SURFACE TRANSPORTATION BOARD
OPEN VOTING CONFERENCE
MARCH 21, 2003

PPL Montana, LLC v. The Burlington Northern and Santa Fe Railway Company
***Petition for Reconsideration*, STB Docket No. 42054**

STATEMENT OF RACHEL D. CAMPBELL, TRIAL ATTORNEY,
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Good morning Chairman Nober and Commissioner Morgan:

In July 2000, PPL Montana filed a complaint challenging the reasonableness of the rates charged by the Burlington Northern and Santa Fe Railway for transporting coal from mines in the Powder River Basin of Wyoming and Montana to PPL's power plant at Billings, MT. PPL sought to make its case using the stand alone-cost method. We have put a map of PPL's stand-alone railroad on the monitors. BNSF argued that the Board should reject PPL's stand-alone cost evidence, because PPL's stand-alone railroad relied on revenues from traffic that would move only over the north-south part (the part in blue on the map) to subsidize facilities on the western part (the part in red). That is, the western, or red, part would need to be cross-subsidized because it would not cover its costs. The western part, which is used to serve PPL, would constitute 70% of the system in length, but would carry only 15% of the traffic.

In its decision issued in August 2002, the Board agreed that PPL's stand-alone cost case contained a cross-subsidy and that such a cross-subsidy is inconsistent with the stand-alone cost test. Accordingly, the Board concluded that PPL's stand-alone cost case was fatally flawed, and the Board dismissed the complaint.

In its Petition for Reconsideration, PPL challenges the Board's cross-subsidy analysis, which it claims established a new and inappropriate test in stand-alone cost cases. The draft decision before you would reaffirm the appropriateness of conducting a threshold cross-subsidy analysis where the issue is raised. The Board's Constrained Market Pricing standards for rate cases are designed to root out and remove cross-subsidies, whether one looks at the existing carrier or at a hypothetical new carrier. It would turn the Constrained Market Pricing principles on their head to protect a complaining shipper from subsidizing other traffic, while setting a rate level that would have other traffic subsidizing that shipper's rate. Because removing all cross-subsidies is a basic principle of Constrained Market Pricing, the draft decision rejects the argument that the cross-subsidy analysis is a new test.

In its Petition for Reconsideration, PPL also claims that, had it known the Board would apply a cross-subsidy analysis, it would have presented different evidence. It identifies three aspects of the cross-subsidy analysis that it claims should be corrected.

First, PPL claims that incorrect figures were used for the western-part traffic volumes. BNSF, in its reply evidence, had challenged PPL's routing of 10.9 million tons of traffic over the western part on the ground that the traffic does not actually move over that route. On rebuttal, PPL had re-routed some, but not all, of this traffic — it changed the routing for 8.4 million tons of traffic, but did not change the routing of the other 2.5 million tons of disputed traffic. In its Petition for Reconsideration, PPL states that, based on its examination of the traffic tapes, it would not have agreed to re-routing 8.4 million tons of traffic if it had known the Board would apply a cross-subsidy analysis.

But, in any stand-alone cost case, the complainant has every incentive from the outset to maximize revenues for the stand-alone railroad as a whole, and one way to do this is to keep joint-line traffic on the stand-alone railroad for the largest portion of the haul possible. Thus, routing choices are important in a stand-alone cost analysis, whether or not a threshold cross-subsidy analysis is needed. Moreover, PPL looked critically at BNSF's routing claim in this case, because PPL did not accept the re-routing for 2.5 million tons of the traffic. Thus, the draft decision explains, there is no reason for the Board not to rely on the evidence PPL submitted.

PPL's second claim is that it is wrong to assume that the lighter-density western part would require as extensive a level of investment as the higher-density north-south part. PPL offers only one example. It claims that, had it known the Board would focus on the costs on the western part of the stand-alone railroad separately, PPL would not have used a centralized traffic control system on the entire system; instead, it would have used a less expensive signaling system, such as an automatic block system, on the western part.

Here again, it is always in a shipper's interest to design the least costly, most efficient stand-alone railroad. Even in PPL's opening evidence, the traffic density on the western segment was so much lower than the density on the north-south part that it was in PPL's interest to consider using a combined signaling system, with centralized traffic control on one part and an automatic block system on the other part. Because PPL's choice of a signaling system was an important one, whether or not a threshold cross-subsidy analysis was performed, PPL has failed to show why the Board should not rely on PPL's own design for the stand-alone railroad.

PPL's third claim is that the differences between PPL's opening and rebuttal evidence should have been reflected in allocating operating costs between the two sets of traffic using the stand-alone railroad. As PPL points out, the ratio the Board used to allocate operating expenses was based on PPL's opening evidence, but that ratio was applied to the costs contained in PPL's rebuttal evidence. Because the routing changes on rebuttal altered the ratio of western-part traffic to total traffic expenses, there was a mismatch between the ratio used and the costs to which that ratio was applied. This error caused an overstatement of operating expenses for western-part traffic.

We cannot tell, on the existing record, whether the overstatement of operating expenses due to the mismatching error was large enough to alter the outcome of the Board's analysis. Therefore, the draft decision would re-open the record for the limited purpose of obtaining additional evidence on the proper allocation of operating expenses between the two parts of the stand-alone railroad.

We would be happy to answer any questions you may have.