

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. EP 693

ORAL ARGUMENT

Decided: August 30, 2010

The Surface Transportation Board will hold oral argument on Tuesday, October 26, 2010, at 9:30 a.m., in the Board's hearing room at the Board's headquarters located at 395 E Street, S.W., Washington, DC. The argument will address Entergy Arkansas, Inc. and Entergy Services, Inc. v. Union Pacific Railroad and Missouri & Northern Arkansas Railroad and BNSF Railway, NOR 42104. The oral argument will be open for public observation, but only counsel for the parties will be permitted to present argument.

Entergy Arkansas, Inc., and Entergy Services, Inc. (jointly, Entergy) have filed a complaint asking the Board to prescribe an alternative through route for the movement of coal from origins in Wyoming's Powder River Basin to a generating plant near Newark, Ark., that is owned jointly by Entergy and intervener Arkansas Electric Cooperative Corporation (AECC) and is directly served by the Missouri & Northern Arkansas Railroad Company, Inc. (MNA). The alternative through route sought by Entergy would involve the movement of Powder River Basin coal that would originate on mines served by the BNSF Railway Company (BNSF) and be interchanged from BNSF to MNA (or from BNSF to the Union Pacific Railroad Company (UP) should UP subsequently replace MNA as the carrier directly serving Entergy's plant) at either Lamar or Aurora, Mo. Entergy's current service involves the through movement of coal that originates at Powder River Basin mines served by UP and is interchanged from UP to MNA at Diaz Junction, Ark, for an 8-mile movement to Entergy's plant. The relief sought by Entergy is opposed by UP, MNA, and BNSF.¹

By motion filed on July 20, 2010, UP asked the Board to schedule oral argument in this case. In their joint reply filed on July 21, 2010, Entergy and intervener AECC argue UP is improperly seeking an opportunity to introduce new evidence after the record had closed, but they state that they would not object to an oral argument if it were properly limited to the current

¹ The relief sought by Entergy has been the subject of prior decisions concerning the lawfulness of provisions in MNA's lease with UP that can make it prohibitively costly for MNA to interchange traffic with a railroad other than UP. For background discussion, see Entergy Arkansas, Inc. and Entergy Services, Inc. v. Union Pacific Railroad and Missouri & Northern Arkansas Railroad, NOR 42104 (STB served June 26, 2009).

record in this proceeding. The Board is granting UP's request for oral argument in order to clarify the record and the issues in this complex proceeding. During the oral argument, the parties may address any relevant issues arising from the record in the proceeding. The Board is particularly interested in the parties' views concerning the applicability of statutory provisions bearing on through routes between railroads and how those provisions relate to each other. The argument, however, will be restricted to discussion of the current record; the parties may not submit or discuss new evidence.

Entergy will have 20 minutes of argument time, and intervener AECC will have 10 minutes of argument time. UP, MNA, and BNSF will collectively have 30 minutes of argument time. Entergy and AECC may each reserve part of their time for rebuttal if they so choose.

By October 19, 2010, the parties shall submit to the Board the name of the counsel who will be presenting argument and the name of the party counsel will be representing. Entergy's and AECC's filings shall also address the requested time reserved for rebuttal, if any. Absent a request by the Board, no additional written comments or other submissions may be filed in connection with this oral argument. The argument will be in the style of an appellate court. Parties should prepare a short oral statement and be prepared to answer questions from the Board. The purpose of oral argument is not to restate the written arguments previously presented or to present new evidence, but to summarize and emphasize the key points of a party's case, and provide an opportunity for questions that the Board may have regarding any issue in the proceeding.

Counsel for the parties shall check in with Board staff in the hearing room prior to the argument.

A video broadcast of the oral argument will be available via the Board's website at <http://www.stb.dot.gov>, under "Information Center"/"Webcast"/"Live Video" on the home page.

Instructions for Attendance at Hearing

The STB requests that all persons attending the hearing use the Patriots Plaza Building's main entrance at 395 E Street, S.W. (closest to the northeast corner of the intersection of 4th and E Streets). There will be no reserved seating, except for those scheduled to present oral arguments. The building will be open to the public at 7:00 a.m., and participants are encouraged to arrive early. There is no public parking in the building.

Upon arrival, check in at the 1st floor security desk in the main lobby. Be prepared to produce valid photographic identification (driver's license or local, state, or Federal government identification); sign-in at the security desk; receive a hearing room pass (to be displayed at all times); submit to an inspection of all briefcases, handbags, etc.; then pass through a metal detector. Persons choosing to exit the building during the course of the hearing must surrender their hearing room passes to security personnel and will be subject to the above security

procedures if they choose to re-enter the building. Hearing room passes likewise will be collected from those exiting the hearing upon its conclusion.

Laptops and recorders may be used in the hearing room, but no provision will be made for connecting personal computers to the Internet. Cellular telephone use is not permitted in the hearing room; cell phones may be used quietly in the corridor surrounding the hearing room, or in the building's main lobby.

The Board's hearing room complies with the Americans with Disabilities Act, and persons needing such accommodations should call (202) 245-0245, by the close of business on October 19, 2010.

For further information regarding the oral argument, contact Chris Oehrle at (202) 245-0375. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at (800) 877-8339.

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

It is ordered:

1. Oral argument in Entergy Arkansas, Inc. and Entergy Services, Inc. v. Union Pacific Railroad and Missouri & Northern Arkansas Railroad and BNSF Railway, NOR 42104, will be held on Tuesday, October 26, 2010, at 9:30 a.m., in the Surface Transportation Board Hearing Room, at 395 E Street, S.W., Washington, DC, as described above.

2. By October 19, 2010, the parties shall submit to the Board the names of the counsel who will be presenting argument and the name of the party counsel will be representing. Entergy's and AECC's filings shall also address the requested time reserved for rebuttal, if any.

3. This decision is effective on the date of service.

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