

SERVICE DATE – NOVEMBER 22, 2022

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. NOR 42173

OMAHA PUBLIC POWER DISTRICT v. UNION PACIFIC RAILROAD COMPANY

Digest:<sup>1</sup> This decision assigns and authorizes an administrative law judge to address subsequent discovery matters.

Decided: November 21, 2022

On July 22, 2022, OPPD filed a complaint pursuant to 49 U.S.C. §§ 11701 and 11704 challenging the reasonableness of a charge assessed by Union Pacific Railroad Company (UP) under the “UP Reciprocal Switching Circular” for the transportation of unit trains<sup>2</sup> of coal in shipper-supplied rail cars to OPPD’s North Omaha Power Station in Omaha, Neb., from UP’s interchange with BNSF Railway Company (BNSF) at BNSF’s Gibson Yard in Omaha (Gibson Yard Interchange), and for the return of the empty unit trains by UP to the Gibson Yard Interchange. (Compl. 1.) OPPD alleges that the charge is a common carrier rate for transportation and asks the Board to determine that the alleged rate is unreasonable, prescribe a reasonable rate, and award reparations for past overcharges.

The Board has signed a Memorandum of Understanding with the Federal Mine Safety and Health Review Commission to employ the services of administrative law judges (ALJs) on a case-by-case basis to perform discrete, Board-assigned functions such as adjudicating discovery disputes in cases pending before the Board. The Board hereby assigns and authorizes Administrative Law Judge Thomas McCarthy to entertain and rule upon discovery matters and to resolve initially any disputes concerning discovery in this proceeding that are filed after the service date of this decision.<sup>3</sup> The parties are directed to send copies of all their filings and documents in this proceeding, including submissions already filed with the Board, to Judge

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<sup>1</sup> The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. See Pol’y Statement on Plain Language Digs. in Decisions, EP 696 (STB served Sept. 2, 2010).

<sup>2</sup> OPPD states that, in the context of the complaint, “unit train” means a train of between 135 and 152 shipper-provided aluminum rail cars. (Compl. 1 n.1.)

<sup>3</sup> This decision does not impact UP’s renewed motion for a protective order filed on October 11, 2022, which remains pending before the Board.

McCarthy at 1331 Pennsylvania Avenue, N.W., Suite 520N, Washington, DC 20004-1710, and at [ctolbert@fmshrc.gov](mailto:ctolbert@fmshrc.gov) and [vrijo@fmshrc.gov](mailto:vrijo@fmshrc.gov).

It is ordered:

1. The Board hereby ratifies the loan of Administrative Law Judge Thomas McCarthy to the office of administrative law judge in the Surface Transportation Board, under terms and conditions prescribed in 5 U.S.C. § 3344 and 5 C.F.R. § 930.208, and the Board today approves his appointment as the Board's own action under the Constitution. Judge McCarthy is assigned to entertain and rule upon discovery matters and to resolve initially any disputes concerning discovery in this proceeding that are filed after the service date of this decision.

2. In addition to filing pleadings with the Board and serving copies on parties of record, parties must send a copy of all filings and documents, including submissions already filed with the Board, to Judge McCarthy at 1331 Pennsylvania Avenue, N.W., Suite 520N, Washington, DC 20004-1710, and at [ctolbert@fmshrc.gov](mailto:ctolbert@fmshrc.gov) and [vrijo@fmshrc.gov](mailto:vrijo@fmshrc.gov).

3. Judge McCarthy will be added to the service list in this proceeding and a copy of this decision will be served upon him.

4. A copy of this decision will be served on the U.S. Office of Personnel Management (OPM), at Human Resource Solutions, ALJ Program Office, 1900 E Street N.W., Suite 2469, Washington, DC 20415-9400 and electronically at [karyn.lusby@opm.gov](mailto:karyn.lusby@opm.gov). Judge McCarthy shall send a copy of the notice or order that constitutes the final disposition of his assignment of this case to OPM at the above address.

5. This decision is effective on its service date.

By the Board, Board Members, Fuchs, Hedlund, Oberman, Primus, and Schultz.