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WRITER'S E-MAIL:

March 23, 2012

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ENTERED
Office of Proceedings
March 23, 2012
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Public Record

VIA HAND DELIVERY

Ms. Cynthia Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0111

Re: STB Finance Docket No. 35506, *Western Coal Traffic League – Petition for a Declaratory Order*

Dear Ms. Brown:

After discussions with Board staff, we are enclosing for filing in the above-referenced proceeding copies of the presentation slides used at the Board's March 22, 2012 hearing by Thomas D. Crowley in his testimony for the Western Coal Traffic League, American Public Power Association, Edison Electric Institute, National Association of Regulatory Utility Commissioners, National Rural Electric Cooperative Association, Western Fuels Association, Inc., and Basin Electric Power Cooperative, Inc. (collectively "Coal Shippers/NARUC").

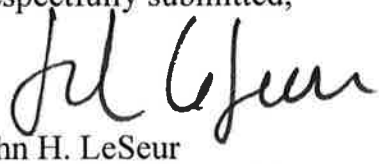
Also, questions were raised by the Board at the hearing on the methodology and basis for developing the values of the assets and liabilities as determined by BNSF as contained in BNSF Railway Company's ("BNSF") 2010 Annual Report R-1. Counsel for Coal Shippers/NARUC informed the Board at the hearing that counsel for Coal Shippers/NARUC had requested this information from BNSF by letter dated October 12, 2011, but that counsel for BNSF had declined to provide it by letter dated October 17, 2011.

Please find enclosed copies of the parties' correspondence on this matter, which consist of a letter dated October 12, 2011 where counsel for Coal Shippers/NARUC requested "all workpapers showing the methodology and basis for

developing the 'fair values' of the assets and liabilities as determined by BNSF" and a response letter dated October 17, 2011 (excluding the Highly Confidential enclosures) where counsel for BNSF declined to provide this information, stating that "[t]he methodology for applying GAAP principles to value purchased assets is not at issue in this proceeding, either as WCTL framed the issue or as the Board delimited it."

Thank you for your attention to this matter.

Respectfully submitted,



John H. LeSeur
An Attorney for Coal Shippers/NARUC

cc: Service List
Enclosures

The Berkshire Hathaway Acquisition Premium Will Directly Lead To Higher Rates For BNSF Captive Shippers

Impact On Jurisdictional Threshold

1. The jurisdictional threshold for a hypothetical BNSF 1,200 mile grain shipment will increase by $0.40 per ton.
2. The jurisdictional threshold for a hypothetical 1,000 mile BNSF coal shipment will increase by $0.58 per ton.
3. Traffic eliminated from STB jurisdictional constitutes a significant portion of BNSF's total regulated traffic.

The Berkshire Hathaway Acquisition Premium Will Directly Lead To Higher Rates For BNSF Captive Shippers

Impact On BNSF Shippers With Rate Prescriptions

1. The maximum rates set by the SAC constraint will increase, e.g., WFA/Basin's transportation charges will increase by $25.1 million over the remaining life of the STB's rate prescription period.

2 The maximum rates set at the jurisdictional threshold will increase, e.g., AEPCO's total transportation charges will increase between $1.8 million and $4.1 million over the remaining life of the STB's rate prescription period.

3. SSAC rate relief parallels the declines that SAC rate relief will experience.

4. Three-Benchmark rate relief can be reduced by over 50% in future rate cases.

The Berkshire Hathaway Acquisition Premium Will Directly Lead To Higher Rates For BNSF Captive Shippers

Impact On Revenue Adequacy

1. The STB calculated the 2010 industry cost of capital at 11.03%.
2. When the impact of the Berkshire Hathaway premium is excluded, BNSF's 2010 ROI equals 10.66%.
3. When the partial impact of the Berkshire Hathaway premium is included, BNSF's 2010 ROI equals 9.22%.
4. When the full impact of premium is included, the STB's 2010 BNSF ROI calculation falls from 9.22% to 8.05%.

Unlike Prior Railroad Acquisitions, Berkshire Hathaway's Acquisition Of BNSF Will Produce No Synergies To Offset The Premium

	Amount (Millions)		
Merger (1)	**Projected Cost Synergies Per Year** (2)	**Acquisition Premium** [1/] (3)	**Years to Recover Premium** [2/] (4)
1. NS/CSXT-Conrail	$1,000	$3,671	3.7
2. UP-SP	$659	$2,729	4.1
3. BN-ATSF	$453	$1,423	3.1
4. Blackstone – CNW	$102	$90	0.9
5. Berkshire Hathaway – BNSF	$0	$8,100	~

[1/] Net premium included in URCS.
[2/] Column (3) ÷ Column (2).

While GAAP May Require Inclusion Of The Premium For Financial Reporting, Its Inclusion Is Not Required For Ratemaking Purposes

"GAAP does not require the STB to use any accounting convention for its regulatory purposes." (Weil Reply V.S. at 3)

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"GAAP is not primarily directed to regulation, and thus should not be relied on for ratemaking purposes." (Verecchia Rebuttal V.S. at 2).

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"Pre-acquisition costs reflect economic value of assets devoted to public use while the valuation after the Berkshire acquisition reflects the new market value of those assets. The issue for the STB when developing variable costs for regulatory purposes cannot be resolved by an examination of which cost is most 'accurate' because both versions of the costs are 'accurate.' Instead, the STB must look at the purpose of the valuation and the impact on the shippers due to an artificial increase in costs. " (Crowley/Fapp Rebuttal V.S. at 6)

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WRITER'S E-MAIL:

October 12, 2011

VIA EMAIL AND U.S. MAIL

Robert M. Jenkins, III
Mayer Brown LLP
1999 K Street, NW
Washington, DC 20006

Re: STB Finance Docket No. 35506, *Western Coal Traffic League – Petition for Declaratory Order*

Dear Robert:

Thank you for your October 4, 2011 response to our request for workpapers. Our workpaper requests sought all workpapers supporting "the development of" BNSF's write-up and depreciation calculations as contained in specified schedules of BNSF's 2010 Annual Report R-1 ("BNSF's R-1"). While your response included spreadsheet data reflecting account values, missing from your response was additional information responsive to our request for workpapers supporting "the development of" those account values.

At this time, WCTL requests that BNSF provide the following workpapers specifically relating to the development of the values shown:

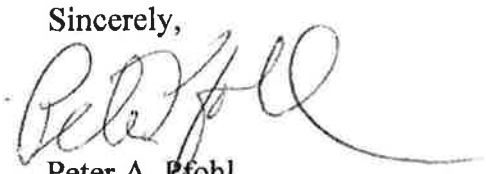
1. In BNSF's R-1, BNSF states that "[u]nder the acquisition method, the new basis of accounting totaling $42,919 million, was pushed down and allocated to the underlying tangible and intangible assets acquired and liabilities assumed based on their respective fair values, with the remainder of $14,803 million allocated to goodwill (included in other assets)." (BNSF R-1, Schedule 200, note 1, page 9) (emphasis added). Please provide all workpapers showing the methodology and basis for developing the "fair values" of the assets and liabilities as determined by BNSF.

2. The note incorporated in Schedule 330 of BNSF's R-1 states that the expenditures during the year for purchase of existing lines, reorganization, etc. "represents the purchase accounting fair valuation of assets net of the accumulated depreciation write-off due to acquisition of BNSF by Berkshire Hathaway." (BNSF R-1, Schedule 330, page 32) (emphasis added). Please provide all workpapers showing the methodology and basis for developing the "fair valuation" of the assets as determined by BNSF.

We request that these workpapers be provided no later than three business days from the date of this letter.

Please contact us if you have any questions.

Sincerely,



Peter A. Pfohl
An Attorney for the
Western Coal Traffic League

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October 17, 2011

BY E-MAIL AND FIRST-CLASS MAIL

Peter A. Pfohl
Slover & Loftus LLP
1224 Seventeenth Street, NW
Washington, DC 20036

Re: STB Finance Docket No. 35506, *Western Coal Traffic League—Petition for Declaratory Order*

Dear Pete:

This responds to your supplemental request for workpapers, which you e-mailed to me on October 12, 2011. First, we cannot agree with your statement that there were workpapers "missing" from those that we sent you on October 4. Your petition for declaratory order seeks to have the entirety of the so-called "acquisition premium" deleted from BNSF's URCS costs. As the Board put it in its September 26 decision initiating this proceeding, "WCTL asks the Board to declare that it will exclude the write-up in BNSF's net investment base attributable to the difference between the book value and the price that Berkshire Hathaway Inc. (Berkshire) paid to acquire BNSF in 2010, and make corresponding changes in BNSF's annual URCS depreciation calculations." STB Decision at 1.

If the Board determined to adjust BNSF's URCS costs as WCTL seeks, as you stated in your petition, it would be a "mechanical exercise . . . once all necessary data is collected." Pet. at 5. As we understand it, in Attachment No. 4 to your petition for declaratory order, WCTL sought workpapers that would enable it to perform that "mechanical exercise." That is what the workpapers we sent you on October 4 permit you to do. No other data are required.

It appears to us that your supplemental request for workpapers is really a request for discovery into a different question, which is how BNSF's accountants applied GAAP principles to value the purchased assets. The methodology for applying GAAP principles to value purchased assets is not at issue in this proceeding, either as WCTL framed the issue or as the Board delimited it. Moreover, WCTL told the Board in its petition for declaratory order that no discovery was necessary in this proceeding, and the Office of Proceedings, in granting WCTL's petition for protective order, expressly limited the scope of its order to the workpapers identified in your Attachment No. 4. Office of Proceedings Decision at 1-2.

As you note in your supplemental request, BNSF's R-1 states that the amounts shown in the R-1 were based on the values determined in the purchase accounting process. BNSF is willing to provide workpapers showing those value amounts and how they relate to the asset

categories in the R-1. Those workpapers are attached, and designated Highly Confidential. We do not believe that any additional discovery is warranted or permitted in this proceeding.

Sincerely yours,

Robert M. Jenkins III

cc: Jill K. Mulligan