

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

	)	
	)	
E.I. DUPONT DE NEMOURS AND COMPANY	)	
	)	
Complainant,	)	
	)	
v.	)	Docket No. NOR 42099
	)	Docket No. NOR 42100
	)	Docket No. NOR 42101
CSX TRANSPORTATION, INC.	)	
	)	
Defendant	)	
	)	

DEFENDANT CSX TRANSPORTATION, INC.’S MOTION TO DISMISS

Pursuant to 49 C.F.R. § 1111.5 and other applicable authority, Defendant CSX Transportation, Inc. (“CSXT”) moves to dismiss the Complaints filed by E.I. du Pont de Nemours and Company (“DuPont”) in the three above-captioned cases: NOR 42099 (the “Plastics Complaint”), NOR 42100 (the “Chlorine Complaint”), and NOR 42101 (the “Nitrobenzene Complaint”) (collectively, “the Complaints”). The Complaints should be dismissed because all three challenge not common carrier rates, but rather confidential, private pricing arrangements that are not subject to the Board’s jurisdiction. As such, the Complaints should be dismissed without prejudice to DuPont’s refiling appropriate challenges to common carrier rates.¹ CSXT further requests that the Board confirm that any further proceedings in

¹ Even appropriate challenges to common carrier rates for the transportation of hazardous materials over which the Board has jurisdiction should not be evaluated or determined using simplified procedures. The unique costs and issues associated with transportation of hazardous materials make rate cases involving those commodities poorly suited to the expedient of simplified procedures. Thorough and accurate evaluation of the actual costs of the movements and other important policy considerations is essential to a sound rate reasonableness analysis in a case involving hazardous materials, and such analysis is not possible under the Board’s simplified procedures. Moreover, rulings and decisions made in cases challenging hazmat transportation rates will likely have broad implications for hazardous materials transportation that reach well beyond the specific cases. Given the financial wherewithal of the instant

these cases – including the filing of an Answer to the Complaints – will be stayed until after the Board issues a final ruling on this Motion.

Background

Complainant DuPont is a multinational corporation that is one of the largest manufacturers of chemicals, plastics, and assorted other products in the United States. DuPont ships millions of tons of commodities via rail every year. A great many of those products are hazardous materials, including toxic-by-inhalation chemicals (“TIH chemicals”). DuPont ships much of this rail freight on the lines of Defendant CSXT, whose common carrier rates are subject to the jurisdiction of the Board. Annually, CSXT transports more than twenty-thousand carloads for DuPont, over hundreds of different routes. DuPont is one of CSXT’s largest customers.

For most of the past two decades, CSXT has transported commodities for DuPont pursuant to a rail transportation contract, CSXT-1847, originally effective on June 1, 1988. The contract has been revised on several occasions, and the last revision was effective on August 1, 2004 (“the 2004 Master Contract”). The 2004 Master Contract was an omnibus contract for all of DuPont’s traffic on CSXT. It set forth rates for approximately 1,000 movements and provided a formula for calculating adjustments to those rates linked to the Rail Cost Adjustment Factor. The 2004 Master Contract expired by its terms on May 31, 2007.

In late summer 2006, CSXT and DuPont began discussing a renewal of their contract. CSXT notified DuPont that it believed that rates in any new contract must be increased, in part because of the very significant costs and risks involved in transporting

Complainant -- a very large international manufacturing corporation whose market capitalization is roughly triple that of CSX Corporation – there is no justification for using a truncated and admittedly imprecise procedure to adjudicate the very important issues this case raises for CSXT and the rail transportation industry.

hazardous materials, including TIH chemicals, for DuPont. On September 22, 2006 (nine months before the contract's scheduled expiration date), CSXT gave DuPont formal written notice of its desire and intention to negotiate new terms of the parties' omnibus contract when the 2004 Master Contract expired. Over the ensuing months the parties exchanged proposed pricing terms and held multiple meetings to negotiate a new contract.

Negotiations intensified in the spring of 2007. On May 24, 2007, DuPont asked CSXT to extend the 2004 Master Contract while negotiations progressed. CSXT agreed to extend the 2004 Master Contract's term to June 15, 2007. At the conclusion of that extension, the parties had been unable to reach agreement on a new omnibus contract. Instead of requiring DuPont to begin shipping via CSXT's public tariff rates, CSXT offered private prices for all movements that had been covered by the expired contract, in the form of DuPont Private Price Lists ("PPLs").² *See, e.g.*, Exhibit 1 hereto (PPL covering some of the movements at issue). These private pricing terms were confidential, private contract offers made to DuPont alone. Each private pricing offer was marked as "Confidential Information for Dupont Patron Group," and each offer clearly noted that the price terms offered to DuPont would "take precedence over public price documents." *Id.* at 1, 2.

When it offered DuPont the Private Price Lists, CSXT advised DuPont that it had a choice between using those private prices or CSXT's "public prices." *See* Exh. 2 (5/25/07

² DuPont's claim that "CSXT refused even to extend the current expiration date of the contract for two weeks in order to permit further negotiations" is therefore a mischaracterization. *E.g.*, Plastics Complaint ¶ 27. CSXT agreed to an extension of the contract's expiration date to June 15. What it refused to do was enter a second extension before implementing any increased rates. Instead, CSXT offered DuPont Private Price Lists. And, CSXT certainly did not cut off "further negotiations." On the contrary, the parties' negotiations have continued until very recently. CSXT continues to work and communicate with DuPont on a daily basis as it provides ongoing transportation services. And, CSXT remains willing to meet with DuPont on rate issues at any time.

email from CSXT's Kuzma to DuPont's Pileggi). CSXT later reiterated that, while it would continue to keep DuPont's private prices in place, it would provide DuPont with public common carrier rates and service if DuPont requested them:

We realize rail transportation is still vitally important to DuPont, so CSX intends for the time being to keep in place the four private price quotes that we established to cover shipments during our negotiations. However, CSX reserves the right to make further price adjustments based on the prevailing market for rail transportation, *including shifting to common carrier rates* for those movements not under contract.

As you may know, there are existing common carrier rates, either on a jointline or Rule 11 basis, available for most of the commodities DuPont ships. We can provide those to you should you not have them available. If there are any DuPont movements not currently covered by a common carrier rate publication, CSXT will promptly establish rates on your specific request.

Ex. 3 (emphasis added) (8/1/07 email from Piacente to Stone)

Based upon the plain language of the Private Price Lists and the express understanding of the parties, therefore, it is apparent that the prices CSXT offered DuPont in these private price quotes were confidential, offered and intended for DuPont alone, and distinct from CSXT's public common carrier rates. DuPont has shipped freight pursuant to all but one of the Private Price Lists covering the movements at issue in the Complaints, thereby accepting CSXT's offer and creating private transportation contracts for each of those shipments.³ DuPont has not asked CSXT to provide it with a quote of common carrier rates for the movements at issue in the Complaints, and it has not asked CSXT to move that traffic under public common carrier rates.

³ Dupont has not shipped chlorine over CSXT between Niagara Falls, New York and New Johnsonville, Tennessee since early 2007.

Procedural History

On August 21, 2007, DuPont filed the three instant Complaints. While CSXT provides rail transportation service to DuPont for hundreds of movements, DuPont has challenged just seven: three movements of plastics and plasticizers (challenged in NOR 42099, the “Plastics Complaint”), one movement of the hazardous material nitrobenzene (challenged in NOR 42100, the “Nitrobenzene Complaint”), and three movements of TIH chlorine (challenged in NOR 42101, the “Chlorine Complaint”). For each of these lanes, the Complaints challenged the rate in CSXT’s Private Price List for DuPont—not an applicable common carrier rate.⁴ Aside from the different movements challenged, DuPont’s three Complaints are nearly identical.⁵

⁴ CSXT has published common carrier rates covering the movements that are the subject of the Plastics and Nitrobenzene Complaints. CSXT does not currently offer a public tariff (common carrier rate) that covers the movement of chlorine. If DuPont requests a public common carrier rate for specific chlorine movements, CSXT will establish such public rates.

⁵ DuPont’s Complaints seek relief under the *Simplified Guidelines* the Board issued in 1996. See STB Ex Parte No. 347 (Sub-No. 2), *Rate Guidelines – Non-Coal Proceedings*, 1 STB 1004 (1996). The Board presently has under consideration new rules that would substantially revise and replace the *Simplified Guidelines*. See STB Ex Parte No. 646, *Simplified Standards in Rail Rate Cases*. Both CSXT and DuPont participated in that rulemaking proceeding, in which the Board received four rounds of comments and held a public hearing. The rulemaking record is closed, and it seems likely that the Board will issue new rules soon. If DuPont were to file an appropriate challenge to common carrier rates and seek “small case” status, the Board may wish to consider whether such a case should be considered under the previous (Ex Parte No. 347 (Sub-No. 2)) rules or the new (Ex Parte No. 646) rules. In addition, if and when DuPont were to file a rate challenge over which the Board has jurisdiction, CSXT believes that mediation supervised by Board staff might be helpful.

ARGUMENT

I. THE BOARD LACKS JURISDICTION TO DECIDE DUPONT'S CHALLENGE TO THE PARTIES' PRIVATE PRICE AGREEMENTS, AND THE COMPLAINTS SHOULD BE DISMISSED WITHOUT PREJUDICE.

DuPont's three parallel complaints share a common flaw. Each challenges a confidential, private rate that CSXT has offered to DuPont alone—not a public common carrier rate. As such, the rates challenged in these Complaints are contract rates not subject to the Board's jurisdiction, and the Complaints should be dismissed. *See* 49 U.S.C. § 10709(c)(1).⁶

In the Interstate Commerce Act (as amended by ICCTA), Congress made clear that the Board's jurisdiction over the reasonableness of rail transportation rates extends only to common carrier rates—not rates set pursuant to contracts between rail carriers and individual shippers. 49 U.S.C. § 10709(c)(1) provides that “[a] contract that is authorized by this section, and transportation under such contract, shall not be subject to this part, and may not be subsequently challenged before the Board.” *See also Burlington N. R.R. Co. v. ICC*, 679 F.2d 934, 936 (D.C. Cir. 1982) (“The reasonableness of rates set in contracts . . . is not subject to ICC regulation”). For this reason, on several occasions the Board has dismissed complaints that challenged rates or practices for contract transportation. *See, e.g., Cross Oil Refining & Marketing, Inc. v. Union Pacific R.R. Co.*, STB Fin. Docket No. 33582 (served Oct. 27, 1998); *Omaha Pub. Power District v. Union Pacific R.R. Co.*, STB Docket No. 42006 (served Oct. 17, 1997); *cf. Zoneskip, Inc. v. United Parcel Serv., Inc.*, 8 I.C.C.2d 645, 651 (1992) (granting motion to dismiss complaint challenging motor carrier contract carriage).⁷ As the ICC explained

⁶ Dismissal should be without prejudice to DuPont's filing complaints that challenge CSXT's common carrier rates.

⁷ Also pending before the Board is a notice-and-comment rulemaking proceeding designed to interpret the term “contract” for purposes of determining the Board's jurisdiction. *See* STB Ex Parte No. 669, *Interpretation of the Term “Contract” in 49 U.S.C. 10709*. Rail carriers, shippers

in *Zoneskip*, whether or not traffic moved pursuant to a common carrier rate or a contract rate is the sort of “essentially legal” question that can be decided on a motion to dismiss in order to spare the Board and the parties from “discovery and protracted proceedings . . . [on] legal claims that will inevitably prove fruitless.” *Id.* at 650-51.

Just as Congress clearly limited the Board’s rate-reasonableness jurisdiction to common carrier rates, it also unambiguously provided that the sort of confidential, single-customer rates under which DuPont’s traffic moves are not common carrier rates. Most importantly, the Interstate Commerce Act provides that common carrier rates are public rates, in two related senses. First, common carriage rates can be used by “the general public.” *Contracts for the Transportation of Property*, ICC Ex Parte No. MC-198, 1991 WL 62174 (Feb. 20, 1991); see 49 U.S.C. § 11101(a); *National Grain and Feed Ass’n v. Burlington N. R.R.*, 8 I.C.C.2d 645, 651 (1992), *overruled on other grounds*, 5 F.3d 306 (8th Cir. 1993) (tariff rates must be “available to all shippers”). Second, common carrier rates are matters of public record that must be “provide[d] to any person, on request.” 49 U.S.C. § 11101(b); *Pejepscot Indus. Park, Inc. d/b/a Grimmell Indus.—Pet. for Declaratory Order*, STB Fin. Docket No. 33989 (served May 15, 2003) (common carrier “must provide written common carrier rates to any person requesting them”). While carriers are obligated to keep private contract terms confidential, see 49 U.S.C. § 11904, common carrier rates must be disseminated to any member of the public upon request. See, e.g., 49 C.F.R. § 1300.2.

The Private Price Lists that DuPont has challenged are not public in either of these determinative senses. The rates in the Private Price Lists are offered to DuPont alone, not

and other interested parties have submitted two full rounds of comments, and the Board is presently considering what, if any, action it will take in that rulemaking proceeding. CSXT’s views and suggestions on the Board’s proposal are set forth in its comments filed in Ex Parte No. 669.

to the general public. Moreover, Private Price List rates are held out to DuPont as “confidential” rates and those rates are intended to be known only to CSXT and DuPont—not to the public.⁸ The Private Price Lists are therefore contract rates— not common carrier rates. As CSXT explained in its comments in Ex Parte No. 669, this sort of private pricing arrangement is widespread in the industry, has proven to be beneficial to both carriers and shippers, and is understood by both carriers and shippers as a confidential contract. *See* Comments of CSX Transportation, *Interpretation of the Term “Contract” in 49 U.S.C. § 10709*, STB Ex Parte No. 669, at 6-8 (served June 4, 2007). Here, for example, CSXT explicitly distinguished between its “common carrier rates” and the Private Price Lists it offered to DuPont, and DuPont chose to accept service under the Private Price List rather than move traffic under a common carrier rate. Ex. 3 (8/1/07 Piacente email). Such shipments are contract shipments, over which the Board does not have jurisdiction.

As DuPont knows, the standard practice when a shipper seeks to challenge an actual common carrier rate is for the shipper to formally request a specific public rate quotation that includes the public price and all other relevant terms. *See* 49 C.F.R. 1300.2 (“A rail carrier must disclose to any person, *upon formal request*, the specific [common carrier] rates requested . . . as well as all charges and service terms.”) (emphasis added); *id.* at 1330.3 (governing requests for establishment of a new common carrier rate). Here, DuPont has not made a request – formal or otherwise – for common carrier rates, and CSXT therefore did not have occasion to provide such public rates to DuPont. Not only is it common knowledge that a shipper wishing to file a rail rate reasonableness challenge must request and obtain a public common carrier rate, CSXT

⁸ DuPont’s decision to publicize its private confidential rates in this proceeding violates a fundamental premise of CSXT’s Private Price Lists, that they are to be kept confidential. Because CSXT offers such private prices with the intent that they be kept confidential, it is considering options to address DuPont’s breach of confidentiality.

expressly advised DuPont that it would issue such common carrier rates to replace the PPLs if DuPont requested such rates. *See, e.g.*, Exh. 3 (correspondence advising DuPont that CSXT would “promptly establish [common carrier] rates upon [DuPont’s] specific request.”). Instead, DuPont made a knowing and conscious choice to accept CSXT’s offer to move the traffic at issue under private contract rates. The Board does not have jurisdiction over rates and other terms contained in such private pricing agreements.

Dismissal of DuPont’s Complaints scarcely leaves it at risk. DuPont’s traffic continues to move under private contracts (the DuPont PPLs). If DuPont wishes to begin shipping freight under public (common carrier) rates, it need only advise CSXT that no longer wishes to move its traffic under those private contracts and formally request common carrier rates. DuPont could then file a rate complaint for any common carrier rates it believes to be unreasonable.

II. THE BOARD SHOULD STAY ANY FURTHER PROCEEDINGS PENDING DISPOSITION OF THIS MOTION.

CSXT requests that the Board stay further proceedings in these matters until it rules on this Motion to Dismiss. Such a stay would be only for the short period necessary to brief and decide the Motion, and would not prejudice DuPont. It would not be a wise or efficient use of the resources of the parties or the Board to develop and file pleadings and evidence in cases that may be dismissed as outside the Board’s jurisdiction. In that event, such efforts would have been wasted on claims and cases over which the Board lacks jurisdiction. And, absent such a short-term stay, the Board might be asked to decide important issues and questions without a proper factual and legal context. Accordingly, CSXT requests that the Board stay these proceedings – including CSXT’s obligation to file an Answer to the Complaints, DuPont’s motion for a procedural schedule, and DuPont’s request for access to the full Costed Waybill

Sample with unmasked revenues -- until the Board decides this Motion and determines whether, as a matter of law, the Board has jurisdiction over the Complaints.⁹

III. RATE CASES INVOLVING TOXIC-BY-INHALATION HAZARDS AND OTHER HAZARDOUS MATERIALS SHOULD NOT BE DETERMINED UNDER A SIMPLIFIED METHODOLOGY THAT IS LESS RIGOROUS AND LESS ACCURATE THAN A STAND-ALONE COST ANALYSIS.

If DuPont files an appropriate challenge to common carrier rates, or if the Board denies this Motion, any cases challenging rates for the transportation of hazardous materials should not be considered under simplified procedures. The methodology outlined in Ex Parte No. 347 (Sub-No. 2), and the two approaches proposed in Ex Parte No. 646 are, by consensus, substantially less accurate, less rigorous, and less faithful to sound economic principles (e.g., Constrained Market Pricing and pricing based on elasticity of demand) than the Stand Alone Cost methods and standards established by the *Coal Rate Guidelines*, Ex Parte No. 347 (Sub-No. 1), 1 I.C.C.2d 420 (1985). At the same time, rail transportation of hazardous materials, including TIH commodities, involves complex costs and issues that are not susceptible to meaningful or adequate resolution under the shortcut methodologies contemplated by Ex Parte No. 347 (Sub-No. 2) and Ex Parte No. 646. Both the costs and the policy issues at stake in cases involving the transportation of TIH and other hazardous materials are far too important to be decided in a truncated proceeding employing methods that are rudimentary and inaccurate. Accordingly, the Board should consider challenges to rates for rail transportation of hazardous materials (including the Chlorine and Nitrobenzene Complaints), if at all, only under a full SAC or CMP

⁹ Staying the obligation to answer during the pendency of a motion to dismiss for failure to state a legally cognizable claim is the standard practice followed in nearly all federal and state courts. This practice is eminently reasonable, as the alternative would be for a defendant to develop and file an answer to a complaint that fails to make out a prima facie claim and is thus a nullity from the outset.

analysis, supplemented as appropriate to consider the extraordinary issues and challenges posed by transportation of hazardous materials.

Rail transportation of TIH and other highly hazardous materials involves special handling and costs that are not involved in the movement of other commodities. Even more important, the inherent risks to rail carriers of hauling such materials are enormous: a single incident has the potential to inflict ruinous liability on a Class I carrier. These and other costs of moving hazardous materials are not adequately captured or accounted for by URCS, nor addressed by either the previous or the proposed simplified guidelines. Such simplified standards and procedures were neither intended nor designed to address the extraordinary issues and costs involved in the transportation of highly hazardous materials for a shipper whose resources and market capitalization dwarf those of the defendant rail carrier. Any effort to apply simplified guidelines to evaluate rates for highly hazardous materials would be an attempt to force a large square peg into a small round hole, and simply could not generate a reasonable result.

It is remarkable that, of the wide range of chemical products that DuPont ships via CSXT, over literally hundreds of O-D pairs, DuPont has chosen to attack the rates on three movements of Chlorine. The Board is well aware of the risks inherent in moving 86,000 pound shipments of compressed Chlorine gas over hundreds of miles. And, the Board is well informed of the facts surrounding the tragedy at Graniteville, South Carolina in 2006.

Under current law, CSXT is required as a common carrier to accept and transport Chlorine if tendered in compliance with Federal regulations.¹⁰ Given a choice, CSXT would

¹⁰ This obligation is not unbounded; a rail carrier must provide transportation only on “reasonable request.” See 49 U.S.C. § 11101(a); *Classification Ratings on Chemicals*, Conrail, 3 ICC 2d 331 (1986).

decline to transport Chlorine. It is a business that the company does not choose to be in. The financial risk should an incident occur – whether or not CSXT were at fault – is tremendous. The new regulatory burdens that are being imposed by other agencies, with consequential operational impacts, are substantial.

Yet, DuPont has brought this case to the STB demanding that it prescribe rates “no lower than” 260 per cent of variable cost – well below the CSXT RSAM of 281. That is to say, DuPont suggests to this agency that a maximum reasonable rate for the most dangerous category of traffic handled by any railroad should be **below the average** that CSXT would have to charge on its higher rated traffic to reach revenue adequacy.

Because transportation of highly hazardous materials necessarily involves complex and important issues well outside the contours of any (existing or proposed) simplified methodologies, CSXT requests that the Board clarify that, if these rate reasonableness cases go forward, they will not be considered under any simplified methodology. At a minimum, any case involving TIH or other highly hazardous materials should be subject to a full SAC analysis, in which the parties are allowed to submit evidence regarding the actual costs of the movements at issue.¹¹

¹¹ As CSXT made clear in its comments in both Ex Parte No. 657 and Ex Parte No. 646, it is essential that evaluation of rail rates for highly hazardous materials use the actual costs of such movements, not the URCS system average costs. *See, e.g.*, STB Ex Parte No. 646, Opening Comments of Norfolk Southern Railway Company and CSX Transportation, Inc. at 17-20 (October 24, 2006); STB Ex Parte No. 657, CSXT/NS Opening Comments at 11-18; *id.*, CSXT/NS Reply Comments at 17-22.

CONCLUSION

For the above reasons, the Board should dismiss DuPont's Complaints without prejudice. Regardless of how it ultimately rules on CSXT's Motion to Dismiss, the Board should stay proceedings on DuPont's Complaints until it decides the Motion.

Respectfully submitted,



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Dated: August 31, 2007

EXHIBIT 1



TRANSPORTATION

PRIVATE PRICE LIST CSXT 97249

**Containing
Confidential Information
for
DUPONT PATRON GROUP1**

CONTAINING PRICES ON

CHEMICALS

Prices are subject to increase, change or expiration. Any change to prices will be shown in supplements to or a reissue of this document, or through advanced notification. Except as otherwise noted, ancillary charges contained in CSXT Tariff 8100 (Merchandise)/8200 (Coal) Series, as of the date of shipment tender, shall apply.

EFFECTIVE: June 16, 2007
(except as otherwise noted)

EXPIRATION: May 31, 2008

CSX TRANSPORTATION
CHEMICALS
www.ShipCSX.com
Jacksonville, FL 32202

August 7, 2007

CSX
TRANSPORTATION
PRIVATE PRICE LIST CSXT 97249

**PARTICIPATING
CARRIERS**

ABBREVIATION

NAME OF CARRIER

CSO.....	CONNECTICUT SOUTHERN RAILROAD INC.
CSXT.....	CSX TRANSPORTATION, INC.
UP.....	UNION PACIFIC RAILROAD COMPANY

CSX
TRANSPORTATION
PRIVATE PRICE LIST CSXT 97249

**PUBLICATION
INFORMATION**

CONTACT PERSONNEL

Please refer to www.ShipCSX.com

CURRENCY

Prices are stated and payable in U.S. funds unless shipment is wholly within Canada,
then price is stated in Canadian funds.

ALTERNATION / NON-ALTERNATION OF PUBLICATION

Rail Transportation Contracts take precedence over prices published herein for the same commodities over the same routes.

Prices published in this private Price List will alternate with prices, with similar price conditions, published in other private documents and take precedence over public price documents.

ALTERNATION OF PRICES

Prices in this publication will alternate with other prices, with similar price conditions, in this publication, unless otherwise specified in an alternation provision documented in the Private CSXT 97249 (0) workbook, sheet tab labeled CSXT Price List.

CONFLICT OF RULES

The rules in this Price List will take precedence over rules contained in other separate publications when shipments move under the prices contained in Private CSXT 97249 (0) workbook.

DESCRIPTION OF COMMODITIES AND INSPECTION

The description of commodity(s) on the Shipping Document will conform to the Standard Transportation Commodity Code (STCC) and show the STCC Number(s). When different prices are provided for the same commodity(s) according to the type of packing or package, the type of packing or package should be shown.

The Carrier(s) reserve the right to inspect shipments to determine applicable prices. When the commodity(s) are found to be incorrectly described, freight charges will be collected according to the proper description.

EMERGENCY ROUTING

When in the case of pronounced traffic congestion (not an embargo), washout, wreck or other similar emergency, or through Carriers' error, Carriers forward shipments via other junction points of the same Carriers or via the lines of other Carriers party to the Price List, the price to apply will be that specified in this Price List, but not higher than the price applicable via the route of movement.

EQUIPMENT MILEAGE ALLOWANCE

For mileage allowance provisions on privately owned or lease equipment please see Private CSXT 97249 (0) workbook, sheet tab labeled CSXT Price List.

FUEL RATE ADJUSTMENT

In the event that the monthly average price per gallon of highway diesel fuel (as determined below, the "HDF Average Price") equals or exceeds 200.0 cents, CSXT will apply a mileage-based fuel adjustment to the linehaul rates and charges provided for in this Contract or publication. The fuel adjustment will be applied to each shipment having a bill of lading or other shipping instruction dated on or after the first day of the second calendar month following the calendar month of a given HDF Average Price determination.

The "HDF Average Price" for a month will be the average price for that month of U.S. No. 2 Diesel Retail Sales by All Sellers, as determined and published by the U.S. Department of Energy, Energy Information Administration ("DOE-EIA"). That average price will, in calculating the HDF Average Price, be rounded to the nearest 1/10th of a cent applying conventional rounding principles. The fuel adjustment will be 1 cent per mile per railcar for every 4 cents per gallon, or portion thereof, by which the HDF Average Price for the calendar month two months prior to the calendar month of shipment exceeds 199.9 cents.

The DOE-EIA publication referenced above can currently be found at www.eia.doe.gov. On the home page select "Petroleum;" under "Prices" select "Weekly Retail Gasoline and Diesel Prices;" for the "Area" select "U. S.;" for the "Period" select "Monthly" then refer to the data on the line entitled "Diesel (On-Highway)." Monthly data is normally published Wednesday after the last Monday of a given month. If DOE-EIA ceases publication of the above information, CSXT will employ a suitable substitute source of price or measure.

The mileage to be applied in calculating the fuel adjustment will be based on rail miles between origin, interchange(s) and destination, and can be found at www.csx.com. On the home page select "Customers;" select "Prices, Tariffs, Fuel Surcharge;" select "Fuel Surcharge;" then select "Mileage" and follow the instructions provided. Registration will be required to use the ShipCSX functions.

INTERNAL ROUTING

Prices or routes published herein, to, from or via stations on CSXT, while on the rails of CSXT, are applicable only over the shortest distance between the stations where transportation is performed by CSXT, except as otherwise specifically authorized by other agreement(s), or unless handled out of route for Carrier's convenience.

INCORPORATION OF DOCUMENTS

Prices subject to rules and conditions of Railway Equipment Register, STCC 6001, OPSTL 6000, UFC 6000, Rules Circular CSXT 4048 Series (Waste Shipments) when applicable, and CSXT Tariff 8100 (Merchandise)/8200 (Coal) Series, unless otherwise noted.

LOADING AND UNLOADING

Consignors and Consignees will load and unload cars.

Consignors must load all cars in accordance with the Association of American Railroads' Circular 42 Series and appropriate AAR commodity loading publications and revisions thereof, or as approved by Rail Carriers involved. All unused securement devices must be returned to and stored in the same car from which removed, and devices must be secured. To inquire about loading and unloading requirements for a participating Carrier other than CSXT, contact that Carrier's sales office. For further information on CSXT loading and unloading requirements, contact:

Director - Freight Damage Prevention
CSX Transportation, Inc. - J815
P.O. Box 44085
Jacksonville, FL 32231-4085
800-327-9715 (Within U.S.)
904-279-6331 (Outside U.S.)

Temporary blocking, flooring or lining, corrugated fibreboard or plywood separators or dividers, standards, strips, stakes or similar bracing or supports (hereafter referred to as dunnage), bulkheads, partitions, temporary doors or door protection, not constituting a part of the car, when required to protect and make freight secure for shipment, will be furnished and installed by Consignor at his expense.

Transportation charges for dunnage, when made, shall be at the price applicable to the freight which it accompanies.

Consignee is responsible for unloading all material from the rail car. This includes lading, dunnage, loading or unloading enhancement materials, or any other miscellaneous debris. Failure to comply with these rules will result in Consignee being charged for all associated removal costs (minimum of \$150 to a maximum of \$500 per car).

When equipment is found to be misloaded or overloaded, the Consignor will be given the opportunity to correct the situation at the Consignor's expense. Consignor is responsible for all damage to freight, rail equipment, or both caused by misloading or overloading. For overloaded cars on CSXT, see CSXT Tariff 8100 Series.

Consignee is required to return and secure the same car, all railroad owned securement devices removed to complete unloading, securely lock all bulkhead doors, return wooden doors used in transportation of bulk commodities and close all exterior doors and hatches.

LOSS AND DAMAGE LIABILITY OF CARRIER

The Carrier shall be liable for claims only if Carrier negligence is shown by the claimant to be the proximate cause of the loss or damage.

Carrier liability for shortage of goods shall be conditioned upon evidence of unauthorized entry into the rail car while the same is in the possession of the Carriers.

Carrier shall not be liable for special or consequential damages, including market decline claims, products deterioration, or other such claims based on delay in transportation, nor shall Carrier be liable for punitive damages or attorney fees.

Carrier liability for damages or shortages is contingent upon Carrier or its agent receiving immediate notification of all noted visible damages and/or shortages discovered during the unloading of a rail car. Damage or shortages discovered other than between 8:00 A.M. and 5:00 P.M., Monday through Friday, are subject to reporting no later than 24 hours following unloading from rail car, Saturdays, Sundays, and Holidays excluded. Concealed damage must be reported immediately upon discovery and made available for inspection at point of delivery. Damage may be reported to: Telephone: 800-432-1032.

Failure of the shipper to comply with packaging requirements of the Uniform Freight Classification and AAR loading provisions shall be a defense to any claim for damage.

Any claim for loss or damage shall be filed within nine (9) months of the date the shipment was delivered, or in the case of failure to make delivery, then within nine (9) months after a reasonable time for delivery. Any lawsuit or other action for the enforcement or liability for loss of damage shall be instituted within one year after the railroad first declines the claim. Loss and Damage Claims should be filed with:

Director - Freight Claims Services
CSX Transportation, Inc. - J815
P.O. Box 44085
Jacksonville, FL 32231-4085
800-327-9715 (Within U.S.)
904-279-6331 (Outside U.S.)

ONE CONSIGNOR, CONSIGNEE, AND DESTINATION

The name of only one Consignor, one origin, one Consignee and one destination shall appear on a Shipping Document. The Shipping Document may also specify the name of a third party that will be billed for the freight charges or a party at the same destination to be notified of the arrival of the shipment. See provisions in the Private CSXT 97249 (0) workbook, sheet tab labeled CSXT Column Definitions.

OVERCHARGE CLAIMS

Claims for overpayment of charges must be in writing and received by Carriers no later than three years after delivery or tender of delivery of shipment. Any lawsuit for overpayment of charges must be filed within:

- A. three years after delivery or tender of delivery of shipment or
- B. six months from the date of Carriers' disallowance of the last timely filed claim, whichever occurs later.

For Overcharge Claim Information pertaining to a participating Carrier other than CSXT contact that Carrier's sales office.

To inquire on CSXT overcharge claims contact:
Patron Overcharge Claims
CSX Transportation, Inc. - J605
6737 Southpoint Drive South, 2nd Floor
Jacksonville, FL 32216-6177
904-279-4764

PACKAGING (applicable on regulated commodities)

Shipper must package all shipments governed by this Price List in accordance with Rules 5, 40, 41 and 51 of the Uniform Freight Classification, UFC 6000 Series, and exceptions thereto as published in 2000 Series Tariffs.

PAYMENT OF CHARGES - EXTENSION OF CREDIT

Customers not on credit must pay freight and other accrued transportation charges prior to transportation of a shipment if it is tendered "prepaid" and prior to placement of a shipment if it is tendered "collect". In order to establish credit with CSX Transportation, Inc., contact:

CSX Transportation, Inc.
Credit Administration - J220
500 Water Street
Jacksonville, FL 32202
Telephone: 904-366-3807
Fax: 904-366-4406

On-line at www.csx.com

- a) Click on "Customers" (on menu bar)
b) Click on "Credit Application" under "Become a Customer"

If credit has been established with CSX Transportation, Inc., freight and other accrued transportation charges shall be paid fifteen (15) calendar days or less from the billing date.

Freight and other accrued transportation charges may not be offset by overcharge, freight damage or other claims.

CSX Transportation, Inc. reserves the right to cancel the credit of any party and place the responsible party (Consignee, Consignor, or other billed party) on a cash basis. If the party responsible for freight charges has not established credit with CSXT, or has their credit cancelled by CSX Transportation, Inc., pursuant to 49 CFR, Section 1320.2, they will be subject to Liquidated damages interest, in addition to the Liquidated damages interest shall not apply in instance of clear clerical error on the part of CSX Transportation, Inc. "Liquidated damages interest" means 20% of the charges due.

PRICE APPLICATION

Actual City locations applying from or to stations within the switching district will be designated as "SD" (Switch District) in the Private CSXT 97249 (0) workbook with sheet tab labeled CSXT Price List.

Prices will NOT apply to/from stations within the switching district of a zip code, state, FSAC (Freight Station Accounting Code), or NRB (National Rate Basis).

Prices in this Price List and other Price Lists may not be used to make a combination of prices that defeat the through prices documented in this CSXT Price Authority.

CSX
TRANSPORTATION
PRIVATE PRICE LIST CSXT 97249

GENERAL RULES

PRICE TERMS AND CONDITIONS (additional):

Carrier agrees to provide rail transportation service at the rates and subject to the additional terms and conditions set forth in Private CSXT 97249 (0) workbook with sheet tabs labeled CSXT Price List, CSXT Commodity Definitions, CSXT Column Definitions, CSXT Location Groups, and CSXT Price List Terms. The workbook is a part of this Price List and may be supplemented from time to time.

PROPORTIONAL APPLICATION OF PRICES (applicable only to Rule 11 rates)

When Price List proportional prices are used to construct through charges beyond the geographic scope of this publication on a through Shipping Document, the Price List charges will be assessed and billed separately by CSXT or other participating Carriers, as appropriate. Shipping Documents on such rebilled shipments must indicate that the shipment is made under Railway Accounting Rule 11. Industry agrees to specify on each Bill of Lading and requests origin Carrier to place the following statement on the waybill:

"Charges to Carriers which are party to this Price List are separately collected pursuant to Railway Accounting Rule 11."

REJECTED, REFUSED, RETURNED SHIPMENTS

Unless restricted, shipments reaching destination but unloaded (for reasons other than the Carriers' errors), may be returned to the original shipping point via the reverse route at the same price and conditions, unless a lower price exists for such return shipments.

SHIPPING DOCUMENT

Prior to tender of freight, Consignor shall execute a Shipping Document similar in content to the Uniform Bill of Lading. However this Price List shall override any inconsistent terms in the Shipping Document.

REDACTED

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Private CSXT 97249 (0) Commodity Definitions
DUPONT PATRON GROUP1

STCC Group Name	Include	STCC Number	STCC Description	Effective Date	Expiration Date	Updated
1092945	Y	1092945	ILMENITE ORE OR CONCENTRATES	1/1/1990		Y
			SODIUM (SODA), CAUSTIC (SODIUM HYDROXIDE), LIQUID LESS THAN OR EQUAL TO 55% CONCENTRATION			
2812220	Y	2812220	CALCIUM CHLORIDE, LIQUID	1/1/1990		Y
2812632	Y	2812632	DIMETHYLAMINE, MONO- METHYLAMINE OR TRI-METHYLAMINE, ANHYDROUS	1/1/1990		Y
2813934	Y	2813934	REFRIGERANTS, NEC, LIQUID, FLAMMABLE	1/1/1990		Y
2813978	Y	2813978	DISPERSANT GASES, NEC, NONFLAMMABLE	1/1/2004		Y
2813981	Y	2813981	COMPRESSED GASES, NEC, OTHER THAN POISON	1/1/1990		Y
2813990	Y	2813990	TRIFLUOROMETHANE	1/1/1990		Y
2813995	Y	2813995	ANILINE (AMINO BENZENE, ANILINE OIL OR PHENYL-AMINE)	1/1/1990		Y
2815112	Y	2815112	NITROBENZENE (NITRO- BENZOL) (OIL MIRBANE)	1/1/1990		Y
2815147	Y	2815147	TITANIUM DIOXIDE AND WATER MIXED, CONSISTING OF NOT EXCEEDING 78 PERCENT BY WEIGHT OF TITANIUM DIOXIDE	1/1/1990		Y
2816130	Y	2816130	PROPYLENE GLYCOL (METHYL GLYCOL, METHYLETHYLENE GLYCOL, 1, 2- DIHYDROXYPROPANE, 1, 2-PROPANEDIOL OR TRIMETHYLENE GLYCOL)	1/1/1990		Y
2818556	Y	2818556	TRIMETHYLENE GLYCOL (TEG)	1/1/1990		Y
2818558	Y	2818558	DECANEDIOIC ACID	1/1/1990		Y
2818614	Y	2818614	PLASTICIZERS, PAINT, LACQUER, VARNISH, GUM, PLASTIC, RESIN OR ADHESIVE	1/1/1990		Y
2818967	Y	2818967	AMMONIUM CHLORIDE (AMMONIUM MURIATE, MURIATE OF AMMONIA, OR SAL AMMONIAC)	1/1/1990		Y
2819125	Y	2819125	SULPHURIC ACID OR OIL OF VITRIOL 93-100% CONCENTRATION	1/1/1990		Y
2819315	Y	2819315	FUMING SULFURIC ACID, LESS THAN 30% IN STRENGTH	1/1/1990		Y
2819345	Y	2819345	SODIUM ALUMINATE	1/1/1990		Y
2819674	Y	2819674	METALLIC SODIUM	1/1/1990		Y
2819901	Y	2819901	SODIUM SILICATE, OTHER THAN DRY (SILICATE SOLUTION), INCLUDING MECHANICAL MIXTURES OF SILICATE OF SODA AND CLAY	1/1/1990		Y
2819992	Y	2819992	POLYETHYLENE TEREPHTHA- LATE	1/1/1990		Y
2821156	Y	2821156	PLASTIC FLAKES, GRANULES, LUMPS, PELLETS, POWDER OR SOLID MASS, OTHER THAN EXPANDED SODIUM CHLORIDE (SALT, COMMON), IN BULK CHEMICALS, NEC	1/1/1990		Y
2821163	Y	2821163	STAUROLITE RESIDUE (RESIDUE MATERIAL IN THE MINING OF ILMENITE ORE)	1/1/1990		Y
2899112	Y	2899112	SAND, ZIRCON (CRUDE ZIR- CONIUM SILICATE SAND), NOT FOR METALLURGICAL USE, WITHOUT PHENOLIC RESIN OR OTHER MOLDING OR CORE MAKING BINDERS	1/1/1990		Y
2899991	Y	2899991	TITANIUM DIOXIDE AND WATER MIXED, CONSISTING OF NOT EXCEEDING 78 PERCENT BY WEIGHT OF TITANIUM DIOXIDE	1/1/1990		Y
4810560	Y	4810560	TITANIUM DIOXIDE	1/1/1990		Y
4835240	Y	4835240	SULPHURIC ACID OR OIL OF VITRIOL 93-100% CONCENTRATION	1/1/2000		Y
4860101	Y	4860101		1/1/1990		Y
STAUROLITE/ZIRCON	Y	1092959		1/1/1990		Y
STAUROLITE/ZIRCON	Y	1441325		1/1/1990		Y
n/a	Y	2816130	see applicable prices for date range			Y
n/a	Y	2819315	see applicable prices for date range			Y

EXHIBIT 2

From: Kuzma, Bruce [Bruce_Kuzma@csx.com]
Sent: Friday, May 25, 2007 5:29 PM
To: mary.l.pileggi@usa.dupont.com
Cc: Piacente, Dean
Subject: DuPont Contract Extension to June 15th, 2007

Mary:

Per the phone conversation Dean and I had with you this afternoon and in response to your letter dated May 23rd, the following summarizes where we are on the negotiation of rates, terms and conditions to replace those that are currently in CSXT-1847 which is set to expire on May 31st, 2007.

- We are agreeable to extending the current rates in CSXT-1847 until June 15th, 2007.
- We are agreeable to continuing to negotiate new contract rates, terms and conditions in good faith through June 7th. If we reach agreement by June 7th, we will publish joint-line rates in CSXT-1847 and CSXT direct rates into CSXT-83887, subject to our mileage based fuel surcharge program as outlined in our March 23rd email.
- If we do not reach agreement by June 7th, CSXT will publish the rates we have already offered in our renewal proposals into several, private, DuPont tariffs as Randy Overbey outlined in his email to Kevin Acker and John Amoroso on May 22nd, 2007 with a June 16th, 2007 effective date. Please let us know if we need to resubmit the details of Randy's May 22nd email. This preserves the joint-line rate environment for DuPont which we understand is critical to the integrity of your current payment processes. Our expectation is that DuPont will begin loading the proposed rates and authorities into your information systems by June 7th or earlier if necessary to have all of your data entry work completed by June 15th. The only other alternative would be to make use of our Rule 11 public prices June 16th forward.
 - In conjunction with the above paragraph, we will continue to negotiate new contract rates, terms and conditions in good faith after June 7th. Once we reach agreement, the new contract(s) will replace the private tariffs approximately 1 to 2 weeks from our new agreement date.

It is our expectation, as we discussed today, that Kevin Acker and other DuPont representatives engage Randy Overbey and other CSX representatives in constructive dialogue about our current offer over the next two weeks.

We look forward to productive discussions.

Regards,

Bruce Kuzma
Director of Sales
CSX Transportation
410-613-6163

EXHIBIT 3

From: Piacente, Dean [Dean_Piacente@csx.com]
Sent: Wednesday, August 01, 2007 5:00 PM
To: Kathryn H Stone
Cc: Gooden, Clarence
Subject: CSX Offer - Dupont Position
Importance: High

Dear Kathryn Stone,

We have received Jeff Coe's response to our offer of July 26th, in which CSX essentially reduced by 50% our original rail transportation proposal of March 9th. Jeff indicated a response to you regarding this matter would be appropriate. CSX and DuPont have been negotiating very actively – and we felt with considerable progress – over the past five months. Given all the efforts and progress over that time, CSX is very disappointed and frankly surprised by this response.

Our initial offer was based on several key principles: market-based economics, the need to reinvest in our small cube covered hopper fleet and other capital infrastructure, and the enormous financial risk associated with moving TIH commodities. We articulated these principles to DuPont as part of our initial proposal, which we continue to believe was fair and reasonable. In the spirit of partnership and compromise, however, Clarence and I agreed last Thursday to reduce our initial proposal by approximately one half, to an overall 20% across-the-board price increase. This would represent the first market-based increase in CSXT-DuPont rates since the contract was renewed three years ago.

Over the past three months, various members of my team have engaged DuPont almost daily in an ongoing, good faith effort to progress negotiations toward conclusion. We repeatedly asked for lane-by-lane specifics of DuPont's competitive alternatives, and in almost every case we adjusted our proposed rates downward to meet competitive alternatives presented by DuPont. As of last week, we felt that we had tentative agreements on nearly half of all proposed rates, so CSX logically concluded that we were making progress, albeit slowly, toward resolving the pricing issues. You can therefore appreciate our surprise and disappointment when we learned DuPont rejected our offer of last Thursday.

CSX has also demonstrated to DuPont our willingness to compromise on several issues, not the least of which is fuel surcharge coverage. Despite the continued high price of crude oil, CSX was willing to continue to forego a fuel surcharge on approximately two-thirds of the carloads under negotiation.

Given DuPont has rejected our offer of last Thursday, please consider it withdrawn by CSX. Mr. Coe's response indicates to CSX that negotiations between our two companies have reached an impasse. We consider that most unfortunate. We realize rail transportation is still vitally important to DuPont, so CSX intends for the time being to keep in place the four private price quotes that we established to cover shipments during our negotiations. However, CSX reserves the right to make further price adjustments based on the prevailing market for rail transportation, including shifting to common carrier rates for those movements not under contract.

As you may know, there are existing common carrier rates, either on a jointline or Rule 11 basis, available for most of the commodities DuPont ships. We can provide those to you should you not have them available. If there are any DuPont movements not currently covered by a common carrier rate publication, CSXT will promptly establish rates on your specific request.

CSXT welcomes the escalation of these negotiations within DuPont's Global Logistics group. As you come at this from a different perspective, please consider the substantial progress made to date, the fact that this is the first market-based adjustment in three years, and that CSXT was willing as recently as last week to make a major downward revision in our offer in an effort to reach closure. CSXT feels that its offer is highly competitive and legally defensible. We look forward to hearing from you.

Sincerely,

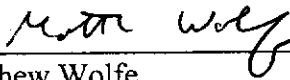
Dean Piacente
Vice President
Chemicals & Fertilizers Sales and Marketing
CSX Transportation

CERTIFICATE OF SERVICE

I hereby certify that on this 31st day of August, 2007, I caused a copy of the foregoing Motion to Dismiss, or, In the Alternative, to Stay Proceedings of CSX Transportation, Inc. to be served on the following parties by first class mail, postage prepaid or more expeditious method of delivery:

Nicholas J. DiMichael
Thompson Hine LLP
1920 N Street, NW, Suite 800
Washington, DC 20036

Jeffrey O. Moreno
Thompson Hine LLP
1920 N Street, NW, Suite 800
Washington, DC 20036



Matthew Wolfe