



GRANTED

Office of  
Proceedings

DECISION ID NO.: 42084

DECIDED DATE: 12/15/11

SERVICE DATE: 12/16/11

APPROVED: Rachel Campbell

BEFORE THE  
SURFACE TRANSPORTATION BOARD

ENTERED  
Office of Proceedings

DEC 12 2011

Part of  
Public Record

☐ REASONABLENESS OF BNSF RAILWAY  
COMPANY COAL DUST MITIGATION  
TARIFF PROVISIONS

Finance Docket No. 35557

### MOTION FOR ADOPTION OF A PROCEDURAL SCHEDULE

In response to the Board's Decision served on November 22, 2011

("November 22 Decision" or "Decision"), Petitioner the Western Coal Traffic League ("WCTL") and BNSF Railway Company ("BNSF") file this Motion for Adoption of a Procedural Schedule. In support hereof, WCTL and BNSF state as follows:

1. In its *November 22 Decision*, the Board instituted a new declaratory order proceeding (Finance Docket No. 35557).
2. In its *Decision*, the Board asked the parties to file a procedural schedule by December 12, 2011.
3. WCTL and BNSF have agreed on a procedural schedule, and request that the Board adopt the proposed procedural schedule set forth in Attachment 1. The proposed schedule calls for a 50 day discovery period, followed by evidentiary filings to be completed over the next 100 days – a schedule similar to that adopted in Finance Docket No. 35305 but more accelerated.
4. The parties also propose that the Board incorporate into the procedural schedule the expedited discovery dispute resolution procedures set forth at 49 C.F.R. § 1114.31(a)(1)-(4) promulgated to apply in stand-alone cost ("SAC") and

simplified standards rate cases. These procedures should help facilitate the prompt and efficient resolution of any discovery disputes, and they are consistent with the Board's decision to use expedited discovery dispute resolution procedures in Finance Docket No. 35305 and in other recent cases. *See* STB Finance Docket No. 35305 (STB served Dec. 1, 2009) at 4 (appointing a Board employee to "act as a discovery facilitator"); *Cargill, Incorporated v. BNSF Railway Co.*, STB Docket No. 42120 (STB served Jan. 4, 2011) (adopting the discovery dispute resolution procedures set forth at 49 C.F.R. § 1114.31(a)(1)-(4) in unreasonable practice case).

WHEREFORE, for the reasons set forth above, WCTL and BNSF jointly request that the Board issue an order adopting the procedural schedule set forth in Attachment 1 and incorporate into the procedural schedule the expedited discovery dispute resolution procedures set forth at 49 C.F.R. § 1114.31(a)(1)-(4) promulgated to apply in SAC and simplified standards rate cases.

Respectfully submitted,

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Dated: December 12, 2011

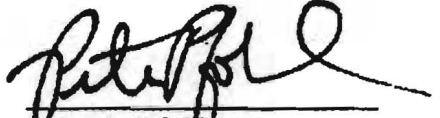
Attachment 1

**STB FINANCE DOCKET NO. 35557  
PROPOSED PROCEDURAL SCHEDULE**

|                |                                                                     |
|----------------|---------------------------------------------------------------------|
| <b>Day 0</b>   | <b>Procedural schedule for declaratory order proceeding adopted</b> |
| <b>Day 10</b>  | <b>Notices of intent to participate due</b>                         |
| <b>Day 50</b>  | <b>Close of discovery</b>                                           |
| <b>Day 95</b>  | <b>Opening evidence and argument due from all PORs</b>              |
| <b>Day 125</b> | <b>Reply evidence and argument due from and all PORs</b>            |
| <b>Day 150</b> | <b>Rebuttal evidence and argument due from all PORs</b>             |

**CERTIFICATE OF SERVICE**

I hereby certify that this 12th day of December, 2011, I have caused the forgoing Motion to be served by first-class mail, or by more expedited means, on all parties of record.

  
Peter A. Pfohl