

August 14, 2003

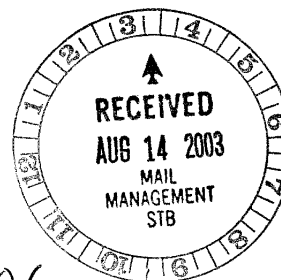
By Hand Delivery

The Honorable Roger Nober
Chairman
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423-0001

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208706

RE: Docket No. 42077, *Arizona Public Service Company and PacifiCorp v. The Burlington Northern and Santa Fe Railway Company*

Dear Chairman Nober:

We are writing to you as counsel for Peabody Energy Corporation ("Peabody") in the above-referenced docket. On June 16, 2003, Peabody filed the following three pleadings in this proceeding:

1. "Petition to Intervene;"
2. "Petition for Injunctive Relief;" and a
3. "Motion for Expedited Consideration" of both petitions.

Peabody requested expedited consideration of its Petitions due to the impending threat of immediate and irreparable harm to Peabody's Lee Ranch Mine from lost sales to the Cholla Generating Station. In its "Motion for Expedited Consideration," Peabody summarized these harms and stated that it required relief from the Board within sixty days in order to prevent irreparable harm from occurring, since APS/PacifiCorp would initiate negotiations for 2004 coal purchases for Cholla by late Summer. This sixty day period has nearly ended and Peabody understands that APS/PacifiCorp will be sending out bid requests to potential coal suppliers very shortly.

The parties to this proceeding have fully argued the issues presented by Peabody's Petitions and all that remains is for the Board to issue a decision on the merits.¹ Therefore, Peabody respectfully requests that the Board issue a decision on its Petitions to Intervene and for Injunctive Relief promptly and expeditiously. A significant delay would be tantamount to a

¹ On June 16, 2003, Peabody also served a single document request upon both BNSF and APS/PacifiCorp for a copy of the last effective contract between them for the transportation of coal from Lee Ranch to Cholla. BNSF has not acknowledged the request by response or objection. APS/PacifiCorp has informed Peabody that it will respond to the request, without objection, once the Board grants Peabody's Petition to Intervene. Although a response to this request is needed to determine the precise level of relief requested by Peabody, it is not essential to determining whether Peabody is entitled to relief. Thus, the Board has all the information it needs to rule on the merits of Peabody's Petitions.

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denial of relief. No other party to this proceeding has objected to Peabody's request for expedited consideration.

Sincerely,



Nicholas J. DiMichael
Jeffrey O. Moreno

cc: Samuel M. Sipe, Esq.
Michael H. Loftus, Esq.