

Surface Transportation Board Denies Motion by BNSF and UPRR to Dismiss Amended Rate Complaint, but Provides Guidance as to How It Will Look at Certain Issues in "SAC" Cases

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) and Union Pacific Railroad Company (UP) (collectively, defendants) for partial dismissal of a complaint filed by Arizona Electric Power Cooperative, Inc. (AEPCO), challenging the reasonableness of certain rates charged by defendants for transporting coal to AEPCO's power plant near Cochise, AZ. The complaint, as originally filed, covered movements from mines in New Mexico to the power plant, handled for part of the trip by BNSF, and for the other part by UP. Later, however, AEPCO amended its complaint to embrace certain BNSF/UP rates applicable to movements of coal from the Powder River Basin (PRB) to the power plant. Defendants moved to dismiss the portion of the complaint involving PRB movements.

The Board typically evaluates the reasonableness of rail rates using the stand-alone cost (SAC) test. The SAC test seeks to determine the lowest cost at which a hypothetical, efficient railroad could provide the transportation service needed by the complaining shipper. Under the SAC test, the complaining shipper designs a hypothetical railroad specifically tailored to serve its needs and the needs of other traffic it designates. The costs of building and operating such an efficient railroad are then compared to the revenues that such a system could expect to earn. If the shipper demonstrates that the stand-alone railroad would earn more than necessary to cover all of its costs (including a reasonable return on investment), the shipper is entitled to rate relief.

Some of the issues in rate cases involve questions about the feasibility of the stand-alone railroad that the shipper designs. Here, defendants moved to dismiss the PRB portion of the complaint on the ground that, under the stand-alone railroad that AEPCO is likely to develop, revenues from PRB coal would improperly cross-subsidize operations involving New Mexico coal. That is, revenues from PRB traffic would be used to pay for rail facilities needed to transport New Mexico coal -- but not PRB coal -- to the power plant.

The Board denied the motion to dismiss, finding that it would not be appropriate to rule on AEPCO's stand-alone railroad until AEPCO introduces such evidence. The Board did, however, agree in theory with defendants that, under the SAC method of reviewing rail rates, revenues from specific traffic should not be relied on to pay for portions of a SAC system over which that traffic would not move. The agency directed the parties to negotiate over outstanding discovery disputes with that principle in mind, and directed the parties to suggest a procedural schedule after discovery is completed.

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 Docket No. 42058. A printed copy of the decision is available for a fee by contacting Da 2 Da Legal, Room 405, 1925 K Street, N.W., Washington, DC 20006, telephone (202) 293-7776, 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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