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SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. 42088

WESTERN FUELS ASSOCIATION, INC., AND
BASIN ELECTRIC POWER COOPERATIVE
v.
BNSF RAILWAY COMPANY

Decided: February 28, 2008

In this proceeding, Western Fuels Association, Inc. and Basin Electric Power Cooperative (collectively WFA) challenge the reasonableness of the rates charged by BNSF Railway Company (BNSF) for movements of coal from origins in the Powder River Basin (PRB) in Wyoming to WFA's Laramie River Station coal-fired electric utility plant at Moba Junction, WY. In a decision served on September 10, 2007 (September '07 Decision), we found that WFA had failed to establish that the challenged rates were unreasonably high but offered WFA an opportunity to submit supplemental evidence.

WFA and BNSF have each filed timely petitions for reconsideration of our decision. As discussed below, both petitions for reconsideration will be denied. The parties have also filed a joint petition to correct certain alleged technical and computational errors in the September '07 Decision that are not material to the outcome of the case. That petition is addressed in the Appendix to this decision.

BACKGROUND

WFA challenged the reasonableness of BNSF's rates using the stand-alone cost (SAC) test. Under the SAC test, a "stand-alone railroad" (SARR) is hypothesized that could serve WFA's coal traffic and other traffic. The SAC constraint limits the rates that the BNSF may charge WFA to what the SARR would need to charge to serve WFA while fully covering all of its costs, including a reasonable return on investment.

WFA designed a SARR, the Laramie River Railroad (LRR), that would serve unit-train coal traffic from the PRB. The LRR's investment requirements and operating expense requirements were projected for a 20-year period, reflecting anticipated changes in traffic, rate levels, and expenses over that time period. The resulting revenue needs were compared to the revenues that BNSF receives from this traffic for the portion of the movements that would be replicated by the LRR. For all but the WFA traffic in the group, the LRR would replicate only a portion of the move, and it would interchange the non-WFA traffic with the residual BNSF system at various locations. The traffic that would be interchanged with the residual BNSF system is referred to as cross-over traffic.

After reviewing the record, the Board compared the best estimate of the costs associated with building and operating the LRR against the best estimate of the revenues to be generated by the traffic that would use the LRR. The Board used a present value analysis that takes into account the time value of money over the 20-year analysis period, netting the annual over-recovery or under-recovery of the revenue requirements of the LRR as of a common point in time. This analysis showed that the projected revenues from the transportation that the LRR would provide would not be sufficient over the 20-year period to allow the LRR to profitably serve the selected traffic. Therefore, the record did not show that the challenged rate levels were unreasonably high.

However, after WFA had designed the LRR, we conducted a rulemaking in which we changed our policy as to how certain recurring SAC issues would be addressed. One of those changes involves how the SARR's share of the total revenues from cross-over traffic should be estimated. In past SAC cases, while there was no one prescribed approach, revenues were generally apportioned based on the relative distance of each carrier's participation in the move. In Major Issues in Rail Rate Cases, STB Ex Parte 657 (Sub-No. 1) (STB served Oct. 30, 2006) pet. for review docketed, No. 06-1374, et al. (D.C. Cir. Nov. 13, 2006) ("Major Issues"), a revenue allocation method that takes into account the density of each segment of the move—the so-called Average Total Cost (ATC) procedure—was prescribed instead.[1]

WFA designed the LRR based on prior precedent, including the mileage-based revenue allocation known as the Modified Straight-Mileage Prorate (MSP). In the September '07 Decision, we recognized that the revenue allocation procedure could affect the optimal size and configuration of a SARR that a complainant would postulate, and that WFA could have been unfairly prejudiced by not knowing when it designed the LRR that the ATC revenue allocation procedure would be applied to its case. We therefore offered WFA the opportunity to redesign the LRR for the limited purpose of addressing the new revenue allocation procedure and to submit supplemental evidence based on that redesign.

DISCUSSION AND CONCLUSIONS

A party may seek to have the Board reconsider a decision by submitting a timely petition that presents new evidence or substantially changed circumstances that would materially affect the case or that demonstrates material error in the prior decision. 49 U.S.C. 722(c); 49 CFR 1115.3. In addition to various claims of technical errors (addressed in the appendix), both parties have sought reconsideration of the September '07 Decision.

[1] The ATC method develops the average total cost per segment of a move based on the defendant carrier's variable and fixed costs and the density and miles of each segment of the move. Revenues from cross-over traffic are allocated in proportion to the average total cost of the segments that are on- and off-SARR.

I. BNSF's Petition for Reconsideration

A. Permission for WFA to Modify Its SAC Presentation

BNSF objects to our allowing WFA an opportunity to revise the LRR's traffic group and submit supplemental evidence in order to take into account the effect of the adoption of ATC. BNSF argues that there was nothing unfair about applying ATC in this case, because WFA knew or should have known that there was uncertainty over the continued propriety of relying on the MSP methodology. BNSF cites to several prior SAC cases where the Board expressed concerns regarding the MSP methodology and left open the possibility of using an approach that reflects relative traffic densities.[2] BNSF notes that WFA used the MSP approach to take advantage of the very aspect of MSP that had been criticized—its failure to address the impact of densities.

BNSF is correct that we had no established approach to allocating revenue from cross-over traffic, and that WFA had constructive if not actual notice that the Board was seeking a new approach that would take into account economies of density. Nonetheless, it was not material error to provide WFA an opportunity to modify its SAC presentation in light of ATC. Using ATC rather than MSP changes the incentives for a shipper in the selection of the traffic group to be used.[3] Under such circumstances, fairness to Western Fuels persuaded us to permit it an opportunity to submit revised evidence to account for the use of ATC. While this is an unusual measure, it is not unprecedented. In AEPCO, the shipper was offered an opportunity to modify its SAC presentation.[4] Otter Tail[5] is another example where the complainant was allowed to submit supplemental evidence based on policy adjustments made by the Board.[6] Thus, while

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[2] See Duke Energy Corporation v. Norfolk Southern Railway Company, STB Docket No. 42069, slip op. at 22 (STB served Nov. 6, 2003) (Duke/NS); Duke Energy Corporation v. CSX Transportation, Inc., STB Docket No. 42070, slip op. at 20 (STB served Feb. 4, 2004) (Duke/CSXT); and Public Service Company of Colorado d/b/a Xcel Energy v. The Burlington Northern & Santa Fe Railway Company, STB Docket No. 42057, slip op. at 19 (STB served June 8, 2004) (Xcel).

[3] Compare PPL Montana, LLC v. The Burlington Northern and Santa Fe Railway Company, 6 S.T.B. 752 (2003) (where the Board concluded that adoption of the internal cross-subsidy test did not alter the incentives of the complainant there).

[4] See Arizona Electric Power Cooperative, Inc. v. The Burlington Northern and Santa Fe Railway Company and Union Pacific Railroad Company, STB Docket No. 42088 (STB served Nov. 19, 2003) (AEPCO).

[5] Otter Tail Power Company v. BNSF Railway Company, STB Docket No. 42071 (STB served Jan. 27, 2006) (Otter Tail).

[6] See Otter Tail Power Company v. The Burlington Northern and Santa Fe Railway Company, STB Docket No. 42071, slip op. at 1 (STB served Nov. 21, 2003) ("Allowing the parties here to address new issues raised by recent decisions is reasonable because it will provide the Board with more relevant evidence and allow it to apply recent precedent."). See also Otter Tail Power Company v. The Burlington Northern and Santa Fe Railway Company, STB Docket No. 42071 (STB served Apr. 14, 2004).

offering WFA an opportunity to modify its SAC presentation is unusual, we conclude it was appropriate given the equities here.

B. Refinement to ATC Methodology

In their supplemental evidence submitted in early 2007, the parties allocated the total revenues from the cross-over movements in accordance with the ATC procedure described in Major Issues. However, in applying ATC to this case in the September ’07 Decision, we found it necessary to refine the procedure slightly so as to avoid an illogical and unintended result.

Because the LRR traffic group included considerable traffic generating revenue either below or barely above variable cost, and because the off-SARR segments of the movements have lower densities (meaning those segments are to be assigned a higher prorate share of the revenues), the practical effect would have been to drive the revenue-to-variable cost (R/VC) percentages of the on-SARR movements below 100% (or, if the total revenue is already less than variable costs, even lower). Thus, the revenue allocation for the on-SARR portion of those movements would have been insufficient to cover the variable cost of handling traffic on the highest-density portion of the movement.

To avoid such an illogical result, instead of applying the ATC allocation procedure to total revenue, we applied the procedure to total revenue contribution (i.e., revenue in excess of variable cost). Accordingly, the revenue assigned to the on-SARR part of a cross-over movement would equal the variable cost to haul the traffic over the facilities replicated by the SARR plus the portion of additional available revenue contribution allocated in accordance with ATC.[7]

BNSF objects to this refinement, claiming that it reintroduces bias in favor of the heavy-density segments. To demonstrate its point, BNSF offers several examples. But its first example illustrates why the adjustment is necessary. BNSF posits a 100-mile movement that generates revenues of $100, but for which the variable cost of providing service is also $100. In such circumstances, there is not sufficient revenue to make *any* contribution to joint and common costs. If we were to prorate the total revenue as described in Major Issues, the share of revenue allocated to the heavy-density, on-SARR portion of the movement would be *less* than the operating costs for that segment. As explained in the September ’07 Decision, that would not be rational.

BNSF argues that the SARR would be more efficient than the incumbent or, alternatively, that the complainant could drop all low-rated traffic from the traffic group.[8] Neither argument is persuasive. The fairness of the revenue allocation method should not depend on either the complainant having to design a SARR that overcomes a revenue allocation

[7] For those movements in the traffic group where the total revenues do not exceed the total variable cost to haul the movement from origin to destination, we applied the same R/VC percentage to both the on-SARR and off-SARR portions of the movement.

[8] See BNSF Recon. at 17-19.

that does not take into account operating expenses, or that requires the complainant to drop the traffic that the incumbent railroad presumably finds worthwhile to handle at the current rate.

We note that BNSF's position here is inconsistent with the position it took in the Xcel case, where it advocated a revenue allocation approach called the Density Adjusted Revenue Allocation (DARA). The first step of DARA would have been to allocate revenue associated with directly attributable costs as measured by the Board's Uniform Railroad Costing System (URCS). The second step would have involved allocating contribution (total revenue less total URCS operating costs) in accordance with economies of density.[9] BNSF argued that its approach would have allowed complainants to take advantage of economies of density, but at the same time provide for an "even-handed" allocation of revenues. It explained that "[t]he even-handedness of DARA derives from the fact that *it assures that both on-SARR and off-SARR segments of cross-over movement will cover their attributable cost*, while giving both a comparable opportunity to cover their unattributable costs."[10] The refinement to ATC we adopted in this case is very similar. It provides an even-handed revenue allocation by ensuring that the revenue division for both on-SARR and off-SARR segments will cover variable (i.e. attributable) costs (calculated using URCS) before allocating any remaining revenue that would be available to cover fixed (i.e. unattributable) costs.

In sum, BNSF has failed to present new evidence or substantially changed circumstances that would materially affect the case, or shown material error in the September '07 Decision. 49 U.S.C. 722(c); 49 CFR 1115.3. Accordingly, its request for reconsideration is denied.

II. WFA's Petition for Reconsideration

A. Interim Use Of MSP

WFA argues that we should not have applied the ATC methodology in the September '07 Decision but instead should have applied MSP and permitted either party to then seek to have any resulting rate prescription modified or vacated based on the changed circumstance of the adoption of the new ATC methodology in Major Issues. WFA asserts that this procedure is supported by agency precedent. It cites to San Antonio, Tex. v. Burlington N., 359 I.C.C. 1, 2 (1978), and 361 I.C.C. 482, 491 (1979), where an interim rate was prescribed while the Board's predecessor, the Interstate Commerce Commission, was considering the adoption of new rate standards. The prescription was later modified (prospectively) based on the new rate standards.

The San Antonio decisions are not on point. Here, we held this proceeding in abeyance until the new rules were issued in Major Issues. Thus, the new methodology was already in place when we addressed this case. And once we had adopted a more accurate, cost-based revenue allocation methodology, it would not have been appropriate to apply a flawed or

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[9] Ultimately, the Board concluded that this second step was flawed in that it did not adequately account for economies of density---a flaw that we corrected with the ATC approach.

[10] See STB Docket No. 42057, BNSF Statement of Clarification at 13 (filed Jan. 20, 2004) (emphasis added).

discredited approach. Therefore, there was no need to apply an interim approach in this case or to delay using the ATC methodology.

B. Cost of Capital

To estimate what it would cost a SARR to raise capital, the longstanding practice in SAC cases is to apply the cost of capital for the rail industry as published annually by the Board, using an average of the figures starting with the year in which construction of a SARR would have begun through the most recently available year. We have recently revised our procedures for calculating the rail industry's cost of capital, replacing the single-stage discounted cash flow model (DCF) with a capital asset pricing model (CAPM).[11] The CAPM approach will be used to determine the 2006 cost of capital. In anticipation of a change in the procedure for determining the cost of capital, WFA argues that the newly adopted procedure should be used instead of the DCF to develop the cost-of-capital figure used in the SAC analysis here for pre-2006.

We will reserve judgment on whether to restate the rail industry's cost-of-capital figures using CAPM for pre-2006 years in the SAC analysis in this case until the parties have had the opportunity to fully argue and brief the merits of WFA's request. Accordingly, in their supplemental evidence, each party should submit two separate SAC calculations, one showing their cost-of-capital figures developed under the single-stage DCF approach and a second showing their cost-of-capital calculations under CAPM. In addition, each party should address the propriety of using restated figures in this case. We also invite parties to address the following question: if we do not restate the prior cost-of-capital findings, should we forecast the cost of equity in succeeding years by taking an average of past cost-of-equity figures, which has been our practice in prior SAC cases, or simply use the 2006 cost-of-equity figure, which will be based on the more current and precise CAPM.

C. Coal Traffic Forecast

To project the amount of coal traffic that would move on a SARR over the entire analysis period, we use forecasts published by the Department of Energy's Energy Information Agency (EIA). In this case, we relied on EIA's 2006 Annual Energy Outlook forecast. WFA argues that the Board departed from precedent by not applying EIA's most recent forecast (at the time 2007) to this proceeding.

As explained in the September '07 Decision at 28, EIA forecasts are continually shifting, and implementing changes to forecasts can be burdensome and necessitate reconfiguration of the network and operating model. Therefore, we decided that the better practice is to use revised forecasts only where there is a significant change between the EIA forecasts that are in the record and more recent publicly available EIA forecasts. We looked at the 2006 and 2007 forecasts and determined that the change was not significant. Continual updating, in an attempt to have the most recent data, can delay the issuance of a decision as the Board's staff has to integrate the

[11] See Methodology to be Employed in Determining the Railroad Industry's Cost of Capital, STB Ex Parte No. 664 (STB served Jan. 17, 2008).

new data into the SAC model. This is often an exercise in futility; here, for example, even if we used EIA's 2007 forecast, a newer 2008 forecast would be available before a final decision is issued in this case. Thus, so long as newer forecasts do not predict a markedly different trend than the earlier forecasts in the record, it is unnecessary to continually substitute more recent forecasts. The 2006 and 2007 are not markedly different, therefore, we will not substitute EIA's 2007 forecast in the SAC analysis. This is consistent with our intent that the record be reopened and the SAC analysis revised only in so far as appropriate to reflect and respond to the change in revenue allocation procedure for cross-over traffic.

D. Fuel Prices

In the September '07 Decision, we based our estimate of the LRR's cost of fuel for locomotives on the actual fuel cost that BNSF incurred at its Guernsey Yard, the location where most fueling on the LRR would occur. WFA argues that we should have used BNSF's system-average fuel cost instead—a figure that reflects not only the cost of locations other than Guernsey but also the results of BNSF's fuel hedging program.

We disagree. The best indicator of what fuel prices would be at the Guernsey location are the prices that BNSF actually pays at Guernsey, not what it pays at other locations. While BNSF may rely on fuel hedging to smooth out fuel price fluctuations, at any point in time the hedged price likely will be higher or lower than actual fuel prices. As the fuel price we use is indexed to estimate future fuel prices, it is important that we use the most accurate cost of fuel at the Guernsey location. We used the best evidence of record for this cost.

E. DCF Amortization

WFA complains that the September '07 Decision did not address the merits of its methodology of amortizing the LRR's debt over the estimated lives of the assets that would be acquired with debt. We did not address the merits of its new approach because WFA's assumption concerning debt amortization, which represented a departure from prior Board precedent, was "buried" in a workpaper on opening (without any supporting evidence or explanation to justify a departure) and the justification and the evidence in support of its assumption concerning debt amortization was not presented until rebuttal. See September '07 Decision at 135-36. WFA argues that because we addressed the merits of this issue in AEP Texas,[12] we should have addressed the merits of the issue here as well. However, AEP Texas is a different case with a separate evidentiary record. Our general rule is not to consider evidence not presented at the correct time.[13] We will adhere to this policy, as it is not fair to allow a party to wait to present its evidence until the opposing party no longer has an opportunity to respond. Whether or not we should have considered the merits of that evidence in AEP Texas is not an issue for this case.

[12] AEP Texas North Company v. BNSF Railway Company, STB Docket No. 41191 (Sub-No. 1) (STB served Sept. 10, 2007).

[13] See General Procedures for Presenting Evidence in Stand-Alone Cost Cases, 5 S.T.B. 441, 445-46 (2001).

F. Other Issues

WFA notes that several of the changes to SAC policy in Major Issues have been challenged and are currently undergoing judicial review by the United States Court of Appeals. WFA argues that, if the court rules in favor of the petitioning shippers on an issue and, on remand, we modify or vacate any of those changes, any such modified ruling should be applied to this proceeding. That request is premature and speculative. Should a change made in Major Issues be altered, the appropriate course in this proceeding can be considered at that time, based on the particular alteration and the reason for it.

Finally, WFA argues generally that the September '07 Decision is unfair because it results in a high R/VC percentage for the SAC rate. However, a high R/VC percentage standing alone does not demonstrate that the rate itself is unreasonably high. The SAC test provides an objective standard for measuring the amount of differential pricing that is permissible. A reasonable rate under the SAC test reflects the shipper's demand for transportation services while ensuring that the shipper is not being forced to subsidize other shippers by bearing the costs of facilities that it does not use or being forced to bear the costs of inefficiencies.

In sum, with the exception of the cost-of-capital issue (on which we defer consideration until the record has been fully developed) WFA has failed to present new evidence or substantially changed circumstances that would materially affect the case, or shown material error in the September '07 Decision. 49 U.S.C. 722(c); 49 CFR 1115.3. Accordingly, its request for reconsideration is denied.

III. Procedural Schedule

The parties have agreed to a procedural schedule that would not include time for additional discovery. Accordingly, WFA asks that supplemental evidence be limited to the use of material already in the administrative record, including what has already been provided in discovery, as well as any other public or commercial material that is equally available to each side without the use of discovery. BNSF objects to allowing the use of any additional public or commercial material. We agree with BNSF that the supplemental evidence should be limited to what is already in the administrative record, including the discovery record, except information the parties need to develop cost-of-capital calculations under CAPM. This is not an opportunity to submit a new case, but instead is an opportunity to allow WFA to modify its SAC presentation in light of the new revenue allocation methodology applied in the September '07 Decision.

It is ordered:

1. WFA's and BNSF's petitions for reconsideration are denied.

2. The following procedural schedule is set forth for this proceeding:

WFA's opening supplemental SAC evidence is due on April 29, 2008.

BNSF's reply supplemental SAC evidence is due on June 30, 2008.

WFA's rebuttal supplemental SAC evidence is due on July 28, 2008.

3. In filing supplemental evidence, the parties should take account of the technical corrections set forth in the Appendix to this decision.

4. This decision is effective on its service date.

By the Board, Chairman Nottingham, Vice Chairman Mulvey, and Commissioner Buttrey.

Anne K. Quinlan
Acting Secretary

APPENDIX
TECHNICAL MATTERS RAISED BY THE PARTIES

1. Future Interest Amortization

The parties point out that the SAC spreadsheets supporting the September '07 Decision incorrectly amortized the LRR's debt. In filing their supplemental evidence in this case, the parties should correct this error.

2. Operating Expense Annualization

WFA notes that 2004 is a leap year and asserts that we incorrectly computed expenses for 2005 by also treating 2005 as a leap year. In pro-rating the 2004 operating expenses to take into account the October 1st start date of the LRR, we multiplied full year 2004 expenses by the number of days left in the year (92) and divided that total by the total number of days in 2004 (366). Thus, the LRR's operating expenses for 2004 were 92/366th of a full year's expenses. To calculate the annual expense for 2005, we annualized the partial-year 2004 expenses, using the inverse of the proportion used previously (366/92). To account for the impact of changing tonnages on annual expenses, the full year 2004 expenses were adjusted by the ratio of 2005 tonnage to full year 2004 tonnage. Thus, WFA's point is without merit as, aside from the effects of inflation, the change in operating expense from year-to-year is dependent on annual changes in tonnage and not on the number of days in a year.

3. Cost of Capital

Although the September '07 Decision stated that the SAC analysis reflected the rail industry's 2005 cost of capital, that data was inadvertently omitted from the SAC spreadsheets. Consistent with the instructions on the filing of supplemental evidence in this decision, the parties' SAC spreadsheets should reflect 2005 cost-of-capital information.

4. Operating Expense Inflation

The September '07 Decision used the third quarter 2005 Global Insight forecast to escalate operating expenses but used the first quarter 2006 Global Insight forecast to escalate SARR revenues. The same index should have been used for both operating expenses and revenues. The parties should use the more recent 2006 Global Insight forecast when submitting their supplemental evidence.

5. Operating Expense Training & Startup Costs

When adding training and startup costs to operating expenses ("Operating SAC" tab of SAC spreadsheet), we inadvertently omitted expenses for the years 2006 through 2024 from the operating expenses that are carried forward to columns BF through BX in the spreadsheet. As the parties acknowledge, this omission is immaterial as it affected only the results summarized in the "Tables" tab of the SAC spreadsheet but not the ultimate results of the SAC analysis.

6. SARR Revenues

The September '07 Decision contained certain errors in the revenue calculations: (1) not using actual tariff rates for the issue traffic for 2006 and 2007; (2) not applying fuel surcharges to the issue traffic in 2004 and 2006 through 2024; (3) applying the RCAF-U for 2008 through 2024 rather than BNSF's forecasting procedure of RCAF-U without fuel, plus a fuel surcharge; (4) using incorrect 2005 revenues for Wood River; (5) using incorrect revenue for all periods for the Daniel traffic; (6) using an incorrect 2005 rate for traffic moving to Big Stone, Corette, Daniel, Fort Martin, Holcomb, Kingston, Leland Olds, Nelson, and Sammis; (7) using incorrect rates for all periods for traffic to Gibbons Creek and Pawnee; and (8) using an incorrect 2006 rate for traffic to Springerville. The parties should correct these errors in their supplemental evidence.

7. Roadbed Preparation

i. Track Miles

The parties agree that we overstated the track miles used for grading because we increased the passing siding/interchange track miles. The parties should use WFA's track miles for grading in their supplemental evidence.

ii. Roadbed Width

The September '07 Decision accepted a roadbed width of 24 feet but used BNSF's roadbed width of 28 feet in calculating grading costs. The parties' supplemental evidence should reflect a width of 24 feet in the grading calculations.

8. Track Construction

i. Rail Transportation

The September '07 Decision used the mileage figure from BNSF's reply to develop transportation costs between Pueblo and Bridger Jct. However, in its first supplemental filing BNSF accepted the mileage in WFA's rebuttal evidence as the correct mileage. In their upcoming supplemental filings, the parties should use the agreed-upon mileage figure.

ii. Unit Cost

The parties agree that the rail costs in the record are 2004 costs. The September '07 Decision inadvertently indexed the costs as if they were 2003 costs. In their supplemental filings, the rail costs are at 2004 levels and need not be indexed further for that year.

9. Yard Fencing Cost

The parties point out that the SAC spreadsheets contain a link that references an incorrect cell for the fencing unit cost. The parties should make appropriate corrections to their spreadsheets.

10. Independently Controlled Switches

The parties point out that the SAC spreadsheets understated the investment for independently controlled switches. The spreadsheet error should be corrected in the parties' supplemental evidence.

11. Yard Lighting

We inadvertently excluded the square foot quantities for the yards at Guernsey, South Logan and Donkey Creek in the yard lighting cost formula and therefore excluded the lighting investment for these yards. The parties should apply the yard acreage determined in the <u>September '07 Decision</u> to the yard lighting cost formula to correct this error.

12. Building Site Development

We inadvertently excluded the square footage used to calculate drainage costs and therefore excluded this cost from building site development investment. The parties should apply the square footage determined in the <u>September '07 Decision</u> to calculate drainage costs and correct this error.

13. Overpasses

The <u>September '07 Decision</u> accepted BNSF's bridge lengths but the SAC spreadsheets do not reflect BNSF's lengths. BNSF's bridge lengths should be used in the parties' supplemental evidence.

14. Train Crew Personnel

In the <u>September '07 Decision</u>, we accepted WFA's count of switch crew personnel (6) and work train personnel (0). The spreadsheet inadvertently included BNSF's values for switch crews (11) and work train crews (2). To correct this error, WFA's numbers for switch crews and work train crews should be used in the parties' supplemental evidence.

WFA asserts that there is a technical error in road train personnel because we accepted BNSF's road train crew personnel but used a different number than the one submitted by BNSF. This is not an error. The <u>September '07 Decision</u> accepted BNSF's recrewing methodology, not its number of road crew members. The decision used WFA's train counts and BNSF's recrewing methodology to reach the road crew requirement.

15. Training and Recruiting Expense

Training and recruitment expense should be reduced due to the overstatement of train crew personnel discussed above. In their supplemental evidence, the parties should use the correct number of train crew personnel in developing training and recruiting expense.

16. Maintenance-Of-Way

i. Small Tool Additive

In the September ’07 Decision we accepted BNSF’s small tool additive but inadvertently used WFA’s evidence. The parties should apply BNSF’s small tool additive in their supplemental evidence.

ii. Equipment Maintenance

In the September ’07 Decision, we accepted BNSF’s maintenance-of-way equipment expense, which included a maintenance of equipment component. We then added WFA’s separate maintenance component to BNSF’s equipment expense, resulting in a double count of the maintenance component. The parties should remove WFA’s separate maintenance component from this calculation.

iii. Building Maintenance

We erred by not recalculating building maintenance based on the revised building construction cost. The parties should correct the building maintenance calculation by recalculating it based on the revised building construction cost.