

211774

BEFORE THE
SURFACE TRANSPORTATION BOARD



AEP TEXAS NORTH COMPANY,

Complainant,

v.

THE BURLINGTON NORTHERN AND
SANTA FE RAILWAY COMPANY,

Defendant.

Docket No. 41191 (Sub-No. 1)

ENTERED
Office of Proceedings

AUG 10 2004

Part of
Public Record

MOTION FOR EXTENSION OF TIME

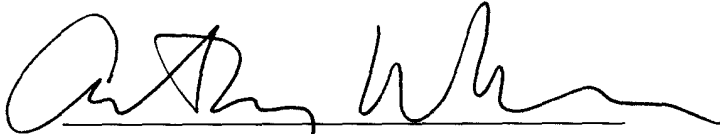
On July 27, 2004, the complainant AEP Texas North Company ("AEP Texas") filed Rebuttal Evidence in the above-captioned proceeding. AEP Texas' Rebuttal Evidence is nearly as large and complex as its Opening Evidence. AEP Texas' Rebuttal Evidence consists of two volumes of narrative evidence, three volumes of exhibits, five volumes of hard copy workpapers, and voluminous electronic workpapers. Defendant The Burlington Northern and Santa Fe Railway Company ("BNSF") has reviewed AEP Texas' July 27, 2004 Rebuttal Evidence and determined that in several areas AEP Texas has exceeded the scope of permissible rebuttal.

BNSF intends to respond to AEP Texas' improper rebuttal, as permitted under the Board's procedural rules. The Board's rules provide that a party may file "a reply or motion addressed to any pleading within 20 days after the pleading is filed with the Board. . . ." 49 C.F.R. § 1104.13(a). BNSF's response to AEP Texas' Rebuttal Evidence would accordingly be due on August 16, 2004. For two reasons, BNSF requests that the Board extend the time in which BNSF may file a responsive pleading by just over three weeks, until September 9, 2004.

First, AEP Texas' Rebuttal Evidence is extensive. The Narrative alone is over 900 pages. (By contrast, AEP Texas' Opening Narrative was only slightly over 500 pages.) BNSF has spent a substantial portion of the 20-day reply period reviewing AEP Texas' Rebuttal Evidence. Additional time is needed to respond to those areas in the Rebuttal Evidence where AEP Texas has exceeded the scope of permissible rebuttal. Second, the Board on June 21, 2004 granted AEP Texas a three-week extension of time in which to file its Rebuttal Evidence. This change in the filing date produced scheduling conflicts with BNSF's counsel and consultants. BNSF nevertheless agreed to AEP Texas' request for an extension of time based on AEP Texas' representation that, while it did not concede that a post-rebuttal filing by BNSF would be either permitted or appropriate, AEP Texas would not oppose BNSF's request for a comparable extension of time if BNSF determined that a response was needed. BNSF has determined that a response to AEP Texas' Rebuttal Evidence is needed and that additional time is needed to prepare such a response. The extension of time requested by BNSF will resolve the scheduling conflicts created by the prior extension of the filing date for AEP Texas' Rebuttal Evidence.

Therefore, BNSF respectfully requests that the Board extend the time in which BNSF may file a response to AEP Texas' Rebuttal Evidence until September 9, 2004.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Samuel M. Sipe, Jr.', written over a horizontal line.

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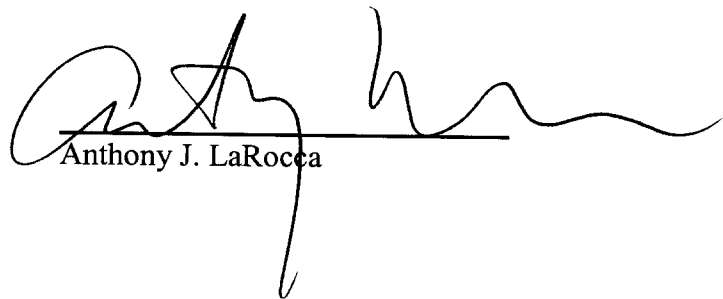
Attorneys for Defendant

August 9, 2004

CERTIFICATE OF SERVICE

I hereby certify that this 9th day of August, 2004, I served a copy of the foregoing
Motion for Extension of Time on the following by hand delivery:

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