

216438

LEBOEUF, LAMB, GREENE & MACRAE LLP

NEW YORK
WASHINGTON, D.C.
ALBANY
BOSTON
CHICAGO
HARTFORD
HOUSTON
JACKSONVILLE
LOS ANGELES
PITTSBURGH
SAN FRANCISCO

1875 CONNECTICUT AVE., N.W.
SUITE 1200
WASHINGTON, D.C. 20009-5728
(202) 986-8000
FACSIMILE: (202) 986-8102

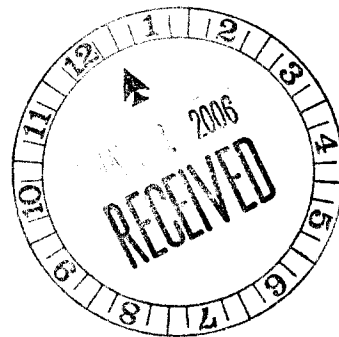
E-MAIL ADDRESS: MICHAEL.MCBRIDE@LLGM.COM
WRITER'S DIRECT DIAL: (202) 986-8050

LONDON
A MULTINATIONAL
PARTNERSHIP
PARIS
BRUSSELS
JOHANNESBURG
(PTY) LTD.
MOSCOW
RIYADH
AFFILIATED OFFICE
BISHKEK
ALMATY
BEIJING

May 1, 2006

VIA HAND DELIVERY

Mr. Vernon A. Williams, Secretary
Surface Transportation Board
1925 K Street, N.W., 7th Floor
Washington, DC 20423-0001



Re: STB Ex Parte No. 657 (Sub-No.1) – Major Issues in Rail Rate Cases

Dear Mr. Williams:

Enclosed for filing in the above-referenced proceeding are the original and 20 copies of the "Initial Comments of BP Amoco Chemical Company."

Respectfully submitted,

Michael F. McBride

Michael F. McBride

*Attorney for BP Amoco Chemical
Company*

Enclosure

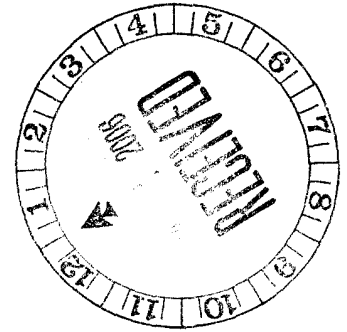
cc: Parties of Record

ENTERED
Office of Proceedings

MAY 1 - 2006

Part of
Public Record

UNITED STATES OF AMERICA
SURFACE TRANSPORTATION BOARD



Ex Parte No. 657 (Sub-No. 1)

MAJOR ISSUES IN RAIL RATE CASES

INITIAL COMMENTS OF BP AMOCO CHEMICAL COMPANY

BP Amoco Chemical Company ("BP Amoco") hereby submits its Initial Comments in this proceeding. These Comments are limited to those topics that the Board has determined to be within the scope of this proceeding in its Decision served April 14, 2006 in this proceeding. BP Amoco is grateful to the Board for clarifying its Decision so as to allow BP Amoco to comment on the unadjusted URCS costs issue as that may affect the jurisdictional threshold.

Fundamentally, BP Amoco advocates that the Board adopt a consistent approach to use of URCS costs in ratemaking proceedings. The Board already proposed not to use adjusted URCS costs in "small-shipment" rate proceedings, in the *BP Amoco* complaint proceeding (STB Docket No. 42093) BP Amoco brought against Norfolk Southern Railway Company ("NS"). See decision therein served June 6, 2005. BP Amoco agrees that, in such circumstances, the Board should be consistent, and use unadjusted URCS costs for purposes of determining the "jurisdictional threshold" as well, as it has proposed herein. The reason is that, if there is a reason to follow an approach for some purposes, there is generally a good reason to do so for other, related purposes. Consistency is proof of objectivity, and objectivity is proof of fairness.

As BP Amoco shows herein, however, "unadjusted URCS costs" are not self-defined, and the Board will need to address whether things that railroads may advocate be changed from what URCS treats as unadjusted costs in fact are the unadjusted URCS costs the Board uses in its proceedings.

It may seem strange that BP Amoco feels the need to comment on what "unadjusted URCS costs" mean, but as these Comments demonstrate, an issue arose in the *BP Amoco* "small-shipment" complaint proceeding what "unadjusted URCS costs" meant. Given that the dispute therein is highly likely to recur in such proceedings, it is timely for the Board to define what "unadjusted URCS costs" means, consistent with its proposal to use "unadjusted URCS costs" herein. BP Amoco strongly urges the Board to do so.

Accordingly in response to the Board's fourth proposal herein, "Movement-Specific Adjustments to URCS" for purposes of calculating the "jurisdictional threshold," and with respect to use of URCS costs generally in such proceedings, BP Amoco requests a strict and complete definition of "unadjusted" URCS. As the only shipper that has filed a rate case under the Rate Guidelines – Non-Coal Proceedings, BP Amoco has unique insight that can contribute to the issues in this proceeding.

If the Board were to apply its "contribution" approach to ratemaking in the small-shipment context, as it proposed for large rate proceedings, that would avoid at least some of the issues surrounding "adjustments" to URCS costs, because phantom costs such as mileage allowances are not costs, yet their treatment as variable costs to the railroad artificially reduces the revenue/variable cost ratio for a movement. Use of the "contribution" approach would make irrelevant whether a phantom cost (like a mileage allowance) is imposed by a railroad. Under the Board's existing approach, however, such a phantom cost, if included in both the numerator (revenue) and the denominator (variable costs) of a movement artificially reduces the revenue/variable cost ratio and thus makes it appear that the contribution of the movement to the railroad's profitability is lower, when it is not in fact any less.

Finally, BP Amoco's advocacy of unadjusted costs in small-shipment rate proceedings is, in fact, consistent with the use of adjusted URCS costs in coal and other large-shipment rate proceedings under *Coal Rate Guidelines, Nationwide*, 1 I.C.C.2d 520 (1985), *aff'd sub nom. Consolidated Rail Corp. v. ICC*, 812 F.2d 1444 (3rd Cir. 1987). Why? Because BP Amoco advocates consistency in both contexts. Shippers and railroads routinely advocate adjustments to URCS costs in such large-shipment proceedings, given the obvious efficiency of unit-train shipments, and accordingly it would be consistent and appropriate to permit parties in those proceedings to advocate adjustments to URCS costs if they so choose in calculating the "jurisdictional threshold" applicable in such cases. Otherwise, a rate that in reality has a revenue/variable cost ratio well over 180 percent could be treated as having a revenue/variable cost ratio of less than or equal to 180 percent, thus preventing a shipper from obtaining relief (given the "jurisdictional threshold" which limiting the Board's authority to prescribe a reduced maximum reasonable rail rate). BP Amoco's point is simple: where the Board permits adjustments to URCS costs, it should do so in calculating the "jurisdictional threshold." Where it does not permit such adjustments elsewhere in a proceeding, as it proposed in *BP Amoco*, it should not permit such adjustments in calculating the jurisdictional threshold. In both respects, BP Amoco advocates consistency as proof of objectivity and thus fairness and accuracy.

Proposal

For purposes of "small-shipment" complaint proceedings at the STB, BP Amoco proposes that the Board adopt and ratify the definition of "unadjusted" URCS which was proposed in *BP Amoco*, as well as in this proceeding. The reasons BP Amoco makes that proposal are that such small-shipment proceedings are, by definition, those where the amount in controversy would not justify proceeding under the Board's "stand-alone

cost" rate Guideline applicable to coal rate cases. In such a case, it makes little sense to make adjustments to URCS costs, and potentially argue about them, when the resolution of those adjustments will have little if any effect on whether the STB has jurisdiction. As a practical matter, the Board's Guidelines for "small-shipment" cases are such that no shipper is likely to file a complaint under those Guidelines if the rate at issue is close to 180% of variable costs, so it would not affect the outcome to make adjustments to URCS costs for purposes of calculating the jurisdictional threshold. Moreover, the Board has proposed, and BP Amoco agrees, that adjustments to URCS costs should not be made for the comparison traffic group used to determine the reasonableness of the rate at issue in such proceedings, so for consistency such adjustments should not be made to URCS costs used for purposes of calculating the jurisdictional threshold.

In contrast, in the "stand-alone cost" ("SAC") cases brought under *Coal Rate Guidelines, Nationwide*, URCS cost adjustments have typically been made. It is certainly conceivable that a complainant in such a proceeding may file a complaint and allege that a rate close to or at the jurisdictional threshold should be prescribed. Accordingly, if adjustments to URCS costs are appropriate in such cases (as both shippers and railroads contend), it could be unfair to the shipper (or conceivably the railroad, but more likely the shipper) not to make adjustments to the URCS costs used to calculate the jurisdictional threshold. Else, the *effective* jurisdictional threshold could be raised, and the rate relief to which a shipper is entitled could be reduced, just because the Board refused to make URCS cost adjustments for purposes of calculating the jurisdictional threshold. That makes no sense when the Board otherwise makes adjustments to URCS costs in such proceedings.

BP Amoco therefore proposes that the Board not make URCS cost adjustments in "small-shipment" rate proceedings, assuming as we do that the Board otherwise does not make URCS cost adjustments in those proceedings (as the Board has proposed), because that is unnecessary to achieve accuracy and fair outcomes, but that the Board allow the parties in proceedings brought under *Coal Rate Guidelines, Nationwide* to make URCS cost adjustments used to calculate the jurisdictional threshold (because the parties propose, and the Board routinely makes, adjustments to URCS costs in those proceedings), and such promotes accuracy in such proceedings.

Detailed Explanation of BP Amoco's Position

In its Decision served June 6, 2005 in *BP Amoco*, the Board proposed that "unadjusted" URCS requires the following nine inputs:

(1) the carrier or region identifier; (2) the type of shipment (local, received-terminated, etc.); (3) one way distance of the shipment; (4) type of car by URCS code; (5) number of cars; (6) car ownership (private or railroad); (7) commodity type (Standard Transportation Commodity Code or STCC code); (8) weight of shipment in tons per car; and (9) type of movement (individual, multi-car, or unit train).

As BP Amoco understood the Board's proposal, these nine inputs would be the *only* inputs to the URCS system, would be complete in that sense, and would therefore preclude any party from seeking to make adjustments to the result of applying those inputs to the URCS costing system. (In addition, the new Board's Windows®-based rail costing software calculates a Total Jurisdictional Add-on (also known as the Ex Parte Adjustment or "Make-Whole Adjustment"). Apparently, per the URCS program as reflected in that software program, these "Make-Whole Adjustment" costs would also be included and considered a part of "unadjusted" URCS. As BP Amoco understands the Board's proposal, however, no other "adjustments" would be made, except the "Make-Whole Adjustment," to determine "unadjusted" URCS costs.) BP Amoco supports that approach, and opposes use of any other adjustments to URCS *in proceedings where such adjustments are otherwise not to be made*, because consistency is proof of objectivity, and objectivity generally is proof of fairness.

In *BP Amoco*, both parties argued for adjustments from the "unadjusted" URCS output. These adjustments are summarized below and the impact of adopting the above definition is explained below:

1. One-way distance of the shipment. BP Amoco proposed using the ALK or computer miles in determining the one-way distance, because the shipper is not in control of the routing chosen by the railroad, and to seek consistency with the comparison traffic group in the Waybill Sample data (which uses ALK or computer miles). The NS proposed using actual railroad miles to properly account for their costs. BP proposed an adjustment to the detailed URCS parameters by reducing circuitry on the railroad to 1.000, in light of its understanding of the routing in the ALK model.

If the proposed definition of "unadjusted" URCS is adopted, the one-way distance of the shipment would be the computer miles, leaving the default circuitry factor per URCS. In *BP Amoco*, this would have yielded a one way distance in between the distance advocated by the two parties. BP Amoco would have used 336 miles x 1.000 = 336 miles. NS would have used 409 miles x 1.000 = 409 miles. The "unadjusted URCS" model, as BP Amoco understands the Board's proposal, would use 336 miles x 1.146 (the URCS circuitry factor) or 385 miles.

2. Car ownership. This may seem to be a very straightforward input (i.e., either the shipper provides the car or the railroad does). However, in *BP Amoco* both BP Amoco and NS proposed changes to the output from this entry. After entering Private, BP Amoco changed the URCS output for Line 405 in the "Private Line Car Rentals" section from \$61.48 to \$0 reflecting the fact that the shipper was bearing 100% of the Private car costs. As BP Amoco understood NS's position, it also would have changed the output of Line 405, eliminating \$74.84 (a higher number due to the dispute over the number of one-way miles) in favor of an argument that a mileage allowance be treated as a variable cost. BP Amoco did not agree with that argument, and the URCS costing system would not so treat it. It is incomprehensible how NS could contend that something of no cost to it, i.e., the mileage allowance (which is collected in the rate and then refunded to the customer)

could constitute a "cost" to the railroad. No rational system of costing could so provide, let alone treat it as, in BP Amoco's circumstances, more than 50% of the variable costs that URCS otherwise calculates.

3. The STB has previously stated that form must yield to substance. To accept that a mileage allowance is a "variable cost," just because a railroad (such as NS, in *BP Amoco*) structured its public tariff (applicable only to BP Amoco) that way, would be an instance of a railroad manipulating form without affecting the substance. The substance is that the railroad incurs no car costs when the shipper provides the car.

Alternatively, the Board's separate proposal to rely on the underlying contribution of the traffic to the railroad, rather than the R/VC ratios allegedly associated with a movement, for purposes of determining the maximum reasonable rate, would also avoid the issue of whether a "mileage allowance" included in a tariff for a shipper who provides the car (as is universally done with tank cars) is a "variable cost" meriting an "adjustment" to URCS costs. An example of how a railroad, acting for litigation advantage, could manipulate the form of its tariff to attempt to affect the substantive regulatory process, is shown below in Table 1 (on a per-car basis), and is in part based on the dispute that arose in *BP Amoco* because of the "full mileage" tariff NS adopted for BP:

Table 1			
	Example 1	Example 2	Example 3
Tariff Rate structure	Zero Mileage	Full Mileage	Zero Mileage
Mileage Allowance for distance and car type	\$0	\$400	\$0
Hypothetical refund or rebate for all cars shipped in the given lane greater than an annual car count of 0 carloads	\$0	\$0	\$8,000
Revenue - Issue Traffic	\$2,000	\$2,400	\$10,000
Unadjusted URCS Costs	\$500	\$500	\$500
Calculated Railroad Variable Costs allowing Mileage Allowance and refund/rebate to be treated as a Variable Cost	\$500	\$900	\$8,500
Calculated Revenue to Variable Costs Ratio	400%	267%	118%

In this example, depending on whether the railroad chose to issue a full-mileage tariff, zero-mileage tariff, or some other creative method to increase its alleged variable costs for the movement, the contribution to the railroad is the same – always \$2000 (again, on a per-car basis). However the ability of the shipper to seek rate relief is significantly impacted, depending on the *form* of the railroad's tariff.

If the proposed definition of "unadjusted" URCS is adopted, the input for car ownership will result in car costs for both private and railroad cars and those costs would not be adjusted. In *BP Amoco*, this would have yielded a car cost in between

the cost advocated by the two parties. BP Amoco advocated car costs of \$0 (based on all costs being born by the shipper) because the railroad incurs no car costs when the shipper provides the car. As BP Amoco understood NS's position, NS would have advocated \$295 (based on a full mileage credit), but that phantom "cost" to NS does not exist (given that it is collected from BP Amoco, then refunded to it). As BP Amoco understands the Board's proposal, unadjusted URCS costs in that situation would in fact be \$70.45 (based on 385 miles, as derived in the previous section of these Comments, using ALK or computer miles times the default circuitry factor).

Conclusion

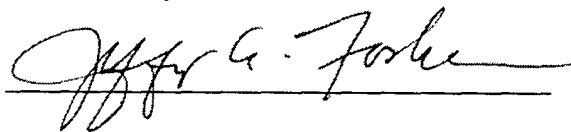
For the reasons stated, BP Amoco urges the Board to adopt its proposal to use unadjusted URCS costs in "small-shipment" proceedings, assuming as we do that the Board continues to adhere to its proposal that it and the parties use unadjusted URCS costs for all other purposes in those proceedings, for consistency. And the Board should define "unadjusted" URCS costs to mean the result of inputting the nine inputs it prescribed in *BP Amoco*, together with the "Make Whole" adjustment incorporated into the URCS program. No other adjustments should be made for any purpose in those proceedings.

However, also for consistency, if in any proceeding (such as under *Coal Rate Guidelines-Nationwide*) the Board otherwise permits adjustments to URCS costs, it should also permit adjustments to URCS costs for purposes of determining the jurisdictional threshold. Otherwise, the Board could either insulate an unreasonable rate from complaint, or prescribe a maximum reasonable rate below the jurisdictional threshold (when calculated using adjusted URCS costs).

If, however, for any reason, in a "small-shipment" rate proceeding, the Board uses adjusted URCS costs (such as if the Board abandons rate comparisons or uses an absolute test of reasonableness such as its proposed contribution method, rather than rate comparisons), the Board should also use adjusted URCS costs for purposes of calculating the jurisdictional threshold, again for consistency, unless the parties otherwise agree.

In other words, the way the Board calculates the jurisdictional threshold should be consistent with the way in which it calculates URCS costs for all other purposes in the proceeding, whether in a "small shipment" rate proceeding or a full-blown rate proceeding under *Coal Rate Guidelines, Nationwide*.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Jeffrey A. Foshee", is written over a horizontal line.

Jeffrey A. Foshee, Director of Logistics,
BP Amoco Chemical Company

UNITED STATES OF AMERICA
SURFACE TRANSPORTATION BOARD

Ex Parte No. 657 (Sub-No. 1)

MAJOR ISSUES IN RAIL RATE CASES

CERTIFICATE OF SERVICE

I hereby certify that I have served this 1st day of May 2006, one copy of the foregoing "Initial Comments of BP Amoco Chemical Company" by first-class mail, postage prepaid upon all Parties of Record.



Michael F. McBride

Attorney for BP Amoco Chemical Company