

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. 42088

WESTERN FUELS ASSOCIATION, INC., AND  
BASIN ELECTRIC POWER COOPERATIVE

v.

BNSF RAILWAY COMPANY

Decided: March 9, 2009

This decision grants a one-day extension of time to file a petition for stay pending judicial appeal pursuant to 49 CFR 1115.5.

In this proceeding, Western Fuels Association, Inc. and Basin Electric Power Cooperative (collectively, WFA) challenged the reasonableness of the rates charged by BNSF Railway Company (BNSF) for movements of coal from origins in the Powder River Basin (PRB) in Wyoming to WFA's Laramie River Station coal-fired electric utility plant at Moba Junction, WY. In a decision served on February 18, 2009 (February decision), the Board found that the challenged rates were unreasonably high, and ordered BNSF to pay reparations and establish reasonable rates consistent with the decision.

Under our rules, petitions to stay the February decision would be due by March 10, 2009, 10 days before the decision takes effect. See 49 CFR 1115.5. On March 6, 2009, BNSF requested a three-day extension of time until March 13, 2009 to file a petition for stay pending judicial review. BNSF states that it filed a petition for judicial review on March 4, 2009, in the United States Court of Appeals for the District of Columbia and that it is currently negotiating with WFA over the terms of an agreement relating to the parties' rights and obligations in the event of any changes to the Board's decision that might result from administrative or judicial review.

WFA replied on March 9, 2009. WFA opposes BNSF's request, but consents to a one-day extension until March 11, 2009.

BNSF's request will be denied. A three-day extension has not been justified, given the short timeframes established in 49 CFR 1115.5. Such an extension would unduly hamper opposing parties' ability to reply and the Board's ability to consider the stay request and any reply by the February decision's effective date. We will, however, grant a more limited, one-day extension until March 11, 2009.

It is ordered:

1. BNSF's request is denied.
2. Petitions for stay pending judicial appeal are due March 11, 2009.
3. This decision is effective on the date of service.

By the Board, Anne K. Quinlan, Acting Secretary.

Anne K. Quinlan  
Acting Secretary