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209021

September 30, 2003

VIA BY HAND DELIVERY

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

ENTERED
Office of Proceedings

SEP 30 2003

Part of
Public Record



Re: STB Docket No. 42056, Texas Municipal Power Agency
v. The Burlington Northern and Santa Fe Railway Company

Dear Secretary Williams:

Enclosed for filing in the above-referenced proceeding please find an original and ten copies of the Complainant's Statement of Damages and Petition for an Order Directing Payment. Also enclosed is a WordPerfect Diskette containing an electronic copy of the submission.

An additional copy of the filing is enclosed. Please indicate receipt and filing by time-stamping the additional 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
Texas Municipal Power Agency

Enclosure

cc: Parties of Record

BEFORE THE
SURFACE TRANSPORTATION BOARD

209021

TEXAS MUNICIPAL POWER AGENCY,	)	
	)	
Complainant,	)	
	)	
v.	)	Docket No. 42056
	)	
THE BURLINGTON NORTHERN AND	)	ENTERED
SANTA FE RAILWAY COMPANY,	)	Office of Proceedings
	)	SEP 11 2003
Defendant.	)	Part of
	)	Record

**COMPLAINANT'S STATEMENT
OF DAMAGES AND PETITION
FOR AN ORDER DIRECTING PAYMENT**

Complainant, Texas Municipal Power Agency ("TMPA"), pursuant to 49 U.S.C. §§ 11704 (b) and (c) (2) and 49 C.F.R. Part 1133, *et seq.*, and in accordance with the Decision served in this proceeding on March 24, 2003, hereby submits its statement of damages due and owing from Defendant, The Burlington Northern and Santa Fe Railway Company ("BNSF"), and its petition for an order directing immediate payment. In view of TMPA's entitlement to the relief sought herein, and the Board's previous acknowledgment of the economic dislocation inherent in delays in the rendering of complete rail rate relief to utility coal shippers, TMPA respectfully requests expedited consideration of its petition.

In support hereof, TMPA shows as follows:

BACKGROUND

In its Decision served March 24, 2003, the Board held that the rate being charged by BNSF for the transportation of coal in common carrier service from Wyoming to TMPA's Gibbons Creek Generating Station near Carlos, Texas was unreasonably high, in violation of 49 U.S.C. § 10701 (d) (1). The Board directed BNSF to establish and maintain lower rates for the subject traffic in conformity with the limitations determined in the Decision, and to pay damages to TMPA with respect to all coal shipments moving under the challenged rate through the date of BNSF's compliance with the Board's prescription order. *See* Decision at 33-35.¹

STATEMENT OF DAMAGES

Regulations promulgated at 49 C.F.R. Parts 1133 and 1141 govern the determination of damages and calculation of interest in cases where, as here, the Board has found that damages are due but has not fixed the specific amount to be paid.² The

¹The Decision was effective April 23, 2003, and BNSF complied with the rate reduction order on May 23, 2003. No stay of the Decision was sought or issued, though both TMPA and BNSF have petitioned for reconsideration. As the Decision is fully effective, an order directing the payment of reparations due TMPA is appropriate at this time. Should the Board's maximum rate determinations be modified on reconsideration or following an appeal in a manner that affects the measure of damages, TMPA will prepare and submit a supplemental statement to quantify and reconcile any rebates to BNSF or additional payments by BNSF that may be required.

²In the Decision, the Board included a preliminary calculation of a principal amount as of the Fourth Quarter of 2001, but went no farther. *Id.* at 36.

following Statement was prepared by TMPA in accordance with the applicable regulations. As required by 49 C.F.R. Part 1133.2 (b), the Statement was submitted to BNSF on August 21, 2003 for review. BNSF has authorized TMPA to state that it concurs in the accuracy of the Statement, subject to the qualifications contained in footnote 1, *supra*.

1. Principal

The principal amount of damages due TMPA in this proceeding is set forth below, generally in the format described at 49 C.F.R. Part 1133.2(a).

Date of Shipments/Delivery: The first coal shipment tendered by TMPA under the common carrier rate that was found unreasonable was loaded on April 2, 2001, and freight charges therefor were paid on April 24, 2001. The last shipment tendered under such rate was loaded on May 20, 2003, and freight charges therefor were paid on June 6, 2003. A complete list of all shipments subject to this claim is set forth in Exhibit A hereto.

Car Initials and Numbers: Coal shipments subject to this claim all moved in single trainloads, with each train bearing an identification number used, *inter alia*, for billing purposes. A complete list of train numbers for all shipments subject to this claim is set forth in Exhibit A.

<u>Origins:</u>	Caballo Rojo, WY Cordero, WY Jacobs Ranch, WY Antelope, WY
<u>Destination:</u>	Gibbons Creek Generating Station (Carlos, TX)
<u>Route:</u>	BNSF Direct.
<u>Commodity:</u>	Coal.
<u>Total Amount Paid:</u>	\$82,176,672.64
<u>Total Lawful Charges:</u>	\$78,778,604.86
<u>Reparations:</u>	\$3,398,067.78

The charges shown above were paid by TMPA. TMPA certifies that this Statement includes claims only on shipments covered by the Decision and the findings therein, and contains no claim for reparations previously filed with the Board by or on behalf of TMPA in any other proceeding.

As shown in Exhibit A, the total principal amount of reparations due is \$3,398,067.78.

2. **Interest**

The March 24 Decision specifically confirmed TMPA's entitlement to interest on all damages due from BNSF, in accordance with 49 C.F.R. Part 1141. *See* Decision at 35. Under the regulations, TMPA is entitled to interest based upon the equivalent coupon yield of 91-day U.S. Treasury Bills, as in effect on the first day of the

quarter in which the first unlawful charge is paid, with interest compounded quarterly and the interest rate updated as of the first day of all subsequent calendar quarters until reparations are paid.

Applying the foregoing procedures, the interest due TMPA on reparations owed by BNSF equals (i) \$72,658.13; plus (ii) \$78.60 per day from September 10, 2003 through the date on which BNSF pays the damages claimed herein.

**PETITION FOR AN ORDER
DIRECTING PAYMENT**

49 U.S.C. § 11704 (c) (2) mandates that when the Board makes an award of damages in connection with a violation of one or more provisions of Subtitle IV, Part A of Title 49, “the Board shall order the rail carrier to pay the amount awarded by a specific date”. As the amount due and owing has been agreed upon by the parties, subject to the condition contained in footnote 1, *supra*, TMPA requests that the Board grant the relief sought herein on an expedited basis.

CONCLUSION

For all the reasons set forth above, the Board should expedite issuance of an order under 49 U.S.C. § 11704 (c) (2), directing BNSF to pay damages to TMPA in the amount of (i) \$3,470,725.91; plus (ii) \$78.60 per day for each day from September 10,

2003 through the date of payment, and to make such payment forthwith after service of the Board's order.

Respectfully submitted,

TEXAS MUNICIPAL POWER AGENCY

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Dated: September 30, 2003

Attorneys for Complainant

EXHIBIT A

REPAIRATIONS INCLUDING INTEREST (2001 & 2003 MAXIMUM RATES) — SUPPLEMENTS FROM APRIL 1, 2001 THROUGH MAY 28, 2001—ANNUAL (Interest Through September 10, 2003)

Detail	Total	Line	Wire	Charge	Term	As Paid By TPA		As Paid By Insurer		Days to September 10, 2003		Comprehensive		Total	
						Rate	Charge	Rate	Charge	2001	2002	2003	2003		
(1)	(2)	(3a)	(3b)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)	
Chubb Rego	CHUBB0016	42601	42601	3001	14,035.32	19.09	\$25,445.42	\$18.20	\$25,197.64	\$12,477.98	67	92	90	66	1,640.50
Chubb Rego	CHUBB0017	42602	42602	3001	14,035.32	19.09	\$26,555.74	\$18.20	\$26,409.26	\$12,465.48	66	92	90	67	1,640.50
Chubb Rego	CHUBB0018	41001	41001	3001	13,989.30	19.09	\$27,139.60	\$18.20	\$26,993.95	\$12,453.45	59	92	90	67	1,640.50
Chubb Rego	CHUBB0019	41002	41002	3001	14,007.47	19.09	\$27,139.60	\$18.20	\$26,993.95	\$12,453.45	58	92	90	67	1,640.50
Chubb Rego	CHUBB0020	41003	41003	3001	14,111.20	19.09	\$27,139.60	\$18.20	\$26,993.95	\$12,453.45	57	92	90	67	1,640.50
Chubb Rego	CHUBB0021	42701	42701	3001	14,259.66	19.09	\$27,139.60	\$18.20	\$26,993.95	\$12,453.45	51	92	90	67	1,640.50
Chubb Rego	CHUBB0022	42603	42603	3001	14,231.95	19.09	\$27,139.60	\$18.20	\$26,993.95	\$12,453.45	47	92	90	67	1,640.50
Chubb Rego	CHUBB0023	42604	42604	3001	14,231.95	19.09	\$27,139.60	\$18.20	\$26,993.95	\$12,453.45	46	92	90	67	1,640.50
Chubb Rego	CHUBB0024	41004	41004	3001	14,231.95	19.09	\$27,139.60	\$18.20	\$26,993.95	\$12,453.45	45	92	90	67	1,640.50
Chubb Rego	CHUBB0025	41005	41005	3001	14,231.95	19.09	\$27,139.60	\$18.20	\$26,993.95	\$12,453.45	44	92	90	67	1,640.50
Chubb Rego	CHUBB0026	41006	41006	3001	14,231.95	19.09	\$27,139.60	\$18.20	\$26,993.95	\$12,453.45	43	92	90	67	1,640.50
Chubb Rego	CHUBB0027	41007	41007	3001	14,231.95	19.09	\$27,139.60	\$18.20	\$26,993.95	\$12,453.45	42	92	90	67	1,640.50
Chubb Rego	CHUBB0028	41008	41008	3001	14,231.95	19.09	\$27,139.60	\$18.20	\$26,993.95	\$12,453.45	41	92	90	67	1,640.50
Chubb Rego	CHUBB0029	41009	41009	3001	14,231.95	19.09	\$27,139.60	\$18.20	\$26,993.95	\$12,453.45	40	92	90	67	1,640.50
Chubb Rego	CHUBB0030	41010	41010	3001	14,231.95	19.09	\$27,139.60	\$18.20	\$26,993.95	\$12,453.45	39	92	90	67	1,640.50
Chubb Rego	CHUBB0031	41011	41011	3001	14,231.95	19.09	\$27,139.60	\$18.20	\$26,993.95	\$12,453.45	38	92	90	67	1,640.50
Chubb Rego	CHUBB0032	41012	41012	3001	14,231.95	19.09	\$27,139.60	\$18.20	\$26,993.95	\$12,453.45	37	92	90	67	1,640.50
Chubb Rego	CHUBB0033	41013	41013	3001	14,231.95	19.09	\$27,139.60	\$18.20	\$26,993.95	\$12,453.45	36	92	90	67	1,640.50
Chubb Rego	CHUBB0034	41014	41014	3001	14,231.95	19.09	\$27,139.60	\$18.20	\$26,993.95	\$12,453.45	35	92	90	67	1,640.50
Chubb Rego	CHUBB0035	41015	41015	3001	14,231.95	19.09	\$27,139.60	\$18.20	\$26,993.95	\$12,453.45	34	92	90	67	1,640.50
Chubb Rego	CHUBB0036	41016	41016	3001	14,231.95	19.09	\$27,139.60	\$18.20	\$26,993.95	\$12,453.45	33	92	90	67	1,640.50
Chubb Rego	CHUBB0037	41017	41017	3001	14,231.95	19.09	\$27,139.60	\$18.20	\$26,993.95	\$12,453.45	32	92	90	67	1,640.50
Chubb Rego	CHUBB0038	41018	41018	3001	14,231.95	19.09	\$27,139.60	\$18.20	\$26,993.95	\$12,453.45	31	92	90	67	1,640.50
Chubb Rego	CHUBB0039	41019	41019	3001	14,231.95	19.09	\$27,139.60	\$18.20	\$26,993.95	\$12,453.45	30	92	90	67	1,640.50
Chubb Rego	CHUBB0040	41020	41020	3001	14,231.95	19.09	\$27,139.60	\$18.20	\$26,993.95	\$12,453.45	29	92	90	67	1,640.50
Chubb Rego	CHUBB0041	41021	41021	3001	14,231.95	19.09	\$27,139.60	\$18.20	\$26,993.95	\$12,453.45	28	92	90	67	1,640.50
Chubb Rego	CHUBB0042	41022	41022	3001	14,231.95	19.09	\$27,139.60	\$18.20	\$26,993.95	\$12,453.45	27	92	90	67	1,640.50
Chubb Rego	CHUBB0043	41023	41023	3001	14,231.95	19.09	\$27,139.60	\$18.20	\$26,993.95	\$12,453.45	26	92	90	67	1,640.50
Chubb Rego	CHUBB0044	41024	41024	3001	14,231.95	19.09	\$27,139.60	\$18.20	\$26,993.95	\$12,453.45	25	92	90	67	1,640.50
Chubb Rego	CHUBB0045	41025	41025	3001	14,231.95	19.09	\$27,139.60	\$18.20	\$26,993.95	\$12,453.45	24	92	90	67	1,640.50
Chubb Rego	CHUBB0046	41026	41026	3001	14,231.95	19.09	\$27,139.60	\$18.20	\$26,993.95	\$12,453.45	23	92	90	67	1,640.50
Chubb Rego	CHUBB0047	41027	41027	3001	14,231.95	19.09	\$27,139.60	\$18.20	\$26,993.95	\$12,453.45	22	92	90	67	1,640.50
Chubb Rego	CHUBB0048	41028	41028	3001	14,231.95	19.09	\$27,139.60	\$18.20	\$26,993.95	\$12,453.45	21	92	90	67	1,640.50
Chubb Rego	CHUBB0049	41029	41029	3001	14,231.95	19.09	\$27,139.60	\$18.20	\$26,993.95	\$12,453.45	20	92	90	67	1,640.50
Chubb Rego	CHUBB0050	41030	41030	3001	14,231.95	19.09	\$27,139.60	\$18.20	\$26,993.95	\$12,453.45	19	92	90	67	1,640.50
Chubb Rego	CHUBB0051	41031	41031	3001	14,231.95	19.09	\$27,139.60	\$18.20	\$26,993.95	\$12,453.45	18	92	90	67	1,640.50
Chubb Rego	CHUBB0052	41032	41032	3001	14,231.95	19.09	\$27,139.60	\$18.20	\$26,993.95	\$12,453.45	17	92	90	67	1,640.50
Chubb Rego	CHUBB0053	41033	41033	3001	14,231.95	19.09	\$27,139.60	\$18.20	\$26,993.95	\$12,453.45	16	92	90	67	1,640.50
Chubb Rego	CHUBB0054	41034	41034	3001	14,231.95	19.09	\$27,139.60	\$18.20	\$26,993.95	\$12,453.45	15	92	90	67	1,640.50
Chubb Rego	CHUBB0055	41035	41035	3001	14,231.95	19.09	\$27,139.60	\$18.20	\$26,993.95	\$12,453.45	14	92	90	67	1,640.50
Chubb Rego	CHUBB0056	41036	41036	3001	14,231.95	19.09	\$27,139.60	\$18.20	\$26,993.95	\$12,453.45	13	92	90	67	1,640.50
Chubb Rego	CHUBB0057	41037	41037	3001	14,231.95	19.09	\$27,139.60	\$18.20	\$26,993.95	\$12,453.45	12	92	90	67	1,640.50
Chubb Rego	CHUBB0058	41038	41038	3001	14,231.95	19.09	\$27,139.60	\$18.20	\$26,993.95	\$12,453.45	11	92	90	67	1,640.50
Chubb Rego	CHUBB0059	41039	41039	3001	14,231.95	19.09	\$27,139.60	\$18.20	\$26,993.95	\$12,453.45	10	92	90	67	1,640.50
Chubb Rego	CHUBB0060	41040	41040	3001	14,231.95	19.09	\$27,139.60	\$18.20	\$26,993.95	\$12,453.45	9	92	90	67	1,640.50
Chubb Rego	CHUBB0061	41041	41041	3001	14,231.95	19.09	\$27,139.60	\$18.20	\$26,993.95	\$12,453.45	8	92	90	67	1,640.50
Chubb Rego	CHUBB0062	41042	41042	3001	14,231.95	19.09	\$27,139.60	\$18.20	\$26,993.95	\$12,453.45	7	92	90	67	1,640.50
Chubb Rego	CHUBB0063	41043	41043	3001	14,231.95	19.09	\$27,139.60	\$18.20	\$26,993.95	\$12,453.45	6	92	90	67	1,640.50
Chubb Rego	CHUBB0064	41044	41044	3001	14,231.95	19.09	\$27,139.60	\$18.20	\$26,993.95	\$12,453.45	5	92	90	67	1,640.50
Chubb Rego	CHUBB0065	41045	41045	3001	14,231.95	19.09	\$27,139.60	\$18.20	\$26,993.95	\$12,453.45	4	92	90	67	1,640.50
Chubb Rego	CHUBB0066	41046	41046	3001	14,231.95	19.09	\$27,139.60	\$18.20	\$26,993.95	\$12,453.45	3	92	90	67	1,640.50
Chubb Rego	CHUBB0067	41047	41047	3001	14,231.95	19.09	\$27,139.60	\$18.20	\$26,993.95	\$12,453.45	2	92	90	67	1,640.50
Chubb Rego	CHUBB0068	41048	41048	3001	14,231.95	19.09	\$27,139.60	\$18.20	\$26,993.95	\$12,453.45	1	92	90	67	1,640.50
Chubb Rego	CHUBB0069	41049	41049	3001	14,231.95	19.09	\$27,139.60	\$18.20	\$26,993.95	\$12,453.45	0	92	90	67	1,640.50
Chubb Rego	CHUBB0070	41050	41050	3001	14,231.95	19.09	\$27,139.60	\$18.20	\$26,993.95	\$12,453.45	0	92	90	67	1,640.50
Chubb Rego	CHUBB0071	41051	41051	3001	14,231.95	19.09	\$27,139.60	\$18.20	\$26,993.95	\$12,453.45	0	92	90	67	1,640.50
Chubb Rego	CHUBB0072	41052	41052	3001	14,231.95	19.09	\$27,139.60	\$18.20	\$26,993.95	\$12,453.45	0	92	90	67	1,640.50
Chubb Rego	CHUBB0073	41053	41053	3001	14,231.95	19.09	\$27,139.60	\$18.20	\$26,993.95	\$12,453.45	0	92	90	67	1,640.50
Chubb Rego	CHUBB0074	41054	41054	3001	14,231.95	19.09	\$27,139.60	\$18.20	\$26,993.95	\$12,453.45	0	92	90	67	1,640.50
Chubb Rego	CHUBB0075	41055	41055	3001	14,231.95	19.09	\$27,139.60	\$18.20	\$26,993.95	\$12,453.45	0	92	90	67	1,640.50
Chubb Rego	CHUBB0076	41056	41056	3001	14,231.95	19.09	\$27,139.60	\$18.20	\$26,993.95	\$12,453.45	0	92	90	67	1,640.50
Chubb Rego	CHUBB0077	41057	41057	3001	14,231.95	19.09	\$27,139.60	\$18.20	\$26,993.95	\$12,453.45	0	92	90	67	1,640.50
Chubb Rego	CHUBB0078	41058	41058	3001	14,231.95	19.09	\$27,139.60	\$18.							

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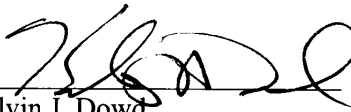
REPAIRATIONS INCLUDING INTEREST (2002 & 2003 MAXIMUM RATES)
— SHIPMENTS FROM APRIL 1, 2001 THROUGH MAY 20, 2003 — ANNUAL
(Interest Through September 10, 2003)

Date	Time	Load	Vtr	Owner	At Paid By TWP/A				Per STB Decision				Repayments												Days to September 10, 2003												Composite Repayments														Total																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																								
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CERTIFICATE OF SERVICE

I hereby certify that on September 30, 2003 I caused three (3) copies of the foregoing Complainant's Statement of Damages and Petition for an Order Directing Payment to be served by hand upon:

Samuel M. Sipe, Jr.
Anthony J. LaRocca
Steptoe & Johnson
1330 Connecticut Avenue, N.W.
Washington, D.C. 20036



Kelvin J. Dowd