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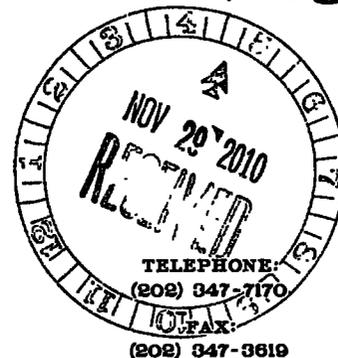
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November 29, 2010



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VIA HAND DELIVERY

Ms. Cynthia Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423-0001

Re: STB Docket No. 41191 (Sub-No.1), AEP Texas
North Company v. BNSF Railway Company

Dear Ms. Brown:

As counsel for AEP Texas North Company ("AEP Texas"), we are in receipt of a document entitled "Comments of BNSF Railway Company on Remand," which was filed in the referenced proceeding by Defendant BNSF Railway Company ("BNSF") on November 22, 2010. In this filing, which includes testimony and exhibits submitted by two (2) witnesses which are not already part of the record, BNSF argues for re-affirmance of the Board's May 15, 2009 Decision in this matter, which decision was vacated and remanded to the Board by the U.S. Court of Appeals for the District of Columbia Circuit in *AEP Texas North Company v. Surface Transportation Board*, 609 F. 3d 432 (D.C. Cir. 2010).

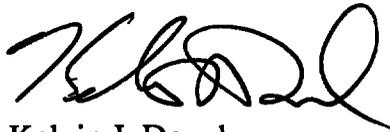
BNSF's "Comments" do not include a request or a stated justification for a reopening of the record in this proceeding, and were not submitted in response to any request or invitation issued by the Board. It is well-settled that administrative proceedings on remand from a reviewing court are controlled by the *agency*, not the parties. *National Grain & Feed Association, Inc. v. Occupational Safety and Health Administration*, 903 F. 2d 308, 310-311 (5th Cir. 1990), *citing Federal Communications Commission v. Pottsville Broadcasting Co.*, 309 U.S. 134, 141-46 (1990). BNSF's unsolicited filing violates this rule. As it is up to the Board in the first instance to determine whether and to what extent to accept further argument or other submissions

from the parties, BNSF's "Comments" properly could be stricken. *See U.S. Magnesium, LLC v. Union Pacific R.R. Co.*, STB Docket No. 42114 (STB served July 7, 2009).

Should the Board decide to accept BNSF's filing, it should so indicate in a formal order and grant AEP Texas a reasonable period of time to reply. The 20-day default period prescribed by the Board's rules for general motions and pleadings (49 C.F.R. Part 1104.13(a)) is plainly inadequate, given that BNSF had nearly five (5) months to prepare its submission and includes new witness testimony and exhibits along with its argument. If the Board admits BNSF's "Comments," AEP Texas respectfully requests that it be given at least until January 28, 2011 to file its reply, at which point the record on remand should be deemed closed.

AEP Texas requests that this letter be entered on the record in the referenced proceeding.

Respectfully submitted,



Kelvin J. Dowd
An Attorney for AEP
Texas North Company

KJD/lad

cc: Counsel of Record
for BNSF