

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. NOR 42138

HORRY COUNTY, SOUTH CAROLINA,
MARION COUNTY, SOUTH CAROLINA,
COLUMBUS COUNTY, NORTH CAROLINA,
CITY OF CONWAY, SOUTH CAROLINA,
TOWN OF FAIR BLUFF, NORTH CAROLINA,
TOWN OF CHADBOURN, NORTH CAROLINA,
TOWN OF TABOR CITY, NORTH CAROLINA
CITY OF WHITEVILLE, NORTH CAROLINA,

**PETITION FOR ORDER HOLDING
PROCEEDING IN ABEYANCE
PENDING COMPLETION OF
SETTLEMENT NEGOTIATIONS**

and
METGLASS, INC. Complainants

v.
THE BALTIMORE AND ANNAPOLIS RAILROAD COMPANY,
d.b.a. CAROLINA SOUTHERN RAILROAD COMPANY,

Defendant.

HORRY COUNTY, SOUTH CAROLINA
1301 Second Avenue
Conway, SC 29526

MARION COUNTY, SOUTH CAROLINA
1305 Main Street
Marion, SC 29571

COLUMBUS COUNTY, NORTH CAROLINA
111 Washington Street
Whiteville, NC 28472

CITY OF CONWAY, SOUTH CAROLINA
225 Main Street
Conway, SC 29526

TOWN OF FAIR BLUFF, NORTH CAROLINA
P.O. Box 157
Fair Bluff, NC 28439

TOWN OF CHADBOURN, NORTH CAROLINA
602 N. Brown Street
Chadbourn, NC 28431

TOWN OF TABOR CITY, NORTH CAROLINA
P.O. Box 655
301 Fifth Street
Tabor City, NC 28463

CITY OF WHITEVILLE, NORTH CAROLINA
317 S. Madison Street
P.O. Box 607
Whiteville, NC 28472

METGLAS, INC.
440 Allied Drive
Conway, SC 29526

Complainants

THOMAS F. McFARLAND
THOMAS F. McFARLAND, P.C.
208 South LaSalle Street, Suite 1890
Chicago, IL 60604-1112
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(312) 201-9695 (fax)
mcfarland@aol.com

Attorney for Complainants

 GRANTED Office of Proceedings	DECISION ID NO.: <u>43716</u>
	DECIDED DATE: <u>3/25/14</u>
	SERVICE DATE: <u>3/25/14</u>
	APPROVED: <u>Rachelle D Campbell</u> Director
	☐

Date Filed: March 21, 2014

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and

METGLAS, INC.

Complainants,

v.

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d.b.a. CAROLINA SOUTHERN RAILROAD COMPANY,

Defendant.

**PETITION FOR ORDER HOLDING PROCEEDING
IN ABEYANCE PENDING COMPLETION
OF SETTLEMENT NEGOTIATIONS**

Pursuant to 49 C.F.R. § 1117.1, Complainants listed on the cover page hereby respectfully petition for an order holding this proceeding in abeyance pending the completion of settlement negotiations. I have been authorized by Lou Gitomer, attorney for Defendant, to state that Defendant does not object to the proposed abeyance.

BACKGROUND

On August 27, 2013, three Counties, five Municipalities, and a shipper, all from North Carolina and South Carolina, joined in a Complaint in which it is alleged that the Baltimore and Annapolis Railroad Company (BAR), doing business as Carolina Southern Railroad Company

(CALA), failed and refused to provide rail transportation on reasonable request in violation of 49 U.S.C. § 11101(a), and that CALA's embargo of rail service has become an unlawful abandonment in violation of 49 U.S.C. § 10903(d). Two Municipalities and a shipper have been permitted to intervene in support of Complainants.

Pursuant to a procedural schedule adopted by the Board, Complainants filed their Opening Statement on February 10, 2014, and Defendant filed its Reply Statement on March 10, 2014. Complainants' Rebuttal Statement is due on March 25, 2014.

Recently, Complainants and Defendant have entered into negotiations for settlement of the Complaint. In the opinion of Complainants, there is a high probability that the negotiations will result in settlement of the Complaint. However, it is not likely that a settlement can be implemented prior to the date for filing of Complainants' Rebuttal Statement.

GROUND FOR ABEYANCE

The Board has stated on many occasions that it favors private negotiated settlement of shipper-carrier disputes rather than polarizing litigation. The present proceeding promises to produce such a negotiated settlement.

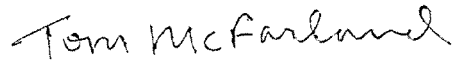
Complainants and Defendant have exchanged settlement proposals that have substantially narrowed differences in their positions. In Complainants' view, a settlement is highly likely. However, even if a settlement agreement were to be reached in principle prior to the March 25 date for filing of Complainants' Rebuttal Statement, it is virtually certain that such an agreement cannot be finalized before that date because a formal settlement agreement must be signed by a total of 12 Complaining Parties (three Counties, seven Municipalities, and two shippers).

In that circumstance, it makes sense to hold the proceeding in abeyance pending conclusion of settlement negotiations. If negotiations result in a settlement agreement, as appears highly likely, Complainants will seek voluntary dismissal of their Complaint with prejudice. In the unlikely event that negotiations for settlement are not successful, Complainants can request that the Board reinstate the Complaint as an active matter, and provide a reasonable time for filing of Complainants' Rebuttal Statement.

CONCLUSION AND REQUESTED RELIEF

WHEREFORE, for the reasons stated, the Board should issue an order holding this proceeding in abeyance pending the completion of settlement negotiations.

Respectfully submitted,



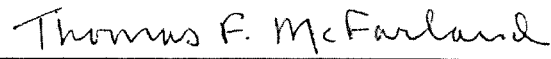
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*Attorney for Complainants
and Intervening Complainants*

Date Filed: March 21, 2014

CERTIFICATE OF SERVICE

I hereby certify that on March 21, 2014, I served the foregoing Petition For Order Holding Proceeding In Abeyance Pending Completion Of Settlement Negotiations, on Louis E. Gitomer, Esq., *lou@lgraillaw.com*, 600 Baltimore Avenue, Suite 301, Towson, MD 21204, Thomas C. Brittain, Esq., *allison@brittainlawfirm.com*, The Brittain Law Firm, P.A., 4614 Oleander Drive, Myrtle Beach, SC 29577, and Michael McBride, Esq., *mfm@vnf.com*, Van Ness Feldman, PC, 1050 Thomas Jefferson Street, N.W., Washington, DC 20007, by electronic mail.



Thomas F. McFarland