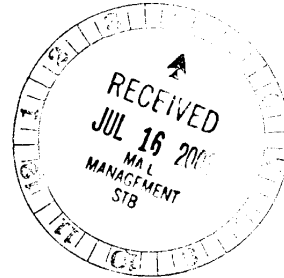


July 16, 2003

Via Hand Delivery

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

208411



RE: STB Ex Parte No. 638, *Procedures to Expedite Resolution of Rail Rate Challenges to be Considered Under the Stand-Alone Cost Methodology*

Dear Secretary Williams:

Please find enclosed for filing the original and ten (10) copies of Otter Tail Power Company's Reply in Support of BNSF's Petition for Reconsideration 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,

A handwritten signature in black ink, appearing to read "Jeffrey O. Moreno".

Jeffrey O. Moreno

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cc: Parties of Record

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Ex Parte No. 638

**PROCEDURES TO EXPEDITE RESOLUTION
OF RAIL RATE CHALLENGES TO BE CONSIDERED
UNDER THE STAND-ALONE COST METHODOLOGY**

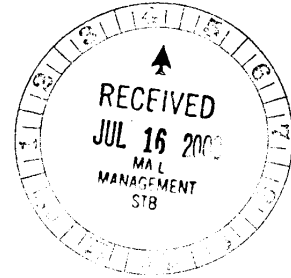
**REPLY IN SUPPORT OF
BNSF'S PETITION FOR RECONSIDERATION**

submitted by

OTTER TAIL POWER COMPANY

Otter Tail Power Company ("Otter Tail") hereby submits this Reply in support of the Petition for Reconsideration filed by The Burlington Northern and Santa Fe Railway Company ("BNSF") on June 26, 2003. BNSF's Petition requests the Board to reconsider its June 6, 2003 decision in this proceeding ("June 6th Decision") requiring parties in stand-alone cost ("SAC") cases to file simultaneously "Highly Confidential" and "Public" versions of their SAC evidence. Otter Tail supports and strongly encourages the Board's efforts to ensure that non-confidential versions of SAC filings are made available to the public. However, in light of its recent experience filing its own Opening SAC evidence, Otter Tail believes that the twin objectives of protecting confidential information and maximizing the amount of information available to the public would be better served if the Board amended its existing regulations to allow a brief interval between the filing of highly confidential and public versions of SAC evidence.

Otter Tail and BNSF filed Opening Evidence in STB Docket No. 42071 on June 13, 2003, only one week after the Board issued its June 6th Decision. That decision rejected a joint proposal by complainants in pending cases and BNSF to allow the parties three days from the



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filing of highly confidential SAC evidence to prepare and file public versions. The purpose of that proposal was to allow the parties to exchange proposed redactions and to determine if any commercially sensitive or proprietary information remained in the proposed public versions. This is a process that is not workable if the parties have to file simultaneous highly confidential and public versions, because it would require the parties to share their pleadings before the filing date with the Board and before such pleadings are final.

Since the June 6th Decision rejected this proposal, Otter Tail had no choice but to use its best judgment to identify and redact commercially sensitive BNSF information from its Opening Evidence. If there was even the slightest doubt as to the confidentiality of BNSF information, Otter Tail redacted that information from its public version rather than risk breaching the Protective Order in the proceeding. Even so, it is entirely conceivable that Otter Tail inadvertently overlooked some confidential information. Furthermore, even if Otter Tail believed otherwise, the Protective Order required Otter Tail to redact from its public version all information that BNSF had designated “Highly Confidential” in discovery, since Otter Tail is not permitted unilaterally to declassify any information. As a consequence, Otter Tail almost certainly redacted much more information than was necessary from its public version, while still possibly inadvertently disclosing some confidential information.

By allowing the parties three days after the filing of confidential versions with the Board to exchange proposed redactions to their public versions, the Board actually will increase the amount of information that ultimately will be available to the public and reduce the risk of inadvertent disclosures. Otter Tail, for example, would have been more liberal in its proposed redactions, secure in the knowledge that BNSF would have the opportunity to identify and object to the disclosure of any confidential information that Otter Tail overlooked or believed should not be confidential. The parties also could have resolved any grey areas during this exchange.¹

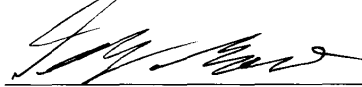
¹ Gray areas frequently arise with respect to information that is derived from confidential sources, but which has been processed to an extent that the result no longer may be confidential or otherwise reveal confidential information.

The result undoubtedly would have been a more extensive public version of Otter Tail's Opening Evidence.²

This proposed three day delay will not be detrimental to the public interest. There is no compelling reason for non-parties to have immediate access to SAC filings on the same day that highly confidential filings are submitted to the Board. Moreover, a three day interval would not constitute an undue delay for public review. As BNSF notes in its Petition, the Federal Communications Commission and the Department of Commerce already have implemented a similar procedure.

For the reasons stated above, Otter Tail requests that the Board grant BNSF's Petition for Reconsideration of the June 6th Decision.

Respectfully submitted,



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Attorneys for Otter Tail Power Company

July 16, 2003

² Otter Tail can make this statement with certainty, since after reviewing BNSF's Opening Evidence on variable costs, it is clear that BNSF's public version contained much information that Otter Tail redacted from its public version.

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of July, 2003, a copy of Otter Tail Power Company's Reply in Support of BNSF's Petition for Reconsideration was served by hand delivery or overnight mail on the following:

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