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February 15, 2005



Via HAND DELIVERY

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

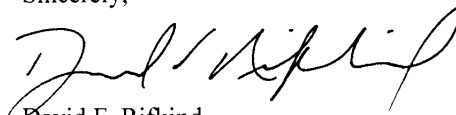
Re: **STB Docket No. 42057, *Public Service Company of Colorado d/b/a Xcel Energy v. The Burlington Northern and Santa Fe Railway Company***

Dear Secretary Williams:

Enclosed for filing in the above-captioned matter are the original and ten copies of BNSF Railway Company's Reply to Complainant's Petition to Correct Technical and Computational Errors in Reconsideration Decision. Included with the filing are three copies of a CD containing a PDF version of this pleading.

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

Sincerely,


David F. Rifkind

Enclosures

cc: Counsel for Complainant

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BEFORE THE
SURFACE TRANSPORTATION BOARD

PUBLIC SERVICE COMPANY OF)
COLORADO d/b/a XCEL ENERGY,)
)
Complainant,)
)
v.)
)
THE BURLINGTON NORTHERN)
AND SANTA FE RAILWAY COMPANY,)
)
Defendant.)

Docket No. 42057

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Public Record

DEFENDANT'S REPLY TO COMPLAINANT'S PETITION
TO CORRECT TECHNICAL AND COMPUTATIONAL ERRORS
IN RECONSIDERATION DECISION

Defendant, BNSF Railway Company, f/k/a The Burlington Northern and Santa Fe Railway Company ("BNSF"), hereby replies in opposition to the Petition to Correct Technical and Computational Errors in Reconsideration Decision, filed on February 8, 2005 by Complainant Public Service Company of Colorado d/b/a Xcel Energy ("Xcel"). Xcel's Petition seeks the correction of two alleged technical and computational errors in the Board's decision on reconsideration served January 19, 2005 ("Reconsideration Decision"). As indicated in Xcel's Petition, BNSF does not oppose correction of the first error identified by Xcel involving a correction to the Board's application of the DCF model to include the 2002 and 2003 cost of capital. However, BNSF does oppose Xcel's request that the Board correct the second alleged error, namely the Board's use of BNSF's transportation cost calculations for the transportation of sub-ballast.

As discussed in greater detail below, the Board's use of BNSF's transportation costs was not a computation error. The Board expressly stated in the Reconsideration Decision that it intended to apply BNSF's transportation costs because of flaws in the approach taken by Xcel to determine materials transportation costs. To the extent that Xcel seeks to have the Board change this decision as applied to particular transportation cost calculations, it is not appropriate to seek such a change through a technical correction request. Moreover, on the merits, Xcel's proposed "correction" is inappropriate because it would require the Board to accept a transportation cost calculation that is inconsistent with the principles announced in the Board's Reconsideration Decision for the calculation of such costs. To the extent Xcel's sub-ballast cost calculations contained any transportation costs, those costs assumed that transportation would occur over the lines of BNSF that are being replicated by the SARR. The Board clearly stated that such a result is impermissible. Finally, Xcel is wrong that the use of BNSF's transportation costs results in a double-count of the cost to transport ballast. As BNSF demonstrated in the proceedings below, Xcel's sub-ballast costs did not contain any transportation costs at all, so the use of BNSF's transportation costs in addition to Xcel's sub-ballast unit costs does not double-count any sub-ballast transportation costs.

Therefore, the Board should reject Xcel's Petition to the extent it seeks any changes in the Board's calculations of materials transportation costs.

ARGUMENT

Xcel claims that the Board should have applied BNSF's transportation costs to the transportation of materials except sub-ballast. Xcel argues that the Board's statement in its June 8, 2004 Decision in this matter that it was treating Xcel's sub-ballast costs as a "delivered"

cost somehow foreclosed the need to inquire into the components of the delivered cost. Xcel further argues that the use of BNSF's materials transportation costs for sub-ballast in addition to Xcel's unit cost for sub-ballast results in a double-count of the transportation portion of Xcel's sub-ballast unit cost. There are several problems with Xcel's position.

First, Xcel's request to modify the Reconsideration Decision as it relates to the calculation of sub-ballast transportation does not belong in a request for the correction of a technical or computational error. The Board has made it clear that a petition to correct technical errors should be used to address non-controversial and obvious computational or technical errors and it is not to be used as an "avenue for addressing substantive issues."¹ Indeed, the Board made this clarification of the scope of technical corrections pleadings in response to Xcel's concern that the technical correction procedure could be exploited as a procedure to seek reconsideration on substantive issues.² The Board's instruction that the parties collaborate in the filing of requests for technical corrections suggests that the Board intended to limit these pleading to matters where the Board's intent was clear but where the Board erred in implementing its intended approach. Technical correction filings are not supposed to address issues that involve exercise of the Board's judgment as decision maker or where new evidence must be addressed.

The Board's Reconsideration Decision did not clearly intend to carve out the calculation of transportation costs for sub-ballast from the Board's overall approach to calculating materials transportation costs. To the contrary, the Board expressly stated that "we will modify our SAC

¹ *Xcel v. BNSF*, STB Docket No. 42057, at 2 (served Dec. 14, 2004).

² *Id.* at 1-2.

calculations to use BNSF's evidence on the unit costs for materials transportation."

Reconsideration Decision at 18. Xcel's position is that the Board should have decided to do something different, namely to carve out the treatment of sub-ballast from the decision to use BNSF's materials transportation costs. This argument about the approach the Board should have taken in its reconsideration decision is not the proper subject of a technical correction request. Xcel is clearly asking the Board to reconsider and make further rulings on the proper treatment of sub-ballast transportation costs, not to correct the erroneous implementation of a decision that the Board has already made on this issue.

Second, Xcel's request that the Board recalculate sub-ballast costs so as to exclude BNSF's transportation costs would result in a direct violation of the principles announced in the Board's Reconsideration Decision. Xcel's argument is that the Board should ignore BNSF's transportation costs for sub-ballast because Xcel's sub-ballast cost is already a "delivered" cost, *i.e.*, a cost that includes transportation of the ballast from the quarry to the worksite. However, even if it were appropriate to treat Xcel's sub-ballast cost as a "delivered" cost, the delivery costs included in that unit cost would necessarily be based on transportation of the sub-ballast over the lines of the incumbent BNSF because the quarry is located at Guernsey on BNSF's line.³ The Board made it clear on reconsideration, however, that it is not permissible for a complainant to calculate materials transportation costs based on the costs that would be incurred in providing transportation over the lines of the incumbent that are being replicated by the SARR. Reconsideration Decision at 18. Thus, if the Board were to accept Xcel's argument and ignore BNSF's transportation costs for sub-ballast because Xcel's sub-ballast unit costs already include

³ See BNSF.RP.WP.III-F-00520C.

a transportation cost, the Board would be in direct contravention of its Reconsideration Decision. It would be adopting Xcel's transportation costs which are improperly based on an assumption that the transportation at issue was provided over the lines of the incumbent that are being replicated.

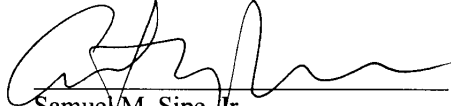
Third, Xcel's argument that the use of BNSF's transportation costs in addition to the sub-ballast unit cost sponsored by Xcel results in a double-count of the transportation cost already included in Xcel's unit cost is wrong for the simple reason that Xcel's sub-ballast unit cost does *not* include a transportation cost component. BNSF presented evidence in the proceeding below showing that the AFE sub-ballast cost used by Xcel does not include any transportation component.⁴ While the Board declined to rely on this evidence for procedural reasons when it decided to treat Xcel's sub-ballast unit cost as a "delivered" cost for purposes of the June 8, 2004 Decision, BNSF's evidence is the only evidence in the record that allows the Board to evaluate Xcel's double-count assertion. It would be a tremendous waste of time and resources for the Board to reopen the record to develop new evidence on Xcel's claim that a double-count exists when evidence is already in the record that refutes Xcel's claim.

⁴ BNSF Reply Evidence, at III.F-94 to 97. Indeed, it should have been obvious that the unit cost that Xcel cherry-picked from BNSF's AFEs did not include transportation costs since the cost used by Xcel was barely one-fourth of the average cost for delivered sub-ballast in other BNSF AFEs produced in discovery that expressly include a transportation cost component. *See* BNSF.RP.WP.III-F-00514 to 516.

CONCLUSION

For the reasons set out above, the Board should deny complainant's Petition to Correct Technical and Computational Errors in Reconsideration Decision as to the Board's determination of sub-ballast transportation unit costs.

Respectfully submitted,



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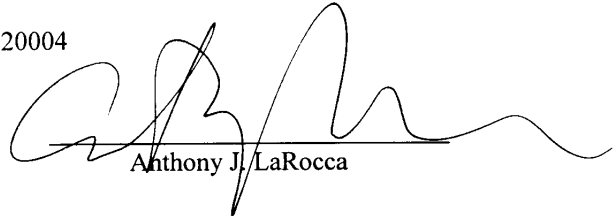
*Attorneys for BNSF Railway Company
f/k/a The Burlington Northern
and Santa Fe Railway Company*

February 15, 2005

CERTIFICATE OF SERVICE

I hereby certify that on February 15, 2005, I caused a copy of the foregoing Defendant's Reply to Complainant's Petition to Correct Technical and Computational Errors to be served by hand upon the following counsel:

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Anthony J. LaRocca