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FOUNDED 1866

December 9, 2010

Via Electronic Filing

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

Re: Total Petrochemicals USA, Inc. v. CSX Transportation, Inc., et al, STB Dkt. No. 42121

Dear Ms. Brown:

We represent Defendant CSX Transportation, Inc. (“CSXT”) in the above-captioned rate case. We write to state CSXT’s position concerning the Second Amended Complaint filed by Complainant Total Petrochemicals USA, Inc. (“TPI”). The Board recently granted TPI’s Motion for Leave to File a Second Amended Complaint, and granted the 11 new defendants added by that Second Amended Complaint 20 days to file an Answer. *See* Decision, *TPI v. CSXT*, STB Docket No. 42121 (served Nov. 19, 2010) (“Decision”). CSXT previously filed Answers to TPI’s Complaint and its First Amended Complaint. Based upon the Decision, and the lack of new substantive allegations against CSXT in the Second Amended Complaint, CSXT believes it is not necessary for it to file an additional Answer. To avoid confusion, however, CSXT submits this letter summarizing its position and response to the Second Amended Complaint.

The principal differences between the First Amended Complaint and the Second Amended Complaint consist of changes to the movements whose rail transportation rates TPI challenges in this case, and the addition of eleven “short line” rail carriers as defendants. *See* Decision at 1 (summarizing changes, including addition and withdrawal of challenges to rates for several movements, reclassification of certain challenges, and routing, origin, and commodities changes). Because the Decision established a date for the eleven new defendants to file an Answer, but did not indicate that CSXT was to file yet another Answer, CSXT understands that the Board does not believe a further (essentially redundant) Answer by CSXT to the Second Amended Complaint is necessary or appropriate. Unless the Board advises CSXT that a new Answer is necessary, CSXT will rely upon its Answer to the allegations of the First Amended Complaint, with the following additional clarifications.

Cynthia T. Brown
December 9, 2010
Page 2

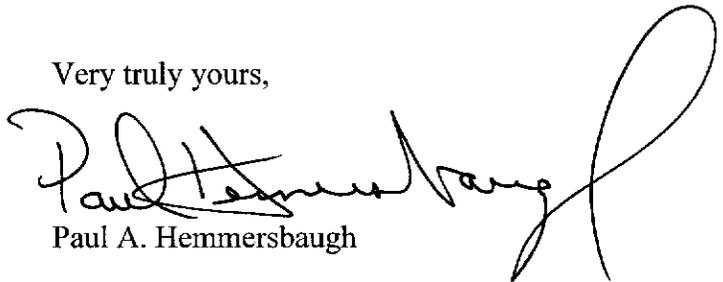
First, the changes to challenged movements are set forth in the exhibits to the Second Amended Complaint, which do not require a responsive pleading. CSXT did not expressly discuss the parallel exhibits in its Answers to the two prior Complaints, and it does not believe any additional response is necessary or appropriate. This does not mean that CSXT agrees with the information set out in those exhibits, and CSXT reserves its rights to contest any of the information set forth in those exhibits, including any allegations or conclusions (express or implied) they may contain. To the extent a response to those exhibits might be deemed to be required, CSXT denies all allegations of exhibits to the Second Amended Complaint.

Second, CSXT lacks information sufficient to admit or deny the new allegations concerning added defendants, including paragraphs 4 through 14 of the Second Amended Complaint and portions of paragraph 2 that refer to defendants other than CSXT. To the extent a response to those paragraphs might be required, CSXT denies the allegations of paragraphs 4 through 14. With respect to the allegations of paragraphs 2 and 3 that apply directly to CSXT, it re-states and relies upon its responses to the same allegations in the First Amended Complaint.

Finally, CSXT reiterates its position that, as a matter of law and due process, a rate reasonableness determination (and, *a fortiori*, any rate prescription) concerning a line haul rate established by a carrier other than CSXT may be made only if that other carrier is a party to the case. And, any rate prescription for another carrier's segment of a joint line movement (*e.g.*, a short line that provides line haul rail transportation service on the segment in question) may only be applied to that other carrier, and would not be enforceable against CSXT.

If the Board has questions concerning this letter or requires additional information, please contact the undersigned counsel to CSXT.

Very truly yours,



Paul A. Hemmersbaugh

cc: Jeffrey T. Moreno (by email)
Other Counsel of Record (by U.S. mail)

CERTIFICATE OF SERVICE

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

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