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December 26, 2002

BY HAND DELIVERY

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

Re: Docket No. NOR-42076
Albany & Eastern Railroad Company v.
The Burlington Northern and Santa Fe Railway
Company

FILED

DEC 26 2002

**SURFACE
TRANSPORTATION BOARD**

Dear Secretary Williams:

Enclosed for filing in the above-captioned proceeding are an original and ten copies of BNSF's "Answer to Compliant to Commence Arbitration Under 49 C.F.R. Part 1108." Please date-stamp the extra copy that is enclosed and return it to our representative.

Also enclosed are a check in the amount of \$75.00 to cover the filing fee, and a diskette containing the Answer in electronic format.

Sincerely yours,


Robert M. Jenkins III

RMJ/bs

Enclosures

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DEC 27 2002

**SURFACE
TRANSPORTATION BOARD**

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

**ALBANY & EASTERN RAILROAD
COMPANY,**

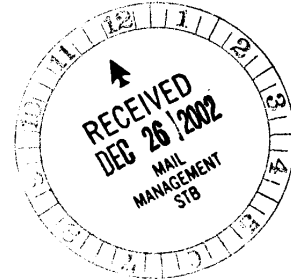
Complainant,

v.

**THE BURLINGTON NORTHERN AND
SANTA FE RAILWAY COMPANY,**

Defendant.

Docket No. NOR-42076



**ANSWER TO
COMPLAINT TO COMMENCE ARBITRATION
UNDER 49 C.F.R. PART 1108**

Pursuant to 49 C.F.R. § 1108.7(c), The Burlington Northern and Santa Fe Railway Company ("BNSF") submits herewith its answer to the complaint filed by the Albany & Eastern Railroad Company ("AERC") on November 26, 2002, in the above-captioned proceeding. For the Board's convenience, BNSF's answer is organized under the numbered headings that appear in AERC's complaint.

"1. The Nature of the Dispute"

Insofar as the statements contained in the first section of AERC's complaint are characterizations of what AERC seeks in this proceeding, no answer is required. BNSF admits that in 1998 BNSF and AERC entered into an agreement under which AERC acquired BNSF's line between Lebanon and Foster, Oregon, and incidental trackage rights to enable traffic on the line to continue to move through BNSF's yard in Albany, Oregon. The parties agreed that the consideration AERC paid for the line did not include the franchise value and going concern

value to BNSF of the rail transportation business to and from the line. Accordingly, if AERC interchanged traffic moving to or from the line with a rail carrier other than BNSF, the agreement provided for AERC to pay a charge to BNSF for each car so interchanged. Among the points on the line covered by the agreement are Bauman and Sweet Home, Oregon.

BNSF admits that it is a signatory to the Railroad Industry Agreement ("RIA"), dated September 10, 1998. On information and belief, AERC is also a signatory to the RIA. While the rate aspects of the RIA were approved by the Board, the Board was not asked to approve, and did not approve, the "Paper Barriers and New Routes" portion of the RIA. *See Association of American Railroads and American Short Line and Regional Railroad Association – Agreement – Application Under 49 U.S.C. 10706*, 3 STB 910 (1998).

BNSF admits that if a dispute about a "paper barrier" arises between Class I and Class III carriers that are signatories to the RIA, and that dispute cannot be resolved through negotiation and discussion, the RIA provides that such a dispute may be submitted to arbitration under the Board's voluntary arbitration procedures at 49 CFR Part 1108. BNSF denies that any dispute between BNSF and AERC falls within Example 3 of Exhibit C of the RIA. Regarding the numbered allegations on pages 5-6 of AERC's complaint, BNSF answers:

1. Denied.
2. Denied.
3. Denied.
4. Denied.
5. Insofar as this allegation assumes that new traffic is at issue, BNSF denies this allegation. BNSF is without information sufficient to affirm or deny what the Union Pacific Railroad ("UP") may have offered.
6. Insofar as this allegation assumes that new traffic is at issue, BNSF denies this allegation. BNSF is without information sufficient to affirm or deny whether an

interchange between AERC and UP at Albany, Oregon, would cause a congestion problem.

7. Insofar as this allegation assumes that new, non-competitive traffic is at issue, BNSF denies this allegation. Insofar as this allegation attempts to paraphrase the public policy principles of the RIA, BNSF contends that those public policy principles speak for themselves.

“2. Statutory Basis of STB Jurisdiction”

AERC’s assertions under this heading state legal conclusions which require no response.

“3. Statement of Issues As To Which Arbitration Is Sought”

AERC’s list of the issues it wishes to arbitrate requires no response.

“4. Relief Sought”

AERC’s statement of the relief it seeks requires no response.

“5. Verification”

BNSF admits that Mr. Root’s verification is attached to AERC’s complaint.

“6. AERC’s Willingness To Arbitrate And Be Bound”

AERC’s statement of its willingness to arbitrate pursuant to the arbitration rules in 49

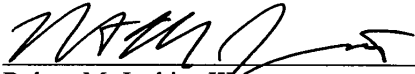
C.F.R. Part 1108 requires no response.

"7. Demand That BNSF Arbitrate And Be Bound"

BNSF is prepared voluntarily to agree to arbitrate this matter pursuant to the arbitration rules at 49 C.F.R. Part 1108.

Respectfully submitted,

Richard E. Weicher
Sidney L. Strickland, Jr.
Michael E. Roper
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SANTA FE RAILWAY COMPANY
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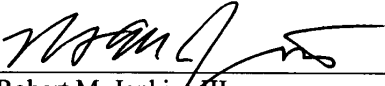
Dated: December 26, 2002

CERTIFICATE OF SERVICE

I hereby certify that on December 26, 2002, a copy of BNSF's Answer to Complaint to Commence Arbitration Under 49 C.F.R. Part 1108 was served by overnight mail or hand-delivery on:

Thomas F. McFarland
Thomas F. McFarland, P.C.
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Robert M. Jenkins III