

WILLIAM L SLOVER
C MICHAEL LOFTUS
JOHN H LE SEUR
KELVIN J DOWD
ROBERT D ROSENBERG
CHRISTOPHER A MILLS
FRANK J PENCOLIZZI
ANDREW B KOLESAR III
PETER A PFOHL
DANIEL M JAFFE
STEPHANIE P LYONS
JOSHUA M HOFFMAN

OF COUNSEL
DONALD G AVERY

SLOVER & LOFTUS
ATTORNEYS AT LAW
1224 SEVENTEENTH STREET, N W
WASHINGTON, D C 20036-3008

September 25, 2008



WRITER'S E-MAIL

VIA HAND DELIVERY

The Honorable Anne K. Quinlan
Acting Secretary
Surface Transportation Board
395 E Street, SW
Washington, D.C 20423-0001

223670

ENTERED
Office of Public Records
SEP 25 2008
Part of
Public Record

Re STB Docket No 42105, Dairyland Power
Cooperative v Union Pacific Railroad Company

Dear Ms. Quinlan:

Enclosed for filing in the above-referenced proceeding, please find an original and ten (10) copies of the Joint Petition to Hold Proceedings in Abeyance by Complainant Dairyland Power Cooperative and Defendant Union Pacific Railroad Company. Please note that **expedited consideration** by the Board is being requested of this joint petition.

We have included an extra copy of this filing. Please indicate receipt by time-stamping this copy and returning it with our messenger.

Sincerely,

John H LeScur

Enclosures
cc UP Counsel

223620

EXPEDITED CONSIDERATION REQUESTED

**BEFORE THE
SURFACE TRANSPORTATION BOARD**



DAIRYLAND POWER COOPERATIVE)

Complainant,)

v)

UNION PACIFIC RAILROAD COMPANY)

Defendant.)

Docket No. 42105

Office of Proceedings
ENTERED
SEP 25 2008
Part of
Public Record

JOINT PETITION TO HOLD PROCEEDING IN ABEYANCE

Pursuant to 49 C.F.R. § 1117.1, Complainant Dairyland Power Cooperative ("Dairyland") and Defendant Union Pacific Railroad Company ("UP") hereby petition the Board to issue an order directing that the above-referenced complaint proceeding be held in abeyance, pending possible dismissal upon the formal conclusion of the parties' pending settlement discussions. In support of this Joint Petition, the parties state as follows:

1. On March 5, 2008, Dairyland filed a complaint alleging that UP has engaged in an unreasonable practice in collecting specified rail fuel surcharges. Dairyland's complaint seeks, inter alia, damages and prescriptive relief

2 In its decision served on July 29, 2008, the Board adopted a procedural schedule governing the parties' discovery and evidentiary filings in this

proceeding On September 15, 2008, the Board issued an order suspending the procedural schedule in this proceeding pending the Board's decision on Dairyland's motion to compel discovery filed on August 29, 2008.

3 Dairyland and UP have reached an agreement in principle to settle this case. This agreement calls for Dairyland to dismiss its Complaint, with prejudice, upon the parties' successful negotiation of final settlement terms

4. Given the status of the parties' settlement discussions, and in the interests of efficiency and the conservation of agency resources, the parties request that the Board hold further proceedings in this docket in abeyance, pending the final resolution of the parties' settlement discussions. Granting the parties' request to hold this proceeding in abeyance will facilitate a privately negotiated resolution of the parties' dispute and will not prejudice any party.

5. If this Petition is granted, the parties will advise the Commission by October 31, 2008 of the status of negotiations, assuming Dairyland has not filed a motion to dismiss prior to that date

WHEREFORE, for the reasons set forth above, Dairyland and UP jointly request the Board to enter an order directing that this proceeding be held in abeyance pending resolution of the parties' settlement discussions.

Respectfully submitted,

John H LeSeur *John H L*
Frank J Pergolizzi
Peter A Pfohl
Slover & Loftus
1224 Seventeenth Street, N.W
Washington, D.C. 20036
(202) 347-7170

*Attorneys for Dairyland Power
Cooperative*

Dated: September 25, 2008

Linda J. Morgan *Michael Rosenthal /pp*
Michael L. Rosenthal
Charles H.P. Vance
Covington & Burling LLP
1201 Pennsylvania Avenue, N W
Washington, D C. 20004
(202) 662-6000

*Attorneys for Union Pacific
Railroad Company*