

EMILY REGIS ORAL STATEMENT

1. Chairman Lipinski, Ranking Member Crawford, and Members of the Subcommittee, good morning. Thank you for this roundtable and the opportunity to speak with you.

2. My name is Emily Regis.

3. I am the Fuels Resource Administrator for Arizona Electric Power Cooperative or AEPCO. AEPCO is a nonprofit rural electric generation and transmission or wholesale cooperative in Arizona. AEPCO serves six-member distribution nonprofit cooperatives that provide retail electric power to more than 400,000 homes and business in Arizona, California, and New Mexico, predominately in lower income areas.

4. I am also the Vice President of the Freight Rail Customer Alliance or FRCA. FRCA represents large trade associations that, in turn represent, more than 3,500 electric utility, agriculture, chemical and alternative fuel companies and their customers in all 50 states.

5. AEPCO has been shipping coal over predecessors of the BNSF and Union Pacific (UP) railroads since the early 1980s. Under the current configuration of the electrical grid and the gas pipelines, we need to use coal to keep the lights on. Our coal comes from three regions: New Mexico, the Powder River Basin in Wyoming, and Colorado. The coal can be delivered only by railroad. We have to depend on UP and BNSF, plus a short-line railroad that acts as BNSF's subcontractor. The railroads are well aware of our captivity and exploit it.

6. In the twenty years I've worked on AEPCO's rail transportation, there have been service problems, but none worse than they are now. Unlike before, the problems are not caused by financial difficulties or increased traffic: the railroads have never been better financially and volumes are actually down. Weather also does not explain the problems, as they started before and continued after the weather challenges.

7. Instead, the key change is nearly all of the Class I railroads have adopted so-called precision scheduled railroading or PSR. They may claim that PSR improves service, but our experience, and that of many other shippers, has been the opposite. Let me give a few examples.

8. Our New Mexico trains typically take three days to move to our plant. Recently, they have taken eight days or more, over double.

9. Delay on the empty return movements has been even worse because the different carriers alter the number and location of locomotives on our trains. We suspect one carrier is redeploying locomotives from our train elsewhere. But the missing locomotive means the train cannot be loaded at the mine, and the train can end up sitting at our plant, an interchange, or the mine for days.

10. PSR also imposes additional and increased charges for railcar demurrage and accessorial services. These charges are supposed to incentivize *shippers* to do *our* part to minimize train delays. But they do not work that way in practice.

11. For example, in April we needed to send our railcars to the shop for routine maintenance. The railcars needed to be completely emptied at our plant before going to the shop. We asked UP to run our cars through our dumper a second time, and

were willing to pay UP's higher charge, but UP refused. The cars left our plant with carry-back coal, meaning we didn't get some coal we already paid for, UP had to haul more weight on a supposedly empty move, and AEPCO was at risk for additional charges from the repair shop for having the shop empty and dispose of the coal.

12. It got worse. Our cars arrived at the shop, and the shop later notified us that the cars would be ready on April 26. We arranged for the mine to load the cars at the end of April, and obtained a train slot from UP for that purpose. But UP did not pick up our cars until May 7, *eleven* days after they were available. So, our cars sat unused, the shop had to provide space for them, and we had to deal with the mine for the loading delay.

13. Under PSR, shippers and their partners face multiple penalties and charges for not handling a train promptly when it arrives. *But UP did not face any penalty or provide compensation when our railcars sat.* There is no reciprocity.

14. Shippers can also face charges for delays caused by the railroads. If two trains arrive at the same time, and the shipper can receive or unload only one, the railroad will "constructively place" the second train, which will start accruing demurrage, *even though the railroad caused the train bunching in the first place.* Those demurrage charges have been increased considerably under PSR, and have become a significant source of revenue for some carriers. This situation is fundamentally unfair.

15. In other words, PSR lowers costs and operating ratios for the railroads, and increases returns for their stockholders and bonuses for their management. But it means worse service, higher costs, and cost-shifting for customers.

16. Shippers appreciate that the Surface Transportation Board's attention to the matter and the two-day oversight hearing it convened in May on demurrage and accessorial charges. The Board's Office of Rail Customer Assistance has been particularly helpful.

17. But the agency has been largely reactive. The railroads did not need Board authority to adopt PSR, and the Board has not imposed any fines or penalties on the railroads or ordered any compensation for shippers. In contrast, FERC regularly imposes penalties, sometimes in the millions of dollars, when utilities violate reliability service, even if service is unaffected.

18. These issues illustrate the larger problems that captive shippers face with rail rates. Stand-alone rate cases at the Board now cost shippers at least \$5 million, making them unaffordable for many shippers.

19. FRCA and its members were very encouraged by the release of the Report of the Board's Rate Reform Task Force. The Report notes major problems with rate cases and proposes changes that may bring real improvement.

20. The Board's statements indicate it will be moving forward on the task force's recommendations and on accessorial and demurrage charges in upcoming rulemakings. FRCA and its members look forward to participating. We hope the Board will act soon to redress the balance between railroads and shippers.

21. Thank you for the opportunity to participate in this Roundtable. I am more than happy to answer your questions.