

EMILY REGIS ORAL STATEMENT

1. Members of the Board, good afternoon. Thank you for holding this hearing, and for giving us an opportunity to speak with you.

2. My name is Emily Regis. I'm wearing two hats today. First, I am the Fuels Resource Administrator for Arizona Electric Power Cooperative or AEPCO. That's my day job. Second, I'm here as the Vice President of the Freight Rail Consumer Alliance or FRCA, an association of shippers and shipper associations. AEPCO is also a member of the Western Coal Traffic League and the National Coal Transportation Association, where I am the current President. AEPCO and FRCA join in the League and NCTA statements as well.

3. AEPCO and FRCA have several areas of concern and several proposals regarding demurrage and accessorial charges, particularly as they relate to precision scheduled railroading or PSR. Let me briefly summarize our written statement.

4. First, we are being forced to pay à la carte for services that used to be included in the line haul rate. As a result, we are being forced to pay more to receive the same bundle of services.

5. Second, the higher charges are associated with PSR. For example, out West, we have seen higher charges with UP, but not with BNSF, at least not yet.

6. Third, it would be one thing if PSR was producing better service for us. But it has been the opposite. UP service has been less predictable and more disrupted. Volumes are not getting moved because of PSR. And PSR reduces surge capacity, meaning those volumes are unlikely to be made up in the future.

7. Fourth, there is an absence of fundamental fairness and basic reciprocity. If shippers hold on to a train too long, we get hit with demurrage or detention. However, the railroads do not face any financial consequence if they take too long to move a train or service suffers.

8. My written statement details a sequence of events with our trainset at AEPCO's power plant. Very briefly, we wanted a couple of additional hours, which we were willing to pay for, to run our coal cars through our dumper a second time. We wanted the cars to be completely empty before sending them to the shop for scheduled maintenance. But UP insisted on taking the cars while some still held small amounts of coal.

9. After the cars made it to the shop, UP was notified the cars would be ready to return to service on April 26. We scheduled the cars for a coal loading at the end of April, and obtained an April PRB train slot from UP. But UP did not retrieve our cars until May 7, eleven days after they were scheduled. So, our cars sat, we couldn't use them, the shop had to provide space for them, and we had to deal with the mine for the delay. But UP did not have to pay a penalty or compensate anyone for its delay, even though UP is quick to charge shippers for their schedule deviations.

10. We offer several suggestions.

11. First, carriers should not be allowed to charge à la carte for services that were previously included in the regular line-haul service, at least not unless the carriers first show that those rates have been reduced {or service improved}.

12. Second, there should be reciprocity. If shippers are at risk for causing delays, then so should carriers.

13. Third, the penalty aspect of demurrage and accessorial charges should be limited. Even if a penalty component is permissible, the sky should not be the limit. 25% seems more than adequate.

14. Fourth, the Board should consider using the FERC penalty approach. At FERC, transmission providers and pipelines are allowed, even required, to impose penalties to enforce reservation rules and the like. But the providers do not retain those penalty proceeds. Instead, they distribute the proceeds to customers that follow the rules. The charges do not become a profit center. The Board uses that same principle with the railroad fuel surcharge safe harbor.

15. Thank you again for holding this hearing, and allowing us to appear. We also want to thank and commend the Board for releasing the rate reform task force report. Reasonable rates, as well as reasonable charges and practices, are all vital to shippers, especially those that lack effective competition. We look forward to learning more about the recommendations and to the opportunity to submit comments on them.

16. We would be pleased to respond to any questions you might have.