

Court Dismisses "Burlington Northern" & "Union Pacific" Appeal of Surface Transportation Board Order after They Drop Their Lawsuit

Surface Transportation Board (Board) Chairman Linda J. Morgan announced that the United States Court of Appeals for the District of Columbia Circuit has dismissed a petition for judicial review of an earlier Board order requiring that two railroads--the "Burlington Northern and Santa Fe" and the "Union Pacific"--maintain a rate for shipments of coal from mine origins in the Powder River Basin (PRB) of Wyoming and Montana to the Cochise, Arizona electric generation plant of Arizona Electric Power Cooperative, Inc. (AEPCO).

In 2000, AEPCO challenged the reasonableness of joint rates (involving more than one railroad) charged by the railroads for moving shipments of coal from two mine origins in New Mexico to AEPCO's plant at Cochise. AEPCO later amended the complaint to include shipments from some Colorado and PRB mine origins, as well. At that point, the railroads cancelled their rates applicable to AEPCO's traffic from PRB mines, on the ground that AEPCO was not using those rates. The railroads then sought to dismiss the rate complaint to the extent it challenged PRB origins.

AEPCO then filed an emergency motion, claiming that it did, indeed, intend to ship coal from the PRB and asking the Board to require the railroads to establish rates for such shipments. Based upon AEPCO's statement of its intent, the Board directed the railroads to establish common carriage (non-contract) rates for AEPCO traffic to move from PRB mines. The railroads complied, and one unit-train (dedicated to hauling one commodity) shipment of coal moved to Cochise.

AEPCO complained, however, that the railroads had failed to fully meet their responsibility to maintain PRB rates for its traffic because the rates did not cover PRB mine origins in Montana and because the rates were set to expire shortly. AEPCO explained that it had both an immediate and a long-term interest in securing a portion of the Cochise plant's coal-supply requirements from PRB mines because AEPCO was investing in expensive equipment to blend PRB coals with coals from other regions. In a decision issued to the public on December 31, 2001, the Board ordered the railroads to hold open the existing rates, or replace them with other rates covering the same service, and to provide rates from the Montana origins. The railroads complied, but also sought judicial review of that order. The railroads subsequently chose to withdraw their petition for judicial review and submitted a stipulation for voluntary dismissal that was signed by all of the parties. As a result, this litigation has ended.

The court's decision was issued in the case entitled *Burlington Northern and Santa Fe Railway Co. and Union Pacific Railroad Co. v. Surface Transportation Board*, No. 02-1054 (D.C. Cir. Oct. 2, 2002). The Board's December 31, 2001 decision was issued in *Arizona Electric Power Cooperative, Inc. v. The Burlington Northern and Santa Fe Railway Company and Union Pacific Railroad Company*, STB Docket No. 42058. A printed copy of that decision is available for a fee by contacting **D~ 2 D~ Legal Copy Service, Suite 405, 1925 K Street, N.W., Washington, DC 20006, telephone (202) 293-7776**, or via da2dalegal@earthlink.net. The decision also is available for viewing and downloading via the Board's website at <http://www.stb.dot.gov>. [STOP]