

224656

SLOVER & LOFTUS LLP

ATTORNEYS AT LAW

1224 SEVENTEENTH STREET, N W
WASHINGTON, D C 20036-3009

WILLIAM L SLOVER
C MICHAEL LOFTUS
JOHN H LE SECUR
KELVIN J DOWD
ROBERT D ROSENBERG
CHRISTOPHER A MILLS
FRANK J PERGOLIZZI
ANDREW B KOLESAR III
PETER A PFOHL
DANIEL M JAFFE
STEPHANIE P JYONS
JOSEUA M HOFFMAN

TELEPHONE
(202) 347-7170

FAX
(202) 347-9619

WRITER'S E-MAIL
cam@sloverandloftus.com

March 10, 2009

OF COUNSEL
DONALD G AVERY

VIA HAND DELIVERY

ENTERED
Office of Proceedings

MAR 10 2009

Part of
Public Record



The Honorable Anne K Quinlan
Secretary
Surface Transportation Board
395 E Street, SW
Washington, D C 20423-0001

Re Docket No 42088, Western Fuels Association, Inc and Basin
Electric Power Cooperative, Inc v BNSF Railway Co

Dear Secretary Quinlan.

Enclosed for filing UNDER SEAL in the above-referenced proceeding please find an original and 20 copies of the "Highly Confidential" version of the Joint Petition to Correct Technical and Computational Errors of Complainants Western Fuels Association, Inc and Basin Electric Power Cooperative, Inc , and Defendant BNSF Railway Company

Also enclosed for filing are an original and 10 copies of the Public version of this Petition The Public version is identical to the Highly Confidential version except it excludes the Attachment, which is essentially a workpaper that contains highly confidential information under the applicable protective order

Please date stamp the extra copy of this cover letter and the enclosed filings and return them to our messenger. Thank you for your attention to this matter

Respectfully submitted,

Christopher A Mills
An Attorney for Complainants

Enclosures

cc Counsel for Defendant BNSF Railway Co

PUBLIC VERSION

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

WESTERN FUELS ASSOCIATION, INC)	
and BASIN ELECTRIC POWER)	
COOPERATIVE, INC)	
)	
Complainants,)	
)	
v.)	Docket No 42088
)	
BNSF RAILWAY COMPANY)	ENTERED Office of Proceedings
)	MAR 10 2009
Defendant)	Part of Public Record

**JOINT PETITION TO
CORRECT TECHNICAL AND COMPUTATIONAL ERRORS**

Complainants Western Fuels Association, Inc and Basin Electric Power Cooperative, Inc (“WFA/Basin”) and defendant BNSF Railway Company (“BNSF”) hereby jointly petition the Board to correct certain technical and computational errors in its decision in this docket served February 18, 2009 (“Decision”)

This Petition is submitted pursuant to the procedure for requesting technical corrections to decisions in SAC cases described in the Board’s Decision served December 14, 2004, in Docket No 42057, Public Service Company of Colorado D/B/A Xcel Energy v The Burlington Northern and Santa Fe Railway Company (id, at 2)

The technical and computational errors in the Decision that the parties have identified are set forth in the Attachment to this Petition. They relate to an error in the density and variable-cost calculations for the SARR's re-routed cross-over traffic. This error impacts the application of the Board's DCF Model.

Specifically, the Board made certain density and variable-cost calculations in applying the ATC procedure for calculating revenue divisions for cross-over traffic, including internally rerouted traffic that the SARR handles between the origin mines and an interchange with the residual BNSF at Northport, NE. At pp 14-15 of the Decision the Board stated that for ATC purposes the incumbent's predominant actual route of movement for cross-over traffic should be used. However, for approximately 50% of the SARR's re-routed traffic, which is cross-over traffic subject to the ATC methodology, the Board used the SARR route (via Guernsey, WY) rather than the predominant actual BNSF route (via Alliance, NE).

The Attachment hereto describes this technical error in more detail, including where it is located in the Board's workpapers and the corrections that are needed to fix it.

WHEREFORE, WFA/Basin and BNSF request the Board to correct the technical errors in the Decision described herein.

Respectfully submitted,

BNSF RAILWAY
COMPANY

By Anthony J. LaRocca
Samuel M Sipe, Jr *cur*
Anthony J LaRocca
Frederick J Horne
STEPTOE & JOHNSON LLP
1330 Connecticut Avenue, N.W.
Washington, D C 20036
(202) 429-3000

Richard E Weicher
Jill K Mulligan
BNSF Railway Company
2500 Lou Menk Drive
Fort Worth, TX 76131
(817) 352-2353

Attorneys for Defendant

Dated March 10, 2009

WESTERN FUELS ASSOCIATION, INC
and BASIN ELECTRIC POWER
COOPERATIVE, INC

By Christopher A Mills
John H. LeScur
Christopher A Mills
Peter A Pfohl
Daniel M Jaffe
SLOVER & LOFTUS LLP
1224 Seventeenth Street, N.W.
Washington, D.C 20036
(202) 347-7170

Attorneys for Complainants

**CORRECTION OF TECHNICAL ERRORS IN
STB'S FEBRUARY 18, 2009 DECISION IN DOCKET NO. 42088**

The Attachment to the Joint Petition to Correct Technical and Computational Errors has been omitted from the Public Version of this filing because it contains information that is Highly Confidential under the protective order in this case