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May 9, 2003



BY HAND DELIVERY

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

207781

Re: Docket No. 42057, *Public Service of Colorado d/b/a Xcel Energy v. The Burlington Northern Santa Fe Railway Company*; Docket No. 42071, *Otter Tail Power Company v. The Burlington Northern Santa Fe Railway Company*

- 207782

Dear Secretary Williams:

Enclosed for filing in the two above-referenced proceedings are the original and ten copies of the parties' Joint Motion to Amend the Protective Orders in these proceedings in response to the Board's Decision served April 25, 2003, in Ex Parte No. 638 and embraced rail rate proceedings.

Sincerely,

A handwritten signature in cursive script, appearing to read "Cynthia L. Quarterman".
Cynthia L. Quarterman

Enclosure

cc: Michael H. Higgins

WASHINGTON

PHOENIX

LOS ANGELES

LONDON

BRUSSELS

BEFORE THE
SURFACE TRANSPORTATION BOARD

Docket No. 42057

207781

PUBLIC SERVICE OF COLORADO D/B/A XCEL ENERGY

v.

THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY

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Docket No. 42071

207782

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OTTER TAIL POWER COMPANY

v.

THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY

JOINT MOTION TO AMEND PROTECTIVE ORDERS

On April 25, 2003, the Board served an order in STB Ex Parte No. 638, embracing these two proceedings, among others, that required the parties to review and jointly propose any necessary modifications of the protective orders governing these proceedings needed to comply with the *Procedures to Expedite Resolution of Rail Rate Challenges to Be Considered Under the Stand-Alone Cost Methodology*, Ex Parte No. 638 ("April 3 Decision") by May 9, 2003. The Board indicated that if the parties were unable to reach agreement on such modifications by that time, the Board would revise them itself. The parties in these proceedings have agreed on certain modifications to the existing protective orders that they believe are appropriate to comply with the spirit, if not the letter, of the Board's April 3 Decision.

In the April 3 Decision, the Board found that the public interest requires that the parties must file a public version of SAC submissions and exchange a partially redacted version (the "Confidential" version) of each submission that removes its own "Highly Confidential" material. April 3 Decision at 7-10. That Decision contemplated contemporaneous service of "Public" and "Confidential" versions of SAC submissions with the "Highly Confidential" version. The parties here have agreed to a modest change to that schedule and respectfully request the Board to adopt the parties' proposal.

Specifically, the parties propose that filing of public versions be deferred by three days. During that three day period, the parties intend to draft a public version of their respective filings, exchange those draft filings, and review and confer with each other regarding the content of the proposed public filings. The parties believe this process has several advantages. First, because preparing the "Highly Confidential" version of SAC evidence requires an extended effort, which must be completed before counsel can undertake the preparation of either a "Confidential" or a public version, the proposed process will provide parties with additional time to prepare the public versions more carefully. Second, the process will help minimize disputes between the parties concerning the disclosure in public versions of "Confidential" or "Highly Confidential" materials and the possibility of inadvertent disclosure of such protected materials. Finally, the three days it will take to complete this process will not unduly delay public review of these materials. Indeed, the additional time taken to prevent inadvertent disclosures of sensitive information serves the public interest. As to the service of "Confidential" versions (or an alternative list) of pleadings or evidence removing a party's own "Highly Confidential" material, the parties have agreed to defer this filing by one business day. The proposed protective order adopts these deferrals.

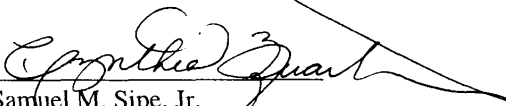
Therefore, the parties jointly propose that the protective orders in these two proceedings be modified to include the following additional paragraphs:

1. If a party files with the Board a pleading or evidence containing Confidential and/or Highly Confidential material in accordance with this Protective Order, that party shall, within three (3) business days after the filing of such pleading or evidence, file with the Board a public version of such pleading or evidence from which all Confidential and Highly Confidential material has been redacted. On the first day of that three-day period following the day of the filing, the parties shall exchange draft public versions of their filings. On the second day, the parties shall provide comments on the other party's draft. Workpapers accompanying such pleading or evidence need not be included in the public version.
2. If a party (the "filing party") files and serves upon the other party (the "reviewing party") a pleading or evidence containing the filing party's Highly Confidential material, the

filing party shall also prepare and serve upon the reviewing party a Confidential Version of the pleading or evidence from which the filing party's Highly Confidential material has been redacted within one business day of the filing. The Confidential Version may be provided in hardcopy or electronic format at the option of the filing party, and may be disclosed to those personnel employed by the reviewing party who have read a copy of this Protective Order and executed the attached Undertaking for Confidential Material ("In-house Personnel"). Alternatively, in lieu of preparing and serving a Confidential Version of any such pleading or evidence, the filing party may provide to outside counsel for the reviewing party a list of the filing party's own Highly Confidential information that must be redacted from its Highly Confidential Version prior to review by the reviewing party's In-house Personnel. If the filing party chooses this latter option, it shall provide the list to outside counsel for the reviewing party within one business day of the filing of the Highly Confidential version, and such outside counsel shall redact the designated material prior to review of the pleading or evidence by the reviewing party's In-house Personnel.

3. Workpapers accompanying a pleading or evidence and containing the filing party's Highly Confidential material need not be included in a Confidential Version (or substitute list) of the pleading or evidence provided to the reviewing party. To ensure that each party can respond with appropriate input from In-house Personnel to evidence or other material or information filed by another party, the parties shall cooperate promptly to redact or otherwise identify portions of such workpapers filed as Highly Confidential so that redacted versions thereof can be disclosed to a party's In-house Personnel.

Respectfully submitted,



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May 9, 2003



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