

41545
DO

SERVICE DATE – APRIL 15, 2011

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. NOR 42113 (Sub-No. 1)

ARIZONA ELECTRIC POWER COOPERATIVE, INC.

v.

UNION PACIFIC RAILROAD COMPANY

Decided: April 14, 2011

This decision grants the request of Arizona Electric Power Cooperative, Inc. (AEPCO) to dismiss with prejudice its complaint against Union Pacific Railroad Company (UP).

On December 30, 2008, AEPCO filed a complaint against UP and BNSF Railway Company (BNSF), requesting that the Board determine that the joint rates established for unit train coal transportation service between coal mine origins in New Mexico and AEPCO's Apache Generating Station, in Cochise, Ariz., are unreasonably high and prescribe a reasonable rate, along with reasonable practices and other service terms for such transportation. On January 30, 2009, AEPCO amended its complaint to add UP single-line service from Colorado and Wyoming to AEPCO's Apache Generating Station, and to add additional traffic from Wyoming and Montana destined for the Apache Generating Station.

On February 24, 2009, UP filed a motion requesting that the Board hold in abeyance the UP single-line portion of the complaint because those movements were before a United States District Court, where UP was seeking a declaratory judgment that the UP single-line traffic is subject to contract terms. By decision served on April 23, 2009, the Board ordered the UP single-line portion of AEPCO's complaint be held in abeyance pending resolution in court regarding whether, and to what extent, a contract exists for that traffic. The Board placed that portion of the complaint in Docket No. NOR 42113 (Sub-No. 1) to allow the remainder of the complaint in Docket No. NOR 42113 against UP and BNSF as joint defendants to move forward.

On March 24, 2011, AEPCO filed a motion to dismiss with prejudice its complaint against UP in Docket No. NOR 42113 (Sub-No. 1), stating that the parties have reached a voluntary settlement. AEPCO's motion to dismiss will be granted, and this proceeding will be discontinued.

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

It is ordered:

1. AEPCO's motion is granted. The complaint is dismissed with prejudice, and this proceeding is discontinued.
2. This decision is effective on its service date.

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