

Surface Transportation Board Substantially Affirms, on Reconsideration, Its Decision Finding "Union Pacific" Rail Rate Unreasonably High for Wisconsin Power & Light Coal Traffic

Surface Transportation Board (Board) Chairman Linda J. Morgan announced today that the Board has issued a decision substantially affirming, with minor modifications, its prior decision finding unreasonably high the rate assessed by the Union Pacific Railroad Company (UP) for moving trainloads of coal from the Powder River Basin (PRB) of Wyoming to the Wisconsin Power and Light Company (WPL) electric generating facility at Sheboygan, Wisconsin. Both UP and WPL had sought the Board's reconsideration of its prior decision (summarized in Surface Transportation Board "News" release No. 01-42, issued September 13, 2001).

There are two components to a rate case: the "market dominance" analysis, in which the Board determines whether the traffic at issue is captive, and the "stand-alone cost" (SAC) analysis, in which the Board determines whether a challenged rate for market dominant traffic is reasonable. In each of those analyses, the Board determines the "variable costs" of providing the service at issue. Variable costs computations are made pursuant to a Board-prescribed methodology that measures the railroad's average variable costs throughout its entire system ("system-average" variable costs). Parties, however, may ask the agency to adjust the formula-based, system-average costs to reflect more accurately the actual cost associated with the particular service at issue.

In its earlier decision, the Board computed one component of UP's variable costs (roadway ownership costs) by using system-average information. In seeking reconsideration, WPL argued that the adjustments that it had suggested to UP's formula-based roadway ownership costs were correct, but that even if they were inaccurate, the Board should have corrected WPL's data rather than making no adjustment at all. The Board found, however, that because WPL's adjustments (and, for that matter, UP's own adjustments) were inaccurate, and because the parties did not present sufficient information to permit the Board to restate either party's adjustments, it was proper to use the unadjusted formula-based roadway ownership costs.

In its request for reconsideration, UP argued that the SAC analysis used to evaluate the reasonableness of the challenged rate was inconsistent with precedent because it failed to recognize that the challenged rate would likely escalate over time, which could change the result of the SAC analysis and raise the level of the future maximum rate prescribed. But the Board found that, in the case on which UP relied, the parties had presented evidence of likely rate changes, whereas here, UP had presented no such evidence. Therefore, the Board found that the SAC analysis was correct and consistent with precedent.

Accordingly, with one exception relating to a minor costing error identified by UP, the Board affirmed its prior decision. The Board's decision was issued today in *Wisconsin Power and Light Company v. Union Pacific Railroad Company*, STB Docket No. 42051. A printed copy of the decision is 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 decision also is available for viewing and downloading via the Board's website at <http://www.stb.dot.gov>.

###