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March 9, 2009

VIA E-FILING

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 Ms. Quinlan:

Enclosed for filing, please find the Reply to BNSF's Petition for Extension of Time to File for Stay Pending Judicial Review of the Board's Order Served February 18, 2009 of Complainants Western Fuels Association, Inc. and Basin Electric Power Cooperative, Inc.

Respectfully submitted,



John H. LeSeur
An Attorney for Complainants

JHL:cef

cc: Counsel for Defendant BNSF Railway Co. (via hand-delivery)

to Wednesday, March 11, 2009, to file any requests for a stay of the Decision pending judicial review. In support hereof, WFA/Basin state as follows:

(1) WFA/Basin and BNSF have been discussing the terms of an agreement to make each other financially whole in the event that the Board's Decision is modified as a result of subsequent administrative or judicial review proceedings. In these discussions, WFA/Basin have informed BNSF they are amenable to entering into reasonable, reciprocal make-whole arrangements.

(2) The type of agreement WFA/Basin and BNSF are discussing is not unfamiliar to BNSF² and the parties have advanced discussions and agreement drafts to the point where WFA/Basin see no need for any extension of the March 10, 2009 due date for filing petitions for a stay. If an agreement is to be done, it clearly can be done on or before March 10.

(3) Moreover, the extension proposed by BNSF is unfair to both WFA/Basin and the Board. If, for whatever reason, an agreement is not reached, BNSF's extension request permits BNSF to file a petition for stay on Friday, March 13, 2009. This would give the Board only a few days to decide the petition prior to the March 20, 2009 effective date of the Decision and give WFA/Basin even less time to file a reply to BNSF's petition in time for the Board to consider it.

² See, e.g., Public Service Co. of Colorado D/B/A Xcel Energy v. BNSF Railway Co., STB Docket No. 42057 (STB served Mar. 25, 2005) at 1 (referencing the repayment agreement entered into between Xcel and BNSF).

(4) Nevertheless, as an accommodation to BNSF's asserted concerns, WFA/Basin do not object to the Board's granting BNSF a one day extension to Wednesday, March 11, 2009 for the filing of any petitions for stay of the Decision pending judicial review. This would give BNSF one more day to complete and execute a repayment agreement, if one is to be completed and executed. Also, if an agreement is not reached, the one day extension would not affect the otherwise applicable due date for WFA/Basin's reply to a BNSF stay petition³ and would reduce the Board's petition review period by only one day.

Respectfully submitted,

WESTERN FUELS ASSOCIATION,
INC. and BASIN ELECTRIC POWER
COOPERATIVE, INC.

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Dated: March 9, 2009

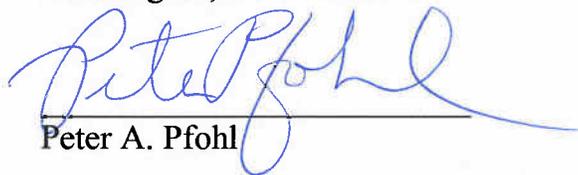
Attorneys for Complainants

³ 49 C.F.R. § 1115.5(a) provides that replies to petitions for stay pending judicial review "must reach the Board no later than 5 days after the petition is filed." *Id.* If BNSF files its petition on Tuesday March 10, the fifth day after the petition is filed is Saturday, March 14. Under 49 C.F.R. § 1104.7, when a due date falls on a weekend day, the due date is extended to the next weekday, here Monday, March 16. March 16 would also be the due date for WFA/Basin's reply if BNSF files a stay petition on Wednesday March 11.

CERTIFICATE OF SERVICE

I hereby certify that this 9th day of March, 2009, I served copies of the foregoing Reply In Opposition to BNSF's Request for an Extension of Time by hand delivery on designated outside counsel for BNSF, as follows:

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