

PUBLIC VERSION

BEFORE THE
SURFACE TRANSPORTATION BOARD

SUNBELT CHLOR ALKALI PARTNERSHIP)

Complainant,)

v.)

NORFOLK SOUTHERN RAILWAY COMPANY)

Defendant.)

Docket No. NOR 42130

ERRATA TO COMPLAINANT’S REBUTTAL EVIDENCE

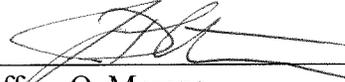
Complainant SunBelt Chlor Alkali Partnership (“SunBelt”) submits this errata to its Rebuttal Evidence, which it filed in the above-captioned proceeding on June 3, 2013. This errata makes the following corrections:

- **Page I-66:** In line 9, “Rebuttal Exhibit III-D-3” should be “Rebuttal Exhibit III-D-2.” In the second to last line of the main text, “SunBelt Reb. Ex. III-D-3, at 9-10, 19-22” should be “SunBelt Reb. Ex. III-D-2, at 9-10, 18-22.”
- **Page I-67:** In line 3, “Rebuttal Exhibit III-D-3” should be “Rebuttal Exhibit III-D-2.”
- **Page III-C-51:** In line 8, “Rebuttal Exhibit III-C-2” should be “Rebuttal Exhibit III-C-3.”

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Replacement pages containing these corrections are attached.

Respectfully submitted,



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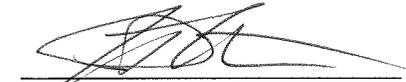
Dated: July 9, 2013

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CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of July 2013, I served a copy of the foregoing Errata to Complainant's Rebuttal Evidence, by email and U.S. mail, upon:

G. Paul Moates
Sidley Austin LLP
1501 K Street, N.W.
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Jason D. Tutrone

Replacement Pages

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Administration Department consisting of 52 persons, over four times the number of persons in SunBelt's plan. In AEPCO, the Board approved a 29-person staff for Legal and Administrative.⁴⁸ NS's proposal in this case is nearly double that benchmark.

For all of these reasons and those described in SunBelt's Rebuttal, NS's G&A costs should be rejected by the Board.

e. Maintenance of way

SunBelt described its MOW plan in Exhibit III-D-3 of its Opening Evidence. In Reply, NS proposed a MOW plan with exactly double SunBelt's staffing level. SunBelt explains in Rebuttal Exhibit III-D-2 that NS's plan is based on flawed assumptions and contains unnecessary departments, new positions, and extra personnel that would not be required for the MOW operations of the SBRR. In particular, SunBelt explains that NS's experts failed to take into account the fact that the SBRR system is a newly-constructed system, unlike the much larger and older NS system. SunBelt Reb. Ex. III-D-2, at 2-5.

NS also bases its MOW plan on practices of carriers thirty or forty years ago. In particular, NS's MOW plan for the SBRR is based on Roadmaster territories of just over 100 route miles, an anachronistic and unrealistic standard even compared to its own system and the modern-day practices of the industry, in which the length of Roadmaster territories has been trending upward due to a variety of factors. SunBelt Reb. Ex. III-D-2, at 9-10, 18-22. Because NS doubled the number of Roadmasters in SunBelt's MOW plan, it arbitrarily assumed that

83 (rejecting effort to add 37 members to the finance/accounting staff); WFA/Basin, at 44-45 (rejecting effort to add employees for the financial reporting function, the budgeting and purchasing function, the real estate function, and 10 miscellaneous clerks, analysts, managers, and directors); and Otter Tail, at C-9 (rejecting effort to revenue accounting and financial reporting employees, and revenue analysts to handle "such matters as overcharging, undercharging, miscoded bills, etc.")

⁴⁸ See AEPCO, slip op. 55, 144.

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nearly all MOW personnel and equipment automatically would double, without explanation or justification, which accounts for the vast majority of the difference between the parties' MOW costs. For these and the many other reasons detailed in Rebuttal Exhibit III-D-2, the Board should reject NS's MOW plan.

f. Insurance

In its Opening Evidence, SunBelt estimated the SBRR's insurance costs using the P&W's average insurance ratio of 3.89 percent of operating expenses from 2008 through 2011. SunBelt Op. III-D-21. NS claims that "SunBelt's calculation of the SBRR's insurance needs is done ... with no consideration of the unique needs of a SARR that is designed to transport an extraordinarily high percentage of TIH traffic." NS Reply at III-D-204. Therefore, although NS accepts SunBelt's evidence, it adds a prorated portion of NS's own insurance premiums, which NS claims is attributable to the movement of TIH commodities on its system, as catastrophic coverage.

In order to justify this adjustment, NS makes two fallacious claims. First, NS states that "the SBRR will have a markedly higher risk of a catastrophic TIH release than other railroads" simply because it carries a higher percentage of TIH traffic relative to total traffic than other railroads, including NS. NS Reply at III-D-206. Such a comparison is meaningless, however, because the SBRR handles far less TIH traffic in total than NS and over far shorter distances. By NS's logic, the SBRR would be a higher risk railroad than NS even if the SBRR handled only 100 cars and all 100 contained TIH materials. The total absolute amount of TIH traffic and the total car-miles transported are far more relevant than any ratio of those values to total system traffic. SunBelt Reb. III-D-47. Second, NS wrongly attributes all of its insurance costs for coverage in excess of { [REDACTED] } solely to TIH traffic. NS Reply, at III-D-209. NS's own Reply Evidence, at page III-D-233, provides an example of liability that CSXT incurred far in

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left Birmingham to the time it departed the station prior to New Orleans. This clearly is not a true transit time.

NS's whole point is moot in any case, since SunBelt's Rebuttal average transit times from the RTC model are shorter in all cases than NS's abridged "transit times." As shown in Rebuttal Exhibit III-C-3, the SunBelt's RTC transit times are on average 5 hours shorter than the times developed by NS.

It is important to keep in mind one other aspect of this comparison. The SBRR's speeds shown in Rebuttal Exhibit III-C-3 reflect the SBRR's peak period average train times, meaning they reflect the average times during the busiest point of the SBRR's shipping year at the peak year of its operations. In contrast, the NS speeds shown are from 2010 and 2011, when less traffic is moving over the SBRR system. Stated differently, the SBRR's transit times in its peak year of operation are still shorter than NS's current times, even when the so-called transit times are improperly calculated.

NS also alleges that "service quality" includes other factors besides delivery speed. Specifically, NS states that service reliability is also a factor, and that SunBelt has not shown that the SBRR will provide comparable service reliability to NS based on the trains SunBelt allegedly failed to include in its SBRR train list. NS's argument for "reliability" as a definitive quality metric is just a case of misdirection in order to divert the Board's attention from NS's failed operating plan. The simple fact that SunBelt is running the same trains as NS, and doing so at higher average speeds indicates the SunBelt is providing the same or better service than the incumbent. NS, which has developed completely new trains, has not demonstrated in any way that it would provide the same services NS currently provides to its own customers. Moreover, as SunBelt discussed above, it has included all the trains necessary to serve the SBRR's traffic