

217141

**BEFORE THE
SURFACE TRANSPORTATION BOARD**



AEP TEXAS NORTH COMPANY,

Complainant,

v.

BNSF RAILWAY COMPANY,

Defendant.

Docket No. 41191 (Sub-No. 1)

ENTERED
Office of Proceedings
JUL 25 2006
Part of
Public Record

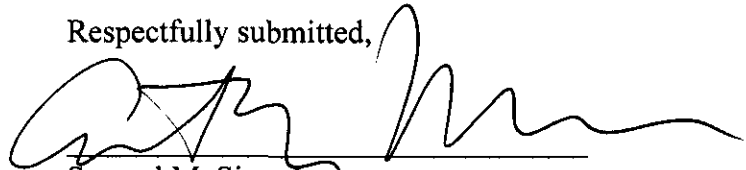
NOTICE REGARDING AUTOMATIC DISMISSAL OF COMPLAINT

The statute governing rail rate reasonableness proceedings provides that a proceeding that has not been concluded with administrative finality within three years of its initiation shall be automatically terminated. 49 U.S.C. §11701(c). Complainant AEP Texas North Company ("AEP Texas") filed and served its complaint initiating the above-captioned matter on August 11, 2003. Accordingly, this proceeding is automatically dismissed if the proceeding has not been concluded by August 10, 2006.

Defendant BNSF Railway Company ("BNSF") believes that dismissal of a pending action after three years is automatic and non-discretionary under the plain terms of the statute. In BNSF's recent appeal to the U.S. Court of Appeals for the District of Columbia Circuit of the Board's decisions in Docket No. 42057, *Public Service Company of Colorado d/b/a Xcel Energy v. The Burlington Northern and Santa Fe Railway Company*, the Board stated that it does not believe the three-year rule applies to rate reasonableness cases. Before the court, BNSF contended that the three-year rule required dismissal of the complaint by the Board, but the court declined to rule on the issue, finding that BNSF had waived its right to raise the issue on appeal

because it had not notified the Board prior to the Board's decision in the underlying case of BNSF's position that the statute required dismissal of the action three years after the proceeding was initiated. *See BNSF Railway Co. v. STB*, No. 05-1030, slip op. at 8-9 (D.C. Cir. June 16, 2006). BNSF does not believe that such notice should be required given the clear language of the statute, but BNSF is filing this notice with the Board to eliminate any doubt about whether the issue has been brought to the Board's attention in a timely manner in the present case.

Respectfully submitted,



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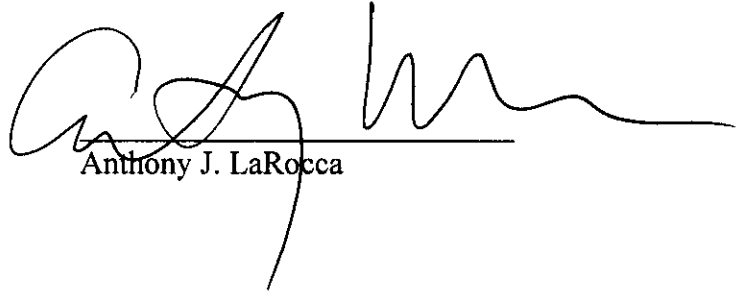
Attorneys for BNSF Railway Company

July 25, 2006

CERTIFICATE OF SERVICE

I hereby certify that this 25th day of July, 2005, I served a copy of BNSF Railway Company's Notice Regarding Automatic Dismissal of Complaint on the following by hand delivery:

William L. Slover
Kelvin J. Dowd
Christopher A. Mills
Daniel M. Jaffe
Slover & Loftus
1224 Seventeenth Street, N.W.
Washington, DC 20036



Anthony J. LaRocca

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July 25, 2005

via Hand Delivery

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

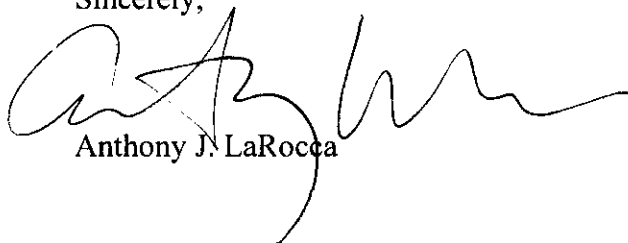
Re: AEP Texas North Company v. BNSF Railway Company,
Docket No. 41191 (Sub-No. 1)

Dear Secretary Williams:

Enclosed for filing in the above-captioned matter are an original and ten copies of Defendant's Notice Regarding Automatic Dismissal of Complaint.

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

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