

STB DOCKET NO. 42054

PPL MONTANA, LLC  
v.  
THE BURLINGTON NORTHERN AND SANTA FE RAILWAY  
COMPANY

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*Decided June 27, 2003*

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The Board declines to reconsider its decision denying the complainant's request to submit additional evidence.

**BY THE BOARD:**

In a decision in this proceeding, *PPL Montana, LLC v. Burlington Northern & Santa Fe Railway Co.*, 6 S.T.B. 286 (2002) (*2002 Decision*), the Board found that PPL Montana, LLC (PPL) had failed to demonstrate that the challenged rates of The Burlington Northern and Santa Fe Railway Company (BNSF) are unreasonably high. The Board found that PPL's SAC presentation under the stand-alone cost (SAC) test was fatally flawed because it relied upon an impermissible cross-subsidy of the "western" part of PPL's hypothetical stand-alone railroad (SARR) by traffic that would not use that part of the system. PPL filed a petition for reconsideration of the *2002 Decision*, which was granted in part and denied in part in *PPL Montana, LLC v. Burlington Northern & Santa Fe Railway Co.*, 6 S.T.B. 752 (2003) (*2003 Decision*).<sup>1</sup> PPL has now filed a petition for reconsideration of that portion of the *2003 Decision* that denied PPL's original petition for reconsideration.<sup>2</sup> PPL's latest petition for reconsideration will be denied.

In the *2003 Decision*, the Board reaffirmed its cross-subsidy analysis and reopened the record for the limited purpose of obtaining the evidence needed to correct the Board's own error in allocating operating expenses between traffic that would use the "western" part of the SARR and traffic that would use only the "north-south" part. The Board denied PPL's request that it be allowed to submit new and different evidence on other aspects of the case in response to the *2002 Decision*, because PPL had every incentive from the outset of the case to maximize revenues and minimize costs for the SARR as a whole.<sup>3</sup> In its latest

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<sup>1</sup> The background of this case and the issues previously decided are set forth in the *2002 Decision* and the *2003 Decision*.

<sup>2</sup> BNSF opposes the new petition.

<sup>3</sup> Contrary to PPL's claim, the Board did not abandon any of the reasoning contained in the *2002 Decision*. Rather, in the *2003 Decision*, the Board explained that PPL should not have been surprised by the *2002 Decision*, as it was based upon longstanding Constrained Market Pricing principles that, while articulated in two cited decisions issued after the record was developed in this case, predated the cited decisions.

petition for reconsideration, PPL takes issue with that reasoning as applied to this case.

PPL first argues that, prior to the *2002 Decision*, it would not have known that it should seek to maximize revenues and minimize the costs over every portion of the SARR. But, as discussed in the *2003 Decision*, there are only two matters identified by PPL as to which it sought to introduce new evidence but was not afforded the opportunity to do so. They were: (1) how far certain traffic would move on the SARR before being interchanged with another carrier, and (2) what level of investment would be appropriate for traffic control on the lighter-density western part. Because moving traffic a greater distance on the SARR would increase revenues on the western part without reducing revenues on any other part of the SARR, it would increase revenues for the SARR as a whole. Similarly, because reducing traffic control costs on the western part would not increase costs on any other part of the SARR, it would reduce the costs for the SARR as a whole. Thus, it was indeed in PPL's interest to address those matters in its original evidence to produce its most favorable SAC case.

PPL next contends that, once a shipper makes a SAC presentation that yields a SAC rate below the regulatory floor (180% of the variable cost of providing the service), there is no reason for it to seek to further decrease the SAC rate, as rates cannot be prescribed below the regulatory floor. However, a shipper should put forward its best case because the Board may reject some of its evidence. Indeed, in a SAC rate case, the Board typically rejects portions of the evidence of each party as to both the level of the SAC rate and the level of the regulatory floor (the variable cost calculation) and restates both numbers accordingly. A party that does not put forward its best case as to all elements of its case assumes the risk of that strategic choice.

Finally, PPL argues that a policy that discourages shippers from "accept[ing] railroad evidence that is questionable or wrong"<sup>4</sup> increases litigation costs and places greater burdens on the Board's staff to resolve what may be unnecessary disputes. But the alternative approach advocated by PPL here—allowing parties to agree to opponents' evidence while reserving the opportunity, if they do not like the consequences, to contest that evidence later—is less appealing, as the administrative process could be endless if parties are permitted to relitigate issues at will.

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

*It is ordered:*

1. The petition for reconsideration is denied.
2. This decision is effective on the date of service.

By the Board, Chairman Nober.

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<sup>4</sup> Petition for Reconsideration at 8.