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February 11, 2003

Via HAND DELIVERY

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, NW
Washington, D.C. 20423-0001

Re: **STB Docket No. 42077, Arizona Public Service Co. and PacifiCorp v. The Burlington Northern and Santa Fe Railway Company**

Dear Secretary Williams:

Enclosed for filing in the captioned docket, please find the original and ten copies of the Report of The Burlington Northern and Santa Fe Railway Company on the Parties' Conference Pursuant to 49 CFR § 1111.10(b).

Please date stamp the extra copy of the referenced pleading and return it with our messenger. If you have any questions regarding this matter, please contact the undersigned.

Sincerely,

A handwritten signature in black ink, appearing to read "Samuel M. Sipe Jr." with a large checkmark at the end.

Samuel M. Sipe Jr.

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Counsel for The Burlington Northern
And Santa Fe Railway Company

cc: C. Michael Loftus

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BEFORE THE
SURFACE TRANSPORTATION BOARD

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ARIZONA PUBLIC SERVICE)
COMPANY, and PACIFICORP,)
)
Complainants,)
)
v.)
)
THE BURLINGTON NORTHERN)
AND SANTA FE RAILWAY)
COMPANY,)
)
Defendant.)

Docket No. 42077



**REPORT OF THE BURLINGTON NORTHERN AND SANTA FE
RAILWAY COMPANY ON THE PARTIES' CONFERENCE
PURSUANT TO 49 C.F.R. § 1111.10(b)**

Defendant, The Burlington Northern and Santa Fe Railway Company ("BNSF"), informs the Board that the parties have met to discuss procedural and discovery matters in this case pursuant to 49 C.F.R. § 1111.10(b). On this date, complainants Arizona Public Service Company and PacifiCorp (hereafter jointly referred to as "APS") are filing a report summarizing the results of the parties' meeting and informing the Board of their position regarding a proposed procedural schedule. In this report, BNSF presents its position regarding the procedural schedule.

Procedural Schedule: The parties have not agreed on a procedural schedule. APS has filed a Petition for Consolidation of this Docket No. 42077 with Docket No. 41185 and BNSF

will file an opposition to that petition.¹ Pending a Board ruling on the Petition for Consolidation, BNSF believes it is premature to establish a procedural schedule. The scope of the evidentiary proceedings will depend on the Board's ruling on APS' Petition for Consolidation. BNSF has committed to attempting to negotiate a mutually agreeable procedural schedule with APS promptly upon the STB's ruling on the pending Petition for Consolidation.

Apart from its prematurity, BNSF believes that the procedural schedule that APS has proposed is unworkable because of its close overlap with the procedural schedule that the Board has established in Docket No. 42071, *Otter Tail Power Co. v. The Burlington Northern and Santa Fe Railway Company*. As counsel for BNSF informed counsel for APS at their meeting pursuant to 49 CFR § 1111.10(b), the dates for evidentiary submission in the *Otter Tail* case are June 13 for opening evidence, September 8 for reply evidence, and October 23 for rebuttal evidence. APS' proposed dates are about a week in advance of the comparable *Otter Tail* dates. When the time comes to negotiate a schedule, BNSF would seek to have substantially greater gaps in the evidentiary filings in the two cases to facilitate the orderly preparation and presentation of evidence.

For the reasons stated herein, BNSF does not believe that it is necessary for the Board to address the issue of the procedural schedule until after it has ruled on APS' Petition for Consolidation. BNSF suggests that the Board call for supplementation of the parties' reports after that decision so that the Board may be informed of the precise nature of any procedural disputes that remain outstanding at that time.

¹ Docket No. 41185, *Arizona Public Service Company and PacifiCorp v. The Burlington Northern and Santa Fe Railway Company*. BNSF's reply to the Petition to Consolidate Docket Nos. 41185 and 42077 is due February 19, 2003.

Respectfully submitted,

Linda Stein

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Attorneys for Defendant

Dated: February 11, 2003

CERTIFICATE OF SERVICE

I hereby certify that on February 11, 2003, I caused one copy of the foregoing Report of The Burlington Northern And Santa Fe Railway Company on the Parties' Conference Pursuant To 49 C.F.R. § 1111.10(b) to be served by hand upon the following counsel for Arizona Public Service Company and PacifiCorp.:

C. Michael Loftus
Frank J. Pergolizzi
Slover & Loftus
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Linda S. Stein