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June 26, 2003

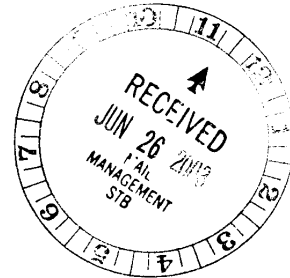
Via Hand Delivery

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

ENTERED
Office of Proceedings

JUN 26 2003

Part of
Public Record



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:

Enclosed for filing are original and ten (10) copies of Xcel Energy's Reply to The Burlington Northern and Santa Fe Railway Company's Motion for Leave to File Limited Surrebuttal Evidence in the above referenced proceeding.

An extra copy of this filing is enclosed for stamping and returning to our offices.

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

Sincerely,

Thomas W. Wilcox

Thomas W. Wilcox
Counsel for Complainant

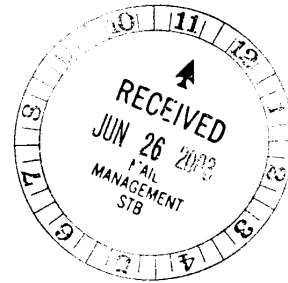
cc: Counsel for Defendant

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JUN 26 2003

BEFORE THE ^{Part of} Public Record
SURFACE TRANSPORTATION BOARD



PUBLIC SERVICE COMPANY OF COLORADO
D/B/A XCEL ENERGY,

Complainant,

v.

THE BURLINGTON NORTHERN AND
SANTA FE RAILWAY COMPANY,

Defendant.

Docket No. 42057

**REPLY TO MOTION FOR
LEAVE TO FILE LIMITED SURREBUTTAL EVIDENCE**

Complainant, Public Service Company of Colorado d/b/a Xcel Energy ("Xcel"), hereby responds in partial opposition to the Motion for Leave to File Limited Surrebuttal Evidence ("Motion"), filed by Defendant, The Burlington Northern and Santa Fe Railway Company ("BNSF"), on June 6, 2003. As explained below, Xcel strongly disputes that it submitted any new evidence in its Rebuttal Evidence that would justify either the acceptance of surrebuttal evidence or the alternative and more serious measure of striking any of Xcel's Rebuttal Evidence. On the contrary, Xcel's Rebuttal Evidence, and significantly the few components of that evidence addressed by BNSF in its Motion and proffered testimony, merely corrects certain errors in, and otherwise responds to several criticisms of, Xcel's Opening Evidence raised by BNSF in its Reply Evidence. This is well within the scope of permissible rebuttal evidence under the Board's rules and precedent.

In sharp contrast, BNSF's Motion is a continuation of its attempts in this proceeding to fundamentally change the Board's rules and precedent governing stand-alone cost presentations.

Specifically, beginning with its February 6, 2003 Motion for Summary Disposition and Stay (“Motion to Dismiss”), BNSF has urged the Board to hold Xcel to the patently unreasonable standard of submitting a flawless stand-alone railroad in its Opening Evidence, and to broadly construe any corrections or changes to that opening presentation as impermissible new evidence or significant alterations to the SARR. The Board previously refused to hold Xcel to such an unreasonable standard when it denied BNSF’s Motion to Dismiss. See April 4, 2003 Decision at 2; citing STB Docket No. 37809, McCarty Farms v. The Burlington Northern and Santa Fe Railway Company, decision served February 13, 1995. Xcel explains below that BNSF’s Motion is contrary to established precedent concerning how a complainant’s rebuttal evidence may legitimately respond to a defendant’s specific criticisms of the complainant’s Opening Evidence.

BNSF’s Motion is also the latest installment of BNSF’s baseless attack on the computer string model used by Xcel’s consultant, L.E. Peabody & Associates, Inc., to help it “construct” the hypothetical stand-alone railroad in this case.¹ But even BNSF’s Motion demonstrates that its attacks continue to be wholly unwarranted. Specifically, while BNSF maintains that the string model is supposedly “not an appropriate tool for SAC analysis,” Motion at 8, its experts admit they successfully ran the model not once, but twice, in their analysis of Xcel’s Rebuttal Evidence, and they understood its workings to the point that they could manipulate the program and its underlying components and assumptions. Motion at 15–16.² Notably, BNSF makes no claim in its Motion that the WCC or its operating plan are infeasible. Thus, BNSF’s own Motion demonstrates that the version of the string model submitted in this proceeding can clearly be used as a tool for the Board to analyze and evaluate the parties’ stand-alone cost evidence in this proceeding.

¹ The Wyoming Colorado Coal Railroad (“WCC”).

² BNSF’s Motion and the proffered verified statement attached to it are numbered sequentially as one document. To avoid confusion, Xcel uses the term “Motion” to refer to both documents.

In addition, as it did in its Motion to Dismiss in response to Xcel's Opening Evidence, BNSF in its Motion attempts to elevate the minor modifications made to Xcel's stand-alone evidence on Rebuttal to the status of dramatic and fundamental alterations of Xcel's stand-alone railroad. Significantly, BNSF again does not back up any of its hyperbole with calculations of the impact of the deficiencies it perceives on the ultimate issue in this case: whether the rates Xcel has challenged are unreasonable. In fact, the issues raised in BNSF's Motion address several minor components of the overall stand-alone cost analysis, and thus have little or no impact on the overall result.³

However, as further explained below, while BNSF is flatly incorrect that Xcel has submitted any impermissible new evidence in its Rebuttal Evidence, Xcel does not dispute that BNSF's Motion has brought to light an inadvertent, easily correctable error in Xcel's Rebuttal Evidence's string program code. Consequently, Xcel does not oppose the submission of the proffered surrebuttal evidence solely on the limited topic of this issue, which involves the program's grade and curvature database. Moreover, contemporaneously with this Reply Xcel is submitting an errata filing that corrects this code-related error in the previously submitted study. The additional material from the parties on this limited topic will provide the Board with a complete record on this one discrete issue.

BNSF's Motion should be denied in all other respects.

³ It is abundantly clear that the deficiencies BNSF now alleges have virtually no impact on the stand-alone costs calculated by Xcel in its Rebuttal Evidence. The modifications made by Xcel in response to BNSF's Reply Evidence resulted in an increase of the stand-alone costs from \$5.15 to \$5.38 per ton. Compare Xcel Table III-H-1 with Table III-H-4. Of that \$.23 increase, approximately \$.11 was due to the addition of the 30.2 miles of additional siding track. See Reply to Motion to Dismiss, Verified Statement of Thomas D. Crowley at 6, Table 1. The remaining differential of \$0.12 per ton includes decreases in stand-alone revenues (Xcel Rebuttal, Table III-A-8), increases in stand-alone operating expenses (Xcel Rebuttal, Table III-D-10) and increases in stand-alone investment other than the 30.2 miles of sidings (Xcel Rebuttal, Table III-F-6). Thus, the corrections to the grade and curvature database Xcel made on Rebuttal had virtually no effect on the stand-alone cost calculation. It follows that any incremental changes to track sidings and grade and curvature data over and above the modifications made on Rebuttal would have little additional impact on the stand-alone cost calculation, if any, and BNSF makes no claim to the contrary.

I. BACKGROUND

In its Motion, BNSF assails three adjustments Xcel made to the WCC in its Rebuttal Evidence in response to specific criticisms raised by BNSF in its Reply Evidence. First, in response to BNSF's criticisms that the grade and curve database assembled by Xcel's experts for the WCC did not always match BNSF actual data, (BNSF Reply Evidence at III.B.20), Xcel (a) responded that some of BNSF's criticisms were wrong from an evidentiary standpoint, and (b) corrected an inadvertent data formatting error in its Opening Evidence study on this issue. Xcel Rebuttal Evidence at III-B-34 and 35. Specifically, Xcel first determined that BNSF had incorrectly assumed that Xcel obtained its grade and curve data from BNSF's track charts, instead of BNSF's actual grade and curve information contained in BNSF's electronic track database provided to Xcel in discovery. Id. Xcel also described how BNSF's analysis on Reply was otherwise flawed. Id. However, Xcel did discover that there were instances where the grade and curve data and the actual train location indeed were mismatched, primarily due to a formatting error in the database. Id. at III-B-35. On Rebuttal, Xcel corrected this inadvertent error.

In its Motion, BNSF and its experts continue to argue over Xcel's use of BNSF's electronic grade and curve data produced in discovery.⁴ This is merely additional argument over the weight to be afforded the respective evidence submitted by the parties, which argument the Board should reject. However, BNSF's Motion brings to light an easily correctable error that is present in Xcel's

⁴ For example, BNSF and its experts argue that Xcel expanded the number of records in the grade file, Motion at 6. But all Xcel did on Rebuttal was expand its use of the same grade and curve information it relied upon in Opening in order to match each piece of data with the correct mileposts along its railroad's route. Compare Xcel Opening electronic file "Grades and Curves.xls," worksheet "final data," Line 7, with Xcel Rebuttal electronic file "grades.xls," Line 3 to 21. BNSF also argues that Xcel's process of producing its "grade.dbf" files was "completely undocumented," Motion at 15, although the record clearly shows that Xcel's summary of BNSF's base grade and curve data was fully documented in Xcel's Opening Evidence and Rebuttal Evidence workpapers, namely, the electronic files "Grades and Curves.xls," and "grades.xls," respectively. None of BNSF's additional argument and characterization of the evidence is justified.

Rebuttal Evidence. As explained in the aforementioned errata filing, this error was the inadvertent replacement of an asterisk (*) on one line of code when it should have been placed on the line immediately below, and the placement of the number 3 instead of the number 4 in three locations. This minor error caused the model to not read all of the grade and curve data contained in the grade and curve database, resulting in the “0% grade” anomaly described in BNSF’s Motion. Motion at 18. As the errata makes clear, and as BNSF’s experts no doubt were aware, this error is easily corrected, and as stated above will have little or no impact on the stand-alone cost of the WCC.⁵ Consequently, Xcel takes great issue with the wholly unsupported assertion that this error, if left undetected, would have resulted in an “enormous” benefit to Xcel. Motion at 18.

Second, in response to BNSF’s allegations about congestion on the WCC, Xcel determined that approximately 30 miles of additional siding would eliminate these congestion problems. Xcel Rebuttal Evidence at III-B-7 and 8. Xcel also manually adjusted the operation of a few trains in and out of rail yards on its hypothetical railroad. *Id.* at III-B-33. In its Motion, BNSF argues that Xcel still has not provided for enough sidings and yards by purporting to demonstrate that the output of the string model still shows congestion. Motion at 7. Xcel disputes this claim. As Xcel has pointed out to the Board previously, disputes over the amount of track to be included in a stand-alone railroad are part of every rate reasonableness case brought under the Coal Rate Guidelines. See Reply to Motion to Dismiss at 15-17. Thus, BNSF’s surrebuttal evidence on this point is merely a

⁵ Moreover, BNSF exaggerates the significance of grade and curvature data in a SAC analysis. The string diagram model is used to demonstrate the feasibility of the stand-alone system that was designed to efficiently handle the selected group of traffic. A computerized model (as opposed to a manual approach) enables the introduction of real-world resistance elements into the calculations, e.g., the impact of grades and curves. Resistance elements refine the costs but are not biased to either an increase or decrease in the costs. Stated differently, a string model without grade and curve data (or any of the other resistance elements) can still be used to accurately demonstrate the feasibility of a stand-alone railroad.

reaffirmation that the parties to this case continue to disagree on this issue. As such, BNSF's surrebuttal evidence on this point should be rejected.

II. ARGUMENT

A. Xcel Did Not Submit Any Impermissible New Evidence on Rebuttal

1. Evidence Responding to Specific Criticisms Raised on Reply is Permissible

As a threshold matter, BNSF's Motion wrongly assumes that the evidence to which it seeks to respond with surrebuttal testimony is impermissible new evidence outside the scope of proper rebuttal. That is not the case. Complainants are clearly permitted to respond to criticisms of their opening stand-alone cost presentation raised by the defendant in its Reply Evidence, and also to correct errors present in their Opening Evidence. See, generally, Ex Parte No. 347 (Sub-No. 3), General Procedures for Presenting Stand-Alone Cost Rate Cases, served March 12, 2001 at 5. The General Procedures followed prior agency precedent in which the Board held that a complainant may submit evidence on rebuttal that responds to defendant's criticisms on reply. See Potomac Electric Power Company v. CSX Transportation, Inc. ("PEPCO"), Docket No. 41989, slip op. at 3 (served Nov. 24, 1997)(standard for rebuttal evidence "has been broadly interpreted and does not bar the introduction in rebuttal of new, but responsive, evidence and argument."); see also Bituminous Coal - Hiawatha, Utah to Moapa, Nevada, Docket No. 37038, slip op. at 4 (ICC served Dec. 7, 1988) ("There is no bar to the presentation of new evidence on rebuttal, however, as long as it is responsive to the reply."). Accord, FMC Wyoming v. Union Pacific Railroad Company, Docket No. 42022, slip op. at 103 (served May 12, 2000) (new evidence submitted by complainants in the rebuttal phase was rejected by the Board because it was not responsive to any criticism of the defendant and because the defendant did not mention the issue in its reply.)

More recently, the Board has distinguished significant reconfigurations of a complainant's stand-alone railroad (which are impermissible), from "correcting errors in a study that had already been introduced into the record." (which are permissible) Duke Energy Corporation v. CSX Transportation, Inc., Docket No. 42070, slip op. at 4 (served Mar. 25, 2003), citing Union Pacific Corporation, Union Pacific Railroad Company and Missouri Pacific Railroad Company - Control - Chicago and Northwestern Transportation Company, and Chicago and Northwestern Railroad Company, Docket No. 32133 et al. (served Sept. 12, 1994), at 17-18 ("Duke Energy").⁶

BNSF makes no attempt whatsoever to reconcile its Motion with the aforementioned decisions, or even the aforementioned April 4, 2003 decision in this case, for that matter.⁷ The Board must reject BNSF's unsupported attempt to significantly broaden the definition of impermissible new evidence on rebuttal in direct contravention of established agency precedent.

2. Xcel Did Not Submit an Entirely New String Program on Rebuttal

In a strained effort to try to characterize the modifications assailed in the Motion as impermissible new evidence, BNSF and its experts state repeatedly that the string program analysis in Xcel's Rebuttal Evidence is a completely new and different analysis than that presented in Xcel's Opening Evidence. Motion at 5-6. This is patently false. All of the data utilized in Xcel's Rebuttal

⁶ See also, Bituminous Coal - Hiawatha, Utah to Moapa, Nevada ("Nevada Power II"), Docket No. 37038, 10 ICC2d 259, 261 (decided Oct. 12, 1994) (Commission denied railroad's motion to strike final brief evidence: "UP cannot complain because NPC has chosen to adopt some of UP's arguments. This is neither unusual nor unexpected. It aids us in the resolution of this case by narrowing the disagreements between the parties in several areas.").

⁷ BNSF's citation to ICC Docket No. 40131 (Sub. No. 1) and No. 40180, Ashley Creek Phosphate Co. v. Chevron Pipeline Co., et al; Ashley Creek Phosphate Co. v. SF Phosphates Ltd. Co., et al., served April 21, 1995, does not support its Motion. In that proceeding, the ICC rejected the vast majority of the defendant's claims that the complainants had filed new evidence on rebuttal that justified surrebuttal evidence or a motion to strike. The ICC only permitted surrebuttal evidence on one discrete issue: a comparison of tariff revenues to stand-alone cost revenues that had been introduced for the first time on rebuttal. This evidence is in no way similar to the modifications made by Xcel in response to BNSF's Reply Evidence, and BNSF makes no claim that it is. All other evidence challenged by the defendant was found to be within the scope of proper rebuttal evidence.

evidence was already present in the record of the case either through submission by Xcel in its Opening Evidence, or by inclusion in BNSF's Reply Evidence. The same holds true for any analyses Xcel performed as part of its Rebuttal submission. The only changes Xcel made to its Opening Evidence in Rebuttal were made (1) to correct minor errors acknowledged in Xcel's Reply to BNSF's Motion to Dismiss and (2) to reflect minor adjustments and corrections made in response to criticisms contained in BNSF's Reply Evidence. For example, to correct the grade and curvature database formatting error, Xcel merely expanded the number of lines in its Rebuttal Evidence grade and curve database so that each piece of grade and curve data was aligned with the correct mileposts along the WCC's route. While the number of lines of data in the database increased between Opening and Rebuttal, the same grade and curve information was used in both evidentiary filings.⁸ Simply stated, there were no major changes made to the WCC's operating assumptions or facilities between Xcel's Opening and Rebuttal Evidence.

All other inputs to the Opening Evidence string program remained the same. See Xcel Rebuttal at I-35 to 36. The restatement of the string model output on Rebuttal therefore is a far cry from introducing an entirely new analysis in the Rebuttal phase of the case. This is yet another example of BNSF's attempt to hold Xcel to an unfairly high standard when making legitimate corrections and/or modifications to its opening stand-alone presentation.

⁸ For example, in its Opening Evidence draft and curve file, Xcel determined that the WCC experienced a -0.92 percent grade between mileposts 9.4 and 4.6 of the Campbell Subdivision, and included this information in one (1) record in its Opening Evidence. See Xcel Opening electronic file "Grades and Curves.xls," worksheet "final data," Line 7. In its Rebuttal Evidence, Xcel included this same grade information between mileposts 9.4 and 4.6, but spread the data across 19 records to properly align the grade and curve data between these mileposts. See Xcel Rebuttal electronic file "grades.xls," Lines three to 21.

3. Xcel's Correction of its Grade and Curvature Database and the Additional
Siding Trackage Did not Significantly Change its Stand-Alone Railroad

For all its rhetoric, BNSF fails to present any evidence to support its totally unfounded charge that Xcel has presented an entirely new SARR on Rebuttal. As it did in its Motion to Dismiss and again in its Reply Evidence, BNSF has mischaracterized and greatly exaggerated the effect of the corrections Xcel made to its stand-alone railroad on Rebuttal. Specifically, BNSF's Motion states that Xcel "produced a SARR with fundamentally different operating assumptions." Motion at 6. The proffered surrebuttal testimony goes substantially further, stating that Xcel presented on Rebuttal an entirely new stand-alone railroad. Motion at 14. These statements are false and disingenuous. The stand-alone railroad in Xcel's Rebuttal Evidence is virtually the same railroad presented by Xcel in its opening evidence: It remains a coal-only railroad operating in unit train service over the same 389.5 mainline route miles. Its overall routing is the same as on opening. Its shipper group is unchanged. No new customers have been added. No new mine origins have been added. Xcel added only 30.2 miles of new sidings to the WCC on Rebuttal. As Xcel pointed out in its Rebuttal Evidence, the 30.2 miles of new sidings constituted only about 5% of the overall track making up the WCC.

BNSF's contention that Xcel presented a fundamentally different topological profile for its SARR, Id., is a blatant and exaggerated distortion of the minor grade corrections that were made to align the grades and curves and which addressed criticisms raised in BNSF's Reply Evidence. As Xcel explained in its Rebuttal Evidence, in the process of reformatting its grade and curve database, Xcel made some minor changes to its grade and curve figures to correct for several data transcription and transformation errors, and to use average grade information between mileposts, just as BNSF did

in its Reply Evidence.⁹ Nevertheless, in its Motion, BNSF has disingenuously highlighted only those portions of the entire WCC system where the few minor changes were made, thereby intentionally exaggerating the scale of the changes. See Attachment A to BNSF's proffered surrebuttal evidence. The Board need only compare Xcel's Opening and Rebuttal Evidence grade and curve data for the entire WCC to conclude that the corrections made by Xcel in its Rebuttal Evidence are in fact minor when looking at the railroad as a whole, and do not materially change the WCC's topographical or operating profile.

This case therefore stands in sharp contrast to Duke Energy, supra, where the Board found that the wholesale relocation of both a rail yard and a significant tunnel changed the original configuration of the complainant's stand-alone railroad to the point of constituting impermissible new evidence. Duke Energy at 4.

Finally, BNSF's attempt to expand its Motion to include a review of the operating implications of the corrections made by Xcel on Rebuttal is similarly unfounded. Motion at 5. In general, BNSF asks the Board to find fault in Xcel's adjustments made on Rebuttal because they relieve congestion and reduce cycle times, thereby addressing precisely the criticisms raised by BNSF. Motion at 8. This preposterous argument must be rejected. In any event, the fact that the corrections reduced cycle times and the need for locomotives on the WCC system does not rise to the level of a fundamental new operating assumption. For example, in PEPCO, supra, the defendant railroad objected to extra locomotive power included in complainant's rebuttal. PEPCO at 4. The Board denied the railroad's motion to strike or to allow surrebuttal, stating that "[a]dditions or

⁹ See for example BNSF Reply electronic files "Simulation – WCC-5.LINK" and "Simulation – WCC-5.NODE." Using average grades between mileposts helps reduce the number of records in the database and makes the simulations easier to run.

deletions of equipment have generally been accepted in the past because they merely affect the cost of operating the hypothetical railroad, not its basic operating parameters.” Id.

4. BNSF’s Surrebuttal Evidence on Sidings and Yard Capacity Should be Rejected

BNSF does not specifically claim in its Motion that Xcel’s addition of 30.2 miles of siding and yards on Rebuttal constitutes a fundamental change in its stand-alone railroad that constitutes impermissible new evidence. Such a claim would be without merit in any event.¹⁰ Rather, BNSF merely repeats the claim it made in its Motion to Dismiss that the string program does not adequately detect instances where sidings and yards are overloaded. Motion at 7. Xcel vigorously disputes this assertion by BNSF, and reasserts that the additional sidings Xcel added to its stand-alone railroad on Rebuttal are sufficient to alleviate any congestion problems present in its Opening Evidence. Moreover, BNSF’s assertion that the string program in this case cannot be used to analyze siding and yard requirements is belied by the proffered surrebuttal evidence, in which BNSF’s experts refer to a specific location on the stand-alone railroad’s system (Northport, Nebraska) where they believe additional capacity is needed. In any event, Xcel notes in this regard that BNSF’s experts appear to have used a flawed analysis that in part overstates the number of trains using the Northport Yard.¹¹

¹⁰ See Reply to BNSF’s Motion to Dismiss at 15-17; see also, FMC at 102-103; PEPCO at 1,2 and 6.

¹¹ As indicated on pages III-B-8 and III-C-11 of Xcel’s Opening Evidence and pages III-B-59 and III-C-19 of its Rebuttal Evidence, the WCC’s Northport Yard will function as a run-through interchange point, where crews from the respective railroads meet, step on, step off, make an air test, and proceed. The yard has been designed to hold five unit coal trains at any one time, if necessary, while, at the same time trains can move through Northport on the main line. Xcel Rebuttal Evidence at III-B-59. If required, crew changes for two additional trains can also take place on the main line, bringing the total interchange capacity of the WCC’s Northport Yard to seven trains. Id. at III-B-33. During the peak period, WCC, on average, delivers 14 loaded, and receives 14 empty trains per day from the BNSF, and deliveries and receives an average of two loaded two empty trains from the UP at Northport, resulting in an average of 32 trains per day using the Northport Yard, or one train arriving every 45 minutes. Id. at III-B-60; Rebuttal Electronic Workpaper “PEAKTRAINS Reb.123.” Since Xcel has allocated one hour for changing crews at the Northport Yard, Id. at III-C-19, there should be, on average, only two trains in the Northport Yard at any time. Since Xcel has provided room for up to seven trains, while expecting only two trains to utilize the Northport Yard, Xcel has provided more than adequate capacity to handle WCC’s peak demand.

In short, that the Board has been provided with sufficient evidence and documentation to enable it to decide whether the WCC requires additional siding or yard trackage. BNSF's surrebuttal evidence on this point should be rejected in its entirety.

B. There is no Basis for Striking Xcel's Rebuttal String Program Analysis

Clearly, Xcel did not submit impermissible new evidence in its Rebuttal Evidence. Rather, Xcel appropriately responded to criticisms outlined by BNSF and corrected previously submitted studies. Nor did Xcel significantly change the stand-alone railroad it submitted in its Opening Evidence. Accordingly, there is no basis for striking any of Xcel's Rebuttal Evidence - the alternative relief briefly mentioned by BNSF in its Motion. The fact that BNSF only weakly presents this request for relief in the alternative to seeking to file surrebuttal evidence is revealing on this point, given the zeal BNSF has demonstrated in this proceeding for attacking Xcel's stand-alone analysis. There is simply no basis for concluding that Xcel has violated the tenets of the General Procedures and altered its stand-alone railroad to the significant degree the Board found objectionable in Duke Power, supra.

There are also no grounds for the alternative measure of striking Xcel's Rebuttal string program analysis because Xcel does not oppose the submission of BNSF's surrebuttal evidence on the limited issue of the grade and curvature database error discussed herein and which is corrected by Xcel's errata filing. Finally, the mere fact that BNSF disputes the amount of siding and yard trackage Xcel has included in its stand-alone railroad analysis clearly provides no basis for rejecting Xcel's entire Rebuttal string program analysis.

**III.
CONCLUSION**

For all the reasons discussed in this Reply, BNSF's Motion must be denied in all respects except that Xcel does not object to the admission of the proffered surrebuttal evidence on the limited issue of the grade and track curvature database issue discussed at pages 16-19 of the proffered surrebuttal testimony.

Respectfully submitted,

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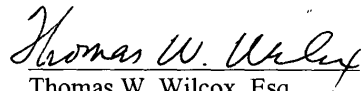
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June 26, 2003

Certificate of Service

I hereby certify that on June 26, 2003, I served a copy of the Reply to Motion for Leave to File Limited Surrebuttal Evidence by hand delivery to counsel for Defendant at the following address:

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