

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35305

ARKANSAS ELECTRIC COOPERATIVE CORPORATION—PETITION FOR
DECLARATORY ORDER

Decided: October 1, 2010

In response to a petition filed by Arkansas Electric Cooperative Corporation (AECC) on October 2, 2009, and the reply of BNSF Railway Company (BNSF) on October 21, 2009, the Board instituted a declaratory order proceeding under 49 U.S.C. § 721 and 5 U.S.C. § 554(e) on December 1, 2009. The issues before the Board include whether provisions of a BNSF tariff are an unreasonable practice, whether BNSF may establish rules regarding coal dust dispersion from coal trains operating over its lines, and whether refusal to provide service to shippers not in compliance with the provisions would violate BNSF's common carrier obligation. Tariff 6041-B Items 100 and 101, the provisions at issue, require that Powder River Basin (PRB) coal shippers using the Joint Line¹ or the Black Hills Subdivision ensure that the emission of coal dust from the cars does not exceed the coal dust emissions standards set by BNSF. The tariff is scheduled to go into effect on October 1, 2010.

On September 30, 2010, the Western Coal Traffic League, American Public Power Association, Edison Electric Institute, and National Rural Electric Cooperative Association (collectively, Coal Shipper Organizations) filed a motion for a housekeeping stay asking that the Board issue an order enjoining the effective date of the tariff provisions pending a further order of the Board. Coal Shipper Organizations state that they are aware of the separate motion for injunctive relief filed by AECC in this proceeding, but argue that their housekeeping stay request does not require the type of showing advanced in AECC's motion. The pleadings by AECC and Coal Shipper Organizations seek the same outcome—an order enjoining BNSF from instituting its tariff until the Board has ruled on the merits of the petition for declaratory order. Therefore, the Board will address both requests in a single decision.

In a decision served on September 30, 2010, BNSF was directed to reply to AECC's Petition to enjoin by October 7, 2010. Similarly, BNSF is directed to reply to Coal Shipper Organizations' motion by October 7, 2010. BNSF may choose to reply to both AECC's and Coal Shipper Organizations' filings in a single pleading.

¹ The Joint Line is the rail line serving the southern PRB that is jointly owned by BNSF and the Union Pacific Railroad Company and operated and maintained by BNSF.

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 ordered to reply to Coal Shipper Organizations' motion for a housekeeping stay by October 7, 2010.

2. This decision is effective on its service date.

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