

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.

Description of the Issue Movement

3. In this Complaint, SunBelt challenges the reasonableness of the common carrier rate charged by NS for the transportation of chlorine from McIntosh, Alabama to New Orleans, LA (the “Issue Movement”). At New Orleans, the chlorine presently is interchanged with the Union Pacific Railroad Company (“UP”), which transports the chlorine to La Porte, TX pursuant to a contract with SunBelt.

The Challenged Rates

4. Prior to March 31, 2011, NS transported the Issue Movement as part of a joint contract rate in Contract REG-NS-C-19551, which was a contract between SunBelt, NS and UP for the through transportation of chlorine from McIntosh to LaPorte. That Contract, as amended, expired on March 30, 2011.

5. Upon expiration of the Contract, NS published a joint tariff rate with UP in NSRQ 70319, Item 101000.00, with an effective date of March 31, 2011 and no expiration date.

6. On July 26, 2011, SunBelt filed its original Complaint in this docket against both NS and UP, in which SunBelt challenged the reasonableness of their joint tariff rate for the transportation of chlorine from McIntosh, AL to La Porte, TX, and any subsequent tariff rates that NS and UP shall publish for that movement.

7. Effective July 30, 2011, NS published a proportional rate in NSRQ 65912 that applied to the transportation of chlorine from McIntosh, AL to New Orleans, LA when destined to La Porte, TX. Also effective July 30, 2011, UP published a local rate in UPTF 4955 to cover transportation of chlorine from New Orleans, LA to La Porte, TX. The combination of those rates comprised the through rate from McIntosh, AL to LaPorte, TX.

8. On September 26, 2011, UP filed a “Motion for Partial Dismissal or, in the Alternative, Expedited Determination of Jurisdiction Over Challenged Rates,” in this docket (“UP Motion”). UP alleged that market dominance should be evaluated independently for its local tariff rate from New Orleans, LA to La Porte, TX, and that no market dominance existed for that segment because of effective competition provided by BNSF Railway.

9. On December 6, 2011, SunBelt filed its Reply to UP’s Motion. SunBelt argued that the NS proportional rate precluded dismissal of UP because Board precedent held that

proportional rates were part of through rates that must be evaluated for reasonableness of the entire through movement. Therefore, SunBelt contended that market dominance must be determined for the entire through movement from McIntosh to La Porte, not just the UP segment from New Orleans to La Porte.

10. Also on December 6, 2011, SunBelt filed a “Motion for Clarification That Complainant is Entitled to Prescription of a Reasonable Joint Rate” (“SunBelt Motion”). In its Motion, SunBelt sought clarification that the challenged rate structure in this docket was the joint rate structure that was effective when SunBelt filed its original Complaint and that SunBelt should present stand-alone cost evidence in the form of a single stand-alone railroad.

11. On December 13, 2011, NS published a local rate from McIntosh, AL to New Orleans, LA in NSRQ 65912 to replace the proportional rate, effective January 2, 2012. On that same date, NS filed its Reply in support of the UP Motion. NS explained, on page 3, that it was replacing the proportional rate in NSRQ 65912 with a local rate “[t]o eliminate any doubt or confusion about SunBelt’s ability to maintain a separate challenge to the NS rate.”

12. On January 6, 2012, NS filed its Reply to SunBelt’s Motion for Clarification. In order “to eliminate any perceived unfairness” to SunBelt from the changing rate structures, NS stated that it would “waive any objection to SunBelt challenging NS’s former Rule 11 [proportional] rate as a local rate.”

13. On May 4, 2012, SunBelt filed a “Motion to Dismiss Union Pacific Railroad Company” because SunBelt has settled its dispute with UP over the reasonableness of UP’s local rate.

14. In this First Amended Complaint, SunBelt challenges the reasonableness of the proportional and local tariff rates in NSRQ 65912 for transportation of chlorine from McIntosh,

AL to New Orleans, LA, and any subsequent tariff rates that NS may publish for the Issue Movement.

Jurisdictional Allegations

15. NS possesses 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 here challenged by SunBelt as unreasonable.

16. The rates charged by NS 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).

17. 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

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

19. 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 July 30, 2011.

20. The Board should prescribe a maximum reasonable rate and award reparations for a combined period of ten years, beginning July 30, 2011.

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

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

- (1) require Defendant, Norfolk Southern Railway Company, 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 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 for the period beginning July 30, 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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May 4, 2012

CERTIFICATE OF SERVICE

I hereby certify that I have caused the foregoing "First Amended Complaint" to be served by both electronic mail and first class mail, this 4th day of May 2012, on:

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