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February 20, 2002

BY HAND DELIVERY

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Room 715
Washington, DC 20423-0001

ENTERED
Office of the Secretary
FEB 20 2002
Part of
Public Record



Re: Docket No. 42059, Northern States Power Company Minnesota
d/b/a/ Xcel Energy v. Union Pacific Railroad Company

Dear Secretary Williams:

On behalf of defendant Union Pacific Railroad Company ("UP"), we respond to the February 15, 2002 letter from Northern States Power's ("NSP") counsel to the Board. Although NSP has withdrawn its motion to compel with respect to certain discovery requests, its letter engages in further obfuscation as to the remaining requests in dispute. It serves neither the Board nor judicial economy for UP to expose and rebut each and every gratuitous or inaccurate remark in NSP's latest missive, but it is important that UP correct the record with respect to the matters addressed below.

RFP 18

UP produced to NSP on February 15 the responsive locomotive expense study addressed by my February 12 letter to the Board. NSP's counsel knew the study would be produced on this date, but chose to send its letter to the Board without reviewing the study. As fully explained in UP's briefs, NSP's additional demand for two shop-level databases greatly exceeds the scope of its initial request, and is unwarranted and unduly burdensome.

RFP 19

UP produced all of the responsive maintenance agreements used for locomotives in NSP service. See UP Reply to Petition for Surreply at 8. Further, UP also produced on February 15 the payment information sought by this request; these bills often refer to minimum miles for monthly payments under these agreements. UP is investigating further whether it can produce the requested unit miles information, and UP will produce any reasonably available responsive information it identifies.

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Honorable Vernon A. Williams

February 20, 2002

Page 2

RFP 20

Only last week did NSP's counsel first ask for documents produced in the WPL case that NSP's counsel believes will enable its consultant to convert the TPS software, which runs on a mainframe computer, to PC compatibility. Because the WPL documents in question do not in any way address PC conversion, I sought clarification from NSP's counsel (Chris Mills). Mr. Mills claimed the WPL documents would permit NSP's consultant somehow to convert TPS to a PC-based model. Although UP fails to see how this is so, it has agreed to produce the requested information provided that NSP -- should it later submit evidence based on such a conversion -- produce to UP all workpapers regarding its conversion to enable UP to validate the operability of its TPS model as modified by NSP's consultants. The parties' emails regarding this subject are attached. See Exh. A. At no time was UP led to believe that NSP considered UP's TPS production "grossly incomplete," and UP rejects that mischaracterization in NSP's letter to the Board. NSP has confirmed (Mills email of February 19) that there is no other information it expects from UP pursuant to its February 15 letter to the Board.

Conclusion

NSP's assertion that UP is responsible for delaying this case is false posturing. This case would be in an evidentiary phase but for NSP's ever-changing and ever-expanding discovery appetite, and its baseless motion to compel. Indeed, UP has over the past two months attempted to negotiate a firm discovery deadline and evidentiary schedule with NSP, but its efforts have been unsuccessful. See Exh. B. NSP has only itself to blame for the duration of this proceeding.

Sincerely,



Eric C. Bosset

Counsel for Defendant

Union Pacific Railroad Company

Enclosures

cc: John H. LeSeur, Esq. (counsel for NSP)

Exhibit A

Bosset, Eric

⑤ From: Christopher A. Mills [cam@sloverandloftus.com]
Sent: Tuesday, February 19, 2002 10:21 AM
To: Bosset, Eric
Cc: John H. LeSeur
Subject: RE: NSP v. UP/ fuel study and discovery

Your reservations are acknowledged without prejudice to NSP's position that it may use the material for the purpose described with appropriate workpaper support. [The answer to your question on the "TPS program instructions" is yes.]

-----Original Message-----

④ From: Bosset, Eric [mailto:ebosset@cov.com]
Sent: Tuesday, February 19, 2002 10:03 AM
To: 'Christopher A. Mills'
Subject: RE: NSP v. UP/ fuel study and discovery

Chris:

UP agrees to permit authorized member of your firm and NSP's consultant -- for purposes of the NSP v. UP rate proceeding only and pursuant to the terms of the Protective Order in this proceeding -- access to the following Highly Confidential documents from the WPL case: HC 014402 - HC 014491. UP's agreement to your request for those documents in no way should be construed as acceptance or agreement with your stated premise below that such documents will "enable [NSP's] consultant to perform the conversion so that the program can be run on a PC." Further, should NSP submit evidence in this case based on the results of any such TPS conversion, UP will expect NSP to produce as workpapers all information regarding the conversion in order to permit UP to validate the operability of TPS following such a modification.

[Finally, please state whether this information you wanted constitutes the so-called "TPS program instructions" NSP claims were "missing" in its February 15, 2002 letter to the Board?]

Eric.

-----Original Message-----

③ From: Christopher A. Mills [mailto:cam@sloverandloftus.com]
Sent: Thursday, February 14, 2002 11:32 AM
To: Bosset, Eric
Cc: John H. LeSeur
Subject: RE: NSP v. UP/ fuel study and discovery

Eric, in response to your voicemail message this morning, we are aware that

the TPS program is a mainframe program. Your message indicates that UP does not have a PC version of it. However, our consultant needs to convert it to a PC program to be able to run it. The workpaper pages from the WPL case referenced in my earlier e-mail explain how the UP (mainframe) program works, and enable our consultant to perform the conversion so that the program can be run on a PC. (Again, we already have the workpapers in the WPL case but cannot use them in the NSP case without UP's permission.)

If you still have questions about our request please give me a call.

Chris

-----Original Message-----

From: Bosset, Eric [mailto:ebosset@cov.com]

Sent: Wednesday, February 13, 2002 3:55 PM

To: 'Christopher A. Mills'

Subject: RE: NSP v. UP/ fuel study and discovery

Chris:

I will get back to you, after speaking with the client, on your request below regarding TPS.

Eric.

-----Original Message-----

From: Christopher A. Mills [mailto:cam@sloverandloftus.com]

Sent: Tuesday, February 12, 2002 9:37 AM

To: Bosset, Eric

Cc: Egan, Kimberly; John H. LeSeur

Subject: NSP v. UP/ fuel study and discovery

Eric, this is to advise that we expect to respond by the end of this week on the event recorder data and fuel study. We are still awaiting some information from our consultants that we need to complete the response.

With respect to the TPS software UP recently produced in response to a NSP discovery request, UP did not provide the supporting documentation needed to convert the mainframe software to a PC version. The documentation

was
provided by UP to Wisconsin Power & Light in its rate case. The
WPL Bates
numbers for this material are 14402-14491. Please provide the
same material
provided in the WPL case for use by NSP (or release the material
provided in
the WPL case for use by NSP in this case, subject to "highly
confidential"
protection under the terms of the protective order in the NSP
case).

Chris

Exhibit B

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January 4, 2002

BY FACSIMILE & FIRST CLASS MAIL

John H. LeSeur, Esq.
Slover & Loftus
1224 Seventeenth Street, N.W.
Washington, DC 20036

Re: Discovery cutoff in NSP v. UP

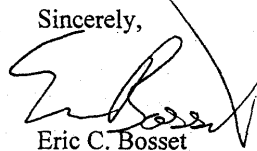
Dear John:

This letter follows up on my prior communications to you regarding UP's desire to establish a discovery cutoff in this proceeding. In light of the Board's stated preference for full-year information bearing on variable costs, UP proposes December 31, 2001, as the cutoff date for documents and other information that NSP requested, and UP agreed to produce, to "the present" (i.e., documents and data regarding costs after that date do not have to be produced). UP and NSP would each agree not to use 2002 information in its variable cost evidence, unless such evidence responds directly to costs or trends for 2002 predicted or alleged by the other party.

If NSP agrees with this cutoff date, UP would begin compiling the information and producing it to NSP as it becomes available. UP's proposed discovery cutoff date would enable the parties to begin filing their variable cost evidence in the spring.

Please let me know if NSP agrees to the foregoing proposal.

Sincerely,



Eric C. Bosset

cc: Louise A. Rinn, Esq.

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January 10, 2002

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WRITER'S E-MAIL:

VIA TELECOPIER

Eric C. Bosset, Esq.
Covington & Burling
1201 Pennsylvania Ave., NW
Washington, D.C. 20004

Re: Docket No. NOR. 42059, Northern States
Power Company Minnesota D/B/A
Xcel Energy v. Union Pacific Railroad Company

Dear Eric:

We are in receipt of your January 4, 2002 letter concerning "discovery cutoff." As we have discussed in past correspondence, NSP is not in a position now to agree to a new discovery cut-off date (*i.e.*, no new discovery requests can be made after date "x"). (See our letters of November 28, 2001 and December 20, 2001.) However, as stated in those letters, NSP is willing to discuss document production cut-off dates for documents prepared after 2000 (*i.e.*, documents created after date "x" do not have to be produced).

Our counterproposal on document cut-off dates is as follows:

(1) Where NSP has requested UP to provide documents prepared to the "present" in its pending discovery requests the present will mean "documents prepared through December 31, 2001" except as otherwise provided below.

(2) The December 31, 2001 document cut-off date will not apply to NSP's requests for documents containing the following traffic and operating statistics: transit/cycle times, cars per train, tons per car and tare per car ("T&O Statistics"). The cut-off date for production of 2002 T&O Statistics documents will be established by the parties in their discussions to

Eric C. Bosset, Esq.
January 10, 2002
Page 2

reactivate the procedural schedule (including the establishment of a new discovery cut-off date).

(3) UP will produce all documents it has been withholding on the basis of its cut-off date objection (including missing 2001 T&O Statistics) by February 10, 2002.

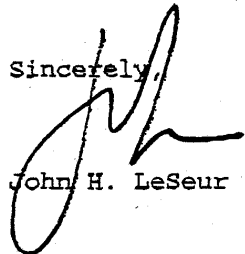
(4) The foregoing assumes that discovery disputes are resolved in a timely fashion and that opening evidence in this case is filed no later than May 1, 2002. If that does not occur, the parties will revisit the document cut-off date issues referenced above.

(5) Nothing herein should be construed as (i) requiring UP to produce documents it has objected to producing on grounds other than its cut-off date objection; (ii) limiting NSP's right to seek orders compelling UP to produce withheld documents; (iii) limiting NSP's ability to file additional discovery requests (or follow-up) prior to the establishment of a new discovery cut-off date (or limiting UP's right to object to any such requests); or (iv) limiting either party from developing URCS unit costs using R-1 data filed with the STB in 2002.

If you have any questions concerning this proposal, please call me. We look forward to your response.

With best regards,

Sincerely,


John H. LeSeur

JHL:cef

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January 18, 2002

BY FACSIMILE AND FIRST-CLASS MAIL

John H. LeSeur, Esq.
Slover & Loftus
1224 Seventeenth Street, N.W.
Washington, DC 20036

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

Dear John:

I respond to your January 10 letter, which in turn responded to my January 4 letter.

(1) Both parties agree that the term "present" as used in NSP's pending discovery requests shall mean "documents prepared through December 31, 2001." NSP proposes some exceptions to this general rule, which UP addresses below.

(2) We are skeptical whether 1Q 2002 statistics can be ready in time for filing opening evidence on May 1 as you have proposed. In any event, UP is not agreeable to supplementing unilaterally its production with 2002 statistics. Such a one-sided burden would interfere with UP's evidentiary preparations. Moreover, discovery has to end sometime. However, UP is willing to discuss a reciprocal exchange of data regarding net tons, cars and transit time for each train that arrived or departed from Black Dog and Bayport during 1Q 2002.

(3) With respect to documents and data UP has agreed to produce, at this time UP believes it would be able to produce most, but not all, of the information by February 28, 2002. Some full-year information for 2001 will not be available until after February, such as 2001 data for density charts, full-year Wage Forms A & B, and the Loss & Damage Report. UP would supplement previously provided material for these items if the 2001 information becomes available prior to the date for filing opening evidence. Further, UP's R-1 for 2001 will not be available until after filing with the STB.

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John H. LeSeur, Esq.

January 18, 2002

Page 2

(4) Assuming all other issues are resolved, UP is agreeable to a schedule under which the parties would file opening evidence in this case on May 1, 2002, so long as we can also agree on the dates for subsequent evidentiary filings in this case.

(5) With respect to subpart (iii) of this numbered paragraph of your letter, UP reiterates its long-standing position that NSP is precluded from serving additional discovery requests (whether described as "follow-up" or otherwise), without UP's consent. See my two letters to you of April 6, 2001.

Sincerely,



Eric C. Bosset

cc: ✓ Louise A. Rinn, Esq.

SLOVER & LOFTUS

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January 24, 2002

VIA TELECOPIEREric C. Bosset, Esq.
Covington & Burling
1201 Pennsylvania Ave., NW
Washington, D.C. 20004Re: Docket No. NOR. 42059, Northern States
Power Company Minnesota D/B/A
Xcel Energy v. Union Pacific Railroad Company

Dear Eric:

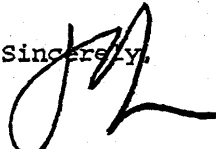
We have received and reviewed your proposal of January 18, 2002. Paragraph (3) states UP will be able to "produce most, but not all of the information" (emphasis added). What documents or data (if any), other than the material referenced in the second sentence of paragraph (3), is included in the phrase "but not all"? Also, what does UP have in mind for the "reciprocal exchange" cited in paragraph (2) of your letter?

If UP is amenable to (i) substituting paragraphs (4) and (5) from our letter to you of January 10, 2002 for paragraphs (4) and (5) from your letter, (ii) NSP obtains satisfactory clarification of paragraph (3), and (iii) the parties work out suitable "reciprocal exchange" arrangements, we are optimistic that NSP and UP can reach agreement on the covered topics. If UP is not so amenable, we suggest deferring any further discussions on document production cut-off dates until the STB issues its decision on NSP's pending motion to compel.

As we have previously discussed (see our letters to you dated November 28, 2001, December 20, 2001, and January 10, 2002), NSP is not in a position now to agree upon a new procedural schedule.

With best regards,

Sincerely,


John H. LeSeur

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February 13, 2002

BY FACSIMILE AND FIRST-CLASS MAIL

John H. LeSeur, Esq.
Slover & Loftus
1224 Seventeenth Street, N.W.
Washington, DC 20036

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

Dear John:

As stated in my several previous letters, UP is looking to bring an end to discovery in this matter and to proceed with the filing of evidence. To that end, UP proposed to NSP to produce otherwise discoverable documents and data through 2001, consistent with the Board's preference for full-year information. UP also agreed to filing opening evidence on May 1, 2002, provided the parties also agree on dates for subsequent evidentiary filings. Regrettably, your January 24 letter retreats completely on establishing an evidentiary schedule ("NSP is not in a position to agree upon a new procedural schedule.").

As to discovery, however, we understand your January 24 letter essentially to accept the 2001 end date, and UP is proceeding with the compilation and production of data and documents on that basis pursuant to my January 18 letter. As stated previously, we believe most of the information will be in NSP's hands by the end of the month, but some of the full-year 2001 data will not be available even within UP until later. My prior letter cited some examples. UP will produce that information to NSP on a rolling basis as it becomes available. If NSP wishes to discuss further a reciprocal exchange of 1Q 2002 data regarding net tons, cars and transit times for each train to and from Black Dog and Bayport, let me know.

Sincerely,



Eric C. Bosset

cc: Louise A. Rinn, Esq.

SLOVER & LOFTUS

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WRITER'S E-MAIL:

February 14, 2002

VIA TELECOPIER

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1201 Pennsylvania Ave., NW
Washington, D.C. 20004

Re: Docket No. NOR. 42059, Northern States
Power Company Minnesota D/B/A
Xcel Energy v. Union Pacific Railroad Company

Dear Eric:

We are in receipt of your letter dated February 13, 2002. Your assertion that NSP has "retreat[ed] completely" on scheduling issues is nonsense. NSP has repeatedly and consistently informed UP that NSP will not be in a position to discuss reactivating the procedural schedule in this case until the pending discovery matters (including those subject to NSP's Motion to Compel) are resolved. (See our letters to you dated November 28, 2001, December 20, 2001, January 10, 2002 and January 24, 2002).

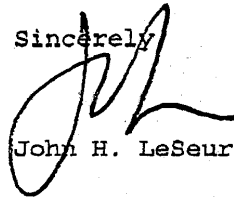
Equally incorrect are your assertions in the second paragraph of your February 13 letter concerning what you claim NSP has "essentially ... accept[ed]" in its January 24, 2002 letter. NSP and UP have no agreement at this time concerning the discovery of materials UP has been withholding under its out-of-date objection. As you know, the parties have been exchanging detailed proposals on this topic containing separately numbered paragraphs. NSP's last proposal to UP was set forth in our January 24, 2002 letter.

Eric C. Bosset, Esq.
February 14, 2002
Page 2

If UP is serious about reaching an agreement with NSP on these matters, please provide the clarifications requested in our January 24, 2002 letter and state, in writing, that UP accepts the specific proposal NSP made (which would combine the substance of paragraphs 1, 2 and 3 from your January 18, 2002 letter with paragraphs 4 and 5 of our January 10, 2002 letter). NSP will then review your clarifications and advise whether an agreement can be reached.

With best regards,

Sincerely,



John H. LeSeur

JHL:cef