

General Docket
United States Court of Appeals for District of Columbia Circuit

Court of Appeals Docket #: 12-7085 In re: Rail Freight Fuel Surcharge Appeal From: United States District Court for the District of Columbia Fee Status: Fee Waived	Docketed: 08/28/2012 Termed: 08/09/2013
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Case Type Information:

- 1) Orig. Proceeding Private
- 2) Mandamus
- 3)

Originating Court Information:

District: 0090-1 : [1:07-mc-00489-PLF-JMF](#)
Trial Judge: Paul L. Friedman, U.S. Senior District Judge

Prior Cases:

None

Current Cases:

None

Panel Assignment:

Panel: MBG JRB DBS
Date of Hearing: 05/03/2013 **Date of Decision:** 08/09/2013 **Date Completed:** 08/09/2013

In re: Rail Freight Fuel Surcharge Antitrust Litigation - MDL No.
1869

BNSF Railway Company

In re - Petitioner

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










In re: Rail Freight Fuel Surcharge Antitrust Litigation - MDL No. 1869,




























BNSF Railway Company; CSX Transportation, Inc.; Norfolk Southern Railway Company; Union Pacific Railroad Company,




In re - Petitioners















Chamber of Commerce of the United States of America,

Amicus Curiae

08/28/2012		PRIVATE CIVIL ORIGINAL PROCEEDING CASE docketed. [12-7085]
08/28/2012	 32 pg, 1.09 MB	PETITION filed [1392209] by Petitioners BNSF Railway Company, CSX Transportation, Inc., Norfolk Southern Railway Company and Union Pacific Railroad Company for leave to file an interlocutory appeal pursuant to Fed. R. Civ. P. 23(f). [Service Date: 07/05/2012 by Hand Delivery] Pages: 16-20. [12-7085]
08/30/2012	 1 pg, 40.1 KB	CLERK'S ORDER filed [1392219] that this case be assigned general case No. 12-7085 for purposes of briefing and argument, terminating case No. 12-8008. [12-8008, 12-7085]
08/31/2012	 1 pg, 41.67 KB	CLERK'S ORDER filed [1392438] setting briefing schedule: PETITIONER Brief due 10/15/2012. Appendix due 10/15/2012. RESPONDENT Brief due on 11/14/2012. PETITIONER Reply Brief due 11/28/2012 [12-7085]
09/14/2012	 3 pg, 86.61 KB	ENTRY OF APPEARANCE filed [1394370] by Theodore J. Boutrous and co-counsel Andrew S. Tulumello on behalf of Petitioner BNSF Railway Company. [12-7085] (Boutrous, Theodore)
09/17/2012	 7 pg, 101.43 KB	MOTION filed [1394881] by BNSF Railway Company for leave to file brief (Response to Motion served by mail due on 10/01/2012) [Service Date: 09/17/2012 by CM/ECF NDA] Pages: 1-10. [12-7085] (Boutrous, Theodore)
09/19/2012	 1 pg, 38.46 KB	CLERK'S ORDER filed [1395298] considering motion for leave to file [1394881-2] ; suspending Clerk order regarding briefing schedule [1392438-2] [12-7085]
09/24/2012	 5 pg, 93.67 KB	SUPPLEMENT [1395976] to motion for leave to file [1394881-2] filed by BNSF Railway Company [Service Date: 09/24/2012] [12-7085] (Boutrous, Theodore)
10/01/2012	 12 pg, 249.55 KB	<i>PUBLIC (REDACTED)</i> RESPONSE IN OPPOSITION FILED [1397381] by Carter Distributing Company, Dakota Granite Company, Donnelly Commodities Incorporated, Dust Pro, Inc., Nyrstar Taylor Chemicals, Inc., Olin Corporation, Strates Shows, Inc. and US Magnesium, LLC [Service Date: 10/01/2012 by CM/ECF NDA, Hand Delivery] Pages: 11-15. [12-7085] (Adams, William)
10/01/2012		UNDER SEAL RESPONSE IN OPPOSITION FILED [1397438] by Carter Distributing Company, Dakota Granite Company, Donnelly Commodities Incorporated, Dust Pro, Inc., Nyrstar Taylor Chemicals, Inc., Olin Corporation, Strates Shows, Inc. and US Magnesium, LLC to motion for leave to file [1394881-2] [Service Date: 10/01/2012 by CM/ECF NDA, US Mail] Pages: 1-10. [12-7085]
10/09/2012	 8 pg, 105.61 KB	REPLY FILED [1398644] by BNSF Railway Company to response [1397438-2], [1397381-2] [Service Date: 10/09/2012 by US Mail, CM/ECF NDA] Pages: 1-10. [12-7085] (Boutrous, Theodore)
11/02/2012	 2 pg, 42.84 KB	PER CURIAM ORDER filed [1402887] granting in part the motion for leave to file a separate brief [1394881-2] , setting briefing schedule and format: PETITIONERS Joint Brief due 12/03/2012. PETITIONER Supplemental Brief due 12/03/2012. Appendix due 12/03/2012. RESPONDENTS Brief due on 01/03/2013. PETITIONERS Reply Brief due 01/17/2013, PETITIONER Supplemental Reply Brief due 01/17/2013. Before Judges: Garland, Brown and Kavanaugh. [12-7085]
11/21/2012	 4 pg, 14.18 KB	UNOPPOSED MOTION filed [1406274] by BNSF Railway Company, CSX Transportation, Inc., Norfolk Southern Railway Company and Union Pacific Railroad Company concerning appendix deferral [Service Date: 11/21/2012] Pages: 1-10. [12-7085] (Phillips, Carter)
11/26/2012	 1 pg, 40.35 KB	CLERK'S ORDER filed [1406582] granting petitioners unopposed motion for permission to file a deferred appendix [1406274-2] , The following revised briefing schedule will now apply: Initial Joint Brief for all Petitioners and Initial Supplemental Brief for BNSF due 12/03/2012. RESPONDENT Brief due on 01/03/2013. Initial Reply Brief for Petitioners and Initial Supplemental Reply Brief for BNSF due 01/17/2013. Deferred Appendix due 01/24/2013. Final Briefs due 02/07/2013. [12-7085]
12/03/2012	 12 pg, 35.29 KB	<i>PUBLIC (REDACTED)</i> PETITIONER BRIEF [1408048] filed by BNSF Railway Company [Service Date: 12/03/2012] Length of Brief: 1162 Words. [12-7085] (Boutrous, Theodore)
12/03/2012	 91 pg, 509.89 KB	JOINT PETITIONER BRIEF [1408054] filed by BNSF Railway Company, CSX Transportation, Inc., Norfolk Southern Railway Company and Union Pacific Railroad Company [Service Date: 12/03/2012] Length of Brief: 13,942 Words. [12-7085] (Phillips, Carter)
12/03/2012	 2 pg, 11.37 KB	NOTICE FILED [1408055] by BNSF Railway Company, CSX Transportation, Inc., Norfolk Southern Railway Company and Union Pacific Railroad Company of submission of paper filing. [Service Date: 12/03/2012] [12-7085] (Phillips, Carter)
12/03/2012	 4 pg, 92.4 KB	NOTICE FILED [1408059] by BNSF Railway Company of submission of paper filing. [Service Date: 12/03/2012] [12-7085] (Boutrous, Theodore)
12/03/2012		UNDER SEAL PETITIONER BRIEF [1408261] filed by BNSF Railway Company [Service Date: 12/03/2012] Length of Brief: 1162 words. [12-7085]

- 12/05/2012  UNDER SEAL PETITIONER BRIEF [1408689] filed by BNSF Railway Company, CSX Transportation, Inc., Norfolk Southern Railway Company and Union Pacific Railroad Company [Service Date: 11/03/2012] Length of Brief: 13,950 Words. [12-7085]
- 12/06/2012   MODIFIED PARTY FILER--NOTICE filed [1408733] by Chamber of Commerce of the United States of America of intention to participate as amicus curiae. [Disclosure Listing: Attached] [Service Date: 12/06/2012] [12-7085] (Stancil, Mark)
4 pg, 57.75 KB
- 12/10/2012   AMICUS FOR PETITIONER FINAL BRIEF [1409175] filed by Chamber of Commerce of the United States of America [Service Date: 12/10/2012] Length of Brief: 6,619 words. [12-7085] (Stancil, Mark)
41 pg, 220.93 KB
- 12/21/2012   UNOPPOSED MOTION filed [1411372] by BNSF Railway Company, CSX Transportation, Inc., Norfolk Southern Railway Company and Union Pacific Railroad Company to extend time to file brief [Service Date: 12/21/2012] Pages: 1-10. [12-7085] (Phillips, Carter)
4 pg, 15.87 KB
- 12/27/2012   CLERK'S ORDER filed [1412007] granting petitioners' unopposed motion to modify the briefing schedule [1411372-2], The following revised briefing schedule will now apply: RESPONDENT Brief due on 01/10/2013. PETITIONER Reply Brief due 01/31/2013. Deferred Appendix due 02/07/2013. Final Briefs due 02/21/2013. [12-7085]
1 pg, 39.82 KB
- 01/10/2013   *PUBLIC (REDACTED)* RESPONDENT BRIEF [1414592] filed by Carter Distributing Company, Dakota Granite Company, Donnelly Commodities Incorporated, Dust Pro, Inc., Nyrstar Taylor Chemicals, Inc., Olin Corporation, Strates Shows, Inc. and US Magnesium, LLC [Service Date: 01/10/2013] Length of Brief: 15196 words. [12-7085] (Neuwirth, Stephen)
87 pg, 3.41 MB
- 01/10/2013   NOTICE FILED [1414593] by Carter Distributing Company, Dakota Granite Company, Donnelly Commodities Incorporated, Dust Pro, Inc., Nyrstar Taylor Chemicals, Inc., Olin Corporation, Strates Shows, Inc. and US Magnesium, LLC of submission of paper filing. [Service Date: 01/10/2012] [12-7085] (Neuwirth, Stephen)
3 pg, 24.95 KB
- 01/11/2013  UNDER SEAL RESPONDENT BRIEF [1414817] filed by Carter Distributing Company, Dakota Granite Company, Donnelly Commodities Incorporated, Dust Pro, Inc., Nyrstar Taylor Chemicals, Inc., Olin Corporation, Strates Shows, Inc. and US Magnesium, LLC [Service Date: 01/11/2013] Length of Brief: In compliance. [12-7085]
- 01/31/2013   *JOINT* PETITIONER REPLY BRIEF [1418247] filed by BNSF Railway Company, CSX Transportation, Inc., Norfolk Southern Railway Company and Union Pacific Railroad Company [Service Date: 01/31/2013] Length of Brief: 6,987 Words. [12-7085] (Phillips, Carter)
44 pg, 100.53 KB
- 01/31/2013   *JOINT* NOTICE FILED [1418248] by BNSF Railway Company, CSX Transportation, Inc., Norfolk Southern Railway Company and Union Pacific Railroad Company of submission of paper filing. [Service Date: 01/31/2013] [12-7085] (Phillips, Carter)
2 pg, 11.36 KB
- 01/31/2013  UNDER SEAL PETITIONER REPLY BRIEF [1418255] filed by BNSF Railway Company [Service Date: 01/31/2012] Length of Brief: 623 words. [12-7085]--[Edited 01/31/2013 by LMF]
- 01/31/2013  *JOINT* UNDER SEAL PETITIONER REPLY BRIEF [1418280] filed by BNSF Railway Company, CSX Transportation, Inc., Norfolk Southern Railway Company and Union Pacific Railroad Company [Service Date: 01/31/2013] Length of Brief: 6,977 words. [12-7085]
- 01/31/2013   *PUBLIC (REDACTED)* PETITIONER REPLY BRIEF [1418281] filed by BNSF Railway Company [Service Date: 01/31/2013] Length of Brief: 623 Words. [12-7085] (Boutrous, Theodore)
8 pg, 233.83 KB
- 01/31/2013   NOTICE FILED [1418285] by BNSF Railway Company of submission of paper filing. [Service Date: 01/31/2013] [12-7085] (Boutrous, Theodore)
3 pg, 91.9 KB
- 02/07/2013   *JOINT* APPENDIX [1419343] filed [Volumes: 1] [Service Date: 02/07/2013] [12-7085] (Phillips, Carter)
786 pg, 8.78 MB
- 02/07/2013   *JOINT* NOTICE FILED [1419345] by BNSF Railway Company, CSX Transportation, Inc., Norfolk Southern Railway Company and Union Pacific Railroad Company of submission of paper filing. [Service Date: 02/07/2013] [12-7085] (Phillips, Carter)
2 pg, 11.4 KB
- 02/07/2013  UNDER SEAL *JOINT* APPENDIX [1419397] filed [Volumes: 7] [12-7085]
- 02/21/2013   *PUBLIC (REDACTED)* RESPONDENT FINAL BRIEF [1421641] filed by Carter Distributing Company, Dakota Granite Company, Donnelly Commodities Incorporated, Dust Pro, Inc., Nyrstar Taylor Chemicals, Inc., Olin Corporation, Strates Shows, Inc. and US Magnesium, LLC [Service Date: 02/21/2013] Length of Brief: 15184 words. [12-7085] (Neuwirth, Stephen)
86 pg, 3.18 MB

- 02/21/2013   NOTICE FILED [1421651] by Carter Distributing Company, Dakota Granite Company, Donnelly Commodities Incorporated, Dust Pro, Inc., Nyrstar Taylor Chemicals, Inc., Olin Corporation, Strates Shows, Inc. and US Magnesium, LLC of submission of paper filing. [Service Date: 02/21/2013] [12-7085] (Neuwirth, Stephen)
3 pg, 24.96 KB
- 02/21/2013   *PUBLIC (REDACTED)* PETITIONER FINAL BRIEF [1421696] filed by BNSF Railway Company, CSX Transportation, Inc., Norfolk Southern Railway Company and Union Pacific Railroad Company [Service Date: 02/21/2013] Length of Brief: 13,929 Words. [12-7085] (Phillips, Carter)
91 pg, 2.25 MB
- 02/21/2013   *PUBLIC (REDACTED)* PETITIONER FINAL REPLY BRIEF [1421698] filed by BNSF Railway Company, CSX Transportation, Inc., Norfolk Southern Railway Company and Union Pacific Railroad Company [Service Date: 02/21/2013] Length of Brief: 6,985 Words. [12-7085] (Phillips, Carter)
44 pg, 104.69 KB
- 02/21/2013   NOTICE FILED [1421699] by BNSF Railway Company, CSX Transportation, Inc., Norfolk Southern Railway Company and Union Pacific Railroad Company of submission of paper filing. [Service Date: 02/21/2013] [12-7085] (Phillips, Carter)
2 pg, 11.42 KB
- 02/21/2013   NOTICE FILED [1421700] by BNSF Railway Company, CSX Transportation, Inc., Norfolk Southern Railway Company and Union Pacific Railroad Company of submission of paper filing. [Service Date: 02/21/2013] [12-7085] (Phillips, Carter)
2 pg, 11.42 KB
- 02/21/2013   *PUBLIC (REDACTED)* PETITIONER FINAL BRIEF [1421728] filed by BNSF Railway Company [Service Date: 02/21/2013] Length of Brief: 1087 Words. [12-7085] (Boutrous, Theodore)
12 pg, 120.95 KB
- 02/21/2013   *PUBLIC (REDACTED)* PETITIONER FINAL REPLY BRIEF [1421729] filed by BNSF Railway Company [Service Date: 02/21/2013] Length of Brief: 603 Words. [12-7085] (Boutrous, Theodore)
8 pg, 104.75 KB
- 02/21/2013   NOTICE FILED [1421730] by BNSF Railway Company of submission of paper filing. [Service Date: 02/21/2013] [12-7085] (Boutrous, Theodore)
3 pg, 91.98 KB
- 02/21/2013   NOTICE FILED [1421731] by BNSF Railway Company of submission of paper filing. [Service Date: 02/21/2013] [12-7085] (Boutrous, Theodore)
3 pg, 91.98 KB
- 02/21/2013  UNDER SEAL RESPONDENT FINAL BRIEF [1421735] filed by Carter Distributing Company, Dakota Granite Company, Donnelly Commodities Incorporated, Dust Pro, Inc., Nyrstar Taylor Chemicals, Inc., Olin Corporation, Strates Shows, Inc. and US Magnesium, LLC [Service Date: 02/21/2013] Length of Brief: 15,184 words. [12-7085]
- 02/21/2013  UNDER SEAL PETITIONER FINAL BRIEF [1421740] filed by BNSF Railway Company, CSX Transportation, Inc., Norfolk Southern Railway Company and Union Pacific Railroad Company [Service Date: 02/21/2013] Length of Brief: 13,936 words. [12-7085]
- 02/21/2013  UNDER SEAL PETITIONER FINAL REPLY BRIEF [1421744] filed by BNSF Railway Company, CSX Transportation, Inc., Norfolk Southern Railway Company and Union Pacific Railroad Company [Service Date: 02/21/2013] Length of Brief: 6,977 words. [12-7085]
- 02/21/2013  UNDER SEAL PETITIONER FINAL BRIEF [1421748] filed by BNSF Railway Company [Service Date: 02/21/2013] Length of Brief: 1087 words. [12-7085]
- 02/21/2013  UNDER SEAL PETITIONER FINAL REPLY BRIEF [1421750] filed by BNSF Railway Company [Service Date: 02/21/2013] Length of Brief: 608 words. [12-7085]
- 02/28/2013   CLERK'S ORDER filed [1422918] scheduling oral argument before Judges GARLAND, BROWN, SENTELLE Friday, 05/03/2013 AM [12-7085]
1 pg, 41.57 KB
- 03/22/2013   LETTER FILED [1426978] by Carter Distributing Company, Dakota Granite Company, Donnelly Commodities Incorporated, Dust Pro, Inc., Nyrstar Taylor Chemicals, Inc., Olin Corporation, Strates Shows, Inc. and US Magnesium, LLC pursuant to FRAP 28j advising of additional authorities [Service Date: 03/22/2013] [12-7085] (Neuwirth, Stephen)
37 pg, 230.88 KB
- 04/01/2013   LETTER FILED [1428318] by Carter Distributing Company, Dakota Granite Company, Donnelly Commodities Incorporated, Dust Pro, Inc., Nyrstar Taylor Chemicals, Inc., Olin Corporation, Strates Shows, Inc. and US Magnesium, LLC pursuant to FRAP 28j advising of additional authorities [Service Date: 04/01/2013] [12-7085] (Adams, William)
18 pg, 1.04 MB
- 04/03/2013   LETTER FILED [1428780] by BNSF Railway Company, CSX Transportation, Inc., Norfolk Southern Railway Company and Union Pacific Railroad Company pursuant to FRAP 28j advising of additional authorities [Service Date: 04/03/2013] [12-7085] (Phillips, Carter)
3 pg, 22.49 KB
- 04/03/2013   LETTER FILED [1428782] by BNSF Railway Company, CSX Transportation, Inc., Norfolk Southern Railway Company and Union Pacific Railroad Company pursuant to FRAP 28j advising of additional authorities [Service Date: 04/03/2013] [12-7085] (Phillips, Carter)
28 pg, 155.62 KB

04/22/2013	 	PER CURIAM ORDER filed [1431832] allocating oral argument time as follows: Petitioners -- 25 Minutes, Respondents -- 25 Minutes; directing party to file Form 72 notice of arguing attorney - due 04/26/2013. [12-7085]
	1 pg, 41.69 KB	
04/25/2013		FORM 72 submitted by arguing attorney, Carter G. Phillips, on behalf of Petitioners BNSF Railway Company, CSX Transportation, Inc., Norfolk Southern Railway Company and Union Pacific Railroad Company. [12-7085] (Phillips, Carter)
04/26/2013		FORM 72 submitted by arguing attorney, Stephen R. Neuwirth, on behalf of Respondents Carter Distributing Company, Dakota Granite Company, Donnelly Commodities Incorporated, Dust Pro, Inc., Nyrstar Taylor Chemicals, Inc., Olin Corporation, Strates Shows, Inc. and US Magnesium, LLC. [12-7085] (Neuwirth, Stephen)
05/03/2013	 	ORAL ARGUMENT HELD before Judges Garland, Brown and Sentelle. [12-7085]
	1 pg, 40.27 KB	
05/22/2013		TRANSCRIPT [1437488] of oral argument [12-7085]
08/09/2013	 	PER CURIAM JUDGMENT filed [1450875] ORDERED that interlocutory review under Rule 23(f) be granted. It is FURTHER ORDERED and ADJUDGED the District Court's class certification decision appealed from in this cause is hereby vacated and the case is remanded to permit the district court to reconsider its decision in light of Comcast Corp. v. Behrend, for the reasons in the accompanying opinion . Before Judges: Garland, Brown and Sentelle. [12-7085]
	1 pg, 57.79 KB	
08/09/2013	 	OPINION filed [1450877] (Pages: 18) for the Court by Judge Brown [12-7085]
	18 pg, 113.94 KB	
08/09/2013	 	CLERK'S ORDER filed [1450878] withholding issuance of the mandate. [12-7085]
	1 pg, 40.07 KB	
09/18/2013		MANDATE ISSUED to Clerk, District Court [12-7085]

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