

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760 (Sub-No. 46)

BNSF RAILWAY COMPANY
—TERMINAL TRACKAGE RIGHTS—
KANSAS CITY SOUTHERN RAILWAY COMPANY AND
UNION PACIFIC RAILROAD COMPANY

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**UNION PACIFIC'S PETITION
FOR ORDER DIRECTING SIMULTANEOUS FINAL BRIEFS**

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Pursuant to 49 C.F.R. § 1117.1, Union Pacific respectfully requests that the Board direct Union Pacific, KCS, BNSF and CITGO to file simultaneous final briefs within 30 days after the service date of the Board’s order granting this request. We request that the final briefs be limited to no more than 20 pages with no attachments, exhibits, or new evidence.¹

Final briefs provide an important opportunity for the parties to set forth their positions on key issues and to address the proper application of Board precedent in light of the full record. For this reason, the Board regularly permits the filing of final briefs upon request of a party. *See, e.g., Total Petrochemicals & Refining USA, Inc. v. CSX Transp. Inc.*, NOR 42121, slip op. at 4 (Sept. 26, 2013) (“[T]he Board generally finds final briefs informative to summarize arguments”); *N. Am. Freight Car Ass’n v. Union Pacific R.R.*, NOR 42119, slip op. at 2 (STB served May 11, 2012) (“[T]he Board has in the past ordered final briefs to focus the issues and assist in analyzing a complex record.”); *Cargill, Inc. v. BNSF Ry.*, NOR 42120, slip op. at 1 (STB served March 1,

¹ Counsel for Union Pacific conferred with counsel for KCS, BNSF, and CITGO prior to filing this Petition. Counsel for KCS indicated that KCS supports Union Pacific’s request. Counsel for CITGO indicated that CITGO does not oppose Union Pacific’s request. Counsel for BNSF indicated that BNSF opposes Union Pacific’s request.

2012) (granting BNSF’s request to file final briefs, noting that “requests for final briefs have been consistently granted”). The Board specifically has recognized that final briefs assist in focusing the evidence and aid the efficiency of the Board’s resolution of outstanding issues. *See, e.g., Pub. Serv. of Colo. d/b/a Xcel Energy v. The Burlington N. & Santa Fe Ry.*, NOR 42057, slip op. at 1 (STB served Aug. 8, 2003) (“In complex cases such as this one, the Board has generally found that briefs . . . can focus the issues and thereby contribute to greater efficiency in analyzing the record.”); *Tex. Mun. Power Agency v. The Burlington N. & Santa Fe Ry. Co.*, NOR 42056, slip op. at 1 (STB served May 28, 2002) (same); *PPL Mont., LLC v. The Burlington N. & Santa Fe Ry.*, NOR 42054, slip op. at 2 (STB served Dec. 12, 2001) (same).

Even in situations where a party has objected to another party’s request for final briefs, the Board has consistently granted such requests. *See, e.g., Total Petrochemicals*, slip op. at 3-4; *N. Am. Freight Car*, slip op. at 2; *Cargill*, slip op. at 1; *Wisc. Power & Light v. Union Pac. R.R.*, NOR 42051, slip op. at 1-2 (STB served Nov. 15, 2000); *FMC Wyo. Corp. v. Union Pac. R.R.*, NOR 42022, slip op. at 1-2 (STB served July 2, 1999). Briefs assist the Board in evaluating the record and making a decision that is fair and fully informed. *See W. Tex. Utils. Co. v. Burlington N.R.R.*, NOR 41191, slip op. at 2 (ICC served Sept. 8, 1995) (noting that final briefs are not meant to “give either side a tactical advantage by allowing it the ‘last word’” but will “assist the [Board] in evaluating the record compiled in the proceeding so that it can make a fair and informed decision”).

In this case, final briefs would allow each party to explain the issues that are relevant, identify the issues that are in dispute, and set forth its positions on these key issues, in light of the record that has been established. Accordingly, the Board should direct Union Pacific, KCS,

BNSF and CITGO to file simultaneous final briefs within 30 days after the service date of the Board's order granting Union Pacific's request.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of October, 2015, I caused a copy of the foregoing document to be served by first-class mail, postage prepaid, or a more expeditious manner of delivery on all parties of record in Finance Docket No. 32760 (Sub-No. 46).



Michael L. Rosenthal