



230079

Sandra Dearden, President & CEO

June 16, 2011

Honorable Cynthia R. Brown  
Chief, Section of Administration  
Surface Transportation Board  
1925 K Street, N.W.  
Washington, DC 20423

**RE: STB Docket No. Ex Parte 705, Competition in the Railroad Industry**

Dear Ms. Brown:

Attached are the oral arguments to be presented by William A. Frauenheim, III, Vice President - Operations, Diversified CPC International, Inc., at the hearing scheduled for June 22 - 23, 2011.

Sincerely,

Sandra J. Dearden  
President & CEO

ENTERED  
Office of Proceedings

JUN 16 2011

Part of  
Public Record

55 East Jackson Boulevard, Suite 625  
Chicago, Illinois 60604  
Phone: (312) 765-0250 \* Fax: (312) 765-0396  
email: s.dearden@highroadconsulting.com

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

---

**Ex Parte No. 705**

---

**COMPETITION IN THE RAILROAD INDUSTRY**

---

**COMMENTS OF  
DIVERSIFIED CPC INTERNATIONAL, INC.**

**William A. Frauenheim, III  
Vice president - Operations  
Diversified CPC International, Inc.  
24338 W. Durkee Road  
Channahon, IL 60410  
(815) 424-2003**

**Sandra J. Dearden  
Highroad Consulting, Ltd.  
55 East Jackson Blvd., Suite 625  
Chicago, IL 60604  
(312) 765-0250**

**June 10, 2011**

## **I. Introduction**

My name is Bill Frauenheim. I am Vice President of Operations at Diversified CPC International, Inc. (Diversified CPC), a leading manufacturer and distributor of liquefied gas aerosol propellants and specialty gas liquids in North America. I am responsible for the operations of Diversified CPC's liquefied gas processing facilities in the U.S. I am a graduate of Penn State University with a B.S. degree in Petroleum and Natural Gas Engineering.

In my role as Vice President of Operations, Diversified CPC's transportation function reports to me. For the past thirteen years, Highroad Consulting, Ltd. has helped us manage our rail transportation. They keep me informed on transportation issues and I frequently participate in meetings with carriers.

Diversified CPC has filed initial comments and reply comments in this proceeding, and we endorse initial comments and reply comments submitted by "Interested Parties" and by Westlake Chemical Corporation.

Diversified CPC International, Inc. (Diversified CPC) is headquartered in Channahon, IL and has six manufacturing and distribution facilities in North America with 48 employees. Even though Diversified CPC is considered a leader in the aerosol propellant industry, Diversified is considered a small shipper. We have 37 rail lanes; volumes in those lanes range from one (1) to 181 carloads annually.

Diversified CPC relies on Class I railroads for inbound shipments of raw materials and to deliver products to customers. While we also ship by truck for shorter distances, some customers request rail deliveries, and truck transportation

is not always a practical alternative for long haul moves. Therefore, rail is a critical part of our operation and the ability for Diversified CPC to be competitive.

## **II. Competition is Inadequate in the Railroad Industry**

The railroads have adopted a position that rail rates declined in real terms during the twenty year period following enactment of the Staggers Act and that shippers have benefited from the cost savings<sup>1</sup>. Further, they try to justify their aggressive pricing practices based on the need to build and maintain their infrastructure.<sup>2</sup>

I cannot comment on the general statement by the railroads that rail rates have declined since enactment of the Staggers Act. What I do know, is our costs of doing business with the railroads have increased, and we frequently need to remind the railroads that Diversified CPC has also invested capital for infrastructure improvements so we can increase freight volumes with the railroads.

For example, Diversified CPC has invested more than \$2.2 million at its rail-served plants for infrastructure improvements required to maintain and increase rail shipments. We cannot always pass those costs thru to our customers. These projects included:

- Rail infrastructure improvements and storage at the Petal, MS (Dragon, MS) plant.
- Installation of additional rail car unloading stations, rail risers, and bulk storage tanks at our Anaheim, CA, Miami, FL and Sparta, NJ plants.

---

<sup>1</sup> Reply Comments of Norfolk Southern Railway, p. 6

<sup>2</sup> Reply Comments of Norfolk Southern Railway, p. 32

- 7
- The Channahon, IL plant was originally constructed with three sidings and eight (8) tank car loading and unloading stations. Prior to the latest expansion to add a fourth siding, we added four additional tank car loading and unloading stations, and bulk storage for a new product blend shipped exclusively by rail. The plant now has (16) tank car loading and unloading stations, effectively doubling the loading and unloading facilities of the original plant design. The plant can now handle up to 24 tank cars on its four (4) sidings.

While Diversified CPC has invested capital in infrastructure to increase rail shipments, the railroads seem to have a one-sided view of the need to earn adequate return on investments. In 2004, one of our customers asked our company to develop a new product for our customer's foam packaging operations. We developed the new product which was accepted by our customer. Diversified CPC acquired additional tank cars, and we invested more than \$500,000 for construction of a storage tank farm, blending system and associated pumps and piping for the new commodity.

During the three-year period when we had the business, rail costs for this move increased more than 41%. The railroads disregarded our warnings and ultimately priced Diversified CPC and the railroads out of the business. After we lost the business, the carriers asked what they could do to help in the recovery of the business; they reestablished the rate that applied prior to the last increase but, unfortunately, it was too late.

While we understand the need for the railroads to earn an adequate return, it was extremely unfair for railroads to encourage us to develop business that required capital investments, and subsequently chase the business away with irresponsible pricing practices.

### **III. Reciprocal Switching**

We believe the example presented above demonstrates that competition in the railroad industry is inadequate. For this particular lane, both origin and destination are classic bottlenecks. 100% of Diversified CPC's rail lanes have bottlenecks at origin and/or destination. While we do not have an agenda to request competitive access at all locations, I believe it possible that simply having an option to open industries to reciprocal switching would create a competitive environment that will serve the public interest.

We have one plant that is not operating according to plan that could benefit if served by a second carrier. Our plan when locating that plant was to serve customers by rail and truck; however, outbound rail rates proposed from that plant have not been competitive so we have been forced to serve those customers from other origins. (We only moved 7 cars outbound from that plant during the last 12 months.) We believe it likely that rail volumes and production at that plant would increase if the plant is served by a second carrier.

### **IV. Rate Reasonableness Standards**

Diversified CPC does not have an agenda to file complaints with the STB to seek relief from unreasonable rates. First of all, we prefer to resolve issues directly

7

with the railroads when possible; second, current procedures are not practical alternatives for small shippers like Diversified CPC. The railroads contend shippers do not need competition so long as we have regulation.<sup>3</sup> In other words, if we do not like rates, we can file a rate case with the STB. This clearly indicates the railroads are out of touch with customers or they simply do not care.

When the Board developed new proceedings and standards for small rate cases, it was a step in the right direction, however, they offer no practical recourse for small shippers like Diversified CPC as the litigation costs would outweigh the potential gain. This is evident by the fact that recent rate cases have been filed by very large companies, including DuPont, TOTAL Petrochemicals, and M&G Polymers.<sup>4</sup> The costs of litigating a rate case under the current procedures, including the small rate case and simplified SAC procedures, prohibits most shippers, and especially small shippers like Diversified CPC from seeking relief at the STB, leaving us no recourse. Small shippers like Diversified CPC should have access to seek Board protection from unreasonable rates and unfair practices.

---

<sup>3</sup> BNSF Comments at 3, AAR Comments at 13. Reply Comments of CSX, p.8

<sup>4</sup> To prove their point the railroads advised that since the adoption of simplified procedures in 2006 and 2007, the Board has heard at least 20 rate cases, every single one of them by a large chemical or coal shipper. For example, chemical shippers that have filed recent SAC cases are large companies, DuPont, TOTAL Petrochemicals, and M&G Polymers. Reply Comments of Canadian Pacific Railway Company, pp. 10 -11. Reply Comments of CSX Transportation, Inc. p. 11

## **V. Summary**

Competition in the railroad industry is inadequate, and we commend the Board for initiating this proceeding. We encourage the Board to create some additional competitive marketing alternatives to shippers including practical solutions for small shippers. Potential alternatives include simple access to reciprocal switching and variable cost thresholds for switching costs. Finally, the Board should review current rate reasonableness standards and rate case procedures and consider changes that may be needed to establish a simple procedure that will give small shippers like Diversified CPC the ability to seek Board relief from unreasonable rates and unfair practices.

I appreciate the opportunity to comment on competition in the railroad industry, and we are hopeful that the information Diversified CPC has and will submit in this proceeding will contribute to the process that will lead to a comprehensive decision that will address these difficult and challenging issues.