

**Statement of Maynard Dixon**  
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Arizona Public Service Co. & PacifiCorp v. The Burlington Northern and Santa Fe Railway Company, Docket No. 41185

Good morning Chairman Nober, Vice Chairman Mulvey, and Commissioner Buttrey.

This case involves the rates charged by BNSF for coal moving from the McKinley mine in New Mexico to an Arizona Power Company plant in Arizona. Several years ago, based on a stand-alone cost (SAC) analysis, the Board found the challenged rates unreasonable and prescribed maximum rates. In a decision served May 12, 2003, the Board reopened this proceeding so the parties could submit evidence on how the impending shutdown of the McKinley mine would impact the SAC analysis and the rate prescription adopted by the Board in previous decisions on the merits.

The revised SAC evidence of both parties now projects a significant under-recovery of the costs of the hypothetical stand-alone railroad for the remaining portion of the 1994-2013 SAC analysis period. Ordinarily, the SAC methodology establishes rates over the entire SAC analysis period so that a shortfall in some years of the period can be redistributed into years where there would be an over-recovery. Over the course of the SAC period, the over-recoveries and under-recoveries would balance, or “net out.” Of course, in this case, the rates from 1994 until the reopening have been limited by the prescription in the Board’s earlier decisions.

Arizona would now have the Board allocate 95% of the shortfall developed in the revised SAC analysis to the years prior to the reopening. Such an approach, however, is unacceptable here. It would shift most of the shortfall into years that are now beyond reach, so that the carrier would never be allowed to recover those costs. This would not comport with the SAC netting

objective, which is to allow the railroad to charge higher rates in some years to offset shortfalls in other years.

For its part, BNSF would have the Board prescribe new rates that would allow the railroad to make-up for all of the under-recoveries shown in the revised SAC analysis. BNSF's approach is also unacceptable. The Board cannot retroactively change a rate prescription, either directly, by ordering Arizona to pay reparations to BNSF for any perceived prior errors in the prescription, or indirectly, by prescribing a rate for the future that is designed to compensate for any past over- or under-recovery. Moreover, BNSF's approach would have the Board set a maximum reasonable rate above the rate that was challenged in this proceeding. But the statute gives initial pricing initiative to the carriers and the Board has no authority to prescribe a rate higher than the rate that the carrier has itself chosen to set.

Here, because the updated SAC analyses of both parties does not support a rate prescription, the staff recommends that the prescription be vacated and the proceeding dismissed. Such an approach would restore rate control to BNSF; the carrier could now set a new rate at whatever level it deems appropriate. And Arizona would be free to challenge the reasonableness of BNSF's new rate, using a redesigned SAC analysis.

Finally, in the 2003 Reopening Decision, the Board alerted the parties that it might change the rate prescription as of the date of reopening. Accordingly, it directed the parties to keep-account of the monies collected so that one party or the other could be made whole, as appropriate, after the agency decided how to proceed as to that issue. Pursuant to that prior directive, Arizona should now compensate BNSF for the difference between the \$6.91 rate BNSF now seeks to charge and the \$4.21 rate that Arizona has been paying, from May 22, 2003, to the effective date of this decision. The shipper could, however, as previously noted, later avail

itself of the opportunity to file a new complaint for the period from May 2003 forward and thus seek to recover all or part of this amount.

This concludes our presentation. We would be happy to answer any of your questions.