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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

Office of Proceedings

SEP 17 2004

COMPLAINANT ARIZONA ELECTRIC POWER COOPERATIVE, INC.'S
POST-EVIDENTIARY BRIEF

REDACTED, PUBLIC VERSION

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Dated: September 16, 2004

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GLOSSARY

ACE	Apache, Cochise & Eastern Railway, the stand-alone railroad proposed by AEPCO
AEI	Automatic equipment identification
AEPCO	Arizona Electric Power Cooperative, Inc.
Apache	AEPCO's Apache Generating Station near Cochise, Arizona
ATSF	The Atchison, Topeka and Santa Fe Railway Company
BN	Burlington Northern Railroad Company
BNSF	The Burlington Northern and Santa Fe Railway Company
CA	Constructive allowance
CY	Cubic yard
DCF	Discounted cash flow
Defendants	BNSF and UP
EOTD	End-of-train device
G&A	General and administrative
I&I	Inter- and intra-train
IT	Information technology
JT	Jurisdictional Threshold
MOW	Maintenance-of-way
MSP	Modified straight-mileage prorate
R/VC	Revenue-to-variable cost ratio
Railroads	BNSF and UP
RCAF-A	Rail cost adjustment factor, adjusted for productivity

RCAF-U	Rail cost adjustment factor, unadjusted for productivity
SAC	Stand-alone cost
SARR	Stand-alone railroad
SEM	Switch engine minutes
SP	Southern Pacific Transportation Company
SWRR	Southwestern Railroad Company, Inc.
SWRR Lease	Lease entered into between SWRR and BNSF
T&O	Traffic and operating
TTX	TTX Company, f/k/a Trailer Train Company
UP	Union Pacific Railroad Company
URCS	Uniform rail costing system
VC	Variable cost

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	)	

REDACTED, PUBLIC VERSION

In this proceeding, Complainant Arizona Electric Power Cooperative, Inc. (“AEPCO”), challenges common carrier rates that Defendants The Burlington Northern and Santa Fe Railway Company (“BNSF”) and Union Pacific Railroad Company (“UP”) (jointly, “BNSF/UP” or “Railroads”) established for transporting coal in unit trains from the McKinley Mine and the Lee Ranch Mine in New Mexico to AEPCO’s Apache Generating Station (“Apache”) near Cochise, Arizona.

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Because the traffic is so captive and profitable to the Defendants, they have utilized a range of motions and other procedural tactics to delay AEPCO's rate case, the complaint for which was filed on December 29, 2000. AEPCO's rate case has thus been pending for over three and a half years, over double the 16-month period that should apply.

The briefing procedures themselves are also defective. Specifically, the Board has ordered simultaneous briefing, even though AEPCO's rebuttal filings have already responded in full to all contentions that the Railroads have presented, and the Railroads have made clear that they intend to present new arguments for the first time in their brief. AEPCO's brief is submitted under protest, with full reservation of all rights. Subject to that caveat, AEPCO's brief addresses significant issues pertaining to the jurisdictional threshold ("JT") and stand-alone costs ("SAC"). AEPCO's brief does not seek to address every issue, but instead focuses on matters that are significant to the ultimate outcome and/or involve substantive dispute. Silence as to other matters should not be construed as acquiescence in the Railroads' position.

II. VARIABLE COSTS/JT

AEPCO Reb. at II-A-78 and BNSF/UP Reb. at II-2 to 3 depict the parties' positions on variable costs ("VC") and the JT for 1Q01 through 1Q03. For prospective purposes, the most significant figure is the { } per ton discrepancy in the VC for 1Q03 Lee Ranch movements in high-capacity cars. AEPCO Reb. at II-A-78. Table 1 on Exhibit A (p. 29, infra) breaks down the parties' differences, based on AEPCO Reb. Ex. II-A-31, p. 14 and Reb. electronic workpapers, BNSF-AEPCO-REBUTTAL.123 and UP-AEPCO-Rebuttal.123.

A. The Railroads' Impermissible Mark-Up of the BNSF/SWRR Division

Starting 4Q01, the largest area of VC/JT dispute, covering { } per ton, involves the lease (the "Lease") BNSF entered into with Southwestern Railroad Company, Inc. ("SWRR"), on September 7, 2001, just over eight months after AEPCO filed its complaint, for the 54-mile line between Rincon and Deming, NM. Under the Lease, BNSF pays SWRR an initial \$ { } per carload of issue traffic. BNSF/UP seek to treat the payment as part of the VC

and thereby extract an 80% mark-up -- an additional \$ { } per ton -- including \$ { } per ton in overheads at the JT level. AEPCO strongly disputes Defendants' effort to extract any mark-up on an amount that confers full compensation on SWRR, and urges that the fee be treated instead as a revenue offset and included in the JT without any additional mark-up. AEPCO Reb. at II-A-10 to 27.

BNSF/UP Reb. at II-8 to 10 claims that the payment is a "handling charge" under § 22(b) of the Lease, that SWRR is not a common carrier for the issue traffic, and that the charges should be included in the VC under No. 42022, FMC Wyoming Corp. v. Union Pacific R.R. (STB served May 12, 2000) ("FMC") at 67-68 & n.111 (citing earlier decisions also noted in BNSF/UP Reply at II-6 n.12). Defendants' arguments fail on all grounds.

While § 22(b) of the Lease does use the term "handling charge," § 22 is the only such provision cited by the Railroads, {

}.¹ {

}

In contrast, the remainder of the Lease demonstrates that {

} One need only

consider that:

¹{

}, one would still need to look beyond the text to verify the nature of the payment given BNSF's ability to control the language of the agreement, especially since SWRR had no incentive to insist on more precise language. That said, as between AEPCO and BNSF, any ambiguities in the Lease should be construed against BNSF as a drafter of the Lease, particularly considering that the Lease was entered into while the litigation was pending.

{

}

One must then conclude that: {

} That SWRR is not named in the

Railroads' common carrier publication for the issue traffic is irrelevant {

}. See The Society

of the Plastics Industry, Inc. v. I.C.C., 955 F.2d 722, 730 (D.C. Cir. 1992) (noting prior concurrence). The claim in BNSF/UP Reb. at II-10 that a division must be stated as a percentage is nonsense. "In many cases divisions between carriers are in the form of specific amounts per unit." In the Matter of the Applications of Carriers in Official, Southern, and Western Classification Territories for Authority to Increase Rates, 58 I.C.C. 220, 254 (1920); No. 42098, The Society of the Plastics Industry, Inc. v. Consolidated Rail Corp. (ICC served Oct. 22, 1990)

(finding fixed independent through rate factors, which are equivalent to SWRR's fee, to be a "division" of a joint rate), aff'd, 955 F.2d 722 (1992).

Only the division/revenue offset treatment makes sense in the larger context. SWRR's division for the issue traffic constitutes {

}, neither SWRR nor BNSF would have entered into the Lease unless each stood to benefit, and no underlying economic rationale supports allowing BNSF and UP to extract a mark-up on the division that would flow to them and not SWRR. Allowing the Defendants to extract a mark-up would also create an incentive to game such arrangements. Assuring carriers of an 80% mark-up on third-party payments would induce them to increase their margins simply by increasing their payments to third parties. Such invitations to gaming are to be discouraged.

The context of the SWRR division differs sharply in key respects from those in FMC and the cases cited therein on which the Railroads base their position.² First, FMC and the other cases involved what were plainly switching services. In contrast, the SWRR provides line-haul, not merely terminal switching services, for a substantial portion of the haul, and FMC and the other authorities are inapplicable for that reason alone.³ In FMC, both the carrier and the Board stressed that UP was "ultimately responsible" for the switching, even if UP did not serve the terminals. In contrast, {

}

Moreover, the switching arrangements in the other cases were long-standing and established entirely independent of rate case or other captivity considerations. No. 39060, Pet. of the Denver & R.G.W. R.R. & Salt Lake Garfield & Western Ry. for Review of a Decision of the

²The treatment of the issue in FMC and other cases is quite brief and less than convincing, but AEPCO will presume its validity for present purposes.

³Excluding loop tracks, SWRR's 54 miles correspond to 13.9% of the total BNSF/UP joint haul of 389.7 miles from Lee Ranch and 37.3% of the 145.58 miles handled by UP.

Public Service Comm'n of Utah Pursuant to 49 U.S.C. 11501 (ICC served March 2, 1983), at 4 (finding the switching carrier (UP) was “not a carrier controlled by the railroads for whom it performs switching services,” and distinguishing pro-shipper precedents as involving “a switching entity operating primarily for the benefit of its owners who share in the income”); Docket No. 39814, Pielet Bros. Trading Co. v. Chicago & North Western (ICC served June 25, 1987) (noting that “Pielet does not challenge the ALJ’s statement that there is no evidence that would show the line-haul carriers influenced the level of IHB’s switching charges”).⁴

In contrast, BNSF entered into the Lease only after this litigation started, which alone establishes the need to scrutinize the payments. Also, BNSF’s only plausible purpose was, as noted supra, to enhance its margins, and BNSF was thus in a position to influence strongly, if not dictate, the SWRR’s charges.⁵ Accordingly, the elements required to treat the payments as independent third-party costs are not present, as all the available evidence demonstrates that a switching charge treatment would distort the underlying economies to BNSF/UP’s advantage.

AEPCO agrees that carriers should be encouraged to make their operations more efficient by contracting with third parties. However, an approach that fails to reflect the economies in such voluntary arrangements, and especially one that reflects a higher VC/JT in the face of such cost-saving arrangements, is inherently arbitrary. In that regard, AEPCO’s Rebuttal

⁴The No. 39814 Pielet decision was reversed on other grounds in Atchison, T.& S.F. Ry. Co. v. I.C.C., 851 F.2d 1432 (D.C. Cir. 1988). The No. 39814 decision is not the Pielet decision in No. 39756 served Aug. 11, 1987 cited by BNSF/UP and in FMC, but the ICC found the two cases were “virtually identical” in No. 37956, Pielet Bros v. C&NW (ICC served Feb. 17, 1989). In any event, Pielet and Denver and Rio Grande involved reciprocal switching arrangements where the switching rates are inherently mutual; the BNSF/SWRR arrangement is, in contrast, a unilateral one that does not embody any such mutuality. Finally, the concern addressed in the No. 39756 Pielet decision (“We will not require carriers that have indisputably incurred expenses to go entirely uncompensated.”) is satisfied by the revenue offset approach as the defending carrier(s) will recoup the division on a dollar-for-dollar basis.

⁵If BNSF’s payments were too low, SWRR’s option was to not enter into the Lease at all, and BNSF would have continued operating the line itself.

Narrative at II-A-19 to 22 demonstrated that the Railroads' cost treatment of the Lease payment served to increase BNSF's VC as well as the JT. Specifically, AEPCO recalculated the claimed variable costs in the Railroads' Reply for 3Q01 (the last quarter before the Lease) using the same adjustments that Defendants used in their Reply to reflect the Lease in 4Q01, i.e., reducing BNSF's T&O miles and associated crew wages to reflect the SWRR and treating the SWRR division as a variable cost. (No such "before and after" contrast was feasible in FMC and other cited authorities.) AEPCO's analysis showed that adopting the Railroads' adjustments for the Lease increased the resulting VC for 3Q01 by \$ { } per ton and the JT by \$ { } per ton.

The "with/without SWRR" analysis confirms that the Railroads' costing approach transforms an arrangement intended to reduce costs into a higher VC and even more inflated JT. Such an outcome is plainly irrational and has no place in a sound costing system. Accordingly, the Board should treat the SWRR payment as the division it is in both name and substance and apply it as a revenue offset, rather than treat it as a "handling charge" that enables BNSF/UP to extract an additional mark-up on an arrangement effectuated to lower their costs.

B. The Double-Count of BNSF's Expenses on the SWRR's Segment

Besides the mark-up on the SWRR division itself, BNSF/UP seek a double-count of various costs that BNSF allegedly incurs for operating over the SWRR's line, even though § 2(a) of the Lease makes clear that SWRR is responsible for { } for the line, and § 2(b) makes equally clear that SWRR is { }." As explained by AEPCO in its Reply at II-A-7 to 8, 22 to 23, and 25 to 28, and its Rebuttal at II-A-22 to 27, BNSF/UP should not be able to recoup from AEPCO operating costs {

} The net VC effect, spread over a number of cost areas, is { } per ton for the 1Q03 Lee Ranch movements in high-capacity cars.

Defendants recognize that § 2(b) of the Lease “provides that SWRR is responsible for roadway property, maintenance-of-way costs, and crew costs between Rincon and Deming” and thus exclude those items from BNSF’s claimed costs. BNSF/UP Reb. at II-10.⁶ Defendants otherwise claim that § 16 “expressly provides that {

},” and the Lease also {

},” and thus does not “{ },” such that there is no basis for finding “that such costs are ‘subsumed’” in the SWRR’s division. *Id.* at II-10 to 11.

BNSF/UP’s construction of the Lease errs in all respects. First, § 2(b) states that { }⁷ Second, the issue traffic moves in shipper-supplied cars, so per diem charges do not apply. Even if per diem charges did apply, § 16 does not confer the total exclusion that BNSF/UP claim, but instead {

}. The SWRR per diem car costs assumed by BNSF are thus subsumed within the division arrangement.

BNSF/UP’s claim that SWRR has free use of the BNSF locomotives is also erroneous. Section 2(g) of the Lease, ignored by Defendants, requires SWRR to { } and imposes a {

⁶AEPCO similarly excluded the T&O miles and related crew wages in its restatement of BNSF/UP’s variable costs of the Deming-Rincon variable costs for 3Q01.

⁷The provision’s specific treatment of some costs serves to establish the predicate for the statement later in {

}

}. { } SWRR's use of the locomotives is thus subsumed within the division and additional charges.

The Lease thus defines SWRR's service obligation in terms of both time { } . These are the key drivers of such cost items as {

}, and they are logically subsumed within the division and/or the { }. Even if BNSF initially pays for such items (which Defendants have not established) for SWRR's benefit, SWRR effectively pays BNSF back through its division and { }, and BNSF should not recoup the costs twice, once from SWRR and another time from AEPCO.

Defendants have not shown that any costs for the two remaining items { } arose on the Rincon-Deming segment. Even if they did, Defendants have not established any reason why SWRR would be excused from liability for such costs or why such factors would not have been factored into the division. Indeed, it is foolish to think that BNSF would have agreed to a division with a short line carrier where the short line carrier makes use of BNSF locomotives, EOTD, and fuel without taking into account how much of those resources would be consumed by the short line, especially when the lease imposes { } on the use of those resources. One can only conclude that (1) SWRR's division subsumes consideration of factors for which BNSF/UP seek double recovery, and (2) SWRR's services under the Lease leave BNSF better off than if BNSF operated the segment itself (or else BNSF would still be doing so). As BNSF receives sufficient compensation for this segment from SWRR, BNSF/UP are not entitled to engage in a double recovery by including these costs in their VC.

C. Locomotive Capital Costs

The parties' dispute over locomotive capital costs encompasses: (1) locomotive spare margin; (2) cycle times; (3) number; and (4) acquisition (i.e., purchase and lease) costs. See, e.g., AEPCO Reb. Exh. II-A-31, p. 6.

1. Locomotive Spare Margin

Until the recent decision in Docket No. 42057, Public Service Co. of Co. d/b/a Xcel Energy v. The Burlington N. and S.F. Ry. Co. (STB served June 8, 2004) ("Pawnee"), the Board and ICC had consistently rejected BNSF's efforts to claim an inflated spare margin based on excess locomotives in various pools. AEPCO Reply at II-A-94-99. Pawnee at 142 deviated from that established precedent, but only because the shipper relied on availability guarantees in "a contract that was not in effect during the period for which the variable costs are being calculated." No such infirmity attaches to AEPCO's calculations, which thus constitute the best evidence of record.

Defendants' calculations {
cannot be justified. Defendants admit they rely on pools located {
} from the AEPCO route (BNSF/UP Op. at II-
40). The most prominent pool {
} Defendants'
calculations thus fail to meet the standard the ICC established nearly twenty years ago in Arkansas Power & Light Co. v. Burlington Northern R.R., 3 I.C.C.2d 757, 792-93 (1987), which explained that BN's approach of having "the spare margin ... include all locomotives that are not in active service" yielded "distortions" as "individual coal movements having widely varying characteristics are nevertheless charged with coal pool average non-cycle experience expressed on a time basis only." The ICC further explained:

In order to justify applying the BN pool studies to individual movements, at a minimum, the count of non-cycle hours should be allocated and applied on at least three separate bases: (1) per

locomotive unit-mile (distance related), (2) per locomotive unit-hour (time related) and (3) per locomotive unit dispatched (neither distance nor time related).

Id. Defendants' spare margin analysis relies on exactly what the ICC prohibited. As BNSF/UP have not even linked their calculations to unit train coal movements, their analysis cannot possibly be accepted. It would be far more appropriate to use system-average figures (no more than 10%) if AEPCO's preferred approach is not accepted.

2. Cycle Times

The SWRR Lease also affects locomotive cycle times, as Defendants seek to double-count hours attributable to the SWRR. For 1Q01-3Q01, before the Lease, Defendants' claimed cycle times for Lee Ranch exceed AEPCO's by only 0.8 hours, 0.9 hours, and 2.6 hours. AEPCO Reb. at II-A-40. For 4Q01-1Q03, Defendants' claimed cycle times for Lee Ranch average { } hours, compared to AEPCO's { } hours. The disparity arises from the treatment of "dwell time" of trains at the Deming SWRR/UP interchange. Comparison of BNSF and UP records for the period between January 1, 2001, and September 6, 2001, the only data available to AEPCO, showed that at Deming, each loaded train sat an average of { } hours and each empty train sat an average of { } hours, yielding a total average dwell time of { } hours, a major portion { } of the BNSF/UP total average cycle time of { } hours. AEPCO Reply at II-A-25 to 26.⁸

Starting 4Q01, AEPCO excluded the average dwell time for empty trains at Deming under the general principle that the receiving carrier bears responsibility for a train after delivery. E.g., Docket No. 42078, Norfolk S. Ry. – Pet. for Decl. Order – Interchange with Reading Blue Mountain & N. R.R. (STB served April 29, 2003), at 4-5. Since, as shown supra, the costs associated with the SWRR's operations are already subsumed within its division, including those hours in the locomotive cycle time calculation would be a double-count, {

⁸After SWRR became involved, AEPCO received no data as to when SWRR took and relinquished possession of the trains at Deming and Rincon.

} BNSF should not receive a duplicative recovery from AEPCO for the reasons stated supra. While the same logic supports excluding dwell time for loaded trains at the BNSF-to-SWRR interchange at Rincon, AEPCO received no data on the length of that dwell time.

3. Number of Locomotives

The parties dispute the size of the locomotive consist for the UP segment of the movement. AEPCO utilized UP's own records for UP's portion of the movement, whereas Defendants seek to rely solely on BNSF's data for the UP as well as BNSF segments. BNSF/UP Reb. at II-82-83 claims that AEPCO's approach "unnecessarily complicated the costing process" and that "UP's data contain obvious errors" that "reflect failures of UP's readers or software to record or properly identify all of the BNSF locomotives moving past a reader."

Defendants' claim that AEPCO's approach is "unnecessarily complicated" is makeweight as accuracy often entails additional effort. Defendants' claim that UP's records are too erroneous to be relied upon is also flawed as Defendants present no basis for finding that BNSF's records are any more accurate than UP's. Mr. Salzman's claim that "UP does not add or remove locomotives while AEPCO trains are on the UP portion of the route" (BNSF/UP Reb. at II-82) is amply rebutted by the fact that {

} (AEPCO Reb. at II-A-37 to 38). Also, while BNSF/UP allege that UP's data is flawed because of failures of UP's AEI software readers (BNSF/UP Reb. at II-82), there is no reason to think BNSF's data is immune from such problems. AEPCO further explained that it addressed claimed defects by eliminating UP records for trains that are incomplete movements or show zero locomotives for

the UP portion of any segment (AEPCO Reb. at II-A-39). As modified, AEPCO's calculations constitute the best evidence of record.

4. Locomotive Lease Costs

The Defendants calculated locomotive lease costs by "normalizing" their lease payments over the life of their various leases, directly violating Board precedent, including most recently Pawnee at 142.

D. Road Property Investment Return and Depreciation Costs

AEPCO and Defendants both used system-average costs for road property return and depreciation for the BNSF portion of the movement, but AEPCO used movement-specific data for the UP portion. AEPCO Reb. at II-A-57 to 59; BNSF/UP Op. at II-33 to 34. The Board has frequently expressed its preference for movement-specific cost calculations where supported by "reliable" evidence. See, e.g., No. 42056, Texas Mun. Power Agency v. The Burlington N.&S.F. Ry., (STB served March 24 2003) ("TMPA"), at 41.

BNSF/UP Reply at II-39 n.67 criticized AEPCO for using a running miles application of the SP acquisition premium that AEPCO had calculated based on total track miles. AEPCO Reb. at II-A-59 accepted this criticism and allocated the SP premium based on SP's total track miles along the AEPCO route. As modified, AEPCO's road property cost calculations constitute the best evidence of record.

E. Locomotive Fuel

AEPCO developed locomotive fuel costs relying in part on a 1985 fuel study that used direct observation to measure locomotive fuel consumption for trains transporting coal between the Mentmore Mine (a now-closed mine that was located on the Defiance Spur about ten miles south of McKinley) and Apache. The study showed that the AEPCO movement consumed approximately 72% of the then-current system average figure of the carriers serving AEPCO (i.e., ATSF and SP). AEPCO then applied the 72% figure to the Defendants' current system average fuel consumption to yield a current movement-specific figure.

AEPCO's relationship-based approach incorporates changes in system-average fuel consumption between 1985 and the present, while preserving the distinctions between the movement-specific costs and system average costs that arise from the topography and route of the issue traffic (which have not changed) and the economies inherent in unit coal train service as opposed to system-average traffic (which also have not changed). AEPCO's Reb. at II-A-59 to 64 further demonstrated that the results of its fuel calculation were entirely consistent with statements by the Defendants and by locomotive manufacturers regarding improvements in fuel efficiency over time. Specifically, AEPCO recounted BNSF's January 22, 1998 statement that "Railroad fuel efficiency has increased 61 percent since 1980" ("BNSF Today," Jan. 22, 1998, included as AEPCO Rebuttal electronic workpaper file 'Fuel efficiency.pdf."), and statements from "trainweb.org" indicating that AC units, such as the C44-9Ws normally used in AEPCO's service "are more fuel efficient than DC locomotives," such as the SD40-2's used in the 1985 study because "they produce more TE [tractive effort] per horsepower than a DC unit." AEPCO Rebuttal electronic workpaper file "Fuel efficiency.pdf." As Defendants did not produce any direct evidence of any errors in AEPCO's approach, and as AEPCO's evidence employs the only movement-specific data, it must be accepted as the best evidence of record.

F. Switching

The parties dispute the number of switching minutes (SEMs). AEPCO calculates an average of { } SEMs by yard locomotives and { } SEMs by road locomotives (in non-yard locations) based on BNSF's train/car movement data, whereas Defendants claim { } minutes and { } minutes, respectively, for a total of { } per train. AEPCO Reb. at II-A-43 to 50 and electronic workpaper "Rebuttal Switching.123;" BNSF/UP Op. at II-30 to 32.

Defendants' position rests on the "operating testimony" of BNSF's Mr. Ellis and UP's Mr. Salzman (BNSF/UP Op. at II-30 to 31) and no hard evidence. Such testimony "based solely on opinions of ... witnesses" and unsupported by "empirical observations for switching

bad-order cars” or other tangible evidence was rejected in TMPA at 45-46. The Railroads’ evidence simply lacks the documentary support that the Board requires.

Defendants also employ highly flawed assumptions that contradict available data; correcting these assumptions to conform to that data results in substantially lower SEMs. For example, AEPCO showed that the Defendants estimated yard SEMs by assuming cars are always handled individually, whereas their records indicate that an average of {

} minutes. Defendants’ estimate of yard SEMs must thus be reduced from { } SEMs per train. AEPCO Reb. at II-A-45 to 47. Defendants estimate of { } minutes for non-yard SEMs at Apache ignores the fact that their own train movement data shows that no switching occurred at Apache for { }, respectively. Id. at 47. This adjustment reduces the Defendants’ Apache figure to { } SEMs. AEPCO also demonstrated that the { } of non-yard switching that the Defendants seek to include for switching performed by Tucson-Lordsburg local trains is entirely without any documentary foundation and must be rejected in its entirety. Id. at II-A-48. Accordingly, even if Defendants met the threshold of acceptability, the appropriate average SEMs could not exceed (a) { } SEMs for yard switching at Belen, Gallup, or Lordsburg, (b) { } SEMs for non-yard switching at Deming, and (c) { } minutes of non-yard SEMs at Apache, or a total of { } minutes, which is the figure that AEPCO calculated directly from Defendants’ data.

III. STAND-ALONE COSTS

Space does not allow AEPCO to address all material SAC issues, nor should AEPCO need to given the comprehensive nature of AEPCO’s Supplemental Rebuttal. Nor can AEPCO anticipate what Defendants will offer in their brief. Subject to these caveats, AEPCO will address some of the more material SAC issues and respond to the Pawnee decision utilizing the Board’s organizational format. Table 2 on Exhibit B (p. 30, infra) quantifies the parties’ differences on significant SAC issues that are addressed in this brief.

A. III-A Traffic Group Issues

Divisions on non-coal cross-over traffic comprise the largest dispute on traffic group matters. Defendants seek large enhancements to their MSP (Modified Straight-mileage Prorate) cost-based divisions as residual incumbents based on alleged terminal and switching costs. Even assuming that divisions are properly based on cost as opposed to commercial factors, Defendants have failed to provide a sufficient basis for their claims. AEPCO Supp. Reb. at III-A-22 to 60. In particular, Defendants' claims, with scant exception, are not premised on any of the cost data that they must routinely collect in the ordinary course of business.⁹

Instead, for intermodal traffic, the SARR's largest revenue source, Defendants rely on the largely undocumented views of a single expert, whose calculations, to the extent they can even be traced, are severely flawed. Defendants' intermodal terminal/line-haul cost comparison is especially defective as it compares apples (total terminal costs) to oranges (a discounted surrogate for variable line-haul costs) for idealized movements that do not conform to the SAC traffic group. Defendants' "Clarification" acknowledges the defective comparison and proposes a "simple adjustment," but, as explained in AEPCO's separate Reply, their URCS fix is fundamentally inconsistent with the rest of Defendants' costing approach that rejected URCS. Defendants cannot have it both ways.

Defendants' Clarification also indicated that their brief would present some defense of their use of TTX rates for repositioning empty cars and containers instead of an URCS or other analysis of actual line-haul costs. The Board cannot reasonably expect AEPCO to respond to claims that have not been presented. However, if Defendants rely on a terminal/line-

⁹Defendants' claims that intermodal and other exempt or competitive traffic is too "marginal" to support a stand-alone or real world railroad is amply rebutted by Defendants' efforts to grow that traffic. See also Fred W. Fraily, BNSF Reborn: Same Track. Same Trains. A Whole New Way to Run a Railroad, Trains, Oct. 2004, at 37 ("Rose's attitude is that a container of freight might be only modestly profitable, but give him millions of them a year and he'll not complain, because those millions of units provide operating efficiencies no single-car shipment of chemicals can match.").

haul cost comparison, they must state their line-haul costs on a basis comparable to their terminal costs, and those line-haul costs must reflect the characteristics of the actual SARR traffic group and not some idealized movement as embodied in the TTX data. Any demonstration of the representativeness of the characteristics should also have been part of Defendants' reply and not part of their brief. As Defendants compared different types of costs based on uncorroborated traffic assumptions, their division analysis cannot be accepted for these reasons as well.

AEPCO also demonstrated that Defendants had not provided any source for their underlying cost assumptions as to I&I switching for intermodal movements.

For manifest and automotive traffic divisions, Defendants ostensibly relied on the URCS analysis presented in AEPCO's original Rebuttal, which compared total R/VC ratios, but Defendants distorted the underlying basis of that analysis by extracting only the residual incumbents' terminal and switching costs (which were overstated by reliance on the 200-mile URCS assumption). Defendants' analysis thus embodies the same distortions on which they premised their rejection of URCS for intermodal costs. As Defendants made no attempt to validate their terminal costs, the calculation of which is made determinative under their analysis, their approach is unsubstantiated and cannot be accepted.

While AEPCO presented an alternate restatement of divisions as a fallback, AEPCO Reb. at III-A-48 to 53 and 57-60, the Board should instead find that Defendants failed to meet their burden to justify any deviation from the standard divisions awarded under the MSP approach for intermodal traffic and that the unadjusted MSP divisions constitute the best evidence of record.

B. SARR System

Little dispute attaches to the design of AEPCO's SARR, the ACE, as it is more robust and handles less traffic than the incumbents' replicated lines. While their cost impact is immaterial, the track enhancements sought by Defendants, particularly at or near the El Paso and Vaughn yards, are not needed, and Defendants have submitted no modeling or other empirical

evidence demonstrating otherwise. The off-SARR upgrades constitute impermissible entry barriers, especially in the absence of any external traffic reroutes, and AEPCO demonstrated (without any rebuttal from Defendants) that off-SARR crew savings would more than offset any capital costs. AEPCO Supp. Reb. at III-B-10 to 21 and III-C-2 to 6.

Defendants' plan to saddle the ACE with additional facilities and costs for delivering fuel to Vaughn constitutes an impermissible entry barrier. In any event, AEPCO demonstrated that the residual BNSF would not be needed to deliver the fuel because the SARR's demand is more than sufficient to prompt a pipeline to construct a 30-mile extension of existing facilities to deliver fuel to Vaughn at a delivered cost below the BNSF system average cost utilized by AEPCO. AEPCO Supp. Reb. at III-B-21 to 29.

C. SARR Operating Plan

No dispute exists as to the ACE's feasibility as its configuration and basic operation (number of trains, cars, and locomotives per train, etc.) track those of the incumbents. Instead, the primary issue is whether the ACE will achieve faster transit times and associated savings based on its increased capacity and lower traffic compared with the incumbents, as calculated by AEPCO's string program analysis. AEPCO Supp. Reb. at III-C-7 to 27. Defendants claim that the SARR's transit times will not surpass their own.

AEPCO acknowledges that a similar, but not identical, string program analysis was rejected in Pawnee. A pivotal distinction here is that Defendants failed to submit any model analysis of their own and instead blithely assumed that the ACE would merely replicate existing operations. (Defendants may not have submitted an RTC or other analysis in order to avoid a revealing comparison between their modeling and real-world results.) As Defendants failed to submit any analysis, their contentions cannot possibly be accepted for that reason alone.

The various Pawnee criticisms do not apply to AEPCO's string program. The model itself, the ACE's configuration, and the resulting transit times remained relatively constant throughout AEPCO's filings, as only modest revisions, having minimal effect, were made in

response to the few, minor criticisms of Defendants that had some basis. AEPCO rejected other changes proposed by Defendants such as prioritizing trains (the ACE was already faster than incumbents), accounting for random failures (Defendants' data did not identify any actual outages that could be simulated), and reflecting air drag resistance (AEPCO's assumptions were already conservative).

Defendants also raised the "disappearing train" criticism (where an empty coal train returns to a SARR origin before incumbents' counterpart) noted in Pawnee. As explained in Supp. Reb. at III-C-22 to 25, the SARR's faster transit times necessitate some adjustment. The most plausible real world adjustment is that fewer trains make faster and thus more trips, but this entails altering loading times, which complicates the peak period modeling. Assuming that the train is "held" at origin at no additional cost thus emerges as the most pragmatic, and a conservative, solution. The Pawnee approach (having the SARR construct additional track to hold the train) effectively punishes the SARR for being more efficient, violating both SAC theory and common sense. In any event, the criticism is trivial for the ACE as only a small portion (3.2%, and no more than four per day during the peak period) of its trains serve local coal origins, besides which the ACE has ample capacity to hold the trains if needed.¹⁰

Defendants' claim that the ACE's transit times would not improve upon incumbents' is inherently implausible since the ACE uses superior facilities and tailored operations to handle less traffic, as the ACE foregoes disruptive local freight and Amtrak traffic

¹⁰AEPCO's string diagram analysis shows that the ACE has three sidings on the Defiance-Belen segment (MP 107.18 to 105.79, MP 95.75 to 94.39, and MP 48.94 to 47.43) and four on the Belen-Vaughn segment (MP 882.06-879.51, MP 854.93 to 853.53, MP 849.86 to 847.31, and MP 815.66 to 812.63) long enough to hold coal trains that are never utilized during the peak period and are thus available for this and/or other purposes. The last two sidings are 2.55 miles and 3.03 miles long, respectively, sufficient to accommodate two coal trains. See AEPCO Reb. electronic workpapers "ROUTE.dbf" (track structure), "TIMESALL.dbf" (arrival times at each station), and "STRING50 SUPP REBUTTAL MANUAL ADJUSTMENTS.xls" (diagram for peak period).

that more than offsets the modest internal rerouting of some coal traffic. As AEPCO is the only party to have quantified the improvements, its analysis is necessarily the best evidence of record.

Defendants further overstated the SARR's locomotive requirements by, inter alia, ignoring availability guarantees, using the spare margin at Barstow (site of a major classification yard) as the surrogate for the ACE's unit and through train operations, and including second-tier SD40-2s in the Barstow utilization rate. Defendants' claimed margin far exceeds what BNSF presented in Pawnee (where the shipper, unlike here, relied on an "expired" lease). AEPCO Supp. Reb. at III-C-30 to 38. As Defendants failed to present a meaningful analysis, AEPCO's evidence must be accepted.

D. SARR Operating Expenses

Defendants dispute a number of AEPCO's operating expenses calculations, but the disputes range in materiality and complexity. AEPCO Supp. Reb. at III-D-1 to 127.

For locomotive lease costs, Defendants used the "normalized" cost approach rejected in TMPA and Pawnee. For locomotive servicing and fuel costs, AEPCO's use of BNSF's lower unit costs for all ACE locomotives, rather than UP's higher fuel cost for UP's portion of the system, flows directly from least-cost SAC principles. As noted supra, Defendants' additive for transporting fuel to Vaughn, NM, imposes a cost on the ACE that Defendants themselves do not incur and as such constitutes an impermissible entry barrier. Defendants' index adjustment for fuel costs is improper as AEPCO's approach already overstates the cost by \$0.046 per gallon. For fuel consumption, Defendants rigged UP's simulator using worst-case assumptions without presenting any evidence that such assumptions conform either to existing operations (the premise for Defendants' transit times) or the operations posited under AEPCO's string program, and further assumed excess locomotives, overstated idle fuel consumption rates, and improperly classified empty trains as loaded trains. AEPCO's use of BNSF's system average fuel consumption rates is entirely sound and constitutes the best evidence of record. AEPCO Supp. Reb. at III-D-7 to 35.

Defendants also vastly overstated the SARR's staffing requirements. Yardmasters and crew haulers/utility clerks are not needed at Vaughn given the use of taxis, and Defendants' train crew calculations defectively assume more train starts than there are actual trains. Id. at III-D-35 to 52.

For mechanical staffing, Defendants ignored AEPCO's Third Errata to its Opening Evidence and incorrectly claimed that three four-person inspection crews are required at Vaughn, whereas AEPCO's inspection procedures (which Defendants did not challenge) show otherwise. Nor did Defendants establish a need for an additional inspection crew at El Paso. Defendants overstated compensation costs by improperly assuming that the non-unionized SARR would be required to pay the same constructive allowances ("CA") as the incumbents. AEPCO's revised figure, reflecting the CA paid by Wisconsin Central when it first became unionized, is more than ample for the non-union ACE. Defendants also overstated crew compensation by relying on an excessively small sample of train crew employees { } performing "above-average" work. See also Tom Murray, A Different Way to Run a Railroad: Regional Versus Network Carriers, 71 J.T.L.L.P 293, 299-300 (2004) (noting regional railroads have a compensation differential of 15-20% and greater flexibility, including "more outsourcing of functions like track maintenance").

Defendants also overstate materials, supplies and equipment costs by improperly including information technology ("IT") systems, thereby duplicating G&A costs, overstating staffing, assuming excessive pick-up trucks (4 for every car-inspection team on duty at any given time) and upgraded SUVs that are supplanted by use of a taxi service, then treating the salvage value as an additional cost, and, as Pawnee found, improperly positing that the ACE would buy two sets of chairs and desks at a time and purchase clothing (boots and gloves) and prescription eye wear that railroad employees purchase themselves. Supp. Reb. at III-D-53 to 57; Pawnee at 73.

For G&A, Defendants make no effort to address AEPCO's specific and detailed evidence or recent precedent that confirms the reasonableness of AEPCO's calculations. Instead, Defendants compare the G&A expense ratios of seven railroads reporting to the STB, thereby ignoring the ACE's characteristics, e.g., the fact it is exclusively a bridge and unit train carrier without switching and classification activities and with limited origination and destination activities. AEPCO's G&A costs are supported by a witness with over 30 years' experience in high-level railroad positions, whose testimony has been credited in other recent rate cases. Pawnee at 66. BNSF/UP Supp. Reply at III.D-52 purported to accept AEPCO's unit hiring and training costs, and they otherwise failed to discuss or support any adjustment to AEPCO's training and start-up costs. AEPCO Supp. Reb. at III-D-57 to 66.

Defendants' criticisms of AEPCO's IT costs are also ill-founded as they ignore the fact that the SARR will handle only complete trainloads, with very few customer originations or terminations, which substantially reduces hardware, software, and support requirements. Id. at III-D-66 to 70.

For maintenance of-way ("MOW"), AEPCO demonstrated that its proposal, including staffing levels that drive much of MOW costs, was principled, feasible, and supported by the experience of Canadian railroads. While the ACE may handle more traffic, it does so without any branch or low density segments, with limited yard and terminal operations, and with much better weather. The ACE should thus be able to achieve substantial efficiencies relative to Class I railroads, especially considering its nonunion status would facilitate cross-training (as in Canada). Moreover, the ACE's outsourcing approach is consistent with the incumbents' practices.

Even if AEPCO's MOW proposal were rejected, Defendants' position cannot be accepted as presented as it deviates from least-cost, most-efficient SAC principles. Their proposal rests on the actual staffing levels of both incumbents, but merely utilizing UP's staffing practices exclusively reduces staffing levels and personnel costs by { }. SAC principles

require that the SARR be deemed to at least match the efficiency achieved by the most efficient (not the least efficient) of two co-Defendants. Defendants' existing staffing combines spot and program maintenance activities, and effects a double-count when applied to the DCF model.

As to matters such as ultrasonic and track geometry testing, rail grinding, and contract maintenance that Defendants agree may be outsourced, they assume excessive quantities and unit costs. Defendants' claim that BNSF has a general "policy" or "rule of thumb" as to frequency does not establish that AEPCO's proposal for less frequent servicing is infeasible or inadequate (especially given Defendants' silence as to UP's practices). Defendants also ignored pertinent aspects of the ACE, including its favorable weather, less extensive fueling facilities, and fewer and smaller yards, that result in lower maintenance costs. Defendants also double-counted \$4.4 million for car damage for derailments, which is captured separately under loss and damage.

Defendants' "random failures" data does not demonstrate any need for additional MOW personnel. The data consists of "false" warnings and/or matters that may be remedied at least temporarily by back-up procedures and does not demonstrate that any trains were actually stopped or substantially delayed. AEPCO Supp. Reb. at III-D-95 to 106. Indeed, if the events had resulted in actual stoppages or major delays, they would have been remedied much faster, particularly given BNSF's excessive staffing. Defendants also overstated MOW personnel costs (both spot and program maintenance) by double-counting the labor separately captured in their personnel costs. Additionally, Defendants allocate 45.5% of total MOW to spot operating expense, as contrasted with the 36% in West Texas Utilities and the 42.3% Pawnee. AEPCO Supp. Reb. at III-D-70 to 121.

Defendants accepted AEPCO's figure for loss and damage costs, which includes derailments, eliminating any dispute. For insurance, AEPCO utilized the Pawnee approach. BNSF/UP applied the insurance/operating expense ratio from carriers with ostensibly similar revenues, but AEPCO's evidence shows that such ratios do not correlate with revenues, besides

which the ACE's focused operations and handling of less hazardous cargo in a low-population area logically yields a lower insurance/operating expense ratio. Id. at III-D-122 to 127.

E. SARR Road Property Investment

AEPCO's Supplemental Rebuttal demonstrated that its claimed road property investment costs were sound, feasible, and actually conservative, and that Defendants included largely unsupported additives to yield costs far exceeding what a least-cost, most-efficient carrier without entry barriers would reasonably expect to incur. Id. at III-F-1 to 193. While the parties' disagreement in Part III-F is substantial, the greatest financial impact is in the areas of roadbed preparation, engineering fees, and track construction.

Roadbed preparation, the largest area of disagreement, encompasses disputes over a number of items, particularly earthwork unit costs, yard grading quantities, water for compaction, and clearing and grubbing. As to earthwork unit costs, the Board has repeatedly adopted equipment consists similar to those designated by AEPCO's engineering experts and repeatedly rejected carrier efforts to burden SARRs with additional, larger, and/or more expensive equipment. See, e.g., Pawnee at 95-96. Defendants' claim that the ACE territory is particularly challenging had no credible support, especially as AEPCO showed that unit costs for excavation for major public projects in the territory were considerably below AEPCO's figures. Id. at III-F-32 to 57. There is thus no basis for imposing significant contingency costs, much less a factor above 8%. Id. at III-F-192 to 193. The ACE's construction service units will not exceed those for the existing lines, unit costs are apt to be lower than projected, and the SARR does not face the environmental restrictions that confront current construction projects.

For other roadbed preparation costs, AEPCO properly utilized the one-foot fill method for most of its yards, Pawnee at 94-95, whereas Defendants improperly used inaccurate topographic data for the Vaughn and El Paso yards and mainline grading quantities where yards do not currently exist. AEPCO's Supplemental Rebuttal corrected Defendants' topographical miscalculations and refuted the use of mainline quantities rather than the one-foot fill approach

for the other yards. Id. at III-F-18 to 31. AEPCO also showed that Defendants misapplied Means data on water for compaction, which defines a CY of water as the water itself, and not the CY of excavation. Id. at III-F-73 to 75. Defendants' claim that the entire right-of-way would need to be cleared and grubbed (and material then hauled away at a total unit cost more than 31 times AEPCO's) rests on an improper interpretation of AEPCO's description of the vegetation as consisting of "nothing more than dense brush" as meaning that the entire territory was covered by dense brush. The pictures included in AEPCO's evidence show very little vegetation, and the ICC Engineering Reports do not include any grubbing quantities, thus demonstrating that little or grubbing is required. Moreover, Defendants gave no explanation for why the small volume of brush would need to be hauled away. Id. at III-F-8 to 12.

AEPCO's proposed fee for engineering service was reasonable, well-supported, and encompassed all functions required by the ACE, including preliminary surveys and construction management. In contrast, Defendants' proposed fee of more than 14% was plainly excessive given the substantial evidence that the ACE's territory is among the easiest places in the United States to build a railroad, the double count of certain activities such as surveys, their inclusion of more than \$38 million for construction stakeout and materials testing that are typically covered by contract specifications, and their underlying premise that railroads are of a "higher" complexity than other projects, whereas Pawnee at 118 found that railroads are of only "average" complexity. Removing Defendants' unnecessary additives and complexity adjustment yields a total engineering factor below the 10% additive adopted in Pawnee. While AEPCO believes its 6.8% additive constitutes the best evidence of record, a 10% additive is the maximum that can possibly be applied under the circumstances. Supp. Reb. at III-F-182 to 191.

AEPCO's Supplemental Rebuttal further refuted Defendants' attempts to add numerous unsupported costs such as undercutting, weather stations at every signal point, bridge unit costs exceeding those shown in Defendants' own workpapers, power transmission lines where solar power is more appropriate, additional fueling facilities where AEPCO's facilities are

already sufficient to handle double the peak day trains, more extensive fencing than incumbents currently have, use of more expensive 12-foot gabions rather than 6-foot gabions, excessive road surfacing and road detours, and failure to recognize any of the efficiencies inherent in double-track construction.¹¹ Even where AEPCO's approach was feasible by Defendants' own measure, they proposed their own, more expensive "solutions," such as a more expensive scraper.

AEPCO's road property costs thus represent the best evidence of record as they comply with lease-cost, most-efficient SAC standards, whereas Defendants' do not.

F. DCF Analysis

At the technical conference, Defendants accepted AEPCO's base case cost of capital adjustment, but opposed AEPCO's alternate adjustment. AEPCO continues to believe that its alternate adjustment (using the 2001 cost of capital for 2001, the 2002 cost of capital for 2002, and the 2003 cost of capital for 2003 and beyond now that the the 2003 cost of capital has been published) is required in order to: (a) match the most recent inflation forecast (rather than an average of historic data figures) used for revenue and operating cost adjustments, (b) abide by the Board's statement in West Texas Utilities, 1 S.T.B. at 712, and (c) avoid having the SARR pay a higher cost than the incumbents, which amounts to an impermissible entry barrier under SAC theory. AEPCO Supp. Reb. at III-G-1 to 10.

AEPCO also believes that the RCAF-A should be used to adjust the SARR's operating expenses. Pawnee recognized that SARRs would experience some productivity improvements, but still selected the RCAF-U as being more representative as the SARR would start with modern equipment and thus reflect future productivity gains from the outset. Even assuming the Board's reasoning made sense in Pawnee, it does not extend to the ACE, which

¹¹AEPCO acknowledges that Pawnee accepted an additive for fine grading, but neither of the two grading-related bids included in BNSF/UP's Supp. Reply workpapers contained a separate line item for fine grading. There is thus insufficient evidentiary basis to include the item here, or to conclude that the existing equipment will be insufficient assuming fine grading is required. In no event should the unit cost exceed that accepted in Pawnee.

uses the same equipment and basic operations as the incumbents, particularly as it is almost entirely a bridge carrier. Also, under the DCF model, the ACE regularly replaces its assets, thus enabling it to take advantage of technological improvements (which it pays for in any event). AEPCO further explained that the incumbents' assets are hardly antiquated, but if age is deemed the key factor, then the appropriate approach is to phase-in the RCAF-A as the ACE's assets reach the same average age as Defendants' current assets (no more than six years), rather than exclude all productivity gains over the entire 20-year DCF model. AEPCO also explained that the ACE's productivity growth would likely exceed the industry average as the RCAF-A also reflects negative productivity developments that the ACE, as a least-cost, most-efficient entity, should be able to avoid. Use of the RCAF-A is also conservative as applied to the ACE because its DCF analysis assumes that traffic volumes are capped at the base year level, thus foregoing productivity as to capital costs. For these reasons, the RCAF-A should be utilized to adjust the SARR's operating expenses. AEPCO Supp. Reb. at III-G-11 to 23.

G. SAC Results

The DCF analysis under the standard percentage reduction method yields substantial savings with rates generally below the JT under AEPCO's analysis (as well as under Defendants' JT analysis). AEPCO did not allege any gaming of the percentage reduction method,¹² but AEPCO did note the anomaly of having most of the DCF savings flow through to traffic that already benefitted from competition, especially where the R/VC ratio fell or would fall under the jurisdictional threshold. AEPCO Supp. Reb. at I-31 to 33. AEPCO further noted

¹²Instead, the problem confronting AEPCO is that {

} . Absent relief from the Board, this trend will presumably continue unabated, and the already substantial disparity between AEPCO's rates and the carriers' cost of service will continue to increase. AEPCO's experience confirms that, absent regulatory relief, captive shippers are unlikely to benefit from industry productivity improvements. AEPCO's experience also confirms the need to recognize the role of productivity improvements in SARR operating expenses, as such recognition serves to reduce the need to bring a subsequent rate case.

that Defendants had not attempted to address AEPCO's claims that AEPCO should be reimbursed for the filing fee and that the interest rates on reparations specified in the Board's regulations were unduly low under the circumstances, especially the long delay that AEPCO has experienced in its rate case. AEPCO Supp. Reb. at III-G-6 to 10.

IV. CONCLUSION

In light of its demonstration that the issue rates are unlawful, AEPCO respectfully requests that the Board (a) find that BNSF/UP have market dominance over the issue traffic and their rates exceed the maximum reasonable level, (b) prescribe maximum reasonable rates, and (c) award reparations for overcharges as well as interest thereon at a reasonable rate and reimbursement of the \$55,000 filing fee for AEPCO's complaint.

Respectfully submitted,

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Dated: September 16, 2004

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Exhibit A

Table 1 Parties' Differences for 1Q03 Lee Ranch Movements in High-Capacity Cars						
	Item (1)	AEPCO (2)	BNSF/UP (3)	Diff. \$/Carload (4)	Diff. \$/ton (5)	% Diff. (6)
1.	SWRR Lease	{ }	{ }	{ }	{ }	{ }
2.	Loco. Capital	{ }	{ }	{ }	{ }	{ }
3.	Road Property	{ }	{ }	{ }	{ }	{ }
4.	Loco. Fuel	{ }	{ }	{ }	{ }	{ }
5.	Switching	{ }	{ }	{ }	{ }	{ }
6.	Other	{ }	{ }	{ }	{ }	{ }
7.	Total	{ }	{ }	{ }	{ }	{ }
Double-count of various SWRR expenses (discussed <u>supra</u>) are not broken out separately, but are subsumed within other categories, including Other.						

Exhibit B

Table 2 Comparison of Selected SAC Elements					
Item	Area (1)	Subject (2)	AEPCO (3)	BNSF (4)	Metric (5)
1.	III-A	Divisions on Cross-over Traffic	\$444.2	\$353.7	2001 Revenues in \$x,xxx,xxx
2.	III-B	Cost of Additional Fueling Facilities at Vaughn	—	\$28.8	20001 Construction Costs in \$x,xxx,xxx
3.	III-C	SARR Operating Plan (String Program)			Not quantified
	III-D	Operating Expenses			
4.		Locomotive Lease Costs	\$7.4	\$18.4	2001 Expenses in \$x,xxx,xxx
5.		Staffing costs	\$32.7	\$52.7	2001 Expenses in \$x,xxx,xxx
6.		Materials and Supplies	\$0.6	\$7.6	2001 Expenses in \$x,xxx,xxx
7.		General & Administrative	\$13.7	\$18.6	2001 Expenses in \$x,xxx,xxx
8.		Maintenance of Way	\$12.9	\$38.5	2001 Expenses in \$x,xxx,xxx
	III-F	Road Property Investment			
9.		Roadbed Preparation	\$208.2	\$571.0	Capital Cost in \$x,xxx,xxx
10.		Engineering Costs	6.8%	13.61%	Percentage basis
11.		Track Construction Costs	\$1.172.0	\$2.165.3	Capital Cost in \$x,xxx,xxx
	III-G	DCF Model			
12.		Cost of Capital	9.75%	10.77%	Cost of Capital in 2003 and beyond
13.		Adjustment of Operating Expenses	RCAF-A	RCAF-U	Index

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of September, 2004, I caused copies of Complainant's Post-Evidentiary Brief, including both the Highly Confidential and Public versions thereof, to be served by hand upon counsel for Defendants, as follows:

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