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***Via Post & Electronic Filing***

Debra L. Miller  
 Acting Chairman  
 Surface Transportation Board  
 395 E Street SW  
 Washington, D.C. 20423

Re: STB Finance Docket No. 42121, *Total Petrochemicals & Refining USA, Inc. v. CSX Transportation, Inc.*

Dear Acting Chairman Miller:

I write on behalf of our client CSX Transportation, Inc. (“CSXT”), Defendant in the above-captioned rate case, in response to the February 2, 2015 letter from counsel for Complainant Total Petrochemicals & Refining USA, Inc. (“TPI”) concerning the procedural schedule for this proceeding. In that Letter, TPI requests that the Board remove the case from its status of being held in abeyance and direct the parties to proceed with the filing of Final Briefs. CSXT does not object to the Board’s reactivating the case, but we urge the Board to rule on TPI’s Petition for Supplemental Evidence, filed on November 5, 2014 (“Petition”), before establishing a new schedule.

TPI states that the Board could proceed in allowing the parties to file Final Briefs prior to rendering its decision on TPI’s Petition because the three issues raised in that pleading are “unrelated to other issues in this case.” TPI Letter at 1. But to the contrary, those issues are in fact directly related to the determination of properly attributable SAC costs for the TPIRR. Indeed, TPI seeks to significantly change its evidence on two elements of the SAC test: the costs of owning and operating intermodal terminals and road property investment costs for clearing and grubbing and bridge abutments. TPI’s Petition also includes an untimely attack on the *Otter Tail* cross-subsidy test, which the Board should make clear is both procedurally impermissible and incorrect as a matter of law.

TPI expresses concern about “mitigating the impact of further delays in this case” (Letter at 2). Yet neither the parties nor the Board would benefit from having the parties submit a second set of “Supplemental Briefs” as TPI’s request would undoubtedly require in the event

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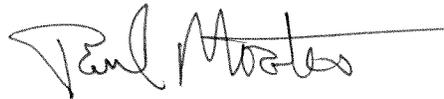
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that the Board does not rule on TPI's Petition prior to the filing of Final Briefs. A single set of Final Briefs addressing all of the issues before the Board should lead to a more expeditious final decision in this matter.

The Board has had TPI's Supplemental Evidence Petition and CSXT's Reply to the same for more than 60 days.<sup>1</sup> CSXT continues to maintain that TPI's Petition should be denied for the reasons given in its November 25, 2014 Reply in Opposition. If the Board agrees and denies TPI's Petition, CSXT believes that a fair briefing schedule would specify the filing of simultaneous Final Briefs 20 days following the issuance of a Board order.

If the Board grants TPI's Petition, in whole or in part, it should afford CSXT at least 20 days to file its Reply to TPI's Supplemental Evidence; and direct the parties to file simultaneous Final Briefs 20 days thereafter.

Very truly yours,



G. Paul Moates

cc: Ann D. Begeman  
Jeffrey O. Moreno

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<sup>1</sup> CSXT is constrained to point out that TPI's suggestion that the schedule it proposed with its Petition "was rendered impractical" because CSXT took the time permitted by the Board's Rules to file its Reply comes with ill grace. TPI made a strategic decision to hold its Petition for simultaneous filing with its Rebuttal evidence in obvious recognition that the matters contained in that Petition constituted improper rebuttal. TPI gives no reason why it could not have filed its Petition long before the date for its Rebuttal submission, nor is CSXT aware of any. TPI has only its own litigation decisions to blame for this most recent delay in this case.