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SERVICE DATE – OCTOBER 22, 2009

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. 42088 (Sub-No. 1)

WESTERN FUELS ASSOCIATION, INC., AND
BASIN ELECTRIC POWER COOPERATIVE

v.

BNSF RAILWAY COMPANY

Decided: October 21, 2009

The decision enters an order directing the railroad defendant in this case to pay reparations.

In the lead docket, No. 42088, Western Fuels Association, Inc. and Basin Electric Power Cooperative (collectively, WFA) challenged the reasonableness of the rates charged by BNSF Railway Company (BNSF) for movements of coal from origins in the Powder River Basin in Wyoming to WFA's Laramie River Station coal-fired electric utility plant at Moba Junction, WY. In a decision served on February 18, 2009 (February '09 Decision), the Board found that BNSF has market dominance over those movements and that the challenged rates were unreasonably high. Accordingly, the Board ordered BNSF to establish rates in accordance with that decision and to pay reparations to WFA (with interest) for shipments dating back to the fourth quarter of 2004. In a further decision, served on June 5, 2009 (June '09 Decision), the Board modified the rate prescriptions to correct an error in certain density and variable cost calculations.

On July 20, 2009, the Board served a decision (July '09 Decision) in this docket to resolve a dispute between WFA and BNSF over whether the rates BNSF established on March 20, 2009, exceeded the maximum lawful levels prescribed in the February '09 Decision, as modified in the June '09 Decision. In the July '09 Decision, the Board found that BNSF had used the proper method in general for calculating the maximum lawful rates in 2009, but erred in its indexing approach. The rates it established therefore exceeded the permissible maximum revenue-to-variable cost (R/VC) ratio for 2009. Accordingly, BNSF was ordered to establish transportation rates that comported with our June '09 Decision in the manner described in Oklahoma Gas & Elec. v. Union Pacific R.R., STB Docket No. 42111 (STB served July 24, 2009). The Board stated that once BNSF established updated rates, WFA should calculate the precise amount of reparations due and submit its statement of damages to BNSF, in accordance with 49 CFR 1133.2.

On September 23, 2008, WFA filed a statement of damages and unopposed petition for an order directing payment. WFA's pleading included calculations of the reparations due WFA based upon BNSF's revised rate schedule that the parties agree comports with the Board's July '09 Decision.

DISCUSSION AND CONCLUSIONS

WFA states that BNSF published a revised schedule of common carrier rates for application on the issue traffic on August 26, 2009. The pleading sets forth the principal amount of reparations due to WFA in this proceeding, generally in the format described at 49 CFR 1133.2(a). WFA states that the calculated reparations due to it by BNSF, excluding interest, are \$112,511,742.00. WFA provides the requisite certifications required under 49 CFR 1133.2.

WFA also notes that it is entitled to interest on all reparations due from BNSF in accordance with the procedures set forth at 49 CFR 1141. WFA states that the total reparations and interest due, as of September 15, 2009, equals \$119,930,033.56, with interest thereafter accruing until the date of payment.

As the unopposed petition comports with the Board's regulations, BNSF is ordered to reimburse WFA for amounts previously collected above the prescribed levels, together with interest to be calculated in accordance with 49 CFR 1141.

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

It is ordered:

1. BNSF is ordered to pay reparations to WFA, within 30 days, in accordance with this decision.
2. This decision is effective on its date of service.

By the Board, Chairman Elliott.

Anne K. Quinlan
Acting Secretary