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August 14, 2013

BY HAND DELIVERY

Ms. Cynthia Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423-0001



Re: STB Docket No. NOR 42136, *Intermountain Power Agency*
v. Union Pacific Railroad Company

Dear Ms. Brown:

Enclosed for FILING UNDER SEAL in the above-referenced proceeding please find a separately packaged original and twenty (20) copies of the Brief of Complaint Intermountain Power Agency ("IPA"). Also enclosed, for FILING UNDER SEAL, are three (3) disks containing an electronic version of this Brief. Additionally, enclosed are an original and ten (10) copies of a REDACTED, PUBLIC version of IPA's Brief for filing on the Board's public docket.

Finally, we have enclosed additional copies of each version of the Brief to be date-stamped and returned to the bearer of this letter. Thank you for your attention to this matter.

Sincerely,

Andrew B. Kolesar III

Enclosures

REDACTED, PUBLIC VERSION

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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

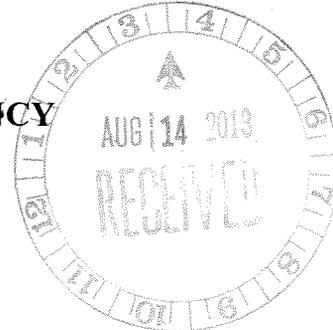
INTERMOUNTAIN POWER AGENCY)	
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Complainant,)	
)	
v.)	Docket No. 42136
)	
UNION PACIFIC RAILROAD COMPANY)	
)	
Defendant.)	

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**BRIEF OF COMPLAINANT
INTERMOUNTAIN POWER AGENCY**



INTERMOUNTAIN POWER AGENCY

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ACRONYMS

IPA uses the following acronyms herein:

ATC	Average Total Cost
BNSF	BNSF Railway Company
DCF	Discounted Cash Flow
ECP	Efficient Component Pricing
IGS	Intermountain Generating Station
IPA	Intermountain Power Agency
IPO	Initial Public Offering
IRR	Intermountain Railroad
MATC	Modified Average Total Cost
RTC	Rail Traffic Controller Model
R/VC	Revenue-to-Variable Cost
SAC	Stand-Alone Cost
SARR	Stand-Alone Railroad
STB	Surface Transportation Board
UP	Union Pacific Railroad Company
URCS	Uniform Railroad Costing System

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

INTERMOUNTAIN POWER AGENCY)	
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Complainant,)	
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v.)	Docket No. 42136
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**BRIEF OF COMPLAINANT
INTERMOUNTAIN POWER AGENCY**

In accordance with the Board’s July 17, 2013 decision in this case, Complainant Intermountain Power Agency (“IPA”) hereby submits its post-evidentiary Brief. *See Intermountain Power Agency v. Union Pac. R.R.*, NOR 42136 (STB served July 17, 2013). In this Brief, IPA summarizes five key aspects of its Opening and Rebuttal Evidence in order to “narrow and focus the issues for the Board’s benefit in analyzing the record” *Sunbelt Chlor Alkali Partnership v. Norfolk S. Ry.*, NOR 42130, slip op. at 2 (STB served July 15, 2013).

The five subjects that IPA addresses herein include: (1) IPA’s use of cross-over traffic and the associated revenue divisions; (2) Z-train traffic; (3) on-SARR local traffic; (4) equity flotation fees; and (5) the proper analysis of cross-subsidy issues. As IPA explains below, IPA’s evidence and argument in this case

demonstrate that it is entitled to relief from the excessive rates charged by Defendant Union Pacific Railroad Company (“UP”) for coal traffic moving to IPA’s Intermountain Generating Station (“IGS”) in Lynndyl, Utah. UP’s arguments in support of the challenged rates are improper and unavailing.

BACKGROUND

IPA filed its Complaint on May 30, 2012. Therein, IPA seeks a determination that UP’s rates for the transportation of coal from Provo, UT to IPA’s IGS electric generating station (in shipper-supplied high- or low-capacity railcars) exceed maximum reasonable levels under the Board’s stand-alone cost (“SAC”) constraint.¹ IPA also seeks the payment of reparations (plus interest) for past UP overcharges since November 2, 2012. IPA submitted Opening Evidence in this proceeding on December 17, 2012. UP filed Reply Evidence on April 12, 2013. IPA filed its Rebuttal Evidence in support of its case-in-chief on July 3, 2013.

Jurisdiction exists in this case under 49 U.S.C. § 10707 (*see* Rebuttal at I-19). In particular, IPA’s evidence shows that the challenged rates substantially exceed the Board’s 180% jurisdictional threshold. As of the fourth quarter of 2012, the revenue-to-variable cost (“R/VC”) ratios associated with those challenged rates ranged from 380% to 406%. *See* Opening at II-4. In addition,

¹ *Coal Rate Guidelines, Nationwide*, 1 I.C.C.2d 520 (1985), *aff’d sub nom. Consolidated Rail Corp. v. United States*, 812 F.2d 1444 (3d Cir. 1987) (“*Coal Rate Guidelines*” or “*Guidelines*”).

IPA has shown (and UP has conceded) that qualitative market dominance also exists with respect to the challenged rates. *Id.* at II-4-11; Reply at II-1.

IPA's evidence demonstrates that relief is justified under the stand-alone cost constraint of the *Coal Rate Guidelines*. IPA's stand-alone railroad ("SARR"), the Intermountain Railroad or "IRR" replicates 174.96 route miles of UP's line, entirely within the State of Utah. *See* Rebuttal at III-B-7. The line extends from Provo, UT on the northeast to Milford, UT on the southwest. The IRR carries both coal and non-coal traffic.

IPA's evidence properly calculates the road property investment associated with constructing the IRR system. *Id.* at Part III-F. Moreover, IPA's evidence presents an appropriate and reasonable operating plan for the movement of the IRR's traffic. *Id.* at Part III-C; *see also* Reply at III.C-4 (UP notes that its "experts have accepted most features of IPA's operating plan for [the] IRR"). Likewise, IPA's evidence appropriately calculates the IRR's operating costs. *See* Rebuttal Part III-D. Finally, IPA's discounted cash flow model comports with the Board's governing rules and precedent.

IPA's evidence presents the calculation of maximum reasonable rates under IPA's Principal Case assumptions (*i.e.*, the use of the Board's Modified ATC divisions methodology) and the calculation of maximum reasonable rates under IPA's Alternative Case 1 assumptions (*i.e.*, the use of the Board's Alternative ATC divisions methodology). *See* Rebuttal at III-H-30-31. The maximum R/VC ratios under IPA's Principal Case methodology range from

231.9% to 306.5% over the 10-year Discounted Cash Flow (“DCF”) period. *Id.* at III-H-29-30. Those R/VC ratios are marginally higher (*i.e.*, 234.1% to 314.5%) under IPA’s Alternative Case 1 methodology. *Id.*

ARGUMENT

Rather than repeating each of the arguments set forth in its Rebuttal Evidence, IPA focuses this brief upon five key issues in dispute between the parties: cross-over traffic, Z-train traffic, on-SARR local traffic, equity flotation fees, and UP’s cross-subsidy arguments. IPA addresses each issue in turn.

I. IPA’s Use of Cross-Over Traffic and its Calculation of ATC Divisions are Appropriate

The most significant disputes in the case relate to the cross-over traffic that IPA includes in its SARR model. UP argues first that the Board should preclude all cross-over traffic, but UP ultimately devotes the majority of its cross-over traffic discussion to the claim that the Board should modify its existing “facially neutral” and unbiased divisions methodology in order to make it biased and identity-sensitive. There is no basis for precluding the use of cross-over traffic or for making UP’s proposed changes to the Board’s ATC procedure.

A. The Board’s Endorsement of Cross-Over Traffic is Well-Established, Reasonable, and Intelligibly Explained

UP argues in its evidence that “[t]his case demonstrates the need to reform the rules governing use of cross-over traffic in rate cases.” Reply at I-16. UP claims that IPA’s reliance on the Board’s existing stand-alone traffic rules

constitutes the “inappropriate exploitation” of ATC. *Id.* On the basis of these assertions, UP insists that the Board should prohibit use of any cross-over traffic, not only here, but in all SAC cases. *Id.* at I-23 (“[T]he Board should entirely prohibit the use of cross-over traffic in SAC cases.”); *id.* (“UP believes the use of cross-over traffic has taken the SAC test far off course . . .”).

The Board, however, repeatedly has held that cross-over traffic remains an important and legitimate part of stand-alone cost cases. *See, e.g., Rate Regulation Reforms*, EP 715, slip op. at 6 (STB served July 18, 2013) (“*Rate Regulation Reforms*”)² (“This modeling device, which was first accepted by the agency in 1994 . . . is now a well-established practice in SAC cases.”) (citing *Otter Tail Power Co. v. BNSF Ry.*, NOR 42071, slip op. at 11-13 (STB served Jan. 27, 2006) (“*Otter Tail*”); *Duke Energy Corp. v. CSX Transp. Inc.*, 7 S.T.B. 402, 422-24 (2004) (“*Duke/CSXT*”); *Texas Mun. Power Agency v. Burlington N. & Santa Fe Ry.*, 6 S.T.B. 573, 605 (2003) (“*TMPA*”)).³ UP has failed to demonstrate that the Board’s longstanding reliance on cross-over traffic is improper.

Moreover, as IPA demonstrates in its Rebuttal Evidence, UP’s insistence that shippers construct only “true” stand-alone railroads (*i.e.*, systems

² The *Rate Regulation Reforms* proceeding is referred to herein generally as “EP 715.”

³ *See also Intermountain Power Agency v. Union Pac. R.R.*, NOR 42136, slip op. at 3 (STB served Dec. 14, 2012) (“*IPA 2012*”) (denying motion to hold case in abeyance) (“The Board is maintaining the underlying precepts that cross-over traffic is an acceptable and useful simplifying tool in building a SARR, and that revenue allocation for that traffic should be based on an average total cost (ATC) methodology.”).

that include no cross-over traffic whatsoever), inevitably would destroy the Board's maximum rate reasonableness jurisdiction. Shippers would be forced to litigate on the basis of SARRs that forego substantial volumes of existing traffic (in violation of the "grouping" principle of the *Coal Rate Guidelines*) or shippers would be forced to design SARRs that would replicate the vast majority of the defendant carrier's system (which the *Xcel* decision recognizes as being "so complicated as to risk being intractable").⁴

Significantly, in the *Nevada Power* case, UP argued in opposition to the substantial expansion of a SARR system that transported coal over UP's lines in Utah. *See Bituminous Coal - Hiawatha, Utah to Moapa, Nevada*, 10 I.C.C.2d 259, 265 n.12 (1994) ("*Nevada Power IP*") ("UP persuaded us to restrict the size of the SARR by asserting that expansion to existing interchange points would unnecessarily prolong this proceeding without providing significant additional information that would improve our analysis. *Having so argued, UP is in a poor position to now complain about the inclusion of hypothetical interchange points that would have been avoided by the proposed 2,000-mile model.*") (emphasis added). In light of this history and the inevitable consequences of UP's "true" stand-alone railroad argument, the Board should reject any suggestion that it should prohibit IPA's use of cross-over traffic in this case, just as it recently rejected this proposal in EP 715 for SAC cases generally.

⁴ *Pub. Serv. Co. of Colorado d/b/a Xcel Energy v. Burlington N. & Santa Fe Ry.*, 7 S.T.B. 589, 601-603 (2004) ("*Xcel*").

In its *Major Issues* decision, the Board also rejected UP's argument in opposition to the use of any cross-over traffic and the Board insisted that it would not "make an about-face" from its prior support of cross-over traffic, which the United States Court of Appeals had affirmed:

Similar arguments advanced by UP relate to the propriety of accepting cross-over traffic in the first instance, rather than to the proposed methodology to allocate revenues between the SARR and the incumbent carrier.[] The Board's reasons for permitting cross-over traffic were set forth in *Xcel* at 13-17, and *have been affirmed as reasonable and intelligibly explained, BNSF Ry. v. STB*, 453 F.3d at 482. *We will not now make an about-face and prohibit the use of cross-over traffic, as UP appears to advocate.*

Major Issues in Rail Rate Cases, EP 657 (Sub-No. 1), slip op. at 36 (STB served Oct. 30, 2006) ("*Major Issues*") (emphasis added). There is no reason for the Board to depart from its long-standing allowance of cross-over traffic in the present case.⁵

The Board likewise should refrain from imposing any limitations on the categories of cross-over traffic that IPA may include in this case. *See Reply* at I-23, III.A-31-32. The Board had proposed – but ultimately elected not to adopt –

⁵ *See Nevada Power II*, 10 I.C.C.2d at 265 n.12 (referring to the "critical ability" of the complaining shipper "efficiently to group profitable [cross-over] traffic which could have been included had the larger system been adopted" and commenting that "[e]xcluding the cross-over traffic would weaken the SAC test because it would deprive the SARR of the ability to take advantage of the same economies of scale, scope and density that the incumbents enjoy over the identical route of movement.").

such limitations in the *Rate Regulation Reforms* proceeding. *See Rate Regulation Reforms*, slip op. at 3 (“[W]e have decided to . . . leave cross-over traffic unchanged”); *id.*, slip op. at 28 (“[W]e will not adopt either proposed limitation . . .”). Those limitations would require IPA to construct a vastly larger SARR system and likewise would constitute an “about-face” from the Board’s prior “reasonable” and “intelligibly explained” support for cross-over traffic.

Notably, while UP previously asked the Board to stay this case pending the outcome of EP 715 (*see* UP Motion to Hold Proceeding in Abeyance filed August 14, 2012), UP’s arguments regarding cross-over traffic stray markedly from the proposals that the Board had made in that case. Although UP incorporates its EP 715 submissions by reference (*see* Reply at I-4 & n.4) and presents alternative calculations based upon the application of the same limitations the Board had proposed in EP 715 (*see id.* at I-23 and III.A-31-32), UP does not attempt to provide any quantitative costing support for applying those now-rejected limitations in this case.⁶

⁶ As IPA explains in greater detail below, UP’s evidence is entirely silent regarding the question of whether the Board should apply “Alternative” ATC in the present case. The Board, of course, had proposed in 2012 to apply the Alternative ATC methodology only to “future” cases. *See Rate Regulation Reforms*, EP 715, slip op. at 17-18 (STB served July 25, 2012) (“*RRR Proposal*”).

B. UP's Divisions Proposal is Fatally Biased and Misdirected

In addition to advocating an outright ban on the use of cross-over traffic, UP also argues that the Board should make the revenue divisions process for cross-over traffic so biased and non-neutral that such traffic would be of no value to shippers.

The essence of UP's divisions approach is to treat carload and multicar traffic as though it were trainload traffic, but to do so only for the portion of the cross-over movements that the SARR provides (and to continue costing the off-SARR portions of such movements as carload or multicar traffic). In order to implement that approach, UP makes four adjustments to the URCS Phase III costing of the IRR's carload or multicar overhead traffic, each designed to cost the on-SARR portion of such interline movements in a manner that will reduce the IRR's share of revenues. In particular, UP: (i) sets the URCS Costed Movement Type to Trainload; (ii) modifies train lengths; and (iii) modifies empty return ratios, solely for the on-SARR portion of cross-over movements. *See Reply at III.A-20 & n.32.* In addition, UP re-assigns the amount by which it has reduced on-SARR costs to its own off-SARR costs, claiming that this adjustment is necessary to ensure accurate total costs and because off-SARR service is "more costly." *Id.* at I-21-22.

In its Rebuttal Evidence, IPA demonstrates that UP's approach to calculating cross-over divisions suffers from several significant flaws. *See Rebuttal at III-A-27-43.* In particular, IPA shows that UP's approach wrongly:

(1) considers the operations of the SARR, rather than those of the defendant carrier, when assessing divisions; (2) makes movement-specific adjustments to URCS costs; (3) costs on-SARR service differently than off-SARR service for the same underlying “intact” operations; (4) ignores the fact that URCS already affords a substantial cost premium for origin and destination service on carload and multicar movements; (5) fails to provide any quantitative basis for the claim that the current ATC methodology misstates costs; and (6) relies upon an inherently biased methodology that generates differing cost results for a given line segment based solely on the identity of the carrier providing service over that segment. *Id.*

1. The Board Considers Only the Operations of the Defendant Carrier When Calculating Divisions

First, UP wrongly focuses on the operations of the SARR when evaluating ATC divisions calculations. UP’s argument in this regard violates the Board’s established rule that divisions on cross-over traffic are to be derived based upon the operations of the *incumbent* carrier using system-average costs, not the operations of the SARR.⁷ UP’s Reply does not acknowledge the Board’s

⁷ See *Major Issues*, slip op. at 35 (“the ATC method . . . is keyed to *the defendant carrier’s relative costs* of providing service”) (emphasis added); *AEP Tex. N. Co. v. BNSF Ry.*, NOR 41191 (Sub-No. 1), slip op. at 13 (STB served Sept. 10, 2007) (“*AEP Texas*”) (“BNSF argues that the purpose of ATC is to determine *the defendant carrier’s relative costs* for the various line segments, and because the defendant does not incur interchange costs with itself, those costs are irrelevant for purposes of calculating ATC.[] We agree.”) (emphasis added).

established rule and does not provide any sort of reasoned explanation for departing from the underlying principles.

Consequently, there is no basis for UP to argue that the operations of the IRR somehow mandate a change in the Board's ATC methodology.

2. The Board Does Not Allow Movement-Specific Adjustments to URCS

Second, UP's proposed adjustment to the ATC methodology is inappropriate because, as UP concedes in its filing (*see* Reply at I-21), the Board does not allow movement-specific adjustments to URCS Phase III costing. *See Major Issues*, slip op. at 47-61; *id.*, slip op. at 51 (the use of movement-specific adjustments does not "lead[] to a more accurate result than using the URCS system-wide average.").

UP's effort to override the URCS inputs for costing calculations is prohibited by the Board and would bias the ATC results, particularly since UP makes its URCS modifications only for the on-SARR segment, notwithstanding the fact that it performs off-SARR service in the same "intact" manner.

3. There is No Basis for Costing On-SARR Service Differently than Off-SARR Service

Third, UP's approach is improper because there is no basis for UP's insistence that the Board should cost the IRR's intact movement of trains containing carload shipments over the SARR track any differently than UP's intact movement of those same trains over its residual lines.

As IPA explains on Rebuttal, UP's approach assumes that shipments traveling from Southern California to Chicago (and using the IRR as a bridge carrier) spontaneously adjust their character *en route*. Specifically, UP assumes that the residual UP provides carload service for such shipments from California to Milford, UT, then UP assumes that the shipment transforms into trainload service from Milford to Lynndyl, then UP assumes that the shipment reverts back to carload service for the residual UP movement from Lynndyl to Chicago. There is no basis for UP's illogical and faulty assumptions.

4. URCS and MATC Already Afford a Substantial Cost Premium to Originating and Terminating Carriers on Interline Movements

Fourth, UP's divisions arguments are improper because URCS Phase III and MATC already afford a substantial cost premium to originating and terminating carriers on interline movements. In its Rebuttal, IPA presents three different sets of divisions results for a hypothetical carload movement using: (i) URCS Phase III; (ii) Modified ATC; and (iii) UP's proposed approach. *See* Rebuttal at III-A-34. That hypothetical assumes a 3-segment general merchandise movement with each segment having a distance of 100 miles, private hopper open top cars, and each car carrying 98 tons per car:

**SUMMARY OF VARIABLE COSTS FOR
HYPOTHETICAL 3-SEGMENT GENERAL MERCHANDISE MOVEMENT**

<u>Item</u> (1)	<u>URCS Phase III</u>		<u>MATC</u>		<u>UP Approach</u>	
	<u>(\$/ton)</u> (2)	<u>(% Total)</u> (3)	<u>(\$/ton)</u> (4)	<u>(% Total)</u> (5)	<u>(\$/ton)</u> (6)	<u>(% Total)</u> (7)
1. Originating RR	\$6.50	36.5%	\$5.23	40.9%	\$5.70	44.6%
2. Bridge RR	\$4.82	27.0%	\$2.33	18.2%	\$1.39	10.8%
3. Terminating RR	<u>\$6.50</u>	<u>36.5%</u>	<u>\$5.23</u>	<u>40.9%</u>	<u>\$5.70</u>	<u>44.6%</u>
4. Total	\$17.83	100.0%	\$12.80	100.0%	\$12.80	100.0%

As Column (3) reflects, URCS Phase III attributes 36.5% of the total movement variable costs to the originating carrier and another 36.5% to the terminating carrier, leaving only 27% of the total variable costs to be assigned to the bridge carrier.

The Board’s existing MATC divisions methodology – which IPA utilizes for its divisions calculations in its Principal Case – increases that premium because it disallows the crediting of interchange costs for interchanges either to or from the SARR. *See* Column (5). Accordingly, MATC attributes 40.9% of the total variable costs to each of the originating and terminating carriers, leaving only 18.2% of the variable costs (and thus, of the revenues) for the bridge carrier.

UP’s costing of the SARR portion of a movement (and only the SARR portion of a movement) as “Unit Train” service goes even further to increase this disparity despite the fact that UP failed to present any evidence to support the contention that the existing MATC methodology does not properly

determine costs for bridge service. *See* Column (7). UP’s approach results in drastic reductions in the variable costs calculated for on-SARR bridge service (*i.e.*, from 18.2% down to 10.8% in the foregoing example), or in other words, UP’s approach reduces the variable costs for performing bridge service of a carload shipment by over 40% relative to the variable cost share determined under the Board’s established methodology. UP has not demonstrated that this additional profound reduction in costs (and associated revenues) is appropriate.

5. UP Provides No Evidence of a Defect in Modified ATC or of Improved Accuracy in UP’s Approach

Fifth, IPA demonstrates that UP has not provided any evidence whatsoever to support the argument that Modified ATC costing of interline movements of carload and multicar traffic fails to match actual costs. *See* Rebuttal at III-A-36. UP’s only reference to the concept of costing accuracy is the dubious and entirely unsupported claim that its approach “is simple and straightforward, *and it is more accurate* than IPA’s use of [] unadjusted URCS costs.” Reply at III.A-20 (emphasis added).

As IPA shows in its Rebuttal, UP has absolutely no basis on which to state that its adjusted costs are “more accurate” than system average URCS Phase III costs. *See* Rebuttal at III-A-36-37. Nothing in UP’s Reply indicates that UP or its expert witnesses performed: (i) any study of the costs associated with the performance of interline rail service; (ii) any study of supposed defects in URCS’s treatment of bridge carrier service; or (iii) any study showing an

improved correlation between UP's divisions approach and any actual costing results for such interline service.

6. UP's Divisions Methodology is Inherently Biased

Finally, IPA demonstrates on Rebuttal that UP's divisions approach is inherently biased and improper because it produces different costing results for an individual line segment depending on whether the SARR or the residual incumbent provides service over that segment. *See* Rebuttal at III-A-37-43. The fact that UP's approach therefore is "identity-sensitive" – even where all other aspects of the service in question are the same – makes it arbitrary, biased, and unusable in SAC proceedings. *See* Rebuttal at III-A-42.

The Board addressed a similarly biased divisions proposal in its 2006 decision in *Major Issues*. In that proceeding, UP and BNSF had argued that the Board should adopt an Efficient Component Pricing ("ECP") approach to calculating divisions that would have yielded different results for a given segment depending upon the identity of the carrier providing service over that segment. In rejecting this proposal, the Board relied explicitly upon the biased nature of the BNSF/UP approach:

We offer the following example to illustrate our practical concerns with the [ECP] approach advocated by both BNSF and UP. Consider the following hypothetical, where a complainant seeks to include a move in its traffic group that generates \$20 per ton in revenue. The variable cost of the move is \$10 per ton, such that it has an R/VC ratio of 200%. Assume the SARR replicates half of the movement from the mine to a fictional interchange, with an URCS variable cost

of \$5 per ton. The residual defendant would transport the movement the remaining distance from the interchange to the power plant. The question is how to allocate revenues to the facilities replicated by the SARR from such a cross-over movement. In this example, the approach advocated by UP and BNSF would allocate \$5 to the facilities replicated by the SARR and \$15 to the non-SARR segment. They both claim that this is the likely outcome in a contestable market.[]

But if one holds everything constant, and switches the position of the parties, the outcome flips inexplicably. Under the theory espoused by UP and BNSF, if the SARR now provided service from the interchange to the power plant, it would receive only \$5 of the total revenue and the lion's share would shift to the party providing service from the mine to the fictional interchange. How would this be the outcome in a contestable marketplace, where the parties are otherwise similarly situated? How can the outcome depend on the identity of the party providing service, rather than on the service provided? UP and BNSF provide no reasoned explanation.[]

Major Issues, slip op. at 38-39 (emphasis added); *id.*, slip op. at 39 (“[T]his alternative plainly fails to achieve the goal of an unbiased result.”); *see also Rate Regulation Reforms*, slip op. at 34 (rejecting UP’s ECP revenue allocation proposal because it would “inject bias in favor of the railroads and render cross-over traffic ineffectual in simplifying the SAC analysis.”).

The “bias” defect that the Board observed in *Major Issues* and *Rate Regulation Reforms* is present in UP’s divisions approach in this case as well. As the Board asked in *Major Issues*, how could the identity-specific results of UP’s proposed approach in the present case be the outcome in a contestable

marketplace? How can the outcome of the Board's divisions approach depend on the identity of the party providing service, rather than on the service provided? Once again, UP provides no reasoned explanation.

As the Board itself has observed, the ATC methodology does not suffer from the same bias that UP seeks to introduce into this case. *See Major Issues*, slip op. at 36 n.92 (“UP seeks to show the flaws in ATC by hypothesizing situations where the approach would not mimic that of a SAC analysis without cross-over traffic. . . . Other examples could be hypothesized where use of ATC could lead to a rate being regarded as reasonable when a SAC without any cross-over traffic would find the rate unreasonable. *The point is not that ATC is perfect, but rather that it is unbiased, because it allocates costs in relation to the average total costs of providing service over the parts of the network in question. The same cannot be said of. . . UP's alternative.*”) (emphasis added); *see also id.*, slip op. at 36 (“Rather than biasing the result towards the over-assignment of contribution to the on-SARR segments, as claimed by UP, the ATC method will ensure that the result more closely aligns with what a larger, more cumbersome SAC analysis would show.”).

C. The Board Should Utilize Modified ATC in this Case

In its *RRR Proposal* decision, the Board proposed to make an adjustment to its ATC divisions methodology for “future” cases. *See RRR Proposal*, slip op. at 17-18. As IPA noted above, however, UP did not present any argument or evidence in this case in support of the use of the Board's

“Alternative” ATC divisions methodology to calculate revenues for the IRR’s cross-over traffic.⁸ Presumably, the absence of such argument or evidence reflects UP’s litigation strategy to rely in this case solely upon its own improper modifications to the ATC divisions methodology.

In its July 18, 2013 decision in *Rate Regulation Reforms*, the Board adopted its prior proposal regarding the use of Alternative ATC. *Rate Regulation Reforms*, slip op. at 30.

IPA respectfully submits that the Board should utilize its Modified ATC methodology in this case. As IPA demonstrated through its submission of alternative divisions calculations on Opening and Rebuttal, the use of Alternative ATC has only a modest impact on the outcome of this proceeding. Nevertheless, the Board’s prior representations indicated that the Board would not utilize Alternative ATC here. *See RRR Proposal*, slip op. at 18 (“We therefore seek public comment on whether we should adopt this modification to ATC for use in all *future* SAC and Simplified-SAC proceedings”) (emphasis added); *see also IPA 2012*, slip op. at 3 (“[I]t was the Board’s intention that cases [already filed with the Board] should proceed as normal”). Given these prior statements and the absence of any UP evidence or argument in this case regarding the use of Alternative ATC to calculate divisions for the IRR, the Board should

⁸ UP had expressed its support for the Board’s proposal to utilize Alternative ATC in EP 715. *See Rate Regulation Reforms*, Opening Comments of Union Pac. R.R. at 16 (filed Oct. 23, 2012).

follow through on its expressed intention to apply Alternative ATC only to future cases.

II. UP is Wrong to Exclude the IRR's Z-Train Traffic

The IRR handles the overhead portion of certain traffic that UP transports in premium intermodal “Z trains” between Southern California and points east of the IRR. In its Reply, UP argues that the Board should exclude any Z-train traffic from the IRR system because the IRR supposedly “cannot replicate the level of service UP provides today.” Reply at I-6; *id.* (“IRR service for Z trains would be *significantly inferior* to the service that UP provides and UP’s customers expect and receive today.”) (emphasis added). UP discusses this issue in Parts I, III.A, and III.C of its Reply. *See* Reply at I-6-7; III.A-2, III.A-11-13, III.C-21-23.

A. IPA’s Rebuttal Demonstrates that there is No Basis for Excluding the IRR’s Z-Train Traffic

The total transit time for the UP-IRR-UP interline service over the lines replicated by the SARR is approximately 30 minutes longer than the UP real-world service over that segment because of the time associated with the hypothetical interchanges from the residual UP to the IRR and from the IRR to the residual UP. *See* Rebuttal at III-C-38; *see also id.* at III-C-38-49.

As IPA demonstrates in its Rebuttal, there is no basis on which to conclude that the IRR’s service would not meet the requirements of its customers. In fact, there is ample reason to believe that {

} See Rebuttal at III-C-42-44.

In particular, UP's web page indicates that while the Denver and Chicago intermodal terminals are open 24-hours per day, the "flip" hours when containers may be removed from railcars onto truck chassis or the ground at Denver are 0800 to 1700 Monday-Friday and 0800 to 1200 Saturday, and at Chicago, the flip hours are 0800 to 1730 Monday-Friday and 0700 to 1200 Saturday. *Id.* at III-C-42. Most of the Z-train traffic that UP moved in the Base Year {

} *Id.* at III-C-42-43. In fact, {

} *Id.* at III-C-43.

In addition, there is also a time interval, which can be substantial, after train arrival before containers are unloaded from railcars and flipped either to customers' truck chassis or to the ground. The car event data that UP produced in discovery shows that {

} *Id.*

The 30-minute increase in the on-SARR transit time for this traffic therefore {

} the additional transit time associated with the introduction of the IRR into the current UP movements would have only a very modest impact on total origin-to-destination transit times.

Based on UP's train and car event data produced in discovery, the average Z-train transit time between Los Angeles and Denver during the Base Year was { } hours, and the average transit time between Los Angeles and Chicago varied from { } hours to { } hours, depending on the specific destination terminal involved (the median transit time was { } hours).⁹ Thus, the 30 minutes of increased transit time on the IRR's portion of the route equals { } percent of the total transit time from Los Angeles to Denver and { } percent of the total average transit time from Los Angeles to Chicago.

Accordingly, the increased transit time resulting from the IRR's insertion into the route for these Z trains is insignificant and would not have a material impact on the overall level of service provided to the shippers involved. Rebuttal at III-C-42.

⁹ See Rebuttal at III-C-41-42 and e-workpaper "Z Train Transit Time.xlsx."

**B. The Board Precedent that UP Cites
Does Not Support UP's Exclusion of Traffic**

UP cites several prior Board rate cases in support of its argument that the Board should exclude the Z-train traffic. *See* Reply at I-7 n.11 and III.A-12-13 & nn.13-16 (citing *TMPA*, 6 S.T.B. at 589; *Nevada Power II*, 10 I.C.C.2d at 273; *Duke/CSXT*, 7 S.T.B. at 414, 427, 430; *McCarty Farms, Inc. v. Burlington N., Inc.*, 2 S.T.B. 460, 476 (1997) (“*McCarty Farms*”); *FMC Wyo. Corp. v. Union Pac. R.R.*, 4 S.T.B. 699, 736 (2000) (“*FMC*”); and *Duke Energy Corp. v. Norfolk S. Ry.*, 7 S.T.B. 89, 100-101 (2003) (“*Duke/NS*”).

The precedent that UP relies upon fails to support UP's argument. This precedent relates to situations in which shippers have proposed significant changes to service parameters (*e.g.*, typically a change in train sizes, a change in origins, or a change in the sequencing of shipments throughout the year) in violation of the historic practices, capabilities, and contract terms of the defendant carrier and its shippers. In the instant case, the only “violation” of historic practice consists of IPA's insertion of the IRR into the existing UP routing. The fact that an extremely modest increase in transit time results from that change does not approach the degree of variation in operating parameters identified by the Board in the cases that UP cites.

For example, in *FMC*, the Board decided to rely upon UP's operating plan because the shipper had elected to cap the maximum length of all coal trains at 115 cars per train even though actual trains lengths frequently

exceeded that limit. *See FMC*, 4 S.T.B. at 736 (“FMC estimated the number of coal trains (which represents 67% of the ORR carload traffic) using the average number of cars per train for all trains moving over specific interchange points or destinations, but limited the maximum length of coal trains to 115 cars per train.”); *id.* (“The coal waybill data and workpapers of both parties show that UP moves coal trains containing various car consists (many exceeding 115 cars) that are customer driven.”). Given the shipper’s modification of the existing train lengths, the Board held that “[s]uch an operating scenario would not meet shipper requirements and we reject FMC’s contention that the ORR could dictate the type of service to be provided.” *Id.*

In addition, the Board also justified its rejection of the FMC operating plan by observing that FMC’s approach “also assumes an even flow of traffic by combining several multiple-car grain shipments into unit trains that would move together to a destination.” *Id.*, 4 S.T.B. at 737. According to the Board, “FMC ignored the actual timing of these shipments, assuming that grain shippers would be willing to proffer freight cars in full trainload lots” even though “grain shippers require an on-demand service and have significant volume fluctuations throughout the year.” *Id.*

Similarly, in the *McCarty Farms* case that UP cites, the Board rejected the shipper’s operating plan because the shipper had assumed that the SARR “would move all freight in evenly distributed carloads 365 days per year.” *McCarty Farms*, 2 S.T.B. at 476. The Board found that this assumption was

wholly unrealistic because “[m]any commodities (grain in particular) are subject to seasonal fluctuations due to factors beyond the control of any railroad” and because “[i]n order to meet its customers’ needs, any railroad must equip itself to accommodate fluctuating traffic requirements, and not simply the yearly average.” *Id.*; *see also id.* at 476 n.33 (“McCarty fails to take into account that numerous factors cause wide, unpredictable fluctuations in demand. For example, grain quality and protein content must be coordinated to meet purchaser orders, and export vessel schedules must be accommodated.”).

The shipper in *McCarty Farms* also had improperly assumed that “trains would be significantly longer than those historically transported by BN.” *Id.* at 476; *see also id.* (“Car loading factors and train lengths cannot be set without regard to the practice and preferences of shippers[] and connecting railroads.”). For all of these reasons, the Board rejected McCarty Farms’ operating plan as infeasible. *Id.* at 478.

In the *Duke/CSXT* case that UP relies upon, the Board again rejected the shipper’s operating plan because the shipper had assumed that train lengths on the SARR would be inconsistent with historic practice and with the specific terms of CSXT’s contracts with its shippers. Specifically, Duke assumed that, “regardless of historical traffic patterns or customer preferences, all traffic would be handled by the [SARR] in unit-train movements, with trains of up to 115 cars.” *Duke/CSXT*, 7 S.T.B. at 426; *id.* (“CSXT notes that most southern utilities it serves today receive their coal shipments under contracts that specify a maximum train

size in the range of 90-95 cars.”); *id.* (“In addition, CSXT’s rail system south of Spartanburg, SC, is designed to handle coal trains of 90-95 cars.”). The Board also faulted Duke for assuming that different shippers purchasing coal at different mines would voluntarily switch coal origins to a single, common origin in order to allow for the creation of coal unit trains. *Id.*, 7 S.T.B. at 427-28.

On the basis of these variations from historic practice and/or contractual requirements, the Board found that Duke’s assumptions violated the SAC principle that the SARR must meet the transportation needs of the traffic it would serve. *Id.*, 7 S.T.B. at 427 (citing *McCarty Farms, FMC*, and *West Tex. Utils. Co. v. Burlington N. R.R.*, 1 S.T.B. 638, 667 (1996), *aff’d sub nom. Burlington N. R.R. v. STB*, 114 F.3d 206 (D.C. Cir. 1997) (“train sizes must reflect the operational constraints and restrictions faced by connecting railroads, coal mines, and utilities”)).

Contrary to those affirmative modifications of the parameters of service to existing customers (*e.g.*, train length, origin, date of shipment), the facts of the present case simply involve a negligible increase in transit time with all other operating parameters held consistent with real-world practice. Moreover, as IPA explained in its Rebuttal and as noted above, {

} *See* Rebuttal at III-C-

42-44.

C. UP's Argument Lacks Adequate Contractual Support

Finally, the Board should reject UP's request to exclude Z-train traffic from the IRR's traffic group because UP has not documented its claims regarding the service needs of its customers with specific contractual support. *See* Rebuttal at I-20-21, 24-26. As IPA demonstrates in its Rebuttal, {

} *Id.* at I-25; III-C-38-49.

If UP had some basis for suggesting that the additional 30 minutes of transit time would violate the service terms of UP's Z-train contracts, it was incumbent upon UP to present the relevant service commitments in support of its Reply Evidence. The fact that it did not do so justifies the reasonable conclusion that UP's contractual service commitments are not so strict that such a minor increase in transit time would have any impact.

III. UP is Wrong to Exclude the IRR's On-SARR Local Traffic

UP seeks to exclude a second broad category of traffic from IPA's traffic group in this case; namely, traffic that originates or terminates on the lines replicated by the IRR using local trains. *See* Reply at I-7-8, III.A-2, and III.A-13-15. This traffic consists of approximately 7,400 shipments of agricultural, ore, rock and general merchandise traffic. *See* Rebuttal at III-A-15 and III-A-16 n.7. Notably, UP seeks to prohibit the IRR from carrying both the on-SARR local portion and the on-SARR through-train portion of such movements.

In the real world, most of the shipments of this type originate on UP's system at points located between Lynndyl and Milford and move south in UP local train service to UP's yard at Milford. *Id.* at III-A-15; *see also* Reply at III.A-13-14.¹⁰ At the Milford Yard, UP switches the cars from a southbound UP local train to a northbound UP through train which, in turn, moves the traffic through Lynndyl or Provo to its ultimate destination. *Id.*

IPA had proposed an arrangement for this traffic on Opening under which the residual UP would serve the on-SARR local traffic by moving it south to the Milford Yard in exchange for a fee. *See* Rebuttal at III-A-15. The IRR would then transport this traffic in northbound through train service from Milford to Lynndyl (or Provo) using its own locomotives and crew, and finally, the IRR would interchange the through train back to the residual UP at that point (for regular UP revenue service to the shipment's ultimate destination). *Id.* at III-A-15-16.

On Reply, however, UP argued that it was essential for the IRR to handle the southbound origination of this northbound traffic without any UP involvement whatsoever. *See* Reply at III.A-14 ("IPA cannot choose to include this on-SARR UP-originated/terminated traffic and then provide only part of the on-SARR movement needed to serve this traffic."). Based upon this argument,

¹⁰ Certain of this traffic instead terminates in local UP service at points between Milford and Lynndyl. The issues remain the same regardless of whether a particular shipment originates or terminates on the IRR.

UP removed each of these shipments (in both the southbound local and northbound through train directions) from its model. *Id.* at III.A-15. UP acknowledged on Reply that it had “considered whether it could adjust IPA’s operating plan to have IRR provide the necessary local-train origination and termination service for this traffic.” *Id.* Although UP certainly possessed all of the information necessary to calculate the costs and ATC revenues associated with the on-SARR local portions of these movements, UP refrained from submitting such evidence to the Board.¹¹

In its Rebuttal Evidence, IPA accepts UP’s position that the IRR cannot rely upon UP in any respect to service this on-SARR local traffic. *See* Rebuttal at III-A-18.¹² IPA adds the necessary crews and locomotives to perform the full on-SARR service that UP actually performs for this traffic in the real

¹¹ *See* Rebuttal at III-A-20; *see also* Reply at III.A-15 (claiming not that it lacked the information necessary to submit evidence of the costs and revenues associated with on-SARR local train traffic, but instead, only that “the most feasible” way to avoid the “infirmity” in IPA’s evidence was to exclude the related through train traffic from the IRR system).

¹² In an effort to excuse its decision to refrain from submitting evidence regarding local train costs and revenues on Reply, UP claimed that IPA supposedly “chose as a fundamental criteria for its SARR to avoid pick-up and delivery of manifest traffic using local trains” Reply at III.A-15. IPA demonstrates in its Rebuttal that UP’s claim is inconsistent with the facts of the case and constitutes an improper effort to circumvent the Board’s *Duke/NS* precedent. *See* Rebuttal at III-A-18-20; *Duke/NS*, 7 S.T.B. at 101 (“Where the railroad has identified flaws in the shipper’s evidence *but has not provided evidence that can be used in the Board’s SAC analysis . . .* the shipper may supply corrective evidence.”) (emphasis added). Accordingly, IPA is justified in foregoing UP involvement in providing service for the IRR’s existing traffic group in order to respond to UP’s Reply criticisms. Rebuttal at III-A-20.

world. As IPA explains, this change in the IRR's manner of handling this local service does not increase the volume of traffic that the IRR will handle. Instead, the effect of this adjustment is merely to eliminate UP's involvement in the on-SARR local service. *Id.*¹³

Consequently, IPA's Rebuttal Evidence includes: (i) the costs and revenues associated with the IRR providing southbound origin service for each of these on-SARR local movements; and (ii) the costs and revenues associated with the on-SARR northbound through train movements of this traffic as well.

Conversely, UP's Reply Evidence excludes both the on-SARR local and the on-SARR through train portions of these movements from the IRR system. Finally, both IPA and UP include alternative calculations in their evidence based upon the assumption that the IRR would provide only the through train portion of this service. *See* Rebuttal at III-A-45-46. UP calculates lower IRR revenues for those through train movements than IPA calculates because UP makes improper adjustments to the Board's ATC divisions methodology, as discussed above. *Id.*

¹³ IPA further explains on Rebuttal that – by UP's own admission – IPA's Opening Evidence “costed the on-SARR local train movements as originating on the IRR.” *Id.* at III-A-19; *see also* Reply at III.A-21 (“IPA did not cost the shipments as SARR bridge movements. . . . Rather, IPA costed the SARR portion as originated or terminated . . .”). IPA's Opening Evidence also “identified the full length of the on-SARR miles (in both the southbound and northbound directions) for this service.” Rebuttal at III-A-20 & n.9.

IV. The Board Should Not Impose an Equity Flotation Fee

On Reply, UP argued that it was essential for the IRR to pay a 7.3% equity flotation fee in order to raise the equity necessary to finance the construction of the SARR. *See* Reply at III.G-1-4. In that regard, UP claimed that the Board's 2007 *AEP Texas* decision represents a modification to the Board's prior approach and obligates IPA to include equity flotation costs in its DCF calculations. Reply at III.G-2.

To calculate an equity flotation cost for the IRR, UP identified six IPO's that took place in 2012 "of roughly the size of IRR's." *Id.* UP averaged the equity flotation fees that these companies paid in order to obtain its proposed 7.3% figure. *Id.* Notably, however, UP objected to the Board's decision in *AEP Texas* to the extent that it required the impact of the equity flotation fees to be spread across the entire railroad industry. *Id.* at III.G-3. UP claimed that the Board's approach in *AEP Texas* "effectively eliminates the impact of the equity flotation costs," and "implicitly assumes that an equity flotation cost is associated only with a small percentage of the railroad industry equity." *Id.*

In Part III-G of its Rebuttal, IPA demonstrates that UP's claims regarding equity flotation fees are mistaken. As an initial matter, UP is wrong to argue that the Board ever imposed a requirement that a shipper include flotation costs. *See* Rebuttal at III-G-2-3. Instead, the Board has consistently rejected efforts by railroads to add such costs to a SARR's cost of equity. *Id.*

The Board's *AEP Texas* decision related to a situation in which the complaining shipper proposed a financial restructuring in order to take advantage of lower capital costs and the shipper included an equity flotation cost designed to track the Board's treatment of debt flotation costs for the railroad industry as a whole. *Id.* In its decision, the Board rejected the shipper's proposed restructuring approach, but included an equity flotation cost of 0.13%. *See AEP Texas*, slip op. at 108; Rebuttal at III-G-2. Significantly, however, the Board explicitly rejected the defendant's proposal of a direct, 4% flotation fee. *Id.*

Imposing an equity flotation fee in a SAC case would create an impermissible double-count since those fees already are reflected in the Board's cost of equity determinations. Moreover, such fees should be excluded because railroads do not actually incur equity flotation costs. As IPA explains in its Rebuttal, the Board rejected the use of an equity flotation fee in *AEPCO 2011*. *See* Rebuttal at III-G-3 (citing *Ariz. Elec. Power Coop., Inc. v. BNSF Ry. & Union Pac. R.R.*, NOR 42113, slip op. at 137-38 (STB served Nov. 22, 2011)).

IPA also shows in its Rebuttal that the six IPOs that UP identified in its Reply Evidence are not relevant to this case. *See* Rebuttal at III-G-5-8. None of the six involved a railroad or even a company in a related industry. The IPOs involved firms with much larger market capitalizations than the IRR and the IPO proceeds largely were used to extinguish debt rather than to procure assets or fund operations. *Id.* It also appears that a primary objective of the IPOs was to enable

trading of the much greater number of shares that was already outstanding in those situations.

V. The Board Should Reject UP's Cross-Subsidy Arguments

Finally, the Board should reject UP's request to limit IPA's relief on cross-subsidy grounds. In its Reply, UP wrongly asserts that the IRR's Lynndyl-Milford overhead traffic "does not share any facilities with the IPA issue traffic" Reply at III.H-17. On the basis of this claim, UP insists that the Board must evaluate whether the IRR model includes an improper cross-subsidy. *Id.* at I-12-16; III.H-16-22. As IPA demonstrates in its Rebuttal, UP's argument is based upon a faulty characterization of the IRR's facilities and operations and should be rejected. *See* Rebuttal at III-H-32-41.

UP also asks the Board to reject its existing *Otter Tail* cross-subsidy test in favor of a new ATC-based test that UP has devised with the stated purpose of imposing greater limits on rate relief for captive shippers. *See* Reply at III.H-18-19. Again, IPA's Rebuttal shows that the Board should reject UP's arguments. *See* Rebuttal at III-H-41-46.

A. UP is Factually Mistaken Regarding the Nature of the IRR System

Contrary to UP's claim, there is no traffic moving on the IRR system that fails to share at least some facilities with the issue traffic (*i.e.*, so-called "Shipper 3" traffic). *See Otter Tail*, slip op. at 10 ("Shipper 3 uses only the

secondary facilities and does not use the core facilities.”).¹⁴ The IPA issue traffic and all of the IRR overhead traffic moving between Lynndyl and Milford overlap for 1.55 miles. *See* Rebuttal at III-B-1-6 and III-H-35.

The factual predicate for UP’s argument is the claim that the multiple tracks constituting the IRR’s line in the vicinity of Lynndyl, UT are entirely separate and that the issue traffic moves over one of those tracks while the Lynndyl-Milford traffic moves over another. As IPA explains in its Rebuttal, UP’s factual predicate is: (i) flatly incorrect with respect to the overhead traffic that moves *northbound* from Milford to Lynndyl; and (ii) is insufficient to support subjecting the *southbound* Lynndyl to Milford traffic to the cross-subsidy analysis. *Id.* at III-H-35-36.

As to the northbound overhead traffic moving from Milford to Lynndyl, the Rail Traffic Controller (“RTC”) Model simulation that IPA submitted on Opening shows that this traffic regularly uses the same mainline track that the IGS trains use. *See* Op. e-workpaper folder “RTC.” Thus, UP’s argument with respect to this traffic is patently incorrect.

For the southbound Lynndyl to Milford overhead traffic, UP concocts a strained argument that the main track and the Lynndyl Yard tracks

¹⁴ *See Otter Tail*, slip op. at 9 (“A full SAC presentation may include the ‘secondary facilities’ needed to serve Shipper 2 but not used by Shipper 1”); *id.*, slip op. at 10 (explaining that “revenues from Shipper 3 should not be used to pay for the core facilities,” although such revenues can free-up additional Shipper 2 revenues to contribute more for the core facilities).

constitute entirely separate facilities because of the instructions associated with IPA's RTC modeling (Reply at I-12-13), but this argument is insufficient to warrant a determination that any Shipper 3 traffic exists on the IRR system.¹⁵

IPA used specific routing instructions through the Lynndyl Yard for the southbound overhead traffic in its RTC simulation on Opening as a simplification to eliminate the possibility of any track conflict at Lynndyl and to simplify the RTC modeling. *See* Rebuttal at III-H-36. If the Opening RTC model had been instructed to allow use of the mainline at Lynndyl, some of the Lynndyl-Milford overhead traffic would have been routed over the main line, as the only major activities that occur at Lynndyl (other than for one train that picked up cars at Lynndyl) are crew changes and interchanges. *See* Rebuttal at III-B-1-6 & III-B-3 n.3. Moreover, in the real world, the IPA issue traffic and all of the overhead traffic must be routed over the same main line because there is no other track at Lynndyl that can accommodate the trains. *Id.* at III-H-36.

IPA's Rebuttal includes a demonstration that absent IPA's RTC instruction, the issue traffic and the overhead traffic moving in both directions utilize the main line when available, thereby entirely eliminating the putative predicate for UP's cross-subsidization claim. *Id.* at III-B-3-4 and III-H-37. There is thus no basis for applying UP's proposed cross-subsidy adjustment.

¹⁵ *Cf. Rate Regulation Reforms*, slip op. at 33 (declining to adopt a divisions approach based on individual track-miles, instead preferring to continue evaluating average total costs on a route-mile basis).

In fact, even if the Lynndyl-Milford and Milford-Lynndyl overhead traffic always were deemed to be diverted off the main line to the Lynndyl Yard, the IPA issue traffic and the crossover traffic both still would receive benefits from sharing common IRR facilities; *i.e.*, it would be more expensive to construct, maintain, and operate the yard track in the absence of the main line. *Id.* at III-H-37-38. UP's focus on whether the IPA traffic and the overhead traffic moving between Lynndyl and Milford actually share the exact same track is thus not only wrong factually, but also too narrow and ignores railroading economics and operations. *Id.* at III-H-38-39.

B. UP's Proposed Alternative Cross-Subsidy Test is Improper

UP's proposed alternative cross-subsidy test is similarly flawed. As IPA explains in its Rebuttal, the approach that UP proposes amounts to a "segmented" SAC analysis that is contrary to the Board's precedent. *See* Rebuttal at III-H-42-43. In particular, the ATC-based approach that UP advocates is a variant of the segmented approach that the STB considered and rejected in *PPL Montana, LLC v. The Burlington N. and Santa Fe Ry.*, 6 S.T.B. 752, 756-58 (2003). The STB excluded unattributable costs from the allocation precisely because they could not be attributed to a specific segment, particularly inasmuch as a SARR or other railroad would be willing to handle traffic that "could make any contribution to the carrier's unattributable cost" *Id.*, 6 S.T.B. at 758 n.22. The fact that the STB now takes unattributable or fixed costs into account in allocating cross-over revenues or contribution between the SARR and the residual

incumbent is no reason to take such costs into account for purposes of allocating revenues across the segments of the SARR for cross-subsidy testing purposes.

In sum, there is no “Shipper 3” traffic, and there is thus no basis for any *Otter Tail*-type adjustment. Even if there were a basis to apply such an adjustment, UP’s ATC-based approach should not be utilized for the reasons stated above.

CONCLUSION

IPA has demonstrated, through the best evidence of record in this case, that the rates it has challenged exceed Stand Alone Costs and the Board therefore should prescribe maximum reasonable rates and otherwise award the relief that IPA seeks. *See* Rebuttal at III-H-19-32, III-H-46-47.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that this 14th day of August, 2013, I have caused both Highly Confidential and Public versions of the Brief of Complainant Intermountain Power Agency to be served by hand delivery upon:

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I further certify that I have caused a Public version of this Brief to be served by overnight courier upon:

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