

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

OCT 03 2003

Part of
Public Record

DEFENDANT'S REPLY TO COMPLAINANT'S
FIRST MOTION TO COMPEL

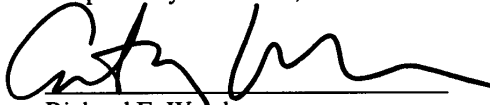
The Burlington Northern and Santa Fe Railway Company ("BNSF") hereby replies to the First Motion to Compel Responses to Discovery Requests ("Motion to Compel"), filed by complainant AEP Texas North Company ("AEP Texas") on September 22, 2003.

AEP Texas' Motion to Compel seeks an order requiring BNSF "to produce relevant rail transportation agreements." Motion to Compel at 1. As AEP Texas explained in the Motion, such an order is necessary to enable BNSF to produce relevant transportation agreements, subject to the protective order in this proceeding, without first obtaining the express permission of each party to those agreements. BNSF advised AEP Texas prior to the filing of the Motion that BNSF was not opposed to a motion for an order compelling the production of relevant transportation contracts because such an order could facilitate and expedite the production of those materials.

BNSF therefore does not oppose AEP Texas' Motion. However, the parties have not yet reached agreement on the proper scope of the production of relevant contracts. In recent cases, the parties have waited until traffic tapes have been produced to discuss the scope of the production of transportation agreements. BNSF is in the process of generating the voluminous

traffic data that AEP has requested, but has not yet produced those materials. BNSF therefore requests that the Board's order compelling production of relevant transportation contracts be expressly conditioned on the parties' reaching an agreement on the proper scope of production. The Board's order in the *Otter Tail* case compelling the production of transportation agreements contained this express limitation. The Board in that case compelled the "production of BNSF's coal transportation agreements and related information . . . to the extent agreed upon by both parties." *Otter Tail Power Company v. The Burlington Northern and Santa Fe Railway Company*, STB Docket No. 42071 (served Nov. 15, 2002). BNSF urges the Board to issue an identical order here.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Richard E. Weicher', is written over a horizontal line.

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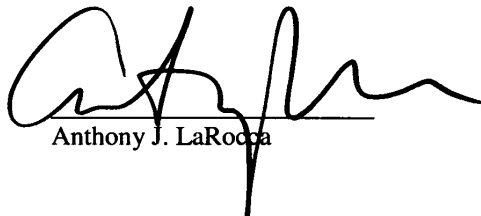
Attorneys for
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Dated: October 3, 2003

CERTIFICATE OF SERVICE

I hereby certify that on October 3, 2003, a true and correct copy of the foregoing
document was served by hand on:

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