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August 6, 2015

Ms. Cynthia Brown  
Chief, Section of Administration  
Office of Proceedings  
Surface Transportation Board  
395 E Street, SW  
Washington, DC 20423-0001

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Office of Proceedings  
August 6, 2015  
Part of Public Record

**Re: Ex Parte No. 722, *Railroad Revenue Adequacy***

Dear Ms. Brown:

BNSF Railway submits the following supplemental comments in response to the Board's decision following the July 22<sup>nd</sup>-23<sup>rd</sup> hearing to hold the record open in the above-captioned proceeding. As stated by BNSF's witness Paul Bischler at the hearing, BNSF understands concerns by the Board about the highest of the high rates being charged by a revenue adequate carrier to shippers in markets not subject to competitive constraints. BNSF strongly opposes the adoption of any company-wide or commodity-wide cap on returns, like those that have been proposed by several commenters in this proceeding. Concerns about levels of rates should continue to be addressed through an individualized analysis that maintains the important regulatory balance that currently exists.

However, the Board's questions during the hearing highlighted concerns that, even if the STB's existing rate reasonableness mechanisms are the appropriate test for the highest rates charged by revenue adequate carriers, many shippers view them as too expensive and too time consuming to make use of. BNSF has heard some of our shippers voice similar concerns about the complexity and expense of the current formal regulatory options available to them. Our efforts to address those concerns with our shippers have historically been more focused on exploring options separate from the Board's procedures, and developing bilateral mechanisms that are more tailored to specific commodity groups and the unique market forces that inform transportation rates in their individual markets. As BNSF's John Miller explained in his testimony in Ex Parte No. EP 665 (Sub-No. 1), *Rail Transportation of Grain Rate Regulation Review*, BNSF established an alternative dispute mechanism with Montana grain producers providing for industry experts mediating and arbitrating rate disputes using market-based standards that take into account the complexities and competitiveness of agricultural markets. As Mr. Miller outlined, BNSF has also engaged the NGFA executive committee in discussions to

expand their existing arbitration process to cover rail rates, without undermining the current rate case criteria.

While we continue discussions around alternatives for expert-based, market-focused resolutions outside the auspices of the Board, BNSF would support renewed efforts by the Board to explore changes to the existing Stand Alone Cost-based procedures focused on decreasing the time and expense incurred by shippers, by defendant railroads, and by the Board's staff in these cases. Some options that the Board may consider are proposals that were made in prior proceedings, such as proposals offered in Ex Parte No. 712 around bifurcating the market dominance determination in all proceedings and curtailing the use of crossover traffic in Full SAC proceedings. The Board may also consider "safe harbor" concepts addressing a shipper's choice of traffic, road property evidence, and/or operating plans based on the involved carrier's real world operations and asset values. Properly developed, a safe-harbor approach could provide shippers with a simplified set of options based on real world data for constructing a stand-alone railroad with reduced uncertainty and complexity, but still leave the option of pursuing the ground-up SARR design in its opening evidence that now exists. The Board may also want to consider heavier use of formal technical conferences during the pendency of the case, allowing the Board staff to engage more directly with the technical evidence being presented by both sides.

These suggestions are meant to identify some initial areas of potential exploration for the Board to consider, and we expect that there are additional areas that thoughtful review of prior cases may identify. We believe that the Board has recently been engaged in an internal review of its own procedures and timelines associated with reviewing rate case evidence and issuing decisions. In our minds, the preferred outcome of any efforts to improve access to the Board's existing processes would be to identify proposals that address the resource implications of these cases for shippers preparing evidence, for defendant railroads developing responses, but also for the Board staff who process these complex cases. To that end, we respectfully request that the Board consider making available some of the output from those internal efforts to help inform the parties as they consider other options for improving rate case procedures at all stages.

Sincerely,



Jill K. Mulligan