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August 1, 2006

VIA HAND DELIVERY

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

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

Dear Secretary Williams:

Enclosed for filing in the referenced proceeding please find an original and 10 copies of Complainant's Reply to Notice Regarding Automatic Dismissal of Complaint.

An additional copy of the Reply 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
An Attorney for
AEP Texas North Company

Enclosure

BEFORE THE
SURFACE TRANSPORTATION BOARD



AEP TEXAS NORTH COMPANY,

Complainant,

v.

BNSF RAILWAY COMPANY,

Defendant.

Docket No. 41191 (Sub-No. 1)

Office of Proceedings

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Public Record

**COMPLAINANT'S REPLY TO NOTICE
REGARDING AUTOMATIC DISMISSAL OF COMPLAINT**

Complainant, AEP Texas North Company ("AEP Texas"), pursuant to 49 C.F.R. Part 1104.13, hereby replies to the Defendant, BNSF Railway Company's ("BNSF") self-styled "Notice Regarding Automatic Dismissal of Complaint," which was filed on or about July 25, 2006. The Notice should be rejected, as BNSF has no valid basis to assert that this proceeding should be dismissed under 49 U.S.C. §11701(c) if a final decision is not rendered by August 10, 2006.

1. As the Board is aware, a final decision in this proceeding originally was due on or before March 9, 2006. *See* 49 U.S.C. § 10704(c)(1). However, on February 27, 2006 the Board served its decision initiating Ex Parte No. 657 (Sub-No. 1), *Major Issues in Rail Rate Cases*, wherein it ruled that the timeframe for issuance of a decision in this case was "tolled" pending completion of the rulemaking proceeding and "further evidentiary proceedings" in this docket. *Id.* at 3.

2. In response to requests by various parties for reconsideration of the Board's action in *Ex Parte No. 657 (Sub-No. 1)*, BNSF actively supported the Board and specifically disclaimed any prejudice to AEP Texas and other parties as a result of any "delay in the resolution of their cases" caused by the rulemaking. *See Ex Parte No. 657 (Sub-No. 1)*, BNSF Railway Company's Reply to Petition for Reconsideration, April 10, 2006, at 3. Subsequently, in its June 15, 2006 Reply Supplemental Evidence in this proceeding, BNSF referenced with approval the notion that "a subsequent round of evidence" might be submitted in this docket once the rulemaking is concluded. *Id.* at 5. Having actively aided and abetted a delay in the resolution of AEP Texas' claim, BNSF cannot now be heard to argue (for the first time) for dismissal of that claim on timeliness grounds. *See BNSF Railway Co. v. S.T.B.*, D.C. Circuit No. 05-1030, June 16, 2006 slip op. at 8-9.

3. The right to prosecute a complaint against BNSF's unreasonably high rates on AEP Texas' coal shipments conferred by 49 U.S.C. §11704(c) is a constitutionally-protected property interest. Under the circumstances presented, where any delay in the rendering of a final decision results solely from the actions of the Board and BNSF and in no part is due to any act or omission by AEP Texas, the application of 49 U.S.C. §11701(c) to dismiss its complaint would violate the Fourteenth Amendment to the United States Constitution. *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 434-37 (1981).

4. Elsewhere, the Board ably has explained why 49 U.S.C. §11701(c) does not apply in the context of proceedings such as the instant. *See BNSF Railway Co. v. S.T.B., supra*, Joint Brief of Respondents, July 21, 2005, at 24-30. AEP Texas concurs in the Board's reasoning.

WHEREFORE, for the reasons stated herein, BNSF's July 25, 2006 Notice should be rejected.

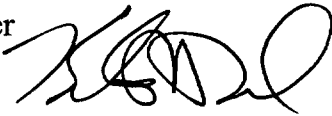
Respectfully submitted,

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Attorneys & Practitioners

Dated: August 1, 2006

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of August 2006, I caused a copy of the foregoing Complainant's Reply to Notice Regarding Automatic Dismissal of Complaint to be served by hand delivery on counsel for BNSF, as follows:

Samuel M. Sipe, Jr.
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