

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. 42022

FMC WYOMING CORPORATION AND FMC CORPORATION

v.

UNION PACIFIC RAILROAD COMPANY

Decided: July 1, 1999

This case involves a challenge by FMC Wyoming Corporation and FMC Corporation (FMC) to the reasonableness of the rates assessed by Union Pacific Railroad Company (UP) for the transportation of FMC's mineral products¹ between certain origins and destinations and/or interchanges in Wyoming, Idaho, Missouri, Illinois, Oregon, and Kansas. FMC's verified complaint, seeking reparations for past movements and a prescription of rates for the future, was filed on October 31, 1997, but the procedural schedule was substantially delayed while the parties litigated over discovery issues. The parties filed their opening evidence and argument on January 15, 1999; their reply presentations were filed on March 31, 1999; and the record closed with the filing of their rebuttal presentations on April 30, 1999.

On May 10, 1999, UP filed a request for the simultaneous filing of closing briefs. FMC replied in opposition on May 17, 1999. UP contends that a single round of simultaneous briefs will, without further delaying the proceeding, allow each party the opportunity to crystallize its position based on the entire record. According to UP, each party can specifically address intervening changes in the opponent's position, set forth its position on key issues in light of the full record, and identify issues that have been narrowed or are no longer in dispute. UP notes that final briefs have been accepted in other recent rate complaint proceedings.²

FMC argues in reply that closing briefs would be redundant, unnecessarily expensive, and inefficient. FMC is concerned that new evidence might be introduced in the briefs, to which it would not have the opportunity to respond.³ It submits that final briefs have been used only in a minority

¹ Soda ash, phosphorus, phosphate rock, coke, and sodium bicarbonate (including sodium sesquicarbonate).

² See, e.g., CF Industries, Inc. v. Koch Pipeline Company, L.P., STB Docket No. 41685 (STB served July 6, 1998); Potomac Electric Power Co. v. CSX Transportation, Inc., STB Docket No. 41989 (STB served Nov. 24, 1997); and Arizona Public Service Company and PacifiCorp v. The Atchison, Topeka and Santa Fe Railway Company, No. 41185 (STB served Mar. 15, 1996).

³ UP has suggested that its brief would "explain the facts underlying (and rebutting) FMC's (continued...)"

of cases and only where good cause was alleged by the parties or found by the Board. Nevertheless, FMC does not oppose narrowly focused briefs responsive to specific requests by the Board for additional argument on particular issues.

In complex cases such as this one, the Board has generally found that briefs, properly employed, can focus the issues and thereby contribute to greater efficiency in analyzing the record. Accordingly, by this order, UP's motion to permit the filing of briefs is granted. In their briefs, the parties should also specifically respond to the questions set out in the appendix to this decision. The parties are reminded that new evidence is not permitted in briefs and will be subject to motions to strike and other sanctions. The briefs shall not exceed 25 pages, exclusive of the specific information requested in the appendix. Each party shall file 15 copies of each submission as well as 3 computer diskettes containing electronic versions of the submission in WordPerfect 7.0 format.⁴

It is ordered:

1. Briefs not to exceed 25 pages in length are due July 22, 1999.
2. This decision is effective on the date of service.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary

³(...continued)
new (and erroneous) assertions that UP failed to provide essential data in discovery.”

⁴ Parties may request, from the Board's Office of Proceedings (202-565-1607), relief from certain requirements to provide copies if they are burdensome (e.g., copies of tariffs).

APPENDIX

The parties are requested to succinctly and directly address the following specific questions regarding the evidentiary record and to furnish certain documentation:⁵

A. Requests addressed to UP.

1. Where in the record is there support for UP's negative revenue adjustment?⁶
2. Where in the record are UP's "standard divisions" for short-haul carriers? Where in its workpapers are UP's individual movement adjustments for standard divisions?⁷
3. Where in the record is it shown that sodding, planting of willow trees, and other steps to preserve side slopes were undertaken and were common on the lines in question? If UP relies solely on the ICC Engineering Reports,⁸ please furnish a copy of the appropriate sections.
4. Where in the record are the details regarding 87 miles of industrial trackage allegedly needed, in addition to the segments reflected in Table CK/JK-4, to handle the ORR stand-alone traffic?⁹

B. Requests addressed to FMC.

1. Where in the record is there tabular data dealing with the interchange points of Memphis,

⁵ References to the record should be by document and page number and by Bates number.

⁶ UP adjusted the revenues of the Overland Railroad (ORR) to remove negative revenues for the selected traffic group. FMC claims that UP offered no supporting documentation for these negative revenue adjustments and failed to respond to discovery on this issue.

⁷ UP used what it described as "standard divisions," in place of FMC's mileage block prorate, to determine the revenue share of short-haul carriers. FMC claims that UP failed to respond to discovery on this issue.

⁸ See Reply V.S. of McDonald/Webb at 50.

⁹ See Kent and Klick Reply Verified Statement at 18, where they state: "The details of these additions are also included in our workpapers."

TN, and East St. Louis, IL?¹⁰

2. Please identify in the record, or furnish a copy of, FMC's Interrogatory number 36, Items r and t (see supra, n.7) and Items s (see supra, n.6), and UP's answers to each.

3. Please identify in the record Addenda 2-4 of UP's contract with Commonwealth Edison.¹¹

4. Please identify in the record the source and significance of the following line item in Pattison rebuttal workpapers at 4875:

“AMOUNT INCLUDED IN TRACK COSTS -\$21,950,000 See track cost derivation.”

5. Where in the record are the car and tonnage data for the first quarter of 1999.¹²

C. Requests addressed to both parties.

1. Please furnish a copy of Tariff UP-3100-I¹³ or, if that is impractical, a copy of the rules section and any other section either party deems pertinent. If the switching charges paid to the

¹⁰ Table 1 on page 3 of FMC's Verified Complaint includes interchange data for Chicago, IL, and Kansas City, MO, but not for Memphis, TN, or East St. Louis, IL, which are identified as interchange points in item 5 of FMC's prayer for relief.

¹¹ FMC claims that UP's adjustments for the buyout of a Commonwealth Edison contract are contrary to Addenda 2-4 of that contract.

¹² FMC provided revenue-to-variable cost (r/vc) data for that quarter (FMC Rebuttal Vol. 2 of 4, Stedman V.S. Ex. CAS-24), but the workpapers support only the preceding 6 quarters. Car and tonnage data are necessary for the development of lading weights included in the r/vc calculation.

¹³ The record appears to contain only 12 pages of rate reduction amendments.

various switching and terminal companies are not governed by Tariff UP-3100-I, please furnish copies of any switching tariffs or agreements or state where they appear in the record.

2. Identify in the record any evidence of the intensity (volumes and rates classified by shipper) with which FMC and other Green River shippers employed Bonneville and other transload facilities.

3. Identify in the record any evidence of the component rates (truck rates, rail rates, and transload charges if not included) associated with competitive transload moves over The Burlington Northern and Santa Fe Railway Company (BNSF). Identify in the record, or furnish a copy of, the BNSF tariff.