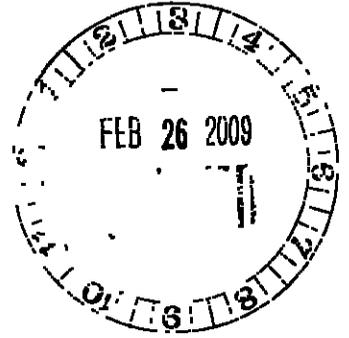


224607

**BEFORE THE
SURFACE TRANSPORTATION BOARD**



OKLAHOMA GAS & ELECTRIC COMPANY.)
)
Complainant,)
)
v.)
)
UNION PACIFIC RAILROAD COMPANY.)
)
Defendant.)

Docket No. 42111

ENTERED
Office of Proceedings
FEB 26 2009
Part of
Public Record

UNION PACIFIC'S REPLY TO OG&E'S REPLY EVIDENCE

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*Attorneys For Union Pacific
Railroad Company*

February 26, 2009

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

OKLAHOMA GAS & ELECTRIC COMPANY,)	
)	
Complainant,)	
)	
v)	Docket No. 42111
)	
UNION PACIFIC RAILROAD COMPANY.)	
)	
Defendant.)	
)	

UNION PACIFIC’S REPLY TO OG&E’S REPLY EVIDENCE

Union Pacific Railroad Company (“UP”) hereby files this limited reply to the Reply Evidence filed on February 13, 2009, by Oklahoma Gas & Electric Company (“OG&E”) UP’s reply is supported by the attached Verified Statement of Mark J. Draper (“Draper V.S.”).

UP and OG&E agree that the Board should establish a “true-up” process to account for the inevitable lag between the time OG&E’s movements will occur and the time UP’s variable costs for those movements can be calculated accurately. However, UP and OG&E disagree about how and when to perform the true-up. UP believes it should be performed after the parties have data concerning UP’s actual URCS variable costs for the period in which the traffic moved. By contrast, OG&E would use indexed URCS costs from a prior period, rather than the period in which the traffic moved, to perform the true-up.

In its Reply Evidence, OG&E supported its argument for a true-up process based on indexed URCS variable costs by asserting that “this case should be no different than any other coal rate case,” and suggesting that the parties had used indexed URCS

variable cost to calculate the reparations in STB Docket No. 42095, *Kansas City Power & Light Company v Union Pacific Railroad Company* (“*KCPL*”) See OG&E Reply Evidence at II-A-8.

In *KCPL*, however, UP and the complainant have *not* used indexed URCS variable costs to calculate reparations. Instead, the complainant has waited until UP’s actual URCS variable costs (and the issue traffic’s actual operating characteristics) become available before submitting its reparations calculations to UP, and the parties have used those actual data in submitting their reparations statements to the Board. The parties thus submitted their initial “Statement of Reparations,” covering reparations for calendar year 2006, on August 21, 2008, and their “Statement of 2007 Reparations,” covering reparations for calendar year 2007, on January 22, 2009 See Draper V.S. at 1 & Ex A (“Statement of Reparations,” filed Aug. 21, 2008) & Ex B (“Statement of 2007 Reparations,” filed Jan 22, 2009).

OG&E may have reached the wrong conclusion because of a mistake it made regarding the timing of the parties’ reparation submissions in *KCPL*. OG&E is apparently under the impression that the parties filed their “Statement of 2007 Reparations” on January 22, 2008 – before UP’s actual 2007 URCS variable costs would have been available from the Board. See OG&E Reply Evidence at II-A-8 (misstating the date of parties’ submission in *KCPL*) In fact, however, the parties filed their “Statement of 2007 Reparations” on January 22, 2009. See Draper V.S., Ex. B.

In short, if the Board were to follow OG&E’s suggestion and establish a true-up process that follows the approach used by the parties in *KCPL*, it should require the

parties to perform true-up calculations using actual URCS variable costs from the period in which the traffic moved rather than indexed URCS variable costs from a prior period

Respectfully submitted,



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Attorneys for Union Pacific Railroad Company

February 26, 2009

CERTIFICATE OF SERVICE

I, Michael L. Rosenthal, certify that on this 26th day of February, 2009, I caused a copy of Union Pacific's Reply to OG&E's Reply Evidence to be served by hand on

Thomas W. Wilcox, Esq.
Sandra L. Brown, Esq.
David F. Benz, Esq.
Frouman Sanders LLP
401 9th Street, N.W., Suite 1000
Washington, DC 20004

and by first-class mail, postage prepaid, on

Patrick D. Shore, Esq.
Senior Attorney
OGE Energy Corporation
321 N Harvey
P.O. Box 321, M/C 1208
Oklahoma, OK 73101



Michael L. Rosenthal

VERIFIED STATEMENT

OF

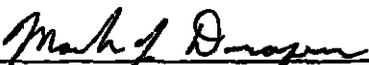
MARK J. DRAPER

My name is Mark J. Draper. I am Manager – Economic Research and Analysis for Union Pacific Railroad Company (“UP”) I have worked in UP’s Finance Department for nearly 29 years, and I am responsible for, among other things, UP’s regulatory costing efforts. As part of my responsibilities, I was involved in preparing and reviewing the “Statement of Reparations,” filed August 21, 2008, and the “Statement of 2007 Reparations” filed January 22, 2009, in STB Docket No. 42095 *Kansas City Power & Light Company v Union Pacific Railroad Company* (“*KCPL*”), which are attached to this statement as Exhibits A and B

I understand that Oklahoma Gas & Electric Company (“OG&E”) is claiming that the parties in *KCPL* used UP’s indexed URCS variable cost from a prior period, rather than UP’s actual URCS variable costs from the period in which the traffic moved, to calculate reparations. OG&E is incorrect. In *KCPL*, the complainant has waited until UP’s actual URCS variable costs (and the issue traffic’s actual operating characteristics) become available before submitting its reparations calculations to UP, and the parties have used those actual data in submitting their reparations statements to the Board. That is why the parties submitted their “Statement of Reparations,” covering reparations for calendar year 2006, on August 21, 2008, and their “Statement of 2007 Reparations,” covering reparations for calendar year 2007, on January 22, 2009

I, Mark J. Draper, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to sponsor this testimony.

Executed on February 25, 2009



Mark. J. Draper

EXHIBIT A

PUBLIC VERSION

223340

BEFORE THE
SURFACE TRANSPORTATION BOARD

KANSAS CITY POWER & LIGHT
COMPANY

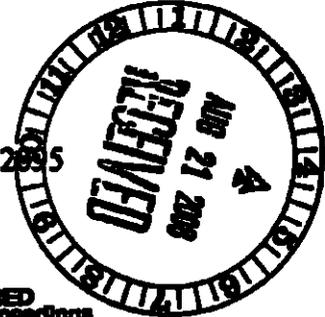
Complainant,

v.

UNION PACIFIC RAILROAD COMPANY

Defendant.

Docket No. 42895



ENTERED
Office of Proceedings

AUG 21 2008

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Public Record

STATEMENT OF REPARATIONS

In its Decision served May 19, 2008, the Board found that the rates charged by Defendant Union Pacific Railroad Company ("UP") for coal transportation service from mines in the Southern Powder River Basin to the Montrose Generating Station near Ladue, Missouri, owned and operated by Complainant Kansas City Power & Light Company ("KCPL"), exceeded maximum reasonable levels. The Board directed UP to establish and maintain rates no higher than 180% of the variable cost of the subject service, and to pay reparations to KCPL, plus applicable interest, for shipments made under the challenged rates from and after January 1, 2006. See Decision at 11.

Effective July 18, 2008, UP established new rates in compliance with the Board's Decision. KCPL and UP cooperated to identify the traffic entitled to reparations for calendar year 2006, and calculate reparations and interest thereon in compliance with 49 C.F.R. Part 1133.2. KCPL and UP also have agreed upon procedures to calculate reparations and interest on traffic moving during calendar year 2007, and between

January 1 and July 17, 2008, once the data necessary to determine the maximum reasonable rates for those time periods under the Board's Decision become available.

In accordance with the applicable regulations, the parties are submitting a statement of reparations for each mine that originated traffic covered by the Board's Decision during calendar year 2006. The reparations (including interest) as calculated by the parties for 2006 totals \$3,058,231.61 through July 18, 2008, plus interest of \$156.43 per day from July 19, 2008 through the date of payment, and are summarized on Attachment No. 1 hereto. The parties will prepare and submit similar statements for 2007 and January 1 – July 17, 2008, promptly upon the completion of calculations for those time periods.

Attachment No. 2 hereto is the certification required by 49 C.F.R.

Part 1133.2.

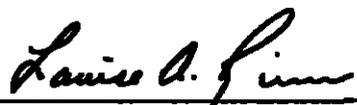
Respectfully submitted,



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(202) 662-6000

Attorneys for Union Pacific Railroad

Company

Company

Dated: August 21, 2008

Attachment No. 1
Redacted

CERTIFICATION

Kansas City Power & Light Company ("KCPL") hereby certifies that this Statement includes claims only on shipments covered by the findings in the above-captioned Docket, and contains no claim for reparations previously filed with the Board by or on behalf of KCPL or, so far as KCPL knows, by or on behalf of any person, in any proceeding.

KCPL received UP's payment described below in satisfaction of the reparations and interest award pursuant to the May 19, 2008 Decision for traffic moving during the 2006 calendar year only, on August 12, 2008.


Kansas City Power & Light Company

**By: David L. Laffere
Manager of Fuels
1201 Walnut
P.O. Box 418679
Kansas City, Missouri 64141**

Date: August 20, 2008

The total amount of reparations and interest for traffic moving during the 2006 calendar year equals \$3,062,142.36. The undersigned hereby certifies that the total amount of reparations and interest for such traffic through August 12, 2008 has been checked against the records of Union Pacific Railroad Company and found correct.



Union Pacific Railroad Company

**By: Jeffrey P. Totusek
Vice-President - Controller and Chief Accounting Officer**

Date: August 12, 2008

EXHIBIT B

interest on traffic moving between January 1 and July 17, 2008, once the data necessary to determine the maximum reasonable rates for those time periods under the Board's Decision become available

In accordance with the applicable regulations, the parties are submitting this Statement of Reparations for shipments covered by the Board's Decision during calendar year 2007. The reparations (including interest) as calculated by the parties for 2007 total \$513,177.79 as of January 20, 2009, which is the date on which UP tendered payment. The parties will prepare and submit a similar statement for January 1 – July 17, 2008, promptly upon the completion of calculations for that time period.

Attachment No. 1 hereto is the certification required by 49 C.F.R.

Part 1133.2

Respectfully submitted,



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William G. Riggins
General Counsel
Kansas City Power & Light Company
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Attorneys for Kansas City Power & Light
Company

Dated January 20, 2009



J. Michael Hemmer
Louise A. Rinn
Union Pacific Railroad Company
1400 Douglas Street
Omaha, NE 68179

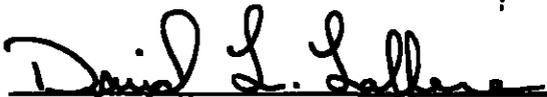
Michael L. Rosenthal
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1201 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
(202) 662-6000

Attorneys for Union Pacific Railroad
Company

CERTIFICATION

Kansas City Power & Light Company ("KCPL") hereby certifies that this Statement includes claims only on shipments covered by the findings in the above-captioned Docket, and contains no claim for reparations previously filed with the Board by or on behalf of KCPL or, so far as KCPL knows, by or on behalf of any person, in any proceeding

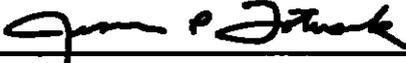
KCPL received UP's payment described below in satisfaction of the reparations and interest award pursuant to the May 19, 2008 Decision for traffic moving during the 2007 calendar year only, on January 20, 2009


Kansas City Power & Light Company

By **David L. Laffere**
Manager of Fuels
1201 Walnut
P O Box 418679
Kansas City, Missouri 64141

Date 1/16/09

The total amount of reparations and interest for traffic moving during the 2007 calendar year equals \$513,177.79. The undersigned hereby certifies that the total amount of reparations and interest for such traffic through January 20, 2009 has been checked against the records of Union Pacific Railroad Company and found correct.



Union Pacific Railroad Company

By Jeffrey P. Totusek
Vice President - Controller and Chief Accounting Officer

Date January 20, 2009