

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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ARIZONA ELECTRIC POWER	)	
COOPERATIVE, INC.	)	
	)	
Complainant,	)	
	)	
v.	)	Docket No. 42113
	)	
BNSF RAILWAY COMPANY and	)	
UNION PACIFIC RAILROAD COMPANY	)	
	)	
Defendants.	)	

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**STATEMENT OF DAMAGES AND UNOPPOSED  
PETITION FOR AN ORDER DIRECTING PAYMENT**

ARIZONA ELECTRIC POWER  
COOPERATIVE, INC.

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Dated: March 20, 2012

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Complainant,	)	
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vi.	)	Docket No. 42113
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**STATEMENT OF DAMAGES AND UNOPPOSED  
PETITION FOR AN ORDER DIRECTING PAYMENT**

Complainant Arizona Electric Power Cooperative, Inc. ("AEPCO"), hereby submits its Statement of Damages and petitions the Surface Transportation Board ("Board" or "STB"), to enter promptly a payment order. AEPCO calculates the damages (repairs plus interest) due it to be \$9,244,143.90 (through January 10, 2012). AEPCO is authorized to state that BNSF Railway Company ("BNSF") and Union Pacific Railroad Company ("UP") (collectively, "Defendants") concur in these calculations and do not oppose the entry of the requested payment order.

**BACKGROUND**

In its Decision in Docket No. 42113, *Arizona Electric Power Cooperative, Inc. v. BNSF Railway Company and Union Pacific Railroad Company* (STB served Nov. 22, 2011) (the "Decision"), the Board found that the joint through rates charged by Defendants for transporting coal from mines in New Mexico and the northern portion of the Powder River Basin in Wyoming and Montana to AEPCO's Apache Generating Station near Cochise, Arizona,

exceeded maximum reasonable levels. The Board directed Defendants to establish and maintain rates no higher than the jurisdictional threshold and to pay reparations to AEPCO, plus applicable interest, for shipments made under the challenged rates. Decision at 39.

BNSF and UP established proportional rates that took effect on January 1, 2012, in response to the prescriptive aspect of the Decision. Those proportional rates are the subject of a petition that AEPCO filed with the Board on January 9, 2012, to which BNSF and UP replied separately on January 30, 2012.

Notwithstanding their disagreement as to whether BNSF and UP have properly complied with the Board's prescription, AEPCO and Defendants have cooperated to identify the traffic entitled to reparations for the period from January 2, 2009 (the date the first movement was tendered under the challenged rates), through December 31, 2011, and to calculate reparations and interest thereon in compliance with the Decision.

#### **STATEMENT OF DAMAGES**

In accordance with the Board's regulations at 49 C.F.R. Parts 1133 and 1141, AEPCO states as follows.

1. Principal

Date of Shipments/Delivery. The first coal shipment subject to the reparations was tendered on January 2, 2009, and freight charges were paid on January 13, 2009. The last coal shipment subject to the reparations was tendered on December 30, 2011, and freight charges were paid on January 12, 2012. A complete list of all shipments subject to this claim is presented in Attachment 1.

Car Initials and Numbers. All coal shipments subject to this claim moved in trainloads, with each train bearing an identification number used for, *inter alia*, billing purposes. Attachment 1 lists all train numbers for all shipments subject to this claim.

Origins. BNSF-served New Mexico and Montana origins listed in Attachment 1.

Destination. Apache Generating Station (near Cochise, AZ).

Route. BNSF/Deming/UP and BNSF/Pueblo/UP

Commodity. Coal.

Total Amount Paid. \$49,996,483.90.

Total Lawful Charges. \$40,769,470.85.

Reparations (Excluding Interest). \$9,227,013.05.

The charges shown above and in Attachment No. 1 were paid by AEPCO.

2. Interest

The Board's Decision confirms that AEPCO is entitled to interest, calculated in accordance with 49 C.F.R. Part 1141, on the reparations. Decision at 39. Under the regulations, AEPCO is entitled to interest based upon the equivalent coupon yield of 91-day U.S. Treasury Bills, as in effect on the first day of the quarter in which the unlawful charge is paid, with interest compounded quarterly and the interest rate updated as of the first day of all subsequent calendar quarters until reparations are paid.

As shown on Attachment No.1, AEPCO is entitled to interest through March 1, 2012, equal to \$17,130.85, plus \$6.31 per day after January 10, 2012 through March 31, 2012, with the interest rate to be updated if payment is received thereafter.

### 3. Certification

Attachment No. 2 contains certifications from AEPCO and BNSF, the rail carrier that collected the charges, for the information specified in 49 C.F.R. § 1133.2. Attachment No. 2 shows that BNSF concurs with AEPCO's reparation and interest calculations.

#### **PETITION FOR AN ORDER DIRECTING PAYMENT**

AEPCO believes that the Decision is quite explicit in directing Defendants to pay reparations, including interest, and that no further order or instruction from the Board is needed, unless the parties disagree as to the computations (which is not the case, as shown in the certifications in Attachment No. 2). BNSF, however, has stated that it requires a further order from the Board before making payment. Accordingly, AEPCO requests that the Board enter an order directing Defendants to make payment of reparations and interest as of January 10, 2012, in the amount of \$9,244,143.90, with interest accruing at the amount of \$6.31 per day through March 31, 2012 until the date of payment in the manner stated above.

AEPCO urges the Board to enter the requested payment order as quickly as possible. The Board served the decision on November 22, 2011. AEPCO presented its initial calculations to Defendants on December 13, 2011, and its full reparation calculations (including additional December 2011 movements) to Defendants on January 10, 2012. The carriers expressed no disagreement with AEPCO's calculations when they initially responded on February 24, 2012.<sup>1</sup> While AEPCO will receive interest on the reparations, the interest rate is very low, especially in contrast to the cost of capital that is utilized to determine the jurisdictional threshold.

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<sup>1</sup> BNSF later conducted a further review and concluded that AEPCO's reparation calculations were slightly understated. AEPCO and the Defendants have agreed to utilize BNSF's more recent calculations.

AEPCO thus urges to the Board to issue the requested order as soon as possible. The Board may wish to consider whether the duty to make payment should be contingent on a further order, though this may require a rulemaking to revise 49 C.F.R. § 1133.2. The Board may also wish for future cases to adopt a higher rate of interest to compensate shippers for the delay in payment.

### CONCLUSION

For the reasons stated above, AEPCO requests that the Board issue an order directing Defendants to pay reparations and interest to AEPCO in the amounts set forth above, and AEPCO suggests that the order be issued as soon as possible.

Respectfully submitted,

ARIZONA ELECTRIC POWER  
COOPERATIVE, INC.

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Dated: March 20, 2012

**Attachment No. 1**

**SUMMARY OF REPARATIONS**





Statement of Repayments at Option No. 42113 From 01/02/2009-01/01/13 (Interest Through January 10, 2013)

Table with 15 columns: Loan No., Waybill Date, Maturity Date, Orig. Coll., Loan, Term, Maturity Date, Max. Coll., Maximum Bal., Repayment, Total, T. Days, Corporate Interest Rate, Total Repayments, and Loan No. The table lists multiple loans with their respective details and totals.

**Statement of Repairs on Deck No. 4213 From 8/1/2011 to 1/1/2012**  
(Interest Through January 10, 2012)

Item ID	Waybill Data	Payment Date	Origin	Units	Total Amount Paid	Total Balance Portion	Maximum Rate	Total Repairs Excluding Interest	Total Days Interest	Composite Interest Rate	Repayments Including Interest	Interest
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)
139	ES32	9/29/2010	El Segundo	13 430.70	\$205,572.08	\$15.27	\$12.51	\$37,203.74	466	1.0012259	\$37,248.35	\$45.81
140	LR18	9/29/2010	Lee Ranch	13,340.00	\$203,984.44	\$15.29	\$12.68	\$34,853.24	468	1.0012258	\$34,875.84	\$45.59
141	ES33	9/29/2010	El Segundo	13 433.16	\$205,493.16	\$15.27	\$12.51	\$37,184.90	468	1.0012258	\$37,240.49	\$45.59
142	LR19	9/19/2010	Lee Ranch	13 434.70	\$205,496.32	\$15.29	\$12.68	\$35,107.32	454	1.0011655	\$35,148.24	\$40.92
143	Subtotal - 3C-2010			273 055.83	\$4,189 423.12			\$786,513.48			\$787,572.28	\$1,650.76
144	ES34	1/25/2010	El Segundo	13 925.33	\$213,289.28	\$15.32	\$12.80	\$35,046.12	441	1.0011095	\$35,068.00	\$38.87
145	ES35	1/29/2010	El Segundo	13 917.23	\$213,176.15	\$15.32	\$12.80	\$35,035.67	441	1.0011095	\$35,074.54	\$39.87
146	ES36	10/4/2010	El Segundo	13 927.45	\$213,520.22	\$15.32	\$12.80	\$35,048.99	434	1.0011395	\$35,087.75	\$39.89
147	ES37	11/2/2010	El Segundo	13,929.00	\$213,996.78	\$15.32	\$12.80	\$35,064.99	434	1.0010794	\$35,094.82	\$37.83
148	ES38	10/16/2010	El Segundo	13,914.78	\$213,133.16	\$15.32	\$12.80	\$35,031.74	434	1.0010794	\$35,069.55	\$37.81
149	ES39	10/27/2010	El Segundo	13 937.69	\$213,055.29	\$15.32	\$12.80	\$35,033.05	434	1.0010794	\$35,070.78	\$37.71
150	ES40	10/24/2010	El Segundo	13 929.75	\$213,352.63	\$15.32	\$12.80	\$35,053.83	425	1.0010407	\$35,088.31	\$38.48
151	ES41	11/11/2010	El Segundo	13 931.20	\$213,373.06	\$15.32	\$12.80	\$35,053.70	425	1.0010407	\$35,090.18	\$38.48
152	ES42	11/20/2010	El Segundo	13 927.36	\$213,319.16	\$15.32	\$12.80	\$35,048.78	408	1.0009589	\$35,082.37	\$33.81
153	ES43	11/16/2010	El Segundo	13 930.60	\$213,364.60	\$15.32	\$12.80	\$35,052.92	408	1.0009589	\$35,088.37	\$33.81
154	ES44	11/15/2010	El Segundo	13 924.15	\$213,273.72	\$15.32	\$12.80	\$35,044.60	408	1.0009589	\$35,078.21	\$33.81
155	ES45	11/8/2010	El Segundo	13 926.90	\$213,312.47	\$15.32	\$12.80	\$35,048.15	408	1.0009589	\$35,081.78	\$33.81
156	ES46	11/21/2010	El Segundo	13 917.83	\$213,431.58	\$15.32	\$12.80	\$35,058.44	392	1.0009897	\$35,087.83	\$31.48
157	ES47	11/24/2010	El Segundo	13 919.55	\$213,476.30	\$15.32	\$12.80	\$35,062.44	392	1.0009897	\$35,097.97	\$31.22
158	ES48	12/1/2010	El Segundo	13 909.63	\$213,412.95	\$15.32	\$12.80	\$35,043.56	392	1.0009897	\$35,075.05	\$31.22
159	ES49	12/1/2010	El Segundo	13 912.86	\$213,478.30	\$15.40	\$12.80	\$35,062.82	392	1.0009697	\$35,094.89	\$32.27
160	ES50	12/22/2010	El Segundo	13,914.38	\$212,709.02	\$15.40	\$12.80	\$35,063.74	384	1.0009697	\$35,094.79	\$31.05
161	ES51	12/22/2010	El Segundo	13,909.85	\$212,628.71	\$15.40	\$12.80	\$35,061.39	384	1.0009697	\$35,091.43	\$31.04
162	ES52	12/29/2010	El Segundo	13,814.38	\$212,751.71	\$15.40	\$12.80	\$35,057.85	378	1.0009335	\$35,092.77	\$30.12
163	ES53	12/13/2010	El Segundo	13,811.20	\$212,706.91	\$15.40	\$12.80	\$35,052.55	371	1.0009335	\$35,089.07	\$29.93
164	ES54	12/16/2010	El Segundo	13,806.30	\$212,623.78	\$15.40	\$12.80	\$35,051.94	371	1.0009335	\$35,084.87	\$29.93
165	ES55	12/18/2010	El Segundo	13,813.50	\$212,767.50	\$15.40	\$12.80	\$35,056.10	371	1.0009335	\$35,088.04	\$29.94
166	Subtotal - 4C-2010			305,199.91	\$4,892 986.01			\$776,407.23			\$777,151.03	\$743.80
167	Subtotal - 2010			1,010,109.58	\$15,431,684.22			\$2,641,288.10			\$2,645,247.54	\$3,948.44
168	LR01	1/4/2011	Lee Ranch	13,783.40	\$213 163.63	\$15.47	\$13.34	\$26,293.07	356	1.0037303	\$26,314.47	\$21.39
169	LR02	1/7/2011	Lee Ranch	13,810.60	\$213 551.10	\$15.46	\$13.34	\$26,313.69	351	1.0007053	\$26,334.37	\$20.87
170	LR03	1/10/2011	Lee Ranch	13,832.35	\$213 712.43	\$15.46	\$13.34	\$26,322.28	343	1.0006652	\$26,341.78	\$19.50
171	LR04	1/13/2011	Lee Ranch	13,814.33	\$213 602.18	\$15.46	\$13.34	\$26,316.42	343	1.0006652	\$26,335.82	\$19.50
172	LR05	1/17/2011	Lee Ranch	13,596.33	\$210,527.74	\$15.46	\$13.34	\$26,152.76	343	1.0006652	\$26,172.16	\$18.39
173	LR06	1/20/2011	Lee Ranch	13,702.73	\$211,863.28	\$15.46	\$13.34	\$26,071.83	333	1.0005150	\$26,090.41	\$17.88
174	LR07	1/23/2011	Lee Ranch	13,677.80	\$211,515.08	\$15.46	\$13.34	\$26,053.23	333	1.0005150	\$26,071.10	\$17.87
175	ESC1	1/27/2011	El Segundo	13 706.83	\$211 497.00	\$15.72	\$13.14	\$35,391.65	322	1.0005568	\$35,411.76	\$18.82
176	LR08	2/9/2011	Lee Ranch	12,545.65	\$189,542.31	\$15.83	\$13.34	\$31,184.87	315	1.0005248	\$31,201.04	\$18.07
177	R09	1/11/2011	Lee Ranch	13,608.83	\$211 638.08	\$15.83	\$13.34	\$34,367.99	315	1.0005248	\$34,388.03	\$18.04
178	LR10	2/11/2011	Lee Ranch	13 622.36	\$211 573.06	\$15.85	\$13.34	\$34,369.33	315	1.0005248	\$34,389.37	\$18.04
179	ESC2	2/21/2011	El Segundo	13 668.83	\$211 686.87	\$15.83	\$13.14	\$36,861.17	315	1.0005248	\$36,879.22	\$18.05
180	LR11	2/24/2011	Lee Ranch	13 662.18	\$211 477.49	\$15.83	\$13.14	\$36,861.17	306	1.0004897	\$36,879.22	\$18.05
181	ESC3	3/2/2011	El Segundo	13 664.70	\$211 463.94	\$15.83	\$13.14	\$36,861.17	306	1.0004897	\$36,879.22	\$18.05
182	LR12	3/12/2011	Lee Ranch	13 708.55	\$211 196.10	\$15.81	\$13.34	\$36,336.58	306	1.0004897	\$36,353.48	\$17.89
183	LR13	3/22/2011	Lee Ranch	13 709.85	\$211 976.00	\$15.81	\$13.34	\$36,259.31	301	1.0004547	\$36,270.08	\$16.03
184	LR14	3/29/2011	Lee Ranch	13 824.03	\$211 976.20	\$15.81	\$13.34	\$36,259.31	294	1.0004186	\$36,274.10	\$14.79
185	LR15	4/13/2011	Lee Ranch	13 866.73	\$217 822.48	\$15.81	\$13.34	\$35,563.71	287	1.0003382	\$35,577.38	\$13.67
186	LR16	3/26/2011	Lee Ranch	13,668.65	\$217,850.14	\$15.81	\$13.34	\$35,243.55	272	1.0003382	\$35,253.49	\$11.92
187	LR17	3/30/2011	Lee Ranch	13,664.46	\$217,933.85	\$15.91	\$13.34	\$35,246.55	265	1.0003214	\$35,255.47	\$11.92
188	Subtotal - 1Q-2011			273,708.21	\$4,302 426.98			\$659,408.29			\$659,747.19	\$340.80
189	LR18	4/4/2011	Lee Ranch	13,726.15	\$220,184.15	\$16.04	\$14.05	\$27,289.59	266	1.0003214	\$27,308.37	\$9.77
190	LR19	4/24/2011	Lee Ranch	13,812.35	\$221,985.15	\$16.04	\$14.05	\$27,518.96	245	1.0002627	\$27,539.21	\$7.23
191	LR20	5/10/2011	Lee Ranch	13,808.00	\$221,484.26	\$16.04	\$14.05	\$27,518.96	245	1.0002627	\$27,539.21	\$7.23
192	LR21	5/9/2011	Lee Ranch	13,833.75	\$225 447.19	\$16.30	\$14.05	\$31,068.85	211	1.0001677	\$31,088.22	\$5.21
193	LR22	5/13/2011	Lee Ranch	13,852.03	\$225,709.60	\$16.28	\$14.05	\$31,068.85	211	1.0001677	\$31,094.08	\$5.21
194	LR23	5/10/2011	Lee Ranch	13,734.05	\$224,014.50	\$16.31	\$14.05	\$31,051.10	211	1.0001677	\$31,084.31	\$5.21
195	LR24	5/14/2011	Lee Ranch	13,707.10	\$223,451.33	\$16.30	\$14.05	\$30,818.59	211	1.0001677	\$30,821.74	\$5.17
196	LR25	5/18/2011	Lee Ranch	13 694.80	\$223 451.33	\$16.30	\$14.05	\$30,818.59	217	1.0001645	\$30,807.59	\$5.69
197	LR26	5/22/2011	Lee Ranch	13 692.23	\$223,282.06	\$16.30	\$14.05	\$30,801.89	217	1.0001645	\$30,819.61	\$5.69
198	R27	5/14/2011	Lee Ranch	13 695.68	\$223,337.15	\$16.30	\$14.05	\$30,812.92	210	1.0001646	\$30,818.00	\$5.68
199	R28	5/30/2011	Lee Ranch	13 692.80	\$223,058.59	\$16.30	\$14.05	\$30,804.06	210	1.0001646	\$30,809.08	\$5.68
200	R29	6/7/2011	Lee Ranch	13 500.90	\$222,377.94	\$16.38	\$14.05	\$31,217.45	180	1.0001107	\$31,229.00	\$3.45
201	LR30	6/23/2011	Lee Ranch	13 570.35	\$225,466.87	\$16.38	\$14.05	\$31,711.61	201	1.0001398	\$31,716.05	\$4.43
202	LR31	6/23/2011	Lee Ranch	13 570.35	\$225,466.87	\$16.38	\$14.05	\$31,711.61	201	1.0001398	\$31,716.05	\$4.43
203	LR32	6/29/2011	Lee Ranch	13,709.83	\$224,615.17	\$16.38	\$14.05	\$31,992.13	194	1.0001202	\$31,995.88	\$3.85
204	LR33	6/29/2011	Lee Ranch	13,584.35	\$224,574.71	\$16.38	\$14.05	\$31,716.00	194	1.0001202	\$31,716.81	\$3.81
205	LR34	6/29/2011	Lee Ranch	13,809.20	\$226,279.12	\$16.39	\$14.05	\$32,259.82	187	1.0001155	\$32,263.46	\$3.72
206	LR35	6/29/2011	Lee Ranch	13,815.53	\$226,326.60	\$16.39	\$14.05	\$32,260.82	180	1.0001107	\$32,263.46	\$3.57
207	Subtotal - 2Q-2011			247,008.48	\$4,023,519.58			\$653,036.46			\$653,729.39	\$92.93

Statement of Investments in Deed Lot 42113 From 1/1/2009-1/1/2013

(Interest Through January 10, 2012)

Table with columns: Label, Yield Date, Payment Date, Object, Date, Amount Paid, Total Rate Per Ton, Maximum Earnings, Recipients, Total Payments, Car Payment, and Total. Rows include investment labels like L63, L85, L86, L87, L88, L89, L90, L91, L92, L93, L94, L95, L96, L97, L98, L99, L100, L101, L102, L103, L104, L105, L106, L107, L108, L109, L110, L111, L112, L113, L114, L115, L116, L117, L118, L119, L120, L121, L122, L123, L124, L125, L126, L127, L128, L129, L130, L131, L132, L133, L134, L135, L136, L137, L138, L139, L140, L141, L142, L143, L144, L145, L146, L147, L148, L149, L150, L151, L152, L153, L154, L155, L156, L157, L158, L159, L160, L161, L162, L163, L164, L165, L166, L167, L168, L169, L170, L171, L172, L173, L174, L175, L176, L177, L178, L179, L180, L181, L182, L183, L184, L185, L186, L187, L188, L189, L190, L191, L192, L193, L194, L195, L196, L197, L198, L199, L200, L201, L202, L203, L204, L205, L206, L207, L208, L209, L210, L211, L212, L213, L214, L215, L216, L217, L218, L219, L220, L221, L222, L223, L224, L225, L226, L227, L228, L229, L230, L231, L232, L233, L234, L235, L236, L237, L238, L239, L240, L241, L242, L243, L244, L245, L246, L247, L248, L249, L250, L251, L252, L253, L254, L255, L256, L257, L258, L259, L260, L261, L262, L263, L264, L265, L266, L267, L268, L269, L270, L271, L272, L273, L274, L275, L276, L277, L278, L279, L280, L281, L282, L283, L284, L285, L286, L287, L288, L289, L290, L291, L292, L293, L294, L295, L296, L297, L298, L299, L300, L301, L302, L303, L304, L305, L306, L307, L308, L309, L310, L311, L312, L313, L314, L315, L316, L317, L318, L319, L320, L321, L322, L323, L324, L325, L326, L327, L328, L329, L330, L331, L332, L333, L334, L335, L336, L337, L338, L339, L340, L341, L342, L343, L344, L345, L346, L347, L348, L349, L350, L351, L352, L353, L354, L355, L356, L357, L358, L359, L360, L361, L362, L363, L364, L365, L366, L367, L368, L369, L370, L371, L372, L373, L374, L375, L376, L377, L378, L379, L380, L381, L382, L383, L384, L385, L386, L387, L388, L389, L390, L391, L392, L393, L394, L395, L396, L397, L398, L399, L400, L401, L402, L403, L404, L405, L406, L407, L408, L409, L410, L411, L412, 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L911, L912, L913, L914, L915, L916, L917, L918, L919, L920, L921, L922, L923, L924, L925, L926, L927, L928, L929, L930, L931, L932, L933, L934, L935, L936, L937, L938, L939, L940, L941, L942, L943, L944, L945, L946, L947, L948, L949, L950, L951, L952, L953, L954, L955, L956, L957, L958, L959, L960, L961, L962, L963, L964, L965, L966, L967, L968, L969, L970, L971, L972, L973, L974, L975, L976, L977, L978, L979, L980, L981, L982, L983, L984, L985, L986, L987, L988, L989, L990, L991, L992, L993, L994, L995, L996, L997, L998, L999, L1000.

Table with columns: Label, Subtotal, Total, Interest, and Total. Rows correspond to labels L63 through L999. Includes a summary row for 'Subtotal - 302211'.

0.025%

1/20/2007

\$6.31

Del V. Nieves

TB # Field 10112

Interest Rate Per Day (0.1% Linc 25yr 1/2007)

Do y Interest Not Compounded (Linc 250 x June 25 1..)

**CERTIFICATION**

Arizona Electric Power Cooperative, Inc. ("AEPCO"), hereby certifies that the foregoing Statement of Damages includes claims only on shipments covered by the findings in Docket No. 42113, and contains no claim for reparations previously filed with the Board by or on behalf of AEPCO or, so far as AEPCO knows, by or on behalf of any person, in any proceeding.

Arizona Electric Power Cooperative, Inc.

By: Emily F. Regis  
Emily F. Regis  
Fuels Resource Administrator  
Arizona Electric Power Cooperative, Inc.  
1000 S. Highway 80  
Benson, Arizona 85602

Date: March 19, 2012

**CERTIFICATION**

Arizona Electric Power Cooperative, Inc. has prepared a Statement of Damages in Docket No. 4211. This Statement of Damages calculates the total amount of reparations and interest due (as of January 10, 2012) for covered shipments moving between December 30, 2008 and December 31, 2011 to be \$9,244,143.90. The undersigned hereby certifies that these calculations have been checked against the records of BNSF Railway Company and found correct.

BNSF Railway Company

  
Name

VP Planning & Studies and Controller  
Title

Dated: 3-20, 2012

**CERTIFICATE OF SERVICE**

I hereby certify that on this March 20, 2012, I caused copies of the foregoing filing to be served on counsel for Defendants Union Pacific Railroad Company and BNSF Railway Company by hand or by email, and also by first class mail, postage prepaid, as follows:

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/s/ Robert D. Rosenberg