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December 28, 2010

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

**RE: STB Docket No. NOR 42121, Total Petrochemicals USA, Inc. v. CSX
Transportation, Inc. et al.**

Dear Ms. Brown:

In a Reply to Motion to Compel filed with the Board on December 23, 2010 in the above-captioned proceeding, the New Hope & Ivyland Railroad ("NHRR") objected to responding to the discovery requests of TOTAL Petrochemicals USA, Inc. ("TPI") in this case. Consequently, NHRR requested that the Board reject TPI's Motion to Compel, which had been filed on December 13, 2010. The time for objections to TPI's discovery requests was before TPI filed its Motion to Compel. 49 CFR § 1114.26(a). Indeed, NHRR's failure to respond or object to discovery is what necessitated TPI's Motion to Compel. Because TPI is prejudiced by not knowing NHRR's objections, TPI respectfully requests that the Board accept this letter in reply to NHRR's December 23rd filing despite 49 CFR § 1104.13(c).

In its reply to TPI's Motion to Compel, NHRR requested that the Board order TPI to pay for NHRR's "retain[ing] lawyers and outside consultants" to respond to TPI's discovery requests in this proceeding. Reply to Motion to Compel at 4. NHRR contends that this cost-shifting is appropriate due to the alleged burden and expense that would be incurred in responding to TPI's discovery requests, but NHRR's description of the alleged burden and expense is both grossly overstated and misinformed. Reply to Motion to Compel at 3-4.

First, NHRR erroneously states that TPI is requesting NHRR to "assemble" and produce information "in the same manner as Class I railroads." Reply to Motion to Compel at 4. See also id. at 3 (NHRR suggests that TPI is requesting NHRR to produce information "in accordance with the Board's Uniform System of Accounts"). TPI is not requesting information in any particular format. Instead, TPI is requesting responsive NHRR data in whatever format it is kept in the ordinary course of business. TPI's discovery does not request information in the manner maintained by Class I railroads, and NHRR will not have to re-format or re-configure responsive information or data. To simplify its response as much as possible, NHRR can simply produce business records representing a larger universe of information (thereby forcing TPI to

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find the requested information), or NHRR can invite TPI to inspect NHRR business records in NHRR offices. 49 CFR § 1114.26(b).

Second, NHRR has cited to no Board or ICC decision that would support the requested cost-shifting. In fact, the Board's recent discussion of the litigation costs inherent in Simplified SAC rate reasonableness disputes rejected a "loser pays" system for allocating discovery costs, despite railroad claims that discovery disproportionately burdened them. Simplified Standards for Rail Rate Cases, STB Ex Parte No. 646 (Sub-No. 1), slip op. at 66-68 (served Sept. 5, 2007).

Third, it bears repeating that NHRR can eliminate any burden associated with responding to discovery by agreeing to a contract with TPI for NHRR's portion of Lane B-42. Any burden and/or expense due to NHRR's participation in this case is entirely self-imposed because NHRR has refused even to discuss a contract with TPI.

Finally, NHRR's timing concerns are contradictory. At the bottom of un-numbered page 2 of the NHRR Reply, NHRR asserts that TPI's Motion to Compel should be denied because TPI's discovery requests are too late, and then in the very next section NHRR claims the discovery requests are too early. NHRR Reply to Motion to Compel at 2-3. The Board should reject NHRR's Reply to Motion to Compel due to the absurd and contradictory nature of NHRR's position. Moreover, the NHRR statements highlight the situation faced by TPI in this case. In its discovery requests to CSXT in this case, TPI requested documents and agreements which would reveal the nature of the relationship between CSXT and the shortline railroads involved in the lanes included in the Complaint. See TPI Motion for Leave to File Second Amended Complaint at page 2-3 (filed Oct. 4, 2010). CSXT did not provide responsive information until several months had passed, thus delaying the addition of NHRR to this case.

Please do not hesitate to contact the undersigned with any questions.

Respectfully submitted,



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David E. Benz
Counsel for TOTAL Petrochemicals USA, Inc.

cc: Parties of record
