

**EXPEDITED CONSIDERATION REQUESTED**

ENTERED  
Office of Proceedings  
July 14, 2014  
Part of  
Public Record

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

_____	)	
SunBelt Chlor Alkali Partnership	)	
	)	
Complainant	)	
v.	)	Docket No. NOR 42130
	)	
NORFOLK SOUTHERN RAILWAY COMPANY	)	
	)	
Defendant	)	
_____	)	

**COMPLAINANT’S MOTION FOR  
EXTENSION OF PAGE LIMIT**

Complainant, SunBelt Chlor Alkali Partnership (“SunBelt”), hereby requests an extension of the page limits for a petition for reconsideration as further detailed herein. The final decision of the Surface Transportation Board in this proceeding<sup>1</sup> (the “Decision”) is over 200 pages long and addresses a far larger number of complex issues than a typical Board proceeding. The Decision also involves novel issues of law and incorporates intervening regulatory changes that strike at the foundation of SunBelt’s evidence. An extension of the page-limit requirement is necessary for SunBelt to adequately present and address in a petition for reconsideration the many legal, factual, procedural, and methodological errors presented by this Decision. **SunBelt requests expedited consideration of this motion because Petitions for Reconsideration are due in two weeks.**<sup>2</sup>

<sup>1</sup> SunBelt Chlor Alkali Partnership v. Norfolk S. Ry., STB Docket No. NOR 42130 (served June 20, 2014).

<sup>2</sup> In a decision served July 1, 2014, the Board extended the due date for Petitions for Reconsideration until July 30, 2014.

## EXPEDITED CONSIDERATION REQUESTED

SunBelt specifically requests that the Board:

1. extend the page limits for reconsideration petitions in this proceeding to 30 pages; and
2. permit the parties to include a technical corrections supplement not to exceed 20 additional pages that is restricted solely to issues that one party has contended are technical in nature but to which the other party does not agree.

The Board's rules limit a petition for reconsideration, and a reply, to 20 pages. 49 C.F.R. § 1115.2(d). When the Interstate Commerce Commission adopted this limit, it expressed concern that the page limit be sufficient for cases that are especially novel, lengthy, and complex.<sup>3</sup> Although the Commission did not believe that greater length was required at that time, it noted that it would "continue to entertain requests for waiver of the page limitation based upon an adequate showing."<sup>4</sup> Because the Commission established the page limit in 1979, before the advent of stand-alone-cost ("SAC") rate cases, the page limit does not account for the length and complexity of modern rate cases.

Although the Board has decided many SAC cases, this case presents several novel issues. It involves one of the first primarily carload SARRs and is one of the first cases where a party has relied on a computer program, MultiRail, to develop its operating plan. It also is one of the first two cases to which the Board applied its Alternative Average Total Cost ("ATC") methodology, which it adopted a full year after SunBelt had submitted its opening evidence, effectively moving the goalposts on SunBelt just as it was kicking the ball. The Board has waived the 20-page limitation on multiple occasions,<sup>5</sup> most recently in E.I. du Pont de Nemours

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<sup>3</sup> Rail Appellate Procedures, 361 I.C.C. 591, 598 (1979).

<sup>4</sup> Id.

<sup>5</sup> See e.g., Burlington N., STB Docket No. 32549, slip op. (served Feb. 11, 2000) (waiving limitation where petitioner alleged "waiver is necessary to allow it to present and summarize witness testimony, explain a need to submit additional evidence, and to

## EXPEDITED CONSIDERATION REQUESTED

and Company v. Norfolk Southern Ry. Co., Docket NOR 42125 (served June 11, 2014), which poses many of the same issues as this proceeding.

SunBelt also requests a technical corrections supplement due to the procedural posture of this case. The Board permits the parties to jointly submit a petition for technical corrections contemporaneous with separate petitions for reconsideration.<sup>6</sup> The subject matter of the technical corrections petition, however, is limited to items that both parties agree are technical in nature.<sup>7</sup> If either party contends that an item is not technical in nature, that party must raise the issue in its reconsideration petition. NS counsel has informed SunBelt's counsel that, due to their preparation of reply evidence on behalf of CSX Transportation, Inc., in Docket No. 42121, Total Petrochemicals and Refining USA, Inc. v. CSX Transp., Inc., the NS counsel and consultants will not be available even to discuss technical corrections with SunBelt until after July 21, 2014. Consequently, by the time the parties know the extent to which they can agree upon technical corrections, there will be insufficient time to request an appropriate extension of the page limits, if necessary to accommodate issues that one party initially believed to be technical in nature but to which the other party disagreed. Therefore, SunBelt asks the Board to permit a 20-page technical corrections supplement that is restricted solely to matters that one party contends are technical in nature, but to which the other party has disagreed. If no such disagreements exist, there would be no technical corrections supplement because none would be necessary.

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conduct discovery.”); W. Fuels Serv. Crop. v. Burlington N. & Santa Fe Ry., STB Docket No. 41987, slip op. at 2 n.6 (served July 28, 1997) (waiving page limit for a 42-page reply with an addendum containing more than 150 pages, noting that the waiver would not unreasonably burden either the petitioner or Board). See also Pa. Power & Light Co. v. Consol. Rail Corp., ICC Docket No. 38186S, 1984 ICC LEXIS 327 at \*2-3 (ICC Aug. 31, 1984) (granting waiver of the 30-page limit for appeals due to the “size and complexity of the record”); Chesapeake & Ohio Ry., 360 I.C.C. 245, 247 (1979) (waiving 30-page limit for a 57-page reply to exceptions in an abandonment proceeding, noting that the proceeding was unusually lengthy and complexity of the application for abandonment).

<sup>6</sup> Public Serv. Co. of Col. d/b/a Xcel Energy v. The Burlington Northern and Santa Fe Ry. Co., STB Docket No. 42057, 2004 STB LEXIS 790, at \*2-4 (served Dec. 14, 2004).

<sup>7</sup> Id.

**EXPEDITED CONSIDERATION REQUESTED**

For the foregoing reasons, SunBelt respectfully requests an extension of the page limit for petitions for reconsideration to 30 pages plus a 20-page technical corrections supplement, if necessary, as outlined in this Motion.

Respectfully submitted,



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July 14, 2014

**EXPEDITED CONSIDERATION REQUESTED**

**CERTIFICATE OF SERVICE**

I hereby certify that this 14th day of July 2014, I served a copy of the foregoing via e-mail and first class mail upon:

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