

STEPTOE & JOHNSON LLP

ATTORNEYS AT LAW

Anthony J. LaRocca
202.429.8119
alarocca@steptoe.com

1330 Connecticut Avenue, NW
Washington, DC 20036-1795

Telephone 202.429.3000
Facsimile 202.429.3902
www.steptoel.com

205-706

June 26, 2002

Via Hand Delivery

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, NW
Washington, DC 20423



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

Dear Secretary Williams:

Attached for filing in the above-captioned matter is correspondence from
defendant's counsel to complainant's counsel relating to Defendant's Petition for Subpoena
Duces Tecum, filed on May 28, 2002.

Sincerely,

Handwritten signature of Anthony J. LaRocca in black ink.

Anthony J. LaRocca

cc: Complainant's Counsel

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June 26, 2002

VIA FACSIMILE

Nicholas J. DiMichael, Esq.
Thompson Hine LLP
Suite 800
1920 N Street, N.W.
Washington, D.C. 20036

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

Dear Nick:

I am writing to you about BNSF's request for a subpoena to L.E. Peabody & Associates, Inc. In your June 17, 2002 Opposition to BNSF's subpoena request, you and Mr. Crowley urged the Board not to issue the subpoena in large part because of the breadth of the subpoena and the burden that would be required to comply with it. BNSF indicated in its subpoena request that it would be willing to work with you and Mr. Crowley in addressing legitimate burden concerns, and your opposition suggests a number of areas where we may be able to address those concerns.

First, BNSF is not interested in Mr. Crowley's prior testimony relating to PRB rail rates or in the work Mr. Crowley did in preparing that testimony. While you are correct that the document request is sufficiently broad to include such materials, the thrust of BNSF's request is for materials generated by L.E. Peabody for its clients in a commercial setting, not for litigation purposes. Therefore, we are willing to narrow the scope of the document request expressly to exclude materials prepared by L.E. Peabody for purposes of presenting testimony in STB proceedings or other litigation. This exclusion should also address the concerns you raised in your joint opposition to the possibility that production of the requested information could violate the terms or spirit of protective orders entered in other litigation.

Second, we are willing to narrow the scope of the document request to those PRB coal shippers whose movements currently traverse BNSF line segments that Otter Tail intends to

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Nicholas J. DiMichael, Esq.
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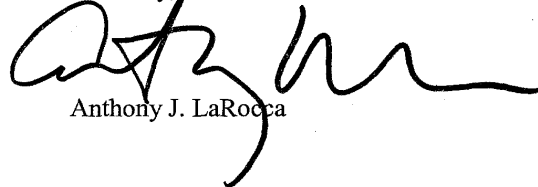
replicate for its stand-alone railroad. This would narrow the universe of shippers whose files would need to be reviewed and thereby simplify the file review process. It would also address the concerns you expressed about the production of information relating only to transportation by the UP.

Third, we agree that the production of information by the parties' experts on rail rate projections should be reciprocal. As a general matter, it is difficult for a defendant to identify experts in advance of receiving the complainant's opening evidence, but it is virtually certain that BNSF will need to sponsor expert testimony on the issue of future rail rates. Therefore, we would agree to provide from our rail rate expert the same materials we are seeking from Mr. Crowley, if such materials exist, and we will agree to provide those materials at the same time that Mr. Crowley produces materials covered by the requested subpoena.

We hope that you and Mr. Crowley will give these proposals serious consideration. We ask that you consider these proposals in light of the fact that if you are successful in resisting the production of Mr. Crowley's rate forecasts, Mr. Crowley's testimony on the subject of future rail rates will not be entitled to much, if any, weight by the Board in the evidentiary phase of this proceeding. BNSF would rather litigate this issue in light of all relevant information.

We are filing a copy of this letter with the Board to apprise it of the modifications we are proposing to BNSF's subpoena request. Please call me if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'Anthony J. LaRocca', written over the printed name.

Anthony J. LaRocca

cc: The Honorable Vernon Williams, Secretary,
Surface Transportation Board