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SEC

SERVICE DATE - NOVEMBER 13, 2003

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. 42056

TEXAS MUNICIPAL POWER AGENCY

v.

THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY

Decided: November 12, 2003

In a decision served on March 24, 2003 (March 2003 decision), the Board found that defendant, The Burlington Northern and Santa Fe Railway Company (BNSF), had market dominance over complainant Texas Municipal Power Agency's (TMPA) coal traffic from the Caballo Rojo and Cordero mines in Wyoming's Powder River Basin (PRB)<sup>1</sup> to TMPA's Gibbons Creek Steam Electric Station at Iola, near Carlos, TX, and that the rate charged by BNSF exceeded a maximum reasonable level. BNSF was ordered to establish within 60 days a new, reduced rate and to repay to TMPA, with interest, the charges paid for common carrier service to the extent they exceeded the prescribed rate.<sup>2</sup> Cross-petitions for reconsideration were filed by both parties on April 14, 2003, but no stay was requested or imposed. BNSF complied with the rate reduction order on May 23, 2003.<sup>3</sup>

By a petition filed on September 30, 2003, pursuant to 49 U.S.C. 11704(b) and (c)(2) and 49 CFR part 1133, TMPA provides a statement of damages and seeks an order directing immediate payment. TMPA also seeks payment of interest, in accordance with 49 CFR part 1141. TMPA states that BNSF concurs in the accuracy of the statement, subject to the outcome of the petitions for

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<sup>1</sup> Two additional mines, Antelope and Jacobs Ranch, were named in the complaint. Although the Board was unable to make a quantitative market dominance determination in the March 2003 decision with respect to those mines because no common carrier movements were in the record, the Board stated in that decision, at 38, that, if TMPA should originate coal from either the Antelope or Jacobs Ranch mine, the parties should use the procedures and findings in Appendix A to the March 2003 decision to calculate the variable costs associated with serving those mines to determine whether that service is subject to the Board's rate regulation and rate prescription.

<sup>2</sup> The reparations period began with the expiration of the rail transportation contract under which the traffic formerly moved and ended with BNSF's establishment of a reasonable rate. The interest period extends until the final payment of reparations.

<sup>3</sup> The last shipment under the old, assailed rate was loaded on May 20, 2003.

reconsideration. Should the Board's maximum rate determinations be modified on reconsideration or following an appeal in a manner that affects the measure of damages, TMPA states that it will prepare a supplemental statement to quantify and reconcile any rebates to BNSF or additional payments by BNSF that may be required.

BNSF does not contest TMPA's reparations and interest calculations.<sup>4</sup> Accordingly, TMPA is entitled to \$3,398,067.78 in reparations plus \$72,658.13 interest through September 10, 2003. Additional interest from September 10, 2003, until the date of payment shall be based on the 91-day Treasury Bill Equivalent yield for the appropriate quarter, as published by the U.S. Department of the Treasury in the Treasury Bulletin.

It is ordered:

1. Within 30 days after service of this decision, BNSF shall remit to TMPA reparations with interest as determined herein.
2. This decision is effective on the date of service.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams  
Secretary

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<sup>4</sup> TMPA's calculations include seven movements from the Antelope and Jacobs Ranch mines, presumably having applied the Board's procedures and findings in the March 2003 decision (see supra note 1) to the seven movements, all of which appear to have occurred after the close of the record on which that decision was based.