

May 18, 2010

Via Hand Delivery

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

227110  
ENTERED  
Office of Proceedings  
MAY 18 2010  
Part of  
Public Record



**Re: Docket No. NOR 42122, NRG Power Marketing LLC v.  
CSX Transportation, Inc.**

Dear Ms. Brown:

Enclosed for filing please find the original and ten (10) copies of the Complaint of NRG Power Marketing LLC. A check for \$350 is also enclosed to cover the filing fee required by 49 CFR §-1002.2(f). An additional copy of the Complaint is included for date-stamping and return to the undersigned via our messenger.

If there are any questions regarding this matter, please do not hesitate to contact the undersigned counsel for NRG Power Marketing LLC.

Sincerely,

Karyn A. Booth  
Attorney for NRG Power Marketing LLC

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MAY 18 2010  
SURFACE  
TRANSPORTATION BOARD

**FILED**  
MAY 18 2010  
SURFACE  
TRANSPORTATION BOARD

*enclosures*

cc: Ellen M. Fitzsimmons, Senior Vice President, Law and Public Affairs, General Counsel  
& Corporate Secretary for CSX Transportation, Inc. (via overnight express)

**FILED**

MAY 18 2010

**SURFACE  
TRANSPORTATION BOARD**

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**



227110

\_\_\_\_\_  
NRG POWER MARKETING LLC )

Complainant, )

v. )

CSX TRANSPORTATION, INC. )

Defendant. )

Docket No. NOR 42122

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Office of Proceedings

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Public Record

**COMPLAINT**

**SURFACE  
TRANSPORTATION BOARD**

COMES NOW Complainant, NRG Power Marketing LLC ("NRG"), 211 Carnegie Center Drive, Princeton, NJ 08540, and files this Complaint against Defendant, CSX Transportation, Inc. ("CSXT"), 500 Water Street, Jacksonville, Florida 32202. NRG brings this Complaint pursuant to 49 U.S.C. §§ 10701, 10704, 10707, 11701 and 11704, and 49 C.F.R. Part 1111. NRG requests that the Surface Transportation Board ("STB" or "Board") prescribe reasonable rates and service terms for CSXT's transportation of coal in unit trains from Chicago, IL to the Huntley Power LLC and the Dunkirk Power LLC, as further described herein. NRG asks the Board to award damages, plus interest, to the extent that NRG will pay common carrier rates in excess of a reasonable maximum rate for such transportation, beginning on April 1, 2010. NRG asks this Board to determine the reasonableness of CSXT's rates using the constrained market pricing principles and procedures adopted in *Coal Rate Guidelines—Nationwide*, Ex Parte No. 347 (Sub-No. 1), 1 I.C.C. 2d 520 (1985), as further refined and applied in subsequent decisions issued by the Interstate Commerce Commission and the Board.

In support of this Complaint, NRG states as follows:

### **The Parties**

1. NRG is a limited liability company organized under the laws of the State of Delaware, with its principal place of business in Princeton, New Jersey. NRG is a wholly-owned subsidiary of NRG Energy Inc. NRG Energy, Inc. is a wholesale power generation company with a significant presence in major competitive power markets in the United States. NRG Energy, Inc. is engaged in the ownership, development, construction and operation of power generation facilities, the transacting in and trading of fuel and transportation services, and the trading of energy, capacity and related products in the regional markets in the United States and select international markets where its generating assets are located.

2. NRG Energy, Inc. owns and operates two coal-fired generating stations in western New York, including the Huntley Power LLC (“Huntley Station”) located in Tonawanda, NY and the Dunkirk Power LLC (“Dunkirk Station”) located at Dunkirk, NY. The Huntley Station is a 380-megawatt coal-fired generating station which consumes approximately 1,500,000 tons of coal per year. The Dunkirk Generating Station is a 530-megawatt coal-fired generating station which consumes approximately 2,000,000 tons of coal per year.

3. CSXT is a Class I common and contract carrier by railroad that engages in the transportation of property in interstate and intrastate commerce. Its headquarters are in Jacksonville, Florida. CSXT is subject to the Interstate Commerce Commission Termination Act of 1995 (49 U.S.C. §§ 10101 *et seq.*) and to the jurisdiction of the Board.

### **Description of the Issue Movements**

4. In this Complaint, NRG challenges the reasonableness of CSXT’s rates for the movement of coal in unit trains of private cars owned by NRG to the Huntley Station and the Dunkirk Station.

5. Since late 2003, coal for the Huntley and Dunkirk Stations has originated in the Powder River Basin in Wyoming. All of the coal to both Stations is delivered by rail in private cars. From the Powder River Basin, the coal is transported in unit trains to Chicago, IL by the Union Pacific Railroad Company (“UP”). At Chicago, UP interchanges the trains of coal with CSXT at Barr Yard. From Chicago, CSXT transports the unit trains to the Huntley Station, a distance of approximately 525 miles, and to the Dunkirk Station, a distance of approximately 475 miles. CSXT is the only rail carrier that serves either the Huntley or the Dunkirk Stations.

#### **The Challenged Rates and Service Terms**

6. Beginning late in 2003, coal was transported to the Huntley and Dunkirk Stations by rail under a joint contract between NRG, on the one hand, and the UP and CSXT, on the other, in joint-line service from the Powder River Basin to the Huntley and Dunkirk Stations. The latest joint contract expired on March 31, 2010. Under that contract, UP and CSXT delivered loaded coal cars to the Huntley and Dunkirk stations and returned empty cars to the mines for reloading.

7. In January 2009 NRG requested, and in April 2009 it received, a contract rate proposal from UP and CSXT to establish a new joint contract to govern the transportation of coal to the Huntley and Dunkirk Stations. For a number of months, NRG and the rail carriers engaged in negotiations over the terms of that contract. However, the parties were unable to reach an agreement on a joint contract.

8. After NRG and the two rail carriers failed to agree on a new joint contract, in February 2010 NRG entered into a contract with the UP for the transportation of coal in unit-train service from the Powder River Basin to the interchange with CSXT at Chicago, effective on April 1, 2010.

9. After additional negotiations with CSXT failed to result in an agreement with that carrier for transportation from Chicago to the destinations, on March 11, 2010, NRG requested from CSXT, under AAR Accounting Rule 11, common carrier tariff rates for these movements from Chicago to the destinations, effective April 1, 2010.

10. In response to NRG's request for the common carrier tariff rates, on March 25, 2010, CSXT provided the common carrier Rule 11 tariff rates, at a level of \$28 per ton to the Huntley Station and \$27 per ton to the Dunkirk Station. CSXT's response to NRG's request for common carrier tariff rates is attached as Exhibit A.

11. In this Complaint, NRG challenges the reasonableness of the CSXT tariff rates identified in Paragraph 10 of this Complaint.

#### **Jurisdictional Allegations**

12. CSXT is the only rail carrier that serves the Huntley and Dunkirk Stations. There is no effective competition from other rail carriers for the transportation of coal in unit trains from CSXT's interchange at Chicago to either the Huntley or the Dunkirk Stations.

13. There is no effective competition from non-rail modes of transportation for the movement of coal from Chicago to either the Huntley or the Dunkirk Stations.

14. The CSXT common carrier rates for the movement of coal to the Huntley and Dunkirk Stations, effective as of April 1, 2010 and challenged by NRG in this Complaint, exceed 180 percent of CSXT's variable cost for the service, as determined in accordance with 49 U.S.C. § 10707(d)(1).

15. CSXT possesses market dominance over the movement of coal from Chicago to both the Huntley and Dunkirk Stations. Therefore, pursuant to 49 U.S.C. § 10707, the Board has

jurisdiction over the rates and services provided by CSXT and challenged by NRG as unreasonable.

**Requested Relief**

16. CSXT's common carrier rates for handling the movements of coal to the Huntley and Dunkirk Stations are unreasonable and violate 49 U.S.C. §§ 10701(d)(1) and 10702, which require CSXT to establish reasonable rates. The Board should order CSXT to cease these violations and it should prescribe maximum reasonable rates pursuant to 49 U.S.C. § 10704(a)(1).

17. The Board should award reparations to NRG, as provided under 49 U.S.C. § 11704(b). The reparations should compensate NRG for any and all amounts paid in excess of the reasonable rates prescribed by the Board pursuant to this proceeding, plus interest.

18. The Board should prescribe maximum reasonable rates and service terms, and award reparations for a combined period of ten years, beginning April 1, 2010.

19. This Complaint includes any and all adjustments to the challenged rates, including adjustments to the applicable fuel surcharges, and any new rates established by CSXT for the services described herein.

20. The proceeding and the relief requested in this Complaint, if granted, will not constitute a major federal action significantly affecting the quality of the human environment or the conservation of energy resources.

WHEREFORE, Complainant, NRG Power Marketing LLC prays that the Board:

(1) require Defendant, CSX Transportation, Inc., to answer the charges alleged herein;

(2) assign this Complaint for hearing under 49 C.F.R. Part 1111 and the stand-alone cost approach adopted in *Coal Rate Guidelines—Nationwide*, Ex Parte No. 347 (Sub-No. 1), 1 I.C.C. 2d 520 (1985);

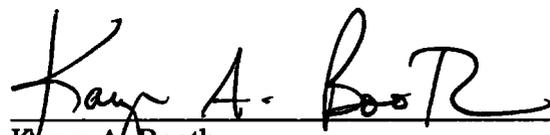
(3) after due hearing and investigation, find that the CSXT's common carrier rates applicable to the transportation of coal in unit trains from Chicago to the Huntley and Dunkirk Stations are unreasonable;

(4) prescribe just and reasonable rates and related rules and service terms for the future applicable to the rail transportation of coal in unit trains from Chicago to the Huntley and Dunkirk Stations, pursuant to 49 U.S.C. §§ 10704(a)(1) and 11701(a);

(5) award NRG reparations, plus applicable interest, in accordance with 49 U.S.C. § 11704 for unlawful rates set by CSXT for the period beginning April 1, 2010 to the effective date of a decision by the Board prescribing just and reasonable rates; and

(6) grant such other and further relief to NRG as the Board may deem just and proper under the circumstances.

Respectfully submitted,



Karyn A. Booth  
Nicholas J. DiMichael  
Sandra L. Brown  
David E. Benz

THOMPSON HINE LLP  
1920 N Street, N.W., Suite 800  
Washington, D.C. 20036  
(202) 331-8800

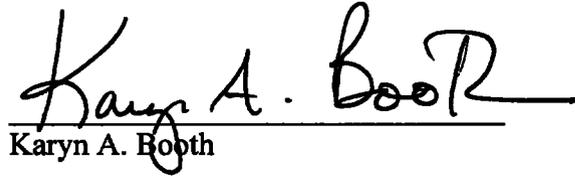
*Attorneys for NRG Power Marketing LLC*

May 18, 2010

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this 18th day of May 2010 the foregoing Complaint has been served by express overnight courier on:

Ellen M. Fitzsimmons  
Senior Vice President Law and Public Affairs,  
General Counsel & Corporate Secretary  
CSX Transportation Inc.  
500 Water Street  
Jacksonville, FL 32202

  
Karyn A. Booth

# **EXHIBIT A**



500 Water Street  
Jacksonville, FL 32202  
904 359 1895 office  
904 359 4890 fax  
email: Pat\_Murphy@csx.com

March 25, 2010

*Via email and U.S. mail*

Ms. Virginia C. Farrow  
Director Coal Transportation  
NRG Energy, Inc.  
211 Carnegie Center  
Princeton, NJ. 08540

**Re: Publication CSXT 10048**

Dear Ginny,

In response to your letter to Henry Rupert dated March 11, 2010, attached is CSXT Publication 10048, which establishes Common Carrier Rates and service terms for transportation of Coal in unit train service, received by CSXT from the Union Pacific Railroad at Chicago, Ill, and delivered to the Huntley and Dunkirk Generating Stations. This publication will be effective April 1, 2010.

Please contact Henry Rupert or myself if you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Patricia K. Murphy".

Patricia K. Murphy  
Director – Utility Coal  
CSX Transportation, Inc.

Attachment

**CSX TRANSPORTATION, INC.**  
**PUBLICATION CSXT-10048**  
Common Carrier Rates on Coal  
For NRG Energy, Inc. (NRG)

Effective Date: April 1, 2010  
Termination Date: December 31, 2010

**1. Transportation Particulars:** (Rates per net ton)

Destinations: Dunkirk, NY \$27.00  
Harriet, NY \$28.00

Origin: Interchange with Union Pacific Railroad (UP) at Chicago, IL as described below.

Route: The rates and terms named herein apply on interline movements originating on the Union Pacific Railroad (UP) in the Powder River Basin when received by CSXT in interchange from the UP at Chicago, IL via CSXT to Destinations.

Application: The rates and terms herein apply only to shipments that meet all requirements of this Item 1, Transportation Particulars.

**Interchange Particulars:**

Location: The interchange of loaded trains between the Union Pacific Railroad (UP) and CSXT will take place on the Blue Island Subdivision between 16<sup>th</sup> Street (MP DC 29.6) and Barr Yard, or at such other location that CSXT's local operating management may find acceptable from time to time.

Run-through Power: NRG shall arrange with the UP to supply locomotive power for these trains subject to the following conditions. Each train shall have two UP-supplied locomotives configured back-to-back with each locomotive equipped to be used in head-end operation. The locomotives supplied shall each have a minimum of 2,000 gallons of fuel at interchange; shall each have sufficient horsepower; and shall each be in a condition consistent with the operation of a coal unit train. Except where otherwise provided herein, the terms and conditions of the Master Equipment Run-Through Agreement between CSXT, UP, and the Baltimore and Ohio Chicago Terminal Railroad Company, dated November 1, 1999, shall apply.

Ratability: NRG shall cause the UP to interchange trains at a frequency consistent with the unloading time at the Destinations, but no more than (i) one in any twenty-four (24) hour period to Dunkirk and (ii) one in any twenty-four (24) hour period to Harriet. In addition, NRG shall arrange with UP to delay interchange to CSXT if five (5) NRG loaded trains are located on CSXT lines at any time, including those placed at the Dunkirk and Harriet Destinations.

<b>Commodity:</b>	Raw, Sub-Bituminous Coal (STCC NO. 11-212).
<b>Equipment:</b>	Customer-supplied (Private) 286,000 pound GWR capacity, aluminum rotary dump cars.
<b>Train Size:</b>	125-Car unit train.
<b>Minimum Train Lading Weight:</b>	14,000 tons.
<b>Unloading:</b>	<p>Unloading of Cars at Destination shall be the responsibility of NRG and shall be done at no cost to CSXT.</p> <p>NRG will unload and release empty unit coal trains to CSXT for departure within 24 hours of placement by CSXT. Placement is defined as when loaded cars are physically placed on NRG's tracks (Huntley Yard in the case of Harriet) and a sufficient number of empties (previously released) are pulled to allow NRG to physically begin the unloading process. NRG shall re-lace air hoses and turn rear angle cocks prior to release. Trains held short of Destination(s) will be Constructively Placed by CSXT in accordance with Tariff CSXT 8200-Series. Locomotives on trains held short may be returned to the account of the UP and charges for re-powering and re-crewing may apply.</p> <p>The rates provided in this publication do not include the use of CSXT crews or locomotives for unloading or other purposes at Destination.</p>
<b>Demurrage:</b>	Trainload/Unit Train Detention at Destination charges will apply as set forth in Item 5190 of Tariff CSXT 8200-Series.
<b>Fuel Surcharge:</b>	No fuel surcharge will apply.
<b>Extended Haul Status:</b>	Rates and terms of this publication are conditioned upon (i) continuing FRA approval of extended haul status permitting inspections at 1,500 mile intervals and (ii) UP performing all required inspections at North Platte, NE to qualify the east-bound movement for extended haul status.

**2. Incorporation of Tariffs, Rules, ETC:**

This Publication incorporates CSXT tariffs (i.e., Common Carrier Rates, including CSXT 8200-series and other service terms), statutes and regulations that would apply if this Publication did not exist, as of the date of shipment tender. The provisions of this Publication control in case of any direct and express conflict.

**3. Payment:**

Subject to the provisions of Section 13, published in Tariff CSXT-8200. All shipments made under this publication will be "Collect".

**4. Bill of Lading:**

The provisions of the Uniform Straight Bill of Lading (Bill of Lading) are incorporated herein by reference. NRG will add the following to each Bill of Lading shipping instruction:

**"Subject to CSXT- 10048"**

**5. Damage Claims:**

Any claims for loss, damage or delay to Commodity shipments shall be governed by 49 USC 11707 and 49 CFR 1005.

**6. Quarterly Rate Adjustments:**

All rates are subject to quarterly increase or decrease based upon 100% of the changes in the Rail Cost Adjustment Factor – Unadjusted as published in the AAR Railroad Cost Indices. Rate adjustments will commence July 1, 2010. Rates will not be adjusted below the base rates as detailed above..

**7. Car Supply and Private Car Compensation**

Rates apply in Customer-supplied private equipment, not subject to mileage allowance or per diem payments for CSXT use. All cars are subject to OT-5 rules and regulations.

**8. Common Carriage Application:**

The rates, terms and conditions as published herein (CSXT- 10048) are established for the use and benefit of NRG in the production of electricity from the coal transported and subsequently burned as pulverized coal purchased by NRG and may not be used by any other entity, transferred to any other entity or used in combination with any movement, including without limitation subsequent transportation by rail or truck from any of the stated destinations.

The rates and conditions set out in this publication are only applicable to the routes specifically listed in this publication. Intermediate applications of origins not listed in PUBLICATION CSXT-10048 will not apply.

The rates, terms, and conditions herein may be modified from time to time on statutory notice.