

228591

STEPTOE & JOHNSON <sup>LLP</sup>  
ATTORNEYS AT LAW

Samuel M. Sipe Jr.  
202.429.6486  
ssipe@steptoe.com

1330 Connecticut Avenue, NW  
Washington, DC 20036-1795  
Tel 202.429.3000  
Fax 202.429.3902  
steptoe.com

January 6, 2011

**VIA HAND DELIVERY**

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

Re: ***Texas Municipal Power Agency v. BNSF Railway Company,***  
**STB Docket No. 42056**

Dear Ms. Brown:

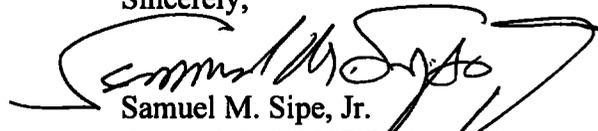
Enclosed for filing in the above-referenced case are the original and ten copies of BNSF's Reply to TMPA's Petition for Enforcement of Decision. We have included one additional unbound copy to be uploaded onto the Board's webpage. Please note that the filing contains color images in the Joint Verified Statement of Michael R. Baranowski and Benton V. Fisher.

Also enclosed are three copies of a CD containing electronic workpapers that contain highly confidential information subject to the protective order entered in this case.

Please date stamp and return the extra copy of this letter to our messenger.

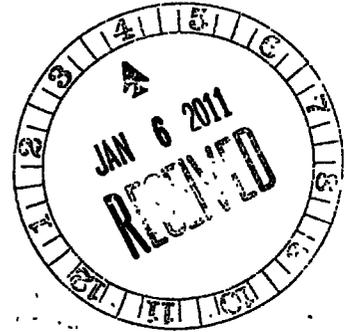
If you have any questions, please do not hesitate to contact me.

Sincerely,

  
Samuel M. Sipe, Jr.  
Counsel for BNSF Railway Company

Enclosures

cc: Parties of Record (with enclosures)



ENTERED  
Office of Proceedings  
Office of Proceedings  
JAN 6 2011  
Part of  
Public Record  
Public Record

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**



\_\_\_\_\_  
**TEXAS MUNICIPAL POWER AGENCY**

**Complainant,**

v.

**BNSF RAILWAY COMPANY**

**Defendant.**

**Docket No. 42056**

**ENTERED  
Office of Proceedings**

**JAN 6 2011**

**Part of  
Public Record**

**BNSF'S REPLY TO TMPA'S PETITION  
FOR ENFORCEMENT OF DECISION**

BNSF Railway Company ("BNSF") hereby replies in opposition to the Petition For Enforcement of Decision ("Petition"), filed by Texas Municipal Power Agency ("TMPA") on December 17, 2010.

**I. INTRODUCTION**

TMPA asks the Board to "direct BNSF to not charge (through March 31, 2021) more than the rate listed in the 'SAC Rate' and 'Tariff Rate' columns of [the Board's] decisions served September 27, 2004 and October 29, 2004." Petition at 5. TMPA claims that under the prior decisions in this case, BNSF has been "barred from charging any rate higher than that listed as the 'SAC Rate' [in the September 27, 2004 and October 29, 2004 decision] for years 2011-2021." *Id.* at 4.

TMPA cites no language in the Board's decisions supporting its claim that BNSF's rates are constrained after 2010 by the referenced decisions. Instead, TMPA's argument appears to be that the *logic* of the Board's SAC analysis requires a limitation on BNSF's rates after 2010 even if the Board did not specify such a limitation: "[I]f the Board allows BNSF to charge a rate

higher than that shown in the SAC rate or Tariff rate column of the TMPA decisions for the 2011-2021 period, then the 20-year DCF analysis will be unlawfully unbalanced.” Petition at 11.

TMPA’s Petition should be denied. The Board’s rate prescription in this case is unambiguous. The Board expressly prescribed rates only for the period 2Q 2001 through 2010. The scope of a rate prescription in a rate reasonableness case is governed by the specific language in the Board’s decision, not by the SAC assumptions underlying the rate prescription. By its very terms, the rate prescription in this case expired at the end of 2010.

TMPA asks that the Board “clarify” that the rate prescription extends beyond 2010 (Petition at 5-6), but the Board cannot “clarify” the rate prescription to say something inconsistent with the plain language of the prescription. TMPA’s Petition might be construed as a request to reopen the Board’s decisions for the purpose of modifying the rate prescription. But TMPA has not provided valid grounds for a reopening. There was no legal flaw in the Board’s decision to prescribe a rate only through 2010. The DCF results showed substantial under-recovery of SAC costs after 2010, so it was entirely reasonable for the Board to limit the rate prescription to the period 2001-2010. The Board properly used its “netting” procedure to ensure that over the rate prescription period (2001-2010), TMPA would receive only the amount of rate relief to which it was entitled.

Nor has TMPA identified any facts that would support a modification of the rate prescription now to extend it for 10 more years. To the contrary, substantial changes in economic conditions make it clear that an extension of the rate prescription would not be appropriate. Most important, fuel prices have gone up far more than expected when the SAC evidence was prepared in this case. As shown by BNSF’s witnesses Messrs. Baranowski and Fisher, if the original DCF analysis had accurately anticipated fuel cost increases, there would

have been no rate prescription at all, even for the period 2001-2010. Indeed, the fact that the enormous increases in fuel prices after 2001 (the base year for fuel prices used in the SAC analysis) have not been reflected in the rates that TMPA has been paying means that TMPA has already received a large windfall during the 10 years in which the rate prescription has been in effect.

Finally, if the Board were to modify the existing rate prescription to extend it beyond the year 2010, the Board would be required to prescribe a rate at the higher of the SAC maximum rate or 180 percent of URCS variable costs. The rate that BNSF is currently charging TMPA is below the Board's jurisdictional threshold and could not be supplanted by a different, lower rate. Although TMPA makes no showing regarding the level of the jurisdictional threshold rate, it incorrectly asserts that the jurisdictional threshold should be calculated using the movement-specific adjustments specified in the prior decisions. Petition at 2 note 1. But the Board determined in 2006 that the jurisdictional threshold would no longer be calculated in rate reasonableness cases using movement-specific adjustments. The Board's jurisdiction over railroad rates is now determined using system-average URCS. BNSF's current rate is less than 180 percent of BNSF's URCS variable costs and is therefore beyond the Board's rate reasonableness jurisdiction.

## **II. BACKGROUND**

TMPA's Petition involves a rate prescription established by the Board in a decision in this case served on March 24, 2003, as modified in decisions served on September 27, 2004 and October 29, 2004. In the March 24, 2003 Decision ("*2003 Decision*"), the Board evaluated TMPA's SAC evidence on the reasonableness of BNSF's rates for the transportation of coal from the Powder River Basin ("PRB") to TMPA's coal fired electric generating facilities at Iola,

Texas. After resolving numerous disputes between the parties on the underlying SAC cost and revenue assumptions, the Board concluded that “we find the challenged rate to be unreasonable and we prescribe a maximum reasonable rate through the year 2011.” *2003 Decision*, at 33.

The Board’s SAC analysis showed that on a present value basis, the stand-alone railroad’s (“SARR”) revenues exceeded its costs by \$208.1 million over the 20-year DCF period. *2003 Decision*, at 159; *see also* Table E-1, line 2021, at page 160. However, revenues exceeded costs only for the years 2001 through 2011. Therefore, only the rates for 2001-2011 exceeded maximum reasonable rates, and only those rates needed to be reduced in order to eliminate the \$208 million SARR over-recovery.

At the time of the *2003 Decision*, the Board applied the percent reduction methodology to determine the extent to which a rate that exceeds a reasonable maximum rate needed to be reduced. Under the percent reduction methodology, the revenues generated on all movements in a particular year, including the issue traffic movements, are reduced by a fixed percentage. The percentage reduction varies each year based on the amount of the overcharge in the year and the total amount of SARR over-recovery that needs to be eliminated. Rates are reduced only for the years in which there was an overcharge. The annual percentage reductions necessary to eliminate the \$208.1 million SARR over-recovery were set out in Table E-1, column 11. *See 2003 Decision*, at 160.

The Board applied these percentage rate reductions to the challenged rates in Table 3 (Caballo Rojo) and Table 4 (Cordero). *See 2003 Decision*, at 34, 35. The challenged rate is referred to as the “Tariff Rate.” The challenged rates for future years were determined by the Board based on BNSF’s pricing authority 90042. *See 2003 Decision*, at 27 note 64. The column titled “SAC Rate” in Tables 3 and 4 identifies the rate produced by applying the appropriate

percentage reduction to the challenged rate. For the years 2012-2021, the “SAC Rate” is the same as the “Tariff Rate” because the challenged rate for those years did not exceed a reasonable maximum rate. The far right column in Tables 3 and 4 set out the “STB Prescribed Rate,” which is described as the “Higher of SAC rate or 180% R/VC rate.” A prescribed rate was established only for the years 2001-2011.

BNSF and TMPA asked for reconsideration of the *2003 Decision* on various grounds. Among other things, TMPA challenged the geographic scope of the Board’s rate prescription, *i.e.*, the mine origins covered by the rate prescription. However, TMPA did not challenge or ask the Board to reconsider its decision to prescribe a rate only for the years in which SAC revenues exceeded SAC costs. In a decision served September 27, 2004, the Board addressed the parties’ petitions for reconsideration.

First, in describing the *2003 Decision*, the Board explained that “[b]ased upon a stand-alone cost (SAC) analysis, the Board prescribed maximum reasonable rates through the year 2011 and awarded reparations to TMPA.” Decision served September 27, 2004, at 1 (“*September 2004 Decision*”). However, the Board found on reconsideration that it had made a few technical errors in its 2003 SAC calculations and it modified the SAC calculations and rate prescription to conform to its technical corrections. *Id.* at 2. The technical corrections reduced the amount of the SARR overcharge from \$208 million to \$108 million and reduced SAC revenues below SAC costs for 2011. *Id.* at 30, Table 1. The Board did not make any changes to the procedures used to calculate the rate reduction or the rate prescription. The modified rate prescription is set out in Table 2 of the *September 2004 Decision*. *September 2004 Decision*, at 31, Table 2. As a result of the technical corrections, the rate prescription period was shortened to 2001-2010.

A month later, the Board discovered that it had made a clerical error in generating Table 2 in the *September 2004 Decision*. As the Board explained, the Board “did not properly calculate the rate prescription for 2002 through 2010.” See Decision served October 29, 2004, at 1 (“*October 2004 Decision*”). The Board corrected its clerical error and republished Table 2. The rate prescription period did not change. As in the *September 2004 Decision*, the prescription period ran from 2001 through 2010. See *October 2004 Decision*, at 2, Table 2, Column “STB Prescribed Rate.”

During the rate prescription period, BNSF charged TMPA the rates prescribed in the *October 2004 Decision*. As the end of the rate prescription period approached, BNSF’s Assistant Vice President, Coal Marketing, Robert Brautovich, contacted TMPA in September 2010 to initiate commercial discussions about the service BNSF would provide after the rate prescription expired. As explained by Mr. Brautovich in the attached verified statement, BNSF and TMPA had discussions about a possible rail transportation contract but no agreement was reached. BNSF therefore established a common carrier rate that would become effective on January 1, 2011.

As explained by Mr. Brautovich, BNSF deliberately set the common carrier rate at a level that would be below the Board’s jurisdictional threshold in order to avoid continued litigation over TMPA’s rates. On December 13, 2010, BNSF established a rate of \$30.85 per ton plus a fuel surcharge, based on the most recent available URCS for the year 2008. Subsequently, the Board issued its 2009 URCS. In order to remain below the jurisdictional threshold based on the newly issued 2009 URCS, on December 24, 2010, BNSF reduced the rate to \$29.70 per ton and eliminated the fuel surcharge.

### III. ARGUMENT

#### A. The Plain Language Of The Board's Decisions In This Case Makes Clear That The Board Did Not Prescribe Rates Beyond 2010.

By asking the Board to “direct BNSF to not charge (through March 31, 2021) more than the rate listed in the ‘SAC Rate’ and ‘Tariff Rate’ columns of [the Board’s] decisions served September 27, 2004 and October 29, 2004,” Petition at 5, TMPA is either contending that the Board prescribed the maximum reasonable rates that BNSF could charge TMPA through March 31, 2021, or suggesting that the Board should now impose such a prescription. But neither alternative is warranted.

As to the first alternative, there is no ambiguity about the scope of the rate prescription in this case. In the original *2003 Decision*, the Board stated that “we prescribe a maximum reasonable rate *through the year 2011.*” *2003 Decision*, at 33 (emphasis added). On reconsideration, the Board explained that it had “prescribed maximum reasonable rates *through the year 2011.*” *September 2004 Decision*, at 1 (emphasis added). In the *September 2004 Decision*, the Board made certain technical corrections to the underlying SAC calculations, but the Board did not change in any way the rate prescription procedures. The technical corrections shortened the rate prescription period by a year, eliminating 2011 as part of the rate prescription period. A month later, the Board noted that it had made a clerical error in the *September 2004 Decision* in “calculat[ing] the rate prescription *for 2002 through 2010.*” *October 2004 Decision*, at 1 (emphasis added).<sup>1</sup>

---

<sup>1</sup> The correction of the clerical error did not change the rate prescription period.

The Board's clear language describing the temporal scope of the rate prescription was reinforced by the chart setting out the prescribed rates. The rate prescription chart in each of the three decisions contains a column titled "STB Prescribed Rate." See *2003 Decision*, at 34, 35; *September 2004 Decision*, at 31; *October 2004 Decision*, at 2. In each of these charts, the STB Prescribed Rate column specifies either a dollar/ton rate or states that the prescribed rate would be the "Higher of SAC rate or 180% R/VC rate." But the Prescribed Rate column of the chart is filled in only for the years 2001-2010 (or 2001-2011 in the prior *2003 Decision*). For each year after 2010 (or 2011 in the prior *2003 Decision*) the STB Prescribed Rate column is blacked out clearly showing that there is no prescribed rate.

TMPA conspicuously avoids any reference to the language actually used by the Board to describe the scope of the rate prescription. Instead, TMPA argues that BNSF's rates must be limited to the "SAC Rate" or "Tariff Rate" set out in Table 2 of the *October 2004 Decision*, regardless of what the Board actually said about the scope of its prescription, because the logic of the underlying SAC analysis requires such limitation: "[I]f the Board allows BNSF to charge a rate higher than that shown in the SAC rate or Tariff rate column of the TMPA decisions for the 2011-2021 period, then the 20-year DCF analysis will be unlawfully unbalanced." Petition at 11.

TMPA cannot rely on the supposed logic of the underlying SAC analysis to override the plain language of the Board's actual rate prescription. Prescribed rates do not flow automatically from a SAC analysis. Rate prescriptions are an exercise of the Board's discretionary authority to prescribe rates under 49 U.S.C. § 10704(a)(1).<sup>2</sup> The Board cannot prescribe a rate unless the

---

<sup>2</sup> "[I]n contrast to reparations – to which a complainant that has paid an unreasonably high rate for past movements has a statutory right to be awarded – the complainant has no similar right to a rate prescription for future movements. Rather, the Board has discretion as to whether

SAC analysis shows that the challenged rate exceeds a reasonable maximum rate. Assuming that there is such a showing, the issues of whether to prescribe a rate and what precise form a prescription will take is up to the Board. Thus, while a Board rate prescription is a result of a SAC analysis showing that a rate is unreasonably high, the assumptions in the SAC analysis cannot override the scope of a rate prescription as determined by the Board.

In *Western Fuels Ass'n, Inc. & Basin Elec. Power Coop. v. BNSF Ry. Co.*, STB Docket No. 42088 (Sub-No. 1) (STB served July 27, 2009) ("*WFA/Basin*"), the petitioners made the same argument that TMPA makes here, namely that the Board must be deemed to have prescribed rates that conform to the assumptions used in the SAC analysis, otherwise the SAC analysis would become unbalanced – i.e., traffic group revenues would no longer equal SAC revenue requirements. See *WFA/Basin*, at 7. According to *WFA/Basin*, such an imbalance would “result in a windfall for BNSF, as BNSF would be able to collect more than the SAC costs from the traffic group, and thus violate core SAC principles.” *Id.*

The Board rejected *WFA/Basin*'s claim that the prescribed rates, expressed as an R/VC ratio under the Board's MMM rate reduction approach, had to be defined by reference to the underlying SAC assumptions. The Board explained that it uses numerous assumptions, including cost and revenue forecasts, in the SAC analysis to determine a proper rate prescription. *Id.* at 8. But once the Board uses those assumptions to come up with a rate prescription, the Board puts the SAC analysis aside. The prescribed rates are defined by the Board's rate prescription order rather than by the assumptions underlying the SAC analysis.

The controlling effect given to rate prescriptions as formulated by the Board is vividly illustrated by *West Texas Utilities Company v. The Burlington Northern and Santa Fe Railway*

---

or not to prescribe rates for future movements.” *AEP Texas North Co. v. BNSF Ry. Co.*, STB Docket No. 41191 (Sub-No. 1), at 18 (STB served May 15, 2009) ("*2009 AEP Texas Decision*").

*Company*, STB Docket No. 41911 (STB served May 29, 2003) (“*2003 WTU Decision*”). There the Board made it clear that the scope of a rate prescription is defined only by the language used by the Board to specify the prescription. The Board in 1996 had prescribed rates at the jurisdictional threshold of 180 percent of variable costs. At the time of the rate prescription, the maximum reasonable rate as determined by the SAC analysis was below the jurisdictional threshold. However, by 2003, the SAC maximum rate had risen to a level that exceeded the jurisdictional threshold. Since BNSF was entitled by law to charge the higher of the SAC maximum rate or the jurisdictional threshold, BNSF sought from the Board “a declaration that the prior decision prescribed the maximum reasonable rate at the higher of the SAC rate or the jurisdictional threshold.” *2003 WTU Decision*, at 2.

The Board denied BNSF’s request for a “declaration” that would define the 1996 rate prescription in a way that was inconsistent with the plain language of the rate prescription it had actually imposed. Even though the Board agreed with BNSF that it had been an error in 1996 to limit BNSF’s rates to the jurisdictional threshold in periods when the SAC maximum rate exceeded the threshold, the Board recognized that it would be improper to retroactively redefine the rate prescription. As the Board explained, “[t]he prior decision was unambiguous, however, so it is inappropriate to declare that it said something different from what it clearly said.” *2003 WTU Decision*, at 2.

In this case, TMPA asks that the Board “clarify” that the rate prescription extends beyond 2010 (Petition at 5-6). But the Board cannot “clarify” the rate prescription to say something that is inconsistent with the plain language of the prescription. The Board prescribed rates in this case through 2010, so the rate prescription by its very terms ended at the end of 2010. TMPA’s

suggestion that the Board should give effect to a non-existent prescription for the post-2010 period is unavailing.

As there is no maximum reasonable rate that has been prescribed beyond 2010, BNSF is therefore free to charge “any rate” that it deems appropriate. 49 U.S.C. § 10701(c). TMPA could, of course, seek to challenge the reasonableness of a new rate established by BNSF if it could establish that BNSF has market dominance over the traffic. But where, as here, the rate in question does not exceed the statutory jurisdictional threshold, quantitative market dominance does not exist.

**B. TMPA Has Identified No Grounds To Reopen The Prior Decisions In This Case To Extend The Rate Prescription Beyond 2010.**

As explained above, the Board unambiguously limited the rate prescribed in this case to the period 2001-2010 and did not prescribe a rate beyond 2010. The Board cannot interpret or enforce its prior decision in a way that is inconsistent with the plain language of that decision. As discussed above, in the *2003 WTU Decision* the Board rejected a request by BNSF to have the Board define the 1996 rate prescription in a way that was inconsistent with the clear language of the 1996 decision. However, in that case the Board concluded that the legal flaw in the 1996 rate prescription was so obvious that it would be appropriate to treat BNSF’s petition as a request for a reopening of the prior decision to modify the rate prescription on grounds of material error. *2003 WTU Decision*, at 3.

The resemblance between the *2003 WTU Decision* and the current situation extends only so far as the parties’ requests for relief. Here, unlike *WTU*, there was no obvious legal flaw in the Board’s prior rate prescription that would justify treating TMPA’s petition as a request to reopen the rate prescription based on material error. Indeed, as discussed below, it is clear that the Board did not commit material error in limiting the rate prescription to the period 2001-2010.

Moreover, in light of the substantial changes in economic conditions since 2003, there would be no factual grounds to support a request for reopening to extend the rate prescription for 10 more years. Therefore, even if the Board were to construe TMPA's Petition as a request to reopen the prior rate case to extend the prior rate prescription, it would have to deny that request because TMPA has failed to allege facts that would justify extending the prescription.

**1. The Board Did Not Commit Material Error In Limiting The Rate Prescription To The Period 2001-2010.**

A party may request the reopening of a final decision, including a rate prescription, on grounds of material error. 49 U.S.C. § 722(c); 49 C.F.R. § 1115.4. But to justify a modification of a rate prescription based on material error, there must be a legal flaw in the underlying decision. It is not enough that the Board might have reached a different result in the prior decision if it had it to do over again. The interests of finality and repose require that the proponent of a reopening show that there was a legal flaw in the prior decision.

In the *2003 WTU Decision*, the governing statute gave BNSF the right to charge rates up to a maximum reasonable rate, and the 1996 rate prescription violated that statutory right. As the Board explained, “[i]f the SAC rate rises above the jurisdictional threshold in any year, the railroad should have the right to charge a rate up to that maximum reasonable rate.” *2003 WTU Decision*, at 3. Because it was material error to have limited the rate prescription to the jurisdictional threshold when the statute gave BNSF the right to charge a higher rate, the Board reopened the 1996 decision and modified the rate prescription on a prospective basis.

In contrast, no statute was violated here in limiting the rate prescription to the period 2001-2010. A shipper does not have a statutory right to a prescription of future rates. Section 10704(a)(1) states that if the Board finds that a rate “does or will violate this part . . . the Board may prescribe the maximum rate. . . .” 49 U.S.C. § 10704(a)(1) (emphasis added). The Board

has repeatedly acknowledged that the prescription of a rate for future periods is discretionary. *See, e.g., 2009 AEP Texas Decision*, at 18. Therefore, TMPA did not have a right to *any* rate prescription, let alone a rate prescription beyond 2010.

The Board's decision to limit the rate prescription to the period 2001-2010 was reasonable. The SAC analysis indicated that the challenged rate exceeded a reasonable maximum rate only through 2010. After 2010, the SAC analysis showed that the SARR would generate insufficient revenue to cover its costs. Rates therefore needed to be reduced to a maximum reasonable level only for the period 2001-2010. Moreover, in setting the maximum reasonable rates for the years 2001-2010, it was appropriate for the Board to use its "netting" procedures to ensure that SARR revenues would be reduced only by an amount necessary to eliminate the \$108 million over-recovery.

Indeed, BNSF does not believe that the Board would have had the legal authority to prescribe rates for the 2011-2021 period. The statute gives the Board discretion to prescribe rates only where the Board has found that the challenged rate "does or will" violate the statute. 49 U.S.C. § 10704(a)(1). For the years 2011-2021, the Board found that the challenged rates did not exceed reasonable maximum rates and therefore did not violate the statute. Therefore, the legal predicate for a rate prescription for the years 2011-2021 simply did not exist.

But the Board does not need to reach the question of its legal authority to prescribe rates in periods when the challenged rate is not found to exceed reasonable maximum rates. Even if the Board had the legal authority to prescribe rates for the period 2011-2021, it chose not to do so. It is irrelevant whether the Board in 2003 *could have* prescribed rates for the period 2011-2021. In a reopening based on material error, the only question is whether the Board's prior decision not to prescribe rates for the entire 20-year period was legally flawed. Particularly in

light of the discretionary nature of a rate prescription, there was no legal flaw in the Board's decision to limit the rate prescription to the period during which rates were found to exceed reasonable maximum rates and leave it to TMPA to seek an extension of the rate prescription in the future if future conditions warranted such an extension.

**2. TMPA Has Identified No Factual Grounds For An Extension Of The Rate Prescription For Ten More Years.**

Even if TMPA's Petition were treated as a request to reopen and modify the rate prescription, TMPA failed to present any factual evidence that would justify an extension of the rate prescription. In a recent decision in the long-running dispute involving BNSF's rates for AEP Texas, the Board made it clear that a shipper seeking to impose a rate prescription based on a prior SAC analysis bears the burden of showing that the assumptions underlying the original SAC analysis remain valid. TMPA has presented no such evidence.<sup>3</sup>

In the *AEP Texas* case, the Board's 2009 SAC analysis showed that BNSF's rates for the issue traffic would exceed a reasonable maximum rate in the year 2020. *2009 AEP Texas Decision*, at 19. For a number of reasons, the Board did not prescribe a rate for 2020. However, the Board stated that "[s]hould the forecasts in the SAC analysis for 2020 be borne out . . . AEP Texas may seek to reopen this proceeding under 49 U.S.C. 722(c) to obtain appropriate rate relief." *Id.* Thus, AEP Texas might be able to obtain a rate prescription for the year 2020, but such a rate prescription would be appropriate only if AEP Texas could show that the assumptions and forecasts underlying the original SAC analysis had been "borne out." If the facts had changed significantly, a reopening to impose the rate prescription would not be appropriate.

---

<sup>3</sup> The more recent rate case involving AEP Texas relates to a challenge to rates for movements that were not covered by the rate prescription discussed in the *2003 WTU Decision*.

Here, the rate prescription sought by TMPA is based on SAC calculations done in 2003 using evidence submitted in 2001-2002. In *Major Issues In Rail Rate Cases*, STB Ex Parte No. 657 (Sub-No. 1) (STB served Oct. 30, 2006) (“*Major Issues*”), the Board decided to limit rate prescriptions to 10 years, recognizing that “changes in market conditions render[] obsolete the underlying assumptions in older SAC analyses well before the 20-year analysis period has ended.” *Major Issues*, at 62. Nearly a decade has passed since the Board did its original SAC analysis in this case yet TMPA has presented no evidence that the assumptions underlying the original SAC analysis remain valid.

Indeed, TMPA could not possibly make such a showing. Dramatic changes in fuel costs alone make it clear that the assumptions in the original SAC analysis have not been “borne out.” As explained by BNSF’s witnesses Messrs. Baranowski and Fisher, locomotive operating cost is the single largest SARR operating expense and fuel cost is the primary component of locomotive operating costs. Fuel costs used in the original SAC analysis came from 2001, before the unprecedented fuel cost increases later in the decade, peaking in 2008. Figure 3 in the *Baranowski/Fisher V.S.* shows that fuel costs increased at a rate that was much higher than the rate assumed in the Board’s SAC analysis. Based on actual fuel prices, the SARR’s operating costs would have been much higher than expected and the SARR would have been entitled to generate far more revenue in all years of the SAC analysis to offset those costs than the Board assumed in its original SAC calculations.

Indeed, in light of the enormous fuel cost increases that were not reflected in the Board’s original SAC analysis, TMPA has it backwards when it claims that BNSF will earn a windfall if the rate prescription is not extended. Messrs. Baranowski and Fisher show that as a result of unexpected fuel cost increases since 2001, TMPA has benefitted over the past 10 years from

substantial rate reductions that, in hindsight, were completely unjustified. In fact, if the original SAC analysis had accurately anticipated the fuel prices that BNSF actually experienced, no rate prescription at all would have been justified.<sup>4</sup>

**C. BNSF's Current Rate Is Below The Board's Jurisdictional Threshold And Cannot Be Supplanted By The SAC Rate From The Board's Prior Decision.**

For the reasons discussed above, BNSF does not believe that any extension of the rate prescription in this case would be warranted. However, if the Board did reopen the prior decisions to extend the rate prescription, the Board would have to make it clear that BNSF is entitled to charge the higher of the SAC maximum reasonable rate or 180 percent of BNSF's URCS variable costs. The Board's *2003 WTU Decision* discussed above, as well as the prior decisions in this case, recognize that the Board cannot prescribe a rate below the jurisdictional threshold of 180 percent of URCS variable costs.

BNSF's witnesses Messrs. Baranowski and Fisher show that based on the most recent available URCS costs, BNSF's January 1, 2011 rate for the issue traffic is below the jurisdictional threshold for all mine origins. Depending on the mine origin, BNSF's rate varies from 166 percent of URCS variable costs to 174 percent. In *Major Issues*, the Board recognized that by establishing an URCS-based jurisdictional threshold, Congress intended "to create an administratively quick and easy-to-determine regulatory safe harbor for the railroads. . . . [I]f a railroad chooses to price its traffic within this safe harbor, it should not need to worry about regulatory intervention." *Major Issues* at 51. That statement is directly applicable to the

---

<sup>4</sup> If the Board were to extend the rate prescription, and BNSF believes there would be no basis for such a decision, the Board would need to treat BNSF's evidence on the changes in fuel costs over the past decade as grounds to conduct a broader reopening to consider the vast array of changed circumstances since 2001. Under the Board's current rules, the Board would also lift the prescriptive effect of the rate prescription while the issue is being considered.

situation here. As explained by Mr. Brautovich, BNSF established the level of the current TMPA rates with specific reference to the most current URCS variable costs in order to yield rates that would fall below the Board's jurisdictional threshold and thereby foreclose the possibility of continued rate litigation. There can be no doubt that such a course of action to secure a regulatory safe harbor is permissible under the governing statute.

In a footnote in its petition, TMPA acknowledges, as it must, that the Board does not have authority to require BNSF to charge rates below the jurisdictional threshold. But TMPA states that "BNSF must prove that its R/VC exceeds [sic] 180% and this must be done under the methodology used in this case, including movement specific adjustments." Petition at 2 note 1. TMPA is incorrect on the issue of methodology. Current law requires that variable costs for jurisdictional threshold purposes be based on unadjusted URCS costs. While the Board used movement-specific adjustments to determine the jurisdictional threshold in the original decision in this case and instructed the parties to use that approach to determine the jurisdictional threshold in applying the rate prescription, the Board subsequently decided to discontinue the use of movement-specific adjustments. In *Major Issues*, the Board concluded that "[i]n an individual rate reasonableness proceeding, we will use our existing URCS model, without further movement-specific adjustment, to make the jurisdictional inquiry and to set the floor for rate relief." *Major Issues*, at 61.

If there were a rate prescription in effect in this case, the Board should construe its decision in *Major Issues* to discontinue use of movement-specific adjustments as automatically overriding the Board's instruction in 2003 to use movement-specific adjustments in calculating the jurisdictional threshold for rate prescription purposes. But it is not necessary to address that question since by its very terms, the rate prescription in this case lasted only until 2010. The

Board's instruction to apply movement-specific adjustments in implementing the rate prescription therefore expired with the rate prescription. The question before the Board now is whether the Board should reopen its prior decision and prescribe rates for another 10 years. It would make no sense to use a superseded method of calculating variable costs for any new rate prescription. If the Board were to decide now that a rate prescription should be established for an additional 10 years, the Board must apply its current method for calculating variable costs.

Indeed, in *Major Issues*, the Board went so far as to conclude that the use of movement-specific adjustments was a "flawed approach" to determining the Board's jurisdiction over railroad rates. *Major Issues*, at 76. Therefore it would be arbitrary and capricious for the Board to require the parties to continue using the movement-specific adjustments from the original decision to determine the Board's jurisdiction over BNSF's rates today.

Several factors led the Board to conclude in *Major Issues* that the use of movement-specific adjustments in rate reasonableness cases was "flawed" and that the Board's jurisdiction should be assessed using system-average URCS costs. Three factors are particularly important here. First, the Board concluded that there was a conceptual flaw in the use of *movement-specific* costs with *system-average* variability factors. *Major Issues*, at 53. The Board recognized that the use of a system-average variability factor to determine the variable costs of a high-density line, such as lines used for coal transportation, will likely understate variable costs.<sup>5</sup> The Board eliminated the analytic flaw produced by the disconnect between movement-specific

---

<sup>5</sup> As the Board noted, "the Board recognized this conceptual disconnect in [*Public Service Co. of Colorado D/B/A Xcel Energy v. The Burlington Northern and Santa Fe Railway Company*, STB Docket No. 42057 (STB served June 8, 2004)], although it did not permit the railroad to use this argument as a weapon to attack the movement-specific adjustments proposed by the shipper, because the railroad itself sought movement-specific adjustments that appeared to suffer the same analytic flaw." *Major Issues*, at 55.

adjustments and system-average variability factors by disallowing all movement-specific adjustments.

Second, the Board concluded that “selective replacement of system-average costs with movement-specific costs may bias the entire analysis, rendering the modified URCS output unreliable.” *Major Issues* at 52. The Board noted that “as a matter of econometric theory, piecemeal or incomplete adjustments to URCS are suspect.” *Id.* As in other cases where movement-specific adjustments were proposed, the Board used movement-specific adjustments in the *2003 Decision* in this case for only a subset of variable cost inputs. The Board’s decision in *Major Issues* to eliminate all movement-specific adjustments ensured that all variable cost inputs would be consistently determined using system-average URCS costs.

Third, the Board concluded that the “immense costs and complexity of [movement-specific] adjustments to URCS conflicts with what Congress intended in adopting the 180% R/VC limitation on Board rate review: to create an administratively quick and easy-to-determine regulatory safe harbor for the railroads.” *Major Issues*, at 51. As explained by BNSF’s witnesses Messrs. Baranowski and Fisher, the Board’s concerns about the complexity of movement-specific adjustments are particularly relevant in this case, where numerous special studies were used in the *2003 Decision* to create the movement-specific adjustments and where several complex adjustments were applied. To revise those special studies and revisit all of the complex adjustments now, and on an on-going basis over the next ten years, would directly conflict with Congress’ intent to establish an “easy-to-determine regulatory safe harbor for the railroads.”

As explained by Messrs. Baranowski and Fisher, the Board’s *2003 Decision* applied 26 different movement-specific adjustments covering a broad range of variable cost categories.

Table 2 to the Baranowski/Fisher verified statement lists the vast amount of data that would need to be collected to try to replicate those movement-specific adjustments today. Moreover, the data previously used to make the movement-specific adjustments came from data systems that have not remained static over the past decade, and it is uncertain that the data previously available to carry out the special studies and adjustments is available today. It is likely that any effort to recreate the adjustments from 2003 using new data from new or different data systems would lead to substantial disputes. In addition, the 2003 movement-specific calculations relied on several complex special studies, including a special study of fuel consumption on specific TMPA trains. The methodologies used in those complex studies might not even be possible to replicate today.

Given the complexity and unreliability of variable costs determined using movement-specific adjustments, the Board specifically found in *Major Issues* that use of system-average costs in lieu of movement-specific adjustments should apply not only to future cases but also to cases pending at the time of the decision in *Major Issues*. Two rate reasonableness cases involving AEP Texas and WFA/Basin were pending when the Board issued its decision in *Major Issues*. In both cases, the parties had already filed variable cost evidence that included numerous movement-specific adjustments. Even though the parties had already incurred the costs to develop complex movement-specific adjustments, the Board found that the concerns that had led it to eliminate movement-specific adjustments in future cases applied also to the pending cases. The Board noted that

while the parties have already incurred the costs for making movement-specific adjustments for historical movements, they have not yet done so for future movements. And because we will use a 20-year SAC analysis period in the AEP Texas and Western Fuels cases, rate prescriptions could in theory extend for almost two decades. Thus, deciding to make

movement-specific adjustments in the pending cases would perpetuate a flawed approach long into the future.

*Major Issues*, at 76.

It would be contrary to current law and to sound regulatory policy for the Board to perpetuate the flawed movement-specific approach into the future if it were to reopen this case and extend the prior rate prescription. As the Board concluded in *Major Issues*, applying the movement-specific adjustments from the *2003 Decision* now and in the future to calculate the jurisdictional threshold on TMPA's movements would impose enormous litigation burdens and would produce results that are not reliable. BNSF has presented evidence demonstrating that the rate being charged to TMPA falls below the jurisdictional threshold calculated using system-average URCS as the Board's rules require. There is no basis for pursuing an alternative approach.

#### **IV. CONCLUSION**

The Board should deny TMPA's Petition on grounds that TMPA seeks to enforce a rate prescription where none exists. If the Board were to treat TMPA's Petition as a request to reopen the prior decisions in this case, the Board should find that a reopening is not warranted because there was no material error in the prior decisions and there is no factual basis for extending the rate prescription for 10 more years. Finally, even if the Board were to reopen the prior decisions and extend the rate prescription, the Board's jurisdiction over BNSF's rates would have to be assessed using system-average URCS and BNSF has shown that its current TMPA rate is below the Board's jurisdictional threshold.

Respectfully submitted,

 Samuel M. Sipe, Jr. (102)

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

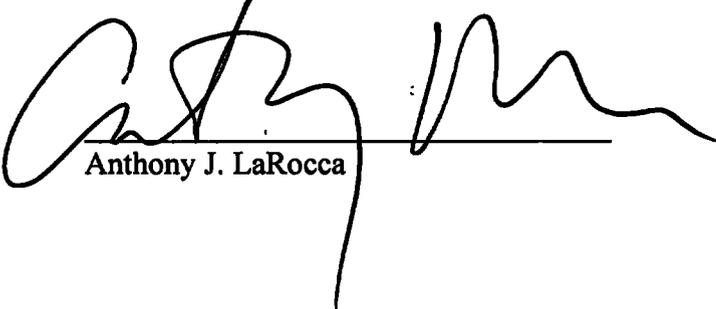
Samuel M. Sipe, Jr.  
Anthony J. LaRocca  
STEPTOE & JOHNSON LLP  
1330 Connecticut Ave., N.W.  
Washington, D.C. 20036  
(202) 429-3000  
Attorneys for BNSF Railway Company

January 6, 2011

**CERTIFICATE OF SERVICE**

I hereby certify that this 6th day of January, 2011, I served a copy of BNSF's Reply to  
TMPA's Petition for Enforcement of Decision on the following by U.S. mail.

Sandra L. Brown  
David E. Benz  
Thompson Hine, LLP  
1920 N Street, NW, Suite 800  
Washington, DC 20036  
(202) 263-4101



Anthony J. LaRocca

**SURFACE TANSPORTATION BOARD  
STB Docket No. NOR 42056**

---

**TEXAS MUNICIPAL POWER AGENCY  
v.  
BNSF RAILWAY COMPANY**

---

**Verified Statement of  
Robert A. Brautovich**

---

**My name is Robert A. Brautovich. I am the Assistant Vice President, Coal Marketing West, for BNSF Railway Company (“BNSF”). I have been employed in the Coal Marketing Group of BNSF and its predecessor, Burlington Northern Railroad Company, since 1992 in the positions of Manager, Coal Marketing, Director of Coal Marketing, and Assistant Vice President, Coal Marketing West. In my Coal Marketing Group positions, I have been responsible for managing specific coal customer accounts and, more recently, for managing the accounts of customers within a geographic territory that includes Texas Municipal Power Agency’s (“TMPA”) Gibbons Creek Steam Electric Station located near Iola, Texas.**

**I was responsible for managing the TMPA account in 2001, when TMPA filed a complaint with the STB challenging the reasonableness of BNSF’s common carrier rate for transportation of coal to the Gibbons Creek plant. Before TMPA filed its complaint, I had engaged in several discussions and negotiating sessions with TMPA executives in an attempt to reach agreement on the terms of a transportation contract. When those negotiations failed to produce an agreement, BNSF established a common carrier rate and TMPA challenged the rate before the STB. After two years of litigation, the STB found that the challenged rate exceeded a**

reasonable maximum rate and ordered BNSF to pay reparations to TMPA. The STB also prescribed the maximum rates that BNSF could charge through 2010.

In the Fall of 2010, as the end of the rate prescription period approached, I contacted Gary Parsons, the General Manager of TMPA, to initiate discussions about commercial options available to BNSF and TMPA when the rate prescription ended. We exchanged correspondence and had a meeting in November 2010. We discussed the possibility of entering into a transportation contract and BNSF offered TMPA specific contract terms. BNSF never received a reply from TMPA to the contract offer.

While BNSF was waiting for a reply from TMPA to its contract offer, BNSF established a common carrier rate that would go into effect on January 1, 2011, when the rate prescription ended. In setting the level of the common carrier rate, my objective was to set a rate that was fair to TMPA and that would avoid continued rate reasonableness litigation in the event that TMPA declined to agree to BNSF's contract proposal. I understand that Congress has established a safe harbor for railroad rates that precludes legal challenge to rates that are less than 180 percent of URCS variable costs. BNSF determined that a rate of \$30.85 per ton plus BNSF's standard fuel surcharge would generate revenues that were less than 180 percent of URCS variable costs. Therefore, BNSF established that rate to take effect on January 1, 2011. The new rate was set out in BNSF Pricing Authority 90068, Revision 75, which BNSF issued on December 13, 2010.

When BNSF established the new common carrier rate, the most recent available URCS was for the year 2008. On December 17, 2010, the Board issued a new URCS for the year 2009. BNSF determined that based on the newly issued 2009 URCS, the TMPA rate previously established in Pricing Authority 90068 needed to be reduced in order to ensure that it generated revenues that were less than 180 percent of URCS variable costs. Therefore, in order to remain

below the jurisdictional threshold, BNSF revised the rate based on the 2009 URCS and eliminated the fuel surcharge. BNSF established the new reduced rate of \$29.70 per ton on December 24, 2010 to be effective on January 1, 2011. The new rate is set out in BNSF Pricing Authority 90115, which is attached to this statement.

I declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement.

  
\_\_\_\_\_  
Robert A. Brautovich

January 5, 2011

**BNSF Railway Company  
Common Carrier Pricing Authority BNSF 90115**

**Effective Date:** January 1, 2011

**Expiration Date:** December 31, 2011

**Commodity:** Raw sub-bituminous, STCC 11-21-Series (excluding artificially dried or processed coal) and STCC 11-22-Series

**Origins:** Wyoming coal mine origins cited herein.

**Destination:** Gibbons Creek Steam Generating Station located near Iola, TX.

**Route:** BNSF direct.

**Rates:** All rates are expressed in U.S. Dollars per net lading ton (2000 pounds avoirdupois) in BNSF provided rail cars.

**Shipper:** Shipper shall be the party tendering Coal for shipment pursuant to this Pricing Authority.

<b>Origin Group</b>	<b>Origin Mines</b>	<b>Rate / ton in BNSF Railcars</b>
WY PRB	Antelope, Belle Ayr, Black Thunder, Buckskin, Caballo, Clovis Point, Cordero, Caballo Rojo, Coal Creek, Dry Fork, Eagle Butte, Fort Union, East Thunder, North Antelope, Rawhide, and West Thunder.	<b>\$29.70</b>

**Railcar Supply and Tender Requirements:** Railcars shall be provided by BNSF. The Minimum Tender for a train is one hundred twenty (120) such Railcars. Claims for damage to or destruction of such Railcars shall be handled in accordance with the procedures set forth in the Field Manual and Office Manual of the Association of American Railroads Interchange Rules, as amended from time to time.

**Railcar and Trainload Weights:** Weighing of Coal shipments tendered for transportation hereunder shall be subject to the provisions BNSF Price List 6041-series Items 130 and 210 in effect on the date such weighing is undertaken. The Minimum Weight per Trainload for freight billing purposes shall be determined by multiplying the number of furnished Railcars per Trainload by 120 net tons. Freight Charges will be assessed on the basis of the applicable Minimum Weight per Trainload or the actual weight of Coal per Trainload whichever is greater.

**Minimum Annual Volume Commitment ("MAVC"):** The Freight Rates enumerated herein are subject to a minimum annual volume commitment of 1,800,000 net tons per calendar year. Within 30 days following completion of a calendar year, shipper shall certify compliance with the MAVC provision. In the event shipper fails to meet the MAVC, the resulting volume shortfall will be subject to payment of liquidated damages, equal to 30% of the rate in effect on the last day of the calendar year times the amount of such volume shortfall.

**BNSF Railway Company  
Common Carrier Pricing Authority BNSF 90115**

**Loading and Unloading:** Loading and Unloading of shipments tendered for transportation hereunder shall be subject to the provisions of BNSF Price List 6041-series Items 110 and 120 in effect on the date that such loading and unloading commences.

**Other Accessorial Services:** Coal unit train accessorial services in addition to those described herein shall be subject to the provisions of BNSF Price List 6041-series or successors thereto in effect on the date such services are provided.

**Billing and Payment:** BNSF will bill each shipment under the terms of the Uniform Straight Bill of Lading. All railcars for each shipment are to be billed on one (1) Bill of Lading. This **Common Carrier Authority BNSF 90115**, correct address and patron code must be shown on the Bill of Lading to insure accurate billing. Shipper shall establish credit with BNSF prior to requesting service hereunder. If credit is extended to Shipper for the payment of transportation charges, such payment shall be subject to the provisions of BNSF Rules Book 6100-series Item 3400 and successors thereto. In the event that shipper does not make timely payment, or if adverse credit conditions occur, which in BNSF's judgment could affect Shipper's ability to meet payment terms, BNSF may require Shipper to pay cash in advance of service for all amounts for which Shipper is liable under this Common Carrier Authority.

**Other Provisions:** Shipments made under the provisions of this Common Carrier Authority are subject to the Uniform Freight Classification 6000-series or its successor, BNSF Rules Book 6100-series, applicable tariffs, statutes, federal regulatory rules and regulations, AAR rules, and other accepted practices within the railroad industry as may be amended from time to time.

**JOINT VERIFIED STATEMENT**

**of**

**MICHAEL R. BARANOWSKI**

**and**

**BENTON V. FISHER**

**I. Introduction**

We are Michael R. Baranowski and Benton V. Fisher. We are Senior Managing Directors in FTI Consulting's Network Industries Strategies practice with offices at 1101 K Street, NW, Washington, DC 20005. Statements of our qualifications are set forth in Exhibits 1 and 2, respectively. We have been asked by BNSF Railway Company to review the Board's March 21, 2003 and September 24, 2004 decisions and supporting work papers in this proceeding and (1) to examine how a number of the key inputs and forecast assumptions used by the Board in the discounted cash flow model to calculate stand-alone costs compare to actual values, with a specific focus on the impact of unexpected fuel cost increases; (2) to explain the complexity and uncertainty that would be involved in any effort to calculate variable costs for the issue traffic movement using the movement-specific adjustments to URCS that were adopted in the Board's original decisions in this case; and (3) to present the revenue-to-variable cost ("R/VC") ratios for the TMPA traffic using the Board's current methodology of system average URCS costs to develop variable costs.

## **II. Comparison of Forecast to Actual Index Values for Key SAC Assumptions**

The principal index and forecast values used in the Board's DCF analysis in this case included the Rail Cost Adjustment Factor – unadjusted for productivity (RCAF-U), which was used to inflate operating expenses, and the Association of American Railroads (AAR) Quarterly Railroad Cost Indexes that were used to inflate road property asset costs. The RCAF-U forecast used by the Board in its original DCF analysis is based on a July 2001 DRI-WEFA RCAF-U forecast. For the forecast of the AAR indexes, the Board's then prevailing practice was to use the average rate of change in the index component values for the prior five years as the forecast for the remainder of the DCF period. In the case of the TMPA DCF, the average rate of change in the AAR index values for the 1996 to 2000 time period form the basis for the 2001 through 2020 forecast.

The DCF analysis underlying the Board's TMPA rate reasonableness determination was generated on March 24, 2003. The DCF model was rerun on February 27, 2004 in support of the subsequent Board decision on reconsideration, but the key forecast components of that latter decision were unchanged from those used for the 2003 decision. As such, the forecast inputs underlying the Board's TMPA rate reasonableness decision at best reflect expectations as of the first quarter of 2003.

The Board has previously acknowledged that forecasts stretching many years into the future are inherently unreliable. In its discussion of the appropriate pattern of capital recovery in this case, the Board explained that the capital recovery advocated by TMPA, which would have weighted the annual capital recovery based on the relative tonnage volumes forecast for each year, placed undue weight on the accuracy of traffic forecasts extending out 20 years. The Board therefore used a time-based pattern of capital recovery. Similar concerns about the reliability of

future forecasts were expressed by the Board in its October 30, 2006 decision in Ex Parte No. 657 – Major Issues in Rail Rate Cases (“Major Issues”), where it acknowledged that forecasts beyond 10 years do not reliably reflect inevitable and unanticipated changes. Specifically, in discussing its decision to switch from a 20-year to a 10-year DCF period, the Board explained:

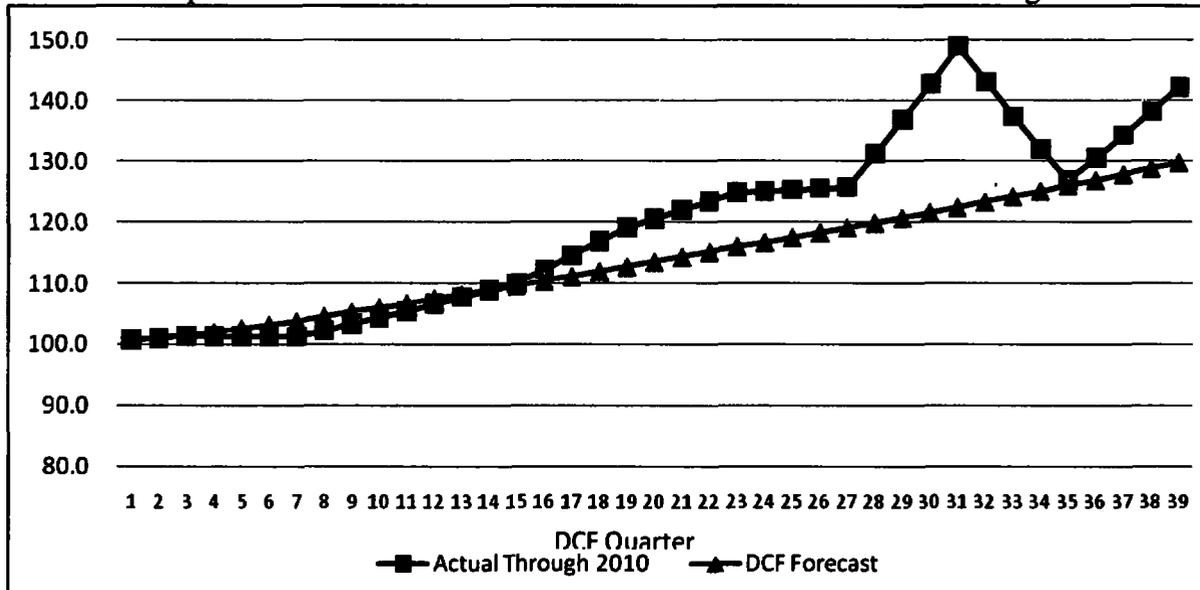
The Board proposed to require the use of a 10-year analysis period in SAC cases for several reasons. First, as a practical matter the benefits of a 20-year analysis and potential rate prescription are illusory. Rate prescriptions have tended to endure no longer than 10 years because of inevitable and substantial changes in circumstances. The logistics industry is dynamic, with changes in market conditions rendering obsolete the underlying assumptions in older SAC analyses well before the 20-year analysis period has ended. Major Issues at 62.

The Board’s concerns regarding long term forecasts are confirmed in this case, where the costs actually experienced by the railroad industry over the 2003-2010 period have consistently turned out to be higher than the costs forecast by the Board in the original DCF analysis. The most prominent example is the price of fuel, which has been consistently and in some years dramatically higher than the forecast price implicit in the Board’s TMPA DCF results. In the remainder of this section, we compare the forecasts of the key cost indexes used by the Board to the actual historical index values over the 2001 to 2010 time frame.

**a. Comparison of Actual Versus Forecast RCAF-U**

The RCAF-U is used in the DCF model to inflate the SARR operating expenses. Figure 1 below compares the RCAF-U forecast for 2001 through 2010 used in the Board’s DCF model to the actual RCAF-U values over the same period.

**Figure 1**  
**Comparison of TMPA DCF Forecast RCAF-U to Actual RCAF-U Through 2010**

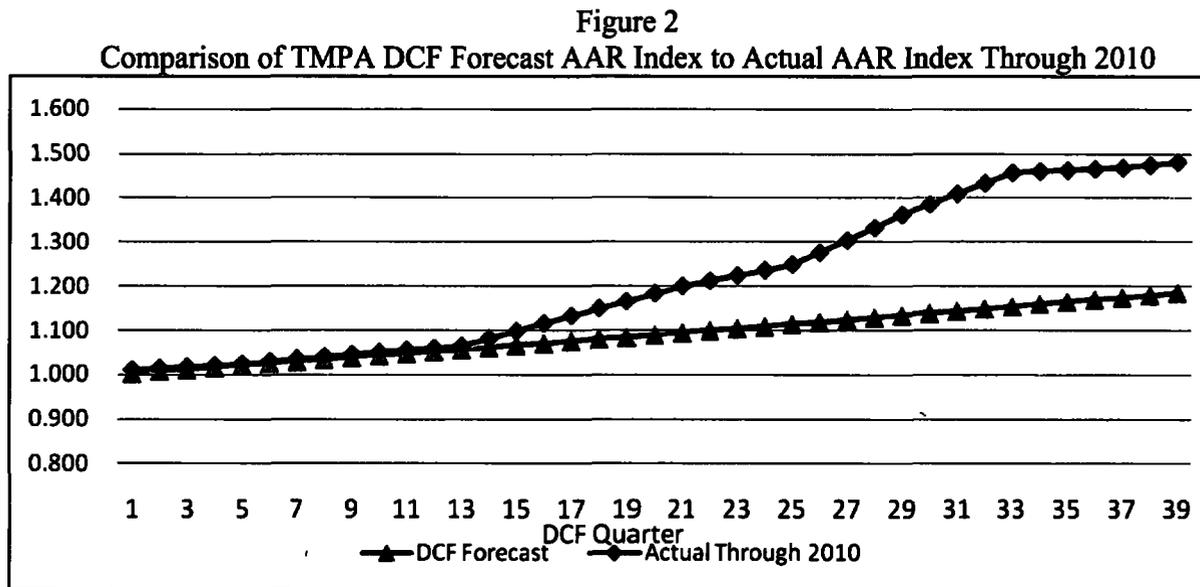


As Figure 1 demonstrates, since approximately Quarter 16 of the DCF model run (the second quarter of 2004), the actual RCAF-U has been consistently higher than forecasted, demonstrating that the forecast SARR operating expenses in the TMPA analysis are understated.

**b. Comparison of Actual Versus Forecast AAR Index Values**

The AAR indexes are used in the DCF model to inflate road property investment costs. The DCF model uses three separate input indexes. The Materials and Supplies index is used to inflate road property asset accounts that consist primarily of materials. These are Account 8 – Ties, Account 9 – Rail and OTM, and Account 11 – Ballast. The Wages and Supplements index is used to inflate road property asset accounts that are comprised primarily of labor. These are Account 1 – Engineering and Account 12 – Track Laying and Surfacing. The remaining road property accounts except for land are indexed by the AAR Materials, Supplies, Wages and

Supplements combined (excluding fuel) index.<sup>1</sup> The AAR and land index values are applied to the assigned account groupings in the “Asset Inflation” tab of the DCF model, where a composite index is calculated. As with the RCAF-U, the actual AAR index values have also turned out to be consistently higher than those initially forecast in the Board’s DCF model. Figure 2 compares the composite forecast AAR index values used in the DCF to the composite index recalculated to reflect the actual AAR index values through 2010.



**c. Changing the Board’s DCF Analysis Only to Capture the Actual Change in Fuel Prices Flips the DCF Results to a Cumulative Under-Recovery Over the 20-Year DCF Period**

Figure 1 demonstrates that the actual RCAF-U since 2004 has been consistently higher than was forecast. Much of the difference is driven by the dramatic – and unforeseen as of 2003 – increases in the price of fuel. The SARR locomotive operating cost of \$103 million for base year 2001 is the single largest operating cost in the Board’s DCF analysis, with fuel cost

<sup>1</sup> The land inflation index in the DCF is not derived from the AAR index values and is typically the result of a special study.

representing 97.5% of those expenses, or \$100.4 million. Because fuel represents such a large portion of SARR operating expenses, any understatement in forecasted fuel cost would have a dramatic effect on the overall stand-alone cost determination. Figure 3 compares the implicit fuel price per gallon used in the Board’s DCF model calculated using the fuel component of the DRI-WEFA RCAF-U forecast with the fuel price indexed based on the actual historical change in the highway diesel fuel price index between 2001 and 2009.

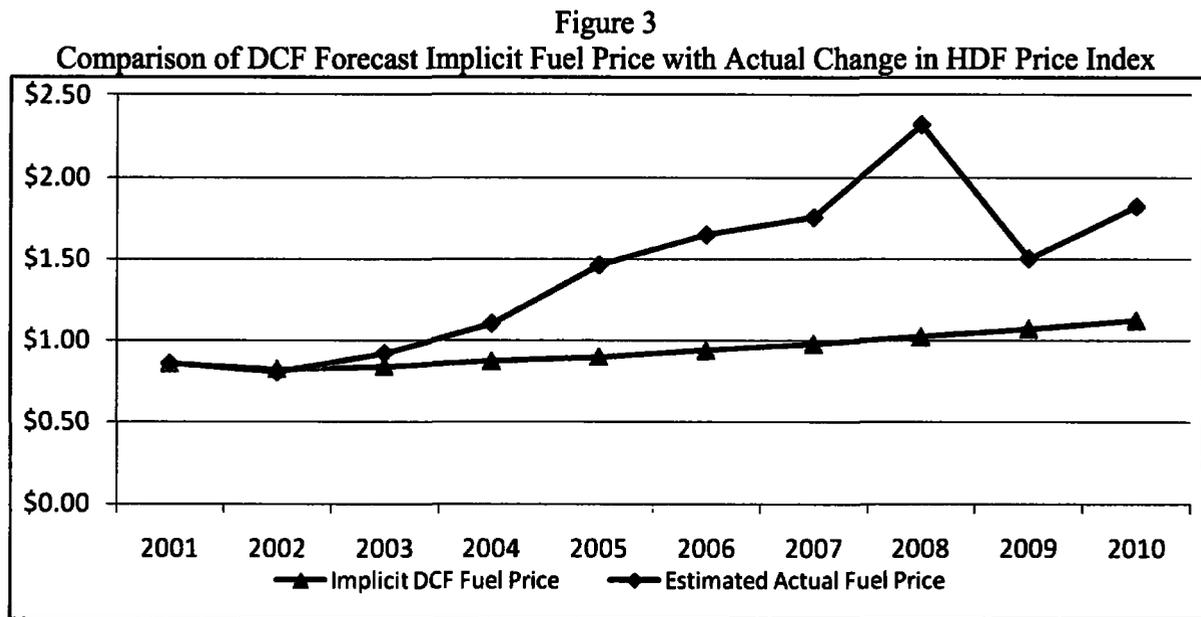


Figure 3 demonstrates that actual fuel prices increased at a much higher rate than forecast. Changing the Board’s DCF results to incorporate only the incremental cost of fuel based on actual fuel prices and conservatively holding 2011-2020 fuel prices at 2010 levels would change the outcome of the DCF analysis from an over-recovery over the 20-year DCF period of \$108 million (present value) to an under-recovery of \$301 million. Details of these calculations are set forth in our work papers.

### **III. Issues and Obstacles with the Development of Movement-Specific Adjustments to URCS Costs as Adopted by the STB in the 2003 and 2004 Decisions**

In 2006, the Board decided in Major Issues to calculate variable costs for purposes of determining the Board's jurisdictional threshold using only system-average URCS. One of the Board's principal concerns that led it to reject continued use of movement-specific adjustments to URCS was the cost and complexity of making movement-specific adjustments. That concern would be particularly applicable if the parties were now required to calculate the jurisdictional threshold based on the movement-specific adjustments used in the Board's original March 2003 decision in this case.

There would be tremendous effort, complexity, and uncertainty associated with determining the jurisdictional threshold level rate based on the various methodologies used in the 2003 decision. In that decision, the STB determined the variable costs for the TMPA issue-traffic movement by evaluating more than two dozen detailed analyses, special studies, and other adjustments to URCS that were proposed by the Complainant and Defendant. In many cases the Board modified calculations made by the parties and incorporated other corrections and adjustments.<sup>2</sup> The STB's discussion of variable costs was set out in a technical Appendix to the 2003 decision that required nearly 30 pages. The Board specifically observed that "We have noticed that the spreadsheets used to develop movement-specific adjustments have become more complex and detailed." (2003 Decision at 41)

Numerous complex movement-specific adjustments to URCS costs were made in the 2003 decision. Set out below is a list of the special studies and analyses on which the STB's 2003 variable-cost findings were based.

---

<sup>2</sup> For example, the STB observed that the variable costs that it adopted differed from both parties' estimates for most of the 20 different cost components. (2003 Decision at 46-47, Table A-4)

*Table 1: Adjustments to System-Average URCS Costs  
Adopted by STB in 2003 TMPA Decision*

<b>Category 1. Adjustments to URCS Input File</b>	
1.	Exclude Account 76 Interest During Construction
2.	Include Account 90 Construction Work in Progress
<b>Category 2. Adjustments to URCS Unit Cost File</b>	
1.	Separate URCS switching costs between road and yard
2.	Separate URCS costs between system-owned tracks and private (loop) tracks
<b>Category 3. Adjustments to URCS Service Unit Inputs</b>	
1.	Tare weights
2.	Empty miles
3.	Number of locomotive units
4.	Cycle-time hours for locomotives
5.	Cycle-time hours for freight cars
6.	Yard switching minutes
7.	Road switching minutes on non-yard tracks
8.	Road switching minutes on yard tracks
9.	Number of bad-order cars switched
<b>Category 4. Adjustments to URCS Unit Costs</b>	
1.	Carload Handling
2.	Joint Facilities
3.	Return on Investment in Road Property
4.	Depreciation of Road Property
5.	Fuel Consumption
6.	Crew Wage
7.	Helper Service
8.	Locomotive Acquisition
9.	Freight Car Acquisition
10.	End-of-Train-Device Acquisition
11.	Third-Party Loading
12.	Loss and Damage
13.	Indexing

Any effort to recalculate variable costs today, nearly eight years later, in a manner consistent with the 2003 decision would be complex and likely contentious.

First, the sheer amount of data needed to carry out the specified movement-specific adjustments would make such an exercise complex and burdensome. As shown in Table 1, the

movement-specific adjustments adopted by the STB in the 2003 decision covered a broad range of cost categories and required the collection of costing inputs that involve data from various accounting and operating sources. The Board spoke directly to the efforts needed to compile this information in its Major Issues decision:

The analysis of proposals for movement-specific adjustments is complex, expensive, and time consuming. Massive discovery is required. Detailed adjustments to the URCS program are needed and exhaustive analysis of the reliability of the evidence is performed. Major Issues at 50.

The same data collection efforts would be required to develop movement-specific adjustments today.

The amount of data needed to carry out the movement-specific adjustments used in the 2003 decision is very broad and would be burdensome to collect. Table 2 below identifies the more than 30 sources of data and other information that would have to be queried to determine whether adjustments to system-average URCS could be calculated today consistent with the adjustments used in the 2003 decision.

*Table 2: Source Data Required to Perform Movement-Specific Adjustments to System-Average URCS Costs Adopted by STB in 2003 TMPA Decision*

Required Data or Information	
STB URCS input file	
R-1 data	
AAR index information	
Waybill records	
Train Movement records	
Locomotive Event data	
Unloading reports	
Time Tables	
Track Charts	
Density data by segment	
Locomotive information	
	Purchases
	Leases

	Maintenance contracts
	Service life, depreciation rate, salvage value
Freight Car information	
	Purchases
	Leases
	Transportation contracts
	Service life, depreciation rate, salvage value
End of Train Devices	
	Purchases
	Service life, depreciation rate, salvage value
Joint Facilities	
	Agreements
	Invoices
Road Property	
	Investment by segment
	Accumulated depreciation by segment
	Annual depreciation by segment
	Unassigned investments
	Unassigned accumulated depreciation
	Unassigned annual depreciation
Fuel Consumption	
	Event recorder data
	Manufacturer consumption rates
	Translation software
Crew Wage	
	Train crew records for TMPA trains
	All W-2 payroll data for TMPA train crews
	Payroll data for mine loading and helper service crews
Third-Party Loading	
	Agreements
	Invoices
Loss and Damage information	

Second, there is no assurance that the same types of data used to produce movement-specific adjustments in the 2003 decision continue to be available today. It is likely that many of the data originally relied upon by the parties include data that BNSF has not collected in many years, since BNSF has not had to use the information subsequent to the STB's adoption of system-average URCS in Major Issues. Moreover, many of the data used in the original

calculations were pulled from databases that were not designed to collect or produce data in the format needed to develop the movement-specific adjustments. Substantial efforts were needed to make the data usable. And as BNSF's data systems have not remained static over the years, it is uncertain whether data that were previously available continue to be available, or whether the data that are currently available can reliably be used in the movement-specific adjustments that were developed several years ago.

Third, some of the inputs that the STB adopted in making the movement-specific adjustments were derived from sources other than BNSF. For example, in resolving the dispute between the parties regarding the amount of switching required to handle the TMPA traffic, the STB adopted a study that TMPA performed of its own Unloading Reports from 2001. The STB used these records to determine the duration and the frequency of switching associated with reconfiguring Distributed Power ("DP") locomotives. (2003 Decision at 46) As the figures adopted by the STB were based on DP operations of 10 years ago, proper updating would require that TMPA perform a new study and make the results available to BNSF.

Fourth, even though the Board resolved the disputes between the parties as to the proper calculation of the movement-specific adjustments in 2003, it is realistic to expect that new disputes would arise as the parties attempt to implement movement-specific calculations today. Since new data would be needed, possibly from new databases, there would likely be disputes over the implementation of the movement-specific adjustments using the new data. Indeed, in the 2003 decision there were a number of areas where the parties ultimately agreed on the values to be used in the movement-specific adjustments, but that agreement was only reached after three rounds of evidence, where both parties filed opening, reply and rebuttal evidence.

Finally, the movement-specific adjustments used in the 2003 decision included a number of complex, time-consuming and potentially contentious special studies. In some cases, it is uncertain that the studies originally carried out could even be replicated today. New study protocols might need to be developed, with the inevitable disputes over the proposed protocols. Some examples of the special studies that would need to be reproduced are discussed below.

Fuel costs are a considerable element of the overall expense of providing railroad service, and in particular are one of the largest cost components for long-haul, unit-coal trains like TMPA's. As noted in the 2003 decision, the parties agreed to conduct a special study of fuel usage using an event recorder for locomotive units on TMPA trains. That study required significant effort and coordination, involving multiple BNSF operating personnel. In addition to designing and implementing a special test-car run that measured fuel flow, BNSF also extracted event recorder information from the locomotives that powered the TMPA trains over multiple months. BNSF<sup>3</sup> used specific software to translate the event recorder results to fuel consumption estimates by segment, taking into account a variety of operational aspects including DP configuration and idling time, and then matched these consumption amounts to other data for the TMPA trains to confirm the validity of the event recorder readings. The amount of fuel consumed on TMPA trains was determined and used to adjust the specific fuel components of URCS variable costs. In order to determine the specific amount of fuel consumed by locomotives on the TMPA movement today, a separate series of analyses would have to be performed that identified the specific locomotives used to power the TMPA trains, the amount of fuel they consumed, and the proper matching and verifications to produce the movement-specific adjustment. Also, as discussed in more recent evidentiary submissions in stand-alone rate cases,

---

<sup>3</sup> The BNSF witness was a retired mechanical department employee who was familiar with locomotive operations and interpreting event recorder information.

the manner in which BNSF captures locomotive event data has changed in the last eight years, raising further uncertainty regarding whether the prior approach could be followed, or what type of study could be performed to develop variable costs for the TMPA movement in a manner consistent with the 2003 decision.

Road property ownership costs represent another major expense item that, like fuel, are particularly significant for long-haul, unit-coal trains. In the 2003 decision, the STB adopted movement-specific adjustments for return on investment and depreciation expenses that had been the subject of disagreement between the parties over three rounds of simultaneous evidentiary filings.<sup>4</sup> In addition to the extensive accounting and density information that was required to develop these adjustments, there were disagreements between the parties regarding the need to reconcile the amounts in the BNSF asset databases to the reported investment totals, and to account for the significant amount of BNSF investments that were not assigned to individual segments. While the STB resolved the treatment of these issues as they were analyzed a decade ago, the passage of time and considerable investments in road property that BNSF has made since then would require a re-examination of the assignment of investments in the more recent period and a determination as to whether the prior methodology could be applied. A new study of road property investment costs would likely result in disputes over how the amounts should be treated and how a movement-specific adjustment should be calculated.

Regarding yard switching costs, the STB rejected BNSF's efforts to rely upon a 1989 study as the basis for a movement-specific adjustment to capture the expense of handling bad-ordered cars. However, the STB recognized that BNSF incurred such costs in providing service to TMPA. Moreover, the STB accepted TMPA's special study of switching costs at the

---

<sup>4</sup> The Board subsequently recognized in Major Issues that no valid movement-specific adjustment in road property costs could be made without also addressing the proper variability factor.

destination, as noted previously. Therefore, in evaluating the switching costs that BNSF incurs today, it would be necessary to consider whether yard switching costs could reliably be calculated using a more recent study or alternative data sources.

If movement-specific adjustments were used to calculate variable costs, it would also be necessary to address the numerous issues discussed above and engage in the burdensome data collection and evaluation for every year in which the jurisdictional threshold must be determined. Such an on-going effort would require a substantial and long-term commitment of resources. The Board properly decided that such a massive use of resources was not warranted and concluded that movement-specific adjustments should no longer be used to determine the jurisdictional threshold.

#### **IV. Calculation of R/VC Ratios for TMPA Traffic**

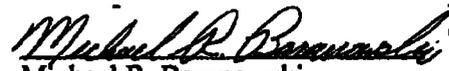
BNSF also asked us to calculate the R/VC ratios on the current common carrier rate that BNSF is charging for the issue traffic movement using the Board's current methodology for determining variable costs. In order to perform those calculations, we determined the nine standard movement inputs for developing URCS variable costs, as set forth by the Major Issues decision, calculated the variable costs based on the 2009 BNSF URCS that was recently released by the Board, and indexed the results to the fourth quarter 2010. As the current common carrier rate is the same for all PRB origins, the resulting R/VC ratios vary by mine and range from 166% to 174%, as shown in Table 3 below.

*Table 3: R/VC Ratios for TMPA Traffic*

Mine Origin	1Q 2010 Rate	URCS Variable Cost (indexed to 4Q 2010)	R/VC Ratio
Antelope	\$29.70	\$17.05	174%
Belle Ayr	\$29.70	\$17.63	168%
Black Thunder	\$29.70	\$17.33	171%
Buckskin	\$29.70	\$17.94	166%
Caballo	\$29.70	\$17.63	168%
Caballo Rojo	\$29.70	\$17.60	169%
Clovis Point	\$29.70	\$17.81	167%
Coal Creek	\$29.70	\$17.52	170%
Cordero	\$29.70	\$17.54	169%
Dry Fork	\$29.70	\$17.85	166%
Eagle Butte	\$29.70	\$17.91	166%
East Thunder	\$29.70	\$17.36	171%
Fort Union	\$29.70	\$17.83	167%
N. Antelope	\$29.70	\$17.11	174%
Rawhide	\$29.70	\$17.88	166%
West Thunder	\$29.70	\$17.38	171%

**VERIFICATION**

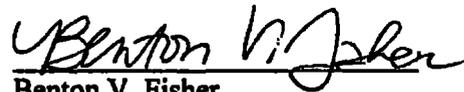
I, Michael R. Baranowski, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am authorized to file this verified statement.

  
Michael R. Baranowski

Executed on January 6, 2011

**VERIFICATION**

**I, Benton V. Fisher, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am authorized to file this verified statement.**

  
**Benton V. Fisher**

**Executed on January 6, 2011**

## Michael R. Baranowski

Senior Managing Director - Economic Consulting

mike.baranowski@fticonsulting.com

1101 K Street, NW  
Suite B100  
Washington, DC 20005  
Tel: (202) 312-9100  
Fax: (202) 312-9101

### Education

B.S. in Accounting,  
Fairfield University

Supplemental Finance  
Studies, Kean College

**Mike Baranowski** provides financial and economic consulting services to the telecommunications and transportation industries. He has special expertise in analyzing and developing complex computer costing models, operations analysis, and transportation engineering. Much of his work involves providing oral and written expert testimony before courts and regulatory bodies.

Some of Mr. Baranowski's representative accomplishments include:

- Overseeing the development of computer cost modeling tools designed to simulate the cost of competitive entry into local telecommunications markets and directing the efforts of a nationwide team of testifying experts presenting the cost model results in multiple proceedings across the country.
- Directing the analysis, critique and restatement of a variety of complex cost models developed by major telecommunications companies designed to simulate the forward-looking cost of competitive entry into local telecommunications markets.
- Designing multiple PC-based spreadsheet models for use in calculating the stand-alone cost of competitive entry into the railroad and pipeline markets. These models have been used to assist clients in all three network industries in making internal pricing decisions that are in compliance with governing regulatory standards.
- Conducting detailed analyses of railroad operations and developing the associated capital requirements and operating expenses attributable to specific movements and the incremental capital and operating expense requirements attributable to major changes in anticipated traffic levels.
- Calculating marginal and incremental costs for a major petroleum products pipeline company, an approach that is now used regularly by the company in making internal day-to-day pricing decisions.

Mr. Baranowski holds a B.S. in Accounting from Fairfield University in Fairfield, Connecticut and has pursued supplemental finance studies at Kean College in Union, New Jersey.

### TELECOMMUNICATIONS TESTIMONY

#### *Federal Communications Commission*

February 1998	File No. E-98-05. AT&T Corp. v. Bell Atlantic Corp. Affidavit of Michael R. Baranowski.
March 13, 1998	File No. E-98-05. AT&T Corp. v. Bell Atlantic Corp. Supplemental Affidavit of Michael R. Baranowski.
June 10, 1999	CC Docket No. 96-98. Implementation of the Local Competition Provisions of the Telecommunications Act of 1996. Reply Affidavit of Michael R. Baranowski, John C. Klick and Brian F. Pitkin.

Michael R. Baranowski

- July 25, 2001 CC Docket No. 00-251, 00-218. In the Matter of Petition of AT&T Communications of Virginia, Inc. and WorldCom, Inc., Pursuant to Section 252(e)(5) of the Communications Act, for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon-Virginia, Inc. Panel
- June 13, 2005 WC Docket No. 05-25;RM-10593. In the Matter of Special Access Rates for Price Cap Local Exchange Carriers; AT&T Corp. Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services, Joint Declaration on Behalf of SBC Communications, Inc.
- July 29, 2005 WC Docket No. 05-25;RM-10593. In the Matter of Special Access Rates for Price Cap Local Exchange Carriers; AT&T Corp. Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services, Joint Reply Declaration on Behalf of SBC Communications, Inc.
- Public Service Commission of Delaware*
- February 4, 1997 PSC Docket No. 96-324. In the Matter of Bell Atlantic - Delaware Statement of Terms and Conditions Under Section 252(F) of the Telecommunications Act of 1996. Testimony of Michael R. Baranowski.
- Public Service Commission of the District of Columbia*
- March 24, 1997 Formal Case No. 962. In the Matter of the Implementation of the District of Columbia Telecommunications Competition Act of 1996. Testimony of Michael R. Baranowski.
- May 2, 1997 Formal Case No. 962. In the Matter of the Implementation of the District of Columbia Telecommunications Competition Act of 1996. Rebuttal Testimony of Michael R. Baranowski.
- Public Service Commission of the State of Maryland*
- March 7, 1997 Docket No. 8731, Phase II. In the Matter of the Petitions for Approval of Agreements and Arbitration of Unresolved Issues Arising Under Section 252 of the Telecommunications Act of 1996. Direct Testimony of Michael R. Baranowski.
- April 4, 1997 Docket No. 8731, Phase II. In the Matter of the Petitions for Approval of Agreements and Arbitration of Unresolved Issues Arising Under Section 252 of the Telecommunications Act of 1996. Rebuttal Testimony of Michael R. Baranowski.
- May 25, 2001 Case No. 8879. In the Matter of the Investigation into Rates for Unbundled Network Elements Pursuant to the Telecommunications Act of 1996. Panel Testimony on Recurring Cost Issues

Michael R. Baranowski

*Public Service Commission of the State of Michigan*

- January 20, 2004 Case No. U-13531. In the Matter, on the Commission's Own Motion to Review the Costs of Telecommunication Service Provided By SBC Michigan. Initial Testimony of Michael R. Baranowski and Julie A. Murphy.
- May 10, 2004 Case No. U-13531. In the Matter, on the Commission's Own Motion to Review the Costs of Telecommunication Service Provided By SBC Michigan. Final Reply Testimony of Michael R. Baranowski and Julie A. Murphy.

*New Jersey Board of Public Utilities*

- December 20, 1996 Docket No. TX 95120631. Notice of Investigation Local Exchange Competition for Telecommunications Services. Rebuttal Testimony of John C. Klick and Michael R. Baranowski.

*North Carolina Utilities Commission*

- March 9, 1998 Docket No. P-100, Sub 133d. In the Matter of Establishment of Universal Support Mechanisms Pursuant to Section 254 of the Telecommunications Act of 1996. Rebuttal Testimony of Michael R. Baranowski.

*Pennsylvania Public Utility Commission*

- January 13, 1997 Docket Nos. A-310203F0002 et al. MFS-III. Application of MFS Intelenet of Pennsylvania, Inc. et. Al. (Phase III). Rebuttal Testimony of Michael R. Baranowski.
- February 21, 1997 Docket Nos. A-310203F0002 et al. MFS-III. Application of MFS Intelenet of Pennsylvania, Inc. et. Al. (Phase III). Surrebuttal Testimony of Michael R. Baranowski.
- April 22, 1999 Docket Nos. P-00991648, P-00991649. Petition of Senators and CLECs for Adoption of Partial Settlement and Joint Petition for Global Resolution of Telecommunications Proceedings. Direct Testimony of Michael R. Baranowski.
- January 11, 2002 Docket No. R-00016683. Generic Investigation of Verizon Pennsylvania, Inc.'s Unbundled Network Element Rates. Panel Testimony on Recurring Cost Issues

*State Corporation Commission Commonwealth of Virginia*

- April 7, 1997 Case No. PUC970005. Ex Parte to Determine Prices Bell Atlantic - Virginia, Inc. Is Authorized To Charge Competing Local Exchange Carriers In Accordance With The Telecommunications Act of 1996 And Applicable State Law. Affidavit of Michael R. Baranowski.
- April 23, 1997 Case No. PUC970005. Ex Parte to Determine Prices Bell Atlantic - Virginia, Inc. Is Authorized To Charge Competing Local Exchange Carriers In Accordance With The Telecommunications Act of 1996 And Applicable State Law. Direct Testimony of Michael R. Baranowski.

Michael R. Baranowski

June 10, 1997 Case No. PUC970005. Ex Parte to Determine Prices Bell Atlantic - Virginia, Inc. Is Authorized To Charge Competing Local Exchange Carriers In Accordance With The Telecommunications Act of 1996 And Applicable State Law. Rebuttal Testimony of Michael R. Baranowski.

*Washington State Utilities and Transportation Commission*

December 22, 2003 Docket No. UT-033044. In the Matter of the Petition of Qwest Corporation To Initiate a Mass-Market Switching and Dedicated Transport Case Pursuant to the Triennial Review Order. Direct Testimony of Michael R. Baranowski.

February 2, 2004 Docket No. UT-033044. In the Matter of the Petition of Qwest Corporation To Initiate a Mass-Market Switching and Dedicated Transport Case Pursuant to the Triennial Review Order. Response Testimony of Michael R. Baranowski.

*Public Service Commission of West Virginia*

February 13, 1997 Case Nos. 96-1516-T-PC, 96-1561-T-PC, 96-1009-T-PC, 96-1533-T-T. Petition to establish a proceeding to review the Statement of Generally Available Terms and Conditions offered by Bell Atlantic in accordance with Sections 251, 252, and 271 of the Telecommunications Act of 1996. Testimony of Michael R. Baranowski.

February 27, 1997 Case Nos. 96-1516-T-PC, 96-1561-T-PC, 96-1009-T-PC, 96-1533-T-T. Petition to establish a proceeding to review the Statement of Generally Available Terms and Conditions offered by Bell Atlantic in accordance with Sections 251, 252, and 271 of the Telecommunications Act of 1996. Rebuttal Testimony of Michael R. Baranowski.

June 3, 2002 Case No. 01-1696-T-PC, Verizon West Virginia, Inc. Petition For Declaratory Ruling That Pricing of Certain Additional Unbundled Network Elements (UNEs) Complies With Total Element Long-Run Incremental Cost (TELRIC) Principles. Direct Testimony of Michael R. Baranowski

July 1, 2002 Case No. 01-1696-T-PC, Verizon West Virginia, Inc. Petition For Declaratory Ruling That Pricing of Certain Additional Unbundled Network Elements (UNEs) Complies With Total Element Long-Run Incremental Cost (TELRIC) Principles. Supplemental Direct Testimony of Michael R. Baranowski

**RAILROAD TESTIMONY**

*Interstate Commerce Commission*

March 9, 1995 Finance Docket No. 32467. National Railroad Passenger Corporation and Consolidated Rail Corporation – Application Under Section 402(a) of the Rail Passenger Service Act for an Order Fixing Just Compensation.

October 30, 1995 Docket No. 41185. Arizona Public Service Company and PacifiCorp v. The Atchison, Topeka and Santa Fe Railway Company.

Michael R. Baranowski

*Surface Transportation Board*

- July 11, 1997 Docket No. 41989. Potomac Electric Power Company v. CSX Transportation, Inc. Reply Statement and Evidence of Defendant CSX Transportation, Inc.
- August 14, 2000 Docket No. 42051. Wisconsin Power and Light Company v. Union Pacific Railroad Company, Reply Verified Statement of Christopher D. Kent and Michael R. Baranowski.
- September 20, 2002 STB Docket No. 42070. Duke Energy Corporation v. CSX Transportation, Inc., Reply Evidence and Argument of CSX Transportation, Inc.
- September 30, 2002 STB Docket No. 42069. Duke Energy Corporation v. Norfolk Southern Railway Company, Reply Evidence and Argument of Norfolk Southern Railway Company.
- October 11, 2002 STB Docket No. 42072. Carolina Power & Light v. Norfolk Southern Railway Company, Reply Evidence and Argument of Norfolk Southern Railway Company.
- November 12, 2002 Docket No. 42070 Duke Energy Corporation v. CSX Transportation, Rebuttal Evidence and Argument of CSX Transportation
- November 19, 2002 Docket No. 42069 Duke Energy Corporation v. Norfolk Southern Railway Company, Rebuttal Evidence and Argument of Norfolk Southern Railway Company
- November 27, 2002 Docket No. 42072 Carolina Power & Light Company v. Norfolk Southern Railway Company, Rebuttal Evidence and Argument of Norfolk Southern Railway Company
- January 10, 2003 STB Docket No. 41185. Arizona Public Service Co. And Pacificorp v. The Atchison, Topeka and Santa Fe Railway Company, Petition of the Burlington Northern and Santa Fe Railway Company to Reopen and Vacate Rate Prescription.
- February 19, 2003 STB Docket No. 42077, Arizona Public Service Co. And Pacificorp v. The Burlington Northern and Santa Fe Railway Company, and STB Docket No. 41185, Arizona Public Service Co. And Pacificorp v. The Burlington Northern and Santa Fe Railway Company, Reply of the Burlington Northern Santa Fe Railway Company in Opposition to Petition for Consolidation.
- April 4, 2003 Docket No. 42057 Public Service Company of Colorado D/B/A Xcel Energy v. The Burlington Northern and Santa Fe Railway Company, Reply Evidence and Argument of The Burlington Northern and Santa Fe Railway Company
- October 8, 2003 Docket No. 42071 Otter Tail Power Company v. The Burlington Northern and Santa Fe Railway Company, Reply Evidence of The Burlington Northern and Santa Fe Railway Company
- October 24, 2003 Docket No. 42069 Duke Energy Corporation v. Norfolk Southern Railway Company, Supplemental Evidence of Norfolk Southern Railway Company

Michael R. Baranowski

October 31, 2003 Docket No. 42069 Duke Energy Corporation v. Norfolk Southern Railway Company, Reply of Norfolk Southern Railway Company to Duke Energy Company's Supplemental Evidence

November 24, 2003 Docket No. 42072 Carolina Power & Light Company v. Norfolk Southern Railway Company, Supplemental Evidence of Norfolk Southern Railway Company

December 2, 2003 Docket No. 42072 Carolina Power & Light Company v. Norfolk Southern Railway Company, Reply of Norfolk Southern Railway Company to Carolina Power & Light Company's Supplemental Evidence

December 12, 2003 Docket No. 42069 Reply of Norfolk Southern Railway Company to Duke Energy Corporation's Petition to Correct Technical Error and Affidavit of Michael R. Baranowski

January 5, 2004 Docket No. 42070 Duke Energy Corporation v. CSX Transportation, Inc., Supplemental Evidence of CSX Transportation, Inc.

January 26, 2004 Docket No. 42058 Arizona Electric Power Cooperative, Inc. v. The Burlington Northern and Santa Fe Railway Company and Union Pacific Railroad Company, Joint Supplemental Reply Evidence and Argument of The Burlington Northern and Santa Fe Railway Company and Union Pacific Railroad Company

March 22, 2004 Docket No. 42071 Otter Tail Power Company v. The Burlington Northern and Santa Fe Railway Company, Supplemental Reply Evidence of The Burlington Northern and Santa Fe Railway Company

April 9, 2004 Docket No. 41185 Arizona Public Service Company and PacifiCorp v. The Burlington Northern and Santa Fe Railway Company, The Burlington Northern and Santa Fe Railway Company's Reply Evidence on Reopening

May 24, 2004 Docket No. 41191 (Sub-No. 1) AEP Texas North Company v. The Burlington Northern and Santa Fe Railway Company, Reply Evidence of The Burlington Northern and Santa Fe Railway Company

June 23, 2004 Docket No. 42057 Public Service Company of Colorado d/b/a Xcel Energy v. The Burlington Northern and Santa Fe Railway Company, Petition to Correct Technical and Computational Errors

March 1, 2005 Docket No. 42071 Otter Tail Power Company v BNSF Railway Company, Supplemental Evidence of BNSF Railway Company

April 4, 2005 Docket No. 42071 Otter Tail Power Company v BNSF Railway Company, Reply of BNSF Railway Company to Supplemental Evidence

July 20, 2005 Docket No. 42088 Western Fuels Association, Inc. and Basin Electric Power Cooperative, Inc. v. BNSF Railway Company, Reply Evidence of BNSF Railway Company

May 1, 2006 Docket No. Ex Parte 657 (Sub-No. 1) Major Issues in Rail Rate Cases, Verified Statement Supporting Comments of BNSF Railway Company

Michael R. Baranowski

May 31, 2006	Ex Parte 657 (Sub-No. 1) Major Issues in Rail Rate Cases; Verified Statement Supporting Reply Comments of BNSF Railway Company
June 15, 2006	Docket No. 42088 Western Fuels Association, Inc. and Basin Electric Power Cooperative, Inc. v. BNSF Railway Company, Reply Supplemental Evidence of BNSF Railway Company
June 15, 2006	Docket No. 41191 (Sub 1) AEP Texas North Company v. BNSF Railway Company, Reply Supplemental Evidence of BNSF Railway Company
June 30, 2006	Docket No. Ex Parte 657 (Sub-No. 1) Major Issues in Rail Rate Cases; Verified Statement Supporting Rebuttal Comments of BNSF Railway Company
February 4, 2008	Docket No. 42099 E.I. DuPont De Nemours and Company v. CSX Transportation, Inc., Opening Evidence of CSX Transportation, Inc.
February 4, 2008	Docket No. 42100 E.I. DuPont De Nemours and Company v. CSX Transportation, Inc., Opening Evidence of CSX Transportation, Inc.
February 4, 2008	Docket No. 42101 E.I. DuPont De Nemours and Company v. CSX Transportation, Inc., Opening Evidence of CSX Transportation, Inc.
May 1, 2008	Docket No. Ex Parte 679 Petition of the AAR to Institute a Rulemaking Proceeding to Adopt a Replacement Cost Methodology to Determine Railroad Revenue Adequacy, Verified Statement of Michael R. Baranowski
July 14, 2008	Docket No. 42088 Western Fuels Association, Inc. and Basin Electric Power Cooperative, Inc. v. BNSF Railway Company, Third Supplemental Reply Evidence of BNSF Railway Company
July 14, 2008	Docket No. AB-515 (Sub-No. 2) Central Oregon & Pacific Railroad, Inc. – Abandonment and Discontinuance of Service – in Coos, Douglas, and Lane Counties, Oregon (Coos Bay Rail Line)
August 8, 2008	Docket No. 41191 (Sub-No. 1) AEP Texas North Company v. BNSF Railway Company, Fourth Supplemental Evidence of BNSF Railway Company
August 11, 2008	Docket No. 42014 Entergy Arkansas, Inc. and Entergy Services, Inc. v Union Pacific Railroad Company and Missouri & Northern Arkansas Railroad Company, Inc.; Finance Docket No. 32187 Missouri & Northern Arkansas Railroad Company, Inc. – Lease, Acquisition and Operations Exemption – Missouri Pacific Railroad Company and Burlington Northern Railroad Company, Reply Evidence and Argument of Union Pacific
September 5, 2008	Docket No. 41191 (Sub-No. 1) AEP Texas North Company v. BNSF Railway Company, Fourth Supplemental Reply Evidence of BNSF Railway Company
September 12, 2008	Docket No. AB-515 (Sub-No. 2) Central Oregon & Pacific Railroad, Inc. – Abandonment and Discontinuance of Service – in Coos, Douglas, and Lane Counties, Oregon (Coos Bay Rail Line); Rebuttal to Protests
August 24, 2009	Docket No. 42114 US Magnesium, L.L.C. v. Union Pacific Railroad Company, Opening Evidence of Union Pacific Railroad Company
October 22, 2009	Docket No. 42114 US Magnesium, L.L.C. v. Union Pacific Railroad Company, Rebuttal Evidence of Union Pacific Railroad Company

Michael R. Baranowski

- January 19, 2010 Docket No. 42110 Seminole Electric Cooperative, Inc. v. CSX Transportation, Inc., Reply Evidence of CSX Transportation, Inc.
- May 7, 2010 Docket No. 42113 Arizona Electric Power Cooperative, Inc. v. BNSF Railway Company and Union Pacific Railroad Company, Joint Reply Evidence of BNSF Railway Company and Union Pacific Railroad Company

*US District Court for Northern District of Oklahoma*

- January 2, 2007 Case No. 06-CV-33 TCK-SAJ, Grand River Dam Authority v. BNSF Railway Company; Report of Michael R. Baranowski
- February 2, 2007 Case No. 06-CV-33 TCK-SAJ, Grand River Dam Authority v. BNSF Railway Company; Reply Report of Michael R. Baranowski

*Circuit Court of Pulaski County, Arkansas*

- August 17, 2007 Case No. CV 2006-2711, Union Pacific Railroad v. Entergy Arkansas, Inc. and Entergy Services, Inc., Expert Witness Report of Michael R. Baranowski
- December 14, 2007 Case No. CV 2006-2711, Union Pacific Railroad v. Entergy Arkansas, Inc. and Entergy Services, Inc., Reply Expert Witness Report of Michael R. Baranowski

*U.S. District Court for the Eastern District of Wisconsin*

- February 15, 2008 Case No. 06-C-0515, Wisconsin Electric Power Company v. Union Pacific Railroad Company, Expert Reply Report of Michael R. Baranowski

*Arbitrations and Mediations*

- March 7, 2005 Arbitration Case #181 Y 00490 04 BNSF Railway Company and J.B. Hunt Transport, Inc., Expert Report on behalf of BNSF Railway Company
- March 28, 2005 Arbitration Case #181 Y 00490 04 BNSF Railway Company and J.B. Hunt Transport, Inc., Rebuttal Expert Report on behalf of BNSF Railway Company
- April 12, 2005 Arbitration Case #181 Y 00490 04 BNSF Railway Company and J.B. Hunt Transport, Inc., Supplemental Expert Report on behalf of BNSF Railway Company
- April 19, 2005 Arbitration Case #181 Y 00490 04 BNSF Railway Company and J.B. Hunt Transport, Inc., Supplemental Rebuttal Expert Report on behalf of BNSF Railway Company
- April/May 2005 Arbitration Case #181 Y 00490 04 BNSF Railway Company and J.B. Hunt Transport, Inc., Hearings before Arbitration Panel
- February 20, 2007 In the Matter of the Arbitration between the Detroit Edison Company, et al, and BNSF Railway Company, Expert Report of Michael R. Baranowski
- March 19, 2007 In the Matter of the Arbitration between the Detroit Edison Company, et al, and BNSF Railway Company, Supplemental Expert Report of Michael R. Baranowski

Michael R. Baranowski

- February 12, 2009 In the Matter of the Arbitration between Wisconsin Public Service Corporation and Union Pacific Railroad Company, Rebuttal Expert Report of Michael R. Baranowski
- October 16, 2009 In the Matter of Arbitration Between Norfolk Southern Railway Company and Drummond Coal Sales, Inc., Expert Report of Michael R. Baranowski

## Benton V. Fisher

Senior Managing Director - Economic Consulting

benton.fisher@fticonsulting.com

1101 K Street, NW  
Suite B100  
Washington, DC 20005  
Tel: (202) 312-9100  
Fax: (202) 312-9101

### Education

B.S. in Engineering and  
Management Systems,  
Princeton University

**Benton V. Fisher** is a Senior Managing Director of FTI's Economic Consulting group, located in Washington, D.C. Mr. Fisher has nearly 20 years of experience in providing financial, economic and analytical consulting services to corporate clients dealing with transportation, telecommunications, and postal subjects.

North America's largest railroads have retained FTI both to assist them in making strategic and tactical decisions and to provide expert testimony in litigation. FTI's ability to present a thorough understanding of myriad competitive and regulatory factors has given its clients the necessary tools to implement and advance their business. Mr. Fisher has worked extensively to develop these clients' applications for mergers and acquisitions and expert testimony justifying the reasonableness of their rates before the Surface Transportation Board. In addition to analyzing extensive financial and operating data, Mr. Fisher has worked closely with people within many departments at the railroad as well as outside counsel to ensure that the railroads' presentations are accurate and defensible. Additionally, Mr. Fisher reviews the expert testimony of the railroads' opponents in these proceedings, and advises counsel on the necessary course of action to respond.

AT&T and MCI retained FTI to advance its efforts to implement the Telecommunications Act of 1996 in local exchange markets. Mr. Fisher was primarily responsible for reviewing the incumbent local exchange carriers' (ILEC) cost studies, which significantly impacted the ability of FTI's clients to access local markets. Mr. Fisher analyzed the sensitivity of multiple economic components and incorporated this information into various models being relied upon by the parties and regulators to determine the pricing of services. Mr. Fisher was also responsible for preparing testimony that critiqued alternative presentations.

Mr. Fisher assisted in reviewing the U.S. Postal Service's evidence and preparing expert testimony on behalf of interveners in Postal Rate and Fee Changes cases. He has also been retained by a large international consulting firm to provide statistical and econometric support in their preparation of a long-range implementation plan for improving telecommunications infrastructure in a European country.

Mr. Fisher has sponsored expert testimony in rate reasonableness proceedings before the Surface Transportation Board and in contract disputes in Federal Court and arbitration proceedings.

Mr. Fisher holds a B.S. in Engineering and Management Systems from Princeton University.



**TESTIMONY**

Surface Transportation Board

January 15, 1999	Docket No. 42022 FMC Corporation and FMC Wyoming Corporation v. Union Pacific Railroad Company, Opening Verified Statement of Christopher D. Kent and Benton V. Fisher
March 31, 1999	Docket No. 42022 FMC Corporation and FMC Wyoming Corporation v. Union Pacific Railroad Company, Reply Verified Statement of Christopher D. Kent and Benton V. Fisher
April 30, 1999	Docket No. 42022 FMC Corporation and FMC Wyoming Corporation v. Union Pacific Railroad Company, Rebuttal Verified Statement of Christopher D. Kent and Benton V. Fisher
July 15, 1999	Docket No. 42038 Minnesota Power, Inc. v. Duluth, Missabe and Iron Range Railway Company, Opening Verified Statement of Christopher D. Kent and Benton V. Fisher
August 30, 1999	Docket No. 42038 Minnesota Power, Inc. v. Duluth, Missabe and Iron Range Railway Company, Reply Verified Statement of Christopher D. Kent and Benton V. Fisher
September 28, 1999	Docket No. 42038 Minnesota Power, Inc. v. Duluth, Missabe and Iron Range Railway Company, Rebuttal Verified Statement of Christopher D. Kent and Benton V. Fisher
June 15, 2000	Docket No. 42051 Wisconsin Power and Light Company v. Union Pacific Railroad Company, Opening Verified Statement of Christopher D. Kent and Benton V. Fisher
August 14, 2000	Docket No. 42051 Wisconsin Power and Light Company v. Union Pacific Railroad Company, Reply Verified Statement of Christopher D. Kent and Benton V. Fisher
September 28, 2000	Docket No. 42051 Wisconsin Power and Light Company v. Union Pacific Railroad Company, Rebuttal Verified Statement of Christopher D. Kent and Benton V. Fisher
December 14, 2000	Docket No. 42054 PPL Montana, LLC v. The Burlington Northern Santa Fe Railway Company, Opening Verified Statement of Christopher D. Kent and Benton V. Fisher
March 13, 2001	Docket No. 42054 PPL Montana, LLC v. The Burlington Northern Santa Fe Railway Company, Reply Verified Statement of Christopher D. Kent and Benton V. Fisher
May 7, 2001	Docket No. 42054 PPL Montana, LLC v. The Burlington Northern Santa Fe Railway Company, Rebuttal Verified Statement of Christopher D. Kent and Benton V. Fisher

Benton V. Fisher

- October 15, 2001 Docket No. 42056 Texas Municipal Power Agency v. The Burlington Northern Santa Fe Railway Company, Opening Verified Statement of Benton V. Fisher
- January 15, 2002 Docket No. 42056 Texas Municipal Power Agency v. The Burlington Northern Santa Fe Railway Company, Reply Verified Statement of Benton V. Fisher
- February 25, 2002 Docket No. 42056 Texas Municipal Power Agency v. The Burlington Northern Santa Fe Railway Company, Rebuttal Verified Statement of Benton V. Fisher
- May 24, 2002 Docket No. 42069 Duke Energy Corporation v. Norfolk Southern Railway Company, Opening Evidence and Argument of Norfolk Southern Railway Company
- June 10, 2002 Docket No. 42072 Carolina Power & Light Company v. Norfolk Southern Railway Company, Opening Evidence and Argument of Norfolk Southern Railway Company
- July 19, 2002 Northern States Power Company Minnesota v. Union Pacific Railroad Company, Union Pacific's Opening Evidence
- September 30, 2002 Docket No. 42069 Duke Energy Corporation v. Norfolk Southern Railway Company, Reply Evidence and Argument of Norfolk Southern Railway Company
- October 4, 2002 Northern States Power Company Minnesota v. Union Pacific Railroad Company, Union Pacific's Reply Evidence
- October 11, 2002 Docket No. 42072 Carolina Power & Light Company v. Norfolk Southern Railway Company, Reply Evidence and Argument of Norfolk Southern Railway Company
- November 1, 2002 Northern States Power Company Minnesota v. Union Pacific Railroad Company, Union Pacific's Rebuttal Evidence
- November 19, 2002 Docket No. 42069 Duke Energy Corporation v. Norfolk Southern Railway Company, Rebuttal Evidence and Argument of Norfolk Southern Railway Company
- November 27, 2002 Docket No. 42072 Carolina Power & Light Company v. Norfolk Southern Railway Company, Rebuttal Evidence and Argument of Norfolk Southern Railway Company
- January 10, 2003 Docket No. 42057 Public Service Company of Colorado D/B/A Xcel Energy v. The Burlington Northern and Santa Fe Railway Company, Opening Evidence and Argument of The Burlington Northern and Santa Fe Railway Company
- February 7, 2003 Docket No. 42058 Arizona Electric Power Cooperative, Inc. v. The Burlington Northern and Santa Fe Railway Company and Union Pacific Railroad, Opening Evidence of The Burlington Northern and Santa Fe Railway Company and Union Pacific Railroad

April 4, 2003 Docket No. 42057 Public Service Company of Colorado D/B/A Xcel Energy v. The Burlington Northern and Santa Fe Railway Company, Reply Evidence and Argument of The Burlington Northern and Santa Fe Railway Company

May 19, 2003 Docket No. 42057 Public Service Company of Colorado D/B/A Xcel Energy v. The Burlington Northern and Santa Fe Railway Company, Rebuttal Evidence and Argument of The Burlington Northern and Santa Fe Railway Company

May 27, 2003 Docket No. 42058 Arizona Electric Power Cooperative, Inc. v. The Burlington Northern and Santa Fe Railway Company and Union Pacific Railroad, Joint Variable Cost Reply Evidence of The Burlington Northern and Santa Fe Railway Company and Union Pacific Railroad

May 27, 2003 Docket No. 42058 Arizona Electric Power Cooperative, Inc. v. The Burlington Northern and Santa Fe Railway Company and Union Pacific Railroad, Reply Evidence of The Burlington Northern and Santa Fe Railway Company

June 13, 2003 Docket No. 42071 Otter Tail Power Company v. The Burlington Northern and Santa Fe Railway Company, Opening Evidence of The Burlington Northern and Santa Fe Railway Company

July 3, 2003 Docket No. 42058 Arizona Electric Power Cooperative, Inc. v. The Burlington Northern and Santa Fe Railway Company and Union Pacific Railroad, Joint Variable Cost Rebuttal Evidence of The Burlington Northern and Santa Fe Railway Company and Union Pacific Railroad

October 8, 2003 Docket No. 42071 Otter Tail Power Company v. The Burlington Northern and Santa Fe Railway Company, Reply Evidence of The Burlington Northern and Santa Fe Railway Company

October 24, 2003 Docket No. 42069 Duke Energy Corporation v. Norfolk Southern Railway Company Supplemental Evidence of Norfolk Southern Railway Company

October 31, 2003 STB Docket No. 42069 Duke Energy Corporation v. Norfolk Southern Railway Company, Reply of Norfolk Southern Railway Company to Duke Energy Company's Supplemental Evidence

November 24, 2003 STB Docket No. 42072 Carolina Power & Light Company v. Norfolk Southern Railway Company, Supplemental Evidence of Norfolk Southern Railway Company

December 2, 2003 STB Docket No. 42072 Carolina Power & Light Company v. Norfolk Southern Railway Company, Reply of Norfolk Southern Railway Company to Carolina Power & Light Company's Supplemental Evidence

January 26, 2004 STB Docket No. 42058 Arizona Electric Power Cooperative, Inc. v. The Burlington Northern and Santa Fe Railway Company and Union Pacific Railroad Company, Joint Supplemental Reply Evidence and Argument of The Burlington Northern and Santa Fe Railway Company and Union Pacific Railroad Company

- March 1, 2004 STB Docket No. 41191 (Sub-No. 1) AEP Texas North Company v. The Burlington Northern and Santa Fe Railway Company, Opening Evidence and Argument of The Burlington Northern and Santa Fe Railway Company
- March 22, 2004 STB Docket No. 42071 Otter Tail Power Company v. The Burlington Northern and Santa Fe Railway Company, Supplemental Reply Evidence of The Burlington Northern and Santa Fe Railway Company
- April 29, 2004 STB Docket No. 42071 Otter Tail Power Company v. The Burlington Northern and Santa Fe Railway Company, Rebuttal Evidence of The Burlington Northern and Santa Fe Railway Company
- May 24, 2004 STB Docket No. 41191 (Sub-No. 1) AEP Texas North Company v. The Burlington Northern and Santa Fe Railway Company, Reply Evidence of The Burlington Northern and Santa Fe Railway Company
- March 1, 2005 Docket No. 42071 Otter Tail Power Company v. BNSF Railway Company, Supplemental Evidence of BNSF Railway Company
- April 4, 2005 Docket No. 42071 Otter Tail Power Company v BNSF Railway Company, Reply of BNSF Railway Company to Supplemental Evidence.
- April 19, 2005 Docket No. 42088 Western Fuels Association, Inc. and Basin Electric Power Cooperative, Inc. v. BNSF Railway Company, Opening Evidence of BNSF Railway Company
- July 20, 2005 Docket No. 42088 Western Fuels Association, Inc. and Basin Electric Power Cooperative, Inc. v. BNSF Railway Company, Reply Evidence of BNSF Railway Company
- July 27, 2004 STB Docket No. 41191 (Sub-No. 1) AEP Texas North Company v. The Burlington Northern and Santa Fe Railway Company, Rebuttal Evidence of The Burlington Northern and Santa Fe Railway Company
- September 30, 2005 Docket No. 42088 Western Fuels Association, Inc. and Basin Electric Power Cooperative, Inc. v. BNSF Railway Company, Rebuttal Evidence of BNSF Railway Company
- October 20, 2005 Docket No. 42088 Western Fuels Association, Inc. and Basin Electric Power Cooperative, Inc. v. BNSF Railway Company, Surrebuttal Evidence of BNSF Railway Company
- June 15, 2006 Docket No. 42088 Western Fuels Association, Inc. and Basin Electric Power Cooperative, Inc. v. BNSF Railway Company, Reply Supplemental Evidence of BNSF Railway Company
- June 15, 2006 Docket No. 41191 (Sub-No. 1) AEP Texas North Company v. BNSF Railway Company, Reply Supplemental Evidence of BNSF Railway Company
- March 19, 2007 Docket No. 41191 (Sub-No. 1) AEP Texas North Company v. BNSF Railway Company, Reply Third Supplemental Evidence of BNSF Railway Company

March 26, 2007 Docket No. 42088 Western Fuels Association, Inc. and Basin Electric Power Cooperative, Inc. v. BNSF Railway Company, Reply Second Supplemental Evidence of BNSF Railway Company

July 30, 2007 Docket No. 42095 Kansas City Power & Light v. Union Pacific Railroad Company, Union Pacific's Opening Evidence

August 20, 2007 Docket No. 42095 Kansas City Power & Light v. Union Pacific Railroad Company, Union Pacific's Reply Evidence

February 4, 2008 Docket No. 42099 E.I. DuPont De Nemours and Company v. CSX Transportation, Inc., Opening Evidence of CSXT

February 4, 2008 Docket No. 42100 E.I. DuPont De Nemours and Company v. CSX Transportation, Inc., Opening Evidence of CSXT

February 4, 2008 Docket No. 42101 E.I. DuPont De Nemours and Company v. CSX Transportation, Inc., Opening Evidence of CSXT

March 5, 2008 Docket No. 42099 E.I. DuPont De Nemours and Company v. CSX Transportation, Inc., Reply Evidence of CSXT

March 5, 2008 Docket No. 42100 E.I. DuPont De Nemours and Company v. CSX Transportation, Inc., Reply Evidence of CSXT

March 5, 2008 Docket No. 42101 E.I. DuPont De Nemours and Company v. CSX Transportation, Inc., Reply Evidence of CSXT

April 4, 2008 Docket No. 42099 E.I. DuPont De Nemours and Company v. CSX Transportation, Inc., Rebuttal Evidence of CSXT

April 4, 2008 Docket No. 42100 E.I. DuPont De Nemours and Company v. CSX Transportation, Inc., Rebuttal Evidence of CSXT

April 4, 2008 Docket No. 42101 E.I. DuPont De Nemours and Company v. CSX Transportation, Inc., Rebuttal Evidence of CSXT

July 14, 2008 Docket No. 42088 Western Fuels Association, Inc. and Basin Electric Power Cooperative, Inc. v. BNSF Railway Company, Third Supplemental Reply Evidence of BNSF Railway Company

August 8, 2008 Docket No. 41191 (Sub-No. 1) AEP Texas North Company v. BNSF Railway Company, Fourth Supplemental Evidence of BNSF Railway Company

September 5, 2008 Docket No. 41191 (Sub-No. 1) AEP Texas North Company v. BNSF Railway Company, Fourth Supplemental Reply Evidence of BNSF Railway Company

October 17, 2008 Docket No. 42110 Seminole Electric Cooperative, Inc. v. CSX Transportation, Inc., CSX Transportation, Inc.'s Reply to Petition for Injunctive Relief, Verified Statement of Benton V. Fisher

August 24, 2009 Docket No. 42114 US Magnesium, L.L.C. v. Union Pacific Railroad Company, Opening Evidence of Union Pacific Railroad Company

Benton V. Fisher

- September 22, 2009 Docket No. 42114 US Magnesium, L.L.C. v. Union Pacific Railroad Company, Reply Evidence of Union Pacific Railroad Company
- October 22, 2009 Docket No. 42114 US Magnesium, L.L.C. v. Union Pacific Railroad Company, Rebuttal Evidence of Union Pacific Railroad Company
- January 19, 2010 Docket No. 42110 Seminole Electric Cooperative, Inc. v. CSX Transportation, Inc., Reply Evidence of CSX Transportation, Inc.
- May 7, 2010 Docket No. 42113 Arizona Electric Power Cooperative, Inc. v. BNSF Railway Company and Union Pacific Railroad Company, Joint Reply Evidence of BNSF Railway Company and Union Pacific Railroad Company
- October 1, 2010 Docket No. 42121 Total Petrochemicals USA, Inc. v. CSX Transportation, Inc., Motion for Expedited Determination of Jurisdiction Over Challenged Rates, Verified Statement of Benton V. Fisher

*U.S. District Court for the Eastern District of North Carolina*

- March 17, 2006 Civil Action No. 4:05-CV-55-D, PCS Phosphate Company v. Norfolk Southern Corporation and Norfolk Southern Railway Company, Report by Benton V. Fisher

*U.S. District Court for the Eastern District of California*

- January 18, 2010 E.D. Cal. Case No. 08-CV-1086-AWI, BNSF Railway Company v. San Joaquin Valley Railroad Co., et al.

*Arbitrations and Mediations*

- July 10, 2009 JAMS Ref. # 1220039135; In the Matter of the Arbitration Between Pacer International, Inc., d/b/a/ Pacer Stacktrain (f/k/a/ APL Land Transport Services, Inc.), American President Lines, Ltd. And APL Co. Pte. Ltd. And Union Pacific Railroad Company; Rebuttal Expert Report of Benton V. Fisher