

STEPTOE & JOHNSON LLP

ATTORNEYS AT LAW

1330 Connecticut Avenue, NW
Washington, DC 20036-1795

Telephone 202.429.3000
Facsimile 202.429.3902
www.steptoel.com

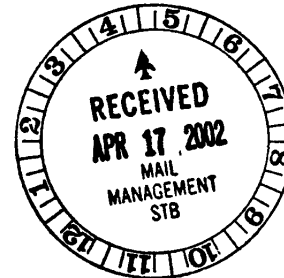
Anthony J. LaRocca
202.429.8119
alarocca@steptoel.com

205196

April 17, 2002

via Hand Delivery

Hon. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423



Re: *Otter Tail Power Company v. The Burlington Northern and Santa Fe Railway Company*, Docket No. NOR 42071

Dear Secretary Williams:

Enclosed for filing in the above-captioned matter are the original and 10 copies of a Motion to Compel filed by defendant The Burlington Northern and Santa Fe Railway Company. Also included are three compact discs containing this filing in electronic form.

Please date stamp the extra copy of this cover letter and return it to the messenger who delivered this filing.

Sincerely,



Anthony J. LaRocca

Enclosures

cc: Counsel for Complainant

ENTERED
Office of the Secretary
APR 17 2002
Part of
Public Record

WASHINGTON

PHOENIX

1

LOS ANGELES

LONDON

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
APR 17 2002
Part of
Public Record

MOTION TO COMPEL RESPONSES TO
DEFENDANT'S FIRST SET OF INTERROGATORIES
AND DOCUMENT REQUESTS

Pursuant to 49 C.F.R. §§ 1114.30 & 1114.31, Defendant The Burlington Northern and Santa Fe Railway Company ("BNSF") hereby moves for an order compelling Complainant Otter Tail Power Company ("Otter Tail") to respond to certain discovery requests calling for information needed by BNSF to defend its rates in this stand-alone cost ("SAC") proceeding.

As discussed below, BNSF is seeking an order from the Board compelling the production of materials in five areas: (1) information maintained by Otter Tail relating to projections of rail rates from Powder River Basin ("PRB") mine origins; (2) information relating to projections of PRB coal demand and transportation costs made by Otter Tail expert witnesses; (3) information relating to the possible construction of a second

electricity generating facility at the site of Otter Tail's existing Big Stone Generating Station; (4) information relating to Otter Tail's decisions whether to purchase electricity from other utilities or generate it by burning coal; and (5) information relating to Otter Tail's evaluation of non-coal fuel sources for the generation of electricity. For the reasons described in detail below, this information is directly relevant to the SAC evidence that will be submitted by the parties in this proceeding and Otter Tail should be ordered to provide it to BNSF in response to BNSF's discovery requests.

BACKGROUND

On January 2, 2002, Otter Tail filed its complaint with the Board challenging the reasonableness of BNSF's rates for transporting unit coal trains between mine origins in the PRB of Wyoming and Otter Tail's Big Stone Generating Station ("Big Stone") near Milbank, South Dakota. Since it filed its complaint, Otter Tail has aggressively pursued discovery from BNSF, serving four sets of discovery requests that contain 123 requests for production (582 if subparts are counted separately).

On February 22, 2002, BNSF served Otter Tail with interrogatories and document requests, to which Otter Tail

provided a written response on March 25, 2002.¹ Otter Tail has not yet produced any documents.² Its written responses set forth numerous objections and, in some instances, identify certain documents that it intends to produce. In response to 10 of BNSF's 64 requests for production, Otter Tail has indicated that it will not provide any information although responsive information apparently exists.

On April 12, 2002, BNSF counsel met with Otter Tail counsel to discuss Otter Tail's responses to BNSF's discovery requests.³ Otter Tail reiterated its objections to the production of

¹ See Complainant Otter Tail Power Company's Responses and Objections to the Burlington Northern and Santa Fe Railway Company's First Set of Interrogatories and Requests for Production of Documents to Otter Tail Power Company (Mar. 25, 2002) (referred to hereinafter as "Otter Tail's Objections"), attached hereto as Exhibit 1. Subsequently, on March 28, 2002, Otter Tail served amended responses to Requests 49 and 51 (attached as Exhibit 2).

² Complainants in SAC cases appear to believe that discovery is a one-way street and that all the burdens of litigation are supposed to fall on the defendant. As of the date of this Motion, which is the date set for the close of discovery, Otter Tail has not produced a single document to BNSF even though it has had BNSF's request for nearly two months. In contrast, BNSF has provided substantial discovery to Otter Tail, including over 100 tape cartridges containing traffic and train event data, electronic data on BNSF operating statistics and numerous documents.

³ Both parties have agreed that the 10-day limitation for filing motions to compel relating to interrogatories in 49 C.F.R. § 1114.31(a) will not apply in this case.

documents and information in certain areas and agreed to consider producing limited information in these areas. In many cases, Otter Tail was unable to describe with specificity the information it intended to produce because it is still in the process of identifying and collecting responsive materials.

The scheduling order entered by the Board provides that discovery will be completed by April 17, 2002. Since no materials have been produced by Otter Tail, it is not possible at this time for BNSF to identify all issues in dispute relating to BNSF's requests for discovery from Otter Tail. However, Otter Tail's written responses to BNSF's discovery requests make it clear there is a dispute between the parties on the proper scope of discovery in the areas that are the subject of this Motion. BNSF is concerned about Otter Tail's responses in several other areas, including Otter Tail's production of materials relating to its future coal supplies and its internal projections of coal usage, but BNSF cannot assess the adequacy of Otter Tail's responses in these areas until materials have been produced. Accordingly, BNSF is filing this Motion now addressing issues as to which it knows there is a dispute based on Otter Tail's written responses. BNSF specifically reserves the right to seek additional discovery orders from the Board in

other areas after Otter Tail has produced materials in response to BNSF's other discovery requests.

All of the discovery requests that are the subject of this Motion involve the issue of future traffic and revenues for the hypothetical stand-alone railroad that Otter Tail will posit in this case, a critical issue in SAC cases. In recent SAC cases, most, if not all, of the hypothetical railroad's life span is in the future, requiring the Board to evaluate the reasonableness of the parties' traffic and revenue projections and estimates. Because the SAC results can be greatly affected by the assumptions made as to future traffic volume and revenues, complainants have a strong incentive to generate inflated traffic and revenue figures. Accordingly, defendants must have the opportunity to rebut a complainant's evidence on traffic and revenue issues with internal information developed by the complainant and with information developed by the complainant's expert witnesses outside the context of litigation. Complainants in SAC proceedings should not be able to present assumptions about future traffic and revenue that would be available to a hypothetical stand-alone railroad and at the same time shield from discovery inconsistent information they and their experts generate and rely on in the normal course of their business.

The specific discovery requests as to which BNSF seeks an order from the Board are described below.

DISCUSSION

I. Information Relating to Projections of Future Rail Rates (Request No. 7)

Request No. 7 seeks information in the possession of Otter Tail relating to projections of rail rates for transportation of PRB coal. The relevance and importance of this information in a SAC case cannot seriously be questioned. One of the most contentious issues in recent SAC cases has been the reliability of the parties' assumptions about future rail rates for the transportation of PRB coal. The assumptions made on this single issue can influence heavily the outcome of a SAC calculation, as demonstrated in the recent *Wisconsin Power and Light*⁴ decision. There, the Board did not even reach many issues relating to SAC costs because the Board's revenue assumptions created such an enormous pool of revenues for the SARR that SAC revenues were found to exceed SAC costs even using many of UP's cost assumptions.

⁴ *Wisconsin Power and Light Co. v. Union Pac. R.R. Co.*, STB Docket No. 42051 (served Sept. 13, 2001).

Otter Tail objects to Request No. 7 on several grounds.⁵ First, Otter Tail alleges that the request is vague because the request does not specify the "rail rates" to which the Request is addressed. This objection is unfounded. On its face the Request is addressed to two types of materials: (1) materials relating to general forecasts of PRB rail rates; and (2) materials relating to forecasts or estimates of rail rates for the transportation of PRB coal to Otter Tail facilities. It is difficult to see how BNSF could have been more precise in identifying the materials requested.

Otter Tail also objects to Request No. 7 as overbroad and unduly burdensome. Otter Tail's overbreadth objection appears merely to be part of a boilerplate objection, and Otter Tail does not explain further the bases for this objection.⁶ However, it is clear that the information sought is relevant to

⁵ Without waiving its objections, Otter Tail states that it would be willing to produce a copy of the EIA Final Report on Transportation, dated October 2000. See Otter Tail Response to Request No. 7. This government report, while potentially relevant, is no substitute for materials developed internally by Otter Tail or obtained by Otter Tail from other sources.

⁶ To the extent Otter Tail's overbreadth objection goes to BNSF's request for all documents relating to the rail rate projections, BNSF is willing to narrow the request to the projections, forecasts and estimates themselves as well as materials that identify the inputs, assumptions and methodologies used to create the projections, forecasts and estimates.

the issue of revenue projections for the SARR. Complainants in the most recent SAC cases involving PRB coal have posited hypothetical railroads that serve numerous PRB coal shippers located in diverse geographic areas. Rail rate projections, forecasts or estimates relating to rail rates for the movement of PRB coal will assist BNSF and the Board in evaluating the reliability of the rail rate projections that Otter Tail sponsors in this case.

For this reason, the Board should also reject Otter Tail's prematurity objection to Request No. 7. Otter Tail asserts that the request is premature because Otter Tail has not yet identified the shippers that will be included in the hypothetical railroad on which Otter Tail will base its SAC evidence. This objection would be valid only if Otter Tail could reasonably withhold rail rate forecasts for PRB shippers that are not included in its SARR. But if Otter Tail has rail rate projections corresponding to any PRB shippers, those projections of future rail rates would be relevant in assessing the reliability of the rail rate projections that Otter Tail makes for the shippers that are included in its SARR.⁷ There is

⁷ Otter Tail's prematurity objection suggests that it in fact has information or forecasts relating to other PRB coal shippers, otherwise there would be no reason to assert a prematurity objection.

no reason to delay the production of such materials while Otter Tail determines which specific shippers will be included in its SARR.

As to Otter Tail's burden objection, Otter Tail has not identified the grounds for asserting that it would be unduly burdensome to identify and produce materials relating to rail rate projections.⁸ It seems implausible that the volume of responsive materials is significant or that a large number of files would need to be reviewed in order to locate responsive materials. Indeed, at the parties' meet and confer session, Otter Tail confirmed that the volume of any responsive materials would not likely be significant.

In short, none of Otter Tail's objections to Request No. 7 is valid. Otter Tail should be ordered to produce all rail rate projections, forecasts and estimates in its possession relating generally to movements of PRB coal or relating specifically to movements of PRB coal to Otter Tail facilities as well as

⁸ The Board has acknowledged that a party can oppose discovery of relevant information only if the burden is significant and outweighs the requesting party's need for the information. See *Wisconsin Power and Light Co. v. Union Pac. R.R. Co.*, STB Docket No. 42051, slip op. at 4 (served June 21, 2000).

materials explaining how those projections, forecasts and estimates were derived.

II. Information Relating to Forecasts Prepared by Otter Tail's Expert Witnesses (Request Nos. 49,51)

BNSF propounded two requests for information that will be necessary to assess the credibility of testimony presented by Otter Tail's expert witnesses. Request No. 49 seeks information relating to projections of demand for PRB coal, future production of PRB coal and future transportation costs for PRB coal, that were prepared by or with the assistance of the experts that Otter Tail will use to present evidence on these issues. Request No. 51 seeks projections and forecasts from Otter Tail's experts relating specifically to the movement of coal from the PRB to Otter Tail's Big Stone facility.

In its March 25, 2002 response to BNSF's requests, Otter Tail objected to these requests on vagueness grounds, but agreed to produce responsive materials. Subsequently, Otter Tail modified its responses to these requests and narrowed in four potentially significant ways the scope of materials it agreed to produce.⁹ None of Otter Tail's belated objections is valid and

⁹ Letter from J. Moreno to A. LaRocca with attached supplementary responses (Mar. 28, 2002) (attached as exhibit 2).

Otter Tail should be required to produce the requested information.¹⁰

First, in Otter Tail's March 28, 2002 supplemental objections, Otter Tail objected to producing forecasts and projections as to which the expert "contributed," in contrast to projections "prepared by" the expert. At the parties' meet and confer session, Otter Tail explained that it would produce forecasts prepared at the expert's firm only if the expert was the principal contributor to the forecast. This limitation is

¹⁰ BNSF's request for expert materials is directed to Otter Tail even though it seeks materials from Otter Tail's experts. BNSF's purpose in seeking the discovery directly from Otter Tail was to avoid the time associated with litigation over a request to the Board for a third-party subpoena to Otter Tail's experts. Otter Tail did not object to these requests on grounds that they were directed to Otter Tail's witnesses rather than to Otter Tail, perhaps to avoid the delay that would result from forcing BNSF to pursue third-party discovery. Indeed, if Otter Tail had made such an objection, BNSF would have immediately pursued discovery directly from Otter Tail's experts. However, BNSF does not believe it is necessary to pursue this discovery through the Board's third-party subpoena procedures. BNSF is not seeking an order directing particular witnesses to produce the requested information. BNSF is seeking an order directed to Otter Tail compelling it to produce the requested information to the extent it chooses to use an expert witness to sponsor testimony on the issues of traffic volume and revenue forecasts. The choice is up to Otter Tail: if it sponsors testimony through an expert, it must agree to produce materials necessary to probe that expert's credibility. Nevertheless, if the Board believes that it is necessary to pursue the discovery set out in Requests Nos. 49 and 51 through third-party discovery procedures, or if Otter Tail raises that objection for the first time in its response to this Motion, BNSF reserves the right to pursue such discovery directly from Otter Tail's witnesses.

unreasonable and could be used by Otter Tail as a stratagem for holding back clearly relevant materials. For example, if a witness assisted in the preparation of a forecast prepared by a group of employees in the witness' firm, Otter Tail would presumably try to withhold the projection from production under the claim that the expert was not the "principal contributor." Similarly, if the expert assisted in the development of a model along with others in the expert's firm, Otter Tail might withhold from production materials relating to the model on grounds that the expert was not the "principal contributor" to its development.

There would be no valid basis for withholding such materials. The views expressed in these materials would clearly be relevant in assessing the reasonableness of any views expressed by the witness in this proceeding. The extent of the expert's participation in the development of the materials would go to the weight accorded to the evidence not its admissibility. Moreover, the expert should have no difficulty identifying projects in which he or she participated, so there would be no valid burden objection.

Second, Otter Tail's supplemental objection included an objection to the scope of the request to the extent it sought information about PRB coal demand and movements corresponding to

destinations "anywhere in the United States." As discussed above, complainants in the recent SAC cases have included in their stand-alone traffic group movements of PRB coal to a wide variety of destinations. Otter Tail's discovery requests to BNSF indicate that Otter Tail expects to follow a similar strategy. Indeed, Otter Tail has sought detailed traffic data about BNSF's movements of coal originating in the PRB without limiting that discovery to movements destined only to utilities in certain geographic areas. A complainant cannot have it both ways: It cannot request information on all movements of PRB coal, and then object to BNSF's requests for information relating to PRB coal movements regardless of the ultimate destination of those movements.

Third, Otter Tail added in its March 28, 2002 supplement a new objection to the production of materials from its experts beyond the scope of the expert discovery that was carried out in the *Wisconsin Power and Light* case. This objection is not specifically stated in the March 28, 2002 supplemental objections, but Otter Tail later explained in the parties' meet and confer session that this objection is reflected in Otter Tail's qualification to produce only "certain" expert materials responsive to BNSF's request. Otter Tail also made it clear in the letter accompanying its supplemental objections that it only

intended to produce expert materials that fell within the scope of the discovery from experts permitted in the *WPL* case.

The discovery sought in *WPL* from complainant's expert, L.E. Peobody & Associates, Inc., related to materials "that deal with national, regional, or PRB coal demand and/or production and forecasts pertaining to the issue traffic."¹¹ The scope of this discovery does not appear to include shipper-specific materials generated by or in the possession of complainant's experts, even if those materials reflect the expert's views as to future trends in PRB coal demand or production. Otter Tail indicated in the parties' meet and confer session that it likewise did not intend to produce any materials from its experts that relate to specific shippers, citing the *WPL* decision as the basis for this limitation on its production of expert materials. But the Board in *WPL* did not rule that the scope of discovery at issue there was the limit on acceptable discovery from a complainant's expert. Instead, the Board simply denied a request for an interlocutory appeal of an Administrative Law Judge's opinion ordering that complainant's expert comply with specific requests submitted by the defendant, UP.

¹¹ *Wisconsin Power & Light Corp. v. Union Pacific Railroad Co.*, STB Docket No. 42051 slip op. at 3 (served June 21, 2000).

Forecasts and projections generated by Otter Tail's experts for a particular shipper could be directly relevant to the experts' testimony in this case, particularly if the shipper is included in Otter Tail's stand-alone shipper group. Otter Tail clearly would have no basis for asserting a relevance objection to the production of shipper-specific materials. Otter Tail states a general burden objection to Request Nos. 49 and 51 but presents no evidence that it would be burdensome to collect or produce shipper-specific information. Moreover, BNSF is willing to work with Otter Tail's experts to deal with any legitimate burden issues they might have. However, a blanket exclusion of materials generated by Otter Tail's experts for particular shippers would not be appropriate on burden grounds given the potential relevance of such information in assessing the reliability of the expert's testimony in this proceeding.

In addition, it is unclear whether the parties in *WPL* believed that the scope of UP's discovery request included information on transportation rates, or instead was limited to information on coal demand and production. Otter Tail's general statement that it will limit its production of information to the scope of the discovery request in *WPL* might therefore be intended to justify the withholding of forecasts, projections or estimates of future rail rates for PRB coal as opposed to

projections of coal demand. However, the views expressed by an expert in his or her non-litigation consulting practice on the question of future rail rates for PRB coal transportation would have indisputable value in assessing the reliability of any forecasts that the witness sponsors in this case on the issue of future rail rates. Those materials should be made available to BNSF to test the credibility of Otter Tail's witnesses on this issue.

Finally, Otter Tail's supplemental objection includes an objection to the production of materials from Otter Tail's experts that include confidential or proprietary information from third parties. However, the Board has repeatedly found that concerns over the confidentiality of information can be addressed through protective orders entered by the Board, and the Board has entered such an order in this case. It would be hard to argue that the information BNSF is seeking is any more sensitive than the details of confidential transportation contracts that defendants are routinely ordered to produce in SAC cases.

Nevertheless, BNSF recognizes the potential sensitivity of information provided by third parties to Otter Tail's experts in a non-litigation context. But BNSF is not interested in the information received by the experts *from* those third parties but

rather in the forecasts, projections and estimates of future coal demand and future rail rates that the expert provided to his or her clients. BNSF is concerned that Otter Tail's objection on confidentiality grounds could be used to avoid any production of materials generated in connection with work performed for particular shippers even if those materials reflect the expert's views on issues that are directly relevant here. BNSF is willing to work with Otter Tail to protect sensitive third party information through redactions of sensitive information or selection of particular documents so long as concerns over confidentiality are not used as a means to withhold information necessary to assess the credibility of an expert's testimony in this proceeding.

III. Information Relating to Otter Tail's Possible Construction of a Second Plant at Big Stone (Request Nos. 5, 24)

Otter Tail has publicly stated that it is conducting feasibility studies to determine whether to build a new electricity generating facility at the current site of the Big Stone plant.¹² BNSF propounded two discovery requests for information relating to these studies. Request No. 5 seeks

¹² Otter Tail Power Company, "Feasibility study for second plant at Big Stone announced", Oct. 3, 2001, *available at* <http://www.optco.com/safe/default.asp?pg=NewsReleases&Func=A&AID=25003> (attached as Exhibit 3).

information relating to the "expansion or modification of the [Otter Tail] facilities used to generate electric power."

Request No. 24 seeks documents "related to Otter Tail's plans to build a second plant at Big Stone." In response to Request No. 5, Otter Tail agreed to provide a single document, its Five Year Performance Improvement Plan. Otter Tail objected to providing any materials in response to Request No. 24.

BNSF discussed these requests with Otter Tail in the parties' meet and confer session and Otter Tail explained that it did not believe information relating to its plans to construct a new facility was relevant in this case because Otter Tail did not plan to include such a facility in its SARR. Whether or not Otter Tail includes a second Big Stone facility in its SARR, information developed in feasibility studies of the construction of a second plant would be relevant in this proceeding in several areas:

- Evaluations or discussions of the possible rail transportation rates to the new facility would be relevant to any rail rate projections that Otter Tail sponsors in its SAC evidence.¹³

¹³ At the meet and confer session, Otter Tail's counsel indicated that he was going to investigate whether such such rate-related information existed, although it was unclear

(Continued...)

- Discussions about competitive alternatives for the transportation of coal would be relevant to market dominance issues.
- Evaluation of the relative economics of different fuel supplies for the new plant would be relevant to projections of future coal demand and traffic volumes on Otter Tail's SARR.
- Evaluation of the effect of the new facility on Otter Tail's dispatch priorities or on the volume of coal burned at the older Big Stone plant would be relevant to any projections of future coal supplied by the SARR to Big Stone.

These examples are not intended to be a comprehensive list of information from Otter Tail's feasibility studies that could relate to Otter Tail's evidence in this case. Indeed, without access to the information itself, it would be impossible to create such a list. However, it is clear from these examples that information relating to Otter Tail's feasibility study of a new electric generating facility would be relevant to several issues and that Otter Tail should be required to produce the

whether Otter Tail intended to produce the information if it exists.

requested information. As indicated previously, BNSF remains willing to discuss ways to reduce any legitimate burden that Otter Tail might incur in collecting the responsive information.¹⁴

IV. Information Relating to Otter Tail's Decisions Whether to Generate or Purchase Electricity (Request Nos. 19,21,22 and Interrogatory No. 22)

Three document requests and one interrogatory seek information relating to the circumstances under which Otter Tail purchases electricity in wholesale markets and the effect of these purchases on Otter Tail's generation of electricity at its coal-fired electricity generating facilities. See Request Nos. 19, 21 and 22 and Interrogatory No. 22.¹⁵ Electricity purchases by Otter Tail are relevant in this case because an electricity seller such as Otter Tail may satisfy its customers' demand for electricity either by generating the electricity itself or through purchases of electricity from other sources. With the recent deregulation of wholesale electricity markets and the emergence of new wholesale suppliers, the possibility of utilities making large purchases of electricity from other

¹⁴ For example, detailed engineering studies could be reviewed at Otter Tail's facilities.

¹⁵ These requests also seek information about Otter Tail's sales of electricity, but BNSF is not seeking a Board order to compel the production of such information.

sources is becoming an increasingly important option for electricity generators. Otter Tail's evaluation of this strategy and its actual practices in this area would provide BNSF and the Board with important information about possible future consumption of coal at the electric generating facilities that Otter Tail includes in its stand-alone network.

At the parties' meet and confer session, Otter Tail explained that its principal objection to this request is that the information sought relates to the question of geographic and product competition. BNSF does not dispute that information about a utility's make or buy decisions would be important in assessing the existence of effective product and geographic competition if presentation of such evidence were currently permitted under the Board's rules, but BNSF does not seek the information addressed in these discovery requests for that purpose. The requested information also is relevant to SAC issues, namely the volume of coal that Otter Tail will transport over the life of its hypothetical stand-alone railroad as well as the volume of coal that the SARR could be expected to transport to other coal-fired electricity generating facilities included in Otter Tail's stand-alone shipper network. Because of the relevance of the requested information to these important SAC issues, Otter Tail should be required to produce it.

Otter Tail also objects to these requests on burden and overbreadth grounds. While it is possible that the identification and production of responsive information could involve significant effort, Otter Tail has not attempted to demonstrate that the burdens would be unreasonable. Moreover, BNSF is willing to work with Otter Tail to reduce the effort that would be required to respond to these requests. However, Otter Tail's undocumented assertion of burden does not justify its absolute refusal to produce any responsive materials.

V. Information Relating to Otter Tail's Evaluation of Alternative Fuels (Request Nos. 38-39)

BNSF is also seeking information relating to Otter Tail's views on the relative economics of different fuel types in the generation of electricity. Request No. 38 seeks general information about the relative economics of burning different types of fuel to generate electricity and Request No. 39 seeks information about the ability to use different fuels in the Big Stone facility. Otter Tail objected to producing any information in response to these two requests. In the parties' meet and confer session, Otter Tail explained that its basic objection to these requests was that they related to issues of product and geographic competition which are no longer addressed

by the Board in the assessment of a defendant's market dominance.

Once again, that objection is misplaced because the information sought by those requests is also relevant to the important SAC issue of the volume of coal that Otter Tail can assume to be transported on its SARR during the life of the hypothetical railroad.¹⁶ If Otter Tail uses or has considered the possibility of using alternative fuels, its analyses and conclusions would be relevant to the question of coal traffic volumes handled by its SARR. If, for example, Otter Tail believes it will increase its use of natural gas or oil in particular facilities and decrease its reliance on coal, this factor could be taken into account in developing future coal traffic assumptions relating to that facility.

CONCLUSION

For the foregoing reasons, BNSF requests that the Board order Otter Tail to provide documents and interrogatory

¹⁶ In *FMC Wyoming Corp. v. Union Pac. R.R. Co.*, STB Docket No. 42022 (served Apr. 17, 1998), the Board provided guidance on the discoverability of materials related to the complainant's use of alternative products, but the Board specifically limited its discussion to the context of market dominance proceedings. The Board based its views there on the proper scope of discovery in market dominance proceedings and did not address the question whether the materials might be discoverable for SAC purposes.

responses sought by BNSF in the Requests for Production of
Documents and Interrogatories identified above.

Respectfully submitted,



Richard E. Weicher
Michael E. Roper
David M. Pryor
The Burlington Northern and
Santa Fe Railway Company
2500 Lou Menk Drive
Fort Worth, TX 76131
(817) 352-2353

Samuel M. Sipe, Jr.
Anthony J. LaRocca
Cynthia L. Quarterman
Steptoe & Johnson LLP
1330 Connecticut Ave., N.W.
Washington, D.C. 20036
(202) 429-6486

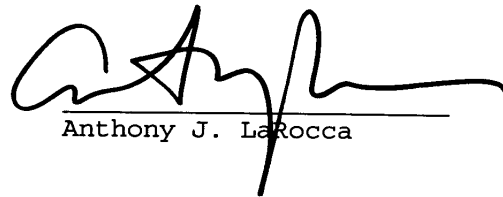
Attorneys for Defendant

April 17, 2002

CERTIFICATE OF SERVICE

I hereby certify that on April 17, 2002, a true and correct
copy of the foregoing document was served by hand on:

Nicholas J. DiMichael, Esq.
Jeffrey O. Moreno, Esq.
Michael H. Higgins, Esq.
Thompson Hine LLP
1920 N Street, N.W., Suite 800
Washington, D.C. 20036



Anthony J. LaRocca

Exhibit 1

March 25, 2002

Via Messenger

Anthony J. LaRocca, Esq.
Steptoe & Johnson LLP
1330 Connecticut Avenue, N.W.
Washington, D.C. 20026

RE: Docket No. NOR 42071; *Otter Tail Power Company v. The Burlington Northern and Santa Fe Railway Company*

Dear Tony:

Enclosed please find Otter Tail Power Company's Responses and Objections to The Burlington Northern and Santa Fe Railway Company's First Set of Interrogatories and Requests for Production of Documents to the Otter Tail Power Company. If you have any questions, please do not hesitate to contact me. My direct dial number is (202) 263-4107.

Sincerely,



Jeffrey O. Moreno
Michael H. Higgins

*Attorneys for Otter Tail Power Company**Enclosures*

OTTER TAIL POWER COMPANY,
Complainant,
v.
THE BURLINGTON NORTHERN AND
SANTA FE RAILWAY COMPANY
Defendant.

Complainant, Otter Tail Power Company ("Otter Tail") hereby submits its responses and objections to Defendant, The Burlington Northern and Santa Fe Railway Company's ("BNSF") First Set of Interrogatories and Requests for Production of Documents to Otter Tail Power Company. Otter Tail's General Objections and Objections to Definitions and Instructions are incorporated into its responses and objections to each Interrogatory and Request for the Production of Documents.

28

-
2. Otter Tail objects to BNSF's Interrogatories and Requests for Production of Documents to the extent that they are irrelevant and/or not reasonably calculated to lead to the discovery of admissible evidence.
 3. Otter Tail objects to BNSF's Interrogatories and Requests for Production of Documents to the extent that they are vague and ambiguous and/or unintelligible.
 4. Otter Tail objects to BNSF's Interrogatories and Requests for Production of Documents to the extent that they seek documents that constitute or disclose confidential or proprietary information, including third-party proprietary information, or other sensitive, non-public information. Notwithstanding this objection, Otter Tail will produce or make available confidential documents that are not otherwise objectionable, subject to the terms of an appropriate protective order.
 5. Otter Tail objects to BNSF's Interrogatories and Requests for Production of Documents to the extent that they seek documents that, if produced, would result in the violation of any obligation, contractual or otherwise, to third parties.
 6. Otter Tail objects to BNSF's Interrogatories and Requests for Production of Documents to the extent that they seek disclosure of documents that are protected by the attorney-client privilege, the attorney work product doctrine, the joint defense privilege, and/or any other applicable privilege or doctrine. Any production of privileged or otherwise-protected information is inadvertent and shall not constitute a waiver of any claim or privilege or other protection.

7. Otter Tail objects to BNSF's Interrogatories and Requests for Production of Documents to the extent that they seek information and/or documents in a form that Otter Tail does not maintain in the ordinary course of business, or that are not readily available in the form requested by BNSF, where such information and/or documents could be developed if at all only through a special study that Otter Tail objects to performing.

8. Otter Tail objects to BNSF's Interrogatories and Requests for Production of Documents to the extent that they request production or identification of all documents that provide the source or bases of, or back up for, information sought by a particular Interrogatory or Request for Production of Documents.

9. Otter Tail objects to the production of information and documents regarding product, geographic, or indirect competition on the grounds that production regarding the foregoing is unduly burdensome, not reasonably calculated to lead to the discovery of admissible evidence, not relevant to the issue of whether there is "an absence of effective competition from other rail carriers or modes of transportation for the transportation to which" the rates challenged by Otter Tail in this proceeding apply, and therefore contrary to 49 U.S.C. § 10707.

10. Otter Tail objects to each and every discovery request to the extent that it seeks information or documents that are not in Otter Tail's possession, custody or control, or otherwise kept by Otter Tail in the ordinary course of business.

OBJECTIONS TO DEFINITIONS AND INSTRUCTIONS

1. These interrogatories and requests for production of documents ("Requests") call for all information, including information contained in documents, which is in the possession, custody, or control of Otter Tail.

OBJECTION:

Otter Tail objects to this instruction the extent that it imposes any obligations beyond those created by 49 C.F.R. § 1114.

7. If any document covered by a Request is withheld for whatever reason, including any privilege, furnish a list identifying all withheld documents in the following manner:
 - a. the specific Request to which the document is responsive;
 - b. the date of the document;
 - c. the name of each author or preparer;
 - d. the name of each person who received the document;
 - e. a brief description of the subject matter of the document and any withheld attachments or appendices;
 - f. the specific factual and legal basis for withholding; and
 - g. the number of pages withheld.

OBJECTION:

Otter Tail objects to this instruction the extent that it imposes any obligations beyond those imposed under 49 C.F.R. § 1114. Subject to and without waiving this objection, Otter Tail states that it will prepare and maintain an appropriate privilege log for review by BNSF.

10. "Otter Tail Power Company," "Otter Tail Corporation," "Otter Tail," "you" and "your" should be interpreted to include Otter Tail, and its predecessors, successors, affiliates, subsidiaries, divisions, members, participating entities or parent corporations, and their agents, employees, officers, directors, principals, attorneys, consultants, and other representatives, and any other person acting on their behalf, including any division, department, predecessor, corporation, or partnership through which they now conduct or have conducted their business affairs as well as the joint owners of Big Stone.

OBJECTION:

Otter Tail objects to this instruction to the extent that it imposes any obligations beyond those imposed under 49 C.F.R. § 1114. Otter Tail objects to this definition to the extent that it includes the joint owners of Big Stone. Otter Tail objects to the definition of "Otter Tail Power Company," "Otter Tail Corporation," "Otter Tail," "you" and "your" on the basis that it is overbroad, unduly burdensome and beyond the scope of permissible discovery to the extent that it requests information and production of documents that are not in the possession, custody, or control of Otter Tail, including, for example, documents in the possession of former employees, directors and all other persons acting (or who have acted) on Otter Tail's behalf. Otter Tail objects to the definition to the extent that it includes information in the files of consultants that has not been provided to OTP and is not within OTP's possession, custody, or control.

14. "Related to" or "relates to" should be interpreted to include every document describing, discussing, analyzing, referring to, associated with, or bearing a relationship to the subject matter of the Request. A document is "related to" or "relates to" a certain subject

matter if the subject matter is described or discussed at any place in the document and even if the subject matter is not a major focus of the document.

OBJECTION:

Otter Tail objects to this instruction the extent that it imposes any obligations beyond those imposed under 49 C.F.R. § 1114. Otter Tail also objects to this instruction on the grounds that it is overbroad and unduly burdensome and that the term "major focus" is vague and ambiguous.

18. Any request to "identify" should be interpreted to include:

- a. with respect to a document, stating the nature of the document (e.g., letter, memorandum, corporate minutes); the date, if any, appearing thereon; the date, if known, on which the document was prepared; the title of the document; the general subject matter of the document; and the identity of the author and recipients.
- b. with respect to a person, stating his or her full name; his or her most recent known home address and telephone number; his or her present title and position; and his or her present and prior connections or associations with any participant or party to this proceeding.

OBJECTION:

Otter Tail objects to the definitions of "identify" on the basis that they are overbroad and unduly burdensome to the extent that they seek information that Otter Tail does not maintain in the ordinary course of business, that Otter Tail does not keep in the format requested, or that would require Otter Tail to undertake a special study.

RESPONSES AND OBJECTIONS TO INTERROGATORIES

INTERROGATORY NO. 1

Identify all persons that have ever provided any service related to the transportation of coal for use at the Big Stone facility or the switching, handling, loading, unloading, or storage of rail cars for Otter Tail, describe the service provided, when that service was provided, and if the person is affiliated with Otter Tail, the nature of the affiliation.

RESPONSE:

Otter Tail objects to this interrogatory as overbroad, unduly burdensome, and vague and ambiguous. Otter Tail also objects to this interrogatory as irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiver of the foregoing objections, Otter Tail states that no entities other than Otter Tail, the mine owners, BNSF, and the Milwaukee Road Railroad have ever provided the services or activities named in this interrogatory.

The Milwaukee Road Railroad went bankrupt in 1982. At that time the State of South Dakota bought the line segment from Terry Mt. to Ortonville, MN. The state then leased the track to the Burlington Northern Railroad to operate.

In the year 1999, the following mines supplied coal to Otter Tail: Westmoreland; Kennecott; Arch; Absaloka Mine; Caballo Rojo Mine; Coal Creek Mine; Cordero Mine.

In the year 2000, the following mines supplied coal to Otter Tail: Arch; Rag; Kennecott; Coal Creek Mine; Belle Ayr Mine; Caballo Rojo Mine; Black Thunder Mine
Cordero Mine.

In the year 2001, the following mines supplied coal to Otter Tail: Triton; Caballo Coal Co.; Rag; Kennecott; Arch; Buckskin Mine; Caballo Mine; Eagle Butte Mine; Caballo Rojo Mine; Black Thunder Mine; Cordero Mine.

The following persons at Otter Tail have performed activities listed in this Interrogatory: Big Stone Plant Personnel: YR 1999: Arnold Amberg, Wesley Bolstad, James Kramer, LeRoy Capp, Michael Frerichs, Robert Laskowske, Dwight Nedved; YR 2000 Arnold Amberg, Wesley Bolstad, James Kramer, Michael Frerichs, Robert Laskowske, Dwight Nedved; YR 2001 Arnold Amberg, Wesley Bolstad, James Kramer, Michael Frerichs, Robert Laskowske, Dwight Nedved.

INTERROGATORY NO. 2

Identify the volume of coal Otter Tail will move each year during the period for which it posits the existence of a stand-alone railroad from each mine in the PRB that will be the source of coal for Otter Tail.

RESPONSE:

Otter Tail objects to this interrogatory as premature. Otter Tail also objects to this interrogatory as irrelevant and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it relates to any facility other than Big Stone. Otter Tail also objects to this interrogatory as vague and unintelligible to the extent that it requires Otter Tail to state in certain terms future volumes that are forecasts. Subject to and without waiver of the foregoing objections, Otter Tail states that it will produce documents responsive to this interrogatory.

INTERROGATORY NO. 3

Identify all coal mines that will be served by the stand-alone railroad that Otter Tail will posit for this case.

RESPONSE:

Otter Tail objects to this interrogatory as premature because Otter Tail's response, in part, requires information that BNSF must provide in discovery. The interrogatory is also premature because Otter Tail has not conclusively established the operations and characteristics of the SARR. Subject to and without waiver of the foregoing objections, Otter Tail states that it will provide the requested information as it becomes available.

INTERROGATORY NO. 4

Identify all customers that will be served by the stand-alone railroad that Otter Tail will posit for this case.

RESPONSE:

Otter Tail objects to this interrogatory as premature because Otter Tail's response, in part, requires information that BNSF must provide in discovery. The interrogatory is also premature because Otter Tail has not conclusively established the operations and characteristics of the SARR. Subject to and without waiver of the foregoing objections, Otter Tail states that it will provide the requested information as it becomes available.

INTERROGATORY NO. 5

State the date on which Otter Tail contends that a hypothetical stand-alone railroad serving the Big Stone facility would begin its operations.

RESPONSE:

Otter Tail objects to this interrogatory as premature because Otter Tail's response, in part, requires information that BNSF must provide in discovery. The interrogatory is also premature because Otter Tail has not conclusively established the operations and characteristics of the SARR. Subject to and without waiver of the foregoing objections, Otter Tail states that the

SARR, as currently planned, will commence operations on January 1, 2002 and that the construction will probably begin in June of 1999.

INTERROGATORY NO. 6

If Otter Tail contends that a cost of capital different from the railroad industry cost of capital should be used in the stand-alone cost analysis in this case, identify:

- a. what cost of capital it contends should be used;
- b. the basis for that contention;
- c. Otter Tail's actual cost of capital.

RESPONSE:

Otter Tail objects to this interrogatory as premature because Otter Tail's response, in part, requires information that BNSF must provide in discovery. The interrogatory is also premature because Otter Tail has not conclusively established the operations and characteristics of the SARR. Subject to and without waiver of the foregoing objections, Otter Tail states that it will provide the requested information as it becomes available.

INTERROGATORY NO. 7

Describe the principal railroad lines and traffic routings that will constitute the stand-alone railroad that Otter Tail will posit for this case.

RESPONSE:

Otter Tail objects to this interrogatory as premature because Otter Tail's response, in part, requires information that BNSF must provide in discovery. The interrogatory is also premature because Otter Tail has not conclusively established the operations and characteristics of the SARR. Subject to and without waiver of the foregoing objections, Otter Tail states that it will provide the requested information as it becomes available.

INTERROGATORY NO. 8

Identify the traffic commodities that will be included in the stand-alone railroad network that Otter Tail will posit for this case.

RESPONSE:

Otter Tail objects to this interrogatory as premature because Otter Tail's response, in part, requires information that BNSF must provide in discovery. The interrogatory is also premature because Otter Tail has not conclusively established the operations and characteristics of the SARR. Subject to and without waiver of the foregoing objections, Otter Tail states that it will provide information responsive to this interrogatory as it becomes available.

INTERROGATORY NO. 9

For any coal shipped to the Big Stone facility that was not transported by BNSF, identify the delivering and origin carrier, the date and volume of each shipment, the transportation rate, the routing and the mode of transportation.

RESPONSE:

No coal has been transported to the Big Stone facility since January 1, 1999 that was not transported by BNSF.

INTERROGATORY NO. 10

Identify and describe all offers made to, solicited by, or considered by Otter Tail at any time for the transportation of coal to the Big Stone facility regardless of mode or carrier.

RESPONSE:

Otter Tail objects to this interrogatory as overbroad and unduly burdensome to the extent that it requests "all" offers at "any" time. Subject to and without waiver of the foregoing objections, Otter Tail states as follows: The Big Stone plant was served originally by the

Milwaukee Railroad, pursuant to a tariff. Otter Tail believes that no responsive material exists from this period. After the Milwaukee Railroad discontinued operations Otter Tail solicited offers from BNSF for coal transportation. From April through December 2001, Otter Tail solicited offers for contract transportation of coal from BNSF and BNSF responded with offers. BNSF should be aware of these offers and solicitations. Otter Tail will produce responsive documents maintained in the ordinary course of business.

INTERROGATORY NO. 11

Identify and describe any studies of opportunities for Otter Tail to acquire, lease, build-in or build-out to obtain direct rail access to the Big Stone facility by a rail carrier other than BNSF, including the estimated costs.

RESPONSE:

Otter Tail states that it has not conducted or requested any such studies since January 1, 1999.

INTERROGATORY NO. 12

Identify any electricity generating facility other than the Big Stone facility that Otter Tail owns (in whole or in part) or operates, or in which Otter Tail has any ownership interest or operating or management responsibility and identify the percentage of ownership interest.

RESPONSE:

Otter Tail objects to this interrogatory as irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving the foregoing objections, Otter Tail states as follows: (1) Coyote Station – 35% ownership and operator; (2) Hoot Lake Plant – 100% ownership; (3) Jamestown Peaking Plant – 100% ownership; (4) Lake Preston Peaking Plant – 100 % ownership; (5) Fergus Control Center – 100% ownership; (6)

Hoot Lake Hydro – 100% ownership; (7) Wright Hydro – 100% ownership; (8) Pisgah Hydro – 100% ownership; (9) Dayton Hollow Hydro – 100 % ownership; (10) Taplin Gorge Hydro – 100% ownership; (11) Bemidji Hydro – 100% ownership.

INTERROGATORY NO. 13

For each facility identified in response to Interrogatory No. 12, please identify the electricity generating capacity and the actual capacity utilization for each year from 1999 to the present.

RESPONSE:

Otter Tail objects to this interrogatory as irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiver of the foregoing objections, Otter Tail states as follows: (1) Coyote Station – net capacity 427MW – net capacity factor 1999 – 83.10%, 2000 – 78.09%, 2001 – 87.04%; (2) Hoot Lake Plant – net capacity 155.6MW – net capacity factor 1999 – 55.1%, 2000 – 65.7%, 2001 – 72.4%; (3) Jamestown Peaking Plant – net capacity 58.8MW – net capacity factor not available; (4) Lake Preston Peaking Plant – net capacity 58.8MW – net capacity factor not available; (5) Fergus Control Center – net capacity 2.0MW – net capacity factor not available; (6) Hoot Lake Hydro – Nameplate rating 1.0MW – net capacity factor not available; (7) Wright Hydro – Nameplate rating .40 MW – net capacity factor not available; (8) Pisgah Hydro – Nameplate rating .52MW – net capacity factor not available; (9) Dayton Hollow Hydro – Nameplate rating .97MW – net capacity factor not available; (10) Taplin Gorge Hydro – Nameplate rating .56MW – net capacity factor not available; (11) Bemidji Hydro – Nameplate rating .74MW – net capacity factor not available.

INTERROGATORY NO. 14

Identify all consultants or experts Otter Tail has retained to provide expert testimony or intend to retain to provide expert testimony in this case and, if Otter Tail has retained a consultant or expert, when it retained that consultant or expert.

RESPONSE:

Otter Tail has retained the following individuals to provide expert testimony in this case:

Thomas D. Crowley	December 2001
Richard McDonald	February 2002
Joseph Kruzich	February 2002
Dr. George Borts	March 2002
Dr. Ralph Barbaro	March 2002

INTERROGATORY NO. 15

For each consultant or expert identified in response to Interrogatory No. 14, please provide:

- a. the qualifications of the witness, including a list of all publications authored and speeches given by the witness within the preceding ten years;
- b. a list of any other cases in which the witness has testified as an expert at trial, by deposition or in writing.

RESPONSE:

Otter Tail objects to the word "publication" as vague and ambiguous. Subject to and without waiving this objection, Otter Tail states that it is in the process of gathering this information and will supplement its responses when available.

INTERROGATORY NO. 16

Identify the Otter Tail employee most familiar with each of the following matters:

- a. coal supply arrangements for the Big Stone facility and the negotiation of coal supply or coal purchase agreements;
- b. the likely volume of coal that will be consumed at the Big Stone facility during the life of the hypothetical stand-alone railroad;
- c. coal transportation arrangements for the present and future movement of coal to the Big Stone facility;
- d. negotiations with prospective providers of coal transportation to the Big Stone facility;
- e. the possible construction of new rail facilities in the area of the Big Stone facility;
- f. forecasts, projections or estimates of PRB coal traffic and coal demand;
- g. forecasts, projections or estimates of electricity demand, the costs of purchasing power from other utilities, and/or the costs of co-generation;
- h. the Big Stone facility's electricity generating operations;
- i. engineering or construction work at the Big Stone facility currently being carried out or planned for the future;
- j. the handling and unloading of rail cars and storage of coal at the Big Stone facility;

- k. compliance by the Big Stone facility with environmental regulations and standards.

RESPONSE:

Otter Tail objects to "most familiar" as vague and ambiguous. Otter Tail objects to 16(b) as duplicative and refers to its response and objections to Interrogatory No. 2. Otter Tail objects to 16(e) and (f) as vague and ambiguous to the extent they are not linked in any reasonable way to the Big Stone facility and or the SARR. Otter Tail objects to 16(g) as irrelevant and vague and ambiguous. Subject to the foregoing objections and without waiver, Otter Tail responds as follows: (a) Dennis Bowman; (b) Dennis Bowman; (c) Dennis Bowman; (d) Dennis Bowman; (e) Keith Kelly; (f) Dennis Bowman; (g) Bryan Morlock; (h) Jeff Endrizzi; (i) Jeff Endrizzi; (j) Keith Kelly; (k) Terry Graumann.

INTERROGATORY NO. 17

Describe in detail the corporate structure of Otter Tail and the joint owners of Big Stone (including their subsidiaries and predecessors in interest), their form of governance, business areas, electric utility facilities and other energy related assets.

RESPONSE:

Otter Tail objects to this interrogatory as irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving the foregoing objections, Otter Tail will produce corporate flow charts for itself or other similar documents to the extent such documents may be available, containing information within the scope of this interrogatory.

INTERROGATORY NO. 18

Present a chronology of all changes in corporate structure and governance of Otter Tail and its subsidiaries and predecessors in interest from January 1, 1999 to the present.

RESPONSE:

Otter Tail objects to this interrogatory as irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving the foregoing objections, Otter Tail will produce past corporate flow charts for itself or other similar documents to the extent such documents may be available, containing information within the scope of this interrogatory.

INTERROGATORY NO. 19

State the basis for the allegations contained in Paragraphs 3, 6-8, and 10-14 of Otter Tail's complaint in this proceeding.

RESPONSE:

Otter Tail states that its knowledge and understanding of the operations of the Big Stone facility, which Otter Tail possesses as operating agent on behalf of the joint owners, are the bases for the allegations contained in paragraph 3. Otter Tail states that its knowledge and understanding of BNSF's operations, which knowledge and understanding Otter Tail has gained, in part, through its previous and current business relationship with BNSF for the transportation of coal, are the bases for the allegation contained in paragraph 6. Otter Tail states that the bases for Otter Tail's allegations contained in paragraphs 7 and 8 are the confidential contract between Otter Tail and BNSF referred to in that paragraph 7, Otter Tail's knowledge and understanding of the operations of the Big Stone facility, and Otter Tail's knowledge and understanding of BNSF's operations under the contract. Otter Tail states that BNSF's Common Carrier Pricing

Authority No. BNSF 90062, which was attached to the Complaint as Exhibit "A," is the basis for the allegations contained in paragraph 10. Otter Tail states that the allegations made in paragraphs 11 through 14 rest upon the bases identified above, upon various publicly-available sources, and upon information and belief.

INTERROGATORY NO. 20

For each projection, forecast or estimate produced in response to Requests for Production Nos. 2, 6, 7, 9, 13-16, 22, 39 and 48-51, identify and describe in detail the methodology used to develop or prepare it, including, but not limited to, the assumptions and sources of information used.

RESPONSE:

Otter Tail objects this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Otter Tail also objects to this interrogatory as premature because Otter Tail cannot provide responsive information until it locates and identifies documents responsive to the named requests for production, to the extent that such documents exist and to the extent that Otter Tail has not objected to the referenced document requests.

INTERROGATORY NO. 21

Identify each local, state or federal proceeding since January 1, 1999 in which Otter Tail has been a party regarding procurement or transportation of coal to one of its electric generating facilities, or electric power generation at one of those facilities.

RESPONSE:

Otter Tail objects this interrogatory as overbroad, unduly burdensome, irrelevant, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it applies

to facilities other than Big Stone. Subject to and without waiver of the foregoing objection, Otter Tail states that it has not been a party to any such proceedings since January 1, 1999.

INTERROGATORY NO. 22

Explain Otter Tail's current policies and procedures for determining whether and to what extent to generate or purchase electricity for use by its customers.

RESPONSE:

Otter Tail objects this interrogatory as overbroad, unduly burdensome, irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.

INTERROGATORY NO. 23

Explain in detail the sources and volumes of fuel (including lignite) used to generate electricity at Big Stone and Otter Tail's other electric generating facilities since their construction and state any constraints on using fuel other than PRB coal at those facilities from January 1, 1999 through 2022.

RESPONSE:

Otter Tail objects this interrogatory as overbroad, unduly burdensome, irrelevant, and not reasonably calculated to lead to the discovery of admissible evidence. Subject to the foregoing objections and without waiver, Otter Tail refers to its production of FERC Forms-423, which contain responsive information.

RESPONSES AND OBJECTIONS TO REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 1

Produce the following documents related to the consumption of coal since January 1, 1999, at the Big Stone facility and all other electric generating facilities owned in whole or in part by Otter Tail:

- a. documents sufficient to identify each source from which coal burned at the facility was obtained;
- b. documents sufficient to identify the volume of coal obtained from each source;
- c. documents sufficient to identify the monthly and annual quantity of coal burned at the facility;
- d. all documents related to the projected, forecast or estimated volume of coal that will be burned at the facility during a future period after the date the document was generated.

RESPONSE:

Otter Tail objects to this Request for Production on the grounds that it is irrelevant, not reasonably calculated to lead to the discovery of admissible evidence, overbroad, and unduly burdensome to the extent that it requires information pertaining to facilities other than Big Stone. Subject to and without waiving the foregoing objections, Otter Tail states that it will produce FERC Forms-423 and Otter Tail's five-year fuel budgets.

REQUEST FOR PRODUCTION NO. 2

Produce all documents discussing or analyzing the coal burning capacity and capacity utilization/capacity factor of the facility, including engineering studies or analyses, studies or

discussions of the factors contributing to capacity utilization/capacity factor of the Big Stone facility in particular years, and projections of capacity and capacity utilization in future years.

RESPONSE:

Otter Tail objects to this Request for Production as vague and ambiguous as to the meaning of the word "facility." Subject to and without waiving the foregoing objection and with the assumption that "facility" refers to Big Stone, Otter Tail states that it will produce responsive documents.

REQUEST FOR PRODUCTION NO. 3

Produce all documents since January 1999 related to past, present and possible future purchases of coal for consumption at the Pawnee facility and all other electricity generating facilities owned in whole or in part by Otter Tail, including but not limited to the following:

- a. documents related to Otter Tail's intent to purchase or source coal from any mine in the PRB;
- b. contracts or agreements with any supplier of coal;
- c. documents related to the negotiation of past, present and possible future coal supply contracts or agreements;
- d. internal studies, analyses or surveys relating to past, present and possible future sources of and prices for coal;
- e. correspondence with mines or owners of mines located in the PRB;
- f. the prices paid for coal;
- g. the projected or estimated future prices for coal;
- h. the annual minimum and maximum tonnages for future coal purchases from each coal mine from which Otter Tail intends to source coal;

- i. the coal specifications for past, present and possible future coal supplies;
- j. studies or analyses of the delivered cost of coal.

RESPONSE:

Otter Tail objects to this Request for Production as irrelevant and not reasonably calculated to lead to the discovery of admissible evidence because the request refers to "the Pawnee facility." Otter Tail states that no responsive documents exist for "Pawnee." Assuming that "Big Stone" should appear in place of "Pawnee," as the name of the facility that is the subject of this Request, Otter Tail objects to the request as irrelevant, overbroad, and unduly burdensome to the extent that it relates to facilities other than Big Stone. Subject to and without waiver of the foregoing objections and subject to the stated assumption, Otter Tail will produce documents to the extent such documents exist in response to subparts (a), (c), (d), (e), and (g). Otter Tail will produce contracts responsive to subparts (b), (f), (h), and (i), subject to confidentiality provisions in such contracts. Otter Tail states that responsive documents do not exist for subpart (j).

REQUEST FOR PRODUCTION NO. 4

Produce the following documents related to the anticipated life of the Big Stone facility and all other electricity generating facilities owned in whole or in part by Otter Tail, including but not limited to the following;

- a. documents related to the useful life of the boilers at the facility;
- b. studies or analyses of the impact of environmental regulations on the useful life of the facility;
- c. studies or analyses of possible expenditures or investments needed to maintain operations of the facility;

- d. engineering studies related to future operations of the facility.

RESPONSE:

Otter Tail objects to this Request for Production on the grounds that it is irrelevant, not reasonably calculated to lead to the discovery of admissible evidence, overbroad, and unduly burdensome to the extent that it requests information for facilities other than Big Stone. Subject to and without waiving the foregoing objections, Otter Tail states that: (a) no responsive documents exist; (b) no responsive documents exist; (c) Otter Tail refers to the Five Year Performance Improvement Plan provided in Request for Production No. 2; (d) Otter Tail refers to its response to subpart (c).

REQUEST FOR PRODUCTION NO. 5

Produce all documents that discuss or analyze the possible expansion of or modification to any part of the Big Stone facility and all other electricity generating facilities owned in whole or in part by Otter Tail, including but not limited to the following:

- a. expansion or modification of the facilities used to generate electric power;
- b. possible reconfiguration of the facility so as to permit utilization, in whole or in part, of a different type of coal from that currently burned or a different type of fuel;
- c. possible expansion or modification of facilities located at the Big Stone facility that handle, store, unload or transport coal cars.

RESPONSE:

Otter Tail objects to this Request for Production on the grounds that it is irrelevant, not reasonably calculated to lead to the discovery of admissible evidence, overbroad, and unduly burdensome to the extent that it requires information for facilities other than Big Stone. Otter

Tail objects to subpart (b) in its entirety as irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving the foregoing objections: (a) Otter Tail refers to the Five Year Performance Improvement Plan referred to in response to Request No. 2; (b) Otter Tail States that no responsive documents exist; (c) Otter Tail states that no responsive documents exist.

REQUEST FOR PRODUCTION NO. 6

Produce all documents related to projections, forecasts or estimates of the demand for coal originating in the Powder River Basin; projections, forecasts or estimates of the production of such coal; and projections, forecasts or estimates of the price of such coal.

RESPONSE:

Otter Tail objects to this Request as vague and ambiguous because it does not identify whose "demand" is covered by the Request. Assuming the broadest possible scope of "demand," Otter Tail objects to this Request for Production as overbroad and unduly burdensome. Subject to and without waiving the foregoing objections, Otter Tail states that it will produce responsive documents to the extent such documents exist. Otter Tail refers to its response to Request No. 3(d) and (g).

REQUEST FOR PRODUCTION NO. 7

Produce all documents related to projections, forecasts or estimates of rail rates from the PRB in general or to any specific Otter Tail coal-burning electric generating facility; and projections, forecasts or estimates of the costs of providing rail service for coal transportation from the PRB in general or to any specific Otter Tail coal-burning electric generating facility.

RESPONSE:

Otter Tail objects to this Request as vague and ambiguous because it does not identify which "rail rates" are covered by the Request. Assuming the broadest possible scope of "rail rates," Otter Tail objects to this Request for Production as overbroad and unduly burdensome. To the extent that this Request for Production relates to facilities located on the SARR other than Big Stone, Otter Tail also objects on the grounds that it is premature because Otter Tail has not yet fully developed the characteristics and operations of its SARR, which will depend upon information that BNSF has not yet provided in response to Otter Tail's discovery requests. Subject to and without waiving the foregoing objections, Otter Tail states that it will produce a copy of the EIA Final Report on Transportation, dated October 2000.

REQUEST FOR PRODUCTION NO. 8

Produce all documents related to existing, projected or estimated demand for electricity generated at the Big Stone facility, for electricity generated at any other electric generating facility located in South Dakota, and for electricity generated at any other electric generating facility that Otter Tail includes in its stand-alone traffic network.

RESPONSE:

Otter Tail objects to this Request as vague and ambiguous because it does not identify whose "demand" is covered by the Request; nor does it indicate whether demand should be measured by facility. Assuming the broadest possible scope of "demand," Otter Tail objects to this Request for Production on the grounds that it is irrelevant, not reasonably calculated to lead to the discovery of admissible evidence, overbroad, and unduly burdensome to the extent that it relates to facilities other than those located on the SARR. To the extent that this Request for Production relates to facilities located on the SARR other than Big Stone, Otter Tail also objects on the grounds that it is premature because Otter Tail has not yet fully developed the

characteristics and operations of its SARR, which will depend upon information that BNSF has not yet provided in response to Otter Tail's discovery requests. Subject to and without waiving the foregoing objections, Otter Tail states that it will produce a copy of its long-range load forecast which contains responsive information within the system-wide context. Otter Tail does not measure demand on the basis of each generating facility.

REQUEST FOR PRODUCTION NO. 9

Produce all documents related to projections, forecasts or estimates of coal demand or consumption by the Big Stone facility, any other electric generating facility owned by Otter Tail and any other electric generating facility that Otter Tail includes in its stand-alone shipper group; and projections, forecasts or estimates of coal shipments from the PRB to such facilities.

RESPONSE:

Otter Tail objects to this Request for Production on the grounds that it is irrelevant, not reasonably calculated to lead to the discovery of admissible evidence, overbroad, and unduly burdensome to the extent that it seeks information for facilities other than those located on the SARR. Otter Tail also objects to this Request for Production on the grounds that it is premature because Otter Tail has not yet fully developed the characteristics and operations of its SARR, which will depend on information that BNSF has not yet provided in discovery. Subject to and without waiving the foregoing objections, Otter Tail refers to its response to Request No. 1(d).

REQUEST FOR PRODUCTION NO. 10

Produce all contracts in force at any time during the period from 1999 to the present between Otter Tail and its customers for electricity generated in whole or in part at the Big Stone facility, and all amendments thereto.

RESPONSE:

Otter Tail objects to this request as overbroad, unduly burdensome, irrelevant, and not reasonably calculated to lead to the discovery of admissible evidence. Otter Tail also objects to this request to the extent that it may require Otter Tail to violate confidentiality agreements contained within, or pertaining to, any contracts.

REQUEST FOR PRODUCTION NO. 11

Produce all documents related to the historical, present and future electricity generating capacity and capacity utilization/capacity factor of the Big Stone facility, any other electric generating facility owned by Otter Tail and any other electric generating facility that Otter Tail includes in its stand-alone shipper group, as well as the actual power generation and capacity utilization of those facilities.

RESPONSE:

Otter Tail objects to this Request for Production on the grounds that it is irrelevant, not reasonably calculated to lead to the discovery of admissible evidence, overbroad, and unduly burdensome to the extent that it requires information for facilities other than those located on the SARR. Otter Tail also objects to this Request for Production on the grounds that it is premature. Subject to and without waiving the foregoing objections, Otter Tail refers to its response to Request No. 2.

REQUEST FOR PRODUCTION NO. 12

Produce all documents sufficient to explain how Otter Tail measures capacity utilization or its capacity factor.

RESPONSE:

Otter Tail objects to this Request for Production on the grounds that it is irrelevant, not reasonably calculated to lead to the discovery of admissible evidence, overbroad, and unduly

burdensome to the extent that it requires information for facilities other than Big Stone. Otter Tail also objects to this Request for Production on the grounds that it is vague and ambiguous. Subject to and without waiving the foregoing objections, Otter Tail states that it uses the NERC standard definition, which Otter Tail will produce.

REQUEST FOR PRODUCTION NO. 13

Produce all documents related to projections, forecasts or estimates of electricity generation at the Big Stone facility, any other electric generating facility owned in whole or in part by Otter Tail, and any other electric generating facility that Otter Tail includes in its stand-alone traffic network.

RESPONSE:

Otter Tail objects to this Request for Production on the grounds that it is irrelevant, overbroad, and unduly burdensome to the extent that it requires information for facilities other than those located on the SARR. Otter Tail also objects to this Request for Production on the grounds that it is premature to the extent it relates to SARR facilities other than Big Stone. Subject to and without waiving the foregoing objections, Otter Tail refers to its responses to Request Nos. 1 and 2.

REQUEST FOR PRODUCTION NO. 14

Produce all documents related to projections, forecasts or estimates of the cost of generating electricity at the Big Stone facility, any other electric generating facility owned in whole or in part by Otter Tail, and any other electric generating facility that Otter Tail includes in its stand-alone traffic network, for each of the following: lignite-fired units, coal-fired units, natural gas units, and oil units.

RESPONSE:

Otter Tail objects to this Request for Production on the grounds that it is irrelevant, not reasonably calculated to lead to the discovery of admissible evidence, overbroad, and unduly burdensome. Otter Tail also objects to this Request on the grounds that it is premature. Subject to and without waiving the foregoing objections, Otter Tail refers to its responses to Request Nos. 1 and 2.

REQUEST FOR PRODUCTION NO. 15

Produce all documents from 1999 to the present related to projections, forecasts or estimates of future annual coal traffic volumes or revenues (in total or by receiver) for all coal traffic that uses or could use any portion of the BNSF line comprising the route used by trains transporting coal from the PRB to the Big Stone facility.

RESPONSE:

Otter Tail objects to this Request for Production as overbroad and vague and ambiguous to the extent it seeks documents related to all coal traffic that "could use" any portion of the BNSF line comprising the route used by trains transporting coal from the PRB to the Big Stone facility. Subject to and without waiver of the foregoing objection, Otter Tail refers to its response to Request No. 1.

REQUEST FOR PRODUCTION NO. 16

To the extent Otter Tail intends to include non-coal traffic in its stand-alone traffic network, produce all documents from 1999 to the present relating to projections, forecasts or estimates of future non-coal traffic volumes or revenues (in total or by receiver) for all non-coal traffic that uses or could use any portion of the BNSF line comprising the route used by trains transporting coal from the PRB to the Big Stone facility.

RESPONSE:

Otter Tail objects to this Request for Production as premature to the extent that Otter Tail requires information that BNSF must provide in discovery in order to formulate its stand-alone traffic network. Subject to this objection and without waiver, Otter Tail does not possess responsive documents.

REQUEST FOR PRODUCTION NO. 17

Produce all documents related to the cost of generating electricity at the Big Stone facility relative to the cost of generating electricity at any other coal-fire electric generating facility which burns PRB coal, including, but not limited to, other Otter Tail coal-fire electric generating facilities.

RESPONSE:

Otter Tail objects to this Request for Production on the grounds that it is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiver of the foregoing objections, Otter Tail states that it will produce responsive documents that make direct comparisons to the extent they exist.

REQUEST FOR PRODUCTION NO. 18

Produce documents sufficient to identify the cost per kilowatt hour of generating electricity at the Otter Tail facility, any other electric generating facility owned in whole or in part by Otter Tail, and any other electric generating facility that Otter Tail includes in its stand-alone traffic network, and the cost of fuel per kilowatt hour for each such facility.

RESPONSE:

Otter Tail objects to this Request for Production on the grounds that it is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Otter Tail also objects to this Request for Production on the grounds that it is premature. Subject to and without waiver

of the foregoing objections, Otter Tail states that it will produce its annual accounting report and year-end O&M spreadsheet.

REQUEST FOR PRODUCTION NO. 19

Produce all documents related to past, present or possible future electric power purchases made by Otter Tail, including, but not limited to, offers, counteroffers, contracts, amendments, supplements, and correspondence; and documents related to the cost of that power; and documents related to the feasibility, potential benefits or future plans for substituting purchased power for electricity generated through the burning of coal at the Big Stone facility.

RESPONSE:

Otter Tail objects to this Request for Production on the grounds that it is overbroad, unduly burdensome, irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.

REQUEST FOR PRODUCTION NO. 20

Produce all documents related to whether Otter Tail has lost or gained customers of electricity generated at the Big Stone facility, including but not limited to documents regarding whether any actual or threatened loss or gain has affected coal consumption at the Big Stone facility.

RESPONSE:

Otter Tail objects to this Request for Production as vague and ambiguous, irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiver of the foregoing objections, Otter Tail states that it will produce responsive portions of its FERC forms and Sales and Revenue annual statistical report.

REQUEST FOR PRODUCTION NO. 21

Produce all documents related to Otter Tail's past, present or possible future purchases and sales of electricity in the wholesale market.

RESPONSE:

Otter Tail objects to this Request for Production as overbroad, unduly burdensome, irrelevant, and not reasonably calculated to lead to the discovery of admissible evidence.

REQUEST FOR PRODUCTION NO. 22

Produce studies, reports, projections, forecasts or analyses as to future purchases and sales of electricity generated by the Big Stone facility, any other electric generating facility owned by Otter Tail, and any other electric generating facility that Otter Tail includes in its stand-alone traffic network.

RESPONSE:

Otter Tail objects to this Request for Production on the grounds that it is irrelevant, not reasonably calculated to lead to the discovery of admissible evidence, overbroad, and unduly burdensome.

REQUEST FOR PRODUCTION NO. 23

Produce all documents related to the development and submission of any power supply or capacity plans submitted to any state or local governmental entity in South Dakota, including any agency responsible for overseeing, supervising or regulating the generation or supply of electricity in South Dakota.

RESPONSE:

Otter Tail objects to this Request for Production on the grounds that it is irrelevant, not reasonably calculated to lead to the discovery of admissible evidence, overbroad, and unduly burdensome to the extent that it requires information for facilities other than Big Stone. Otter

Tail also objects to this request to the extent documents contain material from third parties that is covered by confidentiality agreements. Subject to and without waiver of the foregoing objections, Otter Tail will produce responsive documents.

REQUEST FOR PRODUCTION NO. 24

Produce all documents related to Otter Tail's plans to build a second plant at Big Stone.

RESPONSE:

Otter Tail objects to this Request for Production on the grounds that it is irrelevant, not reasonably calculated to lead to the discovery of admissible evidence, overbroad, and unduly burdensome.

REQUEST FOR PRODUCTION NO. 25

Produce the following documents related to the boilers used at the Big Stone facility:

- a. documents sufficient to identify the type of boilers, the manufacturer and the year they were installed;
- b. documents sufficient to identify the coal specifications the boilers were designed to accommodate;
- c. documents that discuss or analyze any modifications to the boilers since they were installed;
- d. any plans or studies for future modification of the boilers;
- e. documents that discuss or analyze constraints on the types of coal that can be burned at the Big Stone facilities, including HGI, ash fusion, BTU per pound, ash percentage, sulfur percentage and other constraints;
- f. all filings with any governmental entity relating to the ability to burn alternative types of coal at the Big Stone facility.

RESPONSE:

Otter Tail objects to this Request for Production as overbroad, unduly burdensome, irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiver of the foregoing objections, Otter Tail states that it will make responsive documents available for inspection by BNSF in Fargo, ND. With respect to subparts (c) and (d) Otter Tail states that no responsive documents exist. Otter Tail will produce test-burn reports to the extent available, in response to subpart (e).

REQUEST FOR PRODUCTION NO. 26

Produce documents sufficient to identify the pulverizer capacity at the Big Stone facility and any possible changes to the pulverizer facilities or the pulverizer capacity in the future.

RESPONSE:

Otter Tail objects to this Request for Production as overbroad, unduly burdensome, irrelevant, and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiver of the foregoing objections, Otter Tail will make responsive documents available for inspection by BNSF in Fargo, ND.

REQUEST FOR PRODUCTION NO. 27

Produce documents sufficient to identify the capacity of the blending facilities at the Big Stone facility and any possible changes to those facilities or the blending capacity in the future.

RESPONSE:

Otter Tail objects to this Request for Production as overbroad, unduly burdensome, irrelevant, and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiver of the foregoing objections, Otter Tail will make responsive documents available for inspection by BNSF in Fargo, ND.

REQUEST FOR PRODUCTION NO. 28

Produce documents sufficient to identify the SCA of the precipitator at the Big Stone facility, whether the precipitator is hot-side or cold-side, and whether fine gas conditioning capability has been installed, and produce all documents discussing or evaluating any possible changes to the precipitator in the future.

RESPONSE:

Otter Tail objects to this Request for Production as overbroad, unduly burdensome, irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Otter Tail also objects to this Request on the grounds that the term "fine gas" is vague and ambiguous. Subject to and without waiver of the foregoing objections, Otter Tail will make responsive documents available for inspection by BNSF in Fargo, ND.

REQUEST FOR PRODUCTION NO. 29

Produce engineering studies or evaluations of the ash fusion characteristics of coal burned at the Big Stone facility and of the fine gas conditioning capability of the precipitator at the Big Stone facility.

RESPONSE:

Otter Tail objects to this Request for Production as overbroad, unduly burdensome, irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Otter Tail also objects to this Request on the grounds that the term "fine gas" is vague and ambiguous. Subject to and without waiver of the foregoing objections, Otter Tail will make responsive documents available for inspection by BNSF in Fargo, ND.

REQUEST FOR PRODUCTION NO. 30

Produce all documents and correspondence after January 1, 1999 that discuss or relate to the transportation of coal by BNSF for use at the Big Stone facility, including but not limited to the following:

- a. documents that describe, study or evaluate that transportation service or consider possible changes to it;
- b. documents that discuss the size of trains used or to be used by BNSF to provide the transportation service;
- c. documents that discuss the number and type of cars per train used or to be used by BNSF to provide the transportation service;
- d. documents that discuss the weight of coal per car or train in the existing or future transportation service provided by BNSF.

RESPONSE:

Otter Tail will produce documents responsive to this Request for Production to the extent such documents exist.

REQUEST FOR PRODUCTION NO. 31

Produce all documents that consider or discuss in any way the possibility of using a transportation provider other than BNSF to transport coal to the Big Stone facility or for any part of transportation of coal to the Big Stone facility, including the possible costs of such transportation.

RESPONSE:

Otter Tail will produce documents responsive to this Request for Production to the extent such documents exist. Otter Tail states that no such documents exist.

REQUEST FOR PRODUCTION NO. 32

Produce all documents related to the rates or charges paid to BNSF for transportation of coal for use at the Big Stone facility, including but not limited to the following:

- a. rates paid under prior contracts or agreements;
- b. correspondence with BNSF related to rates;
- c. analyses or evaluation of incentive provisions under past or future contracts or agreements;
- d. negotiations over the rates of future transportation contracts or agreements;
- e. negotiations related to the challenged rates;
- f. analyses or evaluation of the challenged rates.

RESPONSE:

Otter Tail objects to subparts (a) and (b) as overbroad, unduly burdensome, irrelevant, and not reasonably calculated to lead to the discovery of admissible evidence. Otter Tail will produce documents responsive to subparts (c) through (f) to the extent such documents exist.

REQUEST FOR PRODUCTION NO. 33

Produce all documents related to payments made to any person other than BNSF, including but not limited to other rail carriers and motor carriers, for transportation of coal to the Big Stone facility, the handling or switching of coal cars at the Big Stone facility, or the loading, unloading or transloading of coal for use at the Big Stone facility.

RESPONSE:

Otter Tail will produce documents responsive to this Request for Production to the extent such documents exist. Otter Tail states that no such documents exist.

REQUEST FOR PRODUCTION NO. 34

Produce all documents related to rail cars owned or leased by Otter Tail, and related to negotiations with prospective vendors or lessors of rail cars to Otter Tail or for use by Otter Tail, including but not limited to the following:

- a. documents sufficient to identify the number of cars; individual car types; the capacity of each car; the date when each car was purchased or leased; the purchase price for each car; if financed, the financing terms for each car; if leased, the lease amount; if leased or rented to others, the per diem payments received; the tare weight of each car; and the car manufacturer;
- b. all documents, regardless of their date, relating to the decision to acquire rail cars and the reasons those cars were acquired;
- c. internal analyses or evaluations of the possible cost of such rail cars;
- d. correspondence with the possible suppliers of such rail cars;
- e. documents describing or discussing Otter Tail plans or business strategy with respect to the possible use of such rail cars;
- f. documents describing or discussing the maintenance and storage of such rail cars;
- g. documents describing or discussing the costs of repairing, maintaining and operating such rail cars.

RESPONSE:

Otter Tail will produce documents responsive to this Request for Production to the extent such documents exist.

REQUEST FOR PRODUCTION NO. 35

Produce documents sufficient to describe the physical layout of the Big Stone facility, including but not limited to the following:

-
- a. maps of the facility;
 - b. documents that describe all facilities that handle loaded and unloaded rail cars;
 - c. documents identifying the total mileage and physical configuration of the rail tracks at the Big Stone facility;
 - d. documents that describe the facilities used to unload coal from rail cars.

RESPONSE:

Otter Tail will produce documents responsive to this Request for Production to the extent such documents exist.

REQUEST FOR PRODUCTION NO. 36

Produce all documents related to the cycle times for each train carrying the issue traffic, including but not limited to documents containing information on the date of release from the mine, date of delivery at the Big Stone facility, number of cars and number of tons.

RESPONSE:

Otter Tail will produce train manifests in response to this request.

REQUEST FOR PRODUCTION NO. 37

Produce all documents supporting or relating to the allegations contained in Paragraphs 3, 6-8 and 10-14 of Otter Tail's January 2, 2002 complaint in this proceeding and your response to Interrogatory No. 19.

RESPONSE:

Otter Tail objects to this Request for Production on the grounds that it is vague and ambiguous, overbroad, and unduly burdensome. Otter Tail makes numerous allegations, most of which are not in dispute in this proceeding. Some allegations are legal, rather than factual conclusions. Those allegations will be tested by the evidence submitted. Otter Tail has

responded, or will respond, to relevant discovery that is related to the evidence it will present. If there are more specifically identifiable allegations in Otter Tail's Complaint that BNSF believes are not covered in its other discovery requests, then Otter Tail will consider a request for that information.

REQUEST FOR PRODUCTION NO. 38

Produce all documents, regardless of date, related to the economics or feasibility of building or using lignite-fired, coal-fired, natural gas-supplied, or oil-supplied electric generating facilities.

RESPONSE:

Otter Tail objects to this request as vague and ambiguous, irrelevant, and not reasonably calculated to lead to the discovery of admissible evidence.

REQUEST FOR PRODUCTION NO. 39

Produce all documents, regardless of date, related to the Big Stone facility's current or future ability to generate electricity using lignite, natural gas, oil or other fuels, including but not limited to engineering studies, forecasts, projections or estimates.

RESPONSE:

Otter Tail objects to this Request for Production on the grounds that it is irrelevant, overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence.

REQUEST FOR PRODUCTION NO. 40

Produce all documents, regardless of date, related to transmission constraints or load pockets surrounding the Big Stone facility or any other electric generating facilities operated or owned in whole or in part by Otter Tail.

RESPONSE:

Otter Tail objects to this Request for Production on the grounds that it is irrelevant, not reasonably calculated to lead to the discovery of admissible evidence, overbroad, and unduly burdensome. Subject to and without waiving the foregoing objections, Otter Tail will make available for inspection and copying by BNSF in Fargo, ND documents responsive for the Big Stone facility, since January 1, 1999.

REQUEST FOR PRODUCTION NO. 41

Produce all documents, regardless of date, related to actual or anticipated plant outages for the time period 1999 to 2022, whether for routine maintenance or any other reason, including but not limited to documents that show the planned and actual time, duration and cause of each plant outage, curtailment or interruption.

RESPONSE:

Otter Tail objects to this Request for Production as vague and overbroad because it does not define or narrow the scope of "plant." Otter Tail assumes that this request applies to the Big Stone facility. Otter Tail also objects to the this Request for Production as overbroad, unduly burdensome, irrelevant, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents generated or created prior to January 1, 1999. Subject to and without waiver of this objection, and with the stated understanding of "plant," Otter Tail will produce responsive documents to the extent such documents exist.

REQUEST FOR PRODUCTION NO. 42

Produce all documents, regardless of date, related to the decision to construct the Big Stone facility, to the extent those documents relate to the options for transporting coal to that facility.

RESPONSE:

Otter Tail objects to this Request for Production as overbroad, unduly burdensome, irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.

REQUEST FOR PRODUCTION NO. 43

Produce all documents, regardless of date, reflecting or discussing solicitations, negotiations or contracts of any type between Otter Tail and any provider of transportation related to the transportation of coal for any part of the movement of coal to the Big Stone facility.

RESPONSE:

Otter Tail objects to this Request for Production to the extent that it duplicates Request No. 31. Subject to and without waiving this objection, Otter Tail will produce responsive documents to the extent that such documents exist.

REQUEST FOR PRODUCTION NO. 44

Produce all documents, regardless of date, related to the transportation or possible transportation of coal for any part of the movement to the Big Stone facility by any rail carrier other than BNSF.

RESPONSE:

Otter Tail objects to this Request for Production to the extent that it duplicates previous requests, including but not limited to Request for Production No. 31. Otter Tail objects to this request as overbroad and unduly burdensome to the extent that it includes the Milwaukee Road and "all documents...related to" rail transportation. Subject to and without waiver of these objections, Otter Tail refers to its response to Request for Production No. 31.

REQUEST FOR PRODUCTION NO. 45

Produce all documents generated since January 1, 1999 related to the transportation of coal to the Big Stone facility by trucks, conveyor belt, or any other non-rail transportation provider, including but not limited to the possibility of transporting coal by such non-rail provider for any part of the movement to the Big Stone facility.

RESPONSE:

Otter Tail objects to this Request for Production to the extent that it duplicates previous requests, including but not limited to Request for Production No. 31. Subject to and without waiver of this objection, Otter Tail states that no responsive documents exist.

REQUEST FOR PRODUCTION NO. 46

Produce all documents, regardless of date, that relate to the possible acquisition of trackage rights by or for Otter Tail on any railroad for the purpose of transporting coal for any part of the movement to the Big Stone facility.

RESPONSE:

Otter Tail objects to this Request for Production as overbroad to the extent that it duplicates previous requests, including but not limited to Request for Production No. 31 and to the extent that it seeks documents prior to January 1, 1999. Subject to and without waiver of this objection, Otter Tail refers to its response to Request for Production No. 31.

REQUEST FOR PRODUCTION NO. 47

Produce all documents generated since January 1, 1999 that relate to the possibility or feasibility of acquiring, leasing or constructing any facilities, by Otter Tail or by any other party, that could be used to transport coal from the PRB to any coal-fired electric generating facility that is owned in whole or in part by Otter Tail, or for any part of such a movement by any transportation provider, including all internal analyses of such possibility and correspondence

with contractors, engineers, providers of financing or other entities that could potentially assist in such construction.

RESPONSE:

Otter Tail objects to this Request for Production on the grounds that it is vague and unintelligible and overbroad. Otter Tail also objects on the grounds that this Request is overbroad and irrelevant to the extent that it requires information for facilities other than Big Stone. Subject to and without waiver of the foregoing objections, Otter Tail states that no responsive documents exist.

REQUEST FOR PRODUCTION NO. 48

Produce all projections, forecasts or estimates prepared by Otter Tail related to the subjects identified below, to the extent such projection, forecast or estimate was prepared after January 1, 1999 and relates to the demand for coal from the PRB anywhere in the United States, to the production of coal in the PRB, or to the future cost of transporting coal from the PRB.

RESPONSE:

Otter Tail objects to this Request for Production on the grounds that it duplicates Request for Production No. 6 and Request for Production No. 7. Otter Tail refers to its responses to the foregoing requests. Subject to and without waiver of these objections, Otter Tail states that no responsive documents exist.

REQUEST FOR PRODUCTION NO. 49

Produce all projections, forecasts or estimates prepared by or contributed to by any witness who will present evidence in this case related to the subjects identified below, to the extent such projection, forecast or estimate was prepared after January 1, 1999 and relates to the

demand for coal from the PRB anywhere in the United States, to the production of coal in the PRB, or to the future cost of transporting coal from the PRB.

RESPONSE:

Otter Tail objects to this Request for Production as vague and ambiguous because it is not clear whether "related to the subjects identified below" modifies "projections, forecasts, or estimates" or "evidence in this case." Subject to the foregoing objection and without waiver, Otter Tail states that it will produce documents responsive to the subjects identified in this request where such documents were prepared by a witness or witnesses who will testify on those subjects in this proceeding. To the extent that a witness will not present evidence on one or more of the listed topics, Otter Tail objects to producing documents related to such topics as irrelevant, not reasonably calculated to lead to the discovery of admissible evidence, overbroad, and unduly burdensome.

REQUEST FOR PRODUCTION NO. 50

Produce all projections, forecasts or estimates prepared by Otter Tail after January 1, 1999 that relate in any way to the movement of coal from the PRB to the Big Stone facility.

RESPONSE:

Otter Tail objects to this Request for Production as duplicative of other requests, including but not limited to Request No. 48. Otter Tail also objects to this Request as overbroad, vague and ambiguous, irrelevant, and not reasonably calculated to lead to the discovery of admissible evidence because of the phrase "relate in any way." Subject to and without waiver of the foregoing objections, Otter Tail states that it will produce documents responsive to this Request to the extent such documents exist.

REQUEST FOR PRODUCTION NO. 51

Produce all projections, forecasts or estimates generated after January 1, 1999, prepared by or contributed to by any witness who will present evidence in this case, and related in any way to the movement of coal from the PRB to the Big Stone facility.

RESPONSE:

Otter Tail objects to this Request for Production as irrelevant, not reasonably calculated to lead to the discovery of admissible evidence, overbroad, and unduly burdensome to the extent it seeks responsive documents that are not related to the same subject matter of the witness's testimony or the same subject matter of projections, forecasts, or estimates submitted by the witness. Otter Tail also objects to this Request as overbroad, vague and ambiguous, irrelevant, and not reasonably calculated to lead to the discovery of admissible evidence because of the phrase "related in any way." Subject to and without waiver of these objections, Otter Tail will produce responsive documents.

REQUEST FOR PRODUCTION NO. 52

Produce all documents discussing or analyzing the potential impact on Otter Tail of current, proposed or possible future laws and regulations, including but not limited to environmental laws and regulations and electric deregulation in both the retail and wholesale markets, affecting or applicable to the sale of electric power by Otter Tail, by other electric utilities in the state of South Dakota or by other utilities outside the state of South Dakota.

RESPONSE:

Otter Tail objects to this Request for Production on the grounds that it is irrelevant, overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Responsive documents on the impact of electric deregulation exist in the

files of virtually anyone within Otter Tail. Otter Tail further objects to the phrase "possible future laws and regulations" as vague and ambiguous and the request, in general, as confusing and unintelligible. Subject to the foregoing objections, Otter Tail states that the impact of laws and regulations on the sale of electric power from Big Stone are reflected in various forecasts and projections that Otter Tail will produce. To the extent Otter Tail has other documents that summarize the impact of proposed laws on the Big Stone facility, Otter Tail will produce them.

REQUEST FOR PRODUCTION NO. 53

Produce all documents discussing or analyzing the potential impact on Otter Tail of current, proposed or possible future laws and regulations, including but not limited to environmental laws and regulations, affecting or applicable to the burning of coal by Otter Tail, by other electric utilities in the state of South Dakota or by other utilities outside the state of South Dakota.

RESPONSE:

Otter Tail objects to this Request for Production as confusing and unintelligible and to the phrase "possible future laws and regulations" as vague and ambiguous. Subject to the foregoing objections, Otter Tail states that the impact of laws and regulations on the burning of coal at Big Stone are reflected in various forecasts and projections that Otter Tail will produce. To the extent Otter Tail has other documents that summarize the impact of proposed laws on the Big Stone facility, Otter Tail will produce them.

REQUEST FOR PRODUCTION NO. 54

Produce all documents discussing or analyzing the potential impact on Otter Tail of current, proposed or possible future laws and regulations, including but not limited to environmental laws and regulations, affecting or applicable to the building of coal-fired electric

generating facilities by Otter Tail, by other electric utilities in the state of South Dakota or by other utilities outside the state of South Dakota.

RESPONSE:

Otter Tail objects to this Request for Production on the grounds that it is irrelevant, not reasonably calculated to lead to the discovery of admissible evidence, overbroad, and unduly burdensome. Otter Tail also objects to this Request as confusing and unintelligible and to the phrase "possible future laws and regulations" as vague and ambiguous. To the extent Otter Tail has other documents that summarize the impact of proposed laws on the Big Stone facility, Otter Tail will produce them.

REQUEST FOR PRODUCTION NO. 55

Produce all documents describing or identifying the form of organization, structure and governance of Otter Tail, including but not limited to subsidiaries, divisions, units, departments, committees, boards and working groups.

RESPONSE:

Otter Tail objects to this Request for Production on the grounds that it is irrelevant. Subject to and without waiving this objection, Otter Tail will produce its corporate flow chart.

REQUEST FOR PRODUCTION NO. 56

Produce all studies, reports or analyses relating to coal consumption, electricity generating capacity, markets, or customers of the generating facilities owned by MDU Resources, Inc. and Northwestern Public Service Company prepared by or for Otter Tail (including any predecessor entities) in connection with the creation of Otter Tail or for purposes of evaluating a possible transaction involving MDU Resources, Inc. and Northwestern Public Service.

RESPONSE:

Otter Tail objects to this Request for Production on the grounds that it is vague and unintelligible, irrelevant, overbroad, and unduly burdensome.

REQUEST FOR PRODUCTION NO. 57

Produce all your 10-Q reports, 10-K reports and Annual Reports, including all attachments and exhibits thereto, since 1999.

RESPONSE:

Otter Tail objects to the extent that the information sought in this Request for Production is equally available to BNSF from public sources. Subject to and without waiving this objection, Otter Tail states that it will produce responsive documents.

REQUEST FOR PRODUCTION NO. 58

Produce all financial reports provided to Otter Tail's stakeholders, since 1999.

RESPONSE:

Otter Tail objects to this Request for Production to the extent that the information is equally available to BNSF from public sources. Subject to and without waiving this objection, Otter Tail states that it will produce responsive documents to the extent such documents exist.

REQUEST FOR PRODUCTION NO. 59

Produce all your RUS Form 12 reports, EIA Form 759, 860 and 861 reports, FERC Form 423 and 580 reports, and responses to FERC queries under Docket No. IN79-6, including all attachments and exhibits thereto, since 1999.

RESPONSE:

Otter Tail objects to this Request for Production to the extent that the information is equally available to BNSF from public sources. Subject to and without waiving this objection, Otter Tail states that it will produce responsive documents to the extent such documents exist.

REQUEST FOR PRODUCTION NO. 60

Produce all correspondence, reports, comments or other documents submitted to any federal, state or local public or governmental entity since January 1, 1999 related to the transportation of coal to the Big Stone facility, the cost of such transportation, or plans for future coal transportation.

RESPONSE:

Otter Tail will produce responsive documents to the extent such documents exist.

REQUEST FOR PRODUCTION NO. 61

Produce all documents, regardless of date, relied on or referenced in your responses to the interrogatories above, including copies of all documents referenced in sub-parts (a) and (b) of Interrogatory No. 15.

RESPONSE:

Otter Tail objects to this Request for Production as vague and ambiguous as to the meaning of "publications" and overbroad and unduly burdensome to the extent documents are available from public sources or are not in the possession, custody, or control of Otter Tail. Subject to and without waiving the foregoing objections, Otter Tail will produce responsive documents.

REQUEST FOR PRODUCTION NO. 62

Produce each Integrated Resource Plan or other similar report or study prepared by, for or about Otter Tail since January 1, 1999, including supporting materials.

RESPONSE:

Otter Tail will produce responsive documents to the extent such documents exist.

REQUEST FOR PRODUCTION NO. 63

Produce documents related to the acquisition, sale or appraisal of land by or for Otter Tail in the states of Wyoming, Montana, North Dakota or South Dakota since January 1, 1999.

RESPONSE:

Otter Tail objects to this Request for Production as overbroad and unduly burdensome to the extent that it covers areas not traversed by the SARR. Otter Tail also objects to this Request for Production as premature because the route for the SARR has not yet been established definitively. Subject to and without waiving the foregoing objections, Otter Tail states that it will produce responsive documents to the extent that such documents exist.

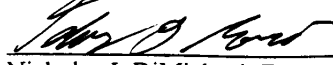
REQUEST FOR PRODUCTION NO. 64

Produce all documents discussing or relating to the potential impact on Otter Tail of the Dakota, Minnesota & Eastern Railroad Corporation's proposal to construct and operate a rail line into the PRB.

RESPONSE:

Otter Tail objects to this Request for Production as overbroad, irrelevant, and not reasonably calculated to lead to the discovery of admissible evidence, to the extent that it relates to anything other than modal competition at the Big Stone facility. Subject to and without waiving the foregoing objection, Otter Tail states that it will produce documents responsive to this request to the extent that such documents exist.

Respectfully submitted,



Nicholas J. DiMichael, Esq.

Jeffrey O. Moreno, Esq.

Michael H. Higgins, Esq.

THOMPSON HINE LLP

1920 N Street, N.W.,

Suite 800

Washington, D.C. 20036

(202) 331-8800

George Koeck

General Counsel

OTTER TAIL POWER COMPANY

215 South Cascade Street

P.O. Box 496

Fergus Falls, MN 56538-0496

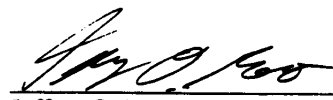
*Attorneys for Complainant Otter Tail Power
Company*

March 25, 2002

CERTIFICATE OF SERVICE

I hereby certify that, on this 25th day of March 2002, I have served a copy of the foregoing Responses and Objections to The Burlington Northern and Santa Fe Railway Company's First Set of Interrogatories and Requests for Production of Documents to the Otter Tail Power Company by hand delivery on counsel for the Defendant at the following address:

Anthony J. LaRocca, Esq.
Steptoe & Johnson LLP
1330 Connecticut Avenue, N.W.
Washington, D.C. 20026



Jeffrey O. Moreno



BRUSSELS CINCINNATI CLEVELAND COLUMBUS DAYTON WASHINGTON, D.C.

Exhibit 2

March 28, 2002

By Fax

Anthony J. LaRocca
Steptoe & Johnson LLP
1330 Connecticut Avenue, NW
Washington, DC 20036-1795

RE: STB Docket No. 42071, Otter Tail Power Company v. The Burlington Northern and Santa Fe Railway Company

Dear Tony:

This letter is intended to clarify Otter Tail's objections and response to BNSF Requests for Production Nos. 49 and 51, which were served on Monday, March 25, 2002. Upon reviewing Otter Tail's responses, we realized that the scope of non-objectionable production represented in responses to RFP-49 and 51 are ambiguous in light of Otter Tail's specific and general objections. We have attempted to clarify this issue with the enclosed revised responses.

In a nutshell, Otter Tail will produce responsive documents from its files, and the files of expert witnesses who will testify on a particular matter, within the scope of the STB's decision in *Wisconsin Power and Light Company v. Union Pacific R.R. Company*, STB Docket No. 42051, 2000 STB Lexis 341 (June 21, 2000). In that decision, the STB directed an expert to produce forecasts "that deal with national, regional, or PRB coal demand and/or production and forecasts pertaining to the issue traffic" because the request was directed to the relevant issue of the expert's credibility.

Otter Tail's agreement to produce documents from the files of its experts is limited to RFP-49 and 51 and the scope set forth in its response to each request. In all other respects, Otter Tail adheres to its general and specific objections. If you have any questions, please do not hesitate to contact us.

Sincerely,

Jeffrey O. Moreno

Enclosures

81

Jeff.Moreno@ThompsonHine.com Phone 202.263.4107 Fax 202.331.8330

jom 133790.1

THOMPSON HINE LLP

1920 N Street, N.W.
Suite 800
Washington, D.C. 20036-1600

www.ThompsonHine.com
Fax 202.331.8330
Phone 202.263.4107

Attachment
Letter to Anthony J. LaRocca
March 28, 2002

REQUEST FOR PRODUCTION NO. 49

Produce all projections, forecasts or estimates prepared by or contributed to by any witness who will present evidence in this case related to the subjects identified below, to the extent such projection, forecast or estimate was prepared after January 1, 1999 and relates to the demand for coal from the PRB anywhere in the United States, to the production of coal in the PRB, or to the future cost of transporting coal from the PRB.

RESPONSE:

Otter Tail objects to this Request for Production as vague and ambiguous because it is not clear whether "related to the subjects identified below" modifies "projections, forecasts, or estimates" or "evidence in this case." Otter Tail further objects to the phrases "or contributed to by" and "anywhere in the United States" as irrelevant, overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Otter Tail also objects to producing documents that contain confidential or proprietary information of third parties. Subject to the foregoing objections and without waiver, Otter Tail states that it will produce certain documents responsive to the subjects identified in this request, including documents from the files of its expert witnesses, where such documents were prepared by a witness or witnesses who will testify on those subjects in this proceeding. To the extent that a witness will not present evidence on one or more of the listed topics, Otter Tail objects to producing documents related to such topics as irrelevant, not reasonably calculated to lead to the discovery of admissible evidence, overbroad, and unduly burdensome.

Attachment
Letter to Anthony J. LaRocca
March 28, 2002

REQUEST FOR PRODUCTION NO. 1

Produce all projections, forecasts or estimates generated after January 1, 1999, prepared by or contributed to by any witness who will present evidence in this case, and related in any way to the movement of coal from the PRB to the Big Stone facility.

RESPONSE:

Otter Tail objects to this Request for Production as irrelevant, not reasonably calculated to lead to the discovery of admissible evidence, overbroad, and unduly burdensome to the extent it seeks responsive documents that are not related to the same subject matter of the witness's testimony or the same subject matter of projections, forecasts, or estimates submitted by the witness. Otter Tail also objects to this Request as overbroad, vague and ambiguous, irrelevant, and not reasonably calculated to lead to the discovery of admissible evidence because of the phrase "related in any way." Otter Tail also objects to producing documents that contain confidential or proprietary information of third parties. Subject to the foregoing objections and without waiver, Otter Tail states that it will produce certain documents responsive to this request, including documents from the files of its expert witnesses, where such documents were prepared by a witness or witnesses who will testify on this subject in this proceeding.



Online. Another advantage
from Otter Tail Power Company.



QUICK:

• Your account • Your home • Your business • Wholesale marketing • Contact us

[Home](#)

[Otter Tail
Corporation news
releases](#)

[Area event calendar](#)

[<< Back](#)

Feasibility study for second plant at Big Stone announced

Otter Tail Corporation CEO John MacFarlane announced today that Otter Tail Power Company has entered a two-year business development study to investigate the feasibility of another electric generating plant on the site of the existing Big Stone Plant near Milbank, South Dakota. "The decision," said MacFarlane, "is not to proceed with construction, but rather to perform further due diligence regarding the project and the region's anticipated energy needs. Based on studies that point to a potential energy shortfall in the Mid-Continent Area Power Pool by 2007 and our long-standing commitment to meet our customers' energy needs in a low-cost, environmentally responsible manner, we see this as a prudent act of stewardship."

In making the announcement, MacFarlane said that a recently completed study includes estimates by MAPP and a highly regarded independent market analyst that energy consumption in the region will increase by 15 percent to 25 percent during the next decade. "We think it's essential to respond to that knowledge," he said. "The study also points to a highly efficient coal-fired plant in the 600-megawatt range as being the most cost-effective choice for helping to meet the anticipated need for increased generation."

"We'll investigate a project that would use state-of-the-art emissions-control technology to make it one of the cleanest coal-burning plants in the world. But because a project of this size requires a considerable amount of discussion, negotiation, and preparation, we won't make a final decision for at least two years. During that two-year period we'll conduct environmental studies, refine the plant's design, arrange for the needed transmission right-of-way, and obtain the essential air, water, and operating permits."

MacFarlane emphasized that all of those issues directly affect the project's feasibility. "The decision we make two

years from now," he said, "depends on resolving those issues. If the decision is to proceed, construction could begin in 2003 with commercial operation in the spring or early summer of 2007."

Ward Uggerud, Otter Tail Power Company's COO of energy supply, emphasized that the proposed plant would be designed with the same concern for efficiency and environmental safeguards as was the existing Big Stone Plant. "During more than 25 years of operation," Uggerud said, "Big Stone has proven that a well-designed, well-maintained coal-fired plant can be an efficient, low-cost energy source as well as an environmentally friendly neighbor. Big Stone II, which would employ state-of-the-art coal-burning techniques and environmental-control technology, would offer further proof."

South Dakota Governor Bill Janklow has expressed pleasure with the decision to proceed with the study. "This project, if completed, would do more than ensure a dependable source of electricity for the region," he said. "It also would be a tremendous economic boost. Representing the largest investment of private capital in the state, it would result in a significant source of tax revenue and millions of payroll dollars to stimulate the state and regional economy. And the emphasis being placed on state-of-the-art environmental controls shows a genuine concern for the environment."

Otter Tail Corporation is headquartered in Fergus Falls, Minnesota, and Fargo, North Dakota. Its utility operation, Otter Tail Power Company, provides electricity and energy services to nearly a quarter million people in Minnesota, North Dakota, and South Dakota. To learn more visit Otter Tail Corporation's web site at www.ottertail.com or Otter Tail Power Company's web site at www.otpc.com. Otter Tail Corporation's common stock trades on The Nasdaq Stock Market® under the symbol OTTR.

<< Back