

BEFORE THE
SURFACE TRANSPORTATION BOARD

ENTERED
Office of Proceedings
August 30, 2017

PUBLIC LISTENING SESSION REGARDING	)	Part of
CSX TRANSPORTATION, INC.'S RAIL SERVICE ISSUES	)	Public Record Docket No. EP 742

MURRAY ENERGY CORPORATION'S MOTION FOR PROTECTIVE ORDER

Pursuant to the Surface Transportation Board's ("Board") August 28, 2017 Decision, Murray Energy Corporation, by counsel, respectfully moves the Board to enter a protective order and in support thereof states as follows:

As the Board has previously noted, Murray Energy Corporation ("MEC") submitted a letter dated August 17, 2017 to the members of the Board, which letter (excluding attachments) has been posted to the Board's website as a filing in this docket.

The August 17 letter included attachments consisting of correspondence from MEC to the Board of Directors of CSX Corporation, Inc. ("CSX"). These attachments to the August 17 letter contain confidential, competitively sensitive information that should be withheld from public disclosure, such as the volume of coal that has been ordered by, and shipped by rail to, customers of MEC over the course of a particular time period. This is information that is not publicly available in the industry and should be maintained as confidential, competitively sensitive information.¹

MEC has redacted the confidential information from the attachments of the August 17 letter, and hereby files a redacted public version of those attachments with this Motion.

MEC respectfully requests, pursuant to 49 CFR §1104.14(b), for the issuance of a protective order to maintain the confidentiality of certain confidential information that has

¹ By providing this information to CSX in the first place, MEC was not "disclosing" anything that CSX was not already aware of. That is, CSX already had full knowledge of the volume of coal ordered by, and shipped by rail to, customers of MEC because all of that information was previously provided to CSX through its train reservation system.

been or may be submitted by parties to this proceeding. Issuance of a protective order at the outset of this proceeding, as the Board has done in prior cases, will establish appropriate procedures for the submission of evidence containing proprietary and commercially sensitive information, while protecting such information from unnecessary public disclosure.

Accordingly, MEC hereby asks this Board to issue a protective order in accordance with 49 CFR §1104.14(b) in the proposed form attached hereto as Appendix 1.

In addition, MEC also asks the Board to treat the unredacted copy of the attachments to the August 17 letter as having been designated “CONFIDENTIAL” and submitted under seal according to the terms of the proposed protective order attached hereto.

Respectfully submitted,



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bhasler@bgdlegal.com

Attorney for Murray Energy Corporation

Dated: August 30, 2017

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on August 30, 2017, a copy of the foregoing was sent to the following by overnight express courier:

Ellen M. Fitzsimmons
Executive Vice President of Law and Public Affairs, General Counsel and Corporate Secretary
CSX Corporate Headquarters
500 Water Street, 15th Floor
Jacksonville, FL 32202



APPENDIX 1

PROTECTIVE ORDER

1. For purposes of this Protective Order:

(a) “Confidential Documents” means documents and other tangible materials containing or reflecting Confidential Information.

(b) “Confidential Information” means confidential financial and cost data, including without limitation income, expense, and pricing of commodities and services; the identification of customers of the party originating the information; the confidential terms of contracts entered into by the party originating the information; and other confidential or proprietary business or personal information, including the information of non-parties to this proceeding which fall within the scope of this definition.

(c) “Designated Material” means any documents designated or stamped as “CONFIDENTIAL” in accordance with paragraph 2 of this Protective Order, and any Confidential Information contained in such materials.

(d) “Proceedings” means those before the Surface Transportation Board (“Board”) concerning the Public Listening Session Regarding CSX Transportation, Inc.’s Rail Service Issues, Docket No. EP 742, and any judicial review proceedings arising from Docket No. EP 742.

2. If any party to these Proceedings determines that any part of a document it submits, discovery request it propounds, discovery response it produces, transcript of a deposition or hearing in which it participates, or pleading or other paper to be submitted, filed or served in these Proceedings contains Confidential Information or consists of Confidential Documents, then that party may designate and stamp such Confidential Information and Confidential Documents as “CONFIDENTIAL.” Any information or documents designated or stamped as “CONFIDENTIAL” shall be handled as provided for hereinafter.

3. Information and documents designated or stamped as “CONFIDENTIAL” may not be disclosed in any way, directly or indirectly, or to any person or entity except to an employee, counsel, consultant, or agent of a party to these Proceedings, or an employee of such counsel, consultant, or agent, who, before receiving access to such information or documents, has been given and has read a copy of this Protective Order and has agreed to be bound by its terms by signing a confidentiality undertaking substantially in the form set forth at Exhibit A to this Order.

4. Any party to these Proceedings may challenge the designation by any other party of information or documents as “CONFIDENTIAL” by filing a motion with the Board or with an administrative law judge or other officer to whom authority has been lawfully delegated by the Board to adjudicate such challenge(s).

5. Designated Material may not be used for any purposes, including without limitation any business, commercial or competitive purposes, other than the preparation and presentation of evidence and argument in Docket No. EP 742, and/or any judicial review proceedings in connection with Docket No. EP 742.

6. Any party who receives Designated Material in the course of these Proceedings shall

destroy such materials and any notes or documents reflecting such materials (other than file copies of pleadings or other documents filed with the Board and retained by outside counsel for a party to these Proceedings) at the earlier of (1) such time as the party receiving the materials withdraws from these Proceedings, or (2) the completion of these Proceedings, including any petitions for reconsideration, appeals, or remands.

7. No party may include Designated Material in any pleading, brief, discovery request or response, or other document submitted to the Board, unless the pleading or other document is submitted under seal, in a package clearly marked on the outside as “Confidential Materials Subject to Protective Order.” See 49 C.F.R. § 1104.14. All pleadings and other documents so submitted shall be kept confidential by the Board and shall not be placed in the public docket in these Proceedings except by order of the Board or of an administrative law judge or other officer in the exercise of authority lawfully delegated by the Board.

8. No party may include Designated Material in any pleading, brief, discovery request or response, or other document submitted to any forum other than this Board in these Proceedings unless: (1) the pleading or other document is submitted under seal in accordance with a protective order that requires the pleading or other document to be kept confidential by that tribunal and not be placed in the public docket in the proceeding, or (2) the pleading or other document is submitted in a sealed package clearly marked, “Confidential Materials Subject to Request for Protective Order,” and is accompanied by a motion to that tribunal requesting issuance of a protective order that would require the pleading or other document be kept confidential and not be placed in the public docket in the proceeding, and requesting that if the motion for protective order is not issued by that tribunal, the pleading or other document be returned to the filing party.

9. No party may present or otherwise use any Designated Material at a Board hearing in these Proceedings, unless that party has previously submitted, under seal, all proposed exhibits and other documents containing or reflecting such Designated Material to the Board, or to an administrative law judge or other officer to whom relevant authority has been lawfully delegated by the Board, and has accompanied such submission with a written request that the Board, administrative law judge or other officer: (a) restrict attendance at the hearing during any discussion of such Designated Material, and (b) restrict access to any portion of the record or briefs reflecting discussion of such Designated Material in accordance with this Protective Order.

10. If any party intends to use any Designated Material in the course of any deposition in these Proceedings, that party shall so advise counsel for the party producing the Designated Material, counsel for the deponent, and all other counsel attending the deposition. Attendance at any portion of the deposition at which any Designated Material is used or discussed shall be restricted to persons who may review that material under the terms of this Protective Order. All portions of deposition transcripts or exhibits that consist of, refer to, or otherwise disclose Designated Material shall be filed under seal and be otherwise handled as provided under the terms of this Protective Order.

11. To the extent that materials reflecting Confidential Information are produced by a party in these Proceedings, and are held and/or used by the receiving person in compliance with the terms of this Protective Order, such production, disclosure, holding, and use of the materials and of the data that the materials contain are deemed essential for the disposition of these Proceedings and will not be deemed a violation of 49 U.S.C. § 11904 or of any other relevant provision of the ICC Termination Act of 1995.

12. All parties must file simultaneously a public version of any Confidential submission filed with the Board. The Confidential Version may be served on other parties in electronic format only.

13. All parties must comply with all of the provisions of this Protective Order unless the Board or an administrative law judge or other officer exercising authority lawfully delegated by the Board determines that good cause has been shown warranting suspension of any of the provisions herein.

14. Nothing in this Protective Order restricts the right of any party to disclose voluntarily any Confidential Information originated by that party, or to disclose voluntarily any Confidential Documents originated by that party, if such Confidential Information or Confidential Documents do not contain or reflect any Confidential Information originated by any other party or non-party.

Exhibit A

UNDERTAKING – CONFIDENTIAL
MATERIAL

I, _____ have read the Protective Order served on _____, 2017, governing the production and use of Confidential Information and Confidential Documents in Docket No. EP 742 understand the same, and agree to be bound by its terms. I agree not to use or to permit the use of any Confidential Information or Confidential Documents obtained pursuant to that Protective Order, or to use or to permit the use of any methodologies or techniques disclosed or information learned as a result of receiving such data or information, for any purpose other than the preparation and presentation of evidence and argument in Docket No. EP 742, and/or any judicial review proceedings in connection with Docket No. EP 742. I further agree not to disclose any Confidential Information, Confidential Documents, methodologies, techniques, or data obtained pursuant to the Protective Order except to persons who are also bound by the terms of the Order and who have executed Undertakings in the form hereof. At the conclusion of this proceeding (including any proceeding on administrative review, judicial review, or remand), I will promptly destroy any documents containing or reflecting materials designated or stamped as “CONFIDENTIAL,” other than file copies, kept by outside counsel, of pleadings and other documents filed with the Board.

I understand and agree that money damages would not be a sufficient remedy for breach of this Undertaking and that parties producing Confidential Information or Confidential Documents shall be entitled to specific performance and injunctive and/or other equitable relief as a remedy for any such breach, and I further agree to waive any requirement for the securing or posting of any bond in connection with such remedy. Such remedy shall not be deemed to be the exclusive remedy for breach of this Undertaking but shall be in addition to all remedies available at law or equity.

Name: _____

Affiliation: _____

Dated: _____



ROBERT E. MURRAY
Chairman, President &
Chief Executive Officer

August 16, 2017

PHONE: (740) 338-3100
FAX: (740) 695-7014
EMAIL: bobmurray@coalsource.com
WEBSITE: www.murrayenergycorp.com

Ms. Donna M. Alvarado, Director
CSX Transportation, Inc. Board of Directors
500 Water Street, C160
Jacksonville, Florida 32202

Subject: Request to the Board of Directors for Immediate Assistance to Resolve Critical Rail Service Issues with CSX Transportation, Inc.

Dear Ms. Alvarado:

As a member of the Board of Directors of CSX Transportation, Inc. ("CSX"), it is urgent that you become aware of the disastrous situation being caused in our Country by the current management of CSX. Accordingly, we are taking the extraordinary step of contacting you directly, as you are positioned to correct this dire situation and to remedy the continuing lack of service to our Companies by CSX. This lack of service is financially destructive to our Companies, and threatens the jobs and family livelihoods of tens of thousands of our citizens.

We have repeatedly brought this matter to the attention of CSX's management, over the past several years and months, including Mr. E. Hunter Harrison, Chief Executive Officer. Since 2015, CSX has failed to deliver one hundred seventy-seven (177) scheduled and permitted 15,000 ton coal trains at our Foresight Energy, LP in Illinois and another one hundred (100) trains to Murray Energy Corporation in West Virginia. This is \$166,200,000 worth of coal at \$40.00 per ton.

We cannot even get a CSX representative to attend our daily and weekly meetings between our Companies, as shippers, our electric utility customers, who do attend, and the CSX Railroad. Mr. Harrison recently said "Coal is dead", and, the CSX is seeing that that prophesy becomes reality immediately.

The complete lack of service is not only to Murray Energy Corporation, but, as widely currently reported across the Country, other coal producers are complaining as well. This abdication of service is not consistent with the exclusive charter and monopoly granted railroads in the United States to ship goods and commodities in interstate commerce, under Title 49, United States Code, Sections 11101 and 11121(a)(1).

We ask that you, and your fellow directors, investigate the situation and direct management to address this critical issue. This is consistent with your fiduciary obligation to the shareholders and the corporation. Indeed, Article II, Section 1 of the CSX Bylaws, amended and restated as of July 7, 2017, provides that the "affairs and business of the Corporation shall be managed under the direction of the Board of Directors." We do not know what you believe your personal responsibility is as a Director of CSX, but, in view of the destruction being caused by the management that you hired since 2015, and especially this year, this will be tested in view of the millions of dollars of destruction involved.

Murray Energy Corporation and our Subsidiary Companies, including Foresight Energy, LP (collectively "Murray Energy"), cannot sit idly by and let CSX bankrupt our Companies and cause our customers to obtain their coal elsewhere. For at least the last three (3) years, the service of CSX has been extremely unacceptable and damaging. Many months we received only seventy percent (70%) of the scheduled trains that are necessary to ship our coal or less. Now we are only receiving one-half (1/2) of our permitted and scheduled service. And, the CSX is losing millions of dollars in revenue. The CSX service has been the worst of any railroad in the entire United States. CSX has a monopoly on service to us, as provided by a misguided United States Congress.

As background, Murray Energy is the largest privately-owned coal company in the United States operating mines at twelve (12) mining complexes located in three (3) of the major coal producing regions – Northern Appalachia, the Illinois Basin and the Uintah Basin in Utah. For Murray Energy and its operating companies, the availability of reliable rail transportation for the delivery of coal to our customers is an absolutely essential element of our business. Moreover, the timely and regular receipt of coal is of equal importance to our customers that use the coal in generating the electricity that powers the Nation's industrial base and provides heat and light to its residents.

We must emphasize that, when talking about the train percentages mentioned above, we are dealing with huge quantities of our product. Our coal trains each typically contain fifteen thousand (15,000) tons of coal. For example, if, in any month, we receive only seventy-five percent (70%) of the trains scheduled for that month, we would be missing out on shipping over two hundred twenty thousand (220,000) tons of coal. At a typical price of \$40 per ton, each train represents \$600,000 of revenue for us. This is causing our Companies unavoidable financial hardship, and could, ultimately lead to their downfall and the loss of employment of the majority of our nearly 6,000 employees.

Enclosed is documentation that will evidence the extremely poor service of CSX.

- Exhibit A evidences the non-performance of CSX with regard to the Murray American Energy, Inc. Mines, in West Virginia, for the years 2015, 2016, and 2017, broken down by month.
- Exhibit B evidences the non-performance of CSX with regard to the Foresight Energy, LP Mines for the years 2015, 2016, and 2017, broken down by month.

- Exhibit C evidences the non-performance of CSX with regard to the Foresight Energy Sugar Camp Mine in Illinois for the month of August, 2017, to date. For confidentiality reasons, all customer information has been redacted.

We trust that the information contained in this letter and enclosures evidence the extremely dire situation in which we find ourselves, as well as the lack of performance, and even concern (not even joining our regular coordination telephone calls or providing sufficient crews and equipment) that has been demonstrated to the CSX management. We have attempted, in so many different ways, to get CSX to work with us in order to find a solution to our problems. They have refused to do so. We have gone so far as to file civil litigation, as well as formal complaints with the Surface Transportation Board, all to no avail, as CSX remains adamant in failing to provide adequate service. We attach copies of our pleadings in these four (4) legal matters.

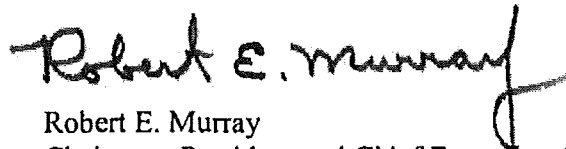
Taking this action in reaching out to you truly was a "last resort" for us, but we are hopeful that, in taking this step, CSX's performance will improve, thereby allowing us to get our coal to our customers that they have requested and that CSX is obligated to transport and deliver and, in fact, thereby keeping our Companies and employees out of bankruptcy.

CSX is "leaving money on the table," by failing to move our coal, and your shareholders, to which you owe a fiduciary duty, are being harmed as a result. Accordingly, we respectfully request that you call a Special Meeting under the auspices of Section 6 of Article II of your bylaws and that you address and correct this situation. The failure to do so is a disservice to your shareholders and a breach of your fiduciary duty and your personal responsibilities.

Please let us know if you need any additional information, and do not hesitate to reach out to me directly.

Sincerely,

MURRAY ENERGY CORPORATION

A handwritten signature in black ink that reads "Robert E. Murray". The signature is written in a cursive, flowing style with a large, prominent "R" and "M".

Robert E. Murray
Chairman, President and Chief Executive Officer

REM:jas
Enclosures
cc: Mr. E. Hunter Harrison

A

MURRAY AMERICAN ENERGY INC. - CSX Performance

CY 2015

MONTH	Monongalia County			Marion County			Harrison County			TOTAL MAEI CSX TRAINS		
	Scheduled	Loaded	% Loaded	Scheduled	Loaded	% Loaded	Scheduled	Loaded	% Loaded	Scheduled	Loaded	% Loaded
January			25%			54%			78%			68%
February			100%			91%			73%			78%
March			N/A			82%			86%			86%
April			N/A			93%			82%			85%
May			N/A			83%			76%			77%
June			N/A			100%			94%			95%
July			N/A			100%			77%			82%
August			N/A			100%			80%			82%
September			N/A			N/A			100%			100%
October			100%			100%			100%			100%
November			N/A			100%			91%			92%
December			100%			100%			100%			100%
TOTAL MAEI CSX TRAINS -- CY 2015												83.8%

CY 2016

MONTH	Monongalia County			Marion County			Harrison County			TOTAL MAEI CSX TRAINS		
	Scheduled	Loaded	% Loaded	Scheduled	Loaded	% Loaded	Scheduled	Loaded	% Loaded	Scheduled	Loaded	% Loaded
January			100%			100%			100%			100%
February			100%			N/A			100%			100%
March			100%			100%			100%			100%
April			100%			50%			100%			94%
May			92%			100%			60%			88%
June			100%			N/A			83%			90%
July			80%			100%			100%			91%
August			64%			88%			92%			81%
September			100%			88%			90%			90%
October			100%			86%			100%			97%
November			92%			83%			76%			83%
December			100%			100%			77%			83%
TOTAL MAEI CSX TRAINS -- CY 2016												89.7%

MURRAY AMERICAN ENERGY INC. - CSX Performance

CY 2017

Monongalia County				Marion County			Harrison County			TOTAL MAEI CSX TRAINS		
MONTH	Scheduled	Loaded	% Loaded	Scheduled	Loaded	% Loaded	Scheduled	Loaded	% Loaded	Scheduled	Loaded	% Loaded
January			100%			N/A			95%			96%
February			100%			N/A			88%			89%
March			100%			100%			92%			93%
April			N/A			89%			80%			83%
May			100%			100%			100%			100%
June			50%			N/A			100%			93%
July			71%			100%			100%			89%
August *			100%			100%			67%			83%
TOTAL MAEI CSX TRAINS - YTD 2017												91.0%
GRAND TOTAL												87%

* August thru 8/15/2107

B

Foresight Energy - CSX Performance

CY 2015 Trains

MONTH	Foresight Energy		
	Scheduled	Loaded	% Loaded
January			76%
February			73%
March			77%
April			102%
May			96%
June			96%
July			94%
August			98%
September			100%
October			89%
November			79%
December			95%
TOTAL- CY 2015			89.6%

CY 2016

MONTH	Foresight Energy		
	Scheduled	Loaded	% Loaded
January			88%
February			88%
March			106%
April			85%
May			112%
June			115%
July			115%
August			109%
September			98%
October			87%
November			72%
December			87%
TOTAL- CY 2016			97.4%

CSX Performance

8/3/2017

2017 Tons Loaded

Month	Scheduled	Actual	% Loaded	Delta
January			82%	
February			82%	
March			76%	
April			84%	
May			83%	
June			86%	
July			61%	
YTD Totals			79%	

2017 # of Trains

Month	Scheduled	Actual	% Loaded	Delta
January			80%	
February			81%	
March			75%	
April			87%	
May			85%	
June			86%	
July			61%	
YTD Totals			79%	

C

Sugar Camp Schedule

8.11.17

Customer	Plant	Trains Nominated	Trains Shipped	% Shipped
				33%
				33%
				20%
				43%
				33%
Total Trains				27%

Note: Trains are classified as Shipped once loaded and released

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**Before the Surface Transportation Board
Washington, D.C. 20423**

CONSOLIDATION COAL COMPANY,	)	
Complainant,	)	Docket: NOR-42156
v.	)	
	)	
CSX TRANSPORTATION, INC.,	)	
Defendant.	)	

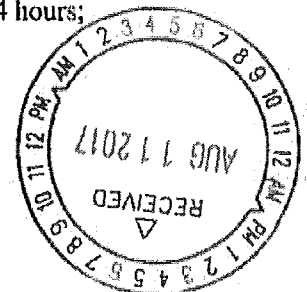
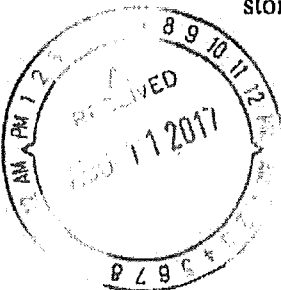
COMPLAINT

Pursuant to 49 U.S.C. § 11101, 49 U.S.C. § 10702, 49 U.S.C. § 11121, and 49 C.F.R. Part 1111, and other applicable authorities, Complainant, Consolidation Coal Company ("Consolidation Coal"), by counsel, states as follows for its complaint against CSX Transportation, Inc. ("CSXT"):

1. The address of the principal place of business for Consolidation Coal is 46226 National Road, St. Clairsville, Ohio 43950.
2. CSXT's address is 500 Water Street, Jacksonville, Florida 32202.

SUMMARY OF RELIEF REQUESTED

3. Consolidation Coal requests an order from the Surface Transportation Board ("Board"):
 - a. directing CSXT to establish reasonable rules and practices to complete crew changes so that the departure of crews from the train occurs simultaneously with the next crew arriving at the train;
 - b. directing CSXT to establish reasonable rules and practices to prevent the storage of trains on side-tracks for periods greater than 24 hours;



- c. directing CSXT to establish reasonable rules and practices to meaningfully address the service inadequacies experienced by Foresight;
- d. requiring CSXT to provide sufficient equipment and trains to timely transport the coal requested by Foresight, as scheduled and confirmed by CSXT's web-based reservation system;
- e. directing CSXT to establish reasonable rules and practices to develop an adequate power plan to maintain an uninterrupted supply chain; and
- f. granting Complainant all other proper relief.

FACTUAL BACKGROUND

4. Consolidation Coal is a subsidiary of Murray Energy Corporation ("Murray Energy").

5. Murray Energy is the largest privately owned coal company in the United States, operating mines at nine (9) mining complexes located in three (3) of the major coal producing regions: Northern Appalachia, the Illinois Basin and the Uintah Basin in Utah.

6. For Murray Energy and its operating companies, including Consolidation Coal, the availability of reliable rail transportation for the delivery of coal to its customers is an absolutely essential element of Murray Energy's business. Moreover, the timely and regular receipt of coal is of equal importance to its customers that use the coal in generating the electricity that powers the Nation's industrial base and provides heat and light to its residents.

7. Consolidation Coal operates coal mines in the Northern Appalachian region. As such, Consolidation Coal has entered into coal supply contracts with various coal purchasers to supply coal from the Monongalia County Mine, the Marion County Mine, the Marshall County

Mine, the Ohio County Mine, and the Harrison County Mine, all in West Virginia. Many of Consolidation Coal's customers use CSXT for rail transportation of the coal.

8. Over recent years, Consolidation Coal has experienced severe and unacceptable delays in transporting its coal to customers due to innumerable transportation delays and failures by CSXT. In 2017, the delays have included the following:

- a. CSXT failing to provide trains and crews on schedule;
- b. CSXT failing to provide a sufficient number of trains;
- c. CSXT failing to pull loaded trains on schedule;
- d. CSXT delaying in-transit shipments;
- e. CSXT prioritizing other shipments without a valid cause;
- f. CSXT failing to communicate critical logistics information to Consolidation Coal.

9. Consolidation Coal has suffered significant and debilitating operational delays and inefficiencies resulting from CSXT's poor service, with Consolidation Coal suffering very negative and damaging financial impacts to the overall success of its coal mining operations.

10. The transportation of coal from the Monongalia County Mine, the Marion County Mine, and the Harrison County Mine is facilitated by Consolidation Coal's participation in a web-based reservation system maintained by CSXT. In a given month, Consolidation Coal provides CSXT an estimated number of coal shipments required for the following month for each of Consolidation Coal's customers, typically thirty (30) days in advance. Using CSXT's web-based reservation system, Consolidation Coal and its coal purchaser customers then timely confirm a specific number of trains to be transported by CSXT in the following month, typically fifteen (15) days in advance of shipments.

11. Since at least 2015, and even with Consolidation Coal's participation in the web-based reservation systems, CSXT has caused the delay or cancellation of an extraordinary number of trains scheduled to originate out of the Monongalia County Mine, the Marion County Mine, and/or the Harrison County Mine. This has occurred even though during the web-based reservation process described above, while CSXT had access to and knowledge of the number of trains requested and confirmed, at no time did CSXT give any indication that it would be unable to handle the requested number of trains.

12. Since 2015 and continuing to the present time, Consolidation Coal has proactively engaged CSXT personnel at all levels, from the hands-on logistical level to the highest executive levels, to express its extreme dissatisfaction with CSXT's severe service inadequacies and to discuss options to remedy the critical situation.

13. Consolidation Coal has repeatedly notified CSXT of its service deficiencies and has requested that improvements be made.

14. Consolidation Coal personnel went above and beyond by committing to daily telephone calls with CSXT. The purpose of these calls was to walk CSXT personnel through the granular logistical necessities of how to timely supply the number of trains requested by Consolidation Coal (which CSXT should have been equipped to determine without such extreme hand-holding from Consolidation Coal).

15. Although CSXT personnel participated in these calls at first, within a matter of weeks they demonstrated a complete and total lack of cooperation and effort by refusing, without explanation, to continue participating in the calls.

16. Ultimately, the comments and concerns of Consolidation Coal have not been adequately addressed, and CSXT has done absolutely nothing to improve their service to Consolidation Coal.

17. On July 19, 2017, Consolidation Coal availed itself of the Board's Rail Customer and Public Assistance Program in an effort to resolve CSXT's ongoing service failures. Regrettably, this process did not improve CSXT's awful service.

18. From January 1, 2017 to July 20, 2017, CSXT failed to provide 9 scheduled trains.

19. All indications are that the train delays and transportation failures lie entirely under the control of CSXT. Despite prolonged and extensive efforts on the part of Consolidation Coal to engage CSXT directly and to solicit the assistance of the Board's Rail Customer and Public Assistance Program, CSXT has provided no meaningful plan for improvement. Thus, the tremendously detrimental service inadequacies persist.

20. At this point, CSXT's service in moving coal to Consolidation Coal's customers can only be described as abysmal and a complete and total failure. In fact, CSXT's performance has substantially deteriorated in 2017 under the tenure of Mr. E. Hunter Harrison as Chief Executive Officer, which follows logically from Mr. Harrison's well-publicized aversion to devoting any of CSXT's efforts and assets toward the shipment of coal.

21. The impact of the service inadequacies is, and has been, severe and costly to Consolidation Coal. Consolidation Coal typically utilizes medium to long term coal supply contracts, which renders it highly impractical for Consolidation Coal to find other coal purchasers on a short-term spot sale basis to sell coal that has been produced which CSXT is unable to transport. Thus, each train car that is not timely shipped by CSXT represents a lost opportunity for a sale.

22. Moreover, due to the limited storage space at the actual mine operations, production must be reduced and standard activities altered when stockpiles get too high because of CSXT's failure to take trains when scheduled. These adjustments to the production schedule result in devastating increases to Consolidation Coal's mining costs.

23. Due to CSXT's failure to take the required steps to ensure it met the approved deliveries, Consolidation Coal was unable to complete certain orders that had been placed by coal purchasers, confirmed by Consolidation Coal, and accepted by CSXT.

GROUND'S FOR RELIEF

24. CSXT has unreasonably reduced the amount of rail service that it provides to transport and deliver coal by rail as requested by Consolidation Coal.

25. By failing and refusing to transport and deliver by rail all of the coal requested by Consolidation Coal to be transported and delivered, CSXT has refused and failed to comply with its obligation under 49 U.S.C. § 11101(a) to provide transportation service on reasonable request.

26. In connection with its failure to carry out its common carrier obligations, CSXT also engaged in unreasonable practices and business activities, including without limitation engaging in imprudent cost-cutting initiatives detrimental to CSXT's ability to provide adequate service, particularly to the coal industry; failing to adopt and implement operating plans sufficient to meet shipper demand; and failing to engage in reasonable proactive steps to improve the severe and prolonged service failures brought to its attention by Consolidation Coal.

27. By failing and refusing to establish and engage in reasonable rules and practices with respect to the transport and delivery of coal by rail as requested by Consolidation Coal, CSXT has refused and failed to comply with its obligation under 49 U.S.C. § 10702(2) to establish and engage in reasonable rules and practices concerning such transportation.

28. In connection with its failure to carry out its common carrier obligations, CSXT also engaged in unreasonable practices and business activities concerning its provision of equipment that resulted in CSXT's failure to provide safe and adequate car service and equipment, including without limitation engaging in imprudent cost-cutting initiatives detrimental to CSXT's ability to provide adequate service, particularly to the coal industry; failing to adopt and implement operating plans sufficient to meet shipper demand; and failing to engage in reasonable proactive steps to improve the severe and prolonged service failures brought to its attention by Consolidation Coal.

29. By failing to provide safe and adequate car service and equipment for the shipment of coal by rail as requested by Consolidation Coal, CSXT has refused and failed to comply with its obligation under 49 U.S.C. § 11121(a) to provide safe and adequate car service and equipment.

PRAYER FOR RELIEF

WHEREFORE, Consolidation Coal respectfully requests that the Board issue an order

- a. directing CSXT to establish reasonable rules and practices to complete crew changes so that the departure of crews from the train occurs simultaneously with the next crew arriving at the train;
- b. directing CSXT to establish reasonable rules and practices to prevent the storage of trains on side-tracks for periods greater than 24 hours;
- c. directing CSXT to establish reasonable rules and practices to meaningfully address the service inadequacies experienced by Foresight;

- d. requiring CSXT to provide sufficient equipment and trains to timely transport the coal requested by Foresight, as scheduled and confirmed by CSXT's web-based reservation system;
- e. directing CSXT to establish reasonable rules and practices to develop an adequate power plan to maintain an uninterrupted supply chain; and
- f. granting Complainant all other proper relief.

Respectfully submitted,



Bradley D. Hasler, IN atty no. 22384-49
BINGHAM GREENEBAUM DOLL LLP
2700 Market Tower, 10 W. Market Street
Indianapolis, IN 46204-4900
Telephone: (317) 635-8900
Facsimile: (317) 236-9907
bhasler@bgdlegal.com

Attorney for Complainant,
Consolidation Coal Company

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on August 11, 2017, a copy of the foregoing was sent to the following by overnight express courier:

Ellen M. Fitzsimmons
Executive Vice President of Law and Public Affairs, General Counsel and Corporate Secretary
CSX Corporate Headquarters
500 Water Street, 15th Floor
Jacksonville, FL 32202



FILED

CIVIL CASE INFORMATION STATEMENT

2017 JUL 31 PM 3:41

CIVIL CASES

JOSEPH M. FURK

In the Circuit Court of Marshall County, West Virginia

I. CASE STYLE:

Plaintiff(s)

Case # 17-C-158C

Consolidation Coal Co.
46226 National Road
St. Clairsville, OH 43950

Judge Cramer

vs.

Defendant(s)

Days to
Answer

Type of Service

CSX Transportation, Inc.
c/o CT Corporation System
5400 D Big Tyler Road
Charleston, WV 25313

30

Secretary of State

Original and __ copies of Complaint furnished herewith.

PLAINTIFF: Consolidation Coal. Co. DEFENDANT: CSX Transportation, Inc.	CASE NUMBER:
---	--------------

II. TYPE OF CASE:

TORTS	OTHER CIVIL	
☐ Asbestos	☐ Adoption	☐ Appeal from Magistrate Court
☐ Professional Malpractice	☐ Contract	☐ Petition for Modification of Magistrate Sentence
☐ Personal Injury	☐ Real Property	☐ Miscellaneous
☐ Product Liability	☐ Mental Health	☒ Other
☐ Other Tort	☐ Appeal of Administrative Agency	

III. JURY DEMAND: ☒ Yes ☐ No

CASE WILL BE READY FOR TRIAL BY (MONTH/YEAR): 5 / 2018

IV. DO YOU OR ANY OF YOUR CLIENTS OR WITNESSES IN THIS CASE REQUIRE SPECIAL ACCOMMODATIONS DUE TO A DISABILITY OR AGE? ☐ YES ☒ NO
IF YES, PLEASE SPECIFY:

- ☐ Wheelchair accessible hearing room and other facilities.
- ☐ Interpreter or other auxiliary aid for the hearing impaired.
- ☐ Reader or other auxiliary aid for the visually impaired.
- ☐ Spokesperson or other auxiliary aid for the speech impaired.
- ☐ Other: _____

Attorney Name: David L. Delk, Jr.

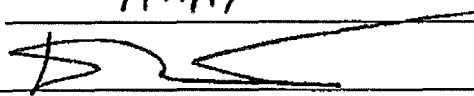
Representing:

Firm Name: Grove, Holmstrand & Delk, PLLC

☒ Plaintiff ☐ Defendants

Address: 44 1/2 15th Street
Wheeling, WV 26003

Telephone: (304) 905-1961

Dated: 7/31/17

Signature

FILED

IN THE CIRCUIT COURT OF MARSHALL COUNTY, WEST VIRGINIA

2017 JUL 31 PM 3:41

Consolidation Coal Co.,

: Case No.

Plaintiff,

: Judge:

v.

:

CSX Transportation, Inc.,

:

JURY DEMAND

:

Defendant.

:

:

COMPLAINT

Plaintiff Consolidation Coal Company ("Consolidation") for its complaint for relief against the Defendant, CSX Transportation, Inc. ("CSX"), states as follows:

PARTIES

1. Consolidation is a Delaware corporation with its principal place of business in St. Clairsville, Ohio. Plaintiff Consolidation operates several coal mines in Marshall County, West Virginia.

2. CSX Transportation, Inc., is a Virginia Corporation with a principal place of business located in Jacksonville, Florida.

JURISDICTION

3. This Court has personal jurisdiction over Defendant because Defendant entered into contracts with Consolidation for the delivery of coal from Consolidation's mines in Marshall County, West Virginia to Consolidation's customers, and/or because the actions of Defendant caused harm in Marshall County, West Virginia, and/or because Defendant maintains a general presence and is authorized to transact business in West Virginia.

4. Venue is proper in the Circuit Court of Marshall County, under West Virginia Code §56-1-1.

FACTS

5. Consolidation supplies coal to multiple purchasers located in several different States, including Ohio, Illinois, South Carolina, and North Carolina.

6. Consolidation's customers have contracts with Defendant to provide rail services that Consolidation uses to ship its coal to the customers.

7. Both Consolidation and Consolidation's customers are entirely dependent on Defendant to transport the coal. Defendant is aware of the vital position it holds and all of the contractual relationships among Consolidation, Consolidation's customers; and Defendant.

8. Since 2015, Defendant has missed numerous obligations under its agreements with Consolidation's customers to provide train transportation of coal.

Customer 1

9. Under a January 11, 2012 contract, Consolidation is required to supply coal to a subsidiary of Customer 1.

10. Consolidation and Customer 1 agreed that the coal would be delivered to Customer 1 free-on-board ("FOB") barge at Consolidation's barge fleet facility located on the West Virginia side of the Ohio River at mile 93.7.

11. Upon information and belief, Customer 1 has an agreement with CSX for shipping from the mine.

Customer 2

12. Consolidation entered into contracts in December 2014 to supply coal to Customer 2.

13. Under those various agreements, Consolidation was required to deliver the coal FOB at Consolidation's mines.

14. Upon information and belief, Customer 2 had agreements with CSX for shipping from the mine.

Customer 3

15. Consolidation entered into numerous contracts with Customer 3 between October 2013 and September 2016 to supply coal to Customer 3.

16. Under those contracts, Consolidation was usually required to deliver the coal FOB at CSX's Curtis Bay facility.

17. Consolidation had agreements with CSX for shipping from Consolidation's mines to Curtis Bay.

Customer 4

18. Consolidation entered into a contract with Customer 4 in August 2006 to supply coal to Customer 4.

19. Under those contracts, Consolidation loaded the coal onto CSX trains as Consolidation's mines.

20. Upon information and belief, Customer 4 had agreements with CSX for shipping from the mines.

Customer 5

21. Consolidation entered into a contract with Customer 5 in January 2015 to supply coal to Customer 5.

22. Under that contract, Consolidation delivered the coal FOB railcar at Consolidation's loadout points located near Consolidation's mines.

23. Upon information and belief, Customer 5 had agreements with CSX for shipping from Consolidation's mines.

Customer 6

24. Consolidation entered into contracts with Customer 6 in June 2014, December 2014 and October 2016 to supply coal to Customer 6.

25. Under those contracts, Consolidation delivered the coal FOB railcar at Consolidation's loadout points located near Consolidation's mines.

26. Upon information and belief, Customer 6 had agreements with CSX for shipping from the mines.

Customer 7

27. Consolidation entered into a contract with Customer 7 in June 2016 to supply coal to Customer 7.

28. Under that contract, Consolidation delivered the coal FOB railcar at Consolidation's mines.

29. Upon information and belief, Customer 7 had agreements with CSX for shipping from Consolidation's mines.

Delivery Delays Caused by CSX

30. Consolidation's contracts with Customers 1 through 7 (collectively, the "Purchasers") are hereinafter referred to collectively as the "Agreements."

31. In each instance as referenced above, Customers 1 through 2 and 4 through 7 reached an agreement with CSX to provide rail transportation services for the coal purchased under their respective coal supply contracts with Consolidation. With respect to Customer 3, Consolidation had a direct contract with CSX for transportation of coal. CSX's timely performance was an essential component for delivery of the purchased coal.

32. CSX provided access to its web-based reservation system for use related to all of the Agreements.

33. Specifically, for each order placed under any of the Agreements, CSX would obtain from Consolidation an estimation of the total amount and number of deliveries to occur during the upcoming month. This estimate typically occurred one month before the shipments were to begin.

34. Thereafter, the Purchasers would access CSX's web-based reservation system and identify the specific number of train cars and coal requested for that month under each of the Agreements. Consolidation would then confirm that they could produce the amount of coal requested. This typically occurred fifteen (15) days before the shipments were to begin.

35. The Purchasers could adjust the total number of projected shipments after Consolidation confirmed they could produce the coal requested if they discovered they needed additional amounts and/or to make up shortfall from the prior month.

36. At no time during the relevant time period did CSX reject the proposals from the Purchasers that were accepted by Consolidation.

37. In every instance, CSX had access to and knowledge of the confirmation and acceptance because this information was provided to CSX through its web-based reservation system.

38. CSX repeatedly failed to take appropriate actions to ensure approved and/or agreed on deliveries were met. On information and belief, CSX's failures included, but are not limited to:

- a. failing, intentionally and/or negligently, to provide adequate crews and engines;

- b. intentionally and/or negligently delaying in-transit shipments, which caused CSX to be unable to return and retrieve additional trains for transit;
- c. failing, intentionally and/or negligently, to anticipate and take necessary actions for scheduled trains; and
- d. intentionally and/or negligently prioritizing other shipments without valid cause.

39. Due to CSX's failure to take the required steps to ensure it met the approved deliveries, Consolidation was forced to delay and/or cancel at least 38 trains from 2015 to the present:

- a. In 2015, CSX caused, in whole or in part, seven trains scheduled on behalf of Customer 1 to be delayed and/or canceled.
- b. In 2015, CSX caused, in whole or in part, three trains scheduled on behalf of Customer 2 to be delayed and/or canceled.
- c. In 2015, CSX caused, in whole or in part, seven trains scheduled on behalf of Customer 5 to be delayed and/or canceled.
- d. In 2016, CSX caused, in whole or in part, ten trains scheduled on behalf of Customer 3 to be delayed and/or canceled.
- e. In 2016, CSX caused, in whole or in part, one train scheduled on behalf of Customer 4 to be delayed and/or canceled.
- f. In 2016, CSX caused, in whole or in part, one train scheduled on behalf of Customer 6 to be delayed and/or canceled.
- g. In 2016, CSX caused, in whole or in part, one train scheduled on behalf of Customer 7 to be delayed and/or canceled.

h. In 2017, CSX caused, in whole or in part, one train scheduled on behalf of Customer 3 to be delayed and/or canceled.

i. In 2017, CSX caused, in whole or in part, one train scheduled on behalf of Customer 6 to be delayed and/or canceled.

40. Thus, due to the foregoing, CSX caused, intentionally or negligently, in whole or in part, thirty-eight trains scheduled by Consolidation through CSX's web-based reservation system to be delayed and/or cancelled.

41. CSX's failures caused Consolidation to incur significant costs in managing, restocking, and storing coal reserves to meet the requirements under the Agreements. Consolidation was also forced to forego acquiring additional contracts and earning additional profits due to the delay in shipment of coal from their holding facilities. CSX's actions caused additional harm by forcing delays to Consolidation's production schedule, which in turn caused tonnage costs to increase.

COUNT I:
BREACH OF CONTRACT

42. Consolidation incorporates all of the above paragraphs as if fully rewritten herein.

43. CSX agreed to provide the necessary crew, engines, and other requirements for delivering the loaded railcars by accepting the requests and confirmations processed on the CSX web-based reservation system, and/or took other actions intended to cause Consolidation and the Purchasers to conclude that CSX agreed to provide the necessary crew, engines, and other requirements for delivering the loaded railcars.

44. The demands by the individual Purchasers, the acceptance by Consolidation, and the agreement/acceptance by CSX constitute accepted, enforceable agreements.

45. CSX failed to provide the necessary crew, engines, and other requirements for delivering the loaded railcars.

46. CSX's failure to provide the necessary crew, engines and other requirements for delivering the loaded railcars caused Consolidation to suffer damages, including but not limited to missed sales opportunities, increased storage and maintenance costs, and increased production costs.

COUNT II:
PROMISSORY ESTOPPEL

47. Consolidation incorporates all of the above paragraphs as if fully rewritten herein.

48. CSX made a clear and unambiguous promise to Consolidation through its web-based reservation system to provide the necessary crew, engines, and other requirements for delivering the loaded railcars, and led Consolidation to conclude that CSX agreed to provide the necessary crew, engines and other requirements for delivering the loaded railcars.

49. Consolidation reasonably relied on CSX's promise to provide the necessary crew, engines, and other requirements for delivering the loaded railcars because CSX never rejected or otherwise indicated that it would not fulfill Consolidation's requests.

50. CSX's failure to provide the necessary crew, engines, and other requirements for delivering the loaded railcars caused Consolidation to suffer damages, including but not limited to missed sales opportunities, increased storage and maintenance costs, and increased production costs.

COUNT III:
INTENTIONAL INTERFERENCE WITH CONTRACT

51. Consolidation incorporates all of the above paragraphs as if fully rewritten herein.

52. Consolidation has valid, enforceable contracts with Purchasers.

53. Consolidation has ongoing business relationships with Purchasers.

54. CSX knew about the contracts and the ongoing business relationships between Consolidation and Purchasers because CSX was an active participant in those relationships.

55. CSX intentionally procured the breach of the contracts between Consolidation and Purchasers by refusing to provide the necessary crew, engines, and other requirements, which caused Consolidation to be unable to comply with its contracts with Purchasers.

56. CSX had no justification for its intentional actions.

57. Consolidation has suffered damages as a result of CSX's failure to provide the necessary crew, engines, and other requirements for delivering the loaded railcars, including but not limited to, missed sales opportunities, increased storage and maintenance costs, and increased production costs.

COUNT IV:
BREACH OF CONTRACT (THIRD PARTY BENEFICIARY)

58. Consolidation incorporates all of the above paragraphs as if fully rewritten herein.

59. Upon information and belief, CSX entered into agreements with Purchasers to provide shipping services related to the coal Purchasers bought from Consolidation.

60. Consolidation was an intended beneficiary of those contracts because CSX knew it was transporting coal for the benefit of Consolidation. CSX knew that it had to supply the necessary crew, engines, and other equipment for Consolidation to be able to fulfill its obligations to Purchasers to deliver coal.

61. CSX breached its contracts with Purchasers by failing to provide the necessary crew, engines, and other requirements for delivering the loaded railcars.

62. CSX's failure to provide the necessary crew, engines, and other requirements for delivering the loaded railcars caused Consolidation to suffer damages, including but not limited

to, missed sales opportunities, increased storage and maintenance costs, and increased production costs.

COUNT V:
PROMISSORY ESTOPPEL (THIRD PARTY BENEFICIARY)

63. Consolidation incorporates all of the above paragraphs as if fully rewritten herein.

64. CSX's actions or lack thereof regarding the request to provide railcars sent on the CSX web-based reservation system created a promise to Purchasers to provide the necessary crew, engines, and other requirements for delivering the coal, and led Consolidation to conclude that CSX agreed to provide the necessary crew, engines, and other requirements for delivering the loaded railcars.

65. Consolidation reasonably relied upon CSX's promise to provide the necessary crew, engines, and other requirements for delivering the loaded railcars.

66. By either affirming that CSX would provide the necessary crew engines and other requirements for delivering the loaded railcars or by failing to acknowledge their inability or refusal to do the same, CSX expected or should have expected Consolidation to rely on CSX's promise.

67. CSX failed to provide the necessary crew, engines, and other requirements for delivering the loaded railcars in violation of its agreements with Purchasers.

68. CSX's failure to provide the necessary crew, engines, and other requirements for delivering the loaded railcars caused Consolidation to suffer damages, including but not limited to, missed sales opportunities, increased storage and maintenance costs, and increased production costs.

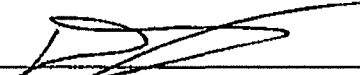
69. Enforcement of CSX's promise is required because it would otherwise result in an injustice that only enforcement of the promise can cure.

WHEREFORE, Consolidation respectfully demands judgment as follows:

1. Trial by jury;
2. Judgment in favor of Consolidation on all claims in an amount in excess of \$25,000;
3. Costs and attorneys' fees, if and where applicable; and
4. All other relief to which Consolidation is entitled.

PLAINTIFF DEMANDS TRIAL BY JURY ON ALL ISSUES

Respectfully submitted,



COUNSEL FOR PLAINTIFF

David L. Delk, Jr. (#6883)
GROVE, HOLMSTRAND & DELK, P.L.L.C.
44 ½ 15th Street
Wheeling, WV 26003
Telephone: (304) 905-1961
E-mail: ddelk@grovedelklaw.com

**Before the Surface Transportation Board
Washington, D.C. 20423**

FORESIGHT COAL SALES LLC,	)	
SUGAR CAMP ENERGY, LLC;	)	Docket: NOR-42155
WILLIAMSON ENERGY, LLC,	)	
Complainants,	)	
v.	)	
	)	
CSX TRANSPORTATION, INC.,	)	
Defendant.	)	

COMPLAINT

Pursuant to 49 U.S.C. § 11101, 49 U.S.C. § 10702, 49 U.S.C. § 11121, and 49 C.F.R. Part 1111, and other applicable authorities, Complainants, Foresight Coal Sales, LLC ("Foresight"), Sugar Camp Energy, LLC ("Sugar Camp"), and Williamson Energy, LLC ("Williamson Energy"), by counsel, state as follows for their complaint against CSX Transportation, Inc. ("CSXT"):

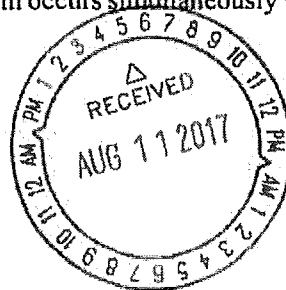
1. The address of the principal place of business for Foresight, Sugar Camp and Williamson Energy is One Metropolitan Square, 211 North Broadway, Suite 2600, St. Louis, Missouri 63102.

2. CSXT's address is 500 Water Street, Jacksonville, Florida 32202.

SUMMARY OF RELIEF REQUESTED

3. The Complainants request an Order from the Surface Transportation Board ("Board"):

- a. directing CSXT to establish reasonable rules and practices to complete crew changes so that the departure of crews from the train occurs simultaneously with the next crew arriving at the train;



- b. directing CSXT to establish reasonable rules and practices to prevent the storage of trains on side-tracks for periods greater than 24 hours;
- c. directing CSXT to establish reasonable rules and practices to meaningfully address the service inadequacies experienced by Foresight;
- d. requiring CSXT to provide sufficient equipment and trains to timely transport the coal requested by Foresight, as scheduled and confirmed by CSXT's web-based reservation system;
- e. directing CSXT to establish reasonable rules and practices to develop an adequate power plan to maintain an uninterrupted supply chain; and
- f. granting Complainants all other proper relief.

FACTUAL BACKGROUND

4. Foresight is a subsidiary of Foresight Energy, LLC. Foresight acts as contracting agent for Sugar Camp and Williamson Energy for the purpose of selling coal from specific mines, including the MC#1 Mine and Viking Mine located in southern Illinois.

5. For Foresight Energy, LLC and its operating companies, including Sugar Camp and Williamson Energy, the availability of reliable rail transportation for the delivery of coal to its customers is an absolutely essential element of Foresight Energy, LLC's business. Moreover, the timely and regular receipt of coal is of equal importance to its customers that contract for, purchase and use the coal in generating the electricity that powers the Nation's industrial base and provides heat and light to its residents.

6. Foresight is responsible for entering into coal supply contracts on behalf of Sugar Camp and Williamson Energy. As such, Foresight has entered into coal supply contracts with

various coal purchasers to supply coal from the MC#1 Mine and the Viking Mine. Many of Foresight's customers use CSXT for rail transportation of the coal.

7. Over recent years, Foresight has experienced severe and unacceptable delays in transporting its coal to customers due to innumerable transportation delays and failures by CSXT. In 2017, the delays have included the following:

- a. CSXT failing to provide trains and crews on schedule;
- b. CSXT failing to provide a sufficient number of trains;
- c. CSXT failing to pull loaded trains on schedule;
- d. CSXT delaying in-transit shipments;
- e. CSXT prioritizing other shipments without a valid cause;
- f. CSXT failing to communicate critical logistics information to Foresight.

8. Foresight has suffered significant and debilitating operational delays and inefficiencies resulting from CSXT's poor service, with Foresight suffering very negative and damaging financial impacts to the overall success of its coal mining operations.

9. The transportation of coal from the Sugar Camp and Williamson Energy mines is facilitated by Foresight's participation in a web-based reservation system maintained by CSXT. In a given month, Foresight provides CSXT an estimated number of coal shipments required for the following month for each of Foresight's customers, typically thirty (30) days in advance. Using CSXT's web-based reservation system, Foresight and its coal purchaser customers then timely confirm a specific number of trains to be transported by CSXT in the following month, typically fifteen (15) days in advance of shipments.

10. Since at least 2015, and even with Foresight's participation in the web-based reservation systems, CSXT has caused the delay or cancellation of an extraordinary number of

trains scheduled to originate out of the mines operated by Sugar Camp and/or Williamson Energy. This has occurred even though during the web-based reservation process described above, while CSXT had access to and knowledge of the number of trains requested and confirmed, at no time did CSXT give any indication that it would be unable to handle the requested number of trains.

11. Since 2015 and continuing to the present time, Foresight has proactively engaged CSXT personnel at all levels, from the hands-on logistical level to the highest executive levels, to express its extreme dissatisfaction with CSXT's severe service inadequacies and to discuss options to remedy the critical situation.

12. Foresight has repeatedly notified CSXT of its service deficiencies and has requested that improvements be made.

13. By letter dated March 14, 2017, Foresight notified the CEO of CSX Corporation that in only the first two weeks of March, CSXT had failed to load 20 scheduled trains. Foresight requested that CSXT take prompt corrective action.

14. By letter dated March 20, 2017, Foresight provided additional detail to the President of CSX Corporation concerning CSXT's unacceptable failure to load the requested number of scheduled trains.

15. Subsequently, Foresight personnel went above and beyond by first committing to weekly telephone calls with CSXT, and then committing further to daily telephone calls with CSXT. The purpose of these calls was to walk CSXT personnel through the granular logistical necessities of how to timely supply the number of trains requested by Foresight (which CSXT should have been equipped to determine without such extreme hand-holding from Foresight).

16. Although CSXT personnel participated in these calls at first, within a matter of weeks they demonstrated a complete and total lack of cooperation and effort by refusing, without explanation, to continue participating in the calls.

17. Ultimately, the comments and concerns of Foresight have not been adequately addressed, and CSXT has done absolutely nothing to improve their service to Foresight.

18. During January through June of 2017, CSXT failed to provide approximately one (1) out of every five (5) trains that Foresight requested and scheduled.

19. On July 19, 2017, Foresight availed itself of the Board's Rail Customer and Public Assistance Program in an effort to resolve CSXT's ongoing service failures. Regrettably, this process did not improve CSXT's awful service.

20. During the first week of August 2017, CSXT's service decline worsened as it failed to provide 8 scheduled trains, possibly in retaliation for Foresight's decision to invoke the Board's Rail Customer and Public Assistance Program. Continuing at this pace, CSXT would fail to provide approximately 21 scheduled trains in August 2017.

21. All indications are that the train delays and transportation failures lie entirely under the control of CSXT. Despite prolonged and extensive efforts on the part of Foresight to engage CSXT directly and to solicit the assistance of the Board's Rail Customer and Public Assistance Program, CSXT has provided no meaningful plan for improvement. Thus, the tremendously detrimental service inadequacies persist.

22. At this point, CSXT's service in moving coal to Foresight's customers can only be described as abysmal and a complete and total failure. In fact, CSXT's performance has substantially deteriorated in 2017 under the tenure of Mr. E. Hunter Harrison as Chief Executive

Officer, which follows logically from Mr. Harrison's well-publicized aversion to devoting any of CSXT's efforts and assets toward the shipment of coal.

23. The impact of the service inadequacies is, and has been, severe and costly to Foresight. Foresight typically utilizes medium to long term coal supply contracts, which renders it highly impractical for Foresight to find other coal purchasers on a short-term spot sale basis to sell coal that has been produced which CSXT is unable to transport. Thus, each train car that is not timely shipped by CSXT represents a lost opportunity for a sale.

24. Moreover, due to the limited storage space at the actual mine operations, production must be reduced and standard activities altered when stockpiles get too high because of CSXT's failure to take trains when scheduled. These adjustments to the production schedule result in devastating increases to Foresight's mining costs.

25. Due to CSXT's failure to take the required steps to ensure it met the approved deliveries, Foresight was unable to complete certain orders that had been placed by coal purchasers, confirmed by Foresight, and accepted by CSXT.

GROUND FOR RELIEF

26. CSXT has unreasonably reduced the amount of rail service that it provides to transport and deliver coal by rail as requested by Foresight.

27. By failing and refusing to transport and deliver by rail all of the coal requested by Foresight to be transported and delivered, CSXT has refused and failed to comply with its obligation under 49 U.S.C. § 11101(a) to provide transportation service on reasonable request.

28. In connection with its failure to carry out its common carrier obligations, CSXT also engaged in unreasonable practices and business activities, including without limitation engaging in imprudent cost-cutting initiatives detrimental to CSXT's ability to provide adequate

service, particularly to the coal industry; failing to adopt and implement operating plans sufficient to meet shipper demand; and failing to engage in reasonable proactive steps to improve the severe and prolonged service failures brought to its attention by Foresight.

29. By failing and refusing to establish and engage in reasonable rules and practices with respect to the transport and delivery of coal by rail as requested by Foresight, CSXT has refused and failed to comply with its obligation under 49 U.S.C. § 10702(2) to establish and engage in reasonable rules and practices concerning such transportation.

30. In connection with its failure to carry out its common carrier obligations, CSXT also engaged in unreasonable practices and business activities concerning its provision of equipment that resulted in CSXT's failure to provide safe and adequate car service and equipment, including without limitation engaging in imprudent cost-cutting initiatives detrimental to CSXT's ability to provide adequate service, particularly to the coal industry; failing to adopt and implement operating plans sufficient to meet shipper demand; and failing to engage in reasonable proactive steps to improve the severe and prolonged service failures brought to its attention by Foresight.

31. By failing to provide safe and adequate car service and equipment for the shipment of coal by rail as requested by Foresight, CSXT has refused and failed to comply with its obligation under 49 U.S.C. § 11121(a) to provide safe and adequate car service and equipment.

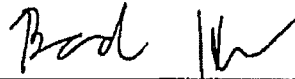
PRAYER FOR RELIEF

WHEREFORE, Complainants respectfully request that the Board issue an Order:

- a. directing CSXT to establish reasonable rules and practices to complete crew changes so that the departure of crews from the train occurs simultaneously with the next crew arriving at the train;

- b. directing CSXT to establish reasonable rules and practices to prevent the storage of trains on side-tracks for periods greater than 24 hours;
- c. directing CSXT to establish reasonable rules and practices to meaningfully address the service inadequacies experienced by Foresight;
- d. requiring CSXT to provide sufficient equipment and trains to timely transport the coal requested by Foresight, as scheduled and confirmed by CSXT's web-based reservation system;
- e. directing CSXT to establish reasonable rules and practices to develop an adequate power plan to maintain an uninterrupted supply chain; and
- f. granting Complainants all other proper relief.

Respectfully submitted,



Bradley D. Hasler, IN atty no. 22384-49
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Indianapolis, IN 46204-4900
Telephone: (317) 635-8900
Facsimile: (317) 236-9907
bhasler@bgdlegal.com

Attorney for Complainants,
Foresight Coal Sales, LLC
Sugar Camp Energy, LLC
Williamson Energy, LLC

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on August 11, 2017, a copy of the foregoing was sent to the following by overnight express courier:

Ellen M. Fitzsimmons
Executive Vice President of Law and Public Affairs, General Counsel and Corporate Secretary
CSX Corporate Headquarters
500 Water Street, 15th Floor
Jacksonville, FL 32202



1722-CC10895

IN THE 22nd JUDICIAL CIRCUIT COURT OF ST. LOUIS CITY
STATE OF MISSOURI

FORESIGHT COAL SALES LLC,
SUGAR CAMP ENERGY, LLC,
WILLIAMSON ENERGY, LLC

PLAINTIFF

V.

CSX TRANSPORTATION, INC.

DEFENDANT

SERVE:

CT CORPORATION SYSTEMS
120 SOUTH CENTRAL AVENUE
CLAYTON, MO 63105

CASE NO. _____

DIVISION: _____

JURY TRIAL DEMANDED

PETITION

Plaintiffs Foresight Coal Sales LLC ("Foresight"), Sugar Camp Energy, LLC ("Sugar Camp"), and Williamson Energy, LLC ("Williamson") (collectively, "Plaintiffs") by counsel, for their complaint for relief against the Defendant, CSX Transportation, Inc. ("Defendant" or "CSX"), state as follows:

PARTIES

1. Foresight is a Delaware limited liability company with its principal place of business in St. Louis City, Missouri.
2. Sugar Camp is a Delaware limited liability company with its principal place of business in St. Louis City, Missouri.
3. Williamson is a Delaware limited liability company with its principal place of business in St. Louis City, Missouri.

4. CSX Transportation, Inc., is a Virginia Corporation with a principal place of business located in Jacksonville, Florida.

JURISDICTION

5. This Court has subject matter jurisdiction over the claims alleged in this Complaint pursuant to Mo. Const. Art. V, Section 14.

6. This Court has personal jurisdiction over Defendant because the Defendant entered into contracts with companies whose principal place of business was and is in St. Louis, Missouri, and/or because the actions of the Defendant caused harm in St. Louis, Missouri, and/or because the Defendant maintains a general presence and is authorized to transact business in Missouri.

7. Venue is proper in this Court pursuant to Mo. Rev. Stat. 508.010(2)(4) and/or 508.010(4).

FACTS

8. Foresight acts as contracting agent for certain affiliated entities for the purpose of selling coal from specific mines.

9. In pertinent part, Foresight acts as agent for Williamson and Sugar Camp.

10. Foresight is responsible for entering into coal supply contracts on behalf of the Williamson and Sugar Camp, and collecting revenues resulting from the supply of coal by Williamson and Sugar Camp to the coal purchasers under the coal supply contracts.

11. Under that authority, Foresight has entered into contracts with multiple purchasers located in several different States, including South Carolina, Florida, Georgia and Alabama.

Customer #1

12. Foresight agreed on behalf of Williamson and Sugar Camp to provide certain amounts of coal to Customer #1.

13. Plaintiffs and Customer #1 agreed that the coal would be delivered to Customer #1 free-on-board ("FOB") railcars at the mine, with, upon information and belief, the railcars to be provided by CSX, pursuant to an agreement with Customer #1.

14. The price for the coal was to be determined at the time of loading. Invoices are sent from Foresight to Customer #1 after shipment, and payment is made by Customer #1 to Foresight.

15. Upon information and belief, Customer #1 has an agreement with CSX for shipping from the mine.

Customer #2

16. Foresight agreed on behalf of Sugar Camp to provide certain amounts of coal to the Customer #2.

17. Foresight and Sugar Camp were required to load and ship coal sold and purchased in accordance with certain requirements referenced from a separate agreement between CSX and Customer #2, including an obligation that CSX coordinate placement of empty cars with Foresight and Sugar Camp by providing, *inter alia*, advance notice of arrival for loading and unloading. Foresight and Sugar Camp were also required to coordinate timely scheduling of unit shipments and trains with CSX.

18. Foresight, Sugar Camp and Customer #2 agreed the coal would be provided FOB railcar at the CSX Interchange in Evansville, Indiana (the "CSX Interchange") for coal delivered from Sugar Camp. Payments are made by Customer #2 to Foresight for the shipped coal pursuant to invoice.

Customer #3

19. Foresight agreed on behalf of Sugar Camp to provide certain amounts of coal to Customer #3.

20. Foresight, Sugar Camp and Customer #3 agreed that the coal was to be provided FOB at the CSX Interchange. Payments are to be made by Customer #3 to Foresight for shipped coal pursuant to invoice.

21. Foresight and Sugar Camp were also required to load and ship coal sold and purchased in accordance with certain requirements referenced from a separate agreement between CSX and Customer #3, including an obligation that CSX coordinate placement of empty cars with Foresight and Sugar Camp by providing, *inter alia*, advance notice of arrival for loading and unloading. Foresight and Sugar Camp were also required to coordinate timely scheduling of unit shipments and trains with CSX.

Customer #4

22. Foresight agreed on behalf of Sugar Camp to provide certain amounts of coal to Customer #4.

23. Foresight, Sugar Camp and Customer #4 agreed that the coal was to be provided FOB railcar at the Evansville Western/CSX Interchange in Evansville, Indiana. Payments are made by Customer #4 to Foresight for shipped coal pursuant to invoice.

24. Foresight could not charge Customer #4 for any coal until after the coal was loaded onto the railcars for delivery.

25. Upon information and belief, Customer #4 has an agreement with CSX whereby CSX was to provide empty railcars for the shipment of coal from the Evansville Western / CSX Interchange to Customer #4.

Customer #5

26. Foresight agreed on behalf of Sugar Camp to provide certain amounts of coal to the Customer #5.

27. Foresight, Sugar Camp and Customer #5 agreed that the coal was to be provided FOB at the CSX Interchange. Payments are to be made by Customer #5 to Foresight for shipped coal pursuant to invoice.

28. Foresight and Sugar Camp were also required to load and ship coal sold and purchased in accordance with certain requirements referenced from a separate agreement between CSX and Customer #5, including an obligation that CSX coordinate placement of empty cars with Foresight and Sugar Camp by providing, *inter alia*, advance notice of arrival for loading and unloading. Foresight and Sugar Camp were also required to coordinate timely scheduling of unit shipments and trains with CSX.

Delivery Delays Caused by CSX

29. In each instance as referenced above, Customers #1-5 (collectively, the "Purchasers") reached an agreement with CSX to provide rail transportation services for the coal purchased under their respective coal supply contracts with Foresight. CSX's timely performance was an essential component for delivery of the purchased coal.

30. CSX provided access to its web-based reservation system for use in scheduling all deliveries to the Purchasers.

31. Specifically, for each order placed under any of the Agreements, CSX would obtain from Foresight an estimation of the total amount and number of deliveries to occur during the upcoming month. This estimate typically occurred one month before the shipments were to begin.

32. Thereafter, the Purchasers would access CSX's web-based reservation system and identify the specific number of train cars and coal requested for that month under each of the Agreements. Foresight would then confirm that they could produce the amount of coal requested. This typically occurred fifteen (15) days before the shipments were to begin.

33. The Purchasers could adjust the total number of projected shipments after Foresight confirmed they could produce the coal requested if they discovered they needed additional amounts and/or to make up shortfall from the prior month.

34. At no time during the relevant time period did CSX reject the proposals from the Purchasers that were accepted by Foresight.

35. In every instance, CSX had access and knowledge of the confirmation and acceptance because they were provided through CSX's web-based reservation system.

36. CSX repeatedly failed to take appropriate actions to ensure approved and/or agreed upon deliveries were met. Upon information and belief, CSX's failures included, but are not limited to:

- a. failing, intentionally and/or negligently, to provide adequate crews and engines;
- b. intentionally and/or negligently delaying in-transit shipments, which caused CSX to be unable to return and retrieve additional trains for transit;
- c. failing, intentionally and/or negligently, to anticipate and take necessary actions for scheduled trains; and
- d. intentionally and/or negligently prioritizing shipments for unrelated third parties without valid cause.

37. Due to CSX's failure to take the required steps to ensure it met the approved deliveries, Plaintiffs were forced to delay and/or cancel at least 160 trains from 2015 to the date of filing of this Petition:

- a. In 2015, CSX caused, in whole or in part, seventeen trains scheduled on behalf of Customer #1 to be delayed and/or canceled.
- b. In 2015, CSX caused, in whole or in part, thirty-six trains scheduled on behalf of Customer #5 to be delayed and/or canceled.
- c. In 2015, CSX caused, in whole or in part, four trains scheduled on behalf of Customer #2 to be delayed and/or canceled.
- d. In 2016, CSX caused, in whole or in part, twenty-eight trains scheduled on behalf of Customer #1 to be delayed and/or canceled.
- e. In 2016, CSX caused, in whole or in part, fifteen trains scheduled on behalf of Customer #5 to be delayed and/or canceled.
- f. In 2016, CSX caused, in whole or in part, five trains scheduled on behalf of Customer #2 to be delayed and/or canceled.
- g. In 2017, CSX caused, in whole or in part, five trains scheduled on behalf of Customer #1 to be delayed and/or canceled.
- h. In 2017, CSX caused, in whole or in part, thirty-two trains scheduled on behalf of Customer #5 to be delayed and/or canceled.
- i. In 2017, CSX caused, in whole or in part, three trains scheduled on behalf of Customer #2 to be delayed and/or canceled.
- j. In 2017, CSX caused, in whole or in part, nine trains scheduled on behalf of Customer #3 to be delayed and/or canceled.

k. In 2017, CSX caused, in whole or in part, six trains scheduled on behalf of Customer #4 to be delayed and/or canceled.

38. Thus, due to the foregoing, CSX caused, intentionally or negligently, in whole or in part, one hundred sixty trains scheduled by Plaintiffs through CSX's web-based reservation system to be delayed and/or cancelled.

39. CSX's failures caused Plaintiffs to incur significant costs in managing, restocking and storing coal reserves to meet the requirements under their agreements with the Purchasers. Plaintiffs were also forced to forego acquiring additional contracts and earning additional profits due to the delay in shipment of coal from their holding facilities. CSX's actions caused additional harm by forcing delays to Plaintiffs' production schedule, which in turn caused tonnage costs to increase.

40. The damages caused by CSX's failures are continuing and ongoing.

COUNT I:
BREACH OF CONTRACT

41. Plaintiffs incorporate by reference paragraphs 1 - 40 of this Complaint.

42. CSX agreed to provide the necessary crew, engines and other requirements for delivering the loaded railcars by failing to refuse any of the requests and confirmations processed on the CSX web-based reservation system, and/or took other actions intended to cause Plaintiffs and the respective Purchasers to conclude that CSX agreed to provide the necessary crew, engines and other requirements for delivering the loaded railcars.

43. The demands by the individual Purchasers, the acceptance by Plaintiffs, and the agreement/acceptance by CSX constitute accepted, enforceable agreements.

44. CSX failed to provide the necessary crew, engines and other requirements for delivering the loaded railcars in violation of its agreement with Plaintiffs.

45. CSX's failure to provide the necessary crew, engines and other requirements for delivering the loaded railcars caused Plaintiffs to suffer damages, including but not limited to missed sales opportunities, lost revenue and profits, increased storage and maintenance costs, and increased production costs.

COUNT II:
PROMISSORY ESTOPPEL

46. Plaintiffs incorporate by reference paragraphs 1 - 45 of this Complaint.

47. CSX's actions or lack thereof regarding the request to provide railcars sent on the CSX web-based reservation system created a promise to Plaintiffs to provide the necessary crew, engines and other requirements for delivering the loaded railcars, and led Plaintiffs to conclude that CSX agreed to provide the necessary crew, engines and other requirements for delivering the loaded railcars.

48. Plaintiffs relied upon CSX's promise to provide the necessary crew, engines and other requirements for delivering the loaded railcars.

49. By either affirming that CSX would provide the necessary crew engines and other requirements for delivering the loaded railcars or by failing to acknowledge their inability or refusal to do the same, CSX expected or should have expected Plaintiffs to rely upon CSX's promise.

50. CSX failed to provide the necessary crew, engines and other requirements for delivering the loaded railcars in violation of its agreement with Plaintiffs.

51. CSX's failure to provide the necessary crew, engines and other requirements for delivering the loaded railcars caused Plaintiffs to suffer damages, including but not limited to missed sales opportunities, lost revenue and profits, increased storage and maintenance costs, and increased production costs.

52. Enforcement of CSX's promise is required because it would otherwise result in an injustice that only enforcement of the promise can cure.

COUNT III:
INTENTIONAL INTERFERENCE WITH CONTRACT

53. Plaintiffs incorporate by reference paragraphs 1 – 52 of this Complaint.

54. Plaintiffs have valid, enforceable and ongoing business relationships with the Purchasers.

55. CSX was aware of the valid, enforceable and ongoing business relationships, in part because it was an active participant in those relationships.

56. CSX intentionally interfered in those relationships by refusing to provide the necessary crew, engines and other requirements, which caused Plaintiffs to be unable to comply with the requests by the Purchasers and their respective agreements with Plaintiffs.

57. CSX has failed to provide any reasonable justification for its intentional actions.

58. CSX's failure to provide the necessary crew, engines and other requirements for delivering the loaded railcars caused Plaintiffs to suffer damages, including but not limited to missed sales opportunities, lost revenue and profits, increased storage and maintenance costs, and increased production costs.

COUNT IV:
BREACH OF CONTRACT (THIRD PARTY BENEFICIARY)

59. Plaintiffs incorporate by reference paragraphs 1 - 58 of this Complaint.

60. Upon information and belief, CSX entered into agreements with the Purchasers to provide shipping services from the mines operated by Sugar Camp and/or Williamson and/or the CSX Interchange to the Purchasers.

61. Plaintiffs were intended beneficiaries of those agreements in that CSX and the Purchasers were not only aware that Plaintiffs were selling the coal and would benefit financially

from the transactions, but also because Plaintiffs were the identified provider of the coal that CSX was transporting.

62. CSX breached the agreements with the Purchasers by failing to provide the necessary crew, engines and other requirements for delivering the loaded railcars.

63. CSX's failure to provide the necessary crew, engines and other requirements for delivering the loaded railcars caused Plaintiffs to suffer damages, including but not limited to missed sales opportunities, lost revenue and profits, increased storage and maintenance costs, and increased production costs.

COUNT V:
PROMISSORY ESTOPPEL (THIRD PARTY BENEFICIARY)

64. Plaintiffs incorporate by reference paragraphs 1 - 63 of this Complaint.

65. CSX's actions or lack thereof regarding the request to provide railcars sent on the CSX web-based reservation system created a promise or promises to the Purchasers to provide the necessary crew, engines and other requirements for delivering the coal, and led Plaintiffs to conclude that CSX agreed to provide the necessary crew, engines and other requirements for delivering the loaded railcars.

66. Plaintiffs relied upon CSX's promise to provide the necessary crew, engines and other requirements for delivering the loaded railcars.

67. By either affirming that CSX would provide the necessary crew engines and other requirements for delivering the loaded railcars or by failing to acknowledge their inability or refusal to do the same, CSX expected or should have expected Plaintiffs to rely upon CSX's promise.

68. CSX failed to provide the necessary crew, engines and other requirements for delivering the loaded railcars in violation of its agreement with the Purchasers.

69. CSX's failure to provide the necessary crew, engines and other requirements for delivering the loaded railcars caused Plaintiffs to suffer damages, including but not limited to missed sales opportunities, lost revenue and profits, increased storage and maintenance costs, and increased production costs.

70. Enforcement of CSX's promise is required because it would otherwise result in an injustice that only enforcement of the promise can cure.

WHEREFORE, Plaintiffs respectfully demand judgment on the Complaint herein as follows:

1. Judgment in favor of Plaintiffs on all claims in the amount to be determined at trial;
2. Costs and attorneys' fees, if and where applicable; and
3. All other relief to which Plaintiffs are entitled.

PLAINTIFFS DEMAND TRIAL BY JURY.

Respectfully submitted,

/s/ Juliane M. Rodriguez

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