

STEPTOE & JOHNSON LLP

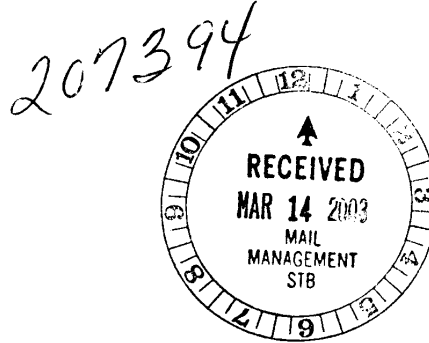
ATTORNEYS AT LAW

Samuel M. Sipe Jr.
202.429.6486
ssipe@steptoe.com

1330 Connecticut Avenue, NW
Washington, DC 20036-1795

Telephone 202.429.3000
Facsimile 202.429.3902
www.steptoel.com

March 14, 2003



Via HAND DELIVERY

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

ENTERED
Office of Proceedings

MAR 14 2003

Part of
Public Record

Re: **STB Docket No. 42057, Public Service Co. of Colorado d/b/a Xcel Energy v.
The Burlington Northern and Santa Fe Railway Company**

Dear Secretary Williams:

I am writing in reference to The Burlington Northern and Santa Fe Railway Company's Motion for Summary Disposition and Stay, filed on February 6, 2003 in the captioned proceeding, and Xcel's February 26, 2003 reply to BNSF's motion. In its motion, BNSF requested an expedited ruling on its request for a stay so that it would know whether or not it needed to commit the resources necessary to prepare reply evidence, currently due three weeks from today, on April 4, 2003. To date, over two weeks after Xcel's reply, there has been no ruling on the stay request. BNSF respectfully requests that the Board issue a ruling on the stay request.

Without responding to the substance of Xcel's arguments, we would point out that Xcel is conspicuously silent on one of BNSF's principal contentions, i.e. that Xcel's opening evidence falls short of the standards of reliability imposed under the Federal Rules of Evidence. BNSF's motion documented numerous obvious and fundamental errors in Xcel's opening operating evidence that are readily verifiable by the Board. On reply, Xcel does not deny the existence of many of these errors; instead, it tries to downplay their significance. What Xcel does not do, or even try to do, is establish the reliability of its opening evidence. Regardless of what Xcel's purported corrections show, the Board has sufficient information on the record before it to determine that Xcel's opening evidence on operating costs is unreliable and therefore may not be considered by the trier of fact (here the Board).

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The requirement of reliability is not just a technicality but goes to the heart of agency adjudications under the Administrative Procedures Act. If the Board does not adhere to threshold standards of reliability with regard to the expert testimony that constitutes the underpinnings of stand-alone cost narrative evidence, then that evidence has no probative value and cannot form the basis of a reasoned agency decision.

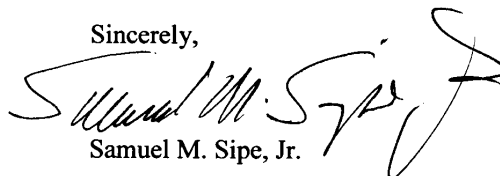
We would also point out that Xcel's reply vividly illustrates one of the central concerns addressed in BNSF's motion, i.e. that complainants in SAC cases do not feel compelled to put in their "real" case on opening but prefer to wait until the rebuttal stage when defendants will not have an opportunity to reply. It is clear from the face of Xcel's reply that Xcel has already begun to distance itself from its opening presentation and set the stage for presenting its "real" case on rebuttal. To take one particularly glaring example, Xcel stated in its opening evidence that it would "operate the same size trains that BNSF operated for each customer in its traffic group during the peak three weeks in 2001" and that "these train sizes *will remain the same throughout the 20-year DCF period.*" Xcel Opening Narrative at III-C-4. Confronted with evidence of its understated train count, Mr. Crowley now unabashedly states that "in developing the inputs for its string chart, Xcel relied on the principle that the WCC would increase train sizes before adding additional trains to meet future traffic levels." Xcel Reply, Verified Statement of Crowley at 11.

There is no reason to wait until the rebuttal stage to see what other changes Xcel will propose in its SAC assumptions to fix what has been shown to be inadequate opening evidence. As BNSF demonstrated in its Motion for Summary Disposition, Xcel has failed to present on opening credible evidence supporting its claim for relief, and its complaint should be dismissed without further proceedings.

I enclose ten copies of this letter for the Board's files.

If you have any questions regarding this letter, please feel free to contact me.

Sincerely,



Samuel M. Sipe, Jr.

Counsel for The Burlington Northern
and Santa Fe Railway Company

cc: Thomas W. Wilcox (by hand)