

STB EX PARTE NO. 347 (SUB-NO. 3)

GENERAL PROCEDURES FOR PRESENTING
EVIDENCE IN STAND-ALONE COST RATE CASES

Decided March 9, 2001

The Board issues general guidelines designed to standardize the format for submitting written presentations, workpapers and electronic spreadsheets and to better focus the evidence.

BY THE BOARD:

In recent months, several new complaints challenging the reasonableness of rates charged by railroads have been filed.¹ While in the past we have been able to review two stand-alone cost (SAC) presentations² at one time, we now face the prospect of simultaneously reviewing three times that number, a daunting task given the statutory deadlines for deciding these cases³ and the limited staff with

¹ *Texas Municipal Power Agency v. Burlington Northern and Santa Fe Railway Company*, STB Docket No. 42056 (filed Oct. 3, 2000); *Public Service Company of Colorado v. Burlington Northern and Santa Fe Railway Company*, STB Docket No. 42057 (filed Dec. 20, 2000); *Arizona Electric Power Cooperative, Inc. v. Burlington Northern and Santa Fe Railway Company and Union Pacific Railroad Company*, STB Docket No. 42058 (filed Dec. 29, 2000); *Northern States Power Company v. Union Pacific Railroad Company*, STB Docket No. 42059 (filed Jan. 26, 2001). These are in addition to other pending rail rate cases (in which some or all of the evidence has already been submitted): *Wisconsin Power and Light Company v. Union Pacific Railroad Company*, STB Docket No. 42051 (filed Dec. 30, 1999); *PPL Montana, LLC v. Burlington Northern and Santa Fe Railway Company*, STB Docket No. 42054 (filed July 6, 2000). Moreover, we have reopened *West Texas Utilities Company v. Burlington Northern Railroad Company*, STB Docket No. 41191 (STB served Nov. 7, 2000) to consider a new rate prescription to additional mines.

² The SAC test evaluates the reasonableness of a railroad's rates by comparing the challenged rate to the rate that a hypothetical, fully efficient railroad would need to charge to cover all the costs to serve a traffic group that includes the traffic of the complaining shipper. The SAC test was adopted by our predecessor the Interstate Commerce Commission (ICC) in *Coal Rate Guidelines, Nationwide*, 1 I.C.C.2d 520 (1985) (*Coal Rate Guidelines*). It is used to evaluate rates in cases involving the movement of large quantities of rail dependent traffic. See, e.g., *West Texas Utilities Company v. Burlington Northern RR Co.*, 1 S.T.B. 638 (1996); *McCarty Farms, et al. v. Burlington Northern, Inc.*, 2 S.T.B. 460 (1997) (*McCarty Farms*).

³ See 49 U.S.C. 10704(c)(1).

the technical expertise to review the evidentiary records.⁴ As the parties to these cases should be aware, it requires a significant commitment of resources to review each SAC case,⁵ and, in the past, incompatibilities in the presentations of opposing parties have significantly complicated our review of the evidentiary records. Therefore, in an attempt to process such cases more efficiently, we have developed procedural guidelines for the submission of evidence in SAC cases. This guidance is designed to standardize the format for submitting written presentations, workpapers and electronic spreadsheets, and better focus the evidence so that we can more efficiently and effectively evaluate the records in these cases.

A. Format Matters

1. Textual Materials

In previous SAC cases, the evidentiary presentations, although extensive, have followed no predetermined format. Often several witnesses address the same issues and, because the evidentiary presentations have generally been organized by witness rather than issue, evidence on a particular topic has been dispersed throughout the record, making the evidence on a topic difficult to track, and thereby unnecessarily complicating the case.

The attached appendix contains a general outline of issues that recur in SAC cases. Parties are directed to follow this outline in submitting their evidence. Specifically, we expect the parties to follow the sequence, and to use the descriptive headings and alpha-numeric references, set out in that outline.⁶ For example, all the evidence addressing the amount of traffic that the stand-alone railroad would transport should be contained in a section labeled “III-A-2” and

⁴ These SAC cases are in addition to other rate-related proceedings involving railroad, pipelines and water carriers that require technical analysis and staff resources.

⁵ In STB Docket No. 42059 (the Northern States Power Company complaint), the shipper and railroad recently entered into a partial settlement that obviates the need for a SAC presentation. The parties have agreed that, should the railroad be found to have market dominance over the transportation, the rate should be limited to 180% of the carrier’s variable cost of providing the service. We encourage negotiated settlements of disputes, including ones that limit the issues needed to be addressed. Agreements to narrow the dispute, such as stipulations to use an agreed upon revenue-variable cost percentage as a rate cap, save time and litigation expenses for all concerned.

⁶ We recognize that a case may present unique issues that do not correspond to any of the specific headings in the appendix. Such issues should be addressed at the end of the general section to which they relate under the category “Other.”

titled "Traffic Group Volumes" in the shipper's opening evidence, the railroad's reply evidence and the shipper's rebuttal evidence.⁷ Having a more standardized presentation of the evidence, with each issue addressed in a single, uniformly labeled section, will enable us to review the record more expeditiously and with greater assurance that no evidence is overlooked or misinterpreted.⁸

Furthermore, where the evidentiary presentation relies on supporting materials (workpapers or electronic spreadsheets), references to those materials must be included in the textual presentation with sufficient specificity to allow quick access to the referenced materials. Unreferenced supporting materials (or broad, general references to the workpapers) will not be considered.⁹

2. Electronic Copies of Submissions

To facilitate the posting of the voluminous submissions to our network server, all electronic submissions in SAC cases should now be submitted on compact disks.¹⁰ Also our general regulations require that, in addition to the printed version of evidentiary presentations, all textual presentations be submitted electronically in Corel WordPerfect format.¹¹ 49 CFR 1104.3. Absent a waiver for good cause, all electronic versions of textual materials should be filed in WordPerfect format so that they can be quickly and accurately disseminated electronically to the staff.¹² Until we have received all electronic versions of textual presentations in WordPerfect format, or a waiver has been granted, the record will not be considered to be closed for purposes of 49 U.S.C. 10704(c).

⁷ A statement of a witness' qualifications, the specific pages of evidence the witness is sponsoring and a verification statement for each witness should be included at the end of the evidentiary presentation. See outline part IV.

⁸ The concern that this requirement is meant to address is more than a mere theoretical concern. See *McCarty Farms, et al. v. Burlington Northern, Inc.*, 3 S.T.B. 102 (1998) (taking into account evidence that had been overlooked in an earlier decision).

⁹ See *Vermont Yankee Nuclear Power Co. v. Natural Resources Defense Council*, 435 U.S. 519, 553-54 (1978) (an agency not faulted for failure to address "cryptic and obscure reference[s]" in the evidence).

¹⁰ In the past we have accepted electronic submissions on a variety of media (diskette, tape or compact disk). See 49 CFR 1104.3.

¹¹ We currently use WordPerfect version 9. All electronic filings must be compatible with this version of WordPerfect.

¹² In prior SAC cases textual materials have sometimes been submitted in Microsoft Word, causing difficulty and delay.

B. Workpapers

1. Paper Copies

In addition to the standardized labeling for the evidentiary presentations set forth in the appendix, all workpapers supporting a party's presentation should be filed in separately bound, sequentially paginated "workpaper" volumes containing the same descriptive headings and alpha-numeric labeling as used for the evidentiary presentations.¹³ Each workpaper volume should contain a table of contents. If particular workpapers are submitted as support for more than one section of the evidentiary presentation, those workpapers should be labeled to correspond to the first evidentiary presentation for which they are offered as support. When used as support for subsequent parts of the evidence, a page containing an appropriate cross-reference should be inserted in the workpaper volume under the descriptive and alpha/numeric label corresponding to the subsequent evidentiary presentations for which the workpapers are offered as support, clearly directing our attention to the precise location of the relevant workpaper.¹⁴ If workpapers are not clearly referenced in the evidence and identified in the workpaper volumes, we will assume that the proponent of a specific position is not relying on materials beyond those contained in the evidentiary presentation.

2. Electronic Spreadsheets

Our general regulations require the submission of electronic spreadsheets in Lotus format. 49 CFR 1104.3. We have Excel spreadsheet software and now will accept electronic spreadsheets in either Lotus or Excel format.¹⁵ The parties are reminded, however, that in order to fully evaluate the evidence, we must be able to access and manipulate all spreadsheets. If a spreadsheet does not function (*e.g.*, will not recalculate), the party filing the defective spreadsheet runs

¹³ For example, workpapers related to the revenues that the stand-alone railroad would earn should be included in a section of the workpapers labeled "III-A-3 — Traffic Group Revenues."

¹⁴ For example, if workpapers are first submitted in support of the volume of traffic the stand-alone railroad would handle, those workpapers should appear in workpaper section III-A-2. If these same workpapers are offered as support for the revenues the stand-alone railroad would earn from the traffic, a page should appear in workpaper section III-A-3 referring us to specific pages in workpaper section III-A-2.

¹⁵ We currently use Lotus 1-2-3 Release 9 and Microsoft Excel 97. All electronic spreadsheets must be compatible with these versions of the software.

the risk that its evidentiary presentation will be treated as incomplete and ultimately unpersuasive.

In some past cases, we have encountered problems with the “links” in spreadsheets functioning properly when the spreadsheets are installed on our desktop computers or network server. To avoid such problems, naming and linking conventions should be used by the parties that will permit the spreadsheets to operate on our computers.¹⁶ We emphasize the importance of spreadsheet links being functional and documented.

Finally, the source of all values in a spreadsheet must be readily apparent.¹⁷ If a source is not identified parties run the risk that we will assume that the value is unsupported.

3. Electronic Databases

If electronic databases are submitted in SAC cases, they should be compatible with the Microsoft Open Database Connectivity (ODBC) standard.¹⁸ We currently use Microsoft Access 97 and databases submitted should be either in this format or another ODBC compatible format.¹⁹ Otherwise, parties should explain why it is not possible to submit the database in this format and seek a determination as to whether it is feasible for us to accept the database in another format.

C. Order of Presentations and Limitations on Rebuttal Evidence

We remind parties that, in presenting evidence, the party with the burden of proof on a particular issue must present its entire case-in-chief in its opening evidence. Rebuttal presentations are limited to responding to the reply

¹⁶ We will not specify a particular naming and linking convention. It is incumbent upon the parties to use generic naming and linking conventions that will permit the spreadsheets to operate on desktop computers or from a network server. Questions concerning naming and linking matters and/or compatibility with our computers can be addressed to William Washburn, Office of Economics, Environmental Analysis, and Administration, at (202) 565-1550.

¹⁷ For example, if road property investment dollars or operating expenses are transferred as values from the spreadsheets where they are initially developed to the discounted cash flow spreadsheet, the discounted cash flow spreadsheet must contain a reference identifying the source (electronic address, including table and cell) from which the value is drawn.

¹⁸ ODBC is a Windows technology that allows a database software package, such as Microsoft Access, to import data from a database created using a different software package.

¹⁹ All databases must be supported with adequate documentation on data attributes, SQL queries, programmed reports, etc.

presentation of the opposing party. Rebuttal may not be used as an opportunity to introduce new evidence that could and should have been submitted on opening to support the opening submissions. New evidence improperly presented on rebuttal will not be considered.²⁰

With respect to SAC evidence, we remind parties that a railroad's SAC evidence should be limited to addressing deficiencies in the complaining shipper's evidence. It is not sufficient for a railroad to show that another way of providing the stand-alone service would be superior, because the purpose of a SAC analysis is to identify the *least* cost at which the current level of service for each member of the traffic group could be provided.²¹

D. Itemization of Cost Differences

We remind all parties that when they dispute cost figures, by countering with figures that differ from the other side's, based on more than one variable they should itemize the portion of the difference attributable to each variable. For example, the cost of land for a stand-alone railroad is affected by both the number of acres that would be needed (which in turn may be based on the width of the right-of-way) and the cost per acre of land. Thus, if a party disagrees with the total land cost estimate of the other party and offers another figure, it should separately quantify and explain that portion of the difference attributable to the per acre value and the portion attributable to the total acreage.

E. Reargument of Settled Issues

Finally, the parties to SAC cases are cautioned not to attempt to relitigate issues that have been resolved in prior cases. Unless new evidence or different arguments are presented, we will adhere to precedent established in prior cases.²²

²⁰ See, e.g., *FMC Wyoming Corp. & FMC Corp. v. Union Pacific RR Co.*, 4 S.T.B. 699, 791, 842 (2000) (*FMC*).

²¹ See *Coal Rate Guidelines*, 1 I.C.C.2d at 542; *CF Indus., Inc. v. Koch Pipeline Co.*, 4 S.T.B. 637, 657 n.57 (2000) (precluding carrier from introducing SAC evidence to defeat shipper presentation based on another valid rate reasonableness test).

²² See, e.g., *Arizona Public Service Co. v. Atchison, T. & SF Ry. Co.*, 2 S.T.B. 367, 385-387 (1997) (rejecting barrier-to-entry arguments resolved in prior case); *McCarty Farms*, 2 S.T.B. at 484 (reaffirming "unconstrained resource assumption" accepted in prior cases); *FMC*, 767-769 (rejecting the weighted system average cost (WSAC) procedure for developing maintenance-of-way (MOW) expense in favor of the speed factor gross ton (SFGT) approach because WSAC has not been shown to be an appropriate tool for developing MOW costs for freight traffic).

Because the guidance contained in this decision is merely procedural, we are issuing this decision without seeking public comment. 5 U.S.C. 553(b)(3)(A).

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Evidentiary presentations in SAC cases should follow the general procedures outlined in this decision.
2. Notice of this decision will be published in the *Federal Register* on March 12, 2001.
3. This decision is effective April 11, 2001.

By the Board, Chairman Morgan, Vice Chairman Clyburn, and Commissioner Burkes.

APPENDIX

OUTLINE GOVERNING THE PRESENTATION OF SAC EVIDENCE

I. COUNSEL'S ARGUMENT AND SUMMARY OF EVIDENCE

II. MARKET DOMINANCE

A. QUANTITATIVE EVIDENCE

1. Variable Costs
2. Rate and Resulting R/VC Calculation
3. Other

B. QUALITATIVE EVIDENCE

1. Intramodal Competition
2. Intermodal Competition
3. Other

III. STAND-ALONE COST

A. TRAFFIC GROUP

1. Stand-Alone Railroad Traffic
2. Volumes (historical and projected)

5 S.T.B.

3. Revenues (historical and projected)
 - a. Single-Line
 - b. Divisions — Existing Interchanges
 - c. Divisions — Cross-Over Traffic²³
 - d. Other
 4. Other
- B. STAND-ALONE RAILROAD SYSTEM
1. Route and Mileage
 2. Track Miles and Weight of Track
 - a. Main Line
 - b. Branch Line
 - c. Sidings
 - d. Other
 3. Yards
 - a. Location and Purpose
 - b. Miles and Weight of Track
 - c. Other
 4. Other
- C. OPERATING PLAN
1. General Parameters (e.g., number of trains, train characteristics, traffic flow)
 2. Cycle Time
 3. Other
- D. OPERATING EXPENSES
1. Locomotive
 - a. Leasing (if applicable)
 - b. Maintenance
 - c. Servicing
 - d. Fuel, Sand & Lubrication
 - e. Other
 2. Rail Cars
 - a. Leasing (if applicable)
 - b. Maintenance
 - c. Private Car Allowance
 - d. Other
 3. Personnel (by department)
 - a. Operating
 - i. Staffing Requirements
 - ii. Compensation
 - iii. Materials, Supplies & Equipment
 - iv. Other

²³ See, e.g., *FMC* at 724-729 discussing revenues attributable to cross-over traffic.

- b. Non-Operating
 - i. Staffing Requirements
 - ii. Compensation
 - iii. Materials, Supplies & Equipment
 - iv. Other
 - c. General & Administrative
 - i. Staffing Requirements
 - ii. Compensation
 - iii. Materials, Supplies & Equipment
 - iv. Other
 - d. Other
 - 4. Maintenance-of-Way
 - a. Operating
 - b. Program (only if asset replacement not provided in road investment)
 - c. Other
 - 5. Leased Facilities (if applicable)
 - 6. Loss & Damage
 - 7. Insurance
 - 8. Ad Valorem Tax
 - 9. Other
- E. NON-ROAD PROPERTY INVESTMENT
- 1. Locomotives (if applicable)
 - 2. Rail Cars (if applicable)
 - 3. Other
- F. ROAD PROPERTY INVESTMENT
- 1. Land
 - a. Right-of-Way Acreage
 - b. Yard Acreage
 - c. Other Acreage
 - d. Property Values
 - e. Other
 - 2. Roadbed Preparation
 - a. Clearing & Grubbing
 - b. Earthworks
 - c. Lateral Drainage
 - d. Culverts
 - e. Other
 - 3. Track Construction
 - a. Geotextile Fabric
 - b. Ballast
 - c. Ties
 - d. Track
 - e. Switches
 - f. Other
 - 4. Tunnels
 - 5. Bridges

6. Signals and Communications
 - a. Centralized Traffic Control
 - b. Detectors (e.g., defective equip., automatic equip. identification, slide)
 - c. Communications System
 - d. Other
7. Buildings and Facilities
8. Public Improvements
 - a. Fences
 - b. Signs & Road Crossing Devices
 - c. Grade Separated & At-Grade Crossings
 - d. Other
9. Mobilization
10. Engineering
11. Contingencies
12. Other

G. DISCOUNTED CASH FLOW ANALYSIS

1. Cost of Capital
2. Inflation Indices
3. Tax Liability
4. Other

H. RESULTS OF SAC ANALYSIS

IV. WITNESS QUALIFICATIONS AND VERIFICATION