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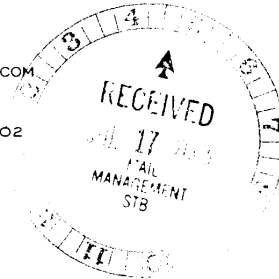
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July 17, 2003

VIA HAND DELIVERY

Mr. Vernon A. Williams, Secretary
Surface Transportation Board
1925 K Street, N.W., 7th Floor
Washington, DC 20423-0001

Re: Arizona Public Service Company and PACIFICORP v. The Burlington
Northern and Santa Fe Railway Company, Dkt. No. 41185; and - 208437
Arizona Public Service Company and PACIFICORP v. The Burlington
Northern and Santa Fe Railway Company, Dkt. No. 42077 - 208436

Dear Secretary Williams:

Enclosed are the original and ten copies of a "Motion for Leave to File Out-of-Time The Reply Amicus Curiae of Edison Electric Institute" and "Reply Amicus Curiae of Edison Electric Institute to Petitions for Reconsideration of Complainants and The Western Coal Traffic League."

Respectfully submitted,

Michael F. McBride

Michael F. McBride

Attorney for Edison Electric Institute

Enclosures

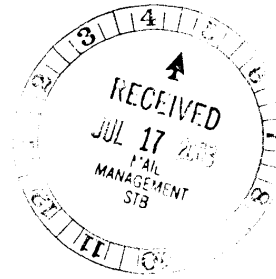
cc: Parties of Record

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Office of Proceedings

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Part of
Public Record

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

ARIZONA PUBLIC SERVICE COMPANY
And PACIFICORP,

Complainants,

v.

THE BURLINGTON NORTHERN AND
SANTA FE RAILWAY COMPANY,

Defendant.

Docket No. 42077 - 208436

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Office of Proceedings

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Public Record

MOTION FOR LEAVE TO FILE OUT-OF-TIME THE
REPLY AMICUS CURIAE
OF EDISON ELECTRIC INSTITUTE

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Attorney for Edison Electric Institute

July 17, 2003

MOTION FOR LEAVE TO FILE OUT-OF-TIME THE REPLY AMICUS CURIAE
OF EDISON ELECTRIC INSTITUTE

Pursuant to 49 C.F.R. § 1112.4, Edison Electric Institute ("EEI"), the national association of the investor-owned electric utility, hereby moves for leave to file a reply amicus curiae out-of-time in these proceedings, for the limited purpose of being heard on the pending Petitions for Reconsideration. In support of its Motion, EEI states that it has participated in virtually every general-interest proceeding before the Board in which rate-case matters, especially coal rate-case matters, have been addressed. Coal-fired power plants generate over fifty percent (50%) of the Nation's electricity, and EEI members ship by rail hundreds of millions of tons of coal annually to generate that electricity. EEI members (which include Complainants Arizona Public Service Company and PacifiCorp ("Complainants")) also have been complainants in a substantial number of coal rate reasonableness cases before the Board or its predecessor.

EEI seeks leave to file a reply amicus curiae in these proceedings because the pending Petitions for Reconsideration, and the Board's Decision served May 12, 2003 ("Decision"), raise issues of industry-wide concern. Specifically, the first issue involves the scope of reopening of a Board decision establishing a maximum reasonable rate for the transportation of large amounts of coal to a coal-fired power plant where there are changed circumstances. Of course, EEI does not oppose the Decision to reopen, because no party did. But it is concerned that any decision to reopen a proceeding, if such occurs, should be done in a manner that is fair to both sides and that is consistent with the "stand-alone cost" ("SAC") principles that govern these types of cases. EEI's participation in these proceedings will not broaden these proceedings or inject new issues.

Over the life of the typical long-term coal supply contract (say, 10-20 years), not to mention the life of a coal-fired power plants (significantly longer than 20 years), circumstances are almost certain to change. It is essential to a fair determination of a maximum reasonable rate

in such proceedings, if a reopening is ordered, that all changed circumstances be considered, not just some such circumstances, or else matters that would clearly be relevant in prescribing, initially, a maximum reasonable rate in such proceedings could not be addressed in the reopened proceeding. EEI seeks leave to address this issue because assuring that all parties to a reopened proceeding have a full opportunity to address changed circumstances is a fundamental due process right of interest to all EEI members.

Second, EEI is concerned that the rate prescription in Docket No. 41185 was vacated without adequate notice, hearing, or a determination on the merits whether the rate should be higher or lower. EEI believes that the Decision violates Arizona Grocery Co. v. Atchison, Topeka, and Santa Fe Rwy. Co., 284 U.S. 370, 387 (1932), and Burlington Northern Rwy. Co. v. ICC, 679 F.2d 934, 940 & n.13 (D.C. Cir. 1982), which require a hearing, consideration of evidence, and a determination that a different rate is the maximum reasonable rate that may be charged, before a rate prescription may be altered. The Arizona Grocery principle is one that permits commercial parties to proceed with their businesses with the certainty of what their rates (or costs) will be, which in turn allows them to enter into contracts or other commercial relationships with certainty about the circumstances applicable to their dealings. Certainty in commercial dealings is a matter of great value to both parties to a transaction. Instead, the Board's "keep account" provision creates uncertainty as to both the utilities' costs of generating electricity and the railroad's revenues derived from this transportation, pendente lite.

The Arizona Grocery principle is of considerable significance to EEI members, for it applies in other regulatory contexts as well. Any action by this Board to alter it may be ultra vires, in light of the Supreme Court's holding. Moreover, even if the Board were to have the

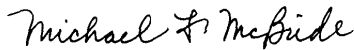
power to do what it did, notwithstanding the Arizona Grocery line of cases, the Board's action could have ramifications and unforeseen consequences that should be avoided.

EEI regrets that this Motion and Reply are being submitted out-of-time. However, before such a pleading can be submitted on EEI's behalf, EEI must seek and obtain authority from a committee of member-company counsel, which process took time. It would not appear that the delay in submitting this Motion and Reply will delay the disposition of these proceedings. Accordingly, EEI respectfully requests that leave to file be granted.

CONCLUSION

For the reasons stated, the Motion for leave to file EEI's amicus curiae reply out-of-time to the pending Petitions for Reconsideration should be granted.

Respectfully submitted,



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Attorney for Edison Electric Institute

July 17, 2003

CERTIFICATE OF SERVICE

I hereby certify that I have served, this 17th day of July 2003, a copy of the foregoing
"Motion For Leave To File Reply Amicus Curiae Out-Of-Time" and "Reply Amicus Curiae of
Edison Electric Institute To Petitions For Reconsideration of Complainants and The Western
Coal Traffic League," by first-class mail, postage prepaid, or by more expeditious means as
indicated below upon the following:

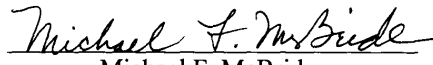
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