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November 17, 2006

via Hand Delivery

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

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Office of Proceedings
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Re: AEP Texas North Company v. BNSF Railway Company,
Docket No. 41191 (Sub-No. 1); Western Fuels Association, Inc.
and Basin Electric Power Cooperative v. BNSF Railway
Company, Docket No. 42088

-218101

-218102

Dear Secretary Williams:

Enclosed for filing in each of the above-captioned matters is BNSF's Reply to the Petitions for Reconsideration of the Board's November 8, 2006 Order. The enclosed is a consolidated reply to Petitions for Reconsideration filed in the two above-captioned matters. An original and 10 copies of BNSF's Reply are enclosed for filing in each of the two dockets.

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: Parties of Record

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BEFORE THE
SURFACE TRANSPORTATION BOARD



AEP TEXAS NORTH COMPANY)
v.)
BNSF RAILWAY COMPANY)

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

2/8/01

WESTERN FUELS ASSOCIATION, INC.)
and BASIN ELECTRIC POWER)
COOPERATIVE, INC.)
v.)
BNSF RAILWAY COMPANY)

STB Docket No. 42088

2/8/02

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**BNSF'S REPLY TO THE PETITIONS FOR RECONSIDERATION
OF THE BOARD'S NOVEMBER 8, 2006 ORDER**

BNSF Railway Company ("BNSF") hereby replies in opposition to the Petition for Reconsideration filed by AEP Texas North Company ("AEP Texas") in Docket No. 41191 (Sub-No.1), *AEP Texas North Company v. BNSF Railway Company*, and the Petition for Reconsideration of the Board's November 8, 2006 Order filed by Western Fuels Association, Inc. and Basin Electric Power Cooperative ("WFA/Basin") in Docket No. 42088, *Western Fuels Association, Inc. and Basin Electric Power Cooperative v. BNSF Railway Company*. BNSF files this consolidated reply to the Petitions for Reconsideration filed in the two cases because both petitions raise the same two issues. Both petitions urge the Board to modify the sequence in which supplemental data are submitted, and both petitions urge the Board to order BNSF to produce broad, burdensome and unnecessary discovery before any supplemental data are filed. For the reasons set out below, the Petitions for Reconsideration should be denied.

The Board has obviously determined that the most efficient and straightforward way to supplement the record with the data it seeks is to get the data directly from the party that is the

source of the data. There is no need to go through the circuitous process proposed by the petitioners, where petitioners elicit data from BNSF and then present it to the Board. The petitioners' proposal would be wasteful and time-consuming, and with respect to their request for new discovery of extensive train-event data, their approach could lead to unnecessary complexity and delay.

The Board's November 8, 2006 Order sets out a reasonable and efficient procedure for supplementing the record in the above-captioned cases so that the methodological changes adopted by the Board in STB Ex Parte No. 657 (Sub-No.1), *Major Issues in Rail Rate Cases*, can be applied to the SAC evidence that has already been submitted by the parties. AEP Texas and WFA/Basin object to the Board's procedures because they do not allow the complainants to "open and close" the record, consistent with procedures for the submission of a complainant's SAC case in chief. But petitioners' argument is based on a misunderstanding of the nature of the filings contemplated by the November 8, 2006 Order. The Board clearly does not contemplate the presentation of new SAC evidence at this late stage of the SAC proceedings. AEP Texas and WFA/Basin have already presented their basic SAC evidence in the pending cases and they have had the right to open and close in those cases. The Board has not called for new evidence on the elements of a SAC presentation but has called only for the submission of supplemental data that are necessary to apply the new methodologies adopted in Ex Parte No. 657 (Sub-No.1) to the SAC evidence already submitted by the parties. Neither party is making its case, so the normal rules governing the submission of SAC evidence do not apply.

In fact, the Board has no standard procedures governing the submission of supplemental data. The need for supplemental filings arises in SAC cases in a variety of contexts, so the procedures governing the submission of supplemental information should be tailored to the

circumstances of individual cases. The circumstances here are unique. Here, the supplemental filings are limited to narrow, specific and technical data necessary to implement methodologies that the Board has already decided to apply in these cases. AEP Texas and WFA/Basin participated extensively in the rulemaking proceeding that led to the adoption of those methodologies. No further evidence on the basic methodologies is needed or would be appropriate. The approach set out in the November 8, 2006 Order is a reasonable way for the Board to obtain the particular data needed under these circumstances with the least amount of delay and complication.

The Board should also reject the requests by AEP Texas and WFA/Basin that the Board order BNSF to produce broad and burdensome new discovery before any supplemental filings are made. The petitioners do not need the data sought in their discovery requests. Petitioners appear to concede that they do not need any data from BNSF to establish the unadjusted variable costs for SARR movements for purposes of establishing the jurisdictional threshold or for purposes of implementing the MMM maximum rate methodology. As to the ATC methodology, the necessary data and corresponding calculations are straightforward. BNSF will present all of its calculations in workpapers and all of the data and calculations will be readily verifiable. Moreover, with one exception, BNSF has already produced in discovery the data necessary to make the ATC calculations. Because the 2004 density data for BNSF's system were not available when discovery was carried out in the *WFA/Basin* case, BNSF intends to submit that data with its supplemental data. No additional data are needed, so there is no need for extensive new discovery at this time.

Petitioners ask the Board to order BNSF to produce extensive train-event data for multiple years, presumably for the purpose of identifying the off-SARR routing of the SARR

traffic. But there are simpler ways to identify the routing of SARR traffic on the lines of the incumbent, as reflected in the evidence BNSF has already produced in its SAC filings in these cases. The records in these cases already contain evidence showing the off-SARR routes for the movements in the SARR traffic groups.¹ Therefore, the use of train-event data to identify off-SARR routes is unnecessary and would serve only to complicate and protract the proceedings. As the Board is aware, the attempt by Arizona Electric Power Cooperative, Inc. to use detailed train-event data in its presentation of SAC evidence produced months of delays and imposed substantial additional burdens on the parties and the Board.² Since there is no reason to use train-event data in these cases, there is no reason to order the requested discovery.

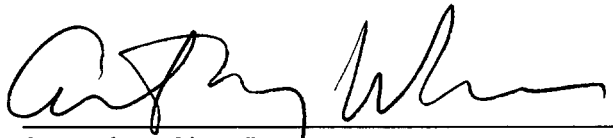
Finally, the requested discovery would impose substantial burdens on BNSF. BNSF has not produced in discovery in prior SAC cases the extensive multi-state train-event data sought now by AEP Texas and WFA/Basin. Substantial data processing would be required to obtain the requested data. In addition, when extensive data are sought in discovery, the railroad defendant generally has several weeks or months to collect and process the data. Here, AEP Texas and WFA/Basin ask the Board to order BNSF to produce extensive data with minimal notice. The time frame for such discovery, even if the discovery were warranted, is clearly inappropriate.

For the reasons set out above, the Board should deny the Petitions for Reconsideration filed by AEP Texas and WFA/Basin.

¹ See BNSF Reply electronic work paper “Residual BNSF Densities 02.xls” and BNSF Reply electronic work paper “Non-Coal Densities.xls” in the *AEP Texas* case, and BNSF Reply electronic work paper “residual BNSF segments.xls” in the *WFA/Basin* case.

² See, e.g., STB Docket No. 42058, *Arizona Electric Power Cooperative, Inc. v. The Burlington Northern and Santa Fe Railway Company and Union Pacific Railroad Company*, slip op. at 1-4 (Decision served November 19, 2003).

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Samuel M. Sipe, Jr.", written over a horizontal line.

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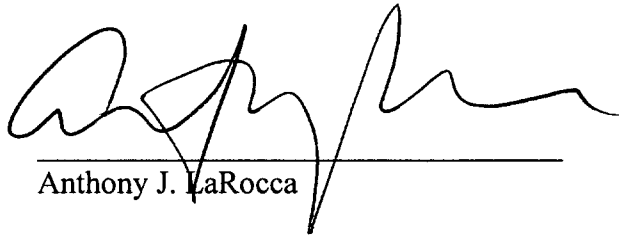
Attorneys for BNSF Railway Company

November 17, 2006

CERTIFICATE OF SERVICE

I hereby certify that this 17th day of November, 2006, I served a copy of BNSF's Reply
To The Petitions For Reconsideration Of The Board's November 8, 2006 Order to the following
by hand delivery:

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