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BEFORE THE
SURFACE TRANSPORTATION BOARD

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GOVERNMENT OF THE TERRITORY
OF GUAM,

Complainant,

v.

SEA-LAND SERVICE, INC.; AMERICAN
PRESIDENT LINES, INC.; and MATSON
NAVIGATION COMPANY, INC.,

Respondents.

Docket No. WCC-101

REPLY OF THE GOVERNMENT OF GUAM
TO THE REPLY OF MATSON NAVIGATION COMPANY, INC.

The Government of the Territory of Guam ("GovGuam") hereby respectfully submits its Reply to the Reply of Matson Navigation Company, Inc. ("Matson") filed in this proceeding on July 8, 2005. In that Reply, Matson advanced substantive arguments for dismissal that go well beyond the procedural issues raised by the Board's June 7, 2005 Order (hereinafter, the "Order to Show Cause"). In fact, Matson's Reply is both a *de facto* motion for reconsideration of the Board's Decision in Phase I of this proceeding, and a request for summary disposition in Phase II.

For the reasons stated below, Matson's Reply should be stricken to the extent it raises or addresses issues that are not responsive to the Order to Show Cause issued by the Board on June 7, 2005.

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I. MATSON'S REPLY GOES WELL BEYOND THE ISSUES RAISED IN THE BOARD'S ORDER TO SHOW CAUSE, AND TO THAT EXTENT, SHOULD BE STRICKEN

By Order dated June 7, 2005, the Board directed GovGuam to show cause why this proceeding should not be dismissed. The Board's Order to Show Cause makes clear that its purpose is to determine whether GovGuam is "ready to move forward with this proceeding generally," and to "participate in an oral argument [on Phase II] specifically." *See* Order to Show Cause at 1. Indeed, the Order to Show Cause specifically references and expressly grants the motions for a show cause order filed by Horizon Lines, LLC ("Horizon") and Matson. Horizon's Motion, filed on February 7, 2005, addresses only the postponements of the Phase II oral argument and requests that the oral argument be promptly rescheduled or, in the alternative, that the Board issue an order to show cause to determine whether GovGuam intends to prosecute its claims in this proceeding. *See* Horizon Motion at 2. The Matson Motion, filed on March 15, 2005, simply concurs with and joins in Horizon's February 7, 2005 Motion, and asks for an order to show cause "for the reasons stated in Horizon's Motion." *See* Matson Motion at 1-2. Accordingly, neither Matson's March 15, 2005 Motion nor the Board's Order to Show Cause raised the possibility of reconsideration of the Board's Phase I decision, summary disposition of the issues involved in Phase II or the legal or factual merits of this proceeding.

GovGuam limited its response to the issue raised by the Board's Order to Show Cause – whether GovGuam intends and is able to move forward with this proceeding and whether this case should be dismissed as a result of the delays caused by GovGuam's past difficulties in proceeding with the oral argument in Phase II. While Matson's Reply does argue that this case should be dismissed as a result of the postponements of the Phase II oral argument, it also

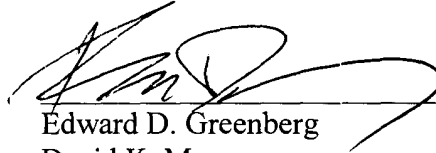
includes an extensive argument that dismissal is appropriate based on Matson's view of the legal and factual merits of the case. Citing its own previously filed Motion to Dismiss, for example, Matson argues that GovGuam's Complaint must be dismissed now because GovGuam is challenging defendants' rates in the aggregate rather than individual rates. But the Board rejected that argument in its November 15, 2001 decision on Phase I, and Matson's attempt to reargue that issue in its Reply is an inappropriate *de facto* motion for reconsideration. Matson does not even begin to explain why the Board should reconsider its Phase I decision or how the requirements for reconsideration set forth in 49 C.F.R. § 1115.3 are met.

Similarly, Matson's Reply relies on extensive citations to, and arguments from, its Phase II submissions as grounds for dismissal. In particular, Matson asks the Board to dismiss GovGuam's Complaint on the basis of Matson's arguments on a number of legal issues raised in the context of Phase II, including the appropriate rate reasonableness methodology, "zones of reasonableness," and whether GovGuam must demonstrate an absence of effective competition as a threshold showing to obtain rate relief. But these issues have been addressed by the parties in their respective submissions in Phase II, and are already before the Board pending oral argument. If Matson is suggesting some sort of odd summary disposition procedure whereby the Board would consider only the merits of Matson's Phase II arguments in determining whether to dismiss this proceeding at this juncture, Matson does not offer any explanation how such a procedure could be considered fair or equitable. If Matson is suggesting that the Board undertake the substantial effort to fully consider and weigh the merits of *all* of the parties' respective submissions on Phase II in connection with the Order to Show Cause, there would appear to be no reason why the Board should not have the benefit of oral argument, and then issue a decision on the merits of the case.

As set forth in great detail in GovGuam's Phase I and Phase II submissions in this proceeding, GovGuam strongly disagrees with the substance of the arguments advanced in Matson's Reply, including those relating to aggregate rate challenges, appropriate rate reasonableness methodologies, zones of reasonableness and "market dominance." However, GovGuam believes that these substantive legal issues should be decided on the merits in Phase II, rather than in connection with the Order to Show Cause. Accordingly, GovGuam will not further burden the record by rehashing its Phase I and Phase II arguments here. To the extent the Board may wish to consider GovGuam's positions on these issues, GovGuam respectfully refers the Board to its Phase I and Phase II submissions on file in this proceeding.

For the reasons set forth above, GovGuam respectfully requests that the Rely of Matson be stricken to the extent it address substantive issues not raised by the Order to Show Cause, and further respectfully submits that this case should not be dismissed.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing document was delivered to the following addressees at the addresses stated by depositing same in the United States mail, first class postage prepaid, this 26 day of July 2005:

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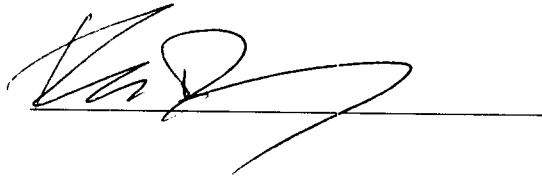
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A handwritten signature in black ink, appearing to be 'P. Shudtz', is written over a horizontal line.