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March 8, 2004



By Hand Delivery

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

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Office of Proceedings

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Public Record

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:

Pursuant to the Board's decision served on February 17, 2004 in the captioned proceeding, The Burlington Northern and Santa Fe Railway Company submits its summary of oral argument discussion points that it proposes to address during the oral argument in this matter that the Board has scheduled for March 18, 2004.

Oral argument on behalf of BNSF will be divided between Mr. Richard E. Weicher, Vice President and Senior Regulatory Counsel for the company, and the undersigned. Mr. Weicher will use approximately eight minutes of the time allotted to BNSF for oral argument and the undersigned will use the remaining portion.

Sincerely,

A handwritten signature in black ink, appearing to read "Samuel M. Sipe, Jr.", with a stylized flourish at the end.

Samuel M. Sipe, Jr.

cc: Thomas W. Wilcox, Esq., with enclosure

**BNSF'S SUMMARY OF ORAL ARGUMENT DISCUSSION POINTS
IN DOCKET 42057**

1. This is not a case in which Board intervention is needed to correct a market failure or remedy an abuse of market power. Prior to the expiration of its contract with BNSF at the end of 2000, Xcel had successfully combined coal transportation provided by BNSF to its sole-served Pawnee plant with transportation to its Comanche plant. Xcel knowingly forsook its market leverage to pursue a regulatory windfall, passing up an offer of a new contract rate that was lower than the rate that it had been paying under the prior agreement.

2. The common carrier rate that BNSF established for the Pawnee movement when Xcel rejected the contract offer was only slightly higher than the expiring contract rate. While the challenged rate exceeds the jurisdictional threshold, this is precisely what should be expected under the demand-based pricing principles adopted in the *Coal Rate Guidelines*. Xcel's demand for coal transportation to the Pawnee plant, standing alone, is highly inelastic, a fact that Xcel does not contest. BNSF must be able to charge demand inelastic customers such as Xcel at Pawnee rates substantially in excess of the jurisdictional threshold if it is to have any prospect of earning revenues sufficient to cover its full costs. Establishing a maximum rate for the Pawnee movement at a level anywhere near that which Xcel seeks would be an indefensible repudiation of differential pricing.

3. The Board must implement the SAC test so as to give effect to the statutory requirement that the Board recognize the policy "that rail carriers shall earn adequate revenues" in determining the reasonableness of rates in individual cases. In this case, the Board must ask whether Xcel's extreme reliance on cross-over traffic is consistent with the economic principles underlying CMP and SAC. BNSF has presented substantial evidence that such extensive use of cross-over traffic violates the cost-causality principle underlying the SAC test because it

precludes a full comparison of revenues and costs. Where complainants rely as heavily on cross-over traffic as Xcel has here, the outcome of the case is effectively determined not by a comparison of revenues and costs but by an arbitrary allocation of revenues.

4. If the Board permits cross-over traffic here, it must accept evidence on revenue allocation that minimizes the potential distortion in the outcome of the SAC test. BNSF's Density Adjusted Revenue Allocation procedure (DARA) is the best evidence of record as to revenue allocation because it more precisely takes account of relative costs of on-SARR and off-SARR segments. (a) DARA explicitly distinguishes between attributable and unattributable costs to implement the Board's instruction in *TMPA* that "[t]he revenue each carrier receives should cover the attributable costs of the service it provides and make some contribution to its unattributable costs." Neither MMP nor MSP explicitly ensures coverage of attributable costs. (b) DARA allocates revenue sufficient to cover directly attributable costs by calculating URCS based variable costs, which is a more precise way of accounting for the costs of originating and terminating unit coal train traffic than the 100 mile origination and termination block credit used in MMP and MSP. (c) DARA takes account of economies of density (which MSP and MMP ignore) by allocating the revenue available to cover unattributable costs in inverse proportion to relative densities on the on-SARR and off-SARR segments.

(5) The Board should exclude from Xcel's SAC traffic group tons and revenues associated with coal moving to Western Resource's Jeffrey plant. In the real world, the Jeffrey traffic does not move over the route replicated by the SARR. Xcel's effort to have the Jeffrey traffic help pay for facilities that it does not use violates SAC principles. Moreover, the rerouted Jeffrey service that Xcel would provide over the SARR is inferior to that which Western actually receives from BNSF. Xcel's SARR reroute is longer, less efficient, and more congested than

BNSF's real world route for the Jeffrey movement. Xcel's own opening evidence showed longer transit times on the rerouted Jeffrey traffic than the real world transit times on BNSF. Xcel's revised transit times in its rebuttal evidence are entitled to no weight because they are a product of Xcel's flawed string program.

6. The significant defects in Xcel's string program mean that both Xcel's capacity assumptions and its operating statistics are unreliable and must therefore be rejected. Among other flaws, Xcel failed to model the SARR's peak traffic period with its string program. The string program does not match terminating empty movements at the mines with originating loads and consequently understates both capacity needs and cycle times. And the string program is an unreliable tool for testing capacity requirements because it fails to detect overloaded sidings and overcrowded yards. In this case, as in previous cases, every time the shipper claims to correct admitted errors with the string program (as in Xcel's rebuttal evidence), new ones appear. In contrast, BNSF's capacity assumptions and many of its operating statistics were developed through the Rail Traffic Controller model, a software tool that is widely used in real world applications and not made for litigation like the string program.

7. Specific issues as to operating costs and construction costs are too numerous to be addressed in detail at the oral argument. In general, Xcel's evidence in both areas is superficial, unsubstantiated and result oriented. BNSF has provided detailed support for its operating and construction costs, relying on neutral sources and information generated in the ordinary course of business. When assessed in accordance with the evidentiary considerations set out in the Board's *Duke/CSX* decision, the quality of BNSF's operating and construction cost evidence is consistently superior to that filed by Xcel, notwithstanding the fact that Xcel attempted to bolster its evidence on rebuttal.