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214011

May 18, 2005

via Hand Delivery

Hon. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423

Expedited Consideration Requested

ENTERED
Office of Proceedings

Re: AEP Texas North Company v. BNSF Railway Company,
Docket No. 41191 (Sub-No. 1)

MAY 18 2005

Part of
Public Record

Dear Secretary Williams:

Enclosed for filing in the above-captioned matter are an original and ten copies of Defendant's Motion to Suspend Briefing Schedule. Please note that BNSF Railway Company has requested expedited consideration of this Motion.

Please date stamp the extra copy of this pleading and return it to the messenger who delivered this filing.

Sincerely,

Anthony J. LaRocca

Enclosure
cc: Complainant's Counsel

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

214011

EXPEDITED CONSIDERATION REQUESTED

AEP TEXAS NORTH COMPANY,

Complainant,

v.

BNSF RAILWAY COMPANY,

Defendant.

Docket No. 41191 (Sub-No. 1)

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Office of Proceedings

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**MOTION OF BNSF RAILWAY COMPANY
TO SUSPEND BRIEFING SCHEDULE**

Pursuant to 49 CFR § 1117.1, BNSF Railway Company (BNSF) hereby moves to suspend the briefing schedule in STB Docket No. 41191 (Sub-No.1) pending disposition of BNSF's Motion to Dismiss the Complaint, filed concurrently with this Motion. Pursuant to the Board's Order served April 22, 2005, final briefs are due June 9, 2005. Final briefs are due in just over three weeks. However, those briefs may become unnecessary if the Board grants BNSF's Motion to Dismiss. Therefore, BNSF seeks expedited consideration of this Motion in order to avoid the burden and expense of filing briefs that may never need to be filed.

ARGUMENT

BNSF is filing concurrently with this Motion to Suspend the Briefing Schedule a Motion to Dismiss the Complaint. BNSF's Motion to Dismiss is being filed in light of the April 8, 2005 decision of the United States Court of Appeals for the District of Columbia Circuit ("D.C. Circuit") in *Burlington Northern and Santa Fe Railway Company v. Surface Transportation Board*, No. 04-1162 ("*BNSF v. STB*"). That decision vacated the Board's March 19, 2004

decision vacating the rate prescription in STB Docket No. 41191. The effect of the D.C. Circuit decision is to reinstate the rate prescription.

BNSF explains in its Motion to Dismiss that the reinstatement of the rate prescription requires dismissal of the complaint in this proceeding. A complaint cannot be brought challenging rates for movements that are already covered by a rate prescription. The reinstated rate prescription expressly covers rates for movements from the Rawhide mine and, by operation of law under the Board's September 2004 *TMPA* decision, it also covers the rates for current and prospective non-Rawhide movements. As to historical non-Rawhide movements, the complaint should be dismissed because it seeks a determination of the maximum reasonable SAC rates for movements that are already the subject of the Board's prior 1996 SAC determination.

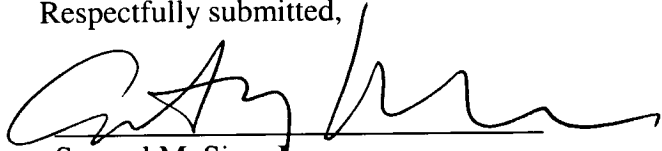
There is no reason for the parties to prepare final briefs in this proceeding while BNSF's Motion to Dismiss is pending. If BNSF is successful, the proceeding will be dismissed and no further action will be required. It is in the interest of administrative efficiency for the Board to suspend the briefing schedule until it considers and rules on BNSF's Motion to Dismiss.

In addition, BNSF urges the Board to act expeditiously on this Motion to Suspend the Briefing Schedule. The final briefs are due in just over three weeks. If BNSF's Motion to Dismiss is granted, then no effort need be expended in the preparation of the final briefs. An expeditious decision on this Motion to Suspend the Briefing Schedule will allow the parties to avoid the expense of preparing final briefs that may never need to be filed.

CONCLUSION

For the reasons stated above, the Board should suspend the briefing schedule established on April 22, 2005. The Board should also act expeditiously on this Motion in order to avoid the time and expense of preparing briefs that may turn out to be unnecessary.

Respectfully submitted,



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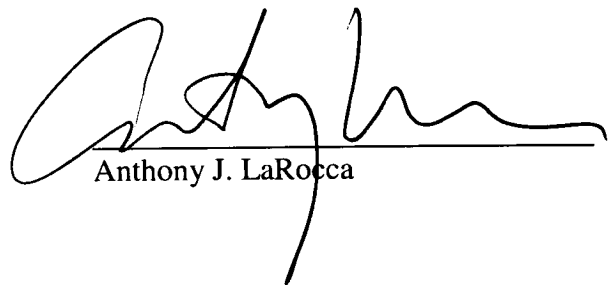
Attorneys for Defendant

May 18, 2005

CERTIFICATE OF SERVICE

I hereby certify that on May 18, 2005, I caused a copy of BNSF Railway Company's
Motion To Suspend Briefing Schedule to be served by hand upon the following:

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