

BEFORE THE
SURFACE TRANSPORTATION BOARD

237034

E.I. DUPONT DE NEMOURS & COMPANY

Complainant,

v.

NORFOLK SOUTHERN RAILWAY COMPANY

Defendant.

ENTERED
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November 13, 2014
Part of
Public Record

Docket No. NOR 42125

JOINT SUPPLEMENTAL PETITION FOR TECHNICAL
CORRECTIONS OF NORFOLK SOUTHERN RAILWAY
COMPANY AND E.I. DUPONT DE NEMOURS & COMPANY

Jeffrey O. Moreno
Jason D. Tutrone
Thompson Hine LLP
1919 M Street, N.W., Suite 700
Washington, D.C. 20036
(202) 331-8800

G. Paul Moates
Paul A. Hemmersbaugh
Matthew J. Warren
Sidley Austin LLP
1501 K Street, N.W.
Washington, D.C. 20005
(202) 736-8000

Counsel to E.I. du Pont de Nemours & Co.

Counsel to Norfolk Southern Railway Co.

Date: November 12, 2014

Pursuant to the guidance established in *Xcel Energy*, the Board’s prior decisions and direction in this case, and other applicable authority, Defendant Norfolk Southern Railway Company (“NS”) and Complainant E.I du Pont de Nemours and Company (“DuPont”) jointly submit this Supplemental Petition for Technical Corrections of two calculations in the Surface Transportation Board’s (“Board’s”) October 3, 2014 Decision in this case. *See DuPont v. Norfolk So. Ry. Co.*, STB Docket No. 42130 (S.T.B. served Oct. 3, 2014) (“*Corrected Decision*”); *Public Serv. Co. of Colorado d/b/a Xcel Energy v. Burlington N. & Santa Fe Ry. Co.*, 7 S.T.B. 1029, 1030 (2004) (“*Xcel Energy*”); *see also DuPont v. Norfolk So. Ry. Co.*, STB Docket No. 42130 (S.T.B. served March 21, 2014); 49 C.F.R. § 1115.3(b).¹

Consistent with the Board’s precedents, this Joint Petition addresses only technical and computational errors—it does not address issues that are appropriately addressed in a reconsideration petition. *See Xcel Energy*, 7 S.T.B. at 1030. The revisions sought by this Petition would correct two technical errors in the Board’s implementation of rulings set forth in the narrative text of the *Decision* and *Corrected Decision*, through proposed changes to the Board’s workpapers and calculations. As discussed below, one error is fairly large and requires a correction of approximately \$688 million. The second error is fairly minor and requires a small correction amounting to approximately \$1.6 million.

First, the STB workpapers underlying the *Corrected Decision* miscalculated the cost of capital used to discount to present value the DPRR’s asset replacement costs and capital carrying charges. Specifically, the Board’s *Corrected Decision* workpapers reduced the 2006 cost of

¹ The Board extended the time to file petitions for reconsideration to November 12, 2014, and this Joint Petition for technical correction of the *Correct Decision* is consistent with that schedule. *See DuPont v. Norfolk So. Ry. Co.*, STB Docket No. 42125 (S.T.B. served Oct. 8, 2014) (extending time to file petitions for reconsideration until November 12, 2014). Both parties are also filing their own individual petitions for reconsideration today.

capital from 9.9% to 7.3% by incorrectly classifying 23.6% of the capital structure as preferred equity with a 0% rate of return. The 2006 cost of capital is part of the 2006-2011 average cost of capital used to discount future replacement costs and capital carrying charges. Correction of this computational error increases the amount of underpayments for the DPRR by approximately \$688 million (from \$6.4 billion to nearly \$7.1 billion). As illustrated in a workpaper attached to this Petition, the technical error should be corrected by simply inserting "0" in cell U14, tab "Cost of Capital", in the Board's workpaper "NS WP D42125 Exhibit III-H-1 STB No3 Corrected STB.xlsm." See NS WP "D42125 Exhibit III-H-1 STB No3 Corrected STB Cost of Capital.xlsm." The macros on tabs "PTC," "Replacement," and "Investment SAC" should be rerun to calculate the final SAC underpayments. See *id.*

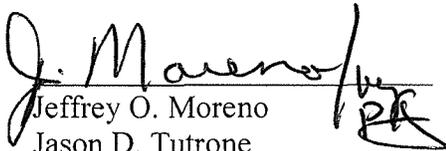
Second, the *Corrected Decision* workpapers contain a minor computational error concerning tax depreciation for certain PTC investment. Instead of developing the tax depreciation for 2010 to 2015 PTC investment in the "PTC" worksheet, the Board's workpapers calculated the tax depreciation expense in the "Tax Depreciation Worksheet." However, calculating the depreciation outside of the "PTC" worksheet means the depreciation tax shields on replacement PTC investment were excluded. In order to correct this computational error, the Board may change cell E17 in worksheet "PTC" to include the following formula "=H130". This will calculate the depreciation on the 2010 to 2015 PTC investment, and account for future depreciation on replacements for these assets. Second, at worksheet "Tax Depreciation," the formulae from cells BE121 to BK133 should be deleted.

Correcting the DCF model to calculate the impact of depreciation on future PTC investment increases the present value of DPRR underpayments by approximately \$1.6 million (or \$1.4 million after applying the cost of capital correction described in the first item above).

The parties have included revised workpapers illustrating how this revision can be made. *See* DuPont WP “D42125 Exhibit III-H-1 STB No3 Corrected STB (Depreciation on Future PTC Investment).xlsm.” (electronic copy attached).

CONCLUSION

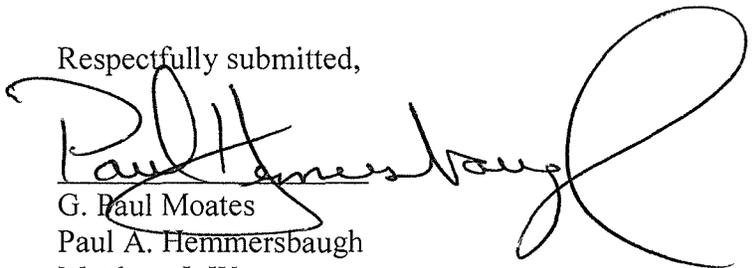
Correction of the two technical errors as described above would conform the Board’s SAC calculations and results to the text of the *Corrected Decision*. The parties jointly request that the Board make the technical corrections described in this Supplemental Petition.



Jeffrey O. Moreno
Jason D. Tutrone
Thompson Hine LLP
1919 M Street, N.W., Suite 700
Washington, D.C. 20036
(202) 331-8800

Counsel to E.I. du Pont de Nemours & Co.

Respectfully submitted,



G. Paul Moates
Paul A. Hemmersbaugh
Matthew J. Warren
Sidley Austin LLP
1501 K Street, N.W.
Washington, D.C. 20005
(202) 736-8000

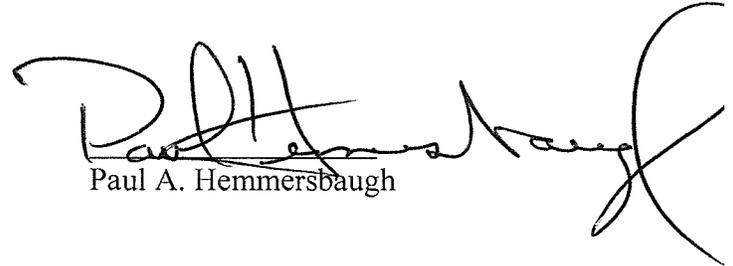
Counsel to Norfolk Southern Railway Company

Dated: November 12, 2014

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of November 2014, I caused a copy of the foregoing Joint Supplemental Petition for Technical Correction of Norfolk Southern Railway Company and E.I. DuPont de Nemours & Company to be served by email and hand delivery upon:

Jeffrey O. Moreno
Jason D. Tutrone
Thompson Hine LLP
1919 M Street, N.W., Suite 700
Washington, D.C. 20036



Paul A. Hemmersbaugh