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August 25, 2003

By Hand Delivery

Honorable Vernon Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Room 711
Washington, DC

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Office of Proceedings

AUG 25 2003

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Public Record



Re: Docket No. 41191 (Sub-No. 1), AEP Texas North Company v. The Burlington Northern and Santa Fe Railway Company

Dear Secretary Williams:

I am writing on behalf of The Burlington Northern and Santa Fe Railway Company in regard to the August 22, 2003 pleading styled Report Pursuant to 49 C.F.R. Part 111.10(b) and Request for Procedural Schedule filed by AEP Texas North ("AEP") in this docket. In this pleading AEP states that BNSF "refused to participate in the mandatory conference of parties called for by the Board's regulations" and requests expedited adoption of a procedural schedule in this docket.

The basis for BNSF's decision to decline to participate in the preliminary conference at this time is clearly set forth in the letter from me to AEP's counsel dated August 22, 2003 that is attached to AEP's pleading. As the letter explains, AEP is purporting to challenge the reasonableness of a lawfully established common carrier rate that it has refused to pay. Since July 2000, AEP has deliberately withheld payment of common carrier rates for movements of coal from non-Rawhide mines to AEP's Oklaunion generating station that the Board specifically authorized BNSF to establish in its November 7, 2000 decision in Docket No. 41191.

It is improper for AEP to seek to invoke the protection of the statute's rate reasonableness provisions when it has refused to fulfill its own obligations to pay BNSF's lawfully established charges. Filing a rate complaint under these circumstances amounts to a misuse of the Board's processes. As I informed AEP's counsel, BNSF has determined to file a motion to dismiss AEP's complaint in this docket unless AEP pays the common carrier charges on non-Rawhide movements that are due and owing by August 29, 2003. In the event of non-payment, we would expect to file the motion to dismiss by September 2, 2003. BNSF will also reply to AEP's August 22 pleading within the time for replying set by the Board's rules.

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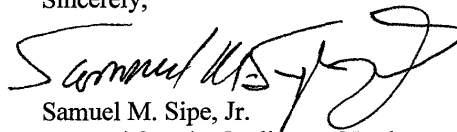
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Given the likelihood that BNSF will seek to have AEP's complaint dismissed in the near term, we did not believe that it would be a useful exercise to meet with AEP's counsel to discuss a procedural schedule.

If you have any questions regarding this letter, please direct them to the undersigned.

Sincerely,

A handwritten signature in dark ink, appearing to read "Samuel M. Sipe, Jr.", with a stylized, looping flourish at the end.

Samuel M. Sipe, Jr.
Counsel for The Burlington Northern
and Santa Fe Railway Company

cc: Chairman Roger Nober
Director David M. Konschnik
General Counsel Ellen D. Hanson
Kelvin J. Dowd, Counsel for AEP
Michael E. Roper, BNSF