

210695

PUBLIC VERSION

**BEFORE THE
SURFACE TRANSPORTATION BOARD**



ARIZONA PUBLIC SERVICE COMPANY,
and PACIFICORP,

Complainants,

v.

THE BURLINGTON NORTHERN AND
SANTA FE RAILWAY COMPANY,

Defendant.

Docket No. 41185

**COMPLAINANTS ARIZONA PUBLIC SERVICE
COMPANY'S AND PACIFICORP'S REBUTTAL EVIDENCE
AND ARGUMENT ON REOPENING**

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V.S. NORDLANDER

V.S. DURNING

V.S. DIETRICH

V.S. CROWLEY

**ELECTRONIC WORKPAPERS (CONTAINED IN ACCOMPANYING
COMPACT DISC)**

ARGUMENT

NORDLANDER

DURNING

DIETRICH

CROWLEY

	)	
ARIZONA PUBLIC SERVICE COMPANY,	)	
and PACIFICORP,	)	
	)	
Complainants,	)	
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v.	)	Docket No. 41185
	)	
THE BURLINGTON NORTHERN AND	)	
SANTA FE RAILWAY COMPANY,	)	
	)	
Defendant.	)	

Complainants Arizona Public Service Company (“APS”) and PacifiCorp (collectively referred to as “APS/PacifiCorp”), hereby submit their Rebuttal Evidence and Argument (“APS/PacifiCorp Rebuttal”) in accordance with the Board’s order in this proceeding served December 8, 2003.¹ APS/PacifiCorp’s Rebuttal responds to The

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Burlington Northern and Santa Fe Railway Company's ("BNSF") April 9, 2004 Reply Evidence on Reopening ("BNSF Reply"). As explained below, and in the Rebuttal Verified Statements of Thomas D. Crowley, Kenneth S. Nordlander, Brian Durning and Randy G. Dietrich, BNSF's Reply seeks to circumvent well-established precedent that retrospective rate relief is not available on reopening, takes an unduly narrow view of the proper scope of reopening of this proceeding and attempts to include in its analysis only changed circumstances that are beneficial to BNSF, while turning a blind eye to changed circumstances that benefit APS/PacifiCorp. Contrary to BNSF's arguments, the methodology and calculations presented by APS/PacifiCorp are consistent with established precedent. They properly consider and reflect changed circumstances relating to declines in traffic volumes from, and the potential closure of, the McKinley Mine, and properly update forecasts and indices that were relied upon in the earlier decisions but have proven to be inaccurate.²

October 14, 2003 denying APS/PacifiCorp's Petition for Reconsideration of the *May 2003 Decision* and further clarifying the scope of this reopened proceeding. ("*October 2003 Decision*"). The *May 2003 Decision* and *October 2003 Decision* are sometimes collectively referred to herein as the "*2003 Decisions*."

² As previously noted in Complainants Arizona Public Service Company's and PacifiCorp's Opening Evidence and Argument on Reopening ("APS/PacifiCorp Opening") (APS/PacifiCorp Op. at 9 n.5.) APS/PacifiCorp believe that the Board committed material errors in its *May 2003 Decision* and *October 2003 Decision* in, *inter alia*, limiting the scope of this proceeding and in 'remov[ing] the prescriptive effect' of its 1998 rate order. APS/PacifiCorp reserve all rights to seek judicial review of these decisions upon the issuance of a final decision in this reopened proceeding.

I. INTRODUCTION

In order to drive the new maximum reasonable rate levels on this reopening up to the vicinity of the rate it published in January 2003, BNSF has been forced to concoct some unprecedented new adjustments to the Board's DCF analysis and to interpret the scope of the Board's reopening in a strained and extremely restrictive manner. First, BNSF claims that APS/PacifiCorp's DCF analysis is flawed because it calculates maximum rates for the 1994 through May 21, 2003 period that exceed the rates previously prescribed by the Board for that period. BNSF Reply Arg. at 2, 29; V.S. Baranowski, Section III. In order to remedy this claimed flaw, BNSF proposes an adjustment that would effectively apply the new maximum rates retroactively and recover reparations.

Second, BNSF raises several unfounded criticisms of APS/PacifiCorp's DCF analysis. These criticisms include an attempt to exclude all non-McKinley Mine coal traffic that has moved, or will move, prior to 2007 to APS/PacifiCorp's Cholla Station and Salt River Project Agricultural Improvement and Power District's ("Salt River's") Coronado Station; a rejection of APS/PacifiCorp's use of historical trends for all available DCF years to update inflation index values used to project future revenues and operating expenses; and an attempt to employ a new modification to the mileage credit blocks for originating and terminating unit coal train traffic in applying the

Board's modified-straight-mileage prorate ("MSP") methodology for dividing revenues for cross-over traffic.

APS/PacifiCorp rebut each of these key criticisms, as well as several less significant issues, in the argument that follows.

In further support of this rebuttal, APS/PacifiCorp also include the Rebuttal Verified Statements of the following witnesses on the following subjects:

<u>Witness:</u>	<u>Subject:</u>
Kenneth S. Nordlander	Cholla: historic and projected coal supply sources; historic and projected coal volumes; contract terms
Brian Durning	Cholla: historic and projected coal supply sources; historic and projected coal volumes
Randy G. Dietrich	Coronado: projected coal supply sources; projected coal volumes
Thomas D. Crowley	DCF conceptual error; restated SAC analysis; reparations.

II. BNSF'S DCF ANALYSIS ADJUSTMENT TO REMEDY THE CLAIMED "CONCEPTUAL ERROR" IN APS/PACIFICORP'S DCF ANALYSIS IS IMPROPER AND MUST BE REJECTED FOR NUMEROUS REASONS

BNSF claims that the DCF analysis submitted by APS/PacifiCorp in its Opening is "conceptually flawed" and therefor must be adjusted. The supposed flaw in the analysis is "... the failure to take account of the prescribed rate levels during the

elapsed portion of the DCF period (1994 through May 21, 2003).” V.S. Baranowski at 10.

In order to “fix” this asserted flaw, BNSF first quantifies the difference between the prescribed rates resulting from the Board’s 1997-1998 DCF analysis and the new SAC-based maximum rates BNSF now calculates in its Reply for the period January 1, 1994 through May 21, 2003. V.S. Baranowski at 24, MRB-2. It then adds this “cost under-recovery” to the SAC-based maximum rates it initially calculated for the period May 22, 2003 through the assumed closure of the McKinley Mine in 2008. *Id.*

BNSF has not even attempted to present any legal support for this unprecedented procedure (*See* Reply, Arg. p. 2, p. 29), and in fact, there is none. Applicable precedent, including the Board’s decision reopening this proceeding, establishes beyond question that BNSF’s effort to obtain revenues over and above the Board’s prescribed rates for coal deliveries from January 1, 1994 through May 21, 2003 is improper and prohibited.

A. The Prescribed Rates in Effect through May 21, 2003 cannot be Challenged

It is well-established law that the Board does not possess the power to order payment of amounts beyond the prescribed rates for traffic that moved before May 21, 2003. In *Arizona Grocery Co. v. Atchison, T. & S. Ry.*, 284 U.S. 370 (1932) (“*Arizona Grocery*”) the Supreme Court explained the limits of the power of the Board’s

predecessor, the Interstate Commerce Commission (“ICC”), to change, retroactively, a prescribed maximum reasonable rate.

Arizona Grocery involved a situation where the ICC had prescribed a maximum reasonable rate which it subsequently found to be unreasonably high and replaced with a new, lower prescribed rate. The ICC awarded reparations for the difference between the first prescribed rate and the lower second prescribed rate on traffic that moved while the first prescribed rate was in effect. The Supreme Court ruled that the agency did not have the power to “. . . retroactively repeal its own enactment as to the reasonableness of the [first] rate it prescribed.” *Id.* at 389. In explaining the reasons for this rule, the Supreme Court stated:

Specific rates prescribed for the future take the place of the legal tariff rates theretofore in force by the voluntary action of the carriers, and themselves become the legal rate. As to such rates, there is therefore no difference between the legal or published tariff rate and the lawful rate. The carrier cannot change a rate so prescribed and take its chances of an adjudication that the substituted rate will be found reasonable. It is bound to conform to the order of the Commission. *If that body sets too low a rate, the carrier has no redress save a new hearing and the fixing of a more adequate rate for the future. It cannot have reparation from the shippers for a rate collected under the order upon the ground that it was unreasonably low.* This is true because the Commission, in naming the rate, speaks in its quasilegislative capacity. The prescription of a maximum rate, or maximum and minimum rates, is a legislative quality as is the fixing of a specified rate.

Id. at 387-88 (emphasis added).³

³ APS/Pacificorp are aware of only one instance in which this Board or its predecessor, the Interstate Commerce Commission (“ICC”), has ever departed from strict

BNSF here argues that because the Board's originally prescribed rates for 1994 through 2003 were too low, it must be allowed to recover, in its post 2003 rates, the difference between the original prescribed rates and the new, higher maximum rates for that historic period calculated on reopening based upon changed circumstances.⁴ Through this adjustment of the DCF analysis, BNSF seeks to do exactly what the Supreme Court explained is prohibited - *i.e.*, to ". . . have reparation from the shippers for a rate collected under the order upon the ground that it was unreasonably low." *Id.*

adherence to the *Arizona Grocery* doctrine: in *Iowa Power v. US*, 712 F.2d 1292 (8th Cir. 1983), the Eighth Circuit affirmed the ICC's acceptance of a Burlington Northern Railroad Company ("BN") tariff that increased Iowa Power's rate on coal shipments above the level that had been prescribed in a prior order, retroactive to the date BN had first filed for the increase. However, in that instance, another court had previously ruled that the ICC's original rejection of the increase had been unlawful under the *Staggers Act* (because enactment of the jurisdictional threshold had vitiated rate prescriptions below the threshold), and the ICC's belated acceptance of the increase was simply an effort to undo the effects of its own judicially-identified *ultra vires* action. The STB has since ruled that *Iowa Power* has no application where, as here, the rate prescription from which retroactive relief is sought was never ruled unlawful. *See, e.g.*, Docket No. 41191, *West Texas Utilities Company v. Burlington Northern and Santa Fe Railway* (STB served May 29, 2003), at 6-7.

⁴ APS/PacifiCorp do not accept any suggestion that the rates originally prescribed by the Board were too low. If the Board were properly considering all the relevant changed circumstances, the new maximum rates calculated on reopening would be below the rates originally prescribed. As discussed *infra*, the Board has already ruled, that under those circumstances APS/PacifiCorp would have no right to reparations.

**B. The Board's Earlier Rulings in this Proceeding
Confirm that BNSF's Proposed "Adjustment"
of the DCF Analysis is Improper**

BNSF has raised the issue of retroactive rate relief in earlier phases of this proceeding. In efforts to convince the Board to reopen and modify its rate prescriptions in 1997, BNSF argued that "... even if the Board at some future time sought to reopen this proceeding to correct an actual shortfall in the SARR's predicted traffic volumes, it likely would have no ability to remedy its error" because of the absence of any Board authority "to recover unpaid amounts if the maximum rate set by the Board is later found to be too low." Petition to Reopen of BNSF filed August 18, 1997, at 15.

In its *1998 Decision*, the Board addressed this argument, and BNSF's (incorrect) companion argument that APS/PacifiCorp could recover further reparations on a reopening if traffic volumes proved to be greater than projected. The Board there explained:

Santa Fe argues that the opportunity to reopen this proceeding to revise our rate prescription in light of future developments does not adequately protect the carrier. Santa Fe Petition, at 14-16. *Santa Fe reasons that we would not be able to reimburse it for reparations or reduced rates that are based on overly optimistic traffic volumes*, but that the utility would be able to obtain further reparations and altered rate relief if traffic volumes are greater than predicted. Santa Fe argues that, in view of this alleged dichotomy of remedies for erroneous predictions, we should resolve any uncertainties over future traffic volumes in favor of the carrier.

We do not agree with Santa Fe's assertion that the utility would be able to obtain retrospectively altered rate relief if traffic volumes are greater than predicted. *The shipper's right to seek reparations for unreasonable rates on past movements does not extend to rates that were prescribed by the Board.* To hold otherwise would mean that rate prescriptions could never be final. While the Board has the authority to reopen past decisions, that authority is seldom exercised retrospectively, and we know of no instance where the Board or its predecessor has routinely reopened administratively final rate prescriptions to order further, retroactive rate reductions. We expect that any possible further reduction in the rates prescribed for the Cholla plant in light of future developments would be restricted to prospective application. Thus, there is no disparity in treatment.

1998 Decision, 3 S.T.B. at 79-80 n.42 (emphasis added).

In its *May 2003 Decision*, the Board specifically addressed, and ruled upon, BNSF's request for retroactive relief from prescribed rate levels that were in effect prior to the effective date of the Board's decision to reopen this proceeding. After discussing why it believed its action to lift the rate prescription is consistent with *Arizona Grocery*, the Board stated that "[h]ere, the lawfulness of the rates approved and prescribed pursuant to 49 U.S.C. 10704(a)(1) in our 1998 Reopening cannot be challenged with respect to traffic that moved from 1997 until now." *May 2003 Decision*, at 8 (emphasis added); see also *WTU v. BNSF*, *supra*, n.3.

**C. The Fact that BNSF's Proposed Adjustment
Would Recover the Reparations Prospectively
from May 2003 does not Render it Permissible**

It is transparently obvious that BNSF's "adjustment" to the DCF analysis for under-recovery of costs due to the fact that the Board's prescribed rates for 1994 through May 21, 2003 were lower than the new maximum rates for that period calculated today (with the very limited evidence the Board has allowed on reopening) is purely and simply an attempt to recover reparations from APS/PacifiCorp for this period. The fact that the reparations would be paid in the form of higher rates from May 22, 2003 through 2008 cannot be viewed as changing, in any sense, the nature of the payment. Indeed, only by giving retroactive effect to the new maximum rates over the historical period can one even calculate the adjustment that BNSF proposes.

Unfortunately for BNSF, however, this attempt to achieve indirectly that which *Arizona Grocery* proscribes directly, runs squarely into the well-established "rule against retroactive ratemaking," which posits that "[a] rate designed to recoup past losses is retroactive and illegal." *Public Service Company of N.H. v. F.E.R.C.*, 600 F.2d 944, 958 (D.C. Cir. 1979). As succinctly explained by Judge Williams in *Associated Gas Distributors v. FERC*, 893 F.2d 809, 810 (1990):

The retroactive ratemaking doctrine . . . focuses on how the current rate is determined. Under this doctrine, the Commission is prohibited from adjusting current rates to make up for previous over- or undercollections of costs in prior periods. The retroactive ratemaking doctrine is thus a

logical outgrowth of the filed rate doctrine, prohibiting the Commission from doing indirectly what it cannot do directly. The Commission may not allow a utility to "recoup past losses. . ."

Id. (Williams, J., concurring in denial of rehearing *en banc*.) Because BNSF's proposed DCF adjustment predicated on alleged under-recoveries prior to May 22, 2003 is manifestly an attempt to recoup those under-recoveries through increases in the current and future rates above the levels that otherwise would be authorized, it is unlawful under the retroactive ratemaking doctrine.⁵

D. BNSF's Effort to Recover Reparations on the Traffic Transported from January 1999 through December 31, 2002 also Violates Contractual Commitments

As explained to the Board in APS/PacifiCorp's Reply To Petition To Reopen And Vacate Rate Prescription, filed January 30, 2003, APS/PacifiCorp and BNSF entered into a Confidential Memorandum of Understanding in January 1999 ("MOU") and subsequently Rail Transportation Agreement BNSF-C-12203 ("BNSF-C-12203"). V.S. Sauvageau at 3-4. The MOU and BNSF-C-12203 appear respectively as Exhibits 4 and 5 of Mr. Sauvageau's Verified Statement. BNSF-C-12203 provides that {

⁵Although the rule against retroactive ratemaking has been applied primarily in the natural gas and electric utility rate context, its underlying rationale – preventing the indirect assessment of retroactive rate increases through prospective increases predicated on past losses – plainly applies with equal force to condemn BNSF's attempt to circumvent *Arizona Grocery*.

} The rate provision of

BNSF-C-12203 specifies at {

}

Section II.B of the referenced Confidential Memorandum of Understanding provides in a pertinent part as follows: {

}

By its attempt to recover reparations for the coal transported during the term of the Agreement, BNSF is {

} In addition, of course, the Board has no jurisdiction over the rates for coal that was transported pursuant to the Agreement, *i.e.*, all coal transported by BNSF to Cholla from January 1, 1999 to December 31, 2002. 49 U.S.C. §10709(c). *See, e.g.*, Docket No. 42059, *Northern States Power Co. Minnesota D/B/A Xcel Energy v. Union Pacific R.R.*, (STB served May 24, 2002) at 1 n.1; Docket No. 42038, *Minnesota Power, Inc. v. Duluth, Missabe and Iron Range Ry.*, (STB served May 11, 1999) at 1 n.1.

E. BNSF Intentionally Waived its Right to Seek Reopening Before January 2003

Although BNSF now seeks to recover additional monies for the services it rendered from 1994 through May 2003, it accepted those rates from the time the Board issued its *1998 Decision* until January 2003. BNSF chose not to appeal the *1998 Decision*, paid reparations and established the rate prescribed for 1998. In 1999, BNSF went beyond simply accepting the prescribed rates and agreed by contract to charge the prescribed rates from January 1, 1999 through 2002 as described immediately above.

After the Board's *1998 Decision*, BNSF remained free to file a further petition or petitions seeking reopening. In fact, the Board specifically invited such petitions in the conclusion of that decision:

If the revenue and cost projections upon which these rate prescriptions are based become unrepresentative, the parties may either agree upon revisions to these prescriptions or petition the Board to reopen the proceeding.

1998 Decision, 3 S.T.B. at 86. *See also id.*, 3 S.T.B. at 79 n.42 and 80. If BNSF had filed a petition seeking reopening earlier, it is possible that such a petition might have been granted. However, BNSF chose to {

} In its Petition to Reopen, filed August 18, 1997, BNSF stated:

The Board's offer to reopen and adjust its rate order if future coal shipments from the McKinley Mine to Cholla and Coronado should fall below predicted levels (as they have during the past two years) does nothing to remedy the problem because the substantial reparations award and rate prescription that the Board seeks to impose on Santa Fe *today*

are almost entirely driven by the Board's unsupported and clearly erroneous estimates of *future* traffic levels, and the Board likely would have no means to adjust its erroneous rate award retroactively.

Petition to Reopen, at 2-3.

Elsewhere in the Petition to Reopen BNSF argued:

. . . the Board at several places in its Decision suggested that it could later reopen the proceeding and adjust its rate prescription if its "status quo" traffic assumptions proved to be incorrect. Decision at 12, 13, 20.

The defect in the Board's proposed remedy is that it does not take into account the manner in which the DCF model determines maximum reasonable rate levels. Because the SAC test involves a long-run, multi-year analysis, and most of the DCF period extends beyond the current year, the model's assumptions regarding the *future* traffic volumes and revenues of the SARR have an enormous impact on the level of the maximum reasonable rate (on which reparations and a rate prescription are based) for the *current* time period.

* * *

. . . even if the Board at some future time sought to reopen this proceeding to correct an actual shortfall in the SARR's predicted traffic volumes, it likely would have no ability to remedy its error.

Petition to Reopen at 14-15.

As noted earlier, APS/PacifiCorp strongly disagree with any suggestion that the Board's 1998 rate prescriptions were in any respect too low. In fact, APS/PacifiCorp believe that if the Board allowed the introduction of other evidence that should be considered on this reopening the resulting SAC-based maximum rates for the January, 1994 to May 21, 2003 period would be below the rates initially prescribed.

The point of referring to these contentions by BNSF is only to demonstrate that at the time it intentionally and voluntarily waived its rights to seek reopening for four years, it was fully cognizant that any overstatement in the future traffic volumes would have a significant impact on maximum reasonable rate levels during those years and that it could not recover reparation for those years.

F. Consideration of Actual Revenues Versus Maximum Rate Levels from the 1998 Decision for the Full AGRR Traffic Group Shows that BNSF has not Suffered a Shortfall

In its development of its proposed reparations adjustment, BNSF focuses solely upon the traffic of the AGRR moving from the McKinley Mine to Cholla. It completely disregards the traffic moving to the other power plant served by the AGRR, *i.e.*, Salt River's Coronado Station. If it had considered the revenues actually received from both the Cholla and the Coronado traffic, there would be a considerably different outcome. Based upon APS/PacifiCorp's DCF analysis on reopening, there would be no revenue shortfall. In fact, for 1994 through May 21, 2003 the actual revenues for the Cholla and Coronado traffic are substantially greater than the revenues for this traffic when based upon the rate levels calculated in the *1998 Decision*. The reason is that Salt River continued to pay for the transportation of its coal to Coronado based on its contract rates. The difference between the SAC-based rates to Coronado and Salt River's contract rates is more than sufficient to offset any conceptual "shortfall" related to the Cholla traffic.

As shown in Crowley Rebuttal Exhibit ____[TDC-7], the actual revenues paid on the Cholla and Coronado traffic from McKinley exceed the revenues under the maximum rates from the *1998 Decision* by more than \$16.2 million over the 1994 through May 2003 period.

If all of BNSF's other adjustments to the DCF analysis were accepted (which, for reasons discussed in the following sections of this argument, would be improper) there would be a "shortfall" in revenues for the Cholla and Coronado traffic, but a much smaller one than the "shortfall" advanced by BNSF through its purported DCF adjustment. According to Mr. Crowley's calculations, the shortfall would be less than half of that calculated by BNSF. *Id.*

G. BNSF's Calculation of Actual Revenues is Otherwise Flawed

As discussed in the next section of this argument, BNSF has wrongfully excluded from its DCF analysis all tons from non-McKinley origins prior to 2007. As a result, BNSF's "shortfall" analysis completely ignores substantial volumes of coal (and associated revenues) that were transported to Cholla between 1994 and May, 2003 from origins other than McKinley. The number of tons delivered to Cholla that are not included in BNSF's shortfall analysis is approximately 3.7 million tons as described by Mr. Crowley. R.V.S. at 10. Assuming that these tons moved under the average non-McKinley rate per ton, BNSF received over \$42 million in revenues for this traffic excluded from BNSF's analysis. *Id.* Focusing solely on the divisions from such

crossover traffic that would have been earned by the AGRR, the figure is approximately \$10 million. *Id.* Crowley, R.V.S., at 10.

Finally, it is appropriate to note that the Cholla rates prescribed by the Board in 1998 have been very profitable for BNSF. Based on the Board's variable cost findings in the *1997 Decision*, and the traffic volumes used by both parties, BNSF has earned a contribution over variable costs in excess of \$55 million in the aggregate from 1994 through May 21, 2003. Crowley Rebuttal Exhibit ____ (TDC-8).

**III. WITH LIMITED EXCEPTIONS, BNSF'S
CRITICISMS OF APS/PACIFICORP'S SAC ANALYSIS
ARE UNFOUNDED AND MUST BE REJECTED**

While essentially agreeing with the basic framework of APS/PacifiCorp's DCF analysis,⁶ BNSF raises certain key criticisms that are designed to restrict greatly the available traffic and revenues available to the AGRR. As explained below, and in the attached Rebuttal Verified Statements, BNSF's attacks lack merit and are fundamentally at odds with the Board's *2003 Decisions* and other Board precedent.

⁶ For example, BNSF accepts: correction of a formula error in the DCF model used by the Board in its *1998 Decision*; APS/PacifiCorp's methodology used to calculate construction expenses for a new siding at Defiance, NM; APS/PacifiCorp's general methodology for adjusting operating expenses to reflect fluctuating traffic volumes; use of actual data for historical values of the Rail Cost Adjustment Factor, Unadjusted for Productivity ("RCAF-U"), Rail Cost Adjustment Factor, Adjusted for Productivity ("RCAF-A"), Railroad Cost Recovery ("RCR") Indexes and railroad Cost of Capital; and APS/PacifiCorp's approach for revising historical and forecasted Federal and State Tax rates. These and other aspects of APS/PacifiCorp's DCF Model that are accepted by BNSF are discussed in the Rebuttal Verified Statement of Mr. Thomas D. Crowley. Because BNSF does not dispute any of the operational or engineering requirements APS/PacifiCorp's witness Paul Reistrup addressed in his Verified Statement on Reopening, APS/PacifiCorp is not including a Rebuttal Verified Statement from Mr. Reistrup.

**A. BNSF's Attempt to Limit the Traffic Group
is Inconsistent with the Board's 2003 Decisions**

**1. The Board's 2003 Decisions do not Preclude the Inclusion of
Non-McKinley Tons in the Traffic Group Prior to 2007.**

BNSF accepts volumes for McKinley Mine coal that was delivered to Cholla and Coronado Stations for the years 1994 through 1998 and 2003. R.V.S. Crowley at 6. For the years 1999 through 2002, BNSF also accepts APS/PacifiCorp's inclusion of stipulated McKinley volumes for the Cholla and Coronado Stations. *Id.* at 6. However, BNSF disputes both historical and projected coal deliveries to Cholla and Coronado submitted by APS/PacifiCorp based on an unduly restrictive reading of the scope of the reopening authorized by the Board in its 2003 Decisions. Specifically, BNSF excludes any non-McKinley tonnages that have been, or will be, delivered to Cholla or Coronado prior to 2007 based on the Board's statement: "We therefore need a more developed record on how Arizona and Salt River will re-source their coal needs, *once McKinley shuts down*, what portion of that traffic could flow over the SARR, and what revenues the SARR could reasonably expect to earn from that coal traffic." *May 2003 Decision* at 5 (emphasis added). BNSF focuses on the phrase "*once McKinley shuts down*" in complete and total isolation from the remaining discussions concerning the proper scope of reopening in the *May 2003 Decision* and *October 2003 Decision*, as its sole basis to eliminate over 13.6 million tons of coal from APS/PacifiCorp's DCF Model. R.V.S. Crowley at 21, Table 5.

It is noteworthy that BNSF did not characterize the scope of the Board's reopening decision in this extremely restrictive fashion when it was opposing APS/PacifiCorp's Petition for Reconsideration. There, BNSF said the reopening decision "... allows APS to present evidence regarding the coal from other origins, *i.e.* the re-sourced coal, that will replace the McKinley Mine coal and move over the same route as the SARR."⁷

As APS/PacifiCorp explained in its Opening Evidence and Argument on Reopening, the proper scope of this reopening is not nearly as limited as BNSF now suggests. The Board's *2003 Decisions* contain several statements that confirm a broader scope. Consistent with the *1997 Decision* and *1998 Decision*, the Board encouraged the parties to update the record to include replacement coal to make up for declining tonnages of traffic moving from the McKinley Mine, and to update forecast assumptions relied upon in those decisions that had proven to be inaccurate over time. These statements include:

- *The decline in traffic moving over the SARR from the McKinley Mine can be made up for by including in the SARR replacement coal from the Lee Ranch mine, or even origins farther away, as crossover traffic that the SARR would interchange at Defiance. May 2003 Decision at 5 (emphasis added).*
- [T]he parties may update the record regarding *any forecasts* made in our prior decisions, such as inflation indexes, cost of rail equity, and revenue forecasts for the Salt River traffic, that proved to be inaccurate. *Id.* at 5-6 (emphasis added).

⁷ BNSF's Reply to APS/PacifiCorp's and WCTL's Petitions for Reconsideration, filed June 23, 2003, at 8.

- Both parties may also update the record regarding *any forecasts used in the original SAC analysis that have since proved to have been inaccurate*, but they may not reargue or recalculate the base figures to which the forecasts applied. *October 2003 Decision* at 3 (emphasis added).

As the above statements demonstrate, the Board's decisions on reopening were not intended to impose the absurdly narrow scope newly suggested by BNSF. These decisions contemplated that the traffic volumes could be updated to reflect *both* re-sourcing arising from declining traffic volumes at McKinley *and* the eventual re-sourcing that would be necessary upon shutdown. A decline in traffic is a reduction over time, not an abrupt halt of traffic upon shutdown of the mine. In addition, the *2003 Decisions* clearly contemplate updates that are necessary to correct forecasts that have proven to be inaccurate.

As APS/PacifiCorp explained in its Opening Argument on Reopening, the Board's original SAC analysis included historic volumes delivered to Cholla and Coronado Stations for the period from 1994 through the first three quarters of 1995. APS/PacifiCorp. Op. Arg. at 13, *citing 1997 Decision*, 2 S.T.B. at 382. Volumes for the remaining years of the DCF model were set at 3.5 million tons per year for APS/PacifiCorp and 2.5 million tons per year for Salt River. These tonnage assumptions were based upon APS/PacifiCorp's and Salt River's average coal consumption at Cholla and Coronado Stations for a five-year period (*i.e.*, 1990-1994), and the assumption that coal needs for these plants would remain at these levels for future years. *1997 Decision*, 2 S.T.B. at 382-384. It was further assumed that all of

these tons would come from a single source – the McKinley Mine – as they had in the past. *Id.* These assumptions were conservative because, as the Board noted, they did not account for any potential growth in demand for power from the Cholla and Coronado Stations in future years. *Id.* at 384 n.45.

As APS/PacifiCorp have explained on reopening, the past six years have differed substantially from the parties' and the Board's, forecast assumptions that formed the basis of the *1997 Decision*. Since the *1997 Decision* there has been a decline in the tons received at Cholla and Coronado Stations from the McKinley Mine for a variety of reasons.

APS/PacifiCorp detailed the reasons for the decline in McKinley tons for the 1998 through 2003 time period, including operational problems and a major labor shutdown at McKinley, in the verified statements submitted as part of their opening evidence. APS/PacifiCorp Opening, V.S. Nordlander at 4, 9. APS/PacifiCorp noted that the decline in McKinley tons was the product of coal conservation efforts in recognition of the operational problems that McKinley was experiencing, as well as to mitigate the impacts of the potential shutdown of McKinley in 2008. *Id.* at 5.

APS/PacifiCorp has used these necessary acquisitions of coal from other sources as an opportunity to test potential replacement coals from various regions. *Id.* Finally, APS/PacifiCorp's opening evidence confirmed that demand for power from the Cholla and Coronado Stations has indeed exceeded the expectations underlying the traffic forecasts that formed the basis of the Board's SAC calculations in its *1997 Decision*.

APS/PacifiCorp. Op. Arg. at 15, *citing* V.S. Nordlander at 9, V.S. Crowley at Exhibit TDC-2 and electronic workpaper file “copy of SRP1995-2000data.xls”. This evidence confirmed that demand for power from the Cholla and Coronado Stations has grown substantially, and that deliveries to both plants have generally exceeded the levels forecasted by the Board in 1997. Significantly, BNSF disputes none of this evidence, which clearly provides a strong basis for the parties to “update the record regarding any forecasts [here, coal volumes] made in our prior decisions . . . that proved to be inaccurate.” *May 2003 Decision* at 5-6.

Accordingly, it is entirely appropriate for APS/PacifiCorp to update their traffic volumes to include non-McKinley tons that were purchased to replace McKinley tonnages because of either: (1) the decline in traffic from the McKinley Mine due to operational problems that caused McKinley coal to be unavailable in the amounts forecast by the Board’s earlier decisions; (2) recognition of the potential closure of the McKinley Mine and related efforts to conserve coal production and test burn other coals through re-sourcing; (3) supplemental coal purchases necessitated by burn that exceeded the burn forecasts relied upon by the Board in its earlier decisions; and (4) the need to replace McKinley tonnages once McKinley actually shuts down (*i.e.*, post-2008).

APS/PacifiCorp submitted extensive evidence supporting the inclusion of non-McKinley tonnages in its traffic volumes for each of these reasons.

APS/PacifiCorp Op. Ev. on Reopening at Argument 13-20; V.S. Crowley at 8-9, Exhibit TDC-2 and Workpaper pp. 79-182; electronic workpaper file “copy of

SRP1995-2000 data.xls”; V.S. Nordlander at 4-5, 7, 9-11, 13-14; V.S. Durning at 3-4; and V.S. Dix at 7. Each of these categories of evidence is within the scope of reopening as defined in the Board’s *2003 Decisions*.

2. BNSF’s Attempts to Exclude Certain Non-McKinley Tons for Future Time Periods is Unfounded.

BNSF also disputes APS/PacifiCorp’s inclusion of certain non-McKinley tonnages for the 2008 through 2013 time period. BNSF claims that the forecasts relied upon by APS are premised on an inappropriate assumption that the Cholla plant will operate at approximately { } capacity beginning in { }. BNSF Reply at 17-19. BNSF then imposes a cap on “the capacity of the coal burn at the Cholla plant at 85 percent.” *Id.* at 18, *citing* V.S. Murphy at 11. As a result of this limitation, BNSF eliminates another { } million tons from the AGRR traffic group. V.S. Murphy at 10, n.15. BNSF also seeks to exclude from the traffic group over { } million tons of “Supplemental Coal” volumes that Salt River anticipates receiving at Coronado from 2007 through 2013. BNSF Reply at 14-15;⁸ R.V.S. Crowley at 23, Table 6. As explained below, and in the Rebuttal Verified Statements of APS/PacifiCorp’s witnesses Crowley, Nordlander, Durning, and the Verified Statement of Randy G. Dietrich of Salt River, BNSF’s criticisms in this regard are without merit and do not justify exclusion of these tonnages from the AGRR traffic group.

⁸BNSF also objects to APS/PacifiCorp’s assumptions concerning the source of Salt River’s future PRB coal purchases. *Id.* at 18.

a. Cholla Coal Volumes (2008-2013).

BNSF's criticisms of APS's forecasts for Cholla for the years 2008 through 2013 are predicated on an analysis projecting the capacity factor levels that would result utilizing the amount and types of coal APS forecasts to burn at Cholla. *See* V.S. Murphy at 9-10. However, BNSF's capacity factor assumptions are based on a miscalculation of projected capacity factor levels. *See* R.V.S. Nordlander at 3-4.

The flaw in BNSF's analysis is caused by its use of unverified and incorrect heat rates for individual Cholla units. *Id.* The heat rate levels BNSF utilized are significantly below the actual heat rate levels achieved at Cholla, which information is verified and assembled by APS personnel in the ordinary course of business. *Id.* at 4. Substituting into BNSF's analysis actual Cholla heat rates for each of the individual units produces an approximately { } percent increase in total plant capacity over that calculated by BNSF. *Id.* at 5. This results in capacity factors for Cholla at { } percent or below for the years 2008-2013 at APS/PacifiCorp's projected coal volumes, rather than the { } capacity factors calculated by Ms. Murphy utilizing the erroneous heat rates. *Id.* These levels are similar to the { } percent capacity levels regularly utilized by APS in the ordinary course of business in forecasting future coal volumes. *Id.*

Furthermore, even if BNSF's capacity factor study had any merit, there is no valid basis for assuming that Cholla cannot, and will not, perform at capacity factors above 85 percent. R.V.S. Nordlander at 5-6; R.V.S. Durning at 2. APS's volume

projections are reliable and achievable, and encompass a variety of underlying operating, fuel, and customer demand data compiled by the organization using APS's best estimates as to coal volume projections necessary to meet load requirements. R.V.S. Nordlander at 6.

Additionally, individual Cholla units have historically experienced annual average capacity factors above { } percent, and exceeding { } percent in certain years. *Id.* at 7; R.V.S. Durning at 2-3. PacifiCorp estimates that Cholla Unit 4 in the years 2006 through 2012 will operate at capacity factors averaging approximately { } percent, and will exceed { } percent in certain years. R.V.S. Durning at 3. While APS has conservatively utilized an { } percent capacity factor in developing the coal tonnage forecasts it has submitted into evidence, Cholla capacity factor levels exceeding { } percent are achievable for Cholla as a whole, and certainly levels exceeding { } percent will be achieved for individual units. R.V.S. Nordlander at 7-8.

BNSF further asserts that the capacity factor for Cholla should be capped at 85 percent because any higher levels would "exceed[] the maximum capacity factor found in STB rate cases." V.S. Murphy at 11. However, the Board has never adopted an 85 percent capacity threshold standard in maximum rate case proceedings. While the Board in individual cases has accepted the use of an 85 percent capacity factor for forecasting future coal deliveries to individual plants, based on the evidence submitted by the complainant supporting such a level, in no instance has the Board "capped" volumes, as BNSF suggests, based upon assertions without evidentiary support. *See,*

e.g., Docket No. 42051, *Wisconsin Power and Light Company v. Union Pacific Railroad Company*, (STB served Sept. 13, 2001) at 20-21; *West Texas Utilities Company v. Burlington Northern Railroad Company*, 1 S.T.B. 638, 663-64 (1996).

The evidence clearly shows that individual Cholla units historically have exceeded { } percent capacity factors in given years, and are projected to exceed { } percent capacity factor levels in future years, based on increased load, operational, and resource availability considerations. *See* R.V.S. Nordlander at 7-8; R.V.S. Durning at 2-4. Many comparable coal generating plants in the United States currently operate at capacity factor levels exceeding 85 percent. R.V.S. Nordlander at 8. To put an arbitrary 85 percent cap on total Cholla production would unfairly restrict anticipated increases in capacity utilization.

b. Coronado Coal Volumes (2004-2013).

BNSF contends that there are “two material errors” in the projected coal volume projections for Cholla. First, BNSF asserts that the inclusion of “Supplemental Coal” tonnages from { } mine origins in the years { } as projected by Salt River “are too speculative to include,” and are “akin to a high demand growth forecast,” with “no evidence suggesting that the ‘high demand growth’ forecast should be relied upon.” V.S. Murphy at 6. Contrary to BNSF’s assertions, Salt River’s projected coal volumes are verified, reasonable business expectations as to the amount of coal Salt River will receive at its Coronado plant in the years 2007 through 2013.

The subpoena issued by the Board through its decision in this proceeding on December 23, 2003 requested Salt River to project the amount of coal Salt River “intends to obtain for use at the Coronado Generating Station for each year 2004-2013.”

See Subpoena at RFP No. 1 and 2. In its response, Salt River listed its expected coal volume receipts between 2004 and 2013, including projected {

} See Op. Workpapers pp. 79-82. There is no evidence to support BNSF’s “high demand growth” theory, and nowhere in Salt River’s discovery response does it suggest or imply that any portion of its projections are “speculative” or otherwise based upon a “high demand” forecast.

Historically, Salt River has received {

} See R.V.S. Crowley at 22.

Salt River’s projected supplemental volumes are very reasonable in comparison to these historical levels. *Id.* BNSF’s criticisms of Salt River’s projections on the grounds that the projected volumes “substantially” exceed historic coal purchases are highly misleading as BNSF’s analysis fails to take into consideration that Salt River will be replacing McKinley Mine coals with {

} *Id.* Further, BNSF’s analysis of historical Salt River purchases ignores unchallenged Salt River forecast information for the years {

} *Id.* Accordingly, there will be no “substantial” increase in Coronado coal volumes beginning in { } as BNSF suggests.

Salt River has no incentive to inflate its projections for purposes of this litigation. Randy G. Dietrich, Manager of the Fuels Department for Salt River, confirms in his Verified Statement submitted herewith that:

{

}

V.S. Dietrich at 1-2.

The second error BNSF claims is that APS/Pacificorp mistakenly forecast that { } percent of the future PRB coal Salt River forecasts to move to Coronado will originate from { } Mine. BNSF contends that the projection of future PRB tonnages to Salt River’s Coronado plant should be based on historic receipts, which it claims support the use of a { } percent - { } percent split between the {

}. BNSF asserts it has “received no information from SRP that this mix of PRB coal will change in the future.”

The issue of the future mix of PRB movements to Coronado is conclusively resolved by Salt River in the accompanying verified statement of Mr. Dietrich:

{

}

V.S. Dietrich at 2.⁹ Based upon the above additional representations by Salt River that its PRB coal supply contract requires an {

} for all PRB nominated volumes, APS has revised its traffic volume assumptions for Coronado accordingly.¹⁰

B. BNSF's Attempt to Limit the Revenues Available to the AGRR are Improper and Reflect a Misunderstanding of Prior Board Precedent

1. Single-Line Revenues (1994-2003).

BNSF accepts APS/PacifiCorp's calculation of historical single-line revenues for movements from the McKinley Mine to Cholla and Coronado Station for the period 1994 through 2003. BNSF Reply at 20-21.

⁹ A copy of the { } is included in APS/PacifiCorp's Opening Workpapers pp. 89-91.

¹⁰ While Salt River has conclusively addressed this issue, it should be noted that BNSF's suggested "historic" PRB mine division approach is not representative as {

} See V.S. Crowley at Exhibit TDC-2.

2. Cross-Over Revenues (1997-2013).

BNSF agrees with APS/PacifiCorp that it is appropriate to include cross-over movements in the traffic group, although as noted above there is a dispute as to when and to what extent such traffic should be allowed. BNSF Reply Arg. at 21. BNSF also agrees that it is appropriate to apply the MSP methodology to divide revenues from such movements, but with a modification. *Id.* at 21-22, *citing* STB Docket No. 42069, *Duke Energy Corp. v. Norfolk Southern Ry. Co.*, (STB served November 6, 2003) at 22-25. As explained by Witness Murphy, BNSF suggests that the Board alter its historic use of 100 mile origination and termination blocks because they allegedly “overstate[] the cost of originating and terminating unit coal train traffic.” *Id.* at 22, *citing* V.S. Murphy at 15-17. Rather than assign a 100-mile credit block for origination and termination, BNSF asks the Board to adopt use of a 25-mile credit block for origination and termination of movements in shipper-owned cars, and a 57-mile credit block for origination and termination of movements in railroad-owned cars. *Id.* According to BNSF, these modified credit blocks more accurately reflect the relationship of costs of origination and termination of unit-train coal movements to its system-wide averages. *Id.*

The recently adopted MSP methodology includes the assignment of 100-mile credit blocks for origination and termination in a manner that is consistent with the Board’s prior modified mileage block prorate approach (“MMP”). *See*, Docket No. 42069, *Duke Energy Corporation v. Norfolk Southern Ry. Co.*, (STB served Nov. 6,

2003) at 22-25 (“*Duke Energy*”). Under the MMP approach, that had been applied in all western rate cases decided after *McCarty Farms*, the Board assigned 100-mile blocks for origination and termination. *McCarty Farms*, 2 S.T.B. at 472; *see also*, Docket No. 42022, *FMC Wyoming v. Union Pacific Ry. Co.*, (STB served May 12, 2000) at 27 n.62; Docket No. 42051, *Wisconsin Power & Light Co. v. Union Pacific Ry. Co.*, (STB served Sept. 13, 2001) at 24 n.57 ; and Docket No. 42056, *Texas Municipal Agency v. The Burlington Northern & Santa Fe Rwy. Co.*, (STB served Mar. 24, 2003) at 31 (“*TMPA*”).

This approach was adopted in *McCarty Farms* at the suggestion of BN, one of BNSF’s predecessors. 2 S.T.B. at 472. Despite offering this approach in *McCarty Farms*, BNSF subsequently raised the very same proposed modification it seeks in this case in the *TMPA* proceeding. The Board rejected that effort without discussion of the merits of BNSF’s proposed modification because it found that BNSF’s evidence would not have reduced the SARR’s total revenues from cross-over traffic below what the shipper had calculated in that proceeding. *TMPA*, at 31.

In its subsequent adoption of the MSP Methodology, however, the Board continued its use of the 100 mile credit blocks for origination and termination and offered the following justification:

As the Board explained in *McCarty Farms*, 2 S.T.B. at 472, it is appropriate to include additional revenues for originating and/or terminating a movement to reflect additional costs associated with providing those services. The equivalent of a 100-mile share of the costs has been used in the past as a surrogate for the costs of providing originating or terminating

service and (in the absence of any better evidence) is used here.

Duke Energy, at 24 n.37. In adopting the use of the 100-mile credit blocks for MSP, the Board was thus fully aware of the purported deficiency with the origination/termination credit blocks that BNSF seeks to advance here, and advanced unsuccessfully in *TMPA*.

BNSF's attempt to re-visit this issue here is not predicated on an offer of "better evidence" sufficient to justify a departure from the Board's practice of using 100-mile credit blocks for originating and terminating traffic. Instead, as Mr. Crowley explains, per-mile costs for short-haul unit train coal traffic are substantially higher than per-mile costs for long-haul movements. R.V.S. Crowley at 29-30. This basic fact is confirmed in the per-ton-mile variable cost figures Mr. Crowley describes from the Board's *TMPA* decision (a 1,413 mile move) and from the *1998 Decision* (a 115 mile haul). BNSF does not consider at all the differing line haul costs of short and long coal movements. Its failure to do so renders its analysis incomplete and its conclusions unsupported. The proposed reduced origination and termination mileage blocks are not justified by "better evidence" and should be rejected.

3. Correction Based on Route-Mile Adjustments.

BNSF also disputes Mr. Crowley's revenue calculations for off-AGRR PRB coal shipments based on the claim that they are premised on an inaccurate routing for this traffic. BNSF Reply at 26-27; V.S. Murphy at 13-15. Mr. Crowley had assumed that the residual BNSF would route this traffic (in both loaded and empty directions) along its Pueblo, Colorado to Defiance, New Mexico via Raton, New

Mexico, for a total of { } route miles from Black Thunder mine to Cholla. R.V.S. Crowley at 27. This routing represents the shortest route available to BNSF. *Id.*

BNSF's Reply evidence suggests that PRB trains to Cholla and Coronado use a longer routing ({ }) from Pueblo to Amarillo, Texas via La Junta, Colorado and then on to Defiance. V.S. Murphy at 13. However, the mileage calculations actually used by BNSF rely upon the mileage for a different routing, via Trinidad, Colorado -- a { } longer route. *See* R.V.S. Crowley at 28. Following the BNSF filing of its Reply Evidence, APS requested additional supplemental workpaper information from BNSF in order to verify BNSF's routing assumptions. The workpapers confirm that the Trinidad, Colorado routing utilized by BNSF is incorrect, and that the actual routing is via La Junta, Colorado, as suggested in the text of BNSF Reply Evidence. Accordingly, Mr. Crowley has revised his PRB revenue calculations to conform to this routing.

4. Projected Revenues and Use of Historical Averages (2004 through 2013).

BNSF objects to APS/PacifiCorp's calculation of revenues for movements in the 2004 through 2013 time period based on the use of a 13 year historical trend line to adjust the various indices applicable to the particular movements. *See* BNSF Reply at 24-27 (objecting to application of 13 year trend to RCAF-A to adjust rates from McKinley to Cholla (24)); application of 13 year trend to RCAF-U to adjust rates under BNSF Common Carrier Pricing Authority 94440 for non-McKinley to Cholla (25) and Lee Ranch to Coronado (25); and application of 13 year trend to RCAF-U to adjust

rates from McKinley to Coronado (26) and PRB Mines to Coronado(27)). In lieu of using the available historical trend line for the reopened proceeding, BNSF instead advocates a six-year historical average for the change in these indices. BNSF Reply at 24. BNSF asserts that such an approach is required because the Board used a six-year historical trend in its *1998 Decision* in this proceeding, and has rejected the use of longer historical trend lines in other proceedings. V.S. Baranowski, Section IV.A, at 18, *citing* Docket No. 37809, *McCarty Farms, et al. v. Burlington Northern, Inc.*, (STB served Aug. 14, 1997) at 55.

BNSF is correct that the Board's *McCarty Farms* decision rejected the use of the 17-year averages that were being advocated by the railroad in that proceeding for use in its cost-of-equity analysis. As the Board explained:

Consistent with our cost-of-equity analysis, we conclude that inflation estimates based on shorter time frames that are adjacent to periods being estimated yield more reliable results than estimates based on 17-year averages.

Id. BNSF, however, has taken this discussion badly out of context, despite clear language on the *preceding page* of the same decision that makes clear the Board's view that longer term averages are entirely appropriate where, as here, the trend line is being used for projections over a longer time period:

BN notes that its method was used by the ICC in *Nevada Power II*. However, in that case the cost of equity had to be projected for a 10-year period (1994-2003). Use of a longer term average is more appropriate for projecting equity costs for a long-term (10-year) period. Here we need only project the cost of equity for the 3-year (1996-98) and 2-year (1976-1977) period adjacent to the period for which actual data is

available. As a general matter, we believe that the cost of equity for a short-term period is a better predictor of what the near-term cost of equity would likely be.

Id. at 54 n.128.

As further explained by Witness Crowley in his Rebuttal Verified Statement, he uses the 13-year historical trend line to project revenues over the remaining 10-year period (2004 through 2013) of the recalculated DCF Model. R.V.S. Crowley at 15. Under such circumstances, “the use of a longer term average is more appropriate . . . for a long-term (10-year) period.” Thus, Mr. Crowley’s approach in this regard is consistent with the methodology that BN advocated in *McCarty Farms*, and that the Board adopted in *Nevada Power II*. *McCarty Farms*, at 54 n.128; *Bituminous Coal – Hiawatha, Utah to Moapa, Nevada*, 10 I.C.C.2d 259, 271 (1994) (“*Nevada Power II*”).

As Mr. Crowley also explains, his use of the long-term trend line is consistent with earlier rulings in this case. In updating its DCF analysis in the *1998 Decision* the Board most certainly did not intend to adopt, as BNSF suggests, a rule that use of long-term trend lines would be inappropriate. On the contrary, as Mr. Baranowski admits, the Board had used a five-year historical average in its *1997 Decision*. In updating its DCF analysis in its *1998 Decision* the Board did precisely what Mr. Crowley did in his updated DCF analysis – it added the newly available data to its trend line, rather than dropping a year and adding the newly available year. V.S. Baranowski at 18.

Under these circumstances, it is entirely appropriate to apply a long-term trend line, based on the new data that has become available since 1998, to the remaining 10-year period of the DCF Model. Mr. Crowley's approach in this regard is consistent with *McCarty Farms*, *Nevada Power II*, and the Board's *1998 Decision*.

C. APS/PacifiCorp's Use of Available Historical Data to Update Cost of Capital Forecasts for the Remaining Ten Years of the DCF Model is Consistent with the 2003 Decisions and Board Precedent

BNSF also disagrees with APS/PacifiCorp's use of the average actual railroad industry cost of capital for debt and equity for 1993 through 2002 to forecast the cost of capital for the years 2003 through 2013. BNSF Reply at 32. BNSF relies again on the Board's supposed standard practice of using a five-year historic time period for projecting the cost of capital, and suggests that a six-year historical time period is appropriate. *Id.*

As explained in Section III.B.4, *supra*, the use of longer term trend lines is appropriate when forecasting longer-term periods, such as the ten years remaining in the DCF Model in this case. Mr. Crowley's approach in this regard is supported by the Board's decisions in *McCarty Farms*, *Nevada Power II*, and the *1998 Decision*, and should be accepted as the better evidence of record.

CONCLUSION

As demonstrated above, in the attached Rebuttal Verified Statements, and in APS/PacifiCorp's Opening, the maximum reasonable rates prescribed by the Board in

its *1998 Decision* should be revised based on changed circumstances. The Board should prescribe new maximum rate levels for the years 2003 through 2008 as follows:

<u>Year</u>	<u>Maximum Rate</u>
2003	\$4.10
2004	\$4.18
2005	\$4.60
2006	\$4.49
2007	\$4.38
2008	\$4.27

APS/PacifiCorp have calculated the reparations that are due based upon these rate levels and ask that the Board find that APS/PacifiCorp are entitled to reparations in the amount of \$200,305 through March 31, 2004, plus an additional amount for shipments from April 1, 2004 until the effective date of the new maximum rates prescribed by the Board, plus interest.

Finally, APS/PacifiCorp request that the Board grant such other and further relief as it may determine to be appropriate under the circumstances.

Respectfully submitted,

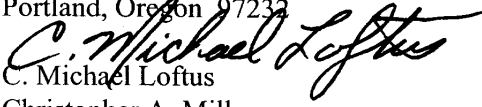
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ARGUMENT

NORDLANDER

DURNING

DIETRICH

CROWLEY

ARIZONA PUBLIC SERVICE COMPANY,
and PACIFICORP,

Complainants

v.

THE BURLINGTON NORTHERN AND
SANTA FE RAILWAY COMPANY,

Defendant.

My name is Kenneth S. Nordlander. I am the Fossil Fuel Procurement Manager for Arizona Public Service Company (“APS”). I am the same Kenneth S. Nordlander who previously submitted a verified statement in this proceeding as part of Complainants APS’s and PacifiCorp’s (“APS/PacifiCorp’s”) February 27, 2004 Opening Evidence and Argument on Reopening (“Opening Verified Statement”).

I have read the Burlington Northern and Santa Fe Railway Company's ("BNSF's") April 9, 2004 Reply Evidence on Reopening in this proceeding. The purpose

of this Rebuttal Verified Statement is to respond on behalf of APS¹ to certain aspects of the Reply Verified Statements of Julie A. Murphy and Michael R. Baranowski.

I. APS's Projected Coal Volumes to Cholla are Reasonable

As I explained in my Opening Verified Statement, APS produced to BNSF in discovery its most recent 10-year coal forecast prepared in the ordinary course of business, for the years from 2004 through 2013, the end of the DCF period. See Exhibit KSN-3. That forecast, prepared on { }, did not reflect changes based upon the {

{ } and several other modest changes to the forecasts based upon developments occurring since APS's {

} forecast was prepared.² APS's updated projections for Cholla for 2004-2013 were set forth in the table contained on page 13 of my Opening Verified Statement.

BNSF accepts APS's forecasts for Cholla for the years 2004-2007, but challenges the forecasts for 2008-2013, based on its assumptions as to the capacity factor levels that would result utilizing the amount and types of coal APS forecasts to burn at Cholla, and its assertions as to the ability of Cholla to achieve such projected capacity

¹ References in this Rebuttal Verified Statement to APS include PacifiCorp, unless the context indicates otherwise.

² Since I filed my Opening Verified Statement, APS has {

}.

factor levels. Specifically, Ms. Murphy contends that APS has “made an erroneous assumption” in its forecasts for Cholla that “assumes that the plant will substantially increase its burn to { } percent beginning in { }” and from that year through 2013, the end of the DCF period. Reply V.S. Murphy at 9-10. Ms. Murphy further asserts that because the { } percent capacity factor assumed by APS “is higher than the plant has historically achieved, and exceeds the maximum capacity factor found in STB rate cases, it should be rejected.” Id. at 11.

Ms. Murphy contends that APS should employ an 85 percent capacity factor “cap” for calculating future traffic volumes. Id. According to Ms. Murphy, if an 85 percent capacity factor is utilized to cap projected future coal consumption, the traffic volumes contained in APS’s forecasts should be reduced by approximately { } tons in { } and by { } tons annually from { }. Id.

Ms. Murphy’s capacity factor arguments are based on inaccurate calculations and ignore Cholla’s operating history. Her calculations utilize unverified, erroneous assumptions as to Cholla’s heat rates that are entirely too low when compared with actual heat rates. Ms. Murphy’s analysis utilizes the following heat rate assumptions for Cholla:

Heat Rate (Btu/KWH)

Unit 1	{	}
Unit 2	{	}
Unit 3	{	}
Unit 4	{	}

See BNSF Reply electronic workpaper “AGR_Traffic and Revenues_A1_BNSF Reply.xls.”

The above heat rate assumptions are not based on actual heat rates for Cholla.³ Actual operating statistic data for Cholla for the years 1995 through the first quarter of 2004, including heat rate data, is included in Exhibit KSN-7.⁴ This data is developed by Cholla plant personnel, in the ordinary course of business, and compiled into a summary spreadsheet on a quarterly basis. Utilizing the last full calendar year data available for 2003,⁵ the actual average net heat rate levels experienced at Cholla were as follows:

³ Ms. Murphy cites the “EPA Dbase” as the source for her heat rate assumptions (see BNSF Reply electronic workpaper “AGR_Traffic and Revenues_A1_BNSFReply.xls” worksheet “BNSF Reply Assmptions”), but APS is unable to verify any such source from which this data was derived.

⁴ Exhibits KSN-1 through KSN-6 are contained in my Opening Verified Statement.

⁵ These heat rates are also comparable with those utilized in APS’s {

}

See Op. Workpapers p. 515.

Heat Rate (Btu/KWH)

Unit 1	{	}
Unit 2	{	}
Unit 3	{	}
Unit 4	{	}

Employing her heat rate factor assumptions, Ms. Murphy's analysis assumes total plant capacity of { }. However, when the 2003 actual heat rate data for Cholla is utilized, total plant capacity changes. Substituting the above actual average heat rates for Cholla for 2003 results in total plant capacity of { }. Utilizing actual heat rates results in a significant (approximately { } percent) increase in total plant capacity over that computed by Ms. Murphy in her analysis.

Use of actual plant heat rates for 2003, and Ms. Murphy's capacity factor methodology, results in an { } percent capacity factor for Cholla in 2008, and an { } percent capacity factor in 2009 through 2013 under APS's coal volume projections.⁶ These capacity factor levels are entirely consistent with the { } percent levels regularly utilized in the ordinary course of business by APS's fuels and planning departments

⁶ The above capacity factor computations are performed using the same methodology employed by Ms. Murphy: Total Annual Plant MMBTUs/Total Annual Plant Capacity (MMBTU), and utilizing the same total plant MMBTUs projected by Ms. Murphy in her analysis (see BNSF Reply electronic workpaper "AGR_Traffic and Revenues_A1_BNSFReply.xls" worksheet "BNSF Reply Assmptions"). For 2008, the computations are as follows: {

}

(including in the { })
in forecasting APS's future coal volumes.

I would also like to point out that there is no reason our Cholla units can not perform at a capacity factor higher than 85 percent. Even if BNSF's capacity factor calculations were accurate, our volume projections would still be reliable and reasonable.

BNSF has not provided any legitimate basis for the artificial 85 percent capacity factor "cap" it seeks to impose on Cholla. As stated in my Opening Verified Statement, APS's volume projections for Cholla were prepared by APS's generation planning and fuels departments in the ordinary course of business, and encompass a variety of inputs, {

}.⁷ The 10-year Cholla forecast is a product of this process. Rest assured, APS would not be forecasting these level of coal deliveries if the plant were not capable of achieving operational consumption levels necessary to approximately match deliveries.⁸

⁷ As I stated in my Opening Verified Statement, APS utilizes {

}.

⁸ Ms. Murphy asserts that APS's projected Cholla coal deliveries in 2008-2013 are unrealistic as they result in {

Also, the possibility of Cholla operating at a capacity factor in excess of 85 percent is entirely realistic given historic operations at the plant and expected future operations. As shown on Exhibit KSN-7, individual Cholla units have experienced annual average capacity factors above { } percent. In 2003, Cholla Units 1 and 4 produced capacity factors of { } percent. In the first quarter of 2004, Cholla Unit 4 had a capacity factor of approximately { } percent.⁹ Furthermore, as stated in the accompanying Rebuttal Verified Statement of Brian Durning, PacifiCorp (the owner of Cholla Unit 4) projects Unit 4 will produce capacity factors in the { } in the years 2006 through 2012.

These factors all support the ability of Cholla to achieve capacity factor levels above 85 percent, and confirm that the capacity factor levels for the plant should not be arbitrarily capped in the manner suggested by Ms. Murphy. I reiterate that APS has not projected operations at capacity factors higher than { } percent in developing

}

⁹ Cholla Unit 4, with a capacity of 380 MW, is by far the largest of Cholla's four units.

the coal tonnage forecasts set forth in {
}. However, as this discussion reveals, such operations are entirely
possible for Cholla as a whole and will clearly occur for specific units.¹⁰

**II. BNSF's Claimed "Conceptual Error" Effectively Seeks to Revise
APS's Contractual Payment Obligations for BNSF Service**

Through the DCF analysis it has submitted in this proceeding, BNSF is
seeking to recover revenues for the period January 1, 1994 through May 21, 2003 in
addition to the rates paid by APS and collected by BNSF for service to Cholla over this
period. See V.S. Baranowki at 10, 24. While counsel is addressing the legal
ramifications of this issue elsewhere, I want to emphasize that this issue implicates
private contractual agreements between the parties.

In 1999, APS and BNSF entered {

¹⁰ There are a significant number of coal-fired plants in the United States that have
achieved operating capacity factors at or above 85 percent, and there are at least 18 plants
that have reached capacity factors above 90 percent, including Salt River Project's 2,250
MW Navajo Station that had a capacity factor of 90.5 percent in 2002. See, e.g., 2002
Operating Performance Rankings Reflect Changes in Market Dynamics, Electric Light &
Power, November, 2003.

}

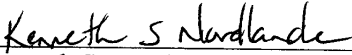
The reparations that BNSF seeks to recover for the coal transported during

{

}

VERIFICATION

I, Kenneth S. Nordlander, verify under penalty of perjury that I have read the foregoing Rebuttal Verified Statement of Kenneth S. Nordlander, 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.



Kenneth S. Nordlander

Executed on: April 23, 2004

Exhibit KSN-7

Page 1 (of 1)

(REDACTED -- PAGE CONTAINS CONFIDENTIAL
AND HIGHLY CONFIDENTIAL
SUBJECT TO PROTECTIVE ORDER)

ARGUMENT

NORDLANDER

DURNING

DIETRICH

CROWLEY

	)	
	)	
ARIZONA PUBLIC SERVICE COMPANY,	)	
and PACIFICORP,	)	
	)	
Complainants	)	
	)	
v.	)	Docket No. 41185
	)	
THE BURLINGTON NORTHERN AND	)	
SANTA FE RAILWAY COMPANY,	)	
	)	
Defendant.	)	
	)	
	)	

My name is Brian Durning. I am the Manager, Fuel Administration/Fuel Resources for PacifiCorp. I am the same Brian Durning who previously submitted a verified statement in this proceeding as part of Complainants APS's and PacifiCorp's Opening Evidence and Argument on Reopening filed on February 27, 2004 ("Opening Verified Statement"). The purpose of this Rebuttal Verified Statement is to Respond to certain assertions made in the Reply Verified Statements of Julie A. Murphy as part of Burlington Northern and Santa Fe Railway Company's ("BNSF's") April 9, 2004 Reply Evidence on Reopening in this proceeding.

As indicated in the accompanying Rebuttal Verified Statement of Kenneth S. Nordlander, BNSF has accepted APS/PacifiCorp's traffic forecasts for Cholla

for the years 2004-2007, but challenges the forecasts for 2008-2013 based on Ms. Murphy's study of capacity factors, and her claims as to capacity factor limitations that should be imposed on Cholla production. As I conveyed in my Opening Verified Statement, PacifiCorp is the owner of Cholla Unit 4, which is operated by APS, along with the other three Cholla units. Unit No. 4 is the largest of the four Cholla units with a capacity of 380 MWs, or approximately 38 percent of total plant capacity.

I have reviewed the Nordlander Rebuttal Verified Statement, and concur in his assessment and conclusions on the issue of the flawed capacity factor analysis conducted by Ms. Murphy, principally because of the inaccurate heat rates utilized by Ms. Murphy in her analysis. The actual heat rates for Cholla for 2003 utilized by Mr. Nordlander are accurate, to the best of my understanding and knowledge, based on data that is regularly shared by the APS fuel department with PacifiCorp in the ordinary course of business.

Importantly, even if the capacity factor study conducted by Ms. Murphy had any merit, I also concur with Mr. Nordlander's view that it is unreasonable to assume that Cholla units cannot perform at capacity factors higher than 85%. In my Opening Verified Statement, I included detailed capacity factor data for Cholla Unit No. 4. In particular, I stated that capacity utilization for Cholla Unit No. 4 has {

_____ }

As I explained in my Opening Verified Statement, because of PacifiCorp's
forecasted {

_____ }

PacifiCorp produced in discovery additional information on this point,
consisting of {

}

VERIFICATION

I, Brian Durning, verify under penalty of perjury that I have read the foregoing Rebuttal Verified Statement of Brian Durning, 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.


Brian Durning

Executed on: April 26, 2004

Exhibit BD-1

Page 1 (of 1)

(REDACTED -- PAGE CONTAINS CONFIDENTIAL
AND HIGHLY CONFIDENTIAL
SUBJECT TO PROTECTIVE ORDER)

ARGUMENT

NORDLANDER

DURNING

DIETRICH

CROWLEY

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

	)	
	)	
ARIZONA PUBLIC SERVICE COMPANY,	)	
and PACIFICORP,	)	
	)	
Complainants	)	
	)	
v.	)	Docket No. 41185
	)	
THE BURLINGTON NORTHERN AND	)	
SANTA FE RAILWAY COMPANY,	)	
	)	
Defendant.	)	
	)	
	)	

VERIFIED STATEMENT OF RANDY G. DIETRICH

My name is Randall G. Dietrich. I am the Manager of the Fuels Department for the Salt River Project Agricultural Improvement and Power District ("Salt River Project"). My business address is 6504 E. Thomas Road, Scottsdale, Arizona 82521.

I understand that certain issues have arisen over the information produced by Salt River Project in response to the December 23, 2003 subpoena issued by the Board in this docket, which I will address below.

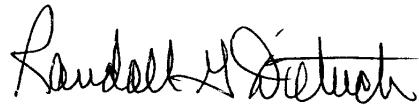
{

}

VERIFICATION

I, Randall G. Dietrich, verify under penalty of perjury that I know the contents of the above Verified Statement, and that the same are true and correct.

Further, I certify that I am qualified and authorized to file this statement.

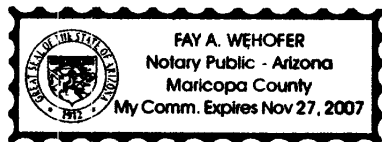
A handwritten signature in black ink, appearing to read "Randall G. Dietrich", written in a cursive style.

Randall G. Dietrich

Executed on April 23, 2004

STATE OF ARIZONA)
) SS.
County of Maricopa)

The foregoing instrument was acknowledged before me this 23rd day of April, 2004, by Randall G. Dietrich of Salt River Project Agricultural Improvement and Power District, an agricultural improvement district, organized and existing under the laws of the State of Arizona, on its behalf.



Fay A. Wehofer
Notary Public

My commission will expire:

11/27/07

ARGUMENT

NORDLANDER

DURNING

DIETRICH

CROWLEY

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

ARIZONA PUBLIC SERVICE	)	
COMPANY and PACIFICORP	)	
	)	
Complainants,	)	
	)	
v.	)	Docket No. 41185
	)	
THE BURLINGTON NORTHERN	)	
AND SANTA FE RAILWAY	)	
COMPANY	)	
	)	
Defendant.	)	

**REBUTTAL VERIFIED STATEMENT
OF THOMAS D. CROWLEY**

I. INTRODUCTION

My name is Thomas D. Crowley. I am an economist and President of L. E. Peabody & Associates, Inc., an economic consulting firm with offices located in Alexandria, Virginia and Chicago, Illinois. I am the same Thomas D. Crowley that submitted a Verified Statement on February 27, 2004 in this proceeding.

I have been asked to respond to the BNSF's Reply Evidence filed April 9, 2004, and in particular, to address the testimony of BNSF's consultants Mr. Michael R. Baranowski and Ms. Julie A. Murphy.

Mr. Baranowski's testimony is focused on the discounted cash flow ("DCF") analysis that I presented in my February 27, 2004 Verified Statement. Mr. Baranowski agrees with the basic framework of my analysis but says he has identified a "conceptual" error and several implementation errors in my DCF analysis.¹ Mr. Baranowski claims that my DCF analysis suffers from a "shortfall in cost-recovery that violates the SAC principle that revenues should just equal costs over the DCF period."² Mr. Baranowski also claims that the DCF analysis that I presented on Opening is based on several implementation errors, including incorrect calculation of various inflation indexes, incorrect calculation of cost of equity, overstatement of the net salvage value of McKinley Mine spur, and incorrect assumptions regarding the timing and cost of construction of a new interchange siding at Defiance, New Mexico.

Ms. Murphy's testimony is focused on the traffic and revenue portion of the stand-alone cost ("SAC") analysis that I presented in my February 27, 2004 Verified Statement. Ms. Murphy agrees with many of the assumptions contained in my analysis but claims that it is based on a number of improper traffic and revenue assumptions that result in an overstatement of the traffic and revenues transported by the stand-alone railroad. Specifically, Ms. Murphy claims that I overstated traffic on the Arizona & Gallup Railroad ("AGRR") by improperly including re-sourced traffic for Arizona Public Service Company's and PacifiCorp's ("APS/PacifiCorp") Cholla Generation Station ("Cholla") and Salt River Project Agricultural Improvement and Power District's ("Salt River") Coronado Generation Station ("Coronado") prior to shut down of the McKinley Mine, by improperly including Salt River's forecast of "supplemental" coal tonnages for Coronado in the years 2007-

¹ See Baranowski Reply V.S. at 3.

² Id at 6.

2013, by improperly assuming that all Powder River Basin (“PRB”) coal volumes forecasted by Salt River for Coronado originate at the Jacobs Ranch Mine, and by improperly assuming that Cholla’s coal requirements will exceed the level of coal shipments necessary to operate Cholla at an 85% capacity factor for the years 2008-2013.³

In addition, Ms. Murphy claims that I overstated AGRR revenues by utilizing the incorrect mileage for AGRR coal traffic originating in the PRB, by improperly calculating revenue divisions for cross-over traffic based on the use of a 100-mile mileage block for originating and terminating traffic, and by improperly forecasting revenues for AGRR traffic by utilizing an incorrect historical trend in RCAF Indexes.⁴

In my Rebuttal Verified Statement, I address each of the criticisms raised by Mr. Baranowski and Ms. Murphy. Where appropriate, I have revised my SAC and DCF model in certain limited respects in response to valid criticisms.

In Section II, I present my summary and conclusions. In Section III, I address each of the criticisms raised by Mr. Baranowski and Ms. Murphy. In Section IV, I present the recalculated results of my SAC and DCF model.

II. SUMMARY AND CONCLUSIONS

As explained below, and as detailed in the Exhibits to this Rebuttal Verified Statement, the recalculated SAC analyses show that the rates challenged by APS/ PacifiCorp in this proceeding for coal traffic from McKinley Mine to Cholla exceed maximum reasonable levels. The SAC analyses continue to show that, even at rate levels prescribed by the Surface Transportation Board (“Board”)

³ See Murphy Reply V.S. at 2.

⁴ Id at 2-3.

in *Arizona Pub. Serv. Co., et al. V. Atchison, T. & S.F., Ry.*, 2 S.T.B 367 (1997), *modified*, *Arizona Pub. Serv. Co., et al. V. Atchison, T. & S.F., Ry.*, 3 S.T.B 70 (1998) (referred to respectively as the “1997 Decision” and “1998 Decision”), APS/PacifiCorp have been overpaying BNSF since May 22, 2003 i.e., the effective date of the Board’s May 9, 2003 decision in this matter (“*May 2003 Decision*”). Accordingly, I have calculated the reparations that are due and owing to APS/PacifiCorp as a result of these overpayments.

Table 1 compares the maximum rates that I calculated and presented in Opening (Column (2)) for the 2003 through 2008 time period to the maximum rates calculated and presented by BNSF in Reply (Columns (3) through (5)). I separated BNSF’s 2003 to 2008 calculations into two parts: 1) rates based on adjustments to the inputs to the DCF model (Column (3)); and 2) an additive that reflects the so-called conceptual error developed by Mr. Baranowski (Column (4)). Table 1 also summarizes my revised calculation of maximum rates after making adjustments to respond to BNSF’s legitimate criticisms of my Opening calculations.

Table 1 Comparison Of APS/PacifiCorp Opening and Rebuttal Maximum Rates To BNSF’s Reply Calculations (\$ Per Ton)					
Time Period (1)	APS/PacifiCorp Opening (2)	BNSF Reply			APS/PacifiCorp Rebuttal (6)
		Maximum Rate (3)	Conceptual Additive (4)	Total (5)	
1. 2003	\$4.04	\$4.30	\$2.89	\$7.20	\$4.10
2. 2004	\$4.12	\$4.35	\$2.92	\$7.27	\$4.18
3. 2005	\$4.60	\$4.55	\$3.06	\$7.61	\$4.60
4. 2006	\$4.47	\$4.32	\$2.90	\$7.22	\$4.49
5. 2007	\$4.38	\$4.40	\$2.96	\$7.36	\$4.38
6. 2008	\$4.27	\$4.30	\$2.89	\$7.20	\$4.27

Source: Exhibit__(TDC-5) and Exhibit__(TDC-10).⁵

⁵ Exhibit__(TDC-1) through Exhibit__(TDC-4) were presented in my Opening Verified Statement.

III. SAC ANALYSIS

In my February 27, 2004 Opening Verified Statement, I presented a SAC analysis that considered the changed circumstances referenced in the Board's *May 2003 Decision* and *October 2003 Decision*. Specifically, I recalculated the DCF model to reflect how these changed circumstances impacted the maximum reasonable rate levels that are appropriate for the movement of coal between McKinley Mine and Cholla and to update the record as to the items identified in the Board's *May 2003 Decision*. Consistent with the *May 2003 Decision* and the *October 2003 Decision*, I calculated the reparations that APS/PacifiCorp are entitled to as a result of overpayments due to the difference between the \$4.21 per ton rate that the Board ruled should be maintained during the pendency of the reopening and the maximum reasonable rates reflected in my SAC analysis.⁶

Mr. Baranowski and Ms. Murphy agree with the basic framework of my analyses and have adopted many of the assumptions they include. In particular, Mr. Baranowski accepts: 1) the correction of the formula error in the DCF model used by the Board in its original decisions; 2) the methodology used to calculate construction expenses associated with the new interchange facility at Defiance, New Mexico; 3) the general methodology for adjusting operating expenses due to fluctuating traffic volumes; 4) the actual data for historical values of the Rail Cost Adjustment Factor, Unadjusted for Productivity ("RCAFU"), Rail Cost Adjustment Factor, Adjusted for Productivity ("RCAFA"), Railroad Cost Recovery ("RCR") Indexes and railroad Cost of Capital; and 5) the approach for revising historical and forecasted Federal and State Tax rates.

Ms. Murphy accepts: 1) the historical volumes (1994-2003) for McKinley Mine coal delivered to Cholla and Coronado; 2) the calculation of the stipulated volumes of McKinley Mine coal

⁶ See *October 2003 Decision*, at 3, n.4.

transported to Cholla and Coronado in the years 1999 through 2002; 3) the revenues for the McKinley Mine to Cholla movement from 1Q97 through 1Q04; 4) the revenues for the McKinley Mine to Coronado movement from 1994 through 2003; and 5) the methodology and the specific contracts and tariffs used to forecast future revenues for the period from 2004 through 2013.⁷

In the remainder of this Section of my Rebuttal Verified Statement, I discuss the issues that Mr. Baranowski and Ms. Murphy dispute in their April 9, 2004 Reply Verified Statements. Each of these items is quantified in Exhibit __ (TDC-6).

**A. Mr. Baranowski Incorrectly States That
My DCF Analysis Is Conceptually Flawed**

In my Opening Verified Statement, I explained in detail the DCF analysis that I undertook in light of the Board's *May 2003 Decision* and *October 2003 Decision*. The starting point for my analysis was the DCF model utilized by the Board in its *1997 Decision* and *1998 Decision*. Each of the individual changes that I made to the Board's DCF model were identified and explained⁸ in my Opening Verified Statement and the results of the recalculated DCF model were presented in Table 1 of my Opening Verified Statement.⁹

In his April 9, 2004 Reply Verified Statement, Mr. Baranowski claims that my recalculated DCF model contains a "significant conceptual error" that renders the results of my recalculated DCF model invalid.¹⁰ Specifically, Mr. Baranowski claims that my recalculated DCF model fails to take into consideration the rate levels prescribed by the Board for the period from 1994 through May 21, 2003. As a result, Mr. Baranowski contends that my DCF model fails "to obtain full cost recovery

⁷ BNSF rejects the historical trends that were utilized by APS/PacifiCorp on Opening but accepted the contracts/tariffs referenced on Opening and the methodology used to forecast future rates.

⁸ See Crowley Opening V.S. at 14-22.

⁹ See Crowley Opening V.S. at 22.

¹⁰ See Baranowski Reply V.S. at 3.

over the 20-year DCF period.”¹¹ According to Mr. Baranowski, in order to obtain full cost recovery over the 20-year DCF period “the issue traffic rates for the May 22, 2003 through 2008 time period must be adjusted upward to offset the shortfall in cost recovery that has occurred during the elapsed portion of the DCF period.”¹²

Mr. Baranowski’s criticism of the results of my recalculated DCF model are incorrect, arbitrary and contrary to the guidance provided by the Board in its *May 2003 Decision*. In its *May 2003 Decision*, the Board lifted its prescribed rates for shipments made after May 21, 2003 while at the same time noting that the “lawfulness of the rates approved and prescribed pursuant to 49 U.S.C. 10704(a)(1) in our 1998 Reopening cannot be challenged with respect to traffic that moved from 1997 until now.”¹³ Mr. Baranowski’s arbitrary adjustment to the DCF model is nothing more than a thinly veiled attempt to make an end-run around this restriction. The legal deficiencies in this effort to receive reparations are addressed in detail elsewhere. However, there are certain other problems with Mr. Baranowski’s claims that are addressed below.

Contrary to the claims made by Mr. Baranowski, the results of my recalculated DCF model are not flawed. I have properly applied each of the updates that I made to the Board’s 1997-1998 DCF analysis. With respect to revenues for APS/PacifiCorp’s traffic from McKinley, I followed what the Board did in its analysis. In the Board’s DCF analysis for the *1997 Decision* and *1998 Decision*, the Board used the challenged tariff rate to calculate revenues for APS/PacifiCorp’s McKinley to Cholla

¹¹ See Baranowski Reply V.S. at 10-11.

¹² Id at 11.

¹³ See *May 2003 Decision* at 7-8.

traffic. In my recalculated DCF model, I followed this same methodology. BNSF agrees that this is the correct manner to calculate revenues for APS/PacifiCorp's McKinley to Cholla traffic.¹⁴

I also properly followed the Board's percent reduction methodology in calculating maximum rate levels.¹⁵ BNSF has not challenged the methodology I employed or the accuracy of my calculations. In fact, BNSF followed the exact same methodology in its own "initial" calculations of maximum rate levels.¹⁶ In other words, my DCF analysis is in all respects consistent with the Board's own analysis. The resulting maximum rate levels for the 1994 through May, 2003 period flow directly from the Board's analysis which is in the respects addressed here (i.e. determination of revenues for issue traffic, implementation of percent reduction methodology) the same analysis the Board has utilized in all of its SAC cases.¹⁷ Over the 20-year DCF model life, the rates produced by my recalculated DCF model produce AGRR revenues that equal the stand-alone requirement. Again, these results are fully consistent with the Board's Constrained Market Pricing principles ("CMP").

Mr. Baranowski suggests that the analysis is flawed because the new maximum rates for the historic period are higher than the rates prescribed for that period in the Board's *1998 Decision*. As a result, he suggests that the stand alone railroad, the AGRR, would have a shortfall in revenues as compared to the revenues paid in the real world.

¹⁴ See BNSF Reply Argument at 20-21 and Baranowski Reply V.S. at 8-9.

¹⁵ See Crowley Opening V.S. electronic workpaper "DCF.123".

¹⁶ See Baranowski Reply V.S. electronic workpaper "DCF BNSF Reply2007.123".

¹⁷ See, 1997 Decision, 2 S.T.B. at 392-393; Docket no. 41191, *West Texas Utilities Co. v. Burlington Northern and Santa Fe Railway Co.*, at 4 (STB served May 29, 2003); Docket No. 42022, *FMC Wyoming v. Union Pacific Railroad*, at 24, 185-199 (STB served May 12, 2000); Docket No. 42051, *Wisconsin Power & Light Co. v. Union Pacific Railroad*, at 13, 35-36 (STB served September 13, 2001); Docket No. 42056, *Texas Municipal Power Agency v. The Burlington Northern and Santa Fe Railway Co.*, at 33-35, 159-160, Table E-1 (STB served May 24, 2003); Docket No. 42072, *Carolina Power & Light Co. v. Norfolk Southern Railway Co.*, at 30 (STB served December 23, 2003).

However, the actual revenues on the AGRR's traffic, which includes both APS/PacifiCorp's movement from McKinley to Cholla and Salt River's movement from McKinley to Coronado, substantially exceed the revenues resulting from the new maximum rates I have calculated for the historic period.

This fact is demonstrated in Exhibit __ (TDC-7) to this Rebuttal Verified Statement. In Exhibit __ (TDC-7), I compare the actual revenues for the AGRR's traffic during the 1994 through May 31, 2003 time period to the revenues that would result based upon the new maximum rates produced from my recalculated DCF analysis. Table 2 below compares these overpayment calculations.

Table 2 Excess/(Deficit) of AGRR Revenues from APS/PacifiCorp And Salt River Traffic - 1994 through May 21, 2003 Based on Rates Actually Paid Versus New Maximum Rates			
<u>Item</u>	<u>From Salt River Traffic (\$ In Millions)</u>	<u>From APS/PacifiCorp Traffic (\$In Millions)</u>	<u>Total (Col. (2) + Col. (3))</u>
(1)	(2)	(3)	(4)
1. Excess/(Deficit)	{ }	{ }	{ }
Source: Exhibit __ (TDC-7), page 1 of 2.			

When all traffic handled by the AGRR is considered, BNSF realized an overpayment of \$16.2 million based on APS/PacifiCorp's calculations ("as-paid") for handling all the stand-alone traffic over the 1994 through May 21, 2003 time period. As I also demonstrate in Exhibit __ (TDC-7), even assuming all of BNSF's other criticisms of my recalculated DCF analysis were correct, the conceptual shortfall would be reduced to \$4.3 million based on BNSF's calculations.

Another defect in Mr. Baranowski's analysis is that he ignores in his "shortfall" analysis the fact that BNSF moved additional non-McKinley Mine traffic and received additional revenues from 1997 through May 1, 2003 beyond the tonnage included in the Joint Stipulation. The Joint Stipulation tonnage equaled 13,125,000 tons but BNSF actually moved { } tons to Cholla during the 1997 to May 1, 2003 time period. The difference between the total tonnage actually shipped to Cholla and the stipulated tonnage is { }. Assuming the average annual non-McKinley rate per ton was paid on the { } ton difference, BNSF received an additional { } million in revenues that Mr. Baranowski did not include in his analysis.¹⁸ In short, Mr. Baranowski's calculation of his shortfall conveniently ignores large amounts of revenue paid by APS/PacifiCorp and received by BNSF on coal moving to Cholla. All of this coal would have been cross-over traffic handled by the AGRR which would have earned substantial divisions in the approximate amount of { } million. For this reason also his "shortfall" additive to the maximum rate levels he calculates for 2003 to 2008 should be rejected.

Mr. Baranowski's "shortfall" argument should not create any mis-impression that the rates prescribed by the Board in 1998 were not highly profitable to BNSF. During the historical time period the APS/PacifiCorp traffic, based on the Board's prescribed rates and the Board's variable cost findings, contributed { } million to BNSF's fixed costs and profits. The { } million contribution to BNSF is quantified in Exhibit__(TDC-8).

Finally, Mr. Baranowski's Reply "shortfall" analysis is at odds with the DCF analysis he presented in this proceeding on January 10, 2003. In his January 10, 2003 DCF analysis, Mr. Baranowski did not develop a shortfall for the 1994-2003 time period, even though one existed based

¹⁸ See Crowley Rebuttal V.S. electronic workpaper "BNSF Additional Revenue_Stipulation3.xls".

on Mr. Baranowski's calculations, and spread it over the 2003 through 2008 time period. Rather, Mr. Baranowski relied upon other mis-placed theoretical adjustments (that he abandoned in Reply) to develop the 2003-2008 BNSF maximum rates that ranged from \$7.57 per ton to \$11.10 per ton.

Absent Mr. Baranowski's improper reparations resulting from his arbitrary adjustment to the DCF model, the prescribed rates for the movement from the McKinley Mine to Cholla developed by Mr. Baranowski are quite similar to the results that I developed and presented in Opening. Table 3 below summarizes these rates.

Table 3 Comparison of APS/PacifiCorp February 27, 2004 Revised Rates <u>For McKinley Shipments To Cholla To BNSF April 9, 2004 Rates</u> (\$Per Ton)			
<u>Year</u>	<u>APS/PacifiCorp</u> <u>Rates - 2/27/04 ^{1/}</u>	<u>BNSF</u> <u>Rates -4/9/04^{2/}</u>	<u>Difference ^{3/}</u>
(1)	(2)	(3)	(4)
2003	\$4.04	\$4.30	\$0.26
2004	4.12	4.35	0.23
2005	4.60	4.55	(0.05)
2006	4.47	4.32	(0.15)
2007	4.38	4.40	0.02
2008	4.27	4.30	0.03
^{1/} Crowley Opening V.S. at 22. ^{2/} Baranowski Reply V.S. at Exhibit MRB-2, page 3 of 3. ^{3/} Column (3) minus Column (2).			

As shown in Table 3 above, the difference between Mr. Baranowski's results and those that I presented in Opening is relatively minor for 2003 through 2008.

**B. Mr. Baranowski Incorrectly
Identifies Other Errors In My Analysis**

In addition to the phantom “conceptual” error described above, Mr. Baranowski includes several other criticisms of the APS/PacifiCorp DCF model assumptions. Each of these criticisms is addressed below and is quantified over the 1994 through 2008 time period in Exhibit __ (TDC-6).

**1. A 13-year Historical Average For Forecasting
RCR, RCAFU and RCAFA Indexes Is Proper**

In Opening, I explained how I revised the Board’s DCF model to incorporate actual RCAFU, RCAFA, and RCR indexes for historical periods. I forecasted future changes in RCAFU and RCAFA indexes based on the historical change in these indexes from 1Q90 through 1Q04. I forecasted future changes in RCR indexes based on the historical change in this index from 1990 through 2003. As I noted in my Opening Verified Statement, the methodology that I utilized is consistent with the approach utilized by the Board in its *1997 Decision* and *1998 Decision*.

In Reply, Mr. Baranowski claims that my “approach to forecasting these indexes is inconsistent with the Board’s *1998 Decision*, which specified a 6-year historical trend to project future index values, and with the Board’s then standard practice, which was to employ a 5-year historical trend to forecast future inflation.”¹⁹ As support for the use of a 5-year average, Mr. Baranowski relies on the Board’s decision in *McCarty Farms*.²⁰ In Reply, Mr. Baranowski sponsors the utilization of a 6-year historical average to forecast future inflation in the DCF model.²¹

¹⁹ See Baranowski Reply V.S. at 18.

²⁰ *McCarty Farms, et al. v. Burlington Northern, Inc.*, STB Docket No. 37809 (decided August 14, 1997) (“*McCarty Farms*”).

²¹ See Baranowski Reply V.S. at 20.

Mr. Baranowski's criticism of my methodology for forecasting RCAFU, RCAFA and RCR indexes is unfounded. It is contrary to the precedents set by the Board in prior decisions and is based on a misreading of the Board's decision in McCarty Farms.

In its decision in Nevada Power II,²² the Board ruled on the methodology for forecasting RCAF indexes. The Board's Nevada Power II decision is appropriate to apply to this proceeding because both proceedings are based on the reopening of a prior Board decision and involved many years of available historical data. In Nevada Power II, the Board accepted a methodology for forecasting future changes in the annual growth rate in the RCAF based on the historical average annual growth rate in the RCAF between 1980 and 1990.²³

Mr. Baranowski claims that "the use of a five-year historical trend for these purposes was first established in McCarty Farms."²⁴ It is interesting to note that in McCarty Farms, the Burlington Northern ("BN") argued that the Board should accept a long-term average of the period from 1978 through 1993 to estimate the cost of equity.²⁵ As support for their argument, BN noted that the same method was used by the ICC in Nevada Power II.²⁶ While Mr. Baranowski is correct in noting that the Board rejected the BN's argument in McCarty Farms, his reference to only part of the Board's decision in McCarty Farms leads the reader to the wrong conclusion concerning the Board's guidance in this matter. Contrary to Mr. Baranowski's conclusion, the Board's decision does not support the use of a five-year forecast in all instances. The Board noted in McCarty Farms that:

²² Bituminous Coal - Hiawatha, Utah to Moapa, Nevada, I.C.C. Docket No. 37038 (decided October 12, 1994)("Nevada Power II").

²³ See Nevada Power II at 271.

²⁴ See Baranowski Reply V.S. at 18.

²⁵ See McCarty Farms at 523.

²⁶ Id at n.128.

[I]n that case [*Nevada Power II*] the cost of equity had to be projected for a 10-year period (1994-2003). Use of a longer term average is more appropriate for projecting equity costs for a long-term (10-year) period. Here we need only project the cost of equity for the 3-year (1996-1998) and 2-year (1976-1977) period adjacent to the period for which actual data is available. As a general matter, we believe that the cost of equity for a short-term period is a better predictor for what the near-term cost of equity would likely be. *McCarty Farms*, n. 128, at 523 (*Emphasis added*)

Rather than supporting the use of a five year average in all instances, the Board's decision in *McCarty Farms* actually states that the use of a longer term average is more appropriate for projecting a long-term period. In my revised DCF model, I forecast these indexes for ten years (2004-2013). As a result, it is consistent with the Board's rulings in *Nevada Power II* and *McCarty Farms* to use a longer term average to forecast indexes.

Finally, as Mr. Baranowski notes, the Board's *1998 Decision* provided guidance on how to revise the DCF model to incorporate additional actual data. While the Board could have updated the model by utilizing a rolling five-year average, the Board simply added actual data to the DCF model and extended the period to include the newly available actual data in the trend used to forecast the indexes.

In its *May 2003 Decision* the Board instructed the parties to "update the record regarding any forecasts made in our prior decisions, such as inflation indexes, cost of rail equity, and revenue forecasts."²⁷ The methodology I utilized to revise the DCF model and SAC analysis is consistent with the Board's guidance in *Nevada Power II*, *McCarty Farms* and the Board's *1998 Decision*.

²⁷ See *May 2003 Decision* at 5.

The impact of incorporating BNSF's forecasted inflation rates equal to a six year historical geometric average into APS/PacifiCorp's DCF model is shown in Exhibit__ (TDC-6), Column (4). APS/PacifiCorp's DCF model used forecasted inflation rates equal to a 13 year historical geometric average. Table 4 below identifies the inflation rates used by BNSF and APS/PacifiCorp.

<u>Index</u> (1)	<u>BNSF</u> (2)	<u>APS/PacifiCorp</u> (3)
1. RCR Material Prices, Wages and Supplements (excl. Fuel)	2.70%	3.12%
2. RCR Materials and Supplies	-0.18%	3.04%
3. RCR Wages and Supplements	3.09%	3.05%
4. RCAFU	2.22%	2.26%
5. RCAFA	-2.26%	-2.41%

**2. A 10-year Historical Average For
Forecasting Railroad "Cost of Capital" Is Proper**

In Opening, I explained how I revised the Board's DCF model to incorporate the actual railroad cost of capital for historical periods. I forecasted future changes in the railroad cost of capital for the years 2003-2013 to equal the average actual railroad industry cost of debt and equity over the 1993 to 2002 time period.²⁸ As I noted in my Opening Verified Statement, the methodology that I utilized is consistent with the approach utilized by the Board in its *1997 Decision* and *1998 Decision*.

In Reply, Mr. Baranowski claims that the "use of a nine-year historical average to forecast the equity cost of capital (1993 through 2002) is inconsistent with the Board's standard practice of using

²⁸ See Crowley Opening V.S. at 21.

a five-year average.”²⁹ In support of this argument, Mr. Baranowski again relies upon a mis-reading of the Board’s decision in McCarty Farms.³⁰ As I noted in Section III.B.1. above, the Board’s guidance from Nevada Power II and McCarty Farms supports the use of a longer average of the actual historical railroad cost of capital to forecast future cost of capital levels.

The impact of incorporating BNSF’s forecasted cost of capital equal to a six year historical simple average (13.19%) into the APS/PacifiCorp’s DCF model is quantified in Exhibit __ (TDC-6), Column (3). APS/PacifiCorp’s DCF model used a forecasted cost of capital equal to a ten year historical simple average (13.34%). Based on the Board’s guidance in Nevada Power II, and the *1997 Decision* and the *1998 Decision*, I have continued to use the ten year average to forecast cost of capital in my DCF analysis.

**3. Mr. Baranowski’s Adjustments
To The Calculation Of Net Salvage Value
For The McKinley Mine Spur Are Incorrect**

In Opening, I explained how I revised the Board’s DCF model to reflect the value of various railroad items from the rail trackage between Defiance and McKinley Mine that will be sold, salvaged or inventoried by the AGRR assuming that the McKinley Mine ceases production in 2008.³¹

In Reply, Mr. Baranowski accepts the method I used to estimate the undepreciated value of track assets as of 2008 with two (2) exceptions.³² First, Mr. Baranowski claims that a 6-year historical

²⁹ See Baranowski Reply V.S. at 22.

³⁰ Mr. Baranowski also incorrectly states in Reply that “[i]n its *1997 Decision*, the Board used the cost of equity associated with the construction period (i.e., the cost of equity for the 1993 time period) for all future years.” See Baranowski Reply V.S. at 21. In the *1997 Decision*, the Board utilized the 1993 railroad industry cost of debt throughout the 20-year analysis and used the railroad industry cost of equity for 1993, 1994 and 1995. See *1997 Decision* at 438.

³¹ See Crowley Opening V.S. at 16.

³² See Baranowski Reply V.S. at 22.

average of RCR indexes should be utilized to forecast the value of track assets in 2008.³³ Second, Mr. Baranowski claims that I failed to account for the tax liability applicable to the sale proceeds.³⁴

The adjustments proposed by Mr. Baranowski are unnecessary and improper. As noted in Section III.B.1. above, Mr. Baranowski's criticism of the time period I used to calculate a historical trend for RCR indexes is unfounded. On Opening, I forecasted changes in RCR indexes from 2004 to 2008 based on a historical trend of the change in the actual RCR indexes from 1994 through 2003.³⁵ On Rebuttal, I continue to utilize this trend to forecast asset inflation of the McKinley Mine spur assets.

Mr. Baranowski's criticism that I failed to take into account a tax liability is incorrect and based on a misunderstanding of my analysis. Mr. Baranowski's calculation of a tax liability is based on his assumption that the salvaged track assets such as rails, ties and ballast will be sold. As I noted in Opening, these items will not be sold but will be inventoried by the AGRR for use in future maintenance and replacement programs.³⁶ Since the items will not be sold there is no tax liability. The value of salvaged assets is realized as their use avoids the necessity to purchase similar assets. Accordingly, on Rebuttal, I have not included any tax liability in any calculation of net salvage value.

The impact of adjusting the value of the rail assets of the McKinley Mine spur to include BNSF's anticipated tax liability associated with a sale of the assets is quantified in Exhibit __ (TDC-6), Column (11).

³³ Id.

³⁴ Id.

³⁵ See Crowley Opening V.S. at 17.

³⁶ Id at 16.

**4. Mr. Baranowski's Change In The Timing Of
Construction For The Defiance Siding Is Improper**

In Opening, I explained how I revised the Board's DCF model to incorporate the capital investment associated with constructing a new interchange siding in 4Q99 that is located at Defiance, New Mexico.³⁷

In Reply, Mr. Baranowski accepts the assumption that a new interchange facility must be constructed, but modifies his DCF model to reflect the construction of this track in 4Q06.³⁸ Mr. Baranowski alters the date of construction of the Defiance siding based on BNSF's assumption that non-McKinley Mine coal will not move over the AGRR prior to 2007.³⁹ As discussed in Section III.C.1.a. below, APS/PacifiCorp rejects BNSF's assumption that re-sourced coal will not move over the AGRR prior to 1997. Since APS/PacifiCorp continues to include re-sourced coal on the AGRR prior to 2007, I continue to include investment costs associated with construction of the new interchange track in 4Q99.

The impact of constructing the Defiance siding in 4Q06 is quantified in Exhibit__ (TDC-6), Column (12).

**C. Ms. Murphy's Criticisms Of AGRR
Tonnage And Revenue Calculations Are Baseless**

Ms. Murphy criticizes several assumptions that I utilized to revise the SAC analysis for the AGRR stand-alone railroad system. Generally, Ms. Murphy's criticisms are directed at either the calculation of AGRR traffic levels or the calculation of AGRR revenue levels.

³⁷ See Crowley Opening V.S. at 18-19.

³⁸ See Baranowski V.S. at 23.

³⁹ In making adjustments to his DCF model, Mr. Baranowski incorrectly calculates the capital recovery amounts for the Defiance siding by continuing to discount cash flows for the new interchange trackage to 2000 instead of 2007. See BNSF Reply electronic workpaper "DCFDS BNSF REPLY 2007.123".

**1. Ms. Murphy's Criticism Of The AGRR
Tonnage Calculations Is Unsupported and Incorrect**

In Opening, I explained my revised calculation of the historical and forecasted traffic volumes for the AGRR. The historical traffic volumes included on the AGRR were based upon the *1997 Decision*, actual BNSF accounting data, and application of the terms of the Joint Stipulation of the parties.⁴⁰ The forecasted traffic volumes included on the AGRR were based on the coal forecasts presented in the Opening Verified Statements of APS/PacifiCorp Witnesses Kenneth Nordlander and Brian Durning and documents provided by Salt River in discovery.

Each of Ms. Murphy's criticisms of my calculation of the AGRR stand-alone railroad system traffic is addressed in the following sections below.

**a. Re-sourced Coal Traffic Is Properly
Included On The AGRR Prior To 2007**

In Opening, I included all the non-McKinley Mine volumes for Cholla and Coronado for the period from 1997 through 2006.⁴¹

In Reply, Ms. Murphy notes that she excludes the non-McKinley Mine volumes that were included in the AGRR traffic base prior to January 1, 2007.⁴² According to Ms. Murphy, she makes this adjustment at BNSF's insistence for the reasons noted by BNSF in their Reply Argument. BNSF's argument for excluding non-McKinley Mine tonnage seems to be based on their reading of the Board's *May 2003 Decision*. In particular, BNSF's interpretation of the Board's *May 2003*

⁴⁰ See Crowley Opening V.S. at 8-9.

⁴¹ See Crowley Opening V.S. at Exhibit __ (TDC-2).

⁴² See April 9, 2004 Murphy Reply Verified Statement ("Murphy Reply V.S.") at 3.

Decision is that re-sourced coal can be added to the AGRR only after the McKinley Mine shuts down.⁴³ BNSF's position is contrary to the Board's guidance in its *May 2003 Decision*.

As explained by APS/PacifiCorp Opening Evidence and Argument On Reopening, including non-McKinley Mine traffic prior to 2007 is consistent with the Board's decisions on this reopening. The language of the *October 2003 Decision* explicitly contemplates coal being re-sourced to Lee Ranch and other mines as the tonnage from McKinley Mine declines.

“The decline in the tonnage of traffic moving over the SARR from the McKinley mine can be made up for by including in the SARR replacement coal from the Lee Ranch mine, or even origins farther away...”⁴⁴

The Board's initial assumption in its *1997 Decision* and *1998 Decision* that both APS/PacifiCorp and Salt River would acquire all of their coal from McKinley Mine has proven to be inaccurate due to a variety of problems at McKinley Mine during the 1997 through 2003 time frame.⁴⁵ On Rebuttal, I continue to include non-McKinley Mine shipments in the AGRR traffic prior to 2007.

The impact of excluding all pre-2007 non-McKinley Mine tons to Cholla and Coronado from APS/PacifiCorp's DCF model is quantified in Exhibit__(TDC-6), Column (5). Table 5 identifies, by year, the tons at Cholla and Coronado that were excluded by BNSF.

⁴³ See BNSF's Reply Evidence on Reopening at 12.

⁴⁴ *October 2003 Decision*, at 5.

⁴⁵ See APS/PacifiCorp Opening Evidence and Argument On Reopening (“APS/PacifiCorp Opening”) at 15-16.

Table 5
Pre 2007 Non-McKinley Tons Excluded By BNSF

	<u>Year</u> (1)	<u>Cholla</u> (2)	<u>Coronado</u> (3)	<u>Total</u> (4)
1.	1997	{ }	{ }	{ }
2.	1998	{ }	{ }	{ }
3.	1999	{ }	{ }	{ }
4.	2000	{ }	{ }	{ }
5.	2001	{ }	{ }	{ }
6.	2002	{ }	{ }	{ }
7.	2003	{ }	{ }	{ }
8.	2004	{ }	{ }	{ }
9.	2005	{ }	{ }	{ }
10.	2006	{ }	{ }	{ }
11.	Total	{ }	{ }	{ }

**b. Supplemental Coal For Coronado
Station Is Properly Included On The AGRR**

In Opening, I included all of the tonnage that Salt River forecasted for Coronado including tonnage categorized by Salt River as supplemental coal.⁴⁶

In Reply, Ms. Murphy states that Salt River's projection of "Supplemental Coal" volumes from PRB origins are "too speculative to include" in the AGRR traffic base.⁴⁷ Ms. Murphy concludes that Salt River is uncertain whether it will take these tonnages and Salt River's forecast of supplemental coal is akin to a "high demand" coal forecast that should not be relied upon.⁴⁸

⁴⁶ See Crowley Opening V.S. at Exhibit (TDC-2).

⁴⁷ See Murphy Reply V.S. at 4.

⁴⁸ Id at 5-6.

Ms. Murphy's conclusions regarding Salt River's forecast of supplemental coal are unsupported. Salt River is a third-party in this proceeding and has no reason to inflate its projection of future volumes to Coronado. In addition, Ms. Murphy's characterization of the Salt River forecast as a "high demand" growth forecast is also unfounded. There is no evidence to support Ms. Murphy's "high demand" growth theory and nowhere in Salt River's discovery response do they imply that any portion of their coal forecast is based on a "high demand" scenario.

Consistent with standard industry practices, Salt River has historically purchased significant amounts of supplemental and/or spot coal, beyond that specifically provided for in its term contracts. For example, in 2000, 2001, and 2002, Salt River purchased {

}, respectively of supplemental and spot coal.⁴⁹ Salt River projects that it will receive between { } tons of supplemental coal at Coronado in the years 2007 through 2013, or an average of { } tons annually over the 10 year forecast period.⁵⁰ In comparison with historical supplemental coal volume purchases at Coronado, Salt River's projected supplemental tonnages are very reasonable.

BNSF asserts that "including the Supplemental Coal will result in coal purchase at the Coronado plant that is substantially higher than the plant's historical coal purchase."⁵¹ BNSF's contentions concerning historical comparisons are highly misleading. First, BNSF does not take into consideration the fact that the purchase by Salt River of alternative, non-McKinley Mine coals following the closure of the McKinley mine with lower btu values will require Salt River to move larger coal volumes in order to meet the Coronado plant's fuel requirements. Second, BNSF

⁴⁹ See Crowley Rebuttal V.S. electronic workpapers "SRP Historical Supplemental.pdf".

⁵⁰ Id.

⁵¹ See Murphy Reply V.S. at 6-7.

curiously leaves out of its analysis critical information for the years 2004 through 2006.⁵² Salt River projects coal receipts of { } million tons in 2004 (including { } supplemental tons), and { } million tons in 2005 and 2006 (including { } supplemental tons). BNSF has not challenged these forecasts. Considering these undisputed projections for 2004 through 2006 for Coronado deliveries, Salt River's projections for 2007 through 2013, ranging from { } million, inclusive of supplemental tons, are clearly reasonable. On Rebuttal, I continue to include Salt River's forecast of supplemental coal as traffic on the AGRR.

The impact of excluding "supplemental" tons to Coronado in years 2007 through 2013 from APS/PacifiCorp's DCF model are quantified in Exhibit__ (TDC-6), Column (7). Table 6 identifies, by year, the "supplemental" tons at Coronado that were excluded by BNSF.

Table 6 Supplemental Coronado Coal Excluded By BNSF		
Year (1)	"Supplemental Coal" (2)	
1. 2007	{	}
2. 2008	{	}
3. 2009	{	}
4. 2010	{	}
5. 2011	{	}
6. 2012	{	}
7. 2013	{	}
8. Total	{	}

⁵² See BNSF Reply Table JAM-3.

**c. Some Forecasted Coal From PRB Origins To
Coronado Station Will Originate From Spring Creek**

In Opening, I assumed that all of the PRB coal destined for Coronado originates from Jacobs Ranch Mine.⁵³ Ms. Murphy criticizes this assumption in Reply. She argues that historically Coronado has received a mix of PRB coal originating from Spring Creek, Montana and Jacobs Ranch, Wyoming.⁵⁴ Ms. Murphy also notes that the route for coal originating at Spring Creek, Montana travels 158 miles farther than the route for coal originating at Jacobs Ranch, Wyoming.⁵⁵

After review, I agree with Ms. Murphy's contention that a certain amount of PRB coal destined for Coronado will originate from Spring Creek Mine in Montana. I disagree with Ms. Murphy's assumption that { } of all future shipment of PRB coal to Coronado will originate from Spring Creek, Montana. BNSF claims that its Jacobs Ranch Mine and Spring Creek Mine coal volume projections are properly based upon an analysis of historic volumes received at Coronado from these two mines.⁵⁶

BNSF's suggested approach to "historic" PRB mine divisions is highly misleading and unrepresentative. PRB coal has historically comprised a very small fraction of the total coal receipts at Coronado. For example, recent history shows that in 2002, Coronado received no coal from Jacobs Ranch Mine or Spring Creek Mine. In 2003, Coronado received only { } tons of coal from the two mines, or only approximately { } percent of total coal deliveries at the plant.⁵⁷ In comparison, Salt River projects over { } million tons of such coal will move to Coronado in future

⁵³ See Crowley Opening V.S. at Exhibit (TDC-2).

⁵⁴ See Murphy Reply V.S. at 7.

⁵⁵ Id at 8.

⁵⁶ See Murphy Reply V.S. at 7-9, Table JAM-4.

⁵⁷ See Crowley Opening V.S. at Exhibit__ (TDC-2) which shows that 2003 SAC tons for Coronado equal { }.

years. BNSF's analysis does not take into consideration the dramatic shifts in future coal sourcing at Coronado, and the fact that historical coal volumes from Jacobs Ranch Mine and Spring Creek Mine are not representative of forecasted future volumes. The impact of BNSF's shift in tonnage is summarized in Exhibit __ (TDC-6), Column (10).

Salt River and {

}

**d. Capping APS/PacifiCorp's Coal
Forecast For Cholla in 2008-2013 Is
Arbitrary And Based On A Flawed Analysis**

In Opening, I utilized the coal forecast presented in Opening by APS/PacifiCorp Witnesses Kenneth Nordlander and Brian Durning.

In Reply, Ms. Murphy criticizes APS/PacifiCorp's forecast of coal requirements for Cholla because, in her opinion, APS/PacifiCorp made an erroneous assumption that Cholla will increase its burn to 90 percent capacity beginning in 2008.⁶⁰ Ms. Murphy also argues that Board precedent requires that volume forecasts to a power plant be capped at an 85 percent capacity factor.⁶¹ According to BNSF, the impact of incorporating an 85% capacity factor at Cholla into APS/PacifiCorp's DCF model results in excluding tons in 2008 through 2013, i.e. { } were

⁵⁸ This Letter Agreement between Salt River and [REDACTED] and is included in APS/PacifiCorp Opening workpapers at 89-91.

⁵⁹ See Randy G. Dietrich Rebuttal V.S. dated April 27, 2004.

⁶⁰ See Murphy Reply V.S. at 9.

⁶¹ Id at 10.

excluded in 2008 and { } tons were excluded annually from 2009 through 2013. The impact on the result is shown in Exhibit __ (TDC-6), Column (6).

Ms. Murphy is wrong on all counts. In Opening, Messrs. Nordlander and Durning explained the development of the Cholla forecast upon which I relied. According to Messrs. Nordlander and Durning, they considered a number of inputs when they developed the Cholla coal forecast including generating unit data, fuel and fuel cost data, load and customer demand data, and operating data including unit capacity.⁶² The Cholla forecast of coal tonnage was developed in the normal course of business and represents APS/PacifiCorp's best estimate of the Cholla coal requirements.⁶³

Messrs. Nordlander and Durning have addressed Ms. Murphy's criticism of their Cholla coal forecast in their Rebuttal Verified Statements filed in this proceeding. Mr. Norlander explains that Ms. Murphy has utilized incorrect heat rates in her capacity factor calculations and that correct heat rates result in capacity factors at or below 85% for the Cholla plant.⁶⁴ He and Mr. Durning confirm that APS/PacifiCorp's forecasts are reasonable, reliable and are designed to assure that the forecasted coal requirements do not exceed the achievable capacity of the unit.⁶⁵ Also, the Board has routinely rejected forecasts based on arbitrary caps or other generalized projections, where, as here, more accurate made "in the ordinary course of business" forecasts exist.⁶⁶ I continue to rely on the Cholla coal forecast presented by APS/PacifiCorp Witnesses Nordlander and Durning.

⁶² See Opening V.S. of Nordlander and Durning dated February 27, 2004.

⁶³ See Rebuttal V.S. of Norlander at 6.

⁶⁴ See Rebuttal V.S. of Norlander at 5.

⁶⁵ See Norlander and Durning Rebuttal V.S. dated April 27, 2004.

⁶⁶ See *McCarty* at 473-474. See, *McCarty* at 473-474; *West Texas Utilities v. Burlington Northern Railroad*, S.T.B. 638, 662-663; Docket No. 42051, WP&L, at 18; Docket No. 42022, at 32-33.

2. Ms. Murphy's Criticisms Of The AGRR Revenue Calculations Are Unsupported And Arbitrary

In Opening, I explained my revised calculation of the historical and forecasted revenues for the AGRR. Historical revenues for shipments on the AGRR were based on the *1997 Decision*, BNSF accounting data, and the challenged rates for McKinley Mine coal shipments to Cholla.⁶⁷ Projected revenues for coal shipments on the AGRR were based on the applicable contract/tariff terms and conditions and a forecast of the appropriate rate adjustment mechanism.⁶⁸ Calculation of revenues for AGRR cross-over traffic are based on the application of the modified straight-mileage prorate ("MSP") methodology that has recently been adopted by the Board.

In Reply, Ms. Murphy criticizes my calculation of the AGRR stand-alone railroad system revenues. Each of Ms. Murphy's criticism's is addressed in the following Sections of this Rebuttal Verified Statement.

a. BNSF's Arbitrary Routing Of PRB Traffic Is Unsupported

In Opening, I calculated the off-AGRR route miles for PRB coal shipments based on the shortest route to the AGRR. I assumed that the residual BNSF would route this traffic in the loaded and empty direction along the segment from Pueblo, Colorado to Defiance, New Mexico via Raton, New Mexico ({ } route miles from Black Thunder to Cholla).

In Reply, Ms. Murphy claims that the route that I used to calculate the miles between the PRB and Defiance, NM is incorrect and understates the off-AGRR miles on the residual BNSF.⁶⁹ Ms. Murphy states that PRB trains destined to Cholla and Coronado do not use BNSF's line segment

⁶⁷ See Crowley V.S. at 10-12.

⁶⁸ Id. at 12-14.

⁶⁹ See Murphy V.S. at 14.

through Raton, NM but instead travel over a much longer route from Pueblo, Colorado to Amarillo, Texas via LaJunta, Colorado and then on to Defiance, New Mexico⁷⁰ ({ } route miles from Black Thunder to Cholla). While Ms. Murphy claims to use the mileage for the route via LaJunta, she actually relies upon the mileage for a route from Pueblo, Colorado to Amarillo, Texas via Trinidad, Colorado⁷¹ ({ } route miles from Black Thunder to Cholla).

On Rebuttal, I revise my calculation of AGRR stand-alone system revenues to reflect the correct mileage for PRB trains to Cholla and Coronado. Based on BNSF records, 100% of the loaded trains to Cholla and Coronado utilized the line segment from Pueblo, Colorado to Amarillo, Texas via LaJunta, Colorado and then on to Defiance, New Mexico in 2003 and 2004. I revised my model to include an additional 290.8 miles for this routing for PRB shipments.⁷²

**b. Ms. Murphy's Adjustment To The Board
Accepted 100-mile Block For Revenue Division
Calculations Is Arbitrary And Incorrect**

In Opening, APS/PacifiCorp calculated divisions of revenues for cross-over traffic based on the Board's MSP methodology. The MSP methodology separates total through revenues for a movement between the stand-alone railroad and the residual incumbent based on a mileage convention. Specifically, the MSP methodology assigns 100 miles to the railroad that originates the traffic and 100 miles to the railroad that terminates the traffic. These 100 mile additives are combined with each railroad's line haul miles resulting in total miles that are used for revenue divisions purposes, i.e. each railroads proportion of the resulting total miles equals that railroad's division of total revenues.

⁷⁰ Id at 13.

⁷¹ See Murphy V.S. at Exhibit JAM-2 and BNSF Reply electronic workpaper "APS Mileage.pdf".

⁷² See Crowley Rebuttal V.S. electronic workpapers "APS/PacifiCorp Corrected.pdf".

In Reply, Ms. Murphy claims that the Board's use of 100 miles to originate or terminate the cross-over coal traffic following the MSP methodology is incorrect. Ms. Murphy's theory is that the MSP methodology is supposed to reflect the expenses incurred by each carrier in handling the traffic. However, Ms. Murphy's analysis only considers the expenses associated with origination and termination of the coal traffic. The conclusions reached by Ms. Murphy are that if the coal traffic moved in railroad owned cars, the 100 mile additive should be reduced to a 57 mile block and if the coal traffic moved in shipper owned cars, the 100 mile additive should be reduced to a 25 mile block. Neither Ms. Murphy nor any other BNSF witness evaluates the line-haul expense portion of the study movements to determine if any such adjustments would be consistent with actual expense characteristics for the overall division of revenues between the AGRR and BNSF. Rather, BNSF assumes that the cost per mile to travel one mile is exactly the same as the cost per mile to travel 1,000 miles.

One need look no further than two recent STB decisions to see proof of the fact that per-mile costs for short-haul unit coal traffic are vastly greater than per-mile costs for long-haul unit coal train traffic. Specifically, in its 2002 Decision in TMPA, the Board determined that BNSF's per-ton-mile variable cost for the 1,413.8 mile move from Caballo Rojo to Gibbons Creek was 6.66 mills. In its 1998 Decision in APS, the Board determined that BNSF's per ton-mile variable cost for the 115.4 mile unit coal train move from McKinley to Cholla was 18.29 mills per ton-mile at 4Q2001, wage and price levels, or 175% more than the 1,413.8 mile TMPA move on a cost per ton-mile basis. The reasons short haul movements result in higher costs per mile are related to both terminal costs and some elements of line-haul costs. Terminal costs are spread over fewer miles resulting in a higher cost per mile. Some line-haul elements, such as crew-wages and equipment utilization, are also

spread over fewer miles, resulting in a higher cost per mile. This is a clear demonstration that BNSF's cost per mile to handle unit coal trains shorter distances is considerably higher than BNSF's cost per mile to handle unit coal trains longer distances.

The comparison clearly demonstrates the bias in BNSF's modification to the MSP methodology. By only adjusting the terminal portion of the STB's calculation, Ms. Murphy has failed to accurately measure the differential in cost for short-haul and long-haul coal moves. BNSF's analysis is without merit and should be rejected accordingly.

c. The 13-year Historical Average For Forecasting RCAF Indexes Is Proper For Forecasting AGRR Revenues

As explained above in Section III.B.1, the six-year historical average Ms. Murphy employs to forecast 2004 through 2013 revenues for the AGRR is improper and not supported by prior Board decisions. On Rebuttal, I continue to use a 13-year historical average of the RCAFU and RCAFA to forecast revenues.

IV. RESTATEMENT OF DCF ANALYSIS AND REPARATIONS

I revised the DCF analysis summarized in Opening to reflect the two changes that respond to BNSF's legitimate criticisms. Specifically, I revised the allocation of forecasted tonnage from PRB to Coronado to reflect shipments of { } of the annual forecasted tonnage from Jacobs Ranch and { } from Spring Creek, and I revised the mileage between PRB and Defiance, New Mexico to reflect BNSF's routing of loaded PRB trains through LaJunta, CO. Table 7 below summarizes the recalculated maximum rate values. For comparative purposes, I have also included the maximum rate calculations included in Opening, the maximum rate calculations included in BNSF's Reply, and the maximum rate calculations included in the Board's *1998 Decision*.

Table 7
**Comparison of APS/PacifiCorp's And BNSF's Calculation of Rates
For McKinley Shipments To Cholla Under The Board's 1998 Decision**
(\$ Per Ton)

<u>Year</u>	<u>Board's 1998 Decision ^{1/}</u>	<u>APS/PacifiCorp Opening ^{2/}</u>	<u>BNSF Reply ^{3/}</u>	<u>APS/PacifiCorp Rebuttal ^{4/}</u>
(1)	(2)	(3)	(4)	(5)
2003	\$4.21	\$4.04	\$7.20	\$4.10
2004	\$4.30	\$4.12	\$7.27	\$4.18
2005	\$4.75	\$4.60	\$7.61	\$4.60
2006	\$4.49	\$4.47	\$7.22	\$4.49
2007	\$4.59	\$4.38	\$7.36	\$4.38
2008	\$4.69	\$4.27	\$7.20	\$4.27
2009	\$4.82	xxx	xxx	xxx
2010	\$4.99	xxx	xxx	xxx
2011	\$5.15	xxx	xxx	xxx
2012	\$5.33	xxx	xxx	xxx
2013	\$5.51	xxx	xxx	xxx

^{1/} Board's 1998 Decision at 56.

^{2/} Exhibit (TDC-5), Column (3).

^{3/} Exhibit (TDC-5), Column (6).

^{4/} Exhibit__ (TDC-9), Column (17).

As shown in Table 7 above, the Board should prescribe new maximum reasonable rates for 2003 at \$4.10 per ton, for 2003 at \$4.18 per ton for 2004, for 2005 at \$4.60 per ton, for 2006 at \$4.49 per ton, for 2007 at \$4.38 per ton and for 2008 at \$4.27 per ton, (Column (5)). The rates prescribed in the Board's 1998 Decision for coal traffic from McKinley Mine to Cholla (Column (2)) exceed these new maximum reasonable levels calculated based upon the changed circumstances considered in accordance with the Board's 2003 Decisions. BNSF presented the opposite picture (Column (4)),

but could only accomplish this result by concocting its conceptual additive for reparations for shipments moving over the 1994 to May 21, 2003 time period.

The revisions to the DCF analysis on Rebuttal result in revised maximum rates for shipments of coal from McKinley Mine to Cholla. As a result, I also revised my calculation of the amount of reparations that BNSF owes APS/PacifiCorp for coal shipments to Cholla from May 22, 2003 through March 31, 2004 (the latest available).

Following the ICC's decision in Guidelines⁷³ and the Board's decisions in WTU and APS, I calculated the principal amount of reparations using the recalculated rebuttal maximum rate levels shown in Table 7, Column (5) above. A summary of these calculations is shown in Column (2) of Table 8 below for the May 22, 2003 through March 31, 2004 period.

Table 8 Principal Amount of Reparations Due APS/PacifiCorp through 1Q04^{1/} (\$ in Millions)	
Quarter (1)	Amount ^{2/} (2)
1. 2Q 2003	\$33,131
2. 3Q 2003	\$75,012
3. 4Q 2003	\$72,652
4. 1Q 2004	<u>\$19,510</u>
5. Total	\$200,305
^{1/} Beginning May 22, 2003. ^{2/} Exhibit (TDC-10) and electronic workpaper "APS Reparations1 rebut.123."	

⁷³ 1 I.C.C. 2d at 524-525 and 548.

Table 8 above shows that for the period from May 22, 2003 through March 31, 2004, BNSF owes APS/PacifiCorp \$200,305 in principal reparations payments. Reparations for the period between April 1, 2004 through the date of the Board's decision, and interest on all the reparations should be calculated at the time of the decision.

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 April 26, 2004.

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

My Commission expires: September 30, 2007

**COMPARISON OF
APS AND BNSF MAXIMUM REASONABLE RATES FOR MCKINLEY SHIPMENTS TO CHOLLA**

Year	STB Prescribed Rates	APS Calculated Maximum Reasonable Rates	BNSF Initial Maximum Reasonable Rates	BNSF Recalculated Maximum Reasonable Rates	Difference	
					C(4) - C(3) (7)	C(6) - C(3) (8)
1994	\$3.67	\$4.23	\$5.10	\$5.10	\$0.87	\$0.87
1995	\$3.78	\$4.15	\$5.01	\$5.01	\$0.85	\$0.85
1996	\$3.65	\$4.00	\$4.79	\$4.79	\$0.79	\$0.79
1997	\$3.68	\$4.10	\$4.78	\$4.78	\$0.68	\$0.68
1998	\$3.76	\$4.05	\$4.56	\$4.56	\$0.51	\$0.51
1999	\$4.16	\$4.12	\$4.51	\$4.51	\$0.39	\$0.39
2000	\$3.93	\$4.41	\$4.31	\$4.31	(\$0.09)	(\$0.09)
2001	\$4.02	\$4.09	\$4.38	\$4.38	\$0.29	\$0.29
2002	\$4.11	\$3.98	\$4.32	\$4.32	\$0.34	\$0.34
2003	\$4.21	\$4.04	\$4.30	\$7.20	\$0.27	\$3.16
2004	xxx	\$4.12	\$4.35	\$7.27	\$0.23	\$3.15
2005	xxx	\$4.60	\$4.55	\$7.61	(\$0.05)	\$3.01
2006	xxx	\$4.47	\$4.32	\$7.22	(\$0.15)	\$2.76
2007	xxx	\$4.38	\$4.40	\$7.36	\$0.02	\$2.98
2008	xxx	\$4.27	\$4.30	\$7.20	\$0.03	\$2.92

Column (2) : Maximum reasonable rates for McKinley coal shipments to Cholla as prescribed by the Board.
Column (3) : Maximum reasonable rates for McKinley coal shipments to Cholla as presented in APS/PacifiCorp's Opening Evidence on Reopening dated February 27, 2004.
Column (4) : Initial maximum reasonable rates for McKinley coal shipments to Cholla as presented in BNSF's Reply Evidence on Reopening dated April 12, 2004.
Column (5) : Dollar per ton additive for McKinley shipments to Cholla for the May 22, 2003 through 2008 time period. These values recover the difference between BNSF's maximum reasonable rates (Column (4)) and the Board's prescribed rates (Column (2)) for the 1994 through May 21, 2003 time period. The Column (5) amounts per ton are added to BNSF's initial maximum reasonable rates (Column (4)) and the sums (Column (6)) are BNSF's claimed maximum reasonable rate
Column (6) : Column (4) + Column (5).
Column (7) : Column (4) - Column (3).
Column (8) : Column (6) - Column (3).

IDENTIFICATION OF DIFFERENCES BETWEEN APS 2/27/04 RATES PER TON AND BNSF 4/9/04 RATES PER TON 1/

Year (1)	APS 02/27/2004 Maximum Reasonable Rate (2)	Differences											BNSF 04/09/2004 Reduced Rate (14)
		Cost of Capital (3)	Inflation (4)	Exclusion of Pre 2007 Non-McKinley Tons (5)	85% Capacity Limit at Cholla (6)	Exclusion of Supplemental Coronado Tons (7)	Cross-Over Revenue Divisions (8)	PRB Coal Routing (9)	Spring Creek Origin for Coronado (10)	Tax Impact on Value McKinley Spur (11)	Timing of Construction Defiance Spur (12)	BNSF DCF Revenue Difference (13)	
1994	\$4.23	(\$0.02)	\$0.20	\$0.32	\$0.06	\$0.04	\$0.13	\$0.12	\$0.00	\$0.01	\$0.01	\$0.01	\$5.10
1995	\$4.15	(\$0.02)	\$0.19	\$0.31	\$0.06	\$0.04	\$0.12	\$0.12	\$0.00	\$0.01	\$0.01	\$0.01	\$5.01
1996	\$4.00	(\$0.02)	\$0.19	\$0.29	\$0.06	\$0.04	\$0.11	\$0.10	\$0.00	\$0.01	\$0.01	\$0.01	\$4.79
1997	\$4.10	(\$0.02)	\$0.18	\$0.21	\$0.05	\$0.04	\$0.10	\$0.09	\$0.00	\$0.01	\$0.01	\$0.01	\$4.78
1998	\$4.05	(\$0.01)	\$0.17	\$0.10	\$0.05	\$0.03	\$0.08	\$0.07	\$0.00	\$0.01	\$0.01	\$0.01	\$4.56
1999	\$4.12	(\$0.01)	\$0.15	\$0.10	\$0.04	\$0.03	\$0.04	\$0.04	\$0.00	\$0.01	\$0.00	\$0.00	\$4.51
2000	\$4.41	(\$0.01)	\$0.16	(\$0.43)	\$0.04	\$0.03	\$0.06	\$0.06	\$0.00	\$0.01	(\$0.02)	\$0.00	\$4.31
2001	\$4.09	(\$0.01)	\$0.16	(\$0.03)	\$0.04	\$0.03	\$0.05	\$0.05	\$0.00	\$0.01	(\$0.02)	\$0.00	\$4.38
2002	\$3.98	(\$0.01)	\$0.15	\$0.06	\$0.04	\$0.03	\$0.04	\$0.04	\$0.00	\$0.01	(\$0.02)	\$0.00	\$4.32
2003	\$4.04	(\$0.01)	\$0.16	(\$0.03)	\$0.04	\$0.03	\$0.05	\$0.04	\$0.00	\$0.01	(\$0.02)	\$0.00	\$4.30
2004	\$4.12	(\$0.01)	\$0.14	(\$0.03)	\$0.04	\$0.03	\$0.04	\$0.04	\$0.00	\$0.01	(\$0.02)	\$0.00	\$4.35
2005	\$4.60	\$0.00	\$0.01	(\$0.11)	\$0.03	\$0.03	\$0.00	\$0.00	\$0.00	\$0.00	(\$0.02)	\$0.00	\$4.55
2006	\$4.47	(\$0.01)	\$0.05	(\$0.27)	\$0.03	\$0.03	\$0.02	\$0.02	\$0.00	\$0.00	(\$0.02)	\$0.01	\$4.32
2007	\$4.38	\$0.00	\$0.02	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$4.40
2008	\$4.27	\$0.00	\$0.03	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$4.30

NOTE: Column (3) through Column (13) show dollar/cents per ton impact of identified BNSF adjustments. Column (14) is equal to the sum of Column (2) through Column (13).

1/ This Exhibit does not show the BNSF adjustment to the maximum reasonable rates for 2003 to 2008 to recover reparations on pre-May 22, 2003 coal traffic from McKinley Mine to Cholla.

Exhibit_(TDC-7)

Page 1 to 2 (of 2)

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Exhibit (TDC-8)

Page 1 of 1

**BNSF CONTRIBUTION EARNED
ON MCKINLEY COAL SHIPMENTS TO CHOLLA**

	APS Maximum Reasonable <u>Rate Per Ton 1/</u> (1)	BNSF's Variable <u>Cost Per Ton</u> (2)	BNSF Contribution <u>Per Ton</u> (3)	Actual <u>Tonnage</u> (4)	Aggregate BNSF <u>Contribution</u> (5)
1994	\$3.67	\$1.70	\$1.97		
1995	\$3.78	\$1.75	\$2.03		
1996	\$3.65	\$1.80	\$1.85		
1997	\$3.68	\$1.80	\$1.88		
1998	\$3.76	\$1.76	\$2.00		
1999	\$4.16	\$1.76	\$2.40		
2000	\$3.93	\$1.91	\$2.02		
2001	\$4.02	\$1.93	\$2.09		
2002	\$4.11	\$1.89	\$2.22		
2003	<u>\$4.21</u>	<u>\$1.97</u>	<u>\$2.24</u>		
Total	xxx	xxx	xxx		

1/ Maximum Reasonable Rate from Board's 1998 Decision.

Exhibit_(TDC-9)

Page 1 (of 1)

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AND HIGHLY CONFIDENTIAL INFORMATION
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Exhibit_(TDC-10)

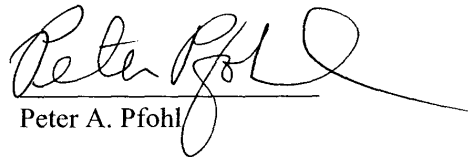
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CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of April, 2004, I served a copy of the foregoing Rebuttal Evidence and Argument on Reopening by hand upon counsel for Defendant, as follows:

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