRT readout from the on-board computer or the locomotive fuel gauge reading, or both) when entraining on or detraining from such trains at any crew change location(s) for such trains, and if so, what is done with such information.

BNSF RESPONSE: For the reasons described above in the General Objections in paragraph 9, BNSF objects to Interrogatory No. 12.

Interrogatory No. 13: (for BNSF only)

With respect to coal trains originating at or destined to BNSF-served mines in Montana and New Mexico, please indicate whether BNSF locomotive engineers or conductors record the level of fuel in the locomotive fuel tanks (using the CRT readout from the on-board computer or the locomotive fuel gauge reading, or both) when entraining on or detraining from such trains at any crew-change location(s) for such trains, and if so, what is done with such information.

BNSF RESPONSE: As to BNSF-served mines in Montana, BNSF objects to Interrogatory No. 13 for the reasons described above in the General Objections in paragraph 9. As to BNSF-served mines in New Mexico, BNSF states that it does not believe that its locomotive engineers or conductors record the level of fuel in the locomotive fuel tanks when entraining on or detraining from such trains at any crew-change locations for such trains in the normal course of business. BNSF is investigating to confirm this response.

Interrogatory No. 14: (for UP only)

With respect to coal trains originating at or destined to UP-served mines in Colorado, please indicate whether UP locomotive engineers or conductors record the level of fuel in the

locomotive fuel tanks (using the CRT readout from the on-board computer or the locomotive fuel gauge reading, or both) when entraining on or detraining from such trains at any crew-change location(s) for such trains, and if so, what is done with such information.

BNSF RESPONSE: Since Interrogatory No. 14 is directed to UP only, no response is required.

Interrogatory No. 15: (for UP only)

Please identify and describe any agreements, arrangements or understandings UP has with coal suppliers that own or operate mines in Colorado and/or Wyoming relating to the rate levels that UP will or is willing to charge either the suppliers or their customers for transportation of coal from such mines.

BNSF RESPONSE: Since Interrogatory No. 15 is directed to UP only, no response is required.

Interrogatory No. 16:

Please indicate whether you keep track of the relative or comparative performance or ratings of your locomotive engineers on any coal unit trains originated at mines in the Wyoming Powder River Basin, Colorado or New Mexico (regardless of whether you originate or terminate such trains) ("coal trains").

BNSF RESPONSE: BNSF objects to Interrogatory No. 16 on the grounds that it is overly broad, unduly burdensome and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Interrogatory No. 17:

If the answer to Interrogatory No. 15 is affirmative, please identify and describe the information developed with respect to the comparative performance or ratings of such locomotive engineers, including any documents generated in the course of evaluating such performance or generating such ratings.

BNSF RESPONSE: See response to Interrogatory No. 15.

Interrogatory No. 18:

Please identify and describe the information concerning fuel levels, consumption or usage (including but not limited to locomotive throttle settings) that is available (internally or externally) from each of your locomotives or type of locomotives that is used to transport coal trains.

BNSF RESPONSE: BNSF objects to Interrogatory No. 18 on the grounds that it is overly broad, unduly burdensome and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. BNSF further objects to Interrogatory No. 18 on the grounds that it is vague and unintelligible.

Interrogatory No. 19:

Please (a) describe any equipment in your locomotives used to transport coal trains (including but not limited to equipment that produces a diagnostic instrument display) that produces or displays (or that can produce and display) real-time data concerning the performance of the locomotive, including but not limited to data concerning fuel consumption and/or the level of fuel remaining in the locomotive's fuel tank at a particular point in time (either in terms of a fuel gauge reading or the number of gallons remaining in the tank, or both), and (b) identify the individuals (by job description or title, if appropriate) who record or otherwise make use of the output (including CRT or other displays) from such equipment.

BNSF RESPONSE: BNSF objects to Interrogatory No. 19 on the grounds that it is vague and unintelligible.

Interrogatory No. 20:

Please indicate whether your locomotives used to transport coal trains have exterior fuel gauges, and if so, describe where such exterior fuel gauge(s) are located on each type of locomotive.

BNSF RESPONSE: BNSF's SD70MAC locomotives contain exterior fuel gauges that are located on the fuel tanks themselves.

Interrogatory No. 21:

Please indicate whether the fuel tanks on your locomotives used to transport coal trains have a sight glass or other means of observing or otherwise determining whether the fuel in the locomotive's fuel tank has reached a particular level relative to the total capacity of the tank.

BNSF RESPONSE: BNSF's SD70MAC locomotives contain a sight glass on the outside of the fuel tanks and a solid state electrical gauge display on the inside of the locomotive.

Interrogatory No. 22:

If the answer to Interrogatory No. 19 is affirmative, please indicate the number (actual or approximate) of gallons of capacity remaining in the fuel tank for each type of locomotive used to transport coal trains when the fuel level has reached the point where it is first visible using the sight glass or other means of observing or otherwise determining whether the fuel in the tank has reached a particular level.

BNSF RESPONSE: See response to Interrogatory No. 19.

Interrogatory No. 23:

Please identify and describe the computer program or software you use to extract data concerning locomotive throttle positions and the time spent in each throttle position from the on-board event recorders and/or computers for your locomotives used to transport coal trains, including the name, address and telephone number of any third-party vendor from whom you obtained such computer program and software.

BNSF RESPONSE: As stated in response to Interrogatory No. 7, BNSF does not collect or maintain in the ordinary course of business information on the throttle position of locomotives.

However, BNSF has and can use Quantum Engineering software to extract data concerning locomotive throttle positions and the time spent in each throttle position from the on-board event recorders for locomotives used to transport coal trains. The address for Quantam is 352 Stowe Avenue, Orange Park, FL 32073.

Interrogatory No. 24:

(for BNSF only) With respect to the description of BNSF locomotive fuel consumption experiments appended hereto as Attachment 1, please: (a) Verify the accuracy of the bracketed portion of the attachment, and if it is inaccurate in any respect, describe how it is inaccurate; (b) Indicate when the fuel consumption tests described in the attachment or in your answer to Interrogatory No. 21 began and when they ended or are expected to end; and (c) Describe the methodology used or to be used in conducting such fuel consumption tests.

BNSF RESPONSE: BNSF objects to Interrogatory No. 24 on the grounds that it is overly broad, unduly burdensome and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Interrogatory No. 25:

Please state if, or if not, and explain why, or why not, The Southwestern Railroad Company, Inc. ("SWRR"), is (a) a common carrier holding out to provide service between Rincon and Deming, NM ("Rincon-Deming"), (b) providing common carrier service to AEPCO, and (c) providing part of the joint through rate service to AEPCO.

BNSF RESPONSE: BNSF objects to Interrogatory No. 25 to the extent that it requires a legal conclusion. Notwithstanding its objection, BNSF responds to the subparts as follows: (a) BNSF lacks knowledge or information sufficient to state whether SWRR is "a common carrier holding out to provide service between Rincon and Deming, NM" for shippers other than AEPCO; (b) SWRR does not provide common carrier service to AEPCO. BNSF and UP provide common carrier service to AEPCO under Common Carrier Authority No. BNSF 90044, Amendment 2. BNSF pays SWRR a handling charge for SWRR to provide service on BNSF's behalf between Rincon and Deming, New Mexico; and (c) BNSF is not a party to any joint rate for service to AEPCO with SWRR.

Interrogatory No. 26:

Please state if, or if not, and explain why, or why not, BNSF remains responsible for providing common carrier rail service to AEPCO under Common Carrier Authority No. BNSF 90044 over the Rincon-Deming segment of the AEPCO Route(s).

BNSF RESPONSE: BNSF objects to Interrogatory No. 26 because it requires a legal conclusion. Notwithstanding its objection, BNSF states that it remains responsible for providing common carrier rail service to AEPCO under Common Carrier Authority No. BNSF 90044, Amendment 2.

Interrogatory No. 27:

Please identify any and all savings and benefits gained, or projected to be gained, by you and/or SWRR by having SWRR, rather than BNSF, operate the Rincon-Deming segment. Your identification should include an identification of all costs, revenues, and efficiencies associated with having SWRR operate the Rincon-Deming segment rather than BNSF.

BNSF RESPONSE: BNSF objects to Interrogatory No. 27 on the grounds that it is overly broad and unduly burdensome and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Interrogatory No. 28:

Please identify all billing payments from BNSF to SWRR and from SWRR to BNSF and also identify the type and quantity of service units associated with the payments.

BNSF RESPONSE: BNSF objects to Interrogatory No. 28 to the extent it requests information regarding payments between BNSF and SWRR unrelated to AEPCO's movement between Deming and Rincon on the grounds that it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. BNSF will produce records showing payments to SWRR associated with transportation of AEPCO's traffic between Deming and Rincon, New Mexico.

DOCUMENT PRODUCTION REQUESTS

Request for Production No. 1:

Please produce current operating timetables (including special instructions), station lists, and station books for all lines comprising your system.

BNSF RESPONSE: BNSF will produce or make available responsive materials to the extent such materials are reasonably available.

Request for Production No. 2

Please produce current track charts or "Condensed Profiles" covering all lines comprising your system, with the data contained on the track charts or "Condensed Profiles" produced in machine-readable format to the extent available (including all necessary documentation).

BNSF RESPONSE: BNSF will produce or make available responsive materials to the extent such materials are reasonably available.

Request for Production No. 3:

Please produce documents, including schematics, which provide the length of the loop tracks at the mines at each of the Origins.

BNSF RESPONSE: BNSF objects to this Request to the extent it seeks information relating to origins other than those located in the states of New Mexico and Arizona. Subject to this objection, BNSF will produce or make available responsive materials to the extent such materials are reasonably available.

Request for Production No. 4:

Please produce documents or data, in a computer-readable format to the extent available, which provide the following information for your portion of each AEPCO train movement for each year or partial year from 1998 to the present:

- a. Each crew district through which AEPCO trains pass identified by "from" and "to" stations;
- b. The route miles in each such crew district;
- c. The route(s) used;
- d. The loaded train miles over the route(s);
- e. The empty train miles over the route(s);
- f. The number of diesel units per train by the unit measure of rail line (e.g., crew district or line segment) for the loaded route(s);
- g. The number of diesel units per train by the unit measure of rail line for the empty route(s);
- h. The number of cars per train by the unit measure of rail line for the loaded route(s);
- i. The number of cars per train by the unit measure of rail line for the empty route(s);
- j. The trailing weight of each train (cars and contents) by the unit measure of rail line for the loaded route(s);
- k. The trailing weight of each train (cars and contents) by the unit measure of rail line for the empty-route(s);
- l. The average net load (tons per car) of each car; and
- m. The tare weight of each car.

BNSF RESPONSE: BNSF objects to this Request on grounds that it is overly broad and unduly burdensome to the extent it seeks information that is not maintained by BNSF in the normal course of business, that is not maintained by BNSF in the format requested, or that would require a special study to compile or to report in the requested format. BNSF further objects to this Discovery Request to the extent it seeks information about matters occurring prior to January 1, 1999. Further, BNSF objects to this Request to the extent it seeks information on AEPCO's train movements in states other than New Mexico and Arizona. Subject to these objections, BNSF will produce or make available responsive data or other materials from which responsive information may be derived to the extent such data and other materials are reasonably available.

Request for Production No. 5:

For each line segment on your system which has been traversed in the last three (3) calendar years by an AEPCO train (loaded or empty), please produce documents, in a computer-readable format to the extent available, which provide the following information for each year 1998 to the present:

- a. The "from" and "to" stations (by station name and milepost);
- b. The BNSF or UP (as applicable) mileage owned and operated, separated into:
 - i. Miles of road;
 - ii. Miles of second main;
 - iii. Miles of all other main tracks; and
 - iv. Miles of passing tracks, crossovers and turnouts.
- c. The miles of road operated under trackage rights;
- d. Authorized speeds for unit coal trains, other unit trains, general freight trains, and passenger trains;
- e. The percent of track-miles in curves of two (2) degrees or more;
- f. The percent of track-miles in curves of four (4) degrees or more;
- g. The percent of rail where rail lubrication is employed;
- h. The mechanism(s) by which rail lubricants are applied;
- i. The percent of track-miles of welded rail;
- j. FRA classes of track (e.g., 20 miles of Class IV track, 30 miles of Class III track, etc.); and
- k. The train-miles, car-miles (loaded and empty), gross ton-miles of cars and contents, gross ton-miles of locomotives and cabooses, and gross ton-miles of locomotives, cars, contents and cabooses for:

- i. Coal unit train or train load traffic;
- ii. Other unit train or train load traffic;
- iii. General freight heavy wheel load traffic;
- iv. General freight traffic (excluding heavy wheel load traffic);
- v. Passenger traffic; and
- vi. Intermodal traffic.

BNSF RESPONSE: BNSF objects to this Request on grounds that it is overly broad and unduly burdensome to the extent it seeks information that is not maintained by BNSF in the normal course of business, that is not maintained by BNSF in the format requested, or that would require a special study to compile or to report in the requested format. BNSF further objects to this Discovery Request to the extent it seeks information about matters occurring prior to January 1, 1999. Further, BNSF objects to this Request to the extent it seeks information on AEPCO's train movements in states other than New Mexico and Arizona. And, BNSF objects to Request No. 5(h) on grounds that it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Subject to these objections, BNSF will produce or make available responsive data or other materials from which responsive information may be derived to the extent such data and other materials are reasonably available.

Request for Production No. 6:

Please produce documents, in a computer-readable format to the extent available, which provide the following information for your entire system subdivided into the categories of track described in Schedule 720 of the Annual Report Form R-1 for each year 1998 to the present:

- a. Miles of track;
- b. Miles of road;
- c. Track-miles of continuous welded rail;
- d. Weight of rail;
- e. Percent of track-miles in curves of two (2) degrees or more; and
- f. Total gross ton-miles, loaded car-miles and empty car-miles generated by cars and contents for:
 - i. Coal unit train or trainload traffic;
 - ii. Other unit train or trainload traffic;
 - iii. General freight heavy wheel load traffic;

- iv. General freight traffic (excluding heavy wheel load traffic);
- v. Passenger traffic; and
- vi. Intermodal traffic.

BNSF RESPONSE: BNSF objects to this Request on grounds that it is overly broad and unduly burdensome to the extent it seeks information that is not maintained by BNSF in the normal course of business, that is not maintained by BNSF in the format requested, or that would require a special study to compile or to report in the requested format. BNSF further objects to this Discovery Request to the extent it seeks information about matters occurring prior to January 1, 1999. Subject to these objections, BNSF will produce or make available responsive data or other materials from which responsive information may be derived to the extent such data and other materials are reasonably available.

Request for Production No. 7:

For each line segment in your system, please produce documents, in a computer-readable format to the extent available, which contain operating statistics and density data (including but not limited to train miles, train hours, locomotive unit miles, loaded car-miles, empty car-miles, net ton-miles, gross ton-miles (both including and excluding locomotives), number of trains, etc.) for all traffic for each year or partial year 1998 to the present.

BNSF RESPONSE: BNSF objects to this Request on grounds that it is overly broad and unduly burdensome to the extent it seeks information that is not maintained by BNSF in the normal course of business, that is not maintained by BNSF in the format requested, or that would require a special study to compile or to report in the format requested. BNSF further objects to this Discovery Request to the extent it seeks information about matters occurring prior to January 1, 1999. BNSF also objects to this Request on grounds that the reference to "line segment" is vague. Subject to these objections, BNSF will produce or make available responsive data, in the format in which such data is available, or other materials from which responsive information may be derived, to the extent such data and other materials are reasonably available.

Request for Production No. 8:

Please produce your system density charts and/or tables showing gross ton-miles moving by direction and by line segment for each year or partial year 1998 to the present and indicate whether or not gross ton-miles for locomotives are included.

BNSF RESPONSE: BNSF objects to this Request on grounds that it is overly broad and unduly burdensome to the extent it seeks information that is not maintained by BNSF in the normal course of business, that is not maintained by BNSF in the format requested, or that would require a special study to compile or to report in the format requested. BNSF further objects to this Discovery Request to the extent it seeks information about matters occurring prior to January 1, 1999. BNSF also objects to this Request on grounds that the reference to "line segment" is vague. Subject to these objections, BNSF will produce or make available responsive data, in the format in which such data is available, or other materials from which responsive information may be derived, to the extent such data and other materials are reasonably available.

Request for Production No. 9:

For each year or partial year 1998 to the present, please produce all documents, in a computer-readable format to the extent available, including all necessary documentation, containing or related to line-specific or location-specific maintenance of way and structures expenditures: (i) for each line segment of your system traversed in whole or in part by any AEPCO train between Origin and Destination; and (ii) for your entire system.

BNSF RESPONSE: BNSF objects to this Request on grounds that it is overly broad and unduly burdensome to the extent it seeks all documents relating to maintenance of way and structures expenditures. BNSF further objects to this Discovery Request to the extent it seeks information about matters occurring prior to January 1, 1999. Further, BNSF objects to this Request to the extent it seeks information on AEPCO's train movements in states other than New Mexico and Arizona. Subject to these objections, BNSF will produce or make available data or

other materials from which maintenance of way and structures expenditures may be derived to the extent such data and other materials are reasonably available.

Request for Production No. 10: (for BNSF only)

Please produce all documents, in a computer-readable format to the extent available, including all necessary documentation, from BNSF's Responsibility Budgeting ("RESBU") system (or other accounting system or procedure) which provide the following information for each year or partial year 1998 to the present:

- a. Total maintenance of way and structure expenditures for the BNSF system;
- b. Total maintenance of way and structure expenditures, by region, for each of BNSF's regional districts, including a description of said districts;
- c. Each RESBU (or other accounting) number that captures maintenance of way and structures expenses related to the line segments traversed in whole or in part by AEPCO unit trains;
- d. The geographic boundaries, e.g., milepost, of each RESBU (or other accounting) unit identified in response to (c) above;
- e. The "Organizational Listing" or other organizational method which identifies each RESBU (or other accounting) number on the BNSF;
- f. The "What Code" or other similar code used in the RESBU (or other accounting) system;
- g. The "RDS Roadmaster Headquarters and Territory Listing", or any other document containing similar information, for each of the BNSF regions traversed in whole or in part by AEPCO unit trains;
- h. The RESBU (or other accounting) number for each division/district contained in the listings identified in response to (g) above;
- i. The Annual Report Form R-1, Schedule 410 accounts which correspond to each RESBU (or other accounting system) value; and
- j. The procedures utilized to allocate depreciation monies into the various categories shown in Schedule 416 of BNSF's Annual Report Form R-1 and how the RESBU System (or other accounting system) is used in this allocation process.

BNSF RESPONSE: BNSF objects to this Request on grounds that it is overly broad and unduly burdensome to the extent it seeks all documents relating to maintenance of way and structures expenditures. BNSF further objects to this Discovery Request to the extent it seeks information about matters occurring prior to January 1, 1999. BNSF further states that the RESBU system no longer exists, so the information requested is not available. Nevertheless,

subject to these objections and qualifications, BNSF will produce or make available relevant data or other materials to the extent such data or other materials are reasonably available.

Request for Production No. 11:

Please produce all documents which contain actual cycle time data or projected cycle times (whether for all or your portion of the total movement from Origin to Destination) for the AEPCO trains for each year or partial year 1998 to the present. If such documents do not exist, please provide documents in hard copy and computer-readable format to the extent available, including all necessary documentation, from which the cycle times for the AEPCO trains for each year or partial year 1998 to the present can be developed.

BNSF RESPONSE: BNSF objects to this Request on grounds that it is overly broad and unduly burdensome to the extent it requests all documents which contain actual or projected cycle times for the AEPCO trains. BNSF further objects to this Discovery Request to the extent it seeks information about matters occurring prior to January 1, 1999. Further, BNSF objects to this Request to the extent it seeks information on AEPCO's train movements in states other than New Mexico and Arizona. Subject to these objections, BNSF will produce or make available data or other materials from which cycle times for the AEPCO trains may be determined to the extent such data or other materials are reasonably available.

Request for Production No. 12:

For each valuation section on your system traversed in whole or in part by the AEPCO trains, please provide the following information for each year 1998 through the present in a computer-readable format to the extent available, and specify, for each subpart, (1) whether the accounting methodology is on a depreciation accounting basis or on a betterment accounting basis and (2) whether or not the figures provided include a write-up of investment associated with the merger between BN and ATSF or between UP and SP or CNW, as applicable:

- a. A description by milepost and station name of the properties encompassed by each valuation section (as of December 31st for each year);
- b. A description by milepost and station name of the portion of the valuation section identified in response to (a) above traversed by any AEPCO unit train (as of December 31st for each year);

- c. Gross values by ICC/STB property account included within the valuation section identified in response to (a) above (as of December 31st for each year);
- d. Annual and accumulated depreciation by ICC/STB property account for all properties included within each valuation section identified in response to (a) above (as of December 31st for each year);
- e. Gross values by ICC/STB property account of only those properties used by AEPCO unit trains for each valuation section identified in response to (a) (as of December 31st for each year);
- f. Annual and accumulated depreciation by ICC/STB property account for all properties used by AEPCO unit trains for each valuation section identified in response to (a) above (as of December 31st for each year);
- g. The annual total gross ton-miles of cars and contents and the annual total gross ton-miles of locomotives and cabooses for each year 1998 through 2000 traversing the entire valuation section for each valuation section identified in response to (a) above where the properties used by AEPCO unit trains are less than the total properties within the valuation section; and
- h. The annual total gross ton-miles of cars and contents and the annual total gross ton-miles of locomotives and cabooses for each year 1998 through 2000 for each valuation section identified in response to (a) above.

BNSF RESPONSE: BNSF objects to this Request on grounds that it is overly broad and unduly burdensome to the extent it seeks information that is not maintained by BNSF in the normal course of business, that is not maintained by BNSF in the format requested, or that would require a special study to compile or to report in the format requested.

Request for Production No. 13:

If the data provided in response to Request for Production No. 12 excludes or includes the write-up of investment associated with the merger of BN and ATSF or the merger of UP and SP or CNW (as applicable), please provide the data necessary to allocate the difference between the as-paid amount and the book value to each affected ICC/STB property account of each affected valuation section.

BNSF RESPONSE: See objection to Request for Production No. 12, above.

Request for Production No. 14:

- (a) (For BNSF only) Please provide documents sufficient to show (i) the book value of ATSF and the actual amount paid by BN for ATSF at the time of the merger between BN and ATSF and (ii) how BNSF treated the differential between the book value and the actual amount paid in its accounting system.
- (b) (For UP only) Please provide documents sufficient to show (i) the book value of SP and the actual amount paid by UP for SP at the time of the merger between UP and SP; (ii) the book value of CNW (including its subsidiaries) and the actual amount paid by UP for CNW at the time of the merger between UP and CNW; and (ii) how UP treated the differential between the book values and the actual amounts paid in its accounting system.

BNSF RESPONSE: BNSF objects to this Request on the grounds that it is overly broad, unduly burdensome and it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Request for Production No. 15:

Please produce documents for each year or partial year 1998 to the present which list by initial and unit number: (a) locomotives used in your portion of the AEPCO service; and (b) all the locomotives in the pool from which the locomotives used in your portion of the AEPCO service are drawn.

BNSF RESPONSE: BNSF objects to this Request on grounds that it is overly broad and unduly burdensome to the extent it seeks information that is not maintained by BNSF in the normal course of business, that is not maintained by BNSF in the format requested, or that would require a special study to compile or to report in the format requested. BNSF further objects to this Discovery Request to the extent it seeks information about matters occurring prior to January 1, 1999. Further, BNSF objects to this Request to the extent it seeks information on AEPCO's train movements in states other than New Mexico and Arizona. Subject to these objections, BNSF will produce or make available responsive data, in the format in which such data is available, or other materials from which responsive information may be derived, to the extent such data and other materials are reasonably available.

Request for Production No. 16:

Please produce documents, in a computer-readable format to the extent available, which provide the following information for each of the locomotives contained in each of the listings produced in response to Request for Production No. 15:

- a. The locomotive initial and number;
- b. The manufacturer, if purchased;
- c. The lessor, if leased or rented;
- d. Model or type (e.g., SD-40-2);
- e. Horsepower;
- f. Capacity of its fuel tanks (gallons);
- g. Weight;
- h. Date of purchase or lease;
- i. Date first placed into service;
- j. The original cost plus the cost of any additions and betterments;
- k. Financing vehicle (e.g., equipment trust);
- l. Debt rate as a percent;
- m. Financing terms (in years);
- n. Annual depreciation;
- o. Annual depreciation as a percent;
- p. Current salvage value as a percent;
- q. Accrued depreciation;
- r. If leased, the type of lease (i.e., capital, operating, "power by the hour", etc.);
- s. If a capital lease, the capitalized value of the lease by locomotive or group of locomotives (if a group of locomotives, the number of locomotives (by initial and number) and aggregate dollars);
- t. If an operating lease, the quarterly, semi-annual, etc., lease payment by locomotive or group of locomotives covering the term of the lease (if a group of locomotives, the number of locomotives (by initial and number) and aggregate dollars);
- u. If leased or rented under a short-term or "power by the hour" agreement, the minimum annual fixed payment and the use payment (e.g., per kilowatt/hour, per diesel unit mile, etc.) per locomotive, the average annual payment per locomotive, and the annual locomotive unit-miles for each such locomotive, stated separately for coal service and other service; and
- v. The diesel unit-miles traveled each year or partial year from 1998 to the present:
 - i. In AEPCO service;
 - ii. In coal service; and
 - iii. In all types of service.

BNSF RESPONSE: BNSF objects to this Request on grounds that it is overly broad and unduly burdensome to the extent it seeks information that is not maintained by BNSF in the

normal course of business, that is not maintained by BNSF in the format requested, or that would require a special study to compile or to report in the format requested. BNSF further objects to Request Nos. 16(c) and (f) on grounds that they seek information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Subject to these objections, BNSF will produce or make available responsive data, in the format in which such data is available, or other materials from which responsive information may be derived, to the extent such data and other materials are reasonably available.

Request for Production No. 17:

Please produce all lease or rental agreements, including all supplements and amendments, plus copies of all billings, applicable to each leased or rented locomotive identified in response to Request for Production Nos. 15 and 16.

BNSF RESPONSE: BNSF objects to this Request on grounds that it is overly broad and unduly burdensome to the extent that it requests all lease agreements, supplements and amendments. BNSF further objects to this Request on grounds that it is overly broad, unduly burdensome, and seeks information and documents that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence to the extent that it requests information about billings. Subject to these objections, BNSF will make available specific lease or rental agreements, to the extent they are reasonably available, for individual locomotives identified by AEPCO and relevant to this proceeding.

Request for Production No. 18:

If at any time from 1998 through the present, you used any locomotives for your portion of the movement of AEPCO trains that you neither owned nor leased (e.g., BNSF owned or leased locomotives used on the UP portion of the movement or UP owned or leased locomotives used on the BNSF portion of the movement), please produce documents sufficient to determine the

frequency and cost of your use of such locomotives since (and including) 1998, including the following:

- a. List all agreements (or describe any arrangements other than agreements) applicable to use of the locomotive(s) including but not limited to the run-through or horsepower equalization agreements or arrangements;
- b. State the itemized amount of compensation or equalization for use of the locomotive, by each category of compensation or equalization, including but not limited to fuel, maintenance and servicing;
- c. List service units covered by the compensation or equalization;
- d. Describe the methodology used for computing the compensation or equalization by component;
- e. State the time periods during which the locomotive was used for the movement of AEPCO traffic; and
- f. State the locomotive unit miles traveled by the locomotive during the time period that it was used for the movement of AEPCO traffic.

BNSF RESPONSE: BNSF objects to this Request on grounds that it is overly broad and unduly burdensome to the extent it seeks information that is not maintained by BNSF in the normal course of business, that is not maintained by BNSF in the format requested, or that would require a special study to compile or to report in the format requested. BNSF further objects to this Request on grounds that it is vague, unintelligible and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Request for Production No. 19:

Please produce all of your locomotive maintenance and repair reports and documents (e.g., SMD-510 reports and LCP-003 reports), for each year or partial year 1998 to the present, which provide locomotive maintenance and repair expenses by locomotive or locomotive type or series (or by other basis in which records are kept) and the total locomotive unit-miles corresponding to these maintenance and repair expenses for (a) the locomotives you use in the AEPCO service, and (b) all locomotives in your fleet.

BNSF RESPONSE: BNSF objects to this Request on grounds that it is overly broad and unduly burdensome to the extent it seeks information that is not maintained by BNSF in the normal course of business, that is not maintained by BNSF in the format requested, or that would require a special study to compile or to report in the format requested. BNSF also objects to this

Request as overly broad and unduly burdensome to the extent it requests all documents related to locomotive maintenance and repair expenses. BNSF further objects to this Discovery Request to the extent it seeks information about matters occurring prior to January 1, 1999. Further, BNSF objects to this Request to the extent it seeks information on AEPCO's train movements in states other than New Mexico and Arizona. BNSF further states that for some locomotives it maintains partial information on maintenance and repair expenses by locomotive or locomotive type or series, but it does not maintain total maintenance and repair expenses for these locomotives. As to other locomotives, BNSF does not maintain any maintenance and repair expense information by locomotive or locomotive type or series. BNSF also refers AEPCO to its R-1 reports. Subject to these objections and qualifications, BNSF will produce or make available responsive data, in the format in which such data is available, or other materials from which responsive information may be derived, to the extent such data and other materials are reasonably available.

Request for Production No. 20:

Please produce all locomotive maintenance agreements, including all supplements, attachments, exhibits and schedules, with outside contractors and provide, for each year or partial year 1998 to the present for all locomotives in your fleet under such maintenance agreements, (a) the amount paid for each locomotive or by locomotive type in total and broken down by each service performed under the agreement and (b) the number of locomotive unit miles corresponding to the amounts listed above.

BNSF RESPONSE: BNSF objects to this Request on grounds that it is overly broad and unduly burdensome to the extent it seeks information that is not maintained by BNSF in the normal course of business, that is not maintained by BNSF in the format requested, or that would require a special study to compile or to report in the format requested. BNSF further objects to this Request as overly broad and unduly burdensome to the extent it seeks information relating to all agreements, including all supplements, attachments, exhibits and schedules. BNSF further

objects to this Discovery Request to the extent it seeks information about matters occurring prior to January 1, 1999. BNSF further objects to this Request to the extent it seeks information relating to all locomotives in BNSF's fleet. BNSF further states that for some locomotives it maintains partial information on maintenance and repair expenses by locomotive or locomotive type or series, but it does not maintain total maintenance and repair expenses for these locomotives. As to other locomotives, BNSF does not maintain any maintenance and repair expense information by locomotive or locomotive type or series. Subject to these objections, BNSF will produce or make available responsive documents or data, in the format in which such data is available, or other materials from which responsive information may be derived, to the extent such documents, data and other materials are reasonably available and to the extent such documents, data and other materials relate to locomotives that are relevant to this proceeding.

Request for Production No. 21:

Please produce documents sufficient to show the following:

- a. The location(s) where the locomotives handling the AEPCO trains are fueled;
- b. The actual amount of fuel used by the locomotives identified in response to Request for Production No. 15, either by individual locomotive, or collectively, for the most recent 12 months or calendar year;
- c. The total number of diesel unit miles generated by the locomotives for which fuel consumption data was provided in response to (b) above during the same time period used in response to (b) above;
- d. The method by which you account for or record fuel usage for the locomotives used for the AEPCO trains;
- e. Computer-readable versions (both compiled and non-compiled), including all supporting databases and necessary documentation, of any and all computer programs in your possession used to estimate the fuel usage of locomotives moving AEPCO traffic; and
- f. The same information for all road locomotives on your system in the same format, i.e., comparable data, as that given in the responses to (b), (c), and (e) above.

BNSF RESPONSE: BNSF objects to this Request on grounds that it is overly broad and unduly burdensome to the extent it seeks information that is not maintained by BNSF in the normal course of business, that is not maintained by BNSF in the format requested, or that would require a special study to compile or to report in the format requested. BNSF further objects to subparts (d)-(f) of this Request on grounds that it is overly broad, unduly burdensome, and seeks information and documents that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. As to subpart (a), BNSF states that it is investigating whether it has documents sufficient to show the locations where locomotives handling the AEPCO trains are fueled. As to subparts (b) and (c), BNSF states that information as to fuel usage and diesel miles responsive to this request is not available for the most recent 12 months or calendar year. Subject to these objections and qualifications, BNSF is conducting an examination to determine whether or not there is data from which information responsive to subparts (b)-(c) can be derived for locomotives used on a limited number of AEPCO trains that are run during the discovery period.

Request for Production No. 22:

Please produce all studies, analyses and related documents (including summaries and supporting data), in a computer-readable format to the extent available, pertaining to the fuel consumption of the AEPCO trains (or the locomotives used on the AEPCO trains) or any other unit coal trains (or the locomotives used by any other unit coal train) moving over all or a portion of the AEPCO route(s), including but not limited to any documents described or identified in or relating to the answers to Interrogatory Nos. 7 through 13 above.

BNSF RESPONSE: BNSF objects to this Request as overly broad and unduly burdensome to the extent it seeks all studies, analyses and related documents pertaining to fuel consumption of the designated trains or locomotives. BNSF further states that no fuel studies of the type described in Request No. 22, which are not subject to the work product doctrine or highly

confidential designations in other proceedings, were conducted during the relevant time period. Subject to these objections and qualifications, BNSF is conducting an examination to determine whether or not there is data that will allow the calculation of the fuel consumed by locomotives used on a limited number of AEPCO trains that are run during the discovery period. BNSF will also provide the Southwest Research Institute study referred to in response to Interrogatory No. 9, above.

Request for Production No. 23:

For each crew district traversed by each AEPCO train (in both the loaded and empty directions), please produce documents, in a computer-readable format to the extent available (including all documentation, i.e., record layouts, field definitions, code definitions, etc.), which provide the following information, in whole or in part, for individual trainmen and enginemen for each AEPCO train for each year or partial year 1998 to the present:

- a. The date;
- b. Number of enginemen (including trainees);
- c. Number of trainmen (including trainees);
- d. Place, time, and date each employee went on duty;
- e. Place, time, and date each employee went off duty;
- f. Train number assigned;
- g. Whether or not a relief crew;
- h. Locomotive initials and numbers (including slave units) and number of units in train;
- i. Number of cars in train;
- j. Actual miles run per train;
- k. Kind of service (e.g., local, through, switching, deadheading);
- l. Service class for each employee (including definitions of codes used);
- m. Run number (including definitions of codes used);
- n. Time claimed for each employee;
- o. Straight time actually worked, for each employee;
- p. Straight time paid for, for each employee (hours and dollars of compensation);
- q. Overtime actually worked, for each employee;
- r. Overtime paid for, for each employee (hours and dollars of compensation);
- s. Constructive codes, related miles and payments, for each employee (including definitions of codes used and different payment rates);
- t. The definition you use internally for accounting purposes for each constructive code identified in response to (s) above. As a hypothetical

example, if you define the constructive code "01" as "Back Pay", provide a description of what constitutes "Back Pay" under your accounting guidelines;

- u. Rate codes of each employee (including definitions of codes used and all different wages rates);
- v. Payments for meals and lodging for each employee; and
- w. Productivity fund payments on behalf of each employee.

BNSF RESPONSE: BNSF objects to this Request on grounds that it is overly broad and unduly burdensome to the extent it seeks information that is not maintained by BNSF in the normal course of business, that is not maintained by BNSF in the format requested, or that would require a special study to compile or to report in the format requested. Further, BNSF objects to this Request to the extent it seeks information on AEPCO's train movements in states other than New Mexico and Arizona. BNSF further objects to Request No. 23(t) on grounds that it is overly broad and unduly burdensome. BNSF further states that information responsive to this Request is not reasonably available for the period prior to October 1999, when a new database was implemented to track such information. Subject to these objections and qualifications, BNSF will produce or make available responsive data from the existing database, in the format in which such data is available.

Request for Production No. 24:

Please produce all wage data, in a computer-readable format, paid to each trainman and enginemen, separately, by date, that is not included in the data you provide in response to Request for Production No. 23 for each year or partial year 1998 to the present.

BNSF RESPONSE: BNSF objects to this Request on grounds that it is overly broad and unduly burdensome to the extent it seeks information that is not maintained by BNSF in the normal course of business, that is not maintained by BNSF in the format requested, or that would require a special study to compile or to report in the format requested. BNSF further objects to this Request on grounds that the reference to "all wage data . . . that is not included in the data

provided in the response to Request for Production No. 23" is vague. Subject to these objections, BNSF will produce or make available responsive data in addition to the data requested in Request No. 23, in the format in which such data is available, or other materials from which responsive information may be derived, to the extent such data and other materials are reasonably available.

Request for Production No. 25:

Please produce all documents identifying train activities for each crew handling each train identified in Request for Production No. 23 including delay reports and conductors reports and documents explaining any codes appearing thereon.

BNSF RESPONSE: BNSF objects to this Request as overly broad and unduly burdensome to the extent it seeks all documents identifying train activities for the designated crews. BNSF further objects to this Discovery Request to the extent it seeks information about matters occurring prior to January 1, 1999. Further, BNSF objects to this Request to the extent it seeks information on AEPCO's train movements in states other than New Mexico and Arizona. Further, BNSF objects to this Request to the extent it seeks information on AEPCO's train movements in states other than New Mexico and Arizona. Subject to this objection, BNSF will make available responsive materials, at the locations where such materials are maintained, to the extent such materials are reasonably available.

Request for Production No. 26:

Please produce documents which provide the following information for helper service used by any AEPCO train for each year or partial year 1998 to the present:

- a. "From" and "To" stations and mileposts where trains are actually helped;
- b. Number and type of locomotives (model and horsepower) involved per help;
- c. Round-trip mileage each locomotive travels per help;

- d. Number of total trains helped per crew assignment;
- e. Minimum train size/weight requiring helper service; and
- f. Crew size per crew assignment.

BNSF RESPONSE: BNSF objects to this Request on grounds that it is overly broad and unduly burdensome to the extent it seeks information that is not maintained by BNSF in the normal course of business, that is not maintained by BNSF in the format requested, or that would require a special study to compile or to report in the format requested. BNSF further objects to this Discovery Request to the extent it seeks information about matters occurring prior to January 1, 1999. Further, BNSF objects to this Request to the extent it seeks information on AEPCO's train movements in states other than New Mexico and Arizona. Subject to these objections, BNSF will produce or make available responsive data, in the format in which such data is available, or other materials from which responsive information may be derived, to the extent such data and other materials are reasonably available.

Request for Production No. 27:

Please produce documents, in a computer-readable format to the extent available, which provide the following information for each helper service crew member participating in helper service which aided the trains described in Request for Production No. 26:

- a. The date and location of service performed;
- b. Number of enginemen (including trainees);
- c. Number of trainmen (including trainees);
- d. Place(s), time(s), and date(s) each employee went on duty and off duty;
- e. Train number(s) and run number(s) (including definitions of codes used);
- f. Helper locomotive initials and numbers (including slave units) and number of units;
- g. Number of cars in train for each train helped;
- h. Actual miles run per train for each train helped;
- i. Kind of service (e.g., local, through, switching, deadheading);
- j. Service class for each employee (including definitions of codes used);
- k. Time claimed for each employee;
- l. Straight time actually worked, for each employee;
- m. Straight time paid for, for each employee (hours and dollars of compensation);

- n. Overtime actually worked, for each employee;
- o. Overtime paid for, for each employee (hours and dollars of compensation);
- p. Constructive code, related miles and payments, for each employee (including definitions of codes used and different payment rates);
- q. The definition that you use internally for accounting purposes for each constructive code identified in response to (p) above. As a hypothetical example, if you define the constructive code "01" as "Back Pay", provide a description of what constitutes "Back Pay" under your accounting guidelines;
- r. Rate codes of each employee (including definitions of codes used and all different wages rates);
- s. Payments for meals and lodging for each employee; and
- t. Productivity fund payments on behalf of employee.

BNSF RESPONSE: BNSF objects to this Request on grounds that it is overly broad and unduly burdensome to the extent it seeks information that is not maintained by BNSF in the normal course of business, that is not maintained by BNSF in the format requested, or that would require a special study to compile or to report in the format requested. Further, BNSF objects to this Request to the extent it seeks information on AEPCO's train movements in states other than New Mexico and Arizona. BNSF further objects to Request No. 27(q) on grounds that it is overly broad and unduly burdensome. BNSF further states that information responsive to this Request is not reasonably available for the period prior to October 1999, when a new database was implemented to track such information. Subject to these objections and qualifications, BNSF will produce or make available responsive data from the existing database, in the format in which such data is available.

Request for Production No. 28:

Please produce documents which provide the following information for all of your helper services operated in the SARR States, separately for each helper service location:

- a. "From" and "to" stations and mileposts where trains are actually helped;
- b. Number and type of locomotives (model and horsepower) involved per help;

- c. Round trip mileage each locomotive travels per help;
- d. Number of total trains helped per crew assignment;
- e. Minimum train size/weight requiring helper service; and
- f. Crew size per crew assignment.

BNSF RESPONSE: BNSF objects to this Request on grounds that it is overly broad and unduly burdensome to the extent it seeks information that is not maintained by BNSF in the normal course of business, that is not maintained by BNSF in the format requested, or that would require a special study to compile or to report in the format requested. Further, BNSF objects to this Request to the extent it seeks information on AEPCO's train movements in states other than New Mexico and Arizona. Subject to these objections, BNSF will produce or make available responsive data, in the format in which such data is available, or other materials from which responsive information may be derived, to the extent such data and other materials are reasonably available.

Request for Production No. 29:

For each of the years 1998 to the present, please produce all studies, analyses and related documents (including logs, records and summaries) of switching performed for the AEPCO trains.

BNSF RESPONSE: BNSF objects to this Request as overly broad and unduly burdensome to the extent it requests all studies, analyses and related documents pertaining to switching at the designated locations. BNSF further objects to this Discovery Request to the extent it seeks information about matters occurring prior to January 1, 1999. Further, BNSF objects to this Request to the extent it seeks information on AEPCO's train movements in states other than New Mexico and Arizona. Subject to these objections, BNSF will produce or make available any studies of switching performed at the designated locations, to the extent such information is reasonably available.

Request for Production No. 30:

Please produce documents for each year or partial year 1998 to the present which provide your loss and damage costs separately for each commodity you carry (including coal), on a system-wide basis, and for coal, separately for unit coal trains and for the AEPCO trains in particular.

BNSF RESPONSE: BNSF objects to this Request on grounds that it is overly broad and unduly burdensome to the extent it seeks information that is not maintained by BNSF in the normal course of business, that is not maintained by BNSF in the format requested, or that would require a special study to compile or to report in the format requested. BNSF further objects to this Discovery Request to the extent it seeks information about matters occurring prior to January 1, 1999. Subject to these objections, BNSF will produce or make available responsive data, in the format in which such data is available, or other materials from which responsive information may be derived, to the extent such data and other materials are reasonably available.

Request for Production No. 31:

Please produce documents which contain the following information for each of the years 1998 to present:

- a. The location(s) where car inspectors inspect the AEPCO trains;
- b. A description of the procedures followed by the car inspectors in preparing for and inspecting the trains;
- c. The total number of car inspections per tour of duty (by day of the week) and the total number of trains inspected per tour of duty (by day of the week), separated between trainload and unit coal trains and other than trainload or unit coal trains, for each location identified in response to (a) above;
- d. The number of car inspectors inspecting each AEPCO train at each location identified in response to (a) above and the time spent by each inspector during each inspection;
- e. The daily or hourly rates of pay, including all additives, for the inspectors identified in response to (d) above;
- f. The number of trains each car inspector identified in response to (a) above inspects during his tour of duty;
- g. The other duties performed by the car inspectors identified in response to (d) above while on duty and not inspecting trains;

- h. The percentage of time the car inspectors identified in response to (d) above spend inspecting trains versus other assignments during their tour of duty;
- i. The materials and supplies used by the car inspectors at each of the locations identified in response to (a) above;
- j. The purchase price of each item identified in response to (i) above; and
- k. The total number of trains and cars inspected at each location identified in response to (a) above.

BNSF RESPONSE: BNSF objects to this Request as overly broad and unduly burdensome to the extent it seeks information that is not maintained by BNSF in the normal course of business, that is not maintained by BNSF in the format requested, or that would require a special study to compile or to report in the format requested. BNSF further objects to this Discovery Request to the extent it seeks information about matters occurring prior to January 1, 1999. Further, BNSF objects to this Request to the extent it seeks information on AEPCO's train movements in states other than New Mexico and Arizona. BNSF further objects to this Request to the extent it seeks a narrative response as opposed to documents from which the requested information may be derived. Subject to these objections, BNSF will produce or make available information on car inspections of AEPCO trains in New Mexico and Arizona, to the extent such information is reasonably available.

Request for Production No. 32:

For each year or partial year 1998 to the present, please produce documents which contain the following information, in a computer-readable format to the extent available, for each of the end-of-train telemetry devices ("EOTD") used on AEPCO trains (in both the loaded and empty directions):

- a. The date of purchase;
- b. The original cost and the cost of any additions and betterments;
- c. The debt rate as a percent;
- d. The financing terms (in years);
- e. The annual depreciation;
- f. The annual depreciation rate as a percent;
- g. The salvage value as a percent; and

h. The accumulated depreciation.

BNSF RESPONSE: BNSF objects to this Request on grounds that it is overly broad and unduly burdensome to the extent it seeks information that is not maintained by BNSF in the normal course of business, that is not maintained by BNSF in the format requested, or that would require a special study to compile or to report in the format requested. BNSF further objects to this Discovery Request to the extent it seeks information about matters occurring prior to January 1, 1999. Further, BNSF objects to this Request to the extent it seeks information on AEPCO's train movements in states other than New Mexico and Arizona. BNSF further states that information on end-of-train devices is not maintained on a train-specific basis and that the information sought in Request Nos. 32(c) and (d) is not maintained in reasonably available data sources. Subject to these objections and qualifications, BNSF will produce or make available data that is responsive to the remaining requests, in the format in which such data is available, or other materials from which responsive information may be derived.

Request for Production No. 33:

Please produce all joint facility agreements, supplements and bills for 1998 to the present for all joint facilities on the lines traversed by AEPCO trains (in both the loaded and empty directions), together with documents that show all maintenance of way and structures expense and all other expenses, by milepost, and how such expenses were allocated between or among the parties to such agreements.

BNSF RESPONSE: BNSF objects to this Request as overly broad and unduly burdensome to the extent it seeks information that is not maintained by BNSF in the normal course of business, that is not maintained by BNSF in the format requested, or that would require a special study to compile or to report in the format requested. BNSF further objects to the Request for billing and expense information on grounds that it is overly broad, unduly burdensome, seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence,

and would require a special study to complete. BNSF further objects to this Discovery Request to the extent it seeks information about matters occurring prior to January 1, 1999. Further, BNSF objects to this Request to the extent it seeks information on AEPCO's train movements in states other than New Mexico and Arizona. Subject to these objections, BNSF will produce a list identifying responsive joint facility agreements, and AEPCO may identify agreements from that list which BNSF will then make available for review, to the extent such agreements are reasonably available.

Request for Production No. 34:

Please produce documents which provide the information requested in Request For Production Nos. 4, 5, 9, 11, 12, 13, 15-27 and 29-33 for any trainload coal movement(s) from mine origins in Colorado, Wyoming or Montana to Other Arizona Destinations for each year 1998 through the present.

BNSF RESPONSE: BNSF objects to this Request on grounds that it is beyond the scope of permissible discovery.

Request for Production No. 35:

Please produce documents for each year or partial year 1998 to the present which contain the following, in a computer readable format (if available), separately for each freight or intermodal car you purchased or leased (including freight cars currently on order) that (i) you provided to be used in the AEPCO service, (ii) has been or could be used to transport coal; and (iii) that has been or could be used to transport other commodities including intermodal traffic:

- a. Initial and number;
- b. Manufacturer;
- c. Lessor, if leased,
- d. AAR car type;
- e. Tare weight;
- f. Load limit;
- g. Length;
- h. Purchase or order date, if purchased;
- i. Lease or order date, if leased;
- j. Total purchase price, if purchased;
- k. If leased, the type of lease (e.g., capital, operating, etc.) and term;

- l. If leased, the amount and frequency of lease payments;
- m. If purchased, the AFE applicable to each purchased freight car;
- n. If leased, the lease agreement including all supplements, amendments, exhibits and applicable schedules;
- o. If a car you provided to be used in the AEPCO service or in other coal service, the source of the car; and
- p. If a trailer train or other car you used to move intermodal and/or automotive traffic on those portions of your system located in the SARR States, your cost for use of the car and the methodology used for calculating your cost for the use of the car.

BNSF RESPONSE: BNSF objects to this Request on grounds that it is overly broad and unduly burdensome to the extent it seeks information that is not maintained by BNSF in the normal course of business, that is not maintained by BNSF in the format requested, or that would require a special study to compile or to report in the format requested. BNSF further objects to this Discovery Request to the extent it seeks information about matters occurring prior to January 1, 1999. Further, BNSF objects to this Request to the extent it seeks information on AEPCO's train movements in states other than New Mexico and Arizona. BNSF further objects to this Request on grounds that the reference to "each freight or intermodal car . . . that has been or could be used to transport coal [or] that has been or could be used to transport other commodities including intermodal traffic" is vague. BNSF further objects to Request No. 35(m) and (p) on grounds that those Requests seek information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Subject to these objections, BNSF will produce or make available data that is responsive to this Request, in the format in which such data is available, or other materials from which responsive information may be derived, to the extent such data and other materials are relevant in this proceeding and reasonably available.

Request for Production No. 36:

For each year 1998 to the present, please provide the following information (in a computer-readable format, if available) with respect to each shipper-owned or shipper-leased freight and intermodal car moving over your system:

- a. The identification number of the car;
- b. The type of the car;
- c. The terms of any mileage allowance agreement covering the car;
- d. Whether the car is subject to a zero-based mileage agreement; and
- e. The year of manufacture of the car.

BNSF RESPONSE: BNSF objects to this Request on grounds that it is overly broad and unduly burdensome to the extent it seeks information that is not maintained by BNSF in the normal course of business, that is not maintained by BNSF in the format requested, or that would require a special study to compile or to report in the format requested. BNSF further objects to this Discovery Request to the extent it seeks information about matters occurring prior to January 1, 1999. Subject to these objections, BNSF will produce or make available data that is responsive to this Request, in the format in which such data is available, or other materials from which responsive information may be derived, to the extent such data and other materials are relevant in this proceeding and reasonably available.

Request for Production No. 37:

Please produce documents (in computer-readable format, if available) sufficient to identify the per diem rates per car and time and mileage amounts that you paid to the owning line(s) during each year 1998 to the present for use of any foreign owned cars moving over those portions of your system located in the SARR States.

BNSF RESPONSE: BNSF objects to this Request on grounds that it is overly broad and unduly burdensome to the extent it seeks information that is not maintained by BNSF in the normal course of business, that is not maintained by BNSF in the format requested, or that would require a special study to compile or to report in the format requested. BNSF further objects to

this Discovery Request to the extent it seeks information about matters occurring prior to January 1, 1999. Further, BNSF objects to this Request to the extent it seeks information on movements in states other than New Mexico and Arizona. Subject to these objections, BNSF will produce or make available data that is responsive to this Request, in the format in which such data is available, or other materials from which responsive information may be derived, to the extent such data and other materials are reasonably available.

Request for Production No. 38:

Please produce all rail car repair and maintenance reports and related documents which include or record rail car repair and maintenance expenses for each year or partial year 1998 to the present, and the total rail car-miles corresponding to these repair and maintenance expenses, in a computer readable format to the extent possible, for all freight cars or car types identified in response to Request for Production No. 35.

BNSF RESPONSE: BNSF objects to this Request on grounds that it is overly broad and unduly burdensome to the extent it seeks information that is not maintained by BNSF in the normal course of business, that is not maintained by BNSF in the format requested, or that would require a special study to compile or to report in the format requested. BNSF further objects to this Discovery Request to the extent it seeks information about matters occurring prior to January 1, 1999. Subject to these objections, BNSF states that information responsive to Request No. 38 for all car types is available from public sources, specifically in Schedules 415 and 755 of BNSF's R-1.

Request for Production No. 39:

If at any time from 1998 through the present, you used any rail cars for your portion of the movement of AEPCO trains (or of coal trains moving from mine origins in Wyoming or Montana to Other Arizona Destinations) that you neither owned nor leased, please produce documents sufficient to determine the frequency and cost of your use of such rail cars since (and including) 1998, including the following:

- a. List all agreements (or describe any arrangements other than agreements) applicable to your use of the rail cars;
- b. State the itemized amount of compensation for use of the rail cars, by each category of compensation, including but not limited to maintenance and servicing;
- c. List service units covered by the compensation;
- d. Describe the methodology used for computing the compensation by component;
- e. State the time periods during which the rail cars were used for the movement of AEPCO or other coal traffic; and
- f. State the miles traveled by the rail cars during the time period that they were used for the movement of AEPCO or other coal traffic.

BNSF RESPONSE: BNSF objects to this Request on grounds that it is vague and unintelligible.

Request for Production No. 40:

Please produce documents sufficient to show the information you used for the following items in determining the maintenance and operating costs associated with providing coal unit train transportation services, including the definitions and decoders needed to understand each piece of information and the supporting data used to develop the information (all in a computer-readable format to the extent available):

- a. Roadway maintenance;
- b. Road property investment;
- c. Locomotive investment;
- d. Locomotive maintenance;
- e. Locomotive fuel;
- f. Railcar investment;
- g. Railcar maintenance;
- h. Train and engine crews; and
- i. Clerical expenses.

BNSF RESPONSE: BNSF objects to this Request on grounds that it is overly broad, unduly burdensome, seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and is beyond the scope of permissible discovery.

Request for Production No. 41:

(a) (For BNSF only) Please produce all documents related to any determination by BNSF of its costs of transporting coal from Origin to Destination or Interchange (and from any mine origin in Wyoming or Montana to Other Arizona Destinations) using any of the information described in Interrogatory No. 2 above and/or produced in response to Request for production No. 40 (in a computer-readable format if available) during the period from 1998 to the present.

(b) (For UP only) Please produce all documents related to any determination by UP of its costs of transporting coal from Origin or Interchange to Destination (and from any mine origin in Wyoming or Montana to Other Arizona Destinations) using any of the information described in Interrogatory No. 2 above and/or produced in response to Request for Production No. 40 (in a computer-readable format if available) during the period from 1998 to the present.

BNSF RESPONSE: BNSF objects to this Request on grounds that it is overly broad, unduly burdensome, seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and is beyond the scope of permissible discovery

Request for Production No. 42:

Please produce the data bases and computer programs (with all documentation related to these data bases and computer programs), in a computer-readable format, that include the information listed below for each movement you handled as originating, terminating, overhead or single-line carrier that traveled in the SARR States for each year or partial year 1998 to the present:

- a. Commodity (seven-digit Standard Transportation Commodity Code "STCC");
- b. Origin city and state;
- c. Destination city and state;
- d. For shipments that originated on your system, the date and time the shipment was originated;
- e. For shipments you received in interchange, the on junction location and station number;
- f. For shipments you received in interchange, the road received from;
- g. For shipments you received in interchange, the date and time the shipment was interchanged;
- h. For shipments given in interchange, the off junction location and station number;
- i. For shipments given in interchange, the road given to;
- j. For shipments given in interchange, the date and time the shipment was interchanged;
- k. For shipments terminated on your system, the date and time the shipment was terminated;

- l. Origin Freight Station Accounting Code ("FSAC");
- m. Destination FSAC;
- n. Origin Standard Point Location Code ("SPLC");
- o. Destination SPLC;
- p. Number of Cars;
- q. Tons (Net);
- r. Tare weight;
- s. Total freight revenues including any adjustments thereto;
- t. Your share or division of the total freight revenues, including any adjustments thereto;
- u. Waybill number and date;
- v. TOFC/COFC plan;
- w. Car/trailer initial for each car/trailer used to move the shipment;
- x. Car/trailer number for each car/trailer used to move the shipment;
- y. The train identification number of all trains used to move the shipment;
- z. The number of locomotives, by train identification, by segment, used to move the shipment;
- aa. The total horsepower, by train identification, by line segment, used to move the shipment;
- bb. Total loaded movement miles;
- cc. Total loaded miles on your system;
- dd. AAR car-type code; and
- ee. Ownership of car (i.e., you, a shipper, or a foreign road).

BNSF RESPONSE: BNSF objects to this Request on grounds that it is overly broad and unduly burdensome to the extent it seeks information that is not maintained by BNSF in the normal course of business, that is not maintained by BNSF in the format requested, or that would require a special study to compile or to report in the format requested. BNSF further objects to this Request as overly broad and unduly burdensome to the extent it requests all documentation related to the designated databases. BNSF further objects to this Request as overly broad and unduly burdensome to the extent it seeks databases and computer programs rather than responsive information contained in the databases and computer programs. BNSF further objects to this Discovery Request to the extent it seeks information about matters occurring prior to January 1, 1999. Further, BNSF objects to this Request to the extent it seeks information on movements in states other than New Mexico and Arizona. BNSF further objects to Request No.

42(s) on grounds that it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. BNSF further objects to Request No. 42(t) on the ground that it seeks information concerning the percentage of the revenues each of the defendant railroads receives from the through rates paid by AEPCO. Subject to these objections, BNSF will produce or make available responsive data, in the form such data are available, or other materials from which responsive information may be derived, to the extent such data and other materials are reasonably available.

Request for Production No. 43:

Please produce all transportation contracts, including amendments and supplements thereto (or letters of understanding with appendices or attachments), and all common carrier pricing authorities or other documents containing common carrier rate and service terms that you entered into, agreed to or provided which govern shipments you handled as originating, terminating, overhead or single-line carrier to, from or through the SARR States in any of the years 2000 and beyond.

BNSF RESPONSE: BNSF objects to this Request on grounds that it is overly broad and unduly burdensome, seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and requires production of materials which, if produced, could result in the violation of contractual obligations to third parties.

Request for Production No. 44: (to UP only)

Please produce documents sufficient to identify and describe, any agreements, arrangements or understandings identified in your response to Interrogatory No. 14 above.

BNSF RESPONSE: Since this Request is directed to UP only, no response is required.

Request for Production No. 45:

Please produce all forecasts or projections prepared by or for you from 1998 through the present, or in your possession, of future traffic volumes and/or revenues for (a) coal and (b) other freight

traffic (including any breakdowns of any such forecasts or projections whether by commodity classification, geographic region, line segment, or any other category) moving over any portion of your system located in the SARR States. Documents responsive to this request include, but are not limited to, traffic projections prepared in connection with engineering studies or authorization for expenditures or marketing studies or operating studies or operating expense budgets or capital budgets or mergers with or acquisitions of other carriers.

BNSF RESPONSE: BNSF objects to this Request on grounds that it is overly broad and unduly burdensome and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence to the extent it seeks all projections of traffic volume and/or revenues, including those prepared "in connection with engineering studies or authorization for expenditures or marketing studies or operating studies or operating expense budgets or capital budgets or mergers with or acquisitions of other carriers." BNSF further objects to producing projections other than BNSF's official coal traffic projections in Arizona and New Mexico. BNSF further objects to this Request on grounds that is overly broad, unduly burdensome and beyond the scope of permissible discovery to the extent it seeks to have BNSF prepare a special study in order to respond. BNSF further objects to this Discovery Request to the extent it seeks information about matters occurring prior to January 1, 1999. Further, BNSF objects to this Request to the extent it seeks information on movements in states other than New Mexico and Arizona. BNSF further objects to this Request on grounds that it would require production of materials which, if produced, could result in the violation of contractual obligations to third parties. Subject to these objections, BNSF will produce or make available official traffic volume and revenue projections corresponding to coal traffic in Arizona and New Mexico that are reasonably available, but it will produce or make available such materials if and only if AEPCO and any consultant AEPCO uses to present stand-alone cost evidence relating to the issues of traffic and revenue projections produces similar information.

Request for Production No. 46:

Please produce documents related to the measurement and/or analysis of cycle times for all of your train movements originating, terminating or passing through the SARR States for each year or partial year from 1998 to the present. Included in this Request are documents containing the following information for each movement, in a computerized format to the extent available:

- a. Waybill number and date;
- b. Car/trailer initial and number;
- c. Origin location, i.e., city, state, FSAC and SPLC;
- d. Destination location, i.e., city, state, FSAC and SPLC;
- e. Cycle time from origin to destination;
- f. Location (i.e., city, state, FSAC and SPLC) where shipment enters the states identified above;
- g. Location (i.e., city, state, FSAC and SPLC) where shipment departs from or terminates in the states identified above; and
- h. Cycle time while movement is within the states identified above.

BNSF RESPONSE: BNSF objects to this Request on grounds that it is overly broad and unduly burdensome to the extent it seeks information that is not maintained by BNSF in the normal course of business, that is not maintained by BNSF in the format requested, or that would require a special study to compile or to report in the format requested. BNSF further objects to this Request on grounds that the request for "documents related to the measurement and/or analysis of cycle times" is vague, overly broad and unduly burdensome. BNSF further objects to this Discovery Request to the extent it seeks information about matters occurring prior to January 1, 1999. Further, BNSF objects to this Request to the extent it seeks information on movements in states other than New Mexico and Arizona. Subject to these objections, BNSF will produce or make available data relating to cycle times for coal train movements in New Mexico and Arizona, in the format in which such data is available, or other materials from which such information may be derived, to the extent such data and other materials are reasonably available.

Request for Production No. 47:

Please provide documents, in a computer-readable format to the extent available, sufficient to show the projected and actual cycle times, and the standard or expected or contractual cycle time for each movement originating, terminating or passing through the SARR States for each year or partial year 1998 to the present.

BNSF RESPONSE: BNSF objects to this Request on grounds that it is overly broad and unduly burdensome to the extent it seeks information that is not maintained by BNSF in the normal course of business, that is not maintained by BNSF in the format requested, or that would require a special study to compile or to report in the format requested. BNSF further objects to this Discovery Request to the extent it seeks information about matters occurring prior to January 1, 1999. Further, BNSF objects to this Request to the extent it seeks information on movements in states other than New Mexico and Arizona. BNSF further objects to this Request to the extent it requires production of materials which, if produced, could result in the violation of contractual obligations to third parties. Subject to these objections, BNSF will produce or make available responsive data, in the format in which such data is available, or other materials from which responsive information may be derived, to the extent such data and other materials are reasonably available.

Request for Production No. 48:

Please produce documents which contain the computer model, supporting databases and supporting manuals that you use to calculate the expected cycle time for a movement, including all necessary inputs required to run the model for each movement originating, terminating, or passing through the SARR States for each year or partial year 1998 to the present.

BNSF RESPONSE: BNSF objects to this Request on grounds that it is overly broad and unduly burdensome to the extent it seeks information that is not maintained by BNSF in the normal course of business, that is not maintained by BNSF in the format requested, or that would

require a special study to compile or to report in the format requested. BNSF further objects to this Discovery Request to the extent it seeks information about matters occurring prior to January 1, 1999. Further, BNSF objects to this Request to the extent it seeks information on movements in states other than New Mexico and Arizona. BNSF further objects to this Request to the extent it requires production of materials which, if produced, could result in the violation of contractual obligations to third parties. Subject to these objections, BNSF states that it does not use a computer model to calculate expected cycle time.

Request for Production No. 49:

Please produce documents, in a computer-readable format to the extent available, which show car movements for each car moving on your line segments in the SARR States for each year or partial year 1998 to the present.

BNSF RESPONSE: BNSF objects to this Request on grounds that it is overly broad and unduly burdensome to the extent it seeks information that is not maintained by BNSF in the normal course of business, that is not maintained by BNSF in the format requested, or that would require a special study to compile or to report in the format requested. BNSF further objects to this Discovery Request to the extent it seeks information about matters occurring prior to January 1, 1999. Further, BNSF objects to this Request to the extent it seeks information on movements in states other than New Mexico and Arizona. Subject to these objections, BNSF will produce or make available responsive data, in the format in which such data is available, or other materials from which responsive information may be derived, to the extent such data and other materials are reasonably available.

Request for Production No. 50:

Please produce documents, in a computer-readable format to the extent available, which show locomotive utilization and locomotive performance for each locomotive that you owned or leased for each year or partial year 1998 to the present.

BNSF RESPONSE: BNSF objects to this Request on grounds that it is overly broad and unduly burdensome to the extent it seeks information that is not maintained by BNSF in the normal course of business, that is not maintained by BNSF in the format requested, or that would require a special study to compile or to report in the format requested. BNSF further objects to this Discovery Request to the extent it seeks information about matters occurring prior to January 1, 1999. Subject to these objections, BNSF will produce or make available responsive data, in the format in which such data is available, or other materials from which responsive information may be derived, to the extent such data and other materials are reasonably available.

Request for Production No. 51:

Please produce the computer-readable model, supporting databases and operating manuals that you use to assign locomotives to each train on your system.

BNSF RESPONSE: BNSF objects to this Request on grounds that it is overly broad, unduly burdensome, seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence and is beyond the scope of permissible discovery. Subject to these objections, BNSF states that it does not use a computer model to assign locomotives to trains.

Request for Production No. 52:

Please produce documents which describe the rules governing the priority given to each train type, i.e., inter-modal, local, through, unit, moving on your system.

BNSF RESPONSE: BNSF objects to this Request on grounds that the reference to "rules governing the priority given to each train type" is vague. Subject to this objection, BNSF will produce or make available responsive materials, to the extent such materials are reasonably available.

Request for Production No. 53:

Please produce documents which contain data, in a computer-readable format to the extent available (e.g., BNSF's Transportation Support System), for all car and train movements and yard and hub operations on your system in the SARR States for each year or partial year 1998 to the present.

BNSF RESPONSE: BNSF objects to this Request on grounds that it is overly broad and unduly burdensome to the extent it seeks information that is not maintained by BNSF in the normal course of business, that is not maintained by BNSF in the format requested, or that would require a special study to compile or to report in the format requested. BNSF further objects to this Discovery Request to the extent it seeks information about matters occurring prior to January 1, 1999. Further, BNSF objects to this Request to the extent it seeks information on movements in states other than New Mexico and Arizona. Subject to these objections, BNSF will produce or make available relevant train event data, in the format in which such data is available, or other materials from which responsive information may be derived, to the extent such data and other materials are reasonably available.

Request for Production No. 54:

Please produce documents, in a computer-readable format to the extent available, that contain the data recorded in train dispatcher sheets for each year or partial year 1998 to the present related to trains moving on your lines in the SARR States.

BNSF RESPONSE: BNSF objects to this Request on grounds that it is overly broad and unduly burdensome to the extent it seeks all data on train dispatch sheets for the designated

trains. BNSF further objects to this Discovery Request to the extent it seeks information about matters occurring prior to January 1, 1999. Further, BNSF objects to this Request to the extent it seeks information on movements in states other than New Mexico and Arizona. Subject to these objections, BNSF will produce or make available responsive data, in the format in which such data is available, or other materials from which responsive information may be derived, to the extent such data and other materials are reasonably available.

Request for Production No. 55:

Provide the following information for all coal and lignite mines you served within the SARR States for each year 1998 to the present:

- a.. Geographic location, i.e., city, county and state;
- b. Railroad location, i.e., railroad station name and milepost;
- c. Railroad mine identification number corresponding to the identification numbers contained in your computerized traffic data, e.g., SPLC (Standard Point Location Code), FSAC (Freight Station Accounting Code) or any other numbering system you use;
- d. Annual tonnages that you shipped from that mine;
- e. Track capacity in feet at each location;
- f. Schematics showing the trackage at each mine with both the track that you own (or jointly own) and the mine-owned track clearly identified;
- g. Annual weeks of mine operation;
- h. Average tons per car loaded; and
- i. Loading capacity (tons per hour).

BNSF RESPONSE: BNSF objects to this Request on grounds that it is overly broad and unduly burdensome to the extent it seeks information that is not maintained by BNSF in the normal course of business, that is not maintained by BNSF in the format requested, or that would require a special study to compile or to report in the format requested. BNSF further objects to this Discovery Request to the extent it seeks information about matters occurring prior to January 1, 1999. Further, BNSF objects to this Request to the extent it seeks information on movements in states other than New Mexico and Arizona. BNSF further objects to this Request on grounds

that it is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence to the extent it requests information about lignite mines. Subject to these objections, BNSF will produce or make available responsive data, in the format in which such data is available, or other materials from which responsive information may be derived, to the extent such data and other materials are reasonably available.

Request for Production No. 56:

Please produce the lease agreements or rental agreements, including all supplements and amendments, plus copies of all billings, applicable to each of the leased or rented locomotives that you have used at any time from 1998 to the present.

BNSF RESPONSE: BNSF objects to this Request on grounds that it is overly broad and unduly burdensome to the extent it seeks copies of agreements pertaining to all BNSF leased or rented locomotives. BNSF further objects to the Request for information on all billings on grounds that it is overly broad, unduly burdensome, and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. BNSF further objects to this Discovery Request to the extent it seeks information about matters occurring prior to January 1, 1999. Subject to these objections, BNSF will make available copies of lease or rental agreements for specific locomotives identified by AEPCO and relevant to this proceeding.

Request for Production No. 57:

For each of the years 1998 to the present, please produce the detailed annual and quarterly Wage Forms A and B that support the summary Wage Forms A and B provided to the STB.

BNSF RESPONSE: BNSF objects to this Discovery Request to the extent it seeks information about matters occurring prior to January 1, 1999. Subject to this objection, BNSF will produce or make available the requested materials to the extent they are reasonably available.

Request for Production No. 58:

Please produce documents sufficient to show the applicable wage rates for your maintenance of way employees by job classification for each year 1998 to the present.

BNSF RESPONSE: BNSF objects to this Discovery Request to the extent it seeks information about matters occurring prior to January 1, 1999. Subject to this objection, BNSF will produce or make available the requested materials to the extent they are reasonably available.

Request for Production No. 59:

Please produce documents setting forth the criteria you use, and the instructions you provide to your personnel, to differentiate between spot (expensed) and program (capitalized) maintenance of way expenses.

BNSF RESPONSE: BNSF will produce or make available the requested materials to the extent they are reasonably available.

Request for Production No. 60:

Please provide documents sufficient to show all maintenance of way expense items that you classify as spot (expensed) maintenance.

BNSF RESPONSE: BNSF will produce or make available the requested materials to the extent they are reasonably available.

Request for Production No. 61:

For maintenance of way performed by contractors in the SARR States for the period from 1998 to the present, provide copies of all bills, including a description of the line location of the contract repairs and the details of the work performed, including labor and materials. Provide in a computer-readable form if applicable (including all necessary documentation).

BNSF RESPONSE: BNSF objects to this Request on grounds that it is overly broad and unduly burdensome, it seeks information that is not maintained by BNSF in the normal course of business, that is not maintained by BNSF in the format requested, or that would require a special

study to compile or to report in the format requested, and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Request for Production No. 62:

Produce copies of your condensed freight schedules for unit train, through train, local train, and TOFC/COFC train service for that portion of your system in the SARR States for each year or partial year 1998 to the present.

BNSF RESPONSE: BNSF objects to this Request on grounds that it is overly broad and unduly burdensome to the extent it seeks information that is not maintained by BNSF in the normal course of business, that is not maintained by BNSF in the format requested, or that would require a special study to compile or to report in the format requested. BNSF further objects to this Discovery Request to the extent it seeks information about matters occurring prior to January 1, 1999. Further, BNSF objects to this Request to the extent it seeks information on movements in states other than New Mexico and Arizona. BNSF further objects to this Request on grounds that it is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence to the extent it requests condensed freight schedules other than those currently in use. Subject to these objections, BNSF will produce or make available responsive data, in the format in which such data is available, or other materials from which responsive information about current schedules may be derived, to the extent such data and other materials are reasonably available

Request for Production No. 63:

Produce all documents and programs, in a computer-readable format to the extent available, which provide or describe your methodology for scheduling all trains (i.e., Unit Trains, General Freight, etc) that operate on your line segments in the SARR States.

BNSF RESPONSE: BNSF objects to this Request on grounds that it is overly broad and unduly burdensome to the extent it seeks information that is not maintained by BNSF in the normal course of business, that is not maintained by BNSF in the format requested, or that would require a special study to compile or to report in the format requested. BNSF further objects to this Request on grounds that to the extent it requests computer programs it is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Request for Production No. 64:

To the extent you incurred expenses for any of the following at any time between January 1, 1998 and the present, please produce documents which contain the following cost information, including the date on which each purchase was made:

- a. Your cost for a hot bearing and dragging equipment detector;
- b. Your cost for a rail lubricator;
- c. Your cost per net ton for:
 - i. 136 lb. premium rail - new;
 - ii. 136 lb. rail - new;
 - iii. 136 lb. rail - secondhand;
 - iv. 132 lb. premium rail - new;
 - v. 132 lb. rail - new;
 - vi. 132 lb. rail - secondhand;
 - vii. 115 lb. rail - new; and
 - viii. 115 lb. rail - secondhand.
- d. Your cost per plant weld;
- e. Your cost per field weld;
- f. Your cost per rail anchor - new;
- g. Your cost per 7.5" x 14" tie plate - new;
- h. Your cost per 7.5" x 14" tie plate - secondhand;
- i. Your cost per 7.5" x 12" tie plate - new;
- j. Your cost per 7.5" x 12" tie plate - secondhand;
- k. Your cost per 7" x 9" x 8'6" wood crosstie - Grade 5;
- l. Your cost per 7" x 9" x 8'6" wood crosstie - Grade 3;
- m. Your cost for a concrete tie with fastenings;
- n. Your cost for a No. 9 turnout (complete);
- o. Your cost for a No. 10 turnout (complete);
- p. Your cost for a No. 11 turnout (complete);
- q. Your cost for a No. 14 turnout (complete);
- r. Your cost for a No. 15 turnout (complete);
- s. Your cost for a No. 20 turnout (complete);

- t. Your cost per MBM for wood switch ties;
- u. Your cost for a track geometry car;
- v. Your cost per sign (installed) for each type of roadway sign (e.g., mileposts, whistle posts, speed restrictions, advance and resume speed, yard limits, etc.); and
- w. State if the costs provided in response to subparts (a) through (v) of this Request include the cost of transportation from point of purchase to inventory location, and from inventory location to point of installation; and if not, state for each item, your cost for such transportation, if any.

BNSF RESPONSE: BNSF objects to this Request on grounds that it is overly broad and unduly burdensome to the extent it seeks information that is not maintained by BNSF in the normal course of business, that is not maintained by BNSF in the format requested, or that would require a special study to compile or to report in the format requested. BNSF further objects to this Discovery Request to the extent it seeks information about matters occurring prior to January 1, 1999. BNSF further objects to this Request on grounds that it is overly broad and unduly burdensome to the extent it seeks cost information linked to specific purchases. Subject to these objections, BNSF will produce or make available responsive data, in the format in which such data is available, or other materials from which responsive information may be derived, to the extent such data and other materials are reasonably available.

Request for Production No. 65:

Please produce bridge lists detailing location, a description of what is being crossed (e.g., river, interstate highway, navigable waterway etc.), type, length, height, etc., for all bridges located on those portions of your system located in the SARR States.

BNSF RESPONSE: BNSF objects to this Request on grounds that it is overly broad and unduly burdensome to the extent it seeks information that is not maintained by BNSF in the normal course of business, that is not maintained by BNSF in the format requested, or that would require a special study to compile or to report in the format requested. Further, BNSF objects to this Request to the extent it seeks information on movements in states other than New Mexico

and Arizona. Subject to these objections, BNSF will produce or make available responsive data, in the format in which such data is available, or other materials from which responsive information may be derived, to the extent such data and other materials are reasonably available.

Request for Production No. 66:

For each of the types of bridges identified in the bridge lists provided in response to Request for Production No. 65, please produce documents sufficient to show the unit costs (e.g., cost per foot or other appropriate measure), for single track open deck construction and double track open deck construction, for each year 1998 to the present.

BNSF RESPONSE: BNSF objects to this Request on grounds that it is overly broad and unduly burdensome to the extent it seeks information that is not maintained by BNSF in the normal course of business, that is not maintained by BNSF in the format requested, or that would require a special study to compile or to report in the format requested. BNSF further objects to this Discovery Request to the extent it seeks information about matters occurring prior to January 1, 1999. Subject to these objections, BNSF will produce or make available AFEs in response to Request No. 88, from which responsive information may be derived, to the extent such materials contain responsive information.

Request for Production No. 67:

For each year 1998 to the present, please produce documents which contain the following information with regard to your system's highway crossings at grade:

- a. The various sizes, compositions and costs per linear foot of a one-lane private road crossing over a single line of track;
- b. The various sizes, compositions and costs per linear foot of a two-lane public highway crossing over a single line of track;
- c. The various sizes, compositions and costs per linear foot of a four-lane public highway crossing over a single line of track;
- d. The cost of signs for a private road crossing (if necessary);
- e. The cost of signs for a public highway crossing; and
- f. The cost of each of the different types of protective devices identified in the response to Request for Production No. 66 (g), *infra*.

BNSF RESPONSE: BNSF objects to this Request on grounds that it is overly broad and unduly burdensome to the extent it seeks information that is not maintained by BNSF in the normal course of business, that is not maintained by BNSF in the format requested, or that would require a special study to compile or to report in the format requested. BNSF further objects to this Discovery Request to the extent it seeks information about matters occurring prior to January 1, 1999. Subject to these objections, BNSF will produce or make available responsive data, in the format in which such data is available, or other materials from which responsive information may be derived, to the extent such data and other materials are reasonably available.

Request for Production No. 68:

Please produce a list of your at-grade highway crossings, in a computer-readable format, for those portions of your system located in the SARR States, together with documents containing the following information for each grade crossing identified in the list:

- a. Geographic location, i.e., city, county and state;
- b. Rail location, i.e., railroad, line name and milepost;
- c. Width;
- d. Length;
- e. Type of construction;
- f. Number of tracks; and
- g. Type of protective devices.

BNSF RESPONSE: BNSF objects to this Request on grounds that it is overly broad and unduly burdensome to the extent it seeks information that is not maintained by BNSF in the normal course of business, that is not maintained by BNSF in the format requested, or that would require a special study to compile or to report in the format requested. Further, BNSF objects to this Request to the extent it seeks information on movements in states other than New Mexico and Arizona. Subject to these objections, BNSF will produce or make available responsive data, in the format in which such data is available, or other materials from which responsive information may be derived, to the extent such data and other materials are reasonably available.

Request for Production No. 69:

Please produce documents containing the following information with regard to your at-grade crossings of railroad lines or tracks:

- a. A list identifying each component required for an automatic type interlocking (assuming a diamond crossing);
- b. The cost of each of the component identified in response to (a) above and the cost of installation for each year or partial year 1998 to the present; and
- c. Any additional costs incurred.

BNSF RESPONSE: BNSF objects to this Request on grounds that it is overly broad and unduly burdensome to the extent it seeks information that is not maintained by BNSF in the normal course of business, that is not maintained by BNSF in the format requested, or that would require a special study to compile or to report in the format requested. BNSF further objects to this Discovery Request to the extent it seeks information about matters occurring prior to January 1, 1999. Subject to these objections, BNSF will produce or make available responsive data, in the format in which such data is available, or other materials from which responsive information may be derived, to the extent such data and other materials are reasonably available.

Request for Production No. 70:

For each year 1998 to the present, please produce documents containing the following information with regard to your hot bearing and dragging equipment detectors:

- a. The criteria for determining the appropriate spacing of the devices along the main lines; and
- b. The location of hot bearing and dragging equipment detectors for that portion of your system located in the SARR states.

BNSF RESPONSE: BNSF objects to this Request on grounds that it is overly broad and unduly burdensome to the extent it seeks information that is not maintained by BNSF in the normal course of business, that is not maintained by BNSF in the format requested, or that would require a special study to compile or to report in the format requested. BNSF further objects to

this Discovery Request to the extent it seeks information about matters occurring prior to January 1, 1999. Further, BNSF objects to this Request to the extent it seeks information on movements in states other than New Mexico and Arizona. Subject to these objections, BNSF will produce or make available responsive data, in the format in which such data is available, or other materials from which responsive information may be derived, to the extent such data and other materials are reasonably available.

Request for Production No. 71:

Please produce documents listing the items, the cost of each item and the amount of each item installed on the your system related to the construction and (during each of the years 1998 to the present) operation of the centralized traffic control signal system or any other traffic control system in use on the your system.

BNSF RESPONSE: BNSF objects to this Request on grounds that it is overly broad and unduly burdensome to the extent it seeks information that is not maintained by BNSF in the normal course of business, that is not maintained by BNSF in the format requested, or that would require a special study to compile or to report in the format requested. BNSF further objects to this Discovery Request to the extent it seeks information about matters occurring prior to January 1, 1999. Subject to these objections, BNSF will produce or make available responsive data, in the format in which such data is available, or other materials from which responsive information may be derived, to the extent such data and other materials are reasonably available.

Request for Production No. 72:

Please produce documents sufficient to show the current location of all microwave towers for those portions of your system located in the SARR States, and the total number of route miles on your system that are covered by microwave communications in those states.

BNSF RESPONSE: BNSF objects to this Request on grounds that it is overly broad and unduly burdensome to the extent it seeks information that is not maintained by BNSF in the

normal course of business, that is not maintained by BNSF in the format requested, or that would require a special study to compile or to report in the format requested. Further, BNSF objects to this Request to the extent it seeks information on movements in states other than New Mexico and Arizona. Subject to these objections, BNSF will produce or make available responsive data, in the format in which such data is available, or other materials from which responsive information may be derived, to the extent such data and other materials are reasonably available.

Request for Production No. 73:

Please produce documents listing the material items, the cost of each item and the quantities used for the construction and operation of the microwave radio communications system on your entire system during each of the years 1998 to the present.

BNSF RESPONSE: BNSF objects to this Request on grounds that it is overly broad and unduly burdensome to the extent it seeks information that is not maintained by BNSF in the normal course of business, that is not maintained by BNSF in the format requested, or that would require a special study to compile or to report in the format requested. BNSF further objects to this Discovery Request to the extent it seeks information about matters occurring prior to January 1, 1999. Subject to these objections, BNSF will produce or make available responsive data, in the format in which such data is available, or other materials from which responsive information may be derived, to the extent such data and other materials are reasonably available.

Request for Production No. 74:

Please produce documents sufficient to show the following information for all tunnels located on any portion of your system in the SARR States:

- a. Location, i.e., line segment name and number;
- b. Beginning and ending mileposts;
- c. Length (in feet);
- d. Method and time period of construction; and
- e. Construction cost per foot for each method of construction.

BNSF RESPONSE: BNSF objects to this Request on grounds that it is overly broad and unduly burdensome to the extent it seeks information that is not maintained by BNSF in the normal course of business, that is not maintained by BNSF in the format requested, or that would require a special study to compile or to report in the format requested. Further, BNSF objects to this Request to the extent it seeks information on movements in states other than New Mexico and Arizona. Subject to these objections, BNSF will produce or make available responsive data, in the format in which such data is available, or other materials from which responsive information may be derived, to the extent such data and other materials are reasonably available.

Request for Production No. 75:

Please produce documents sufficient to show the location of each facility located on any portion of your system in the SARR States that falls within each of the following categories of facilities:

- a. Roadway Maintenance Facilities;
- b. Locomotive Maintenance Facilities;
- c. Locomotive Servicing Facilities;
- d. Administrative Facilities;
- e. Auto Ramps;
- f. Intermodal Facilities;
- g. Rail Yards;
- h. Dispatch Centers;
- i. Freight Car Repair and Maintenance Facilities;
- j. Scales;
- k. Wastewater Treatment Plants;
- l. Snowshed Facilities; and
- m. Train, Yard and Enginemen Facilities.

BNSF RESPONSE: BNSF objects to this Request on grounds that it is overly broad and unduly burdensome to the extent it seeks information that is not maintained by BNSF in the normal course of business, that is not maintained by BNSF in the format requested, or that would require a special study to compile or to report in the format requested. Further, BNSF objects to this Request to the extent it seeks information on movements in states other than New Mexico

and Arizona. Subject to these objections, BNSF will produce or make available responsive data, in the format in which such data is available, or other materials from which responsive information may be derived, to the extent such data and other materials are reasonably available.

Request for Production No. 76:

For each of the facilities identified in response to Request for Production No. 75, please produce documents sufficient to show the following:

- a. The size of the facility in relevant measurements (e.g., square footage of shops and maintenance facilities, numbers of tracks, length of tracks, etc);
- b. The various components of the facilities (i.e., equipment, machinery, etc.); and
- c. The original cost and the applicable time period(s).

BNSF RESPONSE: BNSF objects to this Request on grounds that it is overly broad and unduly burdensome to the extent it seeks information that is not maintained by BNSF in the normal course of business, that is not maintained by BNSF in the format requested, or that would require a special study to compile or to report in the format requested. Subject to these objections, BNSF will produce or make available responsive data, in the format in which such data is available, or other materials from which responsive information may be derived, to the extent such data and other materials are reasonably available.

Request for Production No. 77:

Please produce copies of the most current land valuation maps for your rail lines located in the SARR States, and all documents (including but not limited to deeds or other instruments of grant or conveyance) related to the parcels identified on those maps.

BNSF RESPONSE: BNSF objects to this Request on grounds that it is overly broad and unduly burdensome to the extent it seeks information that is not maintained by BNSF in the normal course of business, that is not maintained by BNSF in the format requested, or that would require a special study to compile or report the information in the format requested. Further,

BNSF objects to this Request to the extent it seeks information on movements in states other than New Mexico and Arizona. Subject to these objections, BNSF will produce or make available documents responsive to this Request, to the extent such documents are reasonably available and relevant to this proceeding.

Request for Production No. 78

Please produce documents identifying all donated rights of way and/or land grants (including easements) obtained by you or your predecessors in connection with the construction of any rail lines or facilities located in the SARR States.

BNSF RESPONSE: BNSF objects to this Request on grounds that it is overly broad and unduly burdensome and neither relevant nor reasonably calculated to lead to the discovery of admissible evidence to the extent it seeks documents identifying all rights of way and/or land grants in connection with the construction of any rail lines or facilities in the designated states.

Further, BNSF objects to this Request to the extent it seeks information on movements in states other than New Mexico and Arizona. Subject to these objections, BNSF will produce or make available documents responsive to this Request, to the extent such documents are reasonably available and relevant to this proceeding.

Request for Production No. 79:

Please produce documents sufficient to show the valuation of the involved land pertaining to all rail line sales and all abandonments you completed in the SARR States for each year 1998 to the present.

BNSF RESPONSE: BNSF objects to this Request as overly broad and unduly burdensome and neither relevant nor reasonably calculated to lead to the discovery of admissible evidence to the extent it seeks data related to all rail line sales and all abandonments in the designated states.

BNSF further objects to this Discovery Request to the extent it seeks information about matters

occurring prior to January 1, 1999. Further, BNSF objects to this Request to the extent it seeks information on movements in states other than New Mexico and Arizona. Subject to these objections, BNSF will produce or make available documents responsive to this Request, to the extent such documents are reasonably available and relevant to this proceeding.

Request for Production No. 80:

Please produce all documents related to any sale or acquisition of land (improved and unimproved) you completed in the SARR States for each year 1998 to the present, including but not limited to documents showing the location of the parcel, size of the parcel, sale or acquisition price, a description of any improvements to the parcel, date of sale and any characteristics of the parcel such as land use, utilities, access and topography.

BNSF RESPONSE: BNSF objects to this Request on grounds that it is overly broad and unduly burdensome and neither relevant nor reasonably calculated to lead to the discovery of admissible evidence to the extent it seeks all documents related to any sale or acquisition of land in the designated states. BNSF further objects to this Discovery Request to the extent it seeks information about matters occurring prior to January 1, 1999. Further, BNSF objects to this Request to the extent it seeks information on movements in states other than New Mexico and Arizona. Subject to these objections, BNSF will produce or make available documents responsive to this Request, to the extent such documents are reasonably available and relevant to this proceeding.

Request for Production No. 81:

Please produce copies of any appraisals prepared since 1998 for any real estate parcel located in the SARR States.

BNSF RESPONSE: BNSF objects to this Request on grounds that it is overly broad and unduly burdensome and neither relevant nor reasonably calculated to lead to the discovery of admissible evidence to the extent it seeks all documents related to any appraisal in the designated

states. BNSF further objects to this Discovery Request to the extent it seeks information about matters occurring prior to January 1, 1999. Further, BNSF objects to this Request to the extent it seeks information on movements in states other than New Mexico and Arizona. Subject to these objections, BNSF will produce or make available documents responsive to this Request, to the extent such documents are reasonably available and relevant to this proceeding.

Request for Production No. 82:

Please produce documents sufficient to show the following information with respect to ballast used on your system for each of the years 1998 to the present:

- a. The average cost per cubic yard for ballast;
- b. The average cost per cubic yard for the transportation and handling of ballast;
- c. The average haul represented by the value(s) in (b) above;
- d. The average cost per cubic yard for subballast;
- e. The average cost per cubic yard for transportation and handling of subballast; and
- f. The average haul represented by the value(s) in (e) above.

BNSF RESPONSE: BNSF objects to this Request on grounds that it is overly broad and unduly burdensome in that it seeks information that is not maintained by BNSF in the normal course of business, that is not maintained by BNSF in the format requested, or that would require a special study to compile or to report in the format requested. BNSF further objects to this Discovery Request to the extent it seeks information about matters occurring prior to January 1, 1999. Subject to these objections, BNSF will produce or make available information on the average cost of ballast and subballast to the extent such information is reasonably available.

Request for Production No. 83:

Please produce documents sufficient to show the following with respect to grading construction activities undertaken at any time on any line segment of your system located in the SARR States:

- a. Number of cubic yards of excavation of:

- i. Common earth;
 - ii. Loose rock; and,
 - iii. Solid rock;
- b. Number of cubic yards of borrow of:
 - i. Common earth;
 - ii. Loose rock; and,
 - iii. Solid rock;
- c. Grading construction data for each construction specification measured by BNSF or UP (as applicable) including without limitation, roadbed width, side slope ratio, compaction, use of geo-textiles, use of water, soil stabilization, and width and depth of side ditches;
- d. Number of route miles, separated between single track main and double track main, corresponding to the cubic yard information described in paragraphs (i) through (iii) of subparts (a) and (b) of this Request;
- e. Number of track-miles corresponding to the cubic yards in paragraphs (i) through (iii) of subparts (a) and (b) of this Request;
- f. Linear feet of pipe installed for lateral drainage;
- g. Number of cubic yards of rip rap placed for the protection of the roadway;
- h. Location and type of retaining walls;
- i. Construction method, including, but not limited to, the number of cubic yards of masonry or other similar material used for retaining walls;
- j. Number of acres cleared;
- k. Number of acres grubbed; and
- l. Number of acres seeded.

BNSF RESPONSE: BNSF objects to this Request on grounds that it is overly broad and unduly burdensome in that it seeks information that is not maintained by BNSF in the normal course of business, that is not maintained by BNSF in the format requested, or that would require a special study to compile or to report in the format requested. BNSF further objects to this Request on grounds that it is overly broad and unduly burdensome and neither relevant nor reasonably calculated to lead to the discovery of admissible evidence to the extent it seeks information on grading construction activities occurring "at any time." Further, BNSF objects to this Request to the extent it seeks information on movements in states other than New Mexico and Arizona. BNSF further objects to this Request on grounds that it is overly broad and unduly burdensome and neither relevant nor reasonably calculated to lead to the discovery of admissible evidence to the extent it seeks information on construction activities anywhere in Arizona and

New Mexico. BNSF further states on information and belief that documents containing information responsive to this Request may be available from public sources. Subject to these objections, BNSF will produce or make available AFEs in response to Request No. 88, from which responsive information may be derived, to the extent such materials contain responsive information.

Request for Production No. 84:

To the extent you incurred any of the following expenses during the years 1998 to the present, please produce documents sufficient to show the average costs you incurred during each year for the following:

- a. Your cost per cubic yard of excavation for:
 - i. Common earth;
 - ii. Loose rock; and,
 - iii. Solid rock;
- b. Your cost per cubic yard of borrow for:
 - i. Common earth;
 - ii. Loose rock; and,
 - iii. Solid rock;
- c. Your cost per cubic yard of rip rap (installed), separated between material and labor;
- d. Your unit cost for each material used for retaining walls, separated between material and labor;
- e. Your gross cost per acre for clearing timber;
- f. Any adjustments to your cost per acre for clearing timber or for clearing by burning;
- g. Your cost per acre for grubbing;
- h. Your cost per acre for seeding;
- i. Your cost per acre for weed spray;
- j. Your cost per hour or per mile for brush cutting; and
- k. Your cost per square yard for geotextile fabric.

BNSF RESPONSE: BNSF objects to this Request on grounds that it is overly broad and unduly burdensome in that it seeks information that is not maintained by BNSF in the normal course of business, that is not maintained by BNSF in the format requested, or that would require a special study to compile or to report in the format requested. BNSF further objects to this

Discovery Request to the extent it seeks information about matters occurring prior to January 1, 1999. Subject to these objections, BNSF will produce or make available AFEs in response to Request No. 88, from which responsive information may be derived, to the extent such materials contain responsive information.

Request for Production No. 85:

Please produce culvert/drainage pipe lists detailing location (i.e., railroad milepost), size (diameter), length, number of tracks crossed, type, and cost of installation for each, for those portions of your system located in the SARR States.

BNSF RESPONSE: BNSF objects to this Request on grounds that it is overly broad and unduly burdensome in that it seeks information that is not maintained by BNSF in the normal course of business, that is not maintained by BNSF in the format requested, or that would require a special study to compile or to report in the format requested. Further, BNSF objects to this Request to the extent it seeks information on movements in states other than New Mexico and Arizona. Subject to these objections, BNSF will produce or make available responsive data, in the format in which such data is available, or other materials from which responsive information may be derived, to the extent such data and other materials are reasonably available.

Request for Production No. 86:

Please produce all of your price list books governing prices for construction and maintenance materials or other documents utilized by your engineering personnel for estimating costs of maintenance and construction projects for each year or partial year 1998 to the present. To the extent that the charges for transportation and delivery, etc., are not included in the prices shown, please produce documents sufficient to show such charges for all materials.

BNSF RESPONSE: BNSF objects to this Requests to the extent it seeks price list books and documents other than those currently used by BNSF on grounds that it is overly broad and unduly burdensome and seeks information that is neither relevant nor reasonably calculated to

lead to the discovery of admissible evidence. BNSF further objects to the request for transportation and delivery charge information not included in the price lists as overly broad and unduly burdensome in that it seeks information that is not maintained by BNSF in the normal course of business, that is not maintained by BNSF in the format requested, or that would require a special study to compile or to report in the format requested. Subject to these objections, BNSF will produce or make available information on current prices to the extent such information is reasonably available.

Request for Production No. 87:

Please produce documents sufficient to show the following for construction projects you have undertaken:

- a. Standard construction project specifications;
- b. Standard estimating procedures for track construction projects; and
- c. Standard estimating procedures for non-track construction projects.

BNSF RESPONSE: BNSF objects to this Request to the extent it seeks documents other than those currently used by BNSF on grounds that it is overly broad and unduly burdensome and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Subject to these objections, BNSF will produce or make available documents responsive to this Request to the extent such documents are reasonably available.

Request for Production No. 88:

Please produce documents sufficient to show the following for each construction and rehabilitation project which exceeded \$1,000,000 in cost and was completed by you, or an outside contractor acting on your behalf, since 1996:

- a. The date the project was started;
- b. The date the project was completed;
- c. A complete copy of the Authorization For Expenditure ("AFE") and description of all columns and data contained with the AFEs; and

- d. A complete copy of the Roadway Completion Report or any successor document.

BNSF RESPONSE: BNSF objects to this Request on grounds that it is overly broad and unduly burdensome in that it seeks information that is not maintained by BNSF in the normal course of business, that is not maintained by BNSF in the format requested, or that would require a special study to compile or to report in the format requested. BNSF further objects to this Request on grounds that it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence to the extent it seeks information relating to activities in states other than New Mexico and Arizona. BNSF further objects to this Request to the extent it seeks information about matters occurring prior to January 1, 1999. BNSF further states that Roadway Completion Reports or successor documents referenced in Request No. 88(d) do not exist, and therefore are not reasonably available. Subject to these objections and qualifications, BNSF will produce or make available responsive AFEs.

Request for Production No. 89:

Please produce documents showing the Ad Valorem Tax you paid for each year 1998 to the present to each of the SARR States, together with documents showing the total route-miles and total track-miles you owned or own in each of these states for each year 1998 to the present.

BNSF RESPONSE: BNSF objects to this Discovery Request to the extent it seeks information about matters occurring prior to January 1, 1999. Further, BNSF objects to this Request to the extent it seeks information on movements in states other than New Mexico and Arizona. Subject to these objections, BNSF will produce or make available information responsive to this Request to the extent such information is reasonably available.

Request for Production No. 90:

Please produce all joint facility or other handling agreements, including all amendments and supplements, to which you are a party, including but not limited to, trackage rights agreements, reciprocal switching agreements, lease agreements and any other agreements relating to sole or joint use of another carrier's tracks, bridges, buildings, or any other facility located in the SARR States.

BNSF RESPONSE: BNSF objects to this Request on grounds that it is overly broad and unduly burdensome to the extent that it seeks contracts, agreements and other documents which are not currently in effect. Further, BNSF objects to this Request to the extent it seeks information on movements in states other than New Mexico and Arizona. Subject to these objections, BNSF will produce joint facility agreements along the AEPCO route in New Mexico or Arizona, to the extent such agreements are reasonably available.

Request for Production No. 91:

For each agreement identified in response to Request for Production No. 90, produce a copy of all bills rendered during each year or partial year 1998 to the present covering each agreement identified, and produce documents which identify:

- a. The procedures followed in calculating maintenance and other expenses, and return on investment, used to bill each party to the agreement;
- b. The party(ies) responsible for maintenance of way and structure expenses, by milepost;
- c. The accounting procedures followed by each carrier party to the agreement, including identification of all debits and credits, by month, by STB account for each year or partial year 1998 to the present;
- d. For each facility identified in response to the above items, provide each participating or using carrier's total car-miles, train-miles, gross ton-miles and net ton-miles over the facility and any other service units used in the development of costs or charges for each year or partial year 1998 to the present;
- e. The facilities involved, by milepost, and ownership thereof;
- f. The method by which the rate, charges, fees, etc. used in billing each party to the agreement is calculated;
- g. All other expenses, by milepost; and
- h. The party(ies) responsible for all other expenses, by milepost.

BNSF RESPONSE: BNSF objects to this Request on grounds that it is overly broad and unduly burdensome in that it seeks information that is not maintained by BNSF in the normal course of business, that is not maintained by BNSF in the format requested, or that would require a special study to compile or to report in the format requested, and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Request for Production No. 92:

Please produce all documents relating to any contribution by any governmental or quasi-governmental entity (including, without limitation, AMTRAK) to construction, upgrading, maintenance and/or operating expenses on any of your rail lines located in the SARR States.

BNSF RESPONSE: BNSF objects to this Request on grounds that it is overly broad and unduly burdensome to the extent it seeks all documents related to the contribution of any governmental or quasi-governmental entity. Further, BNSF objects to this Request to the extent it seeks information on movements in states other than New Mexico and Arizona. Subject to these objections, BNSF will produce or make available information that is responsive to this Request to the extent such information is reasonably available.

Request for Production No. 93:

Please produce all studies, analyses and other documents in your possession and prepared or provided during any of the years 1996 to the present analyzing or reporting on the transportation of coal by truck to Apache or the feasibility of such transportation.

BNSF RESPONSE: BNSF will produce or make available information responsive to this Request to the extent such information is reasonably available.

Request for Production No. 94:

Please produce all inflation and/or rail cost adjustment estimates or calculations that you prepared or caused to be prepared for each year or partial year 1998 to the present, including, but not limited to, any estimates relating to:

- a. The cost of acquiring capital; and
- b. General expenses, including, but not limited to, asset, equipment and labor expense.

BNSF RESPONSE: BNSF objects to this Request on grounds that it is overly broad and unduly burdensome and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. BNSF objects to this Discovery Request to the extent it seeks information about matters occurring prior to January 1, 1999. Subject to these objections, BNSF will produce or make available materials responsive to Request 94(a) to the extent they are reasonably available, but it will produce or make available such materials if and only if AEPCO and any consultant AEPCO uses to present stand-alone cost evidence produces similar information. As to Request 94(b), BNSF responds that it does not generate inflation forecasts internally, but instead uses forecasts it purchases from Standard & Poor's DRI. Because those materials are subject to copyright and are available to AEPCO directly from DRI, BNSF objects to their production.

Request for Production No. 95:

Please produce documents which (a) identify each coal movement you handled in the SARR States for each year 1998 to the present for which a distributed power train configuration was used, and (b) for each such movement show:

- a. The name of the customer involved;
- b. The origin mine(s);
- c. The destination;
- d. The number and type of locomotive units used and their respective locations within the train;
- e. The average number of loaded cars in each train;

- f. Any applicable restrictions on the maximum number of loaded cars in each train;
- g. The type of equipment involved (e.g., steel or aluminum, rotary-dump gondola or hopper; rapid discharge);
- h. The average number of tons of coal per loaded train; and
- i. Any applicable restrictions on the maximum number of tons of coal that can be carried in each train.

BNSF RESPONSE: BNSF objects to this Request on grounds that it is overly broad and unduly burdensome to the extent it seeks information that is not maintained by BNSF in the normal course of business, that is not maintained by BNSF in the format requested, or that would require a special study to compile or to report in the format requested. BNSF further objects to this Discovery Request to the extent it seeks information about matters occurring prior to January 1, 1999. Further, BNSF objects to this Request to the extent it seeks information on movements in states other than New Mexico and Arizona. Subject to these objections, BNSF will produce or make available data that is responsive to this Request, in the format in which such data is available, or other materials from which responsive information may be derived, to the extent such data and other materials are reasonably available.

Request for Production No. 96:

Please produce documents which identify any coal movement you handled in the SARR States for which you did not use a distributed power train configuration at any time from 1998 to the present, but for which you plan to use a distributed power train configuration during all or any portion of 2001, 2002 and 2003.

BNSF RESPONSE: BNSF objects to this Request on grounds that it is overly broad and unduly burdensome to the extent it seeks information that is not maintained by BNSF in the normal course of business, that is not maintained by BNSF in the format requested, or that would require a special study to compile or to report in the format requested. BNSF further objects to this Discovery Request to the extent it seeks information about matters occurring prior to January

1; 1999. Further, BNSF objects to this Request to the extent it seeks information on movements in states other than New Mexico and Arizona. Subject to these objections, BNSF will produce or make available data that is responsive to this Request, in the format in which such data is available, or other materials from which responsive information may be derived, to the extent such data and other materials are reasonably available.

Request for Production No. 97:

Please provide documents containing the following information regarding fiber optics:

- a. An identification of the line segments on your system where fiber optic cables are currently located;
- b. An identification of the line segments on your system where fiber optic cables are planned to be located in the future;
- c. An explanation of the manner in which you utilize (and the cost associated with your use of) fiber optics in your communications and/or signaling systems;
- d. An identification of the amount of money you paid, if any, for the installation of the fiber optic cables;
- e. An identification of the amount of money paid to you by a third party(ies) for the right to install fiber optic cables on your right-of-way;
- f. The amount of revenue you have received from the fiber optics system installed on your right-of-way, and the corresponding number of route miles, by state, for each of the years 1998 to the present;
- g. Copies of all contracts and agreements, including all amendments and supplements, between you and any other entity which pertain to the installation and/or use of fiber optics on your system during each of the years 1998 to the present; and
- h. Copies of all bills, invoices, or other documents you received or sent pursuant to the contracts and agreements identified in response to (g) above.

BNSF RESPONSE: BNSF objects to this Request on grounds that it is overly broad and unduly burdensome to the extent it seeks information that is not maintained by BNSF in the normal course of business, that is not maintained by BNSF in the format requested, or that would require a special study to compile or to report in the format requested. BNSF further objects to this Request on grounds that it seeks information that is neither relevant nor reasonably

calculated to lead to the discovery of admissible evidence, and is beyond the scope of permissible discovery.

Request for Production No. 98:

Please provide documents containing the following information regarding all revenue generating easements, leases or other access rights along your right-of-way in the SARR States that you have granted or intend to grant for purposes other than the installation of fiber optics cables:

- a. An identification of the line segments where such rights have been granted;
- b. An identification of the line segments where such rights are intended to be granted in the future;
- c. The amount of revenue you have received from third parties for the use of your right-of-way, and the corresponding number of route miles, for each of the years 1998 to the present;
- d. Copies of all contracts and agreements, including all amendments and supplements, you entered into, agreed to, or provided which pertain to the use of your right-of-way; and
- e. Copies of all bills, invoices, or other documents you received or sent pursuant to the contracts and agreements identified in response to (d) above.

BNSF RESPONSE: BNSF objects to this Request on grounds that it is overly broad and unduly burdensome to the extent it seeks information that is not maintained by BNSF in the normal course of business, that is not maintained by BNSF in the format requested, or that would require a special study to compile or to report in the format requested. BNSF further objects to this Request on grounds that it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and is beyond the scope of permissible discovery.

Request for Production No. 99:

Please provide documents which identify the locomotive tonnage ratings (e.g., horsepower per trailing ton) by line segment for your rail lines in the SARR States.

BNSF RESPONSE: BNSF objects to this Request on grounds that it is overly broad and unduly burdensome to the extent it seeks information that is not maintained by BNSF in the normal course of business, that is not maintained by BNSF in the format requested, or that would require a special study to compile or to report in the format requested. Further, BNSF objects to this Request to the extent it seeks information on movements in states other than New Mexico and Arizona. Subject to these objections, BNSF will produce or make available data that is responsive to this Request, in the format in which such data is available, or other materials from which responsive information may be derived, to the extent such data and other materials are reasonably available.

Request for Production No. 100: (to BNSF only)

Please provide all workpapers and supporting documents, in a computer-readable format to the extent available, underlying:

- a. The aggregate figures, by ICC/STB account, contained in ATSF's 1995 Annual Report Form R-1, Schedule 330, Column (d);
- b. The line segment-specific figures, by ICC/STB account, underlying the aggregate figures identified in (a) above; and
- c. The basis for allocating the amounts to each line segment.

BNSF RESPONSE: BNSF objects to this Request on grounds that it is overly broad and unduly burdensome to the extent it seeks information that is not maintained by BNSF in the normal course of business, that is not maintained by BNSF in the format requested, or that would require a special study to compile or to report in the format requested. BNSF further objects to this Request on grounds that it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and is beyond the scope of permissible discovery.

Request for Production No. 101: (to UP only)

Please provide all workpapers and supporting documents, in a computer-readable format to the extent available, underlying:

- a. The aggregate figures, by ICC/STB account, contained in SP's 1996 Annual Report Form R-1, Schedule 330, Column (d) and CNW's 1994 Annual Report Form R-1, Schedule 330, Column (d);
- b. The line segment-specific figures, by ICC/STB account, underlying the aggregate figures identified in (a) above; and
- c. The basis for allocating the amounts to each line segment.

BNSF RESPONSE: Since this Request is directed to UP only, no response is required.

Request for Production No. 102:

Please provide documents containing the following information with regard to rail lubrication on your system:

- a. A description of the rail lubrication method(s) you use and the criteria used to determine which method(s) to use for a particular location;
- b. A description of the different types of rail lubricators you use (both stationary and mobile);
- c. The current cost associated with each of the different types of rail lubricators identified/described in response to (b) above; and
- d. The locations of the rail lubricators on the portion of your system located in the SARR States.

BNSF RESPONSE: BNSF objects to this Request on grounds that it is overly broad and unduly burdensome to the extent it seeks information that is not maintained by BNSF in the normal course of business, that is not maintained by BNSF in the format requested, or that would require a special study to compile or to report in the format requested.

Request for Production No. 103:

Please produce all documents identified or described in your answer to Interrogatory No. 17 above.

BNSF RESPONSE: See response above to Interrogatory No. 17.

Request for Production No. 104:

Please produce (a) all agreements and/or licenses between you and any third party with respect to any computer program or software identified in your answer to Interrogatory No. 23 above; and (b) the computer program or software itself.

BNSF RESPONSE: BNSF objects to Request No. 104 on grounds that it is overly broad, unduly burdensome and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. BNSF further objects to Request No. 104(b) to the extent that any relevant computer program or software is proprietary and BNSF is not authorized to release the program or software to third parties.

Request for Production No. 105:

Please produce all documents related to the fuel consumption tests described in Attachment 1 or in your answer to Interrogatory No. 24 above, including but not limited to documents describing or reflecting the methodology and equipment used to conduct such tests and describing or reflecting any results thereof to date.

BNSF RESPONSE: BNSF objects to Request No. 105 on grounds that it is overly broad, unduly burdensome and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Request for Production No. 106:

Please produce all agreements and documents identified or described in your answer to Interrogatory No. 25 above.

BNSF RESPONSE: No documents were identified or described in response to Interrogatory No. 25.

Request for Production No. 107:

Please produce all agreements and documents identified or described in your answer to Interrogatory No. 26 above.

BNSF RESPONSE: No documents were identified or described in response to Interrogatory No. 26.

Request for Production No. 108:

Please produce all agreements and documents identified or described in your answer to Interrogatory No. 27 above.

BNSF RESPONSE: See response to Interrogatory No. 27.

Request for Production No. 109:

Please produce all agreements between you and SWRR and produce or describe the substance of any other understandings between you and SWRR.

BNSF RESPONSE: BNSF objects to Request for Production No. 109 on the grounds that it is overly broad and unduly burdensome. BNSF further states that it has produced a copy of its agreement with SWRR relating to transportation between Deming and Rincon, New Mexico.

Request for Production No. 110:

Please produce all documents identifying or relating to analyses or projections of the following for the SWRR and/or the Rincon-Deming line segment:

- (a) traffic levels (including by commodity);
- (b) revenues (including by commodity);
- (c) costs, including, but not necessarily limited to costs related to, (1) maintenance of way and structures (including any division or allocation between program and spot), (2) train crews, (3) road property, (4) locomotive capital, (5) locomotive fuel, (6) locomotive maintenance, (7) switching, (8) loss and damage (total and by commodity), (9) car inspection, (10) end-of-train telemetry devices (if any), (11) joint facility agreements and associated costs, (12) freight cars (including leases, purchases, cars supplied by other railroads, and shipper cars) including, but not necessarily limited to ownership costs, use costs, and maintenance costs, and (13) clerical expenses;
- (d) any savings expected to be experienced by SWRR compared to BNSF with respect to the cost items identified in (c), above; and
- (e) cycle times and transit times (both one-way and round trip).

CERTIFICATE OF SERVICE

I hereby certify that I have today, March 20, 2002
served copies of the foregoing AEPCO'S Section Motion to Compel,
as follows:

By hand:

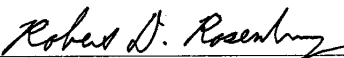
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