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SEC

SERVICE DATE – MAY 28, 2002

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. 42056

TEXAS MUNICIPAL POWER AGENCY

v.

THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY

Decided: May 24, 2002

This case involves a challenge by Texas Municipal Power Agency (TMPA) to the reasonableness of the rates assessed by The Burlington Northern and Santa Fe Railway Company (BNSF) for the transportation of unit trains of coal from origins in the Powder River Basin of Wyoming to TMPA's steam electric generating facility near Carlos, TX. The parties filed their opening evidence and argument on October 15, 2001; their reply presentations on January 15, 2002; and their rebuttals on February 25, 2002.

On March 8, 2002, TMPA filed a petition for the simultaneous filing of closing briefs. BNSF concurred in a reply filed on March 20, 2002. BNSF notes, however, that it has a pending motion to strike portions of TMPA's rebuttal presentation. The filing of briefs will not interfere with the disposition of that motion.

In complex cases such as this one, the Board has generally found that briefs, properly employed, can focus the issues and thereby contribute to greater efficiency in analyzing the record.<sup>1</sup> Specifically, a single round of simultaneous briefs will, without further delaying the proceeding, allow each party to set forth its position on key issues in light of the full record, and identify issues that have been narrowed or are no longer in dispute. Accordingly, by this decision, TMPA's motion to permit the filing of briefs will be granted. The parties are reminded that new evidence is not permitted in briefs and will be subject to motions to strike and other sanctions. The briefs shall be filed no later than 30 days after the service date of this decision and shall not exceed 25 pages. In addition, the parties will be directed to point out where in the record (by document and page number and by Bates number) the following evidence may be found:

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<sup>1</sup> See, e.g., PPL Montana, LLC v. The Burlington Northern and Santa Fe Railway Company, STB Docket No. 42054 (STB served Dec. 12, 2001).

1. (For TMPA)—The analysis of costs and revenues attributable to the residual BNSF for traffic handled in interchange service with the SARR (cross-over traffic);

2. (For both parties)—The off-SARR mileages and revenues for the following movements:

<b>Utility</b>	<b>Plant</b>	<b>Destination City</b>
Kansas City Pwr & Light	La Cygne	Amsterdam, MO
SW Electric Pwr Co.	Flint Creek	Flint Creek, AR
Western Resources	Jeffrey	Jeffrey, KS
Entergy Gulf States	Nelson	Mossville, LA
Grand River Dam Auth.	GRDA 1&2	Pryor, OK
SW Electric Pwr Co.	Welsh Station	Welsh, TX

Finally, TMPA has presented a computerized string diagram model (introduced in its opening evidence in the computer file “StringBASE.zip”) to develop capacity, train cycle times, etc. TMPA specifically notes that it has provided the computer model to the Board as part of its electronic workpapers, so the Board can determine exactly how it works and can perform its own computer runs using the model. (TMPA Reb Narrative at 58.) Board staff, however, has indicated that it would be helpful if additional technical instructions were provided. Accordingly, TMPA will be directed to provide a detailed description of exactly how the model works and where the variables (e.g., mine delay times) can be located within the program.

Each party shall file 15 copies of its brief as well as 3 computer diskettes containing electronic versions of the submission in WordPerfect 9.0 format.

It is ordered:

1. Briefs not to exceed 25 pages in length are due by June 27, 2002.
2. The parties are ordered to respond to the questions and provide the materials discussed in this decision. TMPA’s string diagram model instructions will not count against its 25-page limit.

3. This decision is effective on the date of service.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams  
Secretary