

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. 42095

KANSAS CITY POWER & LIGHT COMPANY

v.

UNION PACIFIC RAILROAD COMPANY

Decided: February 15, 2006

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.

By a decision served on December 12, 2005, the Board dismissed KCPL's motion to compel without prejudice and scheduled a staff-supervised discovery conference for January 13, 2006. KCPL and UP reached agreement on a number of disputed discovery matters, but could not resolve their disputes concerning KCPL's Request for Production (RFP) Nos. 1, 2, 37, and 38 and Interrogatory No. 9.

On January 23, 2006, KCPL filed a second motion to compel responses to these discovery requests. KCPL seeks data related to internal studies of the profitability of UP coal traffic and information related to movement-specific variable cost adjustments. UP replied on February 2, 2006. Because these discovery requests run contrary to well-established Board precedent, the motion to compel will be denied.

DISCUSSION AND CONCLUSION

1. Complainant's RFP Nos. 1 and 2

KCPL states that its RFP Nos. 1 and 2 seek data regarding the profitability of the traffic at issue and UP's coal traffic generally. Specifically, KCPL's RFP No. 1 seeks all documents related to the preparation of the rates at issue in the proceeding. KCPL's RFP No. 2 asks for internal studies related to the profitability of UP coal traffic. KCPL argues that railroads in

recent coal rate reasonableness cases have asserted the need to increase the profitability of their coal traffic as independent grounds proving the reasonableness of captive coal rates. While KCPL contends that such arguments have no place under the Coal Rate Guidelines, Nationwide, 1 I.C.C.2d 520 (1985) (Guidelines), it seeks discovery of the results of any management cost studies that reflect internal conclusions about the profitability of coal traffic to rebut claims that revenue requirements should be accorded independent consideration in the ratemaking process.

UP contends that how it set the rates at issue is not relevant to a stand-alone cost (SAC) challenge to the reasonableness of those rates. UP also argues that KCPL fails to articulate “a real, practical need for the information.” See Guidelines at 548. UP states that it will not argue that its need to increase profitability provides an independent ground for approving rates in excess of those based on properly calculated variable or stand-alone costs. UP further states that it will not make any arguments in this case based on analyses from its internal management costing system. To the extent that RFP No. 2 would still be relevant, UP contends that Board precedent holds that a railroad’s internal costing system is not discoverable in SAC cases, citing Arizona Public Service Co. v. Atchison, T. & S.F. Ry. Co., 2 S.T.B. 367, 372 (1997) (“Because we would not use the carrier’s internal costing system for any purpose in our analysis and decision here, we see no need for [the carrier] to produce the requested information.”). In addition to objecting to its relevance, UP argues that RFP No. 2 is also unduly burdensome.

UP’s representations eliminate much of the justification that KCPL has provided for these requests. Generally, it is contrary to Board precedent to require a party to produce internal management costing information, because costs in Board proceedings are to be determined using the Board’s Uniform Rail Costing System (URCS). See Minnesota Power v. Duluth, Missabe and Iron Range Ry., STB Docket No. 42038 (STB served July 8, 1999) (DMIR); Potomac Elec. Power v. CSX Trans., STB Docket No. 41989, et al. (STB served May 27, 1997). KCPL has also not shown that the information sought would be relevant to a showing that the rates at issue are unreasonable under the SAC constraint. Therefore, these portions of KCPL’s motion to compel will be denied.

2. Complainant’s RFP Nos. 37 and 38 and Interrogatory No. 9

KCPL’s request for Production Nos. 37 and 38 and Interrogatory No. 9 also seek management cost data. KCPL argues that inputs to UP’s internal costing system are relevant to movement-specific variable cost adjustments. KCPL argues that, in past cases, complainants could develop such adjustments with non-management cost records, but that, in recent years, railroads have stopped retaining the records necessary to do so. KCPL cites train dispatch sheets as an example of the type of record that the railroads no longer provide in discovery.

UP contends that it is providing data regarding its costs in response to other KCPL discovery requests that appear to cover the same subject matters as these three requests. UP argues that the Board has twice rejected the same argument for allowing discovery of inputs to internal costing systems, citing DMIR at 3 and Northern States Power Co. D/B/A Xcel Energy v. Union Pacific R.R. Co., STB Docket No. 42059, slip op. at 8-9 (STB served May 23, 2002) (NSP). Further, UP submits similar disputed discovery requests from Texas Municipal Power Agency v. The Burlington Northern & Santa Fe Ry., STB Docket No. 42056 (STB served Feb. 9,

2001) (TMPA) and NSP and compares them with the request made by KCPL. UP also contends that train dispatch sheets have not been kept in the industry for several years, as that sort of data is now routinely compiled in an electronic format.

KCPL has not demonstrated why the Board should depart from precedent and order UP to divulge sensitive, internal costing system information. KCPL's informational requests are virtually identical to the discovery requests disallowed in TMPA and NSP. KCPL has not shown that the unavailability of train dispatcher sheets is a recent development, see also NSP at 3, nor has it demonstrated a need for access to UP's internal costing information to prepare its variable cost evidence. Therefore, these portions of complainants' motion to compel will also be denied.

It is ordered:

1. KCPL's second motion to compel responses to interrogatories and document requests is denied.

2. This decision is effective on the date of service.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary