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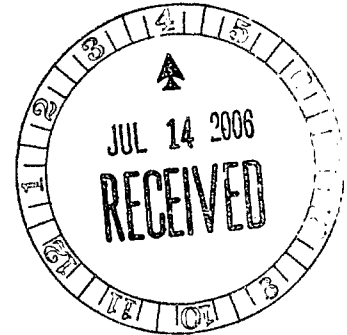
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July 14, 2006

217051

VIA HAND DELIVERY

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W., Room 711
Washington, DC 20423-0001



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

Dear Secretary Williams:

Enclosed for filing in the above-referenced proceeding please find an executed original and twenty (20) copies of the Supplemental Rebuttal Evidence of Western Fuels Association, Inc. and Basin Electric Power Cooperative, Inc. In Response to March 17, 2006 Compliance Order. Three copies of a CD (designated as Highly Confidential under the terms of the governing Protective Order) containing the text of this filing and accompanying Supplemental Rebuttal electronic workpapers are also included.

Please date stamp the extra copy of this cover letter and the enclosed pleading and return it to our messenger. Thank you for your attention to this matter.

Respectfully submitted,

Christopher A. Mills
An Attorney for Complainants

CAM:jml
Enclosures
cc: Counsel for Defendant BNSF Railway Co.

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217051

**BEFORE THE
SURFACE TRANSPORTATION BOARD**



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

Complainants,

v.

BNSF RAILWAY COMPANY

Defendant.

Docket No. 42088

**SUPPLEMENTAL REBUTTAL EVIDENCE OF
WESTERN FUELS ASSOCIATION, INC. AND
BASIN ELECTRIC POWER COOPERATIVE, INC.
IN RESPONSE TO MARCH 17, 2006 COMPLIANCE ORDER**

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Dated: July 14, 2006

Attorneys for Complainants

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

V.

Defendant.

**SUPPLEMENTAL REBUTTAL EVIDENCE OF
WESTERN FUELS ASSOCIATION, INC. AND
BASIN ELECTRIC POWER COOPERATIVE, INC.
IN RESPONSE TO MARCH 17, 2006 COMPLIANCE ORDER**

WFA/Basin submitted Supplemental Opening Evidence, as directed by the Compliance Order, on May 15, 2006. In their Supplemental Opening Evidence WFA/Basin emphasized that the Compliance Order was unnecessary because the Board could itself make all of the calculations called for under the Order using existing record evidence or by performing index forecast updates the Board routinely performs on its

own before issuing final decisions in coal rate cases. Nevertheless, WFA/Basin proceeded to present the requested supplemental evidence.

On June 15, 2006, BNSF filed its supplemental reply evidence (“Supplemental Reply Evidence”). Therein, BNSF accepted WFA/Basin’s procedures for re-running the Rail Traffic Controller (“RTC”) Model; criticized some of WFA/Basin’s procedures for updating the Laramie River Railroad’s (“LRR’s”) revenues and costs; and made a variety of other contentions that exceed the scope of the Board’s Compliance Order.

In their Supplemental Rebuttal Evidence, WFA/Basin make a few technical changes in response to BNSF’s Supplemental Reply Evidence. WFA/Basin also request that the Board reject BNSF’s continuing attempts to circumvent the Compliance Order, inter alia, by rearguing contentions the Board rejected when the Board denied BNSF’s petition to reconsider the Compliance Order¹ and by asking the Board to adopt, in this proceeding, the railroad industry’s highly controversial proposed 2005 cost of capital calculations – calculations the Board is considering in another proceeding.²

As they have throughout these extended proceedings, WFA/Basin request that the Board promptly decide this case and grant the rate relief WFA/Basin seek. All of

¹ See Western Fuels Ass’n, Inc. and Basin Elec. Power Coop., Inc. v. BNSF Ry. Co., STB Docket No. 42088 (STB served April 21, 2006) (“April 21st Decision”).

² See Railroad Cost of Capital – 2005, STB Ex Parte No. 558 (Sub-No. 9) (STB served Dec. 20, 2005).

this rate relief will flow through to the consumers WFA/Basin represent in these proceedings. For ease of comparison with BNSF's Supplemental Reply Evidence, the remainder of this Supplemental Rebuttal Evidence is organized in the format BNSF employed in its Supplemental Reply Evidence.

III. A. TRAFFIC GROUP

1. Compliance Order Tonnages

The Board's Compliance Order directed the parties to use specified traffic group tonnages in making the stand-alone cost ("SAC") calculations. WFA/Basin utilized these tonnages in their Supplemental Opening Evidence. In its Supplemental Reply Evidence, BNSF presents one set of SAC calculations using the same traffic group tonnages as WFA/Basin. BNSF also presents a second set of SAC calculations that remove coal traffic originating at mines north of Donkey Creek, WY and exiting the LRR system at Campbell/Donkey Creek on grounds of an alleged cross-subsidy. For the reasons set forth in Part III-A-3-d of WFA/Basin's Rebuttal Narrative filed September 30, 2005, this traffic should not be excluded.

2. BNSF's Challenge to the Compliance Order Tonnage Forecasts

In its Supplemental Reply Evidence, BNSF requests that the Board modify its Compliance Order tonnage forecast procedures. BNSF presented an identical request and identical supporting arguments to the Board in its petition for reconsideration of the Compliance Order. The Board properly denied BNSF's petition for reconsideration in its April 21st Decision. BNSF is not entitled to another bite of the apple because the Board's April 21st Decision finally resolved the matter. See Big Stone-Grant Indus. Dev. and Transp., L.L.C. – Construction Exemption – Ortonville, MN and Big Stone City, SD, STB Finance Docket No. 32645 (Sub-No. 1) (STB served May 30, 2000) at 4 (STB will

not re-address previously decided issues); Union Pac. Corp. et al. – Control and Merger – Southern Pac. Rail Corp., et al [General Oversight], STB Finance Docket No. 32760 (Sub. No. 21) (STB served Dec. 20, 2001) at 9 (same); 1411 Corp. – Abandonment Exemption – In Lancaster County, PA, STB Docket No. AB-581X et al. (STB served Feb. 15, 2002) at 2-3 (same).

3. Revenue Calculations

In their Supplemental Opening Evidence, WFA/Basin updated the LRR's revenue projections to reflect the revised tonnages, and in addition:

- a. Incorporated the Energy Information Administration's ("EIA") Annual Energy Outlook ("AEO") 2006 Powder River Basin Coal Transportation Rate Forecast;
- b. Incorporated the EIA's AEO 2006 GDP-IPD forecast for the period 2006-2024;
- c. Updated the fuel surcharge forecast to reflect actual EIA retail on-highway diesel fuel ("HDF") prices from 4Q 2005 through 2Q 2006 and to reflect the EIA's AEO 2006 diesel fuel forecasts for subsequent periods; and
- d. Revised the LRR's revenues beginning January, 1, 2006 to reflect BNSF's new mileage-based fuel surcharge which became effective on that date.

See WFA/Basin Supp. Op. electronic workpaper "LRR Traffic and Revenues_WFABasin Supplemental.xls."

In its Supplemental Reply Evidence, BNSF also updated its revenue projections for items (a) through (c) above using the same data and procedures WFA/Basin employed. With respect to item (d), BNSF previously updated the LRR's

revenue to reflect BNSF's new mileage-based fuel surcharge in its Surrebuttal Evidence filed on October 20, 2005. BNSF also made two additional adjustments to revenue that WFA/Basin did not make in their Supplemental Opening Evidence: it replaced forecasted with actual Rail Cost Adjustment Factor ("RCAF") index values through 2Q 2006 and it incorporated Global Insight's March, 2006 forecast of applicable RCAF indices to project RCAF-related revenues for the periods after 2Q 2006.³

To minimize disputes, WFA/Basin follow BNSF's procedure in their supplemental rebuttal evidence. In their supplemental rebuttal revenue calculations, WFA/Basin have utilized actual RCAF index values through 3Q 2006 and have utilized Global Insight's March 2006 RCAF forecasts to make RCAF forecasts for subsequent time periods.

³ See BNSF Supp. Reply electronic workpaper "LRR Traffic and Revenues_6-15-06 Reply.xls."

III. B. STAND-ALONE RAILROAD SYSTEM

In its Supplemental Reply Evidence, BNSF accepted WFA/Basin's conclusion, based on their supplemental RTC Model simulation, that the LRR's configuration is not affected by the changes identified in the Compliance Order. See BNSF Supp. Reply Evidence at 10. BNSF states that it "therefore makes no changes in the SARR configuration here but uses the same assumptions it presented on reply." Id.

The "assumptions" BNSF refers to are set forth at pages 1-5 of BNSF's Reply Narrative filed July 20, 2005, and relate to very modest adjustments to the LRR's route miles and track miles that do not affect the LRR system as input into the RTC Model. WFA/Basin demonstrated that most of these adjustments are inappropriate. See WFA/Basin Reb. Narr. filed Sept. 30, 2005 at III-B-2 to 19.

III. C. OPERATING PLAN

In its Supplemental Reply Evidence, BNSF accepted the results of WFA/Basin's supplemental RTC Model simulation, which confirmed the feasibility of the LRR's operating plan as presented by WFA/Basin. BNSF also accepted (and used) the LRR train transit times generated by WFA/Basin's supplemental RTC Model simulation to calculate relevant operating costs for purposes of its supplemental reply discounted cash flow ("DCF") analysis. Id. at 11.

BNSF also states that it used the revised transit times from WFA/Basin's supplemental RTC Model simulation to calculate revised road locomotive and car counts for the LRR "based on the methodology previously described in BNSF's reply evidence." Id. For the reasons explained at page III-C-9 of their September 30, 2005 Rebuttal Narrative, WFA/Basin disagree with BNSF's reply evidence methodology and submit that the Board should accept the revised locomotive and car counts described in WFA/Basin's Supplemental Opening Evidence, as shown in the table on page 12 of BNSF's Supplemental Reply Evidence.

III. D. OPERATING EXPENSES

In its Supplemental Reply Evidence, BNSF re-calculated the LRR's operating expenses to reflect the LRR's revised tonnages, transit times and equipment requirements (as erroneously determined using the unit costs and methodologies described in its original reply evidence) resulting from the revised RTC Model train transit times. With respect to crew expenses, BNSF states that it accepted WFA/Basin's calculation of peak-year road crew requirements based on the revised LRR volumes and the results of WFA/Basin's supplemental RTC Model simulation. Id. at 13. However, BNSF adjusted the crew count "to account for re-crews or turn crews who are unable to complete a [round trip] turn," and used the revised crew count (and corrected crew wages⁴) to calculate revised crew expenses for purposes of its supplemental reply DCF analysis. Id. at 13-14.

WFA/Basin disagree that any adjustment is needed for LRR re-crews or turn crews (other than those that result from the revised transit times produced by their supplemental RTC Model simulation, which were reflected in their Supplemental Opening Evidence). BNSF's adjustments are methodological, and should be rejected for the reasons set forth at pages III-D-27 to 32 of WFA/Basin's September 30, 2005 Rebuttal Narrative.

⁴ BNSF states that it corrected an error in its reply calculation of LRR crew wages that was pointed out by WFA on rebuttal. Id. at 14 and n.17. WFA/Basin concur with this correction.

BNSF also adjusted the LRR's maintenance-of-way ("MOW") expenses to reflect the LRR's revised gross-ton miles, using the same unit costs and methodology discussed in its original reply evidence. As discussed in Part III-D-4 beginning on page III-D-115 of WFA/Basin's September 30, 2005 Rebuttal Narrative, BNSF's MOW unit costs and methodology are inferior to WFA/Basin's and should not be accepted by the Board.

III. F. ROAD PROPERTY INVESTMENT

As noted in Part III-B above, and as BNSF confirms at page 17 of its Supplemental Reply Evidence, BNSF has accepted WFA/Basin's conclusion that the LRR configuration does not need to be changed as a result of the modified assumptions contained in the Board's Compliance Order and WFA/Basin's supplemental RTC Model simulation. Accordingly, BNSF used the same track configuration for purposes of its supplemental reply DCF analysis that it used in its original reply evidence, albeit with the same unit costs and other assumptions previously used. Id. BNSF's unit costs and other assumptions (to the extent they differed from WFA/Basin's) were thoroughly refuted in Part III-F of WFA/Basin's September 30, 2005 Rebuttal Narrative, and should not be accepted by the Board.

BNSF also makes several "technical" corrections to errors BNSF has found in its original reply calculation of the LRR's construction costs, many of which were pointed out by WFA/Basin in their original rebuttal evidence. Id. These technical corrections appear to be appropriate, but WFA/Basin continue to use the road property investment costs presented in their original rebuttal filing as these costs are the best evidence of record.

III. G. DISCOUNTED CASH FLOW ANALYSIS

In WFA/Basin's Supplemental Opening Evidence and BNSF's Supplemental Reply Evidence, both parties updated their SAC DCF analyses. On rebuttal, WFA/Basin make minor changes to their RCAF/Rail Cost Recovery ("RCR") forecast procedures in response to BNSF's criticisms.⁵ WFA/Basin also urge the Board to reject BNSF's inclusion of proposed 2005 cost of capital calculations.

1. Revenue Forecast

As discussed above, WFA/Basin modified their procedure for updating RCAF-based revenue forecasts to correspond with BNSF's procedures. These revenue calculations are reflected in WFA/Basin's Rebuttal DCF calculations.

2. Operating Expense and Road Property Investment Forecasts

In its Supplemental Reply Evidence, BNSF updated its prior operating expense and road property investment forecasts, inter alia, by substituting actual RCAF and actual RCR index values for previously projected values. To minimize disputes, in their Supplemental Rebuttal Evidence WFA/Basin incorporate updates of their operating expense forecasts using actual RCAF index values through 3Q 2006 and Global Insight's March 2006 RCAF forecast for time periods starting with 4Q 2006. WFA/Basin also

⁵ In footnote 25 on page 18 of its Supplemental Reply Evidence, BNSF notes that WFA/Basin used an erroneous value (373.8 rather than 377.8) for 3Q 2004 for the Association of American Railroads' ("AAR's") Wage Rates and Supplements index. WFA/Basin have corrected this error in their Supplemental Rebuttal DCF analysis.

update their road property forecasts by using actual RCR index values through 2Q 2006 and incorporate Global Insight's March 2006 RCR forecast for the period starting with 3Q 2006. These updates reflect the most recent actual RCAF/RCR actual values available and the most recent available Global Insight forecasts.

3. Cost of Capital Calculations

In its Supplemental Reply Evidence, BNSF updated its cost of capital calculations to reflect the AAR's proposed 2005 cost of capital calculations submitted to the Board on March 31, 2006 in Ex Parte No. 558 (Sub-No. 9). BNSF opined that this updating procedure is consistent with Board practice in prior SAC rate cases. BNSF Supp. Reply Evidence at 18-19. In fact, BNSF's proposal is inconsistent with past practice and should be rejected by the Board.

In previous SAC cases, including the cases cited in footnote 26 on page 18 of BNSF's Supplemental Reply Evidence, the Board updated the cost of capital calculations reflected in the parties' evidence to reflect the most recent final railroad industry annual cost of capital findings by the Board in Ex Parte No. 558. The Board has never updated the cost of capital to reflect the AAR's proposed cost of capital for a particular year. Moreover, the AAR's proposed 2005 cost of capital calculation has been vigorously challenged in the Reply Comments that the Western Coal Traffic League ("WCTL") filed in Ex Parte No. 558 (Sub-No. 9) on April 28, 2006.

WCTL's filing demonstrates that the AAR's 2005 cost of capital calculations are fundamentally flawed and, as a result, produce substantially overstated results.⁶ Under these circumstances, it would be highly inappropriate for the Board to accept BNSF's revised cost of capital calculations based on a highly controversial AAR estimate, whose deficiencies have been brought to the Board's attention.

⁶ WFA/Basin agree with, and incorporate by reference, WCTL's April 28, 2006 critique of AAR's 2005 cost of capital calculations.

III. H. RESULTS OF SAC ANALYSIS

In their Supplemental Opening Evidence, WFA/Basin presented the results of an updated SAC analysis that reflected changes in LRR revenues resulting from the revised LRR tonnage assumptions the Board directed the parties to use in its Compliance Order and changes in LRR operating expenses occasioned by the revised train transit times that resulted from WFA/Basin's supplemental RTC Model simulation.⁷

In its Supplemental Reply Evidence, BNSF presented its own version of updated SAC results, based on the revised train transit times resulting from WFA/Basin's supplemental RTC Model simulation, the other revisions described above, and its reply evidence unit costs and methodologies. Id. at 20-21.

In response to BNSF's Supplemental Reply Evidence, WFA/Basin have revised the SAC analysis presented in their Opening Supplemental Evidence to reflect the changes discussed above. The specific (and only) changes made to WFA/Basin's Supplemental Opening SAC analysis are as follows:

1. Stand-Alone Railroad Revenues
 - a. Incorporated actual RCAF indices for 1Q 2006, 2Q 2006 and 3Q 2006;
 - b. Incorporated Global Insight's March 2006 forecast for 4Q 2006 through 2024; and

⁷ See WFA/Basin Supp. Op. electronic workpaper "LRR RAM Rates_4Q04-2024 Rebuttal (Supplemental).xls."

- c. Incorporated actual HDF prices for July 2006 and August 2006 into the fuel surcharge forecast.

2. Discounted Cash Flow

- a. Corrected the value for 3Q 2004 wage rates and supplements from 373.8 to 377.8;
- b. Incorporated actual RCAF indices (operating expenses) for 3Q 2006 and actual RCR indices (investment) for 2Q 2006 (in each case the latest actual data available);
- c. Incorporated Global Insight's March 2006 RCAF forecast (operating expenses) for 4Q 2006 (the latest RCAF forecast data available) through 2024; and
- d. Incorporated Global Insight's March 2006 RCR forecast (investment) for 3Q 2006 (the latest RCR forecast data available) through 2024.

The results of WFA/Basin's revised DCF analysis are shown in supplemental rebuttal electronic workpaper "Exhibit_III-H-1.xls." The results for the fourth quarter of 2004, using WFA/Basin's proposed RAM method for allocating SAC rate relief, are shown in the revised version of Rebuttal Table III-H-3 set forth below.

Rebuttal Table III-H-3 (Supp. Rebuttal) Summary of Maximum Rate Calculations for Issue Traffic in 4Q 2004					
<u>Origin</u> (1)	<u>BNSF Rate with Surcharge Per Ton</u> (2)	<u>BNSF Variable Cost Per Ton</u> (3)	<u>Jurisdictional Threshold Per Ton</u> (4)	<u>Stand-Alone Cost Per Ton</u> (5)	<u>Maximum Rate Per Ton</u> (6)
Dry Fork	\$6.71	\$1.45	\$2.61	\$3.43	\$3.43
Eagle Butte	6.72	1.50	2.70	3.43	3.43
Cordero	6.48	1.31	2.36	3.43	3.43
Caballo Rojo	6.53	1.31	2.36	3.43	3.43
Jacobs Ranch	6.25	1.24	2.23	3.43	3.43

WFA/Basin also recalculated the reparations they are due for overcharges incurred during 4Q 2004. The amount due (excluding applicable interest) is \$6,318,173.

See WFA/Basin Supp. Reb. electronic workpaper "WFA 071406 SUPPL REPARATIONS RAM 4Q04.123."

For the entire SAC analysis period (4Q 2004 through 3Q 2024), the revised SAC rates (using RAM) that WFA/Basin request the Board to prescribe are set forth in the revised version of Table III-H-5 of WFA/Basin's original Rebuttal Narrative which appears on the next page.

Table III-H-5 (Supp. Rebuttal) Maximum SAC Rates	
<u>Period</u>	<u>Maximum Rate</u>
4Q04	\$3.43
2005	3.16
2006	3.18
2007	3.21
2008	3.33
2009	3.17
2010	3.24
2011	3.26
2012	3.30
2013	3.37
2014	3.48
2015	3.67
2016	3.75
2017	3.76
2018	3.79
2019	3.85
2020	3.91
2021	3.96
2022	4.05
2023	4.13
1Q-3Q2024	4.19

CONCLUSION

The Board should accept WFA/Basin's revised DCF results, as described and presented herein. WFA/Basin also request the Board to promptly issue a decision granting their requested relief.

Respectfully submitted,

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

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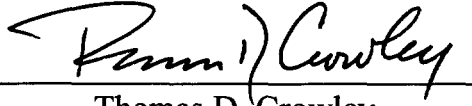
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Dated: July 14, 2006

Their Attorneys

VERIFICATION

I, Thomas D. Crowley, verify under penalty of perjury that I am the same Thomas D. Crowley whose Statement of Qualifications appears in Part V of the Narrative portion of the Opening Evidence of Complainants Western Fuels Association, Inc. and Basin Electric Power Cooperative, Inc. ("WFA/Basin") filed in this proceeding on April 19, 2005; that I am responsible for the portions of the foregoing Supplemental Rebuttal Evidence of WFA/Basin in Response to March 17, 2006 Compliance Order related to Parts III-A, III-D, III-G and III-H; that I know the contents thereof; and that the same are true and correct. Further, I certify that I am qualified and authorized to file this statement.

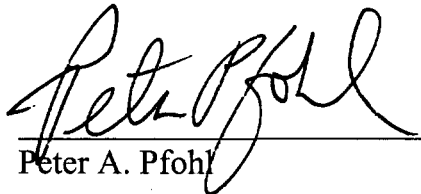

Thomas D. Crowley

Executed on: July 14, 2006

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of July, 2006, I caused a copy of the foregoing Supplemental Rebuttal Evidence to be served by hand delivery on counsel for BNSF, as follows:

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