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April 6, 2009

VIA HAND DELIVERY

The Honorable Anne K. Quinlan
Acting Secretary
Surface Transportation Board
395 E Street, SW
Washington, D.C. 20423-0001

Re: Docket No. 42088, *Western Fuels Association, Inc. and Basin Electric Power Cooperative, Inc. v. BNSF Railway Co.*

Dear Acting Secretary Quinlan:

On March 20, 2009, Defendant BNSF Railway Company ("BNSF") filed a Notice establishing effective rates it claimed "complied" with the Board's February 18, 2009 decision ("Decision") in the above-referenced proceeding.¹ BNSF provided Complainants Western Fuels Association, Inc. and Basin Electric Power Cooperative, Inc. ("WFA/Basin") with copies of the workpapers supporting the rate calculations set forth in BNSF's Notice on March 26, 2009. WFA/Basin promptly filed their Reply to BNSF's Notice, as permitted under the Board's Rules of Practice,² five business days later on April 2, 2009.³ In their Reply, WFA/Basin dispute BNSF's claim that the rates set forth in the Notice comply with the Board's Decision, and provide the Board with corrected maximum rate calculations that do comply with the Decision.

¹ See BNSF's Notice of Filing of Verified Notice of Compliance, Verified Statement of Jill K. Mulligan, at 1 ("Notice").

² See 49 C.F.R. § 1104.13(a) ("[a] party may file a reply or motion addressed to any pleading within 20 days after the pleading is filed with the Board").

³ See WFA/Basin's Reply to BNSF's Notice of Filing of Verified Notice of Compliance ("Reply").

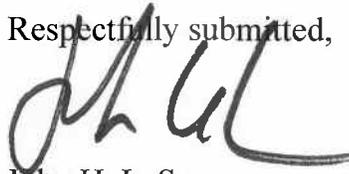
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On April 3, 2009, BNSF filed a letter (“Letter”) with the STB responding to WFA/Basin’s Reply. BNSF’s Letter also states that BNSF intends to file additional replies to WFA/Basin’s Reply. Letter at 1-2. The Board should not consider BNSF’s Letter because it constitutes an impermissible reply to a reply. See 49 C.F.R. § 1104.13(c) (“[a] reply to a reply is not permitted”); Dairyland Power Cooperative v. Union Pacific Railroad Co., STB Docket No. 42105 (STB served July 29, 2008) at 4 n.9 (replies to replies “will not be accepted or considered” by the Board).

Also, the Board should not delay ruling on the issues addressed in BNSF’s Notice pending the Board’s receipt of further impermissible submissions from BNSF. If the Board wants to hear any more from the parties on these issues, WFA/Basin suggest the Board convene a staff-supervised technical conference. Otherwise the Board should expeditiously decide the issues raised on a record properly presented under its Rules of Practice.

Finally, the evident purpose of BNSF’s Letter is to raise assorted extraneous claims. For example, BNSF claims that the corrected maximum rate calculations set forth in WFA/Basin’s Reply “would add tens of millions of dollars in reparations to what is already the largest award of rate relief ever granted by this agency.” Letter at 1. In fact, as WFA/Basin demonstrate in their Reply, the so-called “compliance” rates set forth in BNSF’s Notice reduce by one-third the financial relief the Board itself announced WFA/Basin were entitled to under the Decision. See WFA/Basin Reply at 2-3, 13. Thus, WFA/Basin are only “add[ing]” back Board-ordered rate relief BNSF is impermissibly trying to take away from them and the electric ratepayers they represent in these proceedings.⁴

Respectfully submitted,



John H. LeSeur
An Attorney for Complainants

cc: Counsel for Defendant

⁴ BNSF’s other claims (e.g., Board precedent regarding the establishment of the jurisdictional threshold governs the calculation of maximum stand-alone cost rates under the Board’s new Maximum Markup Methodology) are wrong for the reasons set forth in WFA/Basin’s Reply, reasons WFA/Basin will not repeat here.