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SEC

SERVICE DATE - AUGUST 2, 2004

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. 42058

ARIZONA ELECTRIC POWER COOPERATIVE, INC.

v.

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

Decided: August 2, 2004

In this case, Arizona Electric Power Cooperative, Inc. (AEPCO or complainant) challenges the joint rates charged by The Burlington Northern and Santa Fe Railway Company and Union Pacific Railroad Company (collectively, defendants) for transporting unit-train movements of coal from mines at North Tipple and Lee Ranch, NM, to AEPCO's Apache Generating Station in Cochise, AZ. The parties filed opening evidence on February 7, 2003; reply evidence on May 27, 2003; and rebuttal evidence on July 3, 2003. In light of deficiencies in the record, the Board issued a decision on November 19, 2003, directing the parties to file supplemental evidence. Defendants filed supplemental evidence on January 26, 2004, and complainant filed responsive supplemental evidence on April 2, 2004.

On May 7, 2004, the defendants filed a "clarification" of their supplemental evidence regarding revenue divisions for intermodal cross-over traffic. On May 19, 2004, AEPCO filed a motion to strike the defendants' clarification. The defendants replied to the motion to strike on June 8, 2004, stating, in part, that they do not object to AEPCO being given an opportunity to respond to their "clarification" submission.

On June 25, 2004, AEPCO filed a petition regarding briefing procedures. AEPCO requests a staggered briefing schedule whereby defendants would file their brief first and then AEPCO would file its brief. AEPCO contends that such a schedule is necessary to allow it to respond to new contentions that may be presented for the first time in defendants' brief. AEPCO asks that briefs be limited to 8,500 words (approximately 25 pages). AEPCO also requests a ruling on its motion to strike as soon as possible so that the parties will know if that matter needs to be briefed. In their joint reply filed on July 2, 2004, the defendants maintain that the Board should adhere to its practice of scheduling simultaneous briefs, and they suggest that the Board establish a 40-page limit for briefs.

While the Board is not prepared to address AEPCO's motion to strike at this time, briefing of the case need not be held up awaiting such a ruling. Rather, to protect its interests, AEPCO should submit a separate pleading responding to the "clarification" submitted by the

defendants. That reply will be considered by the Board only if the motion to strike is ultimately denied.

In complex cases such as this one, the purpose of briefs is to identify issues that have been narrowed or are no longer in dispute; put into perspective the principal issues that remain; and summarize the key evidence to assist the Board in navigating through the record. A single round of simultaneous briefs avoids delay, and AEPCO has not demonstrated a need to depart from this practice.

The parties are reminded that new evidence is not permitted in briefs and will be subject to motions to strike and other sanctions. The briefs shall be filed no later than 45 days after the service date of this decision and shall not exceed 30 pages. Given the extensive record in this case, this page limitation should allow the parties ample opportunity to highlight and summarize key points.

It is ordered:

1. Briefs not to exceed 30 pages in length are due by September 16, 2004.
2. AEPCO's reply to defendants' clarification is due by September 16, 2004.
3. This decision is effective on the date of service.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams  
Secretary