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SERVICE DATE - LATE RELEASE APRIL 18, 2000

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. 42038

MINNESOTA POWER, INC.

v.

DULUTH, MISSABE AND IRON RANGE RAILWAY COMPANY

Decided: April 18, 2000

In this proceeding, Minnesota Power, Inc. (MPI) challenges the reasonableness of the rate charged by the Duluth, Missabe and Iron Range Railway Company (DMIR) for transporting coal from a connection with the Burlington Northern and Santa Fe Railway Company (BNSF) at Keenan, MN, to MPI's Laskin Energy Center, a coal-fired electric generating facility near Colby, MN. In a decision served March 6, 2000 (March 6 decision), the Board found that the available data did not permit an accurate estimate of DMIR's variable costs and directed DMIR to keep its records in compliance with our Uniform System of Accounts for the 12-month period beginning May 1, 2000, and thereafter to file a report containing the information listed in the Appendix to that decision.

DMIR has sought reconsideration of that decision¹ and has also sought a postponement of the start date for the accounting period pending disposition of the petition for reconsideration.² DMIR bases its request for a postponement on the financial burden of constructing a new and separate accounting system, but has not otherwise addressed the standards governing stay of an agency determination.³ In light of the substantial startup costs for compliance with the March 6

¹ DMIR filed its petition for reconsideration on March 27, 2000. The American Short Line and Regional Railroad Association filed a statement in support of the petition on April 4, 2000. MPI filed a reply in opposition on April 10, 2000.

² MPI replied to the "stay" petition on March 22, 2000. DMIR also submitted a follow-up letter on March 30, 2000, to which MPI responded on March 31, 2000.

³ See Hilton v. Braunskill, 481 U.S. 770, 776 (1987); Cuomo v. NRC, 772 F.2d 972, 974 (D.C. Cir. 1985); Washington Metropolitan Area Transit Comm'n v. Holiday Tours, Inc., 559 F.2d 841, 843 (D.C. Cir. 1977); Virginia Petroleum Jobbers Ass'n v. FPC, 259 F.2d 921, 925 (D.C. Cir. 1958).

decision,⁴ a brief postponement of the compliance date — until the Board has an opportunity to consider the issues raised in the petition for reconsideration — appears to be appropriate. The Board expects to act on the petition for reconsideration on or before July 14, 2000. It should be emphasized that this brief postponement is issued for “housekeeping” purposes only, to permit the orderly consideration of the arguments raised. The stay does not reflect any determination on the likely disposition of the petition for reconsideration, and neither party should make any inferences about how the Board will ultimately view the merits of that petition.

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

It is ordered:

1. The date for compliance with the accounting provisions of the March 6 decision is postponed until July 14, 2000.
2. This decision is effective on its service date.

By the Board, Linda J. Morgan, Chairman.

Vernon A. Williams
Secretary

⁴ There is a dispute as to the costs that would be involved, but even the lowest amount suggested is not insubstantial.