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SURFACE TRANSPORTATION BOARD DENIES RAILROAD REQUEST TO ALLOW EVIDENCE ON GEOGRAPHIC COMPETITION IN "BOTTLENECK" RATE COMPLAINT; DENIES SHIPPER REQUEST FOR ACCESS TO THE RAILROAD'S INTERNAL COSTING SYSTEM

Surface Transportation Board (Board) Chairman Linda J. Morgan announced today that the Board has issued a decision (1) denying the request of Duluth, Missabe and Iron Range Railway Company (DMIR) to use evidence of geographic competition to defend against a rate complaint filed by Minnesota Power, Inc. (MPI); and (2) denying the request of MPI effectively seeking access to DMIR's internal costing system.

The rate complaint involves coal that is carried by The Burlington Northern and Santa Fe Railway Company (BNSF) in contract service from western mines to Keenan, MN, where it is interchanged with DMIR for delivery to MPI's coal-fired electric generating facility at Laskin Energy Center (Laskin) near Colby, MN. Because DMIR is the only railroad that can provide service from Keenan to Laskin, a rate case involving a movement from the coal mine to the generating facility is considered to be a "bottleneck" case. In the so-called *Bottleneck* decisions, [FOOTNOTE 1: *Central Power & Light Co. v. Southern Pac. Transp. Co.*, Nos. 41242 *et al.* (STB served Dec. 31, 1996), *clarified* (STB served Apr. 30, 1997), *aff'd sub nom. MidAmerican Energy Co. v. Surface Transp. Bd.*, 169 F.3d 1099 (8th Cir. 1999) (*MidAmerican*).] the Board held that when a shipper obtains an (unregulated) rail transportation contract for service over the non-bottleneck segment of an established through route (here, the contract with BNSF between the mines and Keenan), the only rate that is challengeable is the common carriage rate over the bottleneck segment. Thus, MPI's rate complaint was limited to the bottleneck segment between Keenan and Laskin.

Under the law, the Board may not review the reasonableness of a challenged rail rate unless it first finds that the railroad has "market dominance" over the traffic involved. Market dominance refers to "an absence of effective competition from other rail carriers or modes of transportation for the transportation to which a rate applies." In its recent decisions in *Market Dominance Determinations--Product and Geographic Competition*, STB Ex Parte No. 627 (*Product and Geographic*), the Board held that railroads could prove that they are not market dominant by showing intramodal or intermodal competition (competition among railroads from other transportation modes), but that they could not use product or geographic competition (whether the shipper can avoid using the defendant railroad by shipping or receiving a substitute product, or by obtaining its product from a different source or shipping it to a different destination). See "Surface Transportation Board News" release No. 99-32, issued July 2, 1999.

During the complaint proceeding in this case, DMIR wanted to discover information to show that the challenged rate would be constrained by a potential alternative service in which BNSF would carry coal from the same western mines to another MPI power plant (at Boswell, MN), from which it could then be carried to Laskin by truck. In a decision issued on May 11, 1999, the Board denied that discovery request, finding that truck transportation from Boswell to Laskin would represent a geographic alternative to the transportation at issue in the complaint. The Board concluded that, under its decisions in *Product and Geographic*, evidence as to a trucking alternative from any point other than Keenan may not be considered. DMIR sought reconsideration of that decision and asked that the Board allow discovery as to a rail-truck alternative from the coal mine through Boswell.

The Board denied DMIR's request. It recognized that if there had been no contract from the mines to Keenan, then under its *Bottleneck* decisions, the shipper could challenge only the through rate from the mines to Laskin, and evidence of a rail/truck alternative originating at the mines would be permissible. Because of the BNSF contract, however, the Board held that the rate challenge must necessarily be confined to the bottleneck segment, and that the transportation to which the separately challengeable bottleneck-segment rate applies is not the full through movement (from the mines to Laskin), but rather only DMIR's movement (from Keenan to Laskin). Because the transportation to which the rate at issue applies is limited to the movement between Keenan and Laskin, the Board held that transportation alternatives involving service to or from other points would constitute geographic competition.

Also during the complaint proceeding in the case, MPI had sought, through discovery, information about the "internal costing system" that DMIR used for management purposes. In its May 11 decision, the Board found that MPI was not entitled to DMIR's proprietary internal costing system, but that DMIR should produce the operating and financial data used in the costing system. In a motion filed after completion of depositions, MPI asked the Board to compel DMIR to comply with the May 11 decision.

Finding that DMIR did adequately comply with the May 11 order, the Board denied the motion to compel. Throughout the discovery process, DMIR produced a variety of information about costs and operations, some of which was part of the internal costing system, and some of which was not; DMIR, however, did not explicitly identify whether particular information was or was not a part of its internal costing system. MPI argued that DMIR would not be in compliance with the Board's order until it specified which of the operational and costing data produced were used in the internal costing system.

The Board disagreed. It found that requiring DMIR to reveal that sort of information would be tantamount to giving access to DMIR's proprietary costing system. But in any event, the Board found that MPI did not demonstrate that it needs such information. DMIR uses summarized regional/national data in its internal costing system, but for this proceeding, the statute requires costs developed using the Uniform Railroad Costing System (URCS) that cannot be produced from the summarized regional/national data in DMIR's internal system. The Board thus concluded that, in calculating URCS-based costs, MPI is not bound by DMIR's choice of which inputs and factors it uses in its proprietary costing model, and that indeed, DMIR's choices are irrelevant to the computation of URCS costs.

The Board's decision was issued on July 8, 1999 in *Minnesota Power, Inc. v. Duluth, Missabe and Iron Range Railway Company*, STB Docket No. 42038. It is available on the Board's web site at **www.stb.dot.gov**.

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