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May 20, 2005

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VIA HAND DELIVERY

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

ENTERED
Office of Proceedings

MAY 20 2005

Part of
Public Record



Re: Docket No. 41191 (Sub-No. 1), AEP Texas
North Company v. BNSF Railway Company

Dear Secretary Williams:

Enclosed for filing in the referenced docket, please find an original and 10 copies of AEP Texas North Company's Reply In Opposition To Motion To Suspend Briefing Schedule.

An additional copy of the Reply also is enclosed. Kindly indicate receipt and filing by time-stamping this extra copy and returning it to the bearer of this letter.

Thank you for your attention to this matter.

Sincerely,

Kelvin J. Dowd
An Attorney for
AEP Texas North Company

KJD:jml
Enclosures

D.C. Circuit's April 8, 2005 decision in *Burlington Northern and Santa Fe Railway Company v. Surface Transportation Board*, No. 04-1162, revived the rate prescription which had been in effect with respect to AEP Texas' shipments from the Rawhide Mine, until it was vacated by the Board's March 19, 2004 decision in *Docket No. 41191*.² However, that position is directly contradicted by controlling Supreme Court precedent³ in a case brought by BNSF's own predecessor in another coal rate dispute with another of its captive customers. Inasmuch as the Board is compelled by this binding authority to reject the Motion To Dismiss summarily,⁴ there is no justification for holding up briefing in this case.

BNSF has now tried three times to delay or derail this proceeding⁵ and deny AEP Texas its statutory right to a ruling on the merits. To its credit, the Board thus far has declined these invitations and has kept the case on a reasonable track, to the point where all evidence has been submitted and the parties are left only to summarize their positions in briefs and, at the Board's discretion, oral argument. As its sole justification is a motion the core element of which has been squarely rejected by the highest court in the land, BNSF's latest attempt at delay likewise should be turned aside.

² Motion at 2-3.

³ *Burlington Northern, Inc. v. United States*, 459 U.S. 131, 138 (1982). *See also*, *Consolidated Rail Corp. v. National Assoc. of Recycling Industries, Inc.*, 449 U.S. 609, 612 (1981); *Atchison, T. & S. F. R. Co. v. Wichita Board of Trade*, 412 U.S. 800, 818-819 (1973).

⁴ AEP Texas will reply in full to the Motion To Dismiss – which also asks the Board to retroactively apply a ruling in another, unrelated case in the face of AEP Texas' detrimental reliance on prior Board rulings in *this* case – within the time allotted by the Rules of Practice.

⁵ Previously, BNSF filed a Motion To Dismiss on September 2, 2003, which was denied by the Board in the Decision served March 19, 2004, and a Motion To Strike on September 9, 2004, which remains pending.

BNSF's Motion To Suspend Briefing Schedule should be denied.

Respectfully submitted,

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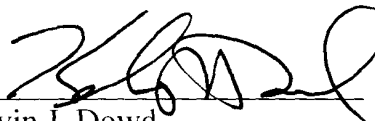
Dated: May 20, 2005

Attorneys & Practitioners

CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of May, 2005, I caused a copy of the foregoing Reply In Opposition To Motion To Suspend Briefing schedule to be served by hand delivery on counsel for BNSF, as follows:

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