

May 7, 2004

By Messenger

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423-0001

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RE: STB Docket No. 42071, *Otter Tail Power Company v. The Burlington Northern and Santa Fe Railway Company*

Dear Secretary Williams:

On April 29, 2004, The Burlington Northern and Santa Fe Railway Company ("BNSF") filed Rebuttal Evidence in the above-referenced docket. At pages II.-28 through II-30, BNSF accuses Otter Tail Power Company ("OTP") of presenting crew wage evidence that is inconsistent with the agreement between BNSF and OTP at the Board sponsored *Ex Parte No. 638* Technical Conference. This is a gross misrepresentation by BNSF of the parties' Technical Conference agreement. OTP takes very seriously the Technical Conference process and the agreements that it reached with BNSF. In order to foster such agreements in future conferences, it is imperative that the parties fairly represent any agreements in their evidence. Therefore, OTP requests that the Board accept this letter into the record in response to BNSF's misrepresentation.

At page II-28, BNSF states "Otter Tail's conclusion that the road switcher performs an average of 13 minutes of work per Big Stone train is inconsistent with its agreement at the Board sponsored *Ex Parte No. 638* conference that the road switcher performs at least 42 minutes of switching per Big Stone train in the Aberdeen Yard." [Footnote citing July 17, 2003 Joint Letter to David M. Konschnik omitted] The Technical Conference agreement, as set forth in the Joint Letter, had nothing to do with road switch crew wages or with SEMs for the road switcher at Aberdeen. The agreement of OTP and BNSF to T&O characteristic No. 17, Rd SEM per Car-Yd, was for the Big Stone train at all locations, not to 42 minutes at Aberdeen or to any specific SEMs at the other three locations of Forsyth, Glendive, or Hettinger. It is disingenuous for BNSF to interpolate from this general agreement a much more specific agreement to the road switching SEMs at Aberdeen, and then accuse OTP of contradicting the agreement.

Moreover, after accusing OTP of being inconsistent with the Technical Conference agreement, BNSF itself uses 54 SEMs, not the 42 SEMs to which it claims the parties agreed at the Technical Conference.

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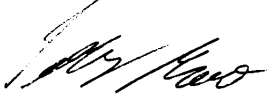
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For the reasons stated above, OTP asks the Board to give no credence to BNSF's misrepresentation of the parties' Technical Conference agreement, which had nothing to do with crew wages or SEMs at Aberdeen.

Sincerely,



Jeffrey O. Moreno

cc: Anthony J. LaRocca, Esq.
Counsel for Defendant, The Burlington Northern and Santa Fe Railway Company