

206105

SURFACE TRANSPORTATION BOARD

STB Docket No. 42054



PPL MONTANA, LLC

v.

THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY

**Defendant's Reply to Motion of PPL Montana, LLC
For Extension of Deadline for Petition for Reconsideration**

**ENTERED
Office of Proceedings**

AUG 26 2002

**Part of
Public Record**

Defendant The Burlington Northern and Santa Fe Railway Company (BNSF) hereby replies to the August 22, 2002 Motion of PPL Montana, LLC (PPL) For Extension of Deadline for Petition for Reconsideration. In its Motion, PPL seeks a 20-day extension of the deadline established under 49 CFR §1115.3 for filing a petition for reconsideration of the Board's August 20, 2002 decision in this case. PPL also seeks authorization to file a 40-page petition, double the page limit set by the Board's rules. For the reasons set out below, BNSF believes that a brief extension of time may be appropriate to accommodate Mr. Crowley's schedule, but it does not believe that a 20-day extension of the deadline is justified or that any expansion of the 20-page limit on petitions for reconsideration would be appropriate.

First, the Board's August 20, 2002 decision is less complex or wide-ranging than most stand-alone cost decisions. The Board's August 20, 2002 decision focused on a single, relatively narrow issue -- PPL's misuse of cross-subsidies. While the Board also addressed a few construction cost issues, it found it unnecessary to rule on numerous other complex and disputed SAC issues. As a result, the time and effort required to analyze and understand the Board's

decision here should be less than that required to evaluate more wide-ranging SAC decisions, and the scope of any appeal of the Board's decision on reconsideration should also be more narrow. If a waiver of the procedural rules governing reconsideration were appropriate here, it is difficult to conceive of a stand-alone cost decision in which a similar waiver would not be justified.

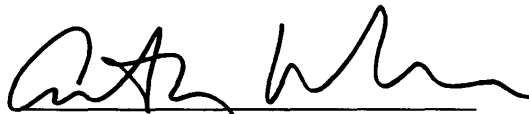
Second, PPL has already had at least three opportunities to address the cross-subsidy issue that is the subject of the Board's decision. BNSF's reply evidence addressed the cross-subsidy issue extensively and PPL's rebuttal filing responded in detail to BNSF's presentation. After the parties' evidence was filed, BNSF once again addressed the cross-subsidy issue in a motion to consolidate the *PPL* case with other pending rate reasonableness cases and PPL replied to that motion with an extensive discussion of its position on cross-subsidy, including a statement by PPL's economist, Professor Borts. Finally, the parties once again presented their views on cross-subsidy in their final briefs on the evidence in this case. PPL can hardly claim to need additional time and space to present argument on an issue that has been at the heart of this case all along.

Third, PPL claims that it needs additional time and space to address the Board's August 20, 2002 decision because the Board established a new "segment stand-alone cost test" that will have far-reaching implications. PPL mischaracterizes the Board's decision. The Board's cross-subsidy analysis was a legitimate response to PPL's aggressive and unprecedented SAC assumptions, particularly its treatment of movements originating in the Powder River Basin (PRB) and interchanged with the residual defendant. PPL's fanciful stand-alone railroad handled only one movement in local service -- the issue traffic -- and the majority of its traffic moved no more than 26 miles on the stand-alone railroad. The Board simply demonstrated that PPL's

traffic selection was not made for the purpose of legitimate cost sharing but to create an impermissible cross-subsidy.

Therefore, BNSF does not believe that PPL's request for a 20-day extension of time or an expansion of the applicable page limits should be granted. Nevertheless, BNSF does not oppose a brief extension of time to accommodate Mr. Crowley's schedule. PPL states that Mr. Crowley may need to be in Kansas City for a few days at the end of August and BNSF is not opposed to an extension of time that corresponds to Mr. Crowley's absence. However, BNSF does not believe that PPL has presented a legitimate basis for any further waiver of the Board's procedural rules.

Respectfully submitted,



Richard E. Weicher
Michael E. Roper
Burlington Northern and Santa Fe
Railway Company
2500 Lou Menk Drive
Fort Worth, TX 76131
(817) 352-2353

Samuel M. Sipe, Jr.
Anthony J. LaRocca
Steptoe & Johnson LLP
1330 Connecticut Avenue, N.W.
Washington, DC 20036
(202) 429-6486

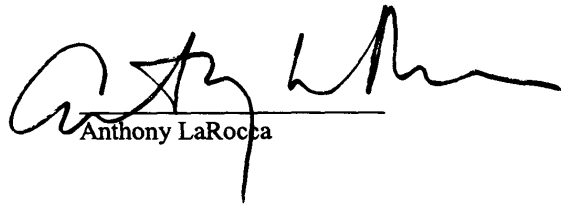
**Attorneys for The Burlington Northern
and Santa Fe Railway Company**

August 23, 2002

CERTIFICATE OF SERVICE

I hereby certify that on August 23, 2002, a true and correct copy of the Final Brief of The
Burlington Northern and Santa Fe Railway Company was served by hand on:

John M. Cutler, Jr.
McCarthy, Sweeney & Harkaway, P.C.
Suite 600
2175 K Street, N.W.
Washington, D.C. 20037



Anthony LaRocca