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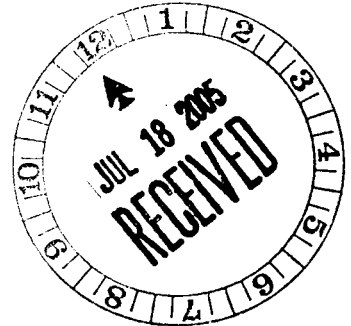
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July 18, 2005



By Hand Delivery

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

Re: *STB Docket No. 42071, Otter Tail Power Company v. BNSF Railway Company*

Dear Secretary Williams:

Pursuant to the Board's decision served on July 1, 2005 in the above captioned proceeding, the BNSF Railway Company submits an original and ten copies of its summary of oral argument discussion points that it proposes to address during the oral argument in this matter that the Board has scheduled for July 27, 2005.

Oral argument on behalf of BNSF will be divided between Mr. Richard Weicher, Vice President and Senior Regulatory Counsel for the company, and the undersigned.

Sincerely,

Samuel M. Sipe gfm
Samuel M. Sipe, Jr.

cc: Nicolas J. DiMichael, Esq.

**BNSF'S SUMMARY OF ORAL ARGUMENT DISCUSSION POINTS
IN OTTER TAIL v. BNSF, DOCKET NO. 42071**

1. This is the fourth in a series of PRB coal shipper cases filed against BNSF between mid-2000 and 2002 where the shippers sought to bring about dramatic reductions in their transportation rates by testing the limits of the Board's SAC methodology. This case is not about a market failure or an abuse of market power. The challenged rates represent only a slight increase over the rate in the expiring contract, notwithstanding that the demand for PRB coal and for PRB coal transportation are skyrocketing. Otter Tail is using STB regulation not as a protection against monopoly abuse but as a business opportunity to improve its profitability at the expense of a revenue inadequate BNSF.

2. The evidence in this case must be considered in light of the strong policy in favor of providing revenue inadequate railroads like BNSF with a meaningful opportunity for differential pricing. The Board has a statutory obligation to take into account BNSF's status as a revenue inadequate railroad in addressing Otter Tail's claim that the issue traffic rates should be reduced. The public interest in a healthy railroad system that is adequately funded and capable of meeting expanding demand for rail service would not be advanced by reducing rates for PRB coal transportation at the same time that increased demand for PRB coal transportation is calling for increased investment in PRB infrastructure.

3. In this case, the principal issue of SAC methodology involves Otter Tail's use of large volumes of short-haul cross-over traffic. Otter Tail's Big Stone plant is located nine hundred miles from the PRB and its coal is transported over this long distance on relatively low density lines, including the lines that handled the issue traffic in the *PPL* case. To compensate for the high cost of transporting coal to Otter Tail's distant facilities, Otter Tail appended to its SARR a short, high-density north-south line in the PRB. This north-south line is dominated by traffic that

moves only a short distance on the SARR and shares virtually no facilities with the issue traffic. The proper treatment of the short-haul traffic on this north-south PRB line is the critical issue in this case.

4. BNSF's economic expert, Professor Janusz Ordover, explained why the use of cross-over traffic in a SAC analysis is objectionable. This issue is being addressed on appeal in the *Xcel* case, and BNSF does not intend to address it further in the argument here. However, if the Board is going to permit the use of cross-over traffic in a SAC analysis, it must address complainants' most obvious manipulations of cross-over traffic to game the SAC results.

5. First, the Board must correct Otter Tail's over-allocation of revenue to the short-haul cross-over traffic. The Board has determined that if cross-over traffic is used in a SAC analysis, the through revenues charged by the incumbent must be allocated between the SARR and the residual incumbent based on the incumbent's relative on-SARR and off-SARR costs. Consistent with this focus on costs, the Board should reject Otter Tail's approach to determining revenue on cross-over movements by reference to the purported revenue divisions of real-world railroads.

6. BNSF presented a density-based methodology (DARA) for implementing the Board's cost-based standard, which the Board has rejected in past cases in favor of its MSP methodology. If the Board continues to use the MSP methodology, it must adjust the origin credits to reflect more accurately the costs of originating unit coal trains. The use of a 100-mile origin credit massively overcompensates the SARR for the costs to originate unit coal trains. The Board's URCS cost assumptions and the parties' variable cost evidence show that a 25-mile origin credit (for movements in shipper-owned cars) should be used. There is no evidence whatsoever in the record that would support the continued use of a 100-mile origin credit.

7. Second, the Board should exclude from the SAC analysis the cross-over traffic that Otter Tail assumed would be rerouted onto the SARR's northern lines from its real-world route of movement on BNSF lines through Minot, ND. There is no competent evidence in this case demonstrating that the SARR could provide the same level of service on the longer SARR route as BNSF provides for this traffic over the Minot route.

8. The Board also should exclude from the SAC analysis 85 million tons of cross-over traffic that originates at mines from Cordero south and travel south to exit the SARR at Converse. This traffic does not use any facilities that are also used by the issue traffic. Otter Tail's clear purpose for including this traffic was to use the revenues generated from this traffic to subsidize the facilities north and west of Cordero that are used by the issue traffic.

9. An alternative approach to addressing the cross-subsidy generated by the 85 million tons of southbound PRB traffic is to apply the *PPL* cross-subsidy test at both the rate reasonableness and the rate reduction phase of the SAC analysis. This approach also addresses the cross-subsidy generated by the short-haul cross-over traffic originating at the northern PRB mines and exiting the SARR at Donkey Creek. Under this test for cross-subsidy, if the Board finds, after resolving contested issues of SAC costs and revenues, that the revenues generated by the traffic moving on the SARR's east-west lines do not cover the collective attributable costs of the east-west facilities, then the Board should dismiss Otter Tail's complaint as in *PPL*. If, on the other hand, the Board concludes that the east-west revenues exceed the collective attributable costs of the east-west traffic, the maximum rate reduction for purposes of setting a prescribed rate would be an amount that eliminates the supposed overcharge on the east-west traffic. This approach ensures that the prescribed rate is not affected by any subsidy generated by the cross-over traffic using the SARR's north-south lines.