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January 5, 2009

**By Hand**

Anne K. Quinlan, Esq.  
Acting Secretary  
Surface Transportation Board  
395 E Street, SW  
Washington, DC 20423



Re E.I. DuPont de Nemours and Company v. CSX Transportation, STB No 42112

Dear Secretary Quinlan

Enclosed for filing in the above-referenced matter, please find the original and ten copies of Defendant CSX Transportation Inc 's Answer to Complainant DuPont's First Amended Complaint. Please stamp the enclosed copies to indicate the Petition has been received and filed, and return the stamped copies with our messenger, for our files. Thank you for your assistance in this matter

If you have questions, please contact the undersigned.

Very truly yours,

Paul A Hemmersbaugh

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Enclosures

cc Nicholas DiMichael

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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Docket No. NOR-42112



\_\_\_\_\_  
E.I DUPONT DE NEMOURS AND CO. )

Complainant, )

v )

CSX TRANSPORTATION, INC )

Defendant )  
\_\_\_\_\_

**ANSWER TO FIRST AMENDED COMPLAINT**

Pursuant to 49 C.F.R. § 1111.4 and other applicable law and authority, Defendant CSX Transportation, Inc ("CSXT") respectfully submits this Answer to the First Amended Complaint filed by Complainant E. I. du Pont de Nemours and Co. ("DuPont") in STB Docket No. 42112 on December 16, 2008 ("Amended Complaint")

While DuPont indicates that its Amended Complaint is nearly "identical" to the Complaint DuPont filed on November 10, 2008 ("Initial Complaint"), CSXT notes that the Amended Complaint differs in several significant respects from the Initial Complaint. Among other things, the Amended Complaint adds new challenges to CSXT's rates for certain movements not included in the Initial Complaint, withdraws challenges to CSXT's rates for certain movements included in the Initial Complaint, and alters the revenue-to-variable-cost ratios DuPont purported to calculate for the issue movements.

CSXT denies all of the allegations of the Amended Complaint except where this Answer specifically states otherwise.

In response to the unnumbered paragraph on page 1 of the Amended Complaint, CSXT denies that DuPont has paid or will pay common carrier rates in excess of a reasonable

maximum rate for CSXT's transportation of the movements set forth in the Amended Complaint (the "issue movements"), and denies that DuPont is entitled to any of the relief it seeks in this proceeding. The remainder of the unnumbered paragraph consists of a characterization of DuPont's Amended Complaint, to which no response is required. To the extent that any such response is required, CSXT denies the remaining allegations of this paragraph

With respect to the numbered paragraphs of the Amended Complaint, CSXT responds as follows.

1. CSXT lacks sufficient information to admit or deny the allegations of Paragraph 1 of the Amended Complaint. To the extent a response is required, CSXT denies the allegations of Paragraph 1

2. CSXT admits the first two sentences of Paragraph 2 of the Amended Complaint. With respect to the third sentence of Paragraph 2, CSXT admits that it is generally subject to Subtitle IV of Title 49 of the United States Code, and that some of its rates and practices are subject to the jurisdiction of the Surface Transportation Board ("Board")

3. Paragraph 3 of the Amended Complaint consists of a characterization of DuPont's Amended Complaint, to which no response is required. To the extent a response is required, CSXT admits that the Amended Complaint purports to challenge some of CSXT's rates for certain origin-destination pairs and groups set forth in Exhibits A and B to the Amended Complaint. CSXT further responds that the specific rates challenged in the Amended Complaint, set forth in Exhibits A and B, are a subset of CSXT rates for transportation of the listed commodities between the described origins, destinations or interchange points that do not include some CSXT common carrier rates for movements between those points. To the extent a further response is required, CSXT denies the remaining allegations of Paragraph 3.

4. CSXT lacks sufficient information to admit or deny the allegations of Paragraph 4 of the Amended Complaint, because it cannot determine with precision the locations of some of the origins and destinations named in Exhibit A. In particular, some of the “points” identified in the Exhibits are groupings of origins or destinations, and not specific individual origins or destinations. To the extent a response is required, CSXT denies the allegations of Paragraph 4.

5. CSXT lacks sufficient information to admit or deny the allegations of Paragraph 5 of the Amended Complaint, in part because it cannot determine with precision the locations of some of the origins and destinations named in Exhibit B. In particular, some of the “points” identified in the Exhibits are groupings of origins or destinations, and not specific individual origins or destinations. CSXT further responds that the specific rates challenged in the Amended Complaint, set forth in Exhibits A and B, are a subset of CSXT rates for transportation of the listed commodities between the described origin, destination, or interchange points, and do not include some CSXT common carrier rates for movements between those points. To the extent a further response is required, CSXT denies the allegations of Paragraph 5.

6. In response to Paragraph 6 of the Amended Complaint, CSXT admits that prior to June 16, 2007 it transported commodities for DuPont between various points pursuant to a Master Contract with DuPont. Because CSXT cannot determine with precision the locations of some of the origins and destinations named in Exhibits A and B, it cannot admit or deny whether it transported the listed commodities between each of the enumerated points. CSXT admits that it provided DuPont with private price quotations after the expiration of the Master Contract, but denies that those private price quotations were “common carrier tariff rates.” These private price quotations were significantly discounted from CSXT’s public common carrier rates. CSXT

admits that the rates in these private price quotations were based on its last contract offer to DuPont. To the extent a further response is required, CSXT denies the remaining allegations of Paragraph 6

7 Paragraph 7 of the Amended Complaint consists of a characterization of DuPont's previous litigation with CSXT, to which no response is required. To the extent that a response is necessary, CSXT admits that DuPont brought complaints before the Surface Transportation Board that were docketed under STB Docket numbers 42099, 42100, and 42101, that the Board considered these complaints pursuant to the guidelines set forth in STB Ex Parte No. 646 (Sub-No 1), *Simplified Standards for Rail Rate Cases* (served Sept. 5, 2007), that the Board's initial decisions in those cases prescribed rates for six of the seven challenged rates; and that CSXT filed petitions for review of those decisions in the United States Court of Appeals for the District of Columbia. CSXT further states that the Board has identified a "material error" in its decisions in each of the three cases, has reopened those three proceedings, and has asked that the Court of Appeals remand the three decisions for further proceedings. To the extent a further response is required, CSXT denies the remaining allegations of Paragraph 7.

8. CSXT admits the first and second sentences of Paragraph 8 of the Amended Complaint. The last sentence of Paragraph 8 is a legal conclusion, to which no response is required. To the extent a response is required, CSXT denies the third sentence of Paragraph 8. CSXT denies the remaining allegations of Paragraph 8.

9 With respect to the allegations of Paragraph 9, CSXT admits that it provided common carrier tariff rates effective December 1, 2008 in response to DuPont's request for such rates. In part because CSXT cannot determine with precision the locations of some of the origins and destinations named in Exhibits A and B, CSXT lacks sufficient information to

admit or deny whether the 99 rates reproduced in Exhibits A and B accurately reflect CSXT's tariff rates, whether those rates are higher than the private price quotations previously in effect, and whether for joint line movements CSXT's Rule 11 rate factor is equal to or greater than the current through rate CSXT further responds that the specific rates challenged in the Amended Complaint, set forth in Exhibits A and B, are a subset of CSXT's rates for transportation of the listed commodities between the described origin, destination, or interchange points, and do not include some CSXT common carrier rates for movements between those points To the extent a further response is required, CSXT denies the remaining allegations of Paragraph 9

10. Paragraph 10 of the Amended Complaint consists of a characterization of DuPont's Amended Complaint, to which no response is required To the extent a response is required, CSXT admits that the Amended Complaint purports to challenge only those CSXT rates expressly set forth in Exhibits A and B to the Amended Complaint To the extent a further response is required, CSXT denies the remaining allegations of Paragraph 10

11 Paragraph 11 states a legal conclusion to which no response is required. To the extent a response is required, CSXT denies Paragraph 11.

12 Paragraph 12 states a legal conclusion to which no response is required To the extent a response is required, CSXI denies Paragraph 12

13. Paragraph 13 states a legal conclusion to which no response is required. To the extent a response is required, CSXT denies Paragraph 13.

14 Paragraph 14 states a legal conclusion to which no response is required, To the extent a response is necessary, CSXT denies Paragraph 14.

15. Paragraph 15 states a legal conclusion to which no response is required, To the extent a response is necessary, CSXT denies Paragraph 15.

16. Paragraph 16 states a legal conclusion to which no response is required,.

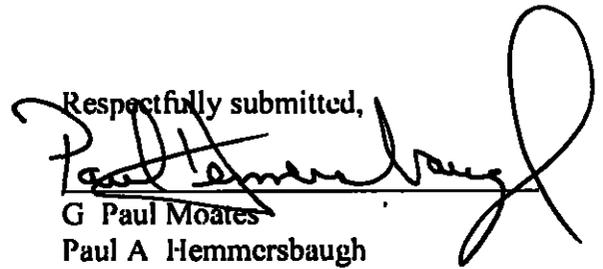
To the extent a response is necessary, CSXT denies Paragraph 16.

17. Paragraph 17 states a legal conclusion to which no response is required

To the extent that a response is necessary, CSXT denies Paragraph 17

The unnumbered final paragraph of the Amended Complaint (on page 5) states legal conclusions and requests for relief to which no response is required. To the extent a response is deemed necessary, CSXT denies the allegations, conclusions, and requests for relief in that final paragraph, including clauses numbered 1 through 6, and denies that DuPont is entitled to any of the relief it seeks in this proceeding, or to any other relief

Peter J. Shultz  
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Respectfully submitted,  
  
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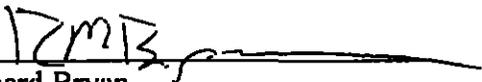
*Counsel to CSX Transportation, Inc.*

Dated January 5, 2009

## CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of January, 2009, I caused a copy of the foregoing Answer of CSX Transportation, Inc. to the First Amended Complaint of E.I. du Pont de Nemours and Co to be served on the following parties by first class mail, postage prepaid or more expeditious method of delivery

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