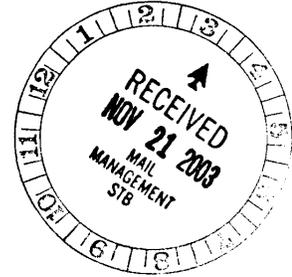


STEPTOE & JOHNSON LLP
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November 21, 2003

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

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Re: **STB Docket No. 41191 (Sub-No. 1), AEP Texas North Company v.
The Burlington Northern and Santa Fe Railway Company**

Dear Secretary Williams:

Enclosed for filing in the captioned docket are the original and ten copies of the First Motion to Compel of The Burlington Northern and Santa Fe Railway Company. This motion seeks an order compelling the production of certain materials that are subject to third-party confidentiality agreements. There is no dispute as to the scope of the requested production and Complainant AEP Texas North Company has indicated that it does not oppose the motion.

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,

Brooke L. Gaede
Counsel for The Burlington Northern
and Santa Fe Railway Company

Enclosures

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- 1 -

WASHINGTON

PHOENIX

LOS ANGELES

LONDON

BRUSSELS

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)

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**DEFENDANT'S FIRST MOTION TO
COMPEL RESPONSES TO DISCOVERY REQUESTS**

Pursuant to 49 C.F.R. § 1114.31, Defendant The Burlington Northern and Santa Fe Railway Company ("BNSF") hereby moves for an order compelling the production of certain confidential materials by Complainant AEP Texas North Company ("AEP Texas") that are relevant to the stand-alone cost ("SAC") issues likely to arise in this proceeding. AEP Texas has stated that it does not oppose BNSF's motion to compel. Specifically, BNSF seeks an order compelling the production of (1) certain coal supply contracts and (2) certain reports related to those contracts filed with public or governmental entities. These materials were the subject of BNSF's First Set of Interrogatories and Requests for Production of Documents served on September 25, 2003.

BNSF's Request for Production No. 3 seeks production of agreements and other documents related to the purchase of coal for AEP Texas' facilities. The parties have narrowed this request to cover only the agreements regarding the purchase of coal for the Oklaunion facility. Coal purchase agreements are relevant to SAC evidence because they permit the

defendant to evaluate the reasonableness of complainant's assumptions regarding the source and volume of coal that will be transported by the stand-alone railroad. In its written responses and objections served on October 27, 2003, AEP Texas objected to this Request, in part, "to the extent that compliance would require the production of documents that are subject to confidentiality obligations with third parties." AEP Texas further stated that "it would not oppose - on grounds of relevance or burden - a motion to compel the production of currently effective agreements (and any amendments thereto) regarding the purchase of PRB coal for use at Oklaunion."

BNSF's Request for Production No. 57 seeks reports and other documents submitted to public or governmental entities related to coal transportation to Oklaunion. Such reports are relevant to SAC issues to the extent they address assumptions the complainant will make in its SAC evidence on coal usage at complainant's facilities or the volume of future coal transportation, among other things. AEP Texas agreed to produce responsive documents to the extent they can be identified and produced without undue burden. In the course of collecting these materials, AEP Texas advised BNSF that it had determined that the responsive materials contained coal source information that is subject to confidentiality agreements that restrict disclosure to third parties. AEP Texas has advised BNSF that it would not oppose a motion to compel the production of such reports.

The Board has previously ordered the production of confidential information relating to complainant's coal sources subject to the provisions of the protective orders governing materials used in a SAC case. *See, e.g., Carolina Power & Light Co. v. Norfolk So. Ry. Co.*, STB Docket No. 42072, at 6 (served Aug. 26, 2002); *Duke Energy Corp. v. Norfolk So. Ry. Co.* STB Docket No. 42069, and *Duke Energy Corp. v. CSX Transp., Inc.*, STB Docket No. 42070, at 11-12

(jointly served July 26, 2002). Consistent with these decisions, BNSF requests that the Board enter an order compelling AEP Texas to produce materials responsive to BNSF's Request for Production Nos. 3 and 57 to the extent the parties agree on the scope of production.

Respectfully submitted,



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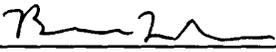
Attorneys for Defendant

November 21, 2003

CERTIFICATE OF SERVICE

I hereby certify that this 21st day of November, 2003, I served a copy of the foregoing Defendant's First Motion to Compel Responses to Discovery Requests to the following by hand delivery:

William L. Slover
Kelvin J. Dowd
Christopher A. Mills
Daniel M. Jaffe
Slover & Loftus
1224 Seventeenth Street, N.W.
Washington, DC 20036



Brooke L. Gaede