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January 30, 2004

209991

rdr@sloverandloftus.com

BY HAND

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

ENTERED
Office of Proceedings

JAN 30 2004

Part of
Public Record

Re: Docket No. 42058, Arizona Electric Power Cooperative, Inc. v.
The Burlington Northern and Santa Fe Ry. and Union Pacific R.R.

Dear Secretary Williams:

Enclosed for filing in the above-referenced proceeding, please find an original and sixteen (16) copies of the Motion of Complainant Arizona Electric Power Cooperative, Inc. ("AEPCO") for an Extension of Time for Filing Supplemental Rebuttal Evidence. In addition, we have enclosed three computer diskettes containing electronic versions of this Reply in WordPerfect 9.0 format.

Because this Petition is being filed less than four weeks before Opening Evidence is due under the present schedule, AEPCO requests that the Board give this filing **EXPEDITED CONSIDERATION**.

We have enclosed an additional hard-copy of this Reply to be date-stamped and returned to the bearer of this letter. Thank you for your attention to this matter.

Sincerely,

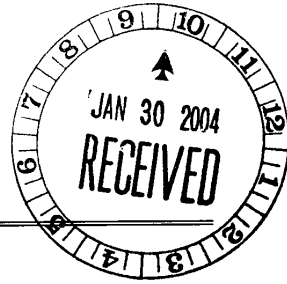
Robert D. Rosenberg

Robert D. Rosenberg

Enclosures

cc: Counsel for Defendants

BEFORE THE
SURFACE TRANSPORTATION BOARD



ARIZONA ELECTRIC POWER
COOPERATIVE, INC.,

Complainant,

v.

THE BURLINGTON NORTHERN AND
SANTA FE RAILWAY COMPANY and
UNION PACIFIC RAILROAD COMPANY,

Defendants.

Docket No. 42058

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**MOTION OF COMPLAINANT ARIZONA ELECTRIC
POWER COOPERATIVE, INC. FOR EXTENSION OF TIME
TO FILE SUPPLEMENTAL REBUTTAL EVIDENCE**

EXPEDITED ACTION REQUESTED

ARIZONA ELECTRIC POWER
COOPERATIVE, INC.

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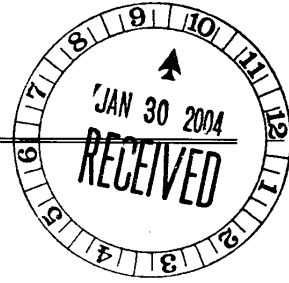
OF COUNSEL:

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1224 Seventeenth St., N.W.
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Dated: January 30, 2004

Attorneys for Complainant

**BEFORE THE
SURFACE TRANSPORTATION BOARD**



ARIZONA ELECTRIC POWER
COOPERATIVE, INC.,

Complainant,

v.

THE BURLINGTON NORTHERN AND
SANTA FE RAILWAY COMPANY and
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Defendants.

Docket No. 42058

**MOTION OF COMPLAINANT ARIZONA ELECTRIC
POWER COOPERATIVE, INC. FOR EXTENSION OF TIME
TO FILE SUPPLEMENTAL REBUTTAL EVIDENCE**

EXPEDITED ACTION REQUESTED

Complainant Arizona Electric Power Cooperative, Inc. ("AEPCO"), hereby respectfully requests an extension of time so that its Supplemental Rebuttal Evidence in the above-captioned proceeding will be due April 2, 2004, rather than February 24, 2004, as presently scheduled. In support of this motion, AEPCO respectfully states as follows.

AEPCO regrets the need to submit this request. AEPCO filed its complaint on December 29, 2000, and has been greatly frustrated and burdened by the ensuing delay in its rate case. AEPCO is thus most reluctant to seek any further extension. However, AEPCO has no responsible alternative under the present circumstances.

The need for the extension arises from the commitments of AEPCO's counsel (Slover & Loftus) and its primary economic consultant (L.E. Peabody & Associates, Inc.) in a number of other pending coal rate cases. In particular, as a result of the extension granted on January 13, 2004, the Opening Evidence in Docket No. 41191, AEP Texas North Company v. BNSF, is now due March 1, 2004, and not January 27, 2004, as originally scheduled. That filing thus now overlaps the period for preparing AEPCO's Supplemental Rebuttal. Additionally, Opening Evidence in Docket No. 41185, Arizona Public Service Company & PacifiCorp v. BNSF, is due February 27, 2004, three days after AEPCO's Supplemental Rebuttal Evidence is presently due. Also, reply evidence in Docket No. 42071, Otter Tail Power Company v. BNSF, is due February 23, 2004.

AEPCO's counsel represents the shipper in the first two cases, and AEPCO is also very dependent on the economic consulting firm (L.E. Peabody & Associates, Inc.) that is heavily involved in all three cases. AEPCO's counsel (and economic consultant) also anticipate a need to conduct a detailed review of the forthcoming decision in Docket No. 42070, Duke Energy Corporation v. CSX Transportation, Inc., where they represent the shipper. Under the circumstances, it is not possible for AEPCO's counsel and consultant to fulfill their responsibilities in the other rate cases, while also fulfilling their responsibilities to AEPCO.

In addition, AEPCO did not anticipate that the Supplemental Reply Evidence that Defendants The Burlington Northern Santa Fe Railway Company and Union Pacific Railroad Company ("BNSF/UP") filed in AEPCO's rate case on January 26, 2004 would be so extensive. For example, Defendants devote 157 pages of narrative to SARR operating costs and 239 pages to SARR road property investment as well as voluminous supporting workpapers. Defendants have also proposed a novel modification to the Board's modified straight-mileage prorate method for determining divisions on cross-over traffic to apply to the SARR's non-coal traffic. And Defendants filed a separate motion to dismiss in addition to their Supplemental Reply Evidence.

Under the circumstances, AEPCO submits that the requested extension is fully appropriate. In particular, except perhaps for the relatively limited evidence on trackage rights, everything that the Defendants have filed could (and, in AEPCO's view, should) have been filed with Defendants original Reply Evidence that was due May 27, 2003 (nearly four months after opening evidence was filed on February 7, 2003). The Board's November 19, 2003 decision gave the Defendants nearly ten weeks to prepare their Supplemental Reply to the Rebuttal Evidence that AEPCO submitted on July 3, 2003, which did not differ materially from the Opening Evidence that AEPCO submitted on February 7, 2003, almost a year before Defendants submitted their Supplemental Reply Evidence. Under the circumstances, and particularly considering the other pending

proceedings, it is appropriate for AEPCO to have nearly ten weeks, instead of a little over four weeks to respond to the Railroads.

AEPCO notes that it requested Defendants' consent to the extension of time, but that Defendants refused to agree to an extension of more than two weeks. While AEPCO thus anticipates that Defendants will oppose this motion, AEPCO believes that good cause exists for granting the requested extension. In particular, Defendants will not be prejudiced since they have been allowed to establish what rates they please, and AEPCO has been forced to pay those rates, during the sustained pendency of the proceeding, which has been greatly protracted by Defendants' repeated motions, rate cancellations, refusal to provide service, discovery objections, etc.

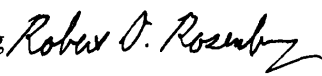
AEPCO further notes that in discussions leading up to and at the technical conference, AEPCO indicated several times its willingness to discuss relaxing the procedural schedule to the extent the Railroads felt burdened. In addition, AEPCO notes that it agreed to the lengthy period (over three months) for the original reply evidence in response to the Defendants' claims that they needed the additional time because of the other rate cases they had pending at the time.

Accordingly, AEPCO respectfully requests that the Board grant the requested extension. AEPCO also requests that the Board act on an expedited basis and that the Defendants state any grounds they may have for opposing the requested extension expeditiously as well.

Respectfully submitted,

ARIZONA ELECTRIC POWER
COOPERATIVE, INC.

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OF COUNSEL:

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Washington, D.C. 20036

Dated: January 30, 2004

Attorneys for Complainant

Certificate of Service

I hereby certify that this 30th day of January 2004, I have caused a copy of the foregoing Response to be served upon counsel for Defendants as follows:

By Hand:

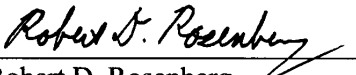
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