

Surface Transportation Board Declines "Union Pacific" and "Burlington Northern" Request for Rulemaking-Type Proceeding; Will Instead Resolve Issues as They Arise in Individual Rate Cases

Surface Transportation Board (Board) Chairman Linda J. Morgan announced today that the Board has issued a decision denying the request of the Union Pacific Railroad (UP) and the Burlington Northern and Santa Fe Railway (BNSF) that the Board address, in a rulemaking-type proceeding, certain issues arising in the application of the stand-alone cost (SAC) test. The SAC test is used to evaluate the reasonableness of common carriage rates (non-contract rates available to the public) that railroads charge captive shippers.

The SAC test seeks to determine the lowest cost at which a hypothetical, efficient railroad could provide the transportation service needed by the complaining shipper. Under the SAC test, the complaining shipper designs a hypothetical railroad specifically tailored to serve its needs and the needs of other traffic it designates. The costs of building and operating such an efficient railroad are then compared to the revenues that such a system could expect to earn. If a shipper demonstrates that a stand-alone railroad would earn more than necessary to cover all of its costs (including a reasonable return on investment), the shipper is entitled to rate relief.

The reasonableness of several of the rates charged by UP and BNSF on western coal traffic are currently being challenged in proceedings pending before the Board. Notwithstanding the agency's typical practice of resolving issues relating to the application of the SAC test through individual adjudications, UP and BNSF asked the agency to address in general terms, and outside the factual situation of a specific case, several selected issues that have arisen in recently decided or pending SAC cases. First, contending that the long-term traffic forecasts required by multi-year SAC analyses are inherently unreliable, the railroads suggested that the agency consider using a one-year SAC analysis instead. Second, the railroads asked the Board to adopt procedures to prevent a complaining shipper from attributing to the stand-alone railroad an unrealistic share of the traffic that would need to be handled by more than one railroad, or to preclude revenues from other traffic to be used to subsidize the costs of facilities not used by that traffic. Finally, the railroads asked the Board to reconsider its determination not to make an adjustment in SAC cases that the railroads argued would be necessary to reflect the accelerated recovery of investment that investors would demand from the hypothetical railroad.

In denying the railroads' request, the Board concluded that the processing of pending and future cases would not be materially aided by breaking out and separately examining some or all of the issues identified by the railroads in a general rulemaking-type proceeding. The Board recognized that the railroads have raised significant issues about how the SAC test should be applied in maximum rate reasonableness adjudications. But it noted that some of the issues have already been addressed in prior proceedings, and that others have been raised, and will be resolved, in cases that are currently pending. Concluding that the types of issues raised by the railroads can better be resolved in the context of particular cases and specific factual circumstances than in the abstract, the Board determined that it would not change its usual practice of resolving issues as they arise in individual proceedings.

The Board issued its decision today in the case entitled *PPL Montana, LLC v. The Burlington Northern and Santa Fe Railway Company*, STB Docket No. 42054 and related cases. A printed copy of the decision is available for a fee by contacting **D~2-D~ Legal, Suite 405, 1925 K Street, N.W., Washington, DC 20006, telephone (202) 293-7776**, or via [http://Da_To_Da@Hotmail.com](mailto:Da_To_Da@Hotmail.com). The decision also is available for viewing and downloading via the Board's website at <http://www.stb.dot.gov>.