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SEC

SERVICE DATE – DECEMBER 12, 2005

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. 42095

KANSAS CITY POWER & LIGHT COMPANY

v.

UNION PACIFIC RAILROAD COMPANY

Decided: December 12, 2005

Kansas City Power & Light Company (KCPL) challenges the reasonableness of rates charged by Union Pacific Railroad Company (UP) for the movement of coal from origins in the Powder River Basin of Wyoming to KCPL's Montrose Generating Station, near Ladue, MO. By a decision served on October 26, 2005, the Board established a procedural schedule for this proceeding and scheduled a staff-supervised discovery conference for December 2, 2005.

In response to a request by KCPL, with which UP concurred, the discovery conference was postponed by a decision served on November 23, 2005, so that continued discussions between the parties could frame and narrow the scope of matters to be addressed. Nonetheless, KCPL filed a motion to compel responses to interrogatories and discovery requests on December 1, 2005.

On December 6, 2005, UP filed a request for an extension of time to reply to KCPL's motion and to file its own motion to compel discovery until December 23, 2005. UP states that the parties are scheduled to meet on December 14, 2005, to discuss and potentially resolve outstanding discovery issues. UP also states that KCPL does not object to its request, as long as KCPL is given until January 9, 2006, to respond to UP's motion, if filed.

Pursuant to 49 CFR 1111.8(b)(2), the Board may convene a discovery conference with the parties at an early stage of discovery, "after discovery requests are served but before any motions to compel may be filed." See also Procedures to Expedite Resolution of Rail Rate Challenges to be Considered under the Stand-Alone Cost Methodology, STB Ex Parte No. 638 (STB served Apr. 3, 2003) at 4. In this case, a pre-motion discovery conference would be appropriate after the parties' December 14, 2005 meeting. Because no pre-motion discovery conference has been held, KCPL's motion to compel will be dismissed without prejudice. If the parties are unable to resolve their differences regarding discovery either before or at a discovery conference, the subject matter of the motion may be resubmitted for Board resolution after that conference has been held.

Accordingly, a discovery conference will be held on January 13, 2006, at 10 a.m., at the Board's offices in Washington, DC. In preparation for that conference, the parties shall jointly prepare and submit informally to the Board's Office of Proceedings by January 6, 2006, a list of all discovery requests that are in dispute at that time and, for each request on that list, an explanation of the dispute.

It is ordered:

1. KCPL's motion to compel responses to interrogatories and discovery requests is dismissed without prejudice to its refiling, if necessary, after the staff-supervised discovery conference.
2. UP's request for an extension of time is dismissed as moot.
3. The parties shall jointly submit a list of the discovery requests that are in dispute informally by letter, as described above, no later than January 6, 2006.
4. A staff-supervised discovery conference will be held on January 13, 2006, at 10 a.m. at the Board's offices in Washington, DC.
5. This decision is effective on the date of service.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary