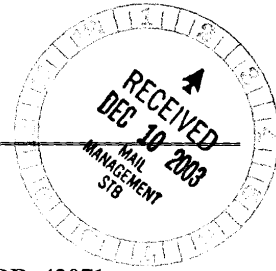


209584

BEFORE THE
SURFACE TRANSPORTATION BOARD



OTTER TAIL POWER COMPANY,

Complaint

v.

THE BURLINGTON NORTHERN AND
SANTA FE RAILWAY COMPANY

Defendant.

Docket No. NOR 42071

ENTERED
Office of Proceedings

DEC 10 2003

FILED
STB

**DEFENDANT'S MOTION TO MODIFY
PROCEDURAL SCHEDULE**

Defendant The Burlington Northern and Santa Fe Railway Company ("BNSF") hereby requests that the Board modify the procedural schedule in this proceeding to provide BNSF with two additional weeks to reply to Complainant Otter Tail Power Company's ("Otter Tail") supplemental version of its opening evidence. BNSF also requests that the Board extend the schedule for the filing of final rebuttal evidence by a corresponding two-week period. Otter Tail has authorized BNSF to represent that Otter Tail consents to BNSF's requested schedule modification. The proposed modified schedule is set forth below:

- January 9, 2004 Otter Tail's amended version of its opening evidence is due.
- February 23, 2004 BNSF's reply to the amended version of Otter Tail's opening evidence is due.
- March 25, 2004 Final rebuttal evidence is due.

The grounds for this request are described below.

On November 21, 2003, the Board granted a petition by Otter Tail to supplement the record in this proceeding. The Board also modified the existing procedural schedule to provide

for supplemental evidentiary filings. The Board's November 21, 2003 Order provided that Otter Tail would file an amended version of its opening evidence on January 9, 2004, BNSF would file a reply to that amended evidence a month later, on February 9, 2004, and final rebuttal evidence from both parties would be due on March 11, 2004.

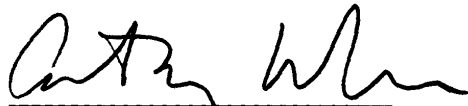
The Board's November 21, 2003 Order also provided for a technical conference to be held on December 9, 2003, to enable the parties to discuss, among other things, the matters to be addressed in the supplemental evidence. In advance of that technical conference, the parties met to discuss the scope of the supplemental evidence. In those discussions and at the December 9, 2003 technical conference, Otter Tail informed BNSF that it intends to submit supplemental evidence on the addition of 31.7 million tons of coal traffic to the stand-alone railroad, the operating expenses and investment costs directly associated with that additional traffic, and the re-allocation of all cross-over traffic revenue according to the Modified Straight Mileage Prorate methodology. Otter Tail also informed BNSF that it intends to use a string program analysis to calculate the operating expenses and investment costs associated with the additional traffic. However, Otter Tail indicated that it intends to use a string program that has been modified from the string program it used on opening to be consistent with the rebuttal evidence that Otter Tail plans to submit in the rebuttal phase of this proceeding.

In light of Otter Tail's decision to use a different string program from the string program sponsored by Otter Tail on opening, BNSF does not believe that one month will be sufficient to reply to Otter Tail's supplemental evidence. BNSF will have to spend substantial time to identify and understand the changes made to the string program before BNSF can prepare its

reply to the supplemental evidence.¹ One month is not sufficient both to analyze the changes to the string program and to prepare reply evidence.

Therefore, BNSF requests that the Board extend the period for BNSF's reply to Otter Tail's supplemental evidence by two weeks, to February 23, 2004. In addition, the Board should extend the date for final rebuttal evidence by a corresponding two-week period in order to maintain the same interval between the filing of reply and rebuttal evidence that was in the Board's November 21, 2003 Order. As indicated above, Otter Tail does not oppose this proposed modification to the procedural schedule.

Respectfully submitted,



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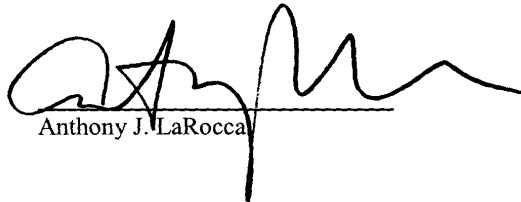
December 10, 2003

¹ The parties agreed to meet shortly after the filing of Otter Tail's supplemental evidence to confirm that we understand the scope and nature of the changes that Otter Tail has made.

CERTIFICATE OF SERVICE

I hereby certify that this 10th day of December 2003, I served a copy of the foregoing
Defendant's Motion to Modify the Procedural Schedule by hand delivery to the following:

Nicholas J. DiMichael
Jeffrey O. Moreno
Michael H. Higgins
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Anthony J. LaRocca