

204628

BEFORE THE  
SURFACE TRANSPORTATION BOARD



OTTER TAIL POWER COMPANY

Complainant,

v.

THE BURLINGTON NORTHERN AND  
SANTA FE RAILWAY COMPANY

Defendant.

Docket No. NOR 42071

ENTERED  
Office of the Secretary

JAN 29 2002

Part of  
Public Record

**JOINT REPORT ON MEETING CONCERNING PROCEDURAL  
AND DISCOVERY MATTERS**

Complainant, Otter Tail Power Company ("Otter Tail") and Defendant, The Burlington Northern and Santa Fe Railway Company ("BNSF"), hereby inform the Board that counsel for the parties to this proceeding have met to discuss procedural and discovery matters, as required by 49 C.F.R. §§ 1111.8 and 1111.10. Otter Tail and BNSF jointly report the following results of the meeting:

1. The parties agreed to seek approval from the Board to establish the following procedural schedule to govern discovery, the submission of evidence, and the filing of briefs in this proceeding:

|                             |                             |
|-----------------------------|-----------------------------|
| Close of Discovery          | Wednesday, April 17, 2002   |
| Filing of Opening Evidence  | Monday, June 3, 2002        |
| Filing of Reply Evidence    | Thursday, September 5, 2002 |
| Filing of Rebuttal Evidence | Monday, October 21, 2002    |
| Filing of Final Briefs      | Thursday, December 5, 2002  |

The agreed-upon schedule departs from the time-frame established by 49 C.F.R. § 1111.8. The reasons for the departure include: (1) prior trial commitments affecting counsel for both parties in the Spring of 2002; (2) BNSF's unopposed request for additional time to respond to Opening Evidence and Otter Tail's unopposed request for additional time to respond to Reply Evidence; and, (3) BNSF's concerns regarding burdens imposed by other pending rail rate proceedings. In accordance with the agreement, Otter Tail and BNSF hereby ask the Board to approve and impose the foregoing procedural schedule.

2. BNSF has reserved the right to seek relief from the foregoing schedule if BNSF is required to submit evidence in another coal rate case on a schedule with evidentiary due dates overlapping the evidentiary due dates set forth above. BNSF states that it would not voluntarily agree to such an overlapping procedural schedule in another coal rate case and would, in the first instance, oppose the issuance of such an overlapping schedule.

3. The parties have agreed upon a protective order to govern discovery and the submission of evidence in this case. Submitted with this Report is a Joint Motion For Protective Order, asking the Board to enter the protective order attached as Appendix A to that Joint Motion on an expedited basis, to facilitate discovery.

4. BNSF states that it will litigate this proceeding in accordance with the Board's decision in *Ex Parte 627*, eliminating consideration of product and geographic competition from market dominance determinations. However, BSNF reserves the right to seek to reopen or supplement the record in this proceeding to develop and present evidence of product and/or geographic competition in the event of a decision by the court

in *Association of American Railroads v. United States*, D.C. Circuit No. 01-1213, issued prior to a judicially final decision on the merits in this proceeding, that does not affirm the Board's decision to exclude evidence of product and geographic competition from market dominance determinations. Otter Tail reserves the right to oppose any request by BNSF to reopen or supplement the record for this purpose.

5. BNSF and Otter Tail agreed that the parties will serve all papers on their Washington counsel by hand-delivery.

6. Other than approval and imposition of the foregoing procedural schedule and the above-described protective order, there are currently no unresolved matters that require Board intervention.

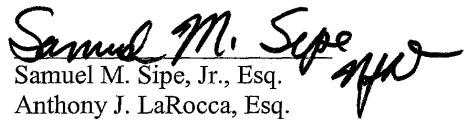
Respectfully submitted,

  
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January 28, 2002

  
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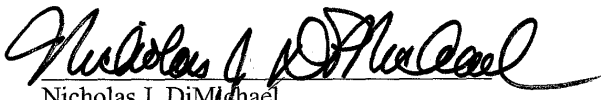
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**CERTIFICATE OF SERVICE**

I hereby certify that on this 28th day of January, 2002, I served a copy of the foregoing JOINT REPORT ON MEETING CONCERNING PROCEDURAL AND DISCOVERY MATTERS by Hand Delivery to counsel for Defendant at the following address:

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