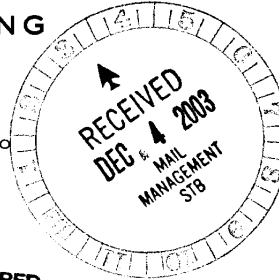


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December 4, 2003

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Office of Proceedings

DEC 04 2003

BY MESSENGER

The Honorable Vernon Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001

Part of
Public Record

Re: *Docket No. 42058, Arizona Electric Power Cooperative, Inc. v.
The Burlington Northern & Santa Fe Railway Co. et al.*

Dear Secretary Williams:

We have reviewed AEPCO's "Response" to the Board's November 19 order, filed on November 26, 2003, in which AEPCO states that it "will rely on its previously-filed evidence." AEPCO Response, p. 10. In view of that election, defendants intend to file their stand-alone cost ("SAC") evidence by January 26, 2004, as prescribed by ordering paragraph 3 of the Board's November 19 order. In view of the holidays, it will not be possible for defendants to accelerate their filing.

Defendants will file this reply SAC evidence under protest. In light of AEPCO's failure to present a viable case-in-chief, defendants should not have the burden of going forward. Defendants accordingly believe that AEPCO's case must be dismissed. However, the Board's November 19 order appears to leave defendants with no alternative to the filing of reply SAC evidence, and defendants will therefore file such evidence on the prescribed date.

The great bulk of AEPCO's November 26 filing consists of improper and unauthorized surplusage. Indeed, the filing constitutes yet another of AEPCO's efforts to complicate this proceeding, resulting in further delay -- delay AEPCO purportedly seeks to avoid but has repeatedly caused by its unorthodox moves. Defendants will respond only briefly.

AEPCO's request that defendants provide revenue information by December 8 and subsequently, at AEPCO's option, submit to depositions about that information (AEPCO Response, p. 3) is objectionable and entirely inappropriate. The deadline for discovery in this proceeding was a year ago. Defendants will serve their SAC evidence and related workpapers on January 26, and AEPCO will have a full opportunity to respond to

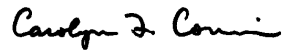
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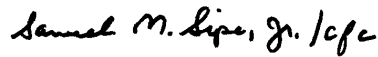
that evidence under the schedule prescribed by the Board. There is certainly no basis for AEPCO's ludicrous suggestion that it should be entitled to alter its "choice of how to proceed" (*id.*). AEPCO has now had multiple opportunities to present its best case, and it has chosen to rest on its July 2003 submission. Under the November 19 order, that choice is final, and the Board should hold AEPCO to it.

Defendants also note that they disagree with AEPCO's unilateral interpretation of the Board's statements about trackage rights and the other comments AEPCO offers in the remainder of its Response. Defendants will address trackage rights issues, as well as present any other evidence they conclude is necessary to a proper SAC analysis, at the time they make their January 26 submission.

Sincerely yours,



Carolyn F. Corwin
Attorney for Union Pacific Railroad Company



Samuel M. Sipe, Jr.
Attorney for The Burlington Northern and
Santa Fe Railway Company

cc: Robert Rosenberg, Esq.