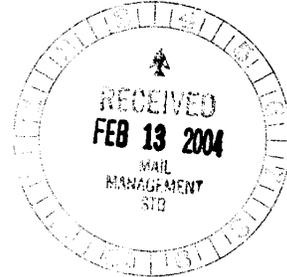


February 13, 2004

*Via Hand Delivery*

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



RE: STB Docket No. 42071, *Otter Tail Power Company v. The Burlington Northern and Santa Fe Railway Company*

Dear Secretary Williams:

Please find enclosed for filing the original and ten (10) copies of Otter Tail Power Company's Reply in Opposition to Defendant's Motion to Modify Procedural Schedule. Also enclosed is a diskette containing the electronic version of the Reply in WordPerfect format.

Please note that the original and the copies contain COLOR IMAGES in Exhibit 1, 2 and 3.

An extra copy of the Reply is enclosed for stamping and returning to our offices.

Should you have any questions regarding the foregoing, please do not hesitate to contact the undersigned.

Sincerely,

Nicholas J. DiMichael  
Jeffrey O. Moreno  
*Counsel for Complainant*

ENTERED  
Office of Proceedings

FEB 13 2004

Part of  
Public Record

cc: Counsel for Defendant

210073

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

FEB 13 2004

Part of  
Public Record

OTTER TAIL POWER COMPANY'S  
REPLY IN OPPOSITION TO  
DEFENDANT'S MOTION TO MODIFY PROCEDURAL SCHEDULE

I. INTRODUCTION

Otter Tail Power Company ("Otter Tail") hereby submits this Reply in opposition to the Motion of defendant, The Burlington Northern and Santa Fe Railway Company ("BNSF"), to modify the procedural schedule in this case. BNSF's Motion is an attempt to erroneously expand an otherwise inapplicable rerouting standard applied by the Board in STB Docket No. 42070, Duke Energy Corporation v. CSX Transportation Inc. (served Feb. 4, 2004) ("Duke/CSX"), to Otter Tail's Stand-Alone Cost ("SAC") presentation. Because BNSF's Motion asks for an extension of the procedural schedule so that BNSF may submit supplemental evidence addressing an inapplicable standard, the Board should deny the Motion. Moreover, even if the standard did apply to Otter Tail's SAC presentation, Otter Tail's reroute meets that standard, which renders BNSF's Motion moot.

**A. Procedural Background.**

In its Opening Evidence, Otter Tail presented a Stand Alone Railroad (“SARR”) that included non-coal cross-over traffic moving in overhead (*i.e.* bridge) service between Fargo, North Dakota and Snowden, Montana. At each end point of Otter Tail’s SARR, the SARR directly interchanges this non-coal traffic with the residual BNSF *at* a point along the customary route of this traffic for continued transportation along the customary BNSF route (*i.e.* there is *no* rerouting of the *off*-SARR portion of the movement). The *on*-SARR portion of the through movement, however, travels over a *partially* different route than this cross-over traffic customarily uses. The customary route between Fargo and Snowden is over the BNSF line that extends 22.6 miles west from Fargo to Surrey Junction, North Dakota; then proceeds northwest to Minot, North Dakota; and then heads due west to Snowden. The SARR route replicates the same 22.6 miles of the customary route extending west from Fargo to Surrey, Junction; but then replicates a different BNSF line that extends due west from Surrey Junction to Glendive, Montana, and then proceeds north to Snowden, where the SARR interchanges with the residual BNSF at a point directly on the customary route. Attached hereto as Exhibit 3 is a map of the Otter Tail SARR that shows the customary route of the traffic, the interchanges with the Otter Tail SARR along the customary route, and the on-SARR reroute.

In its Reply Evidence, BNSF challenged Otter Tail’s rerouting of *only a subset* of this non-coal traffic, namely, *only* high speed intermodal trains, which BNSF referred to as “Z-Trains.”<sup>1</sup> BNSF *did not challenge* Otter Tail’s rerouting of any other non-coal overhead traffic on the SARR, which constitutes the majority of Otter Tail’s rerouted traffic.

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<sup>1</sup> Otter Tail will respond to BNSF’s arguments on the Z trains in its Rebuttal Evidence, currently due on March 25, 2004.

Suddenly, four months after submitting its Reply Evidence, BNSF now requests leave to contend that the remaining non-coal overhead traffic also should be excluded from the SARR on the basis of the Duke/CSX decision, which BNSF misperceives as adopting a new standard applicable to the Otter Tail SARR that would bar all such traffic from the Otter Tail SARR.

**B. Differences Between Otter Tail Reroute and Duke/CSX Reroute.**

An understanding of the differences between the Otter Tail reroutes and the Duke/CSX reroutes<sup>2</sup> is important to understanding why the Duke/CSX standard is not applicable to Otter Tail's rerouting of non-coal overhead traffic between Surrey Junction and Snowden. Figures 1 and 2, attached as Exhibit 1, illustrate these differences.

The Duke/CSX reroute, in Figure 1, is an external, or off-SARR, reroute. Moreover, it is the most extreme form of an off-SARR reroute. An off-SARR reroute occurs beyond the lines of the residual incumbent that are replicated by the SARR and exists whenever a SARR interchanges cross-over traffic with the residual incumbent at a point that is *not* on the route over which that traffic customarily moves. In other words, off-SARR reroutes require the *residual incumbent* to route the cross-over traffic different from its customary route. As illustrated in Figure 1, the Duke/CSX reroute was extreme because Duke's SARR did not have *any* line that interchanged with the residual incumbent at a point along the customary routing of the cross-over traffic and, in fact, did not come within 250 miles of the customary route. Duke/CSX at 19. The residual CSX was required to handle this traffic over an entirely different line from the customary route and was required to interchange traffic with the SARR at points that were

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<sup>2</sup> There were two types of reroutes in Duke/CSX. The first type involved movements that traveled over some portion of the SARR as part of its customary routing but that the SARR rerouted to an interchange with CSX that was not along the customary route. These movements were evaluated by the STB based on the efficiency of the reroute vis-à-vis the customary route. The second type involved movements that, following their customary routing, do not share any common segments with the SARR (Duke/CSX at 16-20) In its Motion, BNSF portrays Otter Tail's reroutes as the second type. As demonstrated in this Reply, BNSF's characterization is incorrect.

nowhere near the customary route. On the other hand, all off-SARR reroutes prior to Duke/CSX had at least some common point of connection between the SARR and the customary route of the cross-over traffic.

In contrast, the Otter Tail reroute of non-coal cross-over traffic, illustrated in Figure 2, is an on-SARR, reroute. An on-SARR reroute occurs *only* on the lines of the SARR itself and thus has *no* impact on the customary routing over the residual incumbent. Otter Tail's reroute of non-coal cross-over traffic is an on-SARR reroute because (i) the entire reroute occurs on the SARR between points B and C in Figure 2, which represent Surrey Junction and Snowden, respectively; (ii) the Otter Tail SARR interchanges the cross-over traffic with the residual BNSF at Points A and C, which represent Fargo and Snowden, respectively; and (iii) all three points are on the route over which this cross-over traffic customarily moves on the BNSF. Furthermore, not only does the Otter Tail SARR connect with the customary BNSF route for this traffic, it also shares 22.6 miles of that route between Fargo and Surrey Junction, Points A and B in Figure 2, and 0.1 miles at Snowden, which is Point C.<sup>3</sup> Thus, Otter Tail's on-SARR reroute of non-coal cross-over traffic does not require the residual BNSF to alter in any way the routing over which BNSF currently handles that traffic, unlike the off-SARR reroute in Duke/CSX.<sup>4</sup>

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<sup>3</sup> Otter Tail Opening Ev., Electronic File "miles.xls".

<sup>4</sup> After the Board released its decision in STB Docket No. 42056, Texas Municipal Power Agency v. The Burlington Northern and Santa Fe Ry. Co. (served March 24, 2003) ("TMPA"), Otter Tail deliberately chose to replicate the BNSF line between Glendive and Snowden as part of its SARR in order to connect the SARR with the residual BNSF at points along the customary route of the rerouted non-coal overhead traffic, thereby converting what would have been an off-SARR reroute to an on-SARR reroute and avoiding the problems that the Board had identified with off-SARR reroutes in TMPA. By doing this, Otter Tail deliberately chose to incur the additional investment and operating expenses (but no additional revenues) associated with this line segment, even though the Otter Tail movement itself did not use the line (Otter's Tail's coal traffic never travels between Glendive and Snowden), because Otter Tail wanted to preclude any argument that it was shifting costs to the residual BNSF that should be borne by the SARR.

## II. THE DUKE/CSX STANDARD DOES NOT APPLY TO ON-SARR REROUTES.

BNSF grossly misconstrues the proper scope of the rerouting standard that the Board applied in Duke/CSX. That standard pertains solely to external, or “off-SARR,” reroutes, which require the *residual incumbent* to handle cross-over traffic on a different line from the customary route, as opposed to internal, or “on-SARR,” reroutes, which do not alter the routing over the residual incumbent’s portion of the movement. On-SARR reroutes do not raise the same concerns as off-SARR reroutes because any costs from the new route are reflected in the SAC analysis and are borne by the SARR itself. Therefore, the Board’s analysis of on-SARR reroutes properly focuses upon whether the transportation needs of the shipper would be met by the SARR.<sup>5</sup> Because Otter Tail has rerouted non-coal overhead traffic only *on-SARR*, between Surrey Junction and Snowden, the Duke/CSX standard for *off-SARR* reroutes is not applicable.

### A. BNSF Has Misapplied the Duke/CSX Standard To Otter Tail’s Reroute.

In an effort to exclude traffic from Otter Tail’s SARR that it did not even challenge in its Reply Evidence because there was no colorable rationale for it to do so under the proper rerouting standards, BNSF has construed portions of the Duke/CSX decision out of context in a last-ditch attempt to devise a new standard that it hopes will eliminate a substantial portion of the traffic base for Otter Tail’s SARR. But, in so doing, BNSF has distorted and misapplied the Duke/CSX standard beyond the scope that the Board intended. Because the Duke/CSX standard does not apply to the Otter Tail reroute, there is no justification for BNSF to submit new evidence.

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<sup>5</sup> TMPA at 19. This is the standard that BNSF heretofore has argued to challenge Otter Tail’s inclusion of “Z-Train” traffic in its SAC analysis. BNSF Reply Ev. at III.A-41. BNSF’s Motion concedes that this standard does not exclude Otter Tail’s other rerouted non-coal traffic. Motion at 2-3.

The following passage in Duke/CSX describes the standard that BNSF argues to justify this Motion:

In this case, a new issue is presented by Duke's attempt to include traffic that would not, under its customary routing, use any lines included in the SARR. The Board concludes that rerouting traffic in this manner is not consistent with the goals and purposes of the SAC test, as revenue from traffic that bears no relation to the SARR network should not be used to pay for that network. Inclusion of other traffic is appropriate where that traffic currently shares in the use of the facilities and should therefore contribute to the costs of those facilities. But it is not appropriate to divert traffic from other parts of the defendant carrier's system to help defray costs for the portion of the system used by the complainant. Thus, *where traffic does not already utilize lines replicated by the SARR, the traffic may not be included in the SAC analysis* absent a compelling justification that the defendant carrier should itself be routing the traffic in this manner and that it is inefficient for it not to do so.

Duke/CSX at 16-17 [emphasis added] BNSF relies principally upon the italicized text to argue that Otter Tail's re-routing of all overhead non-coal traffic is precluded. BNSF, however, attempts to apply this text in a vacuum by ignoring the context in which the Board has developed and applied its rerouting principles.

Duke/CSX represents the latest refinement by the Board of its principles for rerouting cross-over traffic. The Board began to develop these principles in TMPA and subsequently refined them in STB Docket No. 42069, Duke Energy Corporation v. Norfolk Southern Ry. Co. (served Nov. 5, 2003) ("Duke/NS") and STB Docket No. 42072, Carolina P&L Co. v. Norfolk Southern Ry. Co. (served Dec. 22, 2003) ("CPL/NS"). In all three decisions, the Board left absolutely no doubt that it was concerned principally with off-SARR reroutes.<sup>6</sup> Indeed, the

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<sup>6</sup> E.g., TMPA at 23 ("TMPA has not adequately accounted for all *off-SARR* ramifications of such a change and thus has not supported its rerouting assumption.") [emphasis added]; Duke/NS at 25 ("This is the second SAC case in which a complainant has sought to reroute traffic in a manner *that would change the routing of the residual carrier.*") [emphasis added]; CPL/NS at 21 (Duke/NS "refined and clarified SAC policy regarding rerouting of

Board applied the standards adopted in those decisions to exclude only off-SARR reroutes. Similarly, in Duke/CSX, the Board clearly indicated that its rerouting discussion was a refinement of the general principles that it laid out in TMPA and Duke/NS. Duke/CSX at 16. Thus, the Duke/CSX standard must be construed within the context of this history.

In TMPA, the Board first drew the distinction between on-SARR and off-SARR reroutes.

The Board held that:

[A] SAC proponent *may reroute traffic* that the SARR would handle from origin to destination, so long as the new route is reasonable and would meet the shipper's transportation needs. In that circumstance our SAC analysis can ensure that any added costs from the new route are reflected in the SAC analysis and, for the complainant to prevail, covered by the revenues available from that traffic.

TMPA at 21 [emphasis added]. An origin to destination reroute is, by definition, on-SARR. The Board immediately contrasted that scenario with one where the complainant redirects the *off-SARR* portion of a cross-over movement:

On the other hand, redirecting the *off-SARR portion of traffic* introduces new variables that extend the inquiry well beyond the original parameters of the SAC analysis.

Id. at 22 [emphasis added]. Therefore, the Board held that "to reroute non-issue traffic, the complainant's SAC analysis must either take responsibility for the entire movement *from origin to destination* or fully account for the ramifications of requiring the residual carrier to alter its handling of the traffic." Id. [emphasis added]

Although the Board, in TMPA, contrasted off-SARR reroutes only with on-SARR reroutes handled by the SARR "from origin to destination," the Duke/NS decision subsequently

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(non-issue) cross-over traffic in a manner *that would change the routing of that traffic on the residual carrier.*") [emphasis added].

clarified that the Board intended to permit *all* on-SARR reroutes, even when the reroute does not extend from origin to destination, as long as the reroute meets the shippers' transportation needs:

As the Board held in TMPA, if a complainant wishes to reroute traffic in its SAC presentation without having the SARR operate over all of *the rerouted portion* of the move, it must ensure that the combined operations of the SARR and the residual carrier would be at least as efficient as the existing operations. At a minimum, the complainant must fully account for all of the ramifications of requiring the residual carrier to alter its handling of the traffic and any changes in the level of service received by the shippers.

Duke/NS at 26 [emphasis added]. This clarification of TMPA was logical since reroutes that occur solely on the SARR, but for less than the entire length of the movement, do not require the residual incumbent to alter its handling of the traffic any more than reroutes from origin to destination.<sup>7</sup> Thus, since there are no ramifications to the residual carrier from on-SARR reroutes, the only remaining standard for an on-SARR reroute is that the level of service over the reroute meet the shippers' transportation needs.<sup>8</sup>

The Duke/CSX refinement of TMPA, on the other hand, relates to the TMPA requirement that an *off-SARR* reroute account for the ramifications to the residual incumbent of altering its handling of the rerouted traffic from its customary route. Specifically, it establishes a presumption that the most extreme form of off-SARR reroute, *i.e.* a reroute that has absolutely *no* physical connection to the customary route<sup>9</sup>, is inefficient, absent a compelling justification that it is more inefficient for the incumbent not to use the reroute. This presumption by the

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<sup>7</sup> Indeed, if BNSF were required to incur any extra handling costs as a consequence of Otter Tail's on-SARR reroute of non-coal traffic, BNSF could have and should have raised that argument in its Reply Evidence filed on October 8, 2003.

<sup>8</sup> BNSF already has had the opportunity to address whether Otter Tail's reroutes meet the shippers' transportation needs in its Reply Evidence, which it did address as to "Z-Trains." BNSF did not question whether any of the other non-coal reroutes met the shippers' transportation needs in its Reply Evidence (presumably because it could not do so), and it would be improper for the Board to allow BNSF a second chance to do so now.

<sup>9</sup> "In this case, a new issue is presented by Duke's attempt to include traffic that would not, under its customary routing, *use any lines included in the SARR*." Duke/CSX at 16 [emphasis added]

Board is reasonable because an off-SARR reroute with no physical connection to the customary route requires the residual incumbent to incur additional handling costs at two separate locations and over two separate line segments that are not part of the customary route, as opposed to just one location and line segment in prior off-SARR reroutes in TMPA, Duke/NS, and CPL/NS. Since on-SARR reroutes by their nature do not raise these issues at all (since the costs of the reroute are borne by the SARR itself and not the residual carrier), the Duke/CSX refinement of TMPA is not applicable to them.<sup>10</sup>

The Board's actual application of its rerouting principles in Duke/CSX affirms the above analysis. The facts that gave rise to the Duke/CSX rerouting standard were eight specific movements that Duke included in its SARR that, "under their customary routing, generally *do not come within 250 miles* of the lines that would be replicated by the [SARR]" Id. at 19 [emphasis added]. This was a different and more extreme form of off-SARR reroute than the Board was faced with in either TMPA or Duke/NS, and thus correctly required further refinement of the off-SARR rerouting standards in those two decisions.

In significant contrast, the Board did *not* apply the Duke/CSX standard to at least six off-SARR reroutes that are similar to Otter Tail's on-SARR reroute of non-coal overhead traffic. On page 18 of Duke/CSX, the Board identified the 24 reroutes challenged by CSX. Exhibit 2, attached to this Reply, illustrates reroute numbers 1 and 10-14. Although the SARR replicated only the first 18.8 miles of the customary routes for these movements, the Board did not reject those reroutes on the basis of the allegedly "new" standard that the traffic does not already utilize

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<sup>10</sup> The Board's distinction between on-SARR and off-SARR reroutes is an appropriate one, and the Board has reasonably developed a different and higher standard for the extreme form of off-SARR reroutes presented in Duke/CSX. Those off-SARR reroutes raise the possibility – even the likelihood – of "gaming" the system by shifting at least some of the costs of rerouting the traffic that should properly be borne by the SARR onto the residual carrier. Thus, the Board's more stringent standard for those off-SARR reroutes is entirely rational.

lines replicated by the SARR. Indeed, the Board found that these reroutes were acceptable under the Duke/CSX standard.<sup>11</sup> Instead, the Board ultimately rejected those reroutes because Duke did not attempt to justify their greater distance. *Id.* at 18-19. If the Duke/CSX standard had the scope argued by BNSF, the Board would have applied that standard to all six reroutes to conclude that they failed to meet the standard.

Since the Duke/CSX standard was not applicable to these six reroutes in the Duke/CSX decision itself, that standard logically cannot apply to Otter Tail's reroutes. The six Duke/CSX reroutes were all off-SARR reroutes that replicated 18.8 miles of the customary route. Otter Tail's reroutes are on-SARR reroutes that replicate 22.7 miles of the customary route. If the Board's Duke/CSX was not applicable to the off-SARR reroutes that replicate 18.8 miles of the customary route, that standard cannot be applicable to Otter Tail's on-SARR reroutes that replicate 22.7 miles of the customary route.<sup>12</sup>

The inapplicability of the Duke/CSX reroute standard to Otter Tail also is confirmed by TMPA, where the Board *expressly permitted the very same type of internal reroute* that Otter Tail has employed on its SARR between Surrey Junction and Snowden. The Board described the first of three reroutes at issue in that case as follows:

The first rerouting dimension involves how coal is routed out of the PRB. BNSF uses two lines to carry coal traffic out of the PRB—one from Campbell, WY, to Northport, NE; the other from Bill, WY, to Northport. For the GCRR, however, TMPA would have only one line out of the PRB (from Bill to Northport) and would direct all of the GCRR's traffic over that line.

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<sup>11</sup> Duke/CSX at 18 (The last column of the chart indicates that that Board applied the Duke/CSX standard to *only* to the last eight reroutes on the chart.).

<sup>12</sup> Indeed, since Otter Tail's on-SARR reroutes do not require the residual BNSF to handle the traffic over *any* route different from the customary route, they raise even fewer concerns than the six reroutes in the Duke/CSX case, which were partial off-SARR reroutes, though they also still shared some portion of the customary route.

TPMA at 21. Although the Board rejected TMPA's external rerouting of this traffic *beyond* Northport due to the off-SARR implications, it allowed TMPA to retain that traffic on its SARR *as far as* Northport, "[b]ecause TMPA would have been free to include that traffic for the portion of the movements from the PRB to Northport (the point at which the GCRR route would diverge from the actual route of movement)." The Board recognized that the reroute was proper up to Northport, even though the SARR did not replicate any line already used by at least some of this traffic (except possibly some common facilities at the Northport interchange). Id. at 24. This situation described by the Board was an on-SARR reroute, since the TMPA SARR would interchange traffic with the residual BNSF at points along the customary route.

Similarly, in this case, BNSF has two routes by which it can move non-coal traffic between Fargo and Snowden. BNSF can haul the traffic northwest from Fargo to Minot and then west, across northern North Dakota, to Snowden; or it can haul the traffic west from Fargo to Glendive, across central North Dakota, and then north to Snowden. The former is the customary route that BNSF uses today, and the latter is the Otter Tail reroute. Both options are illustrated in Exhibit 3. Just as TMPA used an on-SARR reroute to properly consolidate traffic from two parallel routes between the PRB and Northport onto a single route replicated by TMPA's SARR, Otter Tail has properly used an on-SARR reroute of non-coal traffic from BNSF's northern route between Fargo and Snowden to its central route in order to consolidate traffic from those parallel lines onto a single route replicated by Otter Tail's SARR.

Thus, there is utterly no similarity between the Duke/CSX and Otter Tail reroutes that justifies applying the Duke/CSX standard for off-SARR reroutes to Otter Tail's internal, on-SARR, reroute. BNSF's Motion should be denied because there is no justification for submitting supplemental evidence on an inapplicable standard.

**B. Even Assuming *Arguendo* that the Duke/CSX Standard Applies, Otter Tail's Reroute of Non-Coal Overhead Traffic Meets the Standard.**

The Board also should deny BNSF's Motion because Otter Tail's rerouting of non-coal overhead traffic fully comports with the Duke/CSX standard. BNSF's Motion merely *assumes*, without any evidence or argument, that it is obvious that Otter Tail's reroutes do not satisfy the Duke/CSX standard. Motion at 3. Based on that assumption, BNSF's motion requests an extension of the procedural schedule in order to allow it sufficient time "to determine what changes are required to yard and line capacity, construction costs, operating costs, personnel, and equipment for a railroad that would transport a lower volume of traffic." *Id.* BNSF, however, has overlooked obvious facts that clearly show that Otter Tail's reroutes do meet the Duke/CSX standard. Therefore, BNSF has presented no justification for delaying the procedural schedule to receive such supplemental evidence from BNSF.

The Duke/CSX standard states that "*where traffic does not already utilize lines replicated by the SARR, the traffic may not be included in the SAC analysis absent a compelling justification....*" Duke/CSX at 16-17 [emphasis added]. Evidence already in the record unequivocally establishes that the non-coal overhead traffic that Otter Tail reroutes between Surrey Junction and Snowden does already utilize lines replicated by the SARR, and thus, does not violate the Duke/CSX standard. Therefore, the supplemental evidence that BNSF seeks to file is moot.

An on-SARR reroute, by definition, must replicate a portion of the customary route. That is because, in order to be an on-SARR reroute, the SARR must interchange the rerouted traffic with the residual incumbent at points on the customary route of that traffic. Those interchange points are part of the customary route that is replicated by the SARR. The Otter Tail SARR interchanges the rerouted non-coal overhead traffic at Fargo and Snowden, which are both points

on the customary route of this traffic over the BNSF. This is illustrated by Points A and C in Exhibit 1, Figure 2, and by an actual map of both the Otter Tail reroute and the BNSF customary route in Exhibit 3. This alone satisfies the Duke/CSX standard.

There also is an additional, and perhaps more significant, fact that eliminates any doubt whatsoever that Otter Tail's reroutes meet the Duke/CSX standard. The rerouted non-coal overhead movements utilize 22.7 miles of the customary route that is replicated by the Otter Tail SARR.<sup>13</sup> This includes 22.6 miles of track between Fargo and Surrey Junction, North Dakota and 0.1 miles at Snowden, Montana.<sup>14</sup> Although Fargo is the interchange point between the SARR and the residual BNSF, Surrey Junction is the physical point where the SARR deviates from the customary routing of this traffic. Since the SARR clearly does replicate 22.7 miles of the customary route that this traffic currently uses, the Otter Tail reroutes of non-coal overhead traffic meet the Duke/CSX standard.

The Duke/CSX decision itself proves this fact. As discussed at pages 9-10, *supra*, the Board did not apply its Duke/CSX refinement of the rerouting principles to at least six reroutes that are very similar to Otter Tail's reroutes. Because those six reroutes did replicate 18.8 miles of the customary routes, the Board did not even apply the Duke/CSX standard, since the 18.8 mile overlap met the standard. Therefore, Otter Tail's reroutes, which replicate 22.7 miles of the customary routes, also must meet the standard.

Because Otter Tail's reroute of non-coal overhead traffic so clearly meets the Duke/CSX standard, there is no justification for delaying the procedural schedule in order to receive

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<sup>13</sup> Otter Tail Opening Ev., Electronic File "miles.xls".

<sup>14</sup> The 22.6 miles between Fargo and Surrey Junction is illustrated in Exhibit 1, Figure 2, by segment AB, and the 0.1 miles at Snowden is illustrated by point C.

supplemental evidence from BNSF on the effects of deleting this rerouted traffic from the Otter Tail SARR.

### III. CONCLUSION

WHEREFORE, for the foregoing reasons, the Board should deny “Defendant’s Motion To Modify Procedural Schedule.”

Respectfully submitted,



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(701) 451-3567

*Attorneys for Complainant  
Otter Tail Power Company*

Dated: February 13, 2004

Figure 1: Duke/CSX Reroute

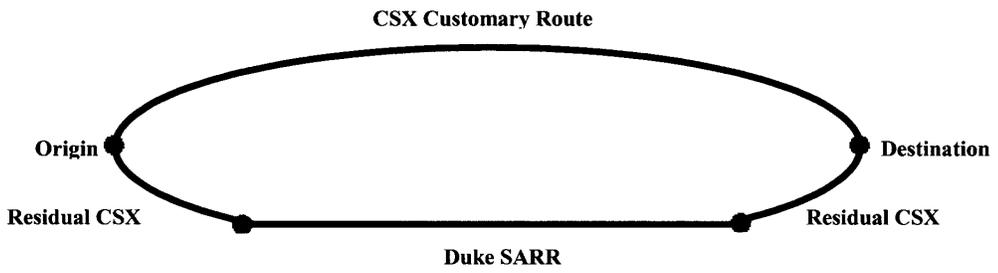
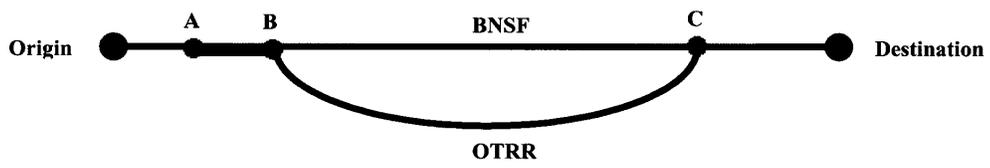
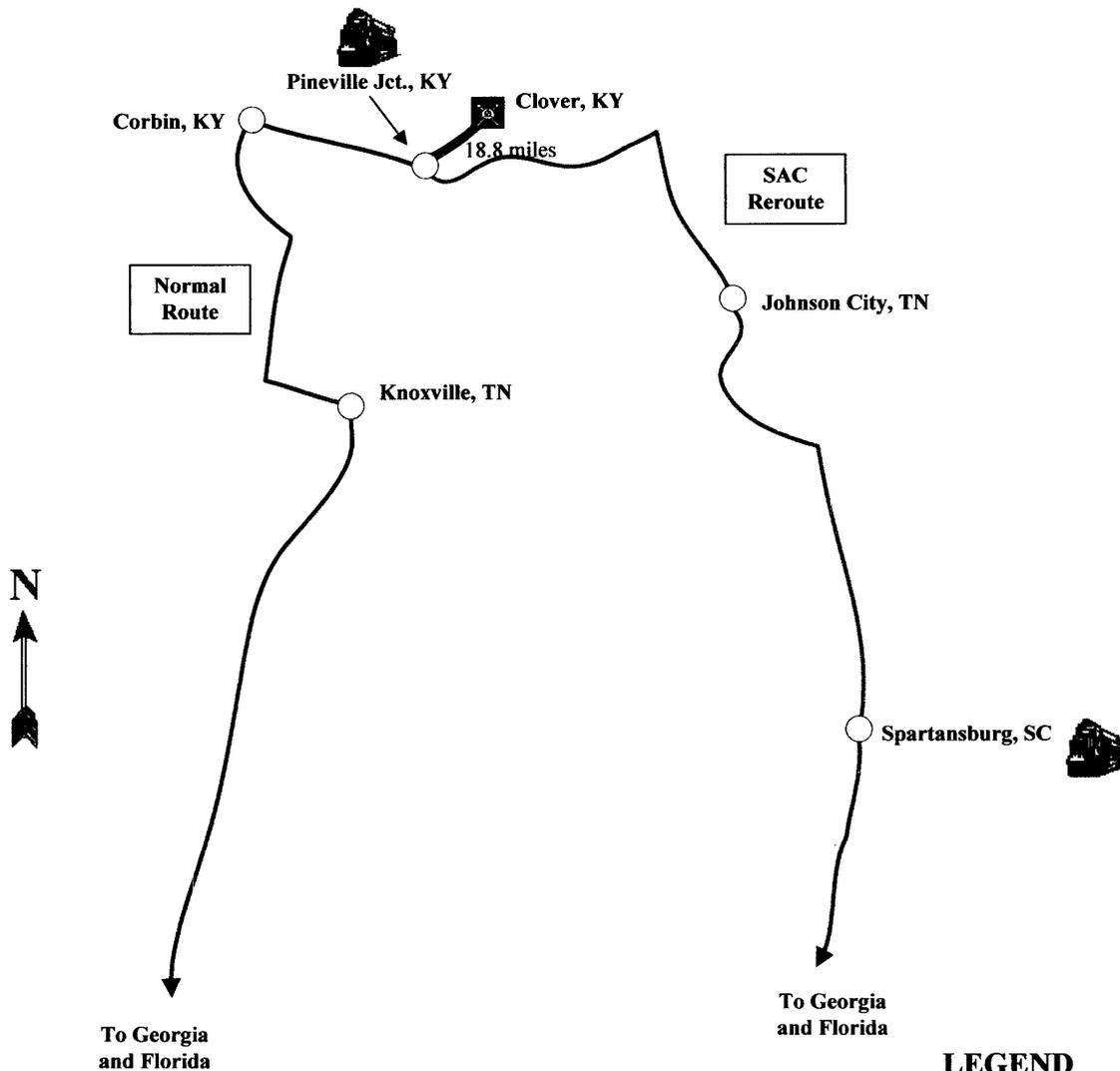


Figure 2: Otter Tail Reroute



# SCHEMATIC OF REROUTE EXAMPLES IN DUKE/CSXT PROCEEDING

(Reroutes 1 and 10 - 14, Duke/CSXT page18)



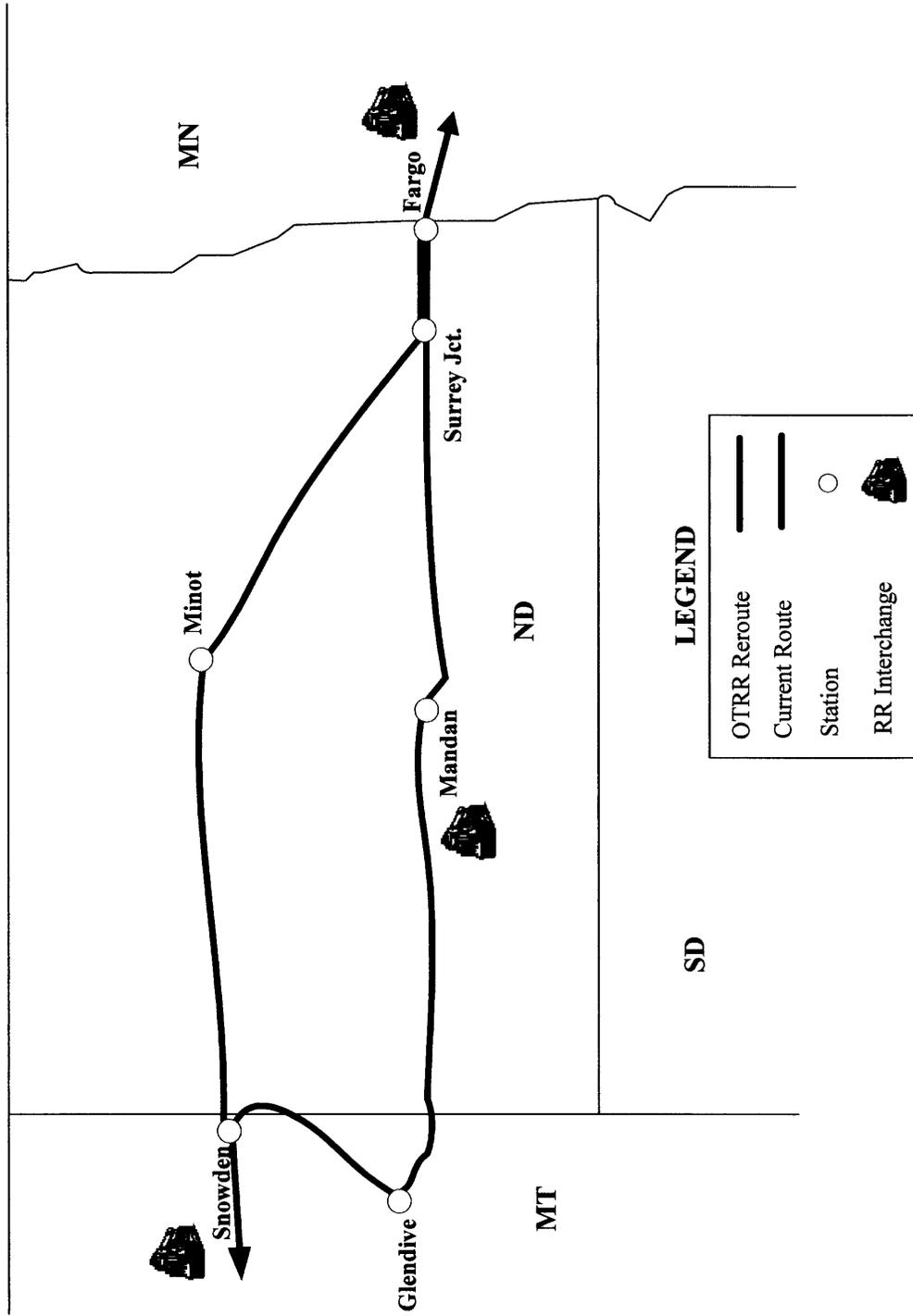
Sources:  
Origin and Interchange Location- CSXT 1/5/04 Supplemental Opening (Public version),  
Supplemental Exhibit 1  
Routes and miles - PC\*Rail V8

### LEGEND

CSXT	———
ACW	———
Station	○
Mine	☠
Interchange	🚂

# SCHEMATIC OF THE OTTER TAIL RAILROAD

## Reroute of Non-Coal Overhead Traffic



**CERTIFICATE OF SERVICE**

I hereby certify that on this 13th day of February, 2004, I served a copy of Complainant's Otter Tail Power Company's Reply in Opposition to Defendant's Motion to Modify Procedural Schedule by hand delivery to counsel for Defendant at the following address:

Samuel M. Sipe, Jr., Esq.  
Anthony J. LaRocca, Esq.  
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