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SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. 42051

WISCONSIN POWER AND LIGHT COMPANY
v.
UNION PACIFIC RAILROAD COMPANY

Decided: May 9, 2002

Upon evaluating the petitions for reconsideration filed by the Wisconsin Power and Light Company (WPL) and the Union Pacific Railroad Company (UP) in this proceeding, the petition filed by WPL is denied and the petition filed by UP is granted in part and denied in part.

BACKGROUND

By complaint filed December 30, 1999, WPL challenged the reasonableness of the common carriage rate charged by UP for trainload movements of coal from eleven mines located in the Powder River Basin (PRB) of Wyoming to WPL's Edgewater electricity generating facility at Sheboygan, WI. In our decision served September 13, 2001 (2001 Decision), we found that UP has market dominance over the transportation at issue and that the challenged rate was unreasonably high. For transportation from the mines from which WPL had actually procured coal, we prescribed maximum rates and ordered reparations.

On October 17, 2001, both WPL and UP filed petitions for reconsideration of the 2001 Decision. WPL objects to our rejection of its computation of the roadway ownership component of UP's variable costs of providing the transportation at issue. WPL contends that its adjustment to UP's system-average roadway ownership costs produced by the Uniform Rail Costing System (URCS) was consistent with precedent, but that, even if there were a flaw, we should have corrected that flaw rather than disregarded its entire computation. UP argues that the procedure we used in the 2001 Decision to calculate the maintenance-of-way (MOW) component of variable costs was contrary to the best evidence of record. UP also objects to our assumption in the stand-alone cost (SAC) analysis that the challenged rate would remain constant for the entire 20-year SAC analysis period. We address each of these issues below.

DISCUSSION

I. VARIABLE COST ISSUES

The determination of the variable cost associated with UP's service to WPL is a critical threshold part of the assessment of whether a defendant carrier has market dominance over the transportation at issue. See 49 U.S.C. 10707(d)(1)(A) (a carrier does not possess market dominance if the rate charged results in a revenue-to-variable cost (r/vc) percentage that is less than 180%). It is also critical to determining the floor for any rate prescription when we find the existing rate to be unreasonably high. See West Texas Util. Co. v. Burlington N.R.R., 1 S.T.B. 638, 677 (1996) ("the 180% r/vc level constitutes the floor below which we may not set a maximum reasonable rate"). A carrier's variable costs are determined "by using [the] carrier's unadjusted costs, calculated using the Uniform Rail Costing System cost finding methodology . . . with adjustments specified by the Board." 49 U.S.C. 10707(d)(1)(B). The party advocating a particular adjustment to the system-average URCS costs has the burden of establishing that its proposed adjustment provides a more accurate estimate of the variable costs attributable to a particular service. Id.

A. Roadway Ownership Costs

To develop the road ownership component of the variable costs assignable to WPL's traffic, the parties adjusted UP's 1999 URCS system-average return on investment (ROI) and road property depreciation (RPD) unit costs by a ratio of the investment per gross ton-mile (GTM) associated with the line segments traversed by WPL's traffic to UP's system-average investment per GTM.[1] However, we found that neither party had properly accounted for UP costs not specifically assigned to any line segment.[2] 2001 Decision at 53-54. We found other errors in the parties' adjustments to system-average costs as well. But as there was insufficient data in the record to correct the parties' evidence relative to unassigned costs, we saw no need to address those other errors. 2001 Decision, at 54 n.107. Having rejected both parties' adjustments to system-average ROI and RPD unit costs, we used the URCS system-average costs, which included

[1] WPL's proposed adjustment would have decreased the ROI and RPD unit costs by 48.5% and 72.0%, respectively, while UP's proposed adjustment would have increased the ROI and RPD unit costs by 18.0% and 24.3%, respectively. As discussed in the appendix to this decision, the parties' widely disparate adjustment factors resulted from differences in how they valued the investments in individual line segments and in what investments the parties included or excluded from the numerator or denominator of the adjustment ratio.

[2] UP does not assign all its investment costs to specific sections of its rail system, but assigns certain investment costs to non-line-specific general accounts.

unassigned costs,[3] as the only reliable source for computing ROI and RPD variable costs. Id. at 54.

WPL argues that we departed from established precedent by finding that unassigned costs should be included in the development of roadway ownership costs. WPL further argues that we should not have rejected its entire ROI and RPD cost adjustments for a flaw that constituted less than 5% of UP's total roadway investment.

In deciding disputed cost issues, we attempt to arrive at the best cost estimate possible. Sometimes the best estimate is provided by one of the parties; other times both parties' evidence is flawed but the flaws can be corrected; and sometimes both parties' estimates are flawed and not susceptible to restatement. When, as here, neither party's adjustment to system-average variable costs is acceptable and cannot be restated, we use the unadjusted URCS system-average variable costs.

On this record, we found that the unadjusted URCS system-average unit costs for ROI and RPD were preferable because they included the unassigned costs. This is not inconsistent with our decision in FMC,[4] as WPL contends. In FMC, we found that the shipper's adjustment of system-average roadway investment costs to exclude unassigned investment costs was appropriate because there was no evidence to indicate that any of the unassigned costs were attributable to serving the issue traffic.[5] Here, by contrast, UP demonstrated that portions of the unassigned costs are attributable to the service provided to WPL.[6] Thus, in both FMC and this case, our decision on whether unassigned costs should be included or excluded from the variable cost calculation was based on the evidentiary record.

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[3] In its opening evidence, UP used unadjusted URCS system-average costs. On reply, UP adopted WPL's methodology for adjusting URCS system-average unit costs, albeit with different results.

[4] FMC Wyoming Corp., et al. v. Union Pac. R.R., STB Docket No. 42022 (STB served May 12, 2000).

[5] FMC at 79 n.119. WPL incorrectly reads FMC as requiring that investment be assigned to a specific line segment before the railroad is allowed to earn a return on, and recover the cost of, the investment. This illogical interpretation would preclude a carrier from recovering its investment in the assets that are never assigned to a particular line segment even though the railroad would be incapable of providing service without the investment.

[6] For example, WPL does not contest UP's statement that it dispatches WPL trains from UP's Fort Worth, TX dispatching facility and the investment in that facility is not assigned to any particular section of UP's rail system.

WPL suggests that, because ROI and RPD costs are a significant part of any variable cost determination and because unassigned ROI and RPD costs are a minor part of overall investment costs, we could and should have corrected its flawed calculations. When possible and practical, we restate evidence to correct for errors. Here, however, the parties' adjustments to URCS system-average ROI and RPD costs involved a complex, multi-step process[7] and it was simply not possible to do so on the record before us. Because this is a significant issue in the variable cost determination, and because evidentiary presentations in future cases may benefit from a more in-depth critique of the parties' evidence on this issue, we have appended to this decision an analysis critiquing the evidence and explaining why certain of the procedures used to adjust system-average costs were inappropriate and why a restatement of the evidence was not possible.

B. Maintenance-Of-Way Costs

The parties used different procedures to develop the MOW component of variable costs. WPL used the "speed factored gross ton" (SFGT) methodology, while UP relied on the "weighted system-average cost" (WSAC) methodology. See 2001 Decision at 50-53. As in prior rate complaint cases, we relied upon the SFGT methodology to estimate variable MOW costs. UP argues that, in applying the SFGT model, variable MOW costs should have been developed on a segment-by-segment basis. UP further contends that the "R-factor"[8] used in this case incorrectly failed to include the MOW variable costs associated with the PRB line that is jointly owned by UP and Burlington Northern and Santa Fe Railway (the Joint Line).

WPL responds that UP's segment-by-segment approach is simply another way of allocating common MOW costs among the different traffic groups using the line and has not been shown to be any more accurate than using an overall average developed from the aggregation of MOW costs for the entire line—the approach used in prior SAC cases. WPL further argues that Joint Line MOW costs were appropriately excluded from the R-factor computation because MOW costs for the Joint Line were not determined using the SFGT method.[9]

In its case-in-chief, WPL used the SFGT methodology to determine MOW variable costs for various segments of the line over which its traffic moves, aggregated those costs, and divided those aggregated costs by the GTMs for the entire line to develop an overall average MOW variable cost per GTM. The variable MOW expenses attributable to WPL's traffic were then calculated by

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[7] 2001 Decision at 54 n.107.

[8] The R-factor is used to adjust the maintenance costs computed by the SFGT model to reflect current maintenance practices, price levels, and overhead expenses.

[9] In its opening evidence, WPL used the SFGT methodology to develop MOW variable costs but failed to develop an estimate for the Joint Line. On rebuttal, WPL developed a separate, non-SFGT estimate of the MOW costs for the Joint Line operations.

multiplying the total GTMs for WPL's coal traffic by the average MOW variable cost per GTM. As UP correctly points out, however, WPL's aggregate approach can assign certain non-WPL traffic a share of common MOW costs associated with line segments over which the non-WPL traffic does not move.[10] Developing MOW variable costs for individual segments ensures that these costs are apportioned only to the traffic that actually traverses a particular line segment. While WPL is correct that the aggregate approach has been used in prior cases, that does not preclude us from using a more exact allocation procedure when it is presented.

Because the 2001 Decision (at 52) used the SFGT model to develop MOW variable costs for all the line segments over which WPL's traffic moves, we intended to include the MOW variable costs associated with all segments of UP's line over which WPL's traffic moves in developing the R-factor. We accepted WPL's R-factor because we found UP's calculation flawed and we incorrectly assumed that Joint Line costs were included in WPL's evidence. But, as UP has correctly pointed out in its petition, WPL excluded Joint Line costs in calculating its R-factor.[11]

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[10] A simple example can demonstrate how the aggregate approach can inappropriately assign costs. For example, assume 10 tons of traffic A move 50 miles from point O to point X (500 GTMs of traffic) and then move another 50 miles from point X to point D (another 500 GTMs). Assume also that 10 tons of traffic B move from point O to point X (a third 500 GTMs). Finally, assume that the MOW costs are $100 for OX and $60 for XD. Under the established principle that traffic B should pay its fair share of maintenance costs for those facilities it uses, traffic B, which accounts for one-half of the GTMs moving over OX, should be responsible for one-half of the MOW costs of OX ($50). But under the aggregate approach used by WPL, traffic B because it accounts for one-third of the GTMs moving over OD would be assigned one-third of the MOW costs from point O to point D ($53.33)—$3.33 more than traffic B's fair share of the MOW costs for the line it uses.

[11] WPL acknowledged that its calculation of the R-factor in its opening evidence incorrectly excluded Joint Line costs. WPL Reb. V.S. Prescott at 12. On rebuttal, in response to UP's reply argument that the variable MOW costs for the Joint Line should be included in the calculation of the R-factor, WPL developed separate variable MOW costs for the Joint Line operations. However, the introduction of a new procedure for estimating variable MOW costs on rebuttal is inappropriate. See General Procedures for Presenting Evidence in Stand-Alone Cost Rate Cases, STB Ex Parte No. 347 (Sub-No. 3) (STB served Mar. 12, 2001) (SAC Procedures), slip op. at 5. Therefore, we used the SFGT model to develop variable MOW costs for the entire route, including the Joint Line operations. Because we restated variable MOW costs for the Joint Line operations using the SFGT methodology, variable MOW costs for the Joint Line operations must be included in the computation of the R-factor.

Accordingly, we have recomputed the R-factor to include the MOW variable costs associated with the Joint Line.[12]

Using the segment-by-segment approach introduced by UP and correcting for our error in the computation of the R-factor results in the revised MOW expense and total GTM expense per car reflected in **Revised Table A-7** below. (This table should be substituted for **Table A-7** in the 2001 Decision at 50.)

Revised Table A-7
Revised GTM Expense Per Car

	Black Thunder (1st Qtr)	**Antelope (1st Qtr)**	**Black Thunder (2nd Qtr)**	**Antelope (2nd Qtr)**
Maintenance-of-Way Exp.	$75.89	$74.33	$76.85	$74.78
Return on Road Property Invest.	163.08	159.72	164.24	159.83
Road Property Depreciation	68.50	67.08	69.36	67.49
Locomotive Fuel Expense	73.36	71.86	81.12	78.94
Locomotive Maintenance Exp.	29.35	28.75	29.72	28.92
Other GTM Expense	40.13	39.31	40.64	39.55
TOTAL	**$450.31**	**$441.04**	**$461.93**	**$449.53**

II. STAND-ALONE COST ISSUE

The SAC analysis in this case estimated the costs that would be incurred to build and operate a hypothetical rail system and the revenues that the hypothetical rail carrier could be expected to earn over a 20-year period. UP argues that we should have escalated the rate applicable to WPL's traffic over the 20-year SAC analysis period. UP points out that the rates of all other shippers in the traffic group were escalated and that in FMC the complaining shipper's

[12] We note that UP incorrectly included some fixed costs (such as rent) and excluded some variable costs in developing the R-factor. Our calculation of the R-factor includes all the variable MOW costs associated with the Joint Line operations and excludes fixed costs.

rate was escalated over time. UP argues that the failure to similarly inflate WPL's rate restricts UP's pricing freedom under the SAC constraint.[13]

Our treatment of WPL's tariff rate is consistent with the evidence submitted in this proceeding and with the precedent in prior cases, as we based our decision on the record evidence. In FMC, the parties presented evidence indicating how the challenged rate could be expected to escalate. Here, neither party's SAC analysis assumed that the challenged rate would increase over time; rather, both parties' evidence held the challenged rate constant over the entire 20-year SAC period. While we escalated the rates of non-WPL traffic, we did so because the record contained information as to how those non-WPL rates could be expected to escalate over time. Because there was no escalation evidence submitted by either party relative to the challenged rate, we simply relied on the evidentiary record in assuming a constant rate for WPL over the 20-year analysis period.[14]

CONCLUSION

For the reasons stated above, we find that the arguments relating to the computation of variable costs in WPL's petition for reconsideration are without merit, as is the stand-alone cost issue raised by UP. However, we grant UP's petition for reconsideration with respect to the development of MOW variable costs. As a result, we have revised the GTM expense per car (see **Revised Table A-7**, supra). This in turn requires revision of the total variable cost calculations for the Antelope and Black Thunder movements, as well as, the reparations and rate prescription findings in the 2001 Decision. Revised variable costs, rate prescriptions, and reparations are shown in **Revised Tables** below.

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[13] UP contends that at some time in the next decade, the SAC rate will likely exceed the 180% r/vc statutory rate floor thereby allowing UP to price at the SAC level. UP should be mindful, however, that our 2001 Decision did not resolve all the disputed SAC issues. Rather, for many of the issues we used the costs figures presented by UP because, regardless of which parties' estimate we accepted, the SAC rate would be less than 180% of variable costs. There is no reason to resolve those issues now because, as UP acknowledges, any SAC rate would not exceed the statutory 180% rate floor for some time. But if and when the SAC rate, set forth in the **Revised Tables** in this decision, exceeds the 180% rate floor, either party may ask us to review those SAC issues left unresolved in the 2001 Decision and provide any updated information that may be appropriate at that time.

[14] As WPL notes, the UP tariff applicable to WPL's traffic contains no escalation factor but tariffs governing the movement of coal in other pending rate complaints have provisions addressing rate escalation. WPL Reply to UP Petition for Reconsideration at 2.

Revised Table A-3
Revised Variable Cost Per Ton
Black Thunder Mine to Edgewater Power Plant
(1st Quarter 2000)

ITEM	WPL	UP	STB
1. Carload O/T Clerical Expense	$ 26.45	$ 26.51	$ 26.35
2. Carload Handling - Other Expense	0.96	4.52	0.95
3. Switching Expense - Yard Locomotives	1.09	1.89	1.54
4. Switching Expense - Road Locomotives (Non-Yard)	1.00	3.07	2.76
5. Switching Expense - Road Locomotives (Yard)	0.54	0.58	0.55
6. Gross Ton-Mile Expense	238.21	532.75	450.31
7. Loop Track Expense - Origin Mine	0.26	0.40	0.36
8. Train-Mile Expense - Other Than Crew	17.38	17.39	17.37
9. Train-Mile Expense - T & E Crew	129.45	161.04	161.01
10. Helper Service Expense - Excluding Crew (N/A Here)	---	---	---
11. Helper Service Expense - Crew Expense (N/A Here)	---	---	---
12. Locomotive Unit-Mile Expense	130.40	104.12	89.67
13. Locomotive Ownership Expense	84.47	104.54	90.18
14. Private Car Rental & User Responsibility	4.94	4.95	4.94
15. Car Operating Expense (RR-Owned Only) (N/A Here)	---	---	---
16. Car Ownership Exp. (RR-Owned Only) (N/A Here)	---	---	---
17. Caboose & EOTD Ownership Expense	0.10	0.11	0.09
18. Loss & Damage Expense	0.03	0.39	0.03
19. Make-Whole Adj. for Single Car (N/A Here)	---	---	---
20. Total Variable Cost/Per Carload	635.27	962.27	846.10
21. Variable Cost Per Ton	5.73	8.68	7.64
22. RFA-URCS Linking Factor	0.9934	0.9934	0.9934
23. Linked Variable Cost Per Ton	5.70	8.63	7.59
24. Jurisdictional Threshold (L. 23 x 180%)	10.26	15.53	13.65
25. Rate Per Ton	14.66	14.66	14.66
26. R/VC Percentage (L.25/L.23)	257.19%	169.87%	193.25%

Note: Lines 6, 20, 21, 23, 24, and 26 of “STB” column contain revised figures.

Revised Table A-4
Revised Variable Cost Per Ton
Antelope Mine to Edgewater Power Plant
(1st Quarter 2000)

ITEM	WPL	UP	STB
1. Carload O/T Clerical Expense	$ 26.45	$ 26.51	$ 26.35
2. Carload Handling - Other Expense	0.96	4.52	0.95
3. Switching Expense - Yard Locomotives	1.09	1.89	1.52
4. Switching Expense - Road Locomotives (Non-Yard)	1.00	2.93	2.64
5. Switching Expense - Road Locomotives (Yard)	0.54	0.58	0.55
6. Gross Ton-Mile Expense	233.30	521.90	441.04
7. Loop Track Expense - Origin Mine	0.31	0.44	0.40
8. Train-Mile Expense - Other Than Crew	16.92	16.92	16.92
9. Train-Mile Expense - T & E Crew	125.25	147.20	147.16
10. Helper Service Expense - Excluding Crew (N/A Here)	---	---	---
11. Helper Service Expense - Crew Expense (N/A Here)	---	---	---
12. Locomotive Unit-Mile Expense	119.80	95.74	82.37
13. Locomotive Ownership Expense	77.85	107.27	83.12
14. Private Car Rental & User Responsibility	4.83	4.85	4.85
15. Car Operating Expense (RR Owned Only) (N/A Here)	---	---	---
16. Car Ownership Exp. (RR-Owned Only) (N/A Here)	---	---	---
17. Caboose & EOTD Ownership Expense	0.09	0.12	0.09
18. Loss & Damage Expense	0.03	0.39	0.03
19. Make-Whole Adj. for Single Car (N/A Here)	---	---	---
20. Total Variable Cost/Per Carload	608.42	931.27	807.99
21. Variable Cost Per Ton	5.50	8.41	7.30
22. RFA-URCS Linking Factor	0.9934	0.9934	0.9934
23. Linked Variable Cost Per Ton	5.46	8.36	7.25
24. Jurisdictional Threshold (L. 23 x 180%)	9.83	15.04	13.05
25. Rate Per Ton	14.66	14.66	14.66
26. R/VC Percentage (L.25/L.23)	268.50%	175.36%	202.19%

Note: Lines 6, 20, 21, 23, 24, and 26 of “STB” column contain revised figures.

Revised Table A-5
Revised Variable Cost Per Ton
Black Thunder Mine to Edgewater Power Plant
(2nd Quarter 2000)

ITEM	WPL	UP	STB
1. Carload O/T Clerical Expense	$ 26.55	$ 26.63	$ 26.49
2. Carload Handling - Other Expense	0.96	4.55	0.95
3. Switching Expense - Yard Locomotives	1.10	1.90	1.54
4. Switching Expense - Road Locomotives (Non-Yard)	1.04	3.12	2.87
5. Switching Expense - Road Locomotives (Yard)	0.55	0.59	0.56
6. Gross Ton-Mile Expense	240.49	541.03	461.93
7. Loop Track Expense - Origin Mine	0.26	0.41	0.38
8. Train-Mile Expense - Other Than Crew	17.36	17.36	17.38
9. Train-Mile Expense - T & E Crew	128.78	160.21	160.16
10. Helper Service Exp.- Excluding Crew (N/A Here)	---	---	---
11. Helper Service Expense - Crew Expense (N/A Here)	---	---	---
12. Locomotive Unit-Mile Expense	137.81	105.91	93.87
13. Locomotive Ownership Expense	81.61	103.55	87.27
14. Private Car Rental & User Responsibility	4.95	4.97	4.97
15. Car Operating Exp. (RR-Owned Only) (N/A Here)	---	---	---
16. Car Ownership Exp. (RR Owned Only) (N/A Here)	---	---	---
17. Caboose & EOTD Ownership Expense	0.09	0.11	0.09
18. Loss & Damage Expense	0.03	0.39	0.03
19. Make-Whole Adj. for Single Car (N/A Here)	---	---	---
20. Total Variable Cost/Per Carload	641.57	970.72	858.50
21. Variable Cost Per Ton	5.73	8.67	7.67
22. RFA-URCS Linking Factor	0.9934	0.9934	0.9934
23. Linked Variable Cost Per Ton	5.70	8.62	7.62
24. Jurisdictional Threshold (L. 23 x 180%)	10.26	15.51	13.72
25. Rate Per Ton	14.66	14.66	14.66
26. R/VC Percentage (L.25/L.23)	257.19%	170.07%	192.35%

Note: Lines 6, 20, 21, 23, 24, and 26 of "STB" column contain revised figures.

Revised Table A-6
Revised Variable Cost Per Ton
Antelope Mine to Edgewater Power Plant
(2nd Quarter 2000)

ITEM	WPL	UP	STB
1. Carload O/T Clerical Expense	$ 26.55	$ 26.63	$ 26.49
2. Carload Handling - Other Expense	0.96	4.55	0.95
3. Switching Expense - Yard Locomotives	1.09	1.89	1.53
4. Switching Expense - Road Locomotives (Non-Yard)	1.02	2.98	2.74
5. Switching Expense - Road Locomotives (Yard)	0.55	0.59	0.56
6. Gross Ton-Mile Expense	234.01	526.63	449.53
7. Loop Track Expense - Origin Mine	0.31	0.47	0.42
8. Train-Mile Expense - Other Than Crew	16.92	16.92	16.93
9. Train-Mile Expense - T & E Crew	124.71	146.56	146.53
10. Helper Service Exp.- Excluding Crew (N/A Here)	---	---	---
11. Helper Service Exp. - Crew Expense (N/A Here)	---	----	---
12. Locomotive Unit-Mile Expense	126.75	97.45	86.32
13. Locomotive Ownership Expense	74.23	106.34	79.37
14. Private Car Rental & User Responsibility	4.85	4.87	4.87
15. Car Operating Exp. (RR-Owned Only) (N/A Here)	---	---	---
16. Car Ownership Exp. (RR-Owned Only) (N/A Here)	---	---	---
17. Caboose & EOTD Ownership Expense	0.09	0.12	0.09
18. Loss & Damage Expense	0.03	0.39	0.03
19. Make-Whole Adj. for Single Car (N/A Here)	---	---	---
20. Total Variable Cost/Per Carload	612.05	936.38	816.37
21. Variable Cost Per Ton	5.52	8.45	7.37
22. RFA-URCS Linking Factor	0.9934	0.9934	0.9934
23. Linked Variable Cost Per Ton	5.49	8.40	7.32
24. Jurisdictional Threshold (L. 23 x 180%)	9.88	15.11	13.17
25. Rate Per Ton	14.66	14.66	14.66
26. R/VC Percentage (L.25/L.23)	267.03%	174.52%	200.29%

Note: Lines 6, 20, 21, 23, 24, and 26 of "STB" column contain revised figures.

Revised Table 3
Revised Rate Prescription
Black Thunder Mine

Year	Tariff Rate	SAC Rate Reduction	SAC Rate	180% of Variable Cost	STB Prescribed Rate
2000 Q1	$14.66	14.4%	$12.55	$13.65	$13.65
2000 Q2	14.66	14.4%	12.55	$13.72	$13.72
2000 Q3/Q4	14.66	14.4%	12.55	**Maximum reasonable rate is the higher of the SAC rate or the rate floor.** Rate floor to be determined by the parties once variable costs for each year are known.	
2001	14.66	25.3%	10.95		
2002	14.66	25.4%	10.94		
2003	14.66	25.1%	10.99		
2004	14.66	24.6%	11.05		
2005	14.66	25.1%	10.98		
2006	14.66	24.8%	11.02		
2007	14.66	24.8%	11.03		
2008	14.66	24.7%	11.04		
2009	14.66	24.7%	11.04		
2010	14.66	24.5%	11.07		
2011	14.66	24.4%	11.08		
2012	14.66	23.5%	11.21		
2013	14.66	23.4%	11.23		
2014	14.66	23.2%	11.26		
2015	14.66	23.0%	11.29		
2016	14.66	22.8%	11.31		
2017	14.66	22.7%	11.34		
2018	14.66	22.5%	11.36		
2019	14.66	22.3%	11.39		

Revised Table 4
Revised Rate Prescription
Antelope Mine

Year	Tariff Rate	SAC Rate Reduction	SAC Rate	180% of Variable Cost	STB Prescribed Rate
2000 Q1	$14.66	14.4%	$12.55	$13.05	$13.05
2000 Q2	14.66	14.4%	12.55	$13.17	$13.17
2000 Q3/Q4	14.66	14.4%	12.55	**Maximum reasonable rate is the higher of the SAC rate or the rate floor.** Rate floor to be determined by the parties once variable costs for each year are known.	
2001	14.66	25.3%	10.95		
2002	14.66	25.4%	10.94		
2003	14.66	25.1%	10.99		
2004	14.66	24.6%	11.05		
2005	14.66	25.1%	10.98		
2006	14.66	24.8%	11.02		
2007	14.66	24.8%	11.03		
2008	14.66	24.7%	11.04		
2009	14.66	24.7%	11.04		
2010	14.66	24.5%	11.07		
2011	14.66	24.4%	11.08		
2012	14.66	23.5%	11.21		
2013	14.66	23.4%	11.23		
2014	14.66	23.2%	11.26		
2015	14.66	23.0%	11.29		
2016	14.66	22.8%	11.31		
2017	14.66	22.7%	11.34		
2018	14.66	22.5%	11.36		
2019	14.66	22.3%	11.39		

Revised Table 5
Revised Reparations

	Origin	Tons	Tariff Rate (per ton)	Amount Paid	Maximum Rate	Reparations
1Q2000	Antelope	25,462	$14.66	$373,276	$13.05	$40,997
	Black Thunder	493,626	14.66	7,236,553	13.65	$498,558
2Q2000	Antelope	25,595	14.66	375,224	13.17	$38,138
	Black Thunder	500,694	14.66	7,340,172	13.72	$470,650
Totals		1,045,377		$15,325,225		$1,048,343

It is ordered:

1. Defendant shall, within 60 days, establish and maintain rates for movements of the issue traffic from Black Thunder and Antelope mines that do not exceed the revised maximum reasonable rates prescribed by this decision.

2. The reparations due WPL are adjusted to reflect the revised rates set forth in **Revised Table 5**.

3. This decision is effective June 13, 2002.

By the Board, Chairman Morgan and Vice Chairman Burkes.

Vernon A. Williams
Secretary

APPENDIX
Roadway Ownership Variable Cost Evidence

Roadway ownership variable costs consist of two components—the return on investment and road property depreciation expenses. The parties used a multi-step process to adjust URCS system-average ROI and RPD unit costs in an attempt to more accurately reflect the roadway ownership variable costs associated with the rail service provided to WPL. In their final evidentiary presentations, both parties used ratios (with numerators reflecting the investment per gross ton-mile associated with the line segments traversed by WPL's traffic and denominators reflecting URCS system-average investment per GTM) to adjust the URCS system-average ROI and RPD unit costs.

While WPL's method for developing the numerators of the adjustment ratios through a multi-step process has been used in prior cases, this is the first case where a defendant railroad challenged significant aspects of the shipper's methodology. After reviewing the record, we concluded that certain of UP's criticisms of WPL's multi-step process were valid, but that some of UP's adjustments to WPL's evidence also had significant flaws. As we discuss, the data needed to correct each party's flawed evidence on certain of the steps were not available and, therefore, we were not able to restate the evidence.

There are two main areas of dispute. One involves the method for developing the total investment for individual line segments, and the second involves the procedure for apportioning those investment costs to WPL's traffic.

I. Individual Line Segment Investment

A. CNW/WRPI Acquisition

In 1995, UP acquired the assets of the Chicago and North Western Transportation Company/Western Rail Properties, Inc. (CNW/WRPI) rail system. Some of these assets are now used to provide service to WPL. In developing roadway ownership costs, WPL initially excluded the portion of the investment costs associated with the purchase of CNW/WRPI that exceeded the pre-acquisition book value of the CNW/WRPI assets. Because we follow generally accepted accounting principles (GAAP) and use purchase accounting in valuing assets,[15] UP estimated the acquisition cost associated with those former CNW/WRPI line segments now used to serve WPL. On rebuttal, WPL abandoned its original position and introduced its own estimate of the acquisition cost associated with the CNW/WRPI assets. The difference in the parties' estimates

[15] See Western Coal Traffic League v. Union Pac. R.R., Finance Docket No. 33726 (STB served May 12, 2000).

of the CNW/WRPI acquisition costs are due to the fact that, with the exception of land values, UP's records do not apportion the 1995 purchase price by individual CNW/WRPI line segments.

In this case, UP developed an acquisition value for the CNW/WRPI line segments that are used to provide service to WPL by inflating the pre-acquisition book value of the assets on the line segments traversed by WPL's traffic by the ratio of the purchase price paid to acquire CNW/WRPI to the pre-acquisition book value of all of CNW/WRPI assets. However, a premium above book value is appropriate only for the CNW assets acquired, not for the WRPI assets, which were written-down in the purchase. Thus, it is inappropriate to increase the value of the former WRPI assets now used to serve WPL. In addition, UP erred by applying the mark-up ratio to the line segment investment base as of 1999, because this investment base included substantial investments made subsequent to the 1995 CNW/WRPI acquisition. Applying a mark-up to post-acquisition investment overstates the cost of those assets to UP and consequently overstates UP's ROI and RPD costs.

To reflect the write-down of WRPI assets, on rebuttal WPL attempted to develop a separate purchase price for each former WRPI and CNW line segment. However, the introduction of new evidence on rebuttal, when UP had no opportunity to reply to the new evidence, was inappropriate.[16] Moreover, WPL's use of 1997 WRPI values instead of 1995 values to apportion investment to individual line segments was unacceptable, as the 1997 investment data included post-acquisition changes in the investment base.

WPL's procedures contained other flaws as well. WPL's evidence assumed that its traffic uses all of the former WRPI lines and, therefore, would benefit from the decreased post-acquisition values of all of the WRPI assets. However, the WPL route includes only a portion of the former WRPI assets. In addition, by apportioning investment based on route-miles rather than track-miles, WPL understated the portion of the former CNW assets used by WPL traffic.

In short, both parties' attempts to account for the CNW/WRPI acquisition costs contained significant flaws. Because the record did not contain data on the 1995 acquisition costs associated with specific CNW/WRPI line segments (nor do reports filed with the Board), no accurate restatement of the acquisition value of those former CNW/WRPI assets now used by WPL traffic was possible.

B. Unassigned Costs

In the 2001 Decision (at 54), we rejected the parties' ROI and RPD cost adjustments because neither party appropriately accounted for unassigned investment costs. In its petition for reconsideration (V.S. Crowley at 3) WPL advocates a methodology for allocating unassigned investment costs to specific line segments. It is inappropriate, however, to consider such evidence

[16] See SAC Procedures at 5; FMC at 103, 172.

at this stage of the proceeding, as that evidence could and should have been submitted earlier. SAC Procedures at 5.

C. Yard Investment Costs

As UP pointed out, WPL assumed that certain rail yards along the route traversed by WPL's traffic are not used by WPL trains, and it therefore excluded the land investments in those yards. UP contested WPL's assumption, noting that WPL had excluded all land investment for the Proviso Yard even though WPL's trains routinely use the Proviso Yard for crew changes.

WPL has not rebutted UP's claim that WPL's trains change crews at Proviso. Therefore, WPL's traffic should be assigned a portion of the yard investment. However, we could not restate WPL's evidence for yard investment because there was no evidence of the proper amount of the Proviso Yard investment required for crew change service for the WPL trains.

Rather than including additional land investment for the Proviso Yard in the numerator of the adjustment ratios, UP excluded 63% of the UP's system-wide land investment from the denominator of the ratios, asserting that this is the percentage of UP's land investment associated with yard activities. But the exclusion of all yard investment from system-wide land investment was inappropriate. Because UP included in the numerator of its adjustment ratios land investment in the yards that WPL acknowledges its traffic uses, UP's system-wide land investment in yards should have been included in the denominator as well.

D. Investment for Certain Line Segments

UP asserted that WPL's evidence failed to include land investment for seven valuation sections (comprising more than 150 miles of the WPL route) and all road property investments associated with 29 other line segments. Our review of the parties' electronic spreadsheet evidence, however, showed that neither party had included the disputed investment costs. In any event, the database from which WPL had obtained investment costs was obtained from UP on discovery. If UP possessed evidence concerning investment costs for the segments in question, it should have provided them to WPL on discovery. WPL should not be faulted for failing to include investment information that was not provided to it by UP.

II. Apportionment Of Line Segment Costs

Following the procedure that had been used in prior SAC cases, WPL developed an average investment cost per GTM for the entire route traversed by its traffic by essentially summing individual line segment investments and then dividing by total GTMs.[17] WPL then multiplied this

[17] UP contended that WPL's GTMs per line segment double counted locomotive GTMs, (continued...)

average investment per GTM by the GTMs for its traffic to estimate what portion of this investment its traffic should be assigned. Here, for the first time in a SAC case, the defendant railroad argues that investment should be apportioned to WPL's traffic on a segment-by-segment basis. UP contended that, because WPL's traffic comprises different percentages of the total gross ton-miles on each segment, weighting costs by total gross ton-miles would misstate the costs that should be apportioned to the WPL traffic. We agree. WPL's calculation improperly assumed that all traffic traverses the entire WPL route, when in fact most traffic does not. Thus, WPL's approach inappropriately assigned to non-WPL traffic a share of investment associated with line segments over which that traffic does not move.[18] While WPL is correct that the approach it used has been accepted in prior cases, that does not preclude us from accepting a superior procedure when it is proposed and is practical.

III. WSAC Adjustment

As a final step, UP adjusted system-average ROI and RPD based on an engineering adjustment factor developed using the WSAC methodology. Because we rejected the use of the WSAC model for developing MOW costs in 2001 Decision at 50-52, UP's WSAC adjustments of ROI and RPD were also inappropriate.

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[17](...continued)
which UP claims were included in the TUC database furnished to WPL. Our review of the TUC database, however, showed that locomotives were not included in the gross tons data field used to calculate aggregate GTMs. The UP database contained the gross trailing weight of the trains, a statistic that includes only the weight of cars and their contents.

[18] An example, demonstrates the potential problems of ignoring segment-specific GTMs and investment. Assume 10 tons of traffic A move 50 miles from point O to point X (500 GTMs of traffic) and then move another 50 miles from point X to point D (another 500 GTMs). Assume also that 10 tons of traffic B move from point O to point X (a third 500 GTMs). Finally, assume that road investment costs are $100 for OX and $60 for XD. Under the established principle that traffic B should pay its fair share of investment costs for those facilities it uses, traffic B, which accounts for one-half of the GTMs moving over OX, should be responsible for one-half of the investment costs of OX ($50). Under the aggregate approach used by WPL, traffic B, because it accounts for one-third of the total GTMs moving over OD, would be assigned one-third of the investment costs from point O to point D ($53.3)—$3.33 more than traffic B's fair share of the MOW costs for the line it uses.