

Surface Transportation Board Directs "Burlington Northern," "Union Pacific" Railroads to Establish Rates for Transporting Coal to Arizona Electric Power Cooperative

Surface Transportation Board (Board) Linda J. Morgan announced today that the Board has issued a decision directing The Burlington Northern and Santa Fe Railway Company (BNSF) and Union Pacific Railroad Company (UP) (collectively, "defendants") to establish common carrier rates for transportation of coal from mines in the Powder River Basin (PRB) to the Apache plant, a coal-fired electrical generating plant near Cochise, Arizona, owned by Arizona Electric Power Cooperative, Inc. (AEPCO).

AEPCO has in the past received the bulk of its coal from mines in New Mexico, and it recently filed a rate complaint with the Board alleging that those rates were unreasonable. After AEPCO amended its complaint to embrace additional movements, including certain BNSF-UP rates applicable to movements of PRB coal, BNSF and UP canceled the PRB rates. AEPCO then asked the Board to order the defendants either to restore the canceled PRB rates or to establish new common carriage rates and service terms for movements from the PRB to the Apache plant.

Railroads have a general duty under 49 U.S.C. 11101(b) to establish common carrier rates upon request. The defendants took the position that they do not need to have common carrier rates in place for movements from PRB coal mines to the Apache plant because AEPCO does not intend to use that service but, rather, simply wants to use the PRB rates to its advantage in the ongoing rate reasonableness case. But the Board found no basis for concluding that AEPCO will not ship under the rates that it seeks here in the foreseeable future. Noting that it would not permit any party to manipulate its rate review processes, the Board directed BNSF and UP to establish common carrier rates for the movement of PRB coal to AEPCO's Apache plant. How any movements that may be performed under new PRB rates would or should affect AEPCO's pending rate complaint, the Board found, can be addressed in that case.

The Board's decision was issued today in *Arizona Electric Power Cooperative, Inc. v. The Burlington Northern and Santa Fe Railway Company and Union Pacific Railroad Company*, STB Finance Docket No. 34041. A printed copy of that decision is available for a fee by contacting **D~To-D~ Office Solutions, Room 405, 1925 K Street, NW, Washington, DC 20006, telephone (202) 756-1649**, or via [http://Da_To_Da@Hotmail.com](mailto:Da_To_Da@Hotmail.com). The decision also is available for viewing and downloading via the Board's Website at <http://www.stb.dot.gov>.

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