

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

TOTAL PETROCHEMICALS USA, INC.)	
)	
Complainant,)	
)	Docket No. NOR 42121
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 Total Petrochemicals USA, Inc. (“TPI”) in STB Docket No. 42121 on July 26, 2010 (“Amended Complaint”).

While TPI states that its Amended Complaint is nearly “identical” to the Complaint TPI filed on May 3, 2010 (“Initial Complaint”), CSXT notes that the Amended Complaint differs in several significant respects from the Initial Complaint. The Amended Complaint adds new challenges to CSXT’s rates for certain movements not included in the Initial Complaint, without any explanation why these movements were not included originally. The new Amended Complaint also withdraws challenges to CSXT’s rates for certain movements included in the Initial Complaint, again without any explanation for the reasons they were included in the original Complaint but now have been dropped. In order to avoid unnecessary delay in these proceedings, CSXT does not object to TPI’s amendment of its Initial Complaint. However, CSXT reserves its right to object to any future amendment(s) if, for example, such

amendment would prejudice the parties' ability to complete discovery in a timely fashion, or otherwise threaten the schedule prescribed by the Board.

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 TPI has paid or will pay common carrier rates in excess of a reasonable maximum for CSXT's transportation of the movements set forth in the Amended Complaint, denies that the Board has jurisdiction over all the issue movements, denies that TPI has joined all necessary parties to this litigation, and denies that TPI is entitled to any of the relief it seeks in this proceeding. The remainder of the unnumbered paragraph consists of a characterization of the 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 Board.

3. Paragraph 3 of the Amended Complaint consists of a characterization of the Amended Complaint, to which no response is required. To the extent a response is required,

CSXT admits that the Amended Complaint purports to challenge CSXT's rates for certain origin-destination pairs and groups set forth in Exhibits A and B to the Amended Complaint. CSXT denies that the Amended Complaint accurately states CSXT's common carrier rates for all of the challenged movements. To the extent a further response is required, CSXT denies the remaining allegations of Paragraph 3.

4. With respect to the allegations of Paragraph 4 of the Amended Complaint, CSXT denies that it "transports" commodities for TPI between all the points identified in Exhibit A, in part because several of the traffic lanes named in the Amended Complaint have seen no traffic in recent years. CSXT admits that it transports the identified commodities for TPI between some of the origins and destinations named in Exhibit A. To the extent a further response is required, CSXT denies the allegations of Paragraph 4.

5. With respect to the allegations of Paragraph 5 of the Amended Complaint, CSXT denies that it "transports" commodities for TPI between all the points identified in Exhibit B, in part because several of the traffic lanes named in the Amended Complaint have seen no traffic in recent years. CSXT admits that it transports the identified commodities for TPI between some of the origins and destinations named in Exhibit B. To the extent a further response is required, CSXT denies the allegations of Paragraph 5.

6. With respect to the allegations in the first sentence of Paragraph 6 of the Amended Complaint, CSXT admits that in 2007 CSXT and TPI agreed to a contract with a two-year term. CSXT denies the remaining allegations in the first sentence of Paragraph 6. CSXT lacks sufficient information to admit or deny the allegations of the second sentence of Paragraph 6. To the extent a response is required, CSXT denies the allegations of the second sentence of Paragraph 6.

7. With respect to the allegations in Paragraph 7 of the Amended Complaint, CSXT admits that in 2009 TPI and CSXT negotiated a new contract. CSXT denies TPI's characterizations of CSXT's proposals during those negotiations. To the extent a further response is required, CSXT denies the remaining allegations of Paragraph 7.

8. With respect to the allegations in the first sentence of Paragraph 8 of the Amended Complaint, CSXT admits that in 2009 CSXT and TPI agreed to a contract that expired June 30, 2010. CSXT denies the remaining allegations in the first sentence of Paragraph 8. CSXT lacks sufficient information to admit or deny the allegations of the second sentence of Paragraph 8. To the extent a response is required, CSXT denies the allegations of the second sentence of Paragraph 8.

9. With respect to the allegations in the first sentence of Paragraph 9 of the Amended Complaint, CSXT admits that on March 24, 2010 TPI sent CSXT a demand for a contract with substantially lower rates than those in the current CSXT-TPI contract and asked CSXT to respond to that demand by April 5, 2010. CSXT requested more time to prepare a responsive proposal, which CSXT provided to TPI on April 30, 2010. CSXT denies the remaining allegations and characterizations in Paragraph 9.

10. With respect to the allegations of Paragraph 10 of the Amended Complaint, CSXT admits that beginning July 1, 2010, CSXT's common carrier rates apply to movements of TPI traffic. CSXT denies that the Amended Complaint accurately states CSXT's common carrier rates for all of the challenged movements. Furthermore, at this early stage of this case, CSXT lacks sufficient information to admit or deny TPI's allegations regarding R/VC ratios. 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, CSXT 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 that it is the only rail carrier that provides service at either the origin or destination for all the challenged movements and denies that there is a lack of effective competition from non-rail modes for all the challenged movements.

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;.

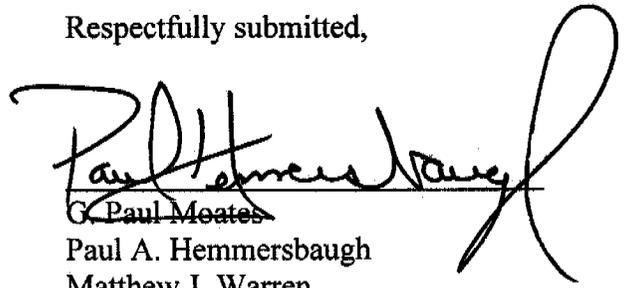
To the extent a response is necessary, CSXT denies Paragraph 16.

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 pages 5 and 6) 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 TPI is entitled to any of the relief it seeks in this proceeding, or to any other relief.

Respectfully submitted,



~~G. Paul Moates~~

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Dated: August 16, 2010

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of August, 2010, I caused a copy of the foregoing Answer of CSX Transportation, Inc. to the Amended Complaint of Total Petrochemicals USA, Inc. to be served on the following parties by first class mail, postage prepaid or more expeditious method of delivery:

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Eva Mozena Brandon