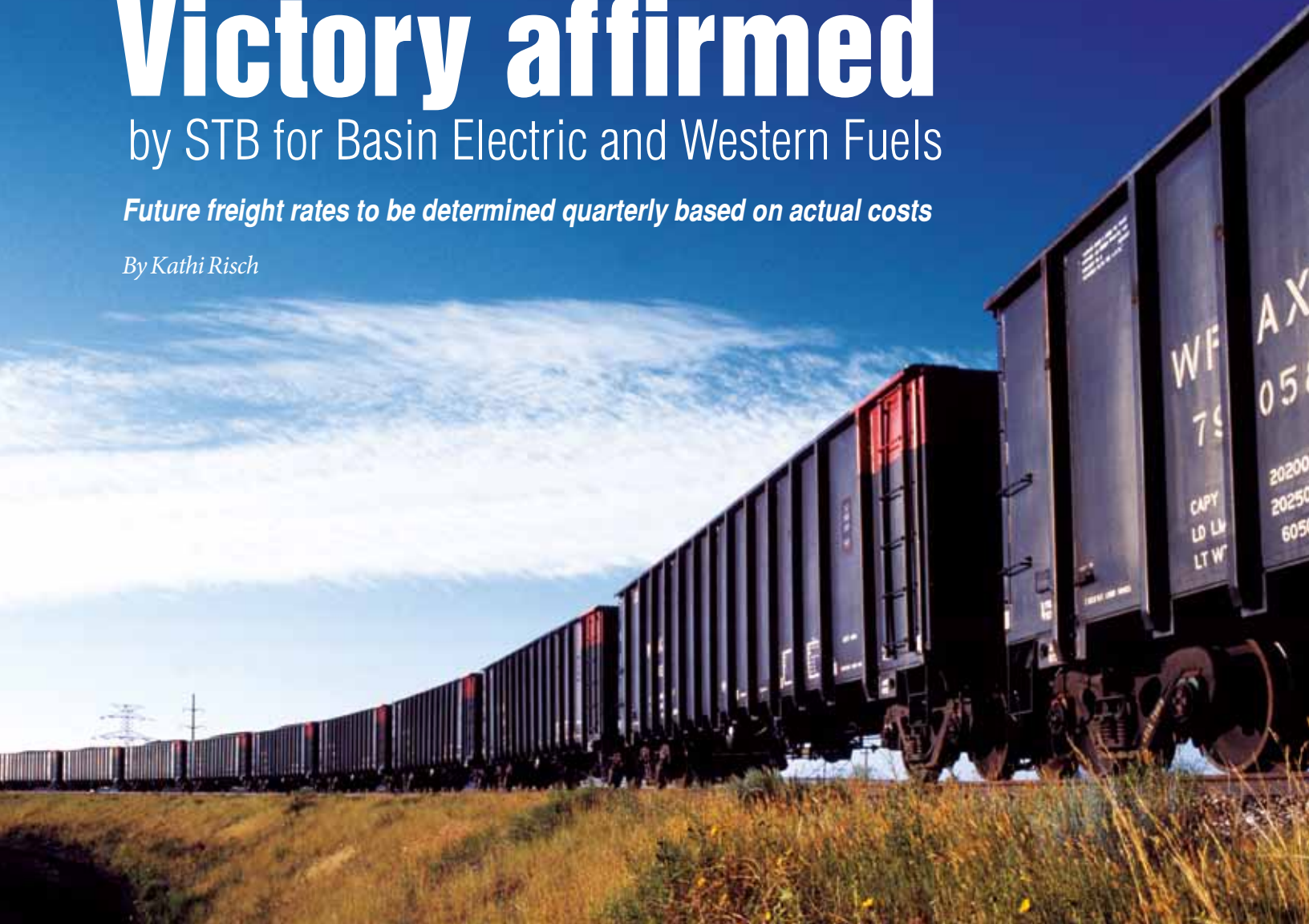


Victory affirmed

by STB for Basin Electric and Western Fuels

Future freight rates to be determined quarterly based on actual costs

By Kathi Risch



The U. S. Surface Transportation Board (STB) released a decision in the Western Fuels Association Inc. and Basin Electric Power Cooperative v. BNSF Railway Company case on July 27, bringing some closure to this precedent-setting freight rate dispute.

The STB found BNSF had established excessive transportation rates for coal shipments to the Laramie River Station in Wyoming that did not comply with the STB's previous ruling on the matter in February 2009. The STB ordered the railroad

to establish maximum lawful rates in accordance with methodology described in *Oklahoma Gas & Elec. v. Union Pacific R.R.*, a decision made by the STB on July 24, 2009.

"While this outcome clearly demonstrates BNSF unfairly exploited its monopoly pricing power over movements to Laramie River, we would like to move forward and put this matter behind us and work with BNSF on other issues that are important to each of our businesses," said Ron Harper, Basin Electric CEO and general manager.

In February, the STB found for Basin Electric and Western Fuels in the case, and directed reparations and rate reductions that it estimated would produce about \$345 million in present value economic benefits to electricity consumers in nine states. In its latest decision, the STB said any estimate of relief over the 20 years covered by the decision was "necessarily speculative." Minor changes in transportation costs in favor of one party would result in millions of dollars in costs to the other and vice versa. In its February decision, the STB "sought to provide the general

public with an understanding of the magnitude of the dispute and the predicted relief,” using forecasted rail operating costs available at the time. Those initial estimates were to be finalized in more detail later.

In the July ruling, the STB also ruled the reduced rates BNSF put into effect after the February decision continued to be excessive, and in the future the STB would “let the actual operating costs dictate the maximum lawful rates BNSF may charge” Western Fuels on the Laramie River coal movement.

BNSF had estimated it owed Western Fuels/Basin Electric roughly \$112 million in reparations, but the STB said that number is “too conservative,” given the new finding that the railroad was not following the correct rate calculation procedures. Once BNSF establishes updated rates, Western Fuels and Basin Electric have been directed to calculate the precise amount of reparations due and submit their statement of damages to BNSF.

Background

Western Fuels and Basin Electric initially challenged the reasonableness of the rates charged by BNSF for movements of 8 million tons of coal each year from several of the Powder River Basin mines in Wyoming to Laramie River at the STB on Oct. 19, 2004. Because these are common carriage rates, and BNSF possesses market dominance over shipments to Laramie River, the STB has jurisdiction over both the rates and authority to review their reasonableness when challenged.

Located near Wheatland, WY, Laramie River is a three-unit, coal-based generating station with a

1,697-megawatt capacity, owned by the six consumer-owned participants in the Missouri Basin Power Project (MBPP). Participants include Wyoming Municipal Power Agency, Lusk, WY; Tri-State Generation and Transmission Association, Denver, CO; Missouri River Energy Services of Sioux Falls, SD; Heartland Consumers Power District, Madison, SD; Lincoln Electric System, Lincoln, NE; and Basin Electric. Basin Electric has a 42.27 percent interest in the project and is the operating agent. Western Fuels is a national fuel supply cooperative for consumer-owned utilities.

In a decision served on Feb. 18, 2009, the STB found the challenged rates were unreasonably high. Accordingly, the STB ordered BNSF to pay reparations with interest for shipments dating back to the fourth quarter of 2004. The STB also prescribed the maximum lawful revenue-to-variable cost (R/VC) ratios that BNSF is permitted to charge for transportation from 12 Powder River Basin mines to Laramie River between 2004 and 2024. R/VC is the revenue earned on a specific rail movement divided by the variable cost of providing the service.

In its February decision, the STB applied an entirely new approach to calculating maximum lawful rates called the “Maximum Markup Methodology.” Under this methodology, the STB calculates a maximum R/VC ratio that limits the amount of demand-based differential pricing the carrier can engage in for a given year. Under this new approach, the STB no longer prescribes fixed

transportation rates for as many as 20 years, as was their practice in previous large rate cases. Instead, the STB prescribes an R/VC ratio that permits the transportation rate to change as often as quarterly to reflect changes in the rail operating costs, such as fuel costs. Western Fuels and Basin Electric were directed to bring any future disputes over variable cost to the attention of the STB.

BNSF established new rates under this standard on March 20, 2009, but Western Fuels and Basin Electric

disputed those rates as exceeding the maximum R/VC ratio levels prescribed by the STB. In the July 23 decision the STB found BNSF had not followed the

correct procedures to calculate the involved variable costs. BNSF’s error led to rates that exceeded maximum permissible R/VC ratio for 2009 by 241 percent.

The STB established specific transportation rates for the first two quarters of 2009 for shipments from the Powder River Basin mines to Laramie River. BNSF was given 30 days to establish new rates for the third quarter of 2009. Thereafter, the rates will be updated quarterly as new variable costs and indices become available. According to the STB, this method should provide more flexibility in rates compared to setting a fixed transportation rate for the next 20 years and allow the transportation rates at Laramie River to rise and fall as BNSF’s operating costs increase or decrease.

“We would like to move forward and put this matter behind us and work with BNSF on other issues that are important to each of our businesses.”

Ron Harper, Basin Electric