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August 2, 2002

BY HAND

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001

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Office of Proceedings

AUG 2 2002

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Public Record



Re: Docket No. 42059, Northern States Power Company Minnesota
D/B/A Xcel Energy v. Union Pacific Railroad Company

Dear Secretary Williams:

We represent Union Pacific Railroad Company ("UP") in its dispute with Northern States Power Company Minnesota ("NSP"). This letter addresses NSP's attempt to obtain rate prescriptions from origin mines from which no traffic has moved under the challenged rates. UP understands that the Board will not consider the reasonableness of rates under such circumstances. We ask you to inform us, however, if our understanding is incorrect, so that we can respond to NSP in our reply filing due on September 20, 2002.

UP's understanding is based on the Board's decision in Wisconsin Power & Light Co. v. Union Pacific Railroad Co., STB Docket No. 42051 (STB served Sept. 13, 2001) ("WPL"). In WPL, the complainant challenged rates that UP had established for transportation from eleven coal mines, even though it moved coal from only two of the mines under the challenged rate. UP submitted variable cost evidence not only for those two mines, but also for two other mines from which there had been pre-complaint contract movements. UP's evidence for the latter two mines was based on actual, pre-complaint contract movements. The Board, however, held that it could not address the reasonableness of rates from origins from which traffic had not moved under the challenged rate. It explained that in the absence of actual movements from those mines under the challenged rates, it did not have the necessary variable cost evidence to

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determine its jurisdiction and the resulting regulatory floor for a rate prescription. WPL at 7 & nn.2-3.¹

In this case, the variable cost evidence is even more restricted than in WPL. The challenged rates cover ten mines in the Powder River Basin ("PRB") of Wyoming, but all of NSP's Wyoming PRB shipments under the challenged rates have originated at North Antelope mine. See NSP Opening Statement at 21 n.17. Consequently, all variable cost evidence associated with actual movements under the challenged rates relates to UP's operations from the North Antelope origin.

Nonetheless, NSP attempted in its Opening Statement to develop variable costs relating to the nine Wyoming PRB origin mines from which no traffic has moved under the challenged rates ("non-movement origins"). NSP apparently derived these costs by splicing together evidence relating to NSP movements from North Antelope with limited data from other shippers moving traffic from other origins under other pricing authorities. See NSP Opening Statement at 48-58.²

Under its WPL precedent, the Board should not consider NSP's evidence regarding non-movement origins. In WPL, UP presented evidence of actual contract movements from other origins to the complaint destination. UP's evidence reflected actual cycle times, actual crew wages, actual lading weights, and actual numbers of cars from the non-movement origins to the complainant's plant. UP's evidence fell short only because it was not based on movements from origins the complainant had shipped from using the challenged rate.

¹ In light of the Board's finding in WPL and its guidance in General Procedures for Presenting Evidence in Stand-Alone Cost Rate Cases, STB Ex Parte No. 347 (Sub-No. 3), STB served Mar. 12, 2001, slip op. at 6, UP did not seek to relitigate the issue.

² For example, NSP developed cycle times for origin mines other than North Antelope using UP data that shows the average running hours between Bill, Wyoming, and the origin mine for each train symbol. NSP used the average for each train symbol to create an unweighted average for all train symbols. (In other words, if one train symbol represented 20 trains with an average cycle time of 7 hours and another represented 1 train with a cycle time of 3 hours, NSP used an average of 5 hours instead of 6.8 hours.) NSP then removed the Bill-North Antelope average cycle time from the actual NSP records and spliced in the new, unweighted average to create a cycle time to the new origin mine. See NSP Workpaper "Tuc_prb.123."

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By contrast, NSP's costs are piecemeal combinations and extrapolations of data from operations under the challenged rate and operations of other shippers from non-movement origins destined for non-complaint destinations under terms that may be quite dissimilar to those specified in the rate at issue here. If UP's evidence of actual movements was insufficient for the Board to assess its jurisdiction and establish a floor for a rate prescription in WPL, then NSP's piecemeal combinations and extrapolations are plainly insufficient in this case.

Moreover, NSP's mix-and-match methodology does not provide a reliable prediction of UP's actual variable costs of handling traffic from non-movement origins. The methodology substitutes unweighted averages for actual data, and it ignores real-world operational differences that have a significant effect on variable costs. The unreliable nature of NSP's methodology further evident when compared to actual results in WPL. In WPL, using actual data, the Board found that UP's variable costs for coal originating at Black Thunder mine were 4.6 percent higher than for coal originating at Antelope mine. See WPL at 45-46. According to NSP's methodology, for coal moving to the King plant, the variable costs for coal originating at Black Thunder mine are only 1.9 percent higher than for coal originating at Antelope mine. See NSP Opening Statement at 73. NSP's methodology plainly fails to reflect real-world cost differences in operating to different origin mines.

In WPL, the Board properly held that it should not make jurisdictional determinations or rate prescriptions based on evidence that was incomplete because movements had not occurred under the challenged rates. WPL at 7. The Board recognized that if the complainant subsequently uses the non-movement origins and the parties cannot agree on a rate, the complainant can return to the Board with supplemental variable cost evidence. See id.³ The Board need not make all-important decisions regarding jurisdiction and reparations on the basis of an incomplete record, because a complainant has the right to receive reparations if the Board later determines the rates to be unreasonable. Cf. Duke Energy Corp. v. Norfolk Southern Ry., STB Docket No. 42069 (STB served July 26, 2002), slip op. at 12 n.25 ("But given the availability of reparations, a rate rollback is not warranted.").

In light of the Board's holding in WPL, UP does not intend to expend the resources that would be necessary to develop variable cost evidence relating to non-movement origins, as we did in WPL. If the Board intends to consider the non-

³ In fact, UP and WPL were able to agree to a method for applying the Board's order to additional origin mines for which no cost data existed.

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movement origins in this case, however, please inform us of that fact, and we will respond to NSP's evidence in our reply filing.

Thank you for your attention.

Sincerely,

A handwritten signature in cursive script, appearing to read "Michael L. Rosenthal".

Michael L. Rosenthal

*Attorney for Union Pacific
Railroad Company*

cc: John H. LeSeur, Esq.