



Jill K. Mulligan
Associate General Counsel

BNSF Railway Company
P.O. Box 961039
Fort Worth, TX 76161-0039
2500 Lou Menk Drive
Fort Worth, TX 76131-2828
817-352-2353 Direct
817-352-2399 Fax
Jill.mulligan@bnsf.com

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VIA ELECTRONIC FILING

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

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

Dear Ms. Brown:

I am writing this letter on behalf of BNSF Railway Company (“BNSF”) in opposition to the December 12, 2013 “Joint Petition of Western Coal Traffic League, Western Fuels Association, Inc., Basin Electric Power Cooperative, Inc., and Arizona Electric Power Cooperative (“Coal Shippers”) For a Technical Conference” (“Petition”) which seeks to “obtain the Board staff’s views concerning the [R-1] inputs the Board plans to use to develop” BNSF’s restated URCS variable costs for 2010, 2011 and 2012. The technical conference requested by Coal Shippers is unnecessary and inappropriate.

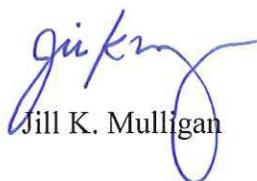
As Coal Shippers acknowledge, BNSF complied with the Board’s July 25, 2013 order in the above-captioned proceeding to refile its R-1 reports for 2010, 2011 and 2012 to remove the purchase accounting markup of rail assets that resulted from the 2010 Berkshire Hathaway acquisition of BNSF. The Board subsequently audited the refiled R-1 reports. *Quarterly Rail Cost Adjustment Factor*, EP 290 (Sub-No.5) (2013-14), slip op. at 1 (STB served Nov. 27, 2013) (“BNSF has now certified its revised R-1 Annual Reports for 2010, 2011, and 2012, and the Board has audited the certified schedules.”). The restated R-1 reports that were audited by the Board are currently available on the Board’s website. Each year the Board utilizes the audited R-1 values in developing a rail carrier’s URCS costs for the year. There is simply no need for a technical conference to address the R-1 inputs that will be used by the Board to produce the restated URCS variable costs for the years corresponding to the restated R-1 reports.

In making their unusual request for a technical conference, Coal Shippers also claim that they “need guidance from the Board’s staff on how it plans to address differences between its July 2013 Workpapers’ R-1 inputs and the corresponding R-1 inputs in BNSF’s restated R-1s.” Petition at 4. The Board’s July 2013 workpapers are not relevant to the preparation of BNSF’s restated URCS costs. The Board’s workpapers were used to prepare an estimate of the impact of the purchase accounting markup on URCS. But the Board’s estimate was never intended to affect the actual URCS calculations, which the Board recognized would be based on BNSF’s restated R-1 reports.

Moreover, Coal Shippers focus on a single specific difference between the accumulated deferred income tax credits contained in the Board’s July 2013 workpapers and the accumulated deferred income tax credits in BNSF’s restated 2010 R-1. They correctly suggest that use of the accumulated deferred income tax credits value in BNSF’s restated 2010 R-1 will produce higher URCS variable costs than those estimated by the Board in the July 2013 decision. Coal Shippers should have readily diagnosed the fact that the Board’s July 2013 workpapers inadvertently failed to account for the markup of accumulated deferred income tax credits in estimating the impact of the asset markup on BNSF’s URCS variable costs. The markup in accumulated deferred income tax credits resulting from the Berkshire Hathaway purchase was included in workpapers that BNSF provided to WCTL,¹ was described in public filings in the above-captioned matter,² and was addressed by WCTL itself in WCTL’s estimate of the impact of purchase accounting on URCS.³ For WCTL to use the Board’s inadvertent failure to account for the markup of accumulated deferred income tax credits in the Board’s July 2013 workpapers as the basis for holding a technical conference on BNSF’s restated R-1 reports is wide of the mark.

The Board has procedures for using a rail carrier’s R-1 reports to generate URCS variable costs for the carrier and there is no reason to delay or disrupt the process of generating restated URCS variable costs for BNSF for 2010, 2011 and 2012 here. BNSF urges the Board to deny Coal Shippers’ request for a technical conference.

Sincerely,



Jill K. Mulligan

¹ “WORKPAPERS WCTL 1003.PDF”, included with BNSF’s October 28, 2011 Opening Evidence and Argument.

² Baranowski/Fisher Exhibit 3, attached to BNSF’s October 28, 2011 Opening Evidence and Argument; *see also* Hund V.S. at 6, attached to BNSF’s October 28, 2011 Opening Evidence and Argument.

³ October 28, 2011 Joint Opening Evidence and Argument of Coal Shippers/NARUC at 13, Summary Table, line 4.