

SLOVER & LOFTUS

ATTORNEYS AT LAW

1224 SEVENTEENTH STREET, N. W.
WASHINGTON, D. C. 20036-3003

WILLIAM L. SLOVER
C. MICHAEL LOFTUS
DONALD G. AVERY
JOHN H. LE SEUR
KELVIN J. DOWD
ROBERT D. ROSENBERG
CHRISTOPHER A. MILLS
FRANK J. PERGOLIZZI
ANDREW B. KOLESAR III
PETER A. PFÖHL
DANIEL M. JAFFE
KAREN HASSELL HERREN
KENDRA A. ERICSON

November 8, 2004

212480
TELEPHONE:
(202) 347-7170

FAX:
(202) 347-3619

WRITER'S E-MAIL:
cam@sloverandloftus.com

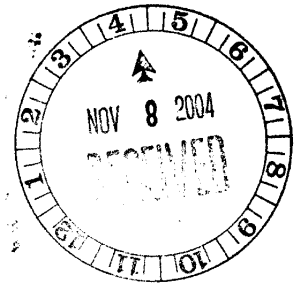
BY HAND DELIVERY

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board - Case Control Unit
1925 K Street, N.W.
Washington, D. C. 20423

ENTERED
Office of Proceedings

NOV 8 2004

Part of
Public Record



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 above-referenced proceeding please find the following pleadings:

- (1) The original and sixteen copies of Complainant AEP Texas North Company's Petition to Supplement the Record.
- (2) The original and sixteen copies of the Supplemental Evidence of Complainant AEP Texas North Company (Highly Confidential Version). This pleading should be filed **UNDER SEAL**.
- (3) The original and ten copies of the Supplemental Evidence of Complainant AEP Texas North Company (Public Version).

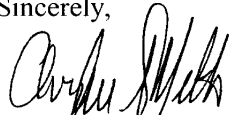
Also enclosed is a CD containing the text of the Supplemental Evidence and accompanying electronic workpapers. All of the workpapers are designated as Highly Confidential and are not included in the public version of this filing.

Please note that this filing contains several pages in color. Their locations are marked with tape flags on the unbound originals.

Hon. Veron L. Williams
November 8, 2004
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We have enclosed an additional hard copy of this filing to be date-stamped and returned to the bearer of this letter. Thank you for your attention to this matter.

Sincerely,

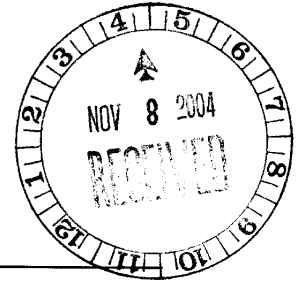
A handwritten signature in black ink, appearing to read "Chris Mills", written over the word "Sincerely,".

Christopher A. Mills

CAM:dmb
Enclosures

cc: Counsel for Defendants

BEFORE THE
SURFACE TRANSPORTATION BOARD



AEP TEXAS NORTH COMPANY

Complainant,

v.

THE BURLINGTON NORTHERN AND
SANTA FE RAILWAY COMPANY

Defendant.

212480
Docket No. 41191 (Sub-No.1)

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PETITION TO SUPPLEMENT THE RECORD

Pursuant to 49 C.F.R. Part 1117 and established Board precedent,¹ Complainant AEP Texas North Company ("AEP Texas") hereby requests leave to supplement the record in this proceeding to provide the Board with a complete and accurate computer simulation of the operations of the Texas and Northern Railroad "TNR," the stand-alone railroad proposed by AEP Texas in this case, using the RTC Model. The Supplemental Evidence includes a revised RTC simulation of the operation of peak-period trains, a description of minor additional TNR track assets (and associated costs) indicated by the simulation, and related updates of the operating expenses, road property investment costs and DCF results presented by AEP Texas on Rebuttal. The Supplemental Evidence is being filed concurrently with this Petition.

¹ See Docket No. 42069, *et al.*, *Duke Energy Corp. v. Norfolk Southern Railway Co.*, Decision served October 20, 2004 at 11-12.

Supplementation of the record is necessary and appropriate because: (1) a complete and accurate RTC simulation using the correct number of peak-period trains is central to the Board's proper evaluation of the feasibility of the TNR's system configuration and operating plan, as both AEP Texas and BNSF rely on the RTC Model in their evidentiary submissions; (2) the revised simulation is necessitated by errors in BNSF-generated peak-period RTC train lists, which were not apparent and could not reasonably have been corrected earlier; and (3) due to its centrality in establishing the feasibility of the TNR's traffic group, system configuration and operating plan as proposed by AEP Texas, the additional RTC simulation and related evidence would materially influence the outcome of the case. Under these circumstances, the standards for supplementation of the existing record with additional evidence as set forth in recent Board decisions² clearly are met.

Because the Supplemental Evidence submitted by AEP Texas includes the cost of adding 69.6 miles of second main track/siding assets and results in corresponding changes in the annual operating expenses, road property investment costs and DCF results presented in AEP Texas' Rebuttal Evidence, and because of the additional material errors in BNSF's RTC simulation described herein, AEP Texas recognizes that BNSF should have an opportunity to submit responsive evidence. *See Duke/CSXT* at 4. Given the

² See Docket No. 42069, *Duke Energy Corporation v. Norfolk Southern Railway Company*, Decision served March 25, 2003, at 2 ("*Duke/NS*"); Docket No. 42070, *Duke Energy Corporation v. CSX Transportation, Inc.*, Decision served March 25, 2003 at 4 ("*Duke/CSXT*"); Docket No. 42072, *Carolina Power & Light Company v. Norfolk Southern Railway Company*, Decision served May 12, 2003, at 1-2 ("*CP&L*"). In its recent decision on reconsideration in these same three cases served October 20, 2004, the Board reiterated that a petition to supplement the record is the appropriate vehicle for the submission of new evidence on SAC issues. *Id.* at 11-12.

limited nature of the Supplemental Evidence, however, AEP Texas believes that no more than four weeks reasonably should be needed for BNSF to prepare a responsive submission. AEP Texas therefore requests that the Board set December 6, 2004 as the due date for BNSF's response.

**I. SUPPLEMENTAL EVIDENCE IS JUSTIFIED UNDER
THE UNIQUE CIRCUMSTANCES PRESENTED**

**A. Accurate RTC Simulation Results Are Central To The Board's
Evaluation Of The Evidence In This Case**

In a recent coal rate decision, the Board ruled that commercially available products such as the RTC Model are appropriate for use in simulating the operations of a stand-alone railroad ("SARR") for purposes of demonstrating its feasibility. Docket No. 42057, *Public Service Company of Colorado D/B/A Xcel Energy v. The Burlington Northern and Santa Fe Railway Company*, Decision served June 8, 2004 ("PSCo/Xcel"), at 26-27. In this case, for the first time, both the complainant and the defendant are relying on the RTC Model to evaluate and verify the feasibility of the hypothetical TNR's train operations as presented by AEP Texas. Accurate simulation of the TNR's peak-period operations is essential to establish, *inter alia*, that certain coal traffic that would be handled by the TNR via a route different from that used by the "real world" BNSF would move at average transit/cycle times that are no greater than the real-world BNSF's average transit/cycle times in 2002, which is the most recent year for which train movement data are available. Indeed, this is an issue raised by BNSF itself in its September 9, 2004 Motion to Strike.

The Board's precedents recognize the important role that a SARR operating plan plays in the development of overall SAC and, thus, in the effective administration of the *Coal Rate Guidelines*. See *Duke/NS* at 12; *Duke/CSXT* at 28. Where the evidentiary record is incomplete or demonstrably inaccurate with respect to a key component of the SAC analysis, the Board repeatedly has ruled that the proper course is to supplement or reopen the record in order to "allow for a fair and informed decision on the merits of the rate complaint." Docket No. 42058, *Arizona Electric Power Cooperative, Inc. v. The Burlington Northern and Santa Fe Railway Company, et al.*, Decision served November 19, 2003 at 2. See also *id.* at 4, 6; *Duke/CSXT*, Decision served February 4, 2004 at 9; *Bituminous Coal -- Hiawatha, Utah to Moapa, Nevada*, 6 1.C.C. 2d 1, 17 (1989); *San Antonio, Texas v. Burlington Northern Railroad Company*, 1 1.C.C. 2d 561, 562 (1986). The relief requested herein is consistent with and supported by Board policy and precedent.

While both AEP Texas and BNSF used the RTC Model to simulate the TNR's operations, such a use is unprecedented for a SARR as large in scope as the TNR, which is nearly 1,200 route-miles in length and carries a total of more than 231 million tons of traffic in its peak year. Given the complexity of the undertaking, it is not surprising that problems and/or discrepancies might develop with the peak-period trains included in BNSF's Reply (and thus AEP Texas' Rebuttal) RTC simulations. These problems are described in the next section.

B. BNSF's RTC Train File Contained Errors That Reasonably Could Not Have been Corrected Earlier

On Opening, AEP Texas simulated the TNR's operations during its seven-day peak traffic period in 2020 (its peak traffic year) plus 4-day warmup and warmdown periods, for a total simulation period of 15 days. The Opening simulation covered 716 loaded coal trains and corresponding empty trains, as well as 138 non-coal trains moving in overhead service.³ On Reply, BNSF presented the results of its own RTC simulation of the TNR's peak-period operations. BNSF's simulation changed some of the inputs and operating assumptions used by AEP Texas Witnesses Paul Reistrup and Walter Schuchmann in the Opening simulation, and removed a considerable number of trains carrying coal traffic that BNSF argued should be excluded from the TNR's peak-year traffic group. According to the workpapers accompanying its Reply filing, BNSF supposedly modeled the operation of 500 loaded coal trains, which represented approximately a 30% reduction from the 716 coal trains that AEP Texas had modeled in its Opening simulation, and a 29% reduction from the 710 coal trains that AEP Texas determined should be modeled on Rebuttal.⁴ Because these numbers were consistent with the reduction BNSF had made in the TNR's peak-year coal traffic, AEP Texas initially had no reason to question their reliability.

³ Both parties agree that the proper number of non-coal merchandise trains to be modeled is 138. These trains, which move on the TNR between Amarillo and Oklaunion, TX, were included in both parties' simulations and are not in dispute.

⁴ As shown in AEP Texas' Rebuttal Exhibit III-B-5, AEP Texas removed a total of six loaded coal trains from the 716 trains included in its Opening simulation. This resulted in a total of 710 loaded coal trains to be included in AEP Texas' Rebuttal simulation. BNSF has not disputed this number.

On Rebuttal, AEP Texas determined to use BNSF's RTC train file as the basis for its Rebuttal simulation of the TNR's peak-period operations. This was done primarily to minimize differences between the parties concerning train sizes and weights, and the simulation start times for empty coal trains. However, because BNSF had improperly deleted a large number of "internally rerouted" coal trains from its Reply simulation, AEP Texas had to add to BNSF's RTC train file Opening peak-period coal trains that BNSF had excluded from its RTC simulation. AEP Texas' Rebuttal simulation thus relied on BNSF's train file, adjusted to restore trains that BNSF stated on Reply that it had removed.

In its Motion to Strike portions of AEP Texas' Rebuttal Evidence filed September 9, 2004, BNSF asserted that AEP Texas failed to include in its Rebuttal RTC simulation all of the loaded coal trains that represented the portion of AEP Texas' Rebuttal coal traffic group that moved in the 2020 peak period. As described in detail in the Verified Statement of Paul H. Reistrup filed on October 20, 2004 as part of AEP Texas' Reply to BNSF's Motion to Strike ("V.S. Reistrup"), an analysis of the data submitted with BNSF's Motion⁵ showed that the number of trains that BNSF *actually* removed from AEP Texas' Opening simulation was greater than the number of trains that should have been removed according to BNSF's Reply Evidence; *i.e.*, BNSF did not include enough coal trains in its Reply simulation to reflect its own purported peak-year

⁵ AEP Texas had no reason to question the coal trains in BNSF's Reply RTC train file when its Rebuttal RTC simulation was prepared, because the percentage of peak-period loaded coal trains BNSF claimed to have eliminated from its simulation matched the percentage of peak-year coal tons that BNSF removed from the TNR's peak-year traffic group (after accounting for certain UP/Coleta Creek coal trains that move over a portion of the TNR system via trackage rights).

TNR coal traffic group. As AEP Texas worked from BNSF's Reply train file in assembling its restored traffic group on Rebuttal, these previously unknown omissions meant that the number of trains added back by AEP Texas did not match either the number of trains that BNSF claimed it removed, or the number needed to reach a peak level of 710 trains. This resulted in an understatement of the total number of loaded coal trains included both in BNSF's Reply RTC simulation and AEP Texas' Rebuttal RTC simulation. Ultimately, the number of loaded coal trains omitted from BNSF's Reply RTC train file (BNSF's version of the TNR's peak-year coal traffic group) but not disclosed on Reply was 60, and the number of coal trains omitted from AEP Texas' Rebuttal train file (AEP Texas' Rebuttal peak-year coal traffic group) was 235. *See* V.S. Reistrup at 17-22.

C. The Absence Of Corrected RTC Simulation Evidence Would Materially Influence The Outcome Of The Case

In recent coal rate cases, the Board has based its findings concerning the feasibility of a SARR's operating plan on computerized simulations of the SARR's operations. Given the centrality of the operating plan and the costs derived therefrom to the results of the SAC analysis,⁶ accurate simulation data is essential to a proper evaluation of the evidence in this case.

In prior cases where the Board has found flaws in a complainant's simulation evidence and the defendant has submitted a complete and feasible alternative simulation based on a different computer program, the Board has rejected the complainant's simulation evidence and defaulted to the defendant's simulation. *See*

⁶ *Duke/NS* at 12.

PSCO/Xcel at 24-27. Such an approach cannot be taken under the circumstances presented here, however. Here, *both parties* used the RTC Model, and both parties' most recent simulations fail to reflect the proper peak-period coal trains for their respective traffic groups.⁷ Neither BNSF's simulation nor its operating plan can be relied upon by the Board in assessing the TNR's feasibility. Absent corrected simulation data and related evidence, the Board will be missing a critical piece of evidence, the record on the TNR's feasibility will be incomplete, and the Board will be unable to make accurate, well-supported SAC findings.

In prior cases, the Board has reopened the record and sought supplemental evidence *sua sponte*, when it determined that the record was "incomplete in a critical respect." *Duke/NS*, Decision served October 10, 2003, at 1 ("the record does not allow the Board to determine the costs and revenues associated with rerouting traffic that would not be local to the stand-alone railroad"). *See also Arizona Electric Cooperative, supra; San Antonio, Texas, supra*. Reopening for the receipt of AEP Texas' Supplemental Evidence is warranted in this case for the same reason.

II. CONCLUSION

For the foregoing reasons, AEP Texas requests that the Board grant it leave to supplement the record in this proceeding as described herein, and that the Board accept the Supplemental Evidence being submitted concurrently with this Petition.

⁷ AEP Texas' Opening RTC simulation did include all trains representing its peak-period traffic group, as it did not rely on a BNSF-generated train file.

Respectfully submitted,

AEP TEXAS NORTH COMPANY
1 Riverside Plaza
Columbus, OH 43215

By: David M. Cohen, Senior Counsel
155 West Nationwide Boulevard
Suite 300
Columbus, OH 43215

OF COUNSEL:

Slover & Loftus
1224 Seventeenth Street, N.W.
Washington, D.C. 20036

Dated: November 8, 2004

William L. Slover
Kelvin J. Dowd
Christopher A. Mills
Slover & Loftus
1224 Seventeenth Street N.W.
Washington, D.C. 20036
(202) 347-7170

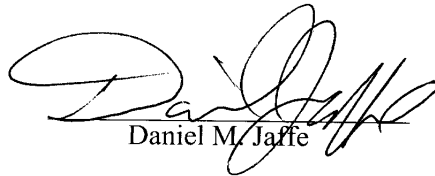


Attorneys & Practitioners

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of November, 2004, I caused a copy of the foregoing Petition to be served by hand delivery on counsel for BNSF, as follows:

Samuel M. Sipe, Jr.
Anthony J. LaRocca
Linda S. Stein
Steptoe & Johnson, L.L.P.
1330 Connecticut Avenue, N.W.
Washington, D.C. 20036-1795



Daniel M. Jaffe