

THE SURFACE TRANSPORTATION BOARD ORDERS \$100 MILLION IN RATE RELIEF & DAMAGES FOR A CAPTIVE UTILITY PLANT

The Surface Transportation Board issued a decision today granting an estimated \$100 million in reparations and rate reductions over the next decade from the Union Pacific Railroad Company (UP) to Oklahoma Gas & Electric Company (OG&E). The utility serves more than 750,000 customers in Oklahoma and western Arkansas.

UP has hauled roughly 6 million tons of coal per year from Wyoming's southern Powder River Basin to OG&E's Muskogee Station power plant in Fort Gibson, Okla. under contracts between the parties. But after the latest contract expired on Dec. 31, 2008, UP and OG&E could not agree on a new contractual rate. So OG&E asked UP for common carrier rates, which the utility began paying in January 2009. OG&E then challenged the new rates in a complaint to the Surface Transportation Board (STB).

Both OG&E and UP agreed that the Muskogee Station is captive to UP, meaning that there is no effective transportation alternative available to OG&E other than using UP. And both parties agreed that the January 2009 common carrier rates should not exceed 180 percent of the variable costs of providing that transportation. The central question put to the STB in this case centered on how to calculate the 180 percent revenue-to-variable cost ratio.

The STB found that the amount of relief owed to OG&E for the first two quarters of 2009 ranged from \$1.66 to \$1.91 per ton in shipper-supplied rail cars, depending on the particular mine origin. The decision also ordered UP to set common carrier rates for the next 10 years at the 180 percent of variable-costs levels. Assuming historical volumes of 6 million tons a year, the relief to OG&E will likely exceed \$10 million a year for the next 10 years.

The Board issued its decision today, July 24, 2009, Oklahoma Gas & Electric Company v. Union Pacific Railroad, STB Docket No. 42111. That decision is available for viewing and downloading, via the Board's Web site at <http://www.stb.dot.gov>, under "E-LIBRARY," then under "**Decisions & Notices**," beneath the date "7/24/09."