

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. 42105

DAIRYLAND POWER COOPERATIVE

v.

UNION PACIFIC RAILROAD COMPANY

Decided: September 15, 2008

In this proceeding, Dairyland Power Cooperative (Dairyland) challenges fuel surcharges collected by Union Pacific Railroad Company (UP) between January 2006 and February 2008 as an unreasonable practice under 49 U.S.C. 10702(2). Dairyland seeks the prescription of reasonable fuel surcharge practices and monetary damages under 49 U.S.C. 11704(b). In a decision served on July 29, 2008, the Board denied UP's motion to dismiss the complaint and clarified the permissible contours of such a complaint. The Board also issued a procedural schedule, lifted a prior protective order granted to UP, and granted Dairyland a protective order to facilitate discovery.

On August 29, 2008, Dairyland filed a motion to compel discovery and a motion to amend the procedural schedule. Dairyland asks the Board to direct UP to produce documents in response to 18 document production requests and to respond to four interrogatories. Dairyland also asks the Board to amend the procedural schedule by eliminating the September 12, 2008 "end of discovery" date and allowing the parties to propose a new date following the Board's ruling on the motion to compel. Finally, Dairyland asks the Board to direct UP to respond to the motion to compel within 10 days, by September 8, 2008. UP filed a reply on September 3, 2008, urging the Board to deny Dairyland's procedural motions and arguing that Dairyland has offered no basis for requiring UP to respond to the motion to compel on an expedited basis.

Dairyland has not supported its request to limit UP to 10 days to respond to the motion to compel, and this request will therefore be denied. UP's reply will be due by September 18, 2008. However, in order to give Dairyland sufficient time to formulate its opening arguments following discovery, the procedural schedule will be suspended pending the Board's ruling on Dairyland's motion to compel. The parties are asked to propose a revised procedural schedule following the Board's ruling on the motion to compel.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. UP's reply to Dairyland's motion to compel is due by September 18, 2008.
2. The procedural schedule in this proceeding is suspended pending the Board's ruling on the motion to compel.
3. This decision is effective on its date of service.

By the Board, Anne K. Quinlan, Acting Secretary.

Anne K. Quinlan
Acting Secretary