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MAYER•BROWN

Mayer Brown LLP
1999 K Street, N.W.
Washington, D.C. 20006-1101

Main Tel +1 202 263 3000
Main Fax +1 202 263 3300
www.mayerbrown.com

Robert M. Jenkins III
Direct Tel +1 202 263 3261
Direct Fax +1 202 263 5261
rmjenkins@mayerbrown.com

March 6, 2011

VIA ELECTRONIC FILING

Cynthia Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington, DC 20423

Re: *Western Coal Traffic League—*
Petition for Declaratory Order,
STB Finance Docket No. 35506

Dear Ms. Brown:

Pursuant to the Notice served February 25, 2012, in the above-captioned proceeding, BNSF Railway Company hereby provides notice of its intent to participate in the hearing scheduled for March 22, 2012, at the STB Hearing Room.

BNSF intends to present five speakers, and asks that the Board divide BNSF's witnesses into two panels. On the first panel would be Thomas N. Hund, BNSF's Executive Vice President and Chief Financial Officer, Richard E. Weicher, BNSF's Vice President and General Counsel – Regulatory, and the undersigned, Robert M. Jenkins III. On the second panel would be Professor Roman L. Weil, the V. Duane Rath Professor Emeritus of Accounting at the Chicago Booth School of Business of the University of Chicago, and Dr. Kevin Neels, Principal of the Brattle Group. In the event that the Board has questions relating to his previously submitted joint written testimony, Michael R. Baranowski, Senior Managing Director of FTI, Consulting, Inc. will also be present at the hearing.

BNSF asks that each of its panels be allotted one-half hour—for a total of one hour. If the Board schedules BNSF's presentation before those of the shipper parties, BNSF asks that BNSF be permitted an additional 15 minutes for rebuttal.

As required by the Notice, attached is a summary of BNSF's intended testimony.

Sincerely yours,

Robert M. Jenkins III
Counsel for BNSF Railway Company

STB FINANCE DOCKET NO. 35506
WESTERN COAL TRAFFIC LEAGUE—PETITION
FOR DECLARATORY ORDER

OULINE OF TESTIMONY OF WITNESSES APPEARING
<u>ON BEHALF OF BNSF RAILWAY COMPANY</u>

FIRST PANEL: Hund, Weicher, and Jenkins

- Following the Berkshire purchase, BNSF's assets and liabilities were valued in accordance with GAAP and the Board's longstanding rules and practices. The valuation process was rigorous, thorough and appropriate.

- The arguments made by shipper interests in this proceeding that it is nonetheless unfair for the Board to follow its own GAAP purchase accounting rules are unavailing.

  - As a general matter, it is a false premise that it is "unfair" to use accurate current asset values and costs for regulatory purposes.

  - Shipper arguments that GAAP accounting will lead to widespread rate increases are completely unfounded. The ultimate regulatory impact on BNSF shippers is extremely modest and would not have a meaningful effect upon the availability of remedies or outcome of future rate challenges from a regulatory standpoint.

  - In addition, shipper reliance on the practices followed by other regulatory regimes is misplaced.

  - Attempts to distinguish the Berkshire transactions from every other merger and transaction where GAAP purchase accounting has been consistently applied fall short.

  - Where the circumstances of a particular proceeding that predated the Berkshire purchase lead to unanticipated consequences, those circumstances can be addressed in that specific proceeding.

- It would be unsound regulatory policy for the Board to deviate in this single transaction from its consistent, appropriate and unambiguous adherence to GAAP principles regarding purchase accounting.

SECOND PANEL: Weil and Neels

- The STB's goal as an economic regulator should be practicably calculating economically accurate costs. GAAP purchase accounting, which is universally required for financial reporting in this country, is more economically accurate than "predecessor cost." GAAP recognizes that the acquisition costs of a company's assets and liabilities acquired in an arms' length transaction reflect fair values, and using those current costs is superior to using older, out-of-date "predecessor costs."

- Claims made by Shipper Interests in this proceeding that, because public utility regulators disallow the use of GAAP-based acquisition cost, the STB should do the same, are wrong. The "circularity" and "double-count" concerns that lead some public utility regulators in some industries subject to traditional original cost regulation to exclude acquisition premiums from a utility's "rate base" do not apply in the rail industry.