

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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M&G POLYMERS USA, LLC.

Complainant,

v.

CSX TRANSPORTATION, INC. and SOUTH  
CAROLINA CENTRAL RAILROAD COMPANY

Defendants.

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Docket No. NOR 42123

**CSX TRANSPORTATION, INC.'S REPLY TO DEFENDANT SOUTH  
CAROLINA CENTRAL RAILROAD COMPANY'S MOTION TO BIFURCATE.**

Defendant CSX Transportation, Inc. ("CSXT") respectfully submits this Reply to Defendant South Carolina Central Railroad Company's ("SCRF") Motion to Bifurcate. CSXT supports the Motion because it is consistent with CSXT's position that, in cases in which there is compelling evidence that a defendant carrier does not have market dominance over challenged movements, the Board should make jurisdictional market dominance determinations early in the case, *before* the parties have developed SAC evidence regarding those movements. *See, e.g.*, CSXT Motion for Expedited Determination of Jurisdiction Over Challenged Rates, *Total Petrochemicals USA, Inc. v. CSX Transportation, Inc.*, STB Dkt. No. 42121 (filed Oct. 1, 2010).

While the Board's general practice in more recent coal rate cases has been to defer market dominance determinations to the final rate case decision, in this case as in *Total Petrochemicals* the likelihood of a finding of lack of market dominance over some or all of the issue movements is far higher than in a coal rate case involving cycling coal unit trains. In the present case, determining if the Board has jurisdiction prior to the filing of SAC evidence could spare the parties and the Board unnecessary expenditure of time and resources required to

develop and evaluate SAC evidence for movements over which the Board lacks jurisdiction. *See id.* Unlike the “typical” SAC case involving movements of large volumes of coal between a limited number of origins and destinations, this case involves numerous lanes, multiple origins and destinations, and an issue commodity that can and often is moved by over-the-road trucks and rail-truck intermodal transportation. *See* Motion at 4-6. The viability of (existing and potential) competitive transportation alternatives means the Board likely lacks jurisdiction over at least a majority of the issue movements.

Development and evaluation of SAC evidence that includes movements over which the Board lacks rate reasonableness jurisdiction (such as the SCRF movement terminating in Darlington, South Carolina) would be a substantial waste of the resources of the parties and the Board. Moreover, if the parties submit SAC presentations involving movements over which the Board subsequently determines it lacks jurisdiction, the parties would likely be required to substantially revise, restructure, and re-submit their SAC presentations (consuming substantial additional time and resources) to reflect the different parameters, characteristics, and requirements of a different set of issue traffic, and likely a different traffic group.<sup>1</sup> Thus, deferral of the jurisdictional determination until after the submission of SAC evidence in this case would be imprudent, as it could result in substantial unnecessary expense to the parties and significantly delay a decision on the merits. The more efficient and reasonable way to proceed in this case is for the Board to first determine which, if any, movements are subject to its rate reasonableness jurisdiction, and then allow the parties to develop SAC evidence based on the traffic over which the Board has jurisdiction.

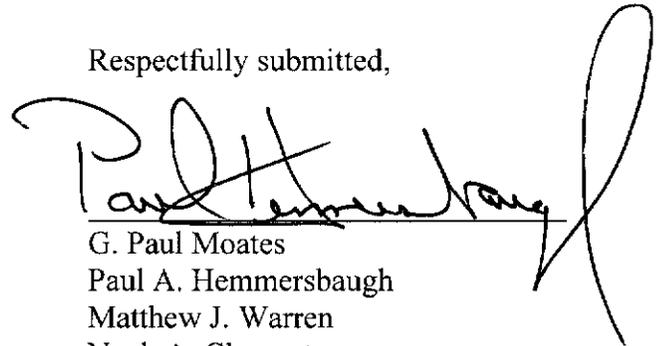
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<sup>1</sup> If the Board were to find the defendant carriers lacked market dominance over all of the challenged movements, then the parties’ development and submission of what are likely to be very complex SAC presentations would be entirely for naught. Such a waste of resources is not in anyone’s interest.

**CONCLUSION**

The Board should grant SCRF's Motion and make market dominance determinations before the parties are required to develop and submit complex and costly SAC evidence.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Paul A. Hemmersbaugh", written over a horizontal line. The signature is stylized with a large loop at the end.

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Dated: December 9, 2010

## CERTIFICATE OF SERVICE

I hereby certify that on this 9<sup>th</sup> day of December, 2010, I caused a copy of the foregoing Reply to Motion to Bifurcate to be served on the following parties by first class mail, postage prepaid or more expeditious method of delivery:

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A handwritten signature in black ink, appearing to read 'Eva Mozena Brandon', written over a horizontal line.

Eva Mozena Brandon