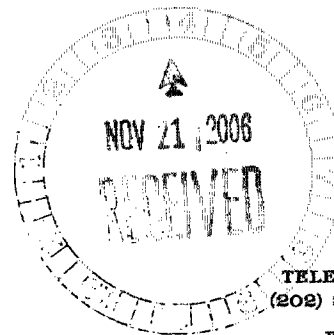


WILLIAM L. SLOVER
C. MICHAEL LOFTUS
JOHN H. LE SEUR
KELVIN J. DOWD
ROBERT D. ROSENBERG
CHRISTOPHER A. MILLS
FRANK J. PERGOLIZZI
ANDREW B. KOLESAR III
PETER A. PFOHL
DANIEL M. JAFFE

OF COUNSEL
DONALD G. AVERY

SLOVER & LOFTUS
ATTORNEYS AT LAW
1224 SEVENTEENTH STREET, N. W.
WASHINGTON, D. C. 20036-3003



TELEPHONE:
(202) 347-7170

FAX:
(202) 347-3619

WRITER'S E-MAIL:

kjd@sloverandloftus.com

November 21, 2006

BY HAND DELIVERY

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
Case Control Unit
1925 K Street, N.W.
Washington, D.C. 20423-0001

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

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218120

Dear Secretary Williams:

The undersigned, counsel for AEP Texas North Company ("AEP") and Western Fuels Association, Inc./Basin Electric Power Cooperative, Inc. ("WFA/Basin"), respectively, write to correct certain misstatements of fact set forth in the consolidated Reply to the Petitions for Reconsideration ("Reply") filed in the referenced proceedings on or about November 17, 2006 by BNSF Railway Company ("BNSF").

At the outset, it is noteworthy that BNSF at once seems to be arguing both that it is reasonable for the Board to permit BNSF to open and close this phase of these proceedings because it is "the party that is the source of the data" that the Board has requested (Reply at 1-2), and that it is permissible to deny AEP and WFA/Basin their right to do so because "[t]he Board has not called for new evidence . . . only for the submission of supplemental data." *Id.* at 2. BNSF's self-contradictory positions reveal its mischaracterization of the impact of the Board's November 8, 2006 Order.

BNSF states that the Board has not called for any “new evidence,” yet it is clear from the Order that the Board has done just that. The Order (at 5) calls for “supplemental evidence,” including data needed to apply a cross-over revenue divisions formula – the average total cost (“ATC”) methodology – that has *never* been part of a SAC case, and as to which no evidence yet has been presented in these proceedings. While the Board in *Ex Parte No. 657 (Sub-No. 1)* generally outlined how ATC might be calculated, it has yet to address all the elements of its application. For example, the Board has not determined how trackage or haulage rights should be handled under ATC, or how ATC should be calculated for movements via short lines that receive prescribed revenue divisions from the line-haul carrier. As the parties with the ultimate burden of proof on rate reasonableness, AEP and WFA/Basin should have the opportunity to address these novel issues and other pertinent issues, and answer any counter-arguments raised by BNSF.

Similarly, BNSF wrongly states that the records in these cases “already contain evidence showing the off-SARR routes” for cross-over movements, and that the production of train-event data to identify the initial origins and/or ultimate destinations of these movements is unnecessary. Reply at 4. The issue is not whether *BNSF* already has provided its version of the data in question, but whether AEP/WFA/Basin, and/or the Board will be able to verify that data. For example, BNSF points to workpapers filed in both dockets (*id.*, n.1)¹, but does not acknowledge that the sources of that data have yet to be produced, the criteria employed by BNSF to isolate the data have yet to be explained, and even something as fundamental as the time period(s) represented have yet to be confirmed. If the supplemental evidence that the Board has called for is to have any credibility, it cannot be comprised solely of unverified summaries unilaterally prepared and controlled by one party.

Finally, BNSF complains that production of the multi-state train event data requested by AEP and WFA/Basin would be unduly burdensome. However, earlier in *Ex Parte No. 657 (Sub-No. 1)* BNSF assured the Board that proper execution of the ATC calculations would *not* entail significant burdens. That the relevant data may not have been

¹ BNSF claims that these workpapers include line densities for off-SARR routes. However, the spreadsheets in question show only gross tons, not the net tons needed to execute ATC.

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produced in previous SAC cases is irrelevant, since the ATC approach was not in place in those cases.

In sum, BNSF has misrepresented the state of the records in the referenced cases, and offered a skewed reading of the Board's Order that gives the party that does not bear the ultimate burden of persuasion complete control over the information most relevant to meeting that burden. AEP and WFA/Basin respectfully suggest that the Board properly consider their respective Petitions for Reconsideration in this light.

Thank you for your consideration in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kelvin J. Dowd', with a large, stylized loop at the end.

Kelvin J. Dowd
An Attorney for
AEP Texas North Company

A handwritten signature in black ink, appearing to read 'Peter A. Pfohl', with a long, sweeping horizontal line extending to the right.

Peter A. Pfohl
An Attorney for
Western Fuels Association, Inc.
and Basin Electric Power Cooperative, Inc.

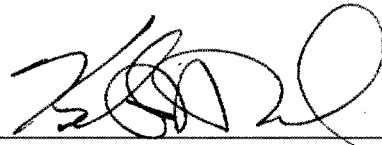
KJD:jml

cc: Chairman Nottingham
Vice-Chairman Mulvey
Commissioner Buttrey
Ellen Hanson, Esq.
Counsel for BNSF

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of November, 2006, I caused a copy of the foregoing to be served by hand delivery on counsel for BNSF, as follows:

Samuel M. Sipe, Jr.
Anthony J. LaRocca
David F. Rifkind
Steptoe & Johnson, L.L.P.
1330 Connecticut Avenue, N.W.
Washington, D.C. 20036-1795

A handwritten signature in black ink, appearing to read 'K. Dowd', is written over a horizontal line.

Kelvin J. Dowd