



ASSOCIATION OF  
AMERICAN RAILROADS

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Public Record

July 24, 2013

Ms. Cynthia T. Brown  
Chief, Section of Administration  
Surface Transportation Board  
395 E Street, S.W.  
Washington, DC 20423

Re: STB Docket No. 42121, *Total Petrochemicals & Refining USA, Inc. v. CSX Transportation, Inc.*

Dear Ms. Brown:

Please find attached the petition to intervene of the Association of American Railroads ("AAR") for filing in the above proceeding. The AAR is filing *amicus curiae* comments for consideration in this proceeding simultaneously with this petition.

Respectfully submitted,

Louis P. Warchot  
*Counsel for the Association of  
American Railroads*

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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STB Docket No. 42121

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TOTAL PETROCHEMICALS & REFINING USA, LLC

v.

CSX TRANSPORTATION, INC.

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PETITION TO INTERVENE OF THE  
ASSOCIATION OF AMERICAN RAILROADS

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Pursuant to 49 CFR § 1112.4, the Association of American Railroads (“AAR”) respectfully requests that it be permitted to intervene in the above-captioned proceeding for the limited purpose of submitting comments on the limit price test for qualitative market dominance applied in this proceeding. In a decision served on May 31, 2013, the Surface Transportation Board (“Board”) utilized the limit price test for qualitative market dominance first applied in *M&G Polymers USA, LLC v. CSX Transp., Inc.*, NOR 42123 (STB served Sept. 27, 2012). The parties to this proceeding, CSX Transportation, Inc. (“CSX”) and Total Petrochemicals & Refining USA, LLC (“TPI”) filed petitions for reconsideration of the May 31 decision on June 20, 2013. The AAR supports CSX’s petition for reconsideration and seeks to intervene to provide the railroad industry’s views on the limit price test applied in this proceeding.

The AAR is a trade association representing the interests of North America’s major freight railroads, and often presents comments and testimony in Board proceedings. The AAR and its freight railroad members often participate in Board proceedings that implicate issues of industry-wide significance. The AAR and its freight railroad members have a strong interest in ensuring that the Board adheres to the Interstate Commerce Act’s mandate that it exert its rate reasonableness

jurisdiction only in cases where the rail carrier truly possesses market dominance. In line with CSX's petition for reconsideration, the AAR believes that the limit price test rule been applied to this proceeding in violation of the Administrative Procedure Act, is contrary to 49 U.S.C. § 10707(d)(2), and is premised on several faulty assumptions.

Consistent with 49 C.F.R. § 1112.4, the AAR comments do not unduly broaden the issues raised in this proceeding. Further, the AAR is filing its comments simultaneously with this petition and thus would not unduly delay the procedural schedule established in this proceeding. The Board has previously allowed trade associations to intervene as *amici* in a rate dispute to support a party's petition for reconsideration on an issue of industry-wide significance. See *Texas Municipal Power Agency v. Burlington N. & Santa Fe Ry.*, 7 S.T.B. 803, 804 (2004).

### Conclusion

The AAR's intervention in this proceeding will neither unduly broaden the issues presented nor contribute to any unnecessary delay in the resolution of those issues. Accordingly, the AAR's petition to intervene should be granted.

Respectfully Submitted,



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*Counsel for the Association of  
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**CERTIFICATE OF SERVICE**

I, Rosita M. N'Dikwe, hereby certify that on this 24<sup>th</sup> day of July 2013 I served by first-class mail, postage prepaid a copy of the Association of American Railroads' petition to intervene in STB Docket No. 42121, *Total Petrochemicals & Refining USA, Inc. v. CSX Transportation, Inc.* on the parties of record at the addresses below:

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