



BRUSSELS CINCINNATI CLEVELAND COLUMBUS DAYTON WASHINGTON, D.C.

May 13, 2002

Via Messenger

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001



205389

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

Dear Secretary Williams:

Enclosed please find an executed original and ten (10) copies of the Joint Motion to Establish New Procedural Schedule for filing in the above-referenced docket.

Also, enclosed is one additional copy of the foregoing motion for stamp and return. Kindly date-stamp the additional copy for return to this office by messenger.

If you have any questions, please do not hesitate to contact me. My direct dial number is (202) 263-4107.

Sincerely,

Nicholas J. DiMichael
Jeffrey O. Moreno
Michael H. Higgins

Attorneys for Otter Tail Power Co.

ENTERED
Office of the Secretary

MAY 14 2002

Part of
Public Record

Enclosures

cc: George Koeck, Esq. (w/encl.)

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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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



Docket No. NOR 42071

**JOINT MOTION TO
ESTABLISH NEW PROCEDURAL SCHEDULE**

Complainant, Otter Tail Power Company ("Otter Tail"), and defendant, The Burlington Northern and Santa Fe Railway Company ("BNSF"), hereby ask the Board to suspend the current procedural schedule and to establish a new procedural schedule that automatically will activate upon the Board's resolution of the parties' discovery disputes.

In a decision served on March 6, 2002, the Board established a procedural schedule in response to a Joint Motion from Otter Tail and BNSF. That procedural schedule set April 17, 2002 as the end of the discovery period and June 3, 2002 as the deadline for filing Opening Statements. The parties have not yet completed their production of documents to each other and believe that they will need thirty days to do so, perhaps longer for a small subset of information. Moreover, both Otter Tail and BNSF have filed Motions to Compel discovery with the Board, which have not yet been resolved.¹ Additional discovery motions are possible after the parties

¹ Otter Tail filed "Complainant's First Motion to Compel" on April 11, 2002 and "Complainant's Second Motion to Compel" on April 18, 2002. BNSF filed a "Motion to Compel Responses to Defendant's First Set of Interrogatories and Document Requests" on April 17, 2002.

review the discovery materials that have been produced.² As a result, the parties are not able to meet the June 3, 2002 deadline for filing Opening Statements.

The parties are working towards an agreement that would set deadlines for providing complete responses to non-objectionable discovery and other matters. The parties also are working towards an agreement as to a time-frame for producing documents in response to a Board order granting any of the motions to compel. These agreements will allow the parties to move forward promptly with the preparation of their Opening Statements after the Board rules on motions to compel.

In the interest of avoiding undue delay in this proceeding, the parties ask the Board to adopt a new procedural schedule that automatically will be activated by the Board's resolution of all pending and future motions to compel. Under the procedural schedule that the parties request the Board to adopt, Opening Statements would be due either (i) 45 days after the Board denies the last pending motion to compel, or (ii) 45 days after BNSF and/or Otter Tail complete production in response to a Board order granting the last pending motion to compel, whichever comes later. Reply Statements would be due 90 days after the Opening Statements and Rebuttal Statements would be due 45 days after the Reply Statements.

² The parties expect shortly to reach an agreement upon a deadline for the filing of any future motions to compel. That deadline would be effective sometime within the next 60 days.

WHEREFORE, Otter Tail and BNSF respectfully request that the Board suspend the current procedural schedule and adopt the procedural schedule proposed above.

Respectfully submitted,

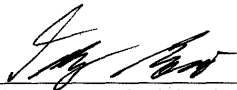


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