



SURFACE TRANSPORTATION BOARD

[Docket No. NOR 38302S; Docket No. NOR 38376S]

**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.**

AGENCY: Surface Transportation Board.

ACTION: Notice of Proposed Settlement Agreement, Issuance of Procedural Schedule.

SUMMARY: On December 1, 2025, the United States Department of Energy and the United States Department of Defense (the Government) and CSX Transportation, Inc. (CSX) (collectively, Movants) filed a motion requesting approval of an agreement (CSX Settlement Agreement) that would settle these rate reasonableness disputes as between them only. The Board is adopting a procedural schedule for filing comments and replies addressing their proposed settlement agreement.

DATES: Comments are due by April 16, 2026. Reply comments are due by May 18, 2026.

ADDRESSES: Comments and replies submitted in these proceedings, referring to Docket Nos. NOR 38302S and NOR 38376S, must be filed with the Board either via e-filing on the Board's website or in writing addressed to: Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001. In addition, one copy of comments must be sent to each of the following: (1) Jason M. Marques, CSX Transportation, Inc., 500 Water Street, J-150 Jacksonville, FL 32202; (2) Stephen C. Skubel, Assistant General Counsel for Litigation, Room 6H-087, U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, DC 20585; and (3) Sarah E. McKenzie,

Counsel, Naval Reactors, 1333 Isaac Hull Avenue, S.E. Stop 1150, Washington Navy Yard, DC 20376-1150. All comments and replies will be posted to the Board's website. **FOR FURTHER INFORMATION CONTACT:** Amy Ziehm, (202) 918-5462. If you require an accommodation under the Americans with Disabilities Act, please call (202) 245-0245.

SUPPLEMENTAL INFORMATION: In March 1981, the Government filed these complaints against 21 railroads (the Railroad Defendants) under section 229 of the Staggers Rail Act of 1980, Pub. L. No. 96-448, 94 Stat. 1895. The Government sought reparations and a rate prescription relating to the nationwide movement of spent nuclear fuel, other high-level radioactive wastes, and the empty containers (casks) and buffer and escort cars used for their movement (together, radioactive materials).

In 1986, the Board's predecessor, the Interstate Commerce Commission (ICC), found that the Railroad Defendants were engaging in an unreasonable practice by imposing substantial and unwarranted cost additives—above and beyond the regular train service rates—in an effort to avoid transporting these radioactive materials. The ICC directed the Railroad Defendants to cancel the existing rates and cost additives, prescribed new rates, and awarded reparations. See Commonwealth Edison Co. v. Aberdeen & Rockfish R.R., 2 I.C.C.2d 642 (1986). The United States Court of Appeals for the District of Columbia Circuit set aside and remanded the decision. See Union Pac. R.R. v. ICC, 867 F.2d 646 (D.C. Cir. 1989). On remand, the ICC ruled that the movement of these radioactive materials for reprocessing was subject to the rate cap on recyclables set out in former 49 U.S.C. 10731(e) and directed the parties to file revenue-to-variable cost (R/VC) evidence to resolve the remaining reparations and rate prescription issues. See U.S. Dep't of Energy v. Balt. & Ohio R.R., 10 I.C.C.2d 112 (1994). While judicial review of that decision was pending, Congress enacted the ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803, which repealed § 10731 in

its entirety and directed that all proceedings pending under the repealed statutory provision be terminated.

The Railroad Defendants petitioned the Board to dismiss the complaints in 1996, and, in 1997, they invited the Government to explore the possibility of settling the complaints. Discussions commenced on a nationwide settlement covering all the Railroad Defendants that might carry radioactive materials. See U.S. Dep't of Energy v. Balt. & Ohio R.R., NOR 38302S et al. (STB served Nov. 5, 2004). The Government subsequently chose to negotiate only with Union Pacific Railroad Company (UP), the destination carrier for most of the movements of radioactive materials that were to be covered by the nationwide settlement, after the parties concluded that there were potential antitrust problems in negotiating with the Railroad Defendants as a group. See id.

In 2004, the Government and UP moved for approval under 49 U.S.C. 10704 of a settlement agreement they had negotiated to resolve these complaints as between them only. The Board approved that settlement agreement in 2005 and directed the Government to file quarterly status reports on the progress of settlement negotiations with other railroads. See U.S. Dep't of Energy v. Balt. & Ohio R.R., NOR 38302S et al. (STB served Aug. 2, 2005). In 2012, BNSF Railway Company (BNSF) and the Government similarly moved for approval of a settlement agreement, and the Board approved that agreement in a decision served the next year. See U.S. Dep't of Energy v. Balt. & Ohio R.R., NOR 38302S et al. (STB served Aug. 26, 2013). Thereafter, in 2017, the Board approved a settlement agreement between the Government and Norfolk Southern Railway Company (NSR). See U.S. Dep't of Energy v. Balt. & Ohio R.R., NOR 38302S et al. (STB served June 28, 2017). Movants state that the settlement agreements with UP, BNSF, and NSR successfully resolved all rate-setting, shipping, and service determinations between those carriers and the Government.

Movants now jointly request that the Board approve the proposed CSX Settlement Agreement and prescribe the rate methodology set forth in it. (Joint Mot. 2, Dec. 1, 2025.) They assert that the agreement achieves a long-term, system-wide settlement, as between CSX and the Government, of all rate and service issues related to spent nuclear fuel and related traffic now moving or likely to move in the future. (Id. at 12.) Movants note that the UP, BNSF, and NSR settlements have served as models to the Government for the CSX Settlement Agreement. (Id. at 9.)

In particular, the CSX Settlement Agreement:

(1) provides for a term of 25 years, commencing on the effective date of the Board's approval of the CSX Settlement Agreement, and continues in effect for additional 5-year periods, subject to a 1-year termination notice requirement. (Id., Ex. A ¶¶ 21, 25; see also id. at 10.) The parties note that the 25-year term with the possibility of extensions follows the BNSF settlement agreement but differs from the UP and NSR settlement agreements, which each provide for unlimited terms, (id. at 9-10);

(2) applies broadly to the nationwide movement on CSX's rail lines of irradiated spent fuel, parts, and constituents; spent fuel moving from foreign countries to the United States for disposal; empty casks; radioactive wastes; and buffer and escort cars. (Id., Ex. A ¶ 1.A.) With respect to those movements governed by the rate basis prescribed in Trainload Rates on Radioactive Materials, E. Railroads, 362 I.C.C. 756 (1980) and 364 I.C.C. 981 (1981) (Eastern Prescription Case),¹ this agreement (similar to the NSR agreement) incorporates a method of determining rates for dedicated trains which grants CSX an increment over the Eastern rate basis to equalize the cost of shipments

¹ In that proceeding, maximum R/VC ratios were prescribed on a commodity-by-commodity basis at various minimum weights as local and proportional rate factors. The prescription was applicable within the East but primarily was to be used for through movements destined beyond the lines of the rail carriers covered by the prescription. The ICC's 1980 decision was affirmed in Consolidated Rail Corp. v. ICC, 646 F.2d 642 (D.C. Cir. 1981), cert. denied, 454 U.S. 1047 (1981).

nationwide, (Joint Mot. 5, Dec. 1, 2025; see also id. at 10 (describing the CSX lines that the Eastern rate basis applies to));

(3) establishes the parties' agreement that the movement of these radioactive materials constitutes common carrier service; addresses the elements of service required of CSX; adopts guidelines for safe handling and security; and obligates CSX to provide, as needed, "extra services" as described in the agreement, at the rates agreed upon, (id. at 6-7, 11, 13; see also id., Ex. A ¶¶ 4, 6.A, 6.B, & 10);

(4) adopts a rate methodology to: (a) apply to all future movements of these radioactive materials in common carrier service. The methodology adopts maximum R/VC markups of CSX's most current system-average variable unit costs computed under the Board's Uniform Rail Costing System (URCS). (Id. at 6; id., Ex. A ¶ 6.) The Government agrees to limit the application of the Eastern rate basis established in the Eastern Prescription Case to the former lines of those railroads specifically listed in the Eastern Prescription Case, (id. at 10-11; see also id., Ex. A ¶ 6);² and (b), compensate CSX for "extra services" and dedicated train service, when requested by the Government, and procedures to calculate "equitable compensation" for emergency-related costs that CSX may incur (Joint Mot. 6-7, 13, Dec. 1, 2025; see also id., Ex. A ¶¶ 6.B & 6.C);

(5) adopts a procedure to update compensation for rates and "extra services" when the Board "issues new URCS and make-whole factors" to reflect changes in CSX's system-average unit costs, (id., Ex. A ¶ 7);

(6) extinguishes CSX's liability (and that of its predecessors and subsidiaries) for reparations in all matters arising out of these proceedings, (id., Ex. A ¶ 23; see also id. at 17);

² The parties note, however, that the Eastern Rate will apply to the applicable lines of Pan Am Railways which were acquired by, and became part of, the CSX network in 2022. (Id. at 10); see also CSX Corp.—Control & Merger—Pan Am Systems, Inc., FD 36472 et al. (STB served Apr. 14, 2022).

(7) adopts alternative dispute resolution procedures with recourse to the Board if those procedures do not resolve a dispute and mechanisms to renegotiate portions of the agreement in a limited number of circumstances or if changed circumstances make further adherence to the terms of the agreement “grossly inequitable” to either party, (id. at 13-14; see also id., Ex. A ¶¶ 15 & 25); and

(8) incorporates language regarding indemnification pursuant to the Price-Anderson Nuclear Industries Indemnity Act, 42 U.S.C. 2210 (Price Anderson Act). Specifically, the CSX Settlement Agreement states that, “as set forth in [the] Price Anderson [Act], such public liability (including any clean-up costs and any loss of use to the extent such damages are permitted by applicable law) shall extend to any CSX-owned property (including but not limited to CSX rights-of-way, yards, rail lines, tracks, locomotives, rolling stock cars, equipment, vehicles, and buildings) (i) that is damaged by a nuclear incident covered by Price Anderson, and (ii) for which atomic/nuclear insurance cannot be obtained or would not be expected.” (Joint Mot. 12, Dec. 1, 2025; see also id., Ex. A ¶ 6.E.)

Movants request that the Board: (1) prescribe the rate methodology and maximum R/VC ratios that have been agreed to for the radioactive materials and rail services that are the subject of the agreement; (2) dismiss CSX as a defendant in these proceedings, extinguish CSX’s liability for reparations in all matters arising out of these proceedings, and relieve CSX from any further requirement to participate in these proceedings (except in response to a properly issued subpoena under the Board’s rules); (3) retain jurisdiction over these proceedings and continue to hold them in abeyance pending further settlement negotiations; and (4) publish notice of their motion and the proposed CSX Settlement Agreement in the Federal Register and adopt a procedural schedule for the filing of comments and replies.

Movants' request will be granted in part at this time. Notice of the motion and proposed CSX Settlement Agreement will be published in the Federal Register. A procedural schedule will be adopted for the filing of comments on the proposed settlement agreement as well as to permit replies responsive to Movants' remaining requests. Comments will be due by April 16, 2026. Reply comments will be due by May 18, 2026. In addition, the Government will be ordered to file, by April 16, 2026, a list of remaining defendants in these proceedings to inform the Board of the proceedings' status.

It is ordered:

1. Movants' request that notice of their motion and proposed agreement be published in the Federal Register is granted.
2. Movants and interested persons must comply with the procedural schedule and requirements outlined above.
3. This decision is effective on its date of service.

By the Board, Anika S. Cooper, Chief Counsel, Office of Chief Counsel.

Zantori Dickerson,

Clearance Clerk.