BEFORE THE

SURFACE TRANSPORTATION BOARD

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STB Docket No. EP 661 (Sub-No. 2)

RAIL FUEL SURCHARGES (SAFE HARBOR)

COLORADO SPRINGS UTILITIES REPLY CONCERNING BNSF RAILWAY COMPANY'S OPENING COMMENTS

Pursuant to the Decision served in the captioned proceeding on May 29, 2014, Colorado Springs Utilities ("CSU") hereby submits its reply concerning the August 4, 2014, *Rail Fuel Surcharges (Safe Harbor) STB Ex Parte No. 661 (Sub-No.2) BNSF Railway Company's Opening Comments* (the "BNSF Filing"). CSU disagrees with BNSF's contention that railroad capital costs should be considered in assessing the economics of a fuel surcharge program. The sole object of fuel surcharges is to recover incremental fuel costs, not capital costs.

A. Identity and Interest of CSU

CSU is an enterprise of the City of Colorado Springs and a municipal corporation located in Colorado Springs, Colorado. It owns and operates two coal-fired plants in the general vicinity of Colorado Springs that use coal delivered by rail under tariffs that include mileage-based fuel surcharges.

B. Locomotive Capital Expenses Have No Bearing on Fuel Surcharges:

The BNSF Filing contends the Surface Transportation Board's calculations in *Cargill. Inc. v. BNSF Railway*, STB Docket No. NOR 42120, failed to assess the full economic impact of fuel-efficiency measures:

> [T]he Board's assessment of the divergence between BNSF's surcharge revenues and internal fuel costs in *Cargill* was substantially overstated because the Board's calculations did not reflect the large capital costs of fuel-efficiency initiatives that BNSF undertook during the Cargill analysis period, which were not reflected in the formulaic fuel costs reviewed by the Board. The Board's cost calculations reflect cost *savings* from fuel efficiency measures taken by BNSF but they do not account for the offsetting investment *costs* incurred to achieve those fuel efficiencies. As BNSF's witness Mr. Fisher explained in evidence submitted in the *Cargill* case, BNSF's annual URCS locomotive acquisition expenses alone increased by $260 Million from 2006-1010 (from $624 million to $884 million) as BNSF acquired new fuel-efficient locomotives, but none of that $260 million dollar increase in cost was reflected in the Board's incremental cost calculations.

BNSF Filing at 11 (emphasis in original quote).

While BNSF may have capital expenses associated with fuel efficiency, these capital expenses have nothing to do with fuel surcharge programs. The Board should reject the consideration of any capital cost recovery in assessing a fuel surcharge program because inclusion of these costs constitutes broad revenue enhancement, rather than recovery of incremental fuel costs. "[T]he term 'fuel surcharge' most naturally suggests a charge to recover increased fuel costs associated with the movement to which it is applied. If it is used instead as a broader revenue enhancement measure, it is mislabeled." *STB Ex Parte No. 661 RAIL FUEL SURCHARGES, decided January 25, 2007, at 7.*

A fuel surcharge program designed with a non-zero strike price implies a quantity of fuel usage and a given efficiency. The cost of fuel usage at such efficiency is recovered both through the base rate and the fuel surcharge. Capital and operating expenditures, including the costs of acquiring new locomotives and fuel efficiency programs, are imbedded in the non-fuel component of the base rate. The use of variable fuel surcharge revenue, however, to recover the above non-fuel costs is double-dipping. Accordingly, BNSF's justification of variable fuel surcharges to offset or recover fixed costs is inappropriate. The Board should reject this rationale in any conversation about safe harbor fuel surcharges.

CONCLUSION

Within the context of the safe harbor proceedings, the Board should adhere to the established principle that fuel surcharge programs may only be designed to collect the carriers' incremental cost of fuel having some reasonable nexus to the actual incremental consumption for the design movements. The Board should exclude consideration of any non-fuel cost in fuel surcharge programs, regardless of whether they are subject to safe harbor protection.

RESPECTFULLY SUBMITTED

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