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August 22, 2007

By e-file

Vernon A. Williams, Secretary
Surface Transportation Board
395 E Street, S.W., Suite 1149
Washington, DC 20024

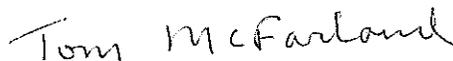
Re: Finance Docket No. 33753, *South Plains Switching, Ltd. Co. -- Acquisition Exemption -- The Burlington Northern and Santa Fe Railway Company*

Dear Mr. Williams:

It is doubtful whether BNSF Railway Company (BNSF) had a right, in its Response filed on August 21, 2007 (Response), to reply to the Reply of South Plains Switching, Ltd. Co. (SAW) in Opposition to BNSF's Petition for Clarification. That Reply did not contain an "affirmative request() for relief," as alleged in note 1 on page 1 of the BNSF Response. Instead, SAW merely argued for a different clarification than argued for by BNSF.

If the Board accepts the BNSF Response, it should also accept these short comments for the sake of a complete record. BNSF has not rebutted the argument in SAW's Reply at 3-4 that the Board cannot interpret the BNSF-SAW Asset Purchase Agreement (Agreement) under the guise of clarifying the authority conferred in the Notice of Exemption. The exemption issued by the Board merely permitted the parties to consummate the sale of whatever rights were conveyed by virtue of the Agreement; it did not constitute a finding by the Board concerning the extent of those rights, which is a matter for a State Court. *See Morristown & Erie Ry. Inc. -- Oper. Exempt. -- Somerset Terminal R. Corp.*, 2002 STB LEXIS 699 at *3 (Finance Docket 34267, decision served Nov. 27, 2002). Thus, the extent of the trackage rights conveyed in the Agreement is a matter for a State Court, and cannot be determined by the Board under the guise of interpreting the extent of operating authority issued by the Board.

Respectfully,



Thomas F. McFarland
*Attorney for South Plains
Switching, Ltd. Co.*

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cc: *(by e-mail)*

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