

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35557

REASONABLENESS OF BNSF RAILWAY COMPANY COAL DUST MITIGATION
TARIFF PROVISIONS

Decided: March 9, 2012

This decision postpones the technical conference scheduled for March 13, 2012. If necessary, the Board will set a new date for the technical conference in a future decision, as explained below.

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 initiated this proceeding to consider the reasonableness of the new tariff's safe harbor provision, but denied the request of the Western Coal Traffic League (WCTL) to reopen Docket No. FD 35305. Ark. Elec. Coop. Corp.—Petition for Declaratory Order, FD 35305, et al. (STB served Nov. 22, 2011).

This proceeding is in the discovery phase and various motions to compel discovery have been filed. On January 27, 2012, BNSF filed a motion to compel discovery from WCTL on behalf of the Member Organizations.¹ As an alternative, BNSF also filed a petition for the issuance of subpoenas to the Member Organizations under 49 C.F.R. § 1113.2. In addition, on February 6, 2012, BNSF filed a motion to compel discovery from Ameren Missouri, which is a party to the proceeding.

On February 27, 2012, the Director of the Office of Proceedings issued a decision in this proceeding finding that the Member Organizations are subject to discovery. The decision provided that, after BNSF and the Member Organizations had an opportunity to negotiate

¹ The members of WCTL are Ameren Energy Fuels & Services Company (AFS), Arizona Electric Power Cooperative, Inc., Austin Energy, CLECO Corporation, CPS Energy, Entergy Services, Inc., Kansas City Power & Light Company, Lower Colorado River Authority, MidAmerican Energy Company, Minnesota Power, Nebraska Public Power District, Omaha Public Power District, Texas Municipal Power Agency, Western Farmers Electric Cooperative, Western Fuels Association, Inc., and Wisconsin Public Service Corporation (collectively, the Member Organizations).

discovery issues, Board staff would, if necessary, hold a technical conference, on March 13, 2012, with counsel for the Member Organizations and BNSF and issue subpoenas to the Member Organizations. The decision further stated that Ameren Missouri was also obligated to respond to legitimate, appropriately tailored discovery requests, and that BNSF and Ameren Missouri should negotiate regarding BNSF's discovery requests, but if necessary, the technical conference would also address the discovery issues between BNSF and Ameren Missouri.

On March 1, 2012, the Member Organizations filed a joint appeal of the February 27, 2012 order, under 49 C.F.R. § 1115.9, which addresses appeals of employee decisions to the Board. On March 6, 2012, the following pleadings were filed in response to the Member Organizations' appeal: a reply in support by Arkansas Electric Cooperative Corporation; separate replies in opposition by BNSF and Union Pacific Railroad Company; and a comment on the appeal by the Association of American Railroads.

On March 2, 2012, the Member Organizations jointly petitioned the Board to postpone the technical conference pending resolution of their appeal. On March 8, 2012, BNSF filed a reply in opposition to the joint petition to postpone the technical conference.

Because the pending appeal could affect the necessity of holding the technical conference between the Member Organizations and BNSF, the technical conference will be postponed until a decision is served addressing the Member Organizations' appeal. In the interest of efficiency, the postponement will also apply to Ameren Missouri's participation in the conference. If necessary, a new date will be set for the technical conference in the Board decision addressing the appeal.

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

It is ordered:

1. The technical conference previously scheduled for March 13, 2012, is postponed.
2. This decision is effective on its service date.

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