

STATEMENT OF CHRISTOPHER OEHRLE
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Otter Tail Power Company v. The Burlington Northern and Santa Fe Railway Company
STB Docket No. 42071

Chairman Nober, Vice Chairman Mulvey, Commissioner Buttrey, good morning.

The draft decision submitted for your consideration instructs both parties to file supplemental evidence so that the Board may have a full record upon which to analyze the traffic group issues raised in this stand-alone cost case. The decision guides the parties in making their supplemental filings.

Under the stand-alone cost test, the complainant posits a hypothetical stand-alone railroad which is used to judge whether the defendant's rates are reasonable. In developing a hypothetical railroad, the complainant selects the traffic that the stand-alone railroad would serve (called the traffic group). The selected traffic group provides the basis upon which the parties develop their respective operating plans and, in turn, make assumptions that will determine the size and cost of building the stand-alone railroad. In doing so, the parties file extensive evidence on the traffic group and related revenues, costs and assumptions.

In this case, the parties sharply disagree on what traffic it is appropriate to include in the traffic group used in the stand-alone cost analysis, and each party has submitted a proposed operating plan for the stand-alone railroad that adheres to its view of what traffic would be handled by the stand-alone railroad. While Otter Tail assumes that the stand-alone railroad would handle approximately 233 million tons of traffic in the base year, BNSF assumes that it would handle only 135 million tons. This large difference in traffic stems from two critical traffic-selection issues on which the parties are diametrically opposed. Otter Tail's evidence

includes, while BNSF's excludes, 13.7 million tons of rerouted non-coal traffic on the northern portion of the stand-alone railroad and 85 million tons of coal traffic traveling south from southern Powder River Basin mines.

By assuming different sized traffic groups without responding to the other side's evidence, the parties have limited the Board's ability to fairly decide this case. If the Board should determine that it does not agree with the entire position of either party, it may be left without the evidence needed to complete its stand-alone cost analysis. Alternatively, if the Board agrees in principle with one party's position, it would be left with evidence that has not been tested through the adversarial process. Either way, the manner in which the parties have presented their evidence will have frustrated the Board's regulatory review process.

While it is far from ideal at this point to seek supplemental evidence in this case, it is necessary to do so on the important traffic group issues regarding rerouted northern non-coal traffic and southbound Powder River Basin coal traffic.

A related issue that has been raised regarding inclusion of this southbound coal traffic from the southern Powder River Basin is the potential that this traffic could impermissibly cross-subsidize the infrastructure that would be needed by the stand-alone railroad north of the Powder River Basin. The draft decision directs both parties to address how the Board might assure that any rate prescription resulting from the SAC analysis would not reflect an impermissible cross-subsidy.

The draft decision confines the parties' supplemental submissions to these two issues.

The parties will not be allowed to use the supplemental submissions as an opportunity to address other issues in this case.

We would be happy to address any questions you might have. Thank you.