

SURFACE TRANSPORTATION BOARD ORDERS BNSF TO DELAY MARKUP OF ASSETS FROM BERKSHIRE HATHAWAY ACQUISITION

Today the Surface Transportation Board took actions to delay the revaluation of BNSF Railway Company's (BNSF) assets, in part because of Berkshire Hathaway, Inc.'s (Berkshire) purchase of BNSF in 2010 without prior Board authorization. The Board reaffirmed that Generally Accepted Accounting Principles (GAAP) must be followed in rail carrier acquisitions, which permit the revaluation of BNSF's assets. But, due to the unique circumstances of this transaction, the Board directed BNSF to transition the revaluation over seven years to reduce the possible impact on captive shippers.

Berkshire failed to obtain agency authorization for its purchase of BNSF, as required under federal law. Because of this, the Board directed BNSF to refile its annual financial reports (known as R-1 Reports) for 2010, 2011, and 2012, the years when Berkshire had unauthorized control of BNSF. Specifically, the Board required BNSF to remove the approximate \$8.1 billion net "markup" of its rail assets derived from Berkshire's purchase of BNSF over its book value, often referred to as a "premium." The Board also ordered BNSF to transition in the markup of its rail assets equally over a four-year period beginning in 2013, until full recognition of the markup under GAAP.

In light of these actions, the agency also reopened rate prescriptions in two rail rate reasonableness cases involving BNSF. First, Western Fuels Association, Inc. and the Basin Electric Power Cooperative (collectively, WFA), plaintiffs in a coal-rate complaint proceeding against BNSF, must confer with BNSF on adjustment of the current rate prescription to hold WFA harmless from BNSF's markup of its rail assets. Second, Arizona Electric Power Cooperative, Inc., the plaintiff in a coal-rate complaint case against BNSF and the Union Pacific Railroad Company (UP), must confer with BNSF and UP on approaches to reinstitute the rate prescription.

The Board's decisions in [Western Coal Traffic League—Petition for Declaratory Order, FD 35506](#); [Western Fuels Association, Inc. and Basin Electric Power Cooperative v. BNSF Railway Company, NOR 42088](#); and [Arizona Electric Power Cooperative, Inc. v. BNSF Railway Company and Union Pacific Railroad Company, NOR 42113](#), may be viewed and downloaded at the Board's website, www.stb.dot.gov, under "E-LIBRARY / Decisions & Notices / 07/25/13".

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