

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. 41185

ARIZONA PUBLIC SERVICE CO. & PACIFICORP

v.

THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY

MOTION TO COMPEL DISCOVERY

Decided: January 15, 2004

By decision served on May 12, 2003, the Board reopened Docket No. 41185 to redetermine the maximum reasonable rate for the movement of coal by The Burlington Northern and Santa Fe Railway Company (BNSF)<sup>1</sup> from the McKinley mine to the Cholla electric generating plant, owned by Arizona Public Service Company and PacifiCorp (Arizona) and located near Joseph City, AZ. Reopening was based on materially changed circumstances – specifically, the fact that the McKinley mine will exhaust its coal reserves sooner than anticipated in prior Board decisions.

On December 30, 2003, Arizona filed a motion to compel responses to discovery. Arizona asks for an order compelling BNSF to produce the contracts and other responsive documents related to Request for Production (RFP) Nos. 1, 2, 3, and 7. RFP 1 includes all of BNSF's transportation contracts and common carrier pricing authorities pertaining to the transportation of coal from mine origins to Cholla and Salt River Project Agricultural Improvement & Power District's (Salt River) Coronado Generating Station (Coronado). RFP's 2, 3, and 7 seek similar information related to the current and projected future sourcing and resourcing of coal by Arizona and Salt River between 1994 and 2013, and the traffic revenues and/or rates applicable to those movements of coal.

Arizona states that BNSF has not objected to producing responsive documents that pertain to Cholla traffic, but has objected to producing responsive documents that pertain to Coronado traffic, on the ground that disclosure could violate BNSF's contractual obligations to third parties. According to Arizona, BNSF would not oppose a motion to compel production of responsive materials related to Coronado to the extent they are reasonably available. Arizona includes a copy of BNSF's responses, which supports Arizona's representation of BNSF's

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<sup>1</sup> The original defendant in this proceeding, The Atchison, Topeka and Santa Fe Railway Company, has since merged with the Burlington Northern Railroad Company to form BNSF. The defendant is referred to as BNSF.

position. On January 9, 2004, BNSF filed a reply to Arizona's motion to compel, stating that it does not oppose the motion. The protective order for this proceeding, served on May 12, 1995, resolves any concerns arising out of third-party confidentiality agreements contained in the contracts.<sup>2</sup> Therefore, Arizona's motion to compel will be granted.

It is ordered:

1. Arizona's motion to compel is granted to the extent agreed upon by both parties.
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>2</sup> See Texas Municipal Power Agency v. The Burlington Northern and Santa Fe Railway Company, STB Docket No. 42056, slip op. at 2-3 (STB served Feb. 9, 2001) (“[w]hile we understand the concerns raised by those shippers here, we are satisfied that the parties’ agreements regarding scope and the application of the ‘highly confidential’ provisions of the protective order are sufficient to protect the interests of third-party shippers.”).