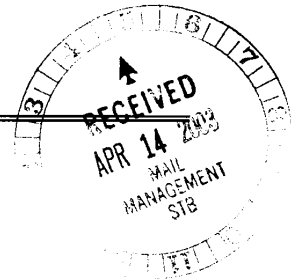


207622



Docket No. 42056

Its Attorneys

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

TEXAS MUNICIPAL POWER AGENCY,	)	
-------------------------------	---	--

Complainant,	)	
--------------	---	--

v.	)	Docket No. 42056
----	---	------------------

THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY,	)	
--	---	--

Defendant.	)	
------------	---	--

**PETITION OF THE WESTERN COAL TRAFFIC
LEAGUE FOR LEAVE TO INTERVENE**

Pursuant to 49 C.F.R. § 1112.4, the Western Coal Traffic League (“WCTL”) hereby petitions the Board for leave to intervene in the above-referenced proceeding for purposes of seeking reconsideration of two aspects of the Board’s decision served March 24, 2003 (“Decision”). WCTL’s intervention will not unduly disrupt the schedule for filing verified statements (the record has already been completed), and would not unduly broaden the issues raised in this proceeding. See 49 C.F.R. § 1112.4(a).

WCTL seeks reconsideration as to two issues arising from the Decision that have widespread applicability and are of substantial concern to western coal shippers generally. These issues are: (i) the Board’s refusal to prescribe rates for service from all of the Powder River Basin (“PRB”) mines covered by the applicable common carrier

pricing authority (see Decision at 38); and (ii) the Board's refusal to require Defendant The Burlington Northern and Santa Fe Railway Company ("BNSF") to offer rates for service in shipper-provided railcars (see Decision at 9). If its petition to intervene is granted, WCTL requests the Board to accept and consider its accompanying petition for reconsideration of the Decision with respect to these two issues.

In support of its petition, WCTL respectfully states as follows:

1. Statement Regarding Petitioner's Interest in the Proceeding (49 C.F.R. § 1112.4(b)(1))

WCTL is a voluntary association formed in 1976 whose regular membership is composed of shippers and receivers of coal mined west of the Mississippi River.¹ WCTL is the only association composed exclusively of those who ship, receive, and pay the applicable charges on high-volume movements of western coal. WCTL members ship in excess of 100 million tons of western origin coal annually.

WCTL's members depend upon their ability to solicit coal supply bids from a number of different sources, and will be harmed in commercial negotiations with both coal suppliers and railroads if the Board sharply limits their ability to obtain reasonable rates from a variety of different origins. Likewise, WCTL's members have invested

¹ WCTL members include: Alliant Energy; Arizona Electric Power Cooperative, Inc.; Associated Electric Cooperative, Inc.; Center Point Energy; Central Louisiana Electric Company, Inc.; City of Austin, Texas; City Public Service Board of San Antonio; Kansas City Power & Light Company; Lower Colorado River Authority; MidAmerican Energy Company; Minnesota Power; Nebraska Public Power District; NRG Power Marketing Inc.; Omaha Public Power District; Texas Municipal Power Agency; Westar Energy; Wisconsin Public Service Corporation; and Xcel Energy.

considerable sums in private railcar fleets, and will experience significant harm if the Board permits rail carriers to decline to provide common carrier rates for service in shipper-provided cars. This result would burden WCTL's members with the costs of their existing railcar fleets in the event that rail carriers decline to provide service in shipper cars.

2. Statement as to Whether Petitioner Supports or Opposes the Relief Sought or the Action Proposed or is Otherwise Concerned with the Issues Presented in the Proceeding (49 C.F.R. § 1112.4(b)(2))

As indicated in the accompanying petition for reconsideration, WCTL supports the relief that Texas Municipal Power Agency ("TMPA") has sought with respect to: (a) the prescription of rates from multiple coal origins – notwithstanding the Board's new "insufficient information" standard (see Decision at 38); and (b) the obligation of rail carriers to establish rates for coal transportation service in shipper-supplied railcars (see Decision at 9). WCTL understands that TMPA is filing its own petition for reconsideration of these and other issues.

3. Statement Regarding Petitioner's Request for Relief (49 C.F.R. § 1112.4(b)(3))

As set forth in greater detail in its accompanying petition for reconsideration, WCTL requests that the Board reconsider and reverse its decision with respect to the two subject issues. In particular, WCTL requests that the Board: (i) prescribe rates for coal movements from all PRB mines to TMPA's Gibbons Creek plant

for which TMPA submitted variable cost data; and (ii) find that BNSF is obligated to publish common carrier rates to TMPA for movement in shipper-supplied railcars.

* * *

The Board routinely grants petitions to intervene in circumstances where, as here, the petitioner demonstrates that it has an interest in the proceeding and intervention will not unduly broaden the issues. See, e.g., Finance Docket No. 34003, *The Burlington Northern and Santa Fe Ry. – Construction and Operation Exemption – Seadrift and Kamey, TX*, Decision served February 14, 2001; Finance Docket No. 33782, *Entergy Arkansas and Entergy Rail – Construction and Operation Exemption – White Bluff to Pine Bluff, AR*, Decision served June 30, 2000; Docket No. AB-33 (Sub-No. 118X), *Union Pacific R.R. – Abandonment Exemption – In El Paso County, CO*, Decision served June 23, 1998.

WHEREFORE, WCTL respectfully requests that the Board grant this petition to intervene and consider WCTL's accompanying petition for reconsideration.

Respectfully submitted,

WESTERN COAL TRAFFIC LEAGUE

OF COUNSEL:

Slover & Loftus
1224 Seventeenth Street, N.W.
Washington, DC 20036

Dated: April 14, 2003

By: C. Michael Loftus 
Andrew B. Kolesar III
Peter A. Pfohl
1224 Seventeenth Street, NW
Washington, DC 20036
(202) 347-7170

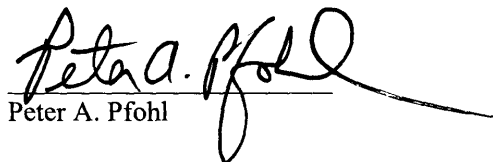
Its Attorneys

CERTIFICATE OF SERVICE

I hereby certify that on April 14, 2003, I caused copies of the foregoing
Petition for Leave to Intervene to be served by hand upon all parties of record in this
proceeding, as follows:

For Complainant: Kelvin J. Dowd
Slover & Loftus
1224 Seventeenth Street N.W.
Washington, D.C. 20036

For Defendant: Samuel M. Sipe, Jr.
Anthony J. LaRocca
Steptoe & Johnson
1330 Connecticut Ave., N.W.
Washington, D.C. 20036


Peter A. Pfohl