Good morning [afternoon], Chairman Primus, Vice Chair Hedlund, and Members Fuchs and Shultz. Thank you for holding this hearing and the opportunity to appear before you.

I am Emily Regis. I work as Fuel Services Manager for Arizona Electric Power Cooperative or AEPCO, a rural electric generation and transmission cooperative. My job involves dealing with both BNSF and UP, as well as a short-line railroad, on a near daily basis. I've been doing it for almost 25 years, during which much has changed. I wish I could say that all that change has been positive, but that is not the case, especially in recent years.

I'm here today on behalf of two organizations, the Freight Rail Customer Alliance or FRCA, and the National Coal Transportation Association or NCTA. FRCA is a national association of shippers and shipper associations seeking reliable rail service at competitive rates. NCTA is an association of electric utilities, coal producers, and a wide variety of commodity shippers and equipment manufacturers associated with the coal supply and coal transportation chains. NCTA seeks to provide education and facilitation for the resolution of coal transportation issues and beneficial uses of coal and related bulk commodities. I'm honored to currently serve as President of both organizations and as a RETAC shipper representative. I am accompanied today by Robert Rosenberg of Slover & Loftus as counsel.

FRCA and NCTA very much appreciate the Board's holding this hearing on growth in the freight rail industry, or lack thereof. The topic is important and timely. Unfortunately, it highlights much of what is wrong in the railroad industry.

Our written comments presented significant data documenting how railroad traffic grew, fairly dramatically, in the first twenty years after the Staggers Rail Act of 1980. That growth, much of it from coal, was good for the railroads, shippers, and the country.

All that changed starting in the early 2000s. Freight carloads have fallen substantially since 2000. Intermodal has grown, but total freight ton-miles are essentially identical to what they were in 2000, despite increases in some interim years, and an overall increase in truck ton-miles over that period. Rail has lost market share despite its inherent advantages.

The question is what has caused this loss in volume? We believe, and the data shows, that railroad prices are the primary cause. From 1980 to 2000, railroad rates declined substantially, especially in real or inflation-adjusted terms, and after adjusting for changes in the traffic mix according to the Board's own analysis. Starting about 2004, railroad rates have increased substantially, even after adjusting for inflation. The overrecovery relative to costs increases if one adjusts for inflation using the RCAF-A, which tracks changes in the railroads' actual cost of production, instead of the GDP implicit price deflator used in the Board's study.

The rate increases have not been by accident. The railroads have been quite explicit about wanting to increase rates. Especially with the adoption of Precision Scheduled Railroading or PSR, the railroads have said directly that they want to focus on raising rates, increasing their margins, and reducing their operating ratios, at the expense of volumes. And that is what the data shows.

It would be one thing if the railroads needed to raise rates in order to survive. But they don't, as the railroads have generally been revenue adequate for many years, approaching twenty by Wall Street standards.

The rate increases might be more tolerable if they had been matched by improvements in service. But they have not. At AEPCO, our recent cycle times are close to double what we experienced

just a few years ago. To paraphrase some former STB Chairs, the railroads are charging more for doing less.

So far, I have been talking about freight generally, but let me now focus on coal. The substantial decrease in coal volumes is no secret. The reduction is largely due to increased environmental restrictions, the rise of heavily subsidized wind and solar renewables, and the presence of low natural gas prices. Those forces, and their interaction, are often variable, as is their impact on utilities' need or rather ability to burn coal. These days, coal is sometimes economic to burn, and sometimes not. I recognize that railroads do not control these forces, but neither do utilities. Despite the use of the best forecasting models in the industry, predictions of volume demand and the market often fall short. Railroad efforts to require things like ratable monthly volumes just make it more difficult for utilities to schedule deliveries and burn coal.

The decline in coal volumes is inevitable. The question is whether railroads have made it better or worse. And the answer is they have made it worse, in several respects. First, they have increased coal rates disproportionately, as shown in our written testimony. Second, they have provided poor and inadequate service. In particular, during 2021-2023, when natural gas prices spiked, there were tens of millions of tons of coal -- 50 million tons in Wyoming in 2022 alone, according to the Wyoming Mining Association -- that the railroads were unwilling or unable to deliver. The coal non-deliveries forced utilities to burn natural gas, at triple or quadruple the cost per million Btu. For example, a trainload of PRB coal might have a delivered cost of $500 thousand, and replacement gas might cost an addition $1-$1.5 million or more. Those extra costs were passed along to ratepayers or absorbed by utilities and other generators.

The situation changed later in 2023 and 2024, when extremely low gas prices reduced demand for coal generation. Railroad service generally improved during this time, largely due to low volume for many other commodities including coal, but this does not make up for the earlier delivery deficits

Also, the level of railroad service is not now universally adequate. To track and document the level of coal service, NCTA surveys its members semi-annually, and shares the results at the RETAC semi-annual meetings. The most recent survey responses, from the second half of 2023 and the first half of 2024, reveal that 29% of respondents are experiencing longer than normal or historic transit times. 71% of respondents reported delays from lack of train crews, 71% reported delayed train pick-ups, 43% reported lack of available locomotive power, 29% reported missed car switches as an ongoing issue, and 43% reported poor communication from the rail carriers. The communication problems are particularly disconcerting. When each train costs the customer $500K, and much of that goes to the carrier, the railroads should be going out of their way to at least communicate with their customers. They are not. When asked what percentage of nominated coal volumes were received in the first half of 2024, only 33% received 100% of their coal with approximately 38% citing the reason being that the rail carriers did not deliver and had to defer volumes to future months.

At this point, there is no reason to expect the railroads to achieve sustained improvement on their own. Railroads cater to investors, not customers. Management that falls short with investors can and will be replaced.

Customer market pressures are not enough. For 20 years, the railroads have been raising rates and reducing volumes, creating periodic service meltdowns, and providing inconsistent service even during the relatively good times.

Regulatory agencies such as the Board exist to address market failures and market dysfunction, which has become the unfortunate norm in the railroad industry. There are two things that the Board should do now to address these problems.

The first is to flesh out and enforce the common carrier obligation. When railroads are unwilling or have made themselves unable to provide adequate service, meaningful damages and/or penalties should result. The concept that the railroads won't get paid for freight they don't deliver is not enough to cause the railroads to meet customer needs. While much traffic moves under contract, and not tariff, common carrier is still the general service standard, and it needs to be meaningful.

The second is to flesh out and apply the revenue adequacy constraint. It should be clear that shippers are unwilling to bring stand-alone cost cases to the Board, and that the other alternatives for relief are inadequate. The railroads already outearn their cost of capital by a substantial amount, yet they continue to take rate increases that exceed their cost increases. The revenue adequate constraint exists, and was adopted nearly 40 years ago, to address that situation, and should be much simpler, faster, and cheaper to apply than the stand-alone cost test.

We want to make clear that we are not asking to return to pre-Staggers. That type of charge is ridiculous. We are asking for markets to have a semblance of balance and competition. In a competitive market, providers are not rewarded for repeatedly provided poor and inadequate

service, failing to meet customer needs, having poor customer relations, and increasing their rates in excess of costs while reducing their volumes.

Thank you very much, and I would be pleased to address any questions you might have.