

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 35305

ARKANSAS ELECTRIC COOPERATIVE CORPORATION – PETITION FOR
DECLARATORY ORDER

Decided: October 28, 2009

On October 2, 2009, Arkansas Electric Cooperative Corporation (AECC)¹ filed a petition for declaratory order seeking to have the Board declare that Tariff 6041-B Items 100 and 101 (Tariff provisions),² issued by BNSF Railway Company (BNSF) on May 27, 2009, constitute an unreasonable rule or practice and that any refusal to provide service for non-compliance with the Tariff provisions is a violation of BNSF's common carrier obligation. The Tariff provisions, which at the time of filing would have taken effect November 1, 2009, require that Powder River Basin (PRB) coal shippers using the Joint Line³ or the Black Hills Subdivision must ensure that the emission of coal dust from the cars does not exceed the coal dust emissions standards set by BNSF. AECC, therefore, concurrently filed a petition to enjoin BNSF from enforcing the Tariff provisions until the Board resolves the underlying petition for declaratory order.

On October 21, 2009, BNSF filed its reply in opposition to the petition for injunctive relief and a reply to AECC's petition for a declaratory order. In response to the petition for injunctive relief, BNSF explains, among other things, that it is suspending the effective date of

¹ AECC is a generation and transmission cooperative that provides wholesale electric power to electric cooperatives throughout Arkansas. AECC is a co-owner, with other utilities, of generation assets that burn millions of tons of PRB coal annually. Three of AECC's coal-burning plants – White Bluff at Redfield, AR, Independence at Newark, AR, and Flint Creek at Gentry, AR – are the subject of the declaratory order, as they receive all of their PRB coal via the Joint Line during normal operations.

² The Tariff provisions, namely Items 100 and 101, state in relevant part that “[e]ffective November 1, 2009, Shipper shall take all steps necessary to ensure that Trains handling cars loaded with Coal from any mine origin that move over [the Joint Line or Black Hills Subdivision, respectively] shall not emit more than an Integrated Dust Value (IDV.2) of [300 units or 245 units, respectively] in order to enhance retention of coal in rail cars.” AECC Pet. at Ex. A, pp. 3-4.

³ The Joint Line is the rail line serving the southern PRB that is jointly owned by BNSF and the Union Pacific Railroad Company (UP) and operated and maintained by BNSF.

the Tariff provisions until August 1, 2010, in part to give the Board time to conclude a declaratory order proceeding resolving this matter.

In light of BNSF's suspension of the effective date of the Tariff provisions, AECC filed a motion to withdraw its petition for injunctive relief stating there is no immediate need to enjoin the Tariff provisions. The Board will grant AECC's motion to withdraw.

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

It is ordered:

1. AECC's motion to withdraw its petition for injunctive relief is granted.
2. This decision will be effective on its date of service.

By the Board, Anne K. Quinlan, Acting Secretary.

Anne K. Quinlan
Acting Secretary