

February 25, 2011

via electronic filing

Cynthia T. Brown
Chief of the Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington, D.C. 20423

**RE: Docket No. NOR 42121, Total Petrochemicals USA, Inc. v. CSX
Transportation, Inc.**

Dear Ms. Brown:

I am writing this letter on behalf of TOTAL Petrochemicals USA, Inc. ("TPI") in response to certain comments made in the testimony of the American Shortline and Regional Railroad Association ("ASLRRA") at the Board's February 24, 2011 hearing in Ex Parte No. 704: *Review of Commodity, Boxcar, and TOFC/COFC Exemptions*. As an example of the lack of market power possessed by Class III railroads, the ASLRRA stated that, in pending rate cases before the Board, the shippers threatened to join several short line railroads as defendants if those railroads did not reduce their rates below current levels. Because this docket is one of just two pending dockets that has involved short line railroad defendants, TPI can only presume that it is one of those shippers mentioned by the ASLRRA. Therefore, TPI is writing to deny those allegations and to correct the record.

TPI did not initially join any short line railroads as defendants in its original Complaint, filed on May 3, 2010. It was not until October 4, 2010, after TPI was able to confirm CSXT's assertions that some of the challenged rates were joint rates that required TPI to join the short lines as necessary defendants, that TPI amended its Complaint. Before filing its amended complaint, TPI contacted each short line railroad to explain the situation and request a contract rate, which would eliminate the need to join them as defendants. TPI openly acknowledged that it had no quarrel with the short line, but that in order to pursue its complaint against CSXT, TPI was required by the Board's "Bottleneck Decisions" to join as defendants any short line that participated in a joint rate with CSXT. TPI also informed each short line that this situation could be avoided if the short line quoted its portion of the joint rate in a separate contract with TPI. TPI then asked each railroad to provide a contract rate, without ever proposing what that rate should be.

TPI never demanded that any short line railroad reduce its rates from current levels in order to be dismissed from this proceeding. Indeed, TPI could not have done so because it did not even

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know the short line railroads' current rates. TPI was paying joint rates established between CSXT and each shortline, and was not privy to the divisions between them. If anything, TPI believes that it paid a premium to each short line in exchange for contracts that would enable TPI to dismiss them as defendants.

Contrary to the implications of the ASLRRRA's testimony, TPI never engaged, or even could have engaged, in any attempt to bully short line railroads for lower rates. If anything, the addition of these short line railroads as defendants was an unwanted distraction from the prosecution of TPI's principal case against CSXT and a waste of resources. Of all the examples of a lack of short line market power, it is unfortunate that the ASLRRRA chose this proceeding.

Sincerely,



Jeffrey O. Moreno

Counsel for Total Petrochemicals USA, Inc.

Cc: Daniel R. Elliott III, Chairman
Charles D. "Chip" Nottingham, Vice Chairman
Francis P. Mulvey, Commissioner
Paul A. Hemmersbaugh, Counsel for CSXT
Keith T. Borman, Counsel for ASLRRRA