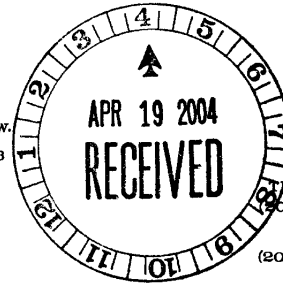


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WRITER'S E-MAIL:

kjd@sloverandloftus.com

April 19, 2004

VIA HAND DELIVERY

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Room 711
Washington, D.C. 20423-0001

2/0636

ENTERED
Office of Proceedings

APR 19 2004

Part of
Public Record

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 for filing in the referenced proceeding, please find an original and 10 copies of the Second Supplement To The Verified Complaint of AEP Texas North Company.

An additional copy of the Second Supplement To The Verified Complaint of AEP Texas North Company also is enclosed. Kindly indicate receipt and filing by time-stamping this extra copy and returning it to the bearer of this letter.

Thank you for your consideration in this matter.

Sincerely,

Kelvin J. Dowd
Attorney for
AEP Texas North Company

KJD:dmb
Enclosure

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. 6)



ENTERED
Office of Proceedings

APR 19 2004

Part of
Public Record

**SECOND SUPPLEMENT TO THE VERIFIED
COMPLAINT OF AEP TEXAS NORTH COMPANY**

COMES NOW Complainant, AEP Texas North Company ("AEP Texas"), and files this Second Supplement to the Verified Complaint it filed on August 11, 2003. In support hereof, AEP Texas shows as follows:

1. AEP Texas' August 11, 2003 Complaint challenged the reasonableness of the rates and service terms initially established by Defendant, the Burlington Northern and Santa Fe Railway Company ("BNSF") on July 2, 1996 and December 9, 1996 (as modified on June 16, 2000 and April 23, 2003) for application to coal movements between mines in the Powder River Basin of Wyoming ("PRB"), to AEP Texas' Oklaunion Generating Station.

2. At the time that AEP Texas' Complaint was filed, the rate for BNSF coal service from the Rawhide Mine in the PRB to Oklaunion was governed by a prescription order entered by the Board in *West Texas Utilities Company v. Burlington Northern Railroad Company*, 1 S.T.B. 638 (1996), *aff'd. sub nom. Burlington Northern Railroad Company v. S.T.B.*, 114 F3d 206 (D.C. Cir. 1997) ("*West Texas*"), as subsequently modified by a decision served May 29, 2003 ("*West Texas II*"). By petition filed September 2, 2003, AEP Texas sought vacation of the *West Texas II* rate prescription, toward the end of restoring BNSF's common carrier ratemaking flexibility subject to AEP Texas' right to challenge the reasonableness of any ensuing new Rawhide rate. Later, AEP Texas acknowledged that such a challenge would be incorporated in the instant docket.¹

3. On or about December 10, 2003, BNSF transmitted to AEP Texas a copy of Common Carrier Pricing Authority BNSF 306720. That document established a new, increased rate of \$18.83 per ton for coal shipments from PRB origins other than Rawhide to Oklaunion, effective January 1, 2004. A separate letter from BNSF advised AEP Texas that the Rawhide rate likewise would be increased to \$18.83 per ton, effective the same date.

¹See Reply to Defendant's Motion to Dismiss Supplement to the Verified Complaint of AEP Texas North Company, January 7, 2004 at 3 n.3.

4. On December 22, 2003, AEP Texas filed its first Supplement to the Verified Complaint, clarifying that AEP Texas' objections to the reasonableness of the rates and terms set forth in Common Carrier Pricing Authority BNSF 306720 were encompassed within the original, August 11, 2003 Complaint. At the time that AEP Texas submitted its Supplement, the petition to vacate the Rawhide prescription was still pending before the Board. In its Decision served March 19, 2004 in this docket, the Board accepted AEP Texas' Supplement.

5. On March 1, 2004, AEP Texas filed its Opening Evidence. Therein, AEP Texas presented evidence of variable and stand-alone costs with respect to coal movements from all PRB mines that have supplied coal for Oklahoma and/or are covered by Common Carrier Pricing Authority BNSF 306720. This included evidence specific to shipments from the Rawhide Mine. As AEP Texas explained in its Narrative, this evidence was included in order to ensure that once BNSF's Rawhide rate again was brought for review under the *Coal Rate Guidelines*, it could be incorporated in AEP Texas' ongoing challenge to the other PRB origin rates without disturbing the existing procedural schedule:

Rawhide shipments are taken into account in the determination of traffic and operating characteristics for the AEP Texas trains, because Rawhide was the principal single coal source relied upon by AEP Texas in 2002. [citation omitted]. Additionally, at the Board's suggestion, AEP Texas petitioned on September 2, 2003 to vacate the Rawhide prescription, so

that new maximum rates could be set in this proceeding that reflect current costs, traffic conditions, and modern interpretations of the *Coal Rate Guidelines*. The Board has yet to grant AEP Texas' petition. When it does so, however (as it clearly should for the reasons stated in the petition), the interests of administrative efficiency and adjudicatory economy will be served best if the record in this proceeding already includes the evidence needed to allow the Board to make a proper determination as to a reasonable maximum rate for future shipments from the Rawhide mine. AEP Texas therefore has included evidence respecting both the variable and stand-alone costs of service from Rawhide in this opening presentation.

Opening Evidence of Complainant AEP Texas North Company, Narrative at I-13 to I-14.

6. In a Decision served March 19, 2004 in *West Texas*, the Board granted AEP Texas' petition to vacate the Rawhide rate prescription, effective April 18, 2004. Therein, over BNSF's objection, the Board acknowledged AEP Texas' right and intent to subject the current Rawhide rate to renewed scrutiny and a fresh analysis under the current standards and applications of the *Coal Rate Guidelines*. See Decision at 3.

7. By letter dated April 6, 2004 (copy attached as Exhibit A), AEP Texas requested that BNSF confirm or establish the common carrier rate that would be in effect for unit train coal shipments from Rawhide to Oklaunion from and after April 18, 2004. In response, BNSF stated that the rate of \$18.83 per ton, which had been in effect for

Rawhide shipments since January 1, 2004, “will continue to apply” once the prior prescription was vacated. A copy of BNSF’s response is attached as Exhibit B.

8. The common carrier rate established by BNSF for application to shipments from Rawhide is identical to the rate in effect on shipments from all the other PRB mines that supply coal to Oklahoma, which rate already is under challenge in this proceeding as unreasonably high and unlawful under 49 U.S.C. § 10701 (d), and is itself unreasonable and unlawful. Evidence of the maximum reasonable rate under the *Coal Rate Guidelines* for BNSF service from Rawhide already is on the record in this proceeding, and the issue can and will be addressed further in full by both parties in the remaining evidentiary phases. The interests of administrative efficiency and economy plainly are served by continuing to consider AEP Texas’ challenge to BNSF’s rate from all PRB origins in this single proceeding, particularly where, as here, neither party’s procedural or substantive rights would be compromised.

WHEREFORE, AEP Texas hereby supplements its Verified Complaint to include its challenge to the reasonableness of the \$18.83 per ton common carrier rate presently in effect on BNSF shipments from the Rawhide Mine to Oklahoma. This Supplement will not affect the procedural schedule currently governing this case.

Respectfully submitted,

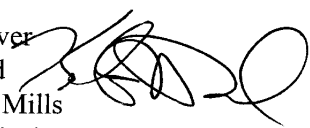
AEP TEXAS NORTH COMPANY
1 Riverside Plaza
Columbus, OH 43215

By: Timothy P. Stanley, Director,
Transportation and Marketing
David Cohen, Senior Counsel
AEP Texas North Company
155 West Nationwide Boulevard
Suite 500
Columbus, Ohio 43215

OF COUNSEL:

Slover & Loftus
1224 Seventeenth Street, N.W..
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1224 Seventeenth Street, N.W.
Washington, D.C. 20036
(202) 347-7170
Attorneys for Complainant



Dated: April 19, 2004



American Electric Power
155 W. Nationwide Blvd.
Suite 500 P.O. Box 18036
Columbus, OH 43216-0036
aep.com

April 6, 2004

VIA OVERNIGHT MAIL

Mr. Larry C. Meyne
Director
Coal Marketing
The Burlington Northern and
Santa Fe Railway Company
P.O. Box 961051
2650 Lou Menk Drive, 2nd Floor
Fort Worth, Texas 76131-2830

Dear Mr. Meyne:

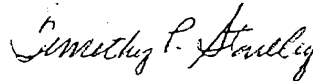
In its decision served March 19, 2004 in docket No. 41191, *West Texas Utilities Company v. The Burlington Northern and Santa Fe Railway Company*, the Surface Transportation Board ("STB") vacated the rate prescription that had been in effect for BNSF coal shipments from the Rawhide Mine to the Oklaunion Generating Station, effective April 18, 2004. According to the STB's ruling, as of April 18 BNSF's common carrier ratemaking initiative will be restored with respect to shipments from the Rawhide Mine.

Mr. Larry C. Meyne
April 6, 2004
Page 2

AEP Texas North Company intends to resume scheduling shipments from Rawhide later this month. Therefore, pursuant to 49 U.S.C. § 17101 and 49 C.F.R. Part 1300, the purpose of this letter is to request that BNSF disclose or, as appropriate, establish the common carrier rate that will apply to unit train shipments of coal from the Rawhide Mine to the Oklaunion Station from and after April 18, 2004. The transportation and operating characteristics of the service that is the subject of this request are those described in the letter dated December 9, 1996 from Mr. Sami M. Shalah of BNSF to Ms. Marguerite Mills of Central and South West Services Inc., attached as Exhibit A to the August 11, 2003 Verified Complaint in STB Docket No. 41191 (Sub-No. 1), *AEP Texas North Company v. The Burlington Northern and Santa Fe Railway Company*, as modified by BNSF Common Carrier Pricing Authority No. BNSF 306760.

Consistent with the requirements of 49 C.F.R. Part 1300.3, AEP Texas North requests a response to this inquiry not later than ten (10) business days from the date of this letter. Should you have any questions or require any additional information regarding this request, please contact the undersigned immediately.

Very truly yours,



Timothy P. Stanley
Director
Transportation & Marketing

cc: David M. Cohen, Esq.

RATE NOTIFICATION LETTER

VIA OVERNIGHT MAIL

Mr. Timothy P. Stanley
Director
Transportation & Marketing
American Electric Power
155 W. Nationwide Boulevard
Columbus, OH 43215

Re: Rawhide Mine Origin Rates

Dear Mr. Stanley:

In your letter of April 6, 2004, you requested that "BNSF disclose or, as appropriate, establish the common carrier rate that will apply to unit train shipments of coal from the Rawhide Mine to the Oklaunion Station from and after April 18, 2004." The rate that will continue to apply is the rate of \$18.83 per ton established by BNSF pursuant to the rate prescription as of January 1, 2004, as stated in my to you dated December 10, 2003 (copy attached). That rate will remain in effect until modified by BNSF.

You also mention in your letter that the transportation and operating characteristics of your request "are those described in the letter dated December 9, 1996 from Sami M. Shalah to Marguerite Mills . . . as modified by BNSF Common Carrier Pricing Authority No. BNSF 306760." BNSF does not agree that the December 9, 1996 letter governs the movements from Rawhide. I assume that your reference to Common Carrier Pricing Authority No. 306760 was in error and that you intended to refer to Common Carrier Pricing Authority No. 306720. However, Common Carrier Pricing Authority No. 306720 by its own terms specifically excludes application to the Rawhide Mine origin. Nevertheless, BNSF is agreeable to applying the terms and conditions of Common Carrier Pricing Authority No. 306720 to movements from Rawhide as of April 18, 2004.

Sincerely,



Cc: Sami Shalah
Rick Weicher
Mike Roper

BNSF



Larry C. Meyne
Director
Coal Marketing

Burlington Northern Santa Fe
P. O. Box 961051
2650 Lou Meak Drive, 2nd Floor
Fort Worth, TX 76131-2830
Phone (817) 867-6244
Fax (817) 352-7939

Via Overnight Mail

December 10, 2003

Mr. Timothy P. Stanley
Manager Transportation & Marketing
American Electric Power Service Corporation
Fuel Supply Department
155 West Nationwide Boulevard
Columbus, OH 43215

Dear Mr. Stanley:

Pursuant to 49 U.S.C. § 11101(c), The Burlington Northern and Santa Fe Railway Company hereby provides notice that as of January 1, 2004, the common carrier rate for transportation of coal from Rawhide Mine in Wyoming, covered by the STB rate prescription, to West Texas Utilities' Oklaunion power station near Vernon, TX, will increase from the current rate of \$18.04 per ton to \$18.83 per ton.

If you have any questions, please feel free to contact me.

Sincerely,

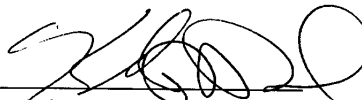
A handwritten signature in cursive script that reads "Larry C. Meyne".

Cc: Sami M. Shalah
Rick Weicher
Mike Roper

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of April, 2004, I served a copy of the foregoing Second Supplement to the Verified Complaint of AEP Texas North Company by hand upon counsel for Defendant, as follows:

Samuel M. Sipe, Jr., Esq.
Anthony J. LaRocca, Esq.
Brooke L. Gaede, Esq.
Steptoe & Johnson LLP
1330 Connecticut Avenue, N.W.
Washington, D.C. 20036


Kelvin J. Dowd