BNSF RAILWAY

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The Honorable John Hoeven
United States Senate
Washington, DC 20510

The Honorable Kent Conrad
United States Senate
Washington, DC 20510

Dear Senators Hoeven and Conrad:

I write in response to your recent letter to the Surface Transportation Board (STB) regarding the currently pending proceeding in STB Finance Docket No. 35506 which is examining the impact of the Berkshire Hathaway acquisition of BNSF Railway Company (BNSF) on the freight railroad economic regulatory framework administered by the STB, and, specifically, the acquisition's potential impact on the rate levels prescribed by the STB in the 2009 Basin Electric/Western Fuels decision.

As a panel of witnesses appearing for BNSF at the STB's March 22 hearing explained, every Class I railroad merger or acquisition in the past two decades has involved a so-called "acquisition premium," which, in each instance, has been recorded using purchase accounting as required by Generally Accepted Accounting Principles (GAAP). The STB has applied this method because it provides for the most economically accurate measure of a railroad's asset value. In this acquisition, BNSF's assets and liabilities were properly valued using GAAP. Thus, we believe that in our case, the STB should follow its decades of established, judicially-affirmed precedent in following GAAP when railroads are purchased.

We appreciate and share your interest in a timely resolution of the issues raised in this proceeding and in the appellate remand pending before the Board in the Basin Electric/Western Fuels proceeding. In addition, the Basin Electric/Western Fuels maximum rate prescription to which your letter refers has the unique characteristic of pre-dating Berkshire's acquisition of BNSF. While the minor regulatory effect of applying purchase accounting to the acquisition will result in no impact on the tens of thousands of rates that BNSF sets for its customers—BNSF sets rates based on market conditions and market demand, not regulatory costs—we acknowledged at the hearing that, because of the existing prescription, the Basin Electric/Western Fuels situation may warrant unique treatment by the STB. We specifically suggested to the STB at the hearing that some sort of bridging factor could be used to address the unique impact of purchase accounting on the Basin Electric/WFA prescription to ensure that the actual rate did not change. This is a remedy that could easily be implemented. For example, an adjustment to neutralize the effect of purchase accounting on the Basin Electric/Western Fuels prescription could be made by doing a calculation of the current Uniform Rail Costing System (URCS) with purchase accounting included (2010 URCS is the most recent), and then the current URCS with the purchase accounting effects taken out. The STB would then calculate an adjustment factor representing the difference.

At the STB's hearing, Chairman Elliott also raised the question of whether these accounting adjustments could be "phased-in" over time to moderate the impact on revenue adequacy and shippers. While we do not believe this is the preferred approach, the purchase accounting adjustments could be phased-in by a gradual inclusion of the adjustment in calculating return on investment (ROI) by the STB over a 3 or 4 year time period beginning when the acquisition occurred in 2010. This would moderate any impact upon revenue adequacy determinations by the STB.

We would be happy to provide more information in this area if desired.

Sincerely,

Matthew K. Rose

cc: The Honorable Daniel R. Elliott, III
Surface Transportation Board
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