

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35305

ARKANSAS ELECTRIC COOPERATIVE CORPORATION –
PETITION FOR DECLARATORY ORDER

Decided: May 13, 2010

This decision grants Arkansas Electric Cooperative Corporation's (AECC) request to withdraw its motion to compel discovery from BNSF Railway Company (BNSF).

In response to a petition filed by AECC on October 2, 2009, and the reply of BNSF on October 21, 2009, the Board instituted a declaratory order proceeding under 49 U.S.C. § 721 and 5 U.S.C. § 554(e) on December 1, 2009. The issues before the Board include whether provisions of a BNSF tariff are an unreasonable practice, whether BNSF may establish rules regarding coal dust dispersion from coal trains operating over its lines, and whether refusal to provide service to shippers not in compliance with the provisions would violate BNSF's common carrier obligation. Tariff 6041-B Items 100 and 101, the provisions at issue, require that Powder River Basin (PRB) coal shippers using the Joint Line¹ or the Black Hills Subdivision ensure that the emission of coal dust from the cars does not exceed the coal dust emissions standards set by BNSF. The December 1, 2009 decision set a discovery schedule and stated that the Board would appoint a discovery facilitator.

On February 11, 2010, AECC filed a motion to compel discovery from BNSF in this proceeding. AECC's motion sought an order to compel BNSF to produce documents and information responsive to AECC's first interrogatories and request for production of documents. On February 19, 2010, BNSF filed a reply in opposition to AECC's motion to compel. On February 22, 2010, AECC filed a notice of partial withdrawal of its motion to compel discovery. On March 5, 2010, counsel for AECC and BNSF participated in a conference with a Board-appointed facilitator to discuss outstanding discovery issues.

On May 10, 2010, AECC filed a notice of withdrawal of its motion to compel discovery from BNSF. AECC states that it bases its withdrawal on representations of BNSF's counsel that BNSF has complied with the agreement between counsel reached at the March 5, 2010 conference. AECC's request to withdraw its motion to compel will be granted.

¹ The Joint Line is the rail line serving the southern PRB that is jointly owned by BNSF and the Union Pacific Railroad Company and operated and maintained by BNSF.

It is ordered:

1. AECC's request to withdraw its motion to compel discovery from BNSF is granted.
2. This decision is effective on its date of service.

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