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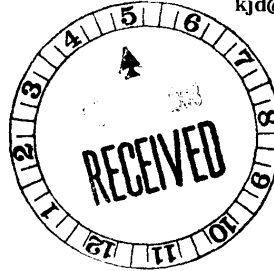
WRITER'S E-MAIL:

September 2, 2003

kjd@sloverandloftus.com

VIA HAND DELIVERY

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Room 711
Washington, D.C. 20423



Re: Docket No. 41191, West Texas Utilities Company
v. The Burlington Northern and Santa Fe Railway Company

Dear Secretary Williams:

Enclosed for filing in the referenced proceeding please find an original and ten copies of AEP Texas North Company's Petition to Vacate Rate Prescription, along with a WordPerfect Diskette containing the filing and a compact disk containing electronic workpapers supporting the Verified Statement of Thomas D. Crowley. Please note that the electronic workpapers, though not the filing or the Verified Statement itself, contain information which has been designated as "Highly Confidential" under the governing protective order. AEP Texas North therefore requests that the electronic workpapers be accepted for filing under seal.

An additional copy of the Petition also is enclosed. Please indicate receipt and filing by time-stamping this extra copy and returning it to the bearer of this letter.

Thank you for your consideration in this matter.

Sincerely,

Kelvin J. Dowd
An Attorney for
AEP Texas North Company

Enclosure

cc: Parties of Record

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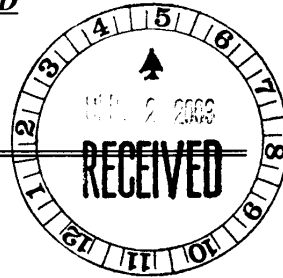
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208824

EXPEDITED CONSIDERATION REQUESTED

**BEFORE THE
SURFACE TRANSPORTATION BOARD**



WEST TEXAS UTILITIES COMPANY

Complainant,

v.

**THE BURLINGTON NORTHERN AND
SANTA FE RAILWAY COMPANY**

Defendant.

Docket No. 41191

**AEP TEXAS NORTH COMPANY'S
PETITION TO VACATE RATE PRESCRIPTION**

Pursuant to 49 U.S.C. § 722(b) and 49 C.F.R. § 1111.7.1, and in accordance with the Board's Decision served July 23, 2003 in this docket ("*West Texas III*"), AEP Texas North Company ("AEP Texas"), successor in interest to Complainant West Texas Utilities Company, hereby petitions the Board to vacate the rate prescription currently governing the transportation of coal from the Rawhide mine in the Powder River Basin ("PRB") of Wyoming to AEP Texas' Oklaunion Generating Station in Vernon, Texas. The purpose of this action is to allow Defendant, The Burlington Northern and Santa Fe Railway Company ("BNSF") to establish a new common carrier rate which, if necessary, AEP Texas then could challenge pursuant to 49 U.S.C. §§ 10701(a) and 11701. In support hereof, AEP Texas shows as follows:

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BACKGROUND

In *West Texas I*¹, the Board prescribed a rate of \$13.68 per ton for coal movements between the Rawhide mine and Oklaunion Station. Very recently, in *West Texas II*,² the Board modified the Rawhide prescription and set a new rate of \$18.04 per ton, a 32% increase, effective June 28, 2003. The ruling in *West Texas II* was predicated on the stand-alone cost (SAC) analysis performed by the Board in *West Texas I*. Since that 1996 Decision, however, there have been numerous, fundamental changes in the factual circumstances, legal standards and regulatory policies on which those SAC findings were based. These include long-term shifts in coal traffic patterns; impacts resulting from Class I railroad mergers; unanticipated changes in inflation rates and the cost of capital; and changes in the Board's own SAC methodology. A more detailed explanation of many of these changes and their potential impacts on the SAC calculation in *West Texas I* is included in the accompanying Verified Statement of Thomas D. Crowley. As shown therein, even if the examination is limited to major changes readily observed in the public domain, there is ample evidence that the underpinnings of the existing prescription are no longer valid.

¹*West Texas Utilities Co. v. Burlington Northern R.R.*, 1 S.T.B. 638 (1996), *aff'd* *sub nom. Burlington Northern R.R. v. S.T.B.*, 114 F.3d 206 (D.C. Cir 1997).

²Docket No. 41191, *West Texas Utilities Company v. The Burlington Northern and Santa Fe Railway Company*, Decision served May 29, 2003.

The initial SAC traffic group relied upon in *West Texas I* included 11 BNSF utility customers that shipped coal in unit trains via a significant portion of BNSF's Front Range Route. V.S. Crowley at 3. These 11 utilities represented the universe of unit train coal shippers using major portions of those lines at that time. Furthermore, internal BNSF projections that were relied upon by the Board failed to identify any prospective, new utility shippers that could be expected to be added to the traffic group in future years *Id.* at 6. Since *West Texas I*, however, and contrary to the assumptions relied upon by the Board, six (6) generating stations that either were not utilizing PRB coal or were not BNSF customers now are receiving PRB coal over BNSF's Front Range Route. V.S. Crowley at 6-7. The availability of this traffic substantially increases the volume of coal that would be transported by the stand-alone railroad, and the associated revenues that would be earned. The other unanticipated changed circumstances outlined by Witness Crowley likewise lead to a downward adjustment in the SAC calculation, and collectively undermine the validity of the current \$18.04 prescription. *Id.* at 4-5.

In *West Texas II*, the Board rejected AEP Texas' call for consideration of these demonstrable changes in circumstances that contradicted many of the assumptions upon which the initial SAC analysis was predicated. Instead, the Board ruled that if AEP Texas wished to challenge the modified rate prescription based on new evidence or substantially changed circumstances, AEP Texas should file a petition to reopen. *West*

Texas II at 4.³ Two months later in *West Texas III*, however, the Board clarified that it did not intend such a reopening to afford AEP Texas a new, full hearing based on current cost data and regulatory standards that would consider all the factual circumstances relevant to the reasonableness of the \$18.04 rate:

In *West Texas II*, the Board stated that WTU may submit evidence of ‘substantially changed circumstances.’ This statement should not be construed as allowing a change in the fundamental assumptions upon which the original SAC analysis was based. The Board has recently held that it is not appropriate to bring an entirely new rate case under the guise of a reopening. Rather, a reopening for substantially changed circumstances is intended to address projections in the original decision that have proven to be seriously inaccurate. See *Arizona Pub. Serv. Co. v. Burlington N. & S. F. Ry.*, Docket No. 41185 et al. (STB served May 12, 2003), *petition for reconsideration pending*.

West Texas III at 3.

³On June 18, 2003, AEP Texas filed a Petition for Reconsideration of *West Texas II*. That Petition remains pending. On July 23, however, the Board served *West Texas III*, with its clarification as to the limited scope of reopening and its invitation to AEP Texas to request vacation of the current prescription in order to obtain a full hearing on a new maximum reasonable rate. AEP Texas acknowledges that the Petition for Reconsideration would be moot if the relief requested herein is granted. Conversely, if the reconsideration requested by AEP Texas is granted, this Petition no longer would be necessary, and would be withdrawn. Under other circumstances, a party in AEP Texas position might wait for a ruling on the Petition for Reconsideration before separately addressing the future of the rate prescription. As explained in Part IV, *infra*, however, AEP Texas faces certain and irreparable harm from any further delay.

The Board then went on to advise that a limited reopening was not the only option available to AEP Texas to seek the establishment of a new maximum reasonable rate for its Rawhide coal shipments:

If a shipper wishes to establish a current maximum reasonable rate using a SAC analysis that is based on different assumptions than originally used, its recourse is to have the rate prescription vacated, allow the railroad to establish a new common carrier rate, and then file a complaint challenging the railroad's new rate. *Id.* at 5 n.7. This limitation is necessary to achieve a proper balance between the interests of fairness to all parties and of administrative finality and repose. *See Arizona Pub. Serv. Co. v. Atchison, T. & S. F. Ry.*, 3 S.T.B. 70, 75 (1998).

Id.

Consistent with the guidance provided by the Board in *West Texas III*, AEP Texas herein seeks vacation of the *West Texas I* prescription, as modified in *West Texas II*, as a predicate to the resumption of Rawhide coal shipments under a new or existing BNSF common carrier rate, subject to AEP Texas' right to challenge the reasonableness of that rate in a full hearing based on current SAC data, and seek a new prescription under 49 U.S.C. § 10704.

ARGUMENT

I. THE BOARD HAS THE AUTHORITY TO VACATE THE *WEST TEXAS* / RATE PRESCRIPTION AND TO RESTORE BNSF'S RATE MAKING INITIATIVE

Pursuant to 49 U.S.C. § 10704(a)(1), the Board may prescribe the maximum rate applicable to a particular movement, after a full hearing, when it finds that the rate is subject to its jurisdiction and exceeds the maximum reasonable level. This same section provides that: “the affected carrier may not publish, charge, or collect a different rate and shall adopt the classification and observe the rule or practice prescribed by the Board.” *Id. See also, Arizona Grocery Co. v. Atchison T. & S.F. Ry. Co.*, 284 U.S. 370, 387-88 (1932).

The statutory framework contemplates that rate prescriptions and other Board orders may become outdated, or may need to be modified, vacated or otherwise revised. Shippers and carriers have different procedural vehicles available to request the lifting of an outdated or unwanted rate prescription. These include 49 U.S.C. § 722(c), which empowers the Board to:

at any time on its own initiative because of material error,
new evidence, or substantially changed circumstances –

- (1) reopen a proceeding;
- (2) grant rehearing, reargument, or reconsideration of an action of the Board; or
- (3) change an action of the Board.

The Board has held elsewhere that this provision can be invoked to reopen a rate prescription. *See* Docket No. 41185, *Arizona Public Service Co. & PacifiCorp v. The Burlington Northern and Santa Fe Railway Company*, Decision served May 12, 2003 at 4 (“APS”). In *APS* and *West Texas III*, the Board further expressed the view that a reopening to revise an existing SAC-based prescription should be limited in scope, and “should not be construed as allowing a change in the fundamental assumptions upon which the original SAC analysis was based.” *West Texas III* at 2.

A reopening to respond to changing circumstances under Section 722 (c) is not the only means by which the Board can address an outstanding rate prescription order, however. The law also contemplates that the Board can vacate a rate prescription in its entirety, and restore the rate making initiative to the carrier subject to normal Board review. 49 U.S.C. § 722(b) provides, in pertinent part:

An action of the Board remains in effect under its own terms or until superseded. The Board may change, suspend, or set aside any such action on notice. Notice may be given in a manner determined by the Board.

A request to vacate a rate prescription in favor of a new common carrier rate was addressed by the ICC in *San Antonio v. Burlington Northern, et al.*, 364 I.C.C. 887, (1981). Therein, the ICC explained:

[T]he question here is whether to vacate a previously established prescription and thus to restore ratemaking initiative to the carriers subject to normal Commission review, and that issue turns on an assessment of the likelihood that the

factual and legal underpinnings of the original prescription continue to have current validity.

* * *

- (4) Although *Arizona Grocery* affirmed the Commission's power to change a prescription by replacing it with another, no party has contended that the Commission is without power...to vacate a prior prescription altogether and thus to restore rate making initiative to the carriers.

364 I.C.C. at 896-97.

Once a prescription is vacated, the railroad is free to set a new rate for the transportation service and the shipper, if dissatisfied with that rate, may file a new complaint and seek to "establish a current maximum reasonable rate" using current cost data and prevailing regulatory standards. *West Texas III* at 3.

II. THE BOARD CAN AND SHOULD VACATE THE *WEST TEXAS I* RATE PRESCRIPTION UPON AEP TEXAS' REQUEST

The law is clear that if a *railroad* seeks to modify a rate prescription because it believes the rate is *too low*, "the carrier has no redress save a new hearing and the fixing of a more adequate rate for the future. "*Arizona Grocery*, 284 U.S. at 387. The Board's predecessor recognized this principle in *San Antonio*, in the context of a request for more limited relief; *i.e.*, the vacation of a prior rate prescription. *San Antonio*, 364 I.C.C. at 896, *citing United States v. Florida East Coast Ry.*, 410 U.S. 224 (1973). *Cf.*, *APS* at 7. In *San Antonio*, the railroad sought vacation of a prescription (and restoration

of its rate making initiative) over the objection of the shipper that originally had sought and secured the prescription. Addressing the *Arizona Grocery* hearing requirement on the rather unique set of facts presented there, the ICC held that extensive evidentiary proceedings already had been completed which established a record sufficient to support its ruling:

In this case, we believe the parties have had and have exercised an opportunity to be heard that is fully adequate to resolve the question before us....[T]he railroads filed a justification statement, including evidence on the cost of service, to which San Antonio replied, challenging that evidence and setting forth its arguments as to why the rate should not be allowed to become effective. Indeed, the carriers and San Antonio have been given a full opportunity to present their arguments concerning the continuing validity of the San Antonio I prescription in three separate forums...and, most importantly, the instant petition for clarification. The issues have been fully addressed.

San Antonio, 364 I.C.C. at 896.

Consistent with the Board's advice in *West Texas III* (at 3), AEP Texas submits that in the narrow class of cases where the party seeking vacation of a rate prescription that has been in effect for several years is the *shipper* that secured the prescription initially, the Board can and should act summarily under Section 722(b) upon request of the shipper.

The governing statute (49 U.S.C. § 10704 (a) (1)) provides that the Board may prescribe a maximum lawful rate only after it finds that "a rate charged or collected by a rail carrier...does or will violate this part...." The only way that a carrier can be

called to defend its rates and be found in violation of Section 10701(a)'s prohibition against unreasonable rates on traffic subject to market dominance is if a complaint is filed by "a person...against a rail carrier providing transportation subject to the jurisdiction of the Board...." 49 U.S.C. § 11704 (c)(1). *See also* 49 U.S.C. § 11701 (b). The principle embodied in these provisions is clear: rate prescriptions are intended to benefit and protect shippers who otherwise would be harmed by unreasonable rates.

The essential corollary of this rule is that if the shipper determines that it no longer needs or desires the protection of the rate prescription it secured, or if that prescription no longer is serving its intended purpose, the shipper should be able to request and receive an order vacating that prescription without further evidentiary showings.⁴ To be sure, removal of the prescription means that the carrier is free to set -- and the shipper must pay -- any new rate it chooses, subject to the Board's jurisdiction to review it on reasonableness grounds. But where the party that sought and for whose benefit the prescription order was first entered seeks its removal, no further proceedings should be required. *West Texas III* at 3.

⁴Such a rule is fully compatible with *Arizona Grocery* and *San Antonio*. The "full hearing" requirement set out in *Arizona Grocery* properly applies when a railroad seeks to remove a prescription and secure an increase in the applicable rate. Having previously been found to have violated the law, it is appropriate that a railroad should bear a heavy evidentiary burden before it can raise its rate again over the shipper's objection. Here, in contrast, the party requesting vacation is the same party for whose benefit the prescription first was imposed.

Through this Petition, AEP Texas does not seek a new Rawhide-Oklahoma rate prescription, or the revision of the prescription first entered in *West Texas I*. Instead, AEP Texas “wishes to establish a current maximum reasonable rate using a SAC analysis that is based on different assumptions than originally used.” *West Texas III* at 3. As the Board instructed there, the first step in that process is “to have the rate prescription vacated....” Under 49 U.S.C. § 722 (b), AEP Texas requests an order to that effect.

**III. THE *WEST TEXAS I* RATE PRESCRIPTION.
AS MODIFIED BY *WEST TEXAS II*, IS NO
LONGER VALID**

AEP Texas’ request for vacation of the Rawhide rate prescription is amply justified by evidence which shows that the factual bases for the *West Texas I* prescription (as modified by *West Texas II*) have been undermined by changed circumstances.

The Board’s assumptions in *West Texas I* regarding coal traffic volumes for the hypothetical West Texas Railroad (“WTRR”) over the 20-year DCF period were critical components of the SAC calculations that supported both *West Texas I* and the more recent *West Texas II*. They also were among the more hotly contested issues between the parties. *See* 1 S.T.B. at 660-664. While some consideration was given to new coal-fired generation capacity scheduled to come on-line during the DCF period,⁵ the Board’s coal volume finding largely rested on the assumption that the mix of BNSF-

⁵*See* 1 S.T.B. at 664.

served unit train coal shippers using the Front Range Route would remain unchanged. *Id.* at 711.

It is now clear that the Board's WTRR volume assumptions were erroneous, as they are very much at odds with actual events in the real world. Current evidence show that the annual coal volumes meeting the criteria for inclusion in the WTRR traffic group are significantly higher than the levels assumed in *West Texas I*.⁶ This results both from shifts in traffic patterns among the eleven (11) utility customers included in the original WTRR group, and from the appearance of six (6) new unit train utility coal shippers on the BNSF Front Range Route (and, thus, the WTRR) whose traffic was not anticipated by the parties or the Board when the original evidentiary record was assembled.

As addressed in further detail by Witness Crowley, the six (6) new WTRR coal movements are to stations that either were not burning coal or were not BNSF customers in 1995, when the initial record closed. Since then, however, all six (6) have become shippers of BNSF-originated Wyoming coal in unit train service via the Front Range Route -- the original criteria for inclusion in the WTRR shipper group. *See V.S. Crowley* at 5-6. This major change in the coal traffic available to the WTRR over the DCF period was unforeseen by the Board when its original volume assumptions were made. Likewise, there have been pattern shifts in the traffic of some original WTRR

⁶*West Texas II* did not revisit or depart from these assumptions.

shippers resulting from post - 1995 railroad mergers, which have the effect of lengthening WTRR's share of some hauls. *Id.* at 14-15.

The collective effect of reflecting these changed circumstances in the Board's 1996 DCF analysis is a significant net increase both in coal volumes and revenues for the WTRR. Based solely on publically-available data, Witness Crowley calculates that actual annual WTRR volumes for 2003 are 21% higher than *West Texas I* assumed, while 2003 WTRR revenues are \$32,000,000 higher than the Board's assumptions. *See* V.S. Crowley at 10, 13. Year-by-year comparisons are shown in Witness Crowley's Tables 2 and 3.

In prior cases, the Board has invited parties to challenge prior prescription orders "[i]f the traffic forecasts upon which these rate prescriptions are based do not materialize...". *FMC Wyoming Corp. v. Union Pacific Railroad*, Decision served May 12, 2000 at 42. Here, the evidence shows that the traffic forecasts on which the *West Texas I* and *West Texas II* rate prescriptions were based have not materialized; actual WTRR volumes and revenues are significantly higher than forecast. Consistent with fundamental SAC theory and principles of simple equity, it should be clear that the foundations of the subject prescriptions are unsound.⁷

⁷Taking account of the new coal traffic in question does not involve a reconfiguration of the WTRR system or a fundamental change in the WTRR traffic group. As noted, the Board in *West Texas I* approved the inclusion of certain traffic that did not exist at the time, but was expected to materialize in the future. *See* 1 S.T.B. at (continued...)

In addition to the changed circumstances regarding WTRR volumes and revenues, there is new evidence showing that the Board's original assumptions concerning inflation rates and capital costs for the WTRR have not been fulfilled. As detailed by Witness Crowley, over the DCF period to date actual inflation has averaged well below the rates assumed in *West Texas I*, and capital costs for the WTRR similarly have been less than forecast. *Id.* at 15-17. The proven errors in these assumptions likewise undermine the viability of the Board's prior orders. *See, CSXT Transportation, Inc., supra.*

Relying solely on publically available information and addressing only the few examples of changed circumstances described above, which can be observed without the benefit of discovery, Witness Crowley re-ran the Board's 1996 SAC model after adjusting the assumptions for traffic volumes and revenues, inflation and capital costs to conform to actual experience. As summarized in his Table 5, the restated SAC rates are significantly lower than those set out in Table 1 of *West Texas II*.

Witness Crowley's re-calculations are preliminary, and as he explains, represent only the first steps in the process that would lead to the determination of a new maximum reasonable rate for the Rawhide-Oklahoma movement. However, they clearly

⁷(...continued)

664. The six (6) shippers in question here were not deliberately left out of the WTRR traffic group; to the contrary, once they became BNSF Front Range Route customers they all met the criteria for inclusion. They would have been included at the outset had AEP Texas and the Board in 1995 foreseen the future availability of their traffic.

demonstrate the ample justification for AEP Texas' decision to request that the current prescription, which is not supported "either by current cost data or by current legal standards,"⁸ be vacated.

IV. THIS PETITION SHOULD BE GIVEN EXPEDITED CONSIDERATION

AEP Texas requests that the Board consider this request for vacation on an expedited basis. Expedited consideration is appropriate here, for two reasons.

First, as shown in Part II, consistency with the statutory scheme and the clear purpose of rate prescription orders requires that a request by a shipper for vacation of a rate prescription established for its own benefit be granted summarily. There being no need to apply an evidentiary test to a shipper's petition to surrender a remedy that it won itself, there is no reason to delay issuance of the requested order.

Second, expedited consideration is necessary to ameliorate irreparable harm to AEP Texas and its ratepayers. As noted at the outset, the purpose of this Petition is to restore BNSF's rate making initiative so that AEP Texas can seek a new maximum reasonable rate based on current cost data and SAC principles. If BNSF sets too high a rate and AEP Texas succeeds in its challenge, reparations will be available to make AEP Texas whole for overcharges collected from the time the challenged rate was established. *See* 49 U.S.C. §§ 11704(b) and 11706(c). Because the current \$18.04 rate is a prescribed

⁸*San Antonio*, 364 I.C.C. at 893.

rate, however, charges paid by AEP Texas thereunder may not be eligible for inclusion in a future reparations claim. *See Arizona Grocery*, 384 U.S. at 387. If, as AEP Texas expects, the new maximum reasonable rate ultimately established is well below \$18.04 per ton, AEP Texas may never be made whole for significant overcharges paid while this Petition was pending.

While delay threatens AEP Texas with irreparable harm, expedited action to grant this Petition would have no adverse impact on BNSF at all. Vacating the current prescription still leaves BNSF free to establish a common carrier rate of \$18.04, or any other rate that it believes it can justify as reasonable under the *Coal Rate Guidelines*. If BNSF's new rate is challenged and successfully defended, BNSF loses nothing. If it is challenged and ultimately ordered reduced, all that BNSF could "lose" is the measure of its charges found by the Board to exceed a lawful maximum.

CONCLUSION

For all of the foregoing reasons, the *West Texas I* rate prescription, as modified by *West Texas II*, should be vacated.

Respectfully submitted,

AEP TEXAS NORTH COMPANY
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By: Timothy P. Stanley, Director
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Dated: September 2, 2003

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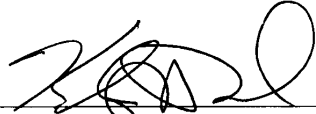


Attorneys & Practitioners

CERTIFICATE OF SERVICE

I hereby certify that this 2nd day of September, 2003, I served a copy of the foregoing Petition to Vacate Rate Prescription by hand delivery on designated outside counsel for BNSF, as follows:

Samuel M. Sipe, Jr.
Anthony J. LaRocca
Steptoe & Johnson, L.L.P.
1330 Connecticut Avenue, N.W.
Washington, D.C. 20036-1795



Kelvin J. Dowd

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**VERIFIED STATEMENT
OF THOMAS D. CROWLEY**

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My name is Thomas D. Crowley. I am an economist and President of the economic consulting firm of L. E. Peabody & Associates, Inc. The firm's offices are located at 1501 Duke Street, Suite 200, Alexandria, Virginia 22314. I am the same Thomas D. Crowley that filed verified statements in this proceeding on June 29, 2000, and on May 7, 2003.

I have been asked by counsel for AEP Texas North Company ("AEP Texas"), successor to West Texas Utilities Company ("WTU"), to describe some of the fundamental changes in the operating, economic and regulatory circumstances that have occurred since the Surface Transportation Board's ("STB" or "Board") April 25, 1996 decision in this proceeding, West Texas Utilities Company v. Burlington Northern Railroad Company, 1 STB 638 ("1996 Decision"), and to determine the impact these changed circumstances have on the Board's calculation of maximum reasonable rates for movements of coal between the Rawhide Mine located near Gillette, WY and AEP Texas's Oklaunion generating station. I am submitting this Statement in support of AEP Texas' Petition to Vacate the current Rawhide rate prescription.

I would clarify at the outset that the changes I will address here are solely those apparent from a review of the public record, and do not include new or changed circumstances that might be revealed in a new proceeding based on current cost and other relevant data that would be secured through discovery. All of these should be taken into account in determining the correct, maximum reasonable rate for AEP Texas' Rawhide traffic. As limited as it is to publically

available data, however, the analysis summarized in this Statement clearly shows that the current Rawhide rate prescription is not valid.

In the 1996 Decision, the STB determined the maximum reasonable rate for the subject movement by calculating the maximum rate under the STB's stand-alone cost ("SAC") constraint, as then interpreted and applied, and comparing the SAC rate to 180 percent of the variable cost to the Burlington Northern Railroad Company ("BN") of providing service to AEP Texas' Oklaunion generating station.^{1/} Because the Board has no rate reasonableness jurisdiction over rail rates below 180 percent of a movement's variable costs, the 180 percent variable cost level constitutes a jurisdictional threshold ("JT"), or floor below which the STB may not prescribe a rate. Therefore, the maximum reasonable rate for a movement is established at the higher of the rate under SAC or at the JT.

In its 1996 Decision, the STB developed the JT for the Rawhide/Oklaunion movement by utilizing its 1994 final Uniform Rail Costing System ("URCS") to develop the BN's system-average costs, and then adjusting the system-average costs based on special studies that were shown to be more representative of the service being offered AEP Texas than the system-average data. Based on this record, the STB concluded that the variable cost associated with providing service to AEP Texas equaled \$7.60 per ton.^{2/} This cost translated into a JT rate level of \$13.68 per ton for the 4th quarter of 1995.

^{1/} See 1996 Decision, at 677. Subsequent to the closing of the record in the 1996 Decision proceeding, the BN merged with the Atchison, Topeka and Santa Fe Railway Company to create the Burlington Northern and Santa Fe Railway Company.

^{2/} See 1996 Decision, at 679.

In addition to developing the maximum rate at the JT level, the STB also evaluated the challenged rate under the SAC methodology. To establish the SAC, the STB developed the operating and construction parameters, and the subsequent costs, of a hypothetical stand-alone railroad, called the West Texas Railroad ("WTRR"). Based on AEP Texas' submission of a traffic group and operating plan drawn from the incumbent's then current operations, the STB utilized the operations and the traffic base of the BN as a guide for the WTRR, and evaluated a railroad designed to transport coal in unit train service to 11 selected power plants that were then being served by the BN over lines that followed the path of the BN route from Eagle Butte Junction, WY, to Fort Worth, TX with branch lines from Wendover to Wheatland, WY and from Sterling, CO, to Wallace, NE. The unit coal trains to the selected 11 power plants were the only unit coal trains then operating over the selected route, and represented the totality of available unit coal train traffic available to the WTRR. The STB concluded that the 1995 SAC maximum rate level equaled \$13.06 per ton.^{3/}

As stated above, the STB prescribes the maximum reasonable rate as the higher of the SAC rate or 180 percent of the variable cost of the movement. As shown in Table 1 below, based on this criteria, the maximum reasonable rate for movements from the Rawhide Mine to AEP Texas' Oklaunion plant in 1995 equaled \$13.68 per ton, or 180 percent of the variable cost.

^{3/} The STB originally found the 1995 SAC rate to be \$12.73 per ton. See 1996 Decision, at 716. However, subsequent to the issuance of its decision, the STB determined it had made a technical error in calculating the 1995 SAC rate, and that the correct 1995 SAC rate equaled \$13.06. See STB Docket No. 41191, West Texas Utilities v. The Burlington Northern and Santa Fe Railway Company, Decided May 28, 2003, page 5 ("2003 Decision").

Table 1 <u>1995 AEP Texas Maximum Reasonable Rate</u>	
<u>Item</u> (1)	<u>Variable Cost/Rate</u> (2)
1. 4Q95 Variable cost Per Ton ^{1/}	\$7.60
2. Jurisdictional Threshold Rate Per Ton ^{2/}	\$13.68
3. 1995 SAC Rate Per Ton ^{3/}	\$13.06
4. 1995 Maximum Reasonable Rate Per Ton ^{4/}	\$13.68
^{1/}	<u>1996 Decision</u> , at 679.
^{2/}	Line 1 x 180 percent.
^{3/}	<u>2003 Decision</u> , at 5.
^{4/}	The higher of Line 2 and Line 3.

In the 2003 Decision, the Board revised the rate prescription based on calculations shown in an STB staff workpaper, that had not been part of the original 1996 Decision. The Board raised the Rawhide-Oklaunion 2003 rate prescription to \$18.04 per ton, the 2003 SAC rate shown in the workpaper.

The 2003 Decision did not consider any changes in the circumstances on which the 1996 Decision and the staff workpaper were based. However, since the 1996 Decision there have been substantial changes in circumstances which, when taken into account, undermine the basis for the 2003 rate prescribed by the Board. The changed circumstances that I address impact the SAC calculations on which the 2003 Decision is grounded. These include long-term shifts in the unit coal train traffic that would be handled by the WTRR, unforeseen impacts on WTRR traffic resulting from the mergers of the BN and the Atchison, Topeka and Santa Fe Railway Company

(“ATSF”) into the BNSF, and the mergers of the Union Pacific Railroad Company (“UP”) and the Southern Pacific Transportation Company (“SP”), unanticipated changes in the rates of inflation and the railroad industry costs of capital, and changes in how the STB applies the discounted cash flow (“DCF”) model when determining SAC.

Though they do not reflect all of the circumstantial changes that affect the legitimacy of the 2003 prescribed rate, even these factors alone show that the current \$18.04 rate is significantly higher than the maximum reasonable rate that could be justified by current cost data and the application of the prevailing principles and precedents under the Coal Rate Guidelines.

In the remainder of this Statement, I will describe these changed circumstances under the following headings:

- I. Long-Terms Shifts In Coal Traffic Patterns
- II. Impacts On WTRR Traffic From Class I Railroad Mergers
- III. Changes In Inflation And Costs Of Capital
- IV. Changes In STB SAC Procedures
- V. Overall Impact On The SAC Rate And The Current Prescription

I. LONG TERM SHIFTS IN COAL TRAFFIC PATTERNS

The original WTRR traffic group, which was based on 1994 BN traffic data, included 11 BN utility coal customers that shipped coal in unit trains via a significant portion of BN’s Front

Range Route. No then-current BN utility customers that met this description were excluded from the WTRR traffic group. Additionally, based on information then available, no new unit coal train customers were expected to utilize BN's Front Range Route, and, therefore, meet the criteria for inclusion in the WTRR traffic group in the future.

Since the STB's 1996 Decision, Western U.S. Class I railroads, including the BNSF, have seen significant long-term shifts in coal traffic and coal use patterns. In specific relation to AEP Texas' SAC route and traffic group, six (6) generating stations that either were not utilizing Powder River Basin coal, or were not utilizing BN's Front Range Route now meet the criteria to be included in the WTRR traffic group. These six stations are:

- Lower Colorado River Authority's ("LCRA") Fayette Project station near Halstead, TX;
- Texas Municipal Power Agency's ("TMPA") Gibbons Creek station near Vernon, TX;
- TXU Texas Utilities' ("TXU") Big Brown station near Streetman, TX;
- Reliant Energy's Limestone station near Donie, TX;
- Entergy's Nelson station near Lake Charles, LA; and
- Public Service of Colorado's ("PSC") Arapahoe station near Denver, CO.

The reason why these six plants were not included in the original WTRR traffic group vary. TMPA's Gibbons Creek plant, TXU's Big Brown plant and Reliant Energy's Limestone plant all burned lignite in 1995, and only converted to BNSF sourced PRB coal after 1996. LCRA's Fayette Project plant and Entergy's Nelson plant were not served by BN in 1995, and only began

receiving coal via BNSF due to trackage rights agreements put in place as part of the UP/SP merger in 1997. PCS's Arapahoe station burned Colorado coal in 1995 that was delivered by the SP, and only converted to BNSF sourced PRB coal in 1996.

At the time evidence was first presented in this proceeding, not one of these six shippers met the criteria for inclusion in the WTRR traffic group. However, given long-term shifts in coal traffic and/or coal use patterns, each of these shippers now move coal over the BNSF's Front Range Route in unit coal trains, and meet the criteria to be included in the WTRR traffic group. Had it been known in 1994 (when the original record was assembled) that these traffic changes were to occur in the near term, they would have been included in the WTRR traffic group.

In addition to new shippers transporting coal over the BNSF's Front Range Route, long-term coal shipping patterns have been impacted by the failure of forecasted new generating capacity to come on-line when and as expected. The original WTRR traffic and revenue forecasts adopted by the Board included new coal-fired plants coming on-line at AEP Texas's Oklaunion station, PSC's Pawnee station and Central Power & Light's ("CPL") Coletto Creek plant during the 20-year DCF period. Information that only has become available subsequent to the STB's 1996 Decision indicates that none of this capacity is expected to be built before the end of the analysis period in 2014.

To estimate the impact of these long-term shifts, I updated the WTRR traffic forecast taking into consideration the traffic from the six new shippers moving coal over the BNSF's Front Range Route, and the lack of new generating capacity coming on-line as forecasted. Relying solely on

data already on record and publically available information, I utilized the following methodology to update the forecast:

1. Actual traffic volumes for the original 11 WTRR customer, as based on FERC 423 data, were used in place of the 1995 to 2002 traffic forecasts included in the STB's 1996 Decision. Traffic volumes for the six new WTRR customers was also based on FERC 423 data;^{4/}
2. The incremental traffic to the proposed new units at PSC's Pawnee plant planned for 2004, CPL's Coletto Creek plant planned for 2010, and AEP Texas' Oklaunion plant for 2012 was eliminated from the forecast; and
3. Forecasts of traffic to the 11 original customers and six new customers subsequent to 2002 are based on the forecast method used by the STB in its 1996 Decision, and applied to the 2002 traffic levels, until such time as the 85 percent capacity factor for each plant has been reached. Once the 85 percent capacity factor has been reached, the traffic levels are held constant for the remaining life of the model. If 2002 traffic is at, or above, the 85 percent capacity factor for each plant, then 2002 traffic levels are held constant for the remaining years of the DCF period.

The results of the updated forecast are compared to the 1996 Decision's forecast in Table 2 below.

^{4/} Entergy's Nelson plant receives PRB coal either directly from the BNSF, or from the Kansas City Southern ("KCS"), which receives PRB coal in interchange with the BNSF at Kansas City, MO. The coal delivered by the KCS does not move over the BNSF's Front Range Route. Because the FERC 423 data does not differentiate between KCS and BNSF terminated coal, I assumed 50 percent of the Entergy Nelson coal is terminated by the KCS, and 50 percent is terminated by the BNSF and moving over the Front Range Route. Also, Reliant's Limestone plant did not begin burning PRB coal until 2002, and Reliant does not presently report Limestone volumes on 2002 FERC Form 423. To estimate Limestone PRB coal volumes, I utilized burn statistics and coal tonnages from other Texas based generating stations that burn both lignite and PRB coal. See electronic file "Donie Tons.xls".

Year (1)	STB 1996 Tons (2)	Updated WTRR Traffic Forecast		Total Tons (5)
		Tons From 11 Original WTR Shippers (3)	Tons From 6 New WTRR Shippers (4)	
1. 1995	45,549,961	46,197,050	0	46,197,050
2. 1996	46,937,282	46,339,320	1,691,065	48,030,385
3. 1997	47,202,161	44,765,483	2,490,746	47,256,229
4. 1998	47,797,198	50,478,981	2,343,272	52,822,253
5. 1999	48,543,918	50,137,129	3,045,156	53,182,285
6. 2000	49,072,835	45,008,016	6,056,442	51,064,458
7. 2001	49,618,311	49,465,050	7,922,215	57,387,265
8. 2002	50,172,344	50,183,809	9,373,202	59,557,011
9. 2003	50,679,254	50,838,558	10,610,763	61,449,321
10. 2004	52,611,251	51,335,895	10,684,902	62,020,797
11. 2005	52,740,808	51,763,445	10,684,902	62,448,347
12. 2006	52,827,534	51,133,375	10,684,902	62,818,277
13. 2007	52,916,973	52,201,272	10,684,902	62,886,174
14. 2008	52,972,660	52,256,521	10,684,902	62,941,423
15. 2009	52,972,660	52,313,502	10,684,902	62,998,404
16. 2010	54,139,207	52,372,270	10,684,902	63,057,172
17. 2011	54,139,207	52,379,788	10,684,902	62,064,690
18. 2012	55,649,741	52,379,788	10,684,902	62,064,690
19. 2013	55,649,741	52,379,788	10,684,902	62,064,690
20. 2014	55,649,741	52,379,788	10,684,902	62,064,690
Source: Electronic file "Tons_Updated.wk4".				

As shown in Table 2 above, the actual coal traffic moving on the WTRR over the 1995-2014 study period is significantly greater than the forecast in the 1996 Decision, even after taking into

consideration the loss of the anticipated additional generating capacity. Based solely on public information that was not available to the Board or the parties in 1994, forecasted 2003 traffic levels are expected to increase by at least 21 percent over what was originally expected, rising from 50.7 million tons to a minimum of 61.5 million tons when the additional traffic is considered. By 2014, traffic volumes based on public data would increase to 63.1 million tons, or 13 percent higher than forecasted in the 1996 Decision. And again, these significant changes are only those observed in the public domain. I would fully expect, and it is reasonable for the Board to assume, that other major changes in BNSF coal traffic patterns that would affect traffic available to the WTRR (for example, cross-over traffic) have occurred which can only be discerned from an examination of BNSF traffic tapes, car movement records and train movement records, documents typically produced in discovery in a present-day SAC case.

Along with the additional traffic volumes, changed circumstances affecting the revenues available to the WTRR also produce results materially different from those assumed in the STB's 1996 Decision. There, the Board adjusted revenues for the original 11 shippers, beginning in 1Q95, based on the five-year historic average change in the Rail Cost Adjustment Factor - Unadjusted For Productivity ("RCAF-U"), or 2.81 percent each year. The actual changes in the RCAF-U over the 1Q95 to 4Q02 time period, however, have averaged 1.89 percent per year. Substituting this rate of change over the historic period and adjusting revenues each subsequent year based on the five-year historic average percentage change in the RCAF-U between 1997 and 2002, or 2.1 percent per year, produces a revenue profile for the WTRR materially different from that assumed in the 1996

Decision. Still other publically observed long-term changed circumstances affecting the WTRR revenue calculation include the following:

1. Beginning in January 1996, with the consummation of the BN/ATSF merger, all traffic moving to Southwestern Public Service's ("SPS") Tolk station would be moved by the WTRR to Amarillo.^{5/}
2. Effective 1Q03, the contracts to SPS' Tolk and Harrington stations were renegotiated.^{6/} The actual renegotiated rate(s) can only be determined through examination of the contracts in discovery. For present purposes however, it is reasonable to estimate the rates beginning in 1Q03, based on the BNSF's average coal rate per ton-mile of 10.5 mills for coal traffic in 2002, indexed to 1Q03 rate levels. Consistent with the Board's 1996 Decision methodology, subsequent to 1Q03, the new rates were adjusted annually by the five-year historic average change in the RCAF-U between 1997 and 2002.
3. In the STB's 1996 Decision, traffic originating in Colorado and moving to CPL's Coletto Creek plant originated on the Denver and Rio Grande Railroad and was interchanged to BN at Pueblo for furtherance to Fort Worth. After the UP/SP merger, however, the traffic shifted, and now originates on the UP which transports it to Dalhart, TX on UP's own rail lines. From Dalhart, UP operates over BNSF rail lines via trackage rights to Fort Worth, before final delivery over UP's own track. As a result of this change, beginning in January 1997 the WTRR rate must be changed from a division of the line haul revenue from Pueblo to Ft. Worth to a trackage rights fee based on the trackage rights fee charged BNSF by UP from the UP/SP merger proceeding.^{7/} The actual trackage rights fee for each year, as reported to the STB in UP's merger status report, is applied through 2002. The trackage rights fee is adjusted by the five-year historic average annual change in the RCAF-U for subsequent years beyond 2002.

^{5/} In the STB's 1996 Decision, the WTRR moved 75 percent of the Tolk traffic to Denver for interchange with the ATSF, and 25 percent to Amarillo for delivery to Tolk. With the BN/ATSF merger, all traffic is delivered to Amarillo by the WTRR where it is forwarded to BNSF. In my revised calculation, the WTRR rate was changed to reflect all shipments being handled to Amarillo, and then adjusted annually in the same fashion as the traffic for the other 10 original utilities.

^{6/} Source: STB Docket No. 42057, Public Service Company of Colorado D/B/A Xcel Energy v. The Burlington Northern and Santa Fe Railway Company, Complainant's Rebuttal Evidence dated May 19, 2003, Public Version.

^{7/} The actual trackage rights fee charged to UP by BNSF for this move was established in the BN/Santa Fe merger proceeding, however, that fee is not publically available.

4. In the 1996 Decision, revenues for traffic moving to PSC's Pawnee station were assumed based on a then-current contract. Beginning in January 2001, however, the PSC traffic has been transported in common carriage under a published rate, which last was updated in January 2003.

In addition to the above discussed changes in revenues for the original 11 WTRR served utilities, overall WTRR revenues are impacted by the addition of traffic to the six new served utilities. Except for the movement to TMPA's Gibbons Creek plant, shipments to these customers are handled by BNSF under contract, so revenues for present purposes must be estimated based on the BNSF's average coal revenue per ton-mile for the year the WTRR began handling the traffic. These revenues then are separated between the WTRR and the residual BNSF based on the STB's modified mileage block proration methodology ("MMP"), and adjusted annually by the actual or forecasted annual change in the RCAF-U, the revenue adjustment method used in the 1996 Decision. Revenues to TMPA's Gibbons Creek plant were established using BNSF's 1996 average coal rate per ton-mile, and, between 1996 and 2Q 2001, when the movement was covered by contract, adjusted in the same method as rates to other new WTRR shippers. However, beginning in 2Q 2001, the traffic moved in common carrier service, and revenues for the movement of coal to Gibbons Creek are based on the STB's prescribed rates for this movement as shown in the STB's March 24, 2003 TMPA decision.

Drawing exclusively on information available in the public domain, reasonable estimates based on that information, and data generated in support of the 1996 Decision, it is still clear that the changed circumstances described above have undermined the validity of the WTRR revenue projections relied upon by the STB in its 1996 and 2003 rate prescription orders. As shown in

Table 3 below, simply accounting for the quantified impacts of the changes observed here requires revision of the 2003 revenue forecast for the WTRR upward by almost \$32,000,000.

Year (1)	STB 1996 Decision WTRR Revenues (2)	Updated WTRR Revenues (3)
1. 1995	\$433,359,742	\$439,119,080
2. 1996	468,414,723	513,621,164
3. 1997	483,622,735	493,376,794
4. 1998	502,747,489	548,953,908
5. 1999	522,965,755	556,377,845
6. 2000	542,748,601	576,762,454
7. 2001	563,394,123	636,838,331
8. 2002	584,862,493	671,726,238
9. 2003	606,631,808	638,190,154
10. 2004	644,494,675	658,508,060
11. 2005	664,656,718	677,874,562
12. 2006	684,496,529	697,827,982
13. 2007	704,963,939	712,809,569
14. 2008	725,562,716	727,977,083
15. 2009	745,951,028	743,644,041
16. 2010	784,903,717	759,677,121
17. 2011	806,959,512	776,014,129
18. 2012	877,793,507	792,560,126
19. 2013	902,459,505	809,246,601
20. 2014	927,818,617	826,266,398
Source: Electronic fil "Tons_Updated.wk4".		

The collective impact of reflecting these changed circumstances is a significant net increase both in traffic volumes and revenues for the WTRR.

II. IMPACTS ON WTRR TRAFFIC FROM CLASS I RAILROAD MERGERS

Several of the long-term changes in the coal traffic patterns for the WTRR from what was projected in the 1996 Decision were the result of mergers between the BN and ATSF, and between the UP and SP. As discussed above, due to the BN/ATSF merger, 75 percent of the shipments to SPS' Tolk plant no longer would be interchanged at Denver, and instead would be transported on the WTRR to Amarillo. This shift leads to a net increase in revenues available to the WTRR.^{8/} Additionally, the merger of the SP into the UP had the unforeseen impact of shifting CPL's Coletto Creek traffic from the WTRR to the UP, which provides the service utilizing trackage rights over the WTRR between Dalhart and Ft. Worth, TX.

The BN/ATSF merger had another impact on the operation and construction of the WTRR that was not anticipated by the Board in 1996. In the STB's 1996 Decision, traffic to SPS' Harrington station was assumed to be delivered by the WTRR to Amarillo, where it was then transported to the generating station along a 1.5 mile spur by the ATSF. The ATSF charged an onerous \$36 per car for this terminating movement. The Board's 2003 Decision likewise incorporated this assumption. However, the fact is that the BN/ATSF merger eliminated the

^{8/} This change also increases the WTRR's operating expenses, as the stand-alone railroad is required to carry the traffic an additional 458.0 miles and incur additional locomotive, crew, insurance and loss and damage related expenses.

requirement for the terminating switch, and allowed for single railroad service to the Harrington plant. In today's operating environment, the WTRR would not interchange Harrington traffic at Amarillo, but would construct the 1.5 mile spur and terminate the shipments itself. This change eliminates approximately \$1.5 million in incurred annual switching charges, and replaces these charges with approximately \$200,000 in annual capital and operating costs incurred to terminate traffic at the Harrington plant.

III. CHANGES IN INFLATION AND COSTS OF CAPITAL

In addition to the materially changed circumstances reflected in long-term shifts in coal traffic patterns and railroad mergers, the STB's 1996 expectations regarding rates of inflation and railroad industry costs of capital over the DCF period have not been validated by actual events. The STB utilized five-year averages taken between 1989 and 1994 to develop its WTRR inflation forecast indexes. When the STB's inflation forecasts are compared against actual rates of inflation, it is obvious the Board's expectations were overstated. For example, Table 4 below compares the STB's 1996 forecast of average annual inflation rates for Materials and Supplies, Wages and Supplements, Equipment Rents, and Materials Prices, Wage Rates and Supplements Combined (Excluding Fuel), against the actual average annual rates of inflation between 1995, the first year of the DCF model, and 2002.

Table 4 Comparison of the STB's 1996 Decision Annual Inflation Forecasts and Actual Annual Inflation		
Index (1)	STB 1996 Decision Inflation Forecasts (2)	Actual Inflation - 1995 to 2002 (3)
1. Materials and Supplies	8.52%	0.25%
2. Wages and Supplements	3.92%	2.96%
3. Equipment Rates	2.91%	0.44%
4. Materials Prices, Wage Rates and Supplements Combined (Excluding Fuel)	4.64%	2.63%
Sources: STB Electronic file "DCF-Tons.wk4" and AAR Railroad Cost Indexes.		

Plainly, the expectations of future rates of inflation on which the 1996 Decision and the 2003 Decision are based overstate actual experience by wide margins. For example, while the STB forecasted prices for materials and supplies to rise by 8.52 percent per annum, in fact, prices only increased on average by 0.25 percent per year.

Overall, the STB predicted the average asset inflation over the 20-year DCF period to equal 6.61 percent per annum. When actual inflation rates are taken into consideration, however, the average annual asset inflation over the 20-year life of the WTRR is only 2.14 percent.^{9/} This discrepancy in asset inflation directly impacts the SAC rates by overstating the replacement value of the WTRR's investment and raising the WTRR's capital recovery charges.

^{9/} This average inflation rate utilizes actual inflation rates between 1995 and 2002. For the periods beyond 2002, I utilized the STB's methodology of forecasting future inflation rates by using a five-year historic average, in this case 1997 to 2002. See electronic file "DCF Tons_updated.wk4".

Similarly, overstated rates of inflation in the RCAF-U also directly impact the WTRR's SAC rates. For example, the 2003 SAC rate of \$18.04 per ton from the STB's 1996 Decision was calculated assuming an average annual change in the RCAF-U of 2.81 percent. In actuality, between 1994 and 2003, the RCAF-U has increased on average by only 1.84 percent per year. This discrepancy means that the forecasted 2003 per ton tariff rate on which the SAC rate was set in the 2003 Decision was not \$24.17 as assumed, but rather only \$22.43 per ton, a difference of \$1.74 per ton. This fact alone undermines the basis for the current rate prescription.

Finally, the railroad industry cost of capital has declined in the eight years since the assumed commencement of WTRR operations in 1995, falling from 12.21 percent in 1994 to 9.75 percent in 2003. As with the changes in inflation, the overstatement in the industry cost of capital has a direct impact on the Board's prescription by overstating the WTRR's capital recovery charges and thus leading to a lower percentage reduction in AEP Texas' SAC rates than would have been the case had the correct figures been available and used.

IV. CHANGES IN STB SAC PROCEDURES

Finally, since the Board's 1996 Decision there have been significant changes in how the STB implements the DCF model used in determining SAC which if applied in this case would produce results for AEP Texas different from the rates reflected in the 2003 Decision. In its 1996 Decision, the STB allocated WTRR capital recovery charges based on changes in forecasted traffic volumes over the 20-year model period. In its May 10, 2000 decision in Docket No. 42022, FMC Wyoming Corporation and FMC Corporation v. Union Pacific Railroad Company

(“FMC”), however, the Board ruled that where freight volumes are projected to increase over the 20-year model period – as is the case with the WTRR’s traffic volumes – allocating capital charges based on volumes puts a disproportionately large share of the capital carrying charges at the later part of the model period. To amend this problem, the STB ruled in FMC that capital recovery charges should be allocated across the 20-year model period based on time and not traffic volumes.

This change in capital recovery allocation directly impacts the SAC rates on the AEP Texas movement. As illustrated in Table 2 above, the WTRR’s traffic is expected to grow well into the future, and, as such, utilizing the capital recovery methodology applied in the STB’s 1996 Decision places a disproportionately large share of the capital burden on the SAC rates in the later periods of the model. Utilizing the precedent established in FMC, and reaffirmed in the Board’s September 21, 2001 decision in Docket No. 42051, Wisconsin Power and Light Company v. Union Pacific Railroad Company (“WPL”) and in TMPA, the correct SAC rates in the later years of the DCF model would be significantly lower than those in the 1996 Decision and the 2003 Decision, when all other factors are taken into consideration.^{10/}

V. OVERALL IMPACT ON THE SAC RATE AND THE CURRENT PRESCRIPTION

As I stated previously, the analysis summarized in this Verified Statement is limited to the principal changes in material circumstances that readily may be observed from the public record.

^{10/} The impact of these changes are shown in Table 5 below.

If the question presented by AEP Texas' Petition asked what the correct maximum reasonable rate for its Rawhide-Oklahoma coal traffic should be, a full analysis of variable^{11/} and stand-alone costs using current cost data supported by complete discovery and consideration of all changed circumstances since the 1996 Decision in a hearing on the record would be necessary. But that is not the relief being sought and is not the purpose of my Verified Statement. Rather, the only question presented by AEP Texas' Petition is whether the current \$18.04 per ton^{12/} rate prescription is unsupported and invalid, and should be vacated. That question clearly should be answered in the affirmative.

When the changed circumstances and new evidence that I have addressed are taken into account, even if no other changes are made to the methodology executed in the 1996 Decision, it is clear that AEP Texas' 2003 SAC rate per ton is significantly lower than the 2003 SAC rate established by the 2003 Decision. To test the impact of these changed circumstances and new evidence on AEP Texas' SAC rates, I adjusted the STB's 1996 Decision DCF model as follows:

1. I adjusted the WTRR's traffic and revenues to reflect actual shipments and changes in rates where known;
2. I utilized actual inflation rates and costs of capital in place of the STB's forecasted inflation. Where actual inflation rates were not available, I utilized the STB's five-year historic average methodology to forecast future rates;

^{11/} I have not addressed variable costs in my Verified Statement both because the current rate prescription is based on SAC and because there is little basis on the public record to conclude that BNSF's variable costs have changed much since the 1996 Decision. Indeed, if the original \$7.60 per ton costs found by the Board are adjusted using the Rail Cost Adjustment Factor adjusted for productivity -- the best surrogate for changes in actual railroad service costs -- the variable cost at 2Q03 levels would be \$6.01 per ton, for a JT of \$10.82 per ton.

^{12/} This \$18.04 rate was calculated after the STB made a correction to how it determined the annual percentage reduction in its workpapers.

3. I adjusted the STB's 1996 Decision operating expenses for each year to reflect actual and forecasted changes in the RCAF-U and the changes in net-ton miles generated by the WTRR based on the new traffic discussed above;^{13/}
4. I increased the WTRR's track miles by 1.5 to reflect the spur leading to SPS' Harrington station, and increased the WTRR investment to reflect this additional track;^{14/} and
5. I utilized the time-based capital recovery methodology adopted by the STB in its FMC, WPL and TMPA decisions.

As shown below in Table 5, even if one only considers the changed circumstances and new evidence discussed in my Verified Statement, the AEP Texas' SAC rates shown in the 2003 Decision are dramatically overstated.

^{13/} In its 1996 Decision, the STB did not adjust maintenance of way expense based on the annual ton-miles generated by the WTRR. To be consistent with the STB's decision, I have not adjusted annual maintenance of way expense by the recalculated WTRR ton-miles.

^{14/} The additional investment was based on the average investment costs per track mile incurred in the construction of the WTRR. See electronic file "WTU Investment for Amarillo Build Out.wk4." I also examined whether if any incremental investment is required to move the incremental traffic from the six new shippers on the stand-alone railroad. I determined that the track configuration accepted by the Board is sufficient to handle the approximately 3.8 new loaded trains per day. See electronic file "Trains Per Day.xls."

Table 5			
Comparison of the STB's 2003 Decision			
<u>WTRR SAC Rates and Updated WTRR SAC Rates</u>			
<u>Year</u>		<u>STB 2003</u>	<u>Updated</u>
<u>(1)</u>		<u>Decision SAC Per Ton</u>	<u>SAC Per Ton</u>
		<u>(2)</u>	<u>(3)</u>
1.	2003	\$18.04	\$16.44
2.	2004	18.83	16.65
3.	2005	19.73	16.89
4.	2006	20.69	17.13
5.	2007	21.70	17.47
6.	2008	25.35	20.57
7.	2009	23.92	18.15
8.	2010	25.10	18.69
9.	2011	26.39	18.90
10.	2012	27.03	19.24
11.	2013	28.46	19.63
12.	2014	29.97	20.03
Sources: STB <u>May 2003 Decision</u> and electronic file "DCF-Tons Updated.wk4".			

Based on a review of the changed circumstances and new evidence observed solely in the public domain subsequent to the 1996 Decision, I conclude that the current \$18.04 prescribed rate cannot be supported by the best evidence of record, and that the Board has no reason to have any continued confidence in its validity.

VERIFICATION

COMMONWEALTH OF VIRGINIA)
)
CITY OF ALEXANDRIA)

I, THOMAS D. CROWLEY, verify under penalty of perjury that I have read the foregoing Verified Statement of Thomas D. Crowley, that I know the contents thereof, and that the same are true and correct. Further, I certify that I am qualified and authorized to file this statement.


Thomas D. Crowley

Sworn to and subscribed before me
this day of September 2, 2003.

Anthony V. Evanshaw
Anthony V. Evanshaw III
Notary Public for the State of Virginia

My Commission expires: September 30, 2003