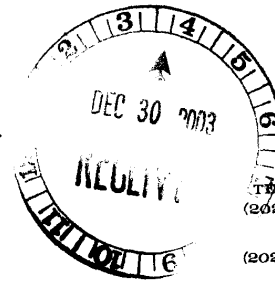


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December 30, 2003

VIA HAND DELIVERY

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W., Room 711
Washington, D.C. 20423

ENTERED
Office of Proceedings

DEC 30 2003

Part of
Public Record

Re: Docket No. 41185, Arizona Public Service Co. & PacifiCorp v.
The Burlington Northern and Santa Fe Railway Company

Dear Secretary Williams:

Please find enclosed for filing in the above-referenced proceeding an original and ten copies of Complainant Arizona Public Service Company and PacifiCorp's Motion to Compel. A diskette containing an electronic copy of the submission (in WordPerfect) is enclosed. Given that discovery is scheduled to close on January 20, 2004, APS/PacifiCorp requests that the Board give this filing **EXPEDITED CONSIDERATION**.

An additional copy of the filing also is enclosed. Kindly indicate receipt and filing by time-stamping this extra copy and returning it to the bearer of this letter.

Sincerely,

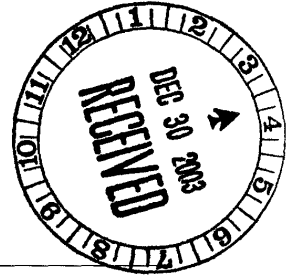
Peter A. Pfohl
An Attorney for
Arizona Public Service Company
and PacifiCorp

Enclosures

cc: Samuel M. Sipe, Jr.
Linda S. Stein

EXPEDITED CONSIDERATION REQUESTED

**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

DEC 30 2003

Part of
Public Record

COMPLAINANTS' MOTION TO COMPEL

ARIZONA PUBLIC SERVICE COMPANY
400 North 5th Street
Phoenix, AZ 85004

PACIFICORP
825 N.E. Multnomah Street
Portland, OR 97232

OF COUNSEL:

By: C. Michael Loftus
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Slover & Loftus
1224 Seventeenth Street, N.W.
Washington, D.C. 20036

Dated: December 30, 2003

**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

COMPLAINANTS' MOTION TO COMPEL

Pursuant to 1114.31 and 1117.1, Complainants Arizona Public Service Company and PacifiCorp (collectively "APS/PacifiCorp") hereby move for an order overruling Defendant The Burlington Northern and Santa Fe Railway Company's ("BNSF's") stated objections and compelling BNSF to produce documents in response to APS/PacifiCorp's Request for Production ("Request") Nos. 1, 2, 3, and 7. These requests, served on November 25, 2003, seek production of BNSF's transportation contracts as well as actual and forecasted traffic volumes, revenues, and/or rates applicable to movements of coal from applicable mine origins to APS/PacifiCorp's Cholla Generating Station ("Cholla") and Salt River Project Agricultural Improvement & Power District's ("Salt River's") Coronado Generating Station ("Coronado") between

1994 and 2013, the 20-year Stand Alone Cost ("SAC") analysis period being considered in this docket.

Each of these requests are directly related to an integral issue involved in this reopened decision. In each instance, BNSF has responded that it is opposed to producing these materials because disclosure could result in the violation of contractual obligations to third parties. However, BNSF has further responded that it will not oppose a motion to compel the production of responsive materials. The Board routinely orders production of such materials in stand-alone cost cases given that the protective order in place in such cases will satisfy all confidentiality concerns of the nature raised by BNSF.

I.

BACKGROUND

This reopened Docket Number 41185 arises from a complaint filed by APS/PacifiCorp before the Interstate Commerce Commission on January 3, 1994, challenging rates for rail transportation between the McKinley Mine, located near Gallup, New Mexico, and Cholla, which is jointly owned by APS and PacifiCorp. In July, 1997, APS/PacifiCorp obtained a decision from the STB which declared the challenged rates to be unreasonable, awarded reparations for past movements and prescribed maximum reasonable rates for the future. See Arizona Public Service Co. and PacifiCorp v. The Atchison, Topeka and Santa Fe Ry., 2 S.T.B. 367 (1997).

In January 2003, BNSF requested the Board to vacate its rate prescription on the grounds of substantially changed circumstances and new evidence relating to the volume of coal available to be shipped from the McKinley Mine. APS/PacifiCorp opposed this request.

On May 12, 2003, the Board served its decision ("May 12 Decision") granting BNSF's request for reopening, defining the scope of reopening as limited to the original 1994 SARR configuration and traffic group, and lifting its rate prescription. APS/PacifiCorp sought reconsideration of that decision, and in a decision served October 14, 2003 ("October 14 Decision"), the Board denied the petition for reconsideration, and requested the parties to submit a proposed procedural schedule to govern the reopened proceeding.¹ On November 25, 2003, APS/PacifiCorp served its First Requests for Production of Documents on BNSF. A copy of the requests and BNSF's responses is appended hereto as Exhibit No. 1.

Under the Board's May 12 and October 14 decisions, in order to meet their evidentiary obligations in the reopened proceeding, the parties will need to address the current and projected future sourcing and re-sourcing of coal by APS/PacifiCorp and Salt River, and the traffic revenues and/or rates applicable to those movements of coal. Each of Request Nos. 1, 2, 3, and 7 are directed to these topics. APS/PacifiCorp's Request No.

¹ In a decision served December 8, 2003, the Board revised the proposed procedural schedule entered previously on October 30, 2003. Under the revised procedural schedule, discovery is to be completed by January 20, 2004.

1 seeks contractual information pertaining to the transportation of coal from mine origins to Cholla and Coronado. This Request, and BNSF's response, are as follows:

Request No. 1:

Please produce all currently effective, or prospectively effective, transportation contracts, including amendments and supplements thereto and appendices or attachments (or letters of understanding), and all common carrier pricing authorities or other documents containing common carrier rate and service terms that BNSF has entered into, agreed to, or provided with respect to the transportation of coal from any origin to (a) Cholla and (b) Coronado.

BNSF Response:

BNSF 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 this objection, BNSF states that it would not oppose a motion to compel the production of responsive materials and will confer with APS/PacifiCorp about the timing of such motion. BNSF further states that it will produce or make available responsive materials that do not violate contractual obligations to third parties.

(Emphasis added).

Request Nos. 2, 3, and 7 (reproduced in Exhibit No. 1 hereto) seek similar information related to the current and projected future sourcing and re-sourcing of coal by APS/PacifiCorp and Salt River between 1994 and 2013, and the traffic revenues and/or rates applicable to those movements of coal. BNSF has not objected to producing responsive documents in response to Request Nos. 2, 3, and 7 that pertain to Cholla traffic. However, BNSF has objected to producing responsive documents that pertain to Coronado traffic "on grounds that it would require production of materials related to

Coronado which, if produced, could result in the violation of contractual obligations to third parties.” BNSF has further stated in each of its responses to Requests Nos. 2, 3, and 7 “that it would not oppose a motion to compel the production of responsive materials related to Coronado to the extent they are reasonably available.”

II.

ARGUMENT

A. The Legal Standard

The Board and its predecessor repeatedly have held that the records of defendant railroads in cases brought under the CMP model 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. United States, 812 F.2d 1444 (3d Cir. 1987) (“[w]e 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. § 1114.21(a). It is also well-settled that the Board’s discovery rules are to be liberally construed. See, e.g., Finance Docket No. 32821, Bar Ale, Inc. v. California Northern Railroad Co. (STB served March 15, 1996) at 2.

**B. The Board Routinely Has Ordered the Production
of the Type of Information Sought Herein**

In this case, the information sought by APS/PacifiCorp is reasonably calculated to lead to the discovery of admissible evidence, and therefore easily satisfies the Board's standard under Coal Rate Guidelines and the Rules of Practice.

With regard to Request No. 1, the Board has consistently held that transportation contracts to which the defendant carrier is a party are highly relevant to the determination of an appropriate SARR traffic group, and its associated volumes and revenues. See, e.g., Docket No. 41191 (Sub-No. 1), AEP Texas North Co. v. The Burlington Northern and Santa Fe Ry. Co. (STB served Dec. 4, 2003); Docket No. 42072, Carolina Power & Light Co. v. Norfolk Southern Ry. Co. (STB served May 1, 2002); Docket No. 42069, Duke Energy Corp. v. Norfolk Southern Ry. Co. (STB served March 4, 2002); Docket No. 42056, Texas Municipal Power Agency v. The Burlington Northern and Santa Fe Ry. Co. (STB served Feb. 9, 2001); Docket No. 42054, PPL Montana, LLC v. The Burlington Northern and Santa Fe Ry. Co. (STB served Nov. 9, 2000). These cases also consistently hold that the existence of a protective order will satisfy all confidentiality concerns.

Request Nos. 2, 3, and 7 address the actual and projected volume, rate, and traffic information for APS/PacifiCorp and Salt River over the 20-year SAC analysis period. The Board has specifically requested that the parties address these subjects:

We . . . need a more developed record on how Arizona and Salt River will re-source their coal needs once McKinley shuts down, what portion of that traffic could flow over the SARR, and what revenues the SARR could reasonably expect to earn from that coal traffic.

May 12 Decision at 5. Request Nos. 2, 3, and 7 (along with Request No. 1) are discretely addressed to the issue of the sourcing of coal by APS and Salt River over the life of the original 20-year SAC analysis period of 1994 - 2013, and associated traffic revenue/rate information. This includes the re-sourcing of coal by Salt River once the McKinley mine is closed, or after current coal purchase agreements expire, if it is anticipated that additional coal would not be purchased from McKinley.

The information sought in response to Request Nos. 2, 3, and 7 is no different in principle than confidential transportation contracts with involved third-party utility customers and other third-party agreements, which the Board has ordered to be produced, subject to the governing protective order,² in the above SAC proceedings. Additionally, the Board recently granted APS/PacifiCorp's petition for subpoena directed to Salt River, seeking very similar discovery information from Salt River, holding that "the information sought by Arizona is relevant, discoverable information related to this proceeding because it concerns grouped traffic that may be considered under the Board's SAC methodology." Decision served Dec. 23, 2003 at 2.

² Such a protective order is in place in this case. See Order served May 12, 1995, as revised.

Given BNSF's statements that it will not oppose a motion to compel these responses, APS/PacifiCorp submit that the same considerations in the above decisions warrant the granting of this Motion to Compel. Any confidentiality concerns that BNSF may have concerning the discovery will be addressed by designation and treatment of the appropriate documents as "Confidential" or "Highly Confidential" under the terms of the governing Protective Order.

CONCLUSION

For the foregoing reasons, APS/PacifiCorp move that the Board overrule BNSF's objections and compel BNSF to produce all documents that are responsive to APS/PacifiCorp's Request Nos. 1, 2, 3, and 7. Given the shortened procedural schedule in this proceeding and the importance of obtaining this information in a timely manner so that it may be utilized in preparing the parties' evidentiary submissions, APS/PacifiCorp respectfully request that the Board expedite its consideration of this Petition.

Respectfully submitted,

ARIZONA PUBLIC SERVICE COMPANY
400 North 5th Street
Phoenix, AZ 85004

PACIFICORP
825 N.E. Multnomah Street
Portland, OR 97232

OF COUNSEL:

Slover & Loftus
1224 Seventeenth Street, N.W.
Washington, D.C. 20036

Dated: December 30, 2003

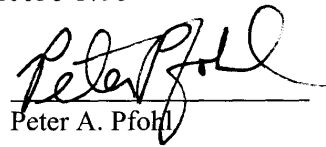
By: C. Michael Loftus
Christopher A. Mills
Frank J. Pergolizzi
Peter A. Pfohl 
1224 Seventeenth Street, N.W.
Washington, D.C. 20036
(202) 347-7170

Attorneys for Complainant

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of December, 2003, I served a copy of
the foregoing Motion by hand upon counsel for Defendant, as follows:

Samuel M. Sipe, Jr., Esq.
Linda S. Stein, Esq.
Steptoe & Johnson, L.L.P.
1330 Connecticut Avenue, N.W.
Washington, D.C. 20036-1795


Peter A. Pfohl

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**DEFENDANT'S RESPONSES AND OBJECTIONS
TO COMPLAINANTS' FIRST AND SECOND SET OF REQUESTS
FOR PRODUCTION OF DOCUMENTS ON REOPENING**

Defendant The Burlington Northern and Santa Fe Railway Company (“BNSF”) hereby responds and objects to the First and Second Set of Requests for Production of Documents served by Complainants Arizona Public Service Company and PacifiCorp on November 25 and 26, 2003 (collectively “APS/PacifiCorp’s Discovery Requests”).

I.

GENERAL OBJECTIONS AND OBJECTIONS TO DEFINITIONS AND INSTRUCTIONS

1. BNSF objects to APS/PacifiCorp's Discovery Requests to the extent that they are overly broad and unduly burdensome.
2. BNSF objects to APS/PacifiCorp'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 the protective order entered in the case.

3. BNSF objects to APS/PacifiCorp'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 APS/PacifiCorp'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 APS/PacifiCorp'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 APS/PacifiCorp, where such documents or information could be developed, if at all, only through a special study.
6. BNSF objects to APS/PacifiCorp'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.
7. 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 requires the 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.

8. BNSF objects to the definition of "document(s)" 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.
9. 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.
10. BNSF objects to Instruction No. 5 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.
11. BNSF objects to Instruction No. 6 on grounds that it is overly broad and unduly burdensome to the extent it requires BNSF to identify each discovery request to which a document may be partially responsive.

II.

RESPONSES AND OBJECTIONS TO REQUESTS FOR PRODUCTION OF DOCUMENTS

Request No. 1:

Please produce all currently effective, or prospectively effective, transportation contracts, including amendments and supplements thereto and appendices or attachments (or letters of understanding), and all common carrier pricing authorities or other documents containing common carrier rate and service terms that BNSF has entered into, agreed to, or provided with respect to the transportation of coal from any origin to (a) Cholla and (b) Coronado.

BNSF Response: BNSF 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 this objection, BNSF states that it would not oppose a motion to compel the production of responsive materials and will confer with APS/PacifiCorp

about the timing of such motion. BNSF further states that it will produce or make available responsive materials that do not violate contractual obligations to third parties.

Request No. 2:

Please produce all forecasts or projections prepared from January 1, 2000 through the present by or for BNSF (or in BNSF's possession), of future (i.e., 2003 or later) traffic volumes, revenues, and/or rates for coal moving over any portion of BNSF's system for delivery to Coronado and/or Cholla. Documents responsive to this request include, but are not limited to, traffic projections prepared in connection with engineering studies or authorizations for expenditures or marketing studies or operating studies or operating expense budgets or capital budgets or mergers with or acquisitions of other carriers, including but not limited to, the "Long Range Forecasts," "Annual Plan," and "Short-Term Plan" forecasts or projections identified in BNSF's March 10, 2003 response to Interrogatory No. 12, as served in Docket No. 42077 and this docket.

BNSF Response: BNSF objects to this Request on grounds 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. BNSF further objects to this Request on grounds that it would require production of materials related to Coronado which, if produced, could result in the violation of contractual obligations to third parties. Subject to these objections, BNSF states that it will produce responsive materials related to Cholla to the extent they are reasonably available. Also subject to these objections, BNSF further states that it would not oppose a motion to compel the production of responsive materials related to Coronado to the extent they are reasonably available.

Request No. 3:

Please produce all documents referring or relating to the potential shut down of the McKinley Mine, including but not limited to documents showing or constituting:

- a. The amount of coal to be produced at the McKinley Mine that will move to Cholla for each year 2004-2013;
- b. The amount of coal to be produced at the McKinley Mine that will move to Coronado for each year 2004-2013;
- c. The amount of coal to be produced at each mine origin other than the McKinley Mine that will move to Cholla for each year 2004-2013;

- d. The amount of coal to be produced at each mine origin other than the McKinley Mine that will move to Coronado for each year 2004-2013;
- e. The transportation route(s) expected to be utilized for movements of coal from each mine origin specified in subparts (c) and (d);
- f. Forecasts, projections, or estimates of the transportation rates or revenues for the movement of coal from the McKinley Mine to Cholla for each year 2004-2013;
- g. Forecasts, projections, or estimates of the transportation rates or revenues for the movement of coal from the McKinley Mine to Coronado for each year 2004-2013;
- h. Forecasts, projections, or estimates of the transportation rates or revenues for the movement of coal from each mine origin as specified in response to subpart (c) to Cholla for each year 2004-2013;
- i. Forecasts, projections, or estimates of the transportation rates or revenues for the movement of coal from each mine origin as specified in response to subpart (d) to Coronado for each year 2004-2013;
- j. The impacts, if any, of the shutdown of the McKinley Mine on expected coal burns at Cholla and Coronado;
- k. The impacts of the shutdown of the McKinley Mine on expected coal transportation revenues to the BNSF on coal deliveries to Cholla and Coronado;
- l. Communications between BNSF and APS/PacifiCorp relating to the potential shutdown of the McKinley Mine, the estimated timing of such shutdown, and/or its potential impacts on coal burns and deliveries at Cholla;
- m. Communications between BNSF and Salt River relating to the potential shutdown of the McKinley Mine, the estimated timing of such shutdown, and/or its potential impacts on coal burns and deliveries at Coronado; and
- n. Communications between BNSF and P&M relating to the potential shutdown of the McKinley Mine by P&M, the estimated timing of such shutdown, and its potential impacts on coal burns and deliveries from McKinley to either Cholla or Coronado or any other customers.

BNSF Response: BNSF objects to this Request on the grounds 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. BNSF further objects to subparts (b), (d), (g), (i), (j), (k), (m) and (n) of this Request on grounds that they would require production of materials related to Coronado which, if produced, could result in the violation of contractual obligations to third parties. Subject to these objections, BNSF states that it will produce responsive materials related to Cholla and the McKinley Mine to the extent they are reasonably available. Also subject to these objections, BNSF states that it would not oppose a motion to

compel the production of responsive materials related to Coronado to the extent such materials are reasonably available.

Request No. 4:

Please provide all documents prepared from January 1, 2000 to present (whether or not prepared by BNSF) relating to any contractual negotiations between BNSF and any party pertaining to coal transportation movements during the period 2004-2013 to (a) Cholla and (b) Coronado.

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 documents other than common carrier pricing authorities or executed contracts between BNSF and any party pertaining to coal transportation movements during the period 2004-2013 to Cholla and/or Coronado. Subject to this objection, BNSF states that it will produce all common carrier pricing authorities and transportation contracts responsive to Request for Production No. 1.

Request No. 5:

Please produce all inflation and/or rail cost adjustment estimates, projections, or forecasts, (whether or not prepared by BNSF) for each year or partial year January 1, 2000 to the present, including, but not limited to:

- a. Inflation indexes, including, but not limited to, the Rail Cost Adjustment Factor, unadjusted for productivity, and the Rail Cost Adjustment Factor, adjusted for productivity;
- b. The cost of acquiring capital; and
- c. Operating expenses and 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, unduly burdensome, and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence to the extent it requests all inflation and/or rail cost adjustment estimates, projections or forecasts. Subject to this objection, BNSF will produce or make available official estimates responsive to subpart (b) of this Request to the extent they are

reasonably available. As to subparts (a) and (c) of this Request, BNSF states that it does not generate responsive inflation forecasts internally, but instead uses forecasts it purchases from Global Insight (formerly DRI-WEFA). Because those materials are subject to copyright and are available to APS/PacifiCorp directly from Global Insight, BNSF objects to their production.

Request No. 6:

Please produce for each year or partial year from January 1, 1994 to the present, by mine origin: (a) the coal tonnages delivered by BNSF to Cholla and (b) the revenues associated with all deliveries identified in response to subpart (a).

BNSF Response: BNSF will produce or make available documents sufficient to show the requested information.

Request No. 7:

Please produce for each year or partial year from January 1, 1994 to the present, by mine origin: (a) the coal tonnages delivered by BNSF to Coronado and (b) the revenues associated with all deliveries identified in response to subpart (a).

BNSF Response: BNSF objects to this Request on grounds that it would require production of materials related to Coronado which, if produced, could result in the violation of contractual obligations to third parties. Subject to this objection, BNSF states that it would not oppose a motion to compel the production of documents sufficient to show the requested information.

Request No. 8:

Please produce any documents prepared (whether or not prepared by BNSF) following the issuance of the Board's decision in Arizona Public Service Company and PacifiCorp v. The Atchison Topeka and Santa Fe Railway Company, 2 S.T.B. 367 (1997), relating to the negotiations between BNSF and APS/PacifiCorp that ultimately resulted in the parties' execution of a Confidential Memorandum of Understanding, dated January 26, 1999, and thereafter Rail Transportation Agreement BNSF-C-12203, in March 1999, governing coal transportation service to Cholla. Such documents shall include, but not be limited to, any documents relating to internal BNSF consideration of any possible aspects, components, provisions, or terms of each of these agreements.

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

Request No. 9:

Please produce any documents prepared (whether or not prepared by BNSF) following the issuance of the Board's decision in Arizona Public Service Company and PacifiCorp v. The Atchison, Topeka and Santa Fe Railway Company, 2 S.T.B. 367 (1997), relating to any analysis, study, or review reflecting the costs, revenues, rates, or profits pertaining to the movement of coal and/or reflecting any comparison of the revenues, rates, or profits pertaining to the movement of coal, between each of the mine origins covered in Rail Transportation Agreement BNSF-C-12203, executed in March 1999 (i.e., McKinley Mine; York Canyon Mine, NM; Lee Ranch Mine, NM; Decker or Spring Creek Mines, MT; or Wyoming Powder River Basin Coal mines listed in Attachment A to the agreement) and Cholla.

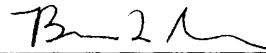
BNSF Response: BNSF objects to this Request on grounds that it is vague. BNSF further objects to this Request on grounds that it is overly broad and unduly burdensome, it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and seeks information that is beyond the scope of permissible discovery. *See, e.g., N. States Power Co. v. Union Pac. R.R. Co.*, STB Docket No. 42059, slip op. at 8-9 (served May 24, 2002).

Request No. 10:

Please produce any documents prepared (whether or not prepared by BNSF) following the issuance of the Board's decision in Arizona Public Service Company and PacifiCorp v. The Atchison, Topeka and Santa Fe Railway Company, 2 S.T.B. 367 (1997), relating to any annual volume requirements considered by BNSF for the movement of coal between the McKinley Mine and Cholla and/or between mine origins other than the McKinley Mine and Cholla. Such documents shall include, but not be limited to, BNSF's internal consideration of possible annual volume requirements to be included in conjunction with: BNSF's common carrier transportation of coal under the STB's 1997 rate prescription order; the letter from David S. Quilici of BNSF to Marc Sauvageau of APS dated September 26, 1997; Confidential Memorandum of Understanding, dated January 26, 1999; Rail Transportation Agreement BNSF-C- 12203, executed in March 1999; and/or Common Carrier Pricing Authority BNSF 90069, issued by BNSF on December 26, 2002.

BNSF Response: BNSF objects to this Request on the grounds 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. Subject to this objection, BNSF states that it will produce responsive materials to the extent they are reasonably available.

Respectfully submitted,



Samuel M. Sipe, Jr.
Anthony J. LaRocca
Linda S. Stein
Brooke L. Gaede
Steptoe & Johnson LLP
1330 Connecticut Avenue, N.W.
Washington, DC 20036-1795

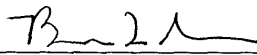
DATED: December 19, 2003

ATTORNEYS FOR THE BURLINGTON
NORTHERN AND SANTA FE RAILWAY
COMPANY

CERTIFICATE OF SERVICE

I hereby certify that this 19th day of December, 2003, I served a copy of The Burlington Northern and Santa Fe Railway Company's Responses and Objections to Complainants' First and Second Set of Requests for Production of Documents on Reopening by hand delivery, as follows:

C. Michael Loftus
Christopher A. Mills
Frank J. Pergolizzi
Peter A. Pfohl
Karen H. Herren
Slover & Loftus
1224 Seventeenth Street, N.W.
Washington, D.C. 20036



Brooke L. Gaede