

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

237656

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CONSUMERS ENERGY COMPANY

Complainant,

v.

CSX TRANSPORTATION, INC.

Defendant.

Docket No. NOR 42142

CSX TRANSPORTATION, INC.'S ANSWER TO ORIGINAL COMPLAINT

Pursuant to 49 C.F.R. § 1111.4, Defendant CSX Transportation, Inc. ("CSXT") respectfully submits this Answer to the Complaint filed by Complainant Consumers Energy Company ("Consumers") in STB Docket No. 42142 on January 13, 2015 ("Complaint").

CSXT denies all of the allegations of the Complaint except where this Answer specifically states otherwise.

In response to the unnumbered paragraph on pages 1-2 of the Complaint, CSXT denies that Consumers has paid or will pay common carrier rates in excess of a reasonable maximum rate for CSXT's transportation of the movement set forth in that initial unnumbered paragraph of the Complaint (the "issue movement"), denies that the Board has jurisdiction over the CSXT rail transportation rate for the issue movement, and denies that Consumers is entitled to any of the relief it seeks in this proceeding. The remainder of the unnumbered paragraph consists of a characterization of Consumers' Complaint, to which no response is required. To the extent that any further response may be required, CSXT denies the remaining allegations of this paragraph.

With respect to the numbered paragraphs of the Complaint, CSXT responds as follows:

1. CSXT lacks sufficient information to admit or deny the allegations of Paragraph 1 of the Complaint, which describes Complainant and its operations. To the extent a response is required, CSXT denies the allegations of Paragraph 1.

2. CSXT lacks sufficient information to admit or deny the allegations in the first four sentences of Paragraph 2 of the Complaint, which describe Complainant's operations and its arrangements with rail carriers other than CSXT. As to the fifth and sixth sentences of Paragraph 2, CSXT admits that it delivers coal shipments originating in the western United States from a Chicago interchange point to Complainant's Campbell facility and that CSXT also has transported coal to Campbell from mines in the eastern United States. To the extent a further response is required, CSXT denies the remaining allegations of Paragraph 2.

3. CSXT lacks sufficient information to admit or deny the allegations of Paragraph 3 of the Complaint. To the extent a further response is required, CSXT denies the allegations of Paragraph 3.

4. CSXT admits the first sentence of Paragraph 4 of the Complaint. With respect to the second sentence of Paragraph 4, CSXT admits that it is generally subject to the Interstate Commerce Commission Termination Act of 1995, and that some of its rates and practices are subject to the jurisdiction of the Board. As to the third sentence of Paragraph 4, CSXT admits that it has the ability to establish rates and terms for its transportation of coal to Complainant's Campbell facility, but denies that CSXT rail transportation is Consumers' sole option for supplying coal to Campbell. To the extent a further response is required, CSXT denies the remaining allegations of Paragraph 4.

5. CSXT denies the allegations of Paragraph 5 of the Complaint.

6. With respect to the allegations of the first sentence of Paragraph 6, CSXT lacks sufficient information to admit or deny whether all coal consumed at Campbell is delivered by rail, and CSXT denies that rail is the only feasible means of transporting coal to the Campbell plant. With respect to the second sentence of Paragraph 6, CSXT admits that the distances between the Powder River Basin, Chicago, and the Campbell plant asserted by Consumers are generally accurate. To the extent a further response is required, CSXT denies the remaining allegations of Paragraph 6.

7. With respect to the allegations of the first sentence of Paragraph 7, CSXT admits that it has transported coal to the Campbell station, but CSXT lacks sufficient information to admit or deny whether CSXT has delivered all coal consumed at the Campbell station. CSXT admits the allegations in the remaining three sentences of Paragraph 7.

8. With respect to the allegations in Paragraph 8 of the Complaint, CSXT admits that Consumers and CSXT have engaged in negotiations for a new contract and thus far have been unable to reach an agreement. CSXT denies Consumers' characterization of those negotiations. To the extent a further response is required, CSXT denies the remaining allegations of Paragraph 8.

9. With respect to the allegations in Paragraph 9 of the Complaint, CSXT denies that Consumers had no alternatives to CSXT rail service available to it. CSXT lacks sufficient information to admit or deny Consumers' allegations about its need for new rates. CSXT admits that Consumers made a written request to CSXT on November 24, 2014 for the establishment of rates and service terms that would apply to the transport of coal to Campbell under common carrier rates in privately owned railcars beginning on January 1, 2015. To the extent a further response is required, CSXT denies the remaining allegations of Paragraph 9.

10. With respect to the allegations in the first sentence of Paragraph 10 of the Complaint, CSXT admits that, after communications with Consumers to clarify certain facts relating to its common carrier rate request, CSXT established Tariff CSXT-13952 on December 26, 2014. CSXT admits the allegations in the second and third sentence of Paragraph 10.

11. With respect to the allegations in Paragraph 11 of the Complaint, CSXT admits that Tariff CSXT-13952 establishes a common carrier rate of \$14.95 per ton for the transportation of coal from CSXT's interchange with BNSF in Chicago to Campbell in shipper supplied railcars.

12. With respect to the allegations of Paragraph 12 of the Complaint, CSXT admits that the Tariff CSXT-13952 is subject to a fuel surcharge as calculated under CSXT Publication 8662. CSXT further admits that the current price of fuel is significantly below the trigger point of that surcharge, but that the fuel surcharge will be recalculated monthly pursuant to Tariff CSXT-13952 and Publication 8662. Footnote 2 to Paragraph 12 is a description of the scope of Consumers' Complaint, to which no response is required. To the extent a further response is required, CSXT admits that Consumers' Complaint only challenges CSXT's rate for the transportation of coal from Chicago to the Campbell facility.

13. With respect to the allegations of Paragraph 13 of the Complaint, CSXT lacks sufficient information to admit or deny whether all PRB coal consumed at the Campbell station is delivered by rail. CSXT denies that rail is the only practical and economically viable alternative to unit train rail service for delivery of coal to Campbell; denies that CSXT does not face effective competition for the transportation of coal to Campbell; and denies that it possesses

qualitative market dominance over Consumers' coal movements. To the extent a further response is required, CSXT denies the remaining allegations of Paragraph 13.

14. The first two sentences of Paragraph 14 consist of a characterization of Consumers' Complaint, to which no response is required. With respect to the allegations of sentence three of Paragraph 14, CSXT does not dispute that the variable costs of the challenged movement as currently calculated using URCS and the challenged rate appear to produce a revenue-to-variable cost ratio in excess of the 180% jurisdictional threshold. To the extent a further response is required, CSXT denies the remaining allegations of Paragraph 14.

15. Paragraph 15 states a legal conclusion to which no response is required. To the extent a response is required, CSXT denies Paragraph 15.

16. Paragraph 16 states a legal conclusion to which no response is required. To the extent that a response is required, CSXT denies Paragraph 16.

17. The first sentence of Paragraph 17 indicates Consumers' choice of a rate reasonableness methodology, to which no response is required. To the extent a response is required, CSXT admits that Consumers has chosen to proceed under *Coal Rate Guidelines*.

18. CSXT denies the allegations of Paragraph 18. Consumers has alleged no facts that could support a claim under the revenue adequacy constraint of *Coal Rate Guidelines*. Indeed, CSXT has not been found to be revenue adequate in any annual revenue adequacy determination decision by the Board or the Interstate Commerce Commission.

19. CSXT denies the allegations of Paragraph 19. Whether or not Consumers' complaint could apply to any hypothetical future tariffs or tariff changes will depend on the surrounding facts and circumstances and would be a matter for the Board to decide.

20. Paragraph 20 states a legal conclusion to which no response is required. The extent to which any action in this proceeding would be a major federal action significantly affecting the quality of the human environment or the conservation of energy resources is governed by the Board's regulations and would be a matter for the Board to decide.

The unnumbered final paragraph of the Complaint (on page 8) states legal conclusions and requests for relief to which no response is required. To the extent a response is deemed necessary, CSXT denies the allegations, conclusions, and request for relief in that final Paragraph, and CSXT denies that Consumers is entitled to any of the relief it seeks in this proceeding, or to any other relief.

Respectfully submitted,



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Dated: February 2, 2015

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of February 2015, I served a copy of the foregoing upon the following counsel for complainant Consumers Energy Company via U.S. first-class mail or more expeditious means of delivery:

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