

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35305

ARKANSAS ELECTRIC COOPERATIVE CORPORATION—PETITION FOR
DECLARATORY ORDER

Decided: September 30, 2010

In response to a petition filed by Arkansas Electric Cooperative Corporation (AECC) on October 2, 2009, and the reply of BNSF Railway Company (BNSF) on October 21, 2009, the Board instituted a declaratory order proceeding under 49 U.S.C. § 721 and 5 U.S.C. § 554(e) on December 1, 2009. The issues raised in this proceeding include whether provisions of a BNSF tariff are an unreasonable practice, whether BNSF may establish rules regarding coal dust dispersion from coal trains operating over its lines, and whether refusal to provide service to shippers not in compliance with the provisions would violate BNSF's common carrier obligation. Tariff 6041-B Items 100 and 101, the provisions at issue, require that Powder River Basin (PRB) coal shippers using the Joint Line¹ or the Black Hills Subdivision ensure that the emission of coal dust from the cars does not exceed the coal dust emissions standards set by BNSF. The tariff is currently scheduled to go into effect on October 1, 2010.

On September 30, 2010, AECC filed a petition to enjoin BNSF from enforcing the tariff provisions until the Board resolves the underlying petition for declaratory order. AECC states that it has requested that BNSF delay the effective date of the tariff provisions, but that BNSF denied this request and plans to implement the tariff provisions on October 1, 2010. BNSF is directed to reply to AECC's petition to enjoin by October 7, 2010.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. BNSF is directed to reply to AECC's petition for injunctive relief by October 7, 2010.
2. This decision is effective on its service date.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

¹ The Joint Line is the rail line serving the southern PRB that is jointly owned by BNSF and the Union Pacific Railroad Company and operated and maintained by BNSF.