

SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34064

WACCAMAW COAST LINE RAILROAD –
MODIFIED RAIL CERTIFICATE

MOTION FOR LEAVE TO INTERVENE OF
BP AMOCO CHEMICAL COMPANY

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ENTERED
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MICHAEL F. McBRIDE
VAN NESS FELDMAN, LLP
1050 THOMAS JEFFERSON STREET,
NW, SUITE 700
WASHINGTON, DC 20007-3877
(202)298-1800 (Telephone)
(202)338-2416 (Facsimile)
mfm@vnf.com

Attorney for BP Amoco Chemical Company

September 12, 2013

PETITION FOR LEAVE TO INTERVENE OF
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1.

On or about August 27, 2013, counsel for Horry County, South Carolina (“Horry County”) filed a letter with the Surface Transportation Board (“Board”) in this proceeding, alleging that Waccamaw Coast Line Railroad (“WCLR”), a division of the Baltimore and Annapolis Railroad (“BLR”) doing business in South Carolina as the Carolina Southern Railroad Company (“CALA”), was in material and undisputed default of its Lease Agreement that allowed CALA to operate over rail lines owned by Horry County. Among other allegations, the “Termination of Lease Agreement” (at 1) attached to the August 26, 2013 letter from counsel for Horry County alleges, *inter alia*, that CALA failed “to properly maintain leased properties” and failed “to provide continuing rail services anticipated under the lease.” Horry County therefore requested a Board determination herein that CALA’s Modified Certificate of Public Convenience and Necessity (“modified rail certificate”) issued herein, allowing it to provide common carrier rail transportation over the rail lines owned by Horry County should be terminated. No request for authority from the Board to abandon the lines in question or discontinue service was made.

On or about August 27, 2013, Horry County also jointly filed, with several other Counties in North Carolina and South Carolina and a rail shipper (collectively, “Complainants”), a related Complaint in STB Docket No. 42138 against Baltimore and Annapolis Railroad Company, doing business as Carolina Southern Railroad Company (“CALA”), alleging that CALA has been for some time and is violating its common

carrier obligations to provide reasonable and adequate rail service over its lines in North Carolina and in South Carolina.

2.

Pursuant to 49 C.F.R. §1112.4(a), BP Amoco Chemical Company (“BP”) seeks leave to intervene herein in support of Horry County, and seeks a ruling from the Board that CALA is in violation of its Lease Agreement with Horry County, provided that Horry County be required promptly to arrange a substitute rail carrier capable of obtaining the requisite authority from the Board to provide rail service over the lines at issue, and that the substitute rail carrier be required promptly to seek such authority.

3.

Since 2006, BP has relied on CALA for rail car storage, including on the lines at issue herein. More than two years ago, 17 covered hopper cars leased by BP for transportation of purified terephthalic acid (“PTA”), an important ingredient for many plastic and other important products, were provided to CALA for storage, but because of CALA’s inability or unwillingness to return those rail cars to BP, BP has not been able to use those 17 hopper cars for any purpose. BP demanded that CALA transport those cars to interchange with CSXT or move them to a location where the 17 hopper cars could be removed at CALA’s expense from the rail lines at issue and thereby returned to BP’s control for relocation on different rail lines under the control of a different rail carrier.

4.

In light of the condition of certain of CALA’s bridges that apparently caused the Federal Railroad Administration to inform CALA that it could not operate over those bridges until certain additional repairs were made, and which prevented CALA from

returning BP's rail cars to it via rail transportation until CALA repaired those bridges, BP directly, and later in March 2013 through the undersigned counsel, requested CALA to either restore rail service promptly or move, at CALA's expense, BP's 17 hopper cars to a location where they could be lifted from CALA's tracks and moved by non-rail means to a location where they could be returned to rail service.

When the undersigned counsel requested that CALA move BP's cars to such a location on CALA's lines at CALA's expense, Mr. Kenneth Pippen, President of CALA, did not agree to do so, stating that he hoped instead that CALA would have rail service restored within a matter of several weeks and that CALA could then move BP's rail cars via rail transportation. A similar conversation was had by the undersigned counsel with Mr. Pippen's son Jason, who also is or was employed by CALA as Vice President and General Manager of CALA and who signed the storage agreement with BP.

As a result of CALA's refusal to cooperate with BP in transporting or otherwise relocating its 17 hopper cars, BP has been unable to recover its cars, yet has had to continue to make lease payments on those 17 hopper cars, and is for a time was required to pay storage fees to CALA of \$2.50/day for each hopper car on CALA's lines plus a one-time fee of \$50/rail car for interchange with CSXT.

5.

To date, CALA has neither restored rail service over the lines at issue, as set forth in the Complaint herein, nor has it cooperated with BP to move BP's rail cars to a location where BP could remove them from CALA's tracks. Accordingly, BP agrees with allegations made by Complainants Horry County, SC *et al.* in Docket No. 42138 that (1) CALA has been and is in flagrant and repeated violation of its common carrier

obligations, over a substantial period of time. BP also maintains that (2) CALA is in breach of its agreement with BP to store its 17 hopper cars until they are needed by BP but to return them to BP when so requested by BP, and (3) that CALA is in default of its Lease Agreement with Horry County, and BP requests that the Board so find.

6.

In accordance with 49 C.F.R. §1112.4(a)(1)-(2), BP's participation herein would not unduly delay the schedule in this proceeding, because no schedule has been set, nor would granting BP's intervention unduly broaden the issues in this proceeding, because BP is raising the same or similar concerns as those that Horry County has raised herein and in Docket No. 42138.

7.

In accordance with 49 C.F.R. §1112.4(b), BP seeks determinations by the Board (1) that CALA is in breach of its agreement with BP to store BP's 17 hopper cars but to return them to BP promptly on request of BP, (2) that CALA is in default under its Lease Agreement with Horry County, and (3) that Horry County's request that CALA's modified rail certificate be terminated should be granted, but the last of the three determinations should be subject to the condition that (4) Horry County, the owner of the rail lines at issue herein, be required, as promptly as possible, to arrange for a substitute rail carrier capable of obtaining operating authority from the Board over the lines at issue herein, and that Horry County require that said rail operator promptly seek operating authority from the Board, so that users of the lines such as BP may obtain rail service, including rail car storage, as may be needed.

8.

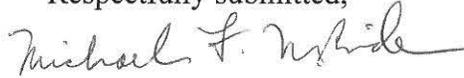
Accordingly, BP has interests in this proceeding that are unique and cannot be adequately represented by any other party.

9.

WHEREFORE, BP hereby seeks leave to intervene as a party, with full rights attendant thereto. BP requests that the Board find (1) that CALA is in breach of its agreement to store rail cars for BP but to return them promptly to BP when so requested by BP and (2) that CALA is in default under its the Lease Agreement with Horry County, SC, grant Horry County's request herein to (3) terminate CALA's modified rail certificate provided that (4) Horry County be required promptly to arrange a substitute rail carrier capable of obtaining a modified rail certificate from the Board to provide needed rail service over the lines at issue. In the alternative, if the Board does not deprive CALA of its operating authority herein, the Board should also require CALA either (5) to arrange to return promptly to BP (via interchange with CSXT) its 17 hopper cars, or (6) to arrange to allow BP to remove its 17 hopper cars from CALA's lines at CALA's expense.

The undersigned is authorized by counsel for the Petitioner, Horry County, and counsel for CALA, to represent that Horry County and CALA do not intend to oppose this intervention.

Respectfully submitted,



MICHAEL F. McBRIDE
VAN NESS FELDMAN, LLP
1050 THOMAS JEFFERSON STREET,
NW, SUITE 700
WASHINGTON, DC 20007-3877
(202)298-1800 (Telephone)
(202)338-2416 (Facsimile)
mfm@vnf.com

Attorney for BP Amoco Chemical Company

CERTIFICATE OF SERVICE

I hereby certify that I have served, this 12th day of September, 2013, a copy of the foregoing Petition for Leave to Intervene, by email, facsimile, or First-Class mail, on the following parties or counsel of record:

Thomas F. McFarland, Esq.
Thomas F. McFarland, P.C.
208 S. LaSalle Street, Suite 1890
Chicago, IL 60604-1112

Thomas C. Brittain, Esq.
The Brittain Law Firm, P.A.
4614 Oleander Drive
Myrtle Beach, SC 29577

Mr. Kenneth Pippen
President, Baltimore and Annapolis Railroad
Company, d/b/a Carolina Southern Railway
Company
171 Highway 905
Conway, SC 29526



Michael F. McBride