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March 26, 2012

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March 26, 2012  
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Public Record

Honorable Daniel R. Elliott, III  
Chairman  
Surface Transportation Board  
395 E Street, S.W.  
Washington, D.C. 20423

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

Dear Chairman Elliott:

On behalf of our client, CSX Transportation, Inc. (“CSXT”), Defendant in the above-referenced pending maximum reasonable rate case, we offer a brief response to the letter filed in this proceeding by counsel for Complainant on March 22, 2012. CSXT takes no position with respect to the requests made in Complainant TOTAL’s letter, other than to express its support for the Board’s careful consideration of the jurisdictional issues raised by the pending motions. As CSXT pointed out in its motion for a preliminary determination of the market dominance issues in this matter, resolution of those issues before the filing of any stand-alone cost evidence will benefit both parties, as well as the Board itself, by minimizing the possibility that the parties submit evidence with respect to movements in traffic lanes in which the Board may determine that CSXT does not possess market dominance.

There are, however, unfortunate and gratuitous characterizations made in the March 22 letter to which CSXT must register its objection. Specifically, counsel’s characterization of CSXT’s “punitive tariff rates” (letter at 1) and of CSXT’s allegedly “anticompetitive behavior” (id. at 3) are objectionable material that under the Board’s regulations could be ordered stricken from the record (49 C.F.R. §1104.8). However, CSXT simply wishes to note that there is no basis for these unnecessary and inaccurate characterizations: the reasonableness of the challenged tariff rates is what is at issue in this case and there is accordingly no proper basis at this juncture upon which to characterize them as unreasonable, let alone “punitive” (which CSXT avers they most certainly are not). Similarly, there is absolutely no credible basis for

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claiming that the challenged rates are in any sense the result of “anticompetitive behavior”. Zealousness in its advocacy is no excuse for TOTAL’s counsel employing such provocative and baseless language.

Sincerely,

A handwritten signature in black ink, appearing to read "G. Paul Moates", with a long horizontal line extending to the right.

G. Paul Moates  
Paul A. Hemmersbaugh

cc: Jeffrey O. Moreno, counsel for TOTAL  
David E. Benz, counsel for TOTAL