

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. 41185

ARIZONA PUBLIC SERVICE COMPANY & PACIFICORP

v.

THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY

Decided: July 2, 2004

On January 13, 2003, The Burlington Northern and Santa Fe Railway Company (BNSF) petitioned the Board to reopen this proceeding and vacate the rate prescription established by the Board in 1997. BNSF presented undisputed evidence that circumstances had changed regarding the Board's assumption in the 1997 decision that the McKinley mine would not exhaust its reserves before the end of the 20-year stand-alone cost (SAC) analysis period. Therefore, in a decision served on May 12, 2003, the Board reopened this proceeding for supplemental evidence.

Arizona Public Service Co. & PacifiCorp (jointly "Arizona") filed its opening supplemental evidence on February 27, 2004; BNSF filed its reply evidence on April 9, 2004; to which Arizona filed rebuttal evidence on April 27, 2004. On June 8, 2004, BNSF filed a motion to establish a briefing schedule. It suggests simultaneous briefs of 25 pages, to be filed on July 23, 2004. Arizona opposes BNSF's motion, in a pleading filed June 15, 2004.

BNSF contends that briefs would assist the Board in deciding the issues in this reopening and that, as the initial proponent of this reopening, BNSF should be given the opportunity to address the record on reopening as a whole. Arizona counters that the Board does not have before it a SAC case with vast multitudes of issues, but instead only a few issues, which are well-defined and as to which the parties have already submitted extensive technical and legal arguments.

In this reopening, the parties have presented one novel issue and ten issues that are more technical in nature. The major issue concerns how the Board should allocate the capital charges in its discounted cash flow (DCF) analysis. Arizona argues that BNSF's approach would constitute an unlawful retroactive adjustment to the previously prescribed rates, citing Arizona Grocery v. Atchison, Topeka & Santa Fe Ry., 284 U.S. 370 (1932) and other precedents.

By this order, the Board is setting a briefing schedule. However, briefs will be due August 6, 2004, and should not exceed 15 pages. That length should be sufficient to address the capital allocation issue raised by BNSF and any other issues that the parties believe warrant discussion in the briefs. The parties are reminded that new evidence is not permitted in briefs.

It is ordered:

1. Briefs are due by August 6, 2004, and shall not exceed 15 pages.
2. This decision is effective on its date of service.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary