

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

NOV 07 2003

Part of
Public Record

**DEFENDANT'S REPLY TO COMPLAINANT'S
SECOND MOTION TO COMPEL**

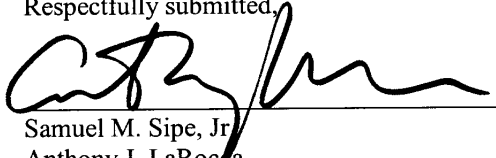
Defendant The Burlington Northern and Santa Fe Railway Company ("BNSF") hereby replies to Complainant AEP Texas North Company's ("AEP") Second Motion to Compel responses to Discovery Requests ("Second Motion to Compel").

AEP's Second Motion to Compel seeks an order compelling the production of two categories of materials. First, AEP seeks agreements related to the sale, lease and/or operation of a rail line between Sterling, NE and Wallace, NE. BNSF advised AEP that responsive materials contain a confidentiality provision that precludes disclosure of the materials to third parties. In light of the confidentiality provision, an order from the Board compelling the production of the requested materials would facilitate and expedite discovery of the requested materials. Therefore, as indicated in the letter from BNSF's counsel to AEP that is attached to AEP's Second Motion to Compel, BNSF is not opposed to an order from the Board compelling the production of these materials subject to the protective order that has been entered in this proceeding.

The second category of materials involves a broader and less defined set of materials related to joint facilities, equipment leases and real estate transactions. BNSF has not completed

its investigation for responsive materials in these areas but it believes that responsive materials exist and that those materials may contain confidentiality provisions that restrict disclosure to third parties. However, because BNSF has not completed its investigation, the parties have not yet discussed or reached agreement on the scope of BNSF's production of requested materials in these areas. While AEP acknowledges that BNSF has not completed its investigation for responsive materials, AEP nevertheless seeks an order from the Board at this time to "avoid the possibility of having to return to the Board with successive motions to compel." Second Motion to Compel at 4. AEP recognizes that the issue of the scope of production has not been resolved and therefore seeks a limited order requiring the production of responsive materials "to the extent both parties agree upon the proper scope of production." Second Motion to Compel at 5. BNSF is not opposed to an order compelling the production of the requested materials to the extent both parties agree upon the scope of production.

Respectfully submitted,



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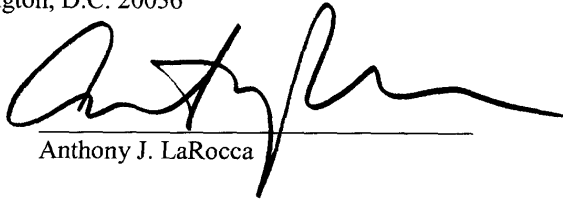
Attorneys for The Burlington
Northern and Santa Fe Railway Company

Dated: November 7, 2003

CERTIFICATE OF SERVICE

I hereby certify that on November 7, 2003, a true and correct copy of the foregoing
document was served by hand on:

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