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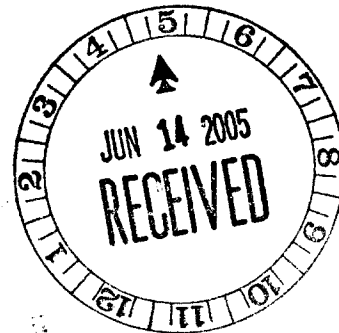
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June 14, 2005

VIA HAND DELIVERY

Mr. Vernon A. Williams, Secretary
Surface Transportation Board
1925 K Street, N.W., 7TH Floor
Washington, Dc 20423-00001

ENTERED
Office of Proceedings
JUN 14 2005
Part of
Public Record



Re: BP Amoco Chemical Company v. Norfolk Southern Railway Company,
STB Docket No. 42093

Dear Mr. Williams:

Enclosed for filing are the original and 10 copies of "highly confidential" and "public" versions of the Appeal to Chairman of Decision Denying, In Part, Access to Costed Waybill Sample Requested Pursuant to 49 C.F.R. Part 1244 on behalf of BP Amoco Chemical Company in the above-referenced proceeding.

Respectfully submitted,

Michael F. McBride

Michael F. McBride

Attorney for BP Amoco Chemical Company

Enclosure

cc: Mr. Tom O'Connor
Mr. Luis M. Sierra
Mr. Jeffrey Foshee
George A. Aspatore, Esq.
G. Paul Motes, Esq.

PUBLIC

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB DOCKET No. 42093

BP AMOCO CHEMICAL COMPANY,
Complainant,

v.

NORFOLK SOUTHERN RAILWAY COMPANY,
Respondent.

APPEAL TO CHAIRMAN OF DECISION DENYING, IN PART, ^{ENTERED}Office of Proceedings
ACCESS TO COSTED WAYBILL SAMPLE
REQUESTED PURSUANT TO 49 C.F.R. PART 1244

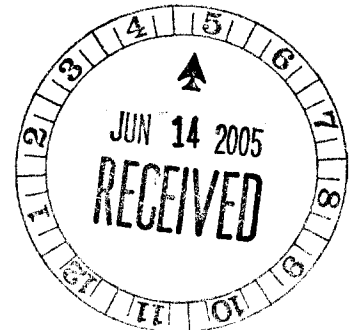
Introduction

Pursuant to 49 C.F.R. § 1244.9(d)(4)(iii), Complainant BP Amoco Chemical Company ("BP") hereby appeals to the Chairman the denial, in part, of BP's request for access to the entire costed Waybill Sample for NS's traffic, for use in STB Docket No. 40293.

Access to the entire costed Waybill Sample was requested by letter dated May 25, 2005 by BP's consultant, Snavelly, King, Majoros, O'Connor & Lee, as BP's consultant. Access would also be provided, of course, to BP's counsel. NS requested identical access on May 31, 2005.

The Board's staff granted access in part, and denied access in part. Specifically, the Board granted access to all chemical rates in the Waybill Sample that are equal to or exceed 180% of variable costs. Apparently, the Board's staff denied the request insofar as it sought access to all rates below 180% of variable costs, and to all non-chemical rates above 180% of variable costs.¹

¹ Apparently, the Staff's denial of access to part of the costed Waybill Sample is without prejudice to access to the entire sample for use in the litigation, if the ongoing mediation does not succeed, because on Friday, June 10, 2005 and again on Tuesday, June 14, 2005, the Staff and Mr. O'Connor of Snavelly, King discussed acceptance of that



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Argument

The decision of the Board's staff is contrary to law. The Board is required to implement the Long-Cannon Amendment, 49 U.S.C. § 10701(d)(2) in rate-reasonableness proceedings such as this one. The Long-Cannon Amendment *requires* the Board to consider whether some rates do not contribute to "going concern value," whether other rates contribute only marginally to "going concern value," and whether one commodity or a group of commodities is paying a disproportionate share of NS's revenues.

BP does not have access to such information, because NS's rates are confidential. However, because URCS demonstrates (in Line 697) that a constant-cost markup of all of NS's rates would require that NS charge only 133% of variable costs on all traffic in order to cover all of its fully allocated costs, BP is entitled to access to the entire costed Waybill Sample to determine the extent to which NS is carrying traffic at rates below 100% of variable costs, or only marginally above 100% of variable costs, to demonstrate, if it can, that NS's rates charged to BP exceed a reasonable maximum, because they are in violation of the Long-Cannon Amendment. The only practical way to do so is with access to the entire costed Waybill Sample.

Moreover, it is patently unfair to deny BP access to NS's relatively low rates, by denying BP access to the entire costed Waybill Sample, when NS has access to all of its own rates, and can present evidence about them without access to the Waybill Sample. BP is entitled to access to the same information and evidence as NS, in order to prove its case in the manner it wishes to

portion of the costed Waybill Sample over 180% of variable costs for the mediation, and the filing of a new request for the entire costed Waybill Sample for use in the litigation (if any). However, because appeals to the Chairman are required within 10 days of the date of disposition of a Waybill Sample request (see 49 C.F.R. § 1244.9(d)(4)(iii)), this appeal is being filed to protect BP's rights, and also because access to the entire costed Waybill Sample would be useful in mediation. Access would be useful in mediation because BP believes that the Board should be encouraging NS, should it believe it needs additional revenue, to raise rates on traffic with low R/VC ratios, rather than raise rates on traffic that already bears higher R/VC ratios (such as the traffic at issue). If the traffic with lower R/VC ratios can bear the increases, it is obviously appropriate for it, rather than the higher-rated traffic, to do so, under the Long-Cannon Amendment. If the lower-rated traffic cannot bear increased rates, NS and its customers will still be better off, because the disappearance of that traffic would alleviate NS's capacity constraints, and allow it to haul more higher-rated traffic.

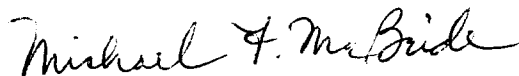
present it. This is especially true when BP seeks to prove its case under statutory factors the Board is required to consider in the Long-Cannon Amendment.

NS ought not to be permitted to raise BP's rates, which were about █% of variable costs under contract, to approximately █% of variable costs, as it has done, under the common carrier tariff filed by NS with the Board on May 26, 2005. Rather, NS ought to be required to increase rates on traffic below 133% of variable costs, now that it has capacity constraints,² before taking rate increases on captive traffic such as that at issue. BP needs to know which NS rates are below 100% and below 133%, in order to make the showing contemplated by the Long-Cannon Amendment.

Conclusion

Accordingly, staff's apparent denial of the entire costed Waybill Sample should be overturned, and BP should be given access to the entire costed Waybill Sample, to permit BP to prove that it is entitled to relief under the Long-Cannon Amendment.

Respectfully submitted,



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Attorneys for BP Amoco Chemical Company

Dated: June 14, 2005

² See Decision served June 6, 2005 at 10; May 26, 2005 NS Reply at 3. Assuming that NS and the Board are correct that NS has capacity constraints in general on its system, BP does not concede that NS has capacity constraints on its Decatur/AL-Kingsport, TN lane at issue in this proceeding.

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Docket No. 42093

BP AMOCO CHEMICAL COMPANY,
Complainant,

v.

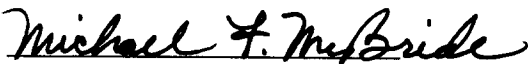
NORFOLK SOUTHERN RAILWAY COMPANY,
Respondent.

CERTIFICATE OF SERVICE

Pursuant to 49 C.F.R. 1111.3, I hereby certify that I have served, this 14th day of June, 2005, a copy of the "highly confidential" and "public" versions of the Appeal to Chairman of Decision Denying, In Part, Access To Costed Waybill Sample Requested Pursuant to 49 C.F.R. Part 1244 on behalf of BP Amoco Chemical Company, on the following counsel for Respondent Norfolk Southern Railway Company, by electronic mail, facsimile, or hand delivery, as indicated:

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