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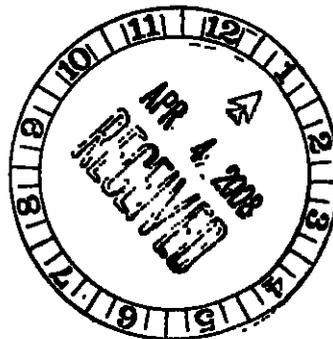
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April 4, 2008



BY HAND

Honorable Anne K. Quinlan
Acting Secretary
Surface Transportation Board
395 E Street, SW
Washington, DC 20423-00001

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

Dear Secretary Quinlan:

Enclosed for filing is an original and ten copies of Union Pacific's Response To Dairyland's Report On The Parties' Conference.

An additional paper copy of this filing is also enclosed. Please return a date-stamped copy to our messenger.

Thank you for your attention to this matter.

Sincerely,

Michael L. Rosenthal

Enclosure

cc Counsel for Dairyland

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**BEFORE THE
SURFACE TRANSPORTATION BOARD**



DAIRYLAND POWER COOPERATIVE,

Complainant,

v

UNION PACIFIC RAILROAD COMPANY,

Defendant.

Docket No. 42105

**UNION PACIFIC'S RESPONSE TO DAIRYLAND'S
REPORT ON THE PARTIES' CONFERENCE**

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April 4, 2008

case, its decision might narrow the issues and thus substantially lessen the need for discovery. Board precedent supports a stay of discovery under these circumstances. *See, e g , DXH, Inc v Matson Navigation Co.*, STB Docket No. WCC-105 (STB served June 6, 2002), at 3; *Paducah & Louisville Ry – Control Exemption – Paducah & Illinois R R* , STB Fin. Docket No. 33362 (STB served July 9, 1999), at 1-2; *Zoneskip, Inc v United Parcel Service of America, Inc* , ICC Docket No. 40519 (ICC served May 28, 1991), at 2.

Dairyland incorrectly claims that the Board’s rules prohibit parties from asking the Board to stay discovery pending resolution of motions to dismiss. Dairyland cites a rule that motions to dismiss will not “automatically stay” proceedings. 49 C.F.R. § 1112.2. But UP is not claiming to be entitled to an automatic stay – it has filed a separate motion explaining why a stay is appropriate under the particular circumstances of this case.

Dairyland also relies on *AEP Texas North Co v BNSF Railway*, but there the defendant sought to stay proceedings because the complainant was short-paying the challenged rate, not because the claim was precluded as a matter of law. *See* STB Docket No. 41191 (Sub-No. 1) (STB served Mar. 19, 2004), at 3 (“BNSF is correct that AEP Texas must pay the existing legally established common carrier rate in full. However, AEP Texas’ failure to do so does not mean that there is no basis, in law, on which to review the reasonableness of BNSF’s rates.”). By contrast, UP’s motion to dismiss explains in detail why Dairyland’s claim is precluded as a matter of law by the D.C. Circuit Court of Appeal’s decision in *Union Pacific Railroad Co v Interstate Commerce Commission*. 867 F.2d 646 (D.C. Cir. 1989), and the Board’s decision in *Rail Fuel Surcharges*, STB Ex Parte No 661 (STB served Jan. 26, 2007).

UP commits that, if the Board denies its motion to dismiss, UP will work in good faith with Dairyland to develop a mutually agreeable procedural schedule.²

Respectfully submitted,



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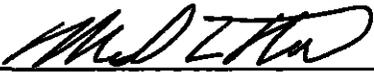
Attorneys for Union Pacific Railroad Company

April 4, 2008

² Dairyland filed its proposed procedural schedule before serving its discovery requests on UP. Although UP has had only a few hours to review those requests, it is clear that Dairyland's proposed 46-day discovery period would be far too short if UP were ever required to produce the requested documents and information.

CERTIFICATE OF SERVICE

I, Michael L. Rosenthal, certify that on this 4th day of April, 2008, I caused a copy of Union Pacific's Response to Dairyland's Report on the Parties' Conference to be served on counsel for Dairyland by email and first class mail.



Michael L. Rosenthal