

ORIGINAL

EXPEDITED PROCESSING REQUESTED

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. 42054

PPL MONTANA, LLC,

Complainant,

v.

THE BURLINGTON NORTHERN AND
SANTA FE RAILWAY COMPANY,

Defendant.



ENTERED
Office of Proceedings

AUG 23 2002

Part of
Public Record

**MOTION OF PPL MONTANA, LLC FOR EXTENSION OF
DEADLINE FOR PETITION FOR RECONSIDERATION**

On August 20, 2002, the Board served its decision denying relief in this proceeding. Under 49 C.F.R. § 1115.3, any petition for reconsideration by Complainant PPL Montana, LLC ("PPL") would be limited to 20 pages and would be due "within 20 days after service of the action or within any further period (not to exceed 20 days) as the Board may authorize."

Because these time and page limits are inadequate under the circumstances, PPL requests that the Board extend the deadline for an additional 20 days, or until September

30, 2002, and that it extend the page limit to 40 pages. Good cause exists for granting this request, as demonstrated below.

Expedited processing of this Motion is needed because PPL must know well before the current deadline of September 9, 2002, whether additional time and pages will be available.¹

In its decision in this rate case, the Board denied relief on the ground that there is a segment of PPL's stand-alone railroad which, considered in isolation, fails to generate revenues sufficient to cover its costs. PPL knows of no other rate case decision in which the Board has imposed such a requirement. On the contrary, in prior rate case decisions involving the stand-alone cost test, the stand-alone railroad was considered a unitary system on which aggregate revenues were compared with aggregate costs to determine system viability.

The Board's August 20 Decision cites Coal Rate Guidelines² in support of the requirement that each segment of a stand-alone railroad must be self sustaining, but this requirement is not set forth explicitly in that decision's discussion of cross-subsidization. Nor does it appear in any subsequent decision found by PPL in the limited amount of time available since August 20 for research. The Board's November 27, 2001 decision in this Docket, and its December 31, 2001 decision in Docket No. 42058, Arizona Electric Power Coop. v. BNSF, discuss cross-subsidization only in more general terms, and were, in any event, served after the close of the record in this case. PPL should be afforded sufficient time to analyze the "segment stand-alone cost test," and the issues it raises.

¹ Counsel for Defendant The Burlington Northern and Santa Fe Railway was contacted but was unwilling to accede to PPL's request. BNSF's counsel did agree to file a prompt response to this Motion, in order to facilitate expedited action by the Board.

In this connection, 20 days is not enough time for PPL's cost consultants, L.E. Peabody & Associates, Inc., to determine whether, assuming arguendo the Decision is not unreasonable or inconsistent with governing statutory and case law, the segment stand-alone cost test has been correctly applied to the facts of this case. Although the Decision asserts that the Board utilized a conservative approach, giving the benefit of the doubt to PPL, PPL should be provided a reasonable opportunity to review the Board's implementation of its test.

An additional difficulty for PPL is that its principal cost witness, Mr. Thomas Crowley of L.E. Peabody & Associates, is currently on call as a witness in the trial of a case brought by Western Resources, Inc. against BNSF and UP in the U.S. District Court for the District of Kansas. Mr. Crowley must be in Kansas City during the period August 27-30 (and possibly longer) for that trial. PPL needs Mr. Crowley to analyze the Board's cost and revenue calculations, and its workpapers, and PPL may include a Crowley verified statement with its petition for reconsideration. An extension of the deadline for that petition is needed to permit the required analysis to be performed.

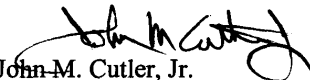
Material error is a recognized basis for reopening decisions, but 20 days and 20 pages are inadequate to permit PPL to "state in detail the nature of and reasons for the relief requested," particularly with a decision of this importance. The Board's August 20 Decision contains little explanation, but its impact is far-reaching. At best, captive shippers located on lines with limited densities will find it difficult or impossible to satisfy the Board's new test. Many shippers may find their rail rates effectively deregulated as a result of the August 20 Decision.

² Coal Rate Guidelines -- Nationwide, 1 I.C.C. 2d 520 (1985), aff'd. sub nom. Consolidated Rail Corp. v. United States, 812 F.2d 1444 (3d Cir. 1987).

Because the decision's approach to the stand-alone cost constraint is both significant and a departure from prior applications of the constraint in coal rate cases, PPL (and BNSF, in any reply it may file) should be afforded additional time, and a more generous page limit, to permit fuller analyses of the issues presented.

For the foregoing reasons, the Board should extend the deadline for PPL's petition for reconsideration to 40 days from the date of the Decision, and expand the page limit from 20 pages to 40 pages.

Respectfully submitted,


John M. Cutler, Jr.
McCarthy, Sweeney & Harkaway, P.C.
Suite 600
2175 K Street, N.W.
Washington, DC 20037
(202) 775-5560

Attorney for PPL Montana, LLC

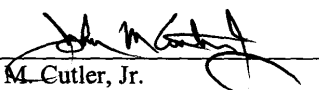
Dated: August 22, 2002

CERTIFICATE OF SERVICE

I hereby certify that I have, this 22d day of August, 2002, caused a copy of this

Motion to be served by messenger delivery on counsel for Defendant BNSF as follows:

Anthony J. LaRocca, Esq.
Step toe & Johnson, LLP
1330 Connecticut Avenue, N.W.
Washington, DC 20036


John M. Cutler, Jr.