

It's about rates, not bookkeeping

In determining reasonable rates for shippers, the STB conducts a detailed analysis, including examination of the percentage of variable costs-to-revenue. The STB has no jurisdiction over rail rates less than 180 percent over a railroad's variable costs to ship a product.



In its February 2009 ruling, the STB established rates for Laramie River rail deliveries on a revenue-to-variable cost basis. This capped what BNSF could charge Basin Electric at approximately 240 percent of its variable costs through 2024. "When the

premium issue came up, we discovered BNSF may attempt to use the accounting procedures of the STB, and the associated \$7.6-billion acquisition premium to increase rates on rail customers. This goes right into the railroads costs, which the STB uses to develop variable costs of service and establish maximum rates," says Chris VandeVenter, Basin Electric legislative representative. "This would directly increase Basin Electric's shipping rates."

"Let's say, hypothetically, BNSF's variable costs without the premium are \$5. We would pay 240 percent above that, or \$12. If the premium were to increase BNSF's variable costs to \$6, we would then be faced with paying \$14.40 to ship the same product, solely because of the premium," he says.

This doesn't just impact Basin Electric. All BNSF customers are potentially impacted. Since rail costs are used by the STB to determine if the agency has regulatory jurisdiction with regard to the 180-percent threshold, including the premium means captive shippers who once could bring a case against BNSF for unreasonable rates will not be able to. Also, since the premium artificially inflates BNSF's revenue-to-variable costs ratio, captive shippers could see rate increases when they negotiate contracts with BNSF.

"Burlington Northern has not disputed its plans to include the premium in its rate base," VandeVenter says. "In fact, in a statement recently published on its website, BNSF says it's a required accounting procedure. However, this is not an issue of accounting; it's an issue of rate-making. They are totally separate. BNSF is not required to include the \$7.6 billion in its rate base. Yet, that's what they are doing."

In a similar regulatory procedure, the Federal Energy Regulatory Commission (FERC) generally requires purchase accounting for electric utilities, like the STB does for railroads, but FERC excludes acquisition premiums from the rate base to protect consumers.

It's not a merger

This is one of few instances where a railroad has been acquired by a non-railroad. In the past, when two railroads merged, the STB would review the transaction; but since this transaction was not a merger, the STB was not involved in the review process prior to the transaction.

In previous disputes when two railroads merged, if a premium was paid, the STB has generally allowed it to be included in the rate base citing offsetting efficiency gains that would benefit customers. "However, because this transaction is not a merger of railroads, no such efficiencies are gained," VandeVenter says.

"The STB is aware this acquisition has changed the way the agency handles BSNF going forward," he says. "BNSF is no longer a publically traded company, like the other railroads; it's a privately held subsidiary

of Berkshire Hathaway. Effectively, that means certain things, such as BNSF's capital costs, are likely to be excluded

from the STB's annual industry cost-of-capital computations.

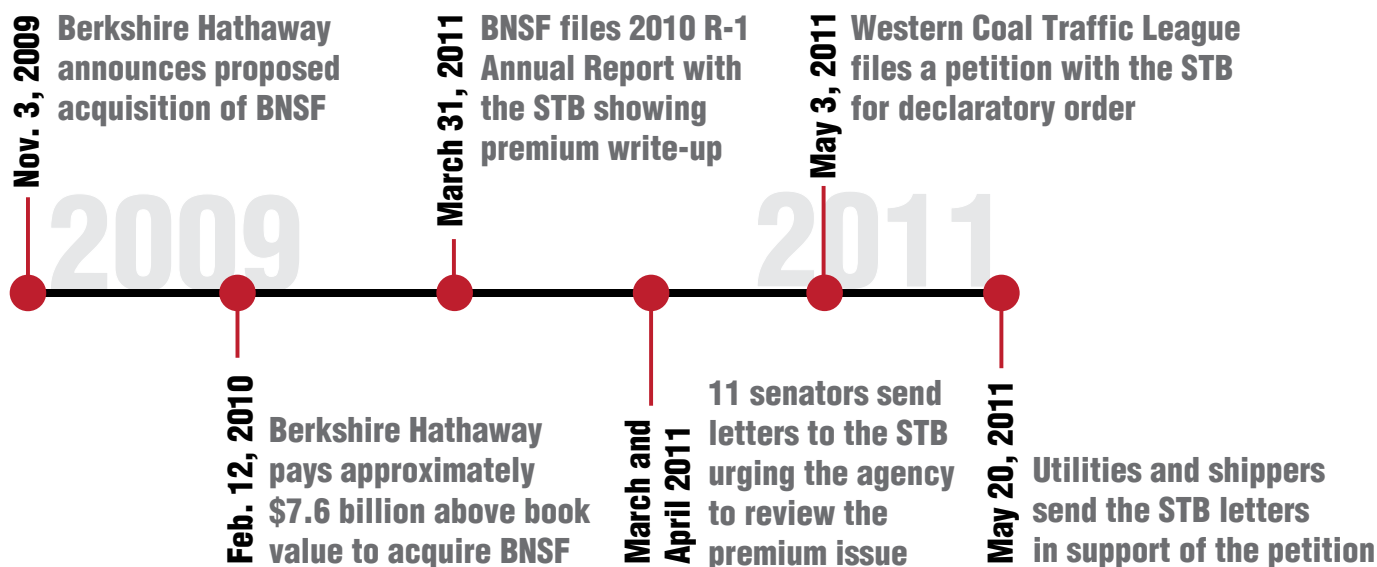
The STB is in

the process of trying to figure out exactly how they are going to handle these regulatory impacts in the future."

It's a unique situation and the addition of the premium in the rate base is a subset of that cost analysis.

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Chris VandeVenter, Basin Electric



An issue of fairness

If BNSF is allowed to include the premium in its rate base, shippers across rural America will pay. The exact impact per shipper is not yet known, but any company that uses BNSF could be affected – ethanol, agriculture, forest products, manufacturing, coal, chemicals, and the list goes on. “Even if a shipper has a contract with BNSF, all rail customers will be impacted in one form or another when they try to negotiate or seek new rates with the railroad,” VandeVenter says.

The issue is garnering attention from national organizations and Congress. In March, U.S. Sens. Al Franken (MN), David Vitter (LA), Tom Harkin (IA), Herb Kohl (WI), Tim Johnson (SD), Mary Landrieu (LA), Mark Pryor (AR), Michael Enzi (WY), Amy Klobuchar (MN) and Jon Tester (MT) signed a letter urging the STB to examine how the premium paid for BNSF will be charged back to captive shippers. Read the letter at <http://bit.ly/SenatorsSTBLetter>.

Then, on May 3, the Western Coal Traffic League, which represents coal consumers west of the Mississippi River, filed a petition with the STB for a declaratory order asking the STB to initiate a proceeding on the premium issue and allow interested parties to participate. In a follow-up letter to the STB on May 20, Edison Electric Institute, the National Rural Electric Cooperative Association, the American Public Power Association and the National Association of Regulatory Utility Commissioners requested the board give full consideration to the petition. Read the letter at <http://bit.ly/JointUtilitySTBLetter>.

Basin Electric has been fully supportive of the petition. Though the cooperative is not directly involved in it, Basin Electric is a member of Western Fuels Association, which is part of the Western Coal Traffic League.

The STB is currently reviewing the petition and will make a decision whether or not to initiate a formal proceeding to address if the premium write-up can be included in BNSF’s rate base. VandeVenter says there’s no deadline for the board to respond, but given the end of September, early part of October is generally when cost of capital decisions are made, there’s a window of about four months, which the petition requests the STB hear the case and make a final decision.

“BNSF contends the inclusion of the acquisition premium in the rate base will have ‘very limited’ impact on shippers. To BNSF, \$7.6 billion may be statistically meaningless, but it’s an amount real and substantial to rural America,” Harper says. “If the amount is inconsequential to BNSF, why isn’t the railroad voluntarily taking action to remove it from the rate base, instead of fighting so hard to keep it?”

“This whole issue boils down to fairness,” Harper says. “Berkshire Hathaway paid a premium for BNSF. Rural America should not have to pick up the bill so the company can recoup its investment.”

If the STB doesn’t prevent the premium from being included in the rate base, shipper rates will be impacted starting in 2012.