

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35557

REASONABLENESS OF BNSF RAILWAY COMPANY COAL DUST MITIGATION
TARIFF PROVISIONS

Decided: February 16, 2012

In Docket No. FD 35305, the Board found a BNSF Railway Company (BNSF) tariff intended to mitigate dispersion of coal dust from rail cars, when considered as a whole, to be an unreasonable practice. Following BNSF's issuance of a new tariff to mitigate coal dust, which includes a safe harbor coal dust suppression provision, the Board denied WCTL's request to reopen Docket No. FD 35305, but initiated this proceeding to consider the reasonableness of the new tariff's safe harbor provision. Ark. Elec. Coop. Corp.—Petition for Declaratory Order, FD 35305, et al. (STB served Nov. 22, 2011).

On December 16, 2011, the Board granted a motion to adopt a procedural schedule, which included a discovery period. On January 27, 2012, BNSF filed a motion to compel discovery from WCTL. In the motion, BNSF argues that the Board should compel WCTL to respond on behalf of its members to certain interrogatories and requests for production. WCTL replied on February 6, 2012, to the motion to compel. On January 27, 2012, BNSF also filed a petition for subpoenas in which it argues that, if the Board denies BNSF's motion to compel, the Board should instead issue subpoenas to the individual members of WCTL. Replies to the petition for subpoenas are due on February 16, 2012.

Also, on February 6, 2012, BNSF filed a motion to compel discovery from Union Electric Company D/B/A Ameren Missouri (Ameren), which is a party to the proceeding.¹ Ameren's reply is due on February 16, 2012.

The parties agreed to incorporate the expedited discovery dispute resolution procedures at 49 C.F.R. § 1114.31 in the schedule for this proceeding. Under that procedure, the Board would normally issue a decision on a motion to compel within 10 days after the reply to the motion is filed, which here is February 16, 2012. However, in order to manage this docket efficiently, the Board will issue promptly a single decision addressing BNSF's three related filings after the periods for replies have passed.

¹ On February 13, 2012, Arkansas Electric Cooperative Corporation (AECC) filed a motion to compel discovery from BNSF. AECC's motion will be addressed in a future decision.

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

It is ordered:

1. The Board will issue a single decision on the discovery relief sought by BNSF after the time for replies has passed.
2. This decision is effective on its service date.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.