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208979
ENTERED
Office of Proceedings

SEP 25 2003

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September 25, 2003



VIA HAND DELIVERY

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

Re: Docket No. 41191 (Sub-No. 1), 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 ten copies of the parties' Joint Petition to Modify Procedural Schedule. Because this Joint Petition is being filed less than two weeks before the scheduled staff-supervised discovery conference in this case, which should be postponed for the reasons set forth below, the parties request that the Board give this filing **EXPEDITED CONSIDERATION**.

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

Thank you for your prompt attention to this matter.

Sincerely,

Christopher A. Mills

CAM:dmb
Enclosures
cc: David M. Konschnik

208979

EXPEDITED CONSIDERATION REQUESTED

**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)

**ENTERED
Office of Proceedings**

SEP 25 2003

**Part of
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JOINT PETITION TO MODIFY PROCEDURAL SCHEDULE

Complainant AEP Texas North Company ("AEP Texas") and Defendant The Burlington Northern and Santa Fe Railway Company ("BNSF") hereby jointly request that the Board modify the procedural schedule for this case, as established in the Board's Decision served September 11, 2003. The proposed modifications are as follows:

	<u>Present Schedule</u>	<u>Proposed Schedule</u>
Staff-supervised discovery conference	October 8, 2003	October 22, 2003
End of discovery	November 10, 2003	November 24, 2003
Staff-supervised technical conference	November 25, 2003	February 24, 2004*
Opening evidence due	January 13, 2004	January 27, 2004
Reply evidence due	March 12, 2004	April 20, 2004
Rebuttal evidence due	April 16, 2004	June 1, 2004

* Four weeks after the due date for filing opening evidence

Modification of the schedule is necessary because the same BNSF counsel and consultants involved in responding to AEP Texas' discovery requests in this proceeding¹ are also engaged in the preparation of BNSF's reply evidence in Docket No. 42071, *Otter Tail Power Company v. The Burlington Northern and Santa Fe Railway Company*. Reply evidence in that proceeding, which involves BNSF's submission on stand-alone costs, is due October 8, 2003 which is also the date presently scheduled for the staff-supervised discovery conference in this case. The intense level of effort required to prepare and assemble SAC evidence makes it impossible for BNSF to complete its responses to AEP Texas' first discovery requests before the end of September, which in turn means that a staff-supervised discovery conference on October 8 is unlikely to be productive.

The parties have agreed to postpone the due date for BNSF's responses to AEP Texas' first discovery requests to September 30, 2003, and to confer further with respect to discovery matters during the week of October 11, 2003, in preparation for the staff-supervised discovery conference. The parties agree that the staff-supervised conference should be postponed for two weeks, until October 22, 2003, in the interest of making it productive. This necessitates a similar two-week postponement of the discovery cut-off date and the due date for the filing of opening evidence. The parties have also agreed on a 12-week interval between the filing of opening and reply evidence,

¹ AEP Texas' first discovery requests in this proceeding were served on August 26, 2003, with a response date of September 25, 2003. The parties met to discuss discovery matters on September 17, 2003, as directed by the Board's Decision served September 11, 2003.

and a 6-week interval between the filing of reply and rebuttal evidence. These intervals are similar to those agreed to by the parties in the *Public Service Company of Colorado* case (Docket No. 42057) and *Otter Tail*, and accepted by the Board in setting the procedural schedules governing those cases. The ultimate result is to extend the date for completion of the evidentiary record in this case by six weeks, which is acceptable to both parties.

The parties have also proposed that the staff-supervised technical conference, presently set for November 25, 2003, be re-scheduled for a date (February 24, 2004) which is four weeks after the proposed new filing date for opening evidence. This is consistent with the scheduling of the successful technical conference conducted in the *Otter Tail* case, which the parties to that case found to be productive because differences in the parties' positions with respect to the Traffic and Operating Characteristics of the issue traffic, which are essential inputs in developing variable costs, were sharply defined in the opening evidence. The parties to this proceeding similarly believe that the staff-supervised technical conference would be most productive if scheduled after the filing of opening evidence.

WHEREFORE, for the foregoing reasons, AEP Texas and BNSF jointly request the Board to enter an order modifying the procedural schedule in this case as proposed herein.² Because the presently-mandated date for the staff-supervised

² BNSF's joinder in this petition should not be construed as altering in any way the positions taken in its pending motion to dismiss (to which AEP Texas has filed a reply in opposition). The schedule proposed herein would become effective upon the Board's order adopting it and remain in effect in the event that the Board does not grant BNSF's motion to dismiss AEP Texas' complaint or does not take other action in connection with that motion that would make the proposed schedule infeasible.

discovery conference is less than two weeks away, the parties respectfully request that the Board expedite its decision on this petition.

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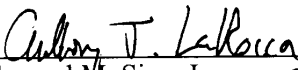
Dated: September 25, 2003

Respectfully submitted,



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