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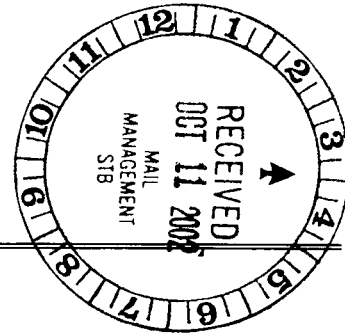
BEFORE THE
SURFACE TRANSPORTATION BOARD

Part of
Public Record

206388

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 BURLINGTON NORTHERN AND
SANTA FE RAILWAY COMPANY

The Burlington Northern and Santa Fe Railway Company ("BNSF") hereby submits comments in response to the Board's August 29, 2002 Notice of Proposed Rulemaking. In that Notice, the Board proposes, among other things, to amend its regulations at 49 C.F.R. part 1002 to establish fees for services provided by the Board for which no fee currently exists. BNSF joins in the comments of the Association of American Railroads with respect to the Board's proposal to establish a fee (to be promulgated as 49 C.F.R. § 1002.2 (f)(64)(i)) for filing motions to compel discovery in formal complaint proceedings under 49 U.S.C. § 10704(c)(1). BNSF's comments here are limited to requesting that the Board correct a reference to the holding of the *West Texas Utilities Company v. Burlington Northern Railroad Company*, STB Docket No. 41191 (ICC served Aug. 24, 1994) (hereinafter "*WTU v. BN*"), contained at page 8 of the Notice.

In discussing Fee Item 56(v), the Notice proposes to establish a fee to be paid by shippers for requests that the Board order a railroad to establish a common carrier rate. In discussing that

proposal, the Board notes that shipper requests for the establishment of a common carrier rate have occurred in the past and further states that “[t]he carrier’s duty to establish an appropriate rate was enforced in [*WTU v. BN*].” BNSF does not dispute that the governing statute obligates a common carrier to establish common carrier rates under certain circumstances, but the Board’s reference to the ICC’s decision in *WTU v. BN* in connection with that obligation is mistaken and could cause confusion if not corrected. It is true that the ICC ordered the Burlington Northern Railroad (BN), a predecessor of BNSF, to establish common carrier rates, but BN appealed that order to the U.S. Court of Appeals for the District of Columbia Circuit, which found that the ICC’s order was unlawful. *See BN v. STB*, 75 F.3d 685 (D.C. Cir. 1996). It is therefore mistaken and potentially misleading for the Board to assert that the ICC’s 1994 order to BN enforced a common carrier’s obligation to establish a common carrier rate. The Notice should be revised to correct this mistake.

Respectfully submitted,

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


Samuel M. Sipe, Jr.
Anthony J. LaRocca
Cynthia L. Quarterman
Steptoe & Johnson LLP
1330 Connecticut Avenue, N.W.
Washington, DC 20036
(202) 429-3000

Attorneys for Defendant
The Burlington Northern and
Santa Fe Railway Company

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