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SEC

SERVICE DATE - MARCH 13, 2001

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. 42056

TEXAS MUNICIPAL POWER AGENCY

v.

THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY

Decided: March 9, 2001

In a verified complaint filed and served on defendant, The Burlington Northern and Santa Fe Railway Company (BNSF), on October 3, 2000, Texas Municipal Power Agency (TMPA or complainant) alleges that the rates to be assessed by BNSF on complainant's movements of coal from origins in the Powder River Basin of Wyoming to TMPA's steam electric generating facility near Carlos, TX, are unreasonably high.¹ Complainant alleges that BNSF possesses market dominance over the traffic and requests that maximum reasonable rates be prescribed along with other relief.² Complainant also requests an award of reparations.

On February 7 and 16, 2001, respectively, complainant filed its third and fourth motions to compel.³ BNSF replied on February 26, 2001. In the third motion to compel, complainant seeks production of additional traffic tape data for the fourth quarter of the 2000 calendar year.⁴ In its response, BNSF states that it will produce the requested traffic data. Because BNSF has agreed to produce the requested data, complainant's third motion to compel is moot. In the

¹ The service is provided by BNSF under a rail transportation contract that will expire sometime between December 31, 2000, and March 31, 2001. The applicable rate will then be a trainload rate for movements in carrier-supplied cars (Common Carrier Pricing Authority BNSF-90042).

² TMPA seeks the prescription of a common carrier rate for unit-train movements in both carrier- and shipper-supplied cars.

³ Complainant's first and second motions to compel were granted, in part, in a decision served on February 9, 2001.

⁴ In response to TMPA's Document Production Request No. 38, BNSF produced traffic tapes for the first 9 months of the year 2000.

fourth motion to compel, complainant seeks production of a joint facility agreement, the DART⁵ agreement, identified by BNSF as responsive to complainant's Document Production Request No. 32. In its response, BNSF does not oppose complainant's motion. However, BNSF states that the agreement in question has a confidentiality provision that prohibits its disclosure to third parties. BNSF asserts that a Board order to compel production of the agreement, subject to the terms of the Protective Order served on November 13, 2000, in this proceeding, would permit BNSF to disclose the requested agreement without violating the confidentiality provision. Accordingly, subject to the terms of the protective order, complainant's motion to compel production of the DART agreement will be granted.

It is ordered:

1. Complainant's third motion to compel discovery is denied as moot.
2. Complainant's fourth motion to compel discovery is granted, as specified above.
3. This decision is effective on the date of service.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary

⁵ Dallas Area Rapid Transit.