

SURFACE TRANSPORTATION BOARD ORDERS \$345 MILLION IN RATE RELIEF & DAMAGES FOR A CAPTIVE UTILITY PLANT

The Surface Transportation Board issued a decision today granting an estimated \$345 million in reparations and rate reductions from the BNSF Railway (BNSF) to Western Fuels Association, Inc. and Basin Electric Power Cooperative, Inc. (collectively, "the Utilities"). The Utilities had challenged the railroad transportation rates charged by BNSF to haul 8 million tons of coal each year from mines in Wyoming's Powder River Basin to their electric-generating plant in Moba Junction, WY. The utility plant is captive to BNSF and provides electricity into grids serving consumers in Colorado, Iowa, Minnesota, Montana, Nebraska, New Mexico, North Dakota, South Dakota, and Wyoming.

In today's decision, the Board found the transportation rates BNSF charged the Utilities—which are now roughly six times the variable cost of providing service—to be unlawfully high. BNSF was ordered to lower its transportation rates by approximately 60%, as the Board's stand-alone cost (SAC) test demonstrated that in 2009 the maximum lawful rate for this traffic cannot exceed a revenue-to-variable cost (R/VC) ratio of 240%. This results in the single largest award to a captive shipper by the Board. BNSF is obligated to promptly reimburse the Utilities for approximately \$100 million in overcharges from 2004 through 2008. The exact amount of damages due the Utilities depends upon the volume of coal transported from the various PRB mines between 2004 and 2008. Following its usual practice, the Board instructed the parties to confer and resolve the precise amount of damages due the Utilities, and bring any disputes to the Board's attention for resolution. In addition, BNSF must also immediately lower its current transportation rates to the R/VC levels prescribed in this decision, and keep the rates below the prescribed level through 2024.

In announcing today's decision, Board Chairman Charles D. Nottingham said,

"Today's unanimous and bipartisan decision demonstrates the Board's commitment to delivering strong regulatory oversight over the freight rail market when necessary to protect captive shippers from monopoly pricing. The ultimate beneficiaries of this decision are consumers in Colorado, Iowa, Minnesota, Montana, Nebraska, New Mexico, North Dakota, South Dakota, and Wyoming who are served by this captive electric utility plant. Those customers have been bearing the burden of these unreasonably high transportation rates in their monthly electric bills, a burden they should no longer be forced to bear."

The Board issued its decision today, February 18, 2009, in [Western Fuels Association, Inc., and Basin Electric Power Cooperative v. BNSF Railway Company, STB Docket No. 42088](#). 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 "2/18/09."

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