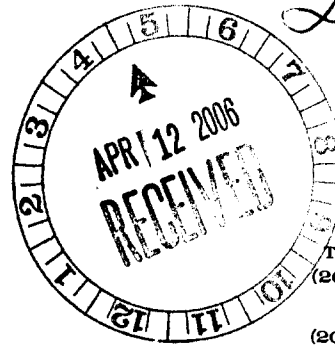


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April 12, 2006

BY HAND DELIVERY

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

ENTERED
Office of Proceedings

APR 12 2006

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

Dear Secretary Williams:

Enclosed for filing are the original and ten copies of Complainants' Reply to Defendant's Petition for Reconsideration of the Board's March 17, 2006 Compliance Order in the above-referenced proceeding.

Kindly acknowledge receipt of the enclosed pleading by date-stamping and returning the enclosed extra copy of this letter to our messenger.

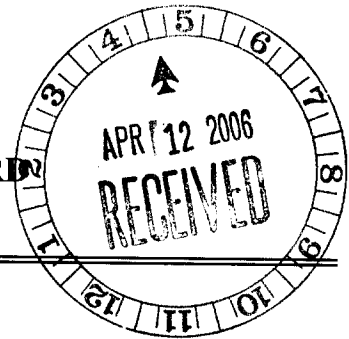
Sincerely,

Christopher A. Mills

CAM:jml

cc: Counsel for BNSF

BEFORE THE
SURFACE TRANSPORTATION BOARD



WESTERN FUELS ASSOCIATION, INC.
and BASIN ELECTRIC POWER
COOPERATIVE, INC.

Complainants,

v.

BNSF RAILWAY COMPANY

Defendant.

Docket No. 42088

ENTERED
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REPLY TO DEFENDANT'S
PETITION FOR RECONSIDERATION

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Dated: April 12, 2006

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Attorneys for Complainants
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Defendant.

Docket No. 42088

Complainants Western Fuels Association, Inc. and Basin Electric Power Cooperative, Inc. (collectively “WFA/Basin”) submit this Reply in opposition to Defendant BNSF Railway Company’s (“BNSF”) Petition for Reconsideration (“Petition”) of the Board’s Decision served March 17, 2006 (“Compliance Order”) in this docket.

The Compliance Order directs the parties to submit supplemental evidence related to the parties' simulations of the Laramie River Railroad ("LRR") SARR's peak-period operations using the Rail Traffic Controller ("RTC") Model. In addition to instructing both parties to make several adjustments to the operating inputs they used in running the RTC Model, the Compliance Order also directs the parties to use the LRR

traffic group tonnages contained in BNSF's Errata to its Reply Evidence filed August 25, 2005 for 4Q04 and 2005, and to use the most current EIA AEO forecasts for Wyoming PRB low-sulfur (sub-bituminous) coal tonnage available as of the date of the Order to project SARR tonnages for 2006-2024.¹

BNSF's Petition seeks reconsideration with respect to the 2005 tonnages reflected in BNSF's August 25, 2006 Errata.² Specifically, BNSF requests the Board to direct the parties to use the AEO 2006 forecast to adjust the 2005 SARR tonnages "to account for the fact that actual 2005 volumes were significantly lower than the forecast of 2005 tonnage used in the parties' SAC evidence" (Petition at 1). The net result would be a downward adjustment in the 2005 LRR tonnages shown in BNSF's August 25 Errata (and thus in the traffic for all subsequent years) by 4.2 percent. Petition at 3-4.

As WFA/Basin demonstrate below, BNSF's Petition is without merit and should be denied because there is no evidence that actual 2005 specific PRB coal traffic volumes included in the LRR traffic group were "significantly lower" than the volumes

¹ WFA/Basin understand the Board's directive with respect to traffic group tonnages to mean the tonnages for 4Q04 and the year 2005 reflected in Attachment 2 to BNSF's August 25, 2005 Errata (BNSF Reply Errata exhibit III.A-8). WFA/Basin understand the Board's directive with respect to the AEO forecast to mean the AEO "Wyoming Powder River Basin Low Sulfur (Sub-Bituminous)" coal tonnage forecasts for the years 2006-2024 set forth in the February 2006 AEO at Supplemental Table 110.

² BNSF filed a more extensive petition for reconsideration of a similar compliance order (also served March 17, 2006) in Docket No. 41191 (Sub-No. 1), AEP Texas North Company v. BNSF Railway Company. On April 10, 2006, the Board summarily denied BNSF's petition for reconsideration in that proceeding, without waiting for a reply from the complainant.

shown in BNSF's August 25, 2005 Errata. In addition, WFA/Basin have already spent substantial time and effort responding to the Compliance Order, as written. Making any changes to the Compliance Order would further add to WFA/Basin's already excessive litigation costs.

II. There is No Evidence that the Actual 2005 SARR Traffic Group Tonnages Were Lower than the Forecast of 2005 Tonnages Used In BNSF's August 25, 2006 In Errata.

BNSF's Petition is based on the false premise that actual 2005 volumes were "significantly lower" than the forecasted 2005 volumes shown in BNSF's August 25, 2005 Errata. This premise is not supported by any facts in terms of actual 2005 volumes for the specific BNSF traffic included in the LRR traffic group. Nor is it supported by the change in the AEO 2006 PRB coal tonnage forecast compared with the AEO 2005 PRB coal tonnage forecast cited by BNSF.

Both parties used an internal BNSF internal forecast to develop the LRR's traffic group tonnages for the 2005 base year. With respect to actual 2005 traffic volumes, BNSF asserts that "BNSF's 2005 coal volumes were only 1.0 percent higher than its 2004 coal volumes" and 2.7 percent lower than its annualized 4Q04 coal volume.³ Petition at 2-3. However, this assertion relates to BNSF's total, systemwide reported

³ BNSF's coal carloadings in 4Q05 actually increased by slightly less than 1 percent over its coal carloadings in 4Q04 according to BNSF's Annual 2005 Investors Report (available on BNSF's website). BNSF's comparison of annualized quarterly carloading figures with actual annual carloading figures is inappropriate because the annualized figures will be distorted by any short-term variances or seasonality.

carload coal volume, which is different from the total tonnage volume – not to mention BNSF's tonnage volume from the PRB.⁴ In any event, changes in BNSF's systemwide coal volume are not necessarily indicative of changes in the PRB coal tonnages included in the SARR traffic group for this case, which move between specific O/D pairs. BNSF has not presented any evidence with respect to actual 2005 volumes for the movements included in the LRR's traffic group.

Moreover, BNSF has not asked the Board to use any change in its 2005 actual coal volume to change the 2005 LRR traffic group tonnages shown in its August 25, 2005 Errata. Rather, BNSF proposes to reduce the 2005 LRR tonnages by 4.2 percent on the basis of a change in the EIA's AEO PRB coal tonnage forecasts for 2005. BNSF's use of changes in the EIA forecasts for this purpose is completely inappropriate for four reasons.

First, BNSF's purported use of EIA forecasts to change 2005 LRR tonnage mixes apples and oranges. Neither party has used (and the Board has not instructed them to use) an AEO tonnage forecast to develop 2005 base-year tonnages. Rather, they have used an internal BNSF forecast, with the Board's endorsement. EIA forecasts have

⁴ It should also be noted that the PRB coal traffic moved by BNSF in 2005 did not reflect customer demand. As the Board is well aware, various problems restricted BNSF's (and Union Pacific's) capacity to transport PRB coal in 2005 and the railroads were unable to meet all of the demand for such transportation. The LRR handles less than half of the total real-world coal traffic moving over the PRB Joint Line, and the LRR – whose newly-constructed lines are designed to handle its peak tonnage in 2004 – would not encounter the problems BNSF and UP did in 2005.

nothing to do with the development of 2005 SARR tonnages in this case; they are used only to develop tonnages for 2006 and beyond.

Second, changes in the EIA's internal AEO forecasts for PRB coal tonnage as a whole have nothing to do with whether the actual tonnage for the specific LRR traffic group in this case in 2005 was lower than the tonnage internally forecasted by BNSF, as reflected in its August 25, 2005 Errata. There is absolutely no basis for changing the LRR's 2005 tonnage because the EIA changed its own internal forecast of total PRB tonnage for that year in its AEO 2006, as compared with its AEO 2005.

Third, BNSF mis-characterizes the AEO 2006 forecast as reflecting actual 2005 PRB tonnage when in fact the 2005 tonnage shown is only a revised forecast. The 2005 coal production figure of 405 million tons included in the AEO 2006 is a forecasted figure, and not the actual 2005 production. This is easily seen by reviewing the EIA's 2006 AEO Report which shows historic coal production, demand and price figures through 2004 and projected figures for 2005 and thereafter.⁵

Table 1 below compares the historical and forecasted coal production between 2003 and 2005 included in the EIA's AEO 2005 and AEO 2006:

⁵ See, e.g., 2006 AEO Figure Nos. 97, 99, 100, 102, 103 and 106. In addition, WFA/Basin understand that the EIA targets November of each year as the completion point for all analyses that will be included in the following year's AEO, which is distributed in February. This would indicate the coal production forecasts included in the AEO 2006 were completed approximately two months before the end of 2005, making it impossible to reflect full-year 2005 production figures.

Table 1						
<u>Actual and Forecasted PRB Coal Production</u>						
<u>2005 AEO PRB Forecast</u>				<u>2006 AEO PRB Forecast</u>		
<u>Year</u>	<u>Production (million tons)</u>	<u>Basis</u>	<u>Percent Change ^{1/}</u>	<u>Production (million tons)</u>	<u>Basis</u>	<u>Percent Change ^{1/}</u>
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1. 2003	357.56	Actual	---	357.56	Actual	---
2. 2004	391.41	Forecast	9.5%	377.29	Actual	5.5 %
3. 2005	421.90	Forecast	7.8%	404.97	Forecast	7.3%
^{1/} (Current Year Production ÷ Previous Year Production) - 1						

As Table 1 shows, the EIA utilized actual 2003 coal production figures in both its 2005 and 2006 AEO PRB coal production forecasts, but revised its 2006 AEO forecast to include actual 2004 PRB production figures instead of relying upon forecasted estimates. The EIA still relied on forecasts for its 2005 PRB coal production figures in both cases.

Fourth, in addition to erroneously assuming the 2005 tonnage number in the AEO 2006 represents an actual rather than a projected figure, BNSF focuses only on the change in forecasted 2005 production (Line 3 in Table 1) from the AEO 2005 to the AEO 2006. However, the proper way to read the table is vertically. Thus, even though the EIA's forecast of 2005 PRB coal production declined in absolute terms between the AEO 2005 and the AEO 2006, the relative change between 2004 and 2005 coal

production remains similar in both forecasts: increases ranging between 7.3 and 7.8 percent.

As BNSF points out at p. 2 of its Petition, both parties assumed that PRB coal volumes for the LRR traffic group would increase by 6.1 percent from the annualized 4Q04 level to 2005. This increase in coal volume is actually less than the EIA's AEO 2006 forecasted increase in PRB coal production of 7.3 percent from 2004 to 2005.⁶

III. The Board Should Not Further Burden WFA/Basin

The Board's Compliance Order directs WFA/Basin to file two additional, costly rounds of evidence. Left unaddressed in the Board's Order is why the Board is requiring WFA/Basin to incur these additional expenditures. In this case, not only are the parties essentially in agreement as to the LRR's operating plan, but the Board should have all of the evidence, tools, and expertise it needs to evaluate the effects of the changes in the traffic group and in the operating inputs to the RTC Model described in its Compliance Order, without further submissions from the parties.

WFA/Basin are well along in their work effort to comply with the Order, as written. Any Board-ordered changes in that Order now would make an already expensive process even more expensive, since WFA/Basin would have to once again start over.

⁶ The difference is most likely attributable to the fact that EIA forecasted overall PRB production, while BNSF forecasted a sub-set of the total production related to the specific coal traffic the LRRR will transport.

IV. CONCLUSION

For the foregoing reasons, BNSF's petition for reconsideration should be promptly and summarily denied by the Board.

Respectfully submitted,

WESTERN FUELS ASSOCIATION, INC. and
BASIN ELECTRIC POWER COOPERATIVE, INC.

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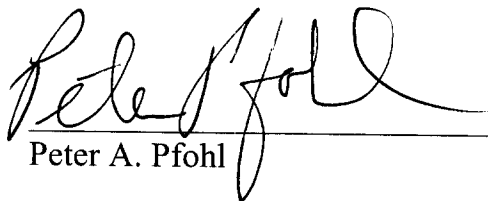
Dated: April 12, 2006

Their Attorneys

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of April, 2006, I caused a copy of the foregoing Reply to Petition for Reconsideration to be served by hand delivery on counsel for BNSF, as follows:

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