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205637

June 14, 2002

Mr. Vernon A. Williams
Surface Transportation Board
1925 K. Street, N.W.
Washington, DC 20423

ENTERED
Office of the Secretary

JUN 17 2002

Part of
Public Record

Dear Mr. Williams

RE: Otter Tail Power Company v. The Burlington
Docket No. NOR 42071

Enclosed is a response by my client, Muscatine Power & Water to a
Petition for subpoena requested by BNSF.

I am not sure if this is filed properly but I was advised our
filing deadline was June 17th. As a result I am under the gun to
do it this afternoon.

The response contains a certificate of service of notice. The
parties listed are the only ones I know about.

Very Truly Yours,

GOEDKEN & CREASEY

By: 
Duane J. Goedken

DJG/mem

BEFORE THE
SURFACE TRANSPORTATION BOARD



OTTER TAIL POWER COMPANY)

Complainant.)

v.)

THE BURLINGTON NORTHERN AND)
SANTA FE RAILWAY COMPANY)

Defendant.)

DOCKET NO. NOR 42071

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NON PARTY RESPONSE TO BNSF SUBPOENA REQUEST

Comes now Muscatine Power & Water ("MPW") by its attorney, Duane J. Goedken of Goedken & Creasey and in response to the Burlington Northern & Santa Fe Railway Company ("BNSF") request for issuance of a Subpoena Decues Tecum directed to L.E. Peabody & Associates, Inc. ("L.E. Peabody") states:

1. Muscatine Power & Water is a City Utility organized under the laws of the State of Iowa and operates a coal fired electric generating plant in the City of Muscatine, Iowa.

2. MPW purchases coal from the Powder River Basin and for the past number of years has retained the services of L.E. Peabody to make estimates, projections and forecasts of rail rates and to evaluate the performance of various rail carriers and evaluate the bids and prices of various rail carriers.

3. MPW utilizes the information developed by L.E. Peabody to negotiate rail contracts with the BNSF and other carriers for the delivery of coal to its generating site.

4. MPW has always contracted with L.E. Peabody on the assumption the information being developed for it is confidential and would not be made available to anyone, particularly the BNSF and other rail carriers.

5. MPW does not totally understand the nature of the dispute between BNSF and L.E. Peabody but does understand that if the request for the subpoena is upheld the information developed for MPW to use in negotiations against the BNSF will be made available to the BNSF.

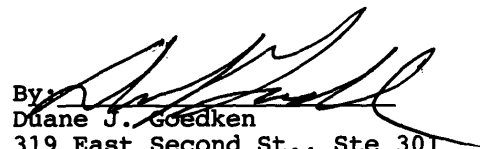
7. It is patently unfair to MPW that a dispute between BNSF and L.E. Peabody, which we are not a party to, could result in

MPW's highly confidential information being released to BNSF and subsequently used against MPW in negotiations.

8. MPW understands there is a protective order of some type regarding the use of the information obtained by the requested subpoena but MPW also recognizes there is never an absolute guaranty of anything. MPW does not feel its future interest should be jeopardized to resolve a dispute between BNSF and L.E. Peabody.

WHEREFORE, MPW asks that its interest be protected by denying the issuance of the subpoena, or by limiting the scope of the subpoena so that information developed by L.E. Peabody for MPW's use against the BNSF and other rail carriers be excluded from the scope of the subpoena.

GOEDKEN & CREASEY

By: 
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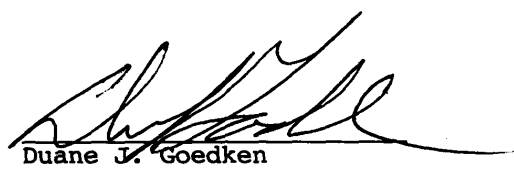
CERTIFICATE OF SERVICE

I hereby certify that on June 14, 2002, a true copy of the foregoing document was mailed by ordinary mail to the following individuals and their address listed below:

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Duane J. Goedken