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October 31, 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), AEP Texas North 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 AEP Texas North Company's Second Motion to Compel Responses to Discovery Requests in the above proceeding.

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.

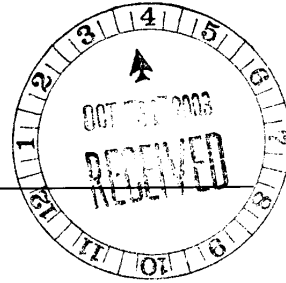
Sincerely,

Christopher A. Mills
An Attorney for
AEP Texas North Company

CAM:dmb
Enclosures
cc: Parties of Record

ENTERED
Office of Proceedings
NOV 03 2003
Part of
Public Record

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)

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Public Record

**COMPLAINANT'S SECOND MOTION TO
COMPEL RESPONSES TO DISCOVERY REQUESTS**

Pursuant to 49 C.F.R. § 1114.31, Complainant AEP Texas North Company ("AEP Texas") hereby moves for an order compelling Defendant The Burlington Northern and Santa Fe Railway Company ("BNSF") to produce:

1. An agreement or agreements related to the sale, lease and/or operation of the former BNSF line between Sterling, NE and Wallace, NE, used to deliver certain coal traffic that may be included in the stand-alone traffic group presented by AEP Texas in this proceeding; and
2. Any other joint facility, equipment lease, or real estate purchase or sale agreement related to the lines in the SARR States that are used or could reasonably be used to transport coal between BNSF-served origins in the Wyoming Powder River Basin and Oklaunion, TX or points beyond.

In support of its motion AEP respectfully states as follows:

On August 26, 2003, AEP Texas served its first discovery requests on BNSF. These Requests sought the production of various agreements between BNSF and other entities related to rail transportation, joint facilities, equipment (locomotive and car)

leases, and agreements for the purchase or sale of real estate in the vicinity of the lines in and near the "SARR States" (the states in which BNSF's lines used to transport Powder River Basin coal to the Oklaunion power plant are located). BNSF previously indicated that it could not produce relevant rail transportation contracts because they contained confidentiality provisions prohibiting their disclosure absent a Board order. AEP's First Motion to compel sought production of such transportation contracts; that motion was granted by the Board in its Decision herein served October 7, 2003.

Request for Production ("RFP") No. 27 of AEP Texas's first discovery requests provides as follows:

Please produce any agreements between BNSF and Nebraska, Kansas & Colorado Railnet, Inc., or its predecessor, related to the sale, lease, maintenance and/or operation of the former BNSF line between Sterling, CO and Wallace, NE, including but not limited to any agreements related to operations thereover for purposes of delivering coal to the Gerald Gentleman generating station near Sutherland, NE.

BNSF's initial response to AEP's first discovery requests included objections to this request on a variety of grounds, which are not at issue here. However, BNSF's counsel later indicated that the agreement might contain a confidentiality provision that would bar BNSF from producing the agreement without an order from the Board. Indeed, BNSF's counsel confirmed this in a letter dated October 31, 2003, a copy of which is appended hereto as Attachment 1. In this same letter, BNSF states that "BNSF would not be opposed to a motion by AEP Texas in this proceeding for an order compelling production of the agreement responsive to RFP No. 27."

The Board has recognized that operating and other facilities agreements relating to the lines likely to be replicated by a stand-alone railroad are relevant and necessary documents for the purposes of presenting evidence regarding operations and costs in maximum reasonable rate proceedings. See, e.g., Docket No. 42056, Texas Municipal Power Agency v. Burlington Northern and Santa Fe Ry. Co. ("TMPA") (STB served March 13, 2001 at 1-2) (granting a motion to compel a joint facility agreement). With respect to such agreements as well as rail transportation contracts, the Board has determined that "the application of the 'highly confidential' provisions of the protective order are sufficient to protect the interests of [third-parties]." TMPA, Decision served February 9, 2001 at 2-3.

Consistent with these decisions, and because the agreement(s) requested in AEP Texas' RFP No. 27 are relevant to the stand-alone railroad's traffic group, revenues and operations, AEP Texas requests that the Board promptly enter the necessary order so that BNSF may produce those agreement(s), subject to their designation and treatment as "highly confidential" under the terms of the Board's Protective Order served in this proceeding on September 11, 2003.

In addition, counsel for BNSF has advised counsel for AEP Texas that it is possible that other relevant agreements pertaining to joint facilities, equipment leases and real estate purchase/sale transactions in the SARR States may contain confidentiality provisions that would preclude their production absent a Board order. To avoid the possibility of having to return to the Board with successive motions to compel, and given that discovery is scheduled to close on November 24, 2003, AEP Texas requests that the

Board order BNSF to produce all such relevant agreements, to the extent both parties agree upon the proper scope of production.

Respectfully submitted,

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1 Riverside Plaza
Columbus, OH 43215

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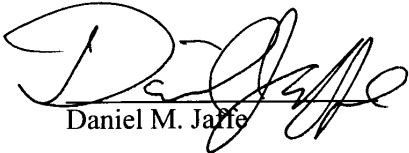
Dated: October 31, 2003

Attorneys for Complainant

CERTIFICATE OF SERVICE

I hereby certify that on this 31st day of October, 2003, I served a copy of the foregoing Second Motion to Compel by hand upon counsel for Defendant, as follows:

Samuel M. Sipe, Jr., Esq.
Anthony J. LaRocca, Esq.
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October 31, 2003

Via Facsimile and U.S. Mail

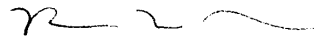
Daniel M. Jaffe, Esq.
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Washington, D.C. 20036-3003

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

Dear Dan:

We determined that the agreement responsive to AEP Texas' Request for Production ("RFP") No. 27 contains a confidentiality provision that limits disclosure of the agreement to third parties. An order by the Board directing BNSF to produce the agreement, subject to the provisions of the protective order, would facilitate and expedite BNSF's production. This letter is to advise you that BNSF would not be opposed to a motion by AEP Texas in this proceeding for an order compelling the production of the agreement responsive to RFP No. 27.

Sincerely,



Brooke L. Gaede