

205010

BEFORE THE
SURFACE TRANSPORTATION BOARD



TEXAS MUNICIPAL POWER AGENCY,)
)
 Complainant.)
)
 v.)
)
 THE BURLINGTON NORTHERN AND)
 SANTA FE RAILWAY COMPANY,)
)
 Defendant.)

Docket No. 42056

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

**DEFENDANT'S REPLY TO COMPLAINANT'S
PETITION FOR ORDER DIRECTING SIMULTANEOUS BRIEFS**

Defendant The Burlington Northern and Santa Fe Railway Company (BNSF) hereby replies to the Petition filed on March 8, 2002 by complainant Texas Municipal Power Agency (TMPA) for an Order Directing Simultaneous Briefs.¹ BNSF agrees that the Board should direct the parties to file simultaneous briefs and it agrees with the terms proposed by TMPA to govern the filing and composition of those briefs.

As TMPA acknowledges, the Board routinely permits closing briefs in proceedings involving the stand-alone cost methodology because such briefs "can focus the issues and thereby contribute to greater efficiency in analyzing the record." *PPL Montana, LLC v. The Burlington Northern and Santa Fe Railway Company*, Docket No. 42054, slip op. at 2 (served Dec. 11, 2001) ("*PPL v BNSF*"); *Wisconsin Power & Light Co. v. Union Pacific RR Co.*, No. 42051, slip op. at 1 (STB decided Nov. 14, 2001). The Board has acknowledged that the use of

¹ Although TMPA's Petition was filed on March 8, 2002, BNSF did not receive a service copy of it until March 14, 2002.

closing briefs "is customary in coal rate complaints." *West Texas Utilities Co. v. Burlington Northern Railroad Co.*, Docket No. 41191, slip op. at 2 (STB served Sep. 8, 1995). *See also FMC v. Union Pacific RR Co.*, Docket No. 42022 (STB served July 2, 1999); *CF Industries, Inc. v. Koch Pipeline Co.*, Docket No. 41685 (STB served July 6, 1998); *Potomac Electric Power Co. v. CSX Trans., Inc.*, Docket No. 41989 (STB served Nov. 24, 1997); and *Arizona Public Service Co. v. The Atchison, Topeka and Santa Fe Rwy Co.*, No. 41185 (STB served Mar. 15, 1996).

While TMPA's Petition seeks an order requiring the submission of briefs, TMPA also suggests that the Board's new evidentiary format rules adopted in Ex Parte No 347 (Sub-No. 3), *General Procedures for Presenting Evidence in Stand-Alone Cost Rate Cases*, served March 12, 2001, might have reduced the need for briefs. BNSF does not agree. The Board's *General Procedures* order created a standardized format for the evidentiary filings that should assist the Board in reviewing the complex record created in stand-alone cost cases. However, the Board has found that briefs serve a function that cannot be satisfied by a standardized format, namely that they "allow each party to set forth its position on key issues in light of the full record, and identify issues that have been narrowed or are no longer in dispute." *PPL v. BNSF*, at 2. Final briefs therefore continue to be an important way for the parties to "focus the issues" in complex stand-alone cost cases. *Id.*

TMPA also requests that the Board serve an order for the filing of final briefs "as expeditiously as possible." Petition at 4. BNSF agrees that the record in this proceeding should be closed so that this case can be resolved promptly. However, BNSF notes that it filed on March 15, 2002 a Motion to Strike, which requests that the Board strike from the record certain evidence submitted by TMPA in its rebuttal filing. The Board might decide that it would be appropriate to resolve BNSF's Motion to Strike before considering final briefs on the remaining

issues in this case, although BNSF would not object if the Board, in the interest of time, ordered the filing of briefs now with the intention of addressing all outstanding issues in its final decision.

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Respectfully submitted,



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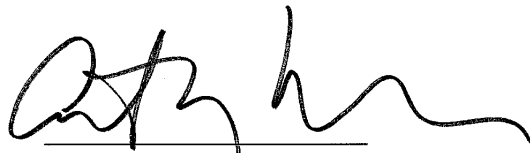
Attorneys for
The Burlington Northern and Santa Fe
Railway Company

Dated: March 20, 2002

CERTIFICATE OF SERVICE

I hereby certify that on March 20, 2002, a true and correct copy of the foregoing
document was served by hand on:

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