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July 8, 2003

Via HAND DELIVERY

Honorable Vernon A. Williams
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001

Re: **Docket No. 41191 (Reopened), West Texas Utilities Company v.
The Burlington Northern and Santa Fe Railway Company**

Dear Secretary Williams:

Enclosed for filing in the referenced proceeding, please find an original and 10 copies of BNSF's Reply to the Petitions for Reconsideration of AEP Texas and the Western Coal Traffic League.

Kindly date stamp the extra copy provided herein and return it to our messenger for our files.

If you have any questions, please contact the undersigned.

Sincerely yours,

Samuel M. Sipe Jr.
Samuel M. Sipe, Jr.

Counsel for The Burlington Northern
and Santa Fe Railway Company

cc: Kelvin J. Dowd (By Hand Delivery)
C. Michael Loftus (By Hand Delivery)

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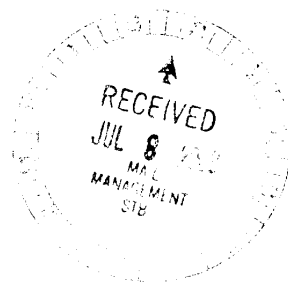
WASHINGTON

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**BEFORE THE
SURFACE TRANSPORTATION BOARD**



WEST TEXAS UTILITIES COMPANY,

Complainant,

v.

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

Defendant.

Docket No. 41191

**DEFENDANT'S REPLY TO THE PETITIONS FOR RECONSIDERATION
OF AEP TEXAS AND THE WESTERN COAL TRAFFIC LEAGUE**

The Burlington Northern and Santa Fe Railway Company ("BNSF") hereby replies in opposition to the Petitions for Reconsideration filed separately in this docket on June 18, 2003 by AEP Texas North Company ("AEP Texas")¹ and the Western Coal Traffic League ("WCTL"). These petitions seek reconsideration of the Board's May 28, 2003 decision ("*May 2003 Decision*") correcting a material error in its 1996 rate prescription.

As a preliminary matter, BNSF does not object to WCTL's Petition for Leave to Intervene for purposes of seeking reconsideration of the *May 2003 Decision*. Because WCTL's Petition for Reconsideration raises the same legal and factual issues as the petition filed by AEP Texas, consideration of WCTL's petition will not complicate this proceeding. At the same time, WCTL's petition adds nothing to the Board's consideration of the issues raised by AEP Texas,

¹ AEP Texas is the successor in interest to West Texas Utilities Company ("WTU"), the original complainant in this docket.

so a separate response to WCTL's petition is not required. Accordingly, BNSF is filing this single response to both petitions.

SUMMARY OF ARGUMENT

AEP Texas and WCTL assert that in its *May 2003 Decision* the Board improperly corrected a legal error in the 1996 rate prescription in this proceeding without first conducting a full hearing on factual issues relating to changed circumstances that have occurred since 1996. As in its recently denied request for a stay, AEP Texas continues to confuse two distinct issues: (1) whether there was legal error in the Board's original ruling that the rate *must* be prescribed at the jurisdictional threshold regardless of the level of the SAC rate; and (2) the broader question whether changed circumstances since the original order affect the level of the rate that can be charged for the issue traffic movement. As to the first question, there is no need for a hearing of any type. It is beyond serious dispute that the Board erred in requiring that the prescribed rate remain at the jurisdictional threshold level regardless of the level of the SAC rate. It is also beyond dispute that that error could be corrected without any consideration of additional evidence. The hearing that petitioners seek goes only to the second question relating to changed circumstances. That hearing would occur if AEP Texas established sufficient grounds for reopening this proceeding to consider changed circumstances, but AEP Texas has not even filed a petition for reopening.

Petitioners also challenge the Board's *May 2003 Decision* based on a mischaracterization of the Board's ruling. Petitioners claim that the Board revised the 1996 rate prescription based on an intervening change in policy, whereas such revisions of a rate prescription can only occur after a full hearing. But the Board's revision of the rate prescription was based on a straightforward correction of a legal error in the 1996 order, not on a change in regulatory policy.

Because the issue of the proper method for determining what SAC rate to prescribe was solely a matter of law, there was no need for an evidentiary hearing. Moreover, petitioners' argument that the Board could only correct a legal error within a year of the original order is contrary to the plain language of the Board's regulations, which permit reopening "at any time."

At bottom, petitioners contend that the error in the Board's original rate prescription should be perpetuated for AEP Texas' benefit and that BNSF should continue to forego revenues to which it is entitled under the law. But as the Board said in its *May 2003 Decision*, "[t]he party who benefitted from the mistake is not entitled to prolong the effects of that mistake while it relitigates the original case." *May 2003 Decision* at 4. AEP Texas is not prejudiced by the Board's *May 2003 Decision*. AEP Texas has already benefitted substantially from the Board's error in failing timely to prescribe the maximum reasonable rate as the higher of the SAC rate or a rate set at the jurisdictional threshold. By denying BNSF's request that the Board give retroactive effect to the correction of the Board's legal error, the Board has allowed AEP Texas to benefit from the legal error in the original prescription by paying rates since 2002 at a level far below the rates that BNSF should have been permitted to charge. There is no prejudice in requiring AEP Texas to start paying rates immediately at levels they should have been paying for over a year.

BACKGROUND

While the procedural background to this matter is familiar to the Board, BNSF provides a brief summary of the key developments to correct certain mischaracterizations contained in the petitioners' statement of facts. In 1994, AEP Texas' predecessor brought a challenge to the reasonableness of the rates for the movement of coal from the Rawhide mine in Wyoming to the Oklaunion generating station in Texas. In 1996, after considering SAC evidence submitted by

the parties, the Board found that the challenged rate was unreasonably high and it prescribed a maximum reasonable rate for traffic that originated at the Rawhide mine. *See West Texas Utils. Co. v. Burlington N. R.R. Co.*, 1 S.T.B. 638 (1996) (“1996 Decision”).

The Board noted that in calculating the maximum SAC rate, the parties proposed different methods for allocating revenue requirements among the traffic group selected for AEP Texas’ hypothetical stand-alone railroad. BNSF argued for the pro rata reduction methodology as developed in *Coal Trading Corp. v. Baltimore & Ohio R.R. Co.*, 6 I.C.C.2d 361 (1990). AEP Texas urged the Board to adopt a ton-mile methodology—which, the Board noted, “was rejected in *Coal Trading*, at 377-80, because it precludes differential pricing.” *1996 Decision*, 1 S.T.B. at 677 n.61. The Board did not rule on the issue of the proper allocation methodology because “in this case either method would yield a stand-alone rate that would be below 180% of the variable cost to [BNSF] of providing service to [AEP Texas].” *Id.* at 677. Since the Board lacked jurisdiction over rail rates below the 180% revenue-to-variable cost (“r/vc”) level, the Board set the maximum reasonable rate level for the AEP Texas traffic at 180% of BNSF’s variable cost of providing service to AEP Texas. *Id.* at 677-78.

In 1997, the Rawhide mine closed. AEP Texas began to take coal for Oklahoma from non-Rawhide origins, and BNSF voluntarily extended the rate it was charging for Rawhide traffic to those movements. In 2000, BNSF notified the Board that it intended to increase its rate to AEP Texas for non-Rawhide movements and asked the Board to confirm that the rate prescription in the *1996 Decision* applied only to coal movements from the Rawhide mine. In the alternative, BNSF asked the Board to modify the rate prescription if the Board were to conclude that it applied to non-Rawhide origins. Specifically, BNSF argued that “setting a rate at the 180% r/vc level is only appropriate if the SAC rate level is lower than that jurisdictional

threshold. If the SAC rate level exceeds 180% r/vc, as it allegedly does now, then BNSF submits that the maximum rate should be the SAC rate rather than the 180% r/vc floor.” *West Texas Utils. Co. v. Burlington N. R.R. Co.*, No. 41191, 2000 WL 1665124 at *2 (served Nov. 7, 2000), *recon. denied*, 2001 WL 283509 (served Mar. 23, 2001). The Board, however, did not reach this argument as it ruled that the rate prescription applied only to movements from the Rawhide mine. *Id.*

AEP Texas resumed shipments from the Rawhide mine in 2002. In April 2003, BNSF requested that the Board confirm BNSF’s entitlement to charge for the Rawhide movement the higher of the SAC maximum rate or the rate set at the jurisdictional threshold of 180% of variable costs. Because it had been prevented from charging the proper amount since AEP Texas resumed shipments from Rawhide as a result of a legal error in the original rate prescription, BNSF also sought an order permitting it retroactively to charge the higher SAC rate on Rawhide movements that had recommenced in 2002. Treating BNSF’s request as a petition to reopen, in May 2003 the Board found that its failure to prescribe a maximum reasonable rate that was at the higher of the SAC rate or the jurisdictional threshold was a clear legal error in the original rate prescription. *May 2003 Decision* at 3. The Board squarely rejected AEP Texas’ contention that it should be given the opportunity to relitigate what the appropriate SAC rate should be, observing that the inaccuracies in the SAC analysis, as alleged by AEP Texas, “are in no way related to the material error identified by BNSF, which can be corrected without changing any of the findings in the original decision. In contrast, [AEP Texas’] proposed adjustments would involve relitigating almost the entire SAC case.” *Id.* at 4. The Board continued:

If [AEP Texas] wishes to have this proceeding reopened based on new evidence or substantially changed circumstances, it may file an appropriate petition to reopen on that basis. But it is not necessary or appropriate to withhold immediate correction of an obvious mistake in the

prior decision that substantially prejudices one of the parties, pending the resolution of matters that would undoubtedly prove far more complex and far-reaching in nature. To the contrary, upon determining that there was material error, we believe we have a responsibility to promptly set right the mistake by revising the rate prescriptions. The party who benefitted from the mistake is not entitled to prolong the effects of that mistake while it relitigates the original case.

Id. (footnote omitted).

On June 9, 2003, AEP Texas filed a petition to stay the *May 2003 Decision* pending the Board's resolution of a petition for reconsideration (the instant motion), and/or a petition to reopen (which has not been filed). The Board denied AEP Texas' request. See *West Texas Utils. Co. v. Burlington N. and Santa Fe Ry. Co.*, Docket No. 41191 (served June 27, 2003) at 4 ("*June 2003 Decision*"). Finding that AEP Texas' petition "commingles a request for a stay pending reconsideration with a request for a stay pending reopening," *id.* at 4, the Board held that AEP Texas would not suffer irreparable harm absent a stay pending reconsideration "since the Board could order that any amounts overpaid by [AEP Texas] be returned" if it concluded, on reconsideration, that its original findings in the *May 2003 Decision* had been incorrect. *Id.* at 6. The Board denied the petition to stay pending reopening as premature and inappropriate "before [AEP Texas] has filed a petition to reopen setting forth the requisite new evidence or changed circumstances warranting a broader reopening." *Id.* at 6.

ARGUMENT

Petitioners do not seriously dispute that there was a legal error in the Board's 1996 rate prescription that the Board corrected in its *May 2003 Decision*. They do not take issue with the substance of the Board's legal analysis.² Instead, their position is that the Board cannot correct

² In its June 27, 2003 decision denying AEP Texas' stay petition, the Board observed that AEP Texas "has not disputed" the error that the Board corrected in the *May 2003 Decision*. *June 2003 Decision* at 6.

that error without first conducting a full hearing. Petitioners' insistence on a full hearing to correct an obvious legal error is nothing more than an attempt to perpetuate the effect of the legal error as long as possible and take advantage of that error at BNSF's expense. No hearing was needed to determine that the 1996 rate prescription was erroneous. Moreover, the existing record contained all of the information needed to correct that error. If AEP Texas believes that additional evidence needs to be considered to determine whether subsequent factual developments would require changes to the Board's revised rate prescription, that evidence must be considered in a different reopening proceeding -- one that AEP Texas has not even sought to initiate.

In support of their petitions for reconsideration, AEP Texas and WCTL raise the same substantive arguments presented in AEP Texas' petition for a stay of the Board's *May 2003 Decision*. In denying that request, the Board described AEP Texas' contentions, which are identical to those presented here: that the *May 2003 Decision* "is an improper post-hoc application of policy developed in rate cases decided after the Board issued [the 1996 rate prescription];" that the Board "may not alter a rate prescription absent a full consideration of all of the changed circumstances that might influence the SAC rate;" and that "correction of a material error must generally occur within 1 year of the original decision." *June 2003 Decision* at 3. None of these arguments supports reconsideration of the Board's *May 2003 Decision*.

I. The Board's *May 2003 Decision* Did Not Apply A Newly Developed Policy But Simply Corrected A Legal Error In The 1996 Rate Prescription

Petitioners claim that the Board's *May 2003 Decision* was erroneous because it retroactively applied new ratemaking policy without a hearing. This is a clear mischaracterization of the *May 2003 Decision*. Nothing in that decision indicates that the Board believed that it needed to revisit its 1996 rate prescription in light of changed policy. Instead, it

is clear that the Board simply concluded that it had failed to formulate the rate prescription fully in the prior decision. The revision in the rate prescription was made only to implement the unambiguous law governing SAC rate prescriptions and not to give effect to a new Board policy. The principles relied upon by the Board in its *May 2003 Decision* were the product of established and undisputed legal principles governing rate cases brought under the SAC test.

There is no dispute that where the Board applies the SAC test and the challenged rate is found to exceed the SAC rate, the defendant railroad is permitted to charge a rate up to the SAC level. The whole thrust of the SAC test is to determine “an appropriate rate cap.” *Coal Rate Guidelines, Nationwide*, 1 I.C.C.2d 520, 542 (1985). In its 1996 decision in this case, the Board found that the SAC rate cap was initially below the jurisdictional threshold, which represents the absolute minimum at which the Board may prescribe a rate. *See 1996 Decision*, 1 S.T.B. at 677-78. The *May 2003 Decision* stands for the proposition that the Board could and should have said in 1996 that BNSF would be permitted to charge a rate up to the SAC level if and when the SAC rate exceeded the jurisdictional threshold. There is no conceivable legal error in this conclusion.

Second, there is no dispute that the Board’s precedent establishes that the SAC maximum rate be determined on the basis of the pro rata reduction method advocated by BNSF in 1996 as opposed to the ton-mile allocation method advocated by AEP Texas. Although this issue was not resolved in the 1996 decision, it had been resolved by the time the Board issued its *May 2003 Decision*.³ There can be no legal error in the Board applying the law in effect at the time of its decision.

³ While it did not need to resolve the issue in 1996, the Board did note that “[AEP Texas’] method arguably relies upon an arbitrary allocation of stand-alone cost per net ton-mile that has been previously rejected.” *1996 Decision*, 1 S.T.B. at 716 n.171 (citing *Coal Trading Corp. v. Baltimore and Ohio R.R. Co.*, 6 I.C.C.2d 361, 380 (1990)).

Third, there is no dispute that the Board can and did correct its material error and revise the rate prescription “without changing any of the findings in the original decision.” *May 2003 Decision* at 4. AEP Texas makes much ado about the Board’s supposed reliance on a staff workpaper that was not part of the original decision, as if the workpaper is somehow new evidence pulled out of a hat for purposes of the *May 2003 Decision*. But AEP Texas knows perfectly well that the workpaper, which was created in 1996 as a product of the Board’s DCF analysis, set forth the SAC rates that necessarily would be generated by the 1996 DCF analysis once the Board decided to prescribe the SAC rate based on the pro rata reduction method.

Since the *May 2003 Decision* simply corrected a legal error and did not adopt a change in regulatory policy, AEP Texas’ reliance on *American Trucking Ass’n, Inc. v. Frisco Transp. Co.*, 358 U.S. 133, 146 (1958) is misplaced. AEP Texas quotes that case for the proposition that “the power to correct inadvertent ministerial errors may not be used as a guise for changing previous decisions because the wisdom of those decisions appears doubtful in light of changing policies.” AEP Texas Petition at 9. But the Board did not say that the correctness of the 1996 rate prescription has become “doubtful in light of changing policies.” It acted to correct a material error made on the original record. And, under the holding of *American Trucking Ass’n*, the Board has “the power and the duty to correct judgments which contain clerical errors or judgments which have issued due to inadvertence or mistake.” *American Trucking Ass’n*, 358 U.S. at 145.⁴

⁴ For the same reason, the other cases cited by petitioners are inapposite. Both *United States v. Seatrail Lines, Inc.*, 329 U.S. 424 (1947) and *Upjohn Co. v. Pennsylvania R.R. Co.*, 381 F.2d 4 (6th Cir. 1967) involved attempts to apply new policies retroactively. These cases did not limit the Board’s authority to correct legal errors, as it did in this instance.

II. The Board's Correction Of An Undisputable Legal Error Did Not Require A Full Evidentiary Hearing

AEP Texas also contends that the Board's decision is inconsistent with *Arizona Grocery Co. v. Atchison, Topeka & Santa Fe Railway Co.*, 284 U.S. 370, 387-88 (1932), because "[a] validly entered rate prescription . . . may not be overturned without an evidentiary hearing." AEP Texas Petition at 9. *Arizona Grocery* is inapposite for several reasons.

First, the Board's *May 2003 Decision* did not "overturn" the prior rate prescription. It revised that rate prescription to make it conform with governing law. In fact, far from overturning previous findings, the *May 2003 Decision* required that the SAC maximum rate findings reached in 1996 be given immediate effect.

Second, *Arizona Grocery* does not require an "evidentiary" hearing. That decision only refers to a "hearing" and AEP Texas itself acknowledged in a prior pleading the "the type of hearing that is required before a rate prescription can be modified may vary depending upon the issues raised. . . ."⁵ This comports with the ICC's holding that "the type of hearing that is required and appropriate in particular circumstances depends on the issues involved." *San Antonio, Tex. v. Burlington Northern, Inc.*, 364 I.C.C. 887, 896 (1981). When the parties have an opportunity to be heard that is fully adequate for the Board to resolve the questions pending before it, no further hearing is required. *See id.* Indeed, in *Howard Sober, Inc. v. ICC*, 628 F.2d 36 (D.C. Cir. 1980), no hearing was needed to correct an erroneous certificate of public convenience and necessity. The court stated that holding a hearing in these circumstances "would waste the Commission's limited resources by forcing it to reconsider an action that was already decided but improperly executed." *Id.* at 41-42. *See also Chavez v. Balesh*, 704 F.2d

⁵ AEP Texas' Reply in Opp'n to Pet. for a Decl. Regarding the Rate Prescription on Coal Movements from Rawhide, Wyo. to Oklaunion, Tex. (May 7, 2003) at 5.

774, 776-77 (5th Cir. 1983) (no notice required when court corrects innocent omission that was apparent from the face of the record).

In the present case, AEP Texas had an opportunity to present its position fully on the legal issue of revising the rate prescription and it in fact did so in its reply to BNSF's April 2003 petition. The Board's decision to revise the rate prescription was made as a matter of law without the need to take new evidence or change any of the findings in the original decision.

Third, the hearing that AEP Texas seeks is entirely unrelated to the merits of the *May 2003 Decision*. AEP Texas claims that the Board erred by relying on "1996 vintage assumptions" regarding coal volumes, revenues, inflation forecasts, capital costs, and long-term changes in traffic patterns. AEP Texas Petition at 13-14. But a hearing on these issues would have no bearing on the limited issue addressed in the *May 2003 Decision* regarding the legality of the rate prescription imposed in 1996. Of course, AEP Texas remains free to ask the Board to consider changed circumstances or new evidence regarding these other factual issues in a separate petition for reopening—which, to date, AEP Texas has not done. But the Board did not err in revising the rate prescription without first conducting an evidentiary hearing to consider changed circumstances or new evidence.

III. There Is No "One Year Limitation" Preventing The Board From Correcting Its Error

AEP Texas further argues that the Board erred because the corrective action was untimely. *See* AEP Texas Petition at 14. AEP Texas' argument is manifestly incorrect.

By statute, the Board can reopen a proceeding to correct a material error "at any time." 49 U.S.C. § 722(c). The *May 2003 Decision* held that the failure to prescribe a maximum rate at the higher of the statutory jurisdictional rate or the SAC rate was a material error. *See May 2003 Decision* at 3. AEP Texas does not seriously dispute that the Board's omission constitutes

material error but argues instead that the correction of that error requires a hearing. *See* AEP Texas Petition at 15-16. Since the *May 2003 Decision* addressed an allegation of material error, the Board clearly had the authority to correct that error when it did.

AEP Texas incorrectly invokes federal rules that would have no application to the Board's correction to its rate prescription. Under Rule 60(a) of the Federal Rules of Civil Procedure, courts may correct clerical errors, omissions, and oversights at any time. The one-year limitation identified by AEP Texas applies only to certain kinds of errors listed in Rule 60(b), such as excusable neglect, newly discovered evidence, and fraud or other misconduct of a party. This case concerns an inadvertent omission more properly analogized to errors under Rule 60(a), not the errors of judgment identified in Rule 60(b).

Moreover, the cases cited by AEP Texas are inapposite here. Neither *Reich v. Youghioghney and Ohio Coal Co.*, 66 F.3d 111 (6th Cir. 1995), nor *City of Long Beach v. Department of Energy*, 754 F.2d 379 (Temp. Emer. Ct. App. 1985), imposed a one-year limitation on agencies' ability to correct accidental omissions of this kind.

In *Reich*, the Sixth Circuit held that an agency's correction was not barred by the theory of administrative finality, which prevents a litigant from obtaining review of an administrative rulemaking after the statutory deadline for the appeal has lapsed. *Reich*, 66 F.3d at 115-16. The court rejected the argument that the agency's adjustment to the amount of interest owed by the defendant was an administrative rulemaking. *Id.* at 116. In dicta, the court observed that the agency corrected its error within one year. *Id.* The court did not hold that inadvertent omissions could not be corrected after this period.

In *City of Long Beach*, the court addressed an agency's correction of an arithmetic error by analogizing the agency's authority to correct its mistakes to the district court's power under

Rule 60(a) of the Federal Rules of Civil Procedure. *See City of Long Beach*, 754 F.2d at 387.

The court did not impose any time limitation on the agency to correct this mistake. *See id.*

Indeed, this case was a review of a district court decision affirming an agency correction that occurred over three years after the agency had first made the mistake. *See id.* at 382-84.

AEP Texas further errs in relying on *Jones v. Anderson-Tully Co.*, 722 F.3d 211 (5th Cir. 1984) (per curiam), for the proposition that the one year limitation applies to “mistakes affecting the substantive rights of parties.” AEP Texas Petition at 14. *Jones* involved a district court’s order in a quiet title case that, as was discovered several years later, incorrectly described the boundaries of certain property. The court held that this was not a clerical error under Rule 60(a), but “one of substance” governed by Rule 60(b)(1). *See Jones*, 722 F.3d at 212. The court’s decision to apply the time limitation of that rule depended on the nature of agency’s conduct in making the mistake—not upon the error’s effect on the parties. Indeed, AEP Texas’ reading of this case cannot be correct. Because only those errors that substantively affect the parties are likely to be noticed or contested in the first place, AEP Texas’ position would thus likely subject *all* mistakes to the one year limitation. This is clearly contrary to the correction procedures set forth in the federal rules.

IV. AEP Texas’s Claim of Prejudice Is Misplaced

AEP Texas claims that it is prejudiced by the Board’s correction of the legal error “seven years after the fact.” AEP Texas Petition at 16. The supposed prejudice results from the fact that AEP Texas did not have a reason to challenge the Board’s calculation of SAC rates based on the percentage reduction methodology at the time of the 1996 prescription. According to AEP Texas, if it had known that the SAC rate would eventually be based on that methodology, it would have appealed the decision or sought reconsideration. *Id.* But AEP Texas suffered no

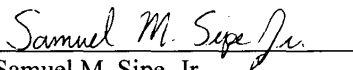
prejudice from the fact that it did not challenge the percentage reduction methodology in 1996. Since then, the Board has expressly found that the percentage reduction methodology is the proper basis for calculating SAC rates. There is no reason to believe it would have found otherwise in response to an earlier challenge by AEP Texas.

The real complaint underlying AEP Texas' prejudice argument is that it "will be required to pay the higher prescribed rate pending a decision on this petition for reconsideration and/or a petition to reopen." AEP Texas Petition at 16. But that is the law. Carriers and shippers alike are required to adhere to the prescribed rate. Moreover, this argument overlooks the fact that AEP Texas has been the beneficiary of the Board's erroneous ruling since 2002, when it resumed its use of Rawhide coal after several years. The Board has refused to allow BNSF to collect the rates it would have been entitled to charge beginning in 2002 but for the legal error that the Board has acknowledged. AEP Texas cannot complain about harm from the payment of the corrected rates a year later. Moreover, as the Board pointed out in its June 27, 2003 decision rejecting AEP Texas' stay petition, AEP Texas could file a petition to reopen if it believed that changed circumstances would justify a reduction in the SAC rates and it "could then seek the type of interim relief afforded in *Arizona PSC*." *June 2003 Decision* at 6.

CONCLUSION

For all the foregoing reasons, BNSF respectfully requests that the Board deny the petitions for reconsideration filed by AEP Texas and WCTL.

Respectfully submitted,


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July 8, 2003

CERTIFICATE OF SERVICE

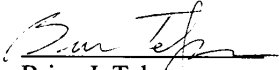
I hereby certify that on July 8, 2003, a copy of the foregoing Reply to the Petitions for Reconsideration of AEP Texas and the Western Coal Traffic League was served by hand on the following:

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