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April 12, 2004



Via HAND DELIVERY

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, NW
Washington, DC 20423

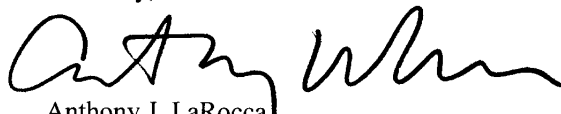
Re: **STB Docket No. 42057, *Public Service Company of Colorado d/b/a Xcel Energy v. The Burlington Northern and Santa Fe Railway Company***

Dear Secretary Williams:

Enclosed for filing in the above-captioned matter are the original and fifteen copies of Defendant's Opposition to Complainant's Petition for Leave to File Attachments to Post-Argument Brief. Also enclosed are three diskettes containing the electronic version of this filing.

Please date stamp the extra copy of the referenced pleading and return it with our messenger. If you have any questions regarding this matter, please contact the undersigned.

Sincerely,


Anthony J. LaRocca

Enclosures

cc: Counsel for Complainant

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BEFORE THE
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

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Office of Proceedings
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**DEFENDANT'S OPPOSITION TO COMPLAINANT'S PETITION
FOR LEAVE TO FILE ATTACHMENTS TO POST-ARGUMENT BRIEF**

On April 5, 2004, both parties in this case filed post-argument briefs in response to a Board order served March 18, 2004. Complainant Public Service Company of Colorado d/b/a Xcel Energy ("Xcel") also filed a petition for leave to file five attachments to its post-argument brief. Defendant The Burlington Northern and Santa Fe Railway Company ("BNSF") hereby replies in opposition to Xcel's petition.

The attachments at issue here contain new evidence that should not be admitted into the record at this late stage of the proceeding. The parties have already filed several rounds of evidence, submitted final briefs, and presented oral argument on the evidence already in the record. A decision in this case is due in less than two months. It is too late to consider new evidence in this proceeding.

The attachments should also be rejected because they contain material beyond the scope of that contemplated in the Board's order for post-argument briefs. In calling for post-argument briefs, the Board did not contemplate new evidentiary submissions. Indeed, the Board expressly limited its first request to the parties for guidance on how to address certain operating and

capacity issues “based on the existing record.” Xcel’s Attachment No. 1 clearly falls outside the scope of this request as it is based on an entirely new formula that is not in the record in this case. The Board’s second and third requests to the parties sought comments regarding methodologies for assessing operating cost inflation and for prescribing a rate in the event SAC revenues are found to exceed SAC costs. But the Board did not request or authorize the submission of new evidence on these issues. Moreover, given the short page limit on the post-argument briefs and the very brief time for the parties to file reply briefs, it is clear that the Board did not contemplate new evidentiary submissions from the parties on these issues.

Finally, it would prejudice BNSF for the Board to allow Xcel to supplement the record at this time. Xcel argues in its petition that its attachments are “relatively straightforward” and “merely provide data that support Xcel’s narrative discussion.” Petition at 2. However, Xcel’s attachments involve a substantial quantity of data from multiple sources. BNSF does not have an opportunity in the context of a post-argument reply brief to evaluate and address this new material.¹

For these reasons, the Board should deny Xcel’s petition for leave to file attachments to its post-argument brief.

¹ *Cf. Duke Energy Corp. v CSX Transp. Inc.*, STB Docket No. 42070, at 4 (decision served March 25, 2003) (striking new evidence presented on rebuttal).

Richard E. Weicher
Michael E. Roper
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Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Samuel M. Sipe, Jr.', written over a horizontal line.

Samuel M. Sipe, Jr.
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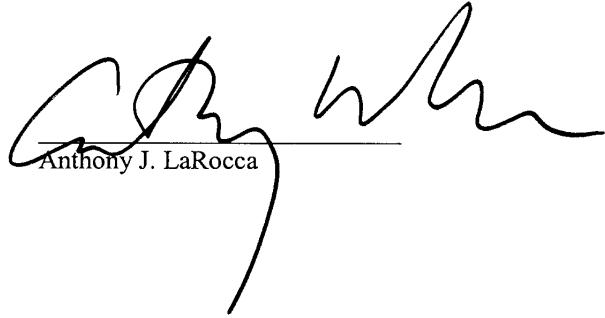
ATTORNEYS FOR THE BURLINGTON
NORTHERN AND SANTA FE RAILWAY
COMPANY

April 12, 2004

CERTIFICATE OF SERVICE

I hereby certify that on April 12, 2004, I caused a copy of the foregoing Defendant's Opposition to Complainant's Petition for Leave to File Attachments to Post-Argument Brief by hand upon the following counsel for Public Service Company of Colorado d/b/a Xcel Energy:

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Anthony J. LaRocca