

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35506

WESTERN COAL TRAFFIC LEAGUE—PETITION FOR DECLARATORY ORDER

Digest:¹ The Board today released its Uniform Rail Costing System (URCS) for 2010. By rule, BNSF Railway Company (BNSF) may, in January 2012, update existing rate prescriptions using this new costing data. In this proceeding, however, several utilities have expressed concern about how the increase in URCS costs resulting from BNSF's acquisition by Berkshire Hathaway, Inc. will impact their rate prescriptions. This decision advises parties with rate prescriptions involving BNSF that if they believe the Board should temporarily lift the prescriptive effect of their 2012 prescriptions pending final resolution of this proceeding, they should promptly petition the Board to reconsider or reopen relevant prior decisions.

Decided: December 8, 2011

On May 2, 2011, the Western Coal Traffic League (WCTL) filed a petition pursuant to 5 U.S.C. § 554(e) and 49 U.S.C. § 721 asking the Board to issue an order declaring that the Board will adjust the Uniform Railroad Costing System (URCS) costs of BNSF Railway Company (BNSF) for calendar year 2010 and subsequent years. Specifically, WCTL asked the Board to declare that it will exclude the write-up in BNSF's net investment base attributable to the difference between the book value and the price that Berkshire Hathaway, Inc. (Berkshire) paid to acquire BNSF in 2010, and to make corresponding changes in BNSF's annual URCS depreciation calculations.

On September 28, 2011, the Board instituted a proceeding to consider WCTL's requests, which remains pending. W. Coal Traffic League—Petition for Declaratory Order, FD 35506, slip op. at 1 (STB served Sept. 28, 2011). At that time, the Board advised that, “[b]ecause this proceeding will occur during the time of year when the Board typically processes the previous year's URCS data and revenue adequacy calculations, we intend to continue to process them using the 2010 R-1 data filed with the Board earlier this year. If the Board later determines that the write-up is inappropriate, we will consider any necessary recalculation or revisions at that time.” Id. at 3.

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

Today we are issuing BNSF's URCS data for 2010, which reflect the increase in BNSF's net investment base following its acquisition by Berkshire. This increase will have an effect on at least two existing BNSF rate prescriptions beginning in January 2012. As maximum lawful rate calculations are updated on a quarterly basis to reflect the most current URCS data and indices available, BNSF's 2010 URCS data would be used for updating purposes in January 2012.² As such, any party that believes the prescriptive effect of its 2012 rate prescription should be temporarily lifted³ pending the outcome of this proceeding should petition the Board to reconsider or reopen any relevant decisions.⁴ Because the Board will handle such petitions on an expedited basis, other interested parties shall have five days in which to respond to any petition filed.

It is ordered:

1. This decision is effective on its service date.

By the Board, Chairman Elliott, Vice Chairman Begeman, and Commissioner Mulvey.

² See Okla. Gas & Elec. Co. v. Union Pac. R.R., NOR 42111, slip op. at 11 & n.16 (STB served July 24, 2009), clarified by Okla. Gas & Elec. Co. v. Union Pac. R.R., NOR 42111, slip op. at 2-3 (STB served Oct. 26, 2009).

³ See Major Issue in Rail Rate Cases, EP 657 (Sub-No. 1), slip op. at 70, 73-75 (STB served Oct. 30, 2006) (setting forth general procedures to be used when a stand-alone cost case is reopened and the prescriptive effect of a rate prescription is temporarily removed); see also E.I. DuPont de Nemours & Co. v. CSX Transp., Inc., NOR 42099 et al., slip op. at 3 (STB served Nov. 21, 2008) (extending policy to rate cases decided under simplified procedures).

⁴ The standards for reconsideration and reopening are set forth at 49 C.F.R. §§ 1115.3 and 1115.4.