

## STB DOCKET NO. 41191

WEST TEXAS UTILITIES COMPANY  
v.  
BURLINGTON NORTHERN RAILROAD COMPANY

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*Decided March 21, 2001*

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Denied West Texas Utilities Company's petition for reconsideration and its request for oral argument.

## BY THE BOARD:

On November 27, 2000, West Texas Utilities Company (WTU) filed a petition for reconsideration of our decision in this proceeding served November 7, 2000 (*November decision*). In that decision, we held that the rate we prescribed in *West Texas Utilities Company v. Burlington Northern RR Co.*, 1 S.T.B. 638 (1996) (*West Texas*), *aff'd sub nom. Burlington N.R.R. v. STB*, 114 F.3d 206 (D.C. Cir. 1997), for movements from the Rawhide origin to WTU's electric generating station at Oklaunion, TX, had not been specifically prescribed for movements from other Powder River Basin (PRB) origins. The Burlington Northern and Santa Fe Railway Company (BNSF)<sup>1</sup> had notified the Board of its intention to increase to \$15.78 per ton, effective July 7, 2000, its common carrier rate on unit train movements of coal from the PRB. We did, however, reopen this proceeding to receive supplemental evidence concerning WTU's opposition to the \$15.78 rate and its request that we extend the rate prescription to other PRB origins. We will now deny WTU's petition to reconsider our *November decision*.

## BACKGROUND

In *West Texas*, we prescribed the maximum reasonable rate level at the point that would produce revenues equal to 180% of BN's variable cost of providing service. 1 S.T.B. at 677-78. We stated that our relief was limited to the rate from the Rawhide origin, but that WTU could ask that BN "establish appropriate rates from \* \* \* other [PRB] mines." *Id.* at 644. We added that "[w]e can

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<sup>1</sup> BNSF is the successor in interest to the Burlington Northern Railroad Company (BN).

address any rate reasonableness concerns as to those other mine origins in a subsequent decision, if necessary, after obtaining appropriate supplemental evidence tailored to those sites.” *Id.*

Subsequently, BN established the \$13.68 rate for Rawhide. At the request of WTU’s parent company, Central and South West Services, BN applied the rate of \$13.68 per ton to other PRB origins. The Rawhide mine closed in 1997, and coal from Buckskin, another PRB mine, was shipped to WTU. BNSF stated that (at least until July 7, 2000, when the \$15.78 rate was scheduled to be applied) it had continued to apply the \$13.68 rate to all PRB origins.

In our *November decision* at 4, we noted, citing *West Texas*, that the original complaint and tariff referred only to Rawhide, and that it was the focus of the complaint. We found (*id.*, footnote omitted):

that the rate prescription in *West Texas* only applied to the Rawhide mine, and, thus, under 49 U.S.C. 11101(c), BNSF may raise its rates from non-Rawhide PRB origins to \$15.78 per ton, effective July 7, 2000. BNSF does not need a Board order to modify the rate.

We also noted that, pursuant to our holding out in *West Texas*, if the parties could not voluntarily agree to a rate from non-Rawhide origins, we would make a rate reasonableness determination after taking further evidence. Accordingly, in our *November decision*, we reopened the proceeding to address the reasonableness of the \$15.78 rate, and asked the parties to file a joint motion to direct further proceedings.

#### POSITION OF THE PARTIES

In its petition for reconsideration, WTU argues that all of the PRB coal origins are located “along BNSF’s north-south line and are geographically proximate;” the Buckskin and Rawhide mines are adjacent to one another and are reached by the same spur line; and these mines have similar loading capacities and track configurations. WTU petition at 2-3 (footnote and citation omitted). WTU submits that, according to the BNSF’s *Guide To Coal Mines By Burlington Northern and Santa Fe Railway*, both Buckskin and Rawhide are described as being located 10 miles north of Gillette, WY, and are thus “in the *same* place for transportation purposes \* \* \*.” *Id.* at 3 (citation omitted, emphasis in original).

WTU contends that BNSF groups the Wyoming PRB origins for setting rates to Texas and the Southwest. WTU argues that these mines also constitute a single group for purposes of the *West Texas* rate prescription and the \$15.78

increase. WTU also asserts that both BNSF and the Union Pacific Railroad Company have tariffs that group the Wyoming PRB origins.

WTU contends, citing *Continental Oil Co. v. Atchison, Topeka & Santa Fe Ry.*, 192 I.C.C. 712 (1933) (*Continental Oil*), that a prescription for one origin in a group must apply to other origins in that group. Accordingly, WTU argues that the Board should extend the Rawhide prescription to the other Wyoming PRB origins. Even in the absence of such precedent, WTU asserts that we should have granted its petition to modify the rate prescription. It submits that not only are the transportation characteristics of the different origins the same or similar, but that BNSF's own cost evidence allegedly shows that its service costs from the different Wyoming PRB mines are basically the same. Citing *San Antonio v. Burlington Northern*, 364 I.C.C. 8876, 896 (1981) (*San Antonio*), WTU claims that the present record is sufficient to order the extension of the Rawhide rate to at least Buckskin and preferably other Wyoming PRB origins as well.

BNSF argues that its voluntary decision to apply the Rawhide prescription to other PRB origins did not broaden our rate prescription. It claims that WTU will not be prejudiced by denial of its petition because, if it challenges the reasonableness of the non-Rawhide rates, it could recover reparations for movements under the challenged rate. BNSF asserts, however, that if we were to declare that the \$13.68 Rawhide rate applied to other PRB origins, then "there would be no readily available mechanism for BNSF to recover undercharges in the event the rate of \$15.78 per ton that BNSF sought to charge were subsequently determined to be reasonable."

#### DISCUSSION AND CONCLUSIONS

We will deny WTU's petition for reconsideration.<sup>2</sup> It has not shown that the *West Texas* rate prescription should be extended to non-Rawhide PRB origins on the present record. As noted, we stated in *West Texas* that the reasonableness of rates from other mine origins could be resolved in a decision based on supplemental evidence about the specific origins. Contrary to WTU's assertion, the Rawhide and Buckskin mines, while located in the same general area, are

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<sup>2</sup> We will also deny WTU's related request for oral argument. It claims that oral argument is needed to "better illuminate[]" the issues, but the parties are capable of adequately developing the issues involved here for our consideration based on a written record.

different mines at different locations,<sup>3</sup> and our prescription by its terms was made applicable only to Rawhide. Because of WTU's concerns about the \$15.78 rate, we have reopened this proceeding to obtain such supplemental evidence. However, before the rate prescription could be extended to non-Rawhide mines, evidence is needed on whether additional resources (investment or expenses) would be necessary for the stand-alone railroad to serve these additional mines, whether there are other significant changed circumstances that would affect the rate analysis, and whether the rate resulting from the stand-alone cost test would exceed the regulatory floor for rate relief (180 percent of variable costs).

We do not find the *Continental Oil* case to be controlling. There, the ICC found that the rate prescribed for one origin in a group (Augusta, KS) was also applicable to another origin (Ponca City). In that case, however, the ICC had already recognized the origin group: "Ponca City is in the so-called Augusta, Kans., group of the Mid-continent field, which group we have recognized in this and other proceedings." 192 I.C.C. at 715. Here, we have not considered Rawhide and the other PRB origins as a group for setting common carrier rates. To the contrary, we specifically established in *West Texas* that rates for the other origins would be considered in a separate proceeding based on additional evidence. 1 S.T.B. at 644. Finally, *San Antonio* does not stand for the proposition that no further hearings are required to extend a prescription. Rather, in *San Antonio*, the ICC merely concluded that, while "a full evidentiary hearing is often appropriate" when a rate is being prescribed, a full evidentiary hearing is not required when a prescribed rate is being vacated. 364 I.C.C. at 895-96.

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

*It is ordered:*

1. WTU's petition for reconsideration and its request for oral argument are denied.
2. This decision is effective on March 23, 2001.

By the Board, Chairman Morgan, Vice Chairman Clyburn, and Commissioner Burkes.

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<sup>3</sup> According to the BNSF Powder River Division Timetable No. 3 (at 22), Rawhide is located 1.7 miles west of Eagle Butte Jct., Buckskin is located 6.6 miles west of Eagle Butte Jct., and yet a third location listed as Buckskin Siding is located 3.3 miles west of Eagle Butte Jct.