

SURFACE TRANSPORTATION BOARD

DECISION

No. 41185

ARIZONA PUBLIC SERVICE COMPANY AND PACIFICORP
v.
THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY

Decided: August 21, 1997

We are granting the petition of The Atchison, Topeka and Santa Fe Railway Company (Santa Fe)¹ for partial stay pending (1) judicial review or; (2) Board consideration of its anticipated request to reopen our prior decision finding certain rates for the transportation of coal to be unreasonable and awarding reparations for past movements.

BACKGROUND

By decision served July 29, 1997, and scheduled to become effective on August 28, 1997, we found that the rates charged by Santa Fe for the unit train transportation of coal between a mine near Gallup, NM, and a generating station at Joseph City, AZ, are unreasonable. We also prescribed reasonable rates for future movements, and we ordered Santa Fe to establish and maintain the prescribed reasonable rates within 60 days, i.e., by September 27, 1997. Finally, we awarded reparations and interest for past movements.

By petition filed August 12, 1997, Santa Fe requests that we partially stay our prior decision, under the same terms under which we stayed our decision in West Tex. Util. Co. v. Burlington N.R.R., No. 41191 (STB served June 25, 1996) (West Texas). There, in response to a similar petition seeking stay of a maximum rate order granting reparations and prescriptive relief to a coal shipper, we granted a partial stay of the decision: (1) the reparations portion of the award was stayed, conditioned on a requirement that the railroad calculate the refunds due under our rate order and reimburse the shipper with interest if the order was sustained; and (2) stay of the rate prescription portion of the order was denied, conditioned on a requirement that the shipper keep account of the funds at issue and agree in writing to reimburse the railroad with interest for the difference between the prescribed rate and the rate ultimately found to be the maximum reasonable rate after judicial review.

Arizona Public Service Company/PacificCorp (Arizona) filed a reply on August 15, 1997. Arizona has no objection to the entry of a stay that is comparable to the stay granted in West Texas.

DISCUSSION AND CONCLUSION

Because Arizona does not oppose Santa Fe's request for a partial stay of our July 29, 1997 decision, we will grant the stay request. As we found in West Texas (slip op. at 6), the granting of a partial stay balances the interests of both parties. Most importantly, it protects both parties during the pendency of further proceedings and ensures that, regardless of whether the shipper or railroad ultimately prevails in this litigation, the prevailing party can be made whole.

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

It is ordered:

¹ Santa Fe has now merged with the Burlington Northern Railroad Company to form the Burlington Northern Santa Fe Railway Company. Because this controversy arose before the merger, we refer to defendant as Santa Fe.

1. The petition for partial stay pending petition to reopen and/or petition for judicial review is granted conditioned on:

- a. Santa Fe keeping account of the refunds due under our rate order and reimbursing the shipper with interest calculated pursuant to 49 CFR Part 1141 if our order is sustained; and
- b. Arizona's agreement (set forth in its reply to the petition for stay) (1) to keep account of the difference between the freight charges it will pay under the rate Santa Fe will establish (on or before September 27, 1997) to comply with our decision and the freight charges that otherwise would have been collected, and (2) to reimburse Santa Fe without further Board action for the difference in charges based on the rate that we are ordering Santa Fe to establish in this case and the rate that is ultimately found to be the maximum reasonable rate after review, with interest calculated pursuant to 49 CFR Part 1141.

2. This decision is effective on its date of service.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams
Secretary