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September 7, 2006

Via DHL Express

Honorable Vernon A. Williams, Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20006

Re: STB Docket No. AB-290 (Sub-No. 254X), Norfolk Southern Railway Company - Discontinuance of Service Exemption - In Stanly County, NC
STB Docket No. AB-290 (Sub-No. 274X), Yadkin Railroad Company - Discontinuance of Service Exemption - In Stanly County, NC
STB Docket No. AB-149 (Sub-No. 2X), Winston-Salem Southbound Railway Company - Discontinuance of Service Exemption - in Stanly County, NC - Reply to Petition to Reopen

Dear Mr. Williams:

Norfolk Southern Railway Company, Yadkin Railroad Company and Winston-Salem Southbound Railway Company, Petitioners in the above dockets, submit for consideration the original and ten copies of the enclosed Reply to the Petition to Reopen filed by Alcoa, Inc. in these proceedings on September 5, 2006.

Very truly yours,

James R. Paschall

Enclosures

cc w/encl via DHL: Mr. Michael F. McBride
LeBoeuf, Lamb, Greene & MacRae LLP
1875 Connecticut Avenue, N.W.,
Washington, DC 20009

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BEFORE THE

SURFACE TRANSPORTATION BOARD

STB Docket No. AB-290 (Sub-No. 254X)

Norfolk Southern Railway Company -
Discontinuance of Service Exemption - In Stanly County, NC

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STB Docket No. AB-290 (Sub-No. 274X)

Yadkin Railroad Company -
Discontinuance of Service Exemption - In Stanly County, NC

STB Docket No. AB-149 (Sub-No. 2)

Winston-Salem Southbound Railway Company -
Discontinuance of Service Exemption - In Stanly County, NC

Petitioners' Reply to Alcoa Inc's Petition to Reopen

On September 5, 2006 Alcoa, Inc. ("Alcoa") filed a petition to reopen the Board's decision served August 11, 2006 in the subject dockets (the "August Decision"). In that decision, the Board granted Petitioners Norfolk Southern Railway Company ("NSR") and Yadkin Railroad Company ("YRC"), a wholly-owned subsidiary of NSR,[1] exemptions under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to discontinue rail service over 11.11 miles of railroad line between milepost WF-0.00 at Halls Ferry Junction, NC and milepost WF-11.11 at Badin, NC in Stanly County,

[1]YRC became a wholly-owned subsidiary of NSR in 2004 when NSR acquired the 9.6 per cent of the YRC stock that it did not own from Roane County, NC.

NC. The Board also granted Petitioner Winston-Salem Southbound Railway Company ("WSSB") an exemption to discontinue service over the approximately 5.21-mile portion of the Line between milepost WF-5.90 at Whitney, NC, and milepost WF-11.11 at Badin, NC. This is Petitioners Reply to Alcoa's Petition to Reopen.

Alcoa, the owner of the Line's right-of-way, track, and improvements, leased the Halls Ferry Jct-Whitney, NC line segment to YRC and the Whitney-Badin, NC line segment jointly to YRC and WSSB, a Class III switching carrier owned equally by NSR and CSX Transportation, Inc. ("CSXT")[2] under two leases dated March 28, 1916.[3] NSR has been the sole operator of the Line since 1996 under its lease of YRC's property and a 1996 haulage agreement to move cars for CSX Transportation, Inc. ("CSXT") over the Whitney-Badin segment that replaced WSSB switching service for CSXT traffic. The leases may be terminated without cause or condition on 60 days' notice to Alcoa. Alcoa has been the only shipper on the line since the mid to late 1990s when the only other shipper known to have been located on the line, Yadkin Brick Company, closed.

Petitioners have given Alcoa a new 60-day written notice of termination of the leases in order to give Alcoa time to make alternative transportation arrangements, be certain that the previous notices become effective, complete the environmental consultation required by the Board and conclude this proceeding. Thus, Petitioners will

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[2]WSSB is operated independently from NSR and CSXT with represented employees under standard rail labor agreements with standard wage and benefit rates and coverage under national benefit plans. A 1995 operating agreement between NSR and CSXT provides for the operation of WSSB as a switching carrier, which handles traffic in the account of its owners.

[3]The Lessor under the 1916 leases was Tallassee Power Company, the predecessor of Alcoa's power generation subsidiary.

not cease service to Badin, NC before October 16, 2006 despite the earlier effective date of the Board's exemption decision.

Reopening Standards. Board decisions in rail line abandonment or discontinuance of service proceedings[4] are administratively final upon the date they are served. 49 CFR § 1152.25(e)(2). Parties seeking further administrative action in such cases may file a petition to reopen the proceeding under 49 CFR § 1152.25(e) (4). 49 CFR § 1152.25(e)(2)(i). Under the Board's regulations at 49 CFR 1152.25(e)(4), a petition to reopen an administratively final action must state in detail the respects in which the challenged decision involves material error, or is affected by new evidence or substantially changed circumstances. A petition to reopen will be granted only upon a showing that the challenged action would be materially affected by one or more of those criteria. 49 CFR 1152.25(e)(2)(ii).

Introduction; Alcoa's Petition to Reopen Does Not Meet Criteria. Alcoa's petition to reopen does not meet its burden under the Board's regulations and prior precedent. Alcoa's petition is largely repetitive of its reply to the petition for exemption. Alcoa seeks to relitigate matters already considered and disposed of in the August Decision. Alcoa seeks to introduce new evidence that is not truly new but was available for, and even relied upon in, Alcoa's reply to the petition for exemption. Alcoa provides meager and insufficient justification for this untimely submission. Even if the newly raised information were in the record, however, it would not result in a material change in the

[4]References made to "abandonment proceedings" or "cases" or "decisions" for convenience also will apply to discontinuance cases unless distinguished. The joint petitions for exemption in the subject dockets will be referred to as the "petition for exemption."

Board's decision because it is irrelevant. Alcoa's fortuitously timed declaration concerning a modest short-term increase in traffic over the Badin Line in the near future, is not a changed circumstance that can result in a material change in the Board's decision. Alcoa does not show that these traffic levels and their duration are likely, much less assured or guaranteed, to produce revenue that would permit Petitioners to rehabilitate the line to keep it in operation or to operate the line profitably for the future. The traffic estimated by Alcoa is only 130 carloads of traffic over 12 to 18 months. Alcoa also does not guarantee any particular level or duration of traffic from its minimal existing or continuing operations at Badin. Therefore, Petitioners request that the Board deny Alcoa's petition to reopen.

Page Limitation. The Board should deny Alcoa's request to exceed the page limitation.[5] If Alcoa had presented the work papers, calculations and supporting documentation with its reply to the petition for exemption, as it should have, it could have kept within the page limitation. Alcoa's new presentation shows the deficiency in its original filing and the weakness of its case through massive additions of mostly previously available (and irrelevant) matter.[6] Alcoa's submission does not support a

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[5]We read the regulation at 49 C.F.R. 1152.27(e)(3) not to "encourage" parties to submit petitions to reopen limited to 30 pages in abandonment cases, as Alcoa states, but to require them to do so: "(3) Form. A petition to reopen and any reply shall not exceed 30 pages in length, including the index of subject matter, argument, and appendices or other attachments."

[6]It is disingenuous for Alcoa to state that Petitioners should not complain about the size of its petition to reopen when it could have, and should have, presented as a large a filing as it desired or needed to submit at the proper stage of the proceeding, in its reply to the petition for exemption. Alcoa had over two months to prepare that reply. Under the Board's rules governing replies to petitions to reopen in abandonment cases, Petitioners have had two days to prepare this one.

material change in the Board's decision. The purpose of a petition to reopen, and the Board's page limitation rule, is to focus on the previous record and the prior decision. It is not to force the Board to delay the conclusion of the proceeding to consider evidence and argument that was or could have been previously presented or is irrelevant. It is also not to force Petitioners to reply to such extensive submissions in the few days allowed for replies to petitions to reopen at this stage of the proceeding. The Board should not allow this disregard of its rules and processes.

Due Process. Alcoa's due process arguments do not relate to the criteria for reopening or reconsideration of Board decisions. Rather, they are collateral attacks on the Board's established rules of procedure for petitions to reopen. Clearly, Alcoa had a "meaningful opportunity" to make a full presentation in its reply in opposition to the petition for exemption. In fact Alcoa had 25 extra days in this case to consider and prepare a response to the petitions for exemption.[7] Due process does not require that Alcoa get a second bite[8] at the apple.[9] Alcoa's citations on this key due process

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[7]Alcoa had Petitioners' main arguments and financial evidence on March 30, 2006 but did not need to respond until June 5, 2006. The procedural schedule was delayed after Petitioners initialing so that Petitioners could add argument almost entirely devoted to the assertion that Alcoa would not become a rail carrier or inherit an active line of railroad upon the return of the Line to it from Petitioners.

[8]Or a third if its repetition of its major arguments in its environmental comments is counted. Or a fourth if its "lodging" of its court complaint and attachments is counted.

[9]See also *Big Stone - Grant Industrial Development and Transportation, L.L.C. - Construction Exemption - Ortonville, MN and Big Stone City, SD; Big Stone - Grant Industrial Development and Transportation, L.L.C. - Petition under 49 U.S.C. 10901(d)*, STB Finance Docket No. 32645, STB Finance Docket No. 32645 (Sub-No. 1) (STB served May 30, 2000).

argument in support of its submission of newly raised, but not new, and immaterial and irrelevant evidence are not on point. In fact, Alcoa's argument is frivolous as it was allowed a full and fair opportunity to present its case in its reply to the petition for exemption. See *Mathews* v. *Eldridge*, 424 U.S 319, 333 (1976).

Alcoa has two factual arguments in support of submitting newly raised matter. Neither have any weight. The argument that it was too much trouble to provide for a protective order during the period between March 30, 2006 and June 5, 2006 is not a sufficient justification for not presenting supporting documentation, work papers and calculations in its reply to the petition for exemption. Alcoa subsequently obtained a protective order for material it considered confidential for submission with the petition to reopen. The argument that this material is just substantiation for Mr. O'Connor's unsupported calculations and assertions that Alcoa assumed the Board would consider substantiated is so illogical that just stating it shows its deficiency.

Oral Argument. Our research discloses that the Board routinely reaches decisions in abandonment proceedings on the written record. We found only two abandonment proceedings before the Board in which a party requested oral argument. The Board denied the requests.[10] Abandonment cases are clearly susceptible to being handled on a written record. Alcoa presents no good reason to prolong this case for an oral argument on irrelevant or routine issues. Alcoa raises no novel, or even credible,

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[10] *CSX Transportation, Inc. - Abandonment Exemption - in Summit County, OH; Terminal Warehouse, Inc.* v. *CSX Transportation, Inc.*, STB Docket No. AB-55 (Sub-No. 631X) n1, STB Docket No. 42086 (STB served May 12, 2004); *The Burlington Northern and Santa Fe Railway Company- Abandonment Exemption - in Washington County, OR*, STB Docket No. AB-6 (Sub-No. 383X) (STB served Dec. 28, 2001).

issues or arguments for which oral hearing would be useful, much less necessary.[11]

Petition versus Application. Most Board's denials of petitions for exemption to abandon or discontinue service over rail lines have not been based solely or even predominantly on the existence of opposition to the filing or of traffic on the subject line or both. The Board has most often found that the petitioner presented an inadequate case, usually lacking any financial or cost and revenue evidence, in denying exemption petitions where protests were filed. When sufficient evidence, such as the financial evidence in accord with the Board regulations submitted by Petitioners in this case, presents a clear case for exemption, the Board has granted contested petitions for exemption to abandon or discontinue service over lines with traffic. In *San Pedro Railroad Operating Company, LLC - Abandonment Exemption - In Cochise County, AZ*, STB Docket No. AB-1081X, (STB served Feb. 3, 2006), the Board stated: "Chemical Lime's request for a formal proceeding is also unpersuasive. Such a proceeding would serve merely to further delay this abandonment with little or no prospect of providing any additional information that would change the result reached in the Board's August

[11]Alcoa also mentions the possibility of discovery but does not identify any relevant evidence that might be obtained through discovery or how discovery would have been necessary for or changed its reply to the petition. It mentions the complexity of the cost issues, which are not complex when the proper methodology is used, nor what could have been added to or changed in the filings in this case, since all possible relevant financial information – and much that is not relevant in Alcoa's filings – has already been presented Alcoa would have been unlikely to be able to obtain any discovery in this case if it had been filed as an application, even if Alcoa could have come up with some discovery requests. In *SWKR Operating Co. - Abandonment Exemption - in Cochise County, AZ*, STB Docket No. AB-441 (Sub-No. 2X) (STB served Feb. 14, 1997), the Board stated: "In abandonment cases, however, it [discovery] is not typically productive, and hence not typically pursued. Contested discovery may be granted under appropriate circumstances in particular abandonment proceedings, but only when the party seeking discovery shows that the information sought is relevant and might affect the result of the case, and that it ought to be obtained through discovery rather than some other means."

Decision."[12] In *San Joaquin Valley Railroad Company - Abandonment Exemption - in Kings and Fresno Counties, CA*, STB Docket No. AB-398 (Sub-No. 4X) (STB served March 5, 1999), the Board stated: "In short, the basic policy of the Board has remained unchanged. If the appropriate statutory showing is made, we will grant an abandonment, by application or exemption, whether or not protests or comments opposing it have been filed." Alcoa's arguments concerning Board policy and precedents on the granting of petitions for exemption in contested cases where there is traffic on the line are quite obviously wrong. The Board properly found that Petitioners did not need to file a formal application in this case and the proceeding should not be reopened to require them to do so.

Standards for Acceptance of New Evidence. Newly raised evidence is not the same as new evidence.[13] New evidence must in fact be new, not just new to the record.

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[12]See also *Norfolk Southern Railway Company - Abandonment Exemption - In Nottoway, Prince Edward, Cumberland, and Appomattox Counties, VA*, STB Docket No. AB-290 (Sub-No. 252X) (STB served Jan. 18, 2005); *Paducah & Louisville Railway, Inc. - Abandonment Exemption - In McCracken County, KY*, STB Docket No. AB-468 (Sub-No. 5X) (STB served June 20, 2003); *Burlington Northern Railroad Company - Abandonment Exemption - Between Mesa and Basin City, Franklin County, WA*, STB Docket No. AB-6 (Sub-No. 370X) (STB served Jan. 27, 1997); *Georgia Midland Railway Company and Southern Railway Company - Abandonment and Discontinuance of Service Exemption - In Spalding, Pike, Meriwether, Talbot, Harris, and Muscogee Counties, GA*, ICC Docket No. AB-290 (Sub-No. 3X) (ICC served May 25, 1988).

[13]*Railroad Ventures, Inc. -- Abandonment Exemption -- Between Youngstown, OH, and Darlington, PA, in Mahoning and Columbiana Counties, OH, and Beaver County, PA*, STB Docket No. AB-556 (Sub-No. 2X) (STB served Dec. 15, 2005); *Friends of Sierra R.R., Inc.* v. *ICC*, 881 F.2d 663 (9th Cir. 1989) *citing Union Mechling Corp.* v. *United States*, 185 U.S. App. D.C. 57, 566 F.2d 722, 726-27 (D.C.Cir. 1977) and *citing to see generally United States* v. *Northern Pacific Railway Co.*, 288 U.S. 490, 493-94, 77 L. Ed. 914, 53 S. Ct. 406 (1933) and cert. denied *Tuolumne Park & Recreation Dist.* v. *ICC*, 493 U.S. 1093, 110 S. Ct. 1166, 107 L. Ed. 2d 1069 (1990); *Platnick Brothers, Inc.* v. *Norfolk & Western Railway Co.*, 367 I.C.C. 782,

Thus, evidence that was reasonably available to the parties before and during the proceeding is not new evidence for purposes of a petition to reopen. See *Platnick Brothers*, 367 I.C.C. at 785.

Moreover, "[a] party should not withhold evidence it considers to be relevant until after it has obtained a result not to its liking, and then seek to have the proceeding reopened so that it may introduce that evidence." *B. Willis, C.P.A., Inc. -- Petition for Declaratory Order*, STB Finance Docket No. 34013 (STB served July 26, 2002).

Alcoa's Transload and Cost Evidence and Supporting Documentation is Not New Evidence. The Board stated a principle in a rate reasonableness proceeding that is equally applicable to any petition to reopen. "A party that does not put forward its best case as to all elements of its case assumes the risk of that strategic choice." *PPL Montana, LLC* v. *The Burlington Northern and Santa Fe Railway Company*, STB Docket No. 42054 (STB served June 30, 2003).

The newly proferred evidence and Alcoa statements do not disguise the fact that Alcoa's "new" matter could have been included in Alcoa's reply to the petition for exemption. Moreover, Alcoa's arguments either are a rehash of ones made in its reply to the petition for exemption and rejected in the Board's August Decision or are simply unsupported or irrelevant. They provide no basis to reopen the proceeding.

Alcoa submitted a transload cost estimate without support or documentation in its reply to the petition for exemption. Its newly proferred support for that estimate is not new, and in fact shows that Alcoa would only sustain a modest increase in

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785 (1983).

transportation costs for the limited amount of traffic now moving to and from its Badin works if Alcoa had to use that alternative means of transportation.

Alcoa admits that the additional documentation, calculation and work papers and additional explanation and argument now submitted by Mr. O'Connor were previously available but simply baldly asserts that it now submits this "substantiation" because the Board noted that Alcoa had not previously submitted it. Despite the precedent cited above and in Petitioners' reply to Alcoa's motion for protective order, and Secretary Williams's clear statement in his decision served September 1, 2006 on the protective order motion concerning newly raised as contrasted with actually new evidence[14], Alcoa has submitted this information anyway. This is clearly not new evidence, there is no way Alcoa could not have understood that and it should be rejected on that basis alone.

Maintenance Costs. Alcoa has spent a substantial portion of its argument on the proposition that NSR has not been performing maintenance on the Line and should not be allowed to claim maintenance costs. It also uses this argument as a justification for its unsupportable argument that rate reasonableness type revenue to cost ratios, based on system average inputs, should be used to determine the profitability of the Line in contrast to the methodology in the Board's regulations at 49 CFR 1152.30-11.52.36 that has been used uniformly in abandonment cases for thirty years.

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[14]Secretary Williams stated: "Evidence on appeal, however, cannot be considered new evidence if before and during the record building stage of the proceeding it was reasonably available to the party seeking to submit it. See, e.g., *Keokuk Junction Railway Company - Feeder Line Acquisition - Line of Toledo, Peoria and Western Railway Corporation between La Harpe and Hollis, IL*, STB Finance Docket No. 34335, slip op. at 4-5 (STB served Feb. 7, 2005)."

This argument is based on several mistaken premises. The most important is exposed in Mr. O'Connor's statement where he acknowledges at page 7 that NSR has performed what he characterizes as "minimal maintenance" on the Line. NSR has not been able to reply to the unfounded charge that the Line has not been maintained before now. NSR acknowledges that the Halls Ferry Jct-Whitney segment of the Line has not been rehabilitated or received other than routine maintenance. NSR also noted that the Whitney-Badin segment did not require imminent rehabilitation. Nonetheless, the entire Line has been maintained to the extent necessary to keep the Line in operation. In fact, tie levels on the Line have been maintained at least to FRA excepted standards and at some points FRA Class 1 standards. Track and bridge inspections and crossing signal test/repair are required by law and are being done on schedule. General track repairs are being done to the extent required to keep trains operating. The ditching (water flowing over or under the track) and brush cutting (trees falling across the track) are done when safe train operations are threatened. Safe train operations dictate the level of maintenance on this or any line. Additional work will be done if the level of traffic/revenue on the line justifies it to be done, which it has not in recent years. The verified statement of Stephen H. Morrell, page 88, noted that "Currently, the bank at milepost WF-7.00 will need attention in the near future. Other bank locations have been recently stabilized."

Alcoa's argument that the leases require Petitioners to maintain the Line, that they have not done so and that normalized maintenance costs should not be used to calculate the avoidable costs of maintaining the Line because the Line has not been

maintained is not only repetitive, but now that NSR has a chance to reply to it, is shown to have no factual basis. Moreover, the argument makes no sense, especially with respect to costs in the forecast year. NSR would be required to incur routine or normalized maintenance costs in that year, as it would in every year, to keep the Line in operation, regardless of the lease terms. It is an avoidable cost. The lease sets no standard for maintenance. NSR has maintained the Line to the extent needed to keep it in operation. [15]

NSR is entitled to include routine, normalized, annual maintenance costs in its cost calculations under the Board's regulations because such costs are both necessary and avoidable. Board decisions have supported use of this type of cost even in cases where maintenance has been deferred. NSR used normalized maintenance costs because the Board routinely accepts such costs in accordance with the costing regulations, which avoids controversy on this point.[16] In any event, the main premise for

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[15]Moreover, the Board has often stated that the Board does not undertake to interpret or enforce private contracts, including operating agreements such as the ODOT-UP lease in *Union Pacific Railroad Company - Discontinuance Exemption - in Oklahoma City, OK*, STB Docket No. AB-33 (Sub-No. 239X) (STB April 13, 2006), citing *The Kansas City Southern Railway Company -- Adverse Discontinuance Application -- A Line of Arkansas and Missouri Railroad Company,* STB Docket No. AB-103 (Sub-No. 14), slip op. at 7 (STB served Mar. 26, 1999), and case cited therein. There may be a few exceptions to this principle, but in view of the cited cases enforcement of a vague maintenance obligation in the 1916 leases or the evaluation of its standard or worth affecting the costing in this case is not one of them.

[16]The Board and the ICC have applied normalized maintenance calculations to show the cost of actual maintenance and deferred maintenance and have given them consideration in determining whether public convenience and necessity permit abandonment in numerous cases. See *Chicago and North Western Transp. Co.* - Abandonment, 366 I.C.C. 373, 377-378 (1982). See also *Union Pacific Railroad Company - Abandonment Exemption - in Pima County, AZ*, STB Docket No. AB-33 (Sub-No. 141X) (STB served February 16, 2000) (Right-of-way owned by City of Tucson): *Burlington Northern Railway Company – Abandonment - In Grays Harbor County, WA*, ICC Docket No. AB-6 (Sub-No. 207) (ICC decided Jan. 8, 1985).

Alcoa's unique costing alternative is not only insufficient, but can not be sustained on the facts. Alcoa did not present any alternative maintenance of way cost estimate but simply, and wrongly, alleged that NSR has not been maintaining the Line at all.

Crew Costs. NSR excluded all overtime pay from its crew cost figures. NSR included only 4.22 hours per day of crew costs on the Line for traversing the Line and return and for performing switching at Whitney for interchange traffic from the WSSB and at Badin for Alcoa's in-plant purposes. This is no doubt an understatement of these costs. See VS Kirchner, page 112. The crew goes on duty at Badin at Alcoa's request and for Alcoa's convenience. The crew performs frequent in-plant switching in addition to pickup and delivery of NSR traffic for which NSR receives no compensation in addition to the line-haul rate. Thus, Alcoa's criticisms of NSR's crew costs and suggestions that they may be overstated or affected by crews timing out are without foundation. NSR made sufficient, if not generous, adjustments to avoid overstatement. NSR made adjustments with respect to every crew cost point Alcoa now complains about but fails to recognize.

Capital Costs. NSR's cost exhibit states a zero net liquidation value, a zero administration cost, a return on value only for modest working capital in accordance with the Board's regulations and precedent, and zero return on value and zero holding gain (or loss) on both locomotives and road properties. See Exhibit 3, page 127. Alcoa's assertions that NSR has improperly included locomotive costs for a depreciated locomotive and improper capital costs and return on value are baseless.

Off-Branch Costs. NSR properly calculated off-branch costs under the

regulations. The purpose of the calculation is to show NSR's avoidable costs and revenues for traffic moving over the Line and other parts of NSR's system. The costs and revenues and revenue to cost ratios of interline carriers are not included in this calculation and have nothing to do with NSR's costs and revenues or the profitability of the Line. Alcoa's clearly irrelevant argument has no probative value. In addition, this information was obviously available and even relied upon in Alcoa's reply to the petition for exemption. It could have been submitted with that reply. It is also no surprise that Alcoa cites no regulation or precedent to support this unusual presentation.

Alcoa's Cost and Financial Evidence is Irrelevant, Not In Accordance With Board Regulations and Not Probative. In the previous sections, Petitioners have shown that Alcoa has presented no factual basis for its irrelevant and highly unusual costing presentation that is not in accord with the Board's regulations.

Alcoa also cites not a single STB or ICC abandonment case for its argument that the Board should disregard thirty years of agency decisions using the abandonment costing regulations to determine the profitability of the maintenance and operation of a rail line in abandonment cases and adopt a cruder form of measurement more appropriate for rate reasonableness determinations that is based on system average inputs.

Aside from rate reasonableness decisions, mostly from other agencies or court decisions on review of those agencies' decisions, Alcoa cites only *Abandonment Proceedings: Use of URCS in the Calculation of Off-Branch Costs*, 8 I.C.C. 2d 203 (1991) and the ICC's decision postponing the effective date for the general adoption of

the URCS methodology as authority for its costing argument. *Abandonment Proceedings* dealt only with the application of URCS to the off-branch cost component of abandonment costing in the context of the abandonment costing regulations at 49 C.F.R. § 1152.32(n) (then § 1152.31). That decision does not sanction or even suggest the use of revenue to cost ratios of the type used in rate reasonableness cases as an alternate basis for making decisions on the profitability or avoidable costs of operation of specific rail lines that are the subject of abandonment applications or petitions.

Our research disclosed 21 ICC and STB abandonment decisions that mention URCS since the decision in *Abandonment Proceedings*.[17] URCS is mentioned only with respect to off-branch costs in every one of them. The Board's abandonment costing methodology pursuant to the Board's regulations at 49 CFR 1152.30-36 is used in every one of them. None of these decisions use or suggest using rate reasonableness types of calculations as an alternate basis for determining a line's profitability.

Compared to the Board's abandonment costing methodology, which focuses on line specific financial data, URCS revenue to variable cost ratios are determined by a relatively crude costing algorithm based on system average inputs that would not provide an accurate picture of costs associated with branch line operations, particularly those with low traffic density. Because URCS is built on system averages, the economies of scale found on high density lines would serve to create an overly rosy picture of the costs to operate the light density branches when revenue to cost ratios

[17]See e.g. *Camas Prairie Railnet, Inc. - Abandonment - In Lewis, Nez Perce, and Idaho Counties, ID (Between Spalding and Grangeville, ID)*, STB Docket No. AB-564 (STB served Sept. 13, 2000).

based on URCS are used as a standard for evaluation of the profitability, or revenues and avoidable costs, of light density rail lines.[18] For this reason, among others, the abandonment costing regulations prescribe a detailed examination of the direct costs of operating lines proposed for abandonment.

NSR has provided, in notes and narrative, the methods and assumptions used to calculate its financial data and NSR has disclosed the input sources used (Uniform System of Accounts and Railroad Annual Report R-1). Also, NSR references its data computations to specific sections of 49 CFR 1152. NSR's data conform to the Board's regulations at 49 CFR 1152.30-36. Alcoa's submission does not. Alcoa did not even attempt to refute NSR's submission with direct evidence under the regulations.

In Public Law 94-210, the Railroad Revitalization and Regulatory Reform Act of 1976 (the 4R Act), enacted February 5, 1976, Congress required the ICC to define precisely the costs and revenues attributable to rail lines which are the subject of abandonment applications, and through the ICC's Rail Services Planning Office, to establish branch-line accounting standards. In adopting new regulations in response to these requirements, the ICC noted that if the Commission was to obtain accurate information concerning the profit or loss which resulted in operating a line, it was essential to require the carrier to provide the ICC with a computation of the avoidable costs, revenues attributable, and reasonable return on the value of the line which is the subject of the application, as these terms are defined in the agency's regulations and

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[18]URCS also makes no effort at assigning or allocating fixed (constant) costs among specific movements.

according to the methodology in the those regulations. *Abandonment of Railroad Lines and Discontinuance of Service*, 354 I.C.C. 129 (1976).

Alcoa's submission of revenue to variable cost ratios based on system averages is irrelevant and not in accord with the regulations. Neither Alcoa's current filing nor their previous filing demonstrate that Petitioners did not use the proper and more specific abandonment regulation methodology in calculating and presenting their financial, revenue and costing evidence. Alcoa did not and does not refute Petitioners' showing that the revenues from Alcoa's traffic were and will be insufficient to profitably support the operations and maintenance of the subject Line or would be sufficient to achieve a profitable operation of the line in the forecast year, even with the temporary, modest additional increase in traffic.

Alcoa's proposed general URCS revenue to variable cost methodology completely misses the point of the cost avoidability standards and line specific methodology adopted by the ICC for abandonment cases in 1976 and consistently applied to this date. This can not be obscured by the argument that the system average URCS costing, using general revenue to variable cost ratios rather than line specific avoidable costs, is preferable to some sort of "total cost" methodology dreamed up by Petitioners for which alternative methods can be applied. The methodology used by NSR and accepted by the Board in its decisions is the one prescribed in the Board's regulations, based on the avoidability concept. This concept is also embodied in the statute at 49 U.S.C. 10904. Alcoa presents its alternative argument because it cannot make a case using the abandonment costing regulations, not because it has come up

with some better way of making the avoidable cost calculation or because this case is somehow the first exception to the rules in thirty years. Alcoa has provided no good factual or legal reason for not using the abandonment regulations methodology.

In an abandonment case that may be the only one in which such irrelevant evidence and argument was tendered since 1976, *Illinois Central Gulf Railroad Company - Abandonment - In Christian, Macon, and Shelby Counties, IL,* ICC Docket No. AB-43 (Sub-No. 136) (ICC served May 6, 1986), the ICC briefly explained the irrelevance of the type of information tendered by Alcoa:

> It is not clear whether an approved contract under 49 U.S.C. 10713 is involved, or a publicly-filed rate after negotiations. If it is the former, we do not normally examine the underlying rates and costs, in the context of an abandonment proceeding, to determine profitability. However, ICG itself indicates that the rates are set only slightly above variable costs. Such rates are conclusively presumed to contribute to going concern value and presumed not to be below a reasonable minimum. 49 U.S.C. 10701a(c)(1-2). However, rates at this level do not establish profitability. That depends on an analysis of the revenue and cost data submitted pursuant to our abandonment regulations. That evidence includes more of ICG's long-run costs, including its cost-of-capital.

It is not surprising that such little authority exists on such an irrelevant argument.[19]

Effect of Transportation Contracts or Renegotiated Short Term Rates. Almost all of the transportation contracts or other rate information submitted in Alcoa's petition to reopen was in existence when Alcoa filed its reply to the petition for exemption. In fact,

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[19]Moreover, it surpasses belief that Petitioners would know so little about their own business as to abandon a line from which they derived significant profits, in fact profits so large as to exceed the levels derived from most of their traffic if Mr. O'Connor's presentation were to be taken seriously. Petitioners know their own avoidable costs and revenues for this Line and would not agitate a large and valued customer at other locations on NSR's lines without reason. That is among the reasons why Petitioners would not take rate increases on the little remaining traffic at this location, which has already wound down over 90% and appeared to be phasing out, in order to recover the full avoidable costs of operating the line.

Mr. O'Connor's statement relied in part on these previously available documents. The Board properly viewed the revenue to variable cost ratios and other calculations submitted by Alcoa with respect to its traffic as unsubstantiated, as well as irrelevant.

As just noted in the decision in *Illinois Central Gulf Railroad Company - Abandonment - In Christian, Macon, and Shelby Counties, IL,* ICC Docket No. AB-43 (Sub-No. 136) (ICC served May 6, 1986), the ICC noted that the agency does not normally examine the underlying rates and costs in transportation contracts, in the context of an abandonment proceeding, to determine profitability of a rail line. There is no reason to do so here.

In their reply to Alcoa's Motion for a Protective Order, Petitioners noted that the few other abandonment decisions they had found that refer to transportation contracts mention them only with respect to their expiration and the obvious lack of assurance of future traffic over a line without them or for some other minor point not having to do with the financial evidence or profitability of the line that was the subject of the case.

The transportation contracts or rate quotations presented in the petition to reopen are irrelevant because they are included either to support rate reasonableness type calculations of revenue to cost ratios or to show that rates are sometimes changed. Some of this information and these calculations pertain to the rates and rvc ratios of connecting carriers. Whether related to the rates, revenues or costs of Petitioners or third parties, Alcoa's calculations are based on system averages, which do not refute the more specific revenue and cost information submitted by Petitioners under the Board's abandonment costing regulations for this specific line. Alcoa's alternative

calculations have no possible value in the determination of the Petitioners' revenues and avoidable costs attributable to the subject Line under the regulations.

Ability to Increase Rates. In most abandonment cases, opponents to the abandonment argue that the railroad should reduce its rates to become more competitive with truck transportation. Although Alcoa suggests NSR could increase rates to recover its costs, in fact Alcoa no doubt would oppose the level of the increases necessary to do so because of the calculations presented by Mr. O'Connor with respect to the current rates. Alcoa actually does argue, inconsistently, that the traffic on the line must be profitable, but on the other hand, NSR can raise the rates if it is not.

There are many reasons why NSR might not or even could not increase rates to the level necessary to recover full avoidable costs of continuing to operate the Line other than that the rates are profitable. Alcoa admits the availability and its use of truck transportation but states that truck transport is less economical than rail with respect to some shipments. At a certain increased level, the rail rate would make trucking economical, of course, and the remaining rail traffic could be diverted to truck. Alcoa is a large NSR customer at other locations. NSR might prefer to work with Alcoa for a presumably short period of time (now over four years) on rates and service for a greatly reduce operation with an uncertain future in order to maintain good will. Indeed, NSR made any rate publications, agreements and renewals for Badin traffic for the last few years with the clear understanding that service to Badin would terminate at some future date and that the Line could not be kept in operation indefinitely at the greatly reduced traffic and revenue levels. The mere extension, renewal, or creation of a rate at a

certain level from or to Badin clearly does not prove that NSR's revenue in operating the Line for such a low traffic level was or is sufficient to cover its avoidable costs. Regardless of the complex reasons why certain rates might or might not be changed, Alcoa made this argument before. It is not new. It is not novel either because the same could be said with respect to the rates for the traffic on any line that is the subject of an abandonment filing on which there is still traffic. The Board has properly not given any consideration to the supposed flexibility to change rates as a rationale for denying an abandonment application or petition for exemption, as in this case.

Flaws and Speculation in O'Connor Criticism of Petitioners' Evidence. We have already exposed the flaws, errors and speculation in Alcoa's, and especially in Mr. O'Connor's, criticisms of NSR's avoidable cost presentation with respect to the normalized maintenance, crew costs and off-branch costs. There are other such flawed and speculative assertions in Alcoa's petition to reopen.

Although Mr. O'Connor's presentation of revenue to variable cost ratios is irrelevant under the Board's regulations and not probative, we nonetheless point out that Page 4 of Mr. O'Connor's testimony seems to show a simple average of the lanes in contrast to a weighted average by the lanes actually used. We also see no column marked "volume." These omissions could materially change the average.

In a strange and unsupported assertion, Alcoa says there "may be" (but they do not know if there is and have no support for) an unjustified acquisition premium related costs in NS's costs. They cite only CN's acquisition of IC, a matter that has no bearing at all on NSR's avoidable costs or revenues for this Line.

Mr. O'Connor says box car reloading may be (but he does not know that it is) feasible for box cars on certain lanes and that NS's model "may not" (but he does not know that it does not) adequately reflect these costs.

As we noted above, Mr. O'Connor has evidence that confirms that NSR forces have been performing maintenance, that he characterizes as "minimal" but does not describe, on the Line (O'Connor page 7). Thus, as explained in detail above, Alcoa's entire premise and argument that NSR has not maintained the Line and has incurred no costs to maintain the Line fails.

Mr. O'Connor continues to refer to the crew shed, which he describes as an office building, and which the Board can decide for what is best described as because there are pictures in the record. He still does not acknowledge that the 1916 lease requires Alcoa to provide such facilities at its expense.[20] He also does not take into account that NSR would need to increase rates to recover the costs of these facilities if it were required to pay for them. With respect to the crew shed and the locomotive storage track, Alcoa receives a significant benefit in having the crew and engine available at the start of a work day, or if they are not engaged in other work, to provide uncompensated in-plant switching for Alcoa. Furthermore, he places no value on these minor items.

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[20] Paragraph 4 of the 1916 Lease from Alcoa to YRC and WSSB provides in pertinent part: "...Lessor [Alcoa]...shall, moreover, from time to time hereafter, at its own cost and expense, make such additions to, betterments, or improvements of said line of railroad and terminal facilities, including extraordinary maintenance thereof, as may be necessary and reasonable for the safe and convenient operation of said line of railroad..."

Mr. O'Connor argues that the "abandonment model" or "NS cost model" is inapplicable to the situation at Badin, even though it is actually the Board's costing regulations which are applicable, and have been applicable in every other abandonment or discontinuance proceeding for thirty years, regardless of the ownership of the real estate and/or track and structures of the Line. The regulations and NSR's financial evidence in accordance with them do not rely on "total cost," whatever that is, but on the avoidable cost methodology in use for thirty years. This case is not so unique as to require the use of a different, and less line specific, methodology that does not determine avoidable costs of operation of the specific line that is the subject of the case.

Changed Circumstances; Temporary New Traffic. While it is difficult to believe that Alcoa suddenly came up with a plan to dismantle a pot line at the Badin facility just in time for the filing of a petition to reopen in this case, this is not the type of changed circumstance that justifies reopening the proceeding, reconsidering the decision or delaying the effective date of the exemption. In fact, it suggests just the opposite.

Alcoa's plan clearly indicates that there is little prospect of long-term increases in future traffic over the Line, only a brief temporary increase in traffic of 130 carloads according to Alcoa's estimate, then a continuation of the current low traffic levels or even a further reduced traffic over the Line. Alcoa in effect asks that Petitioners continue to operate the line at a loss, perhaps for long enough that they will be forced to make substantial rehabilitation expenditures, and so that Alcoa does not need to pay the increased costs of transporting the dismantled pot line or its continued low level of other shipments by truck or truck-rail transload. Yet, "[s]hippers cannot expect the

railroad to subsidize their business operations." *Camas Prairie Railnet, Inc. – Abandonment – in Lewis, Nez Perce, and Idaho Counties, ID*, STB Docket No. AB-564 (STB served Sept. 13, 2000).[21]

A few potential isolated or sporadic shipments do not indicate that a sustained increase in traffic on the Line is likely in the future nor that such traffic will be sufficient for Petitioners to recover the imminently necessary rehabilitation costs of the Halls Ferry Jct-Whitney segment or the avoidable costs of continued maintenance and operation of the entire Line. See *Illinois Central Railroad Company - Abandonment - In Jackson, Hinds County, MS*, ICC Docket No. AB-43 (Sub-No. 162) (ICC served December 5, 1995) where the ICC was not convince that a few large isolated movements of traffic over an 8-month period was sufficient evidence that traffic on the line at issue was likely to increase in the future.

This announcement of a proposed modest temporary future increases in traffic on the Line does not change the forecasted unprofitability of the Line's continued operation. Alcoa has not shown that sufficient revenue will be provided for NSR not to continue to incur substantial and probably additional avoidable losses from the continued maintenance and operation of the Line. The Board's restatement of

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[21]See also *Tennessee Railway Company - Abandonment Exemption - in Scott County, TN*, STB Docket No. AB-290 (Sub-No. 260X), STB served June 17, 2005; *Sierra Pacific Industries - Abandonment Exemption - In Amador County, CA*, STB Docket No. AB-512X, served February 25, 2005; *Idaho Northern & Pacific Railroad Company -- Abandonment Exemption – in Wallowa and Union Counties, OR*, STB Docket No. AB-433X, (STB served Dec. 13, 2001); *Burlington Northern Railroad Company--Abandonment Exemption--Between Mesa and Basin City, Franklin County, WA*, STB Docket No. AB-6 (Sub-No. 370X) (STB served Jan. 27, 1997); *Consolidated Rail Corporation--Abandonment Exemption--In Wicomico County, MD*, STB Docket No. AB-167 (Sub-No. 1176X) (STB served Feb. 19, 1997).

Petitioners' avoidable costs still shows that NSR's operation of the Line will result in a considerable forecast year avoidable loss from operations and that substantial rehabilitation costs may be incurred. Alcoa does not refute these figures or show how the small amount of temporary new traffic will change them. It only makes an argument based on system average revenue to variable cost ratios not in accordance with the Board's regulation.

Increases in future traffic levels over the Line, even the continuation of traffic at current levels, beyond the short period of the temporary traffic must be view as speculative, at best.[22] In any event, "[A] shipper may not insist upon the maintenance of a burdensome line solely for its benefit." See *Busboom Grain Company, Inc.* v. *ICC*, 856 F.2d 790, 795 (7th Cir. 1988) and cases cited therein.

Availability and Cost of Alternate Transportation. Alcoa admits that transportation alternatives for its Badin traffic exist and that it has in fact used them. Even for the heavy or oversize items to be transported in the dismantling of the pot line, transportation alternatives exist. Heavy and specialized haulers are identified in the

[22]Mere speculation about future traffic is not a sound or sufficient basis upon which to deny or revoke an application or petition for exemption for abandonment of or discontinuance of service over a rail line. See *Tennessee Railway Company - Abandonment Exemption - in Scott County, TN*, STB Docket No. AB-290 (Sub-No. 260X) (STB served June 17, 2005); *Sierra Pacific Industries - Abandonment Exemption - In Amador County, CA*, STB Docket No. AB-512X, served February 25, 2005; *Idaho Northern & Pacific Railroad Company - Abandonment Exemption - In Wallowa and Union Counties, OR*, STB Docket No. AB-433X, (STB served Dec. 13, 2001), p. 5-6; *Soo Line Railroad Company - Abandonment Exemption - In St. Paul, Ramsey County, MN*, STB Docket No. AB-57 (Sub-No. 46X) (STB served April 20, 1999), p. 7; *Burlington Northern Railroad Company - Abandonment Exemption - Between Mesa and Basin City, in Franklin County, WA*, STB Docket No. AB-6 (Sub-No. 370X) (STB served Jan. 27, 1997), p. 4; *CSX Transportation, Inc. - Abandonment Exemption - In Bell County, KY, and Claiborne County, TN*, Docket No. AB-55 (Sub-No. 478X) (ICC served Aug. 5, 1994) at 5-6.

petition for exemption. Alcoa simply does not want to pay the increased cost of alternative transportation, though it can well afford to do so. Instead, Alcoa wants NSR to continue to subsidize its operation at Badin.

In *Seaboard System Railroad, Inc. - Abandonment - in Shelby County, TN*, ICC Docket No. AB-55 (Sub-No. 135) (ICC decided June 6, 1985), the Commission noted that TVA maintained an electrical power generating substation at Memphis and employed the railroad for the transportation of electrical transformers to the manufacturer for repair two or three time per year. TVA did not consider truck service a viable option because of the need to design and fabricate large trailers to meet axle weight limits over Tennessee highways and the other cost and difficulties of moving the heavy loads over the highways. Of course, heavy haulage by truck or transload has advanced and become more available in the past twenty years. Even at that time, and in that case, however, the Commission concluded:

> Despite the number of alternative means of transportation available, including rail, barge, truck and combinations of those three, it is likely that many of the shippers will face added expense and inconvenience if abandonment occurs. However, inconvenience and added expense is a normal result of abandonment and is not of itself grounds for requiring a carrier to continue unprofitable operations....
>
> The serious adverse effect on one shipper, TVA, cannot be denied. Nevertheless, SBD should not be required to lose hundreds of thousands of dollars so that TVA can have available emergency rail service. TVA will have to make alternative arrangements because SBD will not be required to subsidize, at the expense of its other customers, TVA's operations.[23]

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[23] See also the *Wheeling & Lake Erie Railway Company - Abandonment Exemption - In Stark, Wayne, and Medina Counties, OH,* ICC Docket No. AB-227 (Sub-No. 2X) (ICC served August 5, 1994); *Burlington Northern Railroad Company -- Abandonment -- in Otoe and*

The fact that a shipper is likely to suffer harm and added expense is insufficient by itself to outweigh the detriment to the public interest caused by continued operation of uneconomic and excess railroad facilities, especially where alternative transportation is available to the shipper.[24] Nor does the fact that transportation alternatives are more expensive provide any basis for finding that a railroad is abusing its market power simply by attempting to exit a market where it can not rehabilitate, maintain and operate its line serving the market without losing money on the operation. It is well settled that a railroad will not be required to operate a rail line simply to prevent shippers from incurring higher transportation costs by truck.[25]

Shipper Option to Keep Line in Service. The Board has often noted that 49 U.S.C. 10904 provides a mechanism for those who want to continue rail service that the Board has authorized to be abandoned. Under section 10904, any financially responsible person may file an offer of financial assistance (OFA) to acquire a line or subsidize the losses of the existing operator. Here, Alcoa owns the Line and does not even need to go through the OFA process to acquire the Line and keep it in service if it

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Nemaha Counties, Nebraska, ICC Docket No. AB-6 (Sub-No. 332) (ICC served Sept. 3, 1991).

[24]See *San Pedro Railroad Operating Company, LLC - Abandonment Exemption - In Cochise County, AZ*, STB Docket No. AB-1081X (STB served Feb. 3, 2006); *Camas Prairie Railnet, Inc. – Abandonment – in Lewis, Nez Perce, and Idaho Counties, ID*, STB Docket No. AB-564 (STB served Sept. 13, 2000), citing *Colorado* v. *United States*, 271 U.S. 153 (1926); *Chicago and North Western Transp. Co. – Abandonment,* 354 I.C.C. 1, 7 (1977).

[25]See *Wisconsin Central Ltd. - Abandonment - In Ozaukee, Sheboygan and Manitowoc Counties, WI*, STB Docket No. AB-303 (Sub-No. 27), (STB served October 18, 2004); *CSX Transportation, Inc.-Abandonment Exemption-In Harrison County, WV*, STB Docket No. AB-55 (Sub-No. 563X) (STB served Sept. 25, 1998).

is truly economical to do so.

Criteria for Decision; Conclusion. The August Decision is in line with precedent. Board decisions that are factually similar to this case reach the same conclusion as the Board did in the August Decision. This most similar case is probably *Norfolk Southern Railway Company - Abandonment Exemption - In Nottoway, Prince Edward, Cumberland, and Appomattox Counties, VA*, STB Docket No. AB-290 (Sub-No. 252X) (STB served January 18, 2005).[26]

The ICC and the Board often have held that the fact that shippers are likely to incur some inconvenience and added expense is insufficient by itself to outweigh the detriment to the public interest of continued operation of uneconomic and excess railroad facilities, frequently citing *Chicago and North Western Transp. Co. -- Abandonment*, 354 I.C.C. 1, 7 (1977) and other cases cited in footnote 24. Here, the principles of those cases are also applicable and favor discontinuance of Petitioners' service over the Line. The several factors considered by the Board, and especially the continuing and increasing avoidable losses and unrecoverable rehabilitation costs attributable to the Line, support the Board's decision to grant the subject exemptions.[27]

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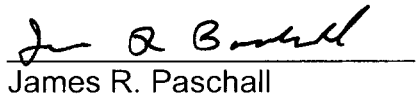
[26]Other comparable cases where the Board weighed the relevant facts and found operation of the line would be uneconomic while adequate transportation alternatives were available to the protesting shipper(s) are *Wisconsin Central Ltd. - Abandonment - In Ozaukee, Sheboygan and Manitowoc Counties, WI*, STB Docket No. AB-303 (Sub-No. 27), (STB served Oct. 18, 2004); and *Union Pacific Railroad Company – Abandonment Exemption – in Lancaster County, NE*, STB Docket No. AB-33 (Sub-No. 112X) (STB served Sept. 24, 1997).

[27]The record and the Board's findings demonstrate that the exemptions granted by the Board in this case also are fully consistent with the provisions of the Rail Transportation Policy, including 49 U.S.C. 10101 (4) (ensuring the development and maintenance of a sound rail

Moreover, regulation is not required to protect Alcoa, a much larger and more profitable company than NSR,[28] with considerable influence on NSR system-wide, from the abuse of market power by NSR with respect to the additional costs of the transportation of a few truckloads of freight per week in lieu of rail service to or from the Badin, NC facility for an indefinite, though not necessarily long-term, period of time.

Alcoa has not met the criteria for reopening. The Board should deny Alcoa's petition to reopen and Petitioners request the Board to do so.

Respectfully submitted,



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Dated: September 7, 2006

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system, (5) (fostering sound economic conditions in transportation), and (9) (encouraging honest and efficient management of rail carriers). Moreover, while Congress expressed an objective of preserving rail service where possible in the Staggers Act of 1980, Congress also expressed a policy of protecting the railroad from bearing the costs associated with unreasonable delay of its disposition of the line. See H. R. Rep. No. 96-1430, 96th Cong., 1st Sess. 125, reprinted in 1980 U.S.C.C.A.N. 4110, 4157 (the OFA provisions will "assist shippers who are sincerely interested in improving rail service, while at the same time protecting carriers from protracted legal proceedings which are calculated merely to tediously extend the abandonment process"). Alcoa's efforts to delay the effective date of the exemption in this case and to extend and complicate this proceeding obviously are not in accord with the objectives of Congress under the Staggers Act and the Interstate Commerce Commission Termination Act.

[28]In a news release dated July 10, 2006 which is publicly available on Alcoa's web site, Alcoa announced the highest quarterly income and revenue in company history. In fact, Alcoa's first-half 2006 net income of $1.35 billion was higher than full-year results for every year in the company's history except fiscal 2000. This is consistent with information Petitioners submitted in the petition for exemption. Mr. Alain Belda, Alcoa Chairman and CEO, is quoted as stating: "We are consistently delivering returns well in excess of the cost of capital, generating cash to fund strategic growth projects, and keeping our balance sheet strong."

CERTIFICATE OF SERVICE

I certify that the foregoing Reply to Alcoa Inc.'s September 5, 2006 Petition to Reopen in STB Docket Nos. AB-290 (Sub-No. 254X), AB-290 (Sub-No. 274X) and AB-149 (Sub-No. 2X) has been served on Mr. Michael F. McBride, LeBoeuf, Lamb, Greene & MacRae LLP, 1875 Connecticut Avenue, N.W., Washington, DC 20009, Attorney for Alcoa, Inc., via e-mail and DHL Express, this 7th day of September, 2006.

James R. Paschall

Dated: September 7, 2006