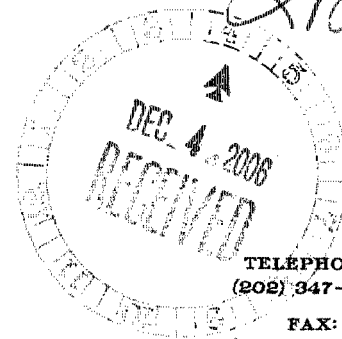


WILLIAM L. SLOVER
C. MICHAEL LOFTUS
JOHN H. LE SEUR
KELVIN J. DOWD
ROBERT D. ROSENBERG
CHRISTOPHER A. MILLS
FRANK J. PERGOLIZZI
ANDREW B. KOLESAR III
PETER A. PFOHL
DANIEL M. JAFFE

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:
jhl@sloverandloftus.com

December 4, 2006

VIA HAND DELIVERY

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

ENTERED
Office of Proceedings

DEC 4 - 2006

Part of
Public Record

Re: Docket No. 42088, Western Fuels Association, Inc. and Basin
Electric Power Cooperative, Inc. v. BNSF Railway Company

Dear Secretary Williams:

This letter addresses issues raised in the Board's decision served in the above-referenced proceeding ("Western Fuels") on November 22, 2006 ("November 22 Order").

(1) Discovery. The November 22 Order authorized Western Fuels Association, Inc. ("WFA") and Basin Electric Power Cooperative, Inc. ("Basin Electric") (collectively "WFA/Basin") to seek specified discovery from BNSF Railway Company ("BNSF"). In response, WFA/Basin served their document production requests on BNSF on November 27, 2006.

(2) Meet and Confer. The November 22 Order directed WFA/Basin and BNSF "to meet and confer on any discovery requests." (Id. at 3). The parties' meet and confer session took place on December 1, 2006.

(3) Staff Discovery Conference. The November 22 Order calls for a "staff discovery conference if needed" on December 5, 2006. (Id.) Counsel for WFA/Basin and BNSF agreed at their December 1st meet and confer session that a staff discovery conference is not needed on December 5, 2006.

(4) Motion to Compel. The November 22 Order provides that motions to compel discovery are due on December 8, 2006. At the December 1st meet and confer session, counsel for BNSF made representations concerning the scope of BNSF's

responsive document production. If BNSF's production complies with these representations, there should be no need for WFA/Basin to file a motion to compel. Accordingly, WFA/Basin does not plan to file a motion to compel by December 8, 2006. However, since BNSF will not actually be producing responsive documents until after December 8, 2006, WFA/Basin reserve the normal rights accorded to parties under the Board's discovery rules to pursue a motion to compel, or other discovery relief, before the scheduled close of discovery (January 16, 2006) should that become necessary. See 49 C.F.R. §1114.31. Alternatively, if the Board intended in its November 22 Order to modify the generally applicable discovery rules, WFA/Basin request that the Board waive the December 8, 2006 deadline.

(5) Other Matters: The Board's November 22 Order addressed separate petitions filed by WFA/Basin¹ and AEP Texas North Company ("AEP Texas") asking the Board to reconsider its order served in Western Fuels and AEP Texas² on November 8, 2006 ("November 8 Order"). The Board's November 8 Order directed the parties in Western Fuels and AEP Texas to present specified "supplemental evidence" implementing the Board's decision served on October 30, 2006 in Major Issues in Rail Rate Cases, STB Ex Parte No. 657 (Sub-No. 1) ("Major Issues").

In its November 22 Order, the Board asserts that in WFA/Basin's Petition For Reconsideration, WFA/Basin did not object "to the substance" of the Board's November 8 Order. (Id. at 2). While it is unclear to WFA/Basin what "substance" the Board is referring to, WFA/Basin's objections to the Board's initiation of the Major Issues proceeding, its objections to the rules the Board adopted Major Issues, and its objections to the retroactive application of these rules in Western Fuels are thoroughly set forth in WFA/Basin's prior submissions to the Board. See Petition for Reconsideration at

¹ See WFA/Basin's Petition For Reconsideration of the Board's November 8, 2006 Order (filed November 14, 2006) ("Petition For Reconsideration").

² AEP Texas North Co. v. BNSF Railway Co., STB Docket No. 41191 (Sub-No. 1) ("AEP Texas").

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3 fn.1; WFA and WFA/Basin submissions filed in Major Issues and Western Fuels on March 20, 2006, May 1, 2006, May 31, 2006 and June 30, 2006.³

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John H. LeSeur". The signature is fluid and cursive, with the first name "John" being more prominent.

John H. LeSeur
An Attorney for Complainants

JHL:cef
cc: Counsel for Defendant BNSF Railway Co.

³ As the Board is also aware, Basin Electric has filed a petition seeking judicial review of the Board's actions in Major Issues. See Basin Electric Power Cooperative, Inc. v. BNSF Railway Company, No. 06-3805 (8th Cir. filed November 9, 2006).