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SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. 41191 (Sub-No. 1)

AEP TEXAS NORTH COMPANY

v.

BNSF RAILWAY COMPANY

Decided: May 15, 2009

On reconsideration, the Board modifies its prior decision and again finds that the challenged rates have not been shown to be unreasonable.

BY THE BOARD:

This case involves a rate dispute between AEP Texas North Company (AEP Texas) and BNSF Railway Company (BNSF). AEP Texas challenged the reasonableness of rates charged by BNSF to transport coal from mine origins in the Powder River Basin (PRB) of Wyoming to the Oklaunion Generating Station (Oklaunion) near Vernon, TX. As explained in a decision served in this proceeding on September 10, 2007 (Sept. 2007 Decision), AEP Texas failed to show that the challenged rates were unreasonable under the Board's stand-alone cost (SAC) test.

AEP Texas designed its SAC presentation in reliance upon Board precedent that was later changed via rulemaking.¹ We recognized in the Sept. 2007 Decision that the change adopted in Major Issues to the procedure for allocating revenues from cross-over traffic in SAC cases could have affected the optimal size and configuration of the hypothesized "stand-alone railroad" (SARR) that a complainant would postulate. We therefore offered AEP Texas the opportunity to redesign its SARR, the Texas & Northern Railroad (TNR), to address the new revenue allocation procedure and to submit supplemental evidence based on that redesign. AEP Texas chose not to alter its SAC presentation.

However, AEP Texas and BNSF both filed timely petitions for reconsideration of the Sept. 2007 Decision. In a decision served on May 29, 2008, we denied both petitions for reconsideration except as to one issue. We directed the parties to submit additional evidence and argument on that issue: whether the Board's evolving cost-of-capital methodology necessitates

¹ See Major Issues in Rail Rate Cases, STB Ex Parte No. 657 (Sub-No. 1), aff'd sub nom. BNSF v. STB, 526 F.3d 770 (D.C. Cir. 2008) (Major Issues).

restating the SARR's cost of equity for previous years. For the reasons discussed below, we find that it does not.

This decision also considers technical corrections raised by the parties and updates the discounted cash flow (DCF) analysis to accommodate the Board's most recent cost-of-capital findings for years that were not previously available, consistent with our precedent. After these technical corrections and updates are factored into the DCF, the analysis shows that the SARR's revenues would exceed its costs over the analysis period. However, the application of the Maximum Markup Methodology (MMM) does not show that AEP Texas' traffic is entitled to rate relief. Thus, AEP Texas has not shown the challenged rates to be unreasonable.

BACKGROUND

This case has its origins in a complaint filed by AEP Texas' predecessor, West Texas Utilities Company,² in STB Docket No. 41191, challenging the reasonableness of rates charged by BNSF³ for coal shipped from PRB mines to Oklaunion. In that case, the Board found that BNSF's rate exceeded the rate allowed under the SAC test and prescribed the maximum rate that could be charged for coal moving from the Rawhide mine—the only PRB mine from which the shipper had been receiving coal. West Texas Utilities Company v. Burlington Northern R.R., 1 S.T.B. 638, aff'd sub nom. Burlington N. R.R. v. STB, 114 F.3d 206 (D.C. Cir. 1997) (West Texas).⁴

AEP Texas subsequently took coal from other mines, and when BNSF raised its rate to the Oklaunion generating station plant from other PRB mines in 2003 (to a level equal to the SAC rate to Rawhide, then \$18.04 per ton), AEP Texas then filed a new, separate complaint in this proceeding challenging the reasonableness of the rates applicable to the non-Rawhide mines. AEP Texas maintained that, given changes to the Board's SAC procedures and changes in the marketplace, the previously prescribed SAC rate was then itself unreasonable, and AEP Texas

² For convenience, the complainant is referred to here as AEP Texas for all time periods.

³ The original defendant in this proceeding, Burlington Northern Railroad Company (BN) later merged with The Atchison, Topeka and Santa Fe Railway Company to form The Burlington Northern and Santa Fe Railway Company. The carrier has since changed its name to BNSF Railway Company. For convenience, the defendant is referred to here as BNSF for all time periods.

⁴ A detailed discussion of the subsequent history of that proceeding is contained in a decision in STB Docket No. 41191 served on September 10, 2007. As relevant here, the Board later modified the prescription to be the higher of the SAC rate or 180% of the carrier's variable cost for that traffic, by a decision served on May 29, 2003. After protracted litigation, the Rawhide prescription was vacated due to changed circumstances by a Board decision served on September 10, 2007.

has refused to pay any increase above \$13.68 per ton on the non-Rawhide movements. See AEP Texas Open Narr. at I-6.⁵

AEP Texas challenges the reasonableness of BNSF's rates, which are derived from the SAC rate that was determined in West Texas, using the SAC test, as refined through the intervening years. Under the SAC test, a SARR is hypothesized that could serve AEP Texas' coal traffic as well as other traffic. The SAC constraint limits the rates that BNSF may charge AEP Texas to what the SARR would need to charge to serve AEP Texas while fully covering all of its costs, including a reasonable return on investment.

AEP Texas designed a SARR, referred to as the TNR, that would serve unit-train coal traffic from the PRB, as well as other, non-coal traffic. In contrast to the SARR in West Texas, AEP Texas modeled a SARR that would contain extensive cross-over traffic, i.e., traffic that is hypothesized to be served by the SARR for only a portion of its total move and then handed back to the residual incumbent carrier (BNSF). For all but four of the non-AEP Texas shippers included in the traffic group, the TNR would replicate only a portion of the move, and it would have to interchange this cross-over traffic with the residual BNSF system at various locations to complete the transportation. The allocation of revenues for such traffic between the SARR and residual incumbent had been a source of much litigation in past SAC cases, before the Board settled on the Average Total Cost (ATC) method in Major Issues.

The TNR's investment requirements and operating expense requirements (revenue needs) were projected for a 20-year period, reflecting anticipated changes in traffic, rate levels, and expenses over that time period. The resulting TNR revenue needs were compared to the revenues that BNSF itself receives from serving the traffic selected by AEP Texas for those portions of the movements that would be replicated by the TNR.

After reviewing the record, the Board compared the best estimate of the costs that would be associated with building and operating the TNR against the best estimate of the revenues to be generated by the traffic that would use the TNR. A present value analysis was used that took into account the time value of money over the 20-year SAC analysis period, netting the annual over-recovery or under-recovery of the revenue requirements of the TNR as of a common point in time. This analysis showed that the projected revenues from the transportation that the TNR would provide would not be sufficient over the 20-year period to allow the TNR to profitably serve the selected traffic. Therefore, the Board found that the record did not show that the challenged rate levels were unreasonably high.

⁵ BNSF sought to collect the underpayment in the United States District Court for the Northern District of Texas, Fort Worth Division. The District Court has stayed BNSF's collection action pending the Board's determination of the reasonableness of the increased rate for non-Rawhide movements.

DISCUSSION AND CONCLUSIONS

A. Cost of Equity

A party may seek to have the Board reconsider a decision by submitting a timely petition that either demonstrates material error in the prior decision or identifies new evidence or substantially changed circumstances that would materially affect the case. 49 U.S.C. 722(c); 49 CFR 1115.3. AEP Texas seeks reconsideration of the use of the Board's previously published cost-of-equity findings for the railroad industry in this case.

To estimate what it would cost a SARR to raise capital, the longstanding practice in SAC cases has been to use an average of the cost-of-capital figures for the rail industry as published annually by the Board, starting with the year in which construction of the SARR would have begun through the most recently available year. In January 2008, we revised our procedures for calculating the cost-of-equity component of the rail industry's cost of capital, replacing the single-stage DCF with a capital asset pricing model (CAPM).⁶ We have recently further refined our approach, adopting an average of CAPM and the Morningstar/Ibbotson multi-stage DCF to calculate the cost of equity.⁷

In its petition for reconsideration, AEP Texas argues that the switch to CAPM required that the Board recalculate the cost of equity for the TNR using CAPM in all years of the DCF. Alternatively, AEP Texas contends that, even if the Board does not restate all years' cost-of-equity estimates, it was material error to rely on the 2005 cost-of-equity figure produced under the single-stage DCF approach, given that the Board had initiated the change in methodology prior to the Sept. 2007 Decision in part to address criticisms that AEP Texas had raised. AEP Texas argues that the Board's reasoning in applying the new rules from the Major Issues rulemaking to pending cases requires that the DCF cost-of-equity figures be replaced with CAPM cost-of-equity figures.

For the reasons discussed below, we find that AEP Texas has not satisfied its burden under 49 U.S.C. 722(c) to have the Board reconsider the use of the Board's previously published cost-of-equity figures in this case. Therefore, we will not restate the cost of equity for past years in this case. Consistent with our precedent, we will forecast the cost of equity in future years by taking the average of the published figures for 2000-2007.

1. The History of the Board's Cost-of-Equity Determination

Each year, the Board measures and publishes the average cost of capital that the railroad industry experienced in the previous year. The Board then uses this cost-of-capital figure for a

⁶ Methodology to be Employed in Determining the Railroad Industry's Cost of Capital, STB Ex Parte No. 664 (STB served Jan. 17, 2008) (Cost of Capital Methodology).

⁷ Use of a Multistage Discounted Cash Flow Model in Determining the Railroad Industry's Cost of Capital, STB Docket No. 664 (Sub-No. 1) (STB served Jan. 28, 2009).

variety of regulatory purposes.⁸ The Board calculates the cost of capital as the weighted average of the cost of debt and the cost of equity, with the weights determined by the overall capital structure of the railroad industry (i.e., the proportion of capital from debt or equity on a market-value basis). While the cost of debt is observable and readily available, the cost of equity (the expected return that equity investors require) can only be estimated. Because the cost of equity cannot be directly observed, estimating the cost of equity requires adopting a finance model and making a variety of simplifying assumptions.

In the proceeding to determine the railroad industry cost of capital for 2005, the Western Coal Traffic League (WCTL) challenged the cost-of-equity calculation submitted by the Association of American Railroads (AAR) using the DCF approach routinely applied by the Board in more than 20 years of previous annual cost-of-capital proceedings. WCTL advocated replacing the DCF methodology with a CAPM method. We concluded that there was insufficient evidence in that annual cost-of-capital determination proceeding to justify a departure from the long-established methodology used to calculate the cost-of-equity component.⁹

In so doing, we observed that there was no clear consensus as to how best to compute the cost of common equity and, in fact, there are many different ways in which it is computed by both investors and regulators. We expressed concern that “CAPM requires the use of many assumptions ... [and each] can have a significant effect on the result obtained and each necessitates judgments on how best to define and measure it.”¹⁰ We noted that WCTL’s position in that proceeding was contrary to the prior position of the shipper community that the “CAPM technique was conceptually and technically flawed.”¹¹ Due to the norm of regularity in government conduct that presumes an agency’s duties are best carried out by adhering to the settled rule, we continued to use the DCF model in determining the 2005 railroad industry cost of capital. We concluded that we could not delay our 2005 cost-of-capital decision while we explored this issue in depth because the cost-of-capital calculation is an integral component of many other decisions the Board must make, including the revenue adequacy determination that we are statutorily required to make annually.¹²

⁸ It is used to evaluate the adequacy of individual railroads’ revenues for that year. See 49 U.S.C. 10704(a)(2),(3); Standards for Railroad Revenue Adequacy, 364 I.C.C. 803 (1981), modified, 3 I.C.C.2d 261 (1986), aff’d sub nom. Consolidated Rail Corp. v. United States, 855 F.2d 78 (3d Cir. 1988). It is also employed in cases involving rail rate review, feeder line applications, rail line abandonment proposals, trackage rights compensation cases, and rail merger review, as well as in our Uniform Rail Costing System (URCS).

⁹ Railroad Cost of Capital – 2005, STB Ex Parte No. 558 (Sub-No. 10) (STB served Sept. 20, 2006), aff’d sub nom. Western Coal Traffic League v. STB, No. 07-1064 (D.C. Cir. Feb. 1, 2008).

¹⁰ Id., citing Railroad Cost of Capital – 1981, 365 I.C.C. 734, 741 (1982).

¹¹ Id., citing Railroad Cost of Capital – 1982, 367 I.C.C. 662, 670 (1983).

¹² See 49 U.S.C. 10704(a)(3).

At the same time, we recognized that WCTL had identified a potential concern with the DCF model that should be explored in more depth. We explained that, before considering whether to make such a significant change, we would seek broader public input from other interested shippers, as well as from transportation experts, Wall Street analysts, financial experts and academics on the relative merits of this longstanding approach. And we would seek comments not only on the DCF and CAPM models, but on any other available recognized methods for determining the cost of capital. Accordingly, we issued an advance notice of proposed rulemaking, in STB Ex Parte No. 664, to explore the most suitable methodology to calculate the cost of capital.¹³

After holding public hearings, reviewing the evidence gathered, and consulting with other federal agencies, the Board changed the methodology that it uses to calculate the railroad industry's cost of equity.¹⁴ We concluded that the time had come to modernize our regulatory process and replace the aging single-stage DCF model that had been employed since 1981, and we decided to calculate the cost of equity using CAPM. Accordingly, we thereafter calculated the railroad industry's cost of equity for the years 2006 and 2007 using CAPM.¹⁵

In the Ex Parte No. 664 proceeding, several parties had suggested that we use a multi-stage DCF in conjunction with CAPM. We elected to adopt a stand-alone CAPM approach because the record in that proceeding did not support adopting any particular DCF model at that time. But we did not want to foreclose the possibility of augmenting CAPM with a DCF approach. Ultimately, both CAPM and DCF are economic models that seek to measure the same thing. CAPM seeks to do so by estimating the level of expected returns that investors would demand given the perceived risks associated with the company. By contrast, DCF models estimate the expected rate of return based on the present value of the cash flows that the company is expected to generate. Both approaches are plausible and intuitive, but are merely models. There is considerable economic literature that suggests that using multiple models will improve estimation techniques when each model provides new information.

Although the record before us in STB Ex Parte No. 664 was insufficient for us to adopt a particular DCF model, it illuminated a number of criteria to guide us in that effort. Therefore, we soon issued an advance notice of proposed rulemaking, in STB Ex Parte No. 664 (Sub-No. 1), requesting comments on using a multi-stage DCF model to complement the use of

¹³ Methodology to be Employed in Determining the Railroad Industry's Cost of Capital, STB Ex Parte No. 664 (STB served Sept. 20, 2006).

¹⁴ Methodology to be Employed in Determining the Railroad Industry's Cost of Capital, STB Ex Parte No. 664 (STB served Jan. 17, 2008).

¹⁵ Railroad Cost of Capital – 2007, STB Ex Parte No. 558 (Sub-No. 11) (STB served Sept. 26, 2008); Railroad Cost of Capital – 2006, STB Ex Parte No. 558 (Sub-No. 10) (STB served Apr. 15, 2008).

CAPM in determining the railroad industry's cost-of-capital.¹⁶ After reviewing the public comments, we proposed to use the Morningstar/Ibbotson three-stage DCF, together with CAPM, to calculate the cost of equity. We proposed to use the average of the two values to establish the railroad industry's cost of equity in a given year. By a decision served on January 28, 2009, we adopted the proposed methodology to calculate the cost of equity in future years.¹⁷

We have made great efforts to modernize and reform our regulatory processes and economic estimates over the past 3 years. As we explained in STB Ex Parte No. 664 (Sub-No. 1), the average of CAPM and the multi-stage DCF produces the best estimate of the rail industry's cost of equity for our purposes, by providing a more stable, less volatile estimate from year to year. But the exact cost of equity in a given year remains an essentially unknowable number and any method we adopt will produce only an estimate. Our goal has been to establish the methodology that produces the best estimate practicable for our regulatory purposes.

2. Historical Figures: 2000-2007

In deciding whether a change in methodology (such as the move to CAPM) can be given retroactive effect, we would generally balance various considerations. See, e.g., Williams Natural Gas Co. v. FERC, 3 F.3d 1544 (D.C. Cir. 1993). Here, BNSF argues we have no discretion and must use the previously published cost-of-equity figures. It argues that the cost-of-capital determinations must be viewed as "quasi-legislative" determinations that are used in rate reasonableness proceedings and that we must, under Arizona Grocery Co. v. Atchison, Topeka & Santa Fe Ry., 284 U.S. 370 (1932), give full effect to those prior quasi-legislative findings. BNSF acknowledges that Arizona Grocery dealt only with retroactive ratemaking, but it argues that the principle announced in that case applies broadly to all quasi-legislative determinations of an agency.¹⁸ Yet it offers no example of any court or agency applying the Arizona Grocery principle outside the context of rate prescriptions. And AEP Texas cites modern cases that declare that Arizona Grocery applies only where the agency has declared what is the maximum lawful rate to be charged by a carrier.¹⁹

Based on the legal arguments presented here, we conclude that we have the discretion to use a different cost-of-equity figure than previously published. The circumstances of this case appear closely analogous to those presented in Williston Basin Interstate Pipeline Co. v. FERC, 165 F.3d 54 (D.C. Cir. 1998), where the court remanded a rate case to FERC so the agency could decide whether to give retroactive effect to a change in the method FERC used to estimate the cost of equity.

¹⁶ Use of a Multi-Stage Discounted Cash Flow Model in Determining the Railroad Industry's Cost of Capital, STB Ex Parte No. 664 (Sub-No. 1) (STB served Feb. 11, 2008).

¹⁷ Use of a Multi-Stage Discounted Cash Flow Model in Determining the Railroad Industry's Cost of Capital, STB Ex Parte No. 664 (Sub-No. 1) (STB served Jan. 28, 2009).

¹⁸ See BNSF Fourth Supp. Open. at 14.

¹⁹ See AEP Texas Fourth Supp. Reply at 6 (citing BP West Coast Prod., LLC v. FERC, 374 F.3d 1263, 1304 (D.C. Cir. 2004)).

In deciding whether to use different cost-of-equity figures than previously published, we conduct the kind of balancing test described by the court in Williams Natural Gas. We conclude it would be poor public policy to depart from our previously published figures. Two considerations are paramount to our analysis: the degree of reliance by the railroad industry on our prior findings, and whether the prior findings appear to be within the bounds of reasonable predictions for the industry's cost of equity.

Reliance. We believe there has been significant investment-backed reliance by the railroad industry on our prior cost-of-capital findings. Generally, we use our annual cost-of-capital findings for the railroad industry for the years at issue to determine the cost of equity that a SARR would experience.²⁰ Though Guidelines suggested that a party could show that a particular SARR might have a cost of equity different than the industry by presenting particularized evidence,²¹ no party has done so. Instead, parties rely on our served and published cost-of-capital findings, updated by the Board to include the most recent figures, as we do not generally consider collateral attacks on the cost-of-capital methodology in the context of an individual rate case due to the settled expectations our findings create.²²

In short, the published cost-of-capital figure lets the railroads and their investors know the target rate of return this agency will consider to be a reasonable return on the railroad's capital investments in that year. Railroads and investors then make investment decisions based in part on those published figures. Indeed, between 2004 and 2007, BNSF alone made over \$9 billion in capital investments.²³ Other factors may be equally, if not more, important in these capital investment decisions, such as prevailing market forces and future forecasts of demand trends. But the attention paid to our recent rulemaking on the cost of capital by the railroads and their investors demonstrates the importance of this figure and our annual findings. If we change that figure retroactively here, we not only undermine settled expectations but we erode investor confidence in future cost-of-capital findings. A lack of confidence can severely affect the incentive of investors to make the necessary private investment in the railroad industry to meet the forecast demand for railroad service.²⁴

Accordingly, as discussed in Western Fuels Association, Inc., and Basin Electric Power Cooperative v. BNSF Railway Company, STB Docket No. 42088 (STB served Feb. 18, 2009)

²⁰ See, e.g., Sept. 2007 Decision at 135; AEP Texas at 112.

²¹ See Guidelines at 544 n.63.

²² See FMC Wyoming Corp. & FMC Corp. v. Union Pacific RR Co., 4 S.T.B. 699, 846 (2000).

²³ This figure is drawn from Schedule 330 of the publicly available annual (R-1) reports filed at the Board by BNSF.

²⁴ See BNSF Fourth Supp. Open., V.S. Hamada & Gokhale at 17 (observing that ex post adjustments to the cost of capital will decrease predictability and investors' willingness to undertake future capital investments).

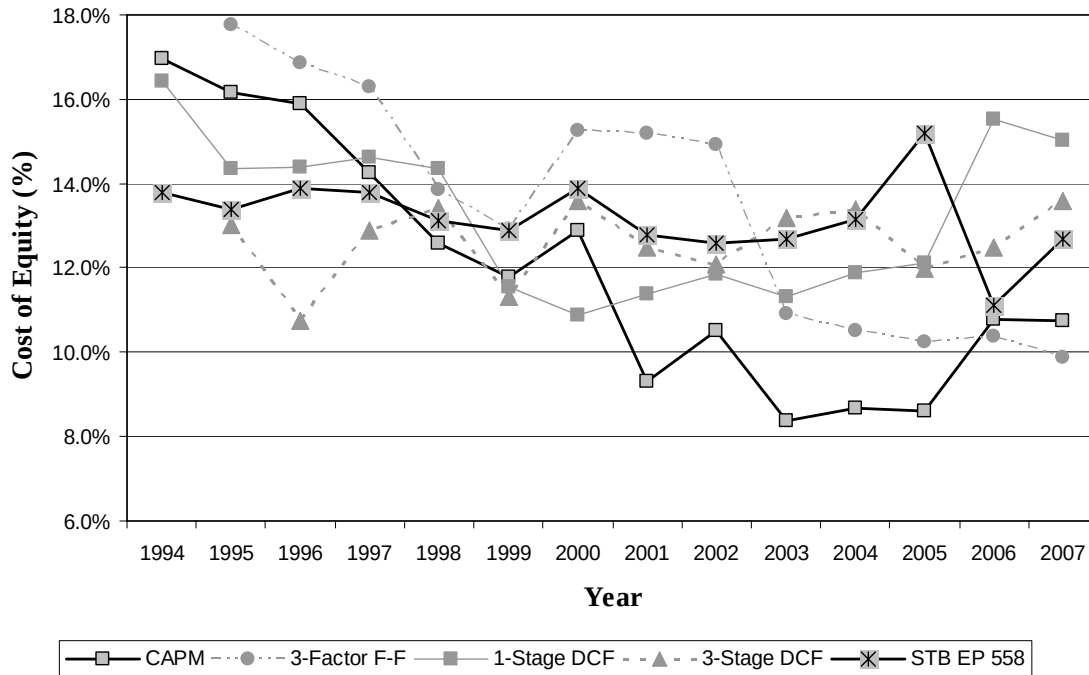
(Western Fuels v. BNSF) slip op. at 24, balancing the reliance interests of carriers and their investors against the public interest in using a specific rate-of-return target and applying it retroactively in rate disputes, we will set aside our cost-of-capital findings only if the prior published findings are shown to clearly fall outside a reasonable range. This is an admittedly subjective criterion, but necessary to protect the reliance interests and assure future investors that they can generally rely on our annual cost-of-capital findings. Our analysis of our prior cost-of-equity findings under this approach is set forth below.

Reasonableness. CAPM is a more modern and better accepted method for estimating the cost of equity than the single-stage DCF model used to derive the 2002-2005 cost-of-equity figures at issue here. We have, however, repeatedly made clear that there are many ways to estimate the cost of equity. The adoption of CAPM did not invalidate the past estimates of the cost of equity measured by the single stage DCF. Nor did the recent adoption of the average of CAPM and a multistage DCF to measure the cost of equity invalidate the 2006 and 2007 estimates established by CAPM. The evolution of our approach for estimating the cost of equity demonstrates why it is unwise to retroactively change our findings simply because a new model is now used.

AEP Texas has not shown that the use of the previously published findings produces a wholly unreliable estimate of the cost of capital for the SARR. Moreover, our comparison of the Board's annual determinations reveals that they are not out of line with other, commercially available estimates of the cost of equity. Below, we compare the Board's previously published determinations of the rail industry's cost of capital (denoted below by the "STB EP 558" line) with other commercially accepted methods of determining the estimates.²⁵

²⁵ As the Morningstar cost-of-equity estimates were not submitted by either party in this proceeding, we take official notice of these publicly available cost-of-equity estimates for the railroad industry. The figures supporting this chart will be made available to the parties upon request. "3-Factor F-F" denotes the estimate published by Ibbotson/Morningstar using a 3-Factor Fama-French approach. "1-Stage DCF" and "3-Stage DCF" refer to the Ibbotson/Morningstar cost-of-equity estimates for the railroad industry using a single-stage and multi-stage DCF model.

Chart 1: Cost of Equity Estimates
Comparison of Ibbotson/Morningstar and STB Methodologies



Investors and finance professionals use different economic models to estimate the cost of equity, including single-stage DCF, multi-stage DCF, CAPM, and 3-Factor Fama-French models. This chart illustrates that various reasonable and commercially available financial models produce a range of estimates for the cost of equity. Which model will produce the highest or lowest estimate will vary, depending on the inputs and assumptions used. For example, in 1994 CAPM produces the highest estimate, while from 2001-2005 it produces the lowest. Simply because one estimate is the highest or lowest in a given year does not mean that it is invalid or even the least accurate. Because complete precision is not possible, we have decided that the best estimate for future years will be the average of two different models that use different assumptions.

The chart also reveals that the Board's prior determinations provide a reasonable estimate of the cost of equity for the hypothetical SARR posited in this case. For every year except 2005, the Board's estimate falls easily within the range produced by the other finance models.

The year 2005 is the only year where the Board's cost-of-equity estimate is above the norm for other finance models. Yet even then, the figure does not vary significantly more than other models that produce the highest or lowest estimate in a given year. Thus, we do not regard the increase as sufficiently large to justify setting aside the industry's expectation that we would use that finding as the target rate of return for that year. In our judgment the 2005 estimate remains within a reasonable range of the cost-of-equity estimates produced by the other models. Accordingly, we will not disturb it.

3. Forecasts: 2008-2020

Our decision to use the previously published cost-of-equity figures in the SAC analysis for all prior years does not end the inquiry, as we must also project the cost of equity into the future years of the DCF analysis in this case. Our long-established practice has been to use the average of the historical cost-of-capital figures starting with the construction start date of the SARR. We do so to minimize the risk that any particular year is aberrant in one way or another. Under that practice, here we would forecast the cost of equity for the years 2008 through 2020 as the average of the historical cost of equity from the years 2000 through 2007.

AEP Texas argues that, if we do not restate past years using CAPM, we should depart from that practice and use only the published 2006 and 2007 estimates to forecast the cost of equity for the years 2008 – 2020. It argues that the Board should not mix estimates derived from CAPM and the single-stage DCF model.²⁶

We conclude that it remains sound policy to adhere to our established practice. As discussed above, we find no basis to restate the 2005 estimate. As for using only the 2006 and 2007 CAPM estimates to project future years, we recently concluded that using an average of the cost-of-equity estimates produced by CAPM and a multi-stage DCF would produce a less volatile and more reliable estimate. Taking the average of all historical years in the DCF to project the cost of equity will similarly reduce the impact that any one year's aberrant estimate would have on the overall forecast for the DCF period. Indeed, given our decision to use an average of CAPM and a multi-stage DCF to estimate the cost of equity in 2008 and future years, it would seem clearly erroneous to forecast the cost of equity in this case by using only the published CAPM figures for 2006 and 2007. Accordingly, we will use our established approach for forecasting the cost of equity.

As we are denying AEP Texas' petition for reconsideration on this issue, we also reject its inclusion of CAPM-derived cost-of-equity figures in its URCS Phase III analysis, which affects the revenue allocations for cross-over traffic under ATC and the maximum R/VC ratios derived by MMM discussed below. We will, however, modify our SAC analysis to accommodate the technical corrections discussed in the appendix. Our policy is to incorporate the most recent cost-of-capital decision into our analysis. Accordingly, we also update the cost-of-equity computation in this proceeding to incorporate the findings in Cost of Capital—2007, STB Ex Parte No. 558 (Sub-No. 11) (STB served Sept. 26, 2008).

B. Modified Discounted Cash Flow Analysis

In a SAC analysis, we compare the revenue requirements of the SARR against the total revenues to be generated by the traffic group over the full SAC analysis period. Because the analysis period is lengthy, a present value analysis is used that takes into account the time value of money, netting the annual over-recovery and under-recovery as of a common point in time. If the present value of the revenues that would be generated by the traffic group is less than the

²⁶ See AEP Texas Fourth Supp. Open. at 25.

present value of the SARR's revenue requirements, then the complainant has failed to demonstrate that the challenged rate levels violate the SAC constraint.

On the other hand, if the present value of the revenues from the traffic group exceeds the present value of the revenue requirements of the SARR, then the Board must decide what relief, if any, to provide to the complainant by allocating the revenue requirements of the SARR among the traffic group and over time.

The results of our revised DCF calculations for this case are shown in **Table 1**, below. As that table shows, over the 20-year SAC analysis period, the forecast revenues from the selected traffic group exceed the revenue requirements of the SARR. Thus, we must allocate the revenue requirements of the SARR among the traffic group and over time to determine the relief, if any, to which the complainant is entitled.

Table 1
Discounted Cash Flow Analysis

Year	TNR Revenue Requirements	Forecast Revenues	Difference	Present Value	Cumulative Difference
2000	\$368,466,276	\$384,120,925	\$15,654,649	\$15,510,534	\$15,510,534
2001	674,174,229	711,114,397	36,940,168	33,855,156	49,365,689
2002	673,617,609	720,995,033	47,377,424	39,337,175	88,702,864
2003	688,206,833	695,164,605	6,957,772	5,362,882	94,065,747
2004	731,533,878	732,450,503	916,625	590,517	94,656,264
2005	767,850,337	740,177,635	(27,672,702)	(15,192,250)	79,464,013
2006	801,091,168	766,903,046	(34,188,122)	(19,277,881)	60,186,133
2007	820,540,391	792,070,305	(28,470,086)	(13,713,999)	46,472,134
2008	831,733,122	800,239,147	(31,493,975)	(13,513,706)	32,958,428
2009	847,876,207	825,622,805	(22,253,401)	(8,617,943)	24,340,485
2010	858,514,413	837,854,705	(20,659,709)	(7,220,905)	17,119,580
2011	878,352,476	864,252,262	(14,100,214)	(4,447,884)	12,671,696
2012	897,653,664	908,871,848	11,218,184	3,193,821	15,865,517
2013	918,064,059	933,323,645	15,259,587	3,920,947	19,786,464
2014	937,622,206	953,531,719	15,909,513	3,689,481	23,475,945
2015	954,266,780	965,910,431	11,643,651	2,437,013	25,912,958
2016	976,186,879	991,893,194	15,706,315	2,966,902	28,879,860
2017	1,000,959,371	1,024,715,768	23,756,397	4,050,137	32,929,997
2018	1,025,926,855	1,057,819,490	31,892,635	4,907,268	37,837,265
2019	1,050,778,252	1,091,985,886	41,207,634	5,722,520	43,559,784
2020	1,084,303,356	1,142,408,173	58,104,817	7,282,525	50,842,309

C. Application of the Maximum Markup Methodology (MMM)

Under MMM, the parties use unadjusted URCS to estimate the variable cost of each movement in the traffic group, and then determine the maximum contribution toward SAC costs of each movement in the traffic group, expressed as a markup over variable cost. In this way, MMM allows the defendant carrier to engage in differential pricing necessary to earn the SAC, including a reasonable return on investment.

The first step of MMM is to calculate the average R/VC ratio for the selected traffic group that would cover the total SAC costs. For shipments in the traffic group that fall below that R/VC ratio, we assume the railroad is already charging the highest markup over variable cost that the traffic can bear. Thus, for the railroad to cover the total SAC costs, it would need to recover the resulting shortfall from other shipments through differential pricing. When that shortfall is distributed among the other movements in the traffic group, the assigned contribution would increase as a markup over variable cost. This result under MMM is a sustainable maximum assigned contribution for the remainder of the traffic group as a markup over the variable cost of each movement.

1. Indexing

This is the second disposition of a rate dispute that applies MMM. In implementing the new approach, we have uncovered an inconsistency between how we would forecast the base-year URCS variable costs to future years and the basic objective of the MMM.²⁷ We describe the issue and our solution below.

MMM seeks to determine how much differential pricing the defendant carrier must be permitted in order to recover the total SAC costs and therefore earn a reasonable return on its capital investments. If the defendant has a significant amount of low-rated traffic (traffic with low R/VC ratios), more differential pricing is needed. If the opposite is true and the railroad moves a greater amount of high-rated traffic, less differential pricing is needed. The MMM analysis is based on the actual distribution of R/VC ratios of the traffic group, thus reflecting the ability (or inability) of the railroad to recover a pro-rata share of SAC costs from all its traffic due to the presence of competitive alternatives and real market forces.

Because we use a multi-year analysis, we need to forecast market conditions to see how much differential pricing the defendant would need over the entire DCF analysis period (here, 20 years). In this effort, we use the best forecast of record for the defendant's future traffic volume and rates. In Major Issues, we proposed to use a hybrid of the RCAF-A and RCAF-U indexes to forecast the base-year variable costs of the defendant carrier.²⁸ Though the primary purpose of

²⁷ Accord Western Fuels v. BNSF at 30

²⁸ See Major Issues at 14 n.19. One of the key changes in Major Issues was to resolve a long-standing dispute between carriers and shippers over the productivity of the SARR and the increase of SARR operating expenses over time. Carriers asserted that the SARR would not be able to generate the same productivity over the DCF period as predicted for the railroad industry, (continued . . .)

the hybrid approach was to forecast the operating expenses of the SARR, we also proposed to apply that figure to the defendant's variable costs in MMM. No one commented on its use in MMM during the rulemaking, and it was adopted.

As we apply MMM here, however, we believe that use of the hybrid approach distorts the true distribution of R/VC ratios and the degree of differential pricing the carrier will need in future years. Moreover, the base-year variable costs used in MMM are the defendant's variable costs estimated by URCS, not the variable costs of the SARR. As such, forecasting those variable costs to increase at the same rate as the total operating expenses of the SARR is improper, as we have previously concluded that the productivity of the hypothetical SARR will differ from that of the actual railroad industry. See Major Issues at 43.

In sum, for MMM to correctly calculate the degree of differential pricing needed by the defendant railroad to recover the total SAC costs over the DCF analysis period, we need to properly forecast the defendant's variable costs. To do so accurately, we must use the RCAF-A index, not a combination of the RCAF-A and the RCAF-U index as was proposed in Major Issues. We conclude this technical change is not so significant as to warrant a new rulemaking. We will therefore implement this modification to MMM here.²⁹

2. Other Issues

The parties disagree on several elements of how to apply MMM here. Those disputes are addressed below.

a. BNSF's Proposed Short Haul Adjustment

BNSF argues that there is a flaw in MMM that biases the result in favor of short-haul traffic. BNSF claims that MMM establishes a benchmark R/VC ratio that caps rates at the same level regardless of whether a shipper is a short-haul or long-haul shipper, and that this unintended consequence eliminates a railroad's differential pricing based on market factors. BNSF asserts that short-haul shippers are given an inappropriately large rate reduction under MMM, while long-haul shippers are less likely to receive rate reductions, even if their rates are high relative to other long-haul shippers. BNSF states that, because it cannot allocate loading slots at the mines to shippers offering the highest contribution, it incurs an opportunity cost when a low-contribution movement displaces a high-contribution movement for access to the PRB.

(. . . continued)

while shippers asserted that the SARR would be able to do so. In Major Issues, we adopted a position between these two perspectives. In our view, the SARR would become more productive over time (thanks to the introduction of new technologies and techniques), but because it is designed to be optimally efficient from the moment it begins operation, the ability to generate additional productivity gains would be constrained. We chose to use a hybrid approach which transitioned over a 20-year period from zero productivity growth (using the RCAF-U index) to the full predicted productivity growth of the railroad industry (using the RCAF-A index).

²⁹ See Western Fuels v. BNSF at 30.

BNSF asserts that, to avoid such lost opportunity costs, a railroad will try to equalize the contribution from all traffic. Because the variable costs of short-haul movements are significantly less than the variable costs of long-haul movements, a higher R/VC ratio is necessary on short-haul movements to generate a dollar contribution that is comparable to that generated on long-haul movements.

To correct this flaw, BNSF developed a regression equation to normalize the R/VC ratios of the shippers in the SARR traffic group to account for the impact of distance on R/VC ratios. This approach, according to BNSF, would eliminate the bias in the rate reductions that would be produced by applying MMM without a length-of-haul adjustment.

We are not persuaded that there is a flaw in MMM. MMM is designed to calculate the maximum mark-up over variable cost that a carrier can charge any movement in the traffic group. The SAC analysis calculates the total revenue the defendant may reasonably charge for all the traffic in the traffic group. MMM then allocates those revenues among the traffic group by R/VC ratios to establish the maximum contribution each shipper should bear towards SAC costs. Because that contribution is expressed on a revenue-to-variable-cost basis, a longer movement will have a higher level of contribution to the overall network than a shorter movement, all other things being equal.

We see no fundamental flaw with the general principle in MMM that relief should be provided to those shippers making the highest contribution over variable cost, whether because of distance or other factors. Therefore, we will not make BNSF's length-of-haul adjustment. BNSF's objection is to a policy choice the Board made over how to allocate the SAC costs among the traffic group, a policy decision that was fully debated and decided through rulemaking in Major Issues. BNSF could have offered an alternative to MMM, but chose instead to defend the flawed approach that MMM replaced. Having failed to persuade either the Board or the reviewing court³⁰ that MMM is an impermissible or unwise approach, BNSF may not collaterally attack that method here.

b. AEP Texas' Traffic

The parties differ as to how to generate both the revenues and the variable costs that establish the R/VC ratios for AEP Texas' traffic in MMM. AEP Texas utilizes a single variable cost derived from the average of the various costs from all of the mine origins. BNSF argues that use of average costs for all relevant mine origins is inconsistent with the principles underlying MMM, as the variable costs per ton can vary substantially by mine origin. We agree with BNSF that it is inappropriate to use a single variable cost for all of AEP Texas' traffic because of the differences between the variable cost from different mine origins.

The parties also disagree on how to generate the revenue portion of the R/VC ratios of the AEP Texas traffic for MMM. As explained in the Sept. 2007 Decision, the parties agreed to an analysis based on a single rate for 2003 and another for 2004 for AEP Texas; and we outlined the

³⁰ BNSF v. STB, 526 F.3d 770 (D.C. Cir. 2008).

methodology to be followed for forecasting the revenues from AEP Texas' traffic in 2005 through 2020.³¹ This was consistent with the record, which showed that the rates quoted by BNSF to the Oklaunion plant did not vary by mine origin. However, BNSF has applied those growth rates to 2002 rates that varied by mine origin. Thus, BNSF's forecasted rates vary by mine origin, although the rates in aggregate match the Sept. 2007 Decision. We have adjusted the forecasted revenues for AEP Texas traffic among the different mines so that rates did not vary by mine origin. This had no effect on the total AEP Texas revenue in the analysis, but it did raise the R/VC ratios for AEP Texas' traffic from some mines and lower it for others in the MMM calculations.

c. Other Traffic

With respect to the non-coal traffic contained in the SARR's traffic group, AEP Texas would aggregate all non-coal traffic into eight separate groups by train type and assign an MMM rate to each group in aggregate. BNSF would aggregate more narrowly, by routing, commodity, and car type, because it maintains that the broader aggregation process that AEP Texas uses ignores crucial differences between shippers and does not generate meaningful MMM rates. While both parties aggregate the non-coal traffic contained in the SARR's traffic in applying MMM, we accept BNSF's methodology, because it more accurately accounts for differences among traffic.

AEP Texas reports quarterly MMM rates for all traffic from Second Quarter 2000 through 2003 and then uses annual rates for the remaining years. BNSF would calculate annual MMM rates for all periods. We use BNSF's methodology, because it treats all periods consistently, and we calculate annual MMM rates for all periods.

Finally, the TNR would carry a relatively small amount of traffic that is transported by UP subject to a trackage rights agreement. As both parties agree on how to handle trackage rights payments in MMM and their approach is reasonable, we will follow their approach here.

d. Target MMM R/VC Revenues

We set the target revenues for the MMM calculations as the revenue from the TNR's traffic group less the required reduction in revenues from the DCF model. If the revenues were to exceed the stand-alone costs in all periods, then the target revenues would be equal to the SARR's revenue requirements. Here, however, the revenues for the TNR's traffic group exceed SAC in some years of the DCF (2000-2004 and 2012-2020), but not all. The parties differ on how to distribute the excess revenues over the SAC analysis period for purposes of applying the MMM procedure. BNSF takes the cumulative overpayment at the end of the DCF period and allocates it over every year in the DCF. AEP Texas allocates the overpayment over only those years in which revenues would exceed SAC.

³¹ See Sept. 2007 Decision at 35-36.

AEP Texas allocates the excess revenues correctly. As **Table I** shows, the cumulative over-recovery at the end of 20 years already reflects the appropriate reduction in revenues for each of the negative (under-recovery) years in the DCF model (2005-2011). Thus, it is only the years in which revenues exceed cost that need a revenue-limiting adjustment.

A simple example demonstrates this issue. Assume that revenues exceed stand-alone costs by \$1 million in each of the first 15 years of the DCF; that stand-alone costs exceed revenues by \$1 million in each of the last 5 years; and that there is no inflation. This results in a net overpayment of \$10 million over the DCF period. This \$10 million net overpayment should be proportionally distributed over those periods where revenues exceed stand-alone costs. Therefore, each of the 15 years of overpayments would be reduced by \$666,667, which is the \$10 million net overpayment divided by the \$15 million of total overpayments, multiplied by the overpayment for a particular year (\$1 million).

2. Results of MMM

Applying the MMM procedure to this case yields the results set forth in **Table 2**, below, for the AEP Texas traffic at issue here.

Table 2
Maximum
R/VC Ratio Under MMM

Year	MMM R/VC
2000	202%
2001	200%
2002	195%
2003	243%
2004	263%
2005	SAC > Revs
2006	SAC > Revs
2007	SAC > Revs
2008	SAC > Revs
2009	SAC > Revs
2010	SAC > Revs
2011	SAC > Revs
2012	250%
2013	248%
2014	250%
2015	256%
2016	254%
2017	249%
2018	245%
2019	242%
2020	237%

We compare these ratios with the R/VC ratios generated or forecast for the challenged rates to determine if those rates are reasonable. As detailed in the workpapers underlying this decision, none of the actual R/VC ratios from 2000 to 2004 exceeded the MMM level for the year in which the service was provided. From 2005 until 2011, no MMM levels are shown because the SAC analysis in this case shows stand-alone costs exceeding revenues in each of those years. The SAC analysis for years 2012 and beyond forecast that AEP Texas' traffic will not generate R/VC ratios that exceed the MMM level until the final year of the DCF period (2020) and then only on transportation from some of the mines (as the variable costs associated with each mine are predicted to vary) and only by a few percent.

Under 49 U.S.C. 11704(b), a rail carrier is liable for damages that are sustained by a person as a result of the carrier's violation of the Interstate Commerce Act. Thus, when we find that a carrier has violated 49 U.S.C. 10701(d)(1) by charging a rate that is unreasonably high, we must award reparations. Here, however, no reparations are warranted because AEP Texas has not to date been charged a rate on any movement that exceeded the maximum R/VC level, as determined under the MMM established for its traffic.

The Board also has the authority to prescribe maximum lawful rates for future movements under 49 U.S.C. 10704(a)(1). That section states that when the Board concludes that "a rate charged or collected by a rail carrier . . . will violate this part, the Board may prescribe the maximum rate." Thus, in contrast to reparations – to which a complainant that has paid an unreasonably high rate for past movements has a statutory right to be awarded – the complainant has no similar right to a rate prescription for future movements. Rather, the Board has discretion as to whether or not to prescribe rates for future movements.

Where, as here, the SAC analysis shows that the defendant's rates have not been shown to be unreasonable now, but may become unreasonable at some future point, we look at the broader context to determine whether or not a rate prescription appears to be warranted and appropriate at this time. Here, our analysis shows that BNSF's rates may become unreasonable only with regard to some of the mines at issue and only in the final year of the analysis period, a full 11 years from now. Moreover, the tonnage from those movements represents only roughly 4% of all of the issue traffic analyzed in this case.

This is the last rate dispute to be adjudicated under a 20-year SAC analysis period. In Major Issues, we decided to move from a 20-year analysis to a 10-year analysis, in part because, by their nature, forecasts become less reliable as they stretch out into the distant future.³² In SAC cases, we must rely on forecasts of future traffic patterns and variable costs to complete a multi-year analysis, but as those forecasts move out into the future, they necessarily become more speculative.³³

³² Major Issues at 64-67.

³³ See FMC Wyoming Corp. & FMC Corp. v. Union Pacific RR Co., 4 S.T.B. 699, 741 (2000) ("We do not believe that our maximum reasonable rate findings should be driven by these projections any more than is necessary.")

In fact, the parties agreed to use an 83-quarter DCF in this case, rather than a 20-year, 80-quarter DCF.³⁴ That decision has led to an analysis that forecasts rates on a handful of movements in year 21 that are projected to generate R/VC ratios marginally in excess of the maximum R/VC ratio established by MMM. In other words, BNSF's rates are predicted to become unreasonable only in the final year of a 21-year modeling period—and then only by a small percentage and only relating to certain (not all) of the challenged movements. This combination of circumstances presented here – rates that have not been shown to be unreasonable for 20 years, followed by a projection of unreasonable rates in year 21, and then only for a small (4%) percentage of the issue traffic analyzed – does not provide us a compelling basis for a rate prescription.

Finally, we are mindful that the prescription of rates is a quasi-legislative act that has the force of law and cannot be undone retroactively by future Board action.³⁵ Thus, if we were to fix rates by a prescription today, and the forecasted overcharges do not materialize, we would not have the authority to require AEP Texas to reimburse BNSF at the end of the analysis period. In contrast, if we take no action now, and the rates BNSF actually charges in the future are unreasonable, AEP Texas could be made whole by an award of reparations under 49 U.S.C. 11704(b). Accordingly, we believe the equities in this case – where no rates prior to 2020 are forecast to be unreasonable – do not favor a rate prescription in advance for 2020. However, our decision today provides a transparent guide as to what our analysis concludes would be a reasonable rate in the future should all things remain constant.³⁶ Should the forecasts in the SAC analysis for 2020 be borne out and the parties remain unable to resolve the matter between them, AEP Texas may seek to reopen this proceeding under 49 U.S.C 722(c) to obtain appropriate rate relief. Or it may wish to file a new rate complaint at that point.³⁷

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

It is ordered:

1. The AEP Texas petition for reconsideration is denied.
2. The requests for technical correction are granted in part and denied in part, as discussed in the Appendix.

³⁴ See Sept. 2007 Decision at 107 n.109.

³⁵ See Arizona Grocery, 284 U.S. at 389.

³⁶ As is our customary practice, the workpapers underlying our SAC calculations will be made available to both parties upon request.

³⁷ See Major Issues at 68-75.

3. This decision is effective June 17, 2009.

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

Anne K. Quinlan
Acting Secretary

Appendix

Technical Matters Raised by the Parties

The parties raise several technical matters with respect to the Board's calculations in the Sept. 2007 Decision. The technical corrections advocated by the parties are addressed below.

1. Traffic and Revenue Costs

BNSF would have us adjust the traffic and revenue spreadsheets by performing a "lookup" of costs for coal moves that are new to the SARR after 2002. AEP Texas agrees to this lookup. As we adopt BNSF's revenue forecasts, we accept this technical correction.

2. ATC Calculation

BNSF would adjust the traffic and revenue costs by changing the ATC calculations for non-coal revenues to match the Board's new modified ATC formula. As we adopt BNSF's revenue forecasts, we accept this technical correction.

3. Surfacing

BNSF would now include all surfacing costs as an annual operating expense. This is inconsistent with BNSF's earlier argument that most surfacing costs be included as a capital expense, an argument rejected in the Sept. 2007 Decision at 70. Because this purported technical correction is inconsistent with BNSF's earlier position, it is rejected.

4. Brush Cutting/Mowing

BNSF would include an additional \$100,000 for weed spray, an expense that is already accounted for in the operating expense spreadsheet under "Weed Spraying." We reject BNSF's purported technical correction here, as it would result in a double count for this expense.

5. Roadbed Preparation

AEP Texas points out that, although we accepted AEP Texas' use of a 24-foot roadbed width in the Sept. 2007 Decision at 79-80, our roadbed preparation costs included the cost for a proposed 28-foot wide roadbed. This error is corrected.

6. Unit Cost of Cross Ties

BNSF would adjust the unit cost applicable to TNR's cross ties, as our acceptance of AEP Texas' tie costs was contingent upon the acceptance of AEP Texas' labor costs, which were ultimately rejected in favor of BNSF's labor costs. AEP Texas agrees with BNSF's adjustment. Because both parties agree to this adjustment, we accept BNSF's technical correction.

7. Transition Ties

BNSF and AEP Texas agree that the Sept. 2007 Decision did not include the cost of transition ties in the final road property investment calculations, even though we accepted BNSF's position that such ties would be (at 88). BNSF and AEP Texas agree on the quantities and costs for the additional transition ties, but AEP Texas argues that BNSF failed to offset the costs through a reduction in the quality of Grade 5 cross ties being replaced by the transition ties. We agree with AEP Texas' adjustment and we make this technical correction, with AEP Texas' modification.

8. Rail Mainline

AEP Texas claims that we erred by applying BNSF's length of haul in its spreadsheets after accepting AEP Texas' calculation of the distance that the TNR's rail would need to be shipped to reach the applicable construction railheads in the Sept. 2007 Decision (at 9-11). This error is corrected.

9. At-Grade Crossings

AEP Texas claims that we erred by using BNSF's costs for at-grade crossing protection, when the Sept. 2007 Decision (at 102) accepted AEP Texas' costs for the signals-related portion of the TNR's crossing protection. This error is corrected.

10. Highway Crossing Overpasses

BNSF claims that we erred by not including all of the costs for highway crossing overpasses. AEP Texas argues that BNSF improperly included these costs, because the Sept. 2007 Decision (at 102-103) rejected BNSF's costs in circumstances where "there is no evidence that BNSF or its predecessors incurred costs associated with highway overpasses" and our workpapers therefore eliminated the costs for six highway overpasses where BNSF did not show that it (or a predecessor) incurred any costs for those crossings. There was no error with respect to highway overpasses, and BNSF's purported technical correction is rejected.

11. Big Cajun Coal Shipments

In reviewing the worksheets and calculations used to develop the TNR revenues, AEP Texas identified a formula error in the rate forecast module for the Big Cajun coal shipments, the effect of which is an understatement of the Big Cajun coal rates (and revenues) for the years 2004 through 2020. BNSF agrees to this revenue correction with respect to shipments to the Big Cajun plant. Because both parties agree to this adjustment, we accept AEP Texas' technical correction.

12. Fringe Benefits Ratio

AEP Texas claims that we erred by applying BNSF's fringe benefits ratio applicable to training and start-up costs (43.2%), after accepting AEP Texas' fringe benefits ratio (33.9%) in the Sept. 2007 Decision at 60-61. This error is corrected.

13. Salary for Clerks

AEP Texas claims that we erred by applying BNSF's annual salary for clerks in calculating the TNR's general and administrative expenses, after accepting AEP Texas' proposed salary for these positions. Because the Sept. 2007 Decision (at 60) did accept the more specific evidence provided by AEP Texas for these salaries, this error is corrected.

14. Loss and Damage Costs

AEP Texas claims that our calculation of the TNR's annual loss and damage costs incorrectly applied certain coal tons to the wrong commodity classification, STCC 14 rather than STCC 11, resulting in an overstatement of those costs. We accept AEP Texas' correction to the loss and damage costs for STCC 11 and STCC 14.

15. Equity Flotation Cost

AEP Texas claims that we erred by including equity flotation costs in calculating the SARR's debt, explaining that it added these costs specifically on account of its refinancing efforts, which were rejected in the Sept. 2007 Decision at 106-107. BNSF argues that, while we rejected AEP Texas' evidence concerning the feasibility of the SARR refinancing its debt, we accepted BNSF's evidence that an equity flotation cost should be added to the SARR's investment base and adopted AEP Texas' approach to calculating that cost. We agree with BNSF. The equity flotation costs included in the Sept. 2007 Decision were incurred as part of the original financing of the SARR and are separate from the equity flotation costs associated with refinancing. These costs should therefore be included in the cost of equity calculated for the SARR. AEP Texas' purported technical correction is rejected.