

40700
DO

SERVICE DATE – APRIL 19, 2010

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. 42104

ENTERGY ARKANSAS, INC. AND ENTERGY SERVICES, INC.

v.

UNION PACIFIC RAILROAD COMPANY

AND

MISSOURI & NORTHERN ARKANSAS RAILROAD COMPANY, INC.

Decided: April 16, 2010

The Board is granting the motion of Entergy Arkansas, Inc., and Entergy Services, Inc. (jointly, Entergy), to file a second amended complaint in this proceeding.

BACKGROUND

Entergy's plant at Newark, Ark., receives Powder River Basin coal via through unit-train service that is jointly operated by the Union Pacific Railroad Company (UP), which serves the mines, and the Missouri & Northern Arkansas Railroad Company, Inc. (MNA), which serves Entergy's plant. Pursuant to the Board's decision in this proceeding served on June 26, 2009, Entergy filed an amended complaint on July 27, 2009, asking the agency to prescribe an alternate through route or routes between MNA and a long-haul carrier other than UP. In its amended complaint, Entergy did not propose a specific alternate through route with a specific interchange point and did not join BNSF Railway Company (BNSF) as a defendant along with UP and MNA. Rather, Entergy mentioned several possible candidate-points where MNA could interchange with BNSF¹ and asked the Board to select the point or points where interchange would be required.

By decision served in this proceeding on December 30, 2009, the Board disposed of various motions filed by MNA. The Board denied MNA's motion to dismiss Entergy's amended complaint at that time, subject to reconsideration at a later date. In declining to dismiss the amended complaint for failure to join BNSF as an essential defendant, the Board stated, slip. op. at 4, that "[i]f Entergy subsequently determines that it desires relief that would require a Board order directed at BNSF, Entergy may seek leave to amend its complaint further to join BNSF as a defendant." The Board also granted MNA's request to require Entergy to make the complaint

¹ Entergy mentioned Aurora, Lamar, Joplin, Kansas City, or Springfield, Mo. (via MNA trackage rights over BNSF between Aurora and Springfield), and Ft. Scott, Kan.

more definite – by requiring Entergy to identify the through route(s) that it seeks to prescribe in its opening statement due on April 7, 2010.

On March 11, 2010, Entergy filed a motion for leave to file a second amended complaint, tendering the second amended complaint that it was seeking to file. In its tendered second amended complaint, Entergy requests the same relief requested in its first amended complaint, for the same reasons, but also (1) joins BNSF as a defendant and (2) asks the Board to select an interchange with BNSF at either Aurora or Lamar, Mo.

On March 18, 2010, BNSF replied in opposition to Entergy's motion for leave to file a second amended complaint, arguing that it should not be joined as a defendant because: (1) it has already made it clear to Entergy that it is willing to participate in a through route with MNA but (2) Entergy has failed to provide it with sufficient information to enable it to "fully evaluate" an interchange with MNA at Aurora or Lamar.

On March 22, 2010, UP filed a reply stating that it takes no position on Entergy's motion for leave to file and that it will work with the other parties to develop any adjustments to the procedural schedule that may prove necessary.

On March 23, 2010, intervener Arkansas Electric Cooperative Corporation filed a statement supporting Entergy's motion to file a second amended complaint, arguing that BNSF's response shows that Entergy and that carrier have not been able to reach agreement on interchange outside these proceedings and that the joinder of BNSF should "facilitate the process."

DISCUSSION AND CONCLUSIONS

In its decision served on December 30, 2009, the Board stated that Entergy could move to amend its complaint in order to add BNSF as a defendant if Entergy determined that the relief it seeks would require a Board order directed against that carrier. In its second amended complaint, Entergy has now specified that it seeks relief in the form of a through route with an interchange between MNA and BNSF at either Aurora or Lamar, Mo. It is well established that the Board can order BNSF's participation in such a through route only if it is a party to the proceeding in which the through route is ordered.² Entergy's motion for acceptance of its second amended complaint will therefore be granted.

² E.g., Fort Smith, Subiaco & Rock Island R.R. v. Arkansas Central R.R., 87 I.C.C. 617, 618 (1924) ("As no other lines are parties defendant we could not make an order requiring their participation in through routes"); Ford Motor Co. v. I.C.C., 714 F.2d 1157, 1160 (D.C. Cir. 1983) ("A tribunal which has jurisdiction over the subject matter of a claim generally may impose no dispositive order on an absentee, but it unquestionably has power to enter orders binding the parties it confronts.")

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

It is ordered:

1. Entergy's motion to file its tendered second amended complaint is granted, and it will be considered in this docket.

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

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