

RECENT STB MAXIMUM RATE CASES

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PRESENTATION OUTLINE

- Governing Maximum Rate Standards
- KCPL v. UP (Served May 19, 2008)
- WFA/Basin Electric v. BNSF (Served February 18, 2009)
- Other Pending Cases

GOVERNING STATUTES

- Rates on “market dominant” common carrier rail traffic “must be reasonable” (49 U.S.C. §10701(d)(1))
- Market dominance means a shipper is captive and is being charged rates with R/VC ratios equal to or greater than 180% (jurisdictional threshold) (49 U.S.C. §10707)
- Shippers pursue rate relief by filing cases at the STB (49 U.S.C. §11701(b))

COAL RATE GUIDELINES

- Coal Rate Guidelines (“Guidelines”) were promulgated in 1985 to set methods to determine whether rates on market dominant coal traffic are reasonable
- Guidelines set four constraints on railroad pricing: stand-alone cost (“SAC”), revenue adequacy, management efficiency and phase-in
- Guidelines were fleshed out between 1985 and 2005 on a case-by-case basis
- Basic standard: STB sets maximum rates on captive traffic at greater of 180% of variable costs or SAC

STAND-ALONE COSTS

- Shipper models hypothetical “Stand-Alone Railroad” (“SARR”) to provide O/D service for the issue traffic
- SARR also serves other traffic selected by shipper along O/D SARR route
- Shipper forecasts SARR revenues and SARR costs over the analysis period
- If SARR revenues exceed SARR costs, the shipper is entitled to rate relief

REVISIONS TO COAL RATE GUIDELINES

- Promulgated in 2006 rulemaking proceeding
- Retains basic standard: rates on captive traffic are unreasonable if they exceed the greater of 180% of variable costs or SAC
- Changes method for calculating variable costs
- Changes some key inputs on how SAC is calculated

REVISIONS TO COAL RATE GUIDELINES

Old Rules

Calculate VC with adjusted URCS

SAC relief if SARR revenues exceed SARR costs over model period

SAC relief = percent reduction

Set cross-over traffic revenue using Modified Mileage Prorate

Index operating costs using RCAF-U

Twenty-year prescription period

Revised Rules

Phase III URCS

Same

Maximum Markup Method (MMM)

Average Total Cost (ATC)

Hybrid RCAF-U/A

Ten-year prescription period

VARIABLE COST INPUTS – OLD RULES

1. Involved Railroad
2. Miles
3. Number of Terminals
4. Number of Interchanges
5. Car ownership
6. Tons Per Car (Load)
7. Tare Per Car
8. Car Type
9. Car Ownership
10. Empty Return
11. Number of Cars Per Train
12. Number of Locomotives
13. Helper Service Operations
14. Actual Switching
15. Station Clerical Adjustment
16. Actual Locomotive Acquisition Costs
17. Actual Locomotive Maintenance Costs
18. Actual Fuel Costs
19. Actual Car Ownership Costs
20. Actual Car Maintenance Costs
21. Actual Crew Costs
22. Actual Maintenance of Way Costs
23. Actual Road Investment Costs
24. Actual Joint Facility Costs
25. Actual Loss & Damage

VARIABLE COST INPUTS – REVISED RULES

1. Involved Railroad
2. Loaded Miles
3. Type of Movement (local, interline, overhead)
4. Tons Per Car
5. Car Type
6. Car Ownership
7. Number of Cars Per Train
8. Shipment Type (single car, multiple car, unit train)
9. Commodity
10. (Indexing)

IMPACT OF REVISED VARIABLE COST RULES

- Simplifies costing procedures
- Produces higher VC and JT for most unit train coal shippers
- Example: WPL v. UP decision at 2Q 2000 levels
 - JT = \$13.72 per ton, 10.8 mills (Old Rules)
 - JT = \$16.97 per ton, 13.4 mills (Revised Rules)

RATE RELIEF – OLD RULES

- Percent Reduction Method
- Example 1: if SARR revenues exceeded SARR costs by 20% during the involved time period, all SARR traffic group members rates were reduced by 20%
- Example 2: if the challenged rate was \$10 per ton during the involved time period, the rate would be reduced by 20% to \$8 per ton

RATE RELIEF- REVISED RULES

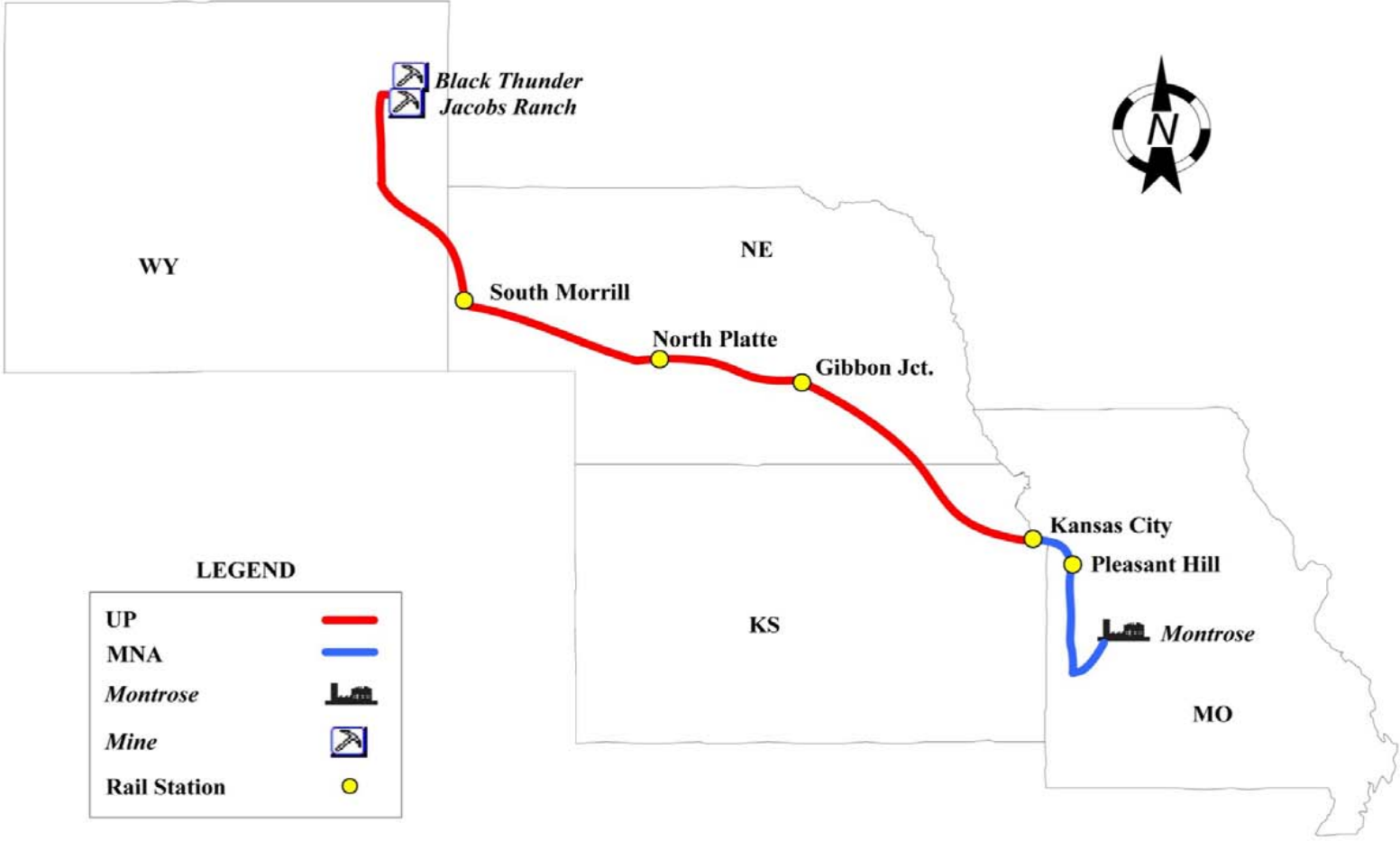
- MMM example
- Assume SARR revenues exceed SARR costs and SARR revenues will equal SARR costs if rates on high R/VC ratio traffic movements are reduced to rates with R/VC ratios of 200% and other traffic rates remain unchanged

<u>SARR Shipper</u>	<u>On-SARR R/VC Ratio</u>	
	<u>Pre-MMM</u>	<u>After MMM</u>
Shipper 1	500%	200%
Shipper 2	350%	200%
Shipper 3	200%	200%
Shipper 4	175%	175%
Shipper 5	150%	150%
Shipper 6	135%	135%

KCPL CASE

- Case involved unit train coal shipments from the Wyoming PRB to KCPL's Montrose Station, near Ladue, MO
- UP transports the coal to Kansas City; MNA from Kansas City to Montrose
- UP has O/D pricing authority (UP rates include compensation for MNA service)
- Rail O/D distance approximately 915 miles (from Black Thunder)
- Approximately 2 million tons transported annually
- KCPL supplies the rail cars

Schematic of Current Route for Coal Movement from Powder River Basin, Wyoming to Montrose Power Station



KCPL CASE

- KCPL files case in October of 2005
- KCPL challenges UP's Circular 111 Option 2 rates from the Wyoming PRB to Montrose
- Case put on hold in 2006 while STB conducted revised Guidelines proceeding
- Case also delayed while STB determined whether Circular 111 rates were common carrier rates
- STB issues interim decisions holding it will apply revised Guidelines' VC standards and that involved Circular 111 rates are common carrier rates

KCPL CASE

- STB reopens merits record on March 29, 2007
- Parties submit joint stipulation to STB on April 18, 2007
- UP stipulates SAC out of case; agrees that if Board finds that its Circular rates exceed the JT, UP will cap rates for a ten-year period at levels not to exceed the JT

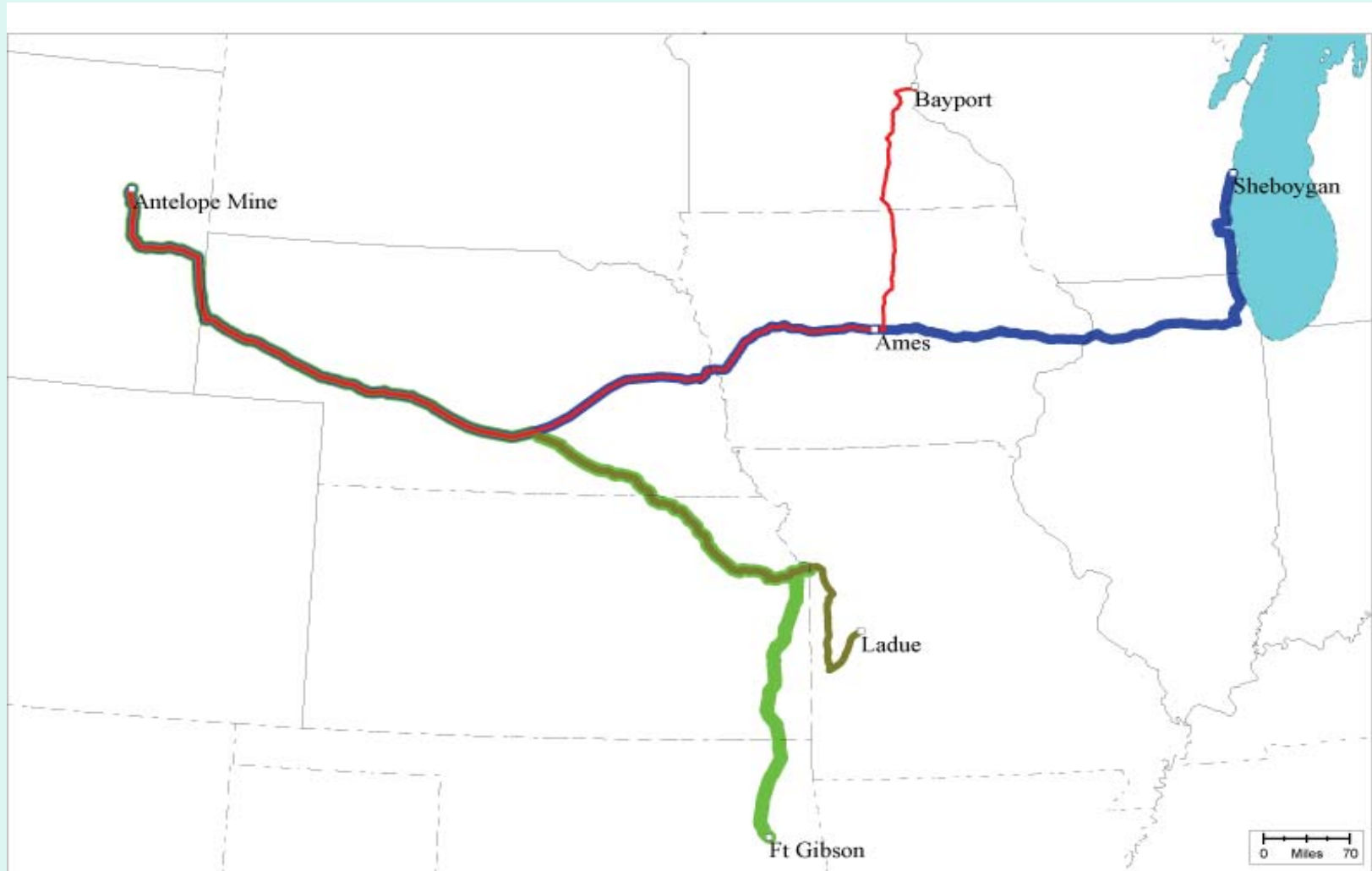
KCPL CASE

- KCPL case final decision served on May 19, 2008
- STB calculates variable costs using the revised standards, rejects cost adjustments proposed by KCPL and UP, applies 2006 CAPM capital costs
- STB finds challenged rates (base rates plus fuel surcharges) exceed the 180% JT in 2006 and 1Q2007
- Rates at JT, under STB calculations, range from \$15.10 per ton to \$16.49 per ton (16.6 mills to 18.0 mills)
- STB directs parties to make JT calculations for later time periods in manner “consistent” with the procedures used in the decision
- STB estimates rate relief (reparations for past overcharges and projected future rate savings) at \$30 million

OTHER JT CASES

- In its 2001 WPL v. UP decision, the STB sets maximum rates at 180% JT; STB finds SAC rates are well below the JT
- UP stipulated out SAC in the next three PRB rate cases where UP was the only defendant: NSP (settled 2003), KCPL (decided 2008) and OGE (filed 2008)

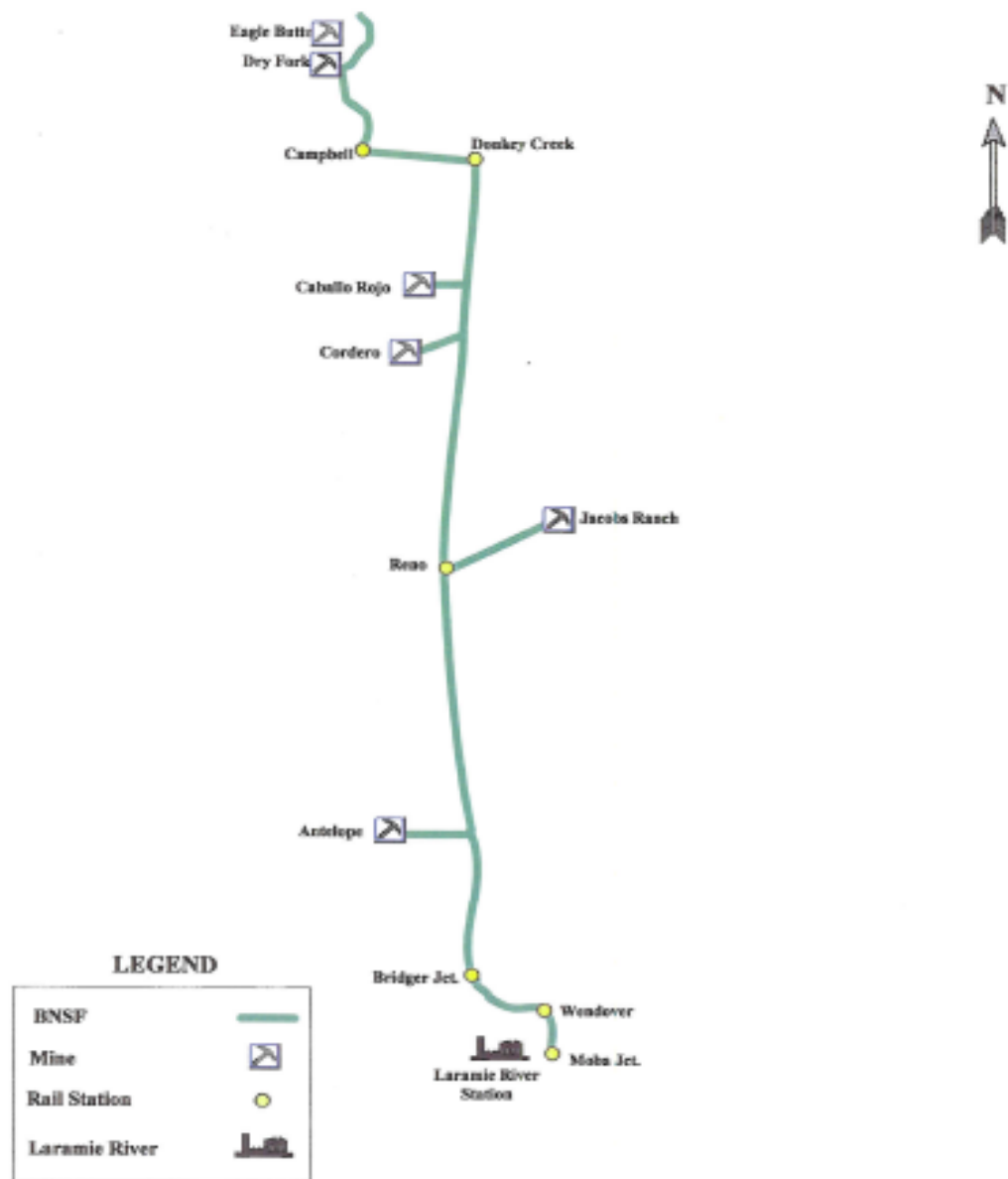
UP JT CASE ROUTES



WFA/BASIN ELECTRIC CASE

- Case involves unit train coal shipments from the Wyoming PRB to the Laramie River Station, near Moba Jct., WY
- Single Line BNSF routing
- Rail O/D distance approximately 186 miles (from Dry Fork)
- Approximately 8 million tons transported annually
- Shipper-supplied rail cars

Schematic of Current Route from PRB, WY to WFA/Basin's Laramie River Station



WFA/BASIN ELECTRIC CASE

- WFA/Basin Electric file complaint in October of 2004
- Challenged Pricing Authority rates initially doubled and, over time, tripled expiring contract rates
- Record initially closes, December 2005
- In November 2006, STB reopens record for receipt of evidence under revised SAC rules
- Parties submit multiple rounds of additional SAC evidence, STB issues several interim decisions
- STB serves merits decision on February 18, 2009

WFA/BASIN ELECTRIC CASE

- STB finds BNSF exerts market dominance over the involved traffic
- STB finds SARR revenues exceed SARR costs over the 20-year analysis period
- STB prescribes maximum MMM R/VC ratios for each year of the 20-year analysis period

WFA/BASIN ELECTRIC CASE

<u>Year</u>	<u>Maximum MMM R/VC Ratio</u>
4Q04	241%
2005	244
2006	229
2007	236
2008	243
2009	240
2010	244
2011	245
2012	247
2013	249
2014	253
2015	266
2016	267
2017	263
2018	260
2019	260
2020	259
2021	258
2022	259
2023	259
2024	257

WFA/BASIN ELECTRIC CASE

- STB directs BNSF to publish conforming tariff rates by March 20, 2009
- STB directs BNSF to pay WFA/Basin Electric reparations for 4Q04 to 1Q09 overpayments
- STB estimates that 2009 maximum rates will be approximately 60% less than the 2009 tariff rates
- STB estimates relief in 4Q04 to 2024 time period at \$345 million (in current dollars)
- “These amounts are the single largest reduction in rail rates ever ordered by this agency” (Decision at 2)

WFA/BASIN CASE – 2009 MMM CALCULATIONS

- Weighted average issue traffic MMM R/VC Ratio = 600%
- Maximum MMM R/VC Ratio = 240%

WFA/BASIN ELECTRIC CASE

1Q 2009 RATES - AT 240% R/VC RATIO

<u>Mine Origin</u>	<u>Tariff Rate (\$/ton)</u>	<u>BNSF Calculation (\$/ton)</u>	<u>WFA/Basin Calculation (\$/ton)</u>
Antelope	\$8.39	\$3.89	\$2.74
North Antelope	8.40	4.07	2.83
Black Thunder	8.42	4.52	3.19
Jacobs Ranch	8.43	4.67	3.24
Cordero	8.86	4.95	3.49
Belle Ayr	8.87	5.10	3.62
Caballo Rojo	8.87	5.10	3.59
Caballo	8.87	5.17	3.65
Dry Fork	9.16	5.73	4.06
Rawhide	9.16	5.78	4.10
Eagle Butte	9.16	5.83	4.09
Buckskin	9.17	5.90	4.06
Reduction (%)		(43%)	(60%)

OTHER PENDING CASES

- AEP Texas v. BNSF Record Closed, Awaiting Decision
- OGE v. UP Record Closed, Awaiting Decision
- AEPCO v. BNSF/UP In Discovery
- Seminole v. CSXT In Discovery
- DuPont v. CSXT In Mediation