

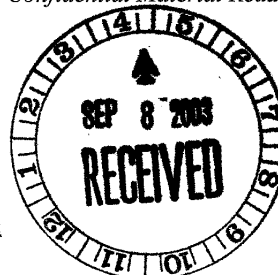
September 8, 2003

Via Hand Delivery

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K St. N.W.
Washington, D.C. 20423

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RE: STB Docket No. 42057, *Public Service Company of Colorado d/b/a Xcel Energy v. The Burlington Northern and Santa Fe Railway Company*

Dear Secretary Williams:

Please find enclosed for filing the original and fifteen (15) copies of Complainant's Post-Evidentiary Brief (*Public Version*) in the above referenced proceeding. Also enclosed are three (3) sets of compact disks containing the electronic version of this version of the Brief in PDF format.

An extra copy of this filing is enclosed for stamping and returning to our offices.

Should you have any questions regarding the foregoing, please do not hesitate to contact the undersigned.

Sincerely,

Thomas W. Wilcox

Thomas W. Wilcox
Counsel for Complainant

cc: Counsel for Defendant

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BEFORE THE
SURFACE TRANSPORTATION BOARD

PUBLIC SERVICE COMPANY OF COLORADO
D/B/A XCEL ENERGY,

Complainant,

v.

THE BURLINGTON NORTHERN AND
SANTA FE RAILWAY COMPANY,

Defendant.



Docket No. 4215

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COMPLAINANT'S POST-EVIDENTIARY BRIEF

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GLOSSARY OF ABBREVIATIONS

AAR	Association of American Railroads
BNSF	Burlington Northern and Santa Fe Railway Company
DARA	Density Adjusted Revenue Allocation Method
DCF	Discounted Cash Flow Analysis
DRI-WEFA	Financial Forecasting Company now known as Global Insight
EIA	Energy Information Administration
G&A	General and Administrative
JEC	Jeffery Energy Center
LCRA	Lower Colorado River Authority
LG&E	Louisville Gas and Electric
MMP	Modified Mileage Block Proration Method
MOW	Maintenance of Way
Pawnee Station	The Pawnee Steam Electric Generating Station
PRB	Powder River Basin
RCAF-A	Rail Cost Adjustment Factor - Adjusted for productivity
RCAF-U	Rail Cost Adjustment Factor - Unadjusted for productivity
RTC	Rail Traffic Controller simulation model
SAC	Stand-Alone Cost
SARR	Stand-Alone Railroad
TAR	Train Activity Report

UP	Union Pacific Railroad Company
URCS	Uniform Rail Costing System
WCC	Wyoming Colorado Coal Railroad
WRPI	Western Rail Properties, Inc.

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

**PUBLIC SERVICE COMPANY OF COLORADO
D/B/A XCEL ENERGY,**

Complainant,

v.

**THE BURLINGTON NORTHERN AND
SANTA FE RAILWAY COMPANY,**

Defendant.

Docket No. 42057

COMPLAINANT'S POST-EVIDENTIARY BRIEF

In response to the Board's August 8, 2003 decision in this proceeding, complainant Public Service Company of Colorado d/b/a Xcel Energy ("Xcel") hereby submits its Post-Evidentiary Brief. Consistent with the purpose for filing briefs in SAC cases, Xcel focuses on the main issues the Board is being asked to decide in light of the full record of this case. In part V, Xcel also responds to the Board's requests for information set forth in the August 8th decision.

I. BACKGROUND

This proceeding was initiated by Xcel on December 20, 2000 after Xcel and BNSF were unable to negotiate mutually acceptable terms for a coal transportation contract for service by BNSF from mines in the PRB to Xcel's Pawnee Station, located on BNSF's main line near Brush, Colorado.

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Prior to 2000, transportation to the Pawnee Station had been governed by contracts between Xcel and BNSF and their predecessors in interest.¹

In the fall of 2000, BNSF supplied the common carrier rates Xcel has assailed in this case via “Common Carrier Pricing Authority No. 90043.” Pricing Authority No. 90043 established aluminum and steel railcar rates for transportation to Pawnee Station from 16 BNSF-served mines in the PRB, including the Eagle Butte and Belle Ayr mines, which supply virtually all of the Pawnee Station’s coal.² The steel railcar rate was \$9.24 per ton, which translated into 24.2 mills per ton mile, more than triple what BNSF claims is a competitive market rate for PRB coal transportation.³ This rate is also over [REDACTED] of BNSF’s variable cost of providing this service.⁴ Pricing Authority 90043 went into effect on January 1, 2001. BNSF has adjusted the rates several times since that date, and all of the rates as adjusted are encompassed by this proceeding. Moreover, Xcel has requested that rates prescribed for the Eagle Butte and Belle Ayr mines be applied to the other 14 mines listed in Pricing Authority 90043, depending on their location in the PRB.⁵

This case is also due in large part to a strategy launched at the highest levels of BNSF to try to substantially increase revenues from its captive coal customers.⁶ BNSF has tried to downplay the

¹ See Xcel Opening Narrative at I-1 to I-2 for additional background on the Pawnee Station.

² Xcel Opening Narrative at I-4 to I-5. A copy of Pricing Authority 90043 was attached to Xcel’s complaint, and the subsequent versions of it are attached as Exhibit I-4 of Xcel’s Opening Evidence.

³ See Note 30, supra.

⁴ For shipments in shipper-owned steel railcars from the Eagle Butte and Belle Ayr mines (1Q01 to 1Q03 levels). See Xcel Rebuttal Narrative at II-A-38, Table II-A-38.

⁵ Xcel Opening Narrative at I-18.

⁶ Xcel Rebuttal Narrative at I-2 and I-3. BNSF Opening Exhibit No. II-A-5.

many facts that establish such a strategy is being implemented,⁷ but all of BNSF's positions in this case are directed toward the execution of this strategy.

BNSF tries to justify the extraordinarily high rates it has established by trying to influence the Board to significantly modify the Guidelines to place more emphasis on increasing railroad revenues than protecting captive shippers from monopolistic pricing practices that result in the shipper subsidizing other parts of the railroad's system.⁸ It also tries to mask the punitive level of the rates by (1) overstating its variable cost of providing service to the Pawnee Station; and (2) presenting SAC evidence that significantly understates the revenues and overstates the costs of Xcel's SARR.

Following the Guidelines and applicable precedent, Xcel has presented to the Board a straightforward, feasible SARR, which it has named the Wyoming Colorado Coal Railroad. The WCC reflects the relatively uncomplicated parameters of the Pawnee Station movement. It comprises a total of only 389.5 route miles and 593.35 track miles. It handles only one commodity - PRB coal - and it hauls that coal in unit trains in only the southern direction for delivery to the Pawnee Station and for interchange with the residual BNSF and UP.⁹ The WCC system from Eagle Butte to the Pawnee Station is largely subsumed within the rail lines that made up the 2,407-mile SARR in TMPA, which is relevant to the SAC issues discussed in part IV.

⁷ Xcel has demonstrated that BNSF's "bundling" theory involving the Pawnee Station and Xcel's Comanche Station (near Pueblo, Colorado) is baseless. Xcel Reply Narrative at I-15 to I-18; II-A-133 to II-A-138.

⁸ Guidelines at 528; Xcel Opening Narrative at I-7 to I-8.

⁹ A schematic of the WCC is included as Xcel Opening Exhibit III-A-1.

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II. BNSF'S ATTEMPTS TO ALTER THE GUIDELINES AND THEIR IMPLEMENTATION

A. BNSF's Overall "Revenue Inadequacy" is Immaterial in a SAC Case

BNSF takes an overall position in this case that, notwithstanding the Guidelines, it should be able to engage in essentially limitless pricing on captive facilities such as the Pawnee Station. BNSF claims it needs to do this in order to become "revenue adequate" on a systemwide basis under 49 U.S.C. §10704(a)(2).¹⁰ However, it is hornbook STB law that BNSF's systemwide revenue inadequacy is immaterial in a SAC case, since by definition and by design, a SAC analysis ensures that the defendant railroad is more than revenue adequate for the issue traffic. Providing the defendant with revenues above SAC would violate the fundamental tenet of constrained market pricing and basic purpose of SAC that "a captive shipper need not bear the cost of any facilities from which it derives no benefit."¹¹ Accordingly, a rate may be unreasonable even if charged by a railroad that is far short of revenue adequacy.¹² Xcel has addressed this point in great detail at pages I-6 to I-10 of its Reply Narrative.

Although BNSF gives lip service to the SAC constraint in this case, it is clear that BNSF would rather the Board ignore this restraint on BNSF's right to differentially price its services to

¹⁰ BNSF Opening Narrative at II-73 to II-94. In fact, the rates BNSF began charging for this service on January 1, 2001, if left in place, would produce rates of return that are over 12 times the railroad industry cost of capital as determined by the STB, and after-tax returns on investment ("ROI") ranging from [REDACTED] Xcel Reply Narrative at II-A-132 to II-A-133. BNSF has virtually no response to these facts, other than to wrongly allege that Xcel has overstated BNSF's returns on Pawnee traffic by understating the costs attributable to the movement. BNSF Rebuttal Narrative at II-A-122 to II-A-133.

¹¹ Guidelines at 528.

¹² Id. at 536-37.

Xcel, something the Board has emphatically rejected.¹³ Application of the SAC test as proposed by Xcel in this case will result in prescribed rates that make BNSF more than revenue adequate for this movement. BNSF's overall revenue inadequacy under §10704(a)(2), which has very little to do with its overall financial health,¹⁴ provides absolutely no basis to either (1) alter the fundamental underpinnings of the Guidelines and SAC test as BNSF proposes in this case, or (2) to modify the application of the SAC test and the rules governing its individual components in a manner that results in a higher maximum reasonable rate for this service than such an analysis would otherwise produce.

BNSF has accompanied its pleas to use the Pawnee Station as a source for more revenues with a full menu of (1) overstated variable costs; (2) understated SARR tonnages and revenues; (3) inflated stand alone investment and operating costs; (4) understated coal volume and revenue forecasts; and (5) overstated forecasts of investment and operating expenses. All of BNSF's offerings should be rejected.

B. BNSF's Proposal to Eliminate "Cross-Over Traffic" from the SAC Analysis Is Wrong as a Matter of Law and Policy

BNSF has used this case to propose that the Board take the extraordinary step of eliminating altogether "cross-over" traffic from a SAC analysis.¹⁵ This fundamental underpinning of the Guidelines and SAC theory was affirmed as recently as the Board's March 24, 2003 TMPA

¹³ See Xcel Reply Narrative at I-9, citing STB Ex Parte No. 575, Review of Rail Access and Competition Issues, 3 S.T.B. 92, 96, note 6 (1998) ("There seems to be a mistaken impression in some quarters that a railroad that is "revenue inadequate" under our standards has unfettered pricing freedom.").

¹⁴ Xcel Reply Narrative at II-A-122 to II-A-133.

¹⁵ BNSF Reply Narrative at I-13 to I-16.

decision.¹⁶ BNSF's proposal flies in the face of the Board's prohibition on relitigating settled issues.¹⁷ It also seeks a significant change to the Guidelines that would have widespread impact on the regulation of the rail industry as a whole.

BNSF's claim is baseless. Xcel's evidence and argument on this point¹⁸ includes the verified statement of Professor George Borts,¹⁹ who explains how the elimination of cross-over traffic would eviscerate the touchstone policy behind the Guidelines that there shall be no restriction on the traffic that a complainant may choose to include in its stand-alone traffic group, and that the SARR must be able to use all of the productive techniques and modes of competitive behavior available to the incumbent, which include interlining traffic and sharing the revenues attributable to that traffic.²⁰ The inclusion of cross-over traffic also serves the highly important practical purpose of permitting smaller and relatively more manageable SAC presentations.²¹ There is no basis to eliminate cross-over traffic from the SAC analysis, or to arbitrarily limit the extent to which a complainant may choose to include such traffic in its SARR.

¹⁶ See TMPA at 17 ("It is well-established that a SAC presentation may include cross-over traffic.") and id. citing Nevada Power II at 265-267 ("excluding cross-over traffic 'would weaken the SAC test because it would deprive the SARR of the ability to take advantage of the same economies of scale, scope and density that the incumbents enjoy over the identical route of movement.'").

¹⁷ General Procedures for Presenting Evidence in Stand-Alone Cost Rate Cases, STB Ex Parte No. 347 (Sub-No. 3)(STB served March 12, 2001) at 6.

¹⁸ Xcel's arguments and evidence in opposition of BNSF's proposal to eliminate or restrict the use of cross-over traffic are found at Xcel Rebuttal Narrative I-4 to I-6; I-10 to I-14; III-A-5 to III-A-14; and Exhibit III-A-7.

¹⁹ Xcel Rebuttal Exhibit III-A-7.

²⁰ Guidelines at 544. BNSF itself currently interlines nearly [REDACTED] of the tonnage in the WCC traffic group. See Xcel Rebuttal Electronic Workpaper "Non-BNSF Destinations.xls."

²¹ Nevada Power II at 280.

C. The Board Must Not Let BNSF “Game” the Board’s Percent Reduction Method

BNSF also has attempted in this case “game” the percent reduction method the Board typically uses to establish maximum reasonable rates.²² It has done so by establishing common carrier rates for this traffic that are far out of line with BNSF’s existing pricing structure and demand elasticities for other captive, similarly situated coal customers.²³ As such, using the percent reduction method to distribute the over-recovery of costs resulting from the SAC analysis in this case will produce maximum reasonable rate that will still not be line with BNSF’s pricing structure.²⁴ Fortunately, the Board has flexibility under the Guidelines to establish appropriate remedies under these circumstances.²⁵ The facts of this case dictate a departure from the percent reduction methodology in setting the maximum reasonable rates for this transportation, and Xcel has proposed two alternatives for the Board’s consideration.²⁶ Xcel has also performed the percent reduction calculation using the challenged rate levels.²⁷

III. VARIABLE COSTS

The rates Xcel has challenged substantially exceed 180% of BNSF’s variable costs of providing rail service to the Pawnee Station.²⁸ BNSF’s market dominance over the transportation

²² TPMA at 14.

²³ Xcel Reply Narrative at II-A-145 to II-A-146.

²⁴ Id. at I-23 to I-24; II-A-143 to II-A-149.

²⁵ Guidelines at 548; Xcel Reply Narrative at I-23.

²⁶ Xcel Reply Narrative at II-A-145 to II-A-149.

²⁷ Xcel Rebuttal Narrative at III-H-7, Table III-H-4.

²⁸ BNSF Opening Narrative at I-2; BNSF Rebuttal Narrative at I-2. BNSF also admits it has qualitative market dominance over rail transportation to the Pawnee Station. BNSF Reply Narrative at II-45.

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at issue under 49 U.S.C. §10707 is unquestioned. Nevertheless, there are several significant variable cost issues for the Board to decide, since their resolution could have a dramatic effect on the jurisdictional “floor” for prescribed rates in this case.

The parties’ respective calculations of BNSF’s variable costs differ by approximately [REDACTED] per ton.²⁹ The evidence in this case shows that BNSF has substantially overstated its variable costs, presumably to try to justify the extraordinarily high rates it has established.³⁰ The variable cost components where the largest differences remain are summarized in Table II-A-37 of Xcel’s Rebuttal Evidence,³¹ and show that approximately 43% of the difference between the parties’ variable calculations is due to one variable cost category—road property investment and depreciation. Moreover, nearly 90% of the differences between the parties are found in this and five other variable cost categories: locomotive capital (17.7%), fuel consumption (8.0%), helpers (7.2%), joint facilities (6.8%), and switching (4.9%).

A. Xcel’s Movement-Specific Adjustments to BNSF’s System-Average Road Property Investment and Depreciation Costs Are Fully Supported and Appropriate

In this case, BNSF has continued a quest that it began in the fall of 2001³² to convince the Board to discontinue the Board’s practice of making movement-specific adjustments to BNSF’s

²⁹ See Xcel Rebuttal Narrative at II-A-6 to II-A-7; Tables II-A-33 and II-A-34.

³⁰ For example, BNSF calculates its variable costs to be [REDACTED]. At the same time, BNSF asserts that a “competitive market rate” for PRB coal transportation should be [REDACTED] mills. BNSF Reply Narrative at III.A-88. BNSF is either (1) understating what a competitive rate would be; (2) pricing competitive coal traffic well below its variable cost; or (3) significantly overstating its variable costs of service. Since BNSF’s market rate assertion comes as part of BNSF’s evidence on future rates for the WCC, Xcel believes both (1) and (3) are correct.

³¹ Xcel Rebuttal Narrative at II-A-13.

³² At pages 11-13 of Xcel’s Third Motion to Compel Discovery and for Sanctions, Xcel explained how BNSF’s efforts to discredit its own road property and investment data, and its accompanying efforts to prevent discovery of that data, began soon after the Board’s September 10, 2001 decision in WPL.

system average road property investment and depreciation variable costs using BNSF's databases of this information. BNSF's strained attempts since WPL to claim that its road property investment and depreciation data is not useful, and is flawed and unreliable, have rightfully fallen on deaf ears at the Board.³³ Xcel's movement-specific adjustments to BNSF's system-average road property investment and depreciation data are proper, fully supported, and constitute the best evidence of record on this variable cost component.³⁴

Having been thwarted in its attempt to disparage its own road property investment database, BNSF tries an alternative approach³⁵ in this case. It argues that movement-specific adjustments for road property expenses are not appropriate because economies of scale or density have no effect on variable costs, which BNSF argues increase as density increases.³⁶ As support for this argument, BNSF stated that "[t]his assumption is reflected in the use of a straight line cost function, which is a basic feature of URCS."³⁷ Based on this assumption, BNSF fashions an argument that, even if

³³ See September 25, 2002 Decision in this proceeding; and TMPA at 57 ("we find BNSF's arguments against the use of its FADB unpersuasive.").

³⁴ The procedures Xcel used to make its adjustment are explained in detail in Xcel's Opening Evidence at Exhibit II-A-4; Xcel's Reply Narrative at II-A-49 to II-A-62 and Exhibit II-A-26; and its Rebuttal Narrative at II-A-14 to II-A-33 and Exhibit II-A-39.

³⁵ BNSF impermissibly raises another criticism for the first time on Rebuttal which has no merit, and which must also be ignored under the Board's prohibition on such actions. See BNSF Rebuttal Narrative at II-33 to 34 and footnote 98 ("running tracks vs. yard tracks" argument). BNSF relies on the TMPA decision for this argument, yet it appears nowhere in BNSF's Reply Evidence, which contained extensive references to the TMPA decision. Raising this argument for the first time on Rebuttal clearly violates the Board's procedural rules. See TMPA at 56, note 94. In any event BNSF is wrong. The adjustment in the TMPA case to which BNSF refers did not relate to the reconciliation of FADB to the R-1, as BNSF claims.

³⁶ BNSF Opening Narrative at II-52 to II-54; BNSF Rebuttal Narrative at II-34 to II-35.

³⁷ BNSF Opening Narrative at II-52.

reliable movement-specific data is available, the Board should not apply the URCS 50% variability factor for the determination of URCS road capital costs.³⁸

Xcel believes the Board has previously disposed of this argument in this case.³⁹ If not, it should do so now.⁴⁰ BNSF's efforts to remove the 50% variability factor for road property investment and depreciation expenses repeat similar claims that were rejected by the ICC in Adoption of URCS. In that proceeding, the AAR, as BNSF does now, argued that the variability of road property investment and depreciation expenses was "far more variable with volume than indicated by the Rail Form A coefficient," and otherwise tried to equate variability in this cost category with other cost categories.⁴¹ But the 50% variability factor expressly recognizes that the variability of long term, sunk road property investments bears no resemblance to the variability of other cost categories.⁴² The ICC rejected the AAR's arguments then, and the Board should reject BNSF's rehash of those arguments in this case. At the end of the day on this point, the only new argument BNSF makes is that (1) the 50% variability factor is a default factor pending development by the industry of a more precise variability factor; and (2), because Xcel cannot develop a more precise

³⁸ BNSF Rebuttal Narrative at II-35 to II-37.

³⁹ Xcel Reply Narrative at II-A-61. The Board arguably decided this issue against BNSF in this proceeding in its September 25, 2002 decision when it granted Xcel's motion to compel production of BNSF road property investment and depreciation data, since BNSF's opposition to that motion was based in large part on the same arguments BNSF repeated verbatim in its Opening Evidence.

⁴⁰ Xcel notes that the Board appeared to have some concerns with the lack of support BNSF offered for this argument in TMPA, where it was apparently raised for the first time by BNSF, albeit too late in the process to receive consideration in that case. TMPA at 56, note 94.

⁴¹ Xcel Rebuttal Narrative at II-A-30 to II-A-31, citing Adoption of URCS, Comments of Association of American Railroads filed March 20, 1989 at 8.

⁴² Xcel Rebuttal Narrative at II-A-32. For example track maintenance, running crew wages, running locomotive maintenance, and general & administrative costs.

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variability factor on its own, it may not use the default 50% variability factor in this case.⁴³ This provides no justification for overturning established agency precedent and preventing the movement-specific adjustment to this variable cost category as proposed by Xcel.

B. Other Major Areas in Which BNSF Has Overstated its Variable Costs

As stated above, the other major cost categories in which BNSF has significantly overstated its variable costs are (1) Locomotive Capital, where BNSF did not use current lease rates, overstated locomotive spare margins,⁴⁴ and did not reflect the Alliance pool; (2) Fuel Consumption, where BNSF overstated its fuel usage in reliance upon a biased, fundamentally flawed special study;⁴⁵ (3) Helper Service, where BNSF overstated the frequency of its use of helper services, despite actual BNSF data that showed otherwise;⁴⁶ (4) Joint Facilities, where BNSF erroneously included switching costs within joint facility expenses;⁴⁷ and (5) Switching, where BNSF overstated both the yard and road switching minutes required for Pawnee Station service.⁴⁸

⁴³ BNSF Rebuttal Narrative at II-38. Xcel believes that a more precise determination of the variability factor for Road Capital Costs would result in a variability factor much less than 50%. Xcel Rebuttal Narrative at II-A-31 to II-A-32.

⁴⁴ Xcel calculated a locomotive spare margin of 5.5% based on actual BNSF locomotive agreements as well as the Board's preference for weighted figures by hours of use. See Xcel Reply Narrative at II-A-66 to II-A-75. A 5.5% spare margin is consistent with past precedent. See e.g., TMPA at 61 (Board adopted a 5% spare margin). BNSF relies upon a conclusory study and flawed logical gymnastics to arrive at a spare margin of [REDACTED]. See id.; See also BNSF Reply Narrative at II-33 to II-35. BNSF's spare margin "study" does not include any citations to any actual BNSF records or course-of-business documents about locomotive utilization. See BNSF.OP.WP.II.A-1065-1068. It is also based on the wrong group of locomotives. In contrast, Xcel's spare margin calculation is fully supported and consistent with agency precedent. See Xcel Opening Workpapers 215-229, 312-325, 337-363 and Xcel Reply Workpapers 4332-4385, 4397-4418.

⁴⁵ Xcel Reply Evidence at II-A-80 to II-A-91.

⁴⁶ Id. at II-A-115 to II-A-116.

⁴⁷ Id. at II-A-42 to II-A-45.

⁴⁸ Id. at II-A-16 to II-A-22.

IV. STAND-ALONE COST

Since the Board's jurisdiction over this case is undisputed, the reasonableness of the rates Xcel has challenged is to be decided using the SAC constraint in the Guidelines. BNSF's responses to Xcel's SAC evidence consist of (1) a vigorous assault on the WCC's Operating Plan; and (2) a broadly arrayed effort to lower the revenues and tonnages attributable to the WCC's shipper group and drastically inflate the WCC's start-up capital investment and operating costs. BNSF compounds the effects of these efforts over the entire 20-year DCF analysis through forecasting methods that are skewed in favor of diminishing revenues and inflating costs. The major points of contention on SAC issues are summarized below.

A. Tonnages and Revenues of the WCC

BNSF attempts to significantly reduce the revenues the WCC would receive over the 20 year DCF period by (1) eliminating some of the tonnages that would be hauled by the WCC from its traffic group; (2) understating the extent to which tonnage volumes will grow over time; (3) reducing the revenue divisions attributable to the WCC from cross-over traffic; and (4) understating the degree to which rates will change over time. The cumulative effect of these changes to Xcel's SARR would be to reduce its revenues by nearly one third in the base year of 2001 (\$345.7 million vs. \$243.7 million), a gap that widens considerably over the 20 year DCF period.⁴⁹

1. BNSF's Attempt to Exclude Tonnages from Certain Movements

The largest amount of tons BNSF seeks to eliminate are those that would be hauled by the WCC for interchange with UP at Northport, Nebraska for final delivery to Western Resources, Inc.'s

⁴⁹ Xcel Rebuttal Narrative at III-A-100, Table III-A-8.

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Jeffery Energy Center (“JEC”), located in St. Marys, Kansas. BNSF also seeks to eliminate certain tonnages from five other movements on the WCC system.⁵⁰

a. Jeffery Energy Center tonnages

Of the 105.3 million tons of coal that would be transported by the WCC in its base year of 2001, ■■■ million tons would be delivered by the WCC from the Eagle Butte Mine to Northport, Nebraska, where it would be interchanged with UP for final delivery to JEC.⁵¹ The routing of this movement over the WCC involves rerouting the BNSF portion of this actual joint-line movement so that the WCC would transport the coal from Eagle Butte to Northport over its system. Xcel has fully accounted for the costs of this movement and demonstrated that the WCC meets the needs of JEC. Elimination of these tonnages and associated revenues from the WCC traffic group over the 20-year DCF model would have a substantial impact on the overall SAC analysis.

Xcel sets out at pages I-15 to I-18, and III-A-14 to III-A-29 of its Rebuttal Narrative why BNSF’s strained arguments for excluding the JEC traffic should be rejected. First and foremost is the fact that BNSF and the STB have found this rerouting to be acceptable in two other cases - WTU and TMPA. This routing has also been used by BNSF in the past.⁵² BNSF’s acceptance of this particular rerouting in TMPA is particularly significant, since in that case BNSF questioned numerous other reroutings of traffic, yet exclusion of the JEC tonnages in that case would also very likely have had a significant impact on the SAC analysis. BNSF makes no attempt to reconcile the past acceptance of this rerouting with its contrary position in this proceeding.

⁵⁰ Id. at III-A-29 to III-A-38.

⁵¹ Xcel Opening Narrative at III-A-6.

⁵² Xcel Rebuttal Narrative at III-A-19 to III-A-20.

Xcel has also explained why BNSF's arguments for excluding the JEC traffic have no merit.⁵³ For example, BNSF's claim that the WCC cannot meet the needs of JEC rests solely upon a cycle time study that is so replete with errors and misstatements so as to be utterly useless.⁵⁴ Moreover, the exclusion of the JEC traffic would weaken the purpose of the SAC test,⁵⁵ which is to posit the least-cost, most efficient hypothetical stand-alone railroad. BNSF is clearly grasping at straws in trying to exclude the JEC tons from the WCC's traffic base. These tons must be included in the DCF model for its entire 20 year period.

b. Tonnages of other movements

The Board should also reject BNSF's arguments that certain tons destined to (1) American Electric Power's Rockport Plant; (2) LCRA's Seymour Plant; (3) LG&E's Ghent Plant; and (4) Northern States Power Company d/b/a Xcel Energy's Riverside and Highbridge plants should be excluded from the SARR.⁵⁶ In its August 8 Decision, the Board asked two questions pertaining to these other plants. Xcel's responses to these questions are set forth in Part V, supra.

2. BNSF's Understatement of the Extent to Which the Tonnages of the WCC will Grow Between 2005 and 2020.

Xcel and BNSF disagree on how much coal volumes will grow on the WCC for the years 2005–2020.⁵⁷ Xcel utilizes its internal forecasts and the 2.5-percent annual increase in PRB coal

⁵³ Id. at III-A-14 to III-A-26.

⁵⁴ Id. at III-A-14 to II-A-29.

⁵⁵ Id. at III-A-26 to III-A-29.

⁵⁶ Id. at III-A-29 to III-A-38.

⁵⁷ The parties agree on tonnages for 2001 to 2004, subject to BNSF's claims that certain tonnages should be excluded from the model in these years. The discussion of tonnages and revenue forecasts for 2005 to 2020 is also subject to BNSF's claims that certain tonnages should also be excluded from the model for those years.

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production forecasted by the Energy Information Agency in its “2002 Energy Outlook” (“EIA 2002 PRB Forecast” or “EIA Aggregate Forecast”). This is the best evidence of record,⁵⁸ as the Board has previously relied on EIA forecasts of this type for SARR tonnage forecasts.⁵⁹ In contrast, BNSF seeks to limit tonnage growth on the WCC to a measly 0.7 percent per year over the DCF period by utilizing non-probative and unreliable internal “forecast” information and extremely tenuous “predictions” of the future of the PRB coal industry.⁶⁰

For tonnages from 2005–2007, BNSF uses an undated, single sheet of paper that it calls its “Macro Coal Forecast.”⁶¹ BNSF’s characterization of this document as a forecast it prepares and relies upon in the normal course of business is contrary to its representations [REDACTED] that it does not perform forecasts beyond a three-year period.⁶² In addition, unlike the EIA PRB Forecast, the “Macro Coal Forecast” reflects all coal shipped on BNSF’s system, and so is therefore a less accurate tool. In sum, the “Macro Coal Forecast” document is of scant probative value.⁶³ The EIA 2002 PRB Forecast is more directly reflective of expected changes in the WCC traffic group,

⁵⁸ For some Xcel-owned plants, Xcel used its own internal tonnage forecasts for 2005–2007. See Xcel Rebuttal Narrative at III-A-40. BNSF accepted the use of these forecasts. BNSF Reply Narrative at III-A-39.

⁵⁹ TPMA at 25; FMC at 34.

⁶⁰ Table III-A-5 of Xcel’s Rebuttal Evidence (p. III-A-53) illustrates the degree to which BNSF’s seeks to hold down volume growth on the WCC over the DCF period.

⁶¹ BNSF Reply Narrative at III.A-40 and BNSF Reply Workpaper BNSF.RP.WP.III-A-00088.

⁶² See Xcel Rebuttal Narrative at III-A-42, citing to a BNSF pleading in STB Docket No. 42071, Otter Tail Power Company v. BNSF, where BNSF stated it does not prepare or rely in the normal course of business traffic forecasts that extend beyond a 2 to 3 year time horizon. BNSF’s “Macro Coal Forecast” document is undated, but discovery was largely completed in this case in 2002, making the document at least a 3 to 5 year forecast. This document also bears no resemblance to BNSF’s 2003 and 2004 forecasts the parties used for those years.

⁶³ See United States v. Western Gillette, Inc., 343 ICC 29, 32-33 (1972) (although admissible, cost study found to be of little probative value by the ICC because it lacks evidentiary foundation).

and is a better documented and verifiable forecasting tool than BNSF's "Macro Coal Forecast" document.⁶⁴

For tonnages from 2008–2020, BNSF again eschews the EIA 2002 PRB Forecast, and instead uses the regional PRB forecasts that underlie it.⁶⁵ BNSF's use of a regional forecast is inconsistent with its attempt to use its nationwide "Macro Coal Forecast" for prior years. Also, the regional PRB forecasts are not as dependable as the national PRB forecast,⁶⁶ and they can dramatically understate actual PRB coal usage in future years. An example cited in Xcel's evidence is EIA's 2003 Regional PRB forecast, which incorrectly shows zero PRB coal being delivered to the region including Colorado (and thus the Pawnee and Comanche Stations) between 2003 and 2021.⁶⁷ BNSF's other arguments for disregarding Xcel's tonnage forecasts are easily disposed of.⁶⁸ The EIA "2002 Energy Outlook" and other forecasting tools used by Xcel are the best evidence of record for forecasting future coal tonnages on the WCC.

3. BNSF's Flawed Replacement for the MMP Method to Estimate Revenues for Cross-Over Traffic

Xcel has estimated the revenue divisions for cross-over traffic between the WCC and the residual BNSF by utilizing the modified mileage block proration method ("MMP"),⁶⁹ which has been

⁶⁴ See McCarty Farms at 474 (Board rejects defendant BN's aggregate grain forecast because it is mostly based on geographic areas not served by the SARR).

⁶⁵ BNSF Reply Narrative at III-A-42.

⁶⁶ Xcel Rebuttal Narrative at III-A-45 to III-A-48.

⁶⁷ See Xcel Rebuttal Narrative at III-A-47 to III-A-48; Rebuttal Vol. III, Workpaper at page 5825 to 5826.

⁶⁸ Xcel Rebuttal Narrative at III-A-48 to III-A-52.

⁶⁹ Xcel Opening Narrative at III-A-15 to III-A-17.

used to estimate cross-over revenues in the last five SAC cases.⁷⁰ There is no basis for departing from the MMP method in this proceeding and using BNSF's "DARA" method.⁷¹

In the first place, estimations of cross-over revenues have been necessary in SAC cases because railroad defendants have refused - as BNSF did in this case - to voluntarily provide complainants or the Board with actual revenue division data.⁷² BNSF made no attempt to use actual data to refute Xcel's estimation of cross-over revenues using the MMP method. For this reason, BNSF's criticisms that the MMP method - which ironically was developed by BNSF's predecessor BN - does not accurately reflect actual revenue divisions lack any credibility. Similarly lacking credibility are BNSF's claims that the MMP methodology favors complainant shippers by overstating the amount of revenues the SARR would obtain *vis a vis* the residual BNSF.

BNSF's DARA method also cannot be considered as a replacement for MMP in this case because it is cost-based, and therefore violates the requirement that the proper approach for estimating revenues the SARR would earn from cross-over traffic "is to estimate what the market-based divisions would be."⁷³ BNSF does not dispute that this is the standard. It simply wants to change it so that cross-over revenues are determined using BNSF's URCS variable costs, plus an allocation of contribution above BNSF's URCS costs, adjusted by density. Not surprisingly,

⁷⁰ TPMA at 31; PPL at 7-10; WPL at 24; FMC at 31; McCarty Farms at 471-472. While the Board has stated recently that it has not adopted a single, preferred method for developing revenue divisions for cross-over traffic, it has nevertheless also stated that the MMP methodology "is the best procedure for allocating revenues to carriers where market-based divisions are not available." See TPMA at 31; FMC at 27.

⁷¹ See Xcel Rebuttal Narrative at I-24 to I-28 and III-A-56 to III-A-71 for a more thorough discussion of this issue.

⁷² See Xcel Rebuttal Narrative at I-27. BNSF has since voluntarily supplied actual revenue division data in another case pending before the Board. See Opening Evidence of Complainant in STB Docket No. 42071, Otter Tail Power v. BNSF (Public Version) at III-A-17 to III-A-18 (filed June 13, 2003).

⁷³ Nevada Power II at 280 (emphasis added); See Xcel Rebuttal Narrative at I-24 to I-25.

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application of DARA would result in more revenues being retained by the residual BNSF. This, of course, would ultimately result in increasing the maximum reasonable rate level determined under the SAC analysis. BNSF's proposal to change the market-based standard finds no support in any prior agency decision, and in fact is directly contrary to established precedent and SAC theory. The DARA methodology is also unnecessarily complex, unverifiable, not neutral, difficult to administer and implement, and suffers from a wide range of other flaws that make it a poor replacement for the established MMP method.⁷⁴

4. Forecasts of WCC Revenues

The parties agree on how to forecast the revenues of the WCC for 2002 through the end of each WCC customer's existing contract term.⁷⁵ However, the parties disagree on how to determine the rates when current contracts expire.⁷⁶ Following the approach taken in WPL, Xcel has made the new contract rate and escalation method for captive plants the same as the old rate and escalation method.⁷⁷ For competitive plants, Xcel projected revenues based on a conservative estimation of a competitive market rate of [REDACTED] mills per ton mile and a competitive marketplace rate adjustment mechanism. Both the rate and the adjustment mechanism were derived from actual BNSF contracts for competitive movements.⁷⁸ BNSF takes issue with Xcel's projections, and tries to paint a gloomy

⁷⁴ Xcel Rebuttal Narrative at III-A-57 to III-A-63. Among other things, DARA method would conflict with established principles that dictate the incumbent will carry any traffic that covers its own attributable costs, and makes any contribution, no matter how slight, to joint and common costs. Id. at III-A-62, and cases cited therein. Xcel's argument and evidence on this point can be found in its Rebuttal Narrative at I-24 to I-28; III-A-11 to III-A-14; III-A-56 to III-A-71; and Exhibit III-A-7.

⁷⁵ Xcel Rebuttal Narrative at III-A-72 to III-A-73.

⁷⁶ BNSF Reply Narrative at III-A-81.

⁷⁷ Xcel Opening Narrative at III-A-19; Xcel Rebuttal Narrative at III-A-73 to III-A-74.

⁷⁸ Xcel Rebuttal Narrative at III-A-84 to III-A-87.

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picture of BNSF's future coal transportation business. However, BNSF's hodge podge of evidence on this point is not credible. Its assertion that contract rates for captive plants will decrease as contracts expire is incorrect and unsupported, and also flatly inconsistent with BNSF's efforts to increase captive coal shipper rates over the past four years.⁷⁹ BNSF's evidence on new rates for captive plants is also tainted by its use of the aforementioned "Macro Coal Forecast," which has no probative value.⁸⁰

As for rates for competitive movements, BNSF does not disagree with Xcel's general approach, but it tries to lower the benchmark competitive marketplace rate to [REDACTED] mills per ton mile by impermissibly incorporating contracts entered into prior to 2001, before the WCC would commence operations.⁸¹ The parties differ markedly on how to forecast rates after contracts expire. Xcel predicts an average annual increase in rates of 1.3%.⁸² In sharp contrast, based on what it claims is recent contract experience, BNSF predicts an average annual [REDACTED].⁸³ BNSF's position is implausible.⁸⁴ Xcel's evidence on rate forecasts for expiring contracts is the best evidence of

⁷⁹ Xcel Rebuttal Narrative at III-A-75 to III-A-83.

⁸⁰ Id. at III-A-82.

⁸¹ BNSF Reply Narrative at III.A-89 to III.A-90; Xcel Rebuttal Narrative at III-A-84 to III-A-86. In TPMA, BNSF complained when the complainant used "older, unexpired long-term contracts that do not reflect current market practices." TPMA at 28. BNSF cannot have it both ways.

⁸² See BNSF Reply Narrative at III.A-94; Xcel Rebuttal electronic file "WCC Traffic_Xcel Rebuttal.xls."

⁸³ BNSF Reply Narrative at III.A-92.

⁸⁴ Xcel Rebuttal Narrative at III-A-90 to III-A-92.

record. Finally, the parties largely agree on future common carrier rates, but disagree on the future rates for the TMPA and WTU coal movements.⁸⁵

B. The Operating Plan for the WCC is Feasible and Fully Supported

Xcel has withstood several attacks by BNSF on the WCC's Operating Plan. Most of BNSF's criticisms have been gross exaggerations of perceived or real flaws in the Operating Plan and the evidence supporting it. Xcel has gone to great lengths to demonstrate the feasibility of its Operating Plan, which was developed based on the considerable railroad and business experience of Xcel's experts, such as Mr. McDonald. These experts first developed the WCC's configuration, yard locations and operating parameters based on its customer group and expected tonnages during the WCC's peak operating period. Their assumptions and conclusions were then tested using a computer "string" model in order demonstrate the WCC's capacity to handle the traffic projected to run over its system during the peak period of the peak year during the 20 year DCF period.⁸⁶ Since this system was designed to handle the peak period traffic, the WCC clearly has sufficient capacity to haul the tonnages of its customer group during the entire DCF period. Xcel's approach is extremely conservative in that it has constructed facilities that will not be needed to handle the traffic group until the last year (2020) of the DCF model life.

Where BNSF's criticisms of the computer model and Operating Plan have been valid, Xcel has modified the plan to take them into account. These changes mostly entailed adding about 30 miles of additional track and correcting data input errors to the program's grade/curve database.⁸⁷

⁸⁵ Id. at III-A-98.

⁸⁶ Xcel Opening Narrative at III-C-10 to III-C-14; Xcel Rebuttal Narrative at III-C-1 to III-C-3.

⁸⁷ Xcel Rebuttal Narrative at I-32 to I-33; III-B-2 to III-B-9.

They did not result in significantly reconfiguring the WCC Operating Plan presented on Opening. However, most of BNSF's criticisms are baseless, and Xcel has refuted such criticisms in its Rebuttal Evidence,⁸⁸ its Reply to BNSF's Motion for Summary Disposition and for Stay; and Reply to BNSF's Motion for Leave to File Limited Surrebuttal. In general, BNSF's invalid criticisms of the WCC Operating Plan suffer from the basic flaw underlying all of BNSF's evidence on stand-alone costs: BNSF's insistence on trying to make the WCC like BNSF, with all of its inefficiencies and additional operating parameters due to its larger size and varied traffic base. This is evident from BNSF's criticisms about operating parameters such as helper locomotives, switch locomotives, cycle times, yard requirements, and a host of other operating parameters.⁸⁹

BNSF has submitted an alternative operating plan for the WCC using a different computer model - the Rail Traffic Controller ("RTC") Model, but this model is not capable of providing useful information in a SAC case.⁹⁰ Specifically, the RTC model merely tests changes in rail line configuration or the impact of incremental traffic on a rail line. It cannot be used to develop train operating statistics or operating parameters for the purpose of determining operating expenses. The capabilities of the model aside, BNSF's use of it was fundamentally flawed. For example, the design of the WCC produced by BNSF is different from the configuration of the WCC upon which BNSF based its construction costs.⁹¹ In any event, the RTC program output submitted by BNSF is not useable in this case because BNSF failed to provide information that enabled Xcel (and the STB) to

⁸⁸ Xcel Rebuttal Narrative at III-B-2 to III-B-36.

⁸⁹ See generally, the discussion at pages III-C-11 to III-C-18 and III-B-48 to III-B-61 of Xcel's Rebuttal Narrative.

⁹⁰ Id. at I-38 to I-41 and III-B-37 to III-B-42.

⁹¹ Id. at III-B-40 to III-B-42.

understand or test the algorithms included in the program or to test BNSF's assumptions and Xcel's criticisms.⁹² Conversely, Xcel has supplied to BNSF and the Board the computer program used by its experts as well as instructions, total documentation and underlying algorithms. This allows for a complete understanding of the program and the ability to test the reliability of its results.⁹³

C. BNSF's Overstatement of the Construction Costs and Operating Expenses of the WCC

BNSF couples its effort to reduce the tonnages and revenues of the WCC with an exaggeration of the costs of constructing and operating the WCC. In violation of the most fundamental tenets of the Guidelines that a SARR must be an optimally efficient, lowest cost hypothetical railroad, BNSF's evidence is replete with inflated costs, inefficient operating parameters, barriers to entry and characteristics that are not needed by the WCC to efficiently serve its traffic group.

1. WCC Construction and Investment Costs

The track making up the WCC traverses the same route as the SARR in TMPA from Eagle Butte, Wy. to Northport, Neb. The cost of constructing that SARR was determined to be \$1.7 million per track mile.⁹⁴ Yet, in this proceeding, BNSF inexplicably has asserted that the construction and investment costs of the WCC should equal \$2.723 million per track mile, over a million dollars more per mile than the longer and more complicated railroad in TMPA.⁹⁵ The chart below

⁹² TMPA at 68.

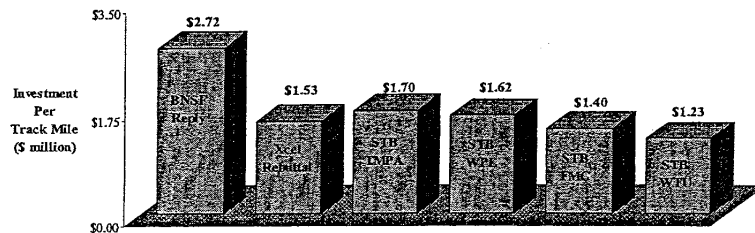
⁹³ Xcel Opening Exhibit III-C-2; Xcel Opening electronic file "ReadMe.xls;" Xcel Rebuttal Narrative at I-30; III-B-26 to III-B-27; Xcel Rebuttal file "ReadMe.xls;" Reply to Motion for Summary Disposition and Stay and materials submitted therewith.

⁹⁴ \$4.097 billion ÷ 2.407.93 track miles. See TMPA at 68, 70 and 111.

⁹⁵ BNSF Reply Narrative at III.B-4, III.F-2.

demonstrates how the construction and investment costs BNSF envisions for the WCC are far in excess of such costs for SARR's in prior SAC cases.

Comparison of BNSF Reply and Xcel Rebuttal Road Property Investments to STB Road Property Investments
(Million dollars per track mile)



BNSF's overstatement of construction and investment costs for the WCC has resulted in the parties being nearly \$1 billion apart on this issue. The more egregious examples of BNSF's overstatement of construction and investment costs are discussed briefly below.

a. Roadbed Preparation

Accounting for over half of the difference between the parties on SAC construction costs is the category of Roadbed Preparation.⁹⁶ Xcel's roadbed preparation costs for the WCC are \$239.17 million, which equates to \$0.403 million per track mile.⁹⁷ This is consistent with the roadbed preparation costs of \$0.387 million per track mile adopted by the Board for the SARR in TMPA.

⁹⁶ Xcel Rebuttal Narrative at III-F-3, and Table III-F-6, which sets out the various Road Property Investment categories and quantifies the differences between the parties.

⁹⁷ \$239.17 million divided by 593.35 track miles.

On the other hand, BNSF asserts that the roadbed preparation costs of the WCC should be \$756.44 million, or \$1.115 million per track mile.⁹⁸ This is triple the amount the Board adopted in TMPA, and more than double what BNSF proposed in that case.⁹⁹

Xcel developed its roadbed preparation costs based on ICC Engineering Reports, prior agency decisions, and other pertinent information.¹⁰⁰ This information was then modified to fit the exact, modern-day specifications of the WCC. Consistent with prior precedent, Xcel assumed a one-foot fill for the yards, and distributed the remainder of the earthwork to the main line track.¹⁰¹ BNSF accepted Xcel's methodology and assumed that the main line earthwork consisted of all the earthwork in the ICC Engineering Reports minus a one-foot fill for yards.¹⁰² However, BNSF then inexplicably attempted to separately calculate each yard's earthwork requirements using several proprietary software programs.¹⁰³ BNSF's flawed methodology and its erroneous conclusions regarding the size, location and configuration of rail yards have resulted in grading and earthwork in rail yards being the largest sub-area of difference between the parties in this SAC investment category.¹⁰⁴

⁹⁸ \$746.44 million divided by 678.37 track miles. See BNSF Reply Narrative at III.B-4 and III.F-1.

⁹⁹ TMPA at 116 (BNSF proposed \$1,256,752,308 divided by total track miles of 2,545.93 = \$0.493 million per track mile).

¹⁰⁰ Xcel Opening Narrative at III-F-9 to III-F-20.

¹⁰¹ WPL at 80-81.

¹⁰² BNSF Reply Narrative at III.F-36 and III.F-42.

¹⁰³ Id. at III.F-42 to III.F-49.

¹⁰⁴ Xcel Rebuttal Narrative at III-F-15, Table III-F-7.

As a threshold point, much of BNSF's evidence on this subject¹⁰⁵ may not be considered by the Board for the reason that BNSF's experts based their testimony on a special study utilizing proprietary computer software that BNSF refused to provide to Xcel in a form that would enable Xcel to test and cross-examine BNSF's experts' conclusions during the rebuttal phase of this case.¹⁰⁶ The Board's position on such actions is the same as the federal courts: the failure to provide the opposing party with the means to analyze an expert's testimony based on computer programs results in the exclusion of that evidence from the case.¹⁰⁷ In any event, BNSF's calculation of roadbed preparation costs for the WCC yards is inconsistent with established precedent.¹⁰⁸ Xcel's evidence, which is consistent with prior SAC cases in both methodology and results, is the best evidence of record on the roadbed preparation component of the WCC's stand-alone costs.

b. Engineering, Contingency, and Materials Transportation Costs

BNSF's overstatement of the materials needed to construct the WCC, combined with other factors such as percent additives, results in significant differences between the parties in other

¹⁰⁵ Specifically, BNSF's expert witnesses made separate calculations that determined the earthwork required at six yards of the WCC (every yard except Sterling) and the day lighting of Guernsey Tunnel #2. See BNSF Reply at III.F-41 to III.F-48.

¹⁰⁶ Xcel Rebuttal Evidence at III-F-29 to III-F-30, III-F-37 to III-F-38.

¹⁰⁷ TMPA at 68 (BNSF's attempt to rely on a computer model which was not provided to the Board or to the complainant was rejected); Hughes Aircraft Co. v. Century Indemnity Co., Nos. 96-55579 and 96-55646, 1998 U.S. App. LEXIS 6644 (9th Cir. Mar. 31, 1998) at *28 (9th Cir. upholds District Court decision to strike testimony of expert when access to iterations of computerized groundwater modeling program not provided); ICC Docket No. 38084S, International Minerals & Chemicals Corporation v. Burlington Northern RR Co., (served May 28, 1986) at 2 (motion to strike costing model granted because model not identified). Pearl Brewing Co. v. Jos. Schlitz Brewing Co., 415 F. Supp. 1122, 1138 (S.D. Texas 1976) (in order to facilitate cross-examination, plaintiff must reveal detailed structure of beer market computer simulation model developed by consultants).

¹⁰⁸ Xcel Rebuttal Narrative at III-F-35, citing WPL at 81. Like the defendant UP in WPL, BNSF has impermissibly maximized the mainline earthwork by following Xcel's methodology and then also inappropriately maximized the yard earthwork by using its own figures.

investment categories. In the case of Engineering Costs, BNSF has sought to triple the amount proposed by Xcel through a combination of distancing itself from the Engineering Costs it agreed to in PPL and exceeding the levels adopted by the STB in TMPA. For example, BNSF makes no attempt to reconcile why its proposed construction management costs for the 593-mile WCC should be 4.9% of investment costs¹⁰⁹ with the fact that construction management costs for the 2,407-mile SARR in TMPA were only 3.7% of investment costs.¹¹⁰ The 3.5% additive used by Xcel is comparable to the approximately 3.5% accepted by the STB in PPL and the 3.7% accepted in TMPA.¹¹¹ For Contingency Costs, the parties agree on a 10% additive for this category, but applying this additive to BNSF's overstated costs results in a \$84 million difference between the parties in the base year.¹¹² Similarly, BNSF's significant overstatement of material quantities for the WCC causes Materials Transportation costs for the WCC to be inflated by \$46 million in the base year.¹¹³

c. Bridges

Another significant difference between the parties on SAC investment costs is BNSF's erroneous assertion that the WCC needs approximately 4,000 additional lineal feet of bridges at a cost of \$35 million.¹¹⁴ Much of this difference is due to BNSF's overstatement of the passing, yard and set-out track requirements of the WCC. However, Xcel's evidence on budge requirements

¹⁰⁹ BNSF Reply Narrative at III.F-154.

¹¹⁰ TMPA at 157. \$145.0 million construction management cost divided by \$4,097.09 million investment less \$223.6 million in land costs.

¹¹¹ Xcel Rebuttal Narrative at III-F-106; BNSF Reply Narrative at III.F-154; PPL at 31.

¹¹² Xcel Rebuttal Narrative at III-F-107.

¹¹³ Id. at III-F-78 to III-F-80.

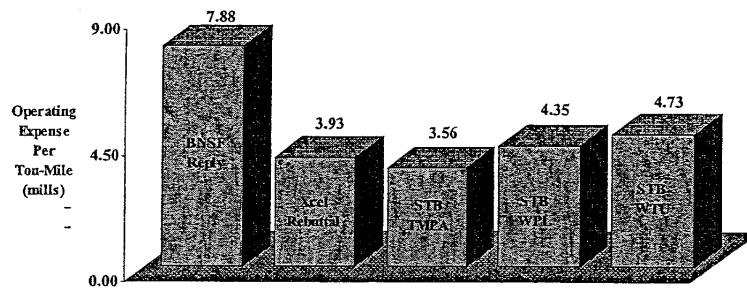
¹¹⁴ BNSF Reply Narrative at III.F-114 to III.F-122; Xcel Rebuttal Narrative at III-F-81 to III-F-86.

sponsored in part by Xcel witness Dr. Sharma, presents a feasible, cost effective bridge design and is the best evidence of record on this point.¹¹⁵

2. Operating Expenses

BNSF's overdesign of the WCC predictably results in BNSF nearly doubling the WCC's initial operating costs (\$184 million vs. \$105.2 million).¹¹⁶ As shown on the chart immediately below, the operating expense per ton mile for the WCC proposed by BNSF is far beyond the levels found to be acceptable in recent SAC cases.

Comparison of BNSF Reply and Xcel Rebuttal Operating Expenses to STB Stand-Alone Operating Expenses
(mills per revenue ton-mile)



BNSF's overstatement of necessary operating costs is most prevalent in (1) administrative and personnel areas such as Training and Start-up, Operating Personnel, and General and Administrative; (2) Maintenance of Way; (3) Locomotive Expenses; and (4) Insurance.

¹¹⁵ Xcel Rebuttal Narrative at III-F-85.

¹¹⁶ Xcel Rebuttal Narrative Section III-D; *Id.* at III-D-2, Table III-D-10.

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a. Administrative and Personnel Related Costs

BNSF proposes yet again what the Board has now twice rejected in the area of Training and Start-up Costs: an equity flotation fee (of 4%, or \$43.9 million) and a debt placement fee.¹¹⁷ BNSF also includes such unjustified expenses as \$2 million for “negotiating real estate leases and other contracts incorporating the WCC,”¹¹⁸ and inflated and arbitrary recruiting and training costs.¹¹⁹ Finally, BNSF improperly expenses these capital costs rather than capitalizing them, thereby further pumping up the operating expenses of the WCC.¹²⁰ All of BNSF’s Training and Start-up Costs evidence must be rejected.

BNSF also asserts, with virtually no support, that the WCC should employ 35 additional non-train personnel, such as crew callers, managers, yard managers and dispatchers.¹²¹ While the parties narrowed their differences regarding train-crew personnel during the Reply and Rebuttal phases of this case, BNSF erroneously still maintains that 64 more crew positions should be filled. BNSF assertions are tied to a flawed computer model, and to overstated scheduling issues, and so therefore must be rejected.¹²² BNSF compounds the Operating Personnel costs of the WCC by making its employees some of the most expensive railroaders in the country, exceeding BNSF’s annual per employee expense by over \$ [REDACTED] based on bogus claims of rising personnel costs.¹²³

¹¹⁷ BNSF Reply Narrative at III.D-109; See TMPA at 162; WPL at 107; Xcel Rebuttal Narrative at III-G-1.

¹¹⁸ Xcel Rebuttal Narrative at III-D-70.

¹¹⁹ Id. at III-D-70 to III-D-75.

¹²⁰ Id. at III-D-77.

¹²¹ These additional non-train personnel are unnecessary. Id. at III-D-14 to III-D-21.

¹²² Id. at III-D-21 to III-D-24.

¹²³ Id. at III-D-24 to III-D-31.

Similarly, BNSF nearly triples the General & Administrative Costs of the WCC, which were developed by Xcel witness Sugar, a current railroad president and long-time railroad manager. BNSF does this by inflating the WCC's staffing requirements far beyond the needs of an efficient railroad offering only unit coal train service to a relatively small group of shippers. Rather, it proposes G&A levels typically used by Class I carriers that transport a wide variety of commodities in a variety of types of train service, and otherwise refuses to incorporate efficiencies that are easily obtainable.¹²⁴ As it did with operating personnel, BNSF grossly inflates the compensation of the WCC's G&A personnel to limits far beyond the average salary even BNSF pays its comparable employees.¹²⁵

Finally, BNSF quadruples the insurance levels Xcel has proposed for the WCC, based on undocumented, arbitrary assertions that are also inconsistent with positions taken elsewhere in BNSF's evidence. Xcel's Insurance evidence, which is based on actual insurance expense data, demonstrates the reasonableness of Xcel's conclusions and the degree to which BNSF is off base.¹²⁶

b. Maintenance of Way

BNSF has also greatly overstated the MOW costs of the WCC because BNSF refuses to recognize that the WCC can avail itself of the accepted practice of using third-party contractors for many maintenance tasks.¹²⁷ As such, BNSF overstates total normalized MOW costs by \$12.5 million, and allocates over 42% of its total MOW to spot maintenance (as opposed to Xcel's 23.5%). Xcel's

¹²⁴ Id. at III-D-34 to III-D-63.

¹²⁵ Id. at III-D-63 to III-D-68.

¹²⁶ Id. at III-D-112 to III-D-114, Table III-D-30.

¹²⁷ Xcel Rebuttal Narrative at III-D-78 to III-D-110 contains an extensive and thorough rejection of BNSF's positions on MOW.

MOW program is fully supported and based on the 15 years of MOW experience of its principal sponsor, Mr. McDonald. BNSF attempts to draw parallels between its experiences with the Orin Line, but Xcel demonstrates that the WCC will be constructed like the WRPI, which was better designed and constructed.¹²⁸ With Mr. McDonald's guidance, the WCC's MOW program is patterned after WRPI, but uses third party contractors more extensively. Xcel's MOW program is fully supported, feasible, and will provide the necessary maintenance for the WCC. The inefficiencies BNSF would introduce into the MOW component are simply not justified.

c. Locomotive Expense

Finally, BNSF has overstated by \$11.3 million the WCC's costs of leasing, maintaining and operating its locomotives in the base year 2001. This is due to several factors, including BNSF's flawed alternative operating plan, its unjustified use of a 10% spare margin, and by its use of inflated lease rates for SD40-locomotives.¹²⁹ BNSF has also inflated the WCC's locomotive costs by calculating fuel consumption based on the biased and severely flawed special study BNSF used to calculate its variable costs. Because this study has been shown to be not probative, Xcel's use of system average fuel consumption is the best evidence of record on this point.

3. Forecast of Capital Investment and Operating Expenses

In addition to trying to reduce the tonnages and revenues of the WCC and to grossly inflate its initial capital investment and operating expenses, BNSF has greatly exaggerated the extent to which the capital investment and operating expenses of the WCC would increase over the 20 year DCF period. While Xcel predicts that the capital recovery and expenses of the WCC will gradually

¹²⁸ Id. at III-D-80 to III-D-82.

¹²⁹ Id. at III-D-3 to III-D-5.

increase over the 20 year DCF period, BNSF predicts a dramatic increase. This disparity is the cumulative effect of BNSF's inflated initial operating expense and investment amounts, and its use of improper indices and inflators to forecast future trends.

a. Capital Investment

In addition to wrongfully adding the previously discussed \$43.9 million financing fee to the initial start-up investment cost of the WCC, BNSF has proposed that the capital costs of the WCC be adjusted over time using historical inflation indices rather than the DRI-WEFA forecasts for rail labor and for materials and supplies utilized by Xcel.¹³⁰ BNSF rejects the DRI-WEFA approach because it claims the Board “returned to” using the five-year historical index method in its last three major SAC cases, WPL, PPL, and TMPA.¹³¹ This statement is highly misleading. The Board did not affirmatively choose the five-year historical average over the DRI-WEFA forecast in these cases.¹³²

The DRI-WEFA forecast is a better indicator of future inflation than a historical average.¹³³ It is specifically tailored to circumstances expected in the future, while the five-year historical average only describes what has occurred in the past. BNSF has made no showing that the historical average can reliably forecast the future.

¹³⁰ Xcel originally used a June 2001 DRI-WEFA forecast in its Opening Evidence. See Xcel Opening Narrative at III-G-2. On Rebuttal, however, Xcel agreed with BNSF that the December 2002 DRI-WEFA forecast is more timely. Xcel Rebuttal Narrative at III-G-2.

¹³¹ BNSF Reply Narrative at III.G-3.

¹³² See WPL at 106; TMPA at 161, (parties agreed on what index to use). In the PPL decision, there is no mention of a capital investment inflation index.

¹³³ Xcel Rebuttal Narrative at III-G-2.

b. Operating expenses - Use of the RCAF-A

BNSF claims that the WCC will achieve zero productivity gains over the entire 20 year DCF period and therefore adjusts operating expenses using the RCAF-U. Because the WCC will in fact achieve productivity gains over the DCF period, Xcel has adjusted expenses using the RCAF-A. BNSF's statement that Xcel has not submitted any evidence demonstrating specific expected productivity gains¹³⁴ for the WCC is not true. Specifically, WCC will clearly realize productivity gains because it will increase its ton-miles over the DCF period while having the opportunity through changes in technology and railroad operating practices to lower its operating expenses.¹³⁵ Specifically, the WCC's net ton-miles are expected to increase by 26% over the twenty-year DCF model period.¹³⁶ At the same time, the WCC's operating expenses are expected to change slower than general inflation in areas such as technology as the WCC upgrades its computers and software.¹³⁷ Operating cost for locomotives will also change slower than general inflation as new units are brought into service to meet demand for transportation as the WCC's traffic volumes increase over the 20-year DCF period.¹³⁸ Locomotives in the future are expected to be more efficient, i.e., produce more

¹³⁴ BNSF Reply Narrative at III.G -1 to III.G-3.

¹³⁵ See generally, Railroad Cost Recovery Procedures, 5 I.C.C.2d 434 (1986).

¹³⁶ Xcel Opening electronic file "WCC densities.123"; Xcel Rebuttal electronic file "WCC densities.123."

¹³⁷ On page III-D-50 of its Opening Narrative, Xcel states that it included funds in its annual operating expenses for annual software upgrades. These upgrades will allow for greater computer productivity and lower operating expenses. Additionally, Xcel Rebuttal electronic workpaper "PAWNEE_OPR_EXPRESB.123," line 292, shows that the WCC will turn over its IT hardware every five (5) years, contrary to BNSF's assertions that most WCC assets will not be replaced during the 20 year DCF period. See also Xcel Rebuttal Evidence Vol. III, Workpapers, pages 5953 to 5954.

¹³⁸ See Xcel Rebuttal electronic file "Exhibit-III-H-3.123," worksheet "Operating SAC," Line 17.

horsepower for the same amounts of fuel, and therefore more productive, than their existing counterparts.¹³⁹

Improvements in MOW practices and track materials will also help drive productivity in the future. Increased track quality has a direct impact on the cost of train operations by reducing train resistance, and therefore increasing train efficiency and lowering unit transport costs.¹⁴⁰ Furthermore, continued improvements in track materials will allow for decreased costs and/or increased output.¹⁴¹ As an optimally efficient carrier, the WCC can be expected take advantage of such improvements to enable it to remain a least cost, highly efficient hypothetical stand-alone railroad.¹⁴²

V. RESPONSES TO STB'S REQUESTS FOR INFORMATION

A. Request for Information No. 1: *The support for the number used to adjust the variable cost item, Carload Handling - Other Expense (Item 2).*

The support for this item is contained in Xcel's Opening Evidence electronic file "CLAIMADJ.123." As shown in this electronic file, the adjustment factor is calculated by dividing the total costs for Adjusting and Transferring Loads by the Total Train and Yard Operations Common Costs Applicable to Carloads-Clerical.

¹³⁹ See Xcel Rebuttal Evidence Vol. III, Workpapers, page 5960.

¹⁴⁰ See Xcel Opening Evidence Vol. III, Workpapers, page 2654.

¹⁴¹ See Xcel Rebuttal Narrative III-F-108.

¹⁴² The STB's determination of railroad operating expenses in previous coal rate cases demonstrates that there is indeed productivity in unit-coal train operations. Compare WTU, (where the STB determined that the average operating cost per revenue ton-mile equaled 4.73 mills per ton-mile in 1995 dollars for a SARR), with WPL (4.35 mills per ton mile in 2000 dollars), and TMPA (approximately 3.56 mills in 2001 dollars).

B. Request for Information No. 2: *The support for the numbers used to index the variable costs to the 1st Quarter 2003.*

The support for the numbers used to index the variable costs to the 1st Quarter 2003 is contained in Xcel's Opening Evidence Vol. III, Workpapers, page 131. The referenced page contains a copy of the Association of American Railroads' All-Inclusive Index for the First Quarter 2003 as provided to the STB in its Ex Parte 290 (Sub No. 5) proceedings.

C. Request for Information No. 3: *The support for the assertion that conformity with previous cases required inclusion of other, non-routine maintenance costs in the calculations, and where you show the expenses that were added to the locomotive calculation.*

On Opening, Xcel based its locomotive maintenance costs on full-service locomotive maintenance contracts provided to Xcel in discovery.¹⁴³ The intervening TMPA decision rejected the complainant's use of full-service locomotive maintenance contracts to develop locomotive maintenance costs because these contracts only account for routine locomotive maintenance costs, and not non-routine costs such as costs due to wrecks, derailments, vandalism, abuse or running out of fuel.¹⁴⁴ Xcel's Reply Narrative at II-A-78 to II-A-80, and Xcel's Rebuttal Narrative at II-A-36, explain that Xcel's determination of locomotive maintenance costs accounted for both routine and non-routine costs.¹⁴⁵ Therefore, the expenses pointed out by BNSF in TMPA, i.e. "costs made up

¹⁴³ See Xcel Opening Narrative at page II-A-37.

¹⁴⁴ See TMPA at page 58. As to where these expenses were added to the locomotive calculation, locomotive expenses are included in URCS Table D3 Line 191 subtotal operating expenses, columns (10) and (20) for GTM and LUM, respectively.

¹⁴⁵ Only the "routine" URCS accounts are adjusted by the special study ratio. "Routine" accounts include D3L101 - Diesel Road Locomotive Repairs, D3L135 - Loco Machine Repairs, and D3L145 - Loco Damages Billed to Others (credit). Non-routine maintenance costs which are not part of normal maintenance are charged to accounts such as D3L136 - Locomotive Equipment Damaged and D3L138 - Locomotive Other Casualties and D3L158 - Clearing Wrecks which are included in the residual "other" GTM and "other" LUM costs and are not adjusted by the special study locomotive maintenance ratio.

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of wrecks, derailments, vandalism, abuse, and/or running out of fuel” are included in Xcel’s variable cost calculations at the unadjusted system average level.¹⁴⁶

D. Request for Information No. 4: *The support for the assertion that third party loading crew wage costs are included in the crew wage special study ratio that covers non-wage expenses, and specifically, where an accounting of these costs can be found within the workpapers that correspond to the ratio.*

The cost for third party loading crews is found in the Special Study, Departmental Overhead and URCS Variability Factor ratio (“Crew Wage Adjustment Factor”) contained in Column (8) of Table II-A-22 of Xcel’s Reply Evidence. The Crew Wage Adjustment Factor, which equals [REDACTED] was developed in the electronic file “Total Wages Reply.xls”, worksheet “Summary”, cell I9 by multiplying the BNSF 2001 URCS Variability Factor of 0.831 by the URCS Departmental Overhead Ratio of 1.35659, and dividing this product by the Crew Wage Special Study ratio of [REDACTED]. The Crew Wage Special Study ratio was developed in the same electronic file at worksheet “SpStudy”, cell H15, and represents the ratio of Train and Engine Salaries and Wages (that is, Annual Report Form R-1, Schedule 410, Lines 402 and 403) to Train and Engine expenses including Train and Engine Salaries and Wages, Purchased Services and General Items. The Train and Engine Purchased Services Expense includes expenses associated with third party loading crews. The Uniform System of Accounts for railroad companies provided by the STB requires that labor billed by contractors is not to be included in Salaries and Wages, but, rather, should be entered as purchased

¹⁴⁶ See Xcel Rebuttal Exhibits II-A-41 through II-A-45, (pages 5 and 6 of 12). Xcel adjusted the routine locomotive maintenance cost by first determining the ratios of locomotive maintenance contract costs to BNSF system average locomotive maintenance costs for 2001 and 2002. These ratios were developed in Xcel Reply electronic file “Loco Maint Reply.123”, worksheet “Summary”, cell D53 for year 2001 and cell D54 for year 2002, and are shown in Xcel Reply Exhibit II-A-29, Lines 11a and 11b, Column (2). Xcel used the ratios developed in “Loco Maint Reply.123” to adjust both its Reply Evidence and Rebuttal Evidence routine locomotive maintenance costs. Xcel’s adjusted routine locomotive maintenance costs can be seen in Xcel Rebuttal electronic file “vc XCEL Rebuttal.123”, worksheet “I”, cell G28, and worksheet “J”, cell G27. The adjusted costs may also be seen in Xcel Exhibit II-A-41, Page 5, Line 6d, Column (B), and Page 6, Line 8c, Column (B).

services. By including the Crew Wage Special Study Ratio in the denominator of the Crew Wage Adjustment Factor, Xcel has accounted for the third party loading crews in its Reply Crew Wage Expenses. Xcel did not also include, as BNSF did, third party loading crew expenses on a direct basis in order to avoid double counting these third party loading expenses.

- E. **Request for Information No. 5:** *The sources for the assertion that Xcel Reply page II-A-116 demonstrates the inaccuracy of BNSF's statement that "the conductor does not generally record the help on a [Train Activity Report]."*

The inaccuracy of BNSF's statement is demonstrated in Xcel's Opening workpapers at pages 437 to 439, which contains a summary of the BNSF's Train Activity Reports ("TARs") provided to Xcel in discovery.¹⁴⁷ Column (7) of this summary lists those instances when a BNSF conductor noted on the TAR that the train received helper service while transporting Xcel's coal. The helper service notes on the TARs negate BNSF's claim that its employees do not generally note when Xcel trains receive helper service.

- F. **Request for Information No. 6:** *The support for the statement that BNSF and the Lower Colorado River Authority (LCRA) have entered into a multi-year agreement to transport coal to the LCRA's Seymour plant.*

Support for this statement can be found in Xcel's Rebuttal Evidence Volume III, Workpapers, pages 5584 to 5586. Pages 5584 and 5585 contain excerpts from LCRA's 2002 Annual Report stating that LCRA has entered into a multi-year transportation agreement with "two carriers" to ship PRB coal to LCRA's Seymour plant. Page 5586 contains a page from the 2001 Energy Argus Coal Transportation Manual showing that the only two carriers that can serve the Seymour plant are UP and BNSF. These pages of the 2002 Annual Report also state that LCRA has entered into new multi-

¹⁴⁷ The TARs which contain the notations of helper service on Xcel trains can be found in Xcel's Opening Evidence, Vol. III Workpapers, pages 467, 488, 508, 527, 529, 566, and 584.

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year PRB coal supply contracts for this facility commencing in the middle of 2003. This coal will be delivered by rail.

G. Request for Information No. 7: *The evidence that confirms that LG&E is obligated to purchase an annual minimum volume of 1 million tons of PRB coal in 2004 and 2005.*

The evidence that confirms this obligation is contained in Xcel's Rebuttal Evidence Volume III, Workpapers, pages 5555 and 5556 of Xcel's Rebuttal Evidence Workpapers. [REDACTED]

[REDACTED]

[REDACTED]

H. Request for Information No. 8: *The support for development of off-line transit and unloading times.*

Xcel based its off-line transit times for trains included in its computer string-diagram model on BNSF's actual 2001 transit times and train miles for the study trains.¹⁴⁸ These off-line transit times were further supported by Xcel's Rebuttal Evidence electronic file "PEAK2020.xls," worksheet "Base Trains," Column (AR). Xcel calculated the off-line transit times in Column (AR) by dividing the round-trip off-line miles for each train by the BNSF's 2001 average loaded speed in miles per hour for that train. Round-trip off-line miles were calculated by subtracting actual BNSF loaded train miles as contained in BNSF's traffic tapes, and shown in Column (Q), from the stand-alone railroad train miles shown in Column (AA), and multiplying the resulting difference by two (2). Average loaded train speeds were calculated by dividing the actual BNSF loaded train miles in Column (Q) by the actual BNSF transit times found in Column (AP).¹⁴⁹

¹⁴⁸ Xcel Opening Narrative at III-C-11.

¹⁴⁹ Because the string-diagram model is simulating train movements in the WCC's peak operating year of 2020, some of the trains included in the electronic file "Peak2020.xls" are not actual trains that moved over the BNSF in 2001, but forecasted new trains moving on the WCC system. For such forecasted new trains, Xcel used actual train miles and transit times from existing movements between the same origin/destination pairs as surrogate for

To determine unloading times at destination, Xcel reviewed the BNSF coal transportation agreements provided in discovery for the contractually maximum unloading times for each customer. Based on this review, Xcel utilized an average unloading time of 6.0 hours in the string-diagram models.¹⁵⁰

- I. **Request for Information No. 9:** *Your evidence shows that multiple train car sets are placed at the origin mines awaiting their next load. In some cases, the train sets are forced to wait several days before loading begins. Please identify where in the record you demonstrated that the mines have the capacity to hold these trains for extended periods.*

Xcel has not demonstrated that the mines have the capacity to hold trains for the extended periods of time because such a demonstration was not necessary. The purpose of the string analysis was to demonstrate that the facilities, equipment and personnel are sufficient to handle the traffic group which Xcel demonstrated in detail. The time gaps in question are the outcome of linking real world operating conditions (i.e., actual mine departure times) with the hypothetical, optimally efficient world of the stand-alone railroad (i.e., faster trains, less congestion, less delays, etc.). Using actual departure times enabled Xcel's experts to test the feasibility of the entire WCC system by beginning each cycle based on known mine load out availability and customer demand for coal.¹⁵¹ The difference in the cycle times achieved by the WCC and BNSF (in the real world) caused this phantom problem. Stated differently, Xcel's objective was to demonstrate the feasibility of the WCC using actual dispatch times to begin each cycle. This phantom problem vanishes if actual dispatch times are

determining off-line transit times.

¹⁵⁰ Xcel Opening Narrative at III-C-11. The specific unloading times at the WCC's customer plants can be found in Xcel's Opening Evidence Vol. III, Workpapers, pages 2116, 2123, 2139, 2147, 2156, 2164, 2166, 2177, 2191, 2205, 2213, 2228, 2236, 2244, 2252, 2261, 2271, 2281, 2290, 2295, 2306, 2343, 2353, 2357, 2371, 2402, and 2409.

¹⁵¹ See Xcel Rebuttal Narrative at III-C-18. As the Board said in an analogous situation, a complainant is not allowed to "assume that connecting railroads would meet the same level of operating efficiencies." WTU at 666.

not used for every cycle (only the first cycle) or if the trains are held at destination or off-line until the next actual dispatch time, as BNSF did in its Reply Evidence. All three approaches produce exactly the same answer and none of the approaches require additional construction to hold trains at origin.

VI. CONCLUSION

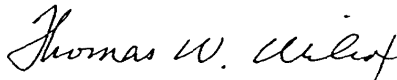
Xcel has unquestionably met its burden of demonstrating that the rates it has challenged substantially exceed the maximum reasonable rates for this movement arrived at by conducting a SAC analysis under the Guidelines and applicable agency precedent. Xcel has done so by presenting a conservative, straightforward SAC analysis that (1) involves a feasible, fully supported operating plan; (2) tonnages and revenues for its SARR that are also fully supported and consistent with prior cases; and (3) SARR construction costs and operating expenses that are fully supported and in line with recent cases involving very similar SARRs and transportation. In sharp contrast, BNSF has sought to justify the punitive rates it established for service to Pawnee Station by not only ignoring or misapplying established SAC rules, but also by trying to fundamentally change those rules so that they emphasize higher railroad revenues instead of protecting captive shippers from monopolistic pricing practices. All of BNSF's efforts must be rejected. The rates Xcel has challenged are clearly unlawful under 49 U.S.C. §10701(d)(1), and Xcel is entitled to relief in this case.

VII. PRAYER FOR RELIEF

Xcel prays for the following relief pursuant to 49 U.S.C. §10704:

- A. A finding pursuant to 49 U.S.C. §10707 that BNSF has market dominance over the transportation of PRB coal to the Pawnee Station;
- B. A finding by the Board that the rates established by BNSF in Pricing Authority No. 90043 that went into effect on January 1, 2001, and the subsequent changes to those rates, including the issuance of Pricing Authority No. 90043-A, are unlawful under 49 U.S.C. §10701(d)(1);
- C. The prescription of maximum reasonable rates for this transportation using either (1) a method that reflects the fact that the rates Xcel has challenged are not consistent with any existing pricing structure; or (2) in the alternative, as set forth in Table III-H-4 of Xcel's Rebuttal Evidence; and
- D. An award of reparations for all charges collected by BNSF in excess of the prescribed rates, including interest thereon. (See Xcel Rebuttal Evidence at III-H-8 to III-H-12).

Respectfully submitted,



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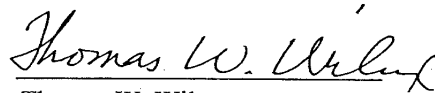
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September 8, 2003

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of September, 2003, I served a copy of the Complainant's
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