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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

ARIZONA PUBLIC SERVICE COMPANY
and PACIFICORP

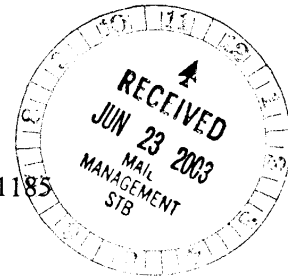
Complainants,

v.

THE BURLINGTON NORTHERN AND
SANTA FE RAILWAY COMPANY,

Defendant.

Docket No. 41185



ENTERED
Office of Proceedings

JUN 16 2003

Part of
Public Record

**MOTION OF APPA AND NRECA FOR LEAVE
TO FILE REPLY COMMENTS AS AMICI CURIAE**

AMERICAN PUBLIC POWER ASSOCIATION
NATIONAL RURAL ELECTRIC COOPERATIVE
ASSOCIATION

OF COUNSEL:

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Dated: June 23, 2003

Their Attorneys

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

ARIZONA PUBLIC SERVICE COMPANY)
and PACIFICORP)

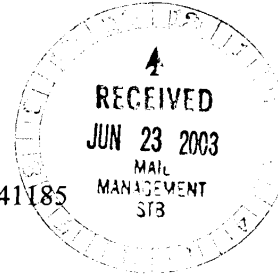
Complainants,)

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THE BURLINGTON NORTHERN AND)
SANTA FE RAILWAY COMPANY,)

Defendant.)

Docket No. 41185



**MOTION OF APPA AND NRECA FOR LEAVE
TO FILE REPLY COMMENTS AS AMICI CURIAE**

American Public Power Association ("APPA") and National Rural Electric Cooperative Association ("NRECA") request leave to appear in this case as amici curiae for purposes of submitting reply comments in support of the petitions for reconsideration filed in this docket on June 2, 2003 by Arizona Public Service Company et. al. ("APS") and the Western Coal Traffic League ("WCTL"). In support hereof, APPA/NRECA state as follows:

1. APPA is the national service organization representing the interests of the nation's approximately two thousand (2,000) locally owned, locally controlled, not-for-profit electric utilities and entities of government, such as municipalities, counties, public utility districts and an occasional state government, throughout the United States.

NRECA is a trade association representing the interests of local cooperative electric utilities and public power districts, and other organizations formed by these entities, and the consumers they serve.

2. APPA and NRECA's membership includes utilities that receive coal transportation service from market dominant rail carriers. These utilities depend upon the STB to establish and maintain reliable and fair maximum rate standards and procedures. APPA and NRECA, and many of their members, have actively participated in prior STB and Interstate Commerce Commission ("ICC") proceedings involving coal rate, and coal service issues.

3. The Board's decision served in this proceeding on May 12, 2003 ("Decision") establishes new rules governing the Board's disposition of carrier petitions to vacate outstanding maximum rate prescription orders on market dominant rail traffic. These rules impact not only the complaining shipper in this docket, but also have industry-wide importance because the rules are likely to be applied in future cases involving other shippers.

4. APPA and NRECA agree with APS and WCTL that the Board's Decision misapplies governing law and produces a result that is unfair to both APS and other similarly situated captive shippers.

5. APPA and NRECA request leave to participate as amici curiae in this proceeding on a limited basis to file joint reply comments in support of the reconsideration petitions filed by APS and WCTL on June 2, 2003.

6. The filing of APPA/NRECA's joint reply comments should not prejudice the rights of the complainant or any other person. The reply comments are limited to the vacation issues raised by APS and WCTL, and do not expand the scope of this case.

7. The STB, and the ICC before it, have routinely granted similar requests made by industry trade associations to participate as amicus curiae in pending cases to address issues of industry-wide concern. See, e.g., Minnesota Power, Inc. v. Duluth, M. and I.R. Ry., STB Docket No. 42038 at 1 (STB served April 18, 2000); Western Coal Traffic League v. Union P. R.R., STB Finance Docket No. 33726 at 1 n.3 (STB served May 12, 2000); Western Resources v. Atchison, T. and S. F. Ry., ICC Docket No. 41604 at 1 (STB served May 31, 1996); Brotherhood of Loco. Engineers v. Atchison, T. and S.F. Ry., I.C.C. Finance Docket No. 31891 at 1 (ICC decided Oct. 29, 1991); Omaha Pub. Power Dist. v. Burlington N. R.R., 3 I.C.C.2d 123, 123-124 (1986); Midtec Paper Corp. v. Chicago and N.W. Transp. Co., 3 I.C.C.2d 171, 173 n.6 (1986).

CONCLUSION

For the foregoing reasons, APPA and NRECA jointly move for leave to file reply comments as amici curiae.

Respectfully submitted,

AMERICAN PUBLIC POWER ASSOCIATION
NATIONAL RURAL ELECTRIC COOPERATIVE
ASSOCIATION

OF COUNSEL:

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CERTIFICATE OF SERVICE

I hereby certify that on June 23, 2003, I caused copies of the foregoing Motion of APPA and NRECA for Leave to File Reply Comments as Amici Curiae to be served by hand upon all parties of record.

A handwritten signature in black ink, appearing to read "John H. LeSeur", is written over a horizontal line.

John H. LeSeur