

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

232357
ENTERED

Office of Proceedings
May 24, 2012
Part of
Public Record

SUNBELT CHLOR ALKALI PARTNERSHIP)
)
)
 Complainant,)
)
 v.)
)
 NORFOLK SOUTHERN RAILWAY COMPANY)
)
)
 Defendant.)
)
)

Docket No. NOR 42130

**ANSWER OF DEFENDANT NORFOLK SOUTHERN RAILWAY COMPANY TO
FIRST AMENDED COMPLAINT**

Pursuant to 49 C.F.R. § 1111.4 and other applicable law and authority, Defendant Norfolk Southern Railway Company (“NS”) respectfully submits this Answer to the First Amended Complaint filed by Complainant Sunbelt Chlor Alkali Partnership (“SunBelt”) in STB Docket No. 42130 on May 4, 2012 (“Amended Complaint”).

NS denies all of the allegations of the Amended Complaint except where this Answer specifically states otherwise.

In response to the unnumbered paragraph on page 1 of the Amended Complaint, NS denies that SunBelt has paid or will pay common carrier rates in excess of reasonable maximum levels for NS’s transportation of chlorine by rail between McIntosh, Alabama and New Orleans, Louisiana (the “Issue Movement”), denies that SunBelt is the real party in interest in this proceeding, and denies that SunBelt is entitled to any of the relief it seeks in this proceeding. The remainder of the unnumbered paragraph consists of a characterization of SunBelt’s Amended Complaint, to which no response is required. To the extent that any such response is required, NS denies the remaining allegations of this paragraph.

With respect to the numbered paragraphs of the Amended Complaint, NS responds as follows:

1. NS lacks sufficient information to admit or deny the allegations of Paragraph 1 of the Amended Complaint. To the extent a response is required, NS denies the allegations of Paragraph 1.

2. NS admits the first two sentences of Paragraph 2 of the Amended Complaint. With respect to the third sentence of Paragraph 2, NS admits that it is generally subject to the Interstate Commerce Commission Termination Act of 1995 and that some of its rates and practices are subject to the jurisdiction of the Board.

3. Paragraph 3 of the Amended Complaint consists of a characterization of SunBelt's Amended Complaint, to which no response is required. To the extent a response is required, NS admits that the Amended Complaint purports to challenge common carrier rates for NS's transportation of chlorine from McIntosh, AL, to New Orleans, LA. To the extent a further response is required, NS denies the remaining allegations of Paragraph 3.

4. With respect to the allegations in Paragraph 4 of the Amended Complaint, NS admits that prior to March 31, 2011, NS transported chlorine from McIntosh, AL, to La Porte, TX, pursuant to transportation contract NS-C-19551, which was a contract among NS, UP, and SunBelt Chlor Alkali Partnership. The contract was also signed by Olin Corporation as Operator for SunBelt Chlor Alkali Partnership. Contract NS-C-19551 expired on March 30, 2011. To the extent a further response is required, NS denies the remaining allegations of Paragraph 4.

5. NS admits the allegations of Paragraph 5 of the Amended Complaint.

6. With respect to the allegations in Paragraph 6 of the Amended Complaint, NS admits that SunBelt filed its original Complaint in this docket on July 26, 2011, and that SunBelt's original Complaint stated that it challenged "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." To the extent a further response is required, NS denies the remaining allegations of Paragraph 6.

7. With respect to the allegations of Paragraph 7 of the Amended Complaint, NS admits that it published a Rule 11 rate in NSRQ 65912 that governed NS's transportation of chlorine from McIntosh, AL, to New Orleans, LA, and that NS's Rule 11 rate became effective July 30, 2011. NS further admits that UP published a Rule 11 local rate governing transportation of chlorine from New Orleans, LA, to La Porte, TX, effective July 23, 2011. To the extent a further response is required, NS denies the remaining allegations of Paragraph 7.

8. With respect to the allegations of Paragraph 8 of the Amended Complaint, NS admits that UP filed a "Motion for Partial Dismissal or, in the Alternative, Expedited Determination of Jurisdiction Over Challenged Rates" on September 26, 2011 ("UP Motion") and that UP's Motion made the arguments referenced in Paragraph 8. NS takes no position as to the merits of UP's arguments. To the extent a further response is required, NS denies the remaining allegations of Paragraph 8.

9. With respect to the allegations of Paragraph 9 of the Amended Complaint, NS admits that SunBelt filed a Reply to the UP Motion on December 6, 2011, and that SunBelt's Reply made the arguments referenced in Paragraph 9 of the Amended Complaint. NS denies that SunBelt's arguments had any merit. To the extent a further response is required, NS denies the remaining allegations of Paragraph 9.

10. With respect to the allegations of Paragraph 10 of the Amended Complaint, NS admits that SunBelt filed a Motion for Clarification on December 6, 2011, and that SunBelt's Motion made the arguments referenced in Paragraph 10. NS denies that SunBelt's Motion for Clarification had any merit. To the extent a further response is required, NS denies the remaining allegations of Paragraph 10.

11. With respect to the allegations of Paragraph 11 of the Amended Complaint, NS admits that it published a new Rule 11 tariff for Issue Traffic moved between McIntosh, AL, and New Orleans, LA, under NS tariff NSRQ 65912 on December 13, 2011. That new NS tariff became effective January 2, 2012. NS further admits that it filed a Reply to the UP Motion on December 13, 2011, and that NS's Reply stated that NS was issuing the new tariff rate "[t]o eliminate any doubt or confusion about SunBelt's ability to maintain a separate challenge to the NS rate." To the extent a further response is required, NS denies the remaining allegations of Paragraph 11.

12. With respect to the allegations of Paragraph 12 of the Amended Complaint, NS admits that on January 6, 2012, NS filed its Reply to SunBelt's Motion for Clarification. NS further admits that its Reply made clear that, in the event that UP were dismissed as a defendant in this rate case, SunBelt could pursue a single challenge to the reasonableness of the NS Rule 11 rates for transportation of chlorine from McIntosh, AL, to New Orleans, LA, that had been in place since July 30, 2011. To the extent a further response is required, NS denies the remaining allegations of Paragraph 12.

13. With respect to the allegations of Paragraph 13 of the Amended Complaint, NS admits that on May 4, 2012, SunBelt filed a "Motion to Dismiss Union Pacific

Railroad Company.” NS lacks sufficient information to admit or deny the remaining allegations of Paragraph 13 of the Amended Complaint.

14. Paragraph 14 of the Amended Complaint consists of a characterization of SunBelt’s Amended Complaint, to which no response is required. To the extent a response is required, NS admits that the Amended Complaint purports to challenge NS’s rates for the transportation of chlorine between McIntosh, AL, and New Orleans, LA, beginning July 30, 2011. To the extent a further response is required, NS denies the remaining allegations of Paragraph 14.

15. Paragraph 15 states a legal conclusion to which no response is required. To the extent a response is required, NS denies Paragraph 15.

16. Paragraph 16 states a legal conclusion to which no response is required. To the extent a response is required, NS states that at this stage of this case, NS lacks sufficient information to admit or deny SunBelt’s allegations regarding revenue-to-variable cost ratios. To the extent a further response is required, NS denies Paragraph 16.

17. Paragraph 17 states a legal conclusion to which no response is required. To the extent a response is required, NS denies Paragraph 17.

18. Paragraph 18 states a legal conclusion to which no response is required. To the extent a response is necessary, NS denies Paragraph 18.

19. Paragraph 19 states a legal conclusion to which no response is required. To the extent a response is necessary, NS denies Paragraph 19.

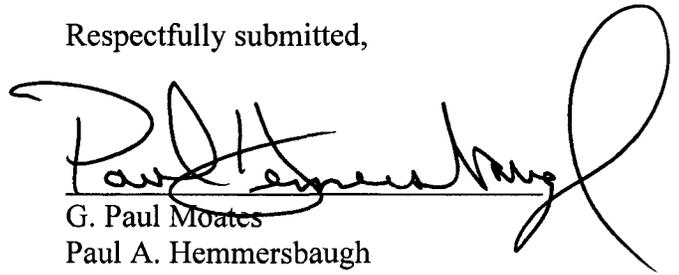
20. Paragraph 20 states a legal conclusion to which no response is required. To the extent a response is necessary, NS denies Paragraph 20.

21. Paragraph 21 states a legal conclusion to which no response is required.

To the extent that a response is necessary, NS denies Paragraph 21.

The unnumbered final paragraph of the First Amended Complaint (on page 6) states legal conclusions and requests for relief to which no response is required. To the extent a response is deemed necessary, NS denies the allegations, conclusions, and requests for relief in that final paragraph, including clauses numbered 1 through 6, and denies that SunBelt is entitled to any of the relief it seeks in this proceeding, or to any other relief.

Respectfully submitted,



G. Paul Moates
Paul A. Hemmersbaugh
Matthew J. Warren
Hanna M. Chouest
Marc A. Korman
Sidley Austin LLP
1501 K Street, N.W.
Washington, D.C. 20005
(202) 736-8000
(202) 736-8711 (fax)

John M. Scheib
David L. Coleman
Christine Friedman
Norfolk Southern Corporation
Three Commercial Place
Norfolk, VA 23510

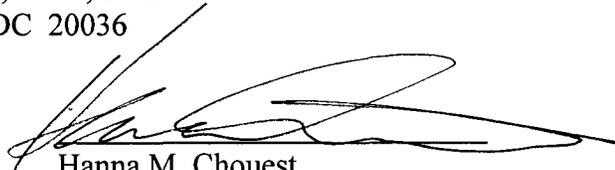
Counsel to Norfolk Southern Railway Company

Dated: May 24, 2012

CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of May, 2012, I caused a copy of the foregoing Answer of Norfolk Southern Railway Company to the First Amended Complaint of Sunbelt Chlor Alkali Partnership to be served by email and first class mail, postage prepaid, or more expeditious method of delivery on:

Jeffrey O. Moreno
Jason D. Tutrone
Thompson Hine LLP
1919 M Street, N.W., Suite 700
Washington, DC 20036



Hanna M. Chouest