

Surface Transportation Board Announces Results of March 21 Voting Conference

Surface Transportation Board (Board) Chairman Roger Nober has announced the results of the open voting conference held by the Board today concerning the following cases.

- **STB Docket No. 42054, *PPL Montana, LLC v. The Burlington Northern and Santa Fe Railway Company*.** At issue was a petition by PPL Montana, LLC (PPL), asking the Board to reconsider its 2002 decision in this case finding that PPL had failed to demonstrate that certain "Burlington Northern" railroad rates for the transportation of coal from the Powder River Basin of Wyoming and Montana to PPL's Colette electricity generating plant at Billings, Montana, are unreasonably high (see Surface Transportation Board "News" release No. 2-29, issued to the public on August 20, 2002). The Board voted, 2-to-0, to deny PPL's requests that the Board change the basic way it looked at "cross-subsidies" in the prior decision. The Board also denied PPL's request to submit new evidence on two issues, finding that the evidence could have been presented earlier. The Board did, however, unanimously decide to reopen the public record in this case for the limited purpose of obtaining additional evidence on how costs should be apportioned in its cross-subsidy analysis.

- **STB Docket No. 42056, *Texas Municipal Power Agency v. The Burlington Northern and Santa Fe Railway Company*.** At issue was the reasonableness of the rates charged by "Burlington Northern" for the transportation of coal from certain mine origins in Wyoming's Powder River Basin to "Texas Municipal Power's" Gibbons Creek Steam Electric Station at Iola, near Carlos, Texas. The Board voted, 2-to-0, to find that the railroad has "market dominance" over the traffic at issue, and that the challenged rate is unreasonably high. The Board prescribed a maximum reasonable rate and ordered reparations. Commissioner Morgan had a commenting opinion in this proceeding.

- **STB Docket No. 42069, *Duke Energy Corporation v. Norfolk Southern Railway Company*, and STB Docket No. 42070, *Duke Energy Corporation v. CSX Transportation, Inc.*** These complaint cases challenge the reasonableness of rates charged by the Norfolk Southern Railway Company (NS) and CSX Transportation, Inc. (CSX) for the transportation of coal from Kentucky, Virginia, and West Virginia to the Duke Energy Corporation's (Duke Energy) electricity-generating plants at Brice and Riverbend, North Carolina, and Pelzer, South Carolina (the CSX case), and at Belmont, Walnut Cove, Spencer, and Eden, North Carolina (the NS case). In the NS case, the shipper asked the Board to reject NS's filing, in its brief submitted after the close of the evidentiary period, of updated evidence, on the ground that it was submitted too late. In the CSX case, the railroad asked the Board to strike portions of Duke Energy's rebuttal evidence filed in the case, also on the ground that it was submitted too late.

Noting that if the agency permitted the evidence-filing stage to continue interminably it would not be able to act in a timely way to move cases to conclusion, the Board voted, 2-to-0 in each case, that the challenged evidence should be stricken from the public record. The Board pointed out that parties could ask the agency to reopen the evidentiary phase of this proceeding if they could demonstrate that the information sought to be introduced is central to the petitioning party's case, could not reasonably have been introduced earlier, and would materially influence the outcome of the proceeding.

- **STB Ex Parte No. 589, *Calculation of Variable Costs in Rate Complaint Proceedings Involving Non-Class I Railroads*.** At issue in this Board-instituted proceeding was how best to determine variable costs (the portion of a carrier's costs that vary depending on the level of service provided) in rate complaint proceedings involving smaller railroads. The Board voted, 2-to-0, to use the "regional average" costs of large railroads, which are readily available to the public, and to allow appropriate adjustments to reflect the particular railroad and the characteristics of the movements at issue in complaint cases.

- **STB Section 5a Application No. 118 (Sub-No. 2), *EC-MAC Motor Carriers Service Association, Inc., et al.*** At

issue was a request that the Board reconsider its earlier decision conditioning the agency's continued approval of trucking-company rate bureau arrangements on a requirement that bureau members furnish a "truth-in-rates" notice to shippers disclosing the range of discounts provided to shippers by bureau members, and that they not use loss-of-discount penalties for a shipper's late payment (see Surface Transportation Board "News" release No. 1-64, issued to the public on November 20, 2001). The Board voted, 2-to-0, to uphold the prior decision, noting that the agency would initiate a new review of rate-bureau agreements, as required under a law passed in 1999, at some point before the end of 2004.

- **STB Section 5a Application No. 61 (Sub-No. 6), *National Classification Committee--Agreement*.** At issue was whether or not a revised agreement of the National Classification Committee (NCC), whose members discuss and establish trucking freight classifications, meets the conditions for renewal set by the Board in its November 2001 decision regarding the NCC (see Surface Transportation Board "News" release No. 1-64, issued November 20, 2001). The Board voted, 2-to-0, to approve the agreement submitted by NCC, with minor changes addressing some of the concerns raised by shipper groups, noting that the agency would initiate a new review of rate bureau agreements, as required under a statute passed in 1999, at some point before the end of 2004.

- **STB Finance Docket No. 34276, *Massachusetts Port Authority--Acquisition Exemption--Certain Assets of Boston and Maine Corporation*, and STB Docket No. AB-32 (Sub-No. 92), *Boston and Maine Corporation--Abandonment--in Suffolk County, MA*.** At issue in these cases were a "notice of exemption" filed by a nonrailroad, the Massachusetts Port Authority (Massport), to acquire from the Boston and Maine Corporation (B&M) the right-of-way and related improvements on the 1.45-mile Mystic Wharf Branch railroad line in Charleston, Suffolk County, Massachusetts; Massport's motion to dismiss its notice based on its contention that it does not need that authority because it would not become a common carrier (offering railroad service to the public) as a result of acquiring the line; and B&M's separate motion to withdraw an application previously approved by the Board allowing B&M to abandon the Mystic Wharf Branch. The Board voted, 2-to-0, to grant these motions.

- **STB Finance Docket No. 34210, *Sunflower Rail Company, LLC--Construction and Operation Exemption--Finney County, KS*.** Under consideration was a request for an "exemption" from Board regulation that would allow the "Sunflower Rail Company," a subsidiary of Sunflower Electric Power Corporation (Sunflower), to construct and operate approximately 4.7 miles of track in the vicinity of Garden City in Finney County, Kansas, to obtain competitive new rail service by gaining access to a "Union Pacific Railroad" line near its plant. The Board voted, 2-to-0, to conditionally approve the proposal, subject to completion of necessary environmental review.

- **STB Finance Docket No. 34305, *The Burlington Northern and Santa Fe Railway Company--Construction and Operation Exemption --Merced County, CA*.** Under consideration was a request for an "exemption" that would allow the "Burlington Northern" to construct and operate an approximately 850-foot line of track in Merced, California. The proposed line would connect to Burlington Northern's main line between Stockton and Bakersfield, and provide competitive new rail service for the Quebecor World Inc. printing and distribution facility in Merced. The Board voted, 2-to-0, to conditionally approve the proposal, subject to completion of necessary environmental review.

The Board provides the above summaries as a courtesy to the public and the media. The actions of the Board in the cases, however, are the Board's written decisions. Those decisions will be forthcoming. Printed copies of the decisions will be available for a fee by contacting **D~ 2 D~ Legal Copy Service, Suite 405, 1925 K Street, N.W., Washington, DC 20006, telephone (202) 293-7776**, or via da2dalegal@earthlink.net. The decisions also will be available for viewing (under the "Decisions & Notices" button) and downloading via the Board's website at <http://www.stb.dot.gov>.

###