

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

WESTERN FUELS ASSOCIATION, INC., and BASIN ELECTRIC POWER COOPERATIVE)	
)	
Complainants,)	Docket No. 42088
)	
v.)	Expedited Treatment Requested
)	
BNSF RAILWAY COMPANY)	
)	
Defendant.)	
)	

**PETITION OF BNSF RAILWAY COMPANY FOR EXTENSION
OF TIME TO FILE FOR STAY PENDING JUDICIAL REVIEW
OF THE BOARD’S ORDER SERVED FEBRUARY 18, 2009**

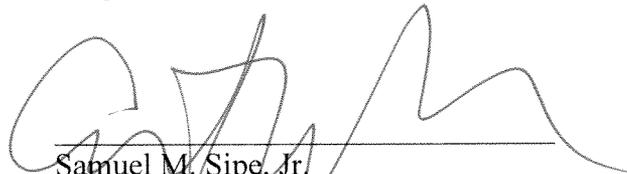
BNSF Railway Company (“BNSF”) hereby petitions the Board to grant a brief extension of time for the filing of a petition for a stay pending judicial review of the Board’s order in this proceeding served February 18, 2009. BNSF requests that the deadline for filing such a petition for a stay be extended until Friday, March 13, 2009. The grounds for this petition for an extension of time are set out below.

On February 18, 2009, the Board issued a decision in this proceeding ordering that BNSF reduce the rates for transportation at issue in this case and pay reparations for amounts previously collected above the prescribed rate levels. The effective date of the February 18 decision is March 20, 2009. On March 4, 2009, BNSF filed a petition to review the February 18 decision in the United States Court of Appeals for the District of Columbia Circuit. Under 49 C.F.R. §1115.5, a petition for stay pending a request for judicial review is due no less than 10 days prior to the effective date of the decision. The effective date of the decision is March 20

2009, so the petition for a stay of the February 18, 2009 decision pending judicial review would be due by March 10, 2009.¹

BNSF is currently negotiating with Western Fuels Association (“WFA”) and Basin Electric Power Cooperative (“Basin”) over the terms of an agreement relating to the parties’ rights and obligations in the event of any changes in the Board’s rate prescription or reparations order that might result from administrative or judicial review of the February 18, 2009 decision. Such an agreement would obviate the need for a stay of the Board’s February 18, 2009 order. An extension of the time for filing a petition for stay until March 13, 2009 will allow the parties to complete their negotiations while preserving BNSF’s right to request a stay in the event that the parties are not able to reach an agreement.

Respectfully submitted,



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March 6, 2009

ATTORNEYS FOR DEFENDANT

¹ An alternative reading of 49 C.F.R. §1104.7 would set a deadline of March 11, 2009 if March 20, 2009 is considered the “last day of the period” and therefore is included in the 10-day period.

Certificate of Service

I, Anthony J. LaRocca, hereby certify that on March 6, 2009, I caused a true and correct copy of the foregoing Petition for Extension of Time to be served by hand on the following:

John H. LeSuer
Slover & Loftus
1224 Seventeenth Street, N.W.
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Anthony J. LaRocca