

232045

**MORRISON | FOERSTER**

2000 PENNSYLVANIA AVE., NW  
WASHINGTON, D.C.  
20006-1888

TELEPHONE: 202.887.1500  
FACSIMILE: 202.887.0763

WWW.MOFO.COM

MORRISON & FOERSTER LLP  
NEW YORK, SAN FRANCISCO,  
LOS ANGELES, PALO ALTO,  
SACRAMENTO, SAN DIEGO,  
DENVER, NORTHERN VIRGINIA  
WASHINGTON, D.C.  
TOKYO, LONDON, BRUSSELS,  
BEIJING, SHANGHAI, HONG KONG

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Writer's Direct Contact  
(202) 887-1519  
DMeyer@mofo.com

**VIA ELECTRONIC FILING**

Cynthia T. Brown  
Chief, Section of Administration  
Office of Procedures  
Surface Transportation Board  
395 E Street, S.W.  
Washington, D.C. 20423-0001

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Public Record

**Re: Finance Docket No. 35517, *CF Industries, Inc. v. Indiana & Ohio Ry., Point Comfort Ry., & Michigan Shore R.R.***

Dear Ms. Brown:

Attached for filing in the above-referenced docket are the Rebuttal Comments of Norfolk Southern Railway Company.

Sincerely,



David L. Meyer

Attachment

cc (with attachment): John M. Scheib, Esq.

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**STB Finance Docket No. 35517**

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**CF INDUSTRIES, INC. v. INDIANA & OHIO RAILWAY COMPANY, POINT  
COMFORT RAILWAY COMPANY, & MICHIGAN SHORE RAILROAD, INC.**

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**REBUTTAL COMMENTS  
OF  
NORFOLK SOUTHERN RAILWAY COMPANY**

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James A. Hixon  
John M. Scheib  
David L. Coleman  
Norfolk Southern Railway Company  
Three Commercial Place  
Norfolk, VA 23510

David L. Meyer  
Anand Viswanathan  
Morrison & Foerster, LLP  
2000 Pennsylvania Ave., N.W.  
Washington, D.C. 20006

*Attorneys for Norfolk Southern Railway Company*

Dated: March 13, 2012

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**CF INDUSTRIES, INC. v. INDIANA & OHIO RAILWAY COMPANY, POINT  
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**REBUTTAL COMMENTS  
OF  
NORFOLK SOUTHERN RAILWAY COMPANY**

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Norfolk Southern Railway Company (“NS”) submits these rebuttal comments regarding a railroad’s ability to address safety and security concerns associated with the transportation of toxic inhalation hazards (“TIH”) and poisonous inhalation hazards (“PIH”) commodities (collectively, “TIH” commodities) by rail.

The record developed in this proceeding leaves no question that TIH commodities are deadly because of their very chemical composition. Indeed, many of them have been used as weapons in various wars from World War I to the Bosnian conflict. *Reply Comments of Norfolk Southern Railway*. STB Finance Docket No. 35517 (filed Feb. 27, 2012) (“NS Reply”) at 4-7. What has developed as the central question here is instead whether railroads are better situated than shippers who seek to exploit the Board processes to make judgments about the operating rules and procedures best suited to ensure that TIH commodities are transported safely. There is only one possible answer to this question: railroads, making decisions that implement and supplement the rules adopted by the expert federal agencies

(including the Federal Railroad Administration (“FRA”), the Pipeline and Hazardous Materials Safety Administration (“PHMSA”), the Transportation Security Administration (“TSA”)) have the requisite expertise, experience, and incentives to make sound decisions about safe railroad operating practices. Those operating judgments should not be subject to second guessing by shippers who bear little or no risk when they seek to invoke the regulatory authority of the Board to have railroad safety rules and practices declared “unreasonable.”

In these comments, NS first contends that many of the (often schizophrenic) arguments raised by American Chemistry Council et al. (“ACC”) and CF Industries, Inc. (“CF Industries”) regarding safety measures raise issues that are outside the Board’s regulatory authority and at a minimum are best left to the agencies responsible for rail safety. Second, NS reiterates that the burden of proof is squarely on the complainants despite their attempt to ignore the passage of the Staggers Rail Act of 1980 (“Staggers Act”) and the Interstate Commerce Commission Termination Act (“ICCTA”). Third, there is no place in this proceeding for assertions about the railroad’s level of rates or charges for its transportation services, and argument of that sort should be stricken. The Board should maintain the bright line that separates reasonable practices claims from rate reasonableness challenges, which among other things require a threshold finding of market dominance. Finally, NS explains that the suggestion that railroad operating rules must be published in tariffs is indefensible and unworkable, and should be rejected out of hand.

**I. CLAIMS OF UNREASONABLENESS PREDICATED ON SAFETY REGULATIONS PROMULGATED BY OTHER AGENCIES ARE OUTSIDE THE BOARD'S JURISDICTION**

Several commenters make arguments about rail safety regulations promulgated and enforced by other agencies that misunderstand the implications of those regulations for this Board's evaluation of challenges to the reasonableness of railroad operating rules and practices. Railroad safety rules that are consistent with and implement governing safety regulations may not be declared unreasonable. At the same time, claims that railroad safety rules would "violate" federal safety regulations are outside the jurisdiction of the Board to adjudicate.

There is no dispute that federal agencies extensively regulate rail safety and in particular the safety of TIIH transportation. *See* NS Reply at 14-16; *see also* Reply Comments of the Association of American Railroads, STB Finance Docket No. 35517 (filed Feb. 27, 2012) ("AAR Reply") at 3-5. Far from disputing this fact, other parties similarly discuss and seek to rely upon the extensive nature of federal safety requirements. *See, e.g.*, Opening Evidence of ACC, STB Finance Docket No. 35517 (filed Jan. 13, 2012) ("ACC Opening") at 4; *see also* Opening Evidence of the Dow Chemical Co., STB Finance Docket No. 33517 (filed Jan. 13, 2012) ("Dow Opening") at 11-14; Reply Evidence and Argument of ACC et al., STB Finance Docket No. 35517 (filed Feb 27, 2012) ("ACC Reply") at 9.

However, opponents of RailAmerica's rules and practices may not rely on this regime of safety regulation to support a Board determination of unreasonableness, for two reasons.

First, this is not a case where Congress or the agencies to which it has delegated railroad safety matters have determined that any steps the railroads might take beyond those specified in extant regulations are unnecessary to achieve safety and security goals. As NS

demonstrated in its Reply Comments, these safety regimes give railroads discretion to consider additional measures aimed at enhancing the level of safety and security. NS Reply at 15-16. In short, FRA, PHMSA, and TSA have expressly stated that their regulations set the floor and not the ceiling. *See, e.g.*, 74 Fed. Reg. 1793 (Jan. 13, 2009); 75 Fed. Reg. 20762 (Apr. 16, 2008); 71 Fed. Reg. 76873 (Dec. 21, 2006).<sup>1</sup>

Second, primary responsibility for rail safety matters rests with these other federal agencies, not the Board. This principle implements Congress' intended allocation of authority among the various agencies with responsibilities relating to railroads. And it has important implications in this case: (1) the Board may not conclude that railroad safety rules that are consistent with and implement federal safety regulations are unreasonable; (2) the Board lacks jurisdiction to determine that particular rules or practices violate governing rail safety regulations; and (3) the Board lacks the authority and expertise to micro-manage railroad safety practices.

The Board has often confirmed that it does not regulate safety, and that when issues involving safety arise the Board defers to the expertise of the safety regulators. In *National R.R. Passenger Corp. – Petition for Declaratory Order – Weight of Rail*, Finance Docket No. 33697 (served Jan. 31, 2003) (“*Weight of Rail*”), for example, the Board emphasized that “[t]he goal of our decisions in the Amtrak/Guilford proceedings has been to resolve matters related to access and rehabilitation, relying on FRA for its safety expertise.” Accordingly,

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<sup>1</sup> Although Congress has given railroads latitude to supplement federal safety rules with their own measures, it has expressly preempted state efforts to regulate rail safety in the fields covered by these federal safety regimes. *See* 49 U.S.C. § 20106; *see also, e.g., Driesen v. Iowa, Chicago & Eastern R.R.*, 777 F. Supp. 2d 1143, 1150 (N.D. Iowa 2011).

when that goal was met, the Board's "involvement [wa]s no longer needed or appropriate" and the proceeding was discontinued. The Board "expect[ed] that FRA will maintain oversight to the extent safety issues are concerned." *Id.* at 4. In the *Granite State Concrete* case, the Board explained its lack of authority and expertise over safety-related complaints.

The parties also raise issues related to rail safety matters. However, under Federal law, primary jurisdiction, expertise and oversight responsibility in rail safety matters are vested in the Secretary of the Department of Transportation, and delegated to the Administrator of the Federal Railroad Administration (FRA). 49 U.S.C. 20101 et seq.; 49 CFR 1.49. Of course, the Board also has responsibility for promoting a safe rail transportation system, 49 U.S.C. 10101(8), but each of the two agencies recognizes the other's expertise, and both agencies exercise their authority in complementary fashion. FRA has expertise in the safety of all facets of railroad operations, while the Board has expertise in economic regulation and, where appropriate, assessment of environmental impacts. ... Rail safety matters are, thus, primarily a matter for FRA's oversight in the first instance.

*Granite State Concrete Co., Inc. & Milford-Bennington R.R. Co., Inc. v. Boston & Maine Corp. & Springfield Terminal Ry.*, Docket No. 42083 (served Sept. 15, 2003) at 3 n.5; see also *Boston & Maine Corp. v. Surface Transportation Board*, 364 F.3d 318, 321 (D.C. Cir. 2004) ("primary jurisdiction over railroad safety belongs to the FRA, not the STB. See 49 U.S.C. § 103(c) ('The [FRA] Administrator shall carry out – (1) duties and powers related to railroad safety vested in the Secretary [of Transportation]....')." CF Industries acknowledges that regulatory agencies other than the STB have "primary jurisdiction for matters of safety." CF Industries' Reply Argument, STB Finance Docket No. 35517 (filed Feb. 27, 2012) (hereinafter "CF Reply") at 3.

"Primary jurisdiction" may be a misnomer, however, insofar as the Board lacks *any* "jurisdiction" over rail safety matters and does not consider them at all except to the extent factual input from the expert agency may be helpful to some issue properly within the

Board's jurisdiction, such as the access and rehabilitation issues present in the *Weight of Rail* case. See *City of Alexandria, Virginia – Petition for Declaratory Order*, STB Finance Docket No. 35157 (served Feb. 17, 2009) at 6 (“Board has no jurisdiction over PHMSA regulations at issue”).

Against this backdrop, the schizophrenic positions of ACC and CF Industries must be rejected. On the one hand, ACC takes the position that the RailAmerica operating practices and rules at issue here are necessary to implement federal rail safety requirements. ACC Reply at 9. If that is so, the Board would lack authority to strike down those rules as unreasonable practices. ACC states, for example, that RailAmerica is “largely correct” in saying that “it is not actually doing anything that it is not already obligated to do under existing laws and regulations.” *Id.* ACC specifically asserts that federal regulatory requirements already require that RailAmerica (1) move TIH-laden cars at 10 mph consistent with applicable FRA speed restrictions for the track to which the rules apply, (2) inspect TIH-laden cars before accepting them in interchange, (3) expedite TIH-laden cars, and (4) receive specific paperwork before accepting a TIH-laden car. ACC Reply at 9-10.<sup>2</sup>

Having asserted that RailAmerica's rules and practices implement applicable federal regulatory requirements, ACC may not invoke the Board's authority to invalidate those same rules and practices. Rules that implement federal regulatory requirements cannot be unreasonable, and indeed the Board would lack authority to enter an order so holding. *Boston & Maine*, 364 F.3d at 321.

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<sup>2</sup> ACC appears to make this argument in support of its contention that the *level of RailAmerica's charges* for TIH transportation are excessive (*id.*), but that claim has no place in this unreasonable practice case. See Section IV below.

On the other hand, CF Industries argues that RailAmerica's "nationwide rollout" of its rules "is in violation of federal regulations," and that RailAmerica has also failed to comply with reporting requirements. CF Reply at 4-5. CF Industries contends that "deviat[ion]" from regulations shows that RailAmerica is "not attempting to increase safety in response to local hazards." *Id.* at 5. This argument should be rejected in light of the primary jurisdiction of the safety agencies to determine whether there is any such violation or deviation. Even apart from the jurisdictional infirmities, however, CF Industries' claim that any deviation would be "unreasonable" must also be rejected as inconsistent with the Board's own unreasonable practice jurisprudence. The Board has made clear as a general matter that its "role under the Interstate Commerce Act, as amended, is not to micromanage the railroad industry," see *Arkansas Electric Cooperative Corporation – Petition for Declaratory Order*, STB Finance Docket No 35305 (served Mar. 3, 2011) at 10. That bedrock principle applies even more strongly when issues of rail safety are at stake. Railroads must be able to adapt their operations in a manner designed to ensure safety and security, taking advantage of their own expertise and experience and the parameters set by the expert safety agencies.

## **II. THE BURDEN OF PROOF IS ON COMPLAINANTS AND NOT ON THE RESPONDING RAILROADS**

Opponents of RailAmerica's rules and practices ignore the burden they bear to prove that those rules and practices are unreasonable. Instead, they argue that RailAmerica has not shown "that the protocols are needed" (CF Reply at 3) and that "RailAmerica is offering little or nothing to justify STS" (ACC Reply at 10). RailAmerica has no obligation to justify anything here; the law places the burden on claimant CF Industries to show that RailAmerica's practices are affirmatively unreasonable.

ACC and CF Industries continue to want to live in a pre-Staggers Act world like the one in which the *Conrail* case was decided. But the Staggers Act and ICCTA became law and changed the regulatory world. As a result, *Conrail* is no longer good law. See NS Reply at 12-14. Their efforts to resuscitate *Conrail* fail.

First, CF Industries claim that “the facts and law in *Conrail* are very similar to those in this proceeding.” CF Reply at 3. The Board knows that the law is not similar. It has said so itself: “The *Conrail* decision was premised . . . on a statutory scheme predating the Staggers Act.” *North American Freight Cars v. BNSF Railway Co.*, STB Docket No. 42060 (Sub-No. 1) (served Jan. 24, 2007) at 8.<sup>3</sup> The governing law is now quite different. Whereas railroads previously bore the burden of proof to justify their proposed rates under investigation by the ICC, the burden is now on the complainant for all claims under ICCTA. NS Reply at 13-14; AAR Reply at 7-10.

Second, CF Industries contends that a railroad may not simply assert safety to justify a particular practice, and that “RailAmerica failed to provide any evidence showing why transporting TIH/PIH on its system is unusually hazardous.” CF Reply Comments at 4. But, again, it is not for the railroad to prove that a practice is reasonable. To the contrary, it is the complainant’s burden to show the practice is unreasonable – to the extent the Board has jurisdiction over the safety measures at issue here (see Section I above). See, e.g., *City of Lincoln v. STB*, 414 F.3d 858, 862 (8th Cir. 2005). This case must be decided under the modern legal framework, not in reliance on *Conrail* or other outdated cases in which the ICC

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<sup>3</sup> *Conrail* was also premised on facts that do not exist here. For example, there is no statutory backstop limiting liability for TIH incidents comparable to backstop established by the to the Price-Anderson Act for nuclear incidents.

required justifications for railroad practices and often sought to prescribe industry-wide solutions that denied railroads the flexibility that Congress decided they should have when it enacted the series of deregulatory statutes culminating in ICCTA.

Finally, CF Industries' suggestion that there is no proof "that transporting TIH/PIH ... is unusually hazardous" bears some attention. It is flatly wrong, and CF Industries' denial of these hazards only highlights why it is so important for railroads to be able to take steps to assure the safe handling of the TIH shipments that shippers like CF Industries insist on without any appreciation (much less internalization) of the risks. TIH commodities have not been developed for weapons use because they are benign. NS Reply at 4-7 (noting that chlorine was used as a weapon in World War I and that anhydrous ammonia was used as in "improvised chemical warfare" in the Bosnian war). The government has not developed extensive safety regulations regarding TIH chemicals and encouraged railroads to develop even more precautions because they are benign. Indeed, given the extensive information provided in this record by NS (*id.*), the Board should simply take judicial notice that TIH commodities are hazardous because of their very chemical composition and that activities involving these commodities, including transportation, are therefore unusually hazardous. The Board should also take judicial notice that shippers like CF Industries do not acknowledge the risks, thereby reemphasizing the appropriateness of railroads taking steps to address them.

**III. THE BOARD SHOULD NOT BE DISTRACTED BY THE IRRELEVANT DISCUSSIONS REGARDING THE LEVEL OF THE RATES AND CHARGES ASSESSED BY RAILAMERICA**

CF Industries and ACC spend considerable time discussing the level of the rates or charges that RailAmerica assesses for transporting TIH commodities. ACC Reply at 6-9; CF

Reply at 6-8.<sup>4</sup> Whether the rates that RailAmerica charges are reasonable is not properly an issue in a reasonable practices case. See *Union Pacific R.R. v. ICC*, 867 F.2d 646 (D.C. Cir. 1989) (“*Union Pacific*”); *Kansas City Power & Light Co. v. Union Pacific R.R.*, Docket No. 42095 (served May 19, 2008) (“*KCP&L*”) at 11 (“what is essentially a rate dispute should not be addressed via a claim of unreasonable practice”). Among other things, in order to challenge the reasonableness of any rate, the complainant must first establish that the railroad has market dominance under 49 U.S.C. § 10707.

The *Union Pacific* case is highly instructive here. That case – like this one – involved a tariff providing for special train service. Complainants there challenged the rate levels resulting from the special service. The court rejected efforts to treat the case as one involving unreasonable practices, even though the shippers argued that the “added costs incurred by the railroads were unwarranted” because the special service was not necessary. Such a challenge could only be brought as a rate reasonableness challenge, where the complainant would be required to prove market dominance. 867 F.2d at 649.<sup>5</sup>

Despite spending pages discussing RailAmerica’s supposed desire to “increase prices” (CF Reply at 6) and its “much higher rates” (ACC Reply at 6), both CF Industries and ACC ultimately acknowledge that rate levels are irrelevant here. ACC Reply at 8 (“The issue in this proceeding is the reasonableness of the STS requirements.”); CF Reply at 8 (“[T]he

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<sup>4</sup> NS has not reviewed the confidential or highly confidential information in this case and expresses no view on the rate levels allegedly charged. NS comments only on the legal regime applicable to the assertions made by CF Industries and ACC.

<sup>5</sup> In fact, the shippers in that case failed to prove market dominance. *Id.* at 650.

STB has already recognized that this proceeding is not fundamentally about rates.”).

Accordingly, the Board should strike the discussion of rate levels from the record.

The specific rate-related assertions made by CF Industries and ACC are a blatant effort to have the Board find RailAmerica’s practices unreasonable because of their impact on RailAmerica’s rate levels. Both complain about the potential rate implications of the expenses RailAmerica will incur in connection with its TIH service protocols. CF Reply at 6-7 (“excessive” costs); ACC Reply at 6 (shippers paying “much higher rates”). But shippers may not complain in this or any other unreasonable practices case about the effect on rates of individual expenses the railroad incurs, or investments it makes, to improve operational safety and security. Complaints about the rates RailAmerica might charge for priority train service are no more appropriate than complaints about rates arising from any number of other steps the railroad might take in the interest of safety, such as upgrading track conditions, hiring additional railroad police, staffing a yard office 24-hours-per-day, or installing fencing around a sensitive facility.

ACC’s effort to insert rate-related claims in this case is even more egregious. ACC seeks to dissect RailAmerica’s “single all-inclusive rate” (ACC Reply at 6) into three elements – *i.e.*, the “Transportation Rate,” the “Special Train Surcharge,” and the “Handling Surcharge” – based on an internal RailAmerica document supposedly describing how RailAmerica developed that rate. *See* ACC Reply at 13 (citing Opening of RailAmerica, Inc., *et al.*, STB Finance Docket No. 35517 (filed Jan. 13, 2012), Exh. B). It then complains that those separate elements are not separately cost justified. This sort of back-door rate challenge is foreclosed by well-established Board and judicial precedent. *See, e.g., Union Pacific*, 867 F.2d at 649; *KCP&L* at 11.

A railroad may charge any reasonable rate it chooses, and a customer is free to challenge the reasonableness of that rate if the transportation at issue is within the Board's regulatory authority and the railroad has market dominance. There is no dispute that RailAmerica's "single all-inclusive rate" reflects the *total* of what RailAmerica charges for TIH transportation. No matter how much dissection of RailAmerica's rate ACC may attempt, no part of that total may be carved off and treated as an unreasonable "practice". See *Union Pacific*, 867 F.2d at 649-50 (demanding that challenge to charge for special train service be evaluated as a rate reasonableness claim, requiring showing of market dominance). The Board recently confirmed that it will not seek to deconstruct the carrier's transportation rate in an unreasonable practices setting:

We also have practical concerns about trying to deconstruct a base rate. Costs – including fuel costs – can be among the factors that carriers consider in setting their base rates. But there are many other factors as well – such as general market conditions, carrier-specific financial condition, product demand and the competitive options available to particular shippers – all of which could influence how a carrier structures its pricing. The Board does not attempt to attribute values to each component of rail pricing actions or rule on a carrier's rate on a component-by-component basis.

*Cargill, Inc. v. BNSF Ry.*, Docket No. 42120 (served Jan 3, 2011) at 6; see also, e.g., *North American Freight Cars v. BNSF Ry.*, STB Docket No. 42060 (Sub-No. 1) at 7 (served Jan. 24, 2007) ("even if prior rates did fully incorporate the costs of indefinitely storing empty private cars ... under the law, BNSF may raise the price for its services, as long as the total amount paid is reasonable").

#### **IV. THE SUGGESTION THAT RAILROADS MUST THEIR PUBLISH OPERATING RULES IN TARIFFS IS INDEFENSIBLE AND UNWORKABLE**

ACC appears to take the position that railroads may not adopt or adhere to operating rules or practices unless they are published in tariffs. Specifically, ACC entitles one section

of its Reply Comments as follows: “The Failure of RailAmerica To Publish Its STS Requirements In A Tariff Is Itself An Unreasonable Practice.” ACC Reply at 3. The contents of that section, however, do not support the position that a failure to publish operating rules in a tariff is an unreasonable practice. ACC instead makes a different argument – that the railroad’s practices should be subject to an unreasonable practices claim regardless of whether they are in a tariff. *Id.* at 4 (arguing that nothing restricts “the Board’s jurisdiction over railroad practices to just those practices in a published tariff”). NS again observes that railroads have very broad latitude to adopt operating rules and the Board likely would exceed its jurisdiction if it sought to micromanage safety-related requirements that are consistent with federal regulation. *See* Section I above.

Nonetheless, there is one sentence in ACC’s Reply that seems to advance the argument that any railroad operating practice not embodied in a tariff is ipso facto unreasonable. ACC states: “In other words, the failure of RailAmerica to publish its dedicated train requirements in a tariff should render enforcement of that requirement *in and of itself* an unreasonable practice.” *Id.* at 4 (emphasis added). If ACC means to assert this position, it is plainly wrong as a matter of both law and practicality.

As a threshold matter, ACC ignores history. Railroads continue to have a legal obligation to disclose upon request their “rates and service terms” for common carrier transportation. 49 U.S.C. § 11101(b); 49 CFR 1300.2. But with the passage of ICCTA, “[c]arriers no longer have to file or maintain tariffs.” *Removal of Obsolete Rail Tariff Regulations*, 1 S.T.B. 4, 5, n.2 (1996).

To be sure, railroads must disclose their “rates and service terms” upon request, and they often do so via publication of tariffs. ACC appears to read this obligation too broadly.

The disclosure obligation of Section 11101(b) encompasses rates and other charges the shipper will be asked to pay and the common carrier transportation it will provide in exchange, as well as the terms with which the *shipper* must comply in order to receive the proffered rates, such as whether the rate is being offered for shipper-supplied equipment or requires a minimum number of cars per shipment.<sup>6</sup> But “service terms” cannot be interpreted to encompass all of the day-to-day operating practices the *railroad* will follow in the course of delivering the shipment to destination or an identified point of interchange.

Were the disclosure obligation of Section 11101 interpreted in the manner ACC suggests, it would be unworkable in the extreme. A railroad’s operating rules and practices are voluminous and constantly evolving. NS has five volumes of rules, each containing extensive detail that is frequently up-dated to reflect experience and changing conditions. NS’ rules and practices are embodied in its Operating Rules; Rules for Equipment Operation and Handling; Hazardous Materials Instructions for Rail; Safety and General Conduct Rules; and a System Timetable. In addition, operating and maintenance bulletins that address local conditions are issued on a virtually continuous basis. The notion that each of these rules and practices must be included within a published tariff is ludicrous.

As one illustration of the absurdity of ACC’s suggestion, ACC specifically lists speed restrictions as one of the operating practices about which it complains.<sup>7</sup> But it would be

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<sup>6</sup> See 49 U.S.C. § 10102(9) (defining “transportation” to include “services related to that movement”).

<sup>7</sup> NS also notes that bona fide speed restrictions are not within the Board’s jurisdiction. 49 U.S.C. § 20111 (providing exclusive jurisdiction to the Secretary of Transportation regarding a violation of a railroad safety regulation); 49 U.S.C. § 20112 (permitting Secretary of Transportation to request the Attorney General bring a civil action to enjoin or enforce a railroad safety regulation).

(footnote continued on next page ...)

impossible for a railroad to republish tariffs every time it changes the speed restriction on a line of railroad. Such changes are made frequently to address maintenance requirements, weather, and numerous other factors. Moreover, speed restrictions are only one component of a railroad's extensive operating rules. Taken to its extreme, ACC's position would mean that NS and other railroads would have to maintain and publish extraordinarily voluminous tariffs at great and utterly unnecessary expense, and contrary to Congress' intent. The Board should not require any such publication.

Respectfully submitted,

James A. Hixon  
John M. Scheib  
David L. Coleman  
Norfolk Southern Railway Company  
Three Commercial Place  
Norfolk, VA 23510



David L. Meyer  
Anand Viswanathan  
Morrison & Foerster, LLP  
2000 Pennsylvania Ave., N.W.  
Washington, D.C. 20006

*Attorneys for Norfolk Southern Railway Company*

Dated: March 13, 2012

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Track speed limits are set by FRA, but those speed limits are the maximum speed at which trains may operate over that particular line. It is not required that trains operate at that speed, and railroads can set lower speed restrictions as they deem necessary or appropriate, including to address weather and other factors.

**CERTIFICATE OF SERVICE**

I, Anand Viswanathan, certify that on this date a copy of the Rebuttal Comments of Norfolk Southern Railway Company, filed on March 13, 2012, was served by email or first-class mail, postage prepaid, on all parties of record.

  
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Anand Viswanathan

Dated: March 13, 2012