

EXPEDITED CONSIDERATION REQUESTED

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

_____)	
TEXAS MUNICIPAL POWER AGENCY)	
)	
Complainant,)	
)	
v.)	Docket No. NOR 42056
)	
THE BNSF RAILWAY COMPANY)	
)	
Defendant.)	
_____)	

PETITION FOR ENFORCEMENT OF DECISION

Carl J. Shahady
Agency Attorney
102 N. Railroad Avenue
Pflugerville, Texas 78660

Sandra L. Brown
David E. Benz
Thompson Hine LLP
1920 N Street, N.W., Suite 800
Washington, DC 20036
202.263.4101
202.331.8330 (fax)

Attorneys for Texas Municipal Power Agency

December 17, 2010

EXPEDITED CONSIDERATION REQUESTED

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

TEXAS MUNICIPAL POWER AGENCY)	
)	
Complainant,)	
)	
v.)	Docket No. NOR 42056
)	
THE BNSF RAILWAY COMPANY)	
)	
Defendant.)	
)	

PETITION FOR ENFORCEMENT OF DECISION

Pursuant to 49 USC § 721(b), 49 USC § 10701, 49 CFR § 1117.1, and the prior decisions in the above captioned docket, Complainant Texas Municipal Power Agency (“TMPA”) respectfully requests that the Surface Transportation Board (“Board” or “STB”) enforce its maximum reasonable rate determination in this case. TMPA requests that the Board issue an order directing the BNSF Railway Company (“BNSF”) to abide by the Board’s prior decisions in this case. Given BNSF’s stated plan to deviate from the maximum reasonable rate starting January 1, 2011, TMPA requests expedited consideration of this Petition. A Board order before January 1st is requested to prevent BNSF from charging a significantly higher rate than the maximum reasonable rate determined under the Board’s 20-year analysis. The Board should order that BNSF may not charge a rate higher than the stand-alone cost rate for the remaining period of the 20-year SAC analysis from January 1, 2011 through March 31, 2021 for

transportation of coal from the Wyoming Powder River Basin to TMPA's Gibbons Creek Station.¹

I. Background

TMPA is a municipal corporation created in 1975 pursuant to an act of the Texas legislature, and it serves the four member cities of Bryan, Denton, Garland, and Greenville ("Member Cities"). See attached Verified Statement of Gary Parsons, TMPA General Manager ("Parsons V.S.") The purpose of TMPA is to provide efficient, clean electrical power at an affordable price to help the communities of its Member Cities prosper. The Member Cities purchase wholesale power from TMPA for resale to the Member Cities' customers. TMPA owns and operates the Gibbons Creek Steam Electric Station, which burns coal from the Powder River Basin ("PRB") in Wyoming. Gibbons Creek, located near Iola, Texas, is the only TMPA generating station. TMPA employs more than 160 people from the local communities dedicated to safe, clean power generation. Parsons V.S. at 2.

In 1995, TMPA began its switch to PRB coal and TMPA now burns 100% PRB coal. In 1995, the State of Texas began deregulation of the wholesale electric market. Electricity deregulation expanded further in 1999 with legislation to deregulate retail electricity markets for customers. In 2000, TMPA Board acted quickly to respond to new mandates that plants must lower emissions of Nitrogen Oxide (NOx). TMPA has been recognized as a leader in NOx reduction in the power industry. It was under this evolving background that TMPA undertook a brave step to challenge the reasonableness of BNSF's rail rates to TMPA and ultimately justifiably rely on the STB's conclusions in the rate case in planning for the future. Id. More

¹ TMPA acknowledges that, under 49 USC § 10707, the maximum reasonable rate cannot be below 180% revenue-variable costs percentage (R/VC). However, the statute provides that BNSF must prove that its R/VC exceeds 180% and this must be done under the methodology used in this case, including movement specific adjustments.

recently, in 2009, TMPA commenced construction on a project to refurbish and modernize its scrubber to address anticipated regulations related to sulfur dioxide and mercury emissions. Furthermore, on December 1, 2010, Texas launched its nodal market implementation to replace the prior zonal market. Key aims of the nodal market implementation are to increase price transparency and yield a lower overall cost of power supply which puts further pressure on TMPA for certainty of its transportation rates. In order for TMPA's electric generating plant to be dispatched under the nodal market, it is important that TMPA avoid dramatic increases in variable costs. *Parsons V.S.* at 3.

As the Board is aware, on October 19, 2001, TMPA filed a complaint with the Board challenging the reasonableness of the tariff rate charged by BNSF for rail transportation of coal from the PRB to Gibbons Creek.² Pursuant to 49 USC § 10701 and other applicable authority, the Board found the BNSF tariff rate unlawful and prescribed maximum reasonable rates. *Texas Municipal Power Agency v. The Burlington Northern and Santa Fe Railway Company*, 6 STB 573 (2003). The Board modified its decision slightly in a reconsideration decision served September 27, 2004, 7 STB 803, and a technical corrections decision served October 29, 2004.

In its initial decision, the Board found that, on a present-value basis over the entire 20-year stand-alone cost ("SAC") analysis period, the stand-alone railroad ("SARR")³ would generate revenues in excess of costs, thus indicating that the challenged tariff rate was too high. 6 STB at 607. At the same time, however, the Board found that, while the SARR generated revenues in excess of costs for the first 11 years of the SAC period, SARR revenues were less than costs for the last 9 years. 6 STB at 607 and 748-749. Later, in reconsideration, the Board again determined that the "sum of the present values of over-recoveries exceeds the under-

² The challenged BNSF tariff had gone into effect on April 1, 2001.

³ The SARR in this case was known as the Gibbons Creek Railroad or the "GCRR."

recoveries, thus demonstrating that the existing rate level is too high.” 7 STB at 831. However, the Board also noted that the SARR generated revenues in excess of costs for only the first 10 years. 7 STB at 830.

To address this situation, where the 20-year analysis revealed an overall over-recovery by the SARR but where there were not over-recoveries in each of the 20 years, the Board “limit[ed] the revenue reductions in 2001 through 2010 to 49% of the overpayments, in order to offset the underpayments that would occur in 2011 through 2021.” 7 STB at 831. By this method, the Board ensured that “over the entire 20-year period the GCRR would earn just enough to cover all its costs and earn a reasonable return of its investment.” 6 STB at 607.

BNSF has charged, and TMPA has paid, the prescribed rate since the Board’s decisions in this case. *Parsons V.S.* at 3. In late 2010, TMPA received correspondence that indicated BNSF’s belief that any rate could be charged beginning January 1, 2011. See Exhibit 1 to *Parsons V.S.* (BNSF letter Oct. 5, 2010). In response, TMPA described how the Board’s decisions in this case stated that the rate reductions given to TMPA in the first 10 years were limited in order to ensure that SARR revenues exactly equaled SARR costs over the entire 20-year period. See Exhibit 2 to *Parsons V.S.* (TMPA letter October 22, 2010). In other words, BNSF was barred from charging any rate higher than that listed as the “SAC rate” for years 2011-2021 at 6 STB at 609-610 and 7 STB at 832. Id. Despite this explanation, BNSF has consistently indicated its belief that any rate can be charged starting January 1, 2011. See Exhibit 3 to *Parsons V.S.* (BNSF letter Nov. 9, 2010). A meeting between the parties on November 17, 2010 did not resolve this issue. On December 13, 2010, BNSF issued a new tariff, BNSF 90068, Revision 75 that covers Gibbons Creek. See Exhibit 4 to *Parsons V.S.* (BNSF 90068, Revision 75). While the Table attachments are protected and contain other

shipper's rates and thus are not included in the Exhibit, BNSF has informed TMPA that the rate it will charge TMPA on January 1, 2011 is \$30.85 plus a mileage-based fuel surcharge. Parsons V.S. at 4. The TMPA Board of Directors voted to authorize seeking the STB's enforcement of the STB's decision in a special meeting held on December 16, 2010. Parsons V.S. at 3-4.

Given BNSF's unwillingness to abide by the 20-year rate prescription period used in Board's decisions in this case, an enforcement order from the Board is appropriate. The Board should direct BNSF to not charge (through March 31, 2021) more than the rate listed in the "SAC Rate" and "Tariff Rate" columns of its decisions served September 27, 2004 and October 29, 2004.⁴

II. Legal Standard

While TMPA believes that the STB's decision in the this case clearly determined the maximum reasonable rate for the 20-year period, TMPA is being forced to bring this petition based upon BNSF's actions to date. TMPA submits that the Board has the requisite authority to address the issues raised herein under various legal standards. For example, in similar contexts, the Board has clarified and/or enforced its prior decisions in a variety of cases. "A prior decision may be clarified whenever there appears to be a need for a more complete explanation of the action taken therein." Union Pacific Corporation, Union Pacific Railroad Company, and Missouri Pacific Railroad Company – Control and Merger – Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and the Denver and Rio Grande Western Railroad Company, Decision No. 61, slip op. at 7 (served Nov. 20, 1996) ("UP-SP Merger").

⁴ See footnote 1.

In the rate reasonableness context, the Board has clarified how maximum reasonable rates are to be calculated by the parties for future time periods. See, e.g., Oklahoma Gas & Electric Company v. Union Pacific Railroad Company, STB Docket No. 42111 (served Oct. 26, 2009). The ICC has clarified how compensation for previously-ordered trackage rights should be calculated. St. Louis Southwestern Railway Company – Trackage Rights Over Missouri Pacific Railroad Company – Kansas City to St. Louis, 8 ICC2d 80 (1991). In the rail merger context, the Board has issued decisions in response to requests for enforcement and/or clarification of Board-imposed merger conditions. See, e.g., UP-SP Merger, 4 STB 879 (2000). See also UP-SP Merger, Decision No. 72, slip op. at 8 (n. 18) (served May 23, 1997) (“shippers have recourse to the Board for enforcement of the merger conditions”).

III. Expedited Board Action Is Requested

TMPA is requesting that the Board take expedited action due to the unique circumstances that currently exist. As described in this Petition, BNSF has clearly indicated its intention to deviate from the Board-determined maximum reasonable rate, starting January 1, 2011. Such an action would be unlawful under the Board’s decisions in this case, and would violate 49 USC §§ 10701, 10702, and 10704. Moreover, it would be equally unlawful for TMPA to pay any rate other than the Board-determined maximum reasonable rate before the end of the 20-year stand-alone cost (“SAC”) analysis period on March 31, 2021. As described below in Section VI, a maximum reasonable rate is legislative in character and has the force of law. Prompt action by the Board is necessary to prevent BNSF from violating the Board’s decisions in this case.

The request for expedited action is all the more necessary because TMPA has justifiably relied on the STB’s decisions in this case and has made significant budget and long term planning decisions based upon the STB’s 20-year analysis. Furthermore, to allow BNSF to now

escape the 20-year prescription period would result in an undue hardship to TMPA, especially since BNSF has enjoyed the benefit of the netting effect over the last 10 years. As explained further in the Parsons V.S. and Section VII below, TMPA's projected budgets for the next decade, including the complex financial relationships between the four Member Cities, is based on the Board-determined maximum reasonable rate. The TMPA debt financing cannot be unraveled at this late date, and BNSF cannot be allowed to unilaterally increase TMPA's rates during the 20-year period determined in this case. Therefore, TMPA is requesting that the Board issue an expedited order before January 1, 2011, directing BNSF to not charge (through March 31, 2021) more than "SAC Rate" stated in the Board's decisions.

IV. The Board's Decisions Established A Maximum Reasonable Rate Through The First Quarter Of 2021

TMPA litigated its rate case before the Board over a more than three year period at a cost to TMPA of over \$3.1 million in legal and consultant fees. Parsons V.S. at 3. As a result of TMPA's complaint, the Board found BNSF's rates unreasonable over the 20-year period. Both TMPA and BNSF contemplated appealing the rate case decisions at that time but ultimately both sides agreed to abide by the decisions which determined the maximum reasonable rate that BNSF could charge over the 20-year analysis period. Parsons V.S. at 3. The TMPA case followed the Board's then-current rules and procedures for stand-alone cost ("SAC") rate reasonableness challenges, including use of a 20-year SAC analysis period and application of the "percent reduction method" in the event that the SARR revenues exceeded costs. Major Issues in Rail Rate Cases, Ex Parte No. 657 (Sub-No. 1), slip op. at 9 (served Oct. 30, 2006) ("Major Issues"). See also Public Service Company of Colorado d/b/a Xcel Energy v. The Burlington Northern and Santa Fe Railway Company, 7 STB 589, 599 (2004) ("Xcel") ("The

Board...compares the revenue requirements of the SARR against the total revenues to be generated by the traffic group over the full (here, 20-year) SAC analysis period.”).

In the decision served March 24, 2003 (“March 2003 Decision”), the Board found that the SARR revenues exceeded costs for some years, but that costs exceeded revenues for other years. 6 STB at 749. On an overall net present value basis for the entire 20-year period, however, the Board found that SARR revenues exceeded costs, thus necessitating rate relief. 6 STB at 608. This use of “netting” across the entire SAC analysis period comported with long-standing ICC and Board precedent. Xcel, 7 STB at 599; Coal Trading Corporation, et al. v. The Baltimore and Ohio Railroad Company, et al., 6 ICC2d 361, 435 (1990) (“Coal Trading”); Bituminous Coal – Hiawatha, Utah to Moapa, Nevada, 10 ICC2d 259, 278 (1994) (“Nevada Power”); Arizona Public Service Company and Pacificorp v. The Atchison, Topeka and Santa Fe Railway Company, 2 STB 367, 393 (1997) (“APS”) (“The netting procedure balances out overpayments and shortfalls so that the sum of the present value of all overpayments and shortfalls for the 20-year DCF period equals zero.”).

The Board made further refinements and corrections to the TMPA maximum rate determination in decisions served on September 27, 2004 (“September 2004 Decision”), 7 STB 803, and October 29, 2004 (“October 2004 Decision”). Nevertheless, the basic framework remained the same as that in the original March 2003 Decision: SARR revenues exceeded stand-alone costs for the first portion (10 years in the final analysis) of the 20-year period, but stand-alone costs exceeded revenues for the remaining years and, overall, revenues exceeded costs.

Because stand-alone costs exceeded SARR revenues for the final 10 years of the 20-year period, the Board could not simply subtract the percentage of excess SARR revenues from the

challenged rate to determine the TMPA prescribed rate for the first 10 years.⁵ Instead, the Board decreased the percentage reduction in the first 10 years “so that over the entire 20-year SAC analysis period this traffic group would generate just enough revenue to cover the GCRR’s revenue requirements.” 7 STB at 831. See also 6 STB at 608 and 748.

As described elsewhere by the Board, “[t]he DCF model limits the revenue reductions in 2001 through 2010 to 49% of the overpayments, in order to offset the underpayments that would occur in 2011 through 2021.” 7 STB at 831. See also 6 STB at 749. In other words, the Board artificially lowered TMPA’s rate relief in the first 10 years so that the annual overpayments and underpayments would exactly “zero out” or “offset” by the end of the 20-year prescription period. Therefore, while there is no percent reduction for years 2011 to 2021Q1, the maximum reasonable rate for that time period is exactly the “SAC rate” or “tariff rate” shown in the table at 6 STB at 609-610, 7 STB at 832, and page 2 of the October 2004 Decision.

As TMPA explained in its October 22, 2010 letter to BNSF, simple arithmetic corroborates what the Board did. As an example, the Board’s September 2004 Decision reveals that, for 2009, the SARR revenues (“BNSF Forecast Revenues”) were \$1,043.9 million and costs (“GCRR Revenue Requirements”) were \$1,021.6 million, a difference of \$22.4 million. 7 STB at 831. This difference represents an over-recovery by the SARR of $(22.4) \div (1,043.9) = 2.15\%$. However, the same table (as well as page 2 of the October 2004 Decision) clearly shows that the Board only reduced the challenged 2009 BNSF rate by 1.05%. The Board did not apply the full 2.15% reduction for 2009 because of the need to “offset the underpayments that would occur in

⁵ Such a method would have required the Board to prescribe a rate above the challenged tariff in the last 10 years of the 20-year period, a step the Board has never taken. APS, 2 STB at 393 (“we must limit the AGRR [SARR] rates so that they would not exceed Santa Fe’s rate levels during the 20-year period”); APS, 7 STB 1021, 1027 (2004) (“the Board has never prescribed a rate for any year that exceeded the challenged rate for that year”).

2011 through 2021.” 7 STB at 831. The Board only applied a reduction of $1.05\%=(2.15)*(0.49)$.

In other words, TMPA only received 49% of the appropriate reduction to “zero-out” the later years of the 20-year rate prescription. The 49% figure was determined by dividing the cumulative 20-year SARR over-recovery (\$108.2 million) by the sum of the over-recovery (\$221.5 million) for those individual years (2001-2010) where an annual over-recovery occurred. 7 STB at 831 (noting that the reduction for 2001 through 2010 was limited to “49% of the overpayments”). Thus, BNSF is legally prohibited from charging anything other than the “Tariff Rate” (a.k.a, the “SAC Rate”) listed on page 2 of the October 2004 Decision through the first quarter of 2021. Any other rate during the 2011-2021Q1 time period would subvert the “offset” created by the Board and directly contradict the Board’s decision in this Docket. “[T]he SAC analysis assumes that the defendant railroad would adhere to the rate that it has selected.” APS, slip op. at 7 (served Dec. 13, 2004).

With the 20-year SAC DCF analysis period inherent in the governing rules at the time, TMPA was not just challenging the BNSF tariff rate that existed in 2001 when TMPA filed its complaint, TMPA was challenging the total amount that TMPA would pay BNSF over the entire 20-year period. It is that total amount that was found unreasonable by the Board. In implementing its finding, the Board reduced the benefit to TMPA in the first ten years to account for the tariff rate level over the entire 20-year period. To allow BNSF to change the tariff rate level for years 11-20 would upend the entire analysis.

V. The Current Position Advocated By BNSF Would Unlawfully Allow Over-Recovery During The SAC Analysis Period

If BNSF is permitted to charge TMPA higher than the maximum reasonable rate for the 2011-2021 time period, the SARR would experience a net over-recovery for the 20-year DCF

period, thus contravening the entire purpose of the SAC analysis. See, e.g., APS, slip op. at 2 (served Dec. 13, 2004) (“If...there would be a net over-recovery (i.e., the defendant carrier earns more from the traffic group than the revenue requirements of the SARR), then the challenged rates are unreasonable and the rates that the defendant carrier may charge for the traffic at issue in the complaint are limited to what the SARR would need to charge to avoid an over- or under-recovery.”).

Given the results of the DCF analysis, there was no other way for the Board to structure TMPA’s rate relief. If the Board had prescribed rates for the 2001-2010 period at the fully-reduced level, then the Board would have also been required to prescribe a rate higher than the tariff rate for the 2011-2021 period. Of course, the Board “has never prescribed a rate for any year that exceeded the challenged rate for that year.” APS, slip op. at 7 (served Dec. 13, 2004). In APS, in fact, the Board rejected BNSF’s request for a prescription in excess of the challenged rate. Id.

Conversely, if 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. In short, BNSF’s view would allow an over-recovery during the 20-year DCF period, thus subverting 49 USC § 10701, the rate reasonableness process, and the DCF analysis.

BNSF itself recognizes that need for SARR revenues and costs to balance over the entire DCF period. In another proceeding, BNSF recently stated that “[t]he logic of the DCF model is that revenues should equal costs on a present value basis over the 20-year DCF period.” BNSF Final Brief on Reopening at p. 10, APS, STB Docket No. 41185 (filed Aug. 6, 2004). See also BNSF oral argument slides at p. 5, APS, STB Docket No. 41185 (filed Sept. 30, 2004) (“The

Fundamental SAC Principle is that Costs Must Equal Revenues over the 20-year DCF Period.”). The reason for ensuring that revenues equal costs, again as stated by BNSF, is that “[i]f revenues fall short of SAC on a present value basis....then the hypothetical SARR will not be viable over the 20-year DCF period.” *Id.*

VI. BNSF’s Attempt To Alter The Existing Decisions Is Unlawful

A. A Board-Prescribed Rate Is Legislative In Nature

A Board-prescribed rate is legislative in nature and therefore has “the force of a statute.” Arizona Grocery Company v. Atchison, Topeka & Santa Fe Railway Company, 284 U.S. 370, 386-387 (1932). See also Major Issues in Rail Rate Cases, Ex Parte No. 657 (Sub-No. 1), slip op. at 73 (served Oct. 30, 2006) (“Major Issues”). “A carrier cannot change a prescribed rate without receiving permission from the Board.” West Texas Utilities Company v. Burlington Northern Railroad Company, STB Docket No. 41191, slip op. at 4 (served Nov. 7, 2000). It would be unlawful for BNSF to charge, and equally unlawful for TMPA to pay, anything rate other than the Board-established rate through the first quarter of 2021.

In its letters to TMPA, BNSF is essentially arguing that the prior Board rate determination under the 20-year analysis period can now be ignored. In order to support this view, BNSF would first have to show both that the standard for reopening in 49 USC § 722(c) has been met and also that “the factual and legal underpinnings of the original prescription no longer continue to have validity.” Major Issues, slip op. at 67-68. This would require a BNSF petition, a formal regulatory proceeding, and a Board decision adopting BNSF’s “belief” before any change could be made to TMPA’s rate.

BNSF’s “belief” expressed to TMPA that the Board only established a maximum reasonable rate for 10-years through 2010 is incorrect and contrary to the language and analysis

of the Board's decisions in this case. Any attempt by BNSF to deviate from the Board-established rate prior to the second quarter of 2021 is not only unsupported by the Board's decisions in this case but also unlawful absent a specific decision from the Board reopening and vacating its prior decisions. In short, the Board should enforce its decision and find that BNSF may not charge more than the "Tariff Rate" column and the "SAC Rate" column of the Board's decision served October 29, 2004.

B. BNSF's "Desire" To Change The Rate Charged To TMPA Does Not Comply With The Board's Rules

Given the legislative nature of the Board's 20-year maximum reasonable rate decision in TMPA, BNSF's attempt to charge a different rate from that in the Board's decision is prohibited by the Board's reopening rules. Major Issues, slip op. at 67-75. Under Major Issues, a Board-mandated maximum reasonable rate cannot be altered without meeting the reopening requirements of 49 USC § 722(c). Id., slip op. at 69-72. See also Burlington Northern and Santa Fe Railway Company v. Surface Transportation Board, 403 F.3d 771 (D.C. Cir. 2005). BNSF has not attempted to meet the reopening standard of Major Issues; indeed, BNSF has made no filing whatsoever at the Board. As the party seeking a change in a prior Board decision, BNSF would have the burden of proof to show that reopening is warranted and that BNSF's proposed higher rate should be charged. Major Issues, slip op. at 67 (Board takes "into account the considerable time and expense required to adjudicate the reasonableness of a rate under the SAC test" when evaluating whether a party has "justified" reopening). Under these circumstances, BNSF's unilateral decision to ignore the Board's prior decisions in this proceeding must be summarily rejected by the Board.

C. BNSF Also May Not Add A Fuel Surcharge, Change The Demurrage Standard, Or Add Coal Dust Costs Without Meeting The STB's Reopening Rules Of Major Issues

As described in the Board's Major Issues decision, reopening under 49 USC § 722 would be required before BNSF could charge a rate (during the 20-year SAC analysis period) different than that given in the Board's decisions in this case. Reopening would apply not just to BNSF's generalized "belief" that the TMPA v. BNSF rate case only encompassed a 10-year maximum rate determination, but also any other efforts by BNSF to add other charges to the Board-established maximum rate.

For example, the Board's decisions in this docket reveal that the parties and the Board considered all costs of ongoing maintenance of the railbed, including costs addressing drainage and the condition of ballast, and almost exclusively followed BNSF's evidence on the related cost components. 6 STB at 691-693. Therefore, no additional costs related to coal dust can be allocated to TMPA under the Board-established rate. As a second example, TMPA does not pay a fuel surcharge in addition to its prescribed rate because this would constitute double-dipping of fuel costs, which were already addressed and included when the Board prescribed the TMPA rate. 6 STB at 663. Again, the Board followed BNSF's evidence on fuel costs for the 20-year DCF period. Id. Finally, any attempt to assess demurrage charges, outside the parameters relied upon in the rate case, against BNSF trains in service to TMPA would be barred. Like the coal dust issue, these demurrage charges encompass costs already factored into the prescribed rate in this docket given the specific circumstances of the traffic (where detailed operational considerations were used to develop the TMPA prescribed rate including how trains were delivered and the length of time the trains would be at the plant).

VII. TMPA Has Justifiably Relied Upon The Board's 20-Year Maximum Rate Determination In Long-Range Financial And Operational Planning

From the time of the Board's decision in this case, TMPA has planned its finances, debt service, and operations around the transportation costs included in the decision through 2021Q1. Parsons V.S. at 4. In fact, prior to BNSF informing TMPA of its desire to raise TMPA's rates, TMPA and its four Member Cities completed a complex financial agreement regarding debt service and cost sharing. In particular, the four member cities refinanced TMPA debt earlier in 2010. The transportation costs inherent in the Board's maximum reasonable rate determination in this case were taken into consideration in relation to this financing, and it is likely that it would have been structured differently had the assumption been used that Board's maximum reasonable rate determination would no longer be in place commencing in 2011. For TMPA, rail transportation costs are a significant component of its financial planning process. Rail transportation costs are a significant component of TMPA's total variable costs. TMPA relied upon the Board's 20-year maximum reasonable rate determination in its financial planning at least through 2018. See Parsons V.S. at 4. TMPA will experience very high fixed costs during the five-year period from 2013 through 2017, and a high average cost of energy, due largely to debt service on bonded indebtedness that cannot be economically refinanced.

TMPA has reasonably relied on the Board's decision because of the 20-year DCF analysis and the Board's description of the netting process. For BNSF to suddenly and unilaterally charge a higher rate would cause untold problems for TMPA and its four member cities. Moreover, it would upset the integrity of the Board's processes.

Given the millions of dollars in legal and consultant fees that are required to litigate a rate case under the Guidelines, the Board should ensure that TMPA obtains the full benefit of the 20-year analysis period. TMPA is a municipal entity with only one generating station; it is

relatively small compared to many other utilities in the U.S. Filing the complaint, and undertaking the concomitant risk, in this docket was a big step for TMPA. The Board should issue the requested an enforcement order to ensure “fair and expeditious regulatory decisions.” 49 USC § 10101(2).

Moreover, BNSF should be held to its commitment because the “factual and legal underpinnings of the original prescription continue to have current validity.” San Antonio, Texas v. Burlington Northern, Inc., 364 ICC 887, 896 (1981). See also APS, 6 STB at 857. Therefore, it would be improper to allow BNSF to alter one of the key factual assumptions of the Board decision. APS, slip op. at 7 (served Dec. 13, 2004) (“the SAC analysis assumes that the defendant railroad would adhere to the rate that it has selected”). See also, UP-SP Merger, 4 STB 879, 881-885 (2000) (Board requires Union Pacific to abide by terms of UP-BNSF Agreement, which underpinned Board approval of the UP-Southern Pacific merger).

VIII. Conclusion

For all the reasons set forth herein, TMPA respectfully requests that the Board expeditiously issue a decision declaring that BNSF may not charge any rate for rail transportation of coal from the PRB to Gibbons Creek through March 31, 2021 other than the rates set out in the “SAC Rates” and “Tariff Rates” column of the Board’s decision on October 29, 2004 in this proceeding.

Respectfully submitted,

Carl J. Shahady
Agency Attorney
102 N. Railroad Avenue
Pflugerville, Texas 78660

A handwritten signature in black ink, appearing to read "Sandra L. Brown", with a long horizontal flourish extending to the right.

Sandra L. Brown
David E. Benz
Thompson Hine LLP
1920 N Street, N.W., Suite 800
Washington, DC 20036
202.263.4101
202.331.8330 (fax)

Attorneys for Texas Municipal Power Agency

December 17, 2010

CERTIFICATE OF SERVICE

I certify that on this 17th day of December 2010, I caused a copy of the foregoing to be served by hand delivery upon the following:

Anthony J. LaRocca
Steptoe & Johnson LLP
1330 Connecticut Avenue, NW
Washington, DC 20036-1795

by Federal Express to the following:

Roger Nober
BNSF Railway Company
2650 Lou Menk Drive
2nd Floor
Fort Worth, TX 76161

and upon regular mail to all parties of record.



David E. Benz

**VERIFIED STATEMENT
OF
GARY PARSONS**

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

TEXAS MUNICIPAL POWER AGENCY)	
)	
Complainant,)	
)	
v.)	Docket No. NOR 42056
)	
THE BNSF RAILWAY COMPANY)	
)	
Defendant.)	
)	

VERIFIED STATEMENT OF GARY PARSONS

My name is Gary Parsons. I am the General Manager of Texas Municipal Power Agency (“TMPA”). My mailing address is P.O. BOX 7000, Bryan, Texas 77805-7000 and TMPA’s physical address is 12824 FM 244 RD, Anderson, Texas 77830-5642. I am a graduate from Texas A&M University in 1979 with a Bachelor of Business Administration. I am a Certified Internal Auditor and a Certified Fraud Examiner. I have also been on the Board of Directors of the Texas Public Power Association (“TPPA”) since July 2002 and presently serve as the President.

I joined the Texas Municipal Power Agency as Internal Auditor in November 1983, one month after commercial operation began. During my 27+ year tenure, I have served in various capacities. I became the General Manager in July 2000 and my responsibilities have included ensuring compliance with key provisions applicable to TMPA in the Texas deregulation; responsibility for the TMPA debt reduction plan; and initiating life assessment studies of the plant and transmission systems.

TMPA is a municipal corporation created in 1975 pursuant to an act of the Texas legislature, and it serves the four member cities of Bryan, Denton, Garland, and Greenville (“Member Cities”). The purpose of TMPA is to provide efficient, clean electrical power at an affordable price to help the communities of its Member Cities prosper. The Member Cities purchase wholesale power from TMPA for resale to the Member Cities’ customers. TMPA owns and operates the Gibbons Creek Steam Electric Station, which burns coal from the Powder River Basin (“PRB”) in Wyoming. Gibbons Creek, located near Iola, Texas, is the only TMPA generating station. TMPA employs more than 160 people from the local communities dedicated to safe, clean power generation.

In 1995, TMPA began its switch to PRB coal and TMPA now burns 100% PRB coal. In 1995, the State of Texas began deregulation of the wholesale electric market. Electricity deregulation expanded further in 1999 with legislation to deregulate retail electricity markets for customers. In 2000, TMPA Board acted quickly to respond to new mandates that plants must lower emissions of Nitrogen Oxide (NOx). TMPA has been recognized as a leader in NOx reduction in the power industry. Furthermore, in regard to anticipated regulations related to sulfur dioxide and mercury emissions, in 2009, TMPA commenced construction on a project to refurbish and modernize its scrubber, a project expected to be completed in 2011. Most recently on December 1, 2010, Texas launched its nodal market implementation to replace the prior zonal market. Key aims of the nodal market implementation are to increase price transparency and yield a lower overall cost of power supply. In order for TMPA’s electric generating plant to be dispatched under the nodal market, it is important that TMPA avoid dramatic increases in variable costs. More information about the Texas Nodal Market Implementation can be found at <http://nodal.ercot.com/about/index.html>.

It was under this evolving background that TMPA undertook a brave step to challenge the reasonableness of BNSF's rail rates to TMPA and ultimately justifiably rely on the STB's conclusions in the rate case in planning for the future. TMPA took a bold step and litigated its rate case before the Board over a three year period at a cost to TMPA of over \$3.1 million in legal and consultant fees. Eventually, the Board found BNSF's rate unreasonable over the 20-year period. Both TMPA and BNSF contemplated appealing the STB's decisions at that time but ultimately both sides agreed to abide by the decisions which determined the maximum reasonable rate that BNSF could charge over the 20-year analysis period.

BNSF has charged, and TMPA has paid, the prescribed rate since the Board's decisions in this case. In October 2010, TMPA received correspondence that indicated BNSF's belief that any rate could be charged beginning January 1, 2011. See Exhibit 1. (BNSF letter Oct. 5, 2010). In response, I wrote to BNSF and described how the Board's decisions in this case stated that the rate reductions given to TMPA in the first 10 years were limited in order to ensure that SARR revenues exactly equaled SARR costs over the entire 20-year period. See Exhibit 2. (TMPA letter October 22, 2010). As I explained in my October 22, 2010 letter to BNSF, simple arithmetic corroborates what the Board did. The Board decision clearly relies on BNSF charging the "SAC rate" for years 2011-2021. Despite this explanation, BNSF has consistently indicated its belief that any rate can be charged starting January 1, 2011. See Exhibit 3 (BNSF letter Nov. 9, 2010). A meeting between the parties on November 17, 2010 failed to reach a resolution of this issue. On December 13, 2010, BNSF published a new tariff covering TMPA's movements that provides that BNSF intends to charge TMPA \$30.85 plus a mileage-based fuel surcharge. See Exhibit 4 (BNSF Tariff 90068, Supplement 75). The TMPA Board of Directors met in a

special meeting on December 16, 2010 and approved seeking STB assistance to enforce the TMPA rate case.

To allow BNSF to now escape the 20-year prescription period would result in an undue hardship to TMPA, especially since BNSF has enjoyed the benefit of the netting effect over the last 10 years under the Board's decision. TMPA's projected budgets for the next decade, including the complex financial relationships between it and the four Member Cities, is based on the Board-determined maximum reasonable rate. The TMPA debt financing cannot be unraveled at this late date, and BNSF cannot be allowed to unilaterally increase TMPA's rates during the 20-year analysis period used in this case. TMPA has planned its finances, debt service, and operations around the transportation costs included in the decision through 2021Q1.

In fact, prior to BNSF informing TMPA of its desire to raise TMPA's rates, TMPA and its four Member Cities completed a complex financial agreement regarding debt service and cost sharing. In particular, the four Member Cities refinanced TMPA debt earlier in 2010. The transportation costs inherent in the Board's maximum reasonable rate determination in this case were taken into consideration in relation to this refinancing, and it is likely that it would have been structured differently had the assumption been used that Board's maximum reasonable rate determination would no longer be in place commencing in 2011. For TMPA, rail transportation costs are a significant component of its financial planning process. Rail transportation costs are a significant component of TMPA's total variable costs. TMPA relied upon the Board's 20-year maximum reasonable rate determination in its financial planning at least through 2018. TMPA will experience very high fixed costs during the five-year period from 2013 through 2017, and a high average cost of energy, due largely to debt service on bonded indebtedness that cannot be economically refinanced.

TMPA has reasonably relied on the Board's decision because of the 20-year DCF analysis and the Board's description of the netting process. For BNSF to suddenly and unilaterally charge a higher rate would cause untold problems for TMPA and its four Member Cities. TMPA implores the Board to expeditiously rule on TMPA's Petition.

VERIFICATION

I, Gary Parson, verify under penalty of perjury that I have read the foregoing Verified Statement, that I know the contents thereof, and that the same are true and correct to the best of my knowledge. Further, I certify that I am qualified and authorized to file this statement.



Gary Parsons, General Manager
Texas Municipal Power Agency

Dated: December 16, 2010

EXHIBIT 1



Robert A. Brautovich
AVP, Coal Marketing

BNSF Railway Company
P. O. Box 961051
Fort Worth, Texas 76161-0051
2650 Lou Menk Drive
Fort Worth, Texas 76131-2830
tel 817 867-6236
fax 817 352-7940
Robert.brautovich@bnsf.com

October 5, 2010



Mr. Gary Parsons
General Manager
Texas Municipal Power Agency
P.O. Box 7000
Bryan, TX 77805

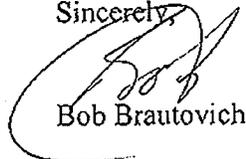
Re: STB Decision - Docket No. 42056

Dear Gary,

This letter will serve to confirm our conversation a week or so ago regarding the future applicability of rates and terms contained in STB Decision No. 42056 served September 27, 2004 and revised October 29, 2004. We believe the STB's decision in that case limits the rate prescription to the period beginning 2001 and ending 2010. Accordingly, the terms associated with deliveries to Gibbons Creek under BNSF-C-90042 will be revised effective January 1, 2011.

As we agreed, it would be in the interest of both our companies to meet before the prescription expires to explore all our commercial options. I will be in touch shortly with some possible meeting dates. We look forward to meaningful and candid discussions.

Sincerely,



Bob Brautovich

Cc: T. Whitmore

EXHIBIT 2



SERVING THE CITIES OF BRYAN, DENTON, GARLAND & GREENVILLE

October 22, 2010

Mr. Robert Brautovich
AVP, Coal Marketing
BNSF Railway Company
P.O. Box 961051
Fort Worth, TX 76161-0051

2650 Lou Menk Drive
Fort Worth, TX 76131-2830

robert.brautovich@bnsf.com

Re: STB's Decision in STB Docket No. 42056

Dear Bob:

As discussed on Thursday, October 14th, this letter confirms our plan to meet on November 17th at 10:00 a.m. at Gibbons Creek, if necessary, to discuss the Surface Transportation Board's (STB) decisions in our 2003 rate case No. 42056.

You may recall that, in our initial conversation on Friday, September 17, I indicated that the decisions in our rate case on March 21, 2003, as revised on September 24 and October 29, 2004, clearly base the prescribed rates on a 20 year period. I explained over the phone, in a very summary fashion, how the 2003 decisions and the revised decisions in September and October 2004 fit together. As discussed on October 14, I stated that I would explain in writing and in detail how the decisions in the case result in a 20 year rate prescription. Since I am an auditor and a numbers guy, my analysis focuses on the mathematics used in these decisions of the STB.

First, let's start with a look at pages 159 and 160 of the 2003 decision (**see Attachment 1**). Page 159, "Appendix E – Discounted Cash Flow Computation", references the phrase "20 year analysis" four times and states that the "percent rate reduction" in column 11 is reduced to avoid any over or under recoveries in the full 20 year Stand Alone Cost (SAC) analysis. This somewhat generic statement is fully supported by clearer words and numbers on page 160, "Table E-1-GCRR Cash Flow", especially by the statement in the footnote below:

"The Discounted Flow Computation (DCF) model limits the revenue reductions in 2001 through 2011 to 67% of the overpayments in order to offset the underpayments that would occur in 2012 through 2021." (March 21, 2003 Decision)

This statement is used as the basis of all calculations and in calculating the appropriate percentage reductions in Table E-1, page 160. This becomes more evident when you recreate an expanded Table E-1 using the same data, but with more columns to show how the percent rate reductions were arrived at. See Column 11, on Table E-1 as compared to my expanded Table E-1, Columns 7, 8, & 9 (**Attachment 2**).

If the STB had not used the 67% reduction to offset the underpayments in Years 2012-2021 and used a 100% reduction instead, you cannot arrive at the same \$208 Million, present value in 2021, which is the net amount of the over and under recoveries to allow for recovery of all costs and a reasonable return on investment as stated on page 159, columns 11 & 12, of my expanded Table E-1, unless you make a negative adjustment in Years 2012-2021.

If the rates prescribed did not continue beyond 2011 in the original decision in 2003, and beyond 2010 in the 2004 revised decision, the SAC analysis would allow the stand alone railroad to collect \$100.7 Million more and \$108.1 Million more, respectively, in the 2003 Case and the 2004 Revised Case.

So, as a result, the rates in the Tariff Rate/SAC Rate column are the prescribed rates in 2011-2021 and are the only valid, prescribed rates starting on January 1, 2011 for the next 10 and a quarter years based on the STB's 2003 and revised 2004 decisions in our rate case as served on October 29, 2004 (**see Attachment 3**).

The same information and data in the original decision were used later to revise errors in the original March 21, 2003 Decision in a revised Decision on September 24, 2004. The original decision was revised to correct several technical errors made by the STB in its 2003 Decision as outlined on pages 27, 30, and 31 of the 2004 Decision (**see Attachment 4**).

These corrections resulted in revisions to Table E-1 of the 2003 Decision that became Table 1 of the 2004 Decision and resulted in a revision from 67% to 49% to the original, very specific, language at the bottom of the original table as follows:

*"The Discounted Flow Computation (DCF) model limits the revenue reductions in 2001 through 2010 to **49%** of the overpayments in order to offset the underpayments that would occur in **2011** through 2021." (September 24, 2004 Decision)**

***Note: Bolding & Highlighting denotes changes to Decision language in 2003**

The final correction in the case occurred on October 29, 2004, using the data to correct an error in the 2003 Decision to properly calculate the rate prescriptions for 2002 through 2010. Table 2 of the revised decision of September 24, 2004, did not match the SAC rate reduction with the proper year. For example, the calculation for the 2003 rate prescription used the rate reduction for 2002, rather than 2003 (**refer to Attachment 3**).

The attached Table 2, "Revised Rate Prescription" (**refer to Attachment 3**) and my second recreated Table 1, "Revised Discounted Cash Flow Analysis" (**Attachment 5**) using the same corrected data clearly match the rate reduction by year and by use of only 49% of the rate reduction to cover under-recoveries in years 2011-2021 instead of 67%.

There is no question that TMPA calculations match the STB's calculations. I recognize that one cannot easily arrive at the STB's decisions without carefully following the language in the decisions and the calculations that support the language. The later revisions in 2004 impacted the ability to easily follow the decisions.

So, my calculations should clearly address BNSF's belief that "the decision of the STB in Docket 42056 limits the rate prescription to the period beginning in 2001 and ending in 2010".

Bob, I will be happy to address comments or questions concerning the enclosed analysis, but it is clear by examining the STB's and my expanded analyses that the numbers and prescribed rates match the language in the STB's decision for the 20 year prescription.

I look forward to your written response which you indicated you would try to provide prior to any meeting. It is my hope that this letter and supporting information and schedules will eliminate the need for a meeting on November 17.

Best Regards,

A handwritten signature in black ink, appearing to read "Gary Parsons", written in a cursive style.

Gary Parsons
General Manager
Texas Municipal Power Agency

GTP/wmc
FedEx # 796370361375

STB Docket No. 42056

APPENDIX E — DISCOUNTED CASH FLOW COMPUTATION

In applying the SAC test, we compare the estimated revenues that the GCRR would earn over the 20-year analysis period to the estimated costs of constructing and operating the hypothetical rail system. As in prior cases, a DCF analysis is used to discount the GCRR's 20-year stream of estimated revenues and costs to a common point in time. In this appendix, we discuss various issues affecting the DCF calculation not addressed elsewhere in this decision.

The results of the DCF calculation are shown in **Table E-1** below. **Column 8** shows that, under the current rate structure, the GCRR's total revenues over the 20-year SAC analysis period would be \$208.1 million more than the GCRR would need in order to recover all its costs, including a reasonable return on its investment. **Column 10** shows the amount by which the GCRR's total revenues would need to be reduced in the period 2001 through 2011 so as to avoid any over- or under-recovery in the full 20-year SAC analysis period, while **column 11** expresses that amount as a percentage reduction. We base our rate prescription and award of reparations for TMPA on that percentage reduction.

STB Docket No. 42056

Table E-1
GCRR CASH FLOW
(millions of dollars)

Year	Capital Costs & Taxes (2)	Annual Operating Costs (3)	Total Annual Costs (4)	Annual Revenues (5)	Annual Over/Under Payment (current) (6)	Annual Over/Under Payment (present value) (7)	Cumulative Over/Under Payment (present val.) (8)	Required Revenue Reduction (present val.) (9)	Required Revenue Reduction (current) (10)	Percent Rate Reduction (11)
2001*	\$339.4	\$309.8	\$649.2	\$694.5	\$45.4	\$45.4	\$45.4	\$30.6	\$30.6	4.40%
2002	460.1	390.8	851.0	926.9	75.9	66.8	112.2	45.0	51.2	5.52%
2003	469.0	402.1	871.2	916.9	45.7	36.3	148.5	24.4	30.8	3.36%
2004	478.1	413.4	891.6	931.0	39.4	28.3	176.8	19.1	26.6	2.85%
2005	487.5	428.1	915.5	970.8	55.3	35.8	212.7	24.1	37.3	3.84%
2006	497.0	437.9	934.9	978.6	43.8	25.6	238.2	17.2	29.5	3.01%
2007	506.7	453.7	960.4	1,006.4	46.0	24.3	262.5	16.3	31.0	3.08%
2008	516.7	468.8	985.6	1,027.7	42.1	20.1	282.6	13.5	28.4	2.76%
2009	526.9	483.7	1,010.6	1,043.9	33.3	14.3	296.9	9.7	22.4	2.15%
2010	537.4	499.4	1,036.7	1,059.8	23.1	9.0	305.8	6.0	15.5	1.47%
2011	548.0	515.5	1,063.6	1,072.5	9.0	3.2	309.0	2.1	6.1	0.56%
2012	559.0	532.0	1,091.0	1,084.9	(6.1)	(1.9)	307.1	0.0	0.0	0.00%
2013	570.2	549.2	1,119.4	1,099.0	(20.4)	(5.8)	301.2	0.0	0.0	0.00%
2014	581.6	566.5	1,148.1	1,110.2	(38.0)	(9.8)	291.4	0.0	0.0	0.00%
2015	593.3	584.1	1,177.4	1,126.6	(50.8)	(11.8)	279.6	0.0	0.0	0.00%
2016	605.3	604.7	1,210.1	1,149.7	(60.3)	(12.7)	266.9	0.0	0.0	0.00%
2017	617.6	624.4	1,242.0	1,170.8	(71.2)	(13.5)	253.4	0.0	0.0	0.00%
2018	630.1	643.8	1,273.9	1,192.0	(81.8)	(14.0)	239.3	0.0	0.0	0.00%
2019	643.0	664.2	1,307.2	1,217.4	(89.9)	(13.9)	225.4	0.0	0.0	0.00%
2020	656.1	685.9	1,342.0	1,246.8	(95.2)	(13.3)	212.1	0.0	0.0	0.00%
2021**	166.1	174.7	340.8	311.7	(29.1)	(4.0)	208.1	0.0	0.0	0.00%

* 2001 data is for the 2nd, 3rd, and 4th quarters of the year.

** 2021 data is for only the 1st quarter of the year.

NOTE: The DCF model limits the revenue reductions in 2001 through 2011 to 67% of the overpayments in order to offset the underpayments that would occur in 2012 through 2021

STB DOCKET No. 42056

Table 1

(Millions of Dollars)
Revised Discounted Cash Flow Analysis

1	2	3	4	5	6	7	8	9	10	11	12
Year	GCCR Revenue Requirements	BNSF Forecast Revenues	Over Recovery/ (Under Recovery)	Present Value By Year	Cumulative Present Value	Percent Rate on 100%	Revenue Reduction Limitation @ 67%	Percent Rate Reduction Ordered 2001-2021	Present Value by Year (Column 5) @ 67% Reduction	Present Value by Year (Column 5) @ 100% Reduction	Cumulative Present Value at 10 Year Intervals
2001	\$ 649.2	\$ 694.5	\$ 45.3	\$ 45.4	\$ 33.60	6.52%	67%	4.37%	\$ 30.6	\$ 45.40	
2002	\$ 851.0	\$ 926.9	\$ 75.9	\$ 66.8	\$ 112.20	8.19%	67%	5.49%	\$ 45.0	\$ 66.80	
2003	\$ 871.2	\$ 916.9	\$ 45.7	\$ 36.3	\$ 148.50	4.98%	67%	3.34%	\$ 24.4	\$ 36.30	
2004	\$ 891.6	\$ 931.0	\$ 39.4	\$ 28.3	\$ 176.80	4.23%	67%	2.84%	\$ 19.1	\$ 28.30	
2005	\$ 915.5	\$ 970.8	\$ 55.3	\$ 35.8	\$ 212.60	5.70%	67%	3.82%	\$ 24.1	\$ 35.80	
2006	\$ 934.9	\$ 978.6	\$ 43.7	\$ 25.6	\$ 238.20	4.47%	67%	2.99%	\$ 17.2	\$ 25.60	
2007	\$ 960.4	\$ 1,006.4	\$ 46.0	\$ 24.3	\$ 262.50	4.57%	67%	3.06%	\$ 16.3	\$ 24.30	
2008	\$ 985.6	\$ 1,027.7	\$ 42.1	\$ 20.1	\$ 282.60	4.10%	67%	2.74%	\$ 13.5	\$ 20.10	
2009	\$ 1,010.6	\$ 1,043.9	\$ 33.3	\$ 14.3	\$ 296.90	3.19%	67%	2.14%	\$ 9.7	\$ 14.30	
2010	\$ 1,036.7	\$ 1,059.8	\$ 23.1	\$ 9.0	\$ 305.90	2.18%	67%	1.46%	\$ 6.0	\$ 9.00	
2011	\$ 1,063.6	\$ 1,072.6	\$ 9.0	\$ 3.2	\$ 309.10	0.84%	67%	0.56%	\$ 2.1	\$ 3.20	\$ 309.10
2012	\$ 1,091.0	\$ 1,084.9	\$ (6.1)	\$ (1.9)	\$ 307.20	-0.56%	0%	0.00%	\$	\$ (1.90)	
2013	\$ 1,119.4	\$ 1,099.0	\$ (20.4)	\$ (5.8)	\$ 301.40	-1.86%	0%	0.00%	\$	\$ (5.80)	
2014	\$ 1,148.1	\$ 1,110.2	\$ (37.9)	\$ (9.8)	\$ 291.60	-3.41%	0%	0.00%	\$	\$ (9.80)	
2015	\$ 1,177.4	\$ 1,126.6	\$ (50.8)	\$ (11.8)	\$ 279.80	-4.51%	0%	0.00%	\$	\$ (11.80)	
2016	\$ 1,210.1	\$ 1,149.7	\$ (60.4)	\$ (12.7)	\$ 267.10	-5.25%	0%	0.00%	\$	\$ (12.70)	
2017	\$ 1,242.0	\$ 1,170.8	\$ (71.2)	\$ (13.5)	\$ 253.60	-6.08%	0%	0.00%	\$	\$ (13.50)	
2018	\$ 1,273.9	\$ 1,192.0	\$ (81.9)	\$ (14.0)	\$ 239.60	-6.87%	0%	0.00%	\$	\$ (14.00)	
2019	\$ 1,307.2	\$ 1,217.4	\$ (89.8)	\$ (13.9)	\$ 225.70	-7.38%	0%	0.00%	\$	\$ (13.90)	
2020	\$ 1,342.0	\$ 1,246.8	\$ (95.2)	\$ (13.3)	\$ 212.40	-7.64%	0%	0.00%	\$	\$ (13.30)	
2021	\$ 340.8	\$ 311.7	\$ (29.1)	\$ (4.0)	\$ 208.40	-9.34%	0%	0.00%	\$	\$ (4.00)	\$ (100.70)
Totals	\$ 21,422.2	\$ 21,338.2	\$ (84.0)	\$ 208.4	\$ 4,965.70				\$ 208.0	\$ 208.40	\$ 208.40

Note: Column 9 is the product of Column 7*

35232
SEC

SERVICE DATE – OCTOBER 29, 2004

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. 42056

TEXAS MUNICIPAL POWER AGENCY

v.

THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY

October 29, 2004

NOTICE TO THE PARTIES:

A decision by the Board, in the above proceeding, decided on September 24, 2004, and served on September 27, 2004, did not properly calculate the rate prescription for 2002 through 2010. Table 2 (on page 31) inadvertently used the prior year's SAC rate reduction, as shown in Table 1, to calculate the rate prescription for each of those years. For example, the calculation of the rate prescription for 2003 used the percent rate reduction for 2002, rather than the percent rate reduction for 2003. Table 2 below should replace the table included in the decision. Please correct your copy accordingly. All other information remains unchanged.

Vernon A. Williams
Secretary

STB Docket No. 42056

Table 2
Revised Rate Prescription

Year	Tariff Rate	SAC Rate Reduction	SAC Rate	STB Prescribed Rate
2001 Q2	\$19.09	2.54%	\$18.61	Higher of SAC rate or 180% R/VC rate
2001 Q3	19.28	2.36%	18.83	
2001 Q4	19.39	2.18%	18.97	
2002	19.55	3.19%	18.93	Higher of SAC rate or 180% R/VC rate
2003	20.06	1.64%	19.73	
2004	20.64	1.32%	20.37	
2005	21.26	2.10%	20.81	
2006	21.89	1.54%	21.55	
2007	22.53	1.63%	22.16	
2008	23.18	1.45%	22.84	
2009	23.88	1.05%	23.63	
2010	24.60	0.59%	24.45	
2011	25.33	0.00%	25.33	
2012	26.09	0.00%	26.09	
2013	26.88	0.00%	26.88	
2014	27.68	0.00%	27.68	
2015	28.51	0.00%	28.51	
2016	29.37	0.00%	29.37	
2017	30.25	0.00%	30.25	
2018	31.16	0.00%	31.16	
2019	32.09	0.00%	32.09	
2020	33.05	0.00%	33.05	
2021 Q1	33.05	0.00%	33.05	

STB Docket No. 42056

portions of the ROW, along with miscellaneous photographs (some of which note that there are no fences shown) in an unlabeled section of its rebuttal workpapers. The photographs appear to have been taken at four locations on the ROW (all on the same subdivision within 80 miles of each other), but with no organized sampling procedure for the remainder of the ROW. Given that both parties agree that at least 25% of the ROW is unfenced, a handful of photographs showing sections with no fencing was not sufficient support for TMPA's claim that fully 80% is unfenced. Thus, TMPA's evidence was simply not on par with the evidence in PPL, where the shipper supported its fencing contentions with detailed, organized observations in 20 pages of workpapers.

IV. Technical Errors

Several technical errors in the numbers used by the Board in TMPA 2003 have been brought to our attention by the parties. First, the parties agree that the wrong value was used for system-average locomotive depreciation. The Board used a figure of \$0.00000105, instead of the correct value of \$0.00006377. The parties should correct this mistake when they calculate the variable costs in future years.

Second, as BNSF has noted, the Board mistakenly separated construction costs for Rails and for Other Track Materials (OTM), when it should have combined them for input into DCF accounts. This error resulted in the application of the wrong asset-life assumptions to OTM costs, as well as the costs for Ballast, Track Labor & Equipment, and Fences and Roadway Signs. This error is corrected herein.

Finally, BNSF notes that the MOW figure reported in the decision and used in the DCF analysis (\$83.3 million) conflicted with the MOW figure provided to the parties in the Board's electronic workpapers (\$87.8 million). The Board inadvertently inserted the wrong table into the decision's appendix (one that did not reflect the final determination of the Board) and provided the parties with some electronic workpapers showing the wrong numbers as well. The DCF analysis then incorrectly used the \$83.3 million figure to calculate the maximum reasonable rate and reparations.

For the reasons discussed in the decision, see TMPA 2003 at 112, the Board generally relied on the evidence submitted by BNSF to develop MOW expenses. However, BNSF's MOW cost estimates were based, in part, on the number of track miles the GCRR would have, and the Board had restated the total track miles from BNSF's estimate of 2,546 down to 2,401. The Board therefore accepted BNSF's total MOW expense (of \$93,025,753), but reduced that expense by roughly 5.6% due to the smaller SARR network. This error is corrected here. The correct figure of \$87,800,819 is shown in our new electronic workpapers at "STB Restated MOW1" spreadsheet "STB Restatement."

STB Docket No. 42056

Table 1
Revised DCF Analysis
(millions of dollars)

Year	GCCR Revenue Requirements	BNSF Forecast Revenues	Difference	Present Value	Cumulative	Percent Rate Reduction
2001	661.0	694.5	33.5	33.6	33.6	2.36%
2002	866.4	926.9	60.6	53.3	86.9	3.19%
2003	886.0	916.9	30.9	24.5	111.4	1.64%
2004	905.8	931.0	25.2	18.1	129.5	1.32%
2005	929.1	970.8	41.7	27.0	156.5	2.10%
2006	947.8	978.6	30.8	18.0	174.6	1.54%
2007	972.7	1,006.4	33.7	17.8	192.3	1.63%
2008	997.2	1,027.7	30.5	14.5	206.9	1.45%
2009	1,021.6	1,043.9	22.4	9.6	216.5	1.05%
2010	1,047.0	1,059.8	12.8	5.0	221.5	0.59%
2011	1,073.1	1,072.6	(0.5)	(0.2)	221.3	0.00%
2012	1,099.8	1,084.9	(14.9)	(4.7)	216.5	0.00%
2013	1,127.5	1,099.0	(28.5)	(8.2)	208.4	0.00%
2014	1,155.5	1,110.2	(45.3)	(11.7)	196.7	0.00%
2015	1,183.9	1,126.6	(57.3)	(13.4)	183.3	0.00%
2016	1,215.8	1,149.7	(66.1)	(13.9)	169.4	0.00%
2017	1,246.9	1,170.8	(76.1)	(14.5)	155.0	0.00%
2018	1,278.0	1,192.0	(85.9)	(14.7)	140.2	0.00%
2019	1,310.4	1,217.4	(93.1)	(14.4)	125.8	0.00%
2020	1,344.3	1,246.8	(97.5)	(13.6)	112.2	0.00%
2021	341.2	311.7	(29.5)	(4.0)	108.2	0.00%

* 2001 data is for the 2nd, 3rd, and 4th quarters of the year.

** 2021 data is for only the 1st quarter of the year.

NOTE: The DCF model limits the revenue reductions in 2001 through 2010 to 49% of the overpayments, in order to offset the underpayments that would occur in 2011 through 2021.

STB Docket No. 42056

Under the revised SAC analysis, the prescribed rate is the higher of the SAC rate, as shown in **Table 2**, or the regulatory rate floor (the 180% R/VC rate level), which the parties should compute in a manner consistent with the procedures and findings in TMPA 2003 at 38-66. (As discussed above, the Board cannot calculate the regulatory rate floor for movements from 14 of the challenged mine origins, or for any of the mines beyond 2001, as we do not have the necessary variable cost information.)

Table 2
Revised Rate Prescription

Year	Tariff Rate	SAC Rate Reduction	SAC Rate	STB Prescribed Rate
2001 Q2	\$19.09	2.54%	\$18.61	Higher of SAC rate or 180% R/VC rate
2001 Q3	19.28	2.36%	18.83	
2001 Q4	19.39	2.18%	18.97	
2002	19.55	2.36%	19.09	Higher of SAC rate or 180% R/VC rate
2003	20.06	3.19%	19.42	
2004	20.64	1.64%	20.30	
2005	21.26	1.32%	20.98	
2006	21.89	2.10%	21.43	
2007	22.53	1.54%	22.18	
2008	23.18	1.63%	22.80	
2009	23.88	1.45%	23.53	
2010	24.60	1.05%	24.34	
2011	25.33	0.00%	25.33	
2012	26.09	0.00%	26.09	
2013	26.88	0.00%	26.88	
2014	27.68	0.00%	27.68	
2015	28.51	0.00%	28.51	
2016	29.37	0.00%	29.37	
2017	30.25	0.00%	30.25	
2018	31.16	0.00%	31.16	
2019	32.09	0.00%	32.09	
2020	33.05	0.00%	33.05	
2021 Q1	33.05	0.00%	33.05	

Finally, based on the revised SAC analysis, we restate the reparations awarded to TMPA for the unreasonable portion of the rate that it has paid prior to this revised rate prescription taking effect. The amount of reparations for movements in the 2nd, 3rd and 4th quarters of 2001 are shown in **Table 3**.

STB Docket No. 42056

Table 1

Revised Discounted Cash Flow Analysis
(Millions of Dollars)

1	2	3	4	5	6	7	8	9	10	11	12
Year	GCRR Revenue Requirements	BNSF Forecast Revenues	Over Recovery/ (Under Recovery)	Present Value By Year	Cumulative Present Value	Reduction Bases on 100%	Revenue Reduction Limitation @ 49%	Reduction Ordered 2001-2021	present value by Year (Column 5) @ 49% Reduction	present value by Year (Column 5) @ 100%	Cumulative Present Value at 10 Year
2001	\$ 661.0	\$ 694.50	\$ 33.5	\$ 33.6	\$ 33.6	4.82%	49%	2.36%	\$ 16.46	\$ 33.60	
2002	\$ 866.4	\$ 926.90	\$ 60.5	\$ 53.3	\$ 86.90	6.53%	49%	3.20%	\$ 26.12	\$ 53.30	
2003	\$ 886.0	\$ 916.90	\$ 30.9	\$ 24.5	\$ 111.40	3.37%	49%	1.65%	\$ 12.01	\$ 24.50	
2004	\$ 905.8	\$ 931.00	\$ 25.2	\$ 18.1	\$ 129.50	2.71%	49%	1.33%	\$ 8.87	\$ 18.10	
2005	\$ 929.1	\$ 970.80	\$ 41.7	\$ 27.0	\$ 156.50	4.30%	49%	2.10%	\$ 13.23	\$ 27.00	
2006	\$ 947.8	\$ 978.60	\$ 30.8	\$ 18.0	\$ 174.50	3.15%	49%	1.54%	\$ 8.82	\$ 18.00	
2007	\$ 972.7	\$ 1,006.40	\$ 33.7	\$ 17.8	\$ 192.30	3.35%	49%	1.64%	\$ 8.72	\$ 17.80	
2008	\$ 997.2	\$ 1,027.70	\$ 30.5	\$ 14.5	\$ 206.80	2.97%	49%	1.45%	\$ 7.11	\$ 14.50	
2009	\$ 1,021.6	\$ 1,043.90	\$ 22.3	\$ 9.6	\$ 216.40	2.14%	49%	1.05%	\$ 4.70	\$ 9.60	
2010	\$ 1,047.0	\$ 1,059.80	\$ 12.8	\$ 5.0	\$ 221.40	1.21%	49%	0.59%	\$ 2.45	\$ 5.00	
2011	\$ 1,073.1	\$ 1,072.60	\$ (0.5)	\$ (0.2)	\$ 221.20	-0.05%		0.00%	\$ (0.20)	\$ (0.20)	\$ 221.20
2012	\$ 1,099.8	\$ 1,084.90	\$ (14.9)	\$ (4.7)	\$ 216.50	-1.37%		0.00%	\$ (4.70)	\$ (4.70)	
2013	\$ 1,127.5	\$ 1,099.00	\$ (28.5)	\$ (8.2)	\$ 208.30	-2.59%		0.00%	\$ (8.20)	\$ (8.20)	
2014	\$ 1,155.5	\$ 1,110.20	\$ (45.3)	\$ (11.7)	\$ 196.60	-4.08%		0.00%	\$ (11.70)	\$ (11.70)	
2015	\$ 1,183.9	\$ 1,126.60	\$ (57.3)	\$ (13.4)	\$ 183.20	-5.09%		0.00%	\$ (13.40)	\$ (13.40)	
2016	\$ 1,215.8	\$ 1,149.70	\$ (66.1)	\$ (13.9)	\$ 169.30	-5.75%		0.00%	\$ (13.90)	\$ (13.90)	
2017	\$ 1,246.9	\$ 1,170.80	\$ (76.1)	\$ (14.5)	\$ 154.80	-6.50%		0.00%	\$ (14.50)	\$ (14.50)	
2018	\$ 1,278.0	\$ 1,192.00	\$ (86.0)	\$ (14.7)	\$ 140.10	-7.21%		0.00%	\$ (14.70)	\$ (14.70)	
2019	\$ 1,310.4	\$ 1,217.40	\$ (93.0)	\$ (14.4)	\$ 125.70	-7.64%		0.00%	\$ (14.40)	\$ (14.40)	
2020	\$ 1,344.3	\$ 1,246.80	\$ (97.5)	\$ (13.6)	\$ 112.10	-7.82%		0.00%	\$ (13.60)	\$ (13.60)	
2021	\$ 342.2	\$ 311.70	\$ (30.5)	\$ (4.0)	\$ 108.10	-9.79%		0.00%	\$ (4.00)	\$ (4.00)	\$ (113.10)
Totals	\$ 21,612.00	\$ 21,338.20	\$ (273.8)	\$ 108.1	\$ 3,365.20				\$ 108.5	\$ 108.1	\$ 108.1

EXHIBIT 3



Robert A. Brautovich
AVP, Coal Marketing

BNSF Railway Company
P. O. Box 961051
Fort Worth, Texas 76161-0051
2650 Lou Menk Drive
Fort Worth, Texas 76131-2830
tel 817 867-6236
fax 817 352-7940
Robert.brautovich@bnsf.com

November 9, 2010

Mr. Gary Parsons
General Manager
Texas Municipal Power Agency
P.O. Box 7000
Bryan, TX 77805

Re: STB Decision - Docket No. 42056
Your letter dated October 22, 2010

Dear Gary,

In advance of our meeting on November 17, 2010 here in Fort Worth, I wanted to respond to your October 22, 2010 letter to me regarding the Board's rate prescription in STB Docket No. 42056, *TMPA v. BNSF*. In your correspondence, you explain your belief that the rate prescription in the *TMPA* case continues beyond 2010. To support your position, your letter includes several spreadsheets that address the Board's "netting" methodology, which is a standard part of the Board's SAC calculations. We appreciate your willingness to share the numbers underlying your logic with us, though we continue to view the *TMPA* prescription as ending at the end of this year.

The Board explicitly stated that it was only prescribing rates through the year 2010. In the Board's original decision, served March 24, 2003, the Board said that "we find the challenged rate to be unreasonable and we prescribe a maximum reasonable rate *through the year 2011*." See page 33 of the March 24, 2003 decision. When the Board made a technical correction to its decision in 2004, the Board changed the last year of the rate prescription to 2010. See the Board's October 29, 2004 decision at page 1, discussing a technical error in "calculate[ing] the rate prescription for 2002 *through 2010*." The Board's rate prescription table makes it clear that the rate prescription did not extend beyond 2010. The column entitled "STB Prescribed Rate" is blacked out for all years after 2010.

Your position that the rate prescription will continue beyond 2010 also fails to take account of the statutory limits on the Board's authority to prescribe rates. The Board does not have authority to prescribe a rate that is below 180% of a railroad's URCS variable costs. The rates that you claim were prescribed rates for 2011 and subsequent years are several dollars

Mr. Gary Parsons
Page Two
November 9, 2010

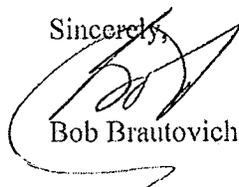
below this minimum jurisdictional threshold and therefore would not be lawful rates even if the Board had prescribed them, which it did not.

Moreover, the limitation of the *TMPA* prescription to ten years coincides entirely with the Board's current policy regarding the appropriate length of rate prescriptions. As you may be aware, in 2006, the Board changed its rate reasonableness procedures to limit rate prescriptions to 10 years instead of the historic 20 years. The Board's rationale was that the numerous forecasts and projections that must be made in a SAC case are inherently unreliable far into the future and, as a result, it is inappropriate to adopt a prescription beyond an initial ten-year period. That general concern is clearly borne out in the specifics of the *TMPA* case. Take the element of fuel costs. The SAC calculations in this case were made based on BNSF's fuel costs in 2001. Since 2001, fuel costs have dramatically increased, but those increases were never reflected in the rates prescribed for your service. *TMPA* has already received a significant windfall from the prescribed rates that BNSF was compelled to charge for the last 10 years.

If the SAC calculations were done today, reflecting current conditions, it is likely that the maximum rate for *TMPA* service would be much higher than the rates set out in the Board's 2003 and 2004 decisions. The decision in the *AEP Texas v. BNSF* rate case is illustrative. In the Board's May 15, 2009 decision in Docket No. 41191 (Sub-No.1), the Board's SAC calculations yielded maximum R/VC ratios for 2012 of 250%. (There was no maximum R/VC calculation for 2011 because, as in the *TMPA* case, no maximum rates were calculated for years in which SARR costs exceeded SARR revenues.) *TMPA*'s destination is hundreds of miles farther from *TMPA* origins than Oklaunion; therefore one would expect that the stand alone costs for a SARR built to serve *TMPA* would be substantially higher. At an R/VC of 250%, BNSF would be permitted to charge *TMPA* as much as \$42.00 per ton in BNSF equipment for Buckskin movements.

While I've not responded to the detailed calculations you've included with your letter as, for the reasons described above, the scope of the *TMPA* rate prescription in the *TMPA* case is clearly and appropriately limited to December 2010, I hope that providing the logic underlying our position brings some clarity prior to our discussions later this month.

Sincerely,



Bob Brautovich

Cc: T. Whitmore

EXHIBIT 4

BNSF RAILWAY COMPANY
COMMON CARRIER PRICING AUTHORITY BNSF 90068
Revision 75

Issue Date: December 13, 2010

Effective Date: January 2, 2011 (unless specified otherwise in tables)

Expiration Date: Effective until modified or cancelled by subsequent publication upon not less than 20 days as provided below in Section 5.

Commodity: Raw coal used for steam purposes, as described in the Standard Transportation Commodity Code Tariff ("STCC") 6001-series, with a STCC number of 11-211-series, 11-212-series and 11-221-series (including bituminous, sub-bituminous and lignite), not including beneficiated, enhanced, processed or synthetic coal ("Coal"). Coal treated with additives used exclusively for dust control or for protection against freezing shall not be considered "beneficiated, enhanced or processed."

Origin(s): Montana and Wyoming Coal mines as listed in Tables A, B, C, and D ("PRB Coal") and Table D ("Signal Peak Coal")

Destination(s): Coal consuming steam electric plants, industrial facilities and barge loading terminals as listed in Tables A, B, C and D.

Route: BNSF Direct or via the connecting carrier(s) named in Tables A, B, C, and D.

Shipper: Party tendering Coal for movement under this publication.

Section 1: Transportation Rates and Services

A) Spot Rates.

Shipper shall pay the Spot Rates listed in Tables A, B, C, and D in United States dollars per net ton (2000 pounds avoirdupois) or per rail car load for movement of Coal from Origins to Destinations as cited therein (said rate tables are password protected and only available to qualified Coal Shippers). The Spot Rates per ton or per car load apply to single loaded trainloads; and no minimum annual volume is required for shipment using such rates.

Except for the application of the Coal Fuel Surcharge as provided below, the Spot Rates in this publication will remain fixed as published, but may be changed by BNSF effective on not less than 20 days notice by subsequent publication.

B) Term and Volume Commitment Rates.

Rates with a term and volume commitment are expressed herein as "Term and Volume Commitment Rates" ("TVC Rate(s)"). When indicated in Tables A, B, C, and D, TVC Rate(s) will be available to any Shipper that, with the concurrence of BNSF, commits to transport tons of Coal between Origins and a Destination for a period of time specified in a Coal Unit Train Commitment Certificate ("Commitment Certificate"). The Coal movement described in such Commitment Certificate shall represent the Shipper's Tonnage Commitment ("STC"), and the

**BNSF RAILWAY COMPANY
COMMON CARRIER PRICING AUTHORITY BNSF 90068**

Shipper shall be entitled to the TVC Rate(s) for the shipment of up to the number of tons and for the term specified in the STC. In lieu of a commitment of a specific tonnage, a Shipper may commit as its STC, one hundred percent (100%) of its tonnage between Origins and the Destination named in the Commitment Certificate, and thereby be entitled to the associated TVC Rate(s) on all its shipments referenced in the Commitment Certificate. The minimum commitment in a STC shall be 250,000 tons per twelve month period. To qualify for the TVC Rate(s), a Shipper must request a Commitment Certificate from BNSF for all pertinent terms. Said certificate must then be fully executed by the Shipper and by BNSF. A sample Commitment Certificate is shown in Attachment A to this publication. Unless mutually agreed, shipments must commence no earlier than ten (10) days or more than ninety (90) days from the Commitment Certificate's date of commencement of shipment, and, cover a period of shipment of twelve, twenty four, or thirty six months (or other periods as may be determined by BNSF from time to time) from the date of initiation of shipments ("Commitment Period"): The BNSF Common Carrier Authority in effect on the Commitment Certificate's date of commencement of shipment shall be applicable to Shipper's Tonnage Commitment.

Except for the application of fuel surcharges as provided below, the TVC Rate(s) shall remain fixed as published and not be subject to adjustment during their associated Commitment Period. The TVC Rates shall be those specified in Tables A, B, C and D on a calendar year basis.

If the Shipper commits to ship an STC, and fails to meet their commitment in the first or subsequent twelve (12) month periods of the Commitment Period, the Shipper shall be obligated to pay BNSF thirty five percent (35%) of the TVC Rate(s) in effect at the time of shipment on all tons short of the minimum tonnage commitment in the Shipper's Commitment Certificate for that twelve month Commitment Period.

Achievement of the STC assumes that the Shipper tenders Coal tonnage in reasonably even consecutive monthly increments over the Commitment Period specified in the Shipper's Commitment Certificate. If the Shipper commits one hundred percent (100%) of their tonnage, the Shipper shall provide BNSF with certification that they have shipped one hundred percent (100%) of their shipments between the Origins and a given Destination at the end of each twelve month period covered by their Commitment Certificate. BNSF shall consider requests for relief from the STC due to circumstances beyond the reasonable control of the Shipper.

C) Application of Fuel Surcharges.

Unless specified otherwise, effective January 1, 2011, transportation charges otherwise calculated by application of the Spot or TVC Rates as specified by Tables A, B, C, and D herein shall be subject to a Coal Fuel Surcharge ("CFS") as published in BNSF Rules Book 6100-series, Item 3383. Therein, Item 3383 is a mileage based fuel surcharge. BNSF Rules Book 6100-series is available for view or downloading at www.bnsf.com.

D) BNSF Service.

Service provided pursuant to this publication will be common carrier service for movement of trainloads of Coal as ordinarily and customarily provided by BNSF for such service, and as such, cycle times and schedules may vary from time to time. In the event of a conflict between this publication and another BNSF publication, this publication shall apply.

Service Limitation Notice: The provision of service and acceptance of any tenders for movement under this publication, including the supply of carrier equipment and/or the introduction of

BNSF RAILWAY COMPANY
COMMON CARRIER PRICING AUTHORITY BNSF 90068

shipper train sets on BNSF for the movement of coal pursuant to this Common Carrier Price Authority shall, for the foreseeable future, be subject to BNSF's sole discretion.

E) Other Provisions.

Unless otherwise specified, charges for interline shipments of Coal made pursuant to this Common Carrier Authority include line haul transportation charges of railroads connecting with BNSF on the route of movement from Origins to the Destinations identified herein.

Unless otherwise specified, no transloading, terminaling, switching or other ancillary services provided by a connecting railroad, terminal railroad or transloading facility are included in the rates identified in Tables A, B, C and D; and payment for any such services provided by the connecting railroad, terminal railroad, or transloading facility shall be the responsibility of the Shipper.

**Section 2: Minimum Basis for
Assessment of Freight Charges**

For shipments designated on a rate per ton basis, the minimum train weight for the assessment of freight charges per trainload shall be THE GREATER OF (1) the actual lading weight of all Coal in a train as determined by weighing pursuant to Tariff BNSF 6041; or (2) the Minimum Train Weight ("MTW"). The MTW and the corresponding transportation rate are specified in Tables A, B, C and D.

For shipments designated on a rate per car load basis, the minimum basis for the assessment of freight charges per trainload shall be THE GREATER OF (1) the actual number of railcars in the train multiplied by the applicable rate; or (2) the minimum tender ("Minimum Tender") per train multiplied by the applicable rate. For car load rates, the Minimum Tender is specified (in lieu of the MTW) with the corresponding transportation rate in Tables A, B, C and D.

**Section 3: Loading, Unloading,
Accessorial Services, and Weighing**

Provisions for the loading and unloading of Coal trains, loading and unloading free time, detention, actual and constructive placement, weighing and other accessorial services and related charges therefore are described in BNSF Tariff 6041-series or successors thereto, which shall apply to movements under this publication.

Shipments made pursuant to the provisions of this publication are also subject to the Uniform Freight Classification 6000-Series or its successor, BNSF Rules Tariff 6100-series, other 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.

Shipments originating under this pricing authority shall be subject to loading rules which may include a requirement that appropriate measures to be taken by the shipper's coal producer to prevent undue loss of coal or coal dust in transit.

**BNSF RAILWAY COMPANY
COMMON CARRIER PRICING AUTHORITY BNSF 90068**

Section 4: Billing and Payment

BNSF shall bill each trainload under the terms of the Uniform Straight Bill of Lading. All railcars in a train are to be billed on one (1) Bill of Lading with the correct Shipper's name, address and patron code. Freight charges will be billed pre-paid (that is, billed by BNSF) via mail, express service or electric means as soon as practical. Shipper shall pay BNSF within fifteen (15) calendar days of receipt of invoice by electronic means. Late payment and other credit terms shall be governed by BNSF Rules Tariff 6100-series. In the event that Shipper does not pay within fifteen (15) days, 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 publication.

Section 5: Modification, Amendment and Cancellation

BNSF reserves the right to modify the terms and conditions of this publication, or cancel this publication in its entirety, by subsequent publication upon not less than 20 days notice.

In the event of cancellation, discontinuance, or modifications of this publication, including the Term and Volume Rates in Section 1, Shippers who are shipping pursuant to Commitment Certificates shall continue to be entitled to, and shall be required to comply with, the rates, terms and conditions in effect at the time of tender of such properly completed and executed Commitment Certificate for Shipper's Tonnage Commitment in such Commitment Certificate during the time period covered by the Commitment Certificate.

Section 6: Miscellaneous Provisions.

Upon reasonable request, Shipper shall have the right to divert an empty train provided it is operationally feasible and can be accomplished at no additional cost to BNSF, however, if the diversion requires the unit train to move in reverse of the route of movement, BNSF reserves the right to charge fees and charges stipulated in BNSF-6041-series.

BNSF RAILWAY COMPANY
COMMON CARRIER PRICING AUTHORITY BNSF 90068

SAMPLE CERTIFICATE

**ATTACHMENT A
COAL UNIT TRAIN COMMITMENT CERTIFICATE, No. 90068-0000**

Shipper: **Public Service Company, 1000 Main Street, Chicago, IL 00000**

Date of Commencement of Shipment: **January 1, 2009**

Date of Termination of Shipments: **December 31, 2011**

Loading Origin (Mine Group): **Group A**

Plant Name and Location: **Alpha Station, Chicago, IL 00000**

Shipper's Tonnage Commitment: **100% of the coal received annually at Alpha Station.**

Year 2009 Rate: **\$2,000 per car load.**

Year 2010 Rate: **\$2,080 per car load.**

Year 2011 Rate: **\$2,163 per car load.**

Minimum Tender: **120 rail cars per shipment.**

Equipment Car Type: **121 ton aluminum gondolas own or leased by Public Service Company.**

Fuel Surcharge: **Mileage based Coal Fuel Surcharge as published as published in BNSF Rules Book 6100-series, Item 3383.**

BNSF Railway Company (BNSF), for valuable consideration received, will provide to Shipper freight rates in accordance with the terms herein stated and as more fully set forth in Common Carrier Pricing Authority 90068 effective on the acceptance date of this Certificate. Other particulars pertinent to this Certificate will be effective as published, through the BNSF web site or through other applicable tariffs referenced therein, on the date a shipment is tendered under this Certificate.

Shipper hereby accepts BNSF's offer to provide transportation pursuant to such Pricing Authority for the movement described above and agrees to tender Shipper's Tonnage Commitment named on this Certificate during the time period specified in accord with all provisions of Pricing Authority 90068; and Shipper in return shall be entitled to the Term and Volume Rates specified for such movement in Common Carrier Pricing Authority 90068, subject to the terms and provisions of that publication.

PUBLIC SERVICE COMPANY	BNSF RAILWAY COMPANY
By:	By
Title:	Title:
Date:	Date: