

SERVICE DATE – JUNE 5, 2009

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. 42088

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

v.

BNSF RAILWAY COMPANY

Decided: June 3, 2009

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 '09 Decision), we found that WFA had shown that BNSF has market dominance over those movements, and that its rates exceeded the level BNSF needed to charge to earn a reasonable return on the full replacement cost of the facilities used to serve WFA. Accordingly, we ordered BNSF to pay reparations to WFA (with interest) for shipments dating back to the fourth quarter of 2004.

On March 10, 2009, WFA and BNSF filed a joint petition to correct technical and computational errors. As discussed below, we agree that errors were made in certain density and variable cost calculations in the February '09 Decision which affect the application of the Board's discounted cash flow (DCF) model. We correct those errors as discussed herein.

DISCUSSION AND CONCLUSIONS

The February '09 Decision contained certain density and variable cost calculations in applying the average total cost (ATC) procedure for calculating revenue divisions for cross-over traffic. WFA posited that some traffic would traverse its stand-alone railroad (SARR) via a different routing than that by which that traffic actually moves over BNSF's system. In reliance on BNSF's evidence, the Board mistakenly calculated the revenues allocated to the SARR based on the costs and densities associated with the new SARR re-routings of those movements, not, as the Board intended, over the actual, historical routing. See February '09 Decision at 13-15.

In particular, the parties identified revenue divisions for six movements that were incorrectly calculated in the February '09 Decision: (1) PSCO/Xcel move from Eagle Butte Mine to Pawnee, CO; (2) Reliant Energy move from Buckskin Mine to Smither's Lake, TX; (3) TXU Energy move from Eagle Butte Mine to Big Brown, TX; (4) West Texas Utilities move

from Buckskin Mine to Oklaunion, TX; (5) West Texas Utilities move from Rawhide Mine to Oklaunion, TX; (6) West Texas Utilities move from Caballo Rojo Mine to Oklaunion, TX.

We agree with the parties that the revenue divisions for these six movements were incorrectly calculated and now fix the error to reflect the actual routing, as described in the February '09 Decision. The revised data has been re-incorporated into the DCF analysis. As shown in the revised tables below, the result of these changes yields slightly higher maximum revenue to variable cost (R/VC) ratios.

Table 1
Revenue Forecasts

	<u>February '09 Decision</u>	Technical Correction	Change	Percentage Change
2004	57,533,780	57,516,506	(17,274)	0.0%
2005	233,035,512	232,522,439	(513,073)	-0.2%
2006	246,651,966	246,107,086	(544,880)	-0.2%
2007	255,730,515	255,196,676	(533,839)	-0.2%
2008	258,395,100	257,867,752	(527,348)	-0.2%
2009	270,036,467	269,506,262	(530,205)	-0.2%
2010	272,841,989	272,307,795	(534,194)	-0.2%
2011	277,661,576	277,117,403	(544,173)	-0.2%
2012	283,567,489	283,013,459	(554,030)	-0.2%
2013	290,209,222	289,643,848	(565,374)	-0.2%
2014	295,281,897	294,706,862	(575,035)	-0.2%
2015	294,620,322	294,052,603	(567,718)	-0.2%
2016	302,725,728	302,139,815	(585,912)	-0.2%
2017	314,256,717	313,648,351	(608,366)	-0.2%
2018	325,451,413	324,823,837	(627,575)	-0.2%
2019	334,288,079	333,643,726	(644,353)	-0.2%
2020	343,591,073	342,930,928	(660,145)	-0.2%
2021	354,048,325	353,368,784	(679,541)	-0.2%
2022	362,657,622	361,962,951	(694,671)	-0.2%
2023	372,688,189	371,975,551	(712,637)	-0.2%
2024	287,477,780	286,928,141	(549,639)	-0.2%

Table 2
Discounted Cash Flow Analysis

	<u>February '09</u> <u>Decision</u>	Technical Correction	Change
2004	7,544,532	7,527,258	(17,274)
2005	33,313,934	32,821,769	(492,165)
2006	65,543,209	64,578,942	(964,268)
2007	98,631,073	97,250,109	(1,380,964)
2008	128,273,372	126,517,925	(1,755,448)
2009	158,128,531	156,029,418	(2,099,113)
2010	185,026,280	182,611,122	(2,415,157)
2011	210,297,128	207,588,109	(2,709,018)
2012	234,069,592	231,087,491	(2,982,101)
2013	256,348,196	253,111,732	(3,236,464)
2014	276,644,832	273,172,229	(3,472,603)
2015	293,630,612	289,945,213	(3,685,399)
2016	309,770,086	305,884,231	(3,885,855)
2017	325,795,586	321,719,751	(4,075,835)
2018	341,696,722	337,442,006	(4,254,716)
2019	356,889,024	352,466,667	(4,422,357)
2020	371,395,228	366,816,106	(4,579,122)
2021	385,444,756	380,718,340	(4,726,416)
2022	398,645,938	393,782,085	(4,863,853)
2023	411,274,091	406,281,547	(4,992,544)
2024	420,684,657	415,599,425	(5,085,233)

Table 3
Maximum MMM
R/VC Ratios

	<u>February '09 Decision</u>	Technical Correction	Change
4Q 2004	2.41	2.41	0.00
2005	2.44	2.47	0.02
2006	2.29	2.30	0.01
2007	2.36	2.38	0.02
2008	2.43	2.44	0.02
2009	2.40	2.41	0.01
2010	2.44	2.45	0.01
2011	2.45	2.46	0.01
2012	2.47	2.48	0.01
2013	2.49	2.50	0.01
2014	2.53	2.55	0.01
2015	2.66	2.68	0.02
2016	2.67	2.69	0.02
2017	2.63	2.65	0.02
2018	2.60	2.62	0.02
2019	2.60	2.61	0.02
2020	2.59	2.61	0.01
2021	2.58	2.60	0.01
2022	2.59	2.61	0.01
2023	2.59	2.60	0.01
2024	2.57	2.58	0.01

The parties have also filed a number of pleadings regarding whether the rates recently established by BNSF comply with the February '09 Decision. That dispute centers on compliance with the February '09 Decision, rather than whether the February '09 Decision is correct. Questions about compliance will be resolved in a newly created sub-docket in this proceeding. See Western Fuels Association, Inc., and Basin Electric Power Cooperative v. BNSF Railway Company – Compliance, STB Docket No. 42088 (Sub-No. 1). Today's decision thus concludes with finality the administrative proceeding establishing the maximum lawful revenue-to-variable cost levels for the traffic at issue.

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

It is ordered:

1. WFA's and BNSF's joint petition to correct technical and computational errors is granted.

2. The rate prescription and reparations award in this case are revised as discussed above. The parties are ordered to re-calculate the amount of reparations, and BNSF shall establish and maintain rates for movements of the issue traffic that do not exceed the maximum reasonable revenue-to-variable cost levels prescribed by the February '09 Decision, as corrected here.

3. This decision is effective on its service date.

By the Board, Acting Chairman Mulvey, and Vice Chairman Nottingham.

Anne K. Quinlan
Acting Secretary