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SEC

SERVICE DATE - FEBRUARY 19, 2004

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. 42071

OTTER TAIL POWER COMPANY

v.

THE BURLINGTON NORTHERN AND  
SANTA FE RAILWAY COMPANY

Decided: February 19, 2004

By motion filed on February 6, 2004, The Burlington Northern and Santa Fe Railway Company (BNSF) requests a 4-week extension of time to file its supplemental reply evidence and a corresponding 4-week extension of time for the parties to file rebuttal evidence, changing the deadline for filing its reply evidence from February 23, 2004, to March 22, 2004, and the deadline for filing rebuttal evidence from March 25, 2004, to April 22, 2004. BNSF states that the extension of time is needed to allow it to file additional rerouted traffic evidence in light of the Board's recent discussion of standards governing the inclusion of rerouted traffic in Duke Energy Corp. v. CSX Transportation, Inc., STB Docket No. 42070, slip op. at 16-17 (STB served Feb. 4, 2004). Otter Tail Power Company (Otter Tail) opposes the extension of time in a reply filed on February 13, 2004.

In initially granting Otter Tail's request to file supplemental evidence and extend the procedural schedule in this case, the Board's decision served November 21, 2003, stated that allowing the parties to address new issues raised in recent decisions is reasonable because it will provide more relevant evidence and allow the Board to apply recent precedent. The extension of the procedural schedule proposed here will further that end and is reasonable. Accordingly, the motion to modify the procedural schedule will be granted.

It is ordered:

1. BNSF's motion to modify the procedural schedule, as last established in a decision served December 12, 2003, is granted.

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

|                |                                                                              |
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| March 22, 2004 | BNSF's reply to the amended version of Otter Tail's opening evidence is due. |
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| April 22, 2004 | Final rebuttal evidence is due. |
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3. This decision is effective on its date of service.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams  
Secretary