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THOMAS F. McFARLAND

August 11, 2017

*By UPS overnight mail
(Monday delivery)*

Ms. Cynthia T. Brown, Chief
Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20024

Re: Docket No. NOR-42154, *Monticello Farm Service, Inc. v. CSX Transportation, Inc.*

Dear Ms. Brown:

Hereby transmitted is the original and 10 copies of a Complaint for filing with the Board in the above referenced matter.

Also enclosed is a check in the amount of \$350 for the filing fee.

Very truly yours,



Thomas F. McFarland
Attorney for Complainant

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FILED
August 14, 2017
SURFACE
TRANSPORTATION BOARD

FEE RECEIVED
August 14, 2017
SURFACE
TRANSPORTATION BOARD



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ENTERED
Office of Proceedings
August 14, 2017
Part of
Public Record

BEFORE THE
SURFACE TRANSPORTATION BOARD



MONTICELLO FARM SERVICE, INC.,)

Complainant,)

v.)

Docket No. NOR-42154

CSX TRANSPORTATION, INC.,)

Defendant.)

COMPLAINT

MONTICELLO FARM SERVICE, INC.
1415 North 6th Street
Monticello, IN 47960

Complainant

THOMAS F. McFARLAND
THOMAS F. McFARLAND, P.C.
208 South LaSalle Street, Suite 1666
Chicago, IL 60604-1228
(312) 236-0204 (ph)
mcfarland@aol.com

Attorney for Complainant

DATE FILED: August 14, 2017

BEFORE THE
SURFACE TRANSPORTATION BOARD

MONTICELLO FARM SERVICE, INC.,	)	
	)	
<i>Complainant,</i>	)	
v.	)	Docket No. NOR-42154
	)	
CSX TRANSPORTATION, INC.,	)	
	)	
<i>Defendant.</i>	)	
	)	

COMPLAINT

Pursuant to 49 U.S.C. § 11701(b), 49 U.S.C. § 11704(c), and 49 C.F.R. § 1111.1,
MONTICELLO FARM SERVICE, INC. (MFS) hereby complains against CSX
TRANSPORTATION, INC. (CSX) as follows:

I.

MFS is engaged in the business of storing and distributing fertilizer and fertilizer materials. MFS's principal place of business is located at 1415 North 6th Street, Monticello, IN 47960.

II.

CSX is a common carrier by rail subject to the jurisdiction of the Surface Transportation Board (the Board) under Title 49 U.S. Code, Part A. CSX's address is 500 Water Street, Jacksonville, FL 32202.

III.

As here pertinent, MFS owns and operates a facility for storage and distribution of fertilizer and fertilizer materials at Monticello, Indiana. That facility is rail served solely by CSX over a rail line that extends approximately 10 miles from Monon, IN to terminus at Monticello, IN (the subject line).

IV.

For many years until CSX's refusal to provide requested transportation, MFS was a consistent user of CSX's rail service for receipt of fertilizer and fertilizer materials at Monticello, IN.

V.

In 2014, CSX filed a Petition for Exemption of abandonment of the subject line. MFS actively opposed that Petition. The Board denied that Petition in Docket No. AB-55 (Sub-No. 712X), decision served September 19, 2014.

VI.

In mid-February, 2017, CSX refused to transport railcars routed to MFS at Monticello, IN, citing unsafe track conditions on the subject line.

VII.

MFS repeatedly complained to CSX about CSX's continuing refusal to provide rail transportation between Monon and Monticello. On several occasions, CSX sales personnel stated to MFS that CSX would soon repair the unsafe track conditions, but that did not occur.

VIII.

Effective June 20, 2017, CSX embargoed the subject line. That formalized the out-of-service condition that had existed since mid-February, 2017.

IX.

As of the filing of this Complaint, CSX has refused MFS's requests for rail transportation over the subject line for more than six months, during which CSX has neither repaired any unsafe track conditions, nor sought Board authority for abandonment.

X.

The cost to repair any unsafe conditions in the subject line is not known to MFS because CSX twice refused permission for MFS's track consultant to go onto the line to determine its physical condition.

XI.

Any unsafe conditions in the subject line have been caused by CSX's long-time failure to have performed even minimal track maintenance.

XII.

The apparent intent of CSX in keeping the subject line out-of-service for more than six months over MFS's objection is to effectively abandon the subject line without Board authority.

XIII.

The six-month period during which CSX has kept the subject line out-of-service is far lengthier than a reasonable time for CSX to have either repaired any unsafe track conditions and restored the line to service, or to have sought Board authority for abandonment of the line.

XIV.

Prior to the date on which CSX took the subject line out-of-service, MFS was on a pace to receive approximately 100 carloads of fertilizer and fertilizer materials per year at Monticello, IN, many of which would provide substantial long-haul revenue for CSX.

XV.

The financial condition of CSX is adequate to pay for repair of any unsafe conditions in the subject line.

XVI.

By reason of the foregoing facts and circumstances, the six-month-plus out-of-service condition of the subject line was transmuted into an unlawful abandonment in violation of 49 U.S.C. § 10903, and constitutes a failure to provide rail transportation on reasonable request in violation of 49 U.S.C. § 11101(a).

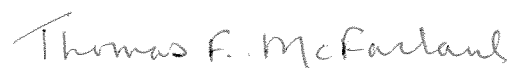
CONCLUSION AND RELIEF SOUGHT

In consideration of the foregoing, the Board is respectfully requested to require CSX to (1) cease and desist from such violations, and (2) pay damages to MFS that will be shown to have been caused by such violations, and that may continue to be incurred during the pendency of the Complaint.

Respectfully submitted,

MONTICELLO FARM SERVICE, INC.
1415 North 6th Street
Monticello, IN 47960

Complainant

A handwritten signature in cursive script that reads "Thomas F. McFarland".

THOMAS F. McFARLAND
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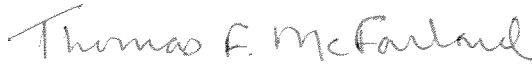
CERTIFICATE OF SERVICE

In accordance with 49 C.F.R. § 1111.3, I hereby certify that on August 11, 2017, I served a copy of the foregoing Complaint by UPS overnight mail on representatives of CSX Transportation, Inc., i.e.:

Ellen M. Fitzsimmons, Esq.
Executive Vice President of Law and Public
Affairs, General Counsel, and Corporate Secretary
CSX, Inc.
500 Water Street, 15th Floor
Jacksonville, FL. 32202
904-359-3200

Louis E. Gitomer, Esq.
Law Office of Louis E. Gitomer, LLC
600 Baltimore Avenue, Suite 301
Towson, MD 21204

I also certify that the front of the overnight express courier envelopes include the legend
“Service of STB Complaint.”


Thomas F. McFarland