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February 28, 2005

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

Pursuant to 49 C.F.R. Part 1117.1, Complainant AEP Texas North Company respectfully requests a limited waiver of the rule set forth at 49 C.F.R. Part 1104.13(c), to permit the filing of the enclosed Reply to Defendant BNSF Railway Company's Response to Complainant's Post-Rebuttal RTC Analysis, which was filed on February 14, 2005. The acceptance of AEP Texas' reply is justified by the need to correct misleading statements in BNSF's Response concerning the state of the evidentiary record on the matter of random operations failures on the BNSF system.

The original and 16 copies of AEP Texas North Company's Reply are enclosed for the Board's consideration, if it grants leave to file same.

We have enclosed an additional hard copy of this letter to be date-stamped and returned to our messenger. Thank you for your attention to this matter.

Sincerely,



Christopher A. Mills

CAM:jml
Enclosures

cc: Counsel for Defendant

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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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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**REPLY TO DEFENDANT'S RESPONSE TO
COMPLAINANT'S POST-REBUTTAL RTC ANALYSIS**

Complainant AEP Texas North Company ("AEP Texas") submits this limited reply to Defendant BNSF Railway Company's ("BNSF") February 14, 2004 Response to AEP Texas' Supplemental Evidence, which contains a revised simulation of the operations of its stand-alone railroad, the Texas & Northern Railroad ("TNR"), using the Rail Traffic Controller ("RTC") computer model. Statements in BNSF's Response relating to AEP Texas' selected inclusion of random track outages in its simulation imply that evidence in the record concerning actual BNSF operations supports a tenfold increase in the number of outages that should be included. In fact, no such evidence exists and BNSF's statements should be disregarded.

In its May 24, 2004 Reply Evidence, BNSF alleged that AEP Texas failed to provide for random outages of various kinds in its Opening RTC simulation, and that AEP Texas should have included 137 random outage events that purportedly occurred in

2002 on the real-world BNSF lines being replicated by the TNR. In its Rebuttal RTC simulation, AEP Texas included 13 outage events that its rail operations expert, Paul Reistrup, concluded were of the kind that the TNR would be likely to experience, based on the records of actual outages provided in BNSF's workpapers.

On September 9, 2004, BNSF filed a Motion to Strike parts of AEP Texas' Rebuttal Evidence which, *inter alia*, challenged AEP Texas' inclusion of 13 random outage events rather than the 137 events posited by BNSF. On October 20, 2004, AEP Texas filed a Reply to BNSF's Motion to Strike, in which it defended the inclusion of the 13 outage events used in its Rebuttal RTC simulation and explained why it was inappropriate and unnecessary to include additional events. Subsequently, on November 8, 2004, AEP Texas filed a Petition to Supplement the Record and Supplemental Evidence containing the results of a revised RTC simulation necessitated by both parties' failure to include the proper number of trains during the peak-period used for the simulation.¹ The revised RTC simulation continued to use the same 13 random outage events that were used in AEP Texas' Rebuttal simulation.

In its Response to AEP Texas' Supplemental Evidence, BNSF once again argues that AEP Texas should have included 137 random outage events in its revised RTC simulation, and that the results of the simulation should be disregarded because inclusion of the additional outage events causes the simulation to fail. Response at 5-12. This is a repeat of the argument BNSF made in its Reply Evidence and again in its Motion to Strike. However, in its Response BNSF claims *for the first time* that the track

¹ As of this date, the Board has not ruled on BNSF's Motion to Strike or AEP Texas' Petition to Supplement the Record.

and signal-related outages it argues should be included consist of “only those events which, by their nature, would have resulted in the track signal system producing a red or ‘stop’ signal, meaning that trains would be forced to stop at the signal and either wait there or proceed, with permission from the dispatcher, at restricted speed.” *Id.* at 6; *see also id.* at 7 (“The track and signal failures that BNSF selected were events that produced red signals requiring the train to stop and then proceed at reduced speeds. . .”). BNSF’s statements clearly imply that the records of actual outages now in evidence show that they all triggered red stop signals.

As Mr. Reistrup explained in AEP Texas’ Rebuttal Narrative and in his Verified Statement accompanying AEP Texas’ Reply to BNSF’s Motion to Strike (“Reistrup V.S.”), the records provided by BNSF in its Reply Evidence and workpapers did not support an assumption that the 137 random outage events advocated by BNSF all required trains to stop for any particular length of time, or that the track and signal-related events were emergency events as opposed to maintenance items that could be scheduled at the dispatcher’s convenience. *See* AEP Texas Reb. Narrative at II-C-46 to 51 and Reistrup V.S. at 8-10 and 12-13.

BNSF’s most complete statement with respect to random track outages in its Reply Narrative is as follows:

Messrs. Albin and Mueller identified all of the failures that would either cause a complete stoppage or a slowdown of traffic and provided this information to Mr. Wheeler for use in the TNR network simulation. Messrs. Albin and Mueller also identified those track outages that would require a track maintenance crew to correct the problem. Mr. Wheeler assumed that a track outage on a double-track section with 15-foot track centers would also require a speed restriction on the adjacent track.

Id. at III.B.20-21. All BNSF offered on Reply was this statement claiming that two witnesses told a third which outages caused a slowdown or stoppage of traffic. The *records* of actual outages provided by BNSF in its workpapers contain no indications that most outages triggered a red signal or caused a complete stoppage of trains.² The statement that only these kinds of outages were included is made for the first time in BNSF's Response to AEP Texas' Supplemental Evidence. It is not verified, and contrary to the impression that BNSF obviously intends to leave, there are no workpapers or other documentation now in evidence that support or confirm it.³

AEP Texas will not repeat here the reasons why Mr. Reistrup concluded that only 13 of the 137 random outages advocated by BNSF were appropriate for inclusion in the RTC simulation. *See* AEP Texas Reb. Narrative at II-C-46 to 51 and Reistrup V.S. at 6-13. BNSF's statements that its claimed outages all triggered red signals requiring trains to stop, made for the first time in its Response, are unsupported by any evidence in the record and should be disregarded.

² The Reply workpapers underlying the track-related outages posited by BNSF include electronic file "June to July Engineering data.xls" and "RTC Track failure-maintenance summary.xls." In the handful of instances where these workpapers actually indicated that a red signal was involved, Mr. Reistrup included the event in his random outages. *See* AEP Texas Reb. Narrative at III-C-50 and Reb. Exhibit III-C-4.

³ For example, at page 9 of its Response, BNSF asserts that the switch-point related outages identified by BNSF involve only switch-point *failures* that caused a red signal, rather than problems that could be rectified by a scheduled maintenance outage. However, the workpapers provided by BNSF refer only to "Switch Points" and none of the "Switch Point" items indicated that a stop signal was involved. A switch-point "failure" that causes a red signal usually involves something that causes a gap between the switch point and the stock rail. Switch-point issues typically involve maintenance items such as cleaning, oiling or grinding a switch point.

Respectfully submitted,

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Dated: February 28, 2005

Attorneys & Practitioners

CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of February, 2005, I caused a copy of the foregoing Reply and accompanying cover letter to be served by hand delivery on counsel for BNSF, as follows:

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