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May 20, 2002

BY FIRST CLASS MAIL

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

ENTERED
Office of the Secretary
MAY 20 2002
Part of
Public Record

42058
Re: STB Docket No. ~~42508~~, Arizona Electric Power Cooperative, Inc. v.
The Burlington Northern and Santa Fe Railway Company and
Union Pacific Railroad Company

Dear Secretary Williams:

We represent defendant Union Pacific Railroad Company ("UP") in the above-referenced proceeding.

UP's April 22, 2002 Petition to Clarify the Colorado Rate Dispute explained that Arizona Electric Power Cooperative ("AEP") refuses to tell UP which rates it intends to challenge and asked the Board to clarify that AEP may not challenge rates UP never actually established. In its April 30, 2002 Reply, AEP for the first time proposes to address UP's concerns by providing prior notice of the rates it intends to challenge, if UP notifies AEP before opening evidence is filed whether UP intends to file opening evidence on variable costs.¹

UP does not wish to burden the record with a formal reply to AEP's cumbersome proposal, but the Board should not construe the absence of a response as acquiescence in or acceptance of AEP's proposal. UP reaffirms its petition. AEP's proposed notification process would not address UP's concerns. Adequate notice is only one of UP's concerns. UP believes that AEP may not attempt to challenge rates not subject to

¹ UP will file opening variable cost evidence, as envisioned in the Board's rules. See 49 C.F.R. § 1111.8.

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challenge in a rate case. UP should not be required to expend resources to defend rates that it never adopted and that AEPCO never used.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael L. Rosenthal". The signature is fluid and cursive, with the first name "Michael" written in a larger, more prominent script than the last name "Rosenthal".

Michael L. Rosenthal

cc: Robert D. Rosenberg, Esq.
Patricia E. Cooper, Esq.
Samuel M. Sipe, Jr., Esq.
Louise A. Rinn, Esq.