

**SURFACE TRANSPORTATION BOARD DENIES BURLINGTON NORTHERN & SANTA  
FE MOTION TO DISMISS "WESTERN FUELS" COMPLAINT SEEKING COMPETITIVE  
RAIL ACCESS**

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Surface Transportation Board (Board) Chairman Linda J. Morgan announced today that the Board has denied a motion filed by the Burlington Northern and Santa Fe Railway Company (BNSF) to dismiss a complaint filed by the Western Fuels Service Corporation (Western) seeking authority under the Board's "competitive access" rules to provide rail service over a rail line owned by BNSF. BNSF serves numerous coal mines in the Powder River Basin of Wyoming. Many of the mines are located on a line that BNSF has operated jointly with the Union Pacific Railroad (UP) and its predecessor, the Chicago and North Western Transportation Company (CNW), since 1981. However, some mines north of the so-called "Joint Line" near Gillette, WY are served only by BNSF. Contending that there is not enough competitive transportation available, Western filed a complaint asking the Board to order BNSF to grant Western "terminal trackage rights" so that Western could provide competitive rail service to those mines.

The Board's competitive access rules permit parties that do not own particular rail lines to obtain "access" to the rail lines when necessary to remedy anticompetitive behavior by the owning railroad. Western has claimed that BNSF acted

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anticompetitively by refusing to grant Western access to the line voluntarily, and by pricing its coal services at the six mines served by one railroad in a way that makes those mines noncompetitive with other mines served by more than one carrier. BNSF asked the Board to dismiss the complaint, on the grounds that the line over which Western sought terminal trackage rights is not a terminal, and that Western has not shown any anticompetitive behavior on the railroad's part.

The Board refused to dismiss the complaint. It expressed concern that Western's allegation of anticompetitive behavior might really amount to a claim that the rates to the singly-served mines are too high, a claim that may already be brought under the rate reasonableness provisions of the statute. However, the Board concluded that, based on the existing record, it should not, without holding a full proceeding in which all sides could present evidence and argument, dismiss Western's allegations that production of coal at the singly-served mines is being improperly thwarted by BNSF's practices.

The Board did, however, deny Western's motion for reopening of 1976 and 1981 decisions authorizing BNSF and CNW to build and operate the shared line jointly. In the proceeding leading to the 1981 decision, Western's parent corporation had unsuccessfully sought access to certain singly-served mines north of the Joint Line as a condition of approval of joint BNSF/CNW operations. Now, Western seeks to reopen the construction/joint operation proceeding and, in connection with that proceeding, require that BNSF give Western access to serve the six additional singly-served mines. The Board denied this request, stating that

"it would be an extraordinary case in which we would revisit a grant of construction authority 15 to 20 years after these lines have been built and modify it by imposing roughly the same trackage rights condition, this time over an unrelated BNSF track further north."

The Board's decision in the case entitled *Western Fuels Service Corporation v. Santa Fe Railway Company*, STB Docket No. 41987, was issued to the public on July 28, 1997.

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