

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

WESTERN FUELS ASSOCIATION, INC.)	
and BASIN ELECTRIC POWER)	
COOPERATIVE, INC.)	STB Docket No. 42088
v.)	
BNSF RAILWAY COMPANY)	

**BNSF RAILWAY COMPANY'S
REPLY TO SUPPLEMENTAL EVIDENCE NOTICE**

BNSF Railway Company ("BNSF") hereby replies to the Supplemental Evidence Notice filed by complainants Western Fuels Association, Inc. and Basin Electric Power Cooperative, Inc. (collectively "WFA/Basin") on October 22, 2007. The Supplemental Evidence Notice is a response to the Board's September 10, 2007 Decision in this matter stating that WFA/Basin should notify the Board if they wish to supplement or revise their prior SAC presentation.

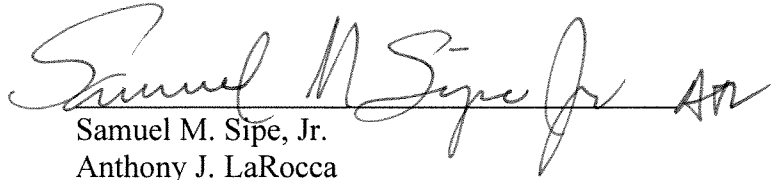
In their Supplemental Evidence Notice, WFA/Basin indicate that they would like the opportunity to present supplemental SAC evidence and they propose a number of conditions to govern the submission of further evidence in this proceeding. BNSF has requested that the Board reconsider its decision to allow WFA/Basin another opportunity to present SAC evidence. *See* BNSF Petition for Reconsideration, filed October 22, 2007. To the extent that the Board permits such further proceedings, however, BNSF responds to WFA/Basin's proposals as follows:

1. BNSF agrees that supplemental discovery should not be permitted.
2. BNSF agrees that supplemental evidence should generally be limited to material already in the administrative and discovery record. WFA/Basin have proposed that it should also be permissible to make use of "any other public or commercial material that is equally available to

each side.” Supplemental Evidence Notice at 2. BNSF cannot agree to this expansion of permissible evidence in the abstract as it is not clear what types of information would be covered or the uses to which such information would be put in the SAC evidence. Moreover, there are standards governing the adequacy of SAC evidence and BNSF does not agree to any relaxation of those standards.

3. BNSF believes that the proposed schedule set forth in Attachment 1 to the Supplemental Evidence Notice is acceptable, except that BNSF should be given 60 days (rather than 45) to prepare its reply evidence. WFA/Basin have requested 60 days to prepare their opening evidence but allotted only 45 days to BNSF to prepare its reply. WFA/Basin’s proposed schedule would place BNSF at a significant disadvantage as WFA/Basin will, in fact, have much more than the 60 days allotted in the proposed schedule to prepare their opening evidence as they are able to begin to prepare it before the Board issues a decision authorizing supplemental evidence. The preparation of reply evidence can be complex and time consuming, requiring verification and validation of the evidence submitted by complainants and, in many cases, development of independent evidence responsive to the complainants’ evidence. There would be no justification for short-changing BNSF with respect to the amount of time allowed to prepare reply evidence.

Respectfully submitted,

A handwritten signature in cursive script, reading "Samuel M. Sipe, Jr.", followed by a horizontal line and the initials "AN".

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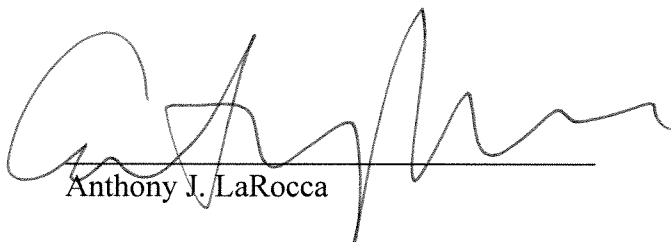
Attorneys for BNSF Railway Company

November 13, 2007

CERTIFICATE OF SERVICE

I hereby certify that this 13th day of November, 2007, I served a copy of BNSF's Reply to Supplemental Evidence Notice on the following by hand delivery:

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