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SURFACE TRANSPORTATION BOARD

Office of Proceedings
September 12, 2013
Part of Public
Record

DOCKET NO. 42138

HORRY COUNTY, SOUTH CAROLINA, ET AL.

v.

BALTIMORE AND ANNAPOLIS RAILROAD COMPANY D/B/A
CAROLINA SOUTHERN RAILROAD COMPANY

PETITION FOR LEAVE TO INTERVENE OF
BP AMOCO CHEMICAL COMPANY

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September 12, 2013

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1.

On or about August 27, 2013, Horry County, South Carolina, *et al.* (“Complainants”) filed a Complaint docketed in Docket No. 42138 herein against Baltimore and Annapolis Railroad Company doing business as Carolina Southern Railroad Company (“CALA”), alleging that CALA has been for some time and is violating its common carrier obligations.

On or about August 27, 2013, Horry County also filed a letter with the Board, in Finance Docket No. 34064, informing the Board that CALA was in default of its Lease Agreement that allowed CALA to operate over lines owned by Horry County, and therefore that Horry County was seeking a Board determination that CALA’s modified rail certificate allowing it to operate over Horry County’s lines should be terminated.

2.

Pursuant to 49 C.F.R. §1112.4(a), BP Amoco Chemical Company (“BP”) hereby petitions for leave to intervene herein in support of Complainants, seeks a ruling from the Board that CALA is in violation of its obligations to provide rail service over the lines at issue, including of its rail car storage agreement with rail cars owned or leased by BP, and that CALA is in violation of its Lease Agreement with Horry County.

3.

BP has relied on CALA for rail car storage services, including on the lines at issue herein, for several years. More than two years ago, 17 rail covered hopper cars (“hopper cars”) used for transportation of purified terephthalic acid (“PTA”) leased by BP were

tendered to CALA for storage, but because of CALA's inability or unwillingness to perform its obligations, including storage, those 17 hopper cars have since that time not been returned to BP, despite BP's requests of CALA to transport those 17 hopper cars to interchange with CSXT or move them to a location where they could be removed from the rail lines at issue and returned to BP's control for relocation by non-rail transportation to different rail lines under the control of a rail carrier other than CALA.

4.

Several months ago, through the undersigned counsel, and before that time by BP directly, BP requested CALA to move, at CALA's expense, BP's 17 hopper cars to a location where they could be lifted from CALA's tracks and moved by truck to a location where they could be returned to rail service. When the undersigned counsel requested that CALA move BP's 17 hopper cars to such a location, Mr. Kenneth Pippen, President of CALA, did not agree to do so, stating that he hoped instead that CALA would have rail service restored within a matter of several weeks and could then move BP's rail cars via rail transportation. A similar conversation was had by the undersigned counsel with Mr. Pippen's son Jason, who is or was employed by CALA as a Vice President and General Manager. As a result of CALA's refusal to cooperate with BP, BP has been unable to recover its 17 hopper cars for use in rail transportation, yet paid CALA an interchange fee of \$50 for each hopper car, and for a time made storage payments to CALA of \$2.50/day for each hopper car, and also has been required to continue to make lease payments on those 17 hopper cars.

5.

To date, CALA has neither restored rail service over the lines at issue, as set forth in the Complaint herein, nor has it cooperated with BP to move BP's hopper cars from storage on CALA's tracks to a location where BP could remove them from CALA's tracks. Accordingly, BP agrees with Complainants Horry County, SC *et al.* that CALA has been and is in violation of its common carrier and track-lease obligations, over a substantial period of time, and of its obligations to BP's under its agreement to store rail cars for BP on CALA's lines until BP requested the return of those rail cars to it, and that the Board should so find.

6.

In accordance with 49 C.F.R. §1112.4(a)(1)-(2), BP's participation herein would not unduly delay the schedule in this proceeding, because no schedule has been set, nor would granting BP's intervention unduly broaden the issues in this proceeding, because BP is raising the same or similar concerns as those that Complainants have presented in their Complaint.

7.

In accordance with 49 C.F.R. §1112.4(b), BP seeks (1) the relief sought in the Complaint, (2) a determination by the Board that CALA has violated its rail transportation obligations over the lines at issue, including to provide rail storage services for BP, and (3) a determination that CALA is required to pay damages to BP for the storage fees and lease payments BP has made on the 17 hopper cars on CALA's lines that BP has not had returned to it after it requested that those cars be returned, because of CALA's failures to perform.

8.

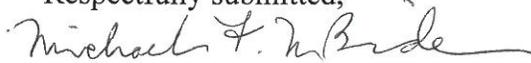
Accordingly, BP has interests in this proceeding that are unique and cannot be adequately represented by any other party.

9.

WHEREFORE, BP Amoco Chemical Company hereby seeks leave to intervene as a party, with full rights attendant thereto. BP requests that the Board (1) find that CALA has not complied with its obligations to provide rail transportation and storage services, (2) grant the relief sought in the Complaint and in this Petition, and also (3) award BP damages for the storage fees and lease payments it has had to make on its 17 hopper cars while CALA has been unwilling or unable to return them to BP or otherwise arrange for BP to remove those hopper cars from CALA's lines so as to return them to use in rail transportation. If the Board does not deprive CALA of its operating authority in F.D. 34064, the Board should also require CALA either (4) to provide common carrier transportation service to BP or (5) arrange to allow BP to remove its 17 hopper cars from CALA's lines at CALA's expense.

The undersigned is authorized to state that counsel for the Complainants, Thomas. F. McFarland, Esq., and counsel for the Defendant, Preston Brittain, Esq., authorized the undersigned to state that their clients do not intend to oppose the granting of this Petition.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that I have served, this 12th day of September, 2013, a copy of the foregoing Motion for Leave to Intervene, by email, facsimile, or First-Class mail, on the following parties or counsel of record:

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