

**BEFORE THE
SURFACE TRANSPORTATION BOARD****TOTAL PETROCHEMICALS & REFINING
USA, LLC****Complainant,****v.****CSX TRANSPORTATION, INC.****Defendant.****Docket No. NOR 42121****CSXT's REPLY TO COMPLAINANT'S MOTION FOR PARTIAL DISMISSAL
OF ITS THIRD MOTION TO COMPEL**

Defendant CSX Transportation, Inc. ("CSXT"), hereby replies to Complainant TOTAL Petrochemicals & Refining USA, Inc.'s ("TPI's") Motion for Partial Dismissal of Complainant's Third Motion to Compel. Although CSXT does not object to TPI's request to dismiss its Motion to Compel as that Motion relates to the scope of supplemental discovery, CSXT does object to TPI's request that the Board order Defendant to begin production of responsive information immediately.

CSXT is pleased that, with the assistance of Board staff through the process of a discovery conference, the parties have been able to negotiate a private resolution of their disagreement on the scope of supplemental discovery that may be necessary for the rate reasonableness phase of this proceeding. However, CSXT emphatically continues to disagree with TPI about the timing of any such supplemental discovery, recognizing that until the Board decides the parties' respective Petitions for Reconsideration of the May 31, 2013 "limit price

test” market dominance decision in this proceeding, the scope of this case remains unclear. Indeed, if the Board were to grant CSXT’s Petition for Reconsideration and issue a new market dominance decision based on the traditional factors that the Board used for decades previously, it is highly likely that a large number of additional traffic lanes would be dropped from the Complaint – perhaps even a sufficient number of such lanes to result in TPI’s election to have its case evaluated under the Simplified Stand-Alone Cost (“SSAC”) or even the Three-Benchmark (“3B”) methodologies.

In those circumstances it would be inappropriate and unfair to CSXT to impose upon it the significant expense and burden of having to undertake immediately the production and updating of the wide variety of data, documents and other information covered by the supplementary discovery responses. Moreover, CSXT respectfully emphasizes its strong belief that the “limit price test” remains economically and legally invalid, and that if the Board fails to grant CSXT’s Petition for Reconsideration, it should do so in recognition of the fact that there is a significant risk that ultimately a reviewing Court of Appeals will remand this case on those grounds at some point in the future. In such circumstances the time and expense of the parties and of the Board itself to have gone through an entire SAC case, including through the production of the enormous amount of information required for the preparation and presentation of such a case, will have been for naught. Further, the “limit price test” will continue to have an unfortunate chilling effect on commercial relations between the two companies. Accordingly, CSXT submits that the Board should not order the commencement of production of supplementary discovery responses until it has ruled

on the pending Petitions for Reconsideration, and that if and when it may order that such production should begin, it afford CSXT at least 90 days to complete such production.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "G. Paul Moates", is written over a horizontal line.

G. Paul Moates
Paul A. Hemmersbaugh
Matthew J. Warren
Sidley Austin LLP
1501 K Street, NW
Washington, DC 20005
(202) 736-8000
(202) 736-8711 (fax)

Counsel to CSX Transportation, Inc.

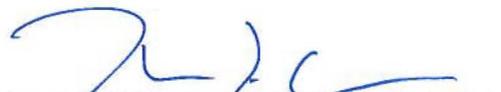
Dated: July 12, 2013

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of July 2013, I served a copy of the foregoing upon counsel for complainant TPI via electronic mail and U.S. first-class mail, postage prepaid, at the address below:

Jeffrey D. Moreno
David E. Benz
Thompson Hine LLP
1919 M Street, NW
Suite 700
Washington, DC 20036-1600

Counsel for Total Petrochemicals & Refinery USA, LLC


Matthew J. Warren