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August 6, 2004



PUBLIC VERSION

Via HAND DELIVERY

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, NW
Washington, DC 20423

Re: **STB Docket No. 41185, *Arizona Public Service Company and PacifiCorp v. The Burlington Northern and Santa Fe Railway Company***

Dear Secretary Williams:

Enclosed for filing in the above-captioned matter are the original and ten copies of the Public version of The Burlington Northern and Santa Fe Railway Company's Final Brief on Reopening. BNSF is submitting a Highly Confidential version of this Final Brief under separate cover.

Please date stamp the extra copy of this cover letter and Brief and return it to the messenger who delivered this filing.

Sincerely,

Linda S. Stein

Enclosures

cc: Counsel for Complainant

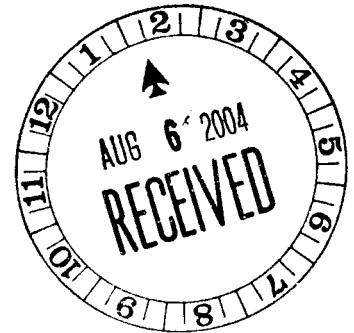
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211746 PUBLIC VERSION

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

THE BURLINGTON NORTHERN AND SANTA FE RAILWAY
COMPANY'S FINAL BRIEF ON REOPENING

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* As successor in interest to The Atchison, Topeka and Santa Fe Railway Company

In accordance with the Board's order served on July 2, 2004, defendant The Burlington Northern and Santa Fe Railway Company ("BNSF") submits its final brief on reopening.

The evidence on reopening submitted by both parties demonstrates that the changed circumstances involving the anticipated shutdown of the McKinley Mine by the end of 2008 result in significant changes in the outcome of the Board's prior stand-alone cost ("SAC") analysis.¹ In particular, both parties' calculations show that the cumulative amount by which revenues exceed SAC over the 20-year DCF period that runs from 1994 through 2013 is substantially less on reopening than it was under the Board's 1998 SAC determination. Complainants Arizona Public Service Company and PacifiCorp ("APS/PacifiCorp") nonetheless contend that BNSF is not entitled to higher rates than those originally prescribed for the period May 22, 2003, through the end of 2008, claiming that the revenue shortfall in the elapsed portion of the DCF period may not be recovered over the remaining years of the DCF period. However, the revenue shortfall from the elapsed years of the DCF period must be recovered if revenues are to equal costs on a present value basis over the full 20-year DCF period. That is the basis for the BNSF calculation that the Board has referred to as BNSF's capital allocation adjustment.²

APS/PacifiCorp contend that BNSF's adjustment constitutes an unlawful retroactive revision of the rates prescribed by the Board in 1998 and is barred by *Arizona Grocery v. Atchison, Topeka & Santa Fe Ry. Co.*, 284 U.S. 370 (1932) ("*Arizona Grocery*"). That claim is

¹ The Board issued an initial DCF analysis in *Arizona Public Service Co. & PacifiCorp v. Atchison, Topeka and Santa Fe Ry. Co.*, 2 S.T.B. 367 (1997) ("*1997 Decision*"), which was subsequently modified in *APS/PacifiCorp v. ATSF*, 3 S.T.B. 70 (1998) ("*1998 Decision*").

² Details of the calculation of the capital allocation adjustment are set forth in the Verified Statement of Michael R. Baranowski ("Baranowski VS") and the supporting workpapers which accompanied the BNSF Reply Evidence on Reopening, STB Docket No. 41185 (filed April 9, 2004) ("BNSF 2004 Reply"). The calculations for this adjustment that underlie BNSF's primary case were resubmitted with BNSF's May 28, 2004 Errata as "DCF BNSF Reply 2007 Errata.123."

incorrect. The previously prescribed rates have remained unchanged through May 21, 2003 and will not be reduced retroactively. The Board vacated the prescriptive effect of its prior rate determination as of May 22, 2003,³ and BNSF seeks a change in the previously prescribed rates only from that date forward. *Arizona Grocery* does not prohibit such prospective rate adjustments. Denial of BNSF's adjustment would not only be inconsistent with the logic of the Board's DCF methodology, it would frustrate the legitimate purposes of reopening where, as here, the defendant railroad has demonstrated changed circumstances that call into question the results of the prior SAC analysis.

FACTUAL BACKGROUND

The facts underlying this reopening proceeding have been set forth in detail in prior pleadings and will not be repeated here. See BNSF 2004 Reply at 5-8; Petition of BNSF to Reopen and Vacate Rate Prescription, STB Docket No. 41185, at 8-11 (filed Jan. 10, 2003). However, certain facts that are particularly relevant to the parties' dispute involving BNSF's proposed capital allocation adjustment are discussed briefly below.

First, this is a case in which the possibility of reopening due to the uncertain state of recoverable reserves at the McKinley Mine was recognized as far back as the Board's 1997 *Decision*. Noting the uncertainty of APS/PacifiCorp and Salt River Project's ("SRP") continued use of McKinley coal over the entire 20-year DCF period, the Board stated that "[i]f Arizona or Salt River should actually change coal suppliers in the future, we can reopen this proceeding at that time and, if necessary determine what a reasonable rate would be under the changed circumstances." *APS/PacifiCorp v. ATSF*, 2 S.T.B at 385 (footnote omitted). In a similar vein, the Board stated in its 1998 *Decision* that "if traffic from the McKinley Mine to the Cholla or

³ *Arizona Public Service Co. & PacifiCorp v. Burlington Northern and Santa Fe Ry. Co.*, STB Docket No. 41185 (served May 12, 2003) ("*May 2003 Decision*").

Coronado plants were permanently reduced below the levels upon which our SAC analysis is predicated, then the parties can and should have this proceeding reopened and the SAC analysis revised appropriately.” *APS/PacifiCorp v. ATSF*, 3 S.T.B. at 79 n.42. When the Board granted reopening in May 2003, it harkened back to its 1997 formulation: “We will therefore grant BNSF’s request to reopen the proceeding due to this substantially changed circumstance [the impending McKinley shutdown] so that we may ‘determine what a reasonable rate would be under the changed circumstances.’ 1997 Decision, 2 S.T.B. at 385.” *May 2003 Decision*, slip op. at 4.

Second, the Board’s *May 2003 Decision* makes a very clear distinction between previously prescribed rates for the elapsed period, which are not subject to challenge on reopening, and rates for the future, which might change as a result of reopening:

Here, 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. But, with this decision, we remove the legislative force of our 1998 Reopening with respect to the lawful rate for future movements. We do not know what the outcome of this reopening will be; the maximum reasonable rate may be higher or lower, by a modest or significant amount. But the evidence that justified reopening also raises genuine questions about the maximum reasonable rate for the future in light of the substantially changed circumstances.

Id. slip op. at 7-8.

Third, to perform their SAC analysis on reopening, both APS/PacifiCorp and BNSF used the same 20-year DCF period (1994 through 2013) used in the Board’s original decision. Both parties concluded that revenues exceeded costs over the 20-year period by a much smaller amount than under the Board’s *1998 Decision*, although they disagreed as to the magnitude of the change. This means that under the reopening analysis the total revenues that the stand-alone railroad (“SARR”) would need to generate over the 20-year DCF period to cover its costs would

be higher than those that it needed under the Board's prior SAC analysis.

ARGUMENT

I. BNSF Is Not Seeking Retroactive Modification Of A Rate Prescription Or An Award Of Reparations For Traffic That Already Moved Under A Rate Prescription

In their Rebuttal on Reopening, APS/PacifiCorp argue that the capital allocation adjustment BNSF proposed on Reply amounts to the retroactive application of a new reasonable rate determination and runs afoul of the Supreme Court's ruling in *Arizona Grocery*. See APS/PacifiCorp's Rebuttal Evidence and Argument on Reopening, STB Docket No. 41185, at 8 (filed April 27, 2004) ("APS/PacifiCorp 2004 Rebuttal"). However, BNSF's adjustment to the Board's 1998 DCF analysis affects the level of rates only on movements occurring after the Board's *May 2003 Decision*, which removed the prescriptive force of its *1998 Decision*. While APS/PacifiCorp are correct that *Arizona Grocery* limits the ability of the Board retroactively to repeal a prescribed rate or to award reparations based on a determination that a prescribed rate for a prior period was not in fact the rate that should have been prescribed, that decision does not limit the Board's discretion in prescribing reasonable rates for future movements. *Arizona Grocery*'s prohibition on retroactive measures is directed at past rates and past movements and does not preclude the Board from determining maximum reasonable rates for the period from May 22, 2003, through 2008 in the manner advocated by BNSF.

A. BNSF Is Not Pursuing Retroactive Measures Prohibited By *Arizona Grocery*

In *Arizona Grocery*, the Supreme Court addressed the issue of whether the Board's predecessor, the ICC, possessed the authority retroactively to repeal or adjust a prior rate prescription that was subsequently determined to be too high, and to order reparations for overpayments on movements subject to that rate. The Court concluded that, given the legislative nature of its determination of a reasonable rate, the Commission was precluded from

retroactively repealing its rate prescription for prior periods. *Arizona Grocery*, 284 U.S. at 338-9. The Court further held that the Commission was prohibited from granting reparations for past traffic moving under those prescribed rates, even when the prescribed rate subsequently had been determined to be unreasonable. *Id.* at 390.

Contrary to APS/PacifiCorp's claims, BNSF's proposed capital allocation adjustment would not require the Board to engage in either of the retroactive measures—retroactive revision to a prior rate prescription or award of reparations on traffic that moved in prior periods under prescribed rates—prohibited by the Court in *Arizona Grocery*. First, BNSF is not asking the Board to repeal its 1998 rate determination as it applied to shipments in prior years, to which BNSF has consistently adhered. When the Board granted BNSF's request to reopen in May of 2003 and removed the prescriptive effect of the 1998 rate for subsequent movements, it underscored the fact that the parties would address on reopening the reasonableness of rates that would apply only to movements after May 22, 2003. *May 2003 Decision*, slip op. at 7-8. As the Board acknowledged, it was limited in its retroactive treatment of its 1998 prescription by *Arizona Grocery*, and “the lawfulness of the rates approved and prescribed pursuant to 49 U.S.C. 10704(a)(1) in our [1998 Decision] cannot be challenged with respect to traffic that moved from 1997 until now.” *Id.*, slip op. at 7. Consistent with *Arizona Grocery* and the Board's *May 2003 Decision*, BNSF's 2004 Reply Evidence does not challenge the prescribed rates that governed movements prior to the Board's removal of the prescriptive effect of its prescription.

Second, BNSF is not seeking reparations from APS/PacifiCorp for underpayments on movements prior to the *May 2003 Decision*, and has not challenged the Board's statement in that decision that BNSF was not entitled to reparations on any movements predating the removal of the prescriptive effect of the 1998 prescription. Such an award of reparations, prohibited under

Arizona Grocery, is clearly different from the capital allocation adjustment proposed in BNSF's 2004 Reply. A reparations order would require that APS/PacifiCorp pay BNSF a specific sum measured by the amount of underpayment on actual APS/PacifiCorp shipments in prior years. This amount, including interest, would be owed to BNSF regardless of the future levels of traffic moving under the new rate. Far from being a reparations payment on past movements, the capital allocation adjustment component of the rates that BNSF proposes is a component of the rate per ton that BNSF should be permitted to charge on movements occurring after the Board vacated its previously prescribed rates in the *May 2003 Decision*. Whereas an award of reparations entitles a party to a certain sum, there is no guarantee that BNSF will be able to recover any particular amount of money in the future that is attributable to the capital allocation adjustment. A rate based on a SAC determination does not provide assurance of revenue to a real-world defendant. It merely represents the rate level that the defendant is entitled to charge, based on the SARR's entitlement to cover its full costs over the DCF period.

B. *Arizona Grocery* Does Not Preclude The Prescription Of A New Rate For Future Periods, Which Is What BNSF Seeks

In *Arizona Grocery*, the Supreme Court specifically outlined limits on the retroactive power of the Commission, but it did not similarly limit the Commission's discretion in adjusting future rates. APS/PacifiCorp gloss over the fact that *Arizona Grocery* does not apply any limits to the Board's discretion to determine future rates by stating that BNSF's proposed capital allocation adjustment "would *effectively* apply the new maximum rates retroactively." APS/PacifiCorp 2004 Rebuttal at 4 (emphasis added). This is an inaccurate characterization of BNSF's adjustment. If accepted, APS/PacifiCorp's characterization of retroactivity would provide stricter limits on the Board's ratemaking powers than required by *Arizona Grocery*.

BNSF's capital allocation adjustment looks to the difference between the prescribed rates

that BNSF has charged and the higher rates that would have been prescribed on reopening to determine the level at which rates would need to be set in later years of the DCF period to allow full recovery of costs during the DCF period. As the Court stated in *Arizona Grocery*, the carrier's only recourse is "the fixing of a more adequate rate for the future." 284 U.S. at 387. That is exactly what BNSF seeks to accomplish in this proceeding.⁴

II. BNSF's Capital Allocation Adjustment Is Required To Implement Properly The DCF Analysis In This Reopening Proceeding

The purpose of this reopening proceeding is to determine whether, given the changed circumstances involving coal expected to be produced at the McKinley Mine, BNSF is entitled to charge higher rates prospectively from the effective date of the Board's *May 2003 Decision* than those prescribed in the Board's *1998 Decision*. In authorizing reopening, the Board stated that, except for changes in traffic related to the shut down of McKinley, "the reopening must be limited to the basic assumptions upon which Arizona based its SAC case in 1994." *May 2003 Decision*, slip op. at 5. In their evidentiary submissions on reopening, both parties understood

⁴ Two other arguments made in APS/PacifiCorp's 2004 Rebuttal are simply reiterations of their *Arizona Grocery* argument and fail for the same reasons that their *Arizona Grocery* argument fails. APS/PacifiCorp erroneously argue that BNSF's capital allocation adjustment is inconsistent with the Board's prior pronouncements in this docket regarding a potential retroactive adjustment or the availability of reparations. However, in the prior decisions cited by APS/PacifiCorp, the Board merely applied the principles established in *Arizona Grocery* as outlined above. See *May 2003 Decision*, slip op. at 7-8 (holding that under *Arizona Grocery* the lawfulness of rates prescribed prior to the Board's reopening could not be challenged); *APS/PacifiCorp v. ATSF*, 2 S.T.B. at 79-80, n. 42 (holding that reparations on past movements were unavailable and any reduction in rates would need to be prospective). As stated above, BNSF's proposed adjustment does not seek the retroactive adjustment or rejection of the Board's 1998 rates, or seek reparations for the difference between the old prescribed rate and a revised reasonable rate for that period, and therefore is consistent with the *Arizona Grocery* principles articulated in the Board's prior rulings. APS/PacifiCorp also incorrectly argue that BNSF's adjustment violates contractual commitments limiting the rates on movements between January 1, 1999, and December 31, 2002 to the rates set by the Board's *1998 Decision*. BNSF has consistently adhered to that contract and, as described above, is seeking neither a retroactive adjustment of the previously prescribed rate incorporated into that contract nor reparations for movements covered by that contract.

that they were required to conduct the SAC analysis using the same DCF period that had been the basis for the original decision, *i.e.*, the 20-year period running from 1994 through 2013.

As BNSF explained in its 2004 Reply, the initial DCF analysis on reopening performed by APS/PacifiCorp's witness Crowley showed a cumulative present value overage (revenues in excess of costs) of \$47.1 million, nearly one-third less than the cumulative present value overage of \$69.6 million that was reflected in the DCF underlying the Board's *1998 Decision*. The maximum reasonable rates calculated—but not displayed—by Mr. Crowley for the elapsed years of the DCF period (1994 through 2002) were generally higher than those prescribed by the Board in the *1998 Decision*. Because APS/PacifiCorp paid BNSF at the lower rates prescribed in the *1998 Decision* throughout the elapsed period, revenues will fall short of the amount needed to recover costs over the 20-year DCF period unless the Board permits BNSF to include the capital allocation adjustment calculated by its witness Baranowski for the period May 22, 2003, through December 31, 2008, when coal movements from McKinley are expected to end.

The logic of the DCF model is that revenues should equal costs on a present value basis over the 20-year DCF period. This will assure that the hypothetical SARR will recover its full economic costs but not over-recover. If revenues fall short of SAC on a present value basis, as APS/PacifiCorp would have them do, then the hypothetical SARR will not be viable over the 20-year DCF period and the SAC test will not have met its purpose of determining the rates which an efficient hypothetical railroad would need to charge upon entering the market.

It is particularly important here to recognize that the concept of covering costs over the 20-year DCF period entails the notion of netting costs and revenues over years. The Board itself made this point in its initial *1997 Decision*. In its calculations to apply the Board's percentage rate reduction method, APS/PacifiCorp "did not provide for netting of revenue shortfalls and

overpayments over the 20-year SAC analysis period.” *APS/PacifiCorp v. ATSF*, 2 S.T.B at 393.

The Board made clear that this failure to provide for netting must be corrected:

Netting is essential, however, because without it the railroad would have no means to recover the revenue shortfalls that would be incurred in certain periods. The netting procedure balances out overpayments and shortfalls so that the sum of the present value of all overpayments and shortfalls for the 20-year DCF period equals zero.

Id.

As construed by both parties, the Board’s *May 2003 Decision* mandated use of the 20-year DCF period running from 1994 through 2013 on reopening. The logic of the Board’s DCF analysis and the law of this case requires that netting be carried out over the DCF period, “because without it the railroad would have no means to recover the revenue shortfalls that would be incurred in certain periods.” *Id.* APS/PacifiCorp’s payment of the originally prescribed rates in the elapsed years of the DCF period results in a revenue shortfall for those elapsed years vis-à-vis the revenue that would be realized under the higher rates that would have been prescribed under either parties’ evidence on reopening. BNSF’s capital allocation adjustment is a form of netting that is authorized under the Board’s DCF procedures.

APS/PacifiCorp argue that BNSF’s capital allocation adjustment “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).” APS/PacifiCorp 2004 Rebuttal at 11. But the rule against retroactive ratemaking does not (and logically cannot) apply to STB SAC determinations employing a DCF analysis. As APS/PacifiCorp acknowledge, that rule involves application of public utility ratemaking principles in the natural gas and electric utility industries. *Id.* at 12 n.5. Neither the Board nor its predecessor has embraced the rule against retroactive ratemaking. On the contrary, the ICC declined to follow the rule against retroactive ratemaking, stating that

“[p]ublic utility ratemaking principles do not apply to the railroad industry.” *Cost Rate Recyclables—1983 Determination*, 3 I.C.C.2d 407, 419, citing *Bessemer & Lake Erie R. Co. v. ICC*, 691 F.2d 1104 (3rd Cir. 1983). The ICC made this statement in the context of determining the reasonableness of rates on recyclables. While the CMP maximum rate standards differ from those that governed movements of recyclables,⁵ the logic of the ICC’s determination applies even more forcefully here given the concept of netting incorporated into the Board’s DCF analysis. Moreover, it has been held that retroactive ratemaking is not inappropriate where parties are on notice that rates are likely to change in the future. See *Natural Gas Clearinghouse v. Federal Energy Regulatory Commission*, 965 F.2d 1066, 1076 (D.C. Cir. 1992); *Cost Rate Recyclables*, 3 I.C.C.2d at 407 n.25.

APS/PacifiCorp’s attempt to reject BNSF’s capital allocation adjustment on retroactive ratemaking grounds is not only inconsistent with the need to net revenue shortfalls over the DCF period, it would frustrate the objectives of reopening a SAC case. The Board has indicated in a variety of different contexts that it could be appropriate to reopen a case decided under the SAC methodology if the party seeking reopening can demonstrate that the revenue projections adopted in a SAC analysis have turned out to be significantly overstated.⁶ Logically, a reopening in such circumstances will always involve a situation in which (1) a rate had previously been prescribed, and (2) a portion of the DCF period has elapsed. If APS/PacifiCorp’s rule against retroactive ratemaking were adopted, the DCF analysis could never take account of a demonstration on

⁵ The statutory provision requiring the determination of maximum rates for the transportation of recyclables, 49 U.S.C. § 10731(e), was omitted in the ICC Termination Act and is no longer in effect.

⁶ See *West Texas Utilities v. BNSF*, STB Docket No. 41191, at 3-4 (served May 29, 2003); *Wisconsin Power and Light Co. v. Union Pacific R.R.*, STB Docket No. 42051, at 33 (served Sept. 13, 2001); *FMC Wyoming Corp. v. Union Pacific R.R.*, STB Docket No. 42022, at 42 (served May 12, 2000) (“FMC”); *APS/PacifiCorp v. ATSF*, 2 S.T.B. at 395.

reopening that a higher rate should have been prescribed for the elapsed portion of the DCF period. Even if reopening were fully justified by changed circumstances, as is the case here, it would hold little or no prospect for increased rates.

Furthermore, it would be anomalous for a defendant carrier that had met its burden to justify reopening to be denied relief based on the supposed “retroactivity” inherent in using a partially elapsed DCF period when use of a prospective DCF period would produce dramatically different results. Suppose, for example, that the parties to this reopening had disregarded the elapsed portion of the 20-year DCF period and limited the reopened SAC analysis to the remaining portion of that period, *i.e.* May 22, 2003, through December 31, 2013. A cursory review of both parties’ DCF analyses indicates that the results of the prospective analysis would be far more favorable to BNSF (because of the lower revenues generated by non-McKinley movements) than the results under the analyses actually performed over the 20-year DCF period.

BNSF’s capital allocation adjustment is necessary to assure that the revenues assumed to be available to the SARR are sufficient to cover costs over the 20-year DCF period. To deny the adjustment would be to undermine the integrity of the DCF model.

III. BNSF’s Capital Allocation Adjustment Is Not Barred By The Fact That Salt River Project’s Real World Revenues Have Not Been Reduced

APS/PacifiCorp also claim that the Board should reject BNSF’s proposed capital allocation adjustment because it does not consider the revenues that the real-world BNSF received for transporting coal to SRP’s Coronado plant during the elapsed portion of the DCF period, but rather considers the lower SAC-based rates for that traffic. *See* APS/PacifiCorp 2004 Rebuttal at 17. However, for purposes of the SAC analysis, which is based on the hypothetical entry of the SARR, the SRP revenues assumed to be available to the SARR for the elapsed portion of the DCF period are those calculated under the Board’s rate reduction methodology,

and not those realized by the real-world BNSF. In other words, SRP's rate reduction is a fiction reflecting the fact that SRP's traffic was used (to APS/PacifiCorp's benefit) in the SAC analysis but its rates are not at issue in this proceeding.

IV. SAC Computational Issues

In addition to their disagreement as to whether the Board should make the capital allocation adjustment proposed by BNSF, the parties disagree about several other SAC computational issues. Those issues are addressed in the evidentiary submissions of the parties. BNSF will address the more significant issues below.

A. Inflation Indexes

The parties disagree about the updated inflation indexes that should be used to project future revenues. APS/PacifiCorp contend that the Board should use the historical trend of the change in the actual RCAF-A and RCAF-U indexes, respectively, for the last 13 years, whereas BNSF asserts that the historical trend in those indexes for the last six years is more appropriate. BNSF provided two rationales for its methodology—(1) a six-year historical average is consistent with Board precedent, including its decision to use a six-year historical average in the *1998 Decision* and (2) a six-year average is more likely to accurately estimate future inflation because it does not include the effects of a one-time spike in inflation during the early 1990s. *See* BNSF 2004 Reply at 31; Baranowski VS at 17-20. While APS/PacifiCorp dispute BNSF's characterization of Board precedent, they never mention BNSF's second rationale—that the 13-year historical trend proposed by APS/PacifiCorp overstates the level of inflation likely to occur in 2003 through 2013 because it includes the impact of a one-time spike in inflation that occurred in the early 1990s. Consequently, the 13-year historical trend proposed by APS/PacifiCorp overstates future inflation and should be rejected by the Board.

On July 2, 2004, the Board requested that the parties provide the rates that they would

have the Board prescribe using yet another methodology to project future revenues—namely, the inflation forecasts developed by Global Insight. The Global Insight forecasts have been used by the Board in recent SAC cases. BNSF believes that it would be inappropriate to use the Global Insights forecasts to project future revenues in this limited reopening of a case that was decided by the Board in the late 1990s. It would be arbitrary to selectively update only certain elements of the DCF analysis to reflect current DCF methodologies while other elements of the DCF analysis continue to reflect the methodologies used in the late 1990s. For example, this reopening does not take into consideration the DCF methodology established by the Board in *FMC*⁷, which requires that capital-carrying charges be allocated on an annual basis rather than a tonnage basis, and thereby avoids the assignment of a disproportionately large share of capital-carrying charges to the latter part of the DCF period.

B. Cross-Over Revenue Divisions

The parties disagree about one aspect of the methodology that should be used to calculate the division of revenues between the stand-alone railroad and the residual BNSF on cross-over traffic movements. APS/PacifiCorp use the MSP methodology to calculate revenue divisions and BNSF accepts that methodology with one adjustment—BNSF corrects the origination/termination credit used in the MSP methodology to reflect more accurately the costs of originating and terminating unit coal train traffic.

APS/PacifiCorp have presented no meritorious arguments for rejecting BNSF's proposed origination/termination mileage block adjustment. Their suggestion that the Board has already rejected this proposed mileage block adjustment in prior cases is incorrect. While BNSF did

⁷ *FMC*, slip op. at 41.

propose such a mileage block adjustment for unit coal trains in the earlier *TMPA* case,⁸ the Board never addressed the substantive merits of the proposed adjustment there, as APS/PacifiCorp concede. APS/PacifiCorp 2004 Rebuttal at 33. Further, contrary to APS/PacifiCorp's claims,⁹ the Board did not reject the origination/termination mileage block adjustment in the *Duke/NS* case because no party to that proceeding proposed that such an adjustment be made to the revenue division methodology.

Similarly, APS/PacifiCorp's attempt to discredit BNSF's proposed origination/termination mileage block adjustment because it does not consider the differing line-haul costs of short-haul and long-haul movements is without merit. The generic MSP approach advocated by APS/PacifiCorp also does not consider alleged differences in line haul costs of short-haul and long-haul movements. If accounting for differing line haul costs were a prerequisite for a revenue allocation methodology for cross-over traffic, then the generic MSP methodology could not be relied upon. As explained in BNSF's 2004 Reply, the origination/termination mileage block adjustment should be adopted because it is more accurate than APS/PacifiCorp's generic MSP approach for allocating revenues for unit coal traffic.

C. Supplemental Coal to SRP's Coronado Plant

APS/PacifiCorp rely on improper rebuttal testimony to support their argument that the "Supplemental Coal" included in SRP's business forecast should be included in the SARR's future volume projections. Specifically, for the first time on rebuttal, APS/PacifiCorp present the verified statement of Randy Dietrich, an SRP employee, ostensibly to explain the business forecast. Since this supporting evidence could have—and should have—been presented on

⁸ *Texas Municipal Power Agency v. BNSF*, STB Docket No. 42056, at 31 (served Mar. 24, 2003).

⁹ APS/PacifiCorp 2004 Rebuttal at 33-34.

opening,¹⁰ the Board should reject it as improper rebuttal. In any event, to the extent that Mr. Dietrich's verified statement {

} the Board should consider the plain language of the SRP business forecast in resolving this dispute.

V. Conclusion

As explained above and in the evidence submitted in this reopening, the capital allocation adjustment proposed by BNSF is consistent with DCF methodology and should be adopted by the Board. Contrary to APS/PacifiCorp's claims, it is not a retroactive adjustment to the previously prescribed rates. The evidence also establishes the validity of BNSF's approach with respect to the other SAC computational issues remaining between the parties.

Respectfully submitted,



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Dated: August 6, 2004

¹⁰ See *General Procedures for Presenting Evidence in Stand-Alone Cost Rate Cases*, STB Ex Parte No. 347 (Sub-No. 3), slip op. at 5 (served Mar. 12, 2001); *Duke Energy Corp. v. Norfolk Southern Ry. Co.*, STB Docket No. 42069, at 13-5 (served Nov. 6, 2003).

¹¹ See BNSF 2004 Reply electronic workpaper "SRP Volume Projection.pdf" (emphasis added).

CERTIFICATE OF SERVICE

I hereby certify that on August 6, 2004, a true and correct copy of the foregoing document was served by hand on:

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