

BEFORE THE
SURFACE TRANSPORTATION BOARD

PUBLIC SERVICE COMPANY OF COLORADO
D/B/A XCEL ENERGY,

Complainant,

v.

THE BURLINGTON NORTHERN AND
SANTA FE RAILWAY COMPANY,

Defendant.



Docket No. 42057

ENTERED
Office of Proceedings
MAY 28 2003
Part of
Public Record

PETITION FOR ORDER
DIRECTING SIMULTANEOUS CLOSING BRIEFS

Complainant Public Service Company of Colorado, d/b/a Xcel Energy, pursuant to 49 C.F.R. § 1117.1, respectfully requests that the Board direct Xcel and defendant The Burlington Northern and Santa Fe Railway Company ("BNSF") to file closing briefs in this case.

Specifically, Xcel proposes that a simultaneous round of closing briefs be ordered by the Board. Xcel asks that each party's brief be limited to 25 pages with no attachments, exhibits, or new evidence and that the briefs be submitted to the Board within 30 days of the Board's decision. Xcel respectfully asks the Board to issue a decision as soon as practicable, given that this case was commenced nearly two and a half years ago.

Xcel is not aware that BNSF opposes the filing of briefs in this case. In fact, in the interest of streamlining this phase of the process, counsel for Xcel contacted BNSF counsel to explore its

interest in filing a joint petition with the Board. While BNSF counsel stated that it agreed in concept with the notion of filing a joint petition regarding final briefs, BNSF counsel was unable to provide Xcel with a definitive response regarding final briefs in a timeframe that is acceptable to Xcel, which is very interested in closing the record in this case and commencing the statutory timeframe for reaching a final decision.¹ Xcel hopes that BNSF will apprise the Board of BNSF's views on final briefs as soon as it knows them.

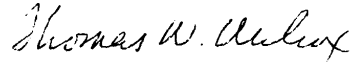
Given the complex nature of this case and the size of the record, closing briefs would be appropriate to help focus the issues and evidence for the Board. The Board has ordered the filing of closing briefs in other large rate cases. See e.g., STB Docket No. 42056, Texas Municipal Power Agency v. The Burlington Northern and Santa Fe Railway Company, served May 28, 2002 at 1 ("In complex cases such as this one, the Board has generally found that briefs, properly employed, can focus the issues and thereby contribute to greater efficiency in analyzing the record."). While this is no doubt a complex coal rate reasonableness case, the circumstances of this proceeding do not warrant increasing the number of pages beyond 25 or the timeframe for preparing and filing closing briefs beyond 30 days, which are the general parameters the Board applied in TMPA and in other cases.

Wherefore, complainant Xcel Energy requests that the Board issue, as soon as practicable, an order directing the parties to simultaneously file closing briefs in this proceeding within 30 days

¹ See, Docket No. 42051, Wisconsin Power & Light Co. v. Union Pacific Railroad Company, Decision served September 13, 2001. (Record does not close for purposes of 49 U.S.C. 10704(c)(1) until briefs are filed.).

after the service date of the Board's decision. The parties' briefs would be limited to 25 pages in length with no attachments, exhibits, or new evidence permitted.

Respectfully submitted,



Thomas W. Wilcox, Esq.
Michael H. Higgins, Esq.
David E. Benz, Esq.
Thompson Hine LLP
1920 N St. N.W., Suite 800
Washington, DC 20036
(202) 331-8800

Bruce A. Colt, Esq.
Senior Attorney
Xcel Energy
800 Nicollet Mall, Suite 2900
Minneapolis, MN 55402
(612) 214-4587

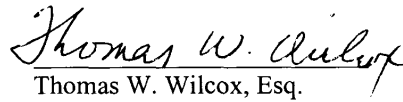
Attorneys for Complainant

May 28, 2003

CERTIFICATE OF SERVICE

I hereby certify that on May 28, 2003, I served a copy of the Complainant's Petition for Order Directing Simultaneous Closing Briefs by hand delivery to counsel for Defendant at the following address:

Samuel M. Sipe, Jr.
Anthony J. LaRocca
Steptoe & Johnson LLP
1330 Connecticut Avenue, N.W.
Washington, DC 20036


Thomas W. Wilcox, Esq.