

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. 41191 (Sub-No. 1)

AEP TEXAS NORTH COMPANY

v.

THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY

MOTION TO COMPEL DISCOVERY

Decided: October 7, 2003

By complaint filed and served on defendant The Burlington Northern and Santa Fe Railway Company (BNSF) on August 11, 2003, AEP Texas North Company (AEP Texas)¹ alleges that the carrier's rates for the movement of coal from origins in the Powder River Basin of Wyoming to AEP Texas' Oklaunion Generating Station (Oklaunion), located near Vernon, TX, are unreasonably high. AEP Texas alleges that BNSF possesses market dominance over the traffic and requests that maximum reasonable rates be prescribed along with other relief.

On September 22, 2003, AEP Texas filed a motion to compel responses to discovery, specifically Request for Production No. 38, which includes all of BNSF's transportation contracts. AEP Texas asks for an order compelling BNSF to produce the contracts and other responsive documents, which, because of confidentiality agreements, BNSF argues it can not produce without express permission from each of the parties to those agreements.

In a reply filed on October 3, 2003, BNSF states that it does not oppose AEP Texas' motion because such an order could facilitate and expedite the production of those materials. BNSF, however, requests that the Board condition its order on the parties reaching an agreement on the proper scope of production. Therefore, concerning the scope of discovery, the parties are directed to negotiate regarding which agreements are necessary for AEP Texas to prepare its stand-alone cost case. The protective order for this proceeding, served on September 11, 2003, resolves any concerns arising out of third-party confidentiality agreements contained in the contracts.²

¹ AEP Texas is the successor in interest to West Texas Utilities Company.

² 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'

(continued...)

It is ordered:

1. AEP Texas' motion to compel production of BNSF's transportation agreements and related information 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

²(...continued)
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.”).