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May 27, 2011

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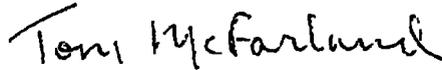
Ms. Cynthia T. Brown, Chief  
Section of Administration  
Office of Proceedings  
Surface Transportation Board  
395 E Street, S.W.  
Washington, DC 20024

Re: Docket No. EP 705, *Competition in the Railroad Industry*

Dear Ms. Brown:

Hereby transmitted are Reply Comments in behalf of Mississippi Lime Company for filing with the Board in the above referenced matter.

Very truly yours,



Thomas F. McFarland  
*Attorney for Mississippi Lime Company*

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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COMPETITION IN THE RAILROAD  
INDUSTRY

) DOCKET NO. EP 705  
)

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REPLY COMMENTS

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MISSISSIPPI LIME COMPANY  
3870 South Lindberg Blvd., Suite 200  
St. Louis, MO 63127-1308

*Replicant*

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DUE DATE: May 27, 2011

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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COMPETITION IN THE RAILROAD ) DOCKET NO. EP 705  
INDUSTRY )

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**REPLY COMMENTS**

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Pursuant to the procedural decision served February 4, 2011, MISSISSIPPI LIME COMPANY (MLC) hereby submits Reply Comments.

**FOREWORD**

The extraordinary transportation significance of the subject matter of this proceeding is evident from the hundreds of Initial Comments that have been filed, encompassing thousands of pages. In MLC's view, the most persuasive of all of those Initial Comments are the Joint Comments of the ALLIANCE FOR RAIL COMPETITION, et al. An unusually broad spectrum of the rail shipper community joined in those Comments, including THE NATIONAL INDUSTRIAL TRANSPORTATION LEAGUE, long regarded as a reasoned voice of shippers. The Joint Comments are compelling, both as to the justification for modification of regulatory policy to provide for increased opportunity for rail-to-rail competition, and the consistency of that modification with the governing statutes. MLC enthusiastically endorses those Joint Comments.

Not surprisingly, the Class I Railroads predict gloom-and-doom if regulatory policy were to be so modified. A number of Initial Comments in behalf of Shipper Interests anticipated and thoroughly rebutted that unwarranted scare tactic, including reference to industries in which participants prosper in a competitive environment. The last thing that the Railroads want is to

compete with each other, but the time has come when it is evident that the National Rail Policy as a whole dictates increased opportunity for intramodal rail competition.

### **REPLY COMMENTS**

MLC's major manufacturing facility at Ste. Genevieve, MO is captive to Union Pacific Railroad Company (UP).<sup>1/</sup> As a result, the focus of MLC's Reply Comments is on the Initial Comments filed in behalf of UP. In particular, MLC's Reply Comments are intended to rebut the following patently-false statement of UP Chief Executive Officer James R. Young at page 19 of his Verified Statement filed as part of UP's Initial Comments:

... Even solely-served shippers without good alternatives have bargaining leverage in negotiations. We are always sensitive to the need to keep our customer competitive — an important constraint on our rates.

That statement has not been true at least since approximately 2005 when, as a result of multiple mergers and acquisitions, UP and BNSF Railway Company (BNSF) consolidated their duopoly position in the Western United States. From that time to date, UP has exercised virtually unrestrained pricing power, no less than the pricing power that motivated Berkshire Hathaway, Inc. to acquire BNSF. (See MLC Initial Comments, Appdx. 2).

During that period, MLC has had no bargaining leverage in rate negotiations with UP. The typical scenario would begin with UP proposing huge rate increases. When MLC would complain, UP would attempt to appease MLC by reducing the proposed rate increases somewhat. However, the reductions agreed to by UP have not been meaningful, with the result that the rate increases have consistently exceeded, by wide margins, corresponding cost increases in the rail

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<sup>1/</sup> Shipments from that facility are also made by truck and by barge, but there are numerous shipments for which rail is the only logistically and economically feasible mode of transportation.

industry and the general level of inflation. UP has not exhibited the slightest sensitivity to the effect of those radically-increased rates on MLC's competitive position in the lime industry. The result of UP's exercise of unrestrained pricing power has been rail rate increases that have exceeded by wide margins increased costs in the rail industry and the general level of inflation.

Attached to this Reply Statement as Appendix 1 is a listing of rail rates per carload between 2005 and 2010, inclusive, applicable to shipments over 12 major MLC shipping lanes,<sup>2/</sup> and a comparison of the average yearly increase in those rates with the average yearly increase in the Rail Cost Adjustment Factor (RCAF) (unadjusted for productivity), and the Consumer Price Index (CPI) during the same 6-year period. The increases in rail rates of between 6 and 18 percent per year are many times greater than increases in rail costs and general inflation in the same time frame. It is thus evident that UP has exploited, and continues to exploit its duopoly pricing power.

Together with a pronounced decline in the quality and quantity of UP rail service described in MLC's Initial Comments, UP's harmful rate behavior has caused MLC to respectfully request the Board to provide for increased opportunity to obtain rail-to-rail competition. A logical step in that direction would be institution of a rulemaking proceeding proposing to eliminate from the regulations governing Intramodal Rail Competition the provisions that have effectively blocked that opportunity in the past, i.e., the requirement in 49 C.F.R. § 1144.2(a)(1) that a proponent of competitive access or a through route-rate establish that such relief "is necessary to remedy or prevent an act that is contrary to the competition policies of 49 U.S.C.

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<sup>2/</sup> The rail rates are in dollars per carload from Ste. Genevieve, MO to major customers. Fifteen rates are shown, but there are three rate-pairs for shipments in rail-owned and shipper-controlled cars to the same customer.

10101 or is otherwise anticompetitive,” and the related factors in 49 C.F.R. §§ 1144.2(a)(1)(i)-(iv) for consideration in that determination.

Respectfully submitted,

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DUE DATE: May 27, 2011

APPENDIX 1

AVERAGE INCREASE IN RAILROAD RATES PER YEAR ON SHIPMENTS FOR MISSISSIPPI LIME COMPANY  
 FROM ST. GENEVIEVE, MO, 2005-2010, INCLUSIVE, COMPARED TO AVERAGE INCREASE PER YEAR IN THE  
 SAME TIME FRAME IN THE RAIL COST ADJUSTMENT FACTOR (RCAF) AND IN THE CONSUMER PRICE INDEX (CPI)

CUSTOMER	2005	2006	2007	2008	2009	2010	Increase	Total %	Average % per year
CUSTOMER 1	\$1,447.00	\$1,744.00	\$1,975.00	\$2,278.00	\$2,460.00	\$2,360.00	\$913.00	63%	11%
CUSTOMER 2 - PRIVATE CAR	\$1,443.00	\$1,558.00	\$1,846.00	\$2,031.00	\$2,234.00	\$2,234.00	\$791.00	55%	9%
CUSTOMER 2 - RAILROAD CAR	\$1,734.00	\$1,873.00	\$2,200.00	\$2,710.00	\$2,981.00	\$2,981.00	\$1,247.00	72%	12%
CUSTOMER 3 - CUSTOMER CAR	\$1,951.00	\$2,127.00	\$2,577.00	\$2,506.00	\$2,600.00	\$2,704.00	\$753.00	39%	6%
CUSTOMER 3 - SHIPPER CAR	\$1,593.00	\$1,736.00	\$2,064.00	\$2,091.00	\$2,168.00	\$2,256.00	\$663.00	42%	7%
CUSTOMER 4	\$1,500.00	\$1,878.00	\$2,157.00	\$2,587.00	\$2,768.00	\$2,879.00	\$1,379.00	92%	15%
CUSTOMER 5 - PRIVATE CAR	\$2,042.00	\$2,226.00	\$3,002.00	\$3,111.00	\$3,345.00	\$3,479.00	\$1,437.00	70%	12%
CUSTOMER 5 - RAILROAD CAR	\$2,327.00	\$3,081.00	\$3,586.00	\$4,306.00	\$4,657.00	\$4,843.00	\$2,516.00	108%	18%
CUSTOMER 6	\$3,061.00	\$3,234.00	\$3,533.00	\$4,234.00	\$4,373.00	\$4,373.00	\$1,312.00	43%	7%
CUSTOMER 7	\$3,135.00	\$3,386.00	\$3,302.00	\$3,883.00	\$4,116.00	\$4,178.00	\$1,043.00	33%	6%
CUSTOMER 8	\$2,432.00	\$2,675.00	\$3,200.00	\$3,871.00	\$4,142.00	\$4,142.00	\$1,710.00	70%	12%
CUSTOMER 9	\$3,954.00	\$4,429.00	\$4,575.00	\$5,431.00	\$5,567.00	\$5,734.00	\$1,780.00	45%	8%
CUSTOMER 10	\$2,239.00	\$2,351.00	\$2,586.00	\$3,186.00	\$3,409.00	\$3,409.00	\$1,170.00	52%	9%
CUSTOMER 11	\$2,264.00	\$2,378.00	\$3,146.00	\$3,338.00	\$3,572.00	\$3,710.00	\$1,446.00	64%	11%
CUSTOMER 12	\$2,389.00	\$2,748.00	\$3,014.00	\$3,362.00	\$3,597.00	\$3,741.00	\$1,352.00	57%	9%
RCAF	1.185	1.25	1.28	1.199	0.996	1.104	-0.081	-7%	-1%
CPI	196.8	201.8	210.036	210.228	215.949	219.179	22.379	11%	2%

**CERTIFICATE OF SERVICE**

I hereby certify that on May 27, 2011, I served the foregoing document, Reply Comments,  
on all known parties of record by first-class, U.S. mail, postage prepaid.

*Thomas F. McFarland*

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