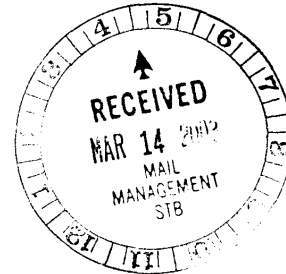


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March 14, 2003

*Via Hand Delivery*ENTERED  
Office of Proceedings

MAR 14 2003

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Public Record

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

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

Dear Secretary Williams:

The undersigned counsel for the Complainant in this proceeding is in receipt of the letter filed by counsel for The Burlington Northern and Santa Fe Railway Company today in this docket. The first paragraph of the letter asks the Board to rule on BNSF's "stay request," contained in its Motion for Summary Disposition and Stay, filed in this proceeding on February 6, 2003.

The remainder of the letter is a reply to Xcel's Reply to BNSF's motion, in direct contravention of 49 C.F.R. §1104.3(c). This portion of the letter should therefore either be stricken from the record or ignored by the Board. As to the letter's substance, BNSF's statement that Xcel has not attempted to establish the reliability of its Opening Evidence is ludicrous. On the contrary, Xcel has clearly demonstrated that, contrary to BNSF's grossly exaggerated allegations, Xcel's Opening Evidence is reliable on its face. As such, BNSF's arguments about the application of Federal Rule of Evidence 702 to exclude unreliable expert testimony have no application. Second, BNSF's statement that Xcel has "begun to distance itself from its opening presentation" is a continuation of the exaggeration and overstatement that has marked this attempt by BNSF to have the Board take the unprecedented step sought by BNSF's Motion. Xcel's Reply speaks for itself on this point, and clearly shows Xcel has done nothing of the sort.

Finally, Xcel notes that there is nothing in the Board's rules that require it to issue a formal ruling on BNSF's "stay request" prior to the parties filing their Reply Evidence in this proceeding. The Board may, in effect deny BNSF's motion and request for stay by choosing not to act on the motion before that date, thereby mooting it. As Xcel noted in its Reply, the Board's rules regarding motions to dismiss clearly state that parties cannot use such motions as a reason to delay the preparation of their case.

Should you have any questions regarding the foregoing, please do not hesitate to contact the undersigned.

Sincerely,

Thomas W. Wilcox  
*Counsel for Complainant*

cc: Counsel for Defendant  
(By Hand Delivery)