

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

**ENTERED**  
Office of Proceedings  
May 15, 2012  
Part of  
Public Record

SUNBELT CHLOR ALKALI PARTNERSHIP	)	
	)	
Complainant,	)	
	)	
v.	)	Docket No. NOR 42130
	)	
NORFOLK SOUTHERN RAILWAY COMPANY	)	
	)	
Defendant.	)	
	)	

**MOTION TO WITHDRAW PETITION FOR SUBPOENA**

Defendant Norfolk Southern Railway Company (“NS”) hereby moves to withdraw its January 27, 2012 Petition for Subpoena directed to Oxy Vinyls, LP (“OxyVinyls”) and Occidental Chemical Corporation (“OxyChem”) without prejudice.<sup>1</sup> SunBelt’s recent settlement with former defendant Union Pacific Railroad Company has substantially narrowed the scope of this case, and in light of that narrowed scope NS is withdrawing the Petition for a non-party Subpoena.

Complainant SunBelt Chlor Alkali Partnership’s (“SunBelt’s”) initial Complaint challenged NS’s and Union Pacific’s (“UP’s”) common carrier rates for transporting SunBelt’s chlorine traffic from its facility in McIntosh, Alabama to an OxyVinyls facility in La Porte, Texas. (NS and UP interchange the interline issue traffic at New Orleans.) Because both the McIntosh origin and the La Porte destination are located near navigable waterways, NS sought discovery from SunBelt about potential barge transportation between McIntosh and La Porte. SunBelt responded to these requests in part by stating that, upon “information and belief,” OxyVinyls has no access to barge transportation. *See* Complainant’s Objections and Responses

<sup>1</sup> As explained in the Petition for Subpoena, both OxyVinyls and OxyChem are wholly-owned subsidiaries of Occidental Petroleum Corporation.

to Defendant Norfolk Southern Railway Company's First Set of Requests for Admission, Interrogatories, and Requests for Production of Documents, at 13. NS's Petition for Subpoena sought to test those "information and belief" assertions by petitioning the Board to issue a subpoena to OxyVinyls and OxyChem for information that would show whether or not OxyVinyls is capable of receiving chlorine by barge.

On May 4, 2012, SunBelt filed a Motion to Dismiss its Complaint against UP. In the Motion, SunBelt indicated that it has entered into a contract with UP governing UP's transportation for its portion of the McIntosh-La Porte movement. The same day, SunBelt also filed a First Amended Complaint restating its claims against NS and limiting the scope of its rate challenge to the NS common carrier rate for transportation between McIntosh and New Orleans.

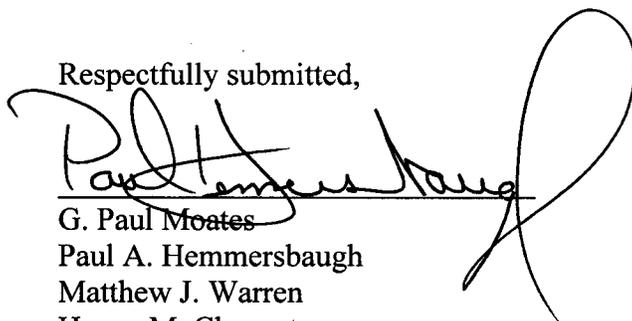
SunBelt's dismissal of UP and the concomitant limitation of SunBelt's rate challenge to the rate for NS's local movement of SunBelt traffic between McIntosh and New Orleans have significantly altered the scope of this case. In light of that alteration, NS moves to withdraw its Petition for Subpoena. By withdrawing the Petition, NS does not concede the validity of any of the arguments made by OxyChem, OxyVinyls, or SunBelt in opposition to the Petition, including but not limited to SunBelt's assertion that transportation alternatives that replicate the entire route of an interline movement cannot constitute effective competition to a Rule 11 rate.

### **CONCLUSION**

NS requests that the Board grant this Motion to Withdraw its Petition for Subpoena, without prejudice to its right to file another such petition should it become necessary or appropriate.

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

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Paul A. Hemmersbaugh", written over a horizontal line. The signature is stylized and includes a large loop at the end.

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

*Counsel to Norfolk Southern Railway Company*

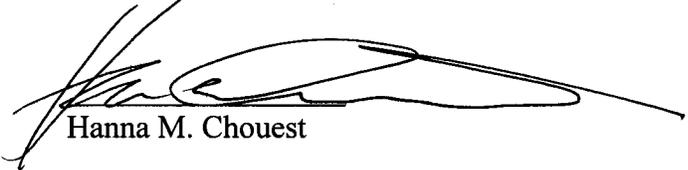
Dated: May 15, 2012

**CERTIFICATE OF SERVICE**

I hereby certify that on this 15th day of May 2012, I caused a copy of the foregoing Motion to Withdraw Norfolk Southern Railway Company's Petition for Subpoena 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  
1920 N Street, N.W., Suite 800  
Washington, DC 20036

Thomas W. Wilcox  
Svetlana Lubchenko  
GKG Law, P.C.  
1054 Thirty-First Street, N.W., Suite 200  
Washington, DC 20007



Hanna M. Chouest