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NORTH DAKOTA GRAIN DEALERS ASSOCIATION

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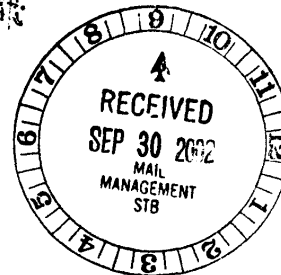
September 27, 2002

206280

FILED

SEP 30 2002

SURFACE
TRANSPORTATION BOARD



The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street N.W.
Washington, DC 20423

Dear Mr. Williams:

Enclosed is the original, ten copies and floppy disk of our PETITION OF NORTH DAKOTA GRAIN DEALERS ASSOCIATION FOR CLARIFICATION OR, ALTERNATIVELY, RECONSIDERATION OF THE DECISION SERVED AUGUST 20, 2002 in Docket No. 42054, PPL Montana LLC vs. Burlington Northern Santa Fe Railway Company.

Enclosed is our check for the \$150 filing fee for a petition for reconsideration. We are requesting that you refund this amount if the Board determines not to accept or act on our petition for reconsideration.

Thank you for your attention to these matters.

Sincerely,

Steven D. Strege
Executive Vice President

ENTERED
Office of Proceedings

SEP 30 2002

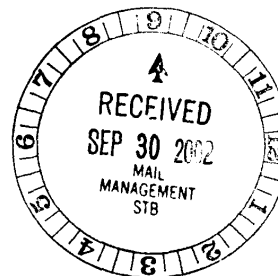
Enclosures

Part of
Public Record

Chc/STB/ltr w/petition for reconsideration

206280

BEFORE THE
SURFACE TRANSPORTATION BOARD



FILED

SEP 30 2002

DOCKET NO. 42054

SURFACE
TRANSPORTATION BOARD

PPL MONTANA, LLC

v.

THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY

PETITION OF NORTH DAKOTA GRAIN DEALERS ASSOCIATION
FOR CLARIFICATION OR, ALTERNATIVELY,
RECONSIDERATION OF THE DECISION
SERVED AUGUST 20, 2002

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ENTERED
Office of Proceedings

SEP 30 2002

Part of
Public Record

SURFACE
TRANSPORTATION BOARD

Steven D. Stregge
Executive Vice President
North Dakota Grain Dealers Association
118 Broadway
606 Black Building
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Dated: September 27, 2002

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. 42054

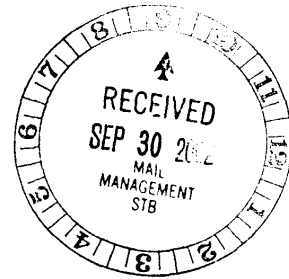
PPL MONTANA, LLC

v.

THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY

PETITION OF NORTH DAKOTA GRAIN DEALERS ASSOCIATION
FOR CLARIFICATION OR, ALTERNATIVELY,
RECONSIDERATION OF THE DECISION
SERVED AUGUST 20, 2002

North Dakota Grain Dealers Association ("NDGDA") is an incorporated trade association whose members operate over 350 grain elevators in the State of North Dakota. As explained in NDGDA's accompanying Petition for Leave to Intervene, NDGDA grain elevator members rely heavily on rail service to market wheat, the principal crop grown in North Dakota, and pay rail rates that are well above the maximum rate reasonableness jurisdictional threshold level of 180 percent of variable costs. Members of NDGDA, and NDGDA on behalf of its members, currently are considering the possibility of instituting one or more proceedings to obtain relief from what they regard as unreasonably high rail rates.



Some members of NDGDA operate grain elevators that are located on high-density main railroad lines, and others operate grain elevators that are located on branch or feeder lines that connect with the main lines. The branch or feeder line elevators may be located within a few miles of the main line or may be located farther away. In either case, the rail rates under which wheat moves from these elevators -- whether on main lines or on branch lines -- are unitary rates that apply from origin to destination. In some cases, the rates from branch line elevators are the same as those from nearby main line elevators to given destinations for like shipments. The rate structure is entirely within the control of the carriers.

The Board's Decision of August 20, 2002 in this proceeding (the "Decision") finds that the complainant, PPL Montana, LLC failed to establish that the challenged coal rates of The Burlington Northern and Santa Fe Railway Company ("BNSF") are unreasonably high, even though BNSF was found to have market dominance over those rates. PPL, which elected to rely on a stand-alone cost presentation ("SAC"), constructed a hypothetical stand-alone railroad ("SARR") that was a unitary main line that (beginning at its southern-most point) extended in a north-south direction and thence in an east-west direction. Most, but not all, of the coal mines served by this SARR were located on the north-south segment, but the east-west segment also contains a branch line that originates coal.

For reasons unexplained in the Decision, the Board concluded that this SARR "can be viewed in two distinct parts" (Slip op. at 7); and concluded that the "western part" of the SARR would not be self-sustaining and would require "an improper cross-subsidization" of traffic moving over that segment. For this reason alone, PPL did not prevail.

NDGDA has had some preliminary conversations with consultants to try to determine whether the Decision is likely to mean in most or all cases that grain elevator branch lines and the higher density main lines with which they connect are likely to be viewed as "two distinct parts" for purposes of an SAC analysis. If that is the case, a grain elevator situated on a branch line might be unable to prevail in a SAC complaint.¹

There is no test in the Decision to allow a potential SAC complainant to determine whether any stand-alone railroad that it may construct to establish a maximum reasonable rate consists of "segments" that the Board would regard as "two distinct parts." The rate assailed in the complaint is a unitary rate that applies over both the "north-south" and "east-west" segments of the PPL stand-alone railroad. BNSF's unitary rate led to a jurisdictional market dominance finding. Apparently, a defendant railroad can quote a unitary rate for market

¹ NDGDA recognizes that, as an alternative to SAC complaints, a complainant may rely on the so-called "simplified" methodology established by the Board in Ex Parte No. 347 (Sub-No. 2), Rate Guidelines -- Non-Coal Proceedings (December 31, 1996). However, no case has been decided under the "simplified" procedures, in part reflecting the highly uncertain outcome of those proceedings. Because the "simplified" procedures rely on "benchmarks" which are to be evaluated by the Board in some undefined manner, uncertainty regarding the outcome of a "simplified" case is a deterrent to the use of those procedures.

dominance purposes that thereafter can be viewed as "segmented" for stand-alone costing purposes.

NDGDA is at a loss to determine precisely what it was about the PPL stand-alone railroad that caused the Board to conclude that it "can be viewed in two distinct parts" and to conduct a cross-subsidy analysis of one or both of those parts. One possibility is that the Board internally evaluated many aspects of the PPL stand-alone railroad and finally concluded that the east-west segment would not be self-sustaining without an improper cross-subsidy. Another alternative may be that the Board simply looked at a map of the PPL stand-alone railroad and concluded that it geographically appeared to be comprised of two segments.

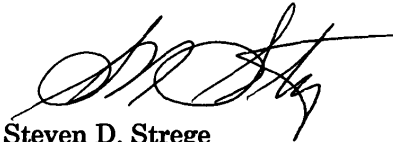
The Board should identify the characteristics of a stand-alone railroad that leads the Board to conclude that it is a railroad consisting of "two distinct parts" and to undertake a cross-subsidization analysis of one or both of those parts. NDGDA estimates that a SAC case will cost \$1 million, more or less, if confined to a single traffic pattern. That type of expenditure has a chilling effect on rate cases as it is, and will be even a greater deterrent if the outcome is dependent upon a "segmentation" test that has not been defined by the Board. Unless the Board is willing and able to indicate clearly how a potential complainant would determine when a stand-alone railroad consists of "two distinct parts," grain elevators in North Dakota, and perhaps other potential complainants in North Dakota or elsewhere, may be required to conclude that a maximum reasonable rate complaint is too risky an undertaking. In an

industry, such as the grain industry in North Dakota, where considerable traffic originates on branch lines at elevator facilities that are considering seeking relief from rates that are 270-400 percent of variable costs, new uncertainties regarding the applicable regulatory standards will deter complaints.

If there are prior cases in which the Board has set forth the test for determining when a stand-alone railroad is comprised of two or more "distinct parts" susceptible to cross-subsidization, NDGDA requests the Board to identify those decisions. If, on the other hand, the PPL Decision is, as NDGDA believes, the first decision to rely on an actual "segmentation" analysis, then NDGDA requests the Board to explain the basis on which a prospective segmentation determination can be made by a potential complainant.

Alternatively, NDGDA respectfully urges the Board to rescind its segmentation approach.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading has been served on all parties of record this 27th day of September 2002, by first-class mail, postage prepaid.


Steven D. Strega