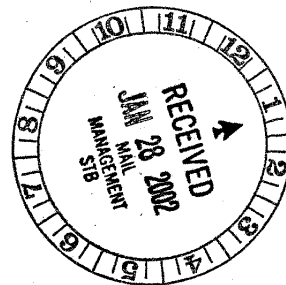


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BEFORE THE
SURFACE TRANSPORTATION BOARD



OTTER TAIL POWER COMPANY)
Complainant,)
v.)
THE BURLINGTON NORTHERN AND)
SANTA FE RAILWAY COMPANY)
Defendant.)

ENTERED
Office of the Secretary
JAN 29 2002
Part of
Public Record

Docket No. NOR 42071

**EXPEDITED CONSIDERATION
REQUESTED**

JOINT MOTION FOR PROTECTIVE ORDER

Complainant, Otter Tail Power Company ("Otter Tail"), and Defendant, The Burlington Northern and Santa Fe Railway Company ("BNSF"), hereby jointly request that the Surface Transportation Board ("STB" or "Board") enter a protective order for the above-referenced proceeding, in the form provided in Appendix A to this motion. The proposed order will facilitate discovery in this proceeding by protecting the confidentiality of material reflecting the terms of contracts, financial information, and other confidential and proprietary information, in the event that such materials are produced by the parties. The proposed order follows the format of protective orders that have been approved by the Board in recent coal rate reasonableness proceedings. See STB Docket No. NOR 42057, *Public Service Company of Colorado d/b/a Xcel Energy v. The Burlington Northern and Santa Fe Railway Company*; STB Docket No. NOR 42054, *PPL Montana, LLC v. The Burlington Northern and Santa Fe Railway Company*; and STB Docket No. NOR 42046, *Texas Municipal Power Agency v. The Burlington Northern and Santa Fe Railway Company*.

On January 18, 2002, counsel for the parties met to discuss discovery and procedural matters for this case, pursuant to 49 C.F.R. § 1111.10(b). At the meeting, Complainant's counsel presented a proposed protective order and undertakings to counsel for Defendant. After review and subsequent negotiations, Defendant's counsel agreed to the proposed protective order and undertakings, which are attached, hereto, as Appendix A.

Accordingly, the parties jointly request that the Board enter the protective order in this proceeding in the form provided in Appendix A, hereto, including the forms of undertaking that accompany it. The parties request that the Board enter the proposed order on an expedited basis to facilitate discovery.

Respectfully submitted,



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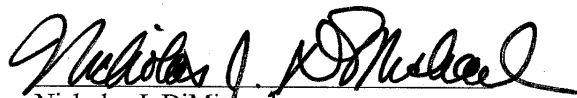
Attorneys for Complainant

January 28, 2002

CERTIFICATE OF SERVICE

I hereby certify that this 28th day of January, 2002, I served a copy of the foregoing Joint Motion for Protective Order by hand delivery upon counsel for Defendant at the following address:

Samuel M. Sipe, Esq.
Stephoe & Johnson
1330 Connecticut Avenue, N.W.
Washington, D.C. 20026


Nicholas J. DiMichael

**PROTECTIVE ORDER
FOR
OTTER TAIL POWER COMPANY
v.
THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY
STB DOCKET NO. NOR 42071**

1. Subject to paragraph 3 below, any party producing material in discovery to another party to this proceeding, or submitting material in pleadings, that the party believes in good faith reflects proprietary or confidential information, may designate and stamp such material as "CONFIDENTIAL," and such material must be treated as confidential. Such material, any copies, and any data or notes derived therefrom:

- (a) Shall be used solely for the purpose of this proceeding and any judicial review proceeding arising therefrom, and not for any other purpose whether business, commercial, competitive, or otherwise.
- (b) May be disclosed only to employees, counsel, or agents of the party requesting such material who have a need to know, handle, or review the material for purposes of this proceeding and any judicial review proceeding arising therefrom, and only where such employee, counsel, or agent has received and has read a copy of this Protective Order, agrees to be bound by its terms, and executes the attached Undertaking for Confidential Material prior to receiving access to such materials.
- (c) Must be destroyed by the requesting party, its employees, counsel, and agents, at the completion of this proceeding and any judicial review proceeding arising therefrom. However, outside counsel (but not outside consultants) for a party are permitted to retain file copies of all pleadings and evidence filed with the Board as well as work product.

- (d) If contained in any pleadings filed with the Board, shall, in order to be held confidential, be filed only in pleadings submitted in a package clearly marked on the outside "Confidential Materials Subject to Protective Order." See 49 CFR 1104.14.

2. Subject to paragraph 3 below, any party producing material in discovery to another party to this proceeding, or submitting material in pleadings, may in good faith designate and stamp particular material, such as material containing shipper-specific rate or cost data or other competitively sensitive information, as "HIGHLY CONFIDENTIAL." If any party wishes to challenge such designation, the party may bring such matter to the attention of the Board or any Administrative Law Judge presiding in this proceeding. Material that is so designated may be disclosed only to outside counsel or outside consultants of the party requesting such materials who have a need to know, handle, or review the materials for purposes of this proceeding and any judicial review proceeding arising therefrom, provided that such outside counsel or outside consultants have been given and have read a copy of this Protective Order, agree to be bound by its terms, and execute the attached Undertaking for Highly Confidential Material prior to receiving access to such materials. However, each party has a right to view its own data, information and documentation, even if the data, information and documentation have been designated as "HIGHLY CONFIDENTIAL" by a producing party, without securing prior permission from the producing party or executing the undertaking. Material designated as "HIGHLY CONFIDENTIAL" and produced in discovery under this provision shall be subject to all of the other provisions of this Protective Order including without limitation paragraph 1.

3. Argument and witness testimony is not, in itself, Confidential or Highly Confidential, except to the extent that such argument or testimony reveals any party's or witnesses' Confidential or Highly Confidential data, information or documentation.

4. In the event that a party produces material which it believes in good faith should have been designated as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" and fails to stamp such material as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL," the producing party may

notify the other party in writing within 5 days of discovering its failure to make the confidentiality designation. Upon receipt of such notice, the party who received the material without the confidentiality designation will return the non-designated portion or destroy it, as directed by the producing party, or take such other steps as the parties agree to in writing. The producing party will promptly furnish the receiving party with properly designated material.

5. In the event that a party produces material that is protected by the attorney-client privilege, work product doctrine, or any other privilege, the producing party may make a written request within a reasonable time after the producing party discovers the disclosure that the other party return the produced privileged document. The party who received the produced document will either return the document to the producing party or destroy the document immediately upon receipt of the written request, as directed by the producing party. By returning or destroying the document, the receiving party is not conceding that the document is privileged and is not waiving its right to later challenge the substantive privilege claim, provided that it may not challenge the privilege claim by arguing that the production waived the privilege.

6. If any party intends to use material designated as "CONFIDENTIAL" and/or "HIGHLY CONFIDENTIAL" at hearings in this proceeding, or in any judicial review proceeding arising therefrom, the party so intending shall submit any proposed exhibits or other documents setting forth or revealing such "CONFIDENTIAL" and/or "HIGHLY CONFIDENTIAL" material to any Administrative Law Judge, the Board, or the court with a written request that the Judge, the Board, or the court: (a) restrict attendance at the hearings during discussion of such "CONFIDENTIAL" and/or "HIGHLY CONFIDENTIAL" material; and (b) restrict access to the portion of the record or briefs reflecting discussion of such "CONFIDENTIAL" and/or "HIGHLY CONFIDENTIAL" material in accordance with the terms of this Protective Order.

7. If any party intends to use material designated as "CONFIDENTIAL" and/or "HIGHLY CONFIDENTIAL" in the course of any deposition in this proceeding, the party so intending shall so advise counsel for the party producing the materials, counsel for the deponent,

and all other counsel attending the deposition, and all portions of the deposition at which any such "CONFIDENTIAL" and/or "HIGHLY CONFIDENTIAL" material is used shall be restricted to persons who may review the material under this Protective Order. All portions of deposition transcripts and/or exhibits that include or disclose such "CONFIDENTIAL" and/or "HIGHLY CONFIDENTIAL" materials shall be kept under seal and treated as "CONFIDENTIAL" and/or "HIGHLY CONFIDENTIAL" material in accordance with the terms of this Protective Order.

8. To the extent that material reflecting the terms of contracts, shipper-specific traffic data, other traffic data, or other proprietary information is produced by a party in this or any related proceedings and is held and used by the receiving person in compliance with this Protective Order, such production, disclosure, and use of the material and of the data that the material contains will be deemed essential for the disposition of this and any related proceedings and will not be deemed a violation of 49 U.S.C. § 11904.

9. Except for this proceeding, the parties agree that if a party is required by law or order of a governmental or judicial body to release designated "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" material produced by the other party, or copies or notes thereof, as to which it obtained access pursuant to this Protective Order, the party so required shall notify the producing party in writing within 3 working days of receipt of actual notice of the release order or within 3 working days of the determination that the "CONFIDENTIAL" material, "HIGHLY CONFIDENTIAL" material, or copies or notes are to be released or within 3 working days prior to such release, whichever is soonest, to permit the producing party to contest the release.

10. All parties must comply with all of the provisions stated in this Protective Order unless good cause, as determined by an Administrative Law Judge decision from which no appeal is taken or by the Board, warrants suspension of any of the provisions herein.

11. Information that is publicly available or obtained outside of this proceeding from a person with a right to disclose it shall not be subject to this Protective Order even if the same

information is produced and designated as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" in this proceeding.

12. A "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" designation may be removed by agreement of the parties, or absent such agreement, by appropriate Board order, upon application of a party seeking to remove such designation, where there is a failure by the party seeking to preserve confidentiality to demonstrate that the material is properly deemed "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" as defined herein.

13. To ensure that each party can respond with appropriate input from in-house counsel and employees to evidence filed by another party, the parties shall cooperate to redact or otherwise identify portions of evidence filed as "HIGHLY CONFIDENTIAL" so that redacted versions of evidence can be disclosed to a party's in-house counsel and employees.

UNDERTAKING
CONFIDENTIAL MATERIAL

I, _____, have read the Protective Order served on _____, 2001, governing the production of confidential documents in STB Docket No. NOR 42071, understand the same, and agree to be bound by its terms. I agree not to use or permit the use of any data or information obtained under this Undertaking, or to use or permit the use of any techniques disclosed or information learned as a result of receiving such data or information, for any purposes other than the preparation and presentation of evidence and argument in STB Docket No. NOR 42071 or any judicial review proceeding arising therefrom. I further agree not to disclose any data or information obtained under this Protective Order to any person who is not also bound by the terms of the Order and has not executed an Undertaking in the form hereof. At the conclusion of this proceeding and any judicial review proceeding arising therefrom, I will promptly return or destroy any copies of such designated documents obtained or made by me or by any outside counsel or outside consultants working with me to counsel for the originating party, provided however, that outside counsel (but not outside consultants) may retain file copies of pleadings filed with the Board.

I understand and agree that money damages would not be a sufficient remedy for breach of this Undertaking and that parties producing confidential documents shall be entitled to specific performance and injunctive or other equitable relief as a remedy for any such breach, and I further agree to waive any requirement for the securing or posting of any bond in connection with such remedy. Such remedy shall not be deemed to be the exclusive remedy for breach of this Undertaking but shall be in addition to all remedies available at law or equity.

Date: _____

STB Docket No. NOR 42071

UNDERTAKING
HIGHLY CONFIDENTIAL MATERIAL

As outside [counsel] [consultant] for _____, for which I am acting in this proceeding, I have read the Protective Order served on _____, 2001, governing the production of confidential documents in STB Docket No. NOR 42071, understand the same, and agree to be bound by its terms. I also understand and agree, as a condition precedent to my receiving, reviewing, or using copies of any documents designated "HIGHLY CONFIDENTIAL," that I will limit my use of those documents and the information they contain to this proceeding and any judicial review proceeding arising therefrom, that I will take all necessary steps to assure that said documents and information will be kept on a confidential basis by any outside counsel or outside consultants working with me, that under no circumstances will I permit access to said documents or information by personnel of my client, its subsidiaries, affiliates, or owners, and that at the conclusion of this proceeding and any judicial review proceeding arising therefrom, I will promptly return or destroy any copies of such designated documents obtained or made by me or by any outside counsel or outside consultants working with me to counsel for the originating party, provided however, that outside counsel (but not outside consultants) may retain file copies of pleadings filed with the Board. I further understand that I must destroy all notes or other documents containing such highly confidential information in compliance with the terms of the Protective Order. Under no circumstances will I permit access to documents designated "HIGHLY CONFIDENTIAL" by, or disclose any information contained therein to, any persons or entities for which I am not acting in this proceeding.

I understand and agree that money damages would not be sufficient remedy for breach of this Undertaking and that parties producing highly confidential documents shall be entitled to specific performance and injunctive or other equitable relief as a remedy for any such breach, and I further agree to waive any requirement for the securing or posting of any bond in connection with such remedy. Such remedy shall not be deemed to be the exclusive remedy or breach of this Undertaking but shall be in addition to all remedies available at law or equity.

OUTSIDE [COUNSEL] [CONSULTANT]

Dated: _____

STB Docket No. NOR 42071