

SERVICE DATE – JULY 21, 2014

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. NOR 42088

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

v.

BNSF RAILWAY COMPANY

Decided: July 21, 2014

In 2009, the Board issued a series of orders in this case prescribing maximum reasonable rates on the coal traffic of Complainants Western Fuels Association, Inc., and Basin Electric Power Cooperative, Inc. (collectively, WFA) moving from the Wyoming Powder River Basin to WFA's Laramie River Station located at Moba Junction, Wyo. W. Fuels Ass'n, Inc. v. BNSF Ry., NOR 42088 (STB served Feb. 18, 2009); W. Fuels Ass'n, Inc. v. BNSF Ry., NOR 42088 (STB served June 5, 2009); W. Fuels Ass'n, Inc. v. BNSF Ry., NOR 42088 (Sub-No. 1) (STB served July 27, 2009). BNSF appealed these decisions to the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit). In a decision issued in May 2010, the court remanded the case for the Board to address BNSF's allegation that the modified Average Total Cost (ATC) methodology the Board used to allocate cross-over traffic revenues in its Stand-Alone Cost (SAC) analysis impermissibly double-counted variable costs. BNSF Ry. v. STB, 604 F.3d 602, 612-13 (D.C. Cir. 2010). After reviewing comments filed by the parties, the Board served its decision on remand in June 2012, in which it concluded (with Board Member Begeman dissenting) that modified ATC did not impermissibly double-count variable costs and reaffirmed its use of modified ATC to allocate cross-over traffic revenues in this case. W. Fuels Ass'n, Inc. v. BNSF Ry., NOR 42088 (STB served June 15, 2012). BNSF subsequently sought judicial review of the Board's remand decision in the D.C. Circuit. The court vacated the Board's decision and remanded the case to the Board for further proceedings. BNSF Ry. v. STB, 741 F.3d 163, 168 (D.C. Cir. 2014).

On June 17, 2014, pursuant to 49 C.F.R. pt. 1117, WFA filed a petition for leave to file comments on remand, along with the comments themselves. On June 30, 2014, BNSF filed a reply to WFA's petition. In its reply, BNSF states that it does not oppose WFA's petition so long as the Board allows BNSF sufficient time (60 days from the date of a decision granting WFA's petition for leave to file comments, in BNSF's view) to file reply comments.

WFA's petition for leave to file comments will be granted and WFA's proffered comments will be accepted into the record. BNSF's requested reply deadline will also be granted.

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

It is ordered:

1. WFA's petition for leave to file comments on remand is granted, and WFA's comments are accepted into the record.
2. BNSF's requested reply deadline of 60 days from a decision granting WFA's petition for leave to file comments is granted. BNSF shall submit its reply comments by September 19, 2014.
3. This decision is effective on the date of service.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.