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July 26, 2011

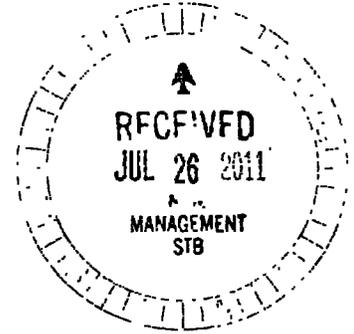
*By Messenger*

Cynthia Brown  
Chief, Section of Administration  
Office of Proceedings  
Surface Transportation Board  
395 E Street, S.W.  
Washington, DC 20423-0001

**FEE RECEIVED**

JUL 26 2011

**SURFACE  
TRANSPORTATION BOARD**



Re: STB Docket No. NOR 42130, *Sunbelt Chlor Alkali P'ship v. Norfolk Southern Ry. et al.*

Dear Ms. Brown:

An original and 10 copies of Sunbelt Chlor Alkali Partnership's complaint is enclosed for filing in the above referenced proceeding. An additional copy is also enclosed for the Surface Transportation Board to date stamp and return via messenger. To cover the filing fee that applies to this proceeding pursuant to 49 C.F.R. § 1002.2(a), a \$350 check is attached.

Best regards,

A handwritten signature in black ink, appearing to read "Jeffrey O. Moreno".

Jeffrey O. Moreno  
Jason D. Tutrone  
*Counsel for Sunbelt Chlor Alkali Partnership*

Enclosures

**ENTERED**  
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**FILED**  
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BEFORE THE  
SURFACE TRANSPORTATION BOARD

**FILED**

JUL 26 2011

**SURFACE  
TRANSPORTATION BOARD**

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SUNBELT CHLOR ALKALI PARTNERSHIP )  
 )  
 Complainant, )  
 )  
 v. )  
 )  
 NORFOLK SOUTHERN RAILWAY COMPANY )  
 )  
 and )  
 )  
 UNION PACIFIC RAILROAD COMPANY )  
 )  
 Defendants. )

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Docket No. NOR 42130

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Public Record**

**SURFACE  
TRANSPORTATION BOARD**

**COMPLAINT**

COMES NOW Complainant, SunBelt Chlor Alkali Partnership ("SunBelt"), 1638 Industrial Road, McIntosh, AL 36553, and files this Complaint against Defendants, Norfolk Southern Railway Company ("NS"), Three Commercial Place, Norfolk, VA 23510, and Union Pacific Railroad Company ("UP"), 1400 Douglas Street, Omaha, NE 68179. SunBelt brings this Complaint pursuant to 49 U.S.C. §§ 10701, 10704, 10707, 11701 and 11704, and 49 C.F.R. Part 1111. SunBelt requests that the Surface Transportation Board ("STB" or "Board") prescribe reasonable rates and service terms for the transportation of chlorine by NS and UP through rail service from McIntosh, AL to LaPorte, TX. SunBelt asks the Board to award damages, plus interest, to the extent that SunBelt has paid or will pay common carrier rates in excess of a reasonable maximum rate for such transportation, beginning on March 31, 2011. SunBelt asks the Board to determine the reasonableness of the NS and UP rates using the constrained market pricing principles and procedures adopted in *Coal Rate Guidelines - Nationwide*, Ex Parte No.

347 (Sub-No. 1), 1 I.C.C. 2d 520 (1985), as further refined and applied in subsequent decisions issued by the Interstate Commerce Commission and the Board.

In support of this Complaint, SunBelt states as follows:

**The Parties**

1. SunBelt is a general partnership organized under the laws of the State of Delaware. The SunBelt partnership was formed for the purpose of constructing and owning a chlor alkali production facility in McIntosh, Alabama. SunBelt was formed in 1996 as a 50/50 partnership between 1997 Chloralkali Venture, Inc. ("CVI"), which was a wholly owned subsidiary of The Geon Company (now called PolyOne Corp.), and Olin SunBelt, Inc., which was a wholly owned subsidiary of Olin Corporation ("Olin"). In 2011, Olin SunBelt II, Inc., (a new wholly owned subsidiary of Olin) acquired CVI's general partnership interest in SunBelt. SunBelt continues to own the McIntosh facility, and continues to exist and operate as a Delaware general partnership between Olin SunBelt, Inc. and Olin SunBelt II, Inc. Pursuant to an operating agreement between SunBelt and Olin Corporation, Olin is the agent of SunBelt for operating the McIntosh facility.

2. NS is a Class I common and contract carrier by railroad that engages in the transportation of property in interstate and intrastate commerce. Its headquarters are in Norfolk, Virginia. NS is subject to the Interstate Commerce Commission Termination Act of 1995 (49 U.S.C. §§ 10101 *et seq.*) and to the jurisdiction of the Board.

3. UP is a Class I common and contract carrier by railroad that engages in the transportation of property in interstate and intrastate commerce. Its headquarters are in Omaha, Nebraska. UP is subject to the Interstate Commerce Commission Termination Act of 1995 (49 U.S.C. §§ 10101 *et seq.*) and to the jurisdiction of the Board.

### **Description of the Issue Movement**

4. In this Complaint, SunBelt challenges the reasonableness of the common carrier rates charged by NS and UP for the transportation of chlorine from McIntosh, Alabama to LaPorte, Texas (the "Issue Movement"). Since March 31, 2011, NS and UP have transported the chlorine from McIntosh to LaPorte pursuant to a joint tariff rate.

5. NS transports the chlorine from the origin in McIntosh, AL to the interchange with UP in New Orleans, LA. The New Orleans Public Belt Railroad connects NS with UP.

6. UP transports the chlorine from the interchange with NS in New Orleans, LA to the destination in LaPorte, TX. The Port Terminal Railroad Association delivers the issue traffic at LaPorte.

### **The Challenged Rates**

7. Prior to March 31, 2011, NS and UP performed the Issue Movement pursuant to a joint contract rate in Contract REG-NS-C-19551, which was a contract between SunBelt, NS and UP. That contract, as amended, expired on March 30, 2011.

8. NS published a joint tariff rate with UP for the Issue Movement in NSRQ 70319, Item 101000.00, with an effective date of March 31, 2011 and no expiration date. The rate was \$11,763 per car and was not subject to a fuel surcharge.

9. On April 11, 2011, just ten days after NSRQ 70319 became effective, NS informed SunBelt that the tariff would expire in just twenty days, on May 1, 2011.

10. On April 11, 2011, NS also informed SunBelt that UP had published a joint rate for the Issue Movement in UPTF 4955, Item 1000-A, effective May 1, 2011. The rate was \$11,476 per car plus a fuel surcharge.

11. While the parties continued to negotiate their differences, NS and UP agreed to maintain in effect the NSRQ 70319 tariff through July 25, 2011. NSRQ 70319 is now scheduled to expire on July 29, 2011. Since March 31, 2011, SunBelt has shipped chlorine from McIntosh, AL to LaPorte, TX pursuant to the common carrier tariff rates in NSRQ 70319.

12. On July 22, 2011, UP informed Sunbelt that, upon expiration of NSRQ 70319, it would publish a Rule 11 proportional tariff rate from New Orleans to LaPorte, instead of the joint rate in UPTF-4955. Upon receiving this notice from UP, Sunbelt requested that NS publish a Rule 11 proportional tariff from McIntosh to New Orleans that could be used in a through movement to LaPorte. As of the filing of this Complaint, NS has not yet responded to Sunbelt's request.

13. In this Complaint, SunBelt challenges the reasonableness of the joint tariff rate in NSRQ 70319 and any subsequent proportional tariff rates that NS and UP shall publish for the Issue Movement.

#### **Jurisdictional Allegations**

14. NS and UP possess market dominance over the Issue Movement. Therefore, pursuant to 49 U.S.C. § 10707, the Board has jurisdiction over the rates and services provided by NS and UP and here challenged by SunBelt as unreasonable.

15. The rates charged by NS and UP and challenged by SunBelt for the Issue Movement exceed 180 percent of the variable cost for the service requested by SunBelt, as determined in accordance with 49 U.S.C. § 10707(d)(1).

16. There is a lack of effective competition from other rail carriers for the Issue Movement because NS is the only rail carrier that provides service at McIntosh, AL. There is a lack of effective competition from non-rail modes for the Issue Movement.

### **Requested Relief**

17. The NS and UP joint and proportional common carrier rates for handling the Issue Movement are unreasonable and violate 49 U.S.C. §§ 10701(d)(1) and 10702, which require NS and UP to establish reasonable rates. The Board should order NS and UP to cease these violations and it should prescribe maximum reasonable rates pursuant to 49 U.S.C. § 10704(a)(1).

18. The Board should award reparations to SunBelt, as provided under 49 U.S.C. § 11704(b). The reparations should compensate SunBelt for any and all amounts paid in excess of the reasonable rate prescribed by the Board pursuant to this proceeding, plus interest, beginning on March 31, 2011.

19. The Board should prescribe a maximum reasonable rate and award reparations for a combined period of ten years, beginning March 31, 2011.

20. This Complaint includes any and all adjustments to the challenged rates, including adjustments to the applicable fuel surcharges, and any new rates established by NS and/or UP for the services described herein.

WHEREFORE, Complainant, SunBelt Chlor Alkali Partnership, prays that the Board:

(1) require Defendants, Norfolk Southern Railway Company and Union Pacific Railroad, to answer the charges alleged herein;

(2) assign this Complaint for hearing under 49 C.F.R. Part 1111 and the stand-alone cost approach adopted in *Coal Rate Guidelines—Nationwide*, Ex Parte No. 347 (Sub-No. 1), 1 I.C.C. 2d 520 (1985);

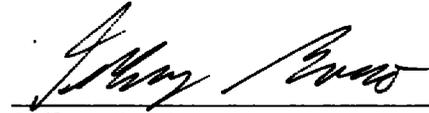
(3) after due hearing and investigation, find that the NS and UP common carrier rates applicable to the Issue Movement are unreasonable;

(4) prescribe just and reasonable rates and related rules and service terms for the future applicable to the Issue Movement, pursuant to 49 U.S.C. §§ 10704(a)(1) and 11701(a);

(5) award SunBelt reparations, plus applicable interest, in accordance with 49 U.S.C. § 11704 for unlawful rates set by NS and UP for the period beginning March 31, 2011 to the effective date of a decision by the Board prescribing just and reasonable rates; and

(6) grant such other and further relief to SunBelt as the Board may deem just and proper under the circumstances.

Respectfully submitted.



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Jeffrey O. Moreno  
Jason D. Tutrone  
Thompson Hine LLP  
1920 N Street, N.W., Suite 800  
Washington, D.C. 20036  
(202) 331-8800

July 26, 2011

## CERTIFICATE OF SERVICE

I hereby certify that I have caused the Complaint to be served by express overnight courier, this 26th day of July 2011, on:

James A Hixon  
Executive Vice President – Law & Corporate Relations  
Norfolk Southern Corporation  
Three Commercial Place  
Norfolk, VA 23510

J. Michael Hemmer  
Senior Vice President – Law and General Counsel  
Union Pacific Railroad  
1400 Douglas Street  
Omaha, NE 68179



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Jeffrey O. Moreno