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September 2, 2003

BY HAND

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



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

Dear Secretary Williams:

Enclosed please find the original and ten copies of the Answer of the Burlington Northern and Santa Fe Railway Company in the above referenced proceeding. BNSF is also filing today under separate cover a Motion to Dismiss the Complaint.

Please date-stamp the extra copy and return it to our messenger for our records.

Sincerely,


Cynthia L. Quarterman

cc: Kelvin J. Dowd

UNITED STATES
DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL
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WASHINGTON

PHOENIX

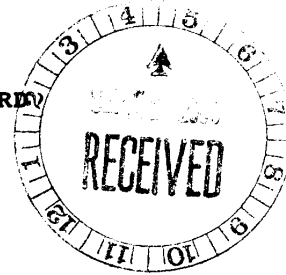
LOS ANGELES

LONDON

BRUSSELS

208828

BEFORE THE
SURFACE TRANSPORTATION BOARD



AEP TEXAS NORTH COMPANY

Complainant,

v.

THE BURLINGTON NORTHERN AND
SANTA FE RAILWAY COMPANY

Defendant.

Docket No. 41191 (Sub-No.1)

ANSWER OF THE BURLINGTON NORTHERN
AND SANTA FE RAILWAY COMPANY

Defendant The Burlington Northern and Santa Fe Railway Company ("BNSF") hereby answers the Verified Complaint filed on August 11, 2003 by complainant AEP Texas North Company ("AEP Texas") in this proceeding.

COMPLAINT

BNSF responds to the allegations of each separately numbered paragraph of the Complaint as follows:

1. BNSF lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 1 of the Complaint, except that BNSF admits that AEP Texas operates the Oklaunion Generating Station.

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2. BNSF admits the allegations in the first sentence of paragraph 2 of the Complaint. The second sentence of paragraph 2 states a legal conclusion to which no answer is required.
3. BNSF lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the first part of the first sentence of paragraph 3 of the Complaint, except that BNSF denies that rail transportation is the only practicable method of transporting coal to Oklaunion. BNSF admits that it is presently the only rail carrier that serves Oklaunion from mine origins in the Powder River Basin but denies that it is the only carrier capable of delivering coal to Oklaunion.
4. BNSF denies the allegations in the first sentence in paragraph 4 of the Complaint, except that BNSF admits that it transported coal to Oklaunion in contract and common carriage service prior to the second quarter of 2000. BNSF further states on information and belief that the Rawhide Mine closed in 1997. The remainder of paragraph 4 of the Complaint purports to characterize the Board's 1996 decision, which speaks for itself.
5. BNSF admits the allegations in paragraph 5 of the Complaint.
6. BNSF lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the first sentence of paragraph 6 of the Complaint. BNSF further states that it was not transporting any coal to Oklaunion from the

Rawhide mine by the summer of 2000. BNSF admits the allegations in the second and third sentence of paragraph 6 of the Complaint and further states that it did in fact establish a rate of \$15.78 per ton for transportation of coal from non-Rawhide mine locations in Wyoming to Oklaunion, effective July 7, 2000. As to the allegations in the fourth sentence of paragraph 6 of the Complaint, BNSF admits that the Board authorized BNSF to establish a rate of \$15.78 from non-Rawhide mines to Oklaunion over WTU's objections, effective July 7, 2000. BNSF denies that the effectiveness of the \$15.78 rate was subject to any conditions. Although the \$15.78 rate became effective on July 7, 2000, AEP Texas continued to pay a rate of \$13.68 per ton.

7. BNSF admits the allegations in the first sentence of paragraph 7 of the Complaint. BNSF denies the allegations in the second sentence of paragraph 7 of the Complaint. As to the third sentence of paragraph 7 of the Complaint, BNSF admits that AEP Texas did not pursue its rate reasonableness claims during the pendency of the negotiations, but BNSF lacks knowledge or information sufficient to form a belief as to AEP Texas' motivations.

8. BNSF admits that negotiations between the parties were ultimately unsuccessful, but denies that there was ever a discrete negotiation between the parties as to rates or service terms for transportation of coal to Oklaunion. As to the second

sentence of paragraph 8, BNSF admits that in the first quarter of 2003 it acted to collect the lawfully established transportation charges on movements from origins other than Rawhide that had been in effect since July 7, 2000. As to the third sentence of paragraph 8, BNSF admits that it has lawfully established \$18.04 as the common carrier rate for transportation from Wyoming Powder River Basin origins to Oklaunion.

9. BNSF denies the allegations of paragraph 9 of the Complaint.

10. BNSF denies the allegations of paragraph 10 of the Complaint.

11. BNSF denies the allegations of paragraph 11 of the Complaint.

12. The first sentence of paragraph 12 of the Complaint contains statements about issues that AEP Texas intends to raise, as to which no answer by BNSF is required. The allegations in the second sentence of paragraph 12 of the Complaint states a legal conclusion, therefore no response by BNSF is required.

13. BNSF denies the allegations in the first sentence of paragraph 13 of the Complaint, except that BNSF admits that the present rate for movements of coal from non-Rawhide mines is \$4.37 per ton higher than the rate established by the Board in 1996 for movements of coal from Rawhide to Oklaunion. BNSF

denies the allegations of the second sentence of paragraph 13. The third sentence of paragraph 13 of the Complaint contains assertions about methodological issues AEP Texas intends to raise, as to which no answer by BNSF is required, except that BNSF denies that the challenged rates are unreasonable.

14. The allegations of the first, third and fourth sentences of paragraph 14 state a legal conclusion, therefore no response by BNSF is required. As to the second sentence of paragraph 14, BNSF lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the first part of that sentence regarding the reasons or motives for any actions by AEP Texas. As to the second part of the second sentence of paragraph 14 of the Complaint, BNSF did not dispute that the Board purported to reopen Docket 41191 to address AEP Texas' opposition to BNSF's \$15.78 rate for transportation from non-Rawhide mines.

15. Paragraph 15 of the Complaint states a legal conclusion, therefore no response by BNSF is required.

AEP TEXAS' PRAYER FOR RELIEF

BNSF denies that an order granting any relief sought by AEP Texas in this proceeding would be appropriate.

DEFENSES

1. AEP Texas cannot maintain a challenge to the reasonableness of BNSF rates of \$15.78 and/or \$18.04 per ton for

transportation from Wyoming Powder River Basin origins to Oklahoma because AEP Texas has failed to pay those rates.

2. The Board lacks jurisdiction to consider the Complaint because BNSF does not have market dominance over the transportation to which the challenged rates apply.

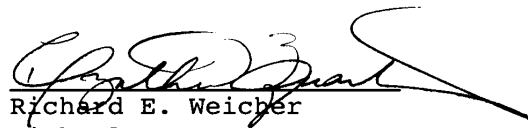
3. The challenged rates are reasonable.

4. The statute of limitations bars AEP Texas from recovering reparations for any period more than two years before the filing of its Complaint.

5. The Board lacks authority and/or any reasonable grounds to order Defendant to reimburse AEP Texas the filing fee for the Complaint.

WHEREFORE, BNSF requests that the Complaint be dismissed and that no relief of any kind be awarded to AEP Texas, that BNSF be awarded its costs, and that the Board grant BNSF such other and further relief as may be appropriate.

Respectfully submitted,



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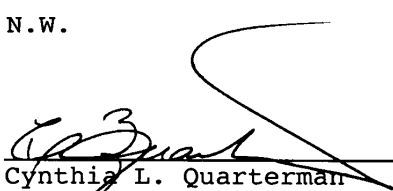
Attorneys for Defendant

September 2, 2003

CERTIFICATE OF SERVICE

I hereby certify that on September 2, 2003, a true and correct copy of the foregoing document was served by hand on:

William L. Slover
Kelvin J. Dowd
Christopher A. Mills
SLOVER AND LOFTUS
1224 Seventeenth Street, N.W.
Washington, DC 20036


Cynthia L. Quarterman