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July 13, 2004

Via Hand Delivery
The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001



Re: Public Service Company of Colorado d/b/a Xcel Energy v. The Burlington Northern and Santa Fe Railway Company, Reply to Petition for Correction of Technical and Computational Errors, S.T.B Docket No. 42057

Dear Secretary Williams:

Please accept for filing on behalf of complainant Public Service Company of Colorado d/b/a Xcel Energy this Reply to BNSF's Petition for Correction of Technical and Computational Errors. The original and 10 copies are included. This Reply also includes an exhibit and several electronic workpapers that contain confidential and highly confidential information that is subject to the protective order in effect in this proceeding. The exhibit and electronic workpapers are being filed under seal and are contained on the accompanying three CDs.

An extra copy of this filing is included for stamping and return to this office. If there are any questions concerning this matter, please contact the undersigned at 202-274-2913.

Sincerely,

Thomas Wilcox
Thomas W. Wilcox
Counsel for Complainant

Cc: Bruce A. Colt, Esq.
Gerald D. Zimmerman

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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. 42057

REPLY TO PETITION FOR CORRECTION OF
TECHNICAL AND COMPUTATIONAL ERRORS

Complainant Public Service Company of Colorado d/b/a Xcel Energy ("Xcel") hereby replies to the Petition to Correct Technical and Computational Errors ("Petition") filed by Defendant Burlington Northern Santa Fe Railway Company ("BNSF") in this proceeding on June 23, 2004.

I. Procedural Issue

BNSF cites as authority for filing its Petition the Board's general "catch all" rule covering petitions for relief "not provided for in any other rule." 49 C.F.R. §1117.1. Petition at 2. Yet BNSF's Petition expressly seeks relief for certain purported errors BNSF believes it has identified in the Board's June 8, 2004 Decision in this proceeding. Requests to the Board to change final decisions on the grounds of material error are expressly covered by 49 C.F.R. §1115.3. One must assume that if BNSF considered the

errors it believes it has identified were not material, the Petition would not have been filed (although Xcel will show that some of the errors identified by BNSF have absolutely no effect on the June 8, 2004 Decision). Indeed, BNSF claims that the “correction” of the purported errors it has identified would result in the maximum reasonable rates established in the June 8 Decision increasing by 4.9% in the base year 2001, a significant change.

Moreover, petitions for reconsideration are expressly limited to 20 pages in length, a limit that the Board has strictly adhered to. See STB Docket No. 42054, PPL Montana, LLC v. Burlington Northern Santa Fe Railway Company, (served August 29, 2002). BNSF’s Petition included 17 pages of argument, a 3-page PDF file, and 36 separate electronic spreadsheets¹. What’s more, BNSF followed up its Petition by filing a 20-page Petition for Reconsideration on June 28, 2004, bringing its total volume of material asking the Board to reconsider and otherwise change its June 8, 2004 Decision to 40 pages and 36 electronic spreadsheets.

BNSF cites the Board’s February 3, 2004 decision in Docket No. 42069, Duke Energy Corporation v. Norfolk Southern Railway Company, as also providing justification for its Petition. In that decision, which followed the filing of a comparable petition by the complainant in that case after the Board’s November 3, 2003 decision on the allegations in the complaint, the Board encouraged parties to bring “computational or technical errors” to its attention in complex rate cases. Specifically, the Board noted that it does not check the accuracy of the internal computations in the spreadsheets used in these cases. Thus, the Board said that it relied on the parties to alert it to these “computation errors in the spreadsheets.” Id. at 2. While Xcel does not disagree that

¹ Moreover, some of the individual spreadsheets included literally dozens of pages of information.

errors should be brought to the attention of the Board, since computational errors by the litigants as well as the agency are unavoidable in these cases, this new procedural step must be reconciled with the Board's rules governing petitions for reconsideration. For example, the Board must strictly scrutinize petitions such as the one filed by BNSF to ensure that they truly are narrowly drawn to address "computational or technical errors" and are not used as a means to circumvent the very clear rules governing petitions for reconsideration. In the Duke-NS case, for example, the Board contrasted "computation error(s)" with "express Board ruling(s)." Id. at 3. The Board invited the former to be brought to its attention, but the latter are restricted to a petition for reconsideration. Id. As will be shown below, BNSF's Petition in several instances addresses more than mere "computational or technical errors." In such cases, the Board should ignore BNSF's arguments. In the alternative, the Board should consider the relevant pages of BNSF's Petition to count toward the 20 pages BNSF is allotted for seeking reconsideration of the Board's June 8 Decision, and strike the portions of BNSF's Petition for Reconsideration that exceed the page limit. Xcel reserves the right to address this point again in response to BNSF's Petition for Reconsideration.

Finally on this issue, Xcel strongly urges the Board to provide litigants in these cases with clear guidance on post-decisional petitions seeking changes to a decision based on alleged errors. By inviting the parties to bring "computational or technical errors" to the Board's attention after a decision is issued without providing specific guidance or rules governing the scope or timing of such filings, the Board has opened up an avenue by which a party who is unsatisfied with the decision has an unlimited number of pages to try to change it. This is directly contrary to the Board's current rules, and if

the Board desires to change those rules to allow the filing of two post-decisional petitions addressing “technical” errors and “substantive” errors, respectively, then fundamental fairness requires the Board to establish specific guidance on such a process. Xcel submits that the fairer solution is to require all computational, technical and substantive issues to be raised at one time under defined rules. See e.g. 18 C.F.R. §385.713 (Federal Energy Regulatory Commission rule permitting requests for rehearing on all technical as well as substantive issues within 30 days of issuance of an order of the Commission).

II. Reply to Specific Alleged Errors Identified in BNSF’s Petition

Xcel replies *seriatim* to each of the purported “technical and computational” errors discussed in BNSF’s Petition.

A. The Calculation of SAC Volume and Revenues

1. Application of Maximum Capacity Factors

BNSF first states that the Board failed to apply the maximum capacity factors at specific plants served by the stand-alone railroad (“SARR”) in this case that were agreed to by the parties in their evidence, resulting in an overstatement of the traffic volume that the WCC would move to various plants. This is not a “computational or technical” error. Rather, BNSF is questioning the substantive methodology selected by the Board to establish the coal volumes that would be considered in the SAC analysis. This section of BNSF’s Petition should be ignored or counted toward the number of pages allotted to BNSF under §1115.3 for a Petition for Reconsideration. In any event, BNSF does not argue that the Board’s decision to use a methodology different from that agreed upon by the parties was erroneous as a matter of law, which it is not.

2. Calculation of Rate Escalation for Certain Plants

Xcel does not dispute BNSF's assertion that the Board did not apply the correct rate adjustment provision for the contracts of three shippers in Xcel's SARR's traffic group from 2004 to the end of their respective contract terms. Petition at 6-7. However, BNSF has failed to demonstrate that, even if the Board was to correct this error, that the correction would have any impact whatsoever on the June 8, 2004 Decision.

BNSF also claims that the Board erred in utilizing the EIA transportation rate forecast to develop rates for certain shippers in Xcel's SARR's traffic group whose contracts expired between 2002-2004 rather than a 2004 BNSF internal forecast. See Decision at 55. However, BNSF's purported "fix" of the Board's "error" is itself erroneous. Specifically, despite BNSF's claim to the contrary, application of BNSF's 2004 internal rate forecast for the plants at issue rather than the EIA rate forecast results in slight increase in the revenues of Xcel's SARR over the 20 year DCF period. This is because to "correct" the Board's "error," BNSF determined the percent change between its January 2003 forecast and its 2004 rate forecast for the movements at issue and applied this percent change to the 2003 rates used by the parties in their evidence. However, the 2003 rates used by the parties are based on BNSF's June 2003 rate forecast, not its January 2003 rate forecast, thus developing the percent change from the January 2003 rates was incorrect. But in any event, it was not necessary to develop the percent change between the 2003 and 2004 to determine 2004 rates because the 2004 forecast contains the 2004 rates that BNSF is attempting to calculate. Exhibit No. 1 to this Reply (filed under seal) shows the 2004 rates for the subject movements used by the STB in the

Decision, the rates included in BNSF's Petition and the rates included in BNSF's 2004 forecast.

B. The Calculation of SARR Operating Costs

1. Incremental Operating Expenses Attributable to Jeffrey Energy Center Traffic

BNSF's questioning of the Board's methodology for determining the operating expenses that are to be attributed to the addition of the Jeffery Energy Center traffic to the WCC is outside the scope of merely alerting the Board to computational or technical errors.

However, Xcel also notes that in applying its methodology the Board committed a technical error by applying the calibration factor developed in the Decision to the cost of railroad-provided cars. STB electronic workpaper "WCC opr_exp(BNSF) STBVersion," sheet "DCF Transfer." This was erroneous because the record demonstrates that Western Resources supplies its own rail cars for the Jeffrey Energy Center movement. Accordingly, applying the calibration factor to the rail car lease expense overstates annual operating expenses.

2. Calculation of Locomotive Maintenance Expenses

Xcel does not dispute BNSF's assertion that the Board made a technical error in calculating locomotive maintenance expenses.

3. Calculation of MOW Track Geometry Testing Expenses

Xcel does not dispute BNSF's assertion that the Board made a technical error regarding track geometry testing in the calculation of maintenance expense.

C. Calculation of SARR Construction Costs

In section C of its Petition BNSF takes issue with several minor components of the SARR's construction costs. Whether the items mentioned by BNSF are all "computational or technical errors" is debatable. For example, BNSF complains that the Board should have used certain cost evidence submitted by BNSF related to the relocation of existing highway 59 in conjunction with the construction of the Bill rail yard by the SARR. Petition at 14. On the other hand, Xcel does not disagree that the Board appears to have made the technical errors described by BNSF regarding (1) track centers; (2) the unit costs for fine grading on side-slopes; and (3) the attempted elimination of certain mine spurs from the calculation of main track miles.

However, BNSF's "correction" of the errors it identified is flawed in two respects. First, the Board rejected BNSF's use of access roads (Decision at 92), but BNSF's revised fine grading quantities submitted with its Petition include amounts for access roads. Compare: (1) BNSF Reply electronic workpaper "III F 2 Grading.XLS", tab "'IIIF_11 CY Grad", Columns Q and R (which include the access roads shown in Columns M and N) to (2) STB electronic workpaper "STB GRADING.XLS", tab "IIIF_18 EW Cost", cells O27 and O29 to (3) BNSF Petition electronic workpaper "STB GRADING_Corrected.XLS", tab "IIIF_18 EW Cost", cells O27 and O29. Second, the STB rejected the use of 28-foot roadbed width for the Eagle Butte Branch and between Donkey Creek and Reno. (Decision at 90-91), but BNSF's fine grading quantities include amounts for these two segments based on a 28-foot roadbed width. These two errors overstate the WCC investment by a total of \$460,927 (\$369,185 in fine grading plus reductions in mobilization of \$12,921, engineering of \$36,919 and contingency of

\$41,902). See accompanying electronic worksheets “BNSF III F 2 Grading with revised fine grading.xls” (recalculation of fine grading quantities); and “BNSF Petition STB GRADING_Corrected with correct side slope quantities.xls (recalculation of fine grading costs).”

Finally, Xcel notes that there were four other technical errors made by the Board in the Decision regarding investment that BNSF failed to mention in its Petition. These errors are described below:

1. Headquarters Building

The Board’s calculation of the SARR’s General and Administrative (G&A) staff results in significantly fewer personnel than proposed by BNSF (51 positions as opposed to 84). However, the Board inadvertently failed to reduce the size of BNSF’s headquarters building to reflect this significant reduction in staff. Reducing the size of the headquarters building to match the G&A staff selected by the Board reduces investment by a total of \$519,486 (\$416,088 for the building, plus \$14,563 for mobilization, \$41,609 for engineering and \$47,226 for contingency). See accompanying electronic workpaper “III F 7 Buildings Revised with STB personnel amounts.xls.”

2. Material Transportation

The Board did not properly reflect the final quantities of several track construction items in its calculation of material costs (rail, rail anchors, ties, tie plates, spikes and ballast). Correcting these quantities reduces investment by a total of \$84,331 (\$69,695 for quantities plus \$6,970 for engineering and \$7,666 for contingencies). See accompanying electronic workpaper “STB Restated Transportation Rebuttal with BNSF tech errors quantities.xls.”

3. Compromise Joints

The Decision states that the Board excluded costs for compromise joints. Decision at 104. However, these costs were included in the STB's construction cost calculations. This overstates investment by a total of \$15,377 (\$12,672 for the compromise joints, \$1,267 for engineering and \$1,438 for contingency).

4. Yard Acreage

Finally, the Board also made a computational error by accepting BNSF's yard acreage evidence without modification. Decision at 86. Acreage needed for the SARR's yards is necessarily smaller because the Board (1) found the car repair facility included by BNSF to be unnecessary; (2) agreed with Xcel on the size of the locomotive repair facility;² and (3) correction of the size headquarters building discussed above results in less need for land. Decision at 111-113.

D. Application of the DCF Model

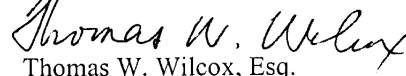
BNSF claims that the Board committed a technical error by not re-running or updating the DCF analysis after changes were made to certain DCF inputs. BNSF also claims that the Board erred in its calculation of insurance expenses in years two through

² BNSF admits that its locomotive facility was larger than that designed by Xcel and ultimately used by the Board. BNSF Reply at III.F-130.

20 of the DCF model. Xcel does not disagree with BNSF that these items constitute technical errors in the Decision.

Bruce A. Colt, Esq.
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Respectfully submitted,



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July 13, 2004

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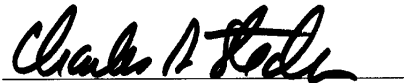
Docket No. 42057

VERIFIED STATEMENT OF CHARLES A. STEDMAN

I am Charles A. Stedman, Vice President of L.E. Peabody & Associates, Inc. I have presented evidence on behalf of the Complainant in the above-captioned matter. My qualifications are set out in Section IV of Xcel's Opening Evidence filed in this proceeding January 10, 2003.

I have declared under penalty of perjury that the calculations contained in the Reply to Petition for Correction of Technical and Computational Errors of Public Service Company of Colorado d/b/a Xcel Energy and the electronic workpapers accompanying this filing were prepared by me or under my supervision and are accurate to the best of my knowledge, information, and belief.

Executed on July 13, 2004

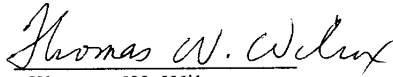


Charles A. Stedman

CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of July, 2004, I served a copy of the Complainant's Petition for Reconsideration by hand delivery to counsel for Defendant at the following address:

Samuel M. Sipe, Jr., Esq.
Anthony J. LaRocca, Esq.
Cynthia L. Quarterman, Esq.
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Thomas W. Wilcox