

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. 42071

OTTER TAIL POWER COMPANY  
v.  
THE BURLINGTON NORTHERN AND  
SANTA FE RAILWAY COMPANY

Decided: November 21, 2003

On November 10, 2003, Otter Tail Power Company (Otter Tail) filed a motion to modify the procedural schedule<sup>1</sup> and a petition to supplement the evidentiary record in this proceeding. Specifically, Otter Tail requests permission to submit supplemental evidence that will adjust its data to conform with the Board's method for allocating cross-over traffic revenues in Duke Energy Corp. v. Norfolk Southern Ry., STB Docket No. 42069 (STB served Nov. 6, 2003) (Duke v. NS). On November 14, 2003, BNSF filed a reply opposing Otter Tail's motion and petition.<sup>2</sup> Otter Tail acknowledges that if it is permitted to file supplemental evidence, BNSF should be afforded an opportunity to reply to it. Otter Tail proposes that its rebuttal to BNSF's reply to the supplemental evidence be filed simultaneously with final rebuttal evidence in the case as a consolidated pleading, so as not to delay the proceeding further, and Otter Tail submits a revised procedural schedule.

Allowing the parties here to address new issues raised by recent decisions is reasonable because it will provide the Board with more relevant evidence and allow it to apply recent precedent. Therefore, Otter Tail's petition to file supplemental evidence will be granted and a revised procedural schedule adopted. The procedural schedule adopted here provides for a technical conference with Board staff to address issues in the case and for Otter Tail to file an amended version of its opening evidence.

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<sup>1</sup> The procedural schedule has been modified several times previously, most recently in a decision served on July 24, 2003, in which the Board extended the due dates for reply evidence and rebuttal evidence.

<sup>2</sup> On November 17, 2003, Otter Tail filed a letter challenging certain statements in BNSF's reply. Otter Tail's letter is an impermissible reply to a reply under 49 CFR 1104.13(c) and, therefore, will not be considered at this time.

It is ordered:

1. Otter Tail's petition to file supplementary evidence is granted.
2. The procedural schedule in this proceeding is modified as follows:

December 9, 2003	Technical Conference.
January 9, 2004	Otter Tail's amended version of its opening evidence is due.
February 9, 2004	BNSF's reply to the amended version of Otter Tail's opening evidence is due.
March 11, 2004	Final rebuttal evidence is due.

3. This decision is effective on its date of service.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams  
Secretary