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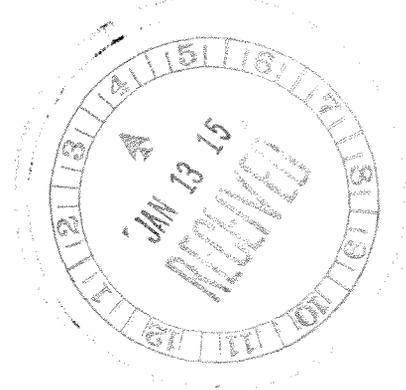
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January 13, 2015

VIA HAND DELIVERY

Ms. Cynthia Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0111



Re: Docket No. NOR 42142, *Consumers Energy Company*
v. CSX Transportation, Inc.

Dear Ms. Brown:

Enclosed for filing in the referenced proceeding, please find an original and ten (10) copies of the Original Complaint of Consumers Energy Company. An extra copy also is enclosed for time-stamping and return to our messenger, as confirmation of filing.

Pursuant to 49 C.F.R. Part 1111.3, a copy of the Complaint is being served on the Chief Legal Officer of the Defendant.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to be "K. Dowd".

Kelvin J. Dowd
An Attorney for Consumers Energy Company

FILED
January 13, 2015
Surface Transportation Board

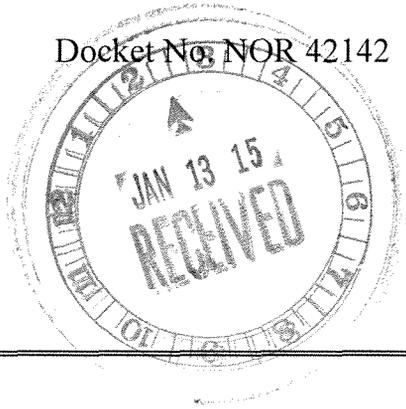
Enclosures

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Surface Transportation Board

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

CONSUMERS ENERGY COMPANY)
One Energy Plaza)
Jackson, Michigan 49201)
)
Complainant,)
)
v.)
)
CSX TRANSPORTATION, INC.)
500 Water Street)
Jacksonville, Florida 23302)
)
Defendant.)
)

Docket No. NOR 42142



ORIGINAL COMPLAINT

CONSUMERS ENERGY COMPANY

Catherine M. Reynolds
Senior Vice President and General Counsel
Kimberly C. Wilson
Supervisory Assistant General Counsel
Consumers Energy Company
One Energy Plaza
Jackson, Michigan 49201

OF COUNSEL:

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Dated: January 13, 2015

and those that would have been paid under the rates prescribed by the Board pursuant to (1), for all shipments between January 1, 2015 and the date that CSXT begins to charge the prescribed rates.

In support hereof, Consumers states as follows:

THE PARTIES

1. Consumers is an electric and gas utility company serving all 68 counties of Michigan's Lower Peninsula. Consumers' electric utility operations serve a mix of approximately 1.8 million residential, commercial and industrial customers, with the largest being the automotive industry. Principal cities served include Battle Creek, Flint, Grand Rapids, Jackson, Kalamazoo, Midland, Muskegon and Saginaw. Consumers' retail electricity rates are subject to the regulatory authority of the Michigan Public Service Commission ("MPSC"), and its generating assets are monitored and dispatched by the Mid-continent Independent System Operator ("MISO"), which manages the open access energy market into which electricity generated by Consumers is offered.

2. Over 75% of Consumers' base load system capacity is comprised of coal-fired generation assets, of which Campbell, at 1455 megawatts, is the largest. Annually, Campbell consumes as much as 5,500,000 tons of low-sulfur coal from origins in the Powder River Basin ("PRB") region of Wyoming, and has the capacity to burn well in excess of 6,000,000 tons each year. Campbell also uses about 500,000 tons of coal each year from origins east of the Mississippi River. Since 1992 and through the present, PRB coal bound for Campbell has been transported from mine origins to CSXT-served interchange tracks near Chicago by BNSF, pursuant to a series of separate, private

contracts between Consumers and the originating railroad. CSXT delivers the shipments from the interchange to Campbell by separate arrangement. Eastern coal moves to Campbell in direct, single-line CSXT service from the CSXT-served mine origins.

3. The cost of coal transportation to Campbell directly impacts the rates paid by Consumers' electricity customers in the State of Michigan for this essential daily service. Likewise, those customers will benefit directly from rail rate relief ordered by the Surface Transportation Board ("Board") in this proceeding, through their monthly electric bills.

4. CSXT is a common carrier railroad engaged in the transportation of freight in interstate commerce. CSXT is subject to the Interstate Commerce Commission Termination Act of 1995, 49 U.S.C. §10101, *et seq.*, and to the jurisdiction of the Board. As further described *infra*, CSXT exerts sole control over the establishment of rates, rules and other terms covering the transportation of coal from the Chicago-area interchange, and from the eastern coal origins used by Consumers, to Campbell.

5. CSXT is earning adequate revenues, within the meaning of 49 U.S.C. §10704(a)(2) and (3) and the Revenue Adequacy Constraint of the Board's *Coal Rate Guidelines*.¹

¹ *Coal Rate Guidelines – Nationwide*, 1 I.C.C. 2d 520 (1985), *aff'd. sub nom. Consolidated Rail Corp. v. United States*, 812 F. 2d 1444 (3d Cir. 1987).

COAL TRANSPORTATION TO CAMPBELL

6. All of the coal consumed at Campbell is delivered by rail, which is the only feasible means of transporting the substantial annual volumes involved. The PRB origins from which coal for Campbell is procured are more than 1100 miles from the station, and the Chicago area interchange between CSXT and BNSF is approximately 170 miles away.

7. Since well before Generating Unit No. 3 at Campbell became operational in 1980, and at all times since Consumers began using PRB coal at Campbell, CSXT or its predecessor companies have delivered all coal consumed at the station. For many years, coal shipped to Campbell both from the Chicago area interchange and from eastern coal origins has been transported by CSXT under contracts that Consumers negotiated with CSXT and entered into pursuant to 49 U.S.C. §10709 (or its predecessor statute). In order to facilitate that service, Consumers acquired a fleet of railcars, and has supplied the railcars to CSXT for use in transporting coal to Campbell. The most recent contract between Consumers and CSXT, denominated as Contract CSXT-C-84720, expired on December 31, 2014.

CONSUMERS' EFFORTS TO SECURE REASONABLE RATES AND SERVICE TERMS

8. In anticipation of the need for unit train coal service after 2014, and consistent with its internal planning and budgeting requirements, well over a year ago Consumers initiated discussions with CSXT regarding terms and conditions for a new contract for coal deliveries to Campbell. Despite conscientious effort and multiple,

alternative proposals advanced by Consumers, however, the parties were not able to reach agreement on reasonable terms either for an extension of CSXT-C-84720 or for a new contract.

9. With no alternatives available, and faced with an urgent need for new rates, terms and conditions for the transportation of its essential generation fuel commencing January 1, 2015, Consumers made a written request to CSXT on November 24, 2014 for the establishment or disclosure of the rates and service terms that CSXT would apply to the transportation of coal to Campbell in common carriage using Consumers-supplied railcars, on and after January 1, 2015.

10. Following Consumers' response to a request by CSXT for additional information regarding post-2014 coal shipments to Campbell, on December 26, 2014 CSXT provided Consumers with Tariff CSXT-13952. *Inter alia*, this tariff contained rates and rules for coal transportation service from various CSXT-served eastern coal origin Districts, and from the Chicago area interchange with BNSF to Campbell, and incorporates other CSXT tariffs and publications containing additional rules, accessorial charges and other provisions applicable to CSXT coal service. On or about January 7, 2015, CSXT established and provided Consumers with Amendment 1 to Tariff CSXT-13952, which made changes to the base Tariff that are not relevant to this Complaint.

11. As shown in Exhibit A hereto, as of January 1, 2015, CSXT's established common carrier rate for PRB coal delivery service to Campbell in shipper-supplied railcars is \$14.95 per ton.

12. According to Tariff CSXT-13952 (including Amendment 1), PRB coal shipments moving to Campbell in common carriage also are subject to a “fuel surcharge,” which under CSXT Publication 8662 is calculated based on the relationship between the monthly average price of on-highway diesel fuel published by the U.S. Energy Information Administration and \$3.749 per gallon, and the distance that a shipment moves. On information and belief, as of January 1, 2015 no CSXT fuel surcharge would be applicable to Consumers’ PRB coal shipments from the Chicago area interchange to Campbell² moving under Exhibit A, because the average price of on-highway diesel fuel for the reference month (November 2014) was lower than \$3.749 per gallon. However, pursuant to Tariff CSXT-13952 and Publication 8662, the fuel surcharge applicable to Consumers’ Campbell coal traffic will be recalculated monthly, starting in February 2015.

**CSXT POSSESSES MARKET DOMINANCE
OVER COAL TRANSPORTATION TO CAMPBELL**

13. All of the PRB coal consumed at Campbell is delivered by rail. CSXT is the only railroad capable of serving Campbell, and neither motor carriage nor water vessel transportation represents a practical and economically viable alternative to unit train rail service. CSXT does not face effective competition for the transportation of coal to Campbell. Accordingly, CSXT possesses “qualitative” market dominance over Consumers’ coal movements under 49 U.S.C. §10707.

² As noted in the introductory paragraph and in Paragraph 14, *infra*, while Consumers does not concede that the rates established by CSXT in Exhibit A for coal transportation from eastern CSXT-served mine origins to Campbell are fair or reasonable, those rates are not being challenged in this Complaint.

14. Consumers does not concede that any of the rates established by CSXT in Exhibit A are just and reasonable for the transportation to which they apply, within the meaning of 49 U.S.C. §10701(d)(1) and regulations and Board policies thereunder. Without waiver of the foregoing, this Complaint challenges the reasonableness of the rate established by CSXT in Exhibit A for PRB coal transportation from the BNSF-CSXT Chicago interchange to Campbell, as described in Paragraph 11. That rate is more than 400% of the variable cost of the associated service, far in excess of the jurisdictional threshold established under 49 U.S.C. § 10707(d).

15. Because CSXT possesses market dominance over coal transportation to Campbell, the Board has jurisdiction to adjudicate the reasonableness of the CSXT rates, rules and practices applicable to that transportation which are the subject of this Complaint.

**THE COMMON CARRIER RATE
ESTABLISHED BY CSXT
FOR APPLICATION TO CONSUMERS' PRB COAL
TRAFFIC IS UNREASONABLE AND UNLAWFUL**

16. The common carrier transportation charges established by CSXT in Exhibit A for application to Consumers' PRB coal shipments from the Chicago interchange to Campbell exceed the maximum reasonable levels permitted under 49 U.S.C. §§ 10701(d)(1) and 10702, and therefore are unlawful.

17. In accordance with 49 C.F.R. Part 1111.1(a), the reasonableness of the charges referenced in Paragraph 16 should be examined using the Constrained Market Pricing methodology set forth in the Board's *Coal Rate Guidelines*, as interpreted and

applied in proceedings before the Board. This is so because PRB coal shipments to Campbell via CSXT involve high volume, repetitive unit train traffic.

18. CSXT's charges are excessive and unreasonable both under the Stand-Alone Cost Constraint and under the Revenue Adequacy Constraint of the *Coal Rate Guidelines*.

19. This Complaint shall be deemed to apply to and likewise challenge any changes to the provisions of Tariff CSXT-13952 subsequent to Amendment 1, or any tariffs, circulars or publications referenced therein, as well as to any new tariffs, circulars, rates or charges that might be established by CSXT and applied to PRB coal transportation service to Campbell.

20. Neither this proceeding nor the granting of the relief requested herein will constitute a major federal action significantly affecting the quality of the human environment or the conservation of energy resources.

WHEREFORE, Complainant Consumers prays that Defendant CSXT be required to answer the charges herein, and that after a hearing and investigation conducted pursuant to 49 U.S.C. §10704(a)(1) and the Board's implementing regulations, the Board: (1) find the challenged rates and charges to be unreasonable in violation of 49 U.S.C. §§ 10701(d)(1), 10702 and/or 10746; (2) prescribe lawful maximum rates and charges, as requested by Consumers and demonstrated by the evidence to be adduced herein; (3) award damages to Consumers pursuant to 49 U.S.C. §11704(b), to be calculated based on the record of the proceeding; and (4) grant to Consumers such other and further relief as the Board may deem proper based on said record.

Respectfully submitted,

CONSUMERS ENERGY COMPANY

By: Catherine M. Reynolds
Senior Vice President and General Counsel
Kimberly C. Wilson
Supervisory Assistant General Counsel
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One Energy Plaza
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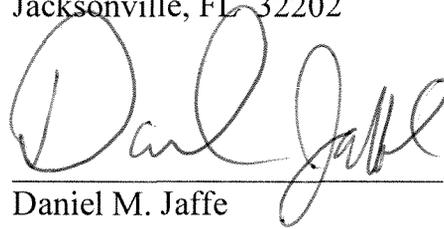
Dated: January 13, 2015

Attorneys and Practitioners

CERTIFICATE OF SERVICE

In accordance with 49 C.F.R. Part 1111.3, I hereby certify that this 13th day of January, 2015, I caused a copy of the foregoing Complaint to be served on the Chief Legal Officer of Defendant via overnight carrier at the following address:

Ellen M. Fitzsimmons, Esq.
Executive Vice President of Law
and Public Affairs, General Counsel
and Corporate Secretary
CSX Transportation, Inc.
500 Water Street
Jacksonville, FL 32202


Daniel M. Jaffe

**CSX Transportation
 CSXT-13952 Amendment 1
 Common Carrier Rates on Coal
 For Consumers Energy**

Effective Date: January 1, 2015
 Termination Date: Subject to change or cancellation with 20 day notice

1. Transportation Particulars: (Rates per net ton)

(a) Destinations: West Olive, Essexville¹ & Whiting, MI²
Commodity: Coal (STCC NO. 11-212)
 Chicago – Sub-bituminous coal only
Route: CSX direct, except as noted below

Rates from CSX Origin Rate Districts

Big Sandy	\$29.42	
Kanawha (Except Hopkins, WV)	\$26.92	
Clinchfield	\$29.99	
Elkhorn	\$31.19	
Harlan	\$36.34	
Hazard	\$32.98	
Jellico-Middlesboro	\$33.81	
New River	\$33.12	
SWVa	\$37.75	
Gauley North	\$32.56	A&O-Grafton-CSX ³
Belington	\$32.56	A&O-Grafton-CSX ³
Chicago ⁴	\$14.95	Rule-11

1. Route to Essexville will be CSX-FLINT-LSR
2. Route to Whiting will be CSX-TOLED-CN. Whiting destination is served by CN and is not applicable from Chicago origin.
3. Route to Essexville and Whiting - append A&O-Grafton-CSX to routes noted in 1 & 2 above
4. Rates applicable from interchange with BNSF in Chicago with BNSF supplied locomotives in the proper configuration. Interchange point is Chicago at 22nd Street, consistent with current practices. Rate is not applicable to Whiting.

Equipment: Receiver supplied railcars capable of loading 286,000 lbs. GWOR. All railcars are subject to OT-5 rules and regulations.

Train Size:

Minimum Train Size for CSX Origin Rate Districts is 100 cars. In the event that the mine origin is rated for less than 100 cars, Consumers must tender the corresponding amount of empty cars for that loading. Maximum train size is as specified in the CSX Coal Origin Directory, subject to line-of-road considerations.

Train Size for Chicago is 130 cars.

Loading:

Rates above are for 4 hour load-outs, private cars, capable of loading 286,000 lbs. GWOR. Add \$.75 per net ton to the rate for load-outs greater than 4 hours.

(b) Destination: Toledo, OH
Rates to Toledo Docks include charges for unloading rail cars and loading to vessel

Commodity: Coal (STCC NO. 11-212)

Route: CSX direct, except as noted below

Rates from CSX Origin Rate Districts

Big Sandy	\$28.48	
Kanawha (Except Hopkins, WV)	\$26.75	
Clinchfield	\$29.66	
Elkhorn	\$29.69	
Harlan	\$38.22	
Hazard	\$33.24	
Jellico-Middlesboro	\$34.38	
New River	\$33.70	
SWVa	\$39.40	
Gauley North	\$32.17	A&O-Grafton-CSX
Belington	\$32.17	A&O-Grafton-CSX

Equipment: Carrier supplied equipment

Train Size:

Train size is the maximum specified in the CSX Coal Origin Directory, subject to line-of-road considerations, not less than 100 cars.

Loading:

Rates above are for 4 hour load-outs, carrier cars, capable of loading 286,000 lbs. GWOR. Add \$.75 per net ton to the rate for load-outs greater than 4 hours.

2. Fuel Surcharge:

Subject to the provisions of CSXT Fuel Surcharge Publication 8662.

3. Reservation System - Trainload/Unit Train Service:

The reservation system for trainload/unit train service as detailed in the CSXT-8200 will apply.

4. Incorporation of Tariffs:

This Price Sheet incorporates CSXT 8100 and CSXT 8200 Tariffs, statutes and regulations that would apply if this Price Sheet did not exist, as of the date of shipment tender. The provisions of this Price Sheet control in case of any direct and express conflict.

5. Payment:

All payments made under this publication will be "Collect"

6. Bill of Lading:

The provisions of the Uniform Straight Bill of Lading (Bill of Lading) are incorporated herein. Receiver will add the following to each Bill of Lading"

"Subject to CSXT 13952"

7. Quarterly Rate Adjustments:

All rates are subject to quarterly increase or decrease based on 100% of the Rail Cost Adjustment Factor– All Inclusive Less Fuel commencing on April 1, 2015. Rates will not be adjusted below the base rates as detailed above.

8. Damage Claims:

Any claims for loss, damage or delay to Commodity shipments shall be governed by 49 USC 11707 and 49 CFR 1005.

10. Common Carrier Application:

The rates, terms and conditions as published herein (CSXT-13952) are established for use and benefit of Consumers Energy in the production of electricity from the coal transported and subsequently burned as pulverized coal purchased by Consumers Energy and may not be used by any other entity, transferred to any other entity or used in combination with any movement, including without limitation subsequent transportation by rail or truck from any of the stated destinations.