

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. 42105

DAIRYLAND POWER COOPERATIVE
v.
UNION PACIFIC RAILROAD COMPANY

Decided: October 2, 2008

In this proceeding, Dairyland Power Cooperative (Dairyland) challenges fuel surcharges collected by Union Pacific Railroad Company (UP) between January 2006 and February 2008 as an unreasonable practice under 49 U.S.C. 10702(2). Dairyland seeks the prescription of reasonable fuel surcharge practices and monetary damages under 49 U.S.C. 11704(b). In a decision served on July 29, 2008, the Board denied UP's motion to dismiss the complaint and clarified the permissible contours of such a complaint. The Board also issued a procedural schedule, lifted a prior protective order granted to UP, and granted Dairyland a protective order to facilitate discovery. On August 29, 2008, Dairyland filed a motion to compel discovery and a motion to amend the procedural schedule. UP filed a reply on September 3, 2008. By decision served on September 15, 2008, the Board suspended the procedural schedule pending a ruling on the motion to compel.

On September 25, 2008, Dairyland and UP filed a joint petition to hold this proceeding in abeyance, pending possible dismissal of the complaint. The parties state that they have reached an agreement in principle to settle this case. Under the agreement, Dairyland would dismiss its complaint, with prejudice, upon the parties' successful negotiation of final settlement terms. The parties state that they will advise the Board by October 31, 2008, of the status of negotiations, assuming Dairyland has not filed a motion to dismiss prior to that date.

The parties' request is reasonable and will be granted. Granting the parties' joint request to hold this proceeding in abeyance will facilitate a privately negotiated resolution of this dispute and will not prejudice any party.

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

It is ordered:

1. This proceeding is held in abeyance. The parties will advise the Board on the status of their settlement negotiations by October 31, 2008.

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

By the Board, Anne K. Quinlan, Acting Secretary.

Anne K. Quinlan
Acting Secretary