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SERVICE DATE - NOVEMBER 9, 2000

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. 42054

PPL MONTANA, LLC

v.

THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY

Decided: November 8, 2000

In a verified complaint filed, and served on defendant The Burlington Northern and Santa Fe Railway Company (BNSF), on July 6, 2000, PPL Montana, LLC (PPL or complainant), alleges that rates to be assessed by BNSF on complainant's trainload and unit-train movements of coal, in shipper-owned cars, from origins in Wyoming and Montana to PPL's electric generating facility at Billings, MT, will exceed a maximum reasonable level.¹ Complainant alleges that BNSF possesses market dominance over the traffic and requests that maximum reasonable rates be prescribed along with other relief. Complainant also requests an award of reparations.

On September 28, 2000, PPL filed a timely motion to compel responses to certain discovery requests. BNSF filed a reply in opposition on October 10, 2000, and a supplemental response on October 19, 2000. On November 6, 2000, PPL filed a motion for extension of the procedural schedule. PPL states that BNSF supports the requested extension.

In its October 19 supplemental response, BNSF withdraws its earlier objection to PPL's request for an order compelling the production of transportation contracts governing shipments of coal handled by BNSF. That portion of PPL's motion to compel is thus uncontested and will be granted.² The procedural schedule will be extended as requested to provide time for producing and evaluating the contracts.

¹ The service was formerly provided by BNSF under a rail transportation contract that expired on June 30, 2000.

² BNSF had initially objected to the scope of PPL's request. PPL subsequently notified BNSF that it would seek production of only 76 agreements, and BNSF's withdrawal is premised on this representation. We grant the motion to compel because, absent an order of the Board, BNSF would be precluded by confidentiality clauses from producing the contracts.

PPL also requests that BNSF be required to produce information regarding locomotive maintenance and fuel expenses.³ It points out that both expense elements are significant components of the variable cost of trainload coal movements and that movement-specific costs are more appropriate for determining the variable cost associated with serving PPL than systemwide costs.⁴

BNSF does not dispute the superiority of movement-specific cost data, but avers that all existing information has already been turned over to PPL in response to its discovery requests. Specifically, BNSF states that it has produced information on maintenance expenses for specific groups of locomotives⁵ and that it does not record locomotive-specific or group-specific maintenance expenses for the remainder. In most instances, maintenance performed in BNSF's shops is recorded at the particular shop by type of expense only.⁶ In a similar vein, BNSF states that it maintains no locomotive-specific or locomotive group fuel consumption data for the locomotives that provide service to particular shippers. Rather, it tracks the amount of fuel consumed by its locomotive fleet only at an aggregate level. Accordingly, in response to PPL's production request, BNSF identified the refueling locations for locomotives used in PPL's service and provided available fuel usage and diesel unit-mile data.

In light of BNSF's representation that the sought data do not exist, an order to compel production would be futile. PPL's motion to compel the production of data will accordingly be denied.

PPL asks in the alternative that BNSF be required to perform a special study of fuel consumption for locomotives used to provide the service at issue. PPL emphasizes the need for fuel consumption data, pointing out that fuel costs may account for 20% of total variable costs, and that systemwide costs would be unreliable if BNSF is using relatively new, efficient

³ PPL states that it is willing to work with BNSF to obtain and analyze locomotive maintenance data, but, as BNSF points out, it is unclear what help PPL could provide.

⁴ Coal shipments in trainload or unit-train volumes are typically more efficient and have lower variable costs than the general run of rail freight shipments.

⁵ PPL contends that this group comprises only leased locomotives. BNSF states that it has information for only those locomotives, both owned and leased, that are subject to maintenance arrangements with their manufacturers.

⁶ It thus appears, contrary to PPL's suggestion, that system-average data can be gathered without compiling data as to individual locomotives or locomotive types or series. Indeed, BNSF submits that there is no business reason for maintaining locomotive-specific data.

locomotives in the issue service. Relying on general law,⁷ PPL contends that the burden on BNSF of recording fuel consumption on the next few shipments is negligible and is outweighed by the probative value of accurate fuel consumption figures. Our discovery rules, however, require parties to furnish information in their possession, not to prepare special studies. See Bituminous Coal, Hiawatha, UT to Moapa, NV, No. 37038, et al., slip op. at 8-9 (ICC served Oct. 24, 1984). Thus, PPL's alternative request to require BNSF to undertake a special study of locomotive fuel consumption is beyond the scope of legitimate discovery and will be denied.⁸

It is ordered:

1. PPL's motion to compel production of coal transportation contracts is granted, subject to the agreement of the parties regarding scope.
2. PPL's motion to compel production of locomotive maintenance and fuel expenses or, in the alternative, to require a special study, is denied.
3. The motion for an extension of the procedural schedule is granted. The revised procedural schedule in this proceeding is as follows:

December 14, 2000	Opening statements due.
March 13, 2001	Reply statements due.
April 23, 2001	Rebuttal statements due.

4. This decision is effective on its date of service.

By the Board, Chairman Morgan, Vice Chairman Burkes, and Commissioner Clyburn.

Vernon A. Williams
Secretary

⁷ PPL relies on a commentary in 23 AM. JUR. 2D Depositions and Discovery § 232 (1983). However, that section simply affirms the obligation of an interrogated party to consult its own records and personnel in replying to interrogatories and, as such, is inapposite.

⁸ This is not to suggest that PPL must rely on systemwide fuel consumption averages. Movement-specific adjustments are commonly proposed by parties to coal rate proceedings and, when supported by probative evidence, have been accepted by the Board.