

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. 42071

OTTER TAIL POWER COMPANY

v.

BNSF RAILWAY COMPANY¹

Decided: February 18, 2005

In a decision served on December 13, 2004 (December 2004 Decision), the Board directed the parties to supplement the record in this proceeding so that the Board would have a full record upon which to analyze the traffic group issues that have been raised in this case. Specifically, we directed Otter Tail Power Company (Otter Tail) to file evidence showing the effect of excluding the disputed rerouted northern non-coal traffic; and we directed BNSF Railway Company (BNSF) to file evidence showing the effect of including the disputed southbound coal traffic originating south of Cordero. We stated that, if Otter Tail wished, it could base its new evidence on the Rail Traffic Controller (RTC) model used in BNSF's evidence in lieu of Otter Tail's string model.

BNSF now seeks clarification of the scope of the supplemental evidence permitted under that order. BNSF objects to, as beyond the scope of the December 2004 order, Otter Tail's plan to submit what BNSF describes as two new stand-alone cost models. One would continue to include the disputed rerouted northern non-coal traffic, but would be revised based on the RTC model. BNSF contends that this would be the equivalent of a new case-in-chief for Otter Tail. The other new presentation would exclude the disputed northern traffic, which BNSF argues should be limited to modeling just the northern lines rather than entire stand-alone railroad (SARR).

In its response, Otter Tail confirms that it intends to use the RTC model both to remodel its earlier evidence and to exclude the rerouted northern non-coal traffic. Otter Tail argues that the two presentations are needed so it can show the effect of removing the rerouted traffic. Otter Tail argues that it cannot provide a complete and accurate response to the Board's order without modeling the complete SARR.

Both parties have misinterpreted to their benefit the December 2004 order. BNSF reads it too narrowly when it argues that Otter Tail must confine its supplemental

¹ Effective January 20, 2005, The Burlington Northern and Santa Fe Railway Company changed its name to BNSF Railway Company.

evidence to the Glendive line. That evidence would not be instructive if it did not show how the SARR system would operate without the excluded traffic. On the other hand, Otter Tail reads the Board's order too broadly in asserting that it may use the RTC model as a basis for submitting revised evidence that includes the disputed northern non-coal traffic.

Notwithstanding the parties' desires to enlarge or contract the scope of the limited reopening of the record, the December 2004 decision was clear. It requires Otter Tail to submit supplemental evidence based *only* on an operating plan for the entire SARR that excludes the rerouted northern non-coal traffic, and it requires BNSF to submit supplemental evidence based on an operating plan *for the entire SARR* that includes the southbound coal traffic originating south of Cordero.

Because we are ruling on the request for clarification today, we will extend by one week the due dates for the filing of supplemental evidence and reply evidence. The due date for briefs will remain the same.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. BNSF's petition for an order clarifying the scope of the supplemental evidence is denied.

2. The procedural schedule in this proceeding is modified as follows:

March 1, 2005	Supplemental evidence is due.
March 28, 2005	Reply evidence is due.
April 20, 2005	Briefs are due.

3. This decision is effective on its date of service.

By the Board, Chairman Nober, Vice Chairman Buttrey, and Commissioner Mulvey.

Vernon A. Williams
Secretary