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SEC

SERVICE DATE - LATE RELEASE APRIL 18, 2000

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. 42051

WISCONSIN POWER AND LIGHT COMPANY

v.

UNION PACIFIC RAILROAD COMPANY

Decided: April 18, 2000

In a decision served March 28, 2000, the Administrative Law Judge (ALJ)¹ ordered as follows:

1. Complainant's motion to compel production of documents, filed on or about February 18, 2000, is granted.
2. Defendant must produce the documents sought by complainant within ten days after the effective date of this Decision.
3. Defendant's petition for subpoena duces tecum directed to L.E. Peabody & Associates, Inc., filed on or about February 11, 2000, is granted.

This decision is effective on the service date.

On March 31, 2000, complainant Wisconsin Power and Light Company (WPL) filed an interlocutory appeal of the discovery order and a petition to quash the subpoena duces tecum.² Defendant Union Pacific Railroad Company (UP) filed a consolidated reply to the appeal and the petition on April 5, 2000. In its reply, UP indicates that it is amenable to extending the return date on the subpoena from April 17 to May 5, 2000. WPL and UP submitted additional argument in letters filed on April 6 and 7, 2000, respectively. On April 10, 2000, WPL filed a motion for

¹ In a decision served March 16, 2000, the matters discussed herein, along with all subsequent discovery disputes, were assigned to Judge Joseph R. Nancy of the Federal Energy Regulatory Commission. Judge Nancy conducted an informal hearing on March 22, 2000, and his decision ensued.

² A subpoena duces tecum was served on March 29, 2000. Compliance was due on April 17, 2000.

sanctions against UP for its alleged failure to comply with the ALJ's order granting WPL's motion to compel.³

The parties' opening evidentiary presentations are due on April 28, 2000, and replies are due on June 27, 2000,⁴ and WPL states that it expects to adhere to this procedural schedule. Because the materials in dispute here relate to matters to be addressed initially in the parties' replies, a brief extension of the compliance deadline for the subpoena will not delay these proceedings, but will afford the Board time for careful deliberation of arguments raised in the interlocutory appeal and petition to quash. Accordingly, the date for compliance with the subpoena duces tecum and all other aspects of the ALJ's order will be extended to May 5, 2000.

It is ordered:

1. The date for compliance with the subpoena duces tecum and all other aspects of the ALJ's March 28, 2000 order is extended to May 5, 2000.
2. The procedural schedule in this proceeding is unchanged.
3. This decision is effective on its service date.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary

³ UP did not appeal the ALJ's order. On April 7, 2000, UP delivered to WPL documents which purportedly comply with the order.

⁴ See 49 CFR 1111.8. By stipulation, discovery was to have been completed by March 29, 2000. See Joint Report on the Parties' Conference Pursuant to 49 CFR 1111.10(b), filed January 11, 2000.