

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.

211605

Docket No. 42057

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REPLY OF THE BURLINGTON NORTHERN AND SANTA FE RAILWAY
COMPANY TO COMPLAINANT'S PETITION FOR RECONSIDERATION

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PREFACE AND SUMMARY OF ARGUMENT

In a decision served June 8, 2004 (“June 8 Decision”), the Board found that transportation rates charged by The Burlington Northern and Santa Fe Railway Company (“BNSF”) for movements of PRB coal to the Public Service Company of Colorado d/b/a Xcel Energy (“Xcel”) Pawnee plant exceeded a reasonable maximum rate. In a petition filed June 28, 2004, Xcel requested that the Board reconsider various aspects of the June 8 Decision, claiming that the Board made numerous errors in its analysis that resulted in prescribed rates that are too high.

As evidence that the prescribed rates are too high, Xcel points to the fact that the prescribed rates generate revenues that are about 250 percent of variable costs and that the prescribed rates exceed the rates charged to other BNSF shippers. Petition at 2. This argument, however, ignores the differential pricing and revenue adequacy principles that lie at the heart of Constrained Market Pricing. Shippers with the highest demand are supposed to pay the proportionately highest rates. In fact, as BNSF explained in its Petition for Reconsideration, it is clear that the maximum reasonable rates established by the Board in the June 8 Decision are too *low* because they produce R/VC ratios that are significantly below the RSAM level, notwithstanding Xcel’s highly inelastic demand. The R/VC ratio produced by the Board’s prescribed rates would be even lower if the Board had correctly calculated variable costs. If BNSF is not allowed to charge rates that produce an R/VC ratio at least equivalent to the RSAM to a highly demand-inelastic shipper like Xcel, then the Board will have frustrated the statutory revenue adequacy requirement and the expectations of the *Coal Rate Guidelines* that the Board’s maximum reasonable rate standards would allow rail carriers to achieve revenue adequacy through a regime of differential pricing.

In any case, there is no need for the Board to further lower the prescribed rate in response to Xcel's petition for reconsideration. Each of Xcel's claims of error is without merit:

Rejection of Xcel Operating Plan: The Board rejected Xcel's operating plan because it was based on a demonstrably unreliable string program analysis and because Xcel's operating assumptions, particularly at the mines, would produce gridlock and impossible operating conditions. The record evidence fully supports the Board's conclusion that Xcel's operating plan was infeasible.

Exclusion of Seymour and Ghent Movements: The Board properly excluded Seymour and Ghent movements from the SARR traffic group after 2003 because doing so was consistent with the BNSF traffic forecasts that both Xcel and BNSF used for traffic decisions regarding other plants. No record evidence supports the conclusion that the SARR could serve these plants after 2003.

Use of RCAF-U to Index Operating Costs: The Board adhered to its traditional approach of indexing operating costs by the RCAF-U. In doing so, the Board properly relied on the best evidence in the record as Xcel presented no viable alternative approach.

Locomotive Requirements: The Board required the SARR to have sufficient locomotives to meet the needs of shippers during peak periods. Xcel claimed that it should not be required to lease that many locomotives on an ongoing basis, but provided no evidence whatsoever about the feasibility or cost of any other approach. The Board's conclusions in this area were appropriate and fully supported.

Locomotive Fuel Consumption: The Board properly relied upon real-world fuel-consumption evidence submitted by BNSF. That evidence accurately reflects the fuel-

consumption rates that the SARR would likely experience and is consistent with the approach to modeling the operation of SARR locomotives followed by both parties.

Updating: Xcel accuses the Board of selectively updating some data used in calculations for the June 8 Decision and argues that the appropriate cure is to engage in further selective updating that would bias the results in Xcel's favor. But Xcel objected when the Board previously sought to update the record in the area of traffic and revenues, where the updated information would likely have had an impact on SAC results that was unfavorable to Xcel. Xcel cannot have it both ways. The Board declined to update traffic and revenue data in light of Xcel's objections, and the Board should also decline to update the record now. Piecemeal updating of the record is certain to skew the SAC results and may introduce new errors into the SAC calculations.

Escalation of Challenged Rates: The Board properly adopted the escalation assumptions for the issue traffic rates agreed to by the parties. Those assumptions were fully supported by the record and there is no reason to change them now.

Variable Costs: Xcel raises four supposed errors in the Board's variable cost calculations. Even if Xcel were correct in its contentions, correcting these errors would have no impact at all on the Board's maximum reasonable rate determinations or its jurisdictional findings. The supposed errors therefore cannot be considered material and are not the proper subject for a petition for reconsideration. In any case, as explained in detail in the following Reply, Xcel is simply incorrect in its assertions of error.

ARGUMENT

On June 23, 2004, complainant Public Service Company of Colorado d/b/a Xcel Energy (“Xcel”) filed a petition requesting that the Board reconsider its treatment of various issues in the decision issued in this proceeding on June 8, 2004 (“June 8 Decision”). This filing contains the reply of The Burlington Northern and Santa Fe Railway Company (“BNSF”) to Xcel’s petition. BNSF’s arguments are summarized above in the separate Preface and Summary of Argument required by the Board’s rules and are described in more detail below.

I. THE BOARD PROPERLY REJECTED XCEL’S OPERATING PLAN

Xcel argues that the Board erred in rejecting Xcel’s operating plan. Xcel claims that the “many similarities between the hypothetical WCC and BNSF’s actual PRB coal operations” such as train size, crew size and locomotive consists should have led the Board to conclude that Xcel’s operating plan was feasible. Petition at 5. But the Board’s rejection of Xcel’s operating plan was based on Xcel’s failure to present a credible model of the WCC’s operations. Even if some of Xcel’s underlying train characteristics were appropriate, the model Xcel used to simulate the operations of those trains was fatally flawed. Since Xcel’s operating model produced the statistics on which operating costs and capacity requirements are based, Xcel’s failure to present a valid operating model required rejection of Xcel’s operating evidence in its entirety.

In its decision, the Board recognized that Xcel depended exclusively upon its string program model “to develop its operating plan and system design.” June 8 Decision at 24. The Board further noted that “the output of the string program is the foundation for Xcel’s operating

costs.” *Id.* at 26. The record contains voluminous evidence of the defects in the string program.¹

Specifically, in rejecting Xcel’s string program evidence, the Board noted that:

- Xcel’s operating statistics varied widely with each new variation of the string program; *Id.* at 24-25;
- Xcel’s string program improperly modeled train speeds that were too fast and resulted in hundreds of train wrecks; *Id.* at 24;
- Xcel’s rebuttal evidence introduced new errors into the string analysis by ignoring grades and curves; *Id.*;
- Xcel’s model assumed that SARR trains would spend extended and widely varying periods of time at the mines and it ignored any additional capacity that would be required as a result of the extended dwell times; *Id.* at 25;
- Xcel assumed that too many SARR trains would be at individual mines at the same time, and assumed that “trains would not arrive in the proper order for loading, so that trains would somehow have to be shifted around each other to match the outbound departures;” *Id.* at 25-26;
- The same string model has been presented in several rate cases and in each instance defendants have demonstrated that the results of the model were flawed; *Id.* at 26;
- Xcel’s *errata* filed after its rebuttal would have required the Board to “manipulate the program to obtain reliable results when its proponents have repeatedly failed to do so;” *Id.* at 27.

On the basis of the record evidence, the Board declined to accept the results of the string program, “[g]iven its proven unreliability, as shown in both this case and prior SAC cases.” June 8 Decision at 27.

Xcel takes issue with two specific findings by the Board as to the infeasibility of Xcel’s operating model, which Xcel mischaracterizes as the only grounds on which the Board rejected its operating plan. Specifically, Xcel takes issue with the Board’s conclusion that grades and

¹ BNSF Motion for Summary Disposition and Stay, at 8-18 and Verified Statement of Robert J. Plum and Karl M. Leopold (both filed Feb. 6, 2003); BNSF Rep. Nar. at III.B-8 to 20, III.C-14 to 18; Surrebuttal Verified Statement of Karl M. Leopold and Terrence J. Monks (filed June 6, 2003).

curves on the WCC were ignored by Xcel's model and with the Board's conclusion that Xcel improperly ignored capacity requirements for trains assumed to dwell at the mines while waiting to be loaded. But Xcel's petition ignores the Board's basic rationale for rejecting Xcel's operating plan – that operating statistics produced by an unreliable model are themselves unreliable and cannot be used in the SAC analysis – as well as the overwhelming evidence in the record on numerous other deficiencies in Xcel's string program. In any event, the Board's conclusions on the two issues addressed in Xcel's petition are fully supported.

As to grades and curves, Xcel makes the novel argument that the modeling of grades and curves simply does not matter: “a computer model without grade and curve data (or any of the other resistance elements) can still be used to accurately demonstrate the feasibility of a stand-alone railroad.” Xcel Petition at 8. Apparently, in Xcel's view, as long as a program generates some type of output that can be labeled “transit time,” it does not matter how that time is calculated, whether that time is understated or overstated, or whether the transit times bear any relationship to reality. But the transit times assumed by the model are the predicate for the modeled train operations and the transit time assumptions are critical in assessing SARR capacity and equipment requirements. A model that produces unrealistic and inaccurate transit times produces unrealistic and inaccurate operating statistics. The Board, recognizing that the string program produces unrealistic transit times by ignoring grades and curves, properly found that Xcel's operating assumptions were not supported.

Xcel also argues that the Board erred by concluding that Xcel's operating plan assumed extended dwell times at the mines without accounting for those dwell times in the operating statistics and without accounting for the capacity that would be required to hold trains waiting to be loaded. Once again, Xcel makes a novel argument -- that the extended dwell times in its

operating plan are actually a reflection of the efficiencies achieved by the SARR. According to Xcel, WCC trains operate faster than real world trains (an assumption undermined by the problems with the string program's transit time assumptions, discussed above). Because of the faster transit times, the WCC trains return to the mines for loading before their real world counterparts, thus creating a dwell time at the mine before the next train departs. Since the extended dwells are supposedly associated with the efficiency of SARR operations, the SARR should not be responsible for any additional costs associated with the extended dwells.

Xcel's argument suffers from many flaws. First, the Board's concern went beyond the fact that Xcel's model assumed extended dwell times at the mines. The Board focused on Xcel's complete failure to address the difficult logistics associated with the staging of empty trains in the congested mine loading areas. The Board correctly concluded that Xcel's plan would lead to "massive congestion and gridlock" in the mine loading areas and would produce "a logistical nightmare, if not an impossibility." June 8 decision at 26.

Second, if Xcel were correct that the extended dwell times were the product of increased efficiencies, the dwell times would not be as large as they were in Xcel's model and there would not be such a wide range of dwell times associated with individual trains. The Board noted that arriving trains are assumed to wait at the mines "between 22.2 and 118.8 hours." June 8 decision at 25-26. Small improvements in on-SARR transit times could not possibly account for these enormous dwell time assumptions. In any event, even if the additional dwell times were in part the product of somewhat faster on-SARR transit times, someone must be responsible for the costs associated with the dwell times that result from those faster train operations and it would be inappropriate to impose those additional costs on the residual incumbent.

Most important, the additional dwell times are not, in fact, the result of supposed efficiencies achieved by the SARR but rather are the product of shoddy and inappropriate modeling assumptions. Xcel did not model unit train operations or follow a given unit train through a complete cycle on the SARR. Instead, Xcel split the on-SARR movement of all of its trains into two independent segments – the movement of a loaded train from the mine to the off-SARR junction, and the movement of an empty train from the on-SARR junction to the mine. The two segments were never linked. In this way, Xcel was able to ignore completely any requirements associated with staging trains into the crowded PRB mines. In Xcel’s hypothetical world, trains never had to wait in a WCC yard for a mine loading slot to become available. By ignoring any link between a train returning empty to a mine and the loaded train that it would eventually become, Xcel’s operating model effectively assumed that returning trains moved straight to the mines where they disappeared. The Board properly found that this assumption was unsupportable and inappropriate. Such an assumption has nothing to do with efficiencies achieved by the SARR. The Board correctly found that Xcel’s faulty modeling approach produced SAC calculations that ignored capacity requirements for mine operations.

II. THE BOARD’S DECISION TO EXCLUDE THE SEYMOUR AND GHENT MOVEMENTS FROM THE WCC SHIPPER GROUP POST-2003 IS PROPER

Xcel also requests the Board to reconsider its decision to exclude from the WCC traffic group the movements to Lower Colorado River Authority’s (“LCRA”) Seymour plant and LG&E Energy’s (“LG&E”) Ghent plant subsequent to 2003. The Board should reject Xcel’s request. The Board’s decision to exclude those movements beginning in 2004 was fully supported by evidence in the record and consistent with SAC precedent.

Both Xcel and BNSF agreed to use BNSF's internal O/D forecast prepared in the ordinary course of business to project volumes to plants other than Xcel plants in the year 2004.² This BNSF forecast did not include any volumes for the Seymour and Ghent plants in 2004. Xcel argued that BNSF's forecast was wrong as to these two plants and it pointed to the Seymour and Ghent contracts produced by BNSF as supposedly demonstrating that those movements would continue beyond 2003.³ But BNSF explained in reply that the contracts did not support any deviation from the BNSF internal forecast. The Seymour contract expired in 2003 and thus did not support Xcel's conclusion that BNSF will continue to transport volumes to that plant beyond 2003.⁴ The other contract cited by Xcel did not even relate to the Ghent plant.⁵ Xcel presented (improperly) additional information on rebuttal to support its deviation from the BNSF internal forecast, but BNSF demonstrated in the final brief that this new information did not support Xcel's claim that BNSF's internal forecast was wrong.⁶

The Board properly excluded the Seymour and Ghent movements from the WCC traffic group subsequent to 2003, explaining that "BNSF's 2004 forecast, which the parties have generally agreed to use to forecast tonnage," reflects no tonnage moving to those plants in 2004. June 8 Decision at 52. Xcel has presented no valid arguments for reconsidering this decision. Xcel's primary argument is that "there is insufficient evidence in the record of this case to overcome the general presumption that such traffic will continue to be available in 2004 and beyond." Petition at 9. But Xcel mischaracterizes the supposed "presumption" about future

² Xcel Opening Nar. at III-A-8 to 9; BNSF Reply Nar. at III.A-29.

³ Xcel Opening Nar. at III-A-9, item 5.

⁴ BNSF Reply Nar. at III.A-33 to 34.

⁵ *Id.* at III.A-34.

⁶ BNSF Brief at 12-13 and n.5.

traffic volumes that the Board discussed in *WTU*. There, and in subsequent cases, the Board has generally assumed that, in the absence of any evidence to the contrary, the SARR will continue to handle an existing movement after the expiration of the current contract. But here there was ample evidence in the record in this case demonstrating that the movements in question would not continue. The BNSF 2004 internal forecast prepared in the ordinary course of business – Xcel’s own source for projecting tonnage volumes in that year – showed no volumes transported to those plants in 2004. Xcel presented no plausible reason to question this evidence.

Xcel’s next argument – that BNSF’s 2004 internal forecast is “unreliable,” *id.* – is nonsensical. This is the very forecast that Xcel itself chose to use to project volumes in 2004 to non-Xcel plants in the WCC shipper-group. Finally, Xcel asks the Board once again to consider the improper evidence that it submitted on rebuttal. Petition at 9, 10. But Xcel provides no reason whatsoever for the Board to reverse the conclusion that it already reached that the evidence does not support a deviation from BNSF’s business forecast. June 8 Decision at 52.

III. USE OF THE RCAF-U TO INDEX OPERATING EXPENSES WAS PROPER

Xcel argues that the Board was wrong to use the RCAF-U to project increases in operating expenses over time because that index does not reflect supposed productivity gains the SARR would achieve over time. Xcel does not argue that the Board erred by rejecting the two alternatives to the RCAF-U that Xcel presented in its post-argument briefs. In fact, the Board presented a clear and detailed explanation in the June 8 Decision of the grounds for rejecting the alternative inflation indices presented by Xcel. Instead, Xcel argues that the Board erred because it did not, on its own, come up with an alternative to the RCAF-U that would reflect the productivity gains that a SARR could expect to achieve.

It was Xcel’s burden to come up with evidence demonstrating the extent to which a SARR could expect to achieve productivity gains. Xcel failed to present any competent

evidence on this issue. The Board should not make up for deficiencies in the complainant's evidence. The Board has made it clear that it looks to the parties to present competent, reliable evidence on the issue of a proper inflation index.⁷ The record evidence would not justify the Board's departure from the index it has traditionally accepted for this purpose, the RCAF-U.

IV. THE BOARD DID NOT ERR IN ITS TREATMENT OF WCC LOCOMOTIVE REQUIREMENTS

Xcel asks the Board to reconsider its approach to determining whether the SARR has sufficient locomotives to meet its peak requirements. Xcel claims that it is irrational and inefficient to require the SARR to establish a fleet of locomotives based on the traffic requirements of the peak period during the year because locomotives would be idle at periods other than the peak. Instead, Xcel argues that a SARR should be required to "acquire enough equipment to meet their average or normal needs and then acquire additional equipment (e.g., through short term leases) to meet their peak period needs." Petition at 12.

Xcel's argument presumes that the SARR's peak periods occur infrequently. But Xcel overstates the uniqueness of the modeled peak period and the supposed underutilization of locomotives. Peaks occur throughout the year at irregular and unpredictable intervals. Accordingly, there would be many instances during the year, at unpredictable times, when the SARR would need far more than the average number of locomotives to serve shipper needs.

Given the unpredictability of traffic flows, it would be impossible to make short-term arrangements that perfectly matched peak period needs even if short-term arrangements could be made. More important, however, there is absolutely no evidence in the record concerning either the feasibility or the cost of making short-term arrangements for locomotives needed to satisfy

⁷ See, e.g., *Public Service Company of Colorado v. The Burlington Northern and Santa Fe Railway Co.*, STB Docket No. 42057, at 1 (served Mar. 18, 2004)(ordering post-argument briefs).

peak period needs as they arise. Short-term lease, if they were available, would certainly be more costly than long-term leases that are used to make the SAC locomotive.⁸

Xcel also argues that the Board's treatment of locomotive peaking requirements is inconsistent with the Board's analysis of crew requirements. While BNSF does not agree with the Board's crew analysis, which assumes hyper-efficient use of crews and a complete absence of real-world complications, crews clearly are not the same as locomotives. Under the Board's and Xcel's own assumptions, crews have a built-in spare margin/peaking factor because they work 270 shifts spread across 365 days. It might be possible to satisfy the SARR's peak crew requirements if one were to assume that all crew personnel were available to work during peak periods. Xcel's locomotive proposal, however, would leave the SARR with more trains than locomotives during peak periods.

V. THE BOARD DID NOT ERR IN ITS TREATMENT OF WCC FUEL REQUIREMENTS

Xcel argues that the Board erred in relying on BNSF's study of locomotive fuel consumption on Xcel trains for purposes of determining WCC fuel consumption. Xcel claims that BNSF's fuel study reflects "real world operating inefficiencies" that should not be attributed to the SARR. Petition at 13. Specifically, Xcel claims that BNSF's operating practice of occasionally using all three locomotives on portions of the empty movement from Pawnee back to the PRB is inefficient. In effect, Xcel's argument is that the WCC could provide the same level of service as the incumbent using less tractive power, and therefore less fuel, than the incumbent. There is no evidence in the record to support this assertion.

⁸ Xcel proposes a new peaking factor calculation in a footnote. Petition at 13 n.4. This peaking factor is invalid because it is premised on an unsubstantiated ability to engage in short-term leasing.

BNSF explained on rebuttal that its engineers are instructed to isolate the third locomotive on empty trains traveling between Pawnee and Alliance or Guernsey whenever it is operationally feasible to do so. BNSF Reb. Nar. at II-48. When a locomotive is isolated, it is not contributing tractive power and therefore is burning less fuel. However, BNSF also explained that there may be circumstances in which a locomotive cannot be isolated, including adverse weather or congestion on the line. *Id.* Real world operating conditions do not permit the isolation of the third locomotive on all returning trains at all times. The Board accepted BNSF's evidence and concluded that Xcel's claim that BNSF could have isolated additional locomotives on the empty return trip from Pawnee was "purely hypothetical." June 8 Decision at 138. Xcel offers nothing new in its petition to suggest that its SARR, which handles traffic volumes comparable to those handled by BNSF using the same lines as BNSF, would be able to operate as efficiently as BNSF with less tractive power.

Moreover, Xcel's assertion that BNSF's current practice is inefficient is inconsistent with both parties' operating plans. Neither party in this case designed an operating plan for the WCC that provided for consistent isolation of one of the three locomotives on empty SARR trains. Both the RTC model and the string program assumed that all locomotives would contribute power throughout the on-SARR movement. Xcel's claim that it would not need the power contributed by the third locomotive because its cycle times are already faster than the incumbent's cycle times begs the question whether the isolation of the third locomotive would result in a serious deterioration of the SARR cycle times. There is no evidence in the record

demonstrating that the SARR could meet the incumbent's existing service levels with less tractive power, or indeed under any circumstances.⁹

VI. THE BOARD SHOULD NOT ENGAGE IN PIECEMEAL UPDATING OF THE RECORD

Xcel claims that it is improper for the Board selectively to update only certain elements of the DCF model, such as the Board's decision to apply a 2004 EIA Aggregate PRB tonnage and rate forecast.¹⁰ Instead, Xcel asks that the Board engage in a more widespread updating of the record and proposes three specific updates that the Board should make in the areas of cost of capital and inflation.

BNSF agrees with Xcel that the selective updating of the record by the Board is inappropriate. But for several reasons, the answer is not to *expand* the Board's selective updating of the record but rather to limit the Board's decision to data that the parties have sponsored. First, use of extra-record evidence introduces errors and complications in SAC calculations that are already difficult. The fact that the updating only involves the application of an established index does not ensure that the updating process will be free from error. For example, in the area of road property inflation the Board adopted Xcel's methodology for indexing road property assets based on a forecast prepared by Global Insight. June 8 Decision at 34. BNSF had proposed that the Board use a five-year historical average. To implement Xcel's proposed use of the Global Insight forecast, the Board used BNSF's reply workpaper

⁹ There is no evidence in the record that the WCC cycle times are superior to the real world cycle times even without isolating the third locomotive. The WCC cycle times on which the Board relied were generated by BNSF's RTC simulations which did not include Jeffrey traffic. There is no evidence in the record on the WCC cycle times that would be achieved if the Jeffrey traffic was included. BNSF explained in its petition for reconsideration that the lack of any such evidence in the record should have resulted in the exclusion of the Jeffrey traffic.

¹⁰ The STB's "update" of the EIA rate forecast was not, in fact, an update. Rather, it was an adoption of an entirely new forecast methodology that neither party proposed.

"BNSF.RP.WP.III-A-00218 (see file "FOIA DCF 42057, 5-18.123", tab "Inflation Index", cells C70:K88), which included the Global Insights forecast. However, for the Materials and Supplies index for the years 2005 through 2020, the Board erred in using index values that are higher than those forecast by Global Insight, thereby overstating the applicable DCF inflation.¹¹ Errors of this type would become even more prevalent if the Board sought to update the SAC calculations with data not already in the record.

Finally, it would be unfair and inappropriate to update the record in a piecemeal manner as proposed by Xcel. While Xcel asks the Board to update inflation and cost of capital indexes, which would increase the apparent SAC revenue overcharge, it resisted the Board's prior request to update the record in the area of traffic and revenue, which would have reduced the revenue overcharge. Public information shows that BNSF's coal traffic volumes in 2003 were substantially below expectations.¹² But when the Board proposed that the record be supplemented on this issue to allow actual 2003 market data to be used in the SAC calculations, Xcel objected and the Board withdrew its request.¹³ Xcel cannot have it both ways. It cannot

¹¹ BNSF discovered this additional technical error in responding to Xcel's petition for reconsideration and hereby requests that the Board correct this error when it issues its decision on reconsideration. BNSF also discovered, in the course of responding to Xcel's "update" request, that the DCF analysis used by the Board does not include any asset inflation in the "Replacement" worksheet used to calculate the present value of the future replacement of assets. Both errors, and the corrections to them, are set out in Attachment 1 to this Reply.

¹² According to BNSF's 2003 Investor Report, at 13, BNSF's coal volumes fell by nearly 4% (2,133 to 2,097 cars) from 2001 to 2003. This compares to the WCC forecast adopted by the Board that projected coal volumes to rise by 14.4% over the same period. *See* http://www.bnsf.com/investors/assets/pdf/4Q_2003_Investors_Report.pdf; STB electronic workpaper "FOIA Tons & Revenues 42057, 5-18.xls," worksheet "BNSF Quantity."

¹³ *See Public Service Company of Colorado v. The Burlington Northern and Santa Fe Railway Co.*, STB Docket No. 42057, at 1 (served Feb. 17, 2004)(requesting updated traffic data) and *Public Service Company of Colorado v. The Burlington Northern and Santa Fe Railway Co.*, STB Docket No. 42057, at 1 (served Mar. 1, 2004)(withdrawing request for updated traffic data).

request an updating of the record when the updating would skew the SAC results in its favor but resist updating when the results would be unfavorable.

The Board should adhere to the record that was developed by the parties. If conditions change in the future, the Board's reopening rules provide a mechanism to identify the impact of those changes on the SAC calculations in their totality without focusing on individual changes in market conditions that distort the SAC results.

VII. THE BOARD PROPERLY PROJECTED THE CHALLENGED RATE LEVEL FOR THE PAWNEE PLANT

Xcel argues that the Board improperly assumed that the challenged common carrier rates would be escalated at a rate of "100% of the change in the RCAF-U." Petition at 16. Xcel's argument is surprising given that the Board simply adopted the methodology proposed by both parties for projecting future Pawnee rates. As BNSF explained in its reply, "Xcel projects annual revenues for the Pawnee movement from 2004 through 2020 based upon 100 percent of the forecasted change in the RCAF-U index. BNSF accepts Xcel's methodology for calculating revenues for the Pawnee Station traffic."¹⁴ Indeed, the assumption that issue traffic rates would escalate consistent with the RCAF-U is fully supported by the record. The common carrier pricing authority established by BNSF for the Pawnee movement effective January 2001 contained a rate escalation provision specifying that the rate would increase on a quarterly basis to reflect changes in the RCAF-U.¹⁵ The record further shows that the changes in the issue traffic rates approximated the changes in the RCAF-U.¹⁶

¹⁴ BNSF Reply Nar. at III.A-49.

¹⁵ Xcel Opening Exh. I-4.

¹⁶ Xcel Rebuttal electronic workpaper "Rebuttal Reparations.123;" BNSF.RP.WP.III.A-00217.

There was never a dispute between the parties as to the escalation to be applied to the issue traffic rate. Xcel confirmed in its rebuttal evidence that “Xcel and BNSF are now in agreement with respect to WCC revenues from single-line traffic;” that is, the Pawnee Station traffic.¹⁷ The rate assumed by the Board for the issue traffic in 2004 – \$9.36 per ton – is identical to that assumed by Xcel and BNSF in their evidence.¹⁸ Since the Board simply adopted the parties’ agreed upon methodology for escalating rates for the Pawnee movement, *i.e.* that the rates will change annually based upon 100 percent of the change in the RCAF-U index, the Board should reject Xcel’s argument for reconsidering this aspect of its decision.

VIII. VARIABLE COST ISSUES

Xcel seeks reconsideration of several variable cost issues. However, the Board’s variable cost determination in this case had no effect on the Board’s rate reasonableness determination, which was based entirely on the SAC analysis. In addition, even if the Board accepted Xcel’s proposed corrections to the supposed errors in the variable cost calculation, there would be no change at all in the Board’s jurisdictional findings or in its rate reasonableness determination. Nothing turns on the purported errors that Xcel identified in its petition. Accordingly, the Board should reject Xcel’s request that the Board reconsider its variable cost calculations. The supposed errors Xcel has identified are not “material error,” and therefore Xcel has not satisfied the requirements for reconsideration under 49 CFR §1115.3(b)(2).

In the event the Board does not reject Xcel’s request to reconsider variable cost issues, BNSF addresses below the merits of each of Xcel’s claims of error.

¹⁷ Xcel Reb. Nar. at III-A-55.

¹⁸ Compare STB electronic workpaper “FOIA Tons & Revenues 42057, 5-18.xls,” worksheet “BNSF Price,” cell J150, with Xcel Rebuttal electronic workpaper “WCC Traffic_XcelRebuttal.xls,” worksheet “ProjTonRev,” and BNSF Reply electronic workpaper “WCC Traffic_BNSFReply.xls,” worksheet “ProjTonRev.” The revenue projections by the Board and the parties did not distinguish between rates for aluminum and steel cars.

A. Locomotive Capital Costs

Xcel identifies two purported errors in the Board's calculation of locomotive capital costs. First, Xcel claims that the Board erred by using locomotive capital costs only for SD70MACs, even though other locomotive types were used in Xcel service. In fact, the Board's calculation of locomotive capital costs includes non-SD70MAC units. As to locomotives owned by BNSF, the Board used BNSF's ownership costs, which are based on the specific units used in Xcel service.¹⁹ The Board's decision mistakenly characterized BNSF's ownership costs as being based solely on SD70MAC locomotives. June 8 Decision at 141. As to locomotives leased by BNSF, the Board used Xcel's lease costs, which are based on the types of units used in Xcel service.²⁰

Second, Xcel claims that inclusion of non-utilized time in the locomotive spare-margin factor is at odds with precedent. Xcel mischaracterizes the relevant case law. In *APL*, which Xcel ignores, the ICC specifically acknowledged that non-utilized time is properly included in the locomotive spare margin.²¹ In *OPPD*, the Board defined spare margin as "the extent to which engines are out of dedicated service."²² Xcel's reliance on *WTU* is misplaced since that case addressed the spare margin to be used for purposes of SAC costs, where actual, real world costs are not necessarily applied. Moreover, the Board's concern in *WTU* was that the spare margin that the defendant proposed for the SARR included times that were already accounted for in locomotive cycle times, such as delays for loading at the mines.²³ BNSF's spare-margin

¹⁹ June 8 Decision at 141 - 42; BNSF Rebuttal electronic workpaper "Locos-Xcel Matchup Rebuttal.xls."

²⁰ *Id.* at 142. Xcel Rebuttal electronic workpaper "Loco Capital Reply.123."

²¹ *Arkansas Power & Light Co. v. BN R. Co.*, 3 I.C.C.2d 757, 793, (1987).

²² *Omaha Public Power Dist. v. BN R. Co.*, 3 I.C.C.2d 123, 152 (1987).

²³ *WTU*, 1 S.T.B. at 690.

evidence in this case does not double-count time that is already included in the locomotive cycle times. *See* BNSF Opening Nar. at II-67.

Xcel also claims that BNSF's spare-margin evidence is based on data that are incomplete and unreliable. But as BNSF explained in the evidence below, the spare-margin data BNSF used to develop unutilized time are data maintained by BNSF in the ordinary course of business and are relied upon by BNSF in determining its locomotive needs. BNSF Reb. Nar. at 68-69. Xcel is simply wrong when it claims that BNSF relied on data for only a single month. BNSF's spare-margin calculations took account of specific data from each month of the entire 18-month study period.²⁴ Certain data for the month of June 2002 were used for the sole purpose of identifying the percentage of unutilized time attributable to fueling/sanding/servicing so that an appropriate reduction could be made to the spare margin to avoid a potential double-count of the time associated with those locomotive activities. BNSF Reply Nar. at II-34.

Finally, Xcel claims that BNSF's spare-margin evidence should have been rejected because it is based on BNSF's experience with the entire Alliance Pool and does not account for the specific characteristics of the issue traffic, such as its length of haul. But the spare margin necessarily is based on the experience of an entire pool of locomotives, not the experience of a particular movement. The spare margin is used to identify the ownership costs associated with managing the pool of locomotives from which the locomotives used in the issue traffic service are drawn. In any event, the amount of the total spare margin of the Alliance Pool that is attributed to individual movements does in fact take account of the characteristics of the movement. For example, a movement like Xcel's with a relatively short cycle time will be

²⁴ BNSF.RP.WP.II.A-0024 and BNSF Reply electronic workpaper "loco spare margin_reply.xls."

allocated a relatively smaller portion of the Alliance Pool's spare margin because the spare-margin factor is applied as a percentage to the cycle time.

B. Locomotive Fuel Consumption Study

Xcel asks the Board to reconsider its use of the results of a fuel study carried out on the trains used to provide issue traffic service in calculating variable fuel costs. First, Xcel complains that the Board improperly used data relating to fuel consumption on locomotives other than SD70MACs, even though SD70MAC locomotives were the predominant locomotive type used in Xcel's service. This argument is frivolous, since the fuel study considered fuel consumption on all of the actual locomotives used in the issue traffic service. Moreover, the Board specifically noted in its decision that BNSF presented evidence demonstrating that the inclusion of non-SD70MAC locomotives in the fuel study did not increase fuel consumption. *Xcel* at 137 (citing BNSF Reb. Nar. at II-43).

Second, Xcel argues that the fuel study was flawed because it used a fuel consumption table that was different from the table used by the Board in *TMPA*. In *TMPA*, the Board simply found that as between two consumption tables that were in the record, BNSF had not shown that the table it used was "superior" to an alternative table proposed by *TMPA*. *TMPA* at 58 n.101. Here, there is only one fuel consumption rate table for SD70MACs in the record. BNSF Reb. Nar. at II-41 to 42. More important, in this case BNSF presented ample evidence, that the Board accepted, demonstrating that the table BNSF used accurately reflects the fuel consumption rates of the SD70MACs used on Xcel trains. *Xcel* at 137 (citing BNSF Reb. Nar. at II-41). Specifically, BNSF showed that the fuel consumption rates set out in its consumption table correspond closely to actual fuel consumption measured in a test car procedure in which Xcel's experts participated. BNSF Reb. Nar. at II-41.

C. Road Property

Xcel claims that the Board erred in adjusting Xcel's road-property calculations to reflect the running-only portion of investment and depreciation expenses and to exclude the yard portion of those expenses. Xcel's argument on this issue is virtually incomprehensible. Xcel appears to claim that it already made an adjustment in its calculations to ensure a comparison of line-specific running-only road property expenses to system-average running-only road property expenses. But an examination of its workpapers shows that this is not correct. Xcel's workpapers show that Xcel's line-specific calculations do not include yard expenses but its system-wide investment does include those expenses.²⁵ The Board properly excluded the yard portion of road property investment from the system-average expenses.²⁶

D. Locomotive Maintenance

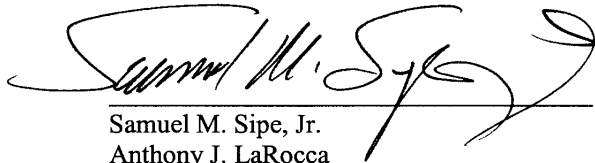
Xcel argues that the Board erred in rejecting Xcel's supposed movement-specific locomotive-maintenance costs. Xcel claims that the Board erred in concluding that Xcel's calculations did not adequately account for non-routine maintenance costs. But Xcel's petition merely restates its prior assertion that non-routine costs are included in other URCS system-average costs and therefore do not need to be considered in the locomotive maintenance cost calculation. Xcel's claim that the locomotive-maintenance cost accounts that it adjusts include only expenditures associated with maintenance contracts is wrong. Numerous expenditures relating to the maintenance of BNSF's locomotives are reported to the same accounts that

²⁵ Xcel rebuttal workpaper "Road Inv Xcel Rebuttal.123."

²⁶ BNSF objects to the use of any adjustment to system-average road property calculations in this case for reasons explained in its evidence. *See* BNSF Opening Nar. at II-48 to 54; BNSF Reply Nar. at II-18 to 24; BNSF Rebuttal Nar. at II-28 to 37. As BNSF explained in its Petition for Reconsideration, the Board's treatment of road property variable costs is based on a flawed understanding of the relationship between URCS fixed and variable costs. *See* BNSF's June 28, 2004 Petition for Reconsideration, at 9, note 8.

include the contract maintenance expenditures. BNSF Reb. Nar. at II-55; Reply Nar. at II-26, n. 55. It is unnecessary to address Xcel's convoluted discussion of equipment damage-related expenses because even if it were true that those particular expenses are reported to non-repair or maintenance accounts, there are numerous other non-routine maintenance expenses BNSF incurs that do not even remotely fall into the category of equipment damages. The Board correctly applied BNSF's system-average locomotive maintenance expense in this case.

Respectfully submitted, .



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July 19, 2004

ATTACHMENT 1

Table 1 Correction to STB's Application of the Global Insight Forecast

Year	Forecast Used by STB in DCF 1/	Year	Forecast per Global Insight Worksheet 2/ (Percent Change)	Correct Forecast for Use in DCF
2005	1.01	2005	1.1	1.011
2006	1.01	2006	1.1	1.011
2007	1.01	2007	1.1	1.011
2008	1.02	2008	1.2	1.012
2009	1.02	2009	1.2	1.012
2010	1.03	2010	1.2	1.012
2011	1.03	2011	1.3	1.013
2012	1.03	2012	1.3	1.013
2013	1.03	2013	1.3	1.013
2014	1.03	2014	1.3	1.013
2015	1.03	2015	1.3	1.013
2016	1.03	2016	1.3	1.013
2017	1.03	2017	1.3	1.013
2018	1.03	2018	1.3	1.013
2019	1.03	2019	1.3	1.013
2020	1.03	2020	1.3	1.013

1/ STB worksheet "FOIA DCF 42057, 5-18.123", worksheet "Inflation Index", cells F73:F88.

2/ See BNSF Reply worksheet BNSF.RP.WP.III-A-00218.

Table 2 Correction to DCF Replacement Asset Values

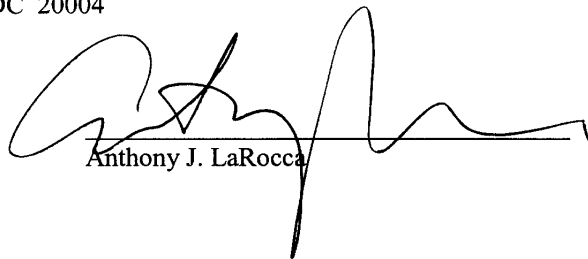
Cell 1/	Description	Formula Used in DCF by STB	Value	Corrected Formula for Use in DCF	Value
M12	Average inflation rate for materials and supplies	+Inflation Index:L24	0.00%	+Inflation Index:T22	1.81%
M13	Average inflation rate for wages & supplements	+Inflation Index:L32	0.00%	+Inflation Index:T30	2.85%
M14	Average inflation rate for mat. & supp., wages & sup. x fuel	+Inflation Index:L16	0.00%	+Inflation Index:T14	2.60%

1/ STB worksheet "FOIA DCF 42057, 5-18.123", worksheet "Replacement".

CERTIFICATE OF SERVICE

I hereby certify that on July 19, 2004, a true and correct copy of the attached Reply to Complainant's Petition for Reconsideration was served by hand upon the following counsel for Public Service Company of Colorado d/b/a/ Xcel Energy:

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