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Office of Proceedings

September 5, 2013

Part of

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BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Ex Parte No. 431 (Sub-No. 4)

REVIEW OF THE GENERAL PURPOSE COSTING SYSTEM

REPLY COMMENTS OF BNSF RAILWAY COMPANY

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BNSF joins in the reply comments of the Association of American Railroads (“AAR”) and submits these additional reply comments in response to the opening comments submitted by various parties regarding the Surface Transportation Board’s (“Board” or “STB”) proposed modifications to the Uniform Rail Costing System (“URCS”) set forth in the Notice of Proposed Rulemaking (“NPRM”) served on February 4, 2013 in the above-referenced docket.

Several shipper and railroad organizations submitted opening comments in this proceeding. The commenting parties broadly agree that changes to URCS are needed but both railroad and shipper groups expressed concern that most if not all of the changes proposed by the Board are not supported by empirical studies or evidence showing that the changes will further the Board’s objective of developing URCS costs that more accurately reflect the variable costs of individual rail movements.¹ It would be arbitrary and capricious for the STB to adopt changes to

¹ See, e.g., *Joint Comments of The American Chemistry Council; The Chlorine Institute; The Fertilizer Institute; and The National Industrial Transportation League* at 25-7 (dated June 20, 2013) (hereafter “ACC et al. Comments”), (2) *Alliance for Rail Competition (ARC), Montana Wheat & Barley Committee, et al.* (hereafter “ARC/Grain Shippers Comments”) at 6 of attached Opening Verified Statement of Gerald W. Fauth III (hereafter “Fauth Opening VS”) (dated June 20, 2013); *Comments of the Association of American Railroads* at 10-13 (dated June 20, 2013) (hereafter “AAR Opening Comments”), *Comments of BNSF Railway Company* at 6, 7, 11, 12 (dated June 20, 2013) (hereafter “BNSF Opening Comments”); *Comments of the Union Pacific Railroad Company* at 2 (dated June 21, 2013) (hereafter “UP Comments”).

URCS without having any supporting empirical studies or evidence.² As shown in the opening comments of the Association of American Railroads (“AAR”) and the accompanying Joint Verified Statement of Michael R. Baranowski and Benton V. Fisher of FTI Consulting (“FTI Opening Verified Statement”), there is an empirical basis for the Board to eliminate the make-whole adjustments and adopt alternative adjustments to the calculation of switching costs related to Switch Engine Minute (“SEM”) costs and station clerical costs in connection therewith. BNSF supported the AAR’s proposed alternative adjustments to those costs in its opening comments and continues to support them now.

As explained in more detail in the AAR’s reply comments, FTI has determined based on further examination of the materials released by the Board that there is an issue with the current application of the make-whole adjustment associated with equipment costs for use of railroad-owned cars during switching (“Railroad-Owned Car Costs”). BNSF agrees with AAR that whether the Board chooses to proceed with its proposal to modify the URCS calculation of Railroad-Owned Car Costs by eliminating the make-whole adjustment associated with those costs or not, this issue should be addressed by the Board. In addition, as explained below, other URCS adjustments proposed by the Board as well as URCS adjustments proposed by some commenters should be rejected.

I. There Is An Empirical Basis To Eliminate Make-Whole Adjustments And Adopt Alternative Adjustments For SEM Costs And Station Clerical Costs In Connection Therewith

The Board has proposed to remove make-whole adjustments to eliminate the unwarranted difference in costs at the breakpoints between single-car/multiple-car shipments and between

² *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009); *Nat’l Assoc. of Home Builders v. EPA*, 682 F.3d 1032, 1037 (D.C. Cir. 2012); *Natural Resources Defense Council v. EPA*, 859 F.2d 156, 210 (D.C. Cir. 1988) (agency actions based upon speculation are arbitrary and capricious).

multiple-car/unit train (trainload) shipments. In connection therewith, the Board has also proposed to change the calculation of system-average unit costs for SEM costs, Railroad-Owned Car Costs and station clerical costs to account for economies of scale associated with larger shipments. The make-whole adjustments associated with SEM costs and station clerical costs are different from the make-whole adjustment associated with Railroad-Owned Car Costs.³ On opening, BNSF explained that it agreed with the Board's proposal to eliminate the make-whole adjustments but did not agree with the Board's related proposed adjustments to the calculation of SEM costs, Railroad-Owned Car Costs, or station clerical costs which were not based on any empirical study. On opening, BNSF expressed support for the adoption of alternative adjustments to these categories of costs that were specified in the AAR comments and accompanying FTI Opening Verified Statement. Unlike the Board's proposed adjustments to these costs which are not based on any actual data or analyses, the alternative adjustments are supported by empirical study. As the alternatives are grounded in the existing URCS relationships, they preserve the economies of scale resulting from larger shipments as derived from detailed ICC costing studies.

A. SEM Costs and Station Clerical Costs

BNSF continues to support the elimination of the make-whole adjustments and corresponding adoption of the alternative adjustments to the calculation of SEM costs and station clerical costs described in FTI's Opening Verified Statement. These alternative adjustments maintain the existing URCS cost relationships that were developed from empirical analysis. As explained by FTI, the efficiencies associated with longer trains that were analyzed in earlier ICC studies and are currently embodied in URCS can be maintained by calculating SEM switching

³ Joint Reply Verified Statement of Michael R. Baranowski and Benton V. Fisher of FTI Consulting ("FTI Reply Verified Statement") at 10. The FTI Reply Verified Statement was submitted with the AAR Reply Comments.

costs and station clerical costs based in part on a “per shipment” approach and in part on a “per car” approach.

With respect to SEM Costs, in its Opening Verified statement, FTI calculated that the efficiencies are preserved by accounting for 70% of SEM costs on a per-shipment basis and 30% of such costs on a per-car basis based on a preliminary analysis of the 2011 Carload Waybill Sample and an assumption regarding the size of intermodal shipments.⁴ FTI was able to perform a similar preliminary analysis of the 2011 Carload Waybill Sample for station clerical costs and include the results in its reply verified statement. FTI calculated that the efficiencies are maintained for station clerical costs by accounting for 25% of such costs on a per-shipment basis and 75% of such costs on a per-car basis.⁵ BNSF also supports FTI’s further proposed refinement to station clerical costs to prevent the over-allocation of such costs to intermodal shipments.⁶

B. Railroad-Owned Car Costs

On opening, BNSF joined in the AAR’s recommendation that the Board eliminate the make-whole adjustment associated with Railroad-Owned Car Costs and adopt an alternative calculation of system-average unit costs associated with such costs in connection therewith. However, as explained in the FTI Reply Verified Statement accompanying AAR’s Reply Comments, based on further analysis of the Board’s workpapers produced in this proceeding, FTI encountered an unexpected issue relating to the redistribution of the Railroad-Owned Car Cost savings associated with larger shipments to smaller shipments under the current make-

⁴ See FTI Opening Verified Statement at 11. BNSF also continues to support FTI’s recommendation that the Board revisit the assignment of switching time and costs to Interterminal and Interterminal switching when calculating SEM Costs. See BNSF Opening Comments at 10-11; FTI Opening Verified Statement at 13-14; FTI Reply Verified Statement at 7-8.

⁵ See FTI Reply Verified Statement at 13.

⁶ See FTI Reply Verified Statement at 13-14.

whole adjustment.⁷ Specifically, the make-whole adjustment in effect distributes railroad-owned car cost savings associated with the efficiency adjustment for one car type to different car types.

Id.

As a result, BNSF, like AAR, now recommends that whether the Board adopts its proposed modification to the calculation of Railroad-Owned Car Costs by eliminating the make-whole adjustment associated with these costs or not, the Board should address this misallocation problem. If the Board decides to continue applying this make-whole adjustment associated with Railroad-Owned Car Costs, it would not affect the Board's ability to eliminate the different make-whole adjustments associated with SEM Costs and station clerical costs and to adopt the alternative adjustments for SEM Costs and station clerical costs described above.

C. Definition of "Shipment"

As explained in BNSF's opening comments, the alternative proposed adjustments for SEM costs and station clerical costs, like the Board's proposed adjustments for those costs, are calculated at least in part on a "per shipment" basis.⁸ The Board proposes to define "shipment" as the cars moving under a given waybill from origin to destination. In its opening comments, BNSF explained that it does not oppose this definition for carload traffic but showed that the definition of "shipment" for intermodal traffic must be refined to improve the accuracy of URCS variable costs for intermodal traffic. In their opening comments, ACC and other chemical

⁷ See FTI Reply Verified Statement at 10-13.

⁸ The Chemical shippers mistakenly claim that calculating these costs on a "per shipment" basis would create a disconnect with the URCS variability factors applied to those costs. See ACC et al. Comments at 8 and accompanying Verified Statement of Robert D. Mulholland (hereafter "Mulholland VS") at 23-24. However, FTI explains that the Board's proposal to change from assigning costs on a per-carload basis to a per-shipment basis is independent of the calculation of variability factors. See FTI Reply Verified Statement at 17-18.

shipper organizations agree that the Board's definition of "shipment" does not work for intermodal shipments.⁹

Consequently, if some URCS costs are going to be assigned at least in part on a "per shipment" basis, the Board must modify its definition of "shipment" as it applies to intermodal shipments. In its opening comments at 10, BNSF provided several possible alternative definitions of "shipment" for intermodal traffic for the Board's consideration, including that the definition (1) could be based on a special study, (2) could be based on each Class I rail carrier's average number of intermodal flatcars moving together as a block from origin ramp to destination ramp annualized over some period of time (this definition will require new reporting by the rail carriers), or (3) at a minimum, could be defined in a manner that is consistent with how URCS defines intermodal shipments today.

Another issue regarding the definition of "shipment" was raised by ARC and the Grain Shippers. They expressed a concern with determining shipments based on the number of cars on a waybill, claiming incorrectly that "[d]ue to railroad accounting practices of questionable validity, there are far more single-car shipments reported than is likely to be accurate."¹⁰ As explained in AAR's Opening Comments at 14, the waybill is based on information that is provided by the shipper. It is the shipper, not the railroad, that determines the number of cars on a waybill. Further, as explained by FTI, the calculation of the number of single-car shipments presented by Mr. Fauth, ARC and the Grain Shippers' expert, is not accurate and results in an overstatement of single-car shipments.¹¹

⁹ See *Mulholland VS* at 21-22 ("intermodal trains often operate as unit trains although individualized containers moving on them are billed under separate waybills. In the case of an 80-car, 4-unit-per-car intermodal train operating between the Port of Long Beach and Chicago, it would clearly be incorrect to consider each of the 320 container units moving together on the train as individual shipments.").

¹⁰ ARC/Grain Shippers Comments at 4.

¹¹ FTI Reply Verified Statement at 25-26.

In addition, some commenters propose alternate definitions of “shipment” that are not practicable. The Arkansas Electric Cooperative Corporation (“AECC”) proposes that “shipment” be “based on the method in which they [*i.e.*, the shipments] actually are handled (trainload vs. nontrainload) rather than continuing to rely on an assumed demarcation based on the number of cars.”¹² However, this proposed definition is too vague to be implemented. Also vague and uncertain is the ARC/Grain Shippers’ suggestion that the railroads should provide information regarding the “number of shipments per switching event or block . . . based on car ownership, car type and commodity . . . [so that] this data could be used by the STB to develop URCS adjustments to the SEM cost per shipment.”¹³ Until there is a more concrete explanation regarding how a shipment would be defined based on the way it is “handled” or operated, or how shipments would be determined “per switching block or event”, BNSF cannot evaluate whether it maintains the data that would be necessary to report such a “shipment”. Further, as FTI explains, the alternative proposed definitions of “shipment” would be more complicated to implement than the Board’s proposed definition and would require further study regarding how the information would be used to allocate costs, more extensive programming, and could increase the complexity of URCS.¹⁴

¹² *Comments of Arkansas Electric Cooperative Corporation* at 6 (dated June 20, 2013) (hereafter “AECC Comments”).

¹³ Fauth Opening VS at 12.

¹⁴ See FTI Reply Verified Statement at 17. For the same reasons, it would be problematic and impracticable to grant Western Coal Traffic League’s (“WCTL”) similar request at page 12 of its opening comments that the Board create “a new shipment entry type in Phase III for dedicated trainload movements – *i.e.*, trains that cycle” or the ARC/Grain Shippers request that the STB “consider requiring the railroads to identify . . . dedicated shuttle and unit trains in the waybill sample reporting” at page 14 of Mr. Fauth’s Opening VS.

II. The Board Should Not Adopt Other URCS Changes Proposed In The NPRM Or By Shippers In Their Opening Comments

A. LUM Costs

For the reasons set forth in the AAR and BNSF opening comments, the Board should not adopt its proposed changes to the calculation of locomotive unit-mile (“LUM”) costs but rather should continue to use the current URCS methodology to calculate LUM costs. The Chemical shippers agree with AAR and BNSF that there is no basis for the Board’s proposed LUM cost adjustments.¹⁵ WCTL provides a weak endorsement for the STB’s proposed change to LUM costs for unit trains, citing to the Board’s reasoning as support for its view that the STB’s proposed approach would produce more accurate costs than the current URCS methodology.¹⁶ However, as explained in the opening comments of the AAR, BNSF and the Chemical shippers, there is no empirical analysis demonstrating that the Board’s proposed approach would result in more accurate costs and, in fact, there is reason to believe that it would not do so.¹⁷

B. URCS Changes Proposed by Various Commenters Should Be Rejected

In their opening comments, some parties recommend several changes to URCS other than those proposed in the Board’s NPRM. For the reasons contained in the AAR’s Reply Comments at 9-11 and FTI’s Reply Verified Statement accompanying the AAR reply comments at 16-26,

¹⁵ ACC et al. Comments at 10 and accompanying Mulholland VS at 26-27.

¹⁶ See WCTL Comments at 13-14.

¹⁷ In the NPRM, the Board also has proposed to change the definition of trainload to begin at 80 cars rather than 50 cars. BNSF does not oppose this change. As explained in FTI’s Opening Verified Statement, while one threshold may not consistently reflect the actual cut-off between trainload and non-trainload shipments, increasing the threshold would further the Board’s objective of avoiding the situation where URCS misclassifies as a trainload a shipment that is handled on the same train with other shipments. See FTI Opening Verified Statement at 21. In their opening comments, the ARC/Grain Shippers argue that increasing the trainload threshold from 50 to 80 cars will encourage “gaming” by rail carriers given the amount of traffic moving in 50-79 car shipments. ARC/Grain Shippers Comments at 10. That argument is misplaced. If 80 cars is a more accurate threshold for trainload shipments than 50 cars then the threshold should be changed to improve the accuracy of URCS costs. In any event, ARC/Grain Shippers have exaggerated the amount of traffic moving in 50-79 car shipments. FTI shows that the amount of traffic moving in 50-79 cars constitutes only 3% of industry-wide carloads and 3% of industry-wide revenues. FTI Reply Verified Statement at 18-19.

BNSF agrees with the AAR that the additional changes proposed by those commenters should not be adopted by the Board.

C. The Board Should Deny the Requests for Additional Railroad Data

In their opening comments, ARC and the Grain Shippers requested the Board to consider requiring Class I railroads to produce data, including information on the number of shipments loaded and terminated in 2010, 2011 and 2012, information relating to the number of shipments per switching event or block, information identifying dedicated shuttle and unit trains in waybill sample reporting and information concerning I&I switching.¹⁸ The Board should deny these requests. These data requests are vague and confusing. For example, to the extent these shippers are requesting information regarding shipments based on the way the shipments are operated or handled, it is unclear what data is being requested or, without further definition, whether BNSF even maintains the data.

If the STB decides that further study of potential URCS changes is warranted, then perhaps the production of some additional railroad data would be appropriate if the requests were sufficiently clear and not unduly burdensome. However, given the current state of the proceeding, the requests for additional data are not appropriate.

III. **Conclusion**

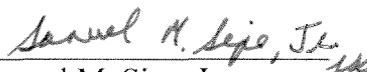
If the Board is unable or unwilling to undertake new studies as the basis for proposed changes to URCS, it should adopt the alternate methodology for calculating SEM costs and station clerical costs and eliminate the make-whole adjustments in connection therewith as described above and in the opening and reply verified statements of FTI. It should also modify the definition of “shipment” as it applies to intermodal traffic as described above. The Board

¹⁸ See Fauth Opening VS at 9, 12, 14.

should adopt the alternative proposals after providing an opportunity for further public comment to allow all interested stakeholders to comment on them.

The Board should reject its proposed change to the URCS methodology for LUM cost calculations, and continue to calculate those costs using the current URCS methodology. The Board should also reject the additional changes to URCS proposed by some commenters, and deny the requests for railroad data.

Respectfully submitted,



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