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April 25, 2005

Via HAND DELIVERY

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, NW
Washington, D.C. 20423-0001

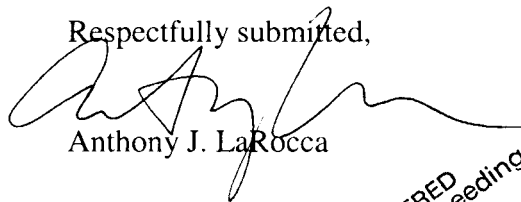
Re: STB Docket No. 42088, *Western Fuels Assoc. and Basin Electric Power Cooperative, Inc. v. BNSF Railway Company*

Dear Secretary Williams:

The electronic workpapers accompanying BNSF Railway Company's April 19, 2005 Opening Evidence in the above-captioned proceeding erroneously included a copy of correspondence that is subject to a confidentiality agreement between the parties. Attached to this letter are three copies of a replacement CD containing BNSF's Opening Evidence electronic workpapers from which the correspondence has been removed. In addition, the replacement CDs contain a revised version of BNSF's Opening Evidence Narrative that deletes the reference to the correspondence at page II-23. A copy of a replacement page II-23 is attached to this letter. BNSF also submits with this letter three copies of a CD that contains in PDF format a revised public version of BNSF's Opening Evidence that deletes the reference at page II-23 to the correspondence. A copy of the public version replacement page II-23 is also attached to this letter. BNSF requests that the Board discard the CDs that BNSF filed on April 19, 2005.

Please date stamp the extra copy of this letter and return it with our messenger. If you have any questions regarding this matter, please contact the undersigned.

Respectfully submitted,



Anthony J. LaRocca

Enclosures

cc: Complainants' Counsel (w/enclosures)

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Complainants have repeatedly complained that the challenged rates are not consistent with BNSF's costs, given the close proximity of Laramie River to the PRB mines.⁴⁴

BNSF has asked Professor Kalt to evaluate these claims regarding the commercial reasonableness of the rates at issue. While the Board will ultimately judge the reasonableness of the challenged rates under the *Coal Rate Guidelines*, it is important that the Board have an accurate view of the commercial background of the dispute. In examining the commercial setting for the rates at issue, Professor Kalt has examined the economic and marketplace conditions in which BNSF has established the challenged rates, including competitive conditions, the context in which the previous rates were established (*i.e.*, as part of a negotiated settlement to litigation), and the market setting for coal transportation.

Professor Kalt finds that the available evidence does not support Complainants' assertions that the challenged rates are commercially unreasonable. The fact that the rates at issue represent a significant increase over the prior contract rates does not have any commercial significance in this case since the pre-existing rates had been suppressed by the settlement that produced those rates. In addition, market conditions have changed substantially since the prior rates were set – today there are far greater demand and tighter rail capacity than in the early 1980s when the earlier rates were set. The challenged rates represent a move to rate levels that are more consistent with market conditions.

1. The Economic and Marketplace Context of BNSF's Rate Increase

Complainants' assertions about the commercial unreasonableness of the challenged rates focus on the fact that the challenged rates are a significant increase from the pre-

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Professor Kalt finds that the available evidence does not support Complainants' assertions that the challenged rates are commercially unreasonable. The fact that the rates at issue represent a significant increase over the prior contract rates does not have any commercial significance in this case since the pre-existing rates had been suppressed by the settlement that produced those rates. In addition, market conditions have changed substantially since the prior rates were set – today there are far greater demand and tighter rail capacity than in the early 1980s when the earlier rates were set. The challenged rates represent a move to rate levels that are more consistent with market conditions.

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