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VIA ELECTRONIC FILING

Hon. Anne K. Quinlan  
Acting Secretary  
Surface Transportation Board  
395 E Street SW  
Washington, DC 20024

January 30, 2009

Re: BNSF Railway Company – Petition for Declaratory Order  
STB Finance Docket No. 35164

Dear Secretary Quinlan:

I am enclosing on behalf of the Oklahoma Department of Transportation (“ODOT”), a letter to the Board requesting that the Board expeditiously issue a decision in this proceeding.

As required by the Board’s decision served October 2, 2008, copies of this letter are being served on BNSF’s representative and on Edwin Kessler.

Respectfully,

Eric M. Hocky  
Attorney for Oklahoma  
Department of Transportation

Enclosure

Pittsburgh  
Philadelphia  
Princeton  
Wheeling

cc: Kristy D. Clark, BNSF Railway (w/encl.; by email)  
Edwin Kessler (w/encl., by US mail)

EMH/e

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## OKLAHOMA DEPARTMENT OF TRANSPORTATION

200 N. E. 21st Street  
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Honorable Anne K. Quinlan  
Acting Secretary  
Surface Transportation Board  
395 East Street Southwest  
Washington, DC 20024

Re: BNSF Railway Company – Petition for Declaratory Order  
STB Finance Docket No. 35164

Dear Secretary Quinlan:

We are writing to urge the Board to issue its decision in this proceeding at the earliest possible time. As discussed below the lack of a decision is impacting the Department's ability to insure the future safety of the people who use the current I-40 bridges.

The Board is well aware of the tortured history of this proceeding and its predecessors. BNSF filed its petition commencing this proceeding on July 15, 2008. The last pleadings in this proceeding were made on December 3, 2008 (the withdrawal by Shawnee economic Development Foundation of its opposition). The last substantive comments were made by Mr. Kessler, the primary opposition to the proposed relocation, on November 19, 2008. The record has been closed since that time.

As the Board is aware the rail lines at issue are within the path of the Department's long-planned and approved \$624 million I-40 relocation project. The existing bridges were designed to handle a daily traffic load of 70,000 vehicles a day, while the current daily traffic load exceeds 100,000 vehicles. The Department must continuously monitor the condition of the existing fracture critical bridges, and new serious issues including cracks in fracture critical members are constantly being discovered and repaired. The condition and obsolescence of the existing bridges constitutes serious concern for the Department.

Because of the issues raised in this and previous proceedings at the Board related to the segments of BNSF Railway Company ("BNSF"), the Department, in an attempt to keep the project on schedule, has adjusted the work package components and sequencing in this area. Now, however, that is no longer possible. If the Department is to complete this vital relocation project in the affected area in a timely fashion, it must have clearance to proceed with the next segment of the project by March, 2009. The contract at issue involves approximately \$70 million in construction costs.

The Board acknowledged in its decision establishing this proceeding that BNSF had requested expeditious handling and set the schedule for final rebuttal accordingly. *See BNSF Railway Company – Petition for Declaratory Order*, STB Finance Docket No. 35164, at p. 3 (served October 2, 2008). We ask now that the Board expeditiously issue its decision.

Thank you for your consideration of this request.

Respectfully,

  
Gary M. Ridley  
Director