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SERVICE DATE – LATE RELEASE AUGUST 18, 2011

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35305

ARKANSAS ELECTRIC COOPERATIVE CORPORATION—PETITION FOR  
DECLARATORY ORDER

Decided: August 18, 2011

This decision directs BNSF Railway Company (BNSF) to reply to a petition of the Western Coal Traffic League (WCTL) in this proceeding.

In response to a petition filed by Arkansas Electric Cooperative Corporation, the Board instituted a declaratory order proceeding under 49 U.S.C. § 721 and 5 U.S.C. § 554(e) in December 2009. The issues raised in the proceeding included whether provisions of a BNSF tariff requiring shippers to limit the emission of coal dust from rail cars constitute an unreasonable practice and whether BNSF may establish rules regarding coal dust dispersion from coal trains operating over its lines. On March 3, 2011, the Board issued a decision finding that the provisions of the tariff, when considered as a whole, were not reasonable and, therefore, violated 49 U.S.C. § 10702.

On July 20, 2011, BNSF issued a revised tariff, BNSF Price List 6041-B Item 100. The revised tariff addresses coal dust emission from trains carrying coal loaded at any Powder River Basin (PRB) mine and requires that shippers of such coal take measures to reduce coal dust loss from cars. Under the revised tariff, shippers must begin taking these measures October 1, 2011. In addition, shippers must provide BNSF with written notice of their compliance efforts at least 30 days before loading cars for shipment by BNSF.

On August 12, 2011, WCTL filed a petition requesting that the Board reopen the record, institute mediation (either by agreement of BNSF or by order of the Board), and stay or enjoin the effective date of the revised tariff pending Board-supervised mediation. WCTL points out that the deadline for providing BNSF with written notice of compliance efforts for most PRB coal shippers will be September 1, 2011. BNSF has not yet filed a reply to the petition. So that the Board may take timely action on this matter, BNSF will be directed to reply to the August 12, 2011 petition by August 23, 2011.

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

It is ordered:

1. BNSF is directed to reply to WCTL's August 12, 2011 petition by August 23, 2011.
2. This decision is effective on its service date.

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