

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35506

WESTERN COAL TRAFFIC LEAGUE—PETITION FOR DECLARATORY ORDER

Digest:¹ The Board denies a request that the Board conduct a technical conference for petitioners to obtain Board staff's views on how the Board plans to use inputs from BNSF Railway Company's revised financial statements that have been certified as accurate and audited by the Board's accountants.

Decided: February 4, 2014

In a decision served in this proceeding on July 25, 2013, the Board held that BNSF Railway Company (BNSF) was not permitted to mark up its railroad assets as a result of its acquisition by Berkshire Hathaway, Inc., during the years 2010, 2011, and 2012, due to the latter's unauthorized control of BNSF during those years. The Board directed BNSF to "refile its R-1 reports for 2010, 2011, and 2012 and remove entirely the markup of rail assets" arising out of the acquisition. W. Coal Traffic League—Pet. for Declaratory Order, FD 35506, slip op. at 31 (STB served July 25, 2013) (BNSF-Berkshire). BNSF submitted its revised R-1 financial statements to the Board on October 22, 2013. The reports were subsequently certified as accurate by BNSF's management and outside accountants and audited by the Board's accounting staff.²

On December 12, 2013, the Western Coal Traffic League, Western Fuels Association, Inc., Basin Electric Power Cooperative, Inc., and Arizona Electric Cooperative, Inc. (Petitioners) jointly filed a petition requesting the Board to conduct a technical conference to obtain Board staff's views concerning how the inputs from BNSF's revised R-1 financial statements will be used to recalculate BNSF's variable costs for 2010, 2011, and 2012 under the Board's Uniform Railroad Costing System (URCS). BNSF filed a letter opposing the request on December 19, 2013.

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

² In response to the petition's statement that "the only publicly available versions of BNSF's restated R-1's are those initially posted on the Board's website circa October 23, 2013," pet. at 3, we clarify that the reports submitted on October 22, 2013, are the only and final version of the restated R-1 reports.

The Board uses data from the Class I railroads' R-1 financial reports to determine, among other things, the railroads' variable costs under URCS. The Petitioners express concern that certain data in BNSF's revised R-1 financial reports differ from data used by the Board to estimate the impact of removing the markup of BNSF's rail assets in the BNSF-Berkshire decision. However, Petitioners have offered no basis for the Board to question the validity of the final data in BNSF's revised R-1 reports, which were certified by BNSF's management and outside accountants and audited by the Board's accounting staff.

The Board's estimate in the BNSF-Berkshire decision of the markup's impact on BNSF's URCS variable costs was based on internal staff calculations and assumptions.³ To the extent there are differences between these estimates and the actual data in BNSF's revised R-1 reports, the audited R-1 reports control and will be used to recalculate the URCS values.⁴ Therefore, it is unnecessary to convene a technical conference here.

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

It is ordered:

1. The request for a technical conference is denied.
2. This decision is effective on its date of service.

By the Board, Chairman Elliott and Vice Chairman Begeman.

³ The BNSF-Berkshire decision clearly stated that the Board was "develop[ing] its own estimate of the impact on URCS," and that all parties of record could obtain the workpapers supporting the Board's calculations supporting this estimate, which Petitioners did. BNSF-Berkshire, slip op. at 14 n.31.

⁴ Additionally, the revised R-1 reports have been used in revising the annual revenue adequacy determinations made by the Board. See R.R. Revenue Adequacy—2012 Determination, EP 552 (Sub-No. 17) (STB served Jan. 2, 2014) (using BNSF's revised 2012 R-1 data); R.R. Revenue Adequacy—2011 Determination, EP 552 (Sub-No. 16) (STB served Jan. 2, 2014) (using BNSF's revised 2011 R-1 data).