

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. 42071

OTTER TAIL POWER COMPANY

v.

THE BURLINGTON NORTHERN AND
SANTA FE RAILWAY COMPANY

MOTIONS TO COMPEL DISCOVERY

Decided: November 15, 2002

This decision addresses the outstanding discovery disputes between the parties, complainant Otter Tail Power Company (Otter Tail) and defendant The Burlington Northern and Santa Fe Railway Company (BNSF), in the above-entitled proceeding. The discovery matters are: BNSF's motion to compel answers to interrogatories and production of documents, and its petition for subpoena duces tecum; and Otter Tail's first and second motions to compel answers to interrogatories and production of documents.

Otter Tail's first and second motions to compel discovery will be granted in part, and a directive issued to the parties to supply any information that they have already agreed to produce. All other requests for relief will be denied.

BACKGROUND

Otter Tail's complaint challenges the reasonableness of rates for 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. Otter Tail alleges that BNSF possesses market dominance over the traffic and requests that maximum reasonable rates be prescribed and reparations awarded. In a decision served on March 6, 2002, a protective order was issued¹ and a procedural schedule

¹ The protective order included provisions governing the production of highly confidential material and stipulated that the protected exchange of material would not constitute an unauthorized

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established for this proceeding. In a decision served on May 30, 2002, the procedural schedule was suspended, at the parties' request, until the completion of discovery.

PETITIONS TO INTERVENE

Petitions to intervene in this proceeding for the limited purpose of opposing BNSF's petition for subpoena duces tecum were filed by the Public Service Company of Colorado d/b/a Xcel Energy (Xcel) and PPL Montana, LLC (collectively, intervenors). Additionally, Muscatine Power & Water (Muscatine) filed a third-party response opposing the subpoena. The subpoena request seeks documents from the private client files of L.E. Peabody & Associates, Inc. (LEPA), that may contain information prepared for, or provided by, intervenors and Muscatine. BNSF does not object to the participation of intervenors and Muscatine for the purpose of opposing the subpoena request,² but it argues against the merits of their opposition to the subpoena. Intervention will be allowed for the purpose of opposing the subpoena duces tecum. Although the petition for subpoena duces tecum was filed under seal, the joint opposition by Otter Tail and LEPA and the opposition statements by intervenors were not. In light of the confidentiality asserted, the discussion will be limited to those matters needed to address the outstanding discovery issues.

DISCUSSION AND CONCLUSIONS

BNSF's Motion to Compel and its Petition for Subpoena Duces Tecum

In its motion to compel, BNSF seeks information relating to future traffic volumes and revenues of the stand-alone railroad (SARR) to be proposed by Otter Tail in its stand-alone cost (SAC) presentation. Specifically, BNSF seeks an order compelling Otter Tail to provide documents and interrogatory responses to various discovery requests, which BNSF groups into the following five areas: (1) information maintained by Otter Tail relating to projections of rail rates from PRB mine origins; (2) information relating to projections of PRB coal demand and transportation costs made by Otter Tail's expert witnesses; (3) information relating to the possible construction of a second electricity generating facility at Big Stone; (4) information relating to Otter Tail's decisions whether to purchase electricity from other utilities or generate it by burning coal; and (5) information relating to Otter Tail's evaluation of non-coal fuel sources for the generation of electricity.

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disclosure, or result in criminal penalties, under 49 U.S.C. 11904.

² As BNSF correctly notes, even though Muscatine does not specifically seek intervention for the purpose of opposing the subpoena request, that is the essence of its response. Accordingly, Muscatine will be treated as an intervenor for purposes of this decision.

1. Information relating to projections of future rail rates (Request for Production No. 7). BNSF's original Request for Production No. 7 sought all documents relating to projections, forecasts or estimates of rail rates from the PRB in general or to any specific Otter Tail coal-burning electricity generating facility; and projections, forecasts or estimates of the costs of producing rail service for coal transportation from the PRB in general or to any specific Otter Tail coal-burning electricity generating facility. In response to Otter Tail's general objections,³ BNSF agreed to narrow the request to the projections, forecasts and estimates themselves, as well as the materials that identify the inputs, assumptions and methodologies used to create the projections, forecasts, and estimates. Otter Tail subsequently agreed to provide responsive documents for all of its facilities located on the SARR.⁴ After conducting a search, Otter Tail states that it has no other responsive documents for any PRB movements to either SARR States or non-SARR States.

Because Otter Tail has produced all documents responsive to Request for Production No. 7, as modified, BNSF's motion is moot as to this request. Accordingly, this portion of BNSF's motion to compel will be denied.

2. Information relating to forecasts prepared by Otter Tail's expert witnesses (Request for Production Nos. 49 and 51). In its motion to compel, BNSF seeks information relating to projections of demand for PRB coal, future production of PRB coal, and future transportation costs for PRB coal, that were prepared by, or with the assistance of, the experts that Otter Tail will use to present evidence on these issues, both generally⁵ and specifically relating to the movement of coal from the PRB to Big Stone.⁶

³ Otter Tail's objections include vagueness, ambiguity, overbreadth, and burden. These objections and similar grounds (e.g., relevance and information not reasonably calculated to lead to the discovery of admissible evidence) are repeated in objections to other discovery requests discussed infra. All such objections will be referred to as general objections.

⁴ Otter Tail explains that its primary objection was that the requests were premature when made, because it had just received traffic tapes needed to begin development of the SARR.

⁵ Request for Production No. 49 seeks all projections, forecasts or estimates prepared by or contributed to by any witness who will present evidence in this case, to the extent such projection, forecast or estimate was prepared after January 1, 1999, and relates to the demand for PRB coal from anywhere in the United States, to the production of coal in the PRB, or to the future cost of transporting coal from the PRB.

⁶ Request for Production No. 51 seeks all projections, forecasts or estimates generated after
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Otter Tail raises general objections, and, with respect to Request for Production No. 49, states that the documents requested are not within its possession, custody or control. Nevertheless, it agreed to produce non-specific documents from its experts' files pertaining to topics on which the experts would testify.⁷ With respect to Request for Production No. 51, Otter Tail submits that there no longer appears to be any dispute between the parties because it always intended to produce all documents addressing movement of coal to Big Stone.⁸

In its petition for subpoena duces tecum, directed to LEPA, BNSF seeks to compel the production of all documents prepared by LEPA for shippers of PRB coal, including documents prepared for any individual shipper, since January 1, 1999, that discuss or refer to forecasts, estimates or projections of rail rates for the transportation of PRB coal. The subpoena follows BNSF's motion to compel this information from Otter Tail and relates to BNSF's Interrogatory No. 14 and Request for Production No. 49. In response to Interrogatory No. 14, which asked Otter Tail to identify its expert witnesses, Otter Tail named Thomas Crowley, President of LEPA, as one of the individuals that would provide expert testimony.

BNSF asserts that the assumptions underlying the level of rail transportation rates that can be expected in the future will have a significant impact on the SAC analysis.⁹ BNSF argues that its subpoena is narrowly drawn to obtain information directly relevant to the future rail rate assumptions that Mr. Crowley will sponsor in this case. BNSF intends to use the subpoenaed files to impeach the credibility of Mr. Crowley and his assumptions. According to BNSF, the relevance of the information sought outweighs any burden or confidentiality concerns of Otter Tail.

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January 1, 1999, prepared by or contributed to by any witness who will present evidence in this case, that are related in any way to the movement of coal from the PRB to Big Stone.

⁷ Otter Tail states that these are forecasts dealing with national, regional, or PRB coal demand that it agreed to produce in an attempt to be consistent with the Board's decision in Wisconsin Power and Light Company v. Union Pacific Railroad Company, STB Docket No. 42051 (STB served June 21, 2000).

⁸ Otter Tail objected to the original request, which asked for all documents related in any way to the Big Stone movement.

⁹ BNSF suggests that the revenue assumptions accepted in Wisconsin Power and Light Company v. Union Pacific Railroad Company, STB Docket No. 42051 (STB served Sept. 13, 2001), were overly optimistic and affected the outcome of the case.

Otter Tail, LEPA, Mr. Crowley and intervenors raise general objections to the subpoena and confidentiality concerns. According to Mr. Crowley, the subpoena request would require LEPA to search the files of over 250 projects, occupying an estimated 850 feet of shelf space, and thousands of computer files. Mr. Crowley states that LEPA's work on virtually every project is highly sensitive and confidential, and is subject to a variety of legal confidentiality restrictions that would greatly complicate any effort to produce the requested materials. Mr. Crowley questions the scope and relevance of the requested materials, explaining that forecasts, estimates, or projections are prepared under a wide variety of circumstances and that much of the material requested would cover movements not relevant to this case. Mr. Crowley submits that the potential business harm to LEPA from the production of the requested documents cannot be measured,¹⁰ and that BNSF has many other sources of data available to use for impeachment purposes.

In response to the opposition to the subpoena, BNSF offered to narrow the request to exclude Mr. Crowley's prior testimony and related work and limit the request to PRB coal shippers on BNSF line segments within the SARR. Otter Tail maintains that BNSF's offer does not go far enough. Nevertheless, Otter Tail and LEPA have offered to make Mr. Crowley available for a 1-day deposition on the subject of rail rate forecasts without an associated subpoena duces tecum. BNSF responds that such a deposition is insufficient and would not give it the information it seeks, namely documents showing that Mr. Crowley has advised clients of a downward trend in PRB coal transportation rates, contrary to the forecasts he sponsors in SAC litigation.

Otter Tail has demonstrated that the burden of producing the information sought outweighs its asserted impeachment value. BNSF has significant resources with which to rebut Otter Tail's future rate projections and defend its own. Otter Tail has provided or agreed to provide the forecasts in its possession, and this information, together with Otter Tail's offer to make Mr. Crowley available for a 1-day deposition, should be more than adequate to permit BNSF to proceed. Accordingly, BNSF's petition for a subpoena duces tecum and this portion of the motion to compel will be denied, although Otter Tail will be directed to supply the information it has agreed to furnish and to make Mr. Crowley available for a 1-day deposition (between normal business hours at a mutually convenient time and place), at which time BNSF can inquire as to whether Mr. Crowley, or his firm, have ever advised clients that PRB coal transportation rates would likely decline in the future.

3. Information relating to Otter Tail's possible construction of a second plant at Big Stone (Request for Production Nos. 5 and 24). In October 2001, Otter Tail announced that it had entered into a 2-year business development study to investigate the feasibility of constructing a second plant at

¹⁰ Intervenors echo these sentiments in their opposition to the subpoena. Xcel specifically notes the chilling effect on coal shippers and expresses concern about an expansion of the breadth and scope of discovery in SAC cases.

Big Stone, referred to as Big Stone II. Based on this announcement, BNSF seeks all information on the possible construction of Big Stone II (Request for Production No. 24) and any changes to Otter Tail's existing electricity generating facilities (Request for Production No. 5).¹¹ Otter Tail raises general objections to these requests to the extent that they require information for facilities other than Big Stone.¹² In its motion to compel, BNSF argues that the discovery sought is relevant to several issues, and it provides examples.

In response to the motion to compel, Otter Tail submits that it has merely announced a 2-year feasibility study, which is a far cry from a commitment to construct Big Stone II. Because it has not decided to construct a second plant, Otter Tail states that it does not intend to include Big Stone II in its SARR. Nevertheless, Otter Tail has agreed to produce certain Big Stone II documents that relate to rail rates and the impact on Big Stone.¹³ Beyond these, Otter Tail submits that no other responsive documents exist.

This portion of the motion to compel will be denied, except for the information that Otter Tail has already agreed to provide. That information, consisting of Big Stone II documents relating to rail rates and the impact on Big Stone, should be sufficient for BNSF's purposes, particularly in light of Otter Tail's statement that it does not intend to include Big Stone II in its SARR.

4. Information relating to Otter Tail's decisions whether to generate or purchase electricity (Request for Production Nos. 19, 21, 22, and Interrogatory No. 22). These requests all relate to information about the circumstances under which Otter Tail purchases electricity in wholesale markets and the effect of these purchases on Otter Tail's generation of electricity at its coal-fired electricity

¹¹ In Request for Production No. 5, BNSF seeks all documents that discuss or analyze the possible expansion or modification of any part of Big Stone or Otter Tail's other facilities, including information about any possible reconfiguration of the facilities to permit the use of a different type of coal from that currently burned or a different type of fuel.

¹² With respect to Request for Production No. 5, Otter Tail, without waiving its objections, refers to its Five Year Performance Improvement Plan, which it supplied in response to another request.

¹³ Otter Tail explains that it did not evaluate rail rates in the feasibility study for Big Stone II, but developed a "zone of reasonableness" for total delivered fuel costs and used that number throughout the study. Otter Tail has offered to produce such delivered fuel cost information to BNSF. Similarly, it has offered to provide BNSF with relevant portions of documents that address the impact of Big Stone II on the generation of electricity at Big Stone, even though it objects to their relevance.

generating facilities.¹⁴ Otter Tail raises general objections to the requests. In its motion to compel, BNSF argues that information relating to Otter Tail's decisions whether to generate or purchase electricity is relevant to SAC issues, namely the volume of coal that would be transported over the life of the SARR, as well as the volume of coal that the SARR could be expected to transport to other coal-fired electricity generating facilities included in Otter Tail's stand-alone shipper network.

In response to the motion to compel, Otter Tail submits that there are more direct and less onerous ways for BNSF to discover information to determine the volume of coal that would be transported over the life of the SARR. According to Otter Tail, it has already provided documents in response to other requests that include the impact of projected future power purchases on coal consumption, making these requests cumulative. Otter Tail states that its past and present coal consumption is known to BNSF. Further, Otter Tail states that it does not have any studies, reports, projections, forecasts or analyses as to future purchases and sales of electricity from its own facilities and doubts that it has any such documents concerning other facilities that may be included in its prospective SARR.

Otter Tail has demonstrated that these discovery requests are extremely burdensome. In its response to the motion to compel, Otter Tail explains that production of all documents related to past, present, and future power purchases are burdensome by virtue of the sheer volume of transactions. Similar interrogatories and document production requests have been denied as overly broad and burdensome in recent cases.¹⁵ Moreover, Otter Tail has argued persuasively that much of the information is unnecessary or cumulative. With the information already produced by Otter Tail, as outlined above, BNSF should have all of the information needed to advance its position on SAC issues. Accordingly, this portion of the motion to compel will be denied.

5. Information relating to Otter Tail's evaluation of alternative fuels (Request for Production Nos. 38 and 39). BNSF seeks Otter Tail's evaluation of alternative fuels, including the relative economics of burning different types of fuel to generate electricity.¹⁶ Otter Tail raises general objections

¹⁴ The requests also sought information about Otter Tail's sales of electricity, but BNSF is not seeking to compel the production of such information.

¹⁵ See, e.g., Duke Energy Corporation v. Norfolk Southern Railway Company, STB Docket No. 42069 et al., slip op. at 5-7 (STB served July 26, 2002).

¹⁶ Request for Production No. 38 seeks all documents related to the economics or feasibility of building or using a lignite-fired, coal-fired, natural gas-supplied, or oil-supplied electric generating facility. Request for Production No. 39 seeks all documents related to Big Stone's current or future

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to the requests. In its motion to compel, BNSF again argues the relevance of the requests to SAC issues. According to BNSF, if Otter Tail uses or has considered the possibility of using alternative fuels, its analyses and conclusions would be relevant to the question of the future coal traffic volumes of the SARR.

In response to the motion to compel, Otter Tail submits that the same arguments against production of power purchase information apply with equal force to alternative fuels. It questions why BNSF did not request more direct information, such as the percentage and type of alternative fuels that Big Stone can burn. Despite its objections, Otter Tail has provided BNSF with its Integrated Resource Plan, which it states is the only document responsive to the question of the relative economics of different fuels. It has also agreed to make the Big Stone engineering specifications available to BNSF for inspection at Otter Tail's headquarters. Otter Tail asserts correctly that this information gives BNSF all of the information requested. However, it is unclear from Otter Tail's response whether its Integrated Resource Plan provides BNSF with the percentage and type of alternative fuels that Big Stone can burn. Otter Tail should provide a summary of this information to BNSF, if it has not already done so. Otherwise, this portion of the motion to compel will be denied.

Otter Tail's First Motion to Compel

Otter Tail seeks two categories of information from BNSF: (1) road property investment and depreciation costs; and (2) forecasts of revenues and traffic volumes.

1. Road property investment and depreciation costs (Request for Production Nos. 12, 13, 14, 109, 110, and 112). Otter Tail seeks line-specific valuation data to enable it to make adjustments to BNSF's system-average road property investment and depreciation costs. In order to calculate movement-specific variable costs, Otter Tail intends to determine road property investment and depreciation costs for the specific line segments used by Otter Tail trains based on BNSF's valuation records obtained through discovery, and, where not available, using a system-average basis for the remaining segments.¹⁷ BNSF raises general objections to the requests and specifically objects on grounds that the information is not maintained in the ordinary course of business or in the format

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ability to generate electricity using such fuels, including, but not limited to, engineering studies, forecasts, projections or estimates.

¹⁷ Otter Tail requested line segment-specific investment and depreciation data in its Request for Production Nos. 12, 13 and 14. It requested information to determine what portion of non-line-specific road investment it should use in Request for Production Nos. 109, 110 and 112.

requested. In its motion to compel, Otter Tail argues that, if it must rely entirely on system-average costs, variable costs will be overstated.

In reply to the motion to compel, BNSF submits that its road property data are unreliable, incomplete, and cannot be used to produce variable costs that are compatible with the Board's Uniform Rail Costing System (URCS). According to BNSF, the data are based on rough assumptions that understate costs and may be attributable to multiple line segments.¹⁴ BNSF also asserts that it does not keep any segment-specific data on accumulated depreciation in the ordinary course of business.¹⁵ BNSF questions whether Otter Tail can address the shortcomings in BNSF's road property data by making adjustments. Even if it were possible to make the necessary adjustments to gross investment, BNSF submits that there is no way to develop line-specific net investment. According to BNSF, line-specific net investment can only be determined using accumulated depreciation at the line-segment level, but it does not have any accumulated depreciation data at the line-segment level that is consistent with group accounting, which is the basis for BNSF's R-1.

These same requests and arguments against production of such information have been made in two recent cases involving BNSF. In both cases, the motions to compel were granted because the possibility of defects in the potential evidence is a merits issue more appropriately addressed in the evidentiary phase of the proceeding.¹⁶ That same reasoning applies here. Accordingly, this portion of the motion to compel will be granted, and BNSF should disclose information on road property investment costs and depreciation in whatever format it is maintained by BNSF.

¹⁴ In a verified statement in support of its reply, BNSF's General Director responsible for accounting functions related to property, plant and equipment, Ms. Cami Elliot, explains that the only source of line-segment data is in BNSF's Fixed Asset Database (FADB) and the FADB data does not identify the total gross investment in specific line segments.

¹⁵ Ms. Elliot states that BNSF does maintain a depreciation calculator program that can develop a very imprecise calculation of accumulated depreciation on a line-segment basis. According to Ms. Elliot, the output of that calculator is not consistent with BNSF's R-1, and substantially overstates accumulated depreciation on specific line segments. Other problems with the calculator program are described in Ms. Elliot's statement.

¹⁶ See Arizona Electric Power Cooperative, Inc. v. The Burlington Northern and Santa Fe Railway Company and Union Pacific Railroad Company, STB Docket No. 42058 (STB served Sept. 11, 2002); Public Service Company of Colorado d/b/a Xcel Energy v. The Burlington Northern and Santa Fe Railway Company, STB Docket No. 42057 (STB served Sept. 25, 2002).

2. Forecasts of revenues and traffic volumes (Request for Production No. 47). Otter Tail seeks forecasts or projections (from 1999 through the present) of future traffic volumes and revenues for both coal and non-coal traffic in the SARR States and along the Otter Tail route. BNSF raises general objections to the request and specifically objects to the extent the request seeks projections or forecasts other than BNSF's official traffic volume and revenue projections. According to BNSF, these official projections are only for 2-3 years. In its motion to compel, Otter Tail pointed out that BNSF had not denied the existence of forecasts beyond 3 years nor explained what distinguishes an official from an unofficial forecast.

In reply to the motion to compel, BNSF explains that all departments send their forecasts to BNSF's Finance Planning & Control Department (FPCD) as input in developing its official forecasts. According to BNSF, FPCD then uses these forecasts to develop the official volume and revenue forecasts for the company. It further provides that the FPCD is the only department with the responsibility for generating such forecasts for the company and that it does not prepare any forecasts beyond 3 years. BNSF has agreed to provide Otter Tail with these forecasts.

Because FPCD incorporates forecasts prepared by other BNSF departments, the specific inputs would merely be cumulative and may not accurately reflect the position of the company. BNSF has agreed to provide forecasts that it produces and relies on in the ordinary course of business. Therefore, Otter Tail's motion to compel discovery of BNSF's volume and revenue forecasts will be denied, except for the materials BNSF has already agreed to produce.¹⁷

¹⁷ Otter Tail has sought leave to file a reply to BNSF's reply to its motion to compel to address what it believes is a mischaracterization by BNSF of its motion as moot. BNSF replied, contending that Otter Tail's reply to a reply should be denied as it presents no compelling reason for waiver of 49 CFR 1104.13(c). As both parties have addressed the alleged mischaracterization, both replies have been considered in the interest of basing this decision on a more complete record. Otter Tail argues that its motion is not moot, and that there is more to Request for Production No. 47, including a request for traffic and/or revenue projections prepared in connection with engineering studies, etc. All aspects of the motion to compel have been considered and will be denied, except for the information that BNSF has already agreed to provide.

Otter Tail's Second Motion to Compel

Otter Tail seeks a variety of information in Request for Production Nos. 45, 46, 47, and 50, including BNSF coal transportation contracts and non-coal transportation contracts, to which BNSF raises general objections and specific confidentiality concerns. In its motion to compel, Otter Tail asks for an order compelling BNSF to produce the contracts and other responsive documents that BNSF has objected to producing based on the potential violation of confidentiality clauses in those documents. Otter Tail submits that it will work with BNSF to address its other objections.

In its reply to the motion to compel, BNSF agrees that an order by the Board would simplify the discovery process as it relates to these materials once the parties have agreed on the appropriate scope. Concerning the scope of the discovery, the parties are directed to negotiate regarding which agreements are necessary for Otter Tail to prepare its SAC case. As BNSF itself concedes, the protective order for this proceeding resolves any concerns arising out of third-party confidentiality agreements contained in the contracts.¹⁸ Accordingly, the portion of Otter Tail's motion pertaining to the production of coal supply and coal transportation contracts and other information governed by confidentiality restrictions of the protective order in this proceeding will be granted.

The parties should expeditiously complete discovery, and then submit a mutually agreeable proposed procedural schedule to the Board.

It is ordered:

1. The petitions to intervene for the limited purpose of opposing BNSF's petition for subpoena duces tecum are granted.
2. BNSF's motion to compel discovery relating to projections of future rail rates is denied, except that Otter Tail is directed to produce the information it has agreed to furnish, if it has not done so already.
3. BNSF's motion to compel discovery relating to forecasts prepared by Otter Tail's expert witnesses and its related petition for a subpoena duces tecum are denied, except that Otter Tail is

¹⁸ See Texas Municipal Power Agency v. The Burlington Northern and Santa Fe Railway Company, STB Docket No. 42056, slip op. at 2-3 (STB served Feb. 9, 2001) (“[w]hile we understand the concerns raised by those shippers here, we are satisfied that the parties’ agreements regarding scope and the application of the ‘highly confidential’ provisions of the protective order are sufficient to protect the interests of third-party shippers.”).

directed to produce the information it has agreed to furnish, if it has not done so already, and to make its expert witness, Mr. Thomas Crowley, available for a 1-day deposition.

4. BNSF's motion to compel discovery relating to Otter Tail's possible construction of a second plant at Big Stone is denied, except that Otter Tail is directed to produce the information it has agreed to furnish, if it has not done so already.

5. BNSF's motion to compel discovery relating to Otter Tail's decisions whether to generate or purchase electricity is denied.

6. BNSF's motion to compel discovery relating to Otter Tail's evaluation of alternative fuels is denied, except that Otter Tail is directed to produce, if it has not done so already, a summary of the percentage and type of alternative fuels that Big Stone can burn, and to make the Big Stone engineering specifications available to BNSF for reasonable inspection at Otter Tail's headquarters.

7. Otter Tail's first motion to compel discovery relating to road property investment and depreciation costs is granted.

8. Otter Tail's first motion to compel discovery relating to forecasts of revenues and traffic volumes is denied, except that BNSF is directed to produce the information it has agreed to furnish, if it has not done so already.

9. Otter Tail's motion for leave to file a reply to a reply is granted.

10. Otter Tail's second motion to compel production of BNSF's coal transportation agreements and related information is granted to the extent agreed upon by both parties.

11. The parties shall meet and submit a revised procedural schedule for this proceeding as soon as possible.

12. This decision is effective on the date of service.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary