

STEPTOE & JOHNSON LLP

ATTORNEYS AT LAW

Samuel M. Sipe Jr.
202.429.6486
ssipe@steptoe.com

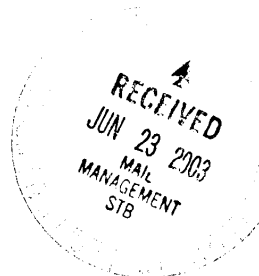
1330 Connecticut Avenue, NW
Washington, DC 20036-1795

Telephone 202.429.3000
Facsimile 202.429.3902
www.steptoe.com

June 23, 2003

Via HAND DELIVERY

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



208165-

208164 - Re: **STB Docket No. 42077, Arizona Public Service Co. and PacifiCorp v. The Burlington Northern and Santa Fe Railway Company, and STB Docket No. 41185, Arizona Public Service Co. and PacifiCorp v. The Burlington Northern and Santa Fe Railway Company**

Dear Secretary Williams:

Enclosed for filing in the captioned dockets, please find the original and ten copies of The Burlington Northern and Santa Fe Railway Company's Reply to Arizona Public Service Company/PacifiCorp and Western Coal Traffic League's Petitions for Reconsideration. Also enclosed is a disk containing a copy of this pleading in Word Perfect format.

Please date stamp the extra copy of the referenced pleading and return it with our messenger. If you have any questions regarding this matter, please contact the undersigned.

Sincerely,

Samuel M. Sipe Jr.

Counsel for The Burlington Northern
and Santa Fe Railway Company

cc: C. Michael Loftus
William L. Slover

Office of Proceedings

JUN 24 2003

Part of
Public Record

- 1 -

WASHINGTON

PHOENIX

LOS ANGELES

LONDON

BRUSSELS

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

ARIZONA PUBLIC SERVICE
COMPANY and PACIFICORP,

Complainants,

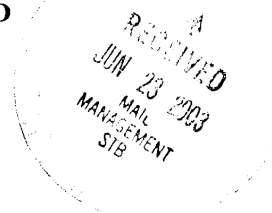
v.

THE BURLINGTON NORTHERN
SANTA FE RAILWAY COMPANY,

Defendant.

Docket No. 41185

Docket No. 42077



JUN 24 2003

Part of
Public Record

**THE BURLINGTON NORTHERN SANTA FE RAILWAY COMPANY'S
REPLY TO ARIZONA PUBLIC SERVICE COMPANY/PACIFICORP
AND WESTERN COAL TRAFFIC LEAGUE'S
PETITIONS FOR RECONSIDERATION**

The Burlington Northern and Santa Fe Railway Company ("BNSF") hereby opposes the Petitions for Reconsideration filed separately by Arizona Public Service Company and PacifiCorp (collectively "APS") and by the Western Coal Traffic League ("WCTL") on June 2, 2003. Those petitions seek reconsideration of the Board's May 12, 2003 decision in the above-referenced dockets ("2003 APS Decision").

BNSF does not object to WCTL's Petition for Leave to Intervene for purposes of requesting reconsideration of the Board's decision. WCTL's Petition for Reconsideration contains the same legal and factual arguments as those contained in APS' petition. Accordingly, BNSF files this single response to both petitions.

SUMMARY OF ARGUMENT

The petitions for reconsideration request the Board to reconsider three aspects of its May 2003 decision in these dockets. However, neither petition articulates any error in the Board's

decision, much less the “material error” necessary to warrant such reconsideration. First, APS and WCTL’s attempt to expand the scope of the reopening to allow APS to reconfigure its stand-alone railroad (“SARR”) design and traffic group is not supported by legal precedent and is unsound as a matter of policy. The Board properly limited the scope of the reopening to the changed circumstances that justified the reopening; namely, the imminent exhaustion of the McKinley mine coal reserves. Contrary to APS and WCTL’s claims, nothing in the Board’s earlier decisions in this case or in other proceedings supports the broad, unlimited reopening advocated by APS and WCTL. Indeed, the Board’s decision on the scope of the reopening reflects sound policy that is equitable to the parties without compromising the value of finality in administrative litigation.

Second, APS and WCTL are incorrect in contending that an additional hearing was necessary before the Board took the action regarding the McKinley mine rate prescription reflected in the Board’s May 2003 decision. Indeed, APS and WCTL mischaracterize the Board’s action as “vacating” the McKinley mine rate prescription. In fact, the Board did not vacate or “lift” the prescribed rate. Rather, the Board suspended the prescriptive effect of the rate as interim relief to avoid imposing irreparable harm on BNSF. Such an act is well within the Board’s statutory powers.

Finally, APS’ petition fails to identify any error whatsoever in the Board’s denial of its request for consolidation. Given the limited issues in Docket No. 41185 on reopening and the different time periods at issue in the two docket proceedings, consolidation is clearly unwarranted. For all these reasons, the petitions of APS and WCTL should be denied.

BACKGROUND

In January 1994, APS initiated this proceeding with the Interstate Commerce Commission (“ICC”), the Board’s predecessor, alleging that the available common carrier tariff rates for the movement of coal from the McKinley coal mine in western New Mexico to APS’ Cholla electric generating station near Joseph City, Arizona, were unreasonable. See Arizona Pub. Serv. Co. v. The Atchison, Topeka and Santa Fe Ry., 2 S.T.B. 367, 370 (1997) (“1997 APS Decision”).

In lengthy evidentiary proceedings before the agency, APS presented a SARR of its design that followed the route of the existing rail line of the Atchison, Topeka, and Santa Fe Railway Company (“ATSF”), BNSF’s predecessor, from the McKinley mine to APS’ Cholla plant and connected to an existing 42-mile private rail spur that runs from East Coronado Junction, Arizona, to Salt River Project’s (“SRP”) electric generating plant in Coronado, Arizona. Id. at 381. APS, as the complaining shipper, was permitted to choose the configuration of its SARR and to select any reasonable subset of available BNSF traffic over this line to perform its stand-alone cost (“SAC”) analysis. The only traffic selected by APS for the SARR were two coal movements – the movement from McKinley mine to APS’ Cholla plant and the movement from McKinley mine to SRP’s Coronado plant. Id.

APS’ SAC calculation required a determination of the volume of traffic that its hypothetical SARR would transport during the twenty-year discounted cash flow (“DCF”) period. Id. at 382. The parties vigorously disputed the amount of coal that would be available to move over the SARR, with ATSF arguing that the mineable coal reserves at McKinley would run out well before the SAC analysis period ended in 2013. While the Board estimated that, at the then-current rate of consumption, the McKinley reserves would run out by 2007, the Board

noted that the Pittsburgh and Midway Coal Mining Company (“P&M”), the owner of the McKinley mine, was “engaged in contract negotiations to acquire new coal reserves on adjacent Navajo lands.” Id. at 384. The Board’s analysis assumed that coal would continue to be available from the McKinley mine through the end of the SAC analysis period in 2013. Id. However, the Board noted that “[i]f [APS] or Salt River should actually change coal suppliers in the future, we can reopen this proceeding at that time and, if necessary, determine what a reasonable rate would be under the changed circumstances.” Id. at 385 (footnote omitted).

In a petition for reconsideration of the 1997 APS Decision, ATSF challenged inter alia the Board’s McKinley mine volume assumption and argued that the volume of coal forecast in the SAC analysis could not be achieved. See Arizona Pub. Serv. Corp. v. The Atchison, Topeka and Santa Fe Ry., 3 S.T.B. 70, 76 (1998) (“1998 APS Decision”). The Board declined to modify its assumption. However, the Board stated that “if traffic from the McKinley Mine to the Cholla or Coronado plants were permanently reduced below the levels upon which our SAC analysis is predicated, then the parties can and should have this proceeding reopened and the SAC analysis revised appropriately.” Id. at 79 n.42.

In January 2003, BNSF moved to reopen this proceeding and vacate the rate prescription. BNSF offered undisputed evidence that the mineable coal reserves at the McKinley mine will be exhausted before 2013, the end of the twenty-year SAC analysis period. BNSF also offered evidence that P&M will not expand its reserves by using coal from adjacent Navajo lands, because the high sulfur content of that coal renders it commercially unsuitable. APS does not dispute that the circumstances have changed with regard to the volume of coal that will be transported from the McKinley mine during the remainder of the SAC analysis period. See APS Reply to Pet. to Reopen and Vacate Rate Prescription (Jan. 30, 2003) at 12.

In its May 2003 ruling on BNSF's petition, the Board reopened the proceeding on a limited basis to determine the reasonable rate in light of the changed circumstances relating to the McKinley mine coal reserves. 2003 APS Decision at 4-6. The Board limited the scope of the reopening and stated that it would only consider new evidence on how APS and SRP "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." Id. at 5. The Board expressly refused to allow APS to expand the configuration of the SARR or to include new traffic other than the re-sourced traffic. Id. In ruling on BNSF's request that the prescribed rate be vacated, the Board suspended the prescriptive effect of its prior rate order but ordered BNSF to maintain its rate at the prescribed level until the reasonable rate could be determined, subject to a keep account order. Id. at 7-8. Finally, the Board denied APS' request to consolidate this proceeding with a separate rate proceeding that APS had initiated regarding BNSF's rates for coal transported to Cholla from the Lee Ranch mine. Id. at 8.

APS and WCTL now petition the Board for reconsideration of three aspects of this decision. However, their petitions fail to establish any material error justifying a modification of the Board's decision and, consequently, should be denied.

ARGUMENT

I. THE BOARD DID NOT ERR IN LIMITING THE SCOPE OF THE REOPENING TO THE CHANGED CIRCUMSTANCES THAT FORM THE BASIS FOR REOPENING

Contrary to the assertions of APS and WCTL, the Board's decision properly limited the reopening of the proceeding to a discrete set of evidentiary issues related to the changed circumstances leading to the reopening. Its refusal to allow a full-blown relitigation of APS' SAC analysis is consistent with the Board's 1997 and 1998 decisions in this proceeding as well

as applicable case law. The Board's ruling also reflects sound regulatory policy that encourages administrative finality and is fair to the parties.

A. Neither the Board's 1997 and 1998 Decisions Nor Its Reopening Standards Require the Board to Authorize APS to Make Wholesale Changes to its Prior SAC Analysis

The Board's decision to limit the reopening of Docket No. 41185 reflects a simple, logical rule: the issues considered on reopening ought to be connected to the changed circumstances that form the basis for the reopening. The changed circumstances here are undisputed — the McKinley mine reserves will be exhausted before the end of the twenty-year DCF period. The scope of the reopened proceedings was thus properly limited to evidence of how those changed circumstances would affect traffic and revenue over the APS-designed SARR. See 2003 APS Decision at 5. The nexus between the reopening issues specified by the Board and the undisputed changes in circumstance is clear. WCTL maintains that no such nexus is necessary, arguing that APS should be able to include non-coal traffic in its SARR network upon reopening. See WCTL Petition at 5. Such an approach is inequitable and illogical. It would permit a shipper who had benefitted from a rate prescription up to the time of reopening to convert every reopening of a SAC case into an entirely new analysis once the shipper was in jeopardy of losing the benefit of the prescription.

APS erroneously claims that the limited reopening authorized by the Board is inconsistent with its 1997 and 1998 decisions in Docket No. 41185. To the contrary, the Board's decision is consistent with those earlier decisions. In both decisions, the Board recognized the possibility that reopening might be necessary if the assumptions regarding the McKinley coal reserves proved to be inaccurate. The Board quite properly did not define the scope of any such

future reopening, as it had no reason or ability to do so at that time. Specifically, in the 1997 decision, the Board noted:

Because coal from other origins might move over the same routes as the [SARR] (except for the spur from the McKinley Mine to the mainline at Defiance) in order to reach new coal source(s), it is neither necessary nor appropriate, on the record before us, to assume (as [BNSF] does) that the entire [SARR] system would be rendered obsolete if the P&M coal contracts were not renewed or if reserves at the McKinley Mine were exhausted. The reasonable rates to be charged under the new circumstances could be determined by examining any additional costs to the [SARR] to serve the new movement(s). It would be better to make any necessary adjustments to the SAC when we know how shippers' traffic patterns will be changed, than attempt to do so now, when any alternations [sic] in the design of the [SARR] would be based on pure speculation.

1997 APS Decision, 2 S.T.B. at 385 n. 51. This language certainly does not suggest that the Board would permit a broad relitigation of the SAC analysis upon a future reopening. Instead, it suggests that the reopening would be limited to the changed circumstances that justify the reopening, which is precisely the approach that the Board took in its 2003 APS Decision. Indeed, the Board's 2003 APS Decision is entirely consistent with this 1997 decision because it allows APS to present evidence regarding the coal from other origins, *i.e.*, the re-sourced coal, that will replace the McKinley mine coal and move over the same routes as the SARR.

Similarly, in its 1998 decision, the Board acknowledged that reopening might be justified but did not define the scope of any future reopened proceeding.

If coal were no longer transported from the McKinley Mine to the Cholla plant, our prescription of a rate for this transportation would be mooted as of that point. Short of that point, if traffic from the McKinley Mine to the Cholla or Coronado plants were permanently reduced below the levels upon which our SAC analysis is predicated, then the parties can and should have this proceeding reopened and the SAC analysis revised appropriately.

1998 APS Decision, 3 S.T.B. at 79 n.42. Of course, the Board did not indicate what SAC revisions would be "appropriate." There was no occasion for the Board to make such a decision.

Consequently, contrary to APS and WCTL's arguments, these passages did not operate as a prior restriction on the Board's ability to determine the proper scope of the issues to be considered upon reopening. The scope of reopening was not resolved by the Board in its earlier decisions. Those decisions clearly reserved judgment on this issue for a more appropriate time. The Board itself recognized that defining those issues at the time of the 1997 and 1998 decisions would have been premature. Because they involved no decisions, the passages in question cannot constitute the "law of the case" on the scope of reopening. See United States v. United States Smelting Refining & Mining Co., 339 U.S. 186, 198 (1950) (law of the case applies only to issues "once litigated and decided"); United States Dep't of Energy v. Baltimore & Ohio R.R. Co., 10 I.C.C.2d 112, 133 (1994) ("The law of the case doctrine does not apply to issues that might have been but were not decided in the earlier proceeding."). At most, the Board's earlier decisions are advisory in nature, having no binding effect on the Board on the issue of the scope of a subsequent reopening. APS and WCTL's attempt to find error in the 2003 APS Decision on this ground is misguided.

B. The Board's Decision Is Consistent With Nevada Power and Other Relevant Precedent.

Contrary to the claims of APS and WCTL, the Board's limited reopening of this proceeding is supported by its ruling in cases such as Bituminous Coal—Hiawatha, Utah to Moapa, Nevada, 10 I.C.C.2d 259 (1994) ("Nevada Power"). That case squarely rejected an attempt by the shipper to do precisely what APS is trying to do here—change the configuration of its SARR analysis upon reopening a rate reasonableness proceeding.

In a 1981 decision, the Tenth Circuit vacated and remanded a rate prescription imposed by the ICC regarding the transportation of coal from Utah mines to Nevada Power Company's plant in Moapa, Nevada, on the grounds that the rate prescription was not adequately supported.

See Union Pac. Ry. Co. v. United States, 637 F.2d 764 (10th Cir. 1981). After the ICC reopened the case and the parties submitted additional evidence under the Coal Rate Guidelines, the ICC conducted a partial SAC analysis but identified several evidentiary gaps for the parties to fill, including evidence of traffic available for inclusion in the SAC group. See Bituminous Coal—Hiawatha, Utah to Moapa, Nev., 6 I.C.C.2d 1, 17 (1989). When Nevada Power sought to use the reopening as an opportunity to enlarge substantially its original SARR, the ICC granted the railroad's motion to strike the shipper's evidence relating to the new railroad configuration:

What [the shipper] proposes, and we reject, is a wholesale departure from the previous configuration. Even if the new configuration would have been acceptable as an initial evidentiary presentation, we are no longer at the initial evidentiary stage. Both parties have submitted extensive evidence on a more limited configuration, which the agency has expended considerable effort to analyze. The purpose of reopening the record was to resolve unanswered questions concerning the previous configuration, . . . not to embark upon a new study of a fundamentally different hypothetical railroad.

Bituminous Coal—Hiawatha, Utah, to Moapa, Nev., No. 37038, 1990 WL 300663 at *3 (I.C.C. Dec. 19, 1990).

APS' efforts to distinguish those proceedings are unavailing. While Nevada Power arose under different factual and procedural circumstances, the primary objective the Board sought to foster in that case—achieving finality by preventing the shipper from fundamentally redesigning its SARR—is precisely the issue presented in this proceeding. See id. (“If parties in proceedings of this type could change their fundamental network designation every time they received additional data, there might be no end to the analytical process and it would be difficult to bring a proceeding of this nature to a conclusion.”).¹

¹ Furthermore, APS is wrong to contend that the use of an expanded traffic group in Nevada Power requires a similar result here. In the 1989 decision identifying evidentiary gaps in the SAC analysis after remand from the Tenth Circuit, the ICC stated that it needed additional information regarding traffic available to move over the SARR. See Bituminous Coal, 6 I.C.C. 2d at 17. But the ICC did not permit a substantive alteration of, or expansion upon, an analytical

APS' contention that it should be allowed to reconfigure its SARR at this late date is similar to the contention that the Board recently rejected in PPL Montana, LLC v. The Burlington Northern Santa Fe Ry. Co., Docket No. 42054, 2003 WL 1474407 (S.T.B. Mar. 24, 2003). In that case, the Board analyzed the complainant's SAC model and determined that it incorporated an impermissible cross-subsidy. As a result, the Board concluded that the shipper's complaint should be dismissed. In its motion for reconsideration of the Board's decision, PPL argued that, had it known the Board would apply the cross-subsidy analysis, it would have presented different evidence on several issues including traffic levels, investment levels, and allocation of operating expenses. Id. at *4. Noting that PPL "cannot shift responsibility for its own submissions in this case," id. at *5, the Board rejected PPL's attempt to alter portions of its case in chief and concluded that "[w]ere we to allow a disappointed party to revise its case in response to our rulings, there could be no end to an administrative proceeding." Id. at *7. Similarly, APS should not be allowed to avoid the consequences of its own submissions in the original case by presenting an extensively revised SARR, thereby undermining the administrative finality of the Board's original decision.

C. The Board's Limitation on the Scope of Reopening Is Sound Regulatory Policy That Encourages Administrative Finality While Avoiding Unfairness to the Parties.

Contrary to the assertions of APS and WCTL, the Board's limited reopening reflects sound regulatory policy that protects the values of administrative finality and is fair to the

issue that the ICC already had addressed and resolved. Rather, the ICC's 1994 decision was effectively the first time the ICC identified the "available traffic" that was to be used in the SAC analysis. See Bituminous Coal, 10 I.C.C.2d at 263 ("In the 1989 Decision, we found that the defendant railroads had not provided [the shipper] with the data necessary to develop meaningful estimates of the type and amount of traffic which might be available for movement on a SARR.").

parties. This is particularly true in this case, where the potential for changes in the assumptions regarding the McKinley mine reserves was identified and vigorously contested by the parties during the 1997 and 1998 proceedings. It would be unwise to permit APS to engage in a broad relitigation of its SAC analysis unrelated to the changed circumstances leading to the reopening of the McKinley mine rate prescription proceeding. Such a policy would unnecessarily consume the resources of the Board (and the parties) by fostering never-ending rate litigation and continual modifications of the SAC analysis.

Indeed, limiting the scope of reopening to issues related to the changed circumstances forming the basis for the reopening is necessary to prevent inequities. Under the SAC analysis, the shipper has the right to design its SARR and select the traffic that will move over the SARR. The railroad must then challenge the shipper's SAC assumptions within the SARR constraints selected by the shipper. Here, APS designed its SARR and limited its traffic group to coal moving from the McKinley mine to two power plants. Presumably APS chose this SARR configuration because it thought it would benefit from it and, indeed, APS has benefitted substantially from the Board's rate prescription in its favor. However, APS' decision regarding network configuration also exposed it to a risk known at the time—that the McKinley reserves would run out if P&M did not acquire additional reserves. See 1997 APS Decision, 2 S.T.B. at 384 (noting that at then-current rate of sales McKinley reserves were estimated to run out by 2007). To permit the broader reopening urged by APS would be to allow shippers to scrap and redesign their SARR whenever doing so would strengthen their position in rate litigation. This by itself would be a wasteful and unwise policy. And, in the context of a rate case, it would work a fundamental unfairness to defendant railroads, who would be deprived of the pricing freedom that should result from correcting a rate prescription that is no longer valid.

II. THE BOARD DID NOT ERR IN GRANTING INTERIM RELIEF BASED ON UNCONTESTED EVIDENCE OF CHANGED CIRCUMSTANCES

APS and WCTL further argue that the Board erroneously set aside the prescribed rate without a sufficient evidentiary hearing. This contention completely mischaracterizes the Board's action in the 2003 APS Decision. Contrary to APS and WCTL's claims, the Board did not "vacate" or "lift" a valid rate prescription. Rather, after recognizing an undisputed change in a key factual assumption underlying its rate prescription, the Board exercised its statutory authority to prevent irreparable injury by granting interim relief and suspending the legislative effect of the rate prescription pending a final decision by the Board upon reopening. Consistent with precedent, including Arizona Grocery Co. v. Atchison, Topeka & Santa Fe Ry. Co., 284 U.S. 370 (1932), this action was necessary to prevent irreparable harm to BNSF in this case.

Because the parties did not dispute the changed circumstance in this case, there was no need for the Board to hold additional evidentiary hearings before it decided to reopen the proceeding and to suspend the effect of the rate prescription pending the reopening. Substantial evidence on the future of the McKinley mine was submitted by the parties in connection with BNSF's petition to vacate the rate prescription. The Board found "undisputed evidence" that the McKinley mine reserves would run out before the twenty-year SAC analysis period ended, and that P&M would not be able to acquire new coal reserves. See 2003 APS Decision at 3. No additional evidentiary hearing is required to establish these uncontested facts. See San Antonio, Tex. v. Burlington Northern, Inc., 364 I.C.C. 887, 896 (1981) ("the type of hearing that is required and appropriate in particular circumstances depends on the issues involved"). While BNSF continues to believe that this undisputed evidence regarding future volumes from McKinley was sufficient for the Board to vacate its rate prescription, at a minimum there was sufficient evidentiary basis for the interim relief granted in the 2003 APS Decision.

APS and WCTL are incorrect in characterizing the Board's action as a vacation of an existing rate prescription and a violation of the Arizona Grocery rule. The Board suspended the prescriptive effect of the rate prescription and imposed an interim limit on the rate BNSF may charge during the pendency of the reopening, subject to a "keep account" provision. See 2003 APS Decision at 7. The Board did not vacate or "lift" the rate. Had the Board done so, BNSF would now be free to charge APS whatever rate it chooses for the contested traffic. Yet BNSF is not now free to do so.

Furthermore, the Board's decision to suspend the prescriptive effect of the prior rate prescription was necessary to prevent irreparable harm. The challenge to the Board's decision to suspend the prescriptive effect of the rate during the pendency of the reopening is little more than an attempt by the shipper to prolong a rate prescription that is likely to be found invalid. If the Board did not suspend the prescriptive effect of the rate during the pendency of the reopened proceeding, BNSF might not be made whole if the Board ultimately decided to vacate the rate prescription or set the prescribed rate at a higher level. The Board's decision was therefore necessary to prevent irreparable harm. Its ruling is authorized under 49 U.S.C. § 721(b)(3).²

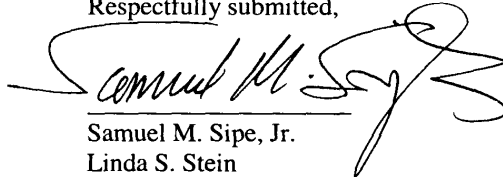
² The cases cited by APS do not require an additional hearing before the Board can take this measure. In Trainload Rates on Radioactive Materials, Eastern Railroads, No. 9205, 1991 WL 108082 (I.C.C. Jan. 9, 1991), the ICC denied a motion to reopen based partly on the petitioner's failure to establish "a reasonable need to be relieved from the rate prescription." Id. at *5. In the instant case the Board has found exactly what was lacking in Trainload Rates, as the Board has concluded that harm will result if it did not suspend the prescriptive effect of the rate. See 2003 APS Decision at 6-8. In Aggregate Volume Rate on Coal, Acco, Utah to Moapa, Nev., 365 I.C.C. 389 (1981), cited by APS, the ICC vacated a rate prescription and used revised cost calculations to justify an increase in the prescribed rate. The Board did not make a similar ruling in this case, however, as the Board has not prescribed a higher rate, but has simply suspended the prescriptive effect of the rate pending a resolution of the issues on reopening. For the same reason, the Board's decision is also distinguishable from McCarty Farms, Inc. v. Burlington Northern Inc., Docket No. 37809, 1991 WL 246202 (I.C.C. Nov. 20, 1991), also cited by APS, in which the ICC sua sponte vacated a rate prescription and noted that shippers could challenge the non-prescribed rate "[s]hould abuses arise in the future." Id. at *2.

III. THE BOARD PROPERLY REFUSED TO CONSOLIDATE DOCKETS NO. 41185 AND NO. 42077

The Board correctly denied APS' request to consolidate reopened Docket No. 41185 with new Docket No. 42077, which challenges BNSF's rates for the transportation of coal from the Lee Ranch mine to Cholla. In light of the different time periods that would apply in the SAC analysis, and the limited scope of reopening in Docket No. 41185, the burden and complication of consolidating these proceedings would clearly outweigh any limited efficiency that might be gained. APS offers no compelling or detailed explanation of how consolidation would improve the efficiency and economy of these proceedings. Accordingly, it is proper that the two dockets continue to proceed along their separate paths.

For all of the above stated reasons, BNSF requests that the Board deny APS and WCTL's petitions for reconsideration.

Respectfully submitted,



Samuel M. Sipe, Jr.
Linda S. Stein
STEPTOE & JOHNSON LLP
1330 Connecticut Ave., N.W.
Washington, DC 20036
Tel. (202) 429-6486
Fax (202) 429-3902

OF COUNSEL:

Richard E. Weicher
Michael E. Roper
THE BURLINGTON NORTHERN
AND SANTA FE RAILWAY COMPANY
2500 Lou Menk Drive
P.O. Box 961039
Ft. Worth, TX 76131-0039
Tel. (817) 352-2353
Fax (817) 352-2397

Dated: June 23, 2003

CERTIFICATE OF SERVICE

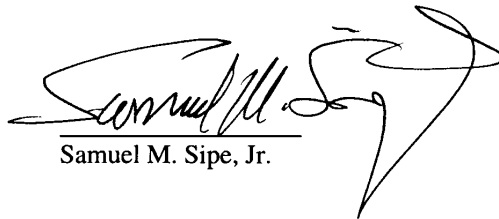
I hereby certify that on June 23, 2003, a copy of the foregoing Reply to Arizona Public Service Company/PacifiCorp and Western Coal Traffic League's Petitions for Reconsideration was served by hand on the following:

C. Michael Loftus
Christopher A. Mills
Kendra A. Ericson
Slover & Loftus
1224 Seventeenth St., N.W.
Washington DC 20036

Counsel for Arizona Public Service Company

William L. Slover
Andrew B. Kolesar III
Slover & Loftus
1224 Seventeenth St., N.W.
Washington DC 20036

Counsel for Western Coal Traffic League



Samuel M. Sipe, Jr.