

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

246969

CONSUMERS ENERGY COMPANY	)	ENTERED
	)	Office of Proceedings
	)	January 28, 2019
	)	Part of
v. Complainant,	)	Public Record
	)	Docket No. NOR 42142
CSX TRANSPORTATION, INC.	)	
	)	
Defendant.	)	
	)	

**JOINT PETITION TO VACATE RATE PRESCRIPTION,
DISMISS THE COMPLAINT WITH PREJUDICE
AND DISCONTINUE THIS PROCEEDING**

Complainant, Consumers Energy Company (“Consumers”) and Defendant, CSX Transportation, Inc. (“CSXT”) submit this Joint Petition to vacate the rate prescription ordered in this docket, dismiss Consumers’ Complaint, with prejudice, and discontinue this proceeding. In support hereof, Consumers and CSXT state as follows:

1. This case was initiated by Consumers through a Complaint filed on January 13, 2015.
2. In a Decision served January 11, 2018, as subsequently modified after reconsideration on August 2, 2018, the Board prescribed maximum reasonable rates for the transportation of coal by CSXT from railroad interchanges in the vicinity of Chicago, Illinois to Consumers’ J.H. Campbell Generating Station near West Olive, Michigan,

between January 1, 2015 and December 31, 2024. The Board's decisions subsequently became the subject of consolidated proceedings on review before the U.S. Court of Appeals for the District of Columbia Circuit.¹

3. Consumers and CSXT have reached a complete and final commercial settlement of all matters at issue in this proceeding. Pursuant to their settlement, the parties filed a Joint Motion asking the D.C. Circuit to dismiss the petitions for review in Case Nos. 18-1259 and 18-1264. That motion was granted on January 25, 2019.

4. The parties now jointly request that (i) the Board vacate the rate prescription that it entered in this proceeding in 2018; (ii) dismiss Consumers' 2015 Complaint, with prejudice; and (iii) discontinue this proceeding. Granting this Joint Petition "is consistent with the Board's longstanding policy of encouraging the private resolution of disputes through voluntary negotiations whenever possible." *CF Indus. Inc. v. Kaneb Pipe Line Partners, L.P.*, Docket No. NOR 42084 (STB served Nov. 21, 2006) at 2. *See also, Western Fuels, Ass'n., Inc., Et Al., v. BNSF Ry. Co.*, Docket No. NOR 42088 (STB served June 15, 2015) at 1.

WHEREFORE, for the reasons set forth above, Consumers and CSXT request that the Board grant the relief sought in this Joint Petition.

¹ Case No. 18-1259, *Consumers Energy Company v. Surface Transportation Board and United States*, and Case No. 18-1264, *CSX Transportation, Inc. v. Surface Transportation Board and United States*.

Respectfully submitted,

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Dated: January 28, 2019

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CERTIFICATE OF SERVICE

I hereby certify that I have this 28th day of January, 2019, caused a copy of the foregoing filing to be served by U.S. Mail, postage prepaid or by more expedited means upon all parties of record.

/s/
Katherine F. Waring
An Attorney for Complainant