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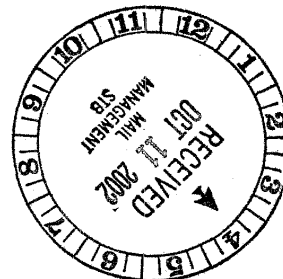
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October 11, 2002

VIA HAND-DELIVERY

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
Case Control Unit
1925 K Street, N.W.
Washington, D.C. 20423



Re: Ex Parte No. 542 (Sub-No. 4)
Regulations Governing Fees for Services Performed in Connection
with Licensing and Related Services-2002 New Fees

Dear Secretary Williams:

Enclosed for filing in the above-referenced proceeding please find an original and ten copies of the Comments of the Western Coal Traffic League.

Kindly acknowledge receipt of these Comments by date-stamping and returning to our messenger the enclosed duplicate of this letter and the pleading..

Thank you for your attention to this matter.

Sincerely,

Christopher A. Mills

ENTERED
Office of Proceedings

OCT 11 2002

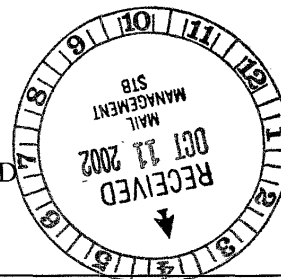
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Public Record

CAM/dhb
Enclosures

cc: Known parties of record

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BEFORE THE
SURFACE TRANSPORTATION BOARD



REGULATIONS GOVERNING FEES FOR)
SERVICES PERFORMED IN CONNECTION) STB Ex Parte No. 542 (Sub-No. 4)
WITH LICENSING AND RELATED)
SERVICES-2002 NEW FEES)

COMMENTS OF THE
WESTERN COAL TRAFFIC LEAGUE

ENTERED
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Part of
Public Record

OF COUNSEL:

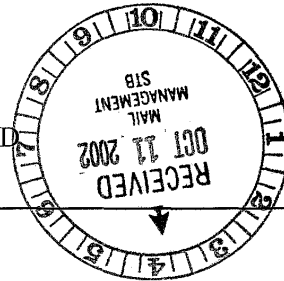
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Dated: October 11, 2002

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BEFORE THE
SURFACE TRANSPORTATION BOARD



REGULATIONS GOVERNING FEES FOR)
SERVICES PERFORMED IN CONNECTION)
WITH LICENSING AND RELATED)
SERVICES-2002 NEW FEES)

STB Ex Parte No. 542 (Sub-No. 4)

**COMMENTS OF THE
WESTERN COAL TRAFFIC LEAGUE**

The Western Coal Traffic League ("WCTL") submits the following comments in response to the Board's Decision served August 29, 2002 ("Decision"), insofar as the Decision proposes new fees for certain services provided by the Board for which no fee currently exists.

IDENTITY AND INTEREST

WCTL is a voluntary association whose membership is comprised of organizations which purchase and transport coal mined west of the Mississippi River.¹ WCTL members transport over 100 million tons of coal annually, nearly all of which

¹ WCTL members include: Alliant Energy; Arizona Electric Power Cooperative, Inc.; Associated Electric Cooperative, Inc.; 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; Mid American Energy Company; Minnesota Power; Nebraska Public Power District; Northern States Power; Omaha Public Power District; Reliant Energy; Texas Municipal Power Agency; Western Resources, Inc.; and Wisconsin Public Service Corporation.

moves by rail. WCTL has actively participated in numerous proceedings conducted by the Board and its predecessor that affect the movement of coal by rail.

Several of WCTL's members have been parties to rate cases before the Board and its predecessor, and others may be in the future. Accordingly, WCTL and its members have a strong interest in the Board's proposal to establish new fees, particularly those related to discovery disputes in maximum-rate complaint cases.

THE BOARD'S PROPOSAL

The Board proposes two new fees that are of concern to WCTL, namely:

1. Fee Item (64)(i) Proposed fee of \$2,300 for filing a motion to compel discovery in complaint cases under the *Coal Rate Guidelines*.
2. Fee Item (12)(iv) Proposed fee of \$10,100 for a request for determination of a dispute involving a rail construction that crosses the line of another carrier under 49 U.S.C. §10901(d).

WCTL's comments are directed to each of these proposals.

MOTION TO COMPEL FEE

Fee item 64(i) proposes a fee of \$2,300 for filing a motion to compel in maximum reasonable rate cases, which would be assessed against the party that loses the motion. WCTL notes that elsewhere the Board is attempting to offset the cost of motions to compel by providing an expedited resolution of such motions,² thereby reducing one of

² See Ex Parte No. 638, Procedures to Expedite Resolution of Rail Rate Challenges to Be Considered Under the Stand-Alone Cost Methodology (STB served September 4, 2002) at 4-5.

the major sources of delays in the rate case process. Consequently, WCTL supports the Board's proposal, with certain modifications detailed below.

First, WCTL urges the Board not to assess a fee for unopposed motions to compel, the most common example being a motion to compel production of rail transportation contracts. Typically, a defendant railroad is obliged by the terms of such contracts not to disclose them without an appropriate order by the Board, but otherwise does not oppose the granting of such a motion. Since the railroad is certain to "lose" a motion it does not oppose, only a small amount of the Board's time should be consumed processing such a motion. Consequently, the \$2,100 fee ought not to apply.³

The Board also has sought comments on how the fee shifting process should work when the Board grants a motion to compel in part and denies it in part, an occurrence which is not uncommon.⁴ WCTL suggests that split-decisions costs should be borne equally by the parties. The fee itself is not oppressive, and an "equal pay" rule eliminates any need for the Board to attempt to make a subjective assessment of the relative strength of the positions taken by the parties, which could be open to endless challenge.

³ As an alternative, WCTL proposes here, and in its comments in Ex Parte No. 638 filed this day, that the Board modify its standard protective order and accompanying ruling to include an order directing the production of all contracts that would be discoverable without formal Board action, but for the requirements of confidentiality or disclosure clauses in the contracts themselves. Such an innovation would eliminate the need for motions to compel entirely, saving time and resources for the Board, its staff and litigating parties.

⁴ See, e.g., Docket No. 42072, Carolina Power & Light Co. v. Norfolk Southern Railway Co. (STB served August 26, 2002); STB Docket No. 42058, Arizona Electric Power Cooperative, Inc. v. The Burlington Northern and Santa Fe Railway Co. and Union Pacific Railroad Co. (STB served September 11, 2002).

RAIL LINE CROSSING FEE

Fee item 12(iv) proposes a fee of \$10,100 for resolution of a petition to determine the fee payable by one railroad to construct a new rail line across the line of another railroad. WCTL does not oppose this proposal. However, WCTL urges the Board to modify its proposal by shifting the fee to the opposing railroad if the Board grants the crossing rights.

The Board has repeatedly noted that one competitive option that many shippers have, consistent with the national rail transportation policy (49 U.S.C. 10101), is to build out to another rail carrier.⁵ The Board has consistently protected such potential build-outs as part of its merger conditions.⁶ Given the acknowledged public interest and benefits of fostering competition in such a manner, WCTL respectfully suggests that shifting the fee to the opposing railroad, if the crossing rights are granted, bolsters that important competitive option. Moreover, the fee shifting is equitable, because experience

⁵ Finance Docket No. 34060, Midwest Generation, LLC—Exemption from 49 U.S.C. 10901—For Construction in Will County, IL (STB served March 20, 2002); Finance Docket No. 33862, Public Service Company of Colorado—Construction Exemption—Pueblo County, CO (STB served August 23, 2000); Finance Docket No. 33387, Southern Electric Railroad Company—Construction and Operation Exemption—West Jefferson, AL (STB served July 16, 1997); Finance Docket 32630 (Sub-No. 1), Omaha Public Power District—Petition Under 49 U.S.C. 10901(D) (STB served August 1, 1996 and ICC served November 30, 1995); Finance Docket No. 31656, Joppa and Eastern Railroad Company—Construction Exemption—Joppa, IL (ICC served July 5, 1990).

⁶ See Union Pacific Corporation, Union Pacific Railroad Company, and Missouri Pacific Railroad Company--Control and Merger--Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and The Denver and Rio Grande Western Railroad Company, 1 S.T.B. 233, 420, 429 (1996).

shows that most incumbent carrier opposition to a crossing (and/or the proposed compensational terms) usually has delay as its principal objective.

CONCLUSION

WCTL requests that the Board modify the proposal set forth in its Decision in the manner described above.

Respectfully submitted,

THE WESTERN COAL TRAFFIC
LEAGUE

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