

SLOVER & LOFTUS

ATTORNEYS AT LAW

1224 SEVENTEENTH STREET, N. W.
WASHINGTON, D. C. 20036-3003

WILLIAM L. SLOVER
C. MICHAEL LOFTUS
DONALD G. AVERY
JOHN H. LE SEUR
KELVIN J. DOWD
ROBERT D. ROSENBERG
CHRISTOPHER A. MILLS
FRANK J. PERGOLIZZI
ANDREW B. KOLESAR III
PETER A. PFOHL
DANIEL M. JAFFE
KAREN HASSELL HERREN
KENDRA A. ERICSON

TELEPHONE:
(202) 347-7170

FAX:
(202) 347-3619

WRITER'S E-MAIL:

kjd@sloverandloftus.com

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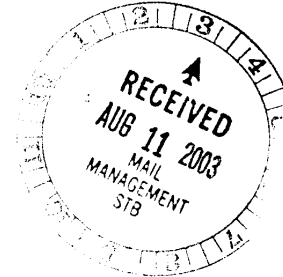
August 11, 2003

Part of
Public Record

VIA BY HAND DELIVERY

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W., Room 711
Washington, D.C. 20423-0001

208674



Re: STB Docket No. 41191, West Texas Utilities Company
v. The Burlington Northern and Santa Fe Railway Company

Dear Secretary Williams:

Enclosed for filing in the above-referenced proceeding please find an original and ten copies of the Notification in Compliance With Decision Served July 23, 2003. Also enclosed is a WordPerfect Diskette containing an electronic copy of the submission.

An additional copy of the filing is enclosed. Please indicate receipt and filing by time-stamping the additional copy and returning it to the bearer of this letter.

Thank you for your consideration in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Kelvin J. Dowd".

Kelvin J. Dowd
An Attorney for
AEP Texas North Company

Enclosure

cc: Parties of Record

BEFORE THE
SURFACE TRANSPORTATION BOARD

208674

WEST TEXAS UTILITIES COMPANY,

Complainant,

v.

THE BURLINGTON NORTHERN AND
SANTA FE RAILWAY COMPANY,

Defendant.

Docket No. 41191

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**NOTIFICATION IN COMPLIANCE
WITH DECISION SERVED JULY 23, 2003**

AEP Texas North Company ("AEP Texas"), successor in interest to Complainant, West Texas Utilities Company, submits this Notification in compliance with the Board's Decision served July 23, 2003 ("Decision").

1. In the Decision (at 2), the Board references a recent offer by Defendant, The Burlington Northern and Santa Fe Railway Company ("BNSF"), to stipulate to an extension of the rate prescription currently applicable to coal shipments from the Rawhide Mine to the Oklaunion Generating Station¹ to coal shipments to Oklaunion from other BNSF-served Wyoming Mines as described in AEP Texas' May 14, 2003 Petition to

¹The current prescription was established in the Board Decision served May 29, 2003 in the captioned docket. AEP Texas' Petition for Reconsideration of that Decision remains pending.

Establish Procedural Schedule. The Decision directs AEP Texas to advise the Board whether it agrees to the stipulation.

2. BNSF made its stipulation offer only after it succeeded (for the present) in securing an increase in the Rawhide prescription from \$13.68 per ton to \$18.04 per ton. Prior to that time, BNSF adamantly had resisted application of the Rawhide prescription to shipments from other origins. AEP Texas believes that the \$18.04 rate is unreasonably high, and therefore does not agree to the extension of the current Rawhide prescription to shipments from non-Rawhide origins. To the extent that previous submissions in this docket by AEP Texas or its predecessor requested or supported such an extension, they were based on the then-current rate prescription. Now that the prior prescription has been modified significantly to AEP Texas' detriment, any such requests are withdrawn.

3. AEP Texas' May 14 Petition contemplated that in this reopened proceeding² AEP Texas would be entitled to a full hearing on the reasonableness of BNSF's common carrier rates from non-Rawhide origins, based on current facts and data, current law, and prevailing interpretations of the *Coal Rate Guidelines*. However, the Board's July 23 Decision strongly implies a much narrower scope:

“... a reopening for substantially changed circumstances is intended to address projections in the original decision that have proven to have been seriously inaccurate If a shipper wishes to establish a current maximum reasonable rate using a SAC analysis that is based on different

²See Decision served November 7, 2000 at 4.

assumptions than originally used, its recourse is to have the rate prescription vacated, allow the railroad to establish a new common carrier rate, and then file a complaint challenging the railroad's new rate."

Decision at 2. There is no prescription in effect with respect to non-Rawhide shipments to Oklaunion, and BNSF already has exercised its ratemaking initiative and established common carrier rates for those movements. Nevertheless, it appears clear that the Board would apply the rule quoted above if AEP Texas continues to proceed in this docket.

4. To secure its right to challenge the lawfulness of BNSF's unreasonably high common carrier rates on coal shipments to Oklaunion based on a fully-developed record considering current cost and other factual data and current interpretations of the *Coal Rate Guidelines*, AEP Texas is continuing its challenge to BNSF's rates through the filing this date of a separate Complaint under 49 U.S.C. §§ 10701 (d) and 10704, as suggested by the Board. Inasmuch as the rates challenged therein are the same rates that were the subject of the November 7, 2000 Decision in this docket, and both Complainant and Defendant have undergone corporate identity changes since this docket opened, AEP Texas has designated its new Complaint as *Docket No. 41191 (Sub-No. 1)*. See *Potomac Electric Power Company v. Consolidated Rail Corp.*, 367 ICC 532, 534 (1983). Further proceedings in this docket should be discontinued with respect to BNSF's non-Rawhide rates.

Respectfully submitted,

AEP TEXAS NORTH COMPANY
1 Riverside Plaza
Columbus, Ohio 43215

By: Timothy P. Stanley, Director
Transportation & Marketing
David Cohen, Senior Attorney
American Electric Power Company
1 Riverside Plaza
Columbus, Ohio 43215

OV COUNSEL:

Slover & Loftus
1224 Seventeenth Street, N.W.
Washington, D.C. 20036

Dated: August 11, 2003

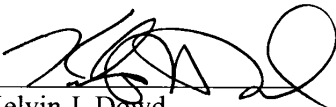
William L. Slover
Kelvin J. Dowd
Christopher A. Mills
Slover & Loftus
1224 Seventeenth Street, N.W.
Washington, D.C. 20036

Attorneys & Practitioners

CERTIFICATION OF SERVICE

I hereby certify that on August 11, 2003, I caused three (3) copies of the foregoing Notification in Compliance With Decision Served July 23, 2003 to be served by hand upon:

Samuel M. Sipe, Jr.
Linda S. Stein
Steptoe & Johnson
1330 Connecticut Avenue, N.W.
Washington, D.C. 20036


Kelvin J. Dowd