

STB Docket No. 42058, AEPCO v. BNSF and UP – Oral Argument held 11/2/04.

This case has a protracted history that has been recited by the Board in prior decisions, and by the parties in their numerous submissions. Suffice it to say that its longevity is due in large measure to the expansion and then narrowing of the complaint, but also is a result of the Board's attempts to protect due process and to develop an adequate record upon which to make a fair and informed assessment of the reasonableness of the challenged rate. Unfortunately, in this Commissioner's view, notwithstanding the Board's previous decisions and attempts to provide guidance on the proper parameters of the stand-alone cost analysis, we have not received the kind of record that this Commissioner would have hoped for, and we are, therefore, presented with a case that is in a highly unusual posture.

The most troubling issue, from my perspective, is AEPCO's use of trackage rights over the Vaughn-to-El Paso line to avoid showing the costs to the stand-alone railroad of building and maintaining that line in its SAC analysis. As the Board stated in its November 2003 decision, that is not what it contemplated when it noted in an earlier decision that the SARR could reflect the benefit of cost-sharing arrangements. More important, the Coal Rate Guidelines seem to preclude using a trackage rights arrangement over a defendant's own line. [See Coal Rate Guidelines, Nationwide, 1 I.C.C.2d 520, 543 n.60 (1985).]

Being relatively new to this case, I approach the case with that concern at the outset. I intend to listen with an open mind to all of the arguments presented today, and will make my decision based upon the entire record.