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SEC

SERVICE DATE - FEBRUARY 6, 2002

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. 42056

TEXAS MUNICIPAL POWER AGENCY

v.

THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY

Decided: February 6, 2002

Due to the number of rail rate complaints pending before the agency in which the stand-alone cost (SAC) test will be used, and given the Board's experience in past SAC cases, the Board issued guidelines early last year to assist it in processing SAC cases by standardizing and focusing the evidentiary presentations.¹ The Board expects all parties in rail rate complaint cases to adhere to both the letter and the spirit of the SAC Procedures. In the evidentiary filings in this case—the first SAC case in which evidence has been submitted under the SAC Procedures—it appears that neither party has followed the prescribed procedures completely.

In a January 17, 2002 letter, counsel for the Texas Municipal Power Agency (TMPA) has complained that written evidence submitted by The Burlington Northern and Santa Fe Railway Company (BNSF) does not comply with the SAC Procedures. TMPA states that, while BNSF's three volumes of narrative adhere to the standardized presentation format prescribed in the SAC Procedures, BNSF's inclusion of three volumes of verified statements does not. TMPA suggests that the verified statements should therefore not be considered, and TMPA seeks direction from the Board as to whether it needs to respond to those verified statements. In a response filed January 23, 2002, BNSF argues that the verified statements are not precluded by the SAC Procedures and were appropriately included to assist the Board in assessing the quality of its evidence.

BNSF has complicated the Board's review of its written SAC presentation by not incorporating all of its evidence on a particular issue in one place. While the Board appreciates BNSF's attempt to fully support its position, the dispersal of the discussion of an issue in several parts of the evidence is what the Board sought to avoid, as it complicates, rather than simplifies, review of the record. The SAC Procedures (at 3) specifically state that each issue should be

¹ See General Procedures for Presenting Evidence in Stand-Alone Cost Rate Cases, STB Ex Parte No. 347 (Sub-No. 3) (STB served Mar. 12, 2001) (SAC Procedures).

addressed in a single, uniformly labeled section. The inclusion elsewhere of verified statements supporting the narrative does not comport with that directive.²

However, because this is the first case processed under the SAC Procedures, and because BNSF's narrative cross-references the verified statements, BNSF will not be required to refile its reply evidence, which could delay the progress of this proceeding. Rather, the Board will consider all 6 volumes of BNSF's reply evidence, and TMPA's rebuttal evidence should address all of BNSF's reply presentation. But in future filings in this and other cases, the Board expects all of the discussion of a single issue (including the argument of counsel and the opinions of experts) to be contained in one section of the evidentiary filing.

With respect to TMPA's filing, while its written evidentiary presentation complies with the SAC Procedures, the electronic spreadsheets it submitted do not. In SAC Procedures (at 4-5), the Board stressed that electronic spreadsheets are to be functional and documented, and should provide for easy manipulation of the data.³ The Board cautioned that all links between electronic spreadsheets should be functional and that the sources of all values should be readily apparent. TMPA's electronic spreadsheets, however, contain no links; instead, values calculated in one spreadsheet appear to have been transferred to another spreadsheet without any reference to the source spreadsheet. While this may avoid any problem of ensuring that links are functional, the widespread transfer of values from one spreadsheet to another, rather than the establishment of links between spreadsheets, makes it impractical for the Board to work with TMPA's spreadsheets. TMPA need not resubmit those spreadsheets to incorporate workable links, but it

² BNSF expresses concern that the filing of only a narrative statement could make it difficult to determine which witness is responsible for, and is sponsoring, which portion of the narrative. While the Board expects expert witnesses to develop significant portions of the evidence, the organization of that evidence should be by issue rather than by witness. Because this organization will often result in the testimony of a witness being distributed in several parts of the evidence, the SAC Procedures (at 3 n.7) direct that the specific pages of the evidentiary submissions each witness is sponsoring be set forth at the end of the evidentiary presentation. This does not preclude the inclusion of separate statements by individual witnesses in a section addressing a particular issue. Thus, the discussion of an issue could be divided into separately numbered subsections, with, for example, the first subsection being a summary of the issue by counsel followed by additional subsections containing the opinions of each expert witness with expertise on the issue. Parties are asked, however, to avoid unnecessary repetition.

³ In processing SAC cases, the Board often restates portions of each party's cost and revenue evidence. In this regard, so that substitute data may be efficiently incorporated into the parties' electronic spreadsheets to produce restatements, electronic spreadsheets must be set up so that the spreadsheets will readily recalculate with inclusion of the substitute data. Thus, to make it feasible for the Board to efficiently restate the evidence, parties should minimize the use of values in spreadsheet cells and instead use formulas or links whenever possible.

should submit electronic spreadsheets with its rebuttal evidence that are functional (i.e., that contain the appropriate links between spreadsheets).

In summary, to facilitate the evidentiary handling of SAC cases—the intent of the Board in issuing SAC Procedures—the Board needs written statements that have all of the arguments and testimony on a single issue together in one place, and electronic spreadsheets that are documented, functional and linked and, thus, capable of being easily manipulated and restated. As parties adjust to these new procedures, the Board believes the workability of the prescribed SAC Procedures will become apparent.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The parties shall be guided by this decision in developing their future filings.
2. This decision is effective February 6, 2002.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary