BEFORE THE
SURFACE TRANSPORTATION BOARD

M&G POLYMERS USA, LLC Complainant, v. CSX TRANSPORTATION, INC. and SOUTH CAROLINA CENTRAL RAILROAD COMPANY Defendants.	)	Docket No. NOR 42123 228401

CONSOLIDATED REPLY OF M&G POLYMERS USA, LLC TO THE MOTION TO BIFURCATE AND THE MOTION FOR PROTECTIVE ORDER OF SOUTH CAROLINA CENTRAL RAILROAD COMPANY

M&G Polymers USA, LLC ("M&G"), pursuant to 49 CFR § 1104.13, hereby replies in opposition to the "Motion to Bifurcate" and the "Motion for Protective Order", both filed on November 19, 2010 by defendant South Carolina Central Railroad Company ("SCRF") in the above-captioned case.[1] SCRF's Motion to Bifurcate is a baseless attempt to split the market dominance determination of a joint CSXT-SCRF rate that has been properly challenged before the Surface Transportation Board ("Board" or "STB"). The meager evidence presented by SCRF to purportedly show a lack of market dominance for SCRF's portion of this lane is unconvincing at best.

[1] The Motion to Bifurcate and Motion for Protective Order filed by SCRF are closely related; for instance, there would be no reason to stay discovery if the Motion to Bifurcate were not granted. Moreover, SCRF invokes the same arguments and fact assertions to support both motions. For these reasons, M&G is consolidating its reply to the motions.

The related Motion for Protective Order similarly fails. It is largely based on the assumption that the Board will grant the ill-conceived Motion to Bifurcate, thus allegedly providing a reason to delay discovery of SCRF except for items related to market dominance. Additionally, SCRF's claim that responding to discovery will be burdensome and expensive is hollow given the size and financial wherewithal of SCRF's parent, RailAmerica, Inc. In further support of its Reply, M&G states as follows:

I. BRIEF FACTUAL BACKGROUND.

SCRF has been joined as a defendant in this proceeding as the destination carrier for Lane 12, in Exhibit B to M&G's Second Amended Complaint ("Lane B-12"), which involves transportation of polyethylene terephthalate ("PET") pursuant to a joint rate from M&G's facility in Apple Grove, West Virginia to the Graham Packaging facility in Darlington, South Carolina.[2] CSX Transportation, Inc. ("CSXT") originates the movement in lane B-12 at Apple Grove, and then interchanges with SCRF at Florence, SC for delivery to Graham at Darlington. CSXT and SCRF provide this through transportation service pursuant to a joint rate.

SCRF was not initially included as a defendant when M&G added this movement to its First Amended Complaint on August 16, 2010. On October 7, 2010, CSXT informed M&G that SCRF is a line-haul carrier that sets its own rate. Upon learning this fact, M&G approached SCRF to request a contract rate that would enable M&G to exclude SCRF from the dispute. To date, however, SCRF has declined to enter into a contract, which consequently required M&G to join SCRF as a defendant in the Second Amended Complaint (filed on October 18, 2010). The Board granted M&G's "Motion for Leave to File Second Amended Complaint" in a decision served on November 19, 2010.

[2] Graham Packaging is a customer of M&G at numerous locations. Nevertheless, for the sake of simplicity, use of the term "Graham" in this Reply will refer only to the Darlington, SC location.

II. SCRF HAS THE BURDEN OF PROOF TO RAISE "CONSIDERABLE DOUBTS" AS TO M&G'S ABILITY TO DEMONSTRATE MARKET DOMINANCE.

The Board does not typically separate the market dominance and rate reasonableness phases of a rate case unless "the evidence submitted by the defendant rail carrier raise[s] considerable doubts as to the complainants' ability to demonstrate market dominance." Gov't of the Territory of Guam v. Sea-Land Service, Inc. et al., STB Docket No. WCC-101, slip op at 6 (served Feb. 2, 2007), citing Sierra Pacific Power Company and Idaho Power Company v. Union Pacific Railroad Company, STB Docket No. 42012, slip op. at 4-5 (served Jan. 26, 1998). The evidence submitted by SCRF in its Motion to Bifurcate is so faint that the Board could justifiably reject it without any response from M&G. Nevertheless, M&G presents a more than ample response in this Reply.

As the moving party, SCRF has the burden of proof to raise considerable doubt as to M&G's ability to demonstrate market dominance over Lane B-12, notwithstanding SCRF's attempt to suggest M&G has the burden. See Motion to Bifurcate at 4. Under the procedural schedule in this case, M&G is not required to present its prima facie case on market dominance until the evidentiary phase of this proceeding, absent a specific Board order. Expedited Procedures for Processing Rail Rate Reasonableness, Exemption and Revocation Proceedings, Ex Parte No. 527, 1 STB 754, 760, n. 10 (1996) ("Expedited Procedures"). M&G's burden does not arise until it is required to submit evidence on market dominance.

SCRF claims, without any citation, that the Board customarily does not bifurcate rail rate reasonableness cases "because the agency usually finds market dominance over the movement at issue." Motion to Bifurcate at 5. Counsel for M&G is unaware of any such statement by the Board. The Board was directed by Congress in the Interstate Commerce Commission Termination Act ("ICCTA") to establish procedures to expedite rail rate challenges. 49 USC

§ 10704(d). In response to this directive, the Board proposed to no longer bifurcate market dominance and rate reasonableness determinations. While making this proposal, the Board noted two competing interests: bifurcation can spare the parties the expense of submitting rate reasonableness evidence if market dominance does not exist, but bifurcation extends the procedural schedule by use of sequential filing of market dominance and rate reasonableness evidence. 61 Federal Register 11799, 11801 (March 22, 1996). The Board carefully balanced these competing considerations, and ultimately decided to adopt a rate case procedural schedule with simultaneous filing of market dominance and rate reasonableness evidence. Expedited Procedures, 1 STB 754, 759 (1996). A specific Board order is required to deviate from this simultaneous filing of market dominance and rate reasonableness evidence. Id. at 760, n. 10.

As shown in this Reply, SCRF has not demonstrated good cause to alter the careful balancing of interests that the Board performed when it decided not to bifurcate the market dominance and rate reasonableness determinations. The evidence proffered by SCRF is alternately irrelevant, based on an incorrect statement of the law, or factually incorrect. In short, SCRF has not raised "considerable doubts" regarding M&G's ability to demonstrate market dominance.

III. SCRF IMPROPERLY ATTEMPTS TO ADDRESS MARKET DOMINANCE SOLELY IN THE CONTEXT OF ITS PORTION OF THE THROUGH MOVEMENT.

A. The CSXT-SCRF Joint-Line Route Cannot Be Severed.

SCRF is remarkably blithe in its implicit assertion that the Board can consider market dominance solely for SCRF's portion of the through movement pursuant to a joint rate with CSXT from Apple Grove to Darlington. Throughout the Motion to Bifurcate, SCRF focuses only upon market dominance as it pertains to the Darlington destination, without even a mention of the Apple Grove origin. SCRF's brief analysis posits that trains or trucks of PET materialize in the vicinity of Darlington, with no discussion of from where they may have come. In effect, SCRF is requesting that the Board separate by carrier the joint CSXT-SCRF movement covered by the challenged rate for market dominance purposes. Congress has defined market dominance as "an absence of effective competition from other rail carriers or modes of transportation for the transportation to which a rate applies." 49 USC § 10707(a) (emphasis added). There is no provision in the statute for separating the transportation "to which a rate applies" into component parts for purposes of a market dominance analysis.

SCRF fails to cite any precedent to support a segmented market dominance analysis. In fact, the precedent that does exist indicates that severing the route for market dominance is not permissible. In the Bottleneck cases, the Board stated that shippers challenging the reasonableness of joint or proportional rates "have generally been required to challenge the entire rate over a through route, and have not been permitted to challenge a discrete segment." Central Power & Light Company v. Southern Pacific Transportation Company, 1 STB 1059, 1072 (1996) ("Bottleneck I"). See also Bottleneck II, 2 STB 235, 238 (1997) (Board states that, in Bottleneck I, "[w]e reaffirmed the principles of L&N[3] and Great Northern[4] that, when railroads establish common carriage through rates, shippers must challenge the reasonableness of the entire rate from origin to destination."). Just as M&G may not split the joint rate for Lane B-12 into separate parts by rail carrier, SCRF may not split the market dominance determination by rail carrier. SCRF's failure to consider market dominance for the entire through route is itself sufficient reason for the Board to deny SCRF's Motions.

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[3] Louisville & Nashville Railroad v. Sloss-Sheffield Steel & Iron Company, 269 U.S. 217 (1925).
[4] Great Northern Railway Company v. Sullivan, 294 U.S. 458 (1935).

B. As A Participant In A Joint-Line Rate, SCRF Is A Necessary Party To M&G's Complaint.

A complaint that challenges the reasonableness of a joint rate and seeks prescriptive relief must name all carriers that participated in the joint rate. Mayo Shell Corp. v. Chicago, Rock Island & Pacific Railroad, 293 ICC 243, 246 (1954). The establishment of a joint rate is an act of each individual participant. Louisville & Nashville Railroad v. Sloss-Sheffield Steel & Iron Co., 269 U.S. 217, 233 (1925). Therefore, each participant in an excessive joint rate is subject to an order prescribing a lawful rate; a party not joined as a defendant would not be subject to prescriptive relief. Mayo Shell, 293 ICC at 246 (carriers not named as defendants "would not be subject to any order prescribing new rates for the future in lieu of those assailed"). Even recently, the Board has required joinder of all parties against whom prescriptive relief is sought, acknowledging that it cannot impose a dispositive order on an absentee. Entergy Arkansas, Inc. and Entergy Services, Inc. v. Union Pacific Railroad Company and Missouri & Northern Arkansas Railroad Company, Inc., STB Docket No. 42104, slip op. at 2 (n. 2) (served April 19, 2010) (quoting Ford Motor Company v. ICC, 714 F.2d 1157, 1160 (D.C. Cir. 1983) ("A tribunal which has jurisdiction over the subject matter of a claim generally may impose no dispositive order on an absentee, but it unquestionably has power to enter orders binding the parties it confronts.")). See also Kentucky Gas Services, Inc. v. Southern Railway, 286 ICC 368, 369 (1952).

A complaint seeking reparation only, however, need only name one participant to the joint rate because each rate participant is jointly and severally liable for the damages. Louisville & Nashville, 269 U.S. at 232-234. See also Chevron Chemical Company v. Southern Pacific Transportation Company, STB Docket No. 40875, slip op. at 4 (served Feb. 5, 1998). M&G is seeking both reparations and prescriptive relief for lane B-12; therefore, both CSXT and SCRF must be joined. It would be inconsistent for the Board to require M&G to challenge the entire through route, but then determine market dominance on a segmented basis.

IV. SCRF'S CLAIMS OF COMPETITION ARE ILLUSORY.

A. There Is No Effective Intramodal Competition For The Darlington Movement.

SCRF suggests that there is intramodal competition for the CSXT-SCRF movement to Darlington because "Graham is considering using a different rail route from an alternate supplier to meet its PET shipping needs." Motion to Bifurcate at 6. Even if true, this claim is utterly irrelevant to a market dominance analysis. It is black letter law that the Board only considers intramodal and intermodal competition that involves "alternatives for moving the same product between the same origin and destination points." Market Dominance Determinations – Product and Geographic Competition, 3 STB 937, 946 (1998). By alluding to an "alternate supplier," SCRF confuses geographic competition with intramodal competition.

Over a decade ago, the Board decided to cease consideration of product and geographic competition, finding these issues overly complex and not particularly helpful. 3 STB at 947-949. This decision was later reiterated. See Market Dominance Determinations, 4 STB 269 (1999) and 5 STB 492 (2001). Therefore, the Board now limits the qualitative market dominance evidence to the factors required by the statute – competition "for the transportation to which a rate applies." 3 STB at 938. In other words, competition evaluated by the Board consists of intramodal and intermodal – transporting "the same commodity between the same points." 3 STB at 937. SCRF's unsupported claim that Graham is "considering" using a different supplier is simply irrelevant.

The reason that SCRF has not provided any evidence of true rail competition for the CSXT-SCRF movement to Darlington is simple – because there is no such competition. The origin of the movement, the M&G facility in Apple Grove, is captive to CSXT. The destination of the movement, the Graham facility in Darlington, is captive to SCRF. There is no possible alternate rail route that would avoid either CSXT or SCRF, much less both of them. In short, there is no effective intramodal competition for the movement.

B. There Is No Effective Intermodal Competition For The Darlington Movement.

SCRF's evidence of intermodal competition for Lane B-12 consists almost exclusively of a photo of a truck being unloaded by Graham and the conclusion that Graham "receives shipments of PET by truck." Motion to Bifurcate at 4-5. See also Motion for Protective Order at 4. The fact that Graham can receive PET by truck is not nearly enough to demonstrate an absence of market dominance over the issue movement. Market Dominance Determinations and Consideration of Product Competition, 365 ICC 118, 133 (1981) ("the availability of many motor carrier alternatives for transportation services between two points can, in most instances, be taken for granted"), affirmed sub nom. Western Coal Traffic League v. United States, 719 F.2d 772 (5th Cir. 1983) (en banc). See also, Product and Geographic Competition, 2 ICC2d 1, 21 (1985). Whether or not such alternative transportation is effective competition for the issue movement requires consideration of: (i) physical characteristics of the product in question that may preclude transportation by motor carrier; (ii) the amount of the product in question that is transported by motor carrier where rail alternatives are available; (iii) the amount of the product that is transported by motor carrier under transportation circumstances (e.g., shipment size and distance) similar to rail; and (iv) the transportation costs of the rail and motor carrier alternatives. Id. SCRF's Motion to Bifurcate barely touches upon any of these factors. Thus, SCRF utterly fails to carry its burden to raise considerable doubts that M&G can establish market dominance over Lane B-12.

Despite this lack of evidence from SCRF, M&G presents substantial evidence that there is no effective competition from intermodal options for transporting PET from Apple Grove to Darlington. In particular, M&G has evaluated both a transloading option – where CSXT would transport PET by rail from Apple Grove to a transload facility near Darlington for transfer to trucks for final delivery to Graham – and a direct trucking option – where trucks would be used for the entire transportation from Apple Grove to Darlington. As described below, neither of these options provides effective competition to the CSXT-SCRF joint-line movement.

1. { }[5]

M&G began shipping PET to Graham at Darlington in { }. Through September, M&G shipped { } See Verified Statement of Andre S. Meyer ("Meyer V.S.") at ¶ 6-7. {

} While, as the ICC has recognized, use of bulk trucks is theoretically possible, there are multiple reasons why M&G must ship PET by rail to Graham at Darlington, which are discussed in the following sections.

2. {{

[5] Pursuant to the Protective Order in this proceeding, M&G has delineated "CONFIDENTIAL" information by single brackets { }, and "HIGHLY CONFIDENTIAL" information by double brackets {{ }}.

}}

3. {

} The facility was designed and constructed for rail transportation, and the CSXT mainline runs through the middle of the plant. Meyer V.S. at ¶ 14. M&G has estimated that the costs of reconfiguring its facility to enable widespread direct loading of trucks would be {{

}}. Id. at ¶ 20.

{ } {{

}}

{

}

Given current staffing levels and the current infrastructure at Apple Grove, M&G has averaged approximately {{ }} truck loadings per week with a peak of {{ }} per week in 2010. Id. at ¶ 19. M&G must conserve Apple Grove's limited truck loading capacity for customers that are not rail-served and for emergency shipments to rail-served customers. Id. There simply is insufficient loading capacity for M&G to switch its rail-served customers to trucks.

There also is inadequate public infrastructure around Apple Grove to significantly increase truck volumes. Apple Grove is reached by a two-lane country road that winds through the mountains and past residential areas. Meyer V.S. at ¶ 21. Moreover, truck transportation at Apple Grove is much more susceptible to weather events (snow, ice, flooding, etc.) than rail, in large part because the rail lines are built above the 500-year flood plain. Id. at ¶ 22. In the past

15 years, there have been three major interruptions in truck traffic flow as a result of two floods and one major ice storm, in addition to routine weather events that have interrupted truck traffic for shorter durations. Id.

In addition, bulk truck capacity is limited in the United States {{

}} More than one recent article in the Logistics Management trade publication have noted the current scarcity of truck capacity. See Exhibits 1-2. See also Meyer V.S., Exhibits 1-4.

Even if a shift of just the lane B-12 rail volume to truck were feasible, it would not be appropriate for the Board to determine market dominance for that lane in isolation from the other lanes in this case, as SCRF has requested.[6] M&G's Complaint challenges the reasonableness of rates in 68 different lanes, of which 39 originate at Apple Grove. Many of those lanes have annual volumes comparable to or less than lane B-12. For each lane individually, it might be physically feasible to shift that traffic to trucks, but collectively it would be impossible to shift more than a small fraction of the total volume.

For example, assume that there are ten case lanes with only five rail cars per year in each lane, and that there is sufficient infrastructure and motor carrier capacity to absorb a total of five cars annually. An isolated, lane-by-lane, market dominance analysis would conclude that there is sufficient capacity to handle the volume in each lane by truck. But on an aggregated basis, there truly is only sufficient capacity to shift one lane to truck, while the other nine remain captive to rail. Therefore, a finding of market dominance for all ten case lanes would be appropriate, because otherwise CSXT will always know that M&G can only divert isolated

[6] For just 6 months in 2010, M&G shipped { } rail cars to Graham, which is the equivalent of { } trucks, or approximately { } truck per day, every day of the week. Meyer V.S. at ¶6.

lanes, while still leaving CSXT with sufficient market power over the balance of M&G's traffic to extract its monopoly profits, and that M&G will not have any regulatory remedy.

4. Transloading is not an effective competitive alternative.

In addition to direct-truck shipments from Apple-Grove, a rail-truck transload option near the destination also is a theoretical alternative to direct-rail transportation. However, because M&G is captive to CSXT at the Apple Grove origin, M&G cannot avoid the CSXT portion of the movement. For the reasons presented in Part III.A., above, intermodal competition via transloading at the destination is irrelevant when the origin also is captive, because the Board does not determine market dominance on a segmented basis when there is a challenge to a common carrier through rate. This fact alone precludes a finding of effective competition from a destination transload alternative when the rail origin remains captive.[7]

Even if the Board were to consider market dominance just for the SCRF segment of the movement, a destination transload option would be substantially more costly than the challenged rate. Because M&G remains captive to CSXT at the origin, it evaluated the cost of transloading through CSXT TRANSFLO terminals in Charleston, SC and Wilmington, NC. The total through cost of the transload option, on a rail-equivalent basis of four trucks per rail car, would be {{ }} from Charleston, and {{ }} from Wilmington. Meyer V.S. at ¶ 25. These costs, which do not include any rail car storage charges at the bulk terminals beyond eight days, are significantly more than the challenged rate of $6,373 per rail car.

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[7] This logic also applies to transloading at the origin when the destination is captive. Therefore, M&G has not evaluated a rail-truck transload at the Apple Grove origin, because Graham is captive to SCRF at the destination. When both the origin and destination are captive to a single railroad, as is the case for Lane B-12, transloads would be required at both ends of the movement. A double transload assuredly would be even more costly than a single transload. Moreover, multiple transloads increase the potential for product contamination. Meyer V.S. at ¶26-27.

Because transloading has costs for rail transportation, bulk terminals, and motor carrier transportation, it is inherently a higher cost alternative to direct rail transportation. Transloading is also a less than optimal method for transporting PET because increasing the number of product transfers can raise contamination and quality issues, while expanding the dust content of the product. Meyer V.S. at ¶ 26. Thus, the transload option does not provide effective competition to CSXT-SCRF rail service.

V. GRAHAM HAS NOT CEASED ITS PURCHASES OF PET FROM M&G.

SCRF suggests that bifurcation is appropriate because Graham "would shortly cease using PET from M&G." Motion to Bifurcate at 5. This statement is factually incorrect and legally irrelevant.

First, SCRF's contention that M&G shipments of PET to Graham will soon cease is factually incorrect. The very same day that SCRF filed its Motion to Bifurcate, M&G was meeting with Graham Packaging to discuss ongoing business matters at Darlington and other Graham locations. {{

}} Thus, there is both historic traffic and likely future traffic on this lane.

Second, this statement is legally irrelevant. As noted in the preceding section, M&G has shipped { } rail cars to Graham in 2010 under the challenged tariff rate, and is therefore entitled to reparations from both CSXT and SCRF in the event the Board finds the rate unreasonable. Furthermore, as previously stated, the standard for bifurcation is whether "considerable doubts" have been raised about the existence of competition, not whether shipments may cease at some future date. Even if shipments were to cease at this location, it would not be unusual for supply to be reinstated at a future date. Meyer V.S. at ¶ 13. The PET industry is highly competitive, and it is possible that M&G could gain and lose the business of any rail customer location more than once in the course of a ten-year rate prescription. Id.

VI. BIFURCATION WOULD CREATE, NOT REDUCE, INEFFICIENCY.

SCRF asserts that it would be "substantially more efficient" to stay discovery regarding Lane B-12 (other than discovery on market dominance issues) until the Board is able to rule on the Motion to Bifurcate. Motion for Protective Order at 4. Similarly, SCRF claims that bifurcation "could save the parties and the Board significant amounts of unnecessary expense and effort." Motion to Bifurcate at 6. These contentions are plainly false. The only party that would benefit from bifurcation and a stay of discovery is SCRF itself. Conversely, bifurcation would delay and complicate the work of M&G in preparing its evidentiary filings.

It is patently untrue that "[s]taying discovery...until the Board rules on the SCRF Motion [to Bifurcate] will not prevent M&G from moving forward with all other aspects of its complaint." Motion for Protective Order at 4. If the Board granted SCRF's motions, then M&G would be forced to develop its SAC evidence without knowing whether, and the extent to which, Lane B-12 should be included. As the Board knows, SAC evidentiary submissions are very complex and technical; M&G could not freeze development of its SAC evidence until the Board ruled on the market dominance over Lane B-12.

Indeed, SCRF has requested that the Board issue another procedural schedule in this case, to cover just Lane B-12, and for this procedural schedule to include discovery, opening evidence, reply, and rebuttal. Motion to Bifurcate at 7. It is unclear when such a separate procedural schedule could be completed, and whether a Board decision could be issued sufficiently in advance of the April 15, 2011, due date for M&G's Opening Evidence, so that M&G could incorporate the Board's decision into its SAC evidence. In any event, M&G is developing its SAC evidence now, and cannot wait months for a determination regarding inclusion of Lane B-12. Thus, bifurcating market dominance and SAC would delay the entire rate case.

It would be manifestly inefficient for the timely adjudication of rate reasonableness on 67 lanes of traffic to be dependent upon and delayed by a separate procedural schedule for a single lane. The Board previously evaluated the competing interests inherent in the bifurcation option, and decided that simultaneous filing of market dominance and rate reasonableness evidence is preferable. Expedited Procedures, 1 STB 754 (1996). Nothing alleged by SCRF warrants deviating from this policy.

SCRF has also suggested that mediation between M&G and SCRF would be appropriate, which would result in even further delay. Motion to Bifurcate at 7. But, mediation has already occurred in this case between M&G and CSXT, and there is nothing to suggest that SCRF's participation would change the outcome. Lane B-12 is subject to a joint-rate, and CSXT accounts for the vast proportion of the movement (and presumably garners the vast majority of the transportation rate). Furthermore, there is no reason to believe that CSXT would be willing to mediate just a single rate in this case. Because the challenged rate is a joint through rate, SCRF cannot reach agreement with M&G without CSXT's concurrence.

Moreover, SCRF's own behavior indicates that mediation is a ploy to delay, rather than a serious attempt to negotiate. M&G offered to enter into a contract with SCRF for its portion of the movement even before M&G filed its Second Amended Complaint to add SCRF as a defendant. SCRF expressed no interest in a contract, even though M&G made clear that, in the absence of a contract, M&G would have little choice but to join SCRF as a defendant. Since filing the Second Amended Complaint, M&G has made clear that it remains willing to enter into a contract with SCRF. However, SCRF has responded with these Motions, and has yet to offer a contract rate to M&G in the seven weeks since M&G filed its Second Amended Complaint. This strongly indicates that SCRF's mediation suggestion is intended to delay, not resolve, this matter.

VII. DISCOVERY SHOULD BE ALLOWED TO PROCEED.

A. SCRF Has Not Justified The Need for A Stay.

SCRF requests that the Board stay discovery (except for market dominance issues) until the Board rules on the SCRF Motion to Bifurcate. Motion for Protective Order at 4-6. The asserted support for this drastic step is two-fold. First, SCRF claims that the Board does not have market dominance over the challenged Darlington rate because competition exists. Motion for Protective Order at 4-6. Second, SCRF claims that the Board should stay discovery, because SCRF is a "Class III railroad with limited financial and personnel resources" and that responding to discovery would be burdensome, time-consuming, and expensive. Id. at 4. Neither assertion warrants a stay of discovery.

As shown elsewhere in this Reply, SCRF's first claim must fail because it has not come close to meeting the "considerable doubts" standard required to support a request for bifurcation. The Board has previously determined that it is both timely and appropriate to address SAC and market dominance issues concurrently. SCRF has not met its burden to justify deviation from that Board determination. Without bifurcation, the foundation of SCRF's Motion for Protective Order disappears.

SCRF's second set of assertions is variously misleading and/or unsupported. Under 49 CFR § 1114.21(c), a party may move to be protected from discovery for "good cause shown" due to "annoyance, embarrassment, oppression, or undue burden or expense, or to prevent the raising of issues untimely or inappropriate to the proceeding." SCRF has not met this standard.

First, SCRF has not alleged annoyance, embarrassment, or oppression.

Second, SCRF has only alleged that it will incur some burden or expense; SCRF has nowhere alleged that the burden or expense is undue. It is obvious that participation in a rate reasonableness case inevitably requires some level of burden and some amount of expense. The sparseness of SCRF's Motions suggests that SCRF is opposed to virtually any level of exertion in this case. There is an easy solution for SCRF, however. SCRF can exit this proceeding permanently by agreeing to a contract with M&G for SCRF's portion of Lane B-12. Thus, any burden and/or expense due to SCRF's participation in this case is entirely self-imposed because SCRF has refused M&G's offer to enter into a contract.[8]

SCRF has not specifically supported its claim that responding to discovery would be burdensome.[9] In fact, the only specific statement about SCRF's ability to respond to discovery – that "SCRF does not necessarily maintain the information requested by M&G" – actually reveals that the burden is slight, not heavy. Motion for Protective Order at 4. Obviously, if SCRF does not have the requested information, then response to M&G's discovery would be a simple statement that "responsive information does not exist." Similarly, SCRF's statement that information "may not be in a readily retrievable format" also presents an ephemeral burden. Id. Where the format is not "readily retrievable," SCRF can simply produce a larger universe of information (thereby forcing M&G to find the requested information), or SCRF can invite M&G to inspect SCRF information in SCRF offices. 49 CFR § 1114.26(b).

[8] According to CSXT, there is no impediment imposed by it upon SCRF's ability to separately contract with M&G. "CSX Transportation, Inc's Reply to M&G Polymers USA, LLC's Motion for Leave to File Second Amended Complaint," pp. 3-4 (filed Nov. 8, 2010).
[9] The discovery requests that M&G served on SCRF are substantially fewer than those served on CSXT, and SCRF need only respond with respect to its far smaller railroad.

Furthermore, while SCRF may be a Class III railroad, it is owned by RailAmerica, Inc., a large corporation with 2009 revenues of over $410 million. RailAmerica 2009 Annual Report at 3. Indeed, RailAmerica's Senior Vice President and General Counsel, Scott Williams, is listed on the front page of both motions filed by SCRF. RailAmerica became (again) a public company in October 2009 despite the recent woes on Wall Street. Id. In fact, RailAmerica "achieved...[its] objective of emerging from the recession stronger than when we entered it." Id. RailAmerica's EBITDA (earnings before interest, taxes, depreciation, and amortization) has increased for three straight years, to $135.1 million in 2009, resulting in RailAmerica's continuing desire to expand by acquiring other shortline railroads. Id. at 3 and 7. Clearly, any discussion of SCRF's size must also acknowledge the ample resources of its parent.

B. The Precedent Cited By SCRF Is Inapposite.

In support of its Motion for Protective Order, SCRF relies on cases that it alleges stand for the proposition that a Motion for Protective Order should be granted where it is contemporaneous with a second motion that, if granted, would result in dismissal of the case. These cases do not support the granting of SCRF's Motion for Protective Order because, in rate cases, the Board has already considered, and carefully balanced, the competing interests associated with the contemporaneous or sequential determination of market dominance and SAC issues, and SCRF has not satisfied its burden to justify deviating from that determination.

As described in Part II, above, the Board recognizes that bifurcation can spare the parties the expense of submitting rate reasonableness evidence if market dominance does not exist. However, the Board also noted that bifurcation extends the procedural schedule. In balancing these interests, the Board has already decided to adopt simultaneous filing of market dominance and rate reasonableness evidence in rail rate disputes.

The cases cited by SCRF are inapposite, because they are not rail rate cases. The first case cited by SCRF concerned a novel fuel surcharge dispute potentially misfiled as an unreasonable practice complaint. Dairyland Power Cooperative v. Union Pacific Railroad Company, STB Docket No. 42105 (served April 29, 2008). The second case was equally unusual: a rate reasonableness dispute in the noncontiguous domestic trade, in which both parties agreed that it was appropriate to extend the time period for responding to discovery. DHX, Inc. v. Matson Navigation Company and Sea-Lane Service, Inc., STB Docket No. WCC-105 (served June 6, 2002). Finally, the third case involved a party that served discovery soon after a request for commencement of a show-cause proceeding; the Board stayed discovery until ruling on whether to begin the requested proceeding. Paducah & Louisville Railway, Inc. – Control Exemption – Paducah & Illinois Railroad Company, STB Docket No. 33362 (served July 9, 1999). In none of these cases did the Board reconsider or question its prior decisions applicable to rail rate cases.

VIII. CONCLUSION.

Neither bifurcation nor stay of discovery is appropriate in this proceeding. The Motion to Bifurcate should be denied because SCRF has not even come close to raising "considerable doubts" as to market dominance over lane B-12, and M&G has provided ample evidence herein to deflate SCRF's hollow claims of effective competition. Moreover, SCRF has not pointed to any support for its unprecedented request that the Board sever the CSXT-SCRF movement for market dominance purposes.

The related Motion for Protective Order should also be denied. Staying discovery would complicate and potentially delay the forward movement of this case, and is not warranted because railroad market dominance assuredly exists for the CSXT-SCRF movement.

Respectfully submitted,

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December 9, 2010

CERTIFICATE OF SERVICE

I hereby certify that this 9th day of December 2010, I served a copy of the foregoing upon Defendants in the following manner and at the addresses below:

Via electronic mail and first-class mail to:

G. Paul Moates
Sidley Austin LLP
1501 K Street, NW
Washington, DC 20005

Counsel for CSXT

Louis E. Gitomer
Law Offices of Louis E. Gitomer
Suite 301
600 Baltimore Avenue
Towson, MD 21204

Counsel for South Carolina Central Railroad Company

Jeffrey O. Moreno

Exhibit 1

Shippers bracing for future rate hikes

LM reader survey expects rate increases to come soon, but capacity is not as much of a concern…for now

By Jeff Berman, Group News Editor
October 25, 2010 - LM Editorial

At a time when capacity across all modes of freight transportation is tightening, coupled with a slower-than-hoped-for economic recovery, many logistics, supply chain, and transportation managers responding to a Logistics Management survey report they are expecting to pay higher rates throughout the remainder of 2010 and into 2011.

The findings of the survey, which polled roughly 340 LM readers and was completed late in the third quarter, found that 65 percent of respondents are planning for higher rates, if they are not paying them already Although shippers acknowledge higher rates are en route, securing capacity was not as much of an issue, with 64 percent indicating they are currently not having major capacity issues and another 34 percent saying they are

"We have seen some capacity issues in certain areas of the country, however, I think many of the major asset-based trucking companies are pumping the capacity problem up, and it is not as severe as they are expecting," said a transportation executive at a cosmetics company. "It is our view that we have seen a correction in inventory levels that has been viewed as new growth or sustainable growth. My view is that pricing will take a slight correction down this quarter and in the first quarter of 2011, and then we might gradually see an increase as our markets slowly recover and capacity becomes more of an issue."

While this shipper sees the current capacity situation as being somewhat 'built-up' by carriers, other shippers signaled significant concerns that are likely to have them scrambling for capacity sooner than later Among the most commonly-mentioned concerns were CSA 2010, pending legislation which will dictate how the federal government rates trucking companies and drivers, limited space on bid and dedicated core lanes, as well as concerns that capacity will sharply tighten as a result of improving business conditions and a subsequent rise in demand

What's more, with Class 8 vehicle production and orders well below typical replacement levels, tight capacity figures to play a more prominent role in supply chain planning for over-the-road transportation for an extended period.

And a research note by Stifel Nicolaus analyst John Larkin notes that volumes are sequentially flat, with shippers seeing moderating demand as fiscal stimuli have run their course and inventories being replenished to desired levels by shippers. Capacity, said Larkin, should continue to contract into the face of the resumption of modest economic growth, and the increased life cycle costs associated with Class 8 tractors and still tight credit markets should deter major fleet additions and also contribute to ongoing reductions in fleet size And forthcoming safety regulations like CSA and Hours-of-Service over the next five years have the ability to "dramatically

Regarding pricing, Larkin noted that pricing power is already shifting from shippers to carriers and should—as the LM survey indicates—accelerate as 2011 evolves

This was echoed by Doug Waggoner, CEO of Echo Global Logistics In a recession, when there is not as much freight to go around, Waggoner said carriers do what they can to attract market share to keep trucks moving, and the main lever they have for that is to lower pricing

"Lower pricing keeps tonnage intact, but it decreases the yield equation " said Waggoner "Conversely, when the economy improves, it allows carriers to be more selective about what business they take on and for the shipper that they gave rock bottom rates during the recession will now be told they have to absorb a rate increase. It is not customer-friendly, but it is how the game is played

Eric Starks, president of freight transportation consultancy FTR Associates, agrees with Larkin in that a capacity crunch is coming, due to freight demand and regulatory issues at a time when capacity is already very tight in regard to the number of active trucks moving freight right now

"We are already seeing very tight capacity within the marketplace with regards to the number of active trucks moving freight right now and that is a critical issue," said Starks "There is a difference there because we still have a large number of used pieces of equipment that are idled and not doing any work. And for those in active service it is a tight operating environment with closer to 95 pct of trucks in use [total national fleet utilization based on FTR estimates] so it is creating an environment that is difficult and when you add on top the impact of government regulations you are really going to be pushing the envelope for capacity and shippers are going to be bearing brunt of this "

About the Author

Jeff Berman
Group News Editor

Jeff Berman is Group News Editor for Logistics Management, Modern Materials Handling and Supply Chain Management Review. Jeff joined the Supply Chain Group in 2005 and leads online and print news operations for these publications. In 2009, Jeff led Logistics Management to the Silver Medal of Folio's Eddie Awards in the Best B2B Transportation/Travel Website category. Jeff works and lives in Cape Elizabeth Maine, where he covers all aspects of the supply chain logistics, freight transportation and materials handling sectors on a daily basis. If you want to contact Jeff with a news tip or idea, please send an e-mail to jberman@ehpub.com

Recent Entries

Yet another FAA reauthorization extension.....

Last week, the House of Representatives once again voted to extend the current authorization for federal aviation programs through March 31, 2010 For those keeping score at home that marks the 17th extension voted by Congress since the authorization's scheduled expiration date in 2007.

Ceridian-UCLA Pulse of Commerce Index is up 0 4 percent in November

The most recent Ceridian-UCLA Pulse of Commerce Index (PCI) was up 0 4 percent in November, marking its first sign of positive growth in four months. The PCI was down 0.6 percent in October and 0 5 percent and 1 0 percent in September and August, respectively

AAR says November 2010 volumes are up year-over-year

November rail volumes were up compared to the same period in 2009, according to data released by the Association of American Railroads (AAR). The AAR reported that monthly rail carloads for November—at 1,137,626—were up 4.5 percent year-over-year

Diesel prices take a 3.5 cent hike for the week, according to EIA data

Diesel prices were up for the first time in three week, rising 3 5 cents to $3.197 per gallon for the week of December 6 according to data from the Department of Energy's Energy Information Administration (EIA).

FedEx Ground rolls out 2011 rate hikes

FedEx recently announced it will up its rates for its FedEx Ground and FedEx Home Delivery units by an average of 4 9 percent, which will take effect on January 3, 2011.

Article Topics

News Trucking Freight Transportation Capacity · All topics

Comments

Posted by Camille on 11/04 at 09.15 AM
I apprehend your post It was amazing. Your apprehension activity is wonderful
no win no fee accident claims

Posted by Briana on 11/05 at 12 39 AM
Give aloof been attractive about about Intense Study because I've absolute accepting the aforementioned troubles with it.
Montreal escorts

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Exhibit 2

First 2011 truck forecast: tighter capacity coming as equipment shortages, driver restraints worsen

November 16 2010 - LM Editorial

A confluence of positive economic events is causing trucking industry officials and economists to predict tighter trucking capacity perhaps as soon as the second quarter of 2011, experts are saying

The effects will be most noticeable in the $290 billion truckload sector, which has more severe capacity restraints on drivers and equipment than the $26 5 billion LTL sector, which still has overcapacity stemming from the last recession.

A shortage of as many as 300,000 drivers out of the total driver pool of 3 million truck drivers in all categories is possible, experts are predicting

The next two years will be very strong for trucking pricing and shippers are being warned to lock in capacity now through longer-length contracts, experts are predicting

"If history repeats itself, we will have two very good years in 2011 and 2012. Having a bad quarter does not mean no recovery," says Noel Perry, an economist with Transportation Research Consulting Group, and a former executive with Schneider National and other transport companies. "We're going to have a much better profitable period than we thought"

Recently, American Trucking Associations Chief Economist Bob Costello told a gathering of trucking executives in Phoenix that the industry is "on the cusp of some of the best years in trucking's history."

First, some history. Prior to this recession, the previous downturn of 2001-2001 was followed by a four-year period (2002-2006) when most trucking companies enjoyed some of the strongest pricing power they've had since deregulation in 1980 The collapse of $3 billion LTL giant Consolidated Freightways in 2002 triggered it, industry executives say.

Some of those same executives are quietly hoping the next two or three years will be a very strong period for truckload pricing There see evidence pointing to spot equipment shortages as drivers become scarcer due to increased regulatory emphasis on unsafe truck drivers.

Perry is forecasting 3 percent growth in Gross Domestic Product for 2011. But because major truckload carriers such as Schneider National, Werner Enterprises, J.B. Hunt and others have cut over-the-road capacity by as much as 12 to 15 percent during the recession, Perry said there is no way these carriers can ramp up with enough trucks and drivers by the time the economy kicks in gear in mid-2011.

"We're going to have a big shortage in drivers," Perry says Perry spoke at the recent annual meeting of the North American Transportation Employee Relations Association (NATERA)

The huge surplus in truckload that began in 2009 is going to disappear fast Perry is predicting a shortage of some 200 000 units in truckload capacity next year as the freight economy improves

"The reason the economy sucks right now is that the service economy is not good right now,' Perry said "But the big story for freight is goods part of the economy is growing "

Truck tonnage is growing about twice the rate of the overall economic growth But the slow growth in housing will continue to affect the freight industry Some leading economists believe the housing industry will not fully recover until 2012, or until some 3 million housing units are removed from the nation's housing inventory *Housing amounts to about 15 percent of the U.S economy*

In 2004, the peak of the last great time in trucking, the industry was about 150 000 short of drivers Next year, there might be a shortage of as many as 100,000 drivers—or more Changes in hours of service as well as the new Comprehensive Safety Analysis (CSA) as well as the continued crackdown on illegal aliens, and there could be as many as 300,000 drivers pulled out of the current truck driver labor pool by 2012
"The pain will be at least twice as much as it was in 2012," Perry predicted

A combination of inadequate investment by carriers on drivers—Schneider National even closed its driving school during the most recent downtown—and a crackdown on unsafe truck drivers along with the fledgling economic recovery will cause trucking rates to rise as capacity tightens, Perry predicted

"Human beings like stability—but what we're getting is instability," Perry says. "People have to manage through the cycle—not just for the peak but for the entire recovery "

This is going to affect traditional shipper behavior Shippers are expected to ask for longer-length contracts to lock in capacity longer as the truck capacity situation worsens, Perry said.
Satish Jindel, a principal with Pittsburgh-based SJ Consulting and a longtime industry analyst said he believes contract rates might improve 5-to-7 percent next year But he noted that carriers because fleets will have to spend more for drivers, fuel and equipment, carriers' actual yields may improve only 3-to-4 percent.

"*If demand in 2011 is as sustained as in 2010, those numbers are good. If demand* goes up, then rates will go up further," Jindel predicted

But Jindel is not convinced truckload rates could rise as much as 10 percent next year, as longtime trucking analyst Jason Seidl of Dahlman Rose recently predicted in a note to investors.

"Somebody has to wake up to reality that truckload shippers have a competitive substitution called intermodal," Jindel said "If the truckload guys raise the rates too much, shippers are going to go to intermodal "

That might be the case for shipments traveling more than 600 miles where intermodal is competitive with truckload on some lanes But for shipments in the 300-to-400-mile range, truckload's service is able to justify the higher rates, shippers and carriers say

In LTL, there is overcapacity in fixed network in certain networks, Jindel said But in available network there is not much overcapacity "If the LTL sector maintains the level of discipline in pricing it has shown in the last 3-to-6 months, they can help themselves maintain price increases and improve their operating ratio."

third quarter (and 90 8 OR for the first nine months of 2010), most other publicly held reporting LTL carriers are still reporting operating ratios in the mid-to-high 90s in the third quarter—usually the most profitable period for trucking companies.

'That is pathetic," Jindel told LM 'Everybody should be in high 80s or low 90s in this environment "

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Comments

Posted by tag heuer replica on 12/03 at 09:52 AM

you confront them directly? <u>Cartier engagement rings</u> directly? Call a manager? Call the police? ring silver 925 police? We rigged Black Bear Saloon in <h3>Rings Jewellery</h3> in South Norwalk.

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BEFORE THE
SURFACE TRANSPORTATION BOARD

M&G POLYMERS USA, LLC Complainant, v. CSX TRANSPORTATION, INC. and SOUTH CAROLINA CENTRAL RAILROAD COMPANY Defendants.	)	Docket No. NOR 42123

VERIFIED STATEMENT OF ANDRE S. MEYER

1. My name is Andre S. Meyer. I am the Americas Supply Chain Manager for M&G Polymers USA, LLC ("M&G"), 450 Gears Road, Suite 240, Houston, TX 77067. M&G is incorporated in Delaware and produces polyethylene terephthalate ("PET") from its production facility at Apple Grove, West Virginia. M&G is ultimately owned by M&G International, which is based in Luxembourg and is the world's third largest producer of PET for packaging applications.

2. PET produced at Apple Grove is sold to customers in pelletized form that is sometimes called "resin." PET produced by M&G is used in the production of disposable and recyclable rigid packaging for numerous retail and consumer products such as soft drinks, mineral water, juice, sauces, cooking oil, and cosmetics. Additionally, PET is used for non-package applications such as fiber and film.

3. In my role as the Americas Supply Chain Manager, I am responsible for supply chain operations including Production Planning, Customer Service, and Delivery for the Americas region which includes operations in Brazil, Mexico, and the United States.

4. I have worked in the PET business since 1989, staying with these operations through the sale of the business from Goodyear to Shell Chemical to M&G. During this period, I have had roles ranging from Research and Development Engineer to Site Manager at the Apple Grove facility. I have a degree in Chemical Engineering from the University of Michigan.

5. I am submitting this Verified Statement ("V.S.") in support of the Consolidated Reply ("Reply") of M&G to the Motion to Bifurcate and the Motion for Protective Order of the South Carolina Central Railroad Company ("SCRF"). The purpose of this V.S. is to (1) describe sales of PET from M&G to Graham Packaging in Darlington, South Carolina; (2) describe the limitations on loading of and use of trucks at Apple Grove; and (3) respond to some specific assertions made by SCRF in its two motions.

I. Overview of M&G Sales to Graham Packaging in Darlington, SC

6. Graham Packaging is a customer of M&G at several locations, including Darlington, South Carolina. At Darlington, Graham produces packaging containers. Graham began buying PET from M&G in { }[1] for use at the Darlington facility. From { } through September 2010, M&G shipped { } bulk railcars of PET to Graham in Darlington. See Exhibit 7 attached to this V.S.

7. { M&G has never shipped a bulk truck of PET to Graham in Darlington. }

[1] Pursuant to the Protective Order in this proceeding, M&G has delineated "CONFIDENTIAL" information by single brackets { }, and "HIGHLY CONFIDENTIAL" information by double brackets {{ }}.

8. {

}

9. {{

}}

10. {{

}}

11. {{

}}

12. {

} {{ }} {

} {{

}}

13. Even if shipments to this location of Graham were to cease, it would be entirely possible for shipments to resume at some date in the near future under such a scenario. The PET business is very competitive, and it is plausible for a supplier like M&G to gain and lose the business of a single customer location more than once in a ten-year period.

II. A Brief Description of the Apple Grove facility

14. The Apple Grove facility was designed to make use of rail transportation, and the CSXT mainline runs through the middle of the plant. The roadway network in the facility is not configured to allow direct truck loading.

15. { } {

}

16. {{

}}

17. {{

}}

18. {{

}}

19. With the current infrastructure at Apple Grove, and at current staffing levels, the number of bulk direct loadings averages {{ }} per week with a peak of only {{ }} per week. Given this limited capacity, M&G must conserve Apple Grove's bulk truck loading capacity for (1) those customers who are not rail-served, and (2) those customers needing emergency shipments. In other words, there is insufficient bulk truck loading capacity for M&G to switch its rail-served customers to trucks.

20. M&G has estimated that the cost to reconfigure Apple Grove to enable widespread use of direct truck loading would be {{ }}.

21. The public road system in the vicinity of Apple Grove is also a limiting factor in the use of direct truck loading. Apple Grove is on a two-lane road in an area that is both mountainous and residential.

22. Rail transportation is also much less susceptible to severe weather events like flooding, snow, and ice storms. In the past 15 years, direct truck service has been significantly impacted by three weather events: two floods and one major ice storm. Moreover, other weather events have resulted in additional, though less significant, interruptions in truck service. Conversely, rail service is much less affected by these weather events, not the least because the rail lines are built above the 500-year flood plain.

III. Response to Assertions of SCRF

23. I understand that SCRF contends that there is effective competition for shipments of PET from Apple Grove to Graham Packaging in Darlington, South Carolina.

24. The possibility of a direct bulk truck shipment from Apple Grove to Graham at Darlington is impractical due to the many reasons described above in paragraphs 9-10 and 14-22. As I explained in those paragraphs, the ability of M&G to ship trucks directly from Apple Grove is severely limited by many factors. Additionally, M&G must reserve the limited truck loading capacity for customers who are not rail-served, and for emergency shipments.

25. I also have evaluated the possibility of a rail-truck transload shipment of PET from Apple Grove to Graham at Darlington. This would entail CSXT rail service from Apple Grove to a transload terminal in the vicinity of Darlington where transfer to trucks would occur for final delivery to Graham. M&G evaluated use of the CSXT TRANSFLO Terminals in Charleston, SC and Wilmington, NC. M&G used CSXT's tariff rates for shipments of PET to Charleston and Wilmington, and the current Transflo Terminal Services List. See Exhibits 8-11 attached to this V.S. The total cost for a transload shipment through Charleston, SC would be {{ }} per railcar, and through Wilmington, NC it would be {{ }} per railcar. The components of these costs are as follows:

	via Charleston, SC	via Wilmington, NC
truck cost from terminal to Graham	{{ }}	{{ }}
transfer fee per truck	{{ }}	{{ }}
cleaning fee per truck	{{ }}	{{ }}
scale fee per truck	$20	$20
Transflo accessorial fee (at { }	{ }	{ }
Fuel cost {{ }}	{{ }}	{{ }}
Total per truck	{{ }}	{{ }}
Truck cost per railcar (at 4 trucks per railcar)	{{ }}	{{ }}
CSXT rate from Apple Grove to Transflo Terminal	$5966.84	$5855.60
Total cost per railcar	{{ }}	{{ }}

These estimates do not include any railcar storage charges, which would begin to accrue after eight days. These estimates are greatly in excess of the joint CSXT-SCRF rate from Apple Grove to Graham at Darlington, which is $6,373.

26. Any transportation that involves transloading is also less than optimal because each transload increases the possibility of contamination of the PET, as well as raises the dust content of the PET.

27. I have not evaluated any alternative transportation scenarios that involve a double-transload at origin and destination because the cost would certainly be higher than the challenged CSXT-SCRF tariff rate given the costs of just the destination transload. Moreover, as described above, each transloading event can raise quality concerns.

28. Moreover, {{ }} Bulk truck capacity is currently severely limited in the United States. Numerous trade publications have recognized this fact, including the journal Logistics Management. {{

}}

VERIFICATION

I, Andre S. Meyer, verify under penalty of perjury that I have read the foregoing Verified Statement, that I know the contents thereof, and that the same are true and correct to the best of my knowledge. Further, I certify that I am qualified and authorized to file this statement.

Andre S. Meyer

Andre S. Meyer

Verified Statement of Andre S. Meyer

Exhibit 1

Redacted

Verified Statement of Andre S. Meyer

Exhibit 2

Redacted

Verified Statement of Andre S. Meyer

Exhibit 3

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Verified Statement of Andre S. Meyer

Exhibit 4

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Verified Statement of Andre S. Meyer

Exhibit 5

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Verified Statement of Andre S. Meyer

Exhibit 6

Redacted

Verified Statement of Andre S. Meyer

Exhibit 7

Redacted

Verified Statement of Andre S. Meyer

Exhibit 8

You are here: ShipCSX > Resources > Price Look-Up

Price Look-Up Results

Price Look-Up Results #1

Origin: Apple Grove, WV (CSXT) **Destination:** Wilmington, NC (CSXT) **STCC:** 2821156 - POLYETHYLENE TEREI

AVAILABLE PRICES
For more details select one or more prices and click 'Get Selected Price Detail'.
To view the price publications click (Ⓘ) next to the price.

☐	Price	Per	Mileage or % Est. Fuel Surcharge	Equipment Size Restrictions	Price Authority	Rout
Covered Hopper Car						
☐	$5,696.00 Ⓘ	PER CAR	$0.24 pm $159.60*	-	CSXT28211	CSXT

New Price Look-Up

*Miles and estimated fuel surcharges are applicable as of 11/22/10 4:14 PM EST and are subject to change.
For ShipCSX questions, call 1-877-ShipCSX (744-7279) Option 2, Option 1
For Customer Service, call 1-877-ShipCSX (744-7279) Option 5, Option 6

Verified Statement of Andre S. Meyer

Exhibit 9

You are here: ShipCSX > Resources > Price Look-Up

Price Look-Up Results

Price Look-Up Results #1

Origin: Apple Grove, WV (CSXT) **Destination:** Charleston, SC (CSXT) **STCC:** 2821156 -

AVAILABLE PRICES
For more details select one or more prices and click 'Get Selected Price Detail'.
To view the price publications click (ⓘ) next to the price.

☐	Price	Per	Mileage or % Est. Fuel Surcharge	Equipment Size Restrictions	Price Authority	Rout
Covered Hopper Car						
☐	$5,807.00 ⓘ	PER CAR	$0.24 pm $159.84*	-	CSXT28211	CSX1

*Miles and estimated fuel surcharges are applicable as of 11/22/10 4:17 PM EST and are subject to change.
For ShipCSX questions, call 1-877-ShipCSX (744-7279) Option 2, Option 1
For Customer Service, call 1-877-ShipCSX (744-7279) Option 6, Option 6

Verified Statement of Andre S. Meyer

Exhibit 10

TRANSFLO®

TRANSFLO Terminal Services, Inc.
Price List

Effective January 1, 2010

Service	Rate
Premium Services	**Prices Per Cwt.**
Non-Hazardous	
Conveyor	$ 0.400
PD	$ 0.400
Liquid	$ 0.430
Plastics	$ 0.450
Other	Individually Priced
Hazardous	
Oxidizers	$ 0.450
Corrosives	$ 0.470
- Sulfuric Acid	$ 0.470
- Hydrochloric Acid	$ 0.520
Combustible Liquids	$ 0.510
Flammable	Individually Priced
Environmentally Hazardous	Individually Priced
Toxics	Individually Priced
Wastes	
Non-Hazardous	$ 0.435
RCRA (EPA Hazardous)	Individually Priced
Value Service (Non Liquids)	$ 0.260
Self Loading	Individually Priced

Special Services

Dilution	$30/Trailer
Extra Labor	$50/Hour/Person
Filtering	Individually Priced
Heating Railcars or Containers *(Subject to Energy Surcharge)*	$60/Hour/Car
Inert Gas Application	$33/Application
Logistics Management	Individually Priced
Overtime	$52/Hour/Person
Product Replenishment Fee	$ 0.80/Cwt
Product Sample	Individually Priced
Railcar Reconsignment Fee	$450/Car
Scale Fee (Extra Truck Weights)	$20/Scale
Sparging	$40/Hour
Trailer Preloading	Individually Priced
Transfer of Returned Product	Same Rate as Original Transfer

Track Occupancy Charge

Private Cars	Days 1- 8	No Charge
	Days 9 - 40	$25/Day
	Days 41 and Beyond	$90/Day
Railroad Owned Cars	Days 1-2	No Charge
	Days 3 and Beyond	$90/Day

All pricing and pricing schedules are subject to review and approval by TRANSFLO.

This document supersedes any and all TRANSFLO public pricing documents including the TRANSFLO Price List dated January 1, 2009 or earlier. This Price List may be amended or superseded from time to time.
Please reference TRANSFLO Terminal Services, Inc. Service Terms and Conditions dated January 1, 2010 for terminal operating details or definitions of above items.
All prices are subject to change pending final review of product MSDS and handling requirements.

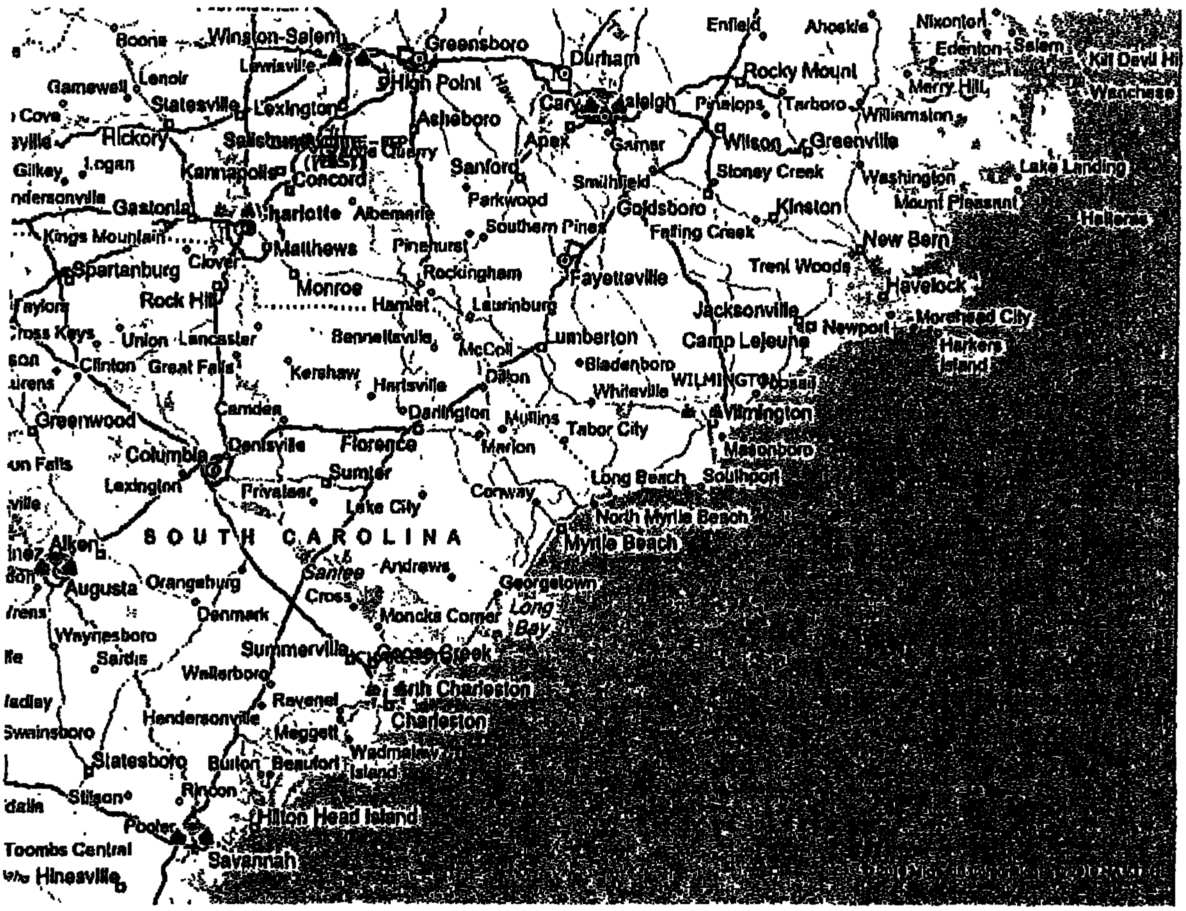
TRANSFLO

s

ANSFLO terminal

ZIP Code: Show ZIP plus radius:

з ... 29532 ○ 50 miles ◉ 100 miles **Find**



s	Address	City	State	ZIP	Car Spots	Transflo Sales Rep	Sales Rep Phone	Distance from Zip
GP	601 North Hoskins Road	Charlotte	NC	28216	114	Diane Murray	804-226-7501	83 miles

TRANSFLO

rminals List

s List

s	Address	City	State	ZIP	Car Spots	Transflo Sales Rep	Sales Rep Phone
	3717 41st Court North	Birmingham	AL	35217	65	Tim Hart	904-279-6325
(	2057 Bell Street	Montgomery	AL	36104	30	Tim Hart	904-279-6325
I	110 Universal Drive	North Haven	CT	06473	110	Brad Osborn	207-781-4045
	1205 Centerville Road	Wilmington	DE	19808	200	Mark Darland	410-336-8550
	890 SW 21st Avenue	Fort Lauderdale	FL	33312	55	Tim Hart	904-279-6325
E	116 Druid Street	Jacksonville	FL	32254	49	Tim Hart	904-279-6325
	2591 West 5th Street	Sanford	FL	32771	33	Tim Hart	904-279-6325
	504 North 34th Street	Tampa	FL	33605	109	Tim Hart	904-279-6325
	1000 Chattahoochee Avenue N.W.	Atlanta	GA	30318	296	Diane Murray	804-226-7501
	1765 Essie McIntyre Boulevard	Augusta	GA	30904	46	Tim Hart	904-279-6325
	107 McFarland Road	Dalton	GA	30720	65	Cameron McCluney	615-371-6308
	2351 Tremont Road	Savannah	GA	31405	38	Tim Hart	904-279-6325
)	1401 West 145th Street	East Chicago	IN	46312	90	Cameron McCluney	615-371-6308
	1550 North Kentucky Avenue	Evansville	IN	47711	27	Cameron McCluney	615-371-6308
!	855 South Emerson Avenue	Indianapolis	IN	46203	45	Cameron McCluney	615-371-6308

s	Address	City	State	ZIP	Car Spots	Transflo Sales Rep	Sales Rep Phone
	7550 Grade Lane	Louisville	KY	40219	75.	Greg Goetz	513-369-5145
	24 Reynolds Lane	Martin	KY	41649	18	Greg Goetz	513-369-5145
]	6666 Old Gentilly Road	New Orleans	LA	70126	25	Cameron McCluney	615-371-6308
	310 Cambridge Street	Allston	MA	02134	96	Brad Osborn	207-781-4045
	1525 Andre Street	Baltimore	MD	21230	130	Mark Darland	410-336-8550
:	150 Hump Road	Hagerstown	MD	21740	31	Mark Darland	410-336-8550
	177 South Rosa Parks Boulevard	Detroit	MI	48216	50	Greg Goetz	513-369-5145
S	945 Freeman Avenue S.W.	Grand Rapids	MI	49503	38	Greg Goetz	513-369-5145
T)	18260 Rialto Street	Melvindale	MI	48122	65	Greg Goetz	513-369-5145
FG	6816 CSX Way	Charlotte	NC	28214	219	Diane Murray	804-226-7501
GP	601 North Hoskins Road	Charlotte	NC	28216	114	Diane Murray	804-226-7501
	1100 Old Mill Road N.E.	Navassa	NC	28451	10	Diane Murray	804-226-7501
	1090 Capital Boulevard	Raleigh	NC	27603	33	Diane Murray	804-226-7501
EM	5025 Overdale Road	Winston Salem	NC	27107	19	Diane Murray	804-226-7501
	454 York Street	Elizabeth	NJ	07201	180	Brad Osborn	207-781-4045
	One Exchange Street Extension	Albany	NY	12205	88	Brad Osborn	207-781-4045
	1254 William Street	Buffalo	NY	14206	100	Brad Osborn	207-781-4045
	200 Welch Street	East Syracuse	NY	13057	55	Brad Osborn	207-781-4045
	3601 Geringer Avenue	Cincinnati	OH	45223	78	Greg Goetz	513-369-5145
	610 East 152nd Street	Cleveland	OH	44110	92	Greg Goetz	513-369-5145

s	Address	City	State	ZIP	Car Spots	Transflo Sales Rep	Sales Rep Phone
	2700 West 3rd Street	Cleveland	OH	44113	105	Greg Goetz	513-369-5145
	3100 Lockbourne Road	Columbus	OH	43207	187	Greg Goetz	513-369-5145
	1601 Miami Street	Toledo	OH	43605	73	Greg Goetz	513-369-5145
	137 Center Avenue	Butler	PA	16001	23	Mark Darland	410-336-8550
	111 East 13th Street	Chester	PA	19013	32	Mark Darland	410-336-8550
\	52 East Oregon Avenue	Philadelphia	PA	19148	215	Mark Darland	410-336-8550
\	South 36th at Moore Street	Philadelphia	PA	19145	258	Mark Darland	410-336-8550
	200 Courtland Street	Pittsburgh	PA	15207	37	Mark Darland	410-336-8550
	15 Chemin des Hauts Fourneaux	Beauharnois	QC	J6N 3C1	60	Brad Osborn	207-781-4045
	130 Willard Street	Greenville	SC	29601	43	Diane Murray	804-226-7501
	408 East Bramlett Road	Greenville	SC	29601	16	Diane Murray	804-226-7501
	1990 Tuxbury Lane	North Charleston	SC	29405	30	Tim Hart	904-279-6325
A	520 West 26th Street	Chattanooga	TN	37408	103	Cameron McCluney	615-371-6308
	2200 Volunteer Boulevard	Knoxville	TN	37916	35	Cameron McCluney	615-371-6308
	426 Chestnut Street	Nashville	TN	37203	52	Cameron McCluney	615-371-6308
URG	3230 Bourbon Street	Fredericksburg	VA	22408	10	Diane Murray	804-226-7501
	3500 Halifax Road	Petersburg	VA	23805	18	Diane Murray	804-226-7501
	920 Godwin Street	Portsmouth	VA	23704	31	Diane Murray	804-226-7501

s	Address	City	State	ZIP	Car Spots	Transflo Sales Rep	Sales Rep Phone
	2300 West Laburnum Avenue	Richmond	VA	23223	55	Diane Murray	804-226-7501
	500 North Third Street	Clarksburg	WV	26301	15	Mark Darland	410-336-8550
	1st Avenue & F Street	S. Charleston	WV	25303	24	Mark Darland	410-336-8550

Verified Statement of Andre S. Meyer

Exhibit 11

Redacted