

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. 42071

OTTER TAIL POWER COMPANY

v.

THE BURLINGTON NORTHERN AND
SANTA FE RAILWAY COMPANY

Decided: May 30, 2002

By complaint filed and served on defendant The Burlington Northern and Santa Fe Railway Company (BNSF) on January 2, 2002, Otter Tail Power Company (Otter Tail) alleges that the rates to be assessed on the movement of coal from mine origins in the Powder River Basin (PRB) of Wyoming to the Big Stone Generating Station (Big Stone) located near Milbank, SD, will exceed a maximum reasonable level.¹ Otter Tail alleges that BNSF possesses market dominance over the traffic and requests that maximum reasonable rates be prescribed along with other relief. A decision that included both a protective order and a procedural schedule was served on March 6, 2002. Under the procedural schedule, opening statements are due on June 3, 2002, reply statements are due on September 5, 2002, and rebuttal statements are due on October 21, 2002.

By joint request filed on May 13, 2002, the parties seek suspension of the existing procedural schedule. The parties have yet to complete their production of documents to each other and have pending motions to compel before the Board. The parties also indicate that they may file additional discovery motions. Until these matters are resolved and all discovery is completed, the Board will not be able to move this case forward. Accordingly, the current procedural schedule will be suspended pending completion of discovery.

The parties propose that a new schedule be adopted now, to be activated upon the Board's resolution of the parties' discovery disputes or upon the parties' compliance with any Board orders

¹ BNSF's service was formerly provided under a rail transportation contract that expired on December 31, 2001. Because the parties could not reach a satisfactory replacement agreement, Otter Tail commenced transportation of the PRB coal under the terms of BNSF's Common Carrier Pricing Authority No. BNSF 90062, effective January 1, 2002.

with regard to the resolution of those disputes.² The proposed approach, however, could create confusion. Therefore, the parties are directed to negotiate and jointly submit a new proposed schedule upon completion of discovery.³

It is ordered:

1. The procedural schedule in this matter is suspended. As soon as discovery is completed, the parties shall negotiate and jointly submit a new proposed schedule.
2. This decision is effective on its service date.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary

² Under the parties' proposed schedule, the due dates for Opening Statements would be the later of either a date: (i) 45 days after the Board denies the last pending motion to compel; or (ii) 45 days after BNSF and Otter Tail complete production in response to a Board order granting the last pending motion to compel. The parties further propose that Reply Statements would be due 90 days after the Opening Statements and Rebuttal Statements would be due 45 days after that.

³ This procedure has been followed in other rate cases. See, e.g., Texas Municipal Power Agency v. The Burlington Northern and Santa Fe Railway Company, STB Docket No. 42056, slip op. at 8-9 (STB served Feb. 9, 2001). The parties can avoid further delay by promptly negotiating and submitting a new proposed schedule after completing discovery.