

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

OTTER TAIL POWER COMPANY,

Complainant,

v.

**THE BURLINGTON NORTHERN AND
SANTA FE RAILWAY COMPANY,**

Defendant.

Docket No. 42071

ENTERED
Office of Proceedings

MAY 12 2004

Part of
Public Record



MOTION FOR EXTENSION OF TIME

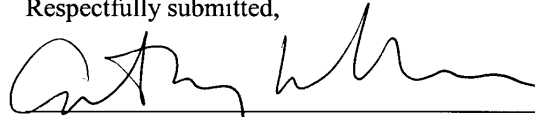
On April 29, 2004, the complainant Otter Tail Power Company ("Otter Tail") filed Rebuttal Evidence in the above-captioned proceeding. Otter Tail's Rebuttal Evidence follows the disturbing trend in recent SAC litigation of complainants presenting new evidence on rebuttal, when the defendant no longer has an opportunity to respond. The Board has articulated strict limits on the type of evidence that can be presented on rebuttal in a SAC case in order to eliminate these abuses of rebuttal evidence, but Otter Tail's Rebuttal Evidence ignores those rules in several areas.

Defendant The Burlington Northern and Santa Fe Railway Company ("BNSF") intends to respond in detail to Otter Tail's abuses of rebuttal evidence. The Board's rules provide that a party may file "a reply or motion addressed to any pleading within 20 days after the pleading is filed with the Board. . . ." 49 CFR §1104.13(a). Under this rule, BNSF's response to Otter Tail's Rebuttal Evidence would be due on May 19, 2004. However, BNSF is in the process of preparing reply evidence in another pending SAC proceeding, *AEP Texas North Company v. The Burlington Northern and Santa Fe Railway Company*, Docket No. 41191 (Sub-No.1), that is due

on May 24, 2004. In light of the intense effort required on the part of BNSF's counsel and its consultants to prepare reply evidence in the *AEP Texas* case, BNSF will not have a sufficient opportunity to prepare a response Otter Tail's Rebuttal Evidence by May 19, 2004. Accordingly, BNSF requests a 20-day extension, until June 8, 2004, to respond to Otter Tail's Rebuttal Evidence.

Richard E. Weicher
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Respectfully submitted,



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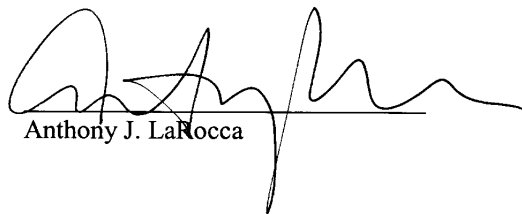
ATTORNEYS FOR THE BURLINGTON
NORTHERN AND SANTA FE RAILWAY COMPANY

May 12, 2004

CERTIFICATE OF SERVICE

I hereby certify that on May 12, 2004, I cause a copy of the foregoing Motion For
Extension Of Time of The Burlington Northern and Santa Fe Railway Company to be served by
hand upon the following counsel for Otter Tail Power Company:

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