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April 9, 2007

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VIA HAND DELIVERY

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
395 E Street, SW
Washington, D.C. 20423-0001

219050

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 original and twenty (20) copies of the Rebuttal Second Supplemental Evidence of Complainants Western Fuels Association, Inc. and Basin Electric Power Cooperative, Inc.

Also enclosed are two separate CD's containing the text of this filing and the accompanying electronic workpapers. The first CD (containing the text of the filing) is public and is so labeled. The second CD (containing the electronic workpapers) is designated and labeled as Highly Confidential under the terms of the governing Protective Order.

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.

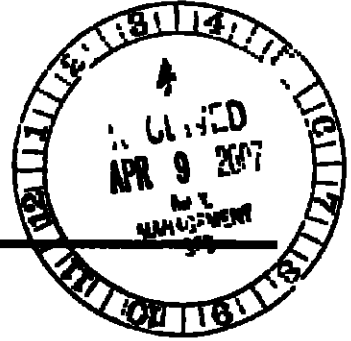
Respectfully submitted,

John H. LeSeur
An Attorney for Complainants

OFFICE OF THE
ENTRUSTED

Enclosures
cc: Counsel for Defendant BNSF Railway Co.

**BEFORE THE
SURFACE TRANSPORTATION BOARD**



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

Complainants,

v.

BNSF RAILWAY COMPANY

Defendant.

Docket No. 42088

**REBUTTAL SECOND SUPPLEMENTAL EVIDENCE
OF COMPLAINANTS WESTERN FUELS ASSOCIATION, INC.
AND BASIN ELECTRIC POWER COOPERATIVE, INC.**

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

OF COUNSEL:

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Dated: April 9, 2007

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WESTERN FUELS ASSOCIATION, INC.	)	
and BASIN ELECTRIC POWER	)	
COOPERATIVE, INC.	)	
	)	
Complainants,	)	
	)	
v.	)	Docket No. 42088
	)	
BNSF RAILWAY COMPANY	)	
	)	
Defendant.	)	

As directed by the Surface Transportation Board (“STB” or “Board”) in its orders served in this proceeding on November 8, 2006 (“Nov. 8 Order”) and November 22, 2006 (“Nov. 22 Order”), Complainants Western Fuels Association, Inc. (“Western Fuels”) and Basin Electric Power Cooperative, Inc. (“Basin Electric”) (collectively “WFA/Basin”) submit their Rebuttal Second Supplemental Evidence (“2007 Rebuttal”). This Rebuttal responds to Defendant BNSF Railway Company’s (“BNSF”) Reply Second Supplemental Evidence filed on March 26, 2007 (“2007 Reply”).

**I.
COUNSEL'S ARGUMENT AND SUMMARY OF EVIDENCE**

This rebuttal filing is the seventh evidentiary filing made by WFA/Basin since "final briefs" were filed in this proceeding in December of 2005. All of these filings respond to post-2005 Board directives emanating from its Major Issues proceeding¹ – a proceeding completed after WFA/Basin expended millions of dollars designing a stand-alone railroad ("SARR") to maximize revenues, and minimize costs, under pre-Major Issues Stand Alone Cost ("SAC") standards. As discussed in their prior filings, WFA/Basin's continued participation in these Board-mandated proceedings is subject to their on-going objections to the Board's arbitrary, unfair and unlawful actions in Major Issues.

The principal impact of the Board's Major Issues decision is to drastically reduce the Laramie River Railroad's ("LRR")² revenues. WFA/Basin designed the LRR to maximize revenues under the longstanding SARR revenue standards in effect when WFA/Basin designed the LRR. Application of these standards produced LRR revenues of approximately \$8.0 billion over the 20-year Discounted Cash Flow ("DCF") period. In Major Issues, the Board adopted a new methodology, Average Total Cost ("ATC"), to calculate cross-over traffic divisions. As WFA/Basin demonstrated in their Opening

¹ See Major Issues in Rail Rate Cases, STB Ex Parte No. 657 (Sub-No. 1) (STB served Oct. 30, 2006). This decision was preceded, inter alia, by a Notice of Proposed Rulemaking ("Major Issues NPRM") served on February 27, 2006.

² The LRR is WFA/Basin's SARR.

Second Supplemental Evidence ("2007 Opening"), retroactive application of the Board's new ATC divisions methodology to the LRR reduces the LRR's revenues to \$5.7 billion over the 20-year DCF model life -- a reduction of \$2.3 billion.³

Incredibly, in its 2007 Reply, BNSF argues that WFA/Basin's calculation of the LRR's ATC divisions is overstated.⁴ BNSF's arguments are wrong. WFA/Basin's 2007 Rebuttal evidence demonstrates that BNSF has deviated from the Board's Major Issues directives in a transparent effort to further reduce the LRR's revenues.

On Rebuttal, WFA/Basin make one minor change to their Opening ATC calculations. This change addresses the problem caused by BNSF's failure to provide density data for trackage rights lines. WFA/Basin also respond to BNSF's mischaracterization of WFA/Basin's 2007 Opening evidence on Maximum Mark-up Methodology ("MMM") issues.⁵ As discussed below, WFA/Basin continue to ask the Board to follow governing precedent and, in accordance with that precedent, prescribe a single maximum SAC rate.

³ WFA/Basin 2007 Opening at 23.

⁴ Under BNSF's ATC calculations, the LRR's revenues over the 20-year DCF period equal \$5.2 billion. See BNSF 2007 Reply at 9-10. These revenues are \$0.8 billion less than BNSF's previously tendered calculations of the LRR's revenues under BNSF's contestable market divisions methodology. See BNSF Reply Supp. Evidence (filed June 15, 2006) at 9 (calculating the LRR's full-SARR "contestability pricing" revenues at \$6.0 billion).

⁵ BNSF accepted WFA/Basin's 2007 Opening calculation of jurisdictional threshold variable costs. See BNSF 2007 Reply at 2. Accordingly, WFA/Basin will not further address variable costs in this Rebuttal.

II. **CROSS-OVER TRAFFIC DIVISIONS**

In its 2007 Reply, BNSF claims that WFA/Basin's ATC cross-over divisions for the LRR are overstated because: (i) WFA/Basin included interchange costs in their ATC variable cost calculations; (ii) WFA/Basin did not allocate fixed costs for trackage rights lines; and (iii) WFA/Basin improperly failed to calculate density segment-specific fixed costs per ton. BNSF proceeds to offer alternative calculations to address these three asserted division overstatements. As discussed below, BNSF's claims, and its alternative calculations, should not be accepted.

A. ATC Variable Costs

WFA/Basin calculated on-SARR and off-SARR variable costs in accordance with the Board's directives in Major Issues and in its Nov. 8 Order. Specifically, in these decisions, the Board directed that ATC variable cost calculations be made using a base year URCS (here BNSF's 2004 URCS); the Board's Phase III costing program (with no adjustments to Phase III unit costs); and nine specific parameters inputted into the Phase III program.⁶

One of the nine movement-specific input parameters the Board directed parties to input into the Phase III program is the shipment type.⁷ For all SARR cross-over traffic movements, WFA/Basin inputted the Phase III shipment type "originated/

⁶ See WFA/Basin 2007 Opening at 14-15.

⁷ See Major Issues NPRM at 26 n.30.

delivered” and for all off-SARR cross-over traffic WFA/Basin inputted “received/delivered.” The URCS Phase III program automatically includes an interchange cost for these interline movement types.

The Board’s ATC variable cost procedures factor in interchange costs for obvious reasons. A cross-over movement, by definition, is an interline movement between the SARR and the residual incumbent.⁸ Accordingly, it is costed as an interline movement under the Board’s ATC variable cost procedures. Also, when a SARR utilizes interline traffic, the Board’s SAC precedents require that the SARR build, maintain and operate interchange facilities with the residual incumbent.⁹ The Board’s ATC variable cost procedures recognize the existence of these costs.

BNSF claims that WFA/Basin should have excluded interchange costs from their ATC URCS Phase III calculations. (2007 Reply at 4-5). To correct this asserted error, BNSF adjusted the Phase III unit costing program to exclude costs BNSF deemed interchange costs. BNSF’s adjustment to the Phase III program to exclude interchange costs violates the Board’s express instructions in Major Issues and its Nov. 8 Order. See Major Issues at 60 (Board will “disallow movement specific adjustments” to Phase III

⁸ See Nov. 8 Order at 2 n. 4 (“‘Cross-over traffic’ refers to movements included in the traffic group for which the SARR ... would interchange the traffic with the ... incumbent railroad’s system.”)

⁹ See, e.g., Otter Tail Power Co. v. BNSF Ry., STB Docket No. 42071 (STB served Jan. 27, 2006) at 6; Public Service Co. of Colorado v. Burlington Northern and Santa Fe Ry., STB Docket No. 42057 (STB served June 8, 2004) at 11.

URCS costs); Nov. 8 Order at 2 n.5 (“unadjusted Phase III URCS costs should be used to calculate the [ATC] variable costs”).

BNSF’s exclusion of interchange costs also produces a clear and arbitrary inconsistency between its treatment of SARR costs and revenues. BNSF includes cross-over traffic interchange costs in its LRR SAC calculations.¹⁰ These costs include construction, maintenance and operating costs. BNSF proceeds to exclude interchange costs in its ATC revenue calculations. The sole purpose of BNSF’s arbitrary exercise is to decrease the LRR’s revenues. That is improper.

BNSF claims that the Board in its Major Issues NPRM directed the parties to exclude interchange costs in making ATC variable cost calculations. (2007 Reply at 5). In fact, the Board’s Major Issues NPRM states exactly the opposite. In the Major Issues NPRM, the Board directed the parties to calculate on-SARR and off-SARR costs “using unadjusted URCS (as was the first step with DARA).”¹¹ “Unadjusted URCS” means what it says (use the Board’s prescribed Phase III procedure) and the “first step with DARA” calculated on-SARR and off-SARR variable costs for cross-over traffic that included interchange costs.¹²

¹⁰ See e.g., BNSF’s Reply Evidence and Argument (filed July 20, 2005) at III.B-37-40, III.B-45, III.B-48, III.C-2 and III.F-46-47.

¹¹ Id. at 20.

¹² See AEP Texas North Co. v. BNSF Ry., STB Docket No. 41191 (Sub No. 1). Rebuttal Third Supplemental Evidence of Complainant AEP Texas North (“AEP Texas 2007 Rebuttal”) (filed Apr. 2, 2007) at 12-13 n.18.

BNSF also claims that, as a matter of SAC theory, the Board contended in Major Issues that SARR divisions reflect the incumbent's cost of service in transporting the cross-over traffic. (2007 Reply at 4). These costs, BNSF opines, do not include interchange costs at the SARR/residual incumbent interchange points. Again, this is not what the Board actually said in Major Issues. In Major Issues, the Board directed that the parties use the incumbent carrier's URCS costs to cost the interline on-SARR and off-SARR movement segments. Major Issues NPRM at 20; Major Issues at 26. Had the Board intended to use the procedure BNSF advocates, it would have included specific directives to make adjustments to the Phase III program to exclude interchange costs.

B. Trackage Rights Lines

In its 2007 Opening evidence, WFA/Basin did not allocate fixed costs for the few miles of involved trackage rights lines (i.e., lines BNSF operates over but does not own).¹³ WFA/Basin did not make these calculations because BNSF produced no line-specific density data for these trackage rights lines.

In its 2007 Reply evidence, BNSF does not include any base year 2004 density data for the involved trackage rights lines. Instead BNSF imputes these densities from other data.¹⁴ For purposes of this 2007 Rebuttal evidentiary filing only, WFA/Basin

¹³ The LRR contains no on-SARR trackage rights lines and the off-SARR trackage rights lines contain only 794 route miles – 8% of the total cross over traffic route miles. See WFA/Basin 2007 Rebuttal electronic workpaper “BNSF_2004_Density_allsegBNSFTM.xls.”

¹⁴ See 2007 Reply at 6 n.6.

have utilized BNSF's 2007 Reply trackage rights density data and recalculated its ATC costs to allocate a pro rata share of BNSF's system average fixed costs to the small number of off-SARR trackage right lines that BNSF uses to transport LRR cross-over traffic.¹⁵ Under WFA/Basin's procedures, BNSF's trackage rights route-miles are treated like any other BNSF route-miles for purposes of allocating BNSF system average fixed costs. This procedure fully responds to BNSF's contention that WFA/Basin's 2007 Opening calculations "understated the densities"¹⁶ on the involved off-SARR lines and complies with the Board's Major Issues directives.

In its 2007 Reply evidence, BNSF does not incorporate the simple procedure WFA/Basin used to address the missing base year trackage rights line densities. Instead, BNSF uses its failure to produce 2004 trackage rights line density data as a springboard to propose major changes in the Board's ATC procedures – changes that are intended solely to further reduce LRR's revenues. These changes find no support whatsoever in the Board's Major Issues decision.

First, BNSF claims the missing density data can be addressed by undertaking a complex procedure to calculate different system-average fixed cost allocations for BNSF-owned tracks and BNSF trackage rights lines. (2007 Reply at 7). This complex procedure – the details of which are buried in BNSF's electronic

¹⁵ See WFA/Basin 2007 Rebuttal electronic workpaper "BNSF_2004_Density_allsegBNSFTM.xls."

¹⁶ See 2007 Reply at 5.

workpapers – ignores the Board's instructions in Major Issues NPRM that parties calculate system-average fixed costs per route mile by “using URCS to determine the railroad's total fixed costs” and then dividing this total cost “by the total route miles of track operated by the railroad.” Id. at 20. This procedure clearly calls for the calculation of a single fixed cost per route-mile to apply to all BNSF route miles (including trackage rights miles). WFA/Basin followed these instructions in calculating BNSF's system average fixed costs per route-mile. BNSF's proposed procedure does not.

Alternatively, BNSF claims the missing density data can be addressed by calculating BNSF's system average fixed costs per route-mile as equaling BNSF's system average fixed costs (from URCS) divided by BNSF's route miles (excluding trackage rights miles). (2007 Reply at 6). This procedure is also clearly inconsistent with the Board's Major Issues ATC instructions. These instructions call for a carrier's system fixed costs to be divided by “total route miles of track operated by the railroad.” Major Issues NPRM at 20 (emphasis added). BNSF's second alternative mistakenly attempts to change the divisor from route miles “operated” to route-miles “owned.”

C. Density Weighting

As WFA/Basin explained in their 2007 Opening evidence, WFA/Basin developed fixed costs for ATC purposes by allocating system-wide fixed costs per route-mile for on-SARR and off-SARR movements using route-specific average density.¹⁷ For

¹⁷ See WFA/Basin 2007 Opening at 16-22.

example, if an on-SARR movement traveled 48.4 miles on the LRR and the weighted average density over this route equalled 54.6 million net tons, WFA/Basin calculated a fixed cost per ton for the on-SARR route as \$0.08 per ton. This amount equals the on-SARR miles (48.4) multiplied by BNSF's 2004 system average fixed cost per mile (\$86,642) with the product divided by the 54.6 million net tons.

BNSF claims that WFA/Basin's approach to calculating route-specific ATC costs is incorrect because it "does not calculate the fixed cost per ton for each density segment." (2007 Reply at 8). Rather than use the weighted average density for the on-SARR and off-SARR route segments developed by WFA/Basin, BNSF estimated fixed cost per ton for each individual density segment, added the column of resulting values and declared the result average fixed costs for ATC purposes.

WFA/Basin did not make the density-segment cost calculations BNSF claims are necessary because that is not what the Board directed in Major Issues. The details of the Board-directed ATC calculations are summarized in the calculation example provided in the Major Issues NPRM:

The following simplified example is offered to illustrate the basic [ATC] approach. Assume there is a movement for which the railroad charges \$10 per ton to haul the traffic 1,000 miles. Assume further that the SARR designed by the complainant would only carry that traffic 500 miles to a fictional interchange point with the residual railroad. To allocate the revenue from that cross-over movement, the parties would have to estimate the average total cost

(ATC) incurred by the railroad to haul that traffic over the 500-mile segment replicated by the SARR, and over the 500-mile segment of the residual railroad. First, the railroad's average variable cost (AVC) per ton to haul the traffic over each segment would be estimated using unadjusted URCS (as was the first step with DARA). The parties would then need to calculate the average fixed cost (AFC) per ton of traffic using the various segments. They would do so by calculating the railroad's system-average fixed cost per route mile, using URCS to determine the railroad's total fixed costs and dividing this figure by the total route miles of track operated by the railroad. This system-average fixed cost per route mile could then be combined with the route miles and the traffic density of any particular segment of the railroad's network to estimate an AFC per ton associated with that segment. The ATC for any particular segment would be the sum of AVC and AFC for that segment.

Id. at 19-20.

The Board's Major Issues NPRM example is quite specific. For cross-over traffic purposes, the SARR is divided into two route "segments" – one on-SARR and one off-SARR. The ATC Average Fixed Cost ("AFC") component is then calculated for each of the two route segments using a formula where the numerator is the defendant carrier's "system average fixed cost per route mile" and the denominator is the "combined ... route miles and the traffic density" for the on-SARR or off-SARR route segments. Major Issues NPRM at 20. Similarly, the Board held in its Major Issues decision:

[ATC] utilizes URCS fixed costs and variable costs on a system-wide basis for the defendant carrier, adjusted by the density and miles of the segment at issue, to establish the average total cost to own and operate a particular segment of a network.

Id. at 35 (emphasis in original).

WFA/Basin's AFC calculation conforms to the Board's instructions in Major Issues. It uses system-average fixed costs per route-mile, and average route density to calculate average fixed costs. BNSF's alternative procedure does not. BNSF's alternative procedure also suffers from numerous subsidiary flaws and inconsistencies. For example, the Board stated in Major Issues that ATC was modelled after BNSF's DARA procedure but intended to correct DARA's flaws. Id. at 26. DARA utilized the same weighted average route density divisor procedure that WFA/Basin utilize here for ATC purposes.¹⁸ In Major Issues, the Board did not point to this density divisor procedure as a flaw in DARA that needed correcting. Instead, the Board called for the same density divisor procedure to be used in implementing ATC. Also, BNSF's approach calls for substantially more detailed ATC calculations than were presented by WFA/Basin since, under BNSF's approach density segment-specific fixed costs must be made for each SARR cross-over movement.

¹⁸ See AEP Texas 2007 Rebuttal at 18 n.26.

Finally, BNSF opines that its density segment-specific approach should be utilized because WFA/Basin's route-specific approach "understates the average cost per ton of the on-SARR and off-SARR portions." (2007 Reply at 8). WFA/Basin's calculations do not understate or overstate anything, they simply follow the Board's stated procedures. Applying BNSF's approach or WFA/Basin's approach will result in all of BNSF's fixed costs being assigned to specific movements. The only difference is in the allocation methods – WFA/Basin uses the method the Board adopted in Major Issues. BNSF does not.

D. Restated LRR Revenues

In their 2007 Rebuttal, WFA/Basin modify their Opening second supplemental revenue calculations to reflect their allocation of fixed costs to off-SARR trackage right lines. The results are shown in Table 2.

Rebuttal Table 2 LRR Rebuttal Revenues Using ATC Divisions*	
Year	Revenues with ATC Divisions¹ (\$ Millions)
4Q2004	\$55.0
2005	234.4
2006	246.5
2007	247.8
2008	248.6
2009	255.0
2010	257.4
2011	262.3
2012	267.7
2013	273.7
2014	278.2
2015	277.5
2016	284.5
2017	295.3
2018	306.1
2019	314.7
2020	324.7
2021	335.5
2022	344.1
2023	353.7
3Q2024	273.2
Total	\$5,735.9
* Column figures reflect rounding. ¹ See WFA/Basin 2007 Rebuttal electronic workpaper "LRR Traffic and Revenues WFABasin Supplemental_ATC_022207_allseg BNSFTM.xls"	

These 2007 Rebuttal revenues are slightly higher than WFA/Basin's 2007 Opening revenue calculations. WFA/Basin's 2007 Opening evidence allocated no fixed costs to

off-SARR trackage rights lines. As discussed above, WFA/Basin do so in this 2007 Rebuttal evidence. This result is a slightly higher allocation of ATC revenues to the corresponding on-SARR route segments.

III. MMM VARIABLE COSTS

In their 2007 Opening evidence, WFA/Basin stated that their calculation of Phase III variable costs could also be used as MMM inputs. (2007 Opening at 2). BNSF attempts to characterize WFA/Basin's statement as one that in effect withdraws WFA/Basin's prior request in this proceeding that the Board prescribe a single SAC rate to apply from all PRB origins to the Laramie River Station. (2007 Reply at 10).

BNSF's characterization is incorrect. WFA/Basin continue to request that the Board follow past precedent and establish a single SAC maximum rate.¹⁹ As BNSF knows, the weighting procedure WFA/Basin previously presented to the Board to calculate a single maximum SAC rate can be used to weight their MMM results. WFA/Basin continue to request that the Board prescribe a single maximum SAC rate for the issue traffic.

¹⁹ See WFA/Basin's Rebuttal Evidence (filed Sept. 30, 2005) at III.H-41-42.

Respectfully submitted,

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

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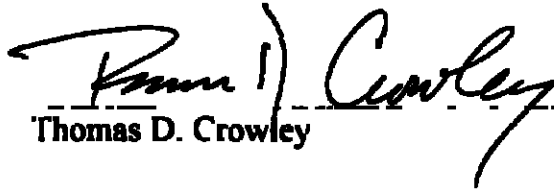
Dated: April 9, 2007

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Attorneys for Complainants

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 Rebuttal Second Supplemental Evidence of WFA/Basin set forth in Parts II and III; 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.

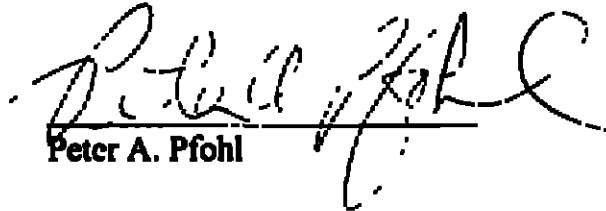

Thomas D. Crowley

Executed on. April 9, 2007

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of April, 2007, I caused a copy of the foregoing Rebuttal Second Supplemental Evidence of Complainants Western Fuels Association, Inc. and Basin Electric Power Cooperative, Inc. to be served by hand delivery on counsel for BNSF, as follows:

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