

Voting Conference, July 27, 2005

Statement of Alan Weinstein
Staff Attorney, STB Office of Proceedings

United States Department of Energy and United
States Department of Defense

v.

Baltimore & Ohio Railroad Company, et al.
Docket No. 38302S

United States Department of Energy and United
States Department of Defense

v.

Aberdeen & Rockfish Railroad Company, Et Al.
Docket No. 38376S

Good morning, Chairman Nober, Vice Chairman Buttrey, and Commissioner Mulvey.

The decision before you approves a settlement agreement that represents a significant step in resolving the oldest cases pending before the Board. In these two complaints, which were filed in March 1981 under section 229 of the Staggers Rail Act of 1980, the United States Departments of Energy and Defense (which I will refer to as the Government) sought reparations and a rate prescription against 21 railroads for the nationwide movement of spent nuclear fuel and related equipment. In 1986, the Board's predecessor, the Interstate Commerce Commission (ICC), found that the charges assessed for these movements constituted an unreasonable practice and prescribed new rates. That decision was remanded by a court in 1989. In 1994, the ICC ruled that those movements of spent nuclear fuel that were to be reprocessed and the empty return movement of the containers used for their transport were recyclables and as such were subject to the recyclables rate cap in what was then 49 U.S.C. 10731(e). The recyclables rate cap was repealed by the ICC Termination Act of 1995. Settlement negotiations between the Government and the railroad parties commenced in 1997.

The Government and Union Pacific Railroad Company (UP) now seek the Board's approval of a Settlement Agreement to resolve these complaints insofar as they involve UP. The

Board sought public comment on the proposed Agreement in November 2004. CSX Transportation, Inc., and Norfolk Southern Railway Company filed comments, and the Government and UP filed replies.

The draft decision approves the proposed Agreement. As requested by the Government and UP, the draft decision also prescribes the Agreement's rate and rate update methodologies as the maximum reasonable rate level, extinguishes UP's liability for reparations, and agrees not to entertain cross-complaints against UP in subsequent proceedings involving the Government's claims for reparations against remaining railroad parties that participated in through rates with UP. The draft decision clarifies that the terms and obligations of the Agreement and the prescribed rate and rate update methodologies will be binding only as between UP and the Government and will have no precedential effect as to the reasonableness of the rates or the common carrier obligations of non-consenting railroad parties in any future proceedings or negotiations.

The draft decision declines to declare now how the Board will address the remaining rate challenges in the event that other railroads do not settle with the Government. It does, however grant the Government's requests to continue holding these proceedings in abeyance subject to the Government reporting quarterly on the progress of negotiations with the remaining railroad parties.

We would be happy to answer any questions you may have. Thank you.