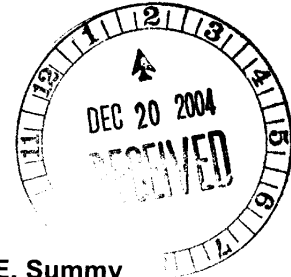




Norfolk Southern Corporation
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ENTERED December 17, 2004
Office of Proceedings

Via DHL Express

DEC 20 2004

Mr. Vernon A. Williams, Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D. C. 20006

Part of
Public Record

212807

RE: United States Department of Energy and United States Department
of Defense v. Baltimore & Ohio Railroad Company, et al.
- ICC Docket No. 38302S

United States Department of Energy and United States Department
of Defense v. Aberdeen & Rockfish Railroad Company, et al.
- ICC Docket No. 38376S

212808

Dear Mr. Williams:

Enclosed please find the original and ten copies of Comments of Norfolk Southern Railway Company to the Joint Motion of the U. S. Department of Energy, U. S. Department of Defense and Union Pacific Railroad Company for Approval of Settlement Agreement and Prescription of Rate Methodology. Also enclosed is a disk containing the comments in electronic format.

Very truly yours,

Greg E. Summy

GES:kch

Enclosures

Mr. Vernon A. Williams, Secretary
December 17, 2004
Page Two

cc: (w/encl.)

Stephen C. Skubel
Room 6H087 9 GC-32)
U. S. Department of Energy
1000 Independence Avenue, S.W.
Washington, DC 20585

Michael Glennon
Naval Sea Systems Command
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Washington, DC 20376-1150

Michael L. Rosenthal
Covington & Burling
1201 Pennsylvania Avenue, N. W.
Washington, DC 20004

Louise A. Rinn
Union Pacific Railroad Company
1400 Douglas Street, Stop 1580
Omaha, Nebraska 68179

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

United States Department of Energy	)
and	)
United States Department of Defense	)
v.	)
Baltimore & Ohio Railroad Company, et al.	)
United States Department of Energy	)
and	)
United States Department of Defense	)
v.	)
Aberdeen & Rockfish Railroad Company, et al.	)

ICC Docket No. 38302S

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ICC Docket No. 38376S

**COMMENTS OF NORFOLK SOUTHERN RAILWAY COMPANY TO THE
JOINT MOTION OF THE U. S. DEPARTMENT OF ENERGY, U. S.
DEPARTMENT OF DEFENSE AND UNION PACIFIC RAILROAD COMPANY
FOR APPROVAL OF SETTLEMENT AGREEMENT AND PRESCRIPTION OF
RATE METHODOLOGY**

Norfolk Southern Railway Company ("NSR"), as a party to the above captioned proceedings files these Comments in response to the Joint Motion of the U. S. Department of Energy ("DOE"), the U. S. Department of Defense ("DOD") (collectively referred to as the "Government") and Union Pacific Railroad Company ("UP") for Approval of Settlement Agreement and Prescription of Rate Methodology. Our Comments will be brief.

As mentioned in the Joint Motion, this proceeding has a long history. While the need for transportation of spent nuclear fuel appears to be comparable to that which was the case when this proceeding was initiated, external conditions have changed over the last 25 years. Certainly, there has always been a need for security in connection with the transportation of this most hazardous commodity. However, the need for security in all aspects of our lives in general and transportation in particular has increased greatly since 9/11. As such, what in the past may have been thought to be speculative concerns about terrorist interference with spent nuclear fuel shipments are now, unfortunately, within the realm of possibility, and therefore must be addressed when evaluating the transportation of such shipments. To the extent transporters are required to take extraordinary risks or perform services that are not usually performed by transporters, such increased risks, and the increased cost of performing such service, must be taken into consideration in determining an adequate rate for the transportation of this commodity.

NSR does not object to UP and the Government entering into a settlement of their disputes in the proceeding. As between themselves, those parties are free and welcome to settle litigation in the manner they see fit. However, NSR does not believe that the terms of the Settlement Agreement between UP and the Government should be binding on NSR, nor does NSR believe that the Board, as suggested by the Government's 5th point under its "Summary of Actions Requested from the Board" in the Joint Motion should establish ground rules for further proceedings in this matter that would be binding

on all affected parties. Further, NSR does not believe that there should be a finding of reasonableness as to the UP portion of the through rates that involve Norfolk Southern. This has never been the law, and there is no need to deviate from precedent in this matter.

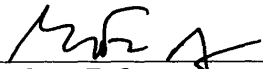
No other railroads are parties to the Settlement Agreement for which approval is sought. There is no "record" concerning the Settlement Agreement upon which "ground rules" could be "established", and moreover, there is no need at this point for *any* ground rules to be established. What NSR anticipates will happen¹ is that the Government is in the process of discussing settlement with all parties, and will contact NSR at some point to discuss settlement of this case. NSR is willing to enter into such discussions, and presumes that such settlement discussions will take place in a similar manner to the discussions which we understand took place between UP and the Government, over the course of a few years, with ample time by the parties to evaluate their options. However, each railroad has the right to determine whether to settle based on its own considerations, and should not be bound by any other settlement agreements, or by the imposition of "ground rules" that do not have as their foundation the participation of all affected parties.

One other point deserves specific mention. The Government has indicated that it would like the Board to make a finding concerning what constitutes common carrier service for this commodity, based upon the Settlement Agreement between UP and the Government. What parties to a settlement agreement may have agreed upon should not have any bearing on

what other parties might agree upon, and should not be determinative of what should constitute common carrier service for the entire industry. It would be very bad policy to allow a settlement agreement involving one railroad to dictate policy for the industry as a whole.

Therefore, NSR has no objection to the STB approving the Settlement Agreement between UP and the Government, but NSR does object to the STB taking any action in this proceeding other than just that. The issuance of a decision that would affect the conduct of the proceeding as a whole should not be made without a fully developed record. Such is not the situation here.

NORFOLK SOUTHERN RAILWAY COMPANY

By 
Greg E. Summy
James R. Paschall

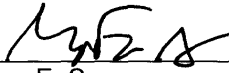
Attorneys for
Norfolk Southern Railway Company
Three Commercial Place
Norfolk, VA 23510
(757) 533-4890

Dated: December 17, 2004

¹ In fact, the DOE has advised NSR of this informally.

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was served upon Stephen C. Skubel, Room 6H087 9 GC-32) U. S. Department of Energy, 1000 Independence Avenue, S.W., Washington, DC 20585; Michael Glennon, Naval Sea Systems Command, 1333 Isaac Hull Avenue, S.E., Mail Stop 1150, Washington, DC 20376-1150; Michael L. Rosenthal, Covington & Burling, 1201 Pennsylvania Avenue, N. W., Washington, DC 20004; and Louise A. Rinn, Union Pacific Railroad Company, 1400 Douglas Street, Stop 1580, Omaha, Nebraska 68179, by first class mail, postage prepaid, on the 17th day of December, 2004.



Greg E. Summy
Attorney for Norfolk Southern
Railway Company