

ENTERED  
Office of Proceedings  
February 10, 2014  
Part of  
Public Record

LAW OFFICE  
THOMAS F. McFARLAND, P.C.  
208 SOUTH LASALLE STREET - SUITE 1890  
CHICAGO, ILLINOIS 60604-1112  
TELEPHONE (312) 236-0204  
FAX (312) 201-9695  
*mcfarland@aol.com*

February 10, 2014

*By e-filing*

Ms. Cynthia T. Brown, Chief  
Section of Administration  
Office of Proceedings  
Surface Transportation Board  
395 E Street, S.W.  
Washington, DC 20024

Re: STB Docket No. NOR 42138, *Horry County, South Carolina, et al. v. Baltimore and Annapolis Railroad Company, d.b.a. Carolina Southern Railroad Company*

Dear Ms. Brown:

Hereby transmitted is Complainants' Opening Statement for filing with the Board in the above referenced matter.

Very truly yours,

*/s/ Thomas F. McFarland*

Thomas F. McFarland

*TMcF:kl:enc:\1608\efSTB6.NOR42138*

cc: All parties of record, *by UPS overnight mail*



HORRY COUNTY, SOUTH CAROLINA  
1301 Second Avenue  
Conway, SC 29526

MARION COUNTY, SOUTH CAROLINA  
1305 Main Street  
Marion, SC 29571

COLUMBUS COUNTY, NORTH CAROLINA  
111 Washington Street  
Whiteville, NC 28472

CITY OF CONWAY, SOUTH CAROLINA  
225 Main Street  
Conway, SC 29526

TOWN OF FAIR BLUFF, NORTH CAROLINA  
  
P.O. Box 157  
Fair Bluff, NC 28439

TOWN OF CHADBOURN, NORTH  
CAROLINA  
602 N. Brown Street  
Chadbourn, NC 28431

TOWN OF TABOR CITY, NORTH CAROLINA  
P.O. Box 655  
301 Fifth Street  
Tabor City, NC 28463

CITY OF WHITEVILLE, NORTH CAROLINA  
P.O. Box 607  
317 S. Madison Street  
Whiteville, NC 28472

METGLAS, INC.  
  
440 Allied Drive  
Conway, SC 29526

CITY OF MYRTLE BEACH, SOUTH  
CAROLINA  
P.O. Box 2468  
Myrtle Beach, SC 29578

TOWN OF LORIS, SOUTH CAROLINA  
4101 Walnut Street  
Loris, SC 29569-2498

NEW SOUTH COMPANIES, INC.  
3700 Claypond Road  
Myrtle Beach, SC 29579

*Complainants and  
Intervenors in Support of Complainants*

THOMAS F. McFARLAND  
THOMAS F. McFARLAND, P.C.  
208 South LaSalle Street, Suite 1890  
Chicago, IL 60604-1112  
(312) 236-0204 (office)  
(312) 201-9695 (fax)  
*mcfarland@aol.com*

*Attorney for Complainants and  
Intervenors in Support of Complainants*

DATE FILED: February 10, 2014



## STATEMENT OF THE CASE

Three Counties, five Municipalities and a shipper in North and South Carolina have joined in a Complaint in which it is alleged that the Baltimore and Annapolis Railroad Company (BAR), doing business as Carolina Southern Railroad Company (CALA), has failed and refused to provide rail transportation on reasonable request in violation of 49 U.S.C. § 11101(a), and that CALA's embargo of rail service has ripened into an unlawful abandonment in violation of 49 U.S.C. § 10903(d). Two Municipalities and another shipper have been permitted to intervene in support of Complainants.<sup>1/</sup>

A Board order is sought that would require that CALA cease and desist from those violations either by restoring rail service, or by filing an application for authority to abandon the involved rail line. Abandonment authority would trigger the offer-of-financial-assistance (OFA) provisions of 49 U.S.C. § 10904 whereby an entity intent on reestablishing rail service could acquire the rail line at a price equal to the line's net liquidation value (NLV), as determined by the Board in the absence of agreement. An award of damages is not sought at the present time.

The Complaint became necessary to resolve an impasse that resulted from CALA's failure to repair defective bridge conditions that gave rise to the embargo, and CALA's refusal to sell the rail line except at a price greatly in excess of NLV.

CALA's rail line extends from point of connection to CSX Transportation, Inc. (CSX) at Mullins, SC to terminus at Whiteville, NC, and from Chadbourn, NC to point of connection to a rail line owned by Horry County, at Conway, SC, a total distance of approximately 76 miles in

---

<sup>1/</sup> Intervention by BP Amoco Chemical Company does not bear on the merits of the Complaint.

Horry and Marion Counties, SC and Columbus County, NC (the Rail Line). The rail line owned by Horry County extends from point of connection to CALA at Conway, SC to terminus at Myrtle Beach, SC, a distance of approximately 14 miles in Horry County, SC. The Rail Line and Horry County's rail line are shown in a map that is attached to this Statement as Appendix 1.<sup>2/</sup>

On August 24, 2011, CALA embargoed service over its Rail Line due to defective bridge conditions identified during a Federal Railroad Administration (FRA) inspection.<sup>3/</sup> CALA renewed that embargo, effective on August 24, 2012, and again effective on August 24, 2013. CALA's embargo remains in effect as of the filing of this Opening Statement approximately 2½ years after it was first imposed.

The dispositive issues are (1) whether or not reasonable requests for rail transportation were made and refused within the meaning of 49 U.S.C. § 11101(a); and (2) whether or not CALA's embargo is a valid defense for that failure and refusal, and for its constructive abandonment of the Rail Line without Board authorization under 49 U.S.C. § 10903(d).

---

<sup>2/</sup> Shipments to or from the Horry County rail line must be transported over the CALA Rail Line to reach CSX and the national rail system at Mullins, SC. Thus, embargo of the CALA Rail Line effectively embargoed rail service over the Horry County line. Until recently, the Horry County rail line was leased and operated by Waccamaw Coast Line Railroad Company (WCLR), a division of BAR, pursuant to a modified certificate of public convenience and necessity. Horry County recently terminated WCLR's lease of the rail line because of WCLR's failure to pay rent. WCLR's modified certificate has been terminated.

<sup>3/</sup> It is not known whether CALA's initial embargo complied with the requirements of the Association of American Railroads (AAR) for imposition of embargoes, but whether the embargo was perfected or not under AAR rules is not controlling. *Groome & Associates v. Greenville County, EDC*, 2005 WL 1767443 at \*9 (Docket No. 42087, decision served July 27, 2005).

Factual matter asserted in the following discussion of those issues is supported in Verified Statements that are attached to this Opening Statement, i.e.:

| <u>Appendix No.</u> | <u>Verified Statement of:</u>   |
|---------------------|---|
| 2                   | Henry Lowenstein, Ph.D.,<br>Complainants' Traffic Consultant  |
| 3                   | Doug Wendel and Dennis Worley,<br>Co-Chairmen of the Interstate Railroad Committee<br>of North and South Carolina |
| 4                   | Kevin Phillips, Metglas, Inc.   |
| 5                   | Carl Hamilton, New South Companies, Inc.  |

### ARGUMENT

#### **I. REASONABLE REQUESTS FOR RAIL TRANSPORTATION WERE MADE AND REFUSED IN VIOLATION OF 49 U.S.C. § 11101(a)**

A rail carrier has an obligation to provide transportation on reasonable request. 49 U.S.C. § 11101(a). It has sometimes been stated by the Board that a reasonable request for rail service under that statute is one that is specific as to volume, commodity, and time of shipment. *Meyer v. North Coast RR Authority*, 2007 STB LEXIS 48 at \*8 (FD 34337, served Jan. 31, 2007).

The rule is different, however, where, as here, the involved rail line has been embargoed for a prolonged time. The law does not require shippers to make continuing futile requests for transportation of specifically identified shipments when the carrier has stated publicly that it will not transport any shipments regardless of volume, commodity and time of shipment. It is enough for shippers and others to make known to the carrier their request for reinstatement of rail service

over an embargoed line. Thus, in *Groome & Associates, Inc. v. Greenville County EDC*, 2005 WL 1767443 (Docket No. 42087, served July 27, 2005), the Board said (at \*9):

. . . Mr. Groome (in behalf of the shipper) informed various members of GCEDC (the carrier) and the City Council that G&A (the shipper) desired the reinstatement of rail service to its facility, and during 2000 and part of 2011, Mr. Groome worked with GCEDC to find an operator for the line so that G&A could receive rail service. Under the circumstances, the record provides sufficient evidence to show that Complainants made a reasonable request for service, thus triggering GCEDC's common carrier obligation.

To the same effect is *Overbrook Farmers Union -- Petition for Declar. Order*, 5 ICC 2d 316 (1989), where the Board's predecessor said (at 325):

. . . In view of the various MP-imposed strictures, both overt and implied, we believe the particular efforts exerted by the cooperative in its discussions with MP relating to individual rail transportation movements and the reinstatement of direct rail service on the line are equivalent to specific requests for rail transportation service . . .

It is significant that CALA provided rail service for many years prior to the embargo to shippers in whose behalf the requests for reinstatement of rail service were made (*see* shipper traffic data in Appendices 2, 4 and 5 hereto). Where the Board has found illegal cessations of service, the requests for service have typically come from shippers located on the line who previously had used the carrier's services. *Meyer v. North Coast RR Authority, supra*, 2007 STB LEXIS 48 at \*9. CALA well knew that the shippers that it served for so many years were requesting that it restore rail service. Accordingly, CALA should not be heard to contend that reasonable requests for rail transportation were not made.

Indeed, CALA has expressly acknowledged Complainants' reasonable requests for rail service. Thus, in Paragraph 12 of its Answer to the Complaint, CALA stated (at 5):

. . . (T)here has been an ongoing request (by Complainants) for the restoration of rail service . . .

Similarly, in Paragraph 7 of its Answer to the Complaint, CALA stated (at 4):

(S)ome of the Complainants in this action have assisted in and aided the efforts to obtain funds designated by various political subdivisions for the upgrades required to allow CALA to resume operations . . .

Thus, CALA's own testimony establishes that Complainants specifically requested restoration of rail service over the Line, and actively cooperated in seeking funding that would enable such restoration. The cited cases make clear that nothing in addition was required to support a determination that Complainants made reasonable requests for rail transportation within the meaning of that phrase in 49 U.S.C. § 11101(a), --- requests that were not granted by CALA. The Board should so find.

## **II. CALA'S EMBARGO IS NO LONGER A VALID DEFENSE TO THE ASSERTED VIOLATIONS OF LAW**

In accordance with 49 U.S.C. § 11101(a), a rail carrier is required to provide transportation on reasonable request. In accordance with 49 U.S.C. § 10903(d), a rail carrier cannot lawfully abandon a rail line nor discontinue rail service over it unless the Board finds that such abandonment or discontinuance is permitted or required by the present or future public convenience and necessity. Upon a proper showing, the Board can enter an order requiring compliance with those statutes. 49 U.S.C. § 11701(a).

Performance of requested rail transportation is excused if a valid embargo of rail service is in effect. An embargo is a temporary emergency measure when for some reason a rail carrier is unable to perform its duty to provide service as a common carrier. *Louisiana Railcar, Inc. v. Missouri Pacific R. Co.*, 5 ICC 2d 542, 545 (1989). A rail carrier decides in the first instance

whether to impose an embargo; the Board typically defers to the rail carrier's initial decision in that respect. *Bolen-Brunson-Bell Lumber Co., Inc. v. CSX Transp. Inc.*, 2003 STB LEXIS 252 (at \*6) (FD No. 34236, decision served May 15, 2003).

There is no contention in the present case that the CALA embargo was invalid when it was first imposed.

However, an embargo ceases to be a valid defense if it becomes unreasonable to keep it in effect. The Court in *GS Roofing Products Co. v. STB*, 143 F. 3d 387 (8<sup>th</sup> Cir, 1998), determined that the Board acts permissibly in resolving the issue of reasonableness of a continuing embargo by balancing five criteria, i.e. (at 392):

- (1) the length of the embargo
- (2) the amount of traffic on the line
- (3) the intent of the carrier
- (4) the cost of repairs
- (5) the financial condition of the carrier

In *Groome & Associates v. Greenville County EDC*, *supra*, (2005 WL 1767443 at \* 10) the Board explained how those criteria are to be applied, i.e.:

... We do not apply these factors in a formulaic way. Rather, our objective is to determine whether the carrier's actions, including its failure to serve, are reasonable under the circumstances ...

Resolution of that issue is simplified in the present case in view of the absence of a claim for damages. When damages are claimed, the Board faces a difficult task of determining a point in time when an embargo became unreasonable in order to be able to apply the two-year statute of limitations for recovery of damages. Here, where only a cease-and-desist order is sought, the Board need only determine whether the embargo is unreasonable at the present time, without regard to when the embargo first became unreasonable.

As set out below, consideration of the five criteria, individually and as a whole, provides compelling support for a determination that CALA's embargo is unreasonable at present, and, as such, that embargo is not a valid defense to the allegations in the Complaint that CALA's failure and refusal to provide requested rail transportation violates 49 U.S.C. § 11101(a) and 49 U.S.C. § 10903(d).

**1. Length of the Embargo**

The embargo has been in effect for 2 ½ years! That is much, much longer than it would have taken for CALA to repair the defective bridge conditions that gave rise to the embargo. CALA's bridge consultant estimated that such repairs would have taken six to eight weeks (Appendix 3 at 3).

The length of the embargo is much, much longer than it reasonably could have taken for CALA to have completed the process of applying for governmental and/or private funding to enable bridge repairs. In the nine-month period between October, 2011 and June, 2012, two applications for TIGER grant funds for bridge repair were applied for and concluded unsuccessfully (Appendix 3 at 3).

The length of the embargo is much, much longer than it reasonably could have taken for CALA to have completed the process of attempting to sell the Rail Line to an entity who would restore rail service over it. It has been six months since CALA stated publicly that it is attempting to sell the Line. (Appendix 3 at 4). No such sale has been agreed on, let alone concluded.

The length of the embargo is much, much longer than it would have taken the Board to complete the abandonment process, triggering the OFA provisions. The Board issues decisions

on requests for abandonment less than four months after filing. *See, e.g.,* 49 U.S.C. § 10904(c). The embargo continues without any request for Board abandonment authority six months after the Complaint was filed.

In sum, the embargo has been in effect longer than the time that it would have taken to complete all of the foregoing activities put together!

In view of all the foregoing, the length of the embargo strongly supports a determination that the embargo has become unreasonable.

## **2. Amount of Traffic on the Line**

The Verified Statement of Dr. Henry Lowenstein<sup>4/</sup> establishes that rail traffic on the Line was substantial prior to the embargo, and would again be substantial if the embargo were to be removed. (Appendix 2, Ex. HL-1)

CALA's own traffic records show that prior to the embargo, 17 shippers on the Line accounted for the healthy traffic volumes shown below (Appendix 2, Ex. HL-1 at 2-3):

| <u>YEAR</u> | <u>CARLOADS</u> |
|-------------|-----------------|
| 2008        | 7,752           |
| 2009        | 2,272           |
| 2010        | 3,121           |

The traffic levels in 2009 and 2010 were adversely affected by the deepest economic recession in the United States since the Great Depression of the 1920s and 1930s, and by rail

---

<sup>4/</sup> Dr. Lowenstein's qualifications to testify about rail traffic in the area of the Rail Line are impeccable (Appendix 2 at 1-3).

service interruptions (Appendix 2, Ex. HL-1 at 4). Consequently, the substantially greater traffic volume in 2008 is more representative of normal CALA traffic volume than traffic in 2009 and 2010 (*id*).

Dr. Lowenstein's personal interviews with 15 shippers who used the Rail Line prior to the embargo established that if service were to be reinstated over the Rail Line, total traffic volume would be approximately 2,400 carloads per year (Appendix 2, Ex. HL-1 at 2, 4-5; *see, also*, the shipper statements attached as Appendices 4 and 5). That estimate is quite conservative because the lengthy embargo has engendered considerable distrust of CALA on the part of the shippers. The shippers stated that they would ship considerably more rail traffic if a carrier other than CALA were to operate the Line (Appendix 2, Ex. HL-1 at 5). In addition, Dr. Lowenstein identified substantial agricultural products in the area of the Rail Line that are susceptible to rail transportation over the Line, if actively pursued (*id* at 5-6).

In view of all of the foregoing, the past and prospective traffic volumes on the Rail Line militate in favor of a determination that CALA's embargo has become unreasonable.

### **3. Intent of the Rail Carrier**

In the months immediately following imposition of the embargo, CALA's expressed intent was to keep the embargo in effect while it sought governmental funding to repair the defective bridges (Appendix 3 at 2). In October, 2011, and again in March, 2012, CALA prevailed on Horry County to file applications on CALA's behalf for TIGER grant funds for bridge repair (*id* at 3). Both of those applications were denied (*id*). In May, 2013, Horry County made it known to CALA that it would not sponsor any additional applications in CALA's behalf for government funding (*id* at 4).

Thereupon, CALA's expressed intent became to keep the embargo in effect while it attempted to sell the Rail Line (Appendix 3 at 4). It may be that sale of the line continues to be CALA's intent. However, there has been no agreement for sale of the Line in the many months that CALA ostensibly has been attempting to sell. (*id*)

It is apparent that attempting to sell a rail line does not support the continuing reasonableness of an embargo that is kept in effect during the attempted sale. Thus, in *Louisiana Railcar, Inc. v. Missouri Pacific R. Co.*, *supra*, the ICC said (5 ICC 2d at 545, 547):

. . . A carrier may not avoid liability simply by attempting to sell the line (at 545).

. . . MP argues that it had no intention to discontinue service to LRC because it proposed to sell the line to another carrier to provide continued service. We do not agree with MP that this effort to arrange for another carrier to provide rail service fulfills its responsibilities under the Act to provide transportation in the meantime. . . (T)he mere search for a substitute rail operator offers no solace to LRC, nor does it meet MP's common carrier obligation (at 547).

In August, 2013, it was made known to CALA that in view of the absence of progress in repairing the bridges and removing the embargo over a two-year period, Horry and Columbus Counties would seek relief at the Board from the continuing embargo (Appendix 3 at 4). However, it was emphasized to CALA that any Complaint at the Board could be withdrawn if CALA were to sell the Rail Line for resumption of rail service while the Complaint was pending (*id*).

Now, nearly six months after the filing of that Complaint, there has been no agreement for sale of the Rail Line.

In view of all of the foregoing, the intent of CALA to keep the embargo in place while unsuccessfully seeking federal funding and sale of the Line is another factor that supports a determination that CALA's embargo is no longer reasonable.

**4.-5. Cost of Repairs and Financial Condition of CALA**

According to a public statement made by Mr. Jason Pippin, Vice President of CALA, in January, 2013, it would cost approximately \$2 million to repair bridge conditions on the Rail Line to the satisfaction of the FRA. Complainants do not have evidence to the contrary.

CALA claims that it does not have enough revenue to cover the cost of the required bridge repairs (Appendix 3 at 3). That contention is called into question as a result of financial information provided to Complainants in discovery.<sup>5/</sup>

However, the Board need not resolve the issue of CALA's ability to pay. Even if it is assumed that CALA cannot afford to pay for the required repairs, that would not support the reasonableness of CALA's embargo. Instead, if CALA cannot make the repairs, it must seek authority to abandon the Rail Line rather than keep the embargo in effect indefinitely. The Board so stated in *Groome & Associates v. Greenville County EDC, supra*, 2005 WL 1767443 at 9, viz.:

. . . (A) carrier may be found to be in violation of the common carrier obligation . . . if the embargo remains in effect too long . . . (citation omitted).

---

<sup>5/</sup>

Indeed, an embargo that extends beyond a reasonable time can be construed as an unlawful abandonment; that is why we require that, at some point, if a carrier is not going to fix a line over which service is requested, it must take steps to obtain abandonment or discontinuance authority . . . (at \*9, emphasis added).

. . . (I)t appears the Complainants would not have opposed abandonment, as they apparently were waiting for SCCR (the carrier) to file for abandonment so that they could see how little it might cost them to acquire the property themselves through the OFA process . . .

. . . (A) party with an obligation to provide service may not refuse to do so indefinitely in the face of a reasonable request for service. Rather, a railroad must, within a reasonable time, either provide service or take steps to be relieved of the common carrier obligation . . . (at \*13).

In view of the foregoing, the cost of the required repairs and CALA's financial condition do not support a finding that the embargo is reasonable at present, even if it is assumed that CALA is unable to pay for the repairs. The Board should so find. If CALA is unable to fix the bridges, it has an obligation to seek authority to abandon the Rail Line. CALA has not done so.

#### **6. CALA Has Not Acted Reasonably**

It remains to apply the five criteria as a whole in a non-formulaic way to determine whether CALA has acted reasonably in keeping the embargo in effect. The sum total of the foregoing evidence compels a finding that CALA has acted unreasonably in failing to either repair the bridges or take steps to seek authority to abandon the Rail Line.

It may be that in view of the costly nature of the required bridge repairs, it was reasonable for CALA to keep the embargo in effect during the period between October, 2011 and June, 2012 when CALA and the local governmental agencies applied unsuccessfully for federal funds for bridge repair. However, it is apparent that it was not reasonable to continue the embargo in effect beyond May 15, 2013, when the local governmental agencies stated unanimously in public

that they would not sponsor any further application for federal funds for bridge repair, and that action was communicated to CALA. (Appendix 3 at 3-4).

As appears in the discussion of intent, *supra*, it was not reasonable for CALA to keep the embargo in effect while it sought to sell the Rail Line. Even if its is assumed for the sake of argument that it was reasonable initially for CALA to do so, it is apparent that it was not reasonable to keep the embargo in effect beyond August 15, 2013, when the local governmental agencies stated unanimously in public that they intended to seek relief from the embargo at the Board, notwithstanding CALA's continuing attempts to sell the Rail Line. (Appendix 3, at 4).

In any event, it is crystal clear that it is manifestly unreasonable for CALA to have kept the embargo in effect at present, many months after it became apparent that there would be no federal funding, nor would there be a buyer for the Rail Line.

The issues in *Groome & Associates v. Greenville County EDC*, *supra*, 2005 WL 1767443, are so strikingly similar to those in the present case that in determining in that case that the embargo had become unreasonable, the Board could have been expressing the same rationale for the same determination in the present case, *viz.* at \*13, emphasis added:

. . . Here, given all of the circumstances we have described, we find that GCEDC (the carrier) made reasonable efforts to obtain funding and to find an operator for the first two years after it bought the line. During that time, while there were some disagreements, all of the parties seemed to be working toward the same goal, and indeed, Mr. Groome and GCEDC seemed to be cooperating in their efforts at times. But by June, 2001, it was, or should have been, apparent to GCEDC that plans for funding and operating the line would not succeed. Moreover, by that time, . . . it should have been apparent to GCEDC that any remaining shippers were frustrated that GCEDC was not likely going to be able to put the line back into service. At that point, even in the unusual circumstances of this case, GCEDC should have known that it was time to seek an end to its obligation to provide service, and it was unreasonable for it not to begin the

abandonment or discontinuance process. GCEDC's failure to get the situation resolved constituted a violation of the common carrier obligation.

The issues resolved by the Board in that case are legally indistinguishable from the issues presented in the present case. Accordingly, the Board should reach the same result.

**CONCLUSION AND REQUESTED RELIEF**

WHEREFORE, for all of the reasons stated, the Board should find that (1) reasonable requests for rail transportation were made and were refused by CALA in violation of 49 U.S.C. § 11101(a); and (2) CALA's embargo of rail service is not a valid defense for its failure to provide that requested rail transportation in violation of that statute, nor for its constructive abandonment of the Rail Line without Board authorization in violation of 49 U.S.C. § 10903(d).

In accordance with 49 U.S.C. § 11701(a), the Board should compel CALA's prompt compliance with those statutes by issuing an order that CALA cease and desist from such violations either by removing the embargo or by seeking Board authority for abandonment of the Line.

Respectfully submitted,

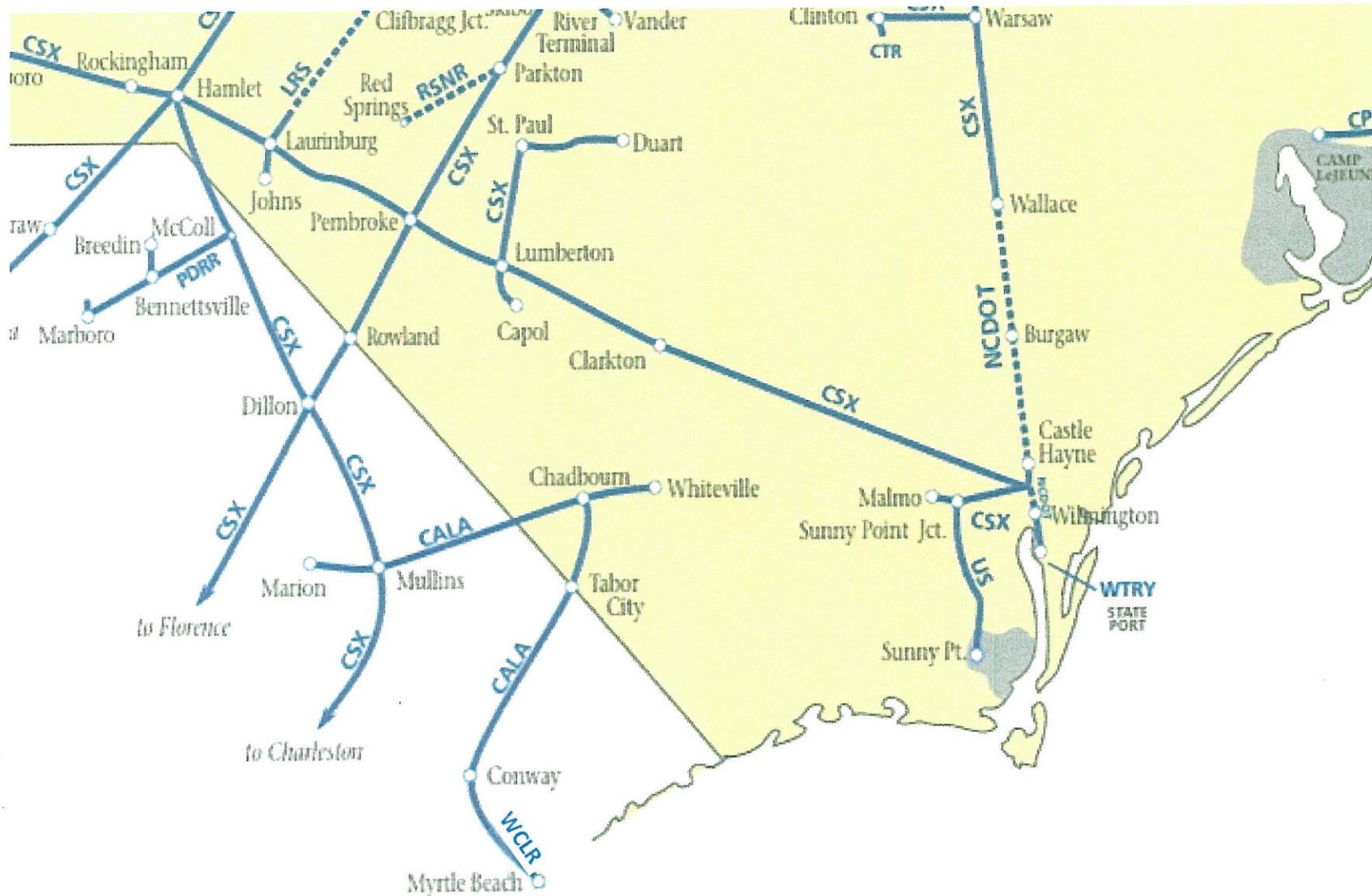
*/s/ Thomas F. McFarland*

THOMAS F. McFARLAND  
THOMAS F. McFARLAND, P.C.  
208 South LaSalle Street, Suite 1890  
Chicago, IL 60604-1112  
(312) 236-0204 (office)  
(312) 201-9695 (fax)  
*mcfarland@aol.com*

*Attorney for Complainants and  
Intervenors in Support of Complainants*

DATE FILED: February 10, 2014

# CALA Route Across SC-NC State Border



**VERIFIED STATEMENT OF HENRY LOWENSTEIN**

My name is Henry Lowenstein, Ph.D. I am President and Chief Executive Officer of Research and Consulting Services, LLC (RCS), Conway, SC 29526-9001.

In July, 2007, I joined Coastal Carolina University, Conway, SC as Dean of the Wall College of Business and Professor of Management and Law. In 2010, I returned to my tenured Professorship in teaching, research, consulting, and community service.

From 2000 to 2007, I was Dean of the School of Business and Public Administration at California State University, Bakersfield, CA. From 1994 to 2000, I was Chairman of the Division of Business & Economics and Professor of Business at West Virginia University, Parkersburg, WV.

I am a native of Richmond, VA. I received my Ph.D. in Labor and Industrial Relations from the University of Illinois, Champaign-Urbana, IL. I have an MBA degree in Transportation from the George Washington University, Washington, DC. That degree is especially pertinent in relation to my testimony in this proceeding. I have a BS degree in Business Administration from Virginia Commonwealth University, Richmond, VA. I have been the recipient of a University of Illinois Graduate Doctoral Fellowship, and the Scottish Rite Foundation Fellowship to the George Washington University. The work that I have performed has received governmental recognition from California, Illinois, and West Virginia, and from local governments in California, South Carolina and Mexico.

I have served in management within private, public, and academic sectors, including officer positions with Kemper Group (insurance-financial services), Dominion Bankshares Corp.,

and Americana Furniture, Inc. I served in the Ford Administration as a management analyst in the Executive Office of the President of the United States-Office of Management and Budget. Other academic positions I have held include University of Illinois-Chicago, Governors State University (Illinois) and Virginia Commonwealth University.

I have a broad background in business, academic, governmental, and public service organizations. I served as a corporate director and board committee chair for the former Tri-Valley Corporation, a California-based energy and mining exploration corporation. I served in various roles for AACSB International, the accreditation agency for business schools worldwide, as an accreditation reviewer, presenter, consultant, committee member, and international ambassador.

I was a principal consultant to the Illinois General Assembly and Chicago Chamber of Commerce on the restructuring of the Regional Transportation Authority during the 1980-81 Chicago-area mass transit crises, and co-authored the labor relations section of Illinois' Regional Transportation Reform Act of 1981. I conducted pioneering work on highway safety/traffic enforcement management techniques and traffic police training in Illinois. In West Virginia, California, and South Carolina, I have been a consultant to legislators and executives on Higher Education Policy, Economic Development, Transportation, and Tax Policy Issues.

My areas of teaching and research include Human Resource Management, Employment Regulation and Policy, Business and Public Policy Strategies, Economic Development, and Transportation. I have authored a number of national, international, and regional articles on the economy, employment, business law-regulation, transportation, and public policy issues.

In the local area in which Carolina Southern Railroad (CALA) operates, I am an ex officio member of the Board of Directors, Executive Committee, and act as a Research Consultant, for the Myrtle Beach Regional Economic Development Corporation (MBREDC). Among my work on many public service organizations, I recently completed a term as Chairman of the Board of Directors of the Ocean View Memorial Foundation of Myrtle Beach, SC.

I have been a frequent guest on local media on business subjects. I am a recipient of a number of awards for research and service in business matters.

The Complainants in STB Docket No. NOR 42138 have requested that I prepare a Report On Rail Traffic On CALA Prior To CALA's Embargo Of Its Rail Line And If The Embargo Were To Be Removed. I have prepared that Report, which is attached to this Verified Statement as Exhibit HL-1. The foregoing description of my background and experience demonstrates that I am highly qualified on the subject matter of that Report.

***RAIL TRAFFIC ON CAROLINA SOUTHERN  
RAILROAD PRIOR TO EMBARGO AND IF THE  
EMBARGO WERE TO BE REMOVED***

Henry Lowenstein, Ph.D.  
(President/CEO)  
RESEARCH AND CONSULTING SERVICES, LLC



CONWAY, SC 29526-9001 U.S.A.

## I. PURPOSE AND OBJECTIVES

Counsel for the Complaining Parties has advised me that one of the factors that the Surface Transportation Board (STB) takes into account in determining whether an embargo of a rail line is no longer reasonable is “the amount of traffic on the line”. With that in mind, counsel requested that I determine the amount of such traffic, both prior to imposition of the embargo and in the event that the embargo were to be removed. The objective of this Report is to identify that prior and prospective traffic.

## II. METHODOLOGY

As to traffic volume prior to imposition of the embargo, I derived the number of carloads originated or terminated by shippers on the rail line in 2008, 2009, and 2010<sup>1</sup> from information provided to me by Baltimore & Annapolis Railroad Company, d.b.a. Carolina Southern Railroad Company (CALA) in conjunction with rail-related studies that I performed in 2012 at the request of the Myrtle Beach Regional Economic Development Corporation (MBREDC).<sup>2</sup>

As to traffic volume if the embargo were to be removed, carload information was derived from interviews with each of the shippers who used the rail line in 2008-2010 in which they provided their best estimate of the number of carloads that they would ship per year.

In addition, I identified substantial agricultural commodities in the area of the rail line that are very much susceptible to transportation by rail, but which were not transported over the rail line in 2008-2010. The source of that information was a recent study of agricultural activity in Horry County performed by Clemson University, supplemented with agricultural statistics for Marion and Columbus Counties from State statistical abstracts.<sup>3</sup>

In an Addendum to my Report, I have identified a likely demand for rail passenger transportation to and from the CALA rail line, especially in conjunction with substantial and growing tourism in and around Greater Myrtle Beach, which would also play a vital role in emergency disaster evacuation, such as when a hurricane approaches, and in rebuilding and restoration after such disaster.

---

<sup>1</sup> The rail line was taken out of service in August, 2011.

<sup>2</sup> Henry Lowenstein, *Economic Development: Saving Rail Access in Horry County, SC*, April 6, 2012; and Henry Lowenstein, *Rail Crossroads: Railroad Access and Jobs in Horry County, SC*, April 26, 2012.

<sup>3</sup> David Hughes, Devin Swindall, Blake Lanford, and Emily Purcell, *Horry County Agribusiness Strategic Plan: Utilizing Local and Regional Assets*, Clemson Institute for Economic and Community Development, September 18, 2013 (“Clemson Report”); data from the South Carolina and North Carolina Departments of Agriculture.

### III. RAIL CARLOADS ON CALA, 2008-2010

Table 1 below identifies, by shipper or receiver, the numbers of carloads originated or terminated by CALA in 2008, 2009, and 2010, and the three-year average of such carloads.<sup>4</sup>

**TABLE 1: RAIL TRAFFIC ON CAROLINA SOUTHERN RAILROAD 2008-2010**

(Source: CALA Carload Data-internal reports)

| Shipper                      | Commodities Carried | 2008        | 2009        | 2010        | 3-Yr. Average |
|------------------------------|---------------------|-------------|-------------|-------------|---------------|
| Kroy Building C-NC           | Plastic             | 28          | 19          | 26          | 24            |
| Santee Cooper H-SC           | Coal                | 2518        | 903         | 1478        | 1633          |
| Blantons Supply H-SC         | Lumber              | 8           | 0           | 5           | 4             |
| Perdue Farms C-NC            | Soybean             | 82          | 37          | 80          | 66            |
|                              | Wheat               | 125         | 10          | 34          | 56            |
| Georgia-Pacific C-NC         | Wood Chips          | 22          | 2           | 0           | 8             |
|                              | Plywood             | 816         | 18          | 0           | 278           |
|                              | Lumber              | 59          | 28          | 0           | 29            |
| Blue Linx C-NC               | Lumber              | 39          | 20          | 38          | 32            |
| Southern States-Loris H-SC   | Limestone           | 52          | 38          | 67          | 52            |
|                              | Other               | 17          | 4           | 12          | 11            |
| Carolina East M-SC           | Fertilizer          | 20          | 6           | 19          | 15            |
| MetGlass/Homewood Steel H-SC | Metal Billets       | 203         | 92          | 312         | 202           |
| Martin Marietta H-SC         | Aggregate           | 185         | 0           | 0           | 62            |
|                              | Stone               | 2935        | 703         | 636         | 1425          |
| CanFor/New South H-SC        | Lumber              | 40          | 61          | 43          | 48            |
| Homewood Farm Supply H-SC    | Limestone           | 5           | 5           | 0           | 3             |
| Idaho Timber C-NC            | Lumber              | 209         | 1           | 0           | 70            |
| Builders First H-SC          | Lumber              | 23          | 1           | 2           | 9             |
| Atlantic Paper C-NC          | Paper               | 365         | 319         | 357         | 347           |
| US Components                | Lumber              | 1           | 0           | 0           | 1             |
| Giles Byrd & Son C-NC        | Limestone           | 0           | 0           | 12          | 4             |
| <b>TOTAL CARLOADS</b>        |                     | <b>7752</b> | <b>2272</b> | <b>3121</b> | <b>4379</b>   |

As can be seen in the Table, carload traffic on CALA declined significantly in 2009 and, while such traffic recovered somewhat in 2010, traffic in that year

<sup>4</sup> H-SC indicates that the shipping or receiving point for the named shipper or receiver is located in Horry County, SC. Similarly, M-SC refers to Marion County, SC and C-NC refers to Columbus County, NC. There is a small difference in the average due to rounding.

was still less than half of the 2008 volume. Two principal factors explain that traffic decline. First, in 2008, the United States was entering the deepest economic recession since the Great Depression of the 1920s and 1930s. Particularly hard hit were the construction and housing industries, both of which provided significant traffic for CALA. Traffic in those categories “fell off the table,” so to speak.

Secondly, in 2010, CALA was already experiencing some interruptions of rail service due to needed repairs on the rail line. That restrained the increase in rail traffic that was occurring in 2010 as economic conditions began to improve.

Consequently, in my opinion, traffic volume on CALA in 2008 is more representative of normal CALA traffic volume than traffic volume in 2009 or 2010.

#### **IV. RAIL CARLOADS ON CALA IF THE EMBARGO WERE TO BE REMOVED**

Table 2 below identifies, by shipper or receiver, the number of carloads per year that would be originated or terminated on the CALA rail line if the embargo were to be removed.

**TABLE 2: RAIL TRAFFIC ON CAROLINA SOUTHERN IF THE EMBARGO WERE TO BE REMOVED**

(Source: Current Shipper Survey, September 2013)

| <b>Shipper</b>          | <b>County /State</b> | <b>Estimated Future Carload Usage</b> |
|-------------------------|----------------------|---------------------------------------|
| PlyGem(Kroy)            | C-NC                 | 30                                    |
| Blantons Supply         | H-SC                 | 15                                    |
| Perdue Farms            | C-NC                 | 225                                   |
| Georgia-Pacific         | C-NC                 | 800                                   |
| Southern States-SC      | H-SC                 | 100                                   |
| Carolina East           | M-SC                 | 19                                    |
| MetGlass/Homewood Steel | H-SC                 | 380                                   |
| CanFor/New South        | H-SC                 | 80                                    |
| Idaho Timber            | C-NC                 | 70                                    |
| Builders First          | H-SC                 | 36                                    |
| Atlantic Paper          | C-NC                 | 500                                   |
| US Components           |                      |                                       |
| Giles Byrd & Son        | C-NC                 | 100                                   |

|                           |      |  |              |
|---------------------------|------|--|--------------|
| 84 Lumber                 | H-SC |  | 24           |
| Tucker Materials          | H-SC |  | 24           |
| <b>TOTAL<br/>CARLOADS</b> |      |  | <b>2,403</b> |

The rail traffic estimated in Table 2 is very conservative. Prior users of CALA's rail service expressed a great deal of frustration and lack of trust in the current ownership and management of CALA due to promises not kept, lack of communication, unreliable rail service, and other factors. It was apparent in the interviews with prior users of CALA's rail service that their estimates of traffic volume would have been considerably greater than shown in Table 2 if reliable rail service were to be provided by a rail carrier other than CALA.

The upshot of the foregoing is that substantial rail traffic would be available for transportation if CALA's embargo were to be removed.

## V. AGRICULTURAL DEMAND

Table 3 below identifies the annual production of corn, soybeans, and wheat in Horry and Marion Counties, SC and Columbus County, NC, and shows the number of carloads of those commodities that would be susceptible to transportation by CALA if only 25 percent of such production were to be transported by rail. Substantial quantities of those types of agricultural commodities traditionally are transported by rail.

**TABLE 3: POTENTIAL FOR RAIL TRANSPORTATION OF AGRICULTURAL COMMODITIES<sup>5</sup>**

| COUNTY          | COMMODITY       | PRODUCTION<br>(tons) | CARLOADS<br>(100 tons per car) | 25 percent of<br>carloads |
|-----------------|-----------------|----------------------|--------------------------------|---------------------------|
| <b>Horry</b>    | <b>Corn</b>     | <b>32,200</b>        | <b>322</b>                     | <b>80</b>                 |
|                 | <b>Soybeans</b> | <b>19,500</b>        | <b>195</b>                     | <b>49</b>                 |
|                 | <b>Wheat</b>    | <b>8,100</b>         | <b>81</b>                      | <b>20</b>                 |
| <b>Marion</b>   | <b>Corn</b>     | <b>28,600</b>        | <b>286</b>                     | <b>71</b>                 |
|                 | <b>Soybeans</b> | <b>10,000</b>        | <b>100</b>                     | <b>25</b>                 |
|                 | <b>Wheat</b>    | <b>2,000</b>         | <b>20</b>                      | <b>5</b>                  |
| <b>Columbus</b> | <b>Corn</b>     | <b>67,000</b>        | <b>670</b>                     | <b>167</b>                |
|                 | <b>Soybeans</b> | <b>35,600</b>        | <b>356</b>                     | <b>89</b>                 |
|                 | <b>Wheat</b>    | <b>31,400</b>        | <b>341</b>                     | <b>78</b>                 |
| <b>TOTALS</b>   |                 | <b>234,400</b>       | <b>2,340</b>                   | <b>534</b>                |

<sup>5</sup> Data for Horry County and Columbus County are for 2011. The latest data for Marion County are for 2007.

Thus, CALA ought to be able to transport more than 500 carloads of agricultural commodities per year if it were to make an effort to compete for such transportation.

## **VI. LIKELY DEMAND FOR RAIL PASSENGER SERVICE AND USE OF THE RAIL LINE AS AN EMERGENCY EVACUATION ROUTE**

Attached to this Report as an Addendum is a description of likely demand for rail passenger service over CALA's rail line, and the critical role that CALA's rail line can play as a means of emergency egress from the Coastal area to safety in the event of natural disasters such as hurricanes (which are all too common recently), floods, forest fires, etc.

## **CONCLUSION**

There was a substantial demand for rail transportation to and from CALA's rail line prior to CALA's embargo of rail service, and there would also be a substantial demand for such transportation in the event that the embargo were to be removed.

## **ADDENDUM TO EXHIBIT HL-1**

In addition to the substantial demand for freight transportation on CALA's rail line identified in this Report, there are two additional areas of likely demand for rail transportation over CALA's line, i.e.:

- (1) passenger service to handle substantial tourism into the area, and
- (2) the essential role the rail line would play in an emergency disaster evacuation, and its rebuilding-restoration (e.g. hurricanes, forest fires, floods).



## A. PASSENGER RAIL

Potential future passenger rail service is a topic that invariably is raised by citizens and businesses in the area around CALA's rail line. Passenger rail in the United States was the primary mode of transportation until the 1950's. Due to increased airfares, energy costs and passenger inconveniences in flying post 9/11, there has been a resurgence of demand and use of passenger rail service nationwide. In FY2013 Amtrak recorded the highest rail ridership in its history, carrying 31.2 million passengers. Locally, the development of the Greater Myrtle Beach area as a tourist destination was heavily supported by CALA's predecessor rail lines. The Myrtle Beach Train Depot continues to exist with track in place, literally blocks from the Atlantic Ocean Beaches of the Grand Strand.

### WHY IS PASSENGER RAIL SUCH A POTENTIALLY LARGE DEMAND HERE?

The answer lies in the volume of tourists traveling to the area. Most people would be surprised to discover that the Greater Myrtle Beach area has over 76% more annual tourists than the entire State of Hawaii. Two other key comparative tourist destinations further demonstrate this point: New Orleans recorded over 9 million visitors and Washington, D.C., nearly 18 million.

The Greater Myrtle Beach area is one of the nation's largest tourism destinations. However, unlike New Orleans and Washington, DC it lacks both interstate highways and direct passenger rail service. (Hawaii-Oahu actually has two interstate highways).

#### TOTAL NUMBER OF TOURISTS (2011-12)

|                                 |                   |
|---------------------------------|-------------------|
| State of Hawaii (all islands)   | 8,028,744         |
| New Orleans, LA                 | 9,010,000         |
| <b>Greater Myrtle Beach, SC</b> | <b>14,100,000</b> |
| Washington, DC                  | 17,900,000        |

A closer look at the inflow and outflow of Myrtle Beach clarifies the significant transportation problems and the potential demand rail could address. Of the over 14 million annual visitors to the Myrtle Beach area, 848,500 come from Canada (55% from Ontario). Canadians enjoy a strong national rail system on VIA Rail that in the Northeast U.S. connects with Amtrak. Another 35% of tourists, nearly 5 million per year, come from states in the Northeast Corridor, Ohio and Virginia, all serviced by existing Amtrak routes.

In terms of mode of transport, approximately 867,000 or 6% of total tourists arrive in Myrtle Beach by air; the area is opening a new international

terminal in April 2013. Approximately 94% of tourists to the Greater Myrtle Beach area (nearly 13 million) arrive by motor vehicle to an area that lacks interstate highway access, has inadequate U.S. highway capacity, and no current passenger rail service.

There is little question that eventual development of passenger rail service with appropriate private-public partnership represents substantial demand for the CALA line.

### **FINANCIAL-ECONOMIC REALITIES OF U.S. PASSENGER RAIL SERVICE**

Passenger rail has long been a goal of many in the region. But any movement to passenger rail strategies must recognize that every nation that operates passenger rail requires a public subsidy in terms of operating costs, capital costs or both. Subsidies are in all cases provided based on the reduction of social costs such as congestion, pollution, improved land use, savings in certain road construction and reducing in traffic accidents, among others.

Passenger rail service particularly in the U.S. to date, has been unable to sustain break-even revenues to costs. For FY12, Amtrak realized \$2,877 billion in revenue and incurred \$4,036 billion in expense, thus covering only 71.3% of its costs from total revenue.

In South Carolina, Amtrak currently offers only three through-train routes (North to South);

- *Crescent* (Spartanburg-Greenville-Clemson)
- *Silver Star* (Camden, Columbia, Denmark, Savannah (GA))
- *Silver Meteor/Palmetto* (Dillon, Florence, Charleston, Yemassee)

Of these three, the *Silver Meteor/Palmetto* line comes closest to CALA's service area, and represents a potential opportunity for seasonal Amtrak service intersecting CALA on the CSX line at Mullins (Marion County) and potentially providing opportunities for rail connection between the Grand Strand and Charleston as a tourism rail alternative.

### **ESTIMATING POTENTIAL PASSENGER DEMAND**

For this estimate, let us work from the Northeastern Corridor tourism (35% of total Myrtle Beach Tourism) estimate of 5 million tourists per year. Let us be very conservative and further assume that half of those northeastern tourists would use passenger rail service to Myrtle Beach as a basis for estimating potential rail passenger demand. **In short, we assume in this model that 2.5 million tourist a year out of the 14.1 million tourists would use rail (17.7%).**

Amtrak's fleet utilizes rail cars with the following coach capacities per car: (for the purpose of this estimate, we assume only coach service, recognizing

additional cars for business class, baggage, and dining add into the utilization) Superliner I = 75 passengers; AmFleet I = 72; North Carolina routes (*Cardinal, Dogwood*) = 66. **For estimating purposes we will use an average of 70 passengers per Amtrak rail passenger car.**

**ESTIMATED PASSENGER RAIL DEMAND EACH WAY = 35,714 passenger carloads (2,500,000 ÷ 70 = 35,714).**

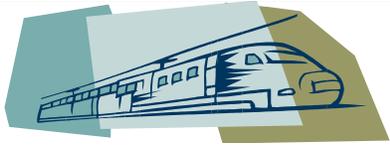
Assuming round trips, this leads to demand to replace more than 71,000 passenger cars per year. From this figure, we can estimate the number of Amtrak train runs. Here we assume 20 passenger cars per train run. This results in the following:

|                                   |              |
|-----------------------------------|--------------|
| INBOUND                           | 1,786        |
| OUTBOUND                          | <u>1,786</u> |
| <b>TOTAL POTENTIAL TRAIN RUNS</b> | <b>3,572</b> |

The area's tourism season runs generally from late March to early October. However, the area has been developing more of a year round visitor economy. For example, peak Canadian tourism comes in the Spring (March to May). Yet even here, one can see that a six month seasonal run would potentially result in demand of close to 300 trains a month (about 10 per day) under the most optimal conditions. Even half of such a schedule would be substantial for the CALA line.

A brief example shows the cost saving potential for the typical Myrtle Beach tourist market which attracts middle class families. For our example, let us assume a family of 4 traveling from New York to Myrtle Beach. Each family member has one checked bag. For rail we will utilize the current lowest Amtrak fare from New York to Dillon, SC (ultimately this would be Mullins, SC if Amtrak service were to be established in the area), and add use for the leg into Myrtle Beach on CALA the current train fare charged on Amtrak's *Downeaster* Line. For simplicity we will use the best 30-day standard airline fare.

**HYPOTHETICAL RAIL-AIRLINE COMPARISON**  
**FAMILY OF FOUR TRANSPORTATION: New York to Myrtle Beach**

|  | <b>Amtrak (inc. prospective CALA Connection)</b> | <b>Airline: Delta Airlines</b> |
|---|--|--------------------------------|
| Round Trip Fare   | \$808  | \$1,064                        |
| Bag Fees  | \$0  | \$ 200                         |

|  |                       |                |
|--|-----------------------|----------------|
| <b>TOTAL Fare &amp; Fees</b>           | <b>\$808</b>          | <b>\$1,264</b> |
| Estimated Family Savings<br>Using Rail | <b>\$456 or 54.4%</b> |                |

It is recognized that rail transportation takes longer and is a subsidized rate. However, for middle class families, it also avoids the inconveniences associated with air travel and the fact that weather delays for rail during summer season are rare. Rail transportation would put the family right at the heart of the beach with no or minimal shuttle transport needed to hotels. Passenger rail would also be a substantial savings to a family vs. use of the automobile. Auto congestion would be substantially relieved during peak tourist season. These conveniences were not quantified and benefits are in addition to the savings displayed in the above example.

The point of this demonstration is to show that, with appropriate capital investment, Amtrak, working with CALA and public officials, could take thousands of cars off the highways and provide a positive environmentally friendly alternative to the large tourism market. Particular convenience would be open to visitors from the Northeast Corridor and Canada for whom rail is a strong demand transportation mode. This further would improve the capacity, safety and speed for both passenger and freight, and provide yet another major economic development stimulus to the area's substantial tourism economy.

One final note on potential passenger rail demand is worth mentioning. The Eastern end of CALA contains two of the state's fastest growing colleges and universities; Coastal Carolina University and Horry Georgetown Technical College. Both are literally across the road (U.S. 501) from the CALA line leading into Myrtle Beach. Together these colleges represent nearly 20,000 students. Potential exists to use the line as perhaps a weekend light rail alternative, that would safely convey students to and from the beach, thus reducing an endemic problem of impaired driving and traffic congestion on U.S. 501.

## **B. EMERGENCY EVACUATION AND RESTORATION**

The attention of public policy makers in recent years has focused on the tremendous devastation in New Orleans as a result of Hurricane Katrina and, in the Northeast, as a result of Hurricane Sandy.

Hurricane Katrina hit New Orleans and the Gulf Coast on August 23, 2005. It killed over 1,800 people, flooded 80% of New Orleans and did an estimated \$148 billion in total damage costs including damage or destruction of over 1.2 million housing units. Over a decade later, damage recovery is still in progress. New Orleans and most of the Gulf Coast are able to expedite recovery through access to extensive railroads, ports, and interstate highways.

Hurricane Sandy dubbed the “Frankenstorm”, hit the Northeast United States (particularly, NY, NJ, and CT) on October 29, 2012. More than 200 people were killed. Total damages were estimated to be \$440 billion (NY, NJ, CT). Sandy damaged or destroyed over 380,000 housing units as well as beach/ coastal infrastructure. Restoration, which is still underway, is enhanced by the area’s extensive rail and interstate highway system.

Hurricane Hugo hit Myrtle Beach on September 9, 1989. Over 250,000 people had to be evacuated from the coast and the storm produced damages of \$7 billion and killed 49 people. It could have been much worse. *Hugo* arrived after the main peak of tourism season in Greater Myrtle Beach . In the 24 years, since that time, both the resident population and tourism market have expanded tremendously. The Counties of Horry, Marion and Columbus are located in a prime hurricane zone. It is literally *a throw of the dice* in any given season as to whether that region will get hit by a major category storm. Were that to happen at peak tourist season, evacuation would be a disaster due to the inadequate road capacity to move out the massive number of tourists, and damage would be catastrophic.

Passenger rail service would be a key emergency evacuation mode. Moreover, reconstruction and restoration along the lines of major storms that have hit the U.S. requires mass mobilization and expeditious movement of temporary housing by the Federal Emergency Management Agency (FEMA) and mass quantities of reconstruction material be it timber, brick-concrete, steel or aggregates. Rail is the only efficient and effective means of handling these demands.

Consequently, the preservation of the CALA line must be viewed not only as satisfying a demand for rail freight service, but also as a public conveyance for disaster evacuation, relief and restoration; a key element in public safety.

BEFORE THE  
UNITED STATES SURFACE TRANSPORTATION BOARD

Docket No. 42138

IN RE: HORRY COUNTY, et. al.v. THE BALTIMORE AND ANNAPOLIS  
RAILROAD COMPANY, d.b.a. CAROLINA SOUTHERN RAILROAD  
COMPANY

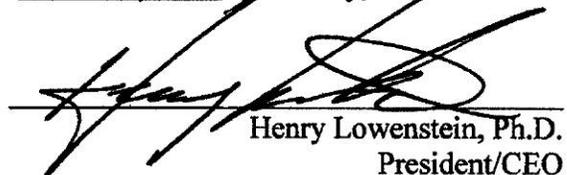
**PROFESIONAL REPORT AND CONCLUSIONS: RAIL TRAFFIC ON  
CALA PRIOR TO EMBARGO AND ESTIMATES POST EMBARGO**

Now comes Henry Lowenstein, Ph.D., President and CEO of Research and Consulting Services LLC, having been retained by Thomas F. McFarland, Attorney at Law, Law Offices of Thomas F. McFarland, PC of Chicago, Illinois on behalf of his clients, the "Complainants," to provide professional evaluation of CALA rail traffic in the above captioned matter.

**VERIFICATION CERTIFICATION**

I, Henry Lowenstein, PhD, President/CEO of Research and Consulting Services, LLC being duly sworn verify that the submitted rail traffic research reports are true and accurate to the best of my knowledge, information and belief as of the date of the report.

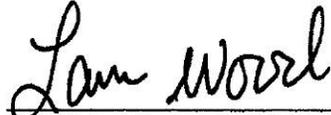
7 February 2014 at Conway, South Carolina

  
Henry Lowenstein, Ph.D.  
President/CEO  
Research and Consulting Services LLC

Signed and Sworn before me this day

7 February 2014

NOTARY:



My Commission Expires 10/14/20

**JOINT VERIFIED STATEMENT OF DOUG WENDEL AND DENNIS WORLEY**

My name is Doug Wendel. I am immediate past Chairman of the Myrtle Beach Regional Economic Development Corporation. I continue to serve on the Executive Committee of that Corporation.

My name is Dennis Worley. I am an attorney in private practice in Tabor City, NC.

We are co-Chairmen of the Interstate Railroad Committee of North and South Carolina (the Railroad Committee). The Railroad Committee was formed as an ad hoc organization to facilitate communication between Messrs. Ken Pippin and Jason Pippin (the Pippins), the owners of The Baltimore and Annapolis Railroad Company (BAR), doing business as Carolina Southern Railroad Company (CALA), on one hand, and, on the other hand, representatives of local Government, shippers, and others interested in reinstatement of rail service over CALA's rail line that extends between a point of connection to CSX Transportation, Inc. (CSX) at Mullins, SC and a terminus at Whiteville, NC, and between Chadburn, NC and point of connection to a rail line owned by Horry County, South Carolina at Conway, SC, a distance of approximately 76 miles in Horry and Marion Counties, SC and Columbus County, NC. The rail line owned by Horry County extends between Conway, SC and a terminus at Myrtle Beach, SC, a distance of approximately 14 miles in Horry County, SC.

CALA declared its rail line out of service in August, 2011 due to unsafe bridge conditions identified by representatives of the Federal Railroad Administration (FRA). CALA formally embargoed rail service over its line in August, 2012, and renewed that embargo in August, 2013.

That embargo remains in effect at present. Thus, shippers and receivers of freight on CALA's rail line have been deprived of rail service for the past 2½ years, with no end in sight. Moreover, the embargo of rail service effectively applies to the rail line owned by Horry County because the only way for shipments that originate or terminate on that rail line to reach the national rail system by means of connection to CSX at Mullins is to operate over CALA's rail line between Conway and Mullins, SC, via Chadburn, NC. (*See* the map that is attached to Complainant's Statement as Appendix 1).

The Railroad Committee held eleven public meetings on the subject of CALA's rail line between September, 2012 and December, 2013. Four of those public meetings were attended by at least one representative of CALA. It was our opinion from those public meetings that CALA's initial intent was to obtain Federal funds to repair the defective bridges. When it became apparent that Federal funds would not be available for the purpose, it appeared that CALA's intent became to sell the rail line for what it termed "fair value". It has now become apparent in view of the passage of substantial time that a sale of the rail line has not occurred.

In the absence of either government funding or sale of the line for resumed rail operation, the Railroad Committee has taken the position that CALA has a duty either to repair the bridges with its own funds and remove the embargo, or seek STB authority to abandon the line, after which the line could be acquired for resumption of rail service under offer-of-financial-assistance (OFA) provisions. Importantly, under those provisions, the STB has authority to determine what constitutes fair value for the rail line, and to require CALA to sell the line for that value.

At a meeting of the Railroad Committee on October 8, 2012 attended by the Pippins, the minutes show that an engineering consultant for CALA estimated that it would take 6 to 8 weeks to repair the defective conditions in the bridges that necessitated the embargo. Mr. Pippin stated that CALA's rail operations do not generate enough revenue to fund repair of the bridges. He suggested that the Counties and/or the affected Municipalities apply for Federal funds for repair of the bridges. It was pointed out to the Pippins that in October, 2011, Horry County, with support from Columbus and Marion Counties, applied for a grant of funds under the TIGER III Program for rehabilitation of CALA. In December, 2011, that application was denied. In March, 2012, Horry County with support of Columbus and Marion Counties, again applied for a grant of funds under the TIGER IV Program for rehabilitation of CALA. In June, 2012, that application also was denied. In view of that multiple denial of Federal funding, it was pointed out that CALA did not appear to have a plan for restoration of rail service on its line.

At a meeting of the Railroad Committee on January 30, 2013 attended by the Pippins, the minutes show that Mr. Ken Pippin stated that CALA continued to be unable to obtain governmental funding for bridge repair. Co-Chairman Wendel expressed concern that the rail line has been out of service for approximately 18 months, with no source of funding in sight. Mr. Wendel stated that in the Railroad Committee's view, CALA has three remaining alternatives, i.e., (1) enter into a Joint Venture with an entity having sufficient capital to repair the bridges; (2) lease the Rail Line to such an entity; (3) sell the rail line to such an entity.

At a meeting of the Railroad Committee on May 15, 2013, the minutes show that Dr. Henry Lowenstein stated that under the TIGER grant program, the local match is now equal to

four times the amount of the funds requested, and the local funds must be expended before any federal funds are spent. The Counties and Municipalities who are members of the Railroad Committee stated unanimously that they would not be willing to sponsor another TIGER grant application for funding in behalf of CALA. That action was communicated to CALA.

At a meeting of the Railroad Committee on August 15, 2013 attended by the Pippins and their attorney, Mr. Thomas Brittain, the minutes show that Mr. Brittain stated that CALA is attempting to sell the rail line if it can obtain fair value for the line. Co-Chairman Wendel stated that in the absence of progress over a two-year period to repair the bridges and remove the embargo, Horry County and Columbus County have retained an attorney to seek relief from the continuing embargo at the STB. Mr. Wendel stressed that any complaint filed at the STB could be withdrawn if CALA were to sell the line for resumption of rail service while the Complaint was pending.

Marion County, five affected Municipalities, and one shipper over CALA's rail line, joined Horry County and Columbus County in a Complaint filed at the STB on August 27, 2013 alleging that CALA has failed to provide rail transportation on reasonable request in violation of 49 U.S.C. § 11101(a), and that its embargo of rail service has ripened into an unlawful abandonment in violation of 49 U.S.C. § 10903(d).

As of the filing of this Joint Verified Statement more than 2½ years after the rail line was taken out of service, CALA has not entered into an agreement to sell the line for reinstatement of rail service, nor has it removed the continuing embargo. Consequently, the complaining entities are prosecuting their Complaint for an order requiring CALA to cease and desist from the above

violations of law by either repairing the bridges and removing the embargo, or by seeking STB authority to abandon the rail line, after which it can be acquired under OFA provisions for resumption of rail service.





**VERIFIED STATEMENT OF KEVIN PHILLIPS**

My name is Kevin Phillips. I am Supply Chain Manager of Metglas, Inc. In that position, I am familiar with transportation of the raw materials used by Metglas in its production process.

Metglas is the world's leading producer of amorphous metal ribbon. Amorphous metals produced by Metglas have a unique non-crystalline structure and possess excellent physical and magnetic properties that combine strength and hardness with flexibility and toughness. Amorphous metals have a wide variety of end uses, such as in electrical distribution transformers.

Metglas's production facility is located at Conway, SC on a rail line owned by Horry County, South Carolina. That rail line was formerly leased and operated by Waccamaw Coast Line Railroad Company (WCLR), a division of The Baltimore and Annapolis Railroad Company (BAR). BAR is a railroad holding company owned by Mr. Ken Pippin and/or his family. Horry County recently terminated WCLR's lease for non-payment of rent.

In order for shipments to or from Horry County's rail line to reach the national rail system, they must be transported over a rail line of Carolina Southern Railroad Company (CALA), another part of BAR, between Conway, SC and point of connection to CSX Transportation, Inc. (CSX) at Mullins, SC. In August, 2011, CALA's rail line was taken out of service because of unsafe bridge conditions. CALA later embargoed service over its rail line. That embargo remains in effect at present. The embargo of CALA's rail line thus effectively embargoed Horry County's rail line.

As here pertinent, prior to CALA's rail line being taken out of service, Metglas received shipments of steel that CALA transported from Mullins to a contractor of Metglas on CALA's rail line approximately five miles from Metglas's production facility. The steel was cut at that contractor's facility and was then transported by truck to Metglas's production facility.

During the period of time that CALA's rail line has been out of service and embargoed, Metglas improved its facility to be able to cut its steel at its own production facility at Conway. Consequently, if rail service were to be restored over CALA's rail line, Metglas would receive its steel directly by rail at its Conway production facility without the need for any truck transportation.

The absence of rail transportation over the CALA rail line is having a serious adverse effect on Metglas. The most economic means of alternate transportation for Metglas has been rail-truck transloading, with Allen's Scrap Metal, LLC performing the transloading at Rains, SC, a point on CSX less than a mile from Mullins, and with Allen's also performing the truck transportation from Rains to Conway. The cost of rail transportation from origin to Rains has been the same as the cost of rail transportation from origin to Metglas's contractor. As shown on a representative invoice of Allen's, attached as Exhibit KP-1, the cost of that transloading and trucking is \$1,500 per car, which is Metglas's additional transportation cost inasmuch as the rail cost has been unchanged. In addition, Metglas is required to pay Vulcan Materials, the owner of the land under the transloading facility, \$1,500 per month and \$150 per car.

Metglas purchases its steel on a delivered basis with transportation charges added to the cost of the steel. Thus, Metglas bears the cost of transportation. In 2010, which was the last full

calendar year before the CALA rail line was taken out of service, Metglas received 312 carloads of steel by rail. At additional cost of \$1,650 per car and \$1,500 per month, the absence of rail service is requiring Metglas to pay additional transportation costs of \$532,800 per year ( $[\$1,650 \times 312] + [\$1,500 \times 12] = \$532,800$ ). The rail line has been out of service and/or embargoed for approximately 2½ years. Consequently, the absence of rail service has required Metglas to pay additional costs of \$1,332,000 to date, and on a continuing basis. Competitive conditions prevent Metglas from passing that huge cost increase on to its customers. Instead, Metglas must absorb the drastic additional cost increase, with resulting adverse effects on its ability to successfully conduct its business.



Allen's Scrap Metal, LLC  
 3838 Danny Road  
 Loris, SC 29569

Invoice Date  
 12/20/2013

Invoice #  
 538

# INVOICE

Job At:

Phone # 843-756-0687 allenscrapmetal.com  
 Fax # 843-756-1061

**Bill To:**

Metglas  
 Attn: Accounts Payable  
 440 Allied Dr.  
 Conway, SC 29526

**PLEASE PAY**

**THIS AMOUNT**

\$9,000.00

Make checks payable to: Allen's Scrap Metal, LLC

Please check box if address is incorrect or has changed, and indicate change(s) on reverse side.

Allen's Scrap Metal, LLC  
 3838 Danny Road  
 Loris, SC 29569

PLEASE DETACH AND RETURN TOP PORTION WITH PAYMENT

| P.O. No.                          | Terms          | Due Date   | Rep      | Project |
|-----------------------------------|----------------|------------|----------|---------|
|                                   | Due on receipt | 12/20/2013 |          |         |
| Description                       | Qty            | Rate       | Amount   |         |
| Unloaded 6 Rail Cars at Rains     |                |            |          |         |
| Rail Car ATW 700089 (52 Billets)  |                |            |          |         |
| Rail Car ATW 700180 (52 Billets)  |                |            |          |         |
| Rail Car ATW 700230 (53 Billets)  |                |            |          |         |
| Rail Car ATW 700046 (52 Billets)  |                |            |          |         |
| Rail Car NOKL 321637 (51 Billets) |                |            |          |         |
| Rail Car NOKL 321642 (53 Billets) |                |            |          |         |
|                                   | 6              | 1,500.00   | 9,000.00 |         |

Each rail car contains 90MT

$1500 / 90 \text{ MT} = \$16.67/\text{MT}$

THERE WILL BE A \$15 CHARGE FOR ALL RETURNED CHECKS  
 10% INTEREST WILL BE ASSESSED ON ALL UNPAID BALANCES AFTER 90 DAYS

**Total** \$9,000.00

Billing Inquiries? Call 843-756-0687

**Balance Due** \$9,000.00



**VERIFIED STATEMENT OF CARL HAMILTON**

My name is Carl Hamilton. I am General Manager Transportation and Logistics of New South Lumber Company, Inc. (New South). I am familiar with transportation matters involving New South.

New South is a major manufacturer of dimension lumber, southern yellow pine lumber products, and treated lumber. New South's corporate headquarters are located at Myrtle Beach, SC. New South has a manufacturing plant at Conway, SC on a rail line that is owned by Horry County, South Carolina. That rail line was formerly leased and operated by Waccamaw Coast Line Railroad Company (WCLR), a division of The Baltimore and Annapolis Railroad Company (BAR). BAR is a railroad holding company owned by Mr. Ken Pippin and by members of his family. Horry County recently terminated WCLR's lease for non-payment of rent.

In order for shipments to or from Horry County's rail line to reach the national rail system, they must be transported over a rail line of Carolina Southern Railroad Company (CALA), another part of BAR, between Conway, SC and point of connection to CSX Transportation, Inc. (CSX) at Mullins, SC. In August, 2011, CALA's rail line was taken out of service because of unsafe bridge conditions. CALA later embargoed rail service over that line. That embargo remains in effect at present. The embargo of CALA's rail line thus effectively embargoed Horry County's rail line and prevented New South from shipping by rail.

The absence of rail service is having a serious adverse effect on New South. New South's rail shipments prior to the embargo were as follows:

| <u>YEAR</u> | <u>CARLOADS</u> |
|-------------|-----------------|
| 2008        | 72              |
| 2009        | 43              |
| 2010        | 29              |

In 2011, New South shipped 338 truckloads from Conway that would have gone by rail but for the embargo. It takes 4.18 trucks to transport the equivalent volume that can be transported in one railcar. Thus, New South would have shipped 81 carloads by rail in 2011. In 2012, New South shipped 315 truckloads from Conway that would have been shipped by rail but for the embargo. At 4.18 trucks per one railcar, New South would have shipped 75 carloads by rail in 2012. The increase in the number of carloads shipped in 2011 and 2012 reflects the recovery in the housing market in those years, with resulting increased demand for lumber.

The current average cost by rail from Conway, SC to the Northeastern and Midwestern markets supplied by New South is \$4,413 per railcar. The current average cost by truck from Conway to those markets is \$6,797 per railcar equivalent, i.e., \$1,626 per truck x 4.18 trucks per railcar = \$6,797. Those costs are reflected in the attachments to my statement marked as Exhibit CH-1.

Accordingly, New South was required to pay increased freight charges of approximately \$193,104 in 2011 and \$178,600 in 2012 as a result of CALA's embargo of rail service, i.e., \$6,797 minus \$4,413 = \$2,384 times 81 cars in 2011 = \$193,104 and times 75 cars in 2012 = \$178,600. The two-year total of increased freight costs is \$371,704, and such increased costs are continuing.

Exhibit CH-1

You are here: [ShipCSX](#) > Plan > Price Look-Up

January 17, 2014 1:46 PM EST [Help](#)

**Price Detail**

Click on the price link for additional price details. To view the price publications click [\(P\)](#) next to the price.

[Printable Summary Version](#) [\(P\)](#) [Printable Detail Version](#) [\(P\)](#) [Help](#)

Origin: Conway, SC (CALA) Destination: Chambersburg, PA (CSXT) STCC: 2421184 - LUMBER OR TIMBER, ROUGH

**AVAILABLE PRICES - PRICE DETAIL**

These price(s) are available for use based on the effective and expiration dates. Click on the price link for additional price details.

| Price                          | Per     | Type     | Mileage or % Est. Fuel Surcharge | Equipment Size Restrictions           | Price Authority | Route               | Min Weight | Private Car Mileage/Cap Owner | Exp Date | Price Type |
|--------------------------------|---------|----------|----------------------------------|---------------------------------------|-----------------|---------------------|------------|-------------------------------|----------|------------|
| \$4,459.00 <a href="#">(P)</a> | PER CAR | Flat Car | 640 @ \$0.46 pm<br>\$294.40*     | From 63' 1" to 74' 0" (inside length) | CSXT2400        | CALA - MULSC - CSXT | -          | Zero                          | 05/01/13 | Public     |

\*Miles and estimated fuel surcharges are applicable as of 1/17/14 1:46 PM EST and are subject to change.  
For ShipCSX questions, call 1-877-ShipCSX (744-7279) Option 2, Option 1  
For Customer Service, call 1-877-ShipCSX (744-7279) Option 5, Option 6

[ShipCSX Privacy](#) [Terms of Use](#) [Corporate Structure](#) © 2013 CSX Technology, Inc.

**New South Lumber Company, Inc. Carrier Acknowledgement**



**Canfor Southern Pine**

Sold To : 624  
 Sherwood Lumber Corp.  
 P.O. Box 9007  
 Central Islip, NY 11722-9007

Ship To : 200  
 Franklin Storage - Gullford  
 2999 Guildford Springs Road  
 (717) 262-2910 Del Martin  
 Chambersburg, PA 17202

Order / Pickup No : 604598-0  
 Projected Delivery : 7/30/2013  
 Estimated Ship : 07/31/2013

| <u>Carrier Information and Fees</u> |                        |
|-------------------------------------|------------------------|
| # 110- AMERICAN TRANSPORT, INC.     | Phone : (412) 788-8878 |
| P.O. BOX 640469                     | Fax : (412) 788-8896   |
| PITTSBURGH, PA 15264-0469           | Contact : Brenda Wiley |
|                                     | Frft Fee : \$1,703.00  |

Cust PO No : E15324      Reference No :  
 FOB : Destination      Salesperson : Sandra McCracken  
 Carrier Type : Common Carrier      Phone : (843) 236-9407

| Line | Part Description             | Inv Loc | PC/PK      | PC  | PK    | BF    | Est.Wgt (lbs) |        |
|------|------------------------------|---------|------------|-----|-------|-------|---------------|--------|
| 1    | 2 X 6 X 10 MSR 2400 S4S KDHT | CON     | 160        | 320 | 2.00  | 3,200 | 8,000         |        |
| 2    | 2 X 6 X 12 MSR 2400 S4S KDHT | CON     | 160        | 480 | 3.00  | 5,760 | 14,400        |        |
| 3    | 2 X 6 X 14 MSR 2400 S4S KDHT | CON     | 160        | 320 | 2.00  | 4,480 | 11,200        |        |
| 5    | 2 X 6 X 18 MSR 2400 S4S KDHT | CON     | 80         | 80  | 1.00  | 1,440 | 80            |        |
| 6    | 2 X 6 X 16 MSR 2400 S4S KDHT | CON     | 160        | 320 | 2.00  | 5,120 | 12,800        |        |
|      |                              |         | ---Totals: |     | 1,520 | 10.00 | 20,000        | 46,480 |

*Important Note: Actual weights may vary and should be verified by weighing on scales*

**NOTE: Representative must present Pick Up Number (604598-0) and PO Number (E15324) to shipping clerk at time of pick up.**

**>>>> TARP LOAD Unless Specified Otherwise <<<<**

**Pick Up From :** New South Lumber Company, Inc.  
 Conway Plant  
 1501 Depot Road  
 Conway, SC 29526  
 (843) 349-3428      (843) 349-3472

**Freight Bill To :** New South Lumber Company, Inc.  
 3700 Claypond Road  
 Myrtle Beach, SC 29579  
 ATTN: Logistics Department  
 (843) 236-9399

**Shipping Hours : 7:00 AM to 4:30 PM  
 Weekdays (Excluding Holidays)**

**Important Safety Notice - Hard Hats and Safety Glasses must be worn while on-site.  
 Please ensure your drivers have these items in their possession upon arrival.**

For questions concerning this acknowledgement, please contact:  
 Michael Collins    Michael.Collins@newsouth.canfor.com  
 Phone : 843-236-8408 | Fax : 843-236-8456 | Cell : 843-340-2480

**Price Detail**

Click on the price link for additional price details. To view the price publications click (P) next to the price.

[Printable Summary Version](#) [Printable Detail Ver](#)

Origin: Conway, SC (CALA) Destination: Thurmont, MD (MMID) STCC: 2421184 LUMBER OR TIMBER ROUGH

**AVAILABLE PRICES - PRICE DETAIL**

These price(s) are available for use based on the effective and expiration dates. Click on the price link for additional price details.

| Price      | Per     | Type     | Mileage or % Est Fuel Surcharge | Equipment Size Restrictions           | Price Authority | Route                      | Ratio Weight | Private Car Mileage/Car Ovrms | Car | Exp Date |
|------------|---------|----------|---------------------------------|---------------------------------------|-----------------|----------------------------|--------------|-------------------------------|-----|----------|
| \$4,367.00 | PER CAR | Flat Car | 607 @ \$0.46 pm \$279.22*       | From 63' 1" to 74' 0" (inside length) | CSXT2404        | CALA-MULSC-CSXT-ENHGR-MMID | -            | Zero                          | -   | 05/01/13 |

[New Price Look-Up](#)

[Return to Price Rest](#)

# New South Lumber Company, Inc. Carrier Acknowledgement



## Canfor Southern Pine

**Sold To : 756**  
 NVR Building Products Co.-MD  
 210 N. Carroll Street  
 Thurmont, MD 21788

**Ship To : 1**  
 NVR Building Products Co.-MD  
 100 Apples Church Rd  
 301-271-5300  
 Thurmont, MD 21788

**Order / Pickup No : 600800-0**  
**Projected Delivery : 7/24/2013**  
**Estimated Ship : 07/29/2013**

**Carrier Information and Fees**

|                                   |                         |
|-----------------------------------|-------------------------|
| # 10383 ROSEBUD ENTERPRISES, INC. | Phone : (704) 465-0545  |
| 4582 NC 742 N.                    | Fax : (704) 694-2129    |
| WADEBORO, NC 28170                | Contact : Keith Rosebud |
|                                   | Frft Fee : \$1,550.00   |

**Cust PO No : TL012073**      **Reference No : T1414**  
**FOB : Destination**      **Salesperson : Lisa Sims**  
**Carrier Type : Common Carrier**      **Phone : (843) 236-8401**

| Line            | Part Description        | Inv Loc | PC/PK | PC  | PK   | BF    | Est.Wgt (lbs)                    |
|-----------------|-------------------------|---------|-------|-----|------|-------|----------------------------------|
| 1               | 2 X12 X 14 GRD 3 S4S HT | CON     | 80    | 320 | 4.00 | 8,960 | 18,816                           |
| 2               | 2 X 6 X 14 GRD 3 S4S HT | CON     | 160   | 480 | 3.00 | 6,720 | 14,112                           |
| 4               | 2 X 8 X 10 GRD 3 S4S HT | CON     | 160   | 640 | 4.00 | 6,400 | 13,440                           |
| <b>Totals :</b> |                         |         |       |     |      |       | <b>1,440 11.00 22,080 46,368</b> |

See Special Instructions Below...

*Important Note: Actual weights may vary and should be verified by weighing on scales*

**NOTE: Representative must present Pick Up Number (600800-0) and PO Number (TL012073) to shipping clerk at time of pick up.**  
**Bagged Load requires additional processing at facility. Please call shipping office for appointment.**

**Pick Up From :** New South Lumber Company, Inc.  
 Conway Plant  
 1501 Depot Road  
 Conway, SC 29526  
 (843) 349-3428      (843) 349-3472

**Freight Bill To :** New South Lumber Company, Inc.  
 3700 Claypond Road  
 Myrtle Beach, SC 29579  
 ATTN: Logistics Department  
 (843) 236-9399

**Shipping Hours : 7:00 AM to 4:30 PM**  
**Weekdays (Excluding Holidays)**

Bagged Load requires additional processing at facility.  
 Please call the shipping office at the number(s) above for appointment.

**Special Shipping / Pick Up Instructions**  
**Shipping Hours:**

**Monday thru Friday : 6:00am to 2:30 pm**

**Important Safety Notice - Hard Hats and Safety Glasses must be worn while on-site.**  
**Please ensure your drivers have these items in their possession upon arrival.**

For questions concerning this acknowledgement, please contact:  
 Michael Collins    Michael.Collins@newsouth.canfor.com  
 Phone : 843-236-8408 | Fax : 843-236-8456 | Cell : 843-340-2490

BEFORE THE  
UNITED STATES SURFACE TRANSPORTATION BOARD

Docket No. 42138

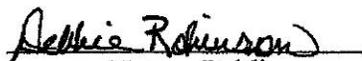
IN RE: HORRY COUNTY, et. al.v. THE BALTIMORE AND ANNAPOLIS  
RAILROAD COMPANY, d.b.a. CAROLINA SOUTHERN RAILROAD  
COMPANY

Carl Hamilton, General Manager Transportation and Logistics for CanFor-Southern Pine, and, Vice-President, New South Express, Inc, Myrtle Beach, South Carolina, being duly sworn, states that he has knowledge of the factual assertions set forth in this Statement, and that all of those assertions are true and correct to the best of his knowledge and belief.

  
Carl Hamilton

STATE OF SOUTH CAROLINA )  
COUNTY OF HORRY )

SUBSCRIBED and SWORN to before me  
this 17<sup>th</sup> day of January, 2014

  
Notary Public

My Commission expires 3-19-2023



**CERTIFICATE OF SERVICE**

I hereby certify that on February 7, 2014, I served the foregoing Complainants' Opening Statement, on Louis E. Gitomer, Esq., 600 Baltimore Avenue, Suite 301, Towson, MD 21204, Thomas C. Brittain, Esq., The Brittain Law Firm, P.A., 4614 Oleander Drive, Myrtle Beach, SC 29577, and Michael McBride, Esq., Van Ness Feldman, PC, 1050 Thomas Jefferson Street, N.W., Washington, DC 20007, by UPS overnight mail, Monday delivery.

*/s/ Thomas F. McFarland*

\_\_\_\_\_  
Thomas F. McFarland