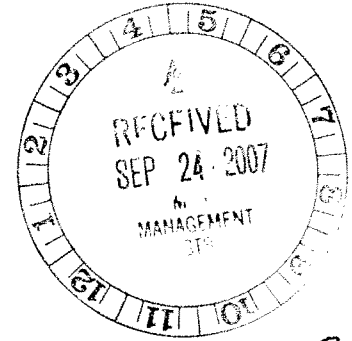


**BEFORE THE  
SURFACE TRANSPORTATION BOARD**



\_\_\_\_\_  
E.I. DUPONT DE NEMOURS AND COMPANY )

Complainant, )

v. )

CSX TRANSPORTATION, INC. )

Defendant. )  
\_\_\_\_\_

Docket No. NOR 42099 -

Docket No. NOR 42100 -

Docket No. NOR 42101 -

220324  
220325  
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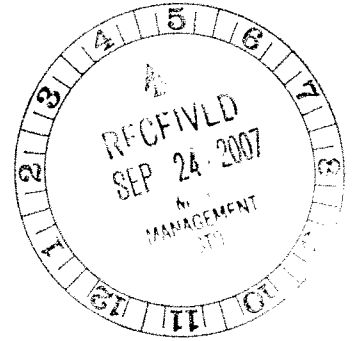
**REPLY IN OPPOSITION  
OF E.I DU PONT DE NEMOURS AND COMPANY TO  
DEFENDANT CSX TRANSPORTATION, INC'S  
MOTION TO DISMISS**

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September 24, 2007

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**



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**REPLY IN OPPOSITION  
OF E.I DU PONT DE NEMOURS AND COMPANY TO  
DEFENDANT CSX TRANSPORTATION, INC'S  
MOTION TO DISMISS**

E.I. du Pont de Nemours and Company ("DuPont") hereby submits this Reply in Opposition to the Motion to Dismiss filed by CSX Transportation, Inc. ("CSXT") on August 31, 2007, in all three of the above-captioned proceedings. In support of this Reply in Opposition, DuPont has attached the Verified Statement of Mary Pileggi ("Pileggi V.S."), DuPont's U.S./Canada Region Logistics Manager. (Attachment A)

The Board may only dismiss a complaint if that complaint "does not state reasonable grounds for investigation and action." 49 U.S.C. § 11701(b). In making that determination, the Board "must construe factual allegations in a light most favorable to complainant." *Sierra Pac. Power Co. v. Union Pac. R.R. Co.*, STB Docket No. 42012, at 4 (served Jan. 26, 1998), *citing Western Fuels Service Corp. v. The Burlington N. and Santa Fe Ry. Co.*, STB Docket No. 41987 (served July 28, 1997).

In its Motion, CSXT asks the Board to dismiss all three of DuPont's small rate case complaints on the grounds that DuPont has challenged contract rates, established pursuant to 49 U.S.C. § 10709, not common carrier rates. CSXT is wrong on both legal and factual grounds.

First, CSXT's legal arguments are flatly inconsistent with both agency precedent and with the words and legislative history of the ICC Termination Act ("ICCTA").

Second, the facts directly contradict CSXT's allegations of the existence of a Section 10709 contractual relationship between the parties with respect to the rates published by CSXT and challenged by DuPont. Specifically, the facts show that:

- DuPont *rejected* the precise rates published by CSXT during the course of the parties' contract negotiations.
- During discussions with DuPont prior to the tender of traffic, CSXT referred to the published documents as "tariffs," "rate authorities," "circulars," and "price lists" but *never* "contracts." CSXT's own description of the rate publications are consistent with the terminology long used to describe common carrier rates.
- There were no negotiations over the published rates. Indeed, the rates were *imposed* on DuPont by CSXT despite DuPont's rejection of them in the course of prior contract negotiations.
- CSXT never characterized the published rates as a Section 10709 contract "offer," there was no written or oral "acceptance" by DuPont, and there were no signatures by either party to the documents. Thus, there was no "meeting of the minds."
- DuPont *specifically told* CSXT that it understood the published rates to be common carrier rates and CSXT never challenged DuPont's understanding during discussions prior to use of the rates. In fact, CSXT never even mentioned the term "contract" until six weeks after the rates were published.

In short, the facts establish unequivocally that the rates published by CSXT and challenged by DuPont are common carrier rates that are subject to the Board's jurisdiction.

CSXT's position also must be rejected as a matter of law and policy, since it would enable a carrier to form a Section 10709 contract over a shipper's objection and strip the Board of jurisdiction over virtually all rail rates. The railroad's stance is flatly inconsistent with

Congress' careful preservation of the Board's authority over common carrier rates while permitting freely negotiated contracts between shippers and carriers.

Finally, CSXT asks the Board to declare that simplified rail rate case procedures are inappropriate for challenging the reasonableness of rates for transporting *all* hazardous materials. This position was rejected by the Board in its recent decision in Ex Parte 646, *Simplified Standards for Rail Rate Cases*, served September 5, 2007. CSXT's position would leave all shippers of these commodities entirely without redress against unreasonable rates. Moreover, such a request is not an appropriate basis for a motion to dismiss.

## **I. INTRODUCTION**

DuPont is a global science company that delivers a wide-range of products for a variety of markets, including agricultural, nutrition , electronics, communications, safety and protection, home and construction, and automotive and apparel. Pileggi V.S. at 1. Many of the products that DuPont ships and receives are transported by railroads and the company needs a safe and competitive rail system to remain successful in its own markets. Pileggi V.S. at 2. In the United States, DuPont ships by rail from 39 facilities and is captive to a single railroad at 32 of those locations. *Id.*

DuPont's domestic rail volume equates to approximately 60,000 railcars per year. Pileggi V.S. at 2. This volume is comprised of both hazardous and non-hazardous materials. *Id.* Specifically, 60% of DuPont's rail shipments involve hazardous materials and 17% of the total volume concern commodities classified as toxic-by-inhalation ("TIH") hazards. *Id.*

CSXT carries more rail shipments for DuPont than any other railroad. Pileggi V.S. at 2. CSXT serves 21 of the company's 39 rail- served facilities and DuPont is captive to CSXT at 16 locations. *Id.* CSXT transports a variety of commodities for DuPont, of which 11 percent are

TIH materials, 27 percent are other hazardous materials, and the remaining 62 percent are non-hazardous materials. *Id.*

In June 1988, DuPont and CSXT entered into a rail transportation contract (CSXT-1847) which governed virtually all DuPont traffic handled by the railroad for nearly 20 years. *Pileggi V.S.* at 2. The contract provided for the regular adjustment of the rates charged by CSXT and the parties adopted numerous other amendments over the years, including an extension of the contract term until May 31, 2007. *Id.*

Based on the scope and complexity of the traffic covered under the parties' contract and in order to assist its business units in budgeting for transportation costs, DuPont informed CSXT in February of 2006, and again in the Spring and Summer of that year, of its desire to begin the contract re-negotiation. *Pileggi V.S.* at 3. CSXT failed to honor these requests and waited until March 9, 2007 to provide DuPont with a contract proposal. For a variety of reasons, including unacceptable rate levels and structure, DuPont expressly rejected the proposal on March 19, 2007. *Id.*

Over the next two months, DuPont was compelled to develop a contract counter-proposal covering hundreds of traffic lanes across multiple businesses, and the parties thereafter engaged in various meetings and discussions. *Pileggi V.S.* at 3. In the middle of the parties' negotiations, CSXT informed DuPont in May 2007 that it intended to publish the rates it proposed on March 9, if the parties failed to reach a new agreement by June 1. *Id.* Recognizing that time was running short, DuPont asked CSXT to extend the contract term for a two month period. CSXT refused, agreeing only to a two-week extension, until June 15. The railroad also imposed an unrealistic deadline of June 7 for the parties to complete a new agreement, failing which the carrier stated it would publish the previously rejected rates in "private DuPont tariffs." *Id.* at 4.

CSXT rebuffed further attempts by DuPont to extend the contract to allow the negotiations to continue. Pileggi V.S. at 4. In early June, CSXT informed DuPont that it intended to publish the previously rejected rates in “several temporary rate authorities” effective on June 16. *Id.* DuPont thereafter notified CSXT that it understood any published rates to be “common carriage, non-contract moves” and CSXT did not challenge DuPont’s understanding. *Id.* Rather, on June 22 and June 25, CSXT published four tariffs, effective on June 16, 2007, as “CSX Transportation Private Price List Containing Confidential Information for E.I. du Pont de Nemours Containing Prices on Chemicals.” *Id.* At no time did CSXT ever refer to the Private Price Lists as contracts, and DuPont always understood them to be common carrier tariffs. *Id.* at 5.

Since the expiration of the contract on June 15, 2007, DuPont has tendered traffic to CSXT under the Private Price Lists, while it continued to negotiate a new contract with CSXT. However, these additional efforts, including a meeting in Jacksonville, FL among high ranking DuPont and CSXT officials in late July 2007, were not successful. Pileggi V.S. at 5. On August 3, 2007, DuPont expressed its disappointment to CSXT that the parties could not reach an agreement, a failure which required DuPont to “tender traffic under CSXT common carrier rate publications.” *Id.* Thereafter, DuPont filed its complaints challenging the legality of certain rates published by CSXT in the Private Pricing List.

## **II. DUPONT HAS CHALLENGED COMMON CARRIER RATES**

As the party alleging the existence of a Section 10709 contract, CSXT “has the burden of showing the presence or absence of a contract underlying the rates at issue.” *The Toledo Edison Co. v. Norfolk & Western Ry. Co.*, 367 I.C.C. 869, 871 (1983) (“*Toledo Edison*”). CSXT has failed to meet this burden in several respects. First, CSXT never even attempts to establish the

existence of a contract in its Motion. Rather, it seeks to establish the non-existence of a tariff. Second, the railroad bases its “no-tariff” argument upon two faulty legal assertions. Specifically, CSXT argues that common carrier tariffs must be “public” in the sense that they must be “available to all shippers.” CSXT Motion at 7. CSXT also argues that common carrier tariffs must be “public” in the sense that they must be “matters of public record.” *Id.* CSXT further argues that, because the DuPont “Private Price Lists” (“PPLs”) are confidential, private publications, they legally cannot be common carrier tariffs and therefore must be Section 10709 contracts, regardless of the parties’ intent. *Id.* at 7-8. CSXT is wrong.

“Private” tariffs that contain rates that may be used only by a named party to the exclusion of the general public have been expressly permitted by the agency for more than two decades. Moreover, the ICC Termination Act of 1995 (“ICCTA”) abolished the requirement that all tariffs be publicly available. Finally, the facts themselves do not demonstrate even a “reasonable possibility” that a contract exists.<sup>1</sup>

**A. CSXT’s Legal Position is Contrary To Agency Precedent and the Requirements and Legislative History of ICCTA**

**1. The Agency Has Long Permitted Private Common Carrier Tariffs.**

The fact that CSXT has published rates applicable only to DuPont does not convert those rates into Section 10709 contract rates. “Private” common carrier tariff rates have been expressly permitted by the agency since at least 1984. In *Rates for a Named Shipper or Receiver*, 367 I.C.C. 959 (1984), the ICC repealed its rule prohibiting tariffs naming rates for the account of a named shipper or receiver. The ICC found that Congress intended to permit

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<sup>1</sup> The “reasonable possibility” test allocates the decisional burden to the proper forum to determine whether a contract or a tariff underlies the challenged rate, in conformity with the Congressional objectives of 49 U.S.C. § 10709. *Toledo Edison*, 367 I.C.C. at 873. Because the “potential for delay in deferring [sic] to a court’s jurisdiction is a serious concern,” the Board “must assure [itself] that the action is correctly taken.” *Id.* at 872.

maximum flexibility on the part of carriers in the pricing of their services so that they can provide a variety of quality and price options to meet the changing needs of shipper and market demands. *Id.* at 962. Furthermore, the ICC concluded, “as a practical matter, it makes little or no sense to foreclose a form of pricing that may otherwise be legally achieved by obtaining contract carrier authority or by filing tariffs containing minimum weights, unique product line descriptions, or limited geographic descriptions without mention of shipper names.” *Id.* at 964.

This decision was cited favorably in the railroad context in *National Grain & Feed Assoc. v. Burlington N. R.R. Co.*, 8 I.C.C.2d 421, 438 (1992) (“*NGFA*”), *overruled on other grounds*, 5 F.3d 306 (8th Cir. 1993):

In complainant’s opinion, shipper-specific tariffs are by definition unlawful, because tariffs must be open to all who choose to use them. The law today is not so limiting. *The Commission no longer prohibits carriers from publishing shipper-specific tariffs*, as it has concluded that claims of discrimination can better be addressed on a case-by-case basis than through a blanket prohibition. *Rates for Names [sic] Shippers*, 367 I.C.C. 959 (1984).

(Emphasis added). Ironically, CSXT incorrectly cites this very same decision for its assertion that common carrier rates must be available to all shippers.<sup>2</sup>

Thus, CSXT’s assertion that the DuPont PPLs cannot be common carrier tariffs because they can be used only by DuPont is inconsistent with agency precedent and is legally incorrect.

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<sup>2</sup> Because CSXT’s Motion contains an erroneous citation to *NGFA*, DuPont is unable to determine upon what language CSXT bases its conclusion. The closest discussion of CSXT’s point is *NGFA*’s citation of two court decisions from 1911 and 1924 stating that a tariff must be “available to all shippers.” *Id.* at 437. The ICC merely noted that, since the challenged tariff was available to all shippers, the complainant’s citation to those decisions was inapposite. *Id.* Later in the decision, the ICC also distinguished both cases. *Id.* at 438, n. 27.

**2. ICCTA Does Not Require That All Common Carrier Tariffs Be Available to All Members of the Public.**

CSXT incorrectly asserts that 49 U.S.C. § 11101(b) requires all common carrier rates to be “public” in the sense that they must be “matters of public record,” because rail rates must be provided to any person on request. CSXT Motion, p. 7. But Section 11101(b) does not require rail carriers to publicly disseminate all of their common carrier rates. Rather, it simply requires rail carriers to “provide to any person, on request, the carrier’s rates and other service terms.” This means that a carrier must provide a person, upon request, the carrier’s rates and service terms for *that* person.

The Board reached this very conclusion in *Pejepscot Industrial Park, Inc., d/b/a Grimmel Industries—Pet. for Declaratory Order*, STB Finance Docket No. 33989 (served May 15, 2003), another decision that CSXT ironically cites for the opposite conclusion. In that decision, the Board held:

As a common carrier, MEC has two *interconnected* obligations under section 11101. First, it must provide written common carrier rates to any person requesting them. 49 U.S.C. 11101(b). Second, it must provide rail service pursuant to those rates upon reasonable request. 49 U.S.C. 11101(a). *These requirements are linked, because a rate is a necessary predicate to any specific request for service. Without rates, and any attendant terms setting forth the particulars of service, a shipper cannot make a specific service request.* It is axiomatic that a rail carrier may not indirectly avoid its common carrier obligation to provide service by evading its obligation to establish rates upon request.

*Id.* at 8 (emphasis added) (footnotes omitted). The Board declared that the objective of Section 11101(b) is to ensure that a rail carrier cannot avoid its common carrier obligation to a person under Section 11101(a) simply by refusing to provide that person with rate and service terms. This section does not require a rail carrier to provide those *same* rates and service terms to any *other* person upon request.

The express terms of Section 11101 also indicate that, in ICCTA, Congress eliminated the requirement that all common carrier tariff rates be publicly disseminated, with the exception of agricultural products. *See* 49 U.S.C. § 11101(d). Section 11101(d) requires that:

With respect to transportation of agricultural products, *in addition to* the requirements of subsections (a), (b), and (c), a rail carrier *shall publish, make available, and retain for public inspection* its common carriers rates....(emphasis added)

If subsection (b) requires public dissemination of all common carrier rates, as CSXT claims, then subsection (d) is unnecessary. But the text of subsection (d) clearly states that its public dissemination requirement is “in addition to” the requirements of subsection (b). Thus, CSXT incorrectly reads a public dissemination requirement into Section 11101(b).

Any doubt about this construction is resolved by the legislative history of Section 11101. The House Conference Report clarifies that “[t]he provision also includes specific *additional* obligations of the carrier with respect to transportation of agricultural products, *including making rate and service terms...publicly available.*” H. Conf. Rep. No. 104-422, 104th Cong., 1st Sess., *reprinted in* 1995 U.S.C.C.A.N. 793, 868 (emphasis added). Thus, Congress only required rail carriers to publicly disseminate common carrier rates for agricultural products.<sup>3</sup>

Accordingly, the Board should reject CSXT’s argument that the DuPont PPLs must be Section 10709 contracts merely because they are confidential.<sup>4</sup>

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<sup>3</sup> Ironically, CSXT’s position was rejected by the Union Pacific Railroad Company in comments filed in Ex Parte 669. In those comments, UP agreed that a rail carrier may publish confidential common carrier tariff rates for a single shipper based on the requirements of Section 11101, as revised by ICCTA. UP Reply Comments at 8-9.

<sup>4</sup> In any event, DuPont never asked CSXT to issue confidential rates. The fact that CSXT did so of its own volition should not allow it to convert a common carrier tariff into a contract.

**B. The Facts Establish that the DuPont PPLs are Common Carrier Tariffs**

The Board's decision in *Union Pac. R.R. Co.—Pet. for Declaratory Order*, STB Finance Docket No. 35021, slip op. at 3 (served May 16, 2007) (“UPRR”), holds that the same document could be a tariff in some scenarios and a contract in others. The key to that determination is the intent of the parties as evidenced by the facts surrounding the negotiation of the document and by the form and content of the document, among other factors.

In *UPRR*, the Board denied UP's petition for a declaratory order that UP's Circular 111 was a tariff. Although the Board previously had declared Circular 111 to be a tariff in *Kansas City P & L Co. v. UP*, STB Docket No. 42095 (served Mar. 29, 2007) (“KCPL”), it clarified that its prior decision was based upon evidence of the parties' intent to employ a common carriage rate. Furthermore, the Board declared that, absent similar persuasive contemporaneous evidence of the parties' intent in other arrangements, it would presume Circular 111 to be a contract based upon the terms of the agreement itself. Thus, whether a document is a tariff or a contract depends upon the intent of the parties and the text of the document itself.

Similarly, in *NGFA*, the ICC noted that “a tariff is nothing more than a special kind of contract” and that a Section 10709 contract is merely a special class of contract that Congress has chosen to exempt from regulation:

Rail carriers have long followed the practice of incorporating rates they have negotiated with shippers into tariffs. The Staggers Act, by creating a special class of contract service under § 10713 [currently § 10709], did not prohibit that practice. It merely put the rates in those contracts filed with the ICC as contracts rather than as tariffs into a special class that is exempt from all regulation under the Act.

8 I.C.C. 2d at 437-38. Thus, since even tariffs are contracts, the relevant question is *which form* of contract – a tariff or a Section 10709 contract – did the parties enter in *this* particular case?

In answering this question, CSXT has the burden to prove at least a “reasonable possibility” that a Section 10709 contract exists. *Toledo Edison*, 367 I.C.C. at 871-73.<sup>5</sup> The facts clearly show that the parties in this case did not intend to make, and did not in fact make, a Section 10709 contract. CSXT’s unverified factual allegations are flimsy and contradictory at best, and fail to mention a host of other evidence.

The Verified Statement of Mary Pileggi, DuPont’s U.S./Canada Logistics Manager, provides detailed evidence of the course of discussions between the parties. The facts described in Ms. Pileggi’s Statement show conclusively both that the parties did not intend to enter, and did not in fact enter, a Section 10709 contract, and that the rates tendered by CSXT that are the subject of this complaint are common carrier tariff rates and not Section 10709 contract rates.

As noted by Ms. Pileggi, for nearly 20 years, the transportation of DuPont products by CSXT had been governed by a Section 10709 Master Rail Transportation Contract. *Pileggi V.S.* at 2. Because that Master Contract was scheduled to expire on May 31, 2007, in February 2006 DuPont asked CSXT for a contract proposal to replace the expiring contract. *Id.* at 3. Despite DuPont’s early request for a contract proposal, CSXT did not respond to DuPont’s request until March 9, 2007. *Id.* However, that proposal was unacceptable to DuPont for a variety of reasons, and DuPont specifically rejected CSXT’s March 9 contract proposal in a letter to CSXT on March 19, 2007. *Id.*

After further unfruitful discussions between the parties, in May 2007, CSXT peremptorily informed DuPont that it intended to publish in CSXT circulars *the rates that were included in the previously rejected March 9 proposal*, with an effective date of June 1, 2007. *Pileggi V.S.* at 3. On May 23, DuPont expressed its disappointment over CSXT’s decision to

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<sup>5</sup> See note 1, *supra*.

publish the previously rejected rates. *Id.* At the same time, DuPont asked CSXT to extend the existing Master Contract for two months, to allow the parties to reach a mutually acceptable agreement. But on May 25, CSXT informed DuPont that it would agree to only a two-week extension, and that if the parties did not reach agreement by June 7, CSXT would unilaterally publish the rates that the railroad had proposed on March 9 into several “private DuPont tariffs” with an effective date of June 16. *Id.* at 4.

After CSXT again rejected a DuPont request to extend the existing Master Contract to permit more negotiations, the railroad informed DuPont that it would publish “several temporary rate authorities” containing the very same March 9 rates that DuPont had rejected in the course of the prior contract negotiations. *Id.*

On June 14, DuPont informed CSXT that, commencing June 16, it would pay the rates set forth in the CSXT circulars “as *common carriage, non-contract moves.*” *Id.* (emphasis added). In that letter, DuPont again stated that the rates tendered by CSXT were *not* acceptable for inclusion in a contract. *Id.*

CSXT published the March 9 rates that DuPont had rejected in four tariffs entitled a “CSXT Private Price List,” effective June 16, 2007. *Id.* The CSXT DuPont PPLs did not state that they were a contract “offer.” DuPont never orally or in writing indicated any “acceptance” of a contract offer. In fact DuPont had told CSXT several times that the rates in these private “tariffs” were *not* acceptable as contract rates. The DuPont PPLs contained no space for any signature and the document was never signed. As a matter of both fact and law, there clearly was no meeting of the minds on a Section 10709 contract.

CSXT’s entire evidentiary showing consists of just two e-mails sent by CSXT to DuPont, the circumstances of which are completely unverified by the railroad. *See CSXT Motion, Exs. 2*

and 3. Just as CSXT's case law citations do not support its legal argument, neither does its factual evidence support the existence of a contract.

In CSXT's Exhibit 2, a May 25, 2007 e-mail from Bruce Kuzma to Mary Pileggi, CSXT states:

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 effective date. Please let us know if we need to resubmit the details of Randy's May 22nd email. This preserves the joint-line 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. (emphasis added)

Twice in this e-mail, CSXT refers to the DuPont PPLs as "tariffs," and not once does CSXT suggest, much less state, that the PPLs are contract documents.

Yet CSXT claims that this May 25 e-mail shows that CSXT offered DuPont a choice between using private prices or CSXT's public prices, which CSXT seems to believe should have informed DuPont that the PPLs were contract documents. CSXT Motion at 3-4. The full text quoted above clearly disproves that assertion. CSXT merely expressed the fact that DuPont could use the joint rates in the private PPLs or Rule 11 rates in CSXT's public tariffs.

The only other piece of evidence cited by CSXT is an August 1, 2007 e-mail from CSXT's Dean Piacente to DuPont's Kathryn Stone sent more than six weeks *after* CSXT

published and DuPont began using the private PPLs. The language that CSXT relies upon to prove the existence of a contract states:

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.* (emphasis added)

In its Motion, CSXT seems to suggest that the term “contract” refers to the DuPont PPLs. That is not at all clear from the very general statement in the email, and more importantly, this was the first and only time prior to its Motion to Dismiss that CSXT even used the term “contract” in its correspondence with DuPont over the PPLs. Such a vague reference, more than six weeks *after* CSXT published and DuPont began tendering traffic under the PPLs that CSXT previously had described as “tariffs,” was clearly an attempt by CSXT to “paper the record.” This “evidence” falls far short of proving the “reasonable possibility” of a Section 10709 contract. Moreover, CSXT omits the fact that DuPont responded to this August 1 letter with its own letter dated August 3, 2007, again stating why DuPont could not accept the March 9 contract offer from CSXT, thus requiring DuPont to “tender traffic under CSXT common carrier rate publications.” Pileggi V.S. at 5.

The record in this case unequivocally shows that, in its contract negotiations with CSXT, DuPont *expressly rejected* the very same rates that CSXT has published in the DuPont PPLs. Pileggi V.S. at 3-4. CSXT cannot unilaterally convert DuPont’s rejection into acceptance by publishing the rates in a PPL and then claim that document is a contract. DuPont at all times understood that the PPLs established common carrier rates and conveyed that understanding to CSXT on multiple occasions. *See* Pileggi V.S. at 4-5. Indeed, CSXT encouraged DuPont’s

understanding by referring to the PPL's as "tariffs," "rate authorities" and "circulars," but never once during the discussions calling them "contracts." *Id.*

Furthermore, the content of the DuPont PPLs themselves demonstrates that they *are in fact* common carrier tariffs. The documents bear all the marks of common carrier tariffs. The rates contained in the documents were imposed unilaterally, and the rates can be changed unilaterally by CSXT on merely twenty days' notice. Acceptance is by the tender of traffic, and the documents contain no bilateral promise by the shipper. See, STB Ex Parte No. 669, *Interpretation of the Word "Contract" in 49 U.S.C. 10709*, decision served March 29, 2007, slip op. at 4 ("Traditionally, common carrier pricing has been a holding out to the public to provide a specified transportation services for a given price that a shipper accepts by tendering traffic. Under these unilateral contracts (footnote omitted), the carrier has the right to change the common carrier rates or terms upon 20 days' notice under 49 U.S.C. 11101."). Nowhere in the documents does the word "contract" appear to describe the CSXT DuPont PPLs; nor is there any statement that the PPLs are contracts pursuant to 49 U.S.C. § 10709. In addition, the section in each PPL entitled "Alternation/Non-Alternation of Publication" states: "*Rail Transportation Contracts* take precedence over prices published herein for the same commodities over the same routes." (emphasis added) If the PPLs are rail transportation contracts, this provision makes no sense.<sup>6</sup> This is further evidence that the parties in fact entered into a common carrier arrangement.

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<sup>6</sup> The most that CSXT could say about this provision is that it creates an ambiguity. But ambiguities, whether they be in a contract or a tariff, are construed against the drafter, which in these cases is solely CSXT. *Ideal Forging Corp. and G.V. Eads and Co., Inc., -- Petition for Declaratory Order -- Certain Rates and Practices of Legend Freight Systems, Inc.*, STB Docket No. 40900 (served Jan. 25, 1999), citing *Coca-Cola Co. v. Atchison, T.&S.F. Ry.*, 608 F.2d 213, 220 (5th Cir. 1979).

An equally telling fact comes from comparing the DuPont PPLs with the form and content of tariffs published on CSXT's web site. As an example, Public Price List CSXT 28151 (*See* DuPont Attachment B),<sup>7</sup> covering Petrochemicals, contains the same section headings and order as CSXT Private Price List 97249 (*See* CSXT Motion, Ex. 1), which in turn is nearly identical to each of the other DuPont PPLs. Even more striking, the text of both documents is nearly identical, almost verbatim.<sup>8</sup>

In essence, these PPLs, which CSXT portrays as beneficial to both carriers and shippers, are tariffs imposed by CSXT on DuPont with the terms "private" and "confidential" inserted on the cover. That serves no one's interest either in this case or in rail transportation generally, except CSXT's desire to create a document that it can assert is either a contract or a tariff, depending upon which answer suits the moment.

Although DuPont recognizes that certain private pricing arrangements can have value to shippers, that value is in no way denigrated by confirming that such documents are common carrier tariffs. Indeed, their value is *enhanced* by providing shippers with minimum regulatory protections against the unilateral whims of a rail carrier to publish or change those documents. The Board should rule that the rate authorities at issue in this case are in fact common carrier tariffs. CSXT's entire premise for claiming otherwise is its assertion that private pricing arrangements could be rendered void altogether because they would be neither contracts nor tariffs. But as demonstrated above, CSXT's assertions are based upon the false predicate that common carrier rates can be neither private nor confidential.

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<sup>7</sup> Presumably, this public tariff would apply to Nitrobenzene, which has the same 5-digit STCC of 28151 and is the subject of DuPont's complaint in Docket NOR 42101.

<sup>8</sup> The only notable difference is in the fuel surcharge text. Whereas the public tariff incorporates by reference CSXT Fuel Surcharge Publication 8661, DuPont PPL 97249 expressly spells out the fuel surcharge methodology. But both documents employ the same fuel surcharge calculation.

As the Union Pacific Railroad Company correctly noted at page 9 of its Opening Comments in Ex Parte 669 (emphasis added):

A contract by its nature requires agreement between the parties. Thus, a railroad cannot designate an arrangement as a Section 10709 contract if there is no mutual assent to create such a contract. *Absent that assent, such an arrangement for a regulated commodity is a common carrier rate. So, the railroad has no choice if there is no agreement but to call the rate a common carrier rate.*

Since there are no facts upon which CSXT can demonstrate even a “reasonable possibility” of mutual assent to enter into a Section 10709 contract, the DuPont PPLs must be common carrier tariffs that establish common carrier rates.

**C. CSXT’s Position Would Strip the Board of Virtually All Authority Over Rail Rates and Is Inconsistent With the Proper Role of Section 10709 Contracts Expressed by Congress**

As both a matter of law and policy, CSXT’s position is inconsistent with the whole structure of regulation established by Congress in the Staggers Act and ICCTA. In those statutes, Congress permitted shippers and carriers to enter into Section 10709 contracts, but preserved the authority of the Board to regulate all other rates published by rail carriers. CSXT’s position would permit a carrier to offer unacceptable rail rates to a shipper in the course of contract negotiations, and after the shipper rejected those rates, to impose the very same rates on the shipper in a “Private Price List” *outside* the Board’s regulatory authority.

Indeed, under CSXT’s position, even the rates published in the carrier’s “public” tariff would be unavailable to a shipper once the carrier had published a Private Price List, based on the “Alternation/Non-Alternation of Publication” clause contained in these documents. This clause states that the rates in the private price list published for a specific shipper *supercede* the rates in the carrier’s public tariff. Thus, CSXT’s “Alice in Wonderland” position would deny the

shipper any regulatory protection against unreasonably high rates published in private price lists, while simultaneously making the carrier's public tariffs unavailable to the shipper. Under this view, the Board's authority over rail rates would be circumscribed to encompass only a miniscule portion of the universe of rail carrier pricing.<sup>9</sup> This is clearly inconsistent with the intent of Congress and the entire structure of ICCTA's regulation of rail rates.

Moreover, Congress enacted a regulatory scheme in which common carriage is the default for all rail transportation. Only a Section 10709 contract is exempt from common carrier regulation.

Shippers *who do not elect* to enter into contracts, or are unable to do so, are assured that carriers will have the same common carrier obligations as in existing law.

H.R. Rep. No. 96-1430, at 100 (1980), *reprinted in* 1980 U.S.C.C.A.N. 4110, 4132 (emphasis added). CSXT's arguments are inconsistent with this intent because they require that any document that is not a tariff must be a Section 10709 contract, when Congress clearly intended that any document that is not a Section 10709 contract must be a common carrier tariff. Congress expected that Section 10709 contracts would be negotiated between a shipper and a carrier.<sup>10</sup> CSXT's position would turn this expectation on its head: a carrier could *impose* on the shipper a Section 10709 contract after a shipper had *rejected* the carrier's contract offer by merely publishing the same rates in an unregulated "PPL."

---

<sup>9</sup> Under CSXT's position, the *only* circumstance in which the Board would have jurisdiction once any railroad published a PPL would be where the shipper made a request under 49 C.F.R. §1330.2 for a tariff rate – a course of action designed to strip the Board of jurisdiction over virtually all rail rates and to terminally chill the rights of all but the most determined shipper. See, CSXT Motion, p. 8.

<sup>10</sup> See, *id.*

### **III. THE SIMPLIFIED RAIL RATE PROCEDURES APPLY TO ALL HAZARDOUS MATERIAL SHIPMENTS**

In a second argument in its Motion to Dismiss, CSXT asks the Board to declare that any cases challenging rates for the transportation of hazardous materials should not be considered under simplified procedures, but instead must require a full stand-alone cost (“SAC”) presentation. CSXT Motion at 10-12. CSXT’s request is inconsistent with the Board’s recent decision in Ex Parte 646 (Sub-No. 1), *Simplified Standards for Rate Cases* and is procedurally improper. Moreover, the request contravenes both the statute and Congressional intent.

At its essence, CSXT’s request challenges the eligibility of hazardous material traffic to use the simplified rail rate procedures. Congress directed the Board “to establish a simplified and expedited method for determining the reasonableness of challenged rail rates in those cases in which a full stand-alone cost presentation is too costly, given the value of the case.” 49 U.S.C. § 10701(d)(3). This is the sole standard established by Congress for eligibility. There is no expression of intent in the statute or the legislative history to exclude hazardous material traffic from the use of simplified procedures.

If the Board were to bar hazardous material traffic from using the simplified procedures, it effectively would deregulate this traffic. Because hazardous materials seldom move between an origin and a destination in quantities that would justify a full SAC presentation, an aggrieved hazardous material shipper would be denied regulatory rate protection if it could only challenge a rail rate under the SAC procedures. Yet, hazardous material shippers are among those shippers with the greatest need for regulatory protection, since hazardous materials often can be transported safely *only* by rail and most rail movements are captive to a single rail carrier.

Although CSXT asks the Board to exclude all hazardous material movements from the simplified rate procedures, most of its focus is upon commodities that are toxic-by-inhalation,

such as chlorine.<sup>11</sup> Indeed, the very reason why three of the seven lanes that are the subject of DuPont's Complaints are TIH movements of chlorine is because chlorine is both disproportionately captive to rail compared with DuPont's other commodities, and because CSXT has increased chlorine rates disproportionately in an attempt to de-market as much chlorine traffic as possible. *See* CSXT Motion at 11-12 ("Given a choice, CSXT would decline to transport Chlorine.") Without a regulatory remedy to protect against unreasonably high TIH rates, CSXT may decline to transport TIH commodities merely through its pricing of the traffic. The end result would be that either TIH traffic does not move at all, or it moves by truck, which poses greater risks to the general public. As DuPont will show in its evidence in this case, CSXT's desire to de-market chlorine through its rate actions attempts to elevate CSXT's private interest above the interest of the public in the utilization of the safest and most secure mode for the transportation of hazardous commodities – rail carriage.

Furthermore, shortly after CSXT filed its Motion to Dismiss, the Board issued its final rules in *Simplified Standards for Rail Rate Cases*, STB Ex Parte No. 646 (Sub-No. 1). Those rules do not contain any restriction against application of the simplified procedures to either hazardous material in general, or the more narrow category of TIH traffic. Therefore, it would be improper for the Board to impose such restrictions in this case, when the rules adopted by the Board contain no such restriction.

The premise behind CSXT's request to bar hazardous materials from using the simplified procedures is that transportation of hazardous materials "involves complex costs and issues that are not susceptible to meaningful or adequate resolution under" the simplified procedures.

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<sup>11</sup> The notion that all hazardous materials should be barred from using the simplified procedures is absurd on its face, as CSXT must well know, because all hazardous materials are not alike.

CSXT Motion at 10. But CSXT is wrong. Under the three-benchmark approach that DuPont has invoked in its Complaints, the costs of moving hazardous materials would be reflected in the rates of the comparable traffic group. To the extent that CSXT believes otherwise, the Board's procedures permit it to submit evidence of "other relevant factors." *Simplified Standards*, slip op. at 22 (served Sept. 5, 2007). Indeed, in its own comments to the Board in *Simplified Standards*, CSXT never advocated for the exclusion of hazardous materials from using the three-benchmark approach. Rather, CSXT merely urged the Board to permit carriers to submit particularized evidence of extra costs that the comparable group may not reflect.<sup>12</sup> That is precisely what the Board's newly-adopted rules permit.

Finally, CSXT has chosen an improper procedural vehicle for raising its objection to applying the simplified standards to hazardous materials movements. This type of objection should be raised through a rulemaking proceeding, or in the evidence and argument phase of this case. To raise its objections as part of a Motion to Dismiss, however, with only bald assertions and no evidence, in and of itself requires the Board to deny CSXT's request.

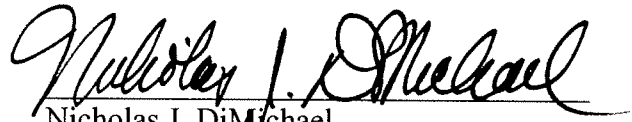
#### **IV. CONCLUSION**

For the foregoing reasons, the Board should deny CSXT's Motion to Dismiss DuPont's three complaints filed under the Board's simplified rate case procedures.

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<sup>12</sup> Joint Opening Comments of NS and CSXT, p. 24; Joint Reply Comments of NS and CSXT, pp. 27-28.

Respectfully submitted,

A handwritten signature in black ink, reading "Nicholas J. DiMichael". The signature is written in a cursive style with a horizontal line underneath the name.

Nicholas J. DiMichael

Jeffrey O. Moreno

Karyn A. Booth

Laurence W. Prange

Thompson Hine LLP

1920 N Street, N.W., Suite 800

Washington, D.C. 20036

(202) 331-8800

September 24, 2007

CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of September, 2007, a copy of the foregoing Reply in Opposition of E.I. du Pont de Nemours and Company to Defendant CSX Transportation, Inc.'s Motion to Dismiss was served by overnight mail or messenger upon the following:

Peter J. Shudtz  
Paul R. Hitchcock  
Steven C. Armbrust  
CSX CORPORATION  
500 Water Street  
Jacksonville, FL 32202

G. Paul Moates  
Paul A. Hemmersbaugh  
Matthew J. Warren  
SIDLEY AUSTIN LLP  
1501 K Street, NW  
Washington, DC 20005



Nicholas J. DiMichael

# **ATTACHMENT A**

BEFORE THE  
SURFACE TRANSPORTATION BOARD

|                                    |   |  |
|------------------------------------|---|--|
| E.I. DUPONT DE NEMOURS AND COMPANY | ) |  |
|                                    | ) |  |
| Complainant,                       | ) |  |
|                                    | ) |  |
| v.                                 | ) |  |
|                                    | ) |  |
| CSX TRANSPORTATION, INC.           | ) |  |
|                                    | ) |  |
| Defendant.                         | ) |  |

VERIFIED STATEMENT OF MARY PILEGGI  
E.I. DUPONT DE NEMOURS AND COMPANY

I. My name is Mary Pileggi. I am the U.S./Canada Region Logistics Manager for E.I. du Pont de Nemours and Company ("DuPont") in Wilmington, DE. I have been an employee of DuPont since December 1, 1999. Currently, I manage the transportation of DuPont's products in the U.S./Canada regions, including logistics, transportation equipment, safety and security. I am also responsible for supervising the negotiation and administration of contracts between DuPont and its carriers, including the rail agreement with CSX Transportation, Inc. ("CSX"). I have directly participated in and/or have supervised the most recent contract negotiations between DuPont and CSX.

I.  
DUPONT'S RELIANCE UPON RAIL TRANSPORTATION SERVICES

2. DuPont is a global science company creating sustainable solutions essential to a better, safer, healthier life for people everywhere. Operating in more than 70 countries, DuPont offers a wide range of innovative products and services for markets including agriculture, nutrition, electronics, communications, safety and protection, home and construction, automotive and apparel. The science based solutions that DuPont delivers to the global marketplace require as raw materials or intermediates products that are both hazardous and non-hazardous in nature.

3. DuPont needs a strong, viable, safe and competitive rail transportation network to remain successful in the markets it serves. DuPont ships or receives approximately 60,000 railcars annually. Of this total rail volume, 60% of the railcars contain hazardous materials, and 17% of the total is classified as toxic inhalation hazards (“TIH”). The nature of the products and volumes that we ship or receive require movement by rail. DuPont has 39 active rail shipping locations in the US situated along the Gulf Coast and East of the Mississippi River. DuPont tenders traffic to 38 US railroads, including all seven Class I’s and regional and shortline carriers. Eighty-eight percent of the rail transportation needs of DuPont are met by CSXT, UP, NS and KCS. Of the 39 active rail sites, DuPont is captive to one carrier at 32.

4. DuPont and CSXT have had a contractual relationship since 1988, and CSXT is the largest rail transportation carrier for DuPont. CSXT has access to 21 of the 39 DuPont rail sites and the Company is captive to CSXT at 16 locations. DuPont ships or receives a wide variety of commodities on CSXT, including plastics, ilmenite ore, titanium dioxide, sulfuric acid, chlorine, refrigerant gases and limestone. Eleven (11) percent of the DuPont shipments on CSXT are TIH materials, twenty-seven (27) percent are other hazardous material shipments, and the remaining sixty two (62) percent are non-hazardous shipments.

## II. DUPONT AND CSX’S RAIL TRANSPORTATION CONTRACT NEGOTIATIONS AND THE PUBLICATION BY CSX OF DUPONT PRIVATE TARIFFS

5. For nearly 20 years, the transportation of DuPont products by CSX has been governed by a Master Rail Transportation Agreement, CSXT-1847 (“Master Contract”). The parties entered into the Master Contract in June 1988 and have amended it from time-to-time over the years. The Master Contract governed virtually all DuPont commodities transported by CSX and adjusted the contract rates regularly. Under amendments adopted in 2004, the Master Contract was scheduled to expire on May 31, 2007.

6. Because CSXT handles such a large portion of the Company's traffic, and in order to assist our business units in planning for the anticipated re-negotiation of the Master Contract, DuPont asked CSX for a contract proposal in February 2006. Exh. 1. DuPont made additional requests for new contract rates to CSX, but the railroad did not provide them. Instead, in September 2006, CSX advised DuPont of the terms that it desired to address in a contract renewal and that CSX would offer DuPont a contract proposal in January 2007. Exh. 2.

7. DuPont did not receive a written contract proposal from CSX until March 9, 2007. The proposal failed to cover all traffic lanes and included a rate structure based largely on Rule 11 rates which the railroad knew was incompatible with DuPont's payment systems. The proposal also included substantial rate increases and other unacceptable terms. Thus, DuPont rejected this proposal on March 19, 2007. Exh. 3.

8. With only ten weeks remaining until the expiration of the contract, DuPont was required to develop a counter-proposal covering hundreds of traffic lanes across its five business platforms, each with multiple strategic business units. We also asked CSX to meet with four of our primary business units to assist the carrier in understanding the impact of its proposed rate increases on the businesses. The meetings took place on May 7 (Fluoroproducts Business), May 18 (Titanium Technologies Business), and June 7 (Chemical Solutions Enterprise and Packaging & Industrial Polymers Businesses).

9. In May, at a time when we were deeply engaged in the contract negotiations with CSX, the railroad informed DuPont that it intended to publish the rates included in the previously rejected March 9 proposal, with an effective date of June 1, 2007. Exh. 4. On May 23, 2007, DuPont expressed its disappointment over CSX's decision to publish the rates that DuPont previously rejected. We also asked CSX to extend the existing contract for a two month period to allow the parties to try and reach a mutually acceptable agreement. Exh. 5. DuPont believed that a two month extension would be necessary, based on the scope and complexity of the traffic at issue, the two month delay in receiving the

CSXT contract proposal and because it still had not received complete rate information from the carrier for all traffic lanes to be included in the contract.

10. On May 25, 2007, CSX informed DuPont that it would agree only to a two week extension of the contract, until June 15. CSX also advised us that if the parties failed to agree upon new contract rates and terms by June 7 it would publish the rates it proposed on March 9 into several “private DuPont tariffs” with an effective date of June 16. Exh. 6. CSX added that if the parties agreed on a contract, that contract would replace the “private tariffs.” *Id.*

11. On June 5, DuPont again expressed its concern over CSX’s decision to publish the rates set forth in the March 9 proposal and again asked CSX to extend the current contract until June 30, 2007 to allow the contract negotiations to continue. Exh. 7. On June 8, 2007, CSX denied the Company’s request and informed us that it would publish “several temporary rate authorities” effective June 16. Exh. 8.

12. On June 14, 2007, I informed CSX that DuPont desired to continue the contract negotiations and that

In the interim, and until we complete our negotiations, DuPont will, commencing June 16, 2007, pay the base rates set forth in your circulars as common carriage, non-contract moves. We do not, however, agree that these circular rates are acceptable for future inclusion in our master rail contract.

Exh. 9.

In its response to my email, CSX did not dispute that the rates would be published as common carrier rates. Rather, it informed me that, for joint-line movements originating on CSXT, it would publish its rates in its “circulars” but the movements originating with another rail carrier would be published in DuPont’s contract with such other carrier. Exh. 10.

13. CSX ultimately published the rates contained in its March 2007 proposal in four tariffs titled “CSX Transportation Private Price List CSXT Containing Confidential Information for Dupont EI DeNemours Containing Prices on Chemicals,” which became effective on June 16, 2007. Exh. 11-14.

The Price Lists expressly permit CSX unilaterally to increase or change the rates and terms at any time.

*Id.* DuPont always understood these documents to be common carrier tariffs. At no time did CSX ever refer to them as “contracts.” DuPont received the CSX tariffs in two transmissions, the first on June 22 and the second on June 25, although the tariffs were effective as of June 16, 2007.

14. Notwithstanding our disagreement with the rates and terms published by CSX, DuPont was left with no other choice but to tender traffic to CSX pursuant to such common carrier tariffs following the expiration of the Master Contract. Before and after the contract’s expiration, we continued to negotiate with the railroad to try and reach a new long-term agreement.

15. On July 26, 2007, a meeting was held in Jacksonville, Florida between a senior executive and in-house counsel from DuPont and two senior executives and in-house counsel from CSX in an effort to resolve the impasse between the parties. Following that meeting, the parties continued their negotiations but were unable to reach agreement.

16. In an e-mail dated August 1, 2007, CSX informed DuPont that it was withdrawing its most recent contract proposals but would maintain the “private pricing quotes” that it published for DuPont’s traffic. Exh. 15. DuPont responded with a letter setting forth the reasons why it could not accept the most recent contract offer from CSX. The letter also expressed our disappointment that the parties could not reach agreement, requiring DuPont to “tender traffic under CSXT common carrier rate publications.” Exh. 16.

17. Thereafter, DuPont determined that it had exhausted its efforts to reach a new contract with CSX and that it was left with no other choice but to challenge in part the common carrier rates published by CSX in the DuPont Price Lists that we believe are unreasonably high and unlawful.

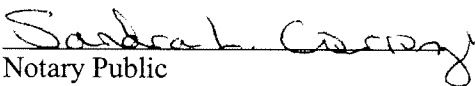
VERIFICATION

STATE OF DELAWARE     )  
                                      )  
CITY OF WILMINGTON    )

I, Mary Pileggi, verify under penalty of perjury that I have read the foregoing Verified Statement of Mary Pileggi, that I know the contents thereof, and that the same are true and correct. Further, I certify that I am qualified and authorized to file this statement.

  
\_\_\_\_\_  
Mary Pileggi

Sworn to and subscribed  
before me this day of September 21, 2007

  
\_\_\_\_\_  
Notary Public

SANDRA L. CORROZI  
NOTARY PUBLIC  
STATE OF DELAWARE  
My Commission Expires Jan 13, 2009

# **EXHIBIT 1**

Kevin G Acker/AE/DuPont

05/14/2007 03:06 PM

To "Overbey, Randy" <Randy\_Overbey@CSX.com>@DUPONT\_MHUB  
cc "Kuzma, Bruce" <Bruce\_Kuzma@csx.com>, Mary L  
Pileggi/AE/DuPont@DuPont  
Subject RE: Contract renewal [Link](#)

Randy,

There was nothing to cover last November as the rates we asked for in February 2006 weren't presented to us until March 9, 2007. Without a rate proposal what specifically would you have liked to talk about?

Kevin G. Acker  
Modal Leader, Rail Procurement & Service  
DuPont Sourcing & Logistics  
4417 Lancaster Pike  
BMP 22-2286  
Wilmington, DE 19805  
302.992.2092

# **EXHIBIT 2**

**CONFIDENTIAL MATERIAL**

**FILED UNDER SEAL**

**SUBJECT TO MOTION FOR PROTECTIVE ORDER**

# **EXHIBIT 3**

DuPont Sourcing and Logistics  
4417 Lancaster Pike  
BMP 22-2286  
Wilmington, DE 19805  
302.992.2092



March 19, 2007

Mr. Randy K. Overbey  
National Account Manager  
CSX Transportation

Via email

Re: Renewal of CSXT - 1847

Dear Mr. Overbey:

Your March 9, 2007 contract proposal for business beginning with June 1, 2007 has proven itself to be a great disappointment. The draft contract language (CSXT – 83887) and the proposed rate levels demonstrate a lack of understanding of DuPont's requirements and a complete erosion of the business relationship our two companies have built and fostered these last twenty years.

Our disappointment is due to your offering a contract proposal that cannot be implemented by DuPont. Even if all other issues were resolved, DuPont cannot manage Rule 11 pricing and CSXT has been aware of that for quite sometime.

It is clear that CSXT has decided to substantially change the way it does business with DuPont. Unfortunately, CSXT waited too long to inform this customer as a proposal of this nature should have been presented in early 2006 to provide ample opportunity to negotiate and determine a satisfactory solution.

Given that DuPont cannot implement the CSXT proposal and must, therefore, reject it, we will outline a process to begin serious negotiations, given the little time left until our current contract expires.

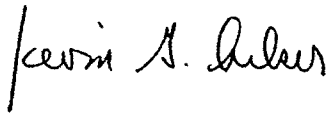
First, with respect to the rate levels CSXT proposed, DuPont Logistics is in the process of presenting CSXT's proposal to the impacted DuPont Business Units and a fair and reasonable counter proposal will be made upon completion of their review. CSXT may be requested to participate in individual business meetings within DuPont to resolve the market pricing disconnects.

Second, with respect to the proposed Terms and Conditions, our discussions should begin promptly using the draft language provided to you via email attachment on March 6th. Our discussions should focus on the seven items Mr. Kuzma listed in his memo of September 5, 2006 as those with which CSXT had concern in our current agreement. A copy of that email is attached for your reference.

Third, with respect to Rule 11 pricing, CSXT needs to reconsider providing the application of interline pricing for all DuPont shipments involving interline partners.

Please contact me at your earliest convenience to schedule these important discussions.

Very truly yours,

A handwritten signature in black ink, appearing to read "Kevin G. Acker". The signature is written in a cursive style with a large initial 'K'.

Kevin G. Acker  
Modal Leader, Rail Procurement and Service

Cc: Dean Piacente, CSXT  
Bruce Kuzma, CSXT  
Mary Pileggi, DuPont

# **EXHIBIT 4**

**CONFIDENTIAL MATERIAL**

**FILED UNDER SEAL**

**SUBJECT TO MOTION FOR PROTECTIVE ORDER**

# **EXHIBIT 5**



May 23, 2007

Re: Extension request to CSXT – 1847

Dear Dean,

DuPont is disappointed with the email received from CSXT dated May 22nd, regarding the planned publication of the original CSXT rate proposal in circulars for application beyond the May 31st expiration date of Contract CSXT-1847.

It has always been the intention of DuPont to complete and resolve all open issues regarding a new contractual agreement to Contract CSXT-1847 before the May 31 expiration date. However, it is with great regret that DuPont is making the following request from CSXT and must reject the planned publication of DuPont rates in circulars. DuPont respectfully requests a two-month extension to Transportation Contract CSXT-1847, which currently expires with May 31, 2007, while negotiations toward a mutually acceptable agreement progress.

CSXT may not have estimated the intensity with which DuPont would desire to respond to the proposal delivered on March 9<sup>th</sup>. As previously advised, the original proposal sent shock waves through the DuPont organization and has a profound impact on DuPont's business. The expectation that an agreement would be reached on rates, terms and conditions within fifty-seven business days was not realistic.

Anticipating the effort that would be expended within DuPont, given the complexity of working with ~20 businesses, DuPont knew to ask for a contract rate proposal first in February 2006. We repeated emphasis with the request in August and September of 2006 as our businesses were building their respective budgets and we thought it prudent to give them rate advice for 2007. An additional request for the contract rate proposal was made in October 2006 at National Freight. All attempts at securing a rate proposal were rejected with the indication that the June 2007 market could not be projected until early 2007. DuPont also received a September 2006 email message from Bruce Kuzma that indicated we would have a proposal in January 2007. The January proposal never arrived and the actual delivery date became March 9, 2007.

DuPont business representatives have been diligently working on the collection of industry data (including competitive analysis) as an attempt to educate members of CSXT's negotiating team on their individual businesses and the challenges facing a global competitive entity like DuPont. To date, two platforms have presented to CSXT in hopes that the information provided gives justification to fair and reasonable rates for the value of the service being provided. The others are preparing their business cases now for presentation in early June.

Beyond the significant resources required to pull together accurate data for presentation, the process has been delayed substantially by CSXT's unwillingness to provide the needed rates

4417 Lancaster Pike  
BMP 22-2290  
Wilmington, DE 19805

for a full and complete business analysis. As of this date, we have still not received rates that we requested in March and believe the recent email of May 22nd indicates we will not be receiving many of them.

Our mutual interests are best served when all the required data is received, the full impact is analyzed, and the potential supply chain changes are understood, so each party can make the best decision.

I'm sure you'll agree that given the magnitude and impact of the original CSXT March 9<sup>th</sup> proposal (Rule 11 rates, new contract terms and conditions, significant proposed rate increases, per car charges, one price per lane, etc.) it would have been extremely difficult for DuPont and CSXT to complete all that is needed to create a new contractual agreement within fifty seven business days. We believe CSXT does not want to cause more damage to the relationship with DuPont by forcing publication of an unacceptable pricing structure nor create additional rework with the freight accounting process that DuPont will be significantly challenged to implement. We believe the two-month contract extension request is fair and reasonable and aligned with Bruce Kuzma's earlier timeline that would have permitted DuPont and CSXT the two additional months to complete the negotiation.

We appreciate your consideration and look forward to your response as soon as possible. Please feel free to contact me to discuss any portions of this request if it helps CSXT to make its decision.

Very truly yours,



Mary Pileggi  
US/Canada Region Logistics Manager  
DuPont  
(302) 992-3474  
cell (302) 293-1665

# **EXHIBIT 6**

"Kuzma, Bruce" <Bruce\_Kuzma@csx.com>

05/25/2007 05:29 PM

To Mary L Pileggi/AE/DuPont@DuPont

cc "Piacente, Dean" <Dean\_Piacente@csx.com>

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 23<sup>rd</sup>, 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 31<sup>st</sup>, 2007.

- We are agreeable to extending the current rates in CSXT-1847 until June 15<sup>th</sup>, 2007.
- We are agreeable to continuing to negotiate new contract rates, terms and conditions in good faith through June 7<sup>th</sup>. If we reach agreement by June 7<sup>th</sup>, 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 23<sup>rd</sup> email.
- If we do not reach agreement by June 7<sup>th</sup>, 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 22<sup>nd</sup>, 2007 with a June 16<sup>th</sup>, 2007 effective date. Please let us know if we need to resubmit the details of Randy's May 22<sup>nd</sup> 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 7<sup>th</sup> or earlier if necessary to have all of your data entry work completed by June 15<sup>th</sup>. The only other alternative would be to make use of our Rule 11 public prices June 16<sup>th</sup> forward.
- In conjunction with the above paragraph, we will continue to negotiate new contract rates, terms and conditions in good faith after June 7<sup>th</sup>. 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

---

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# **EXHIBIT 7**

4417 Lancaster Pike  
BMP 22-2290  
Wilmington, DE 19805  
302 992-3474



June 5, 2007

Re: Request for Extension to CSXT – 1847

Dear Dean,

Much has progressed since our May 23<sup>rd</sup> request for a two-month extension to CSXT-1847. The teams continue to meet regularly, spending many hours reviewing competitive data that requires additional follow-up with both the CSXT teams and DuPont businesses. While these negotiations are challenging, they are moving forward. To date, we have reached agreement on new rate levels, rates in a per car format and have reached consensus on the elimination of rates from our current Agreement. There are also many other lanes still in negotiation awaiting the result of the joint research and compromise. Although we are making progress, we still however need CSXT to provide the remaining rate offers so that DuPont can complete a comprehensive business analysis. Much work remains; but, I am convinced that both sides are committed to a mutually satisfactory outcome.

As you know, CSXT's negotiating team is meeting with two of DuPont's largest rail users on Thursday, June 7<sup>th</sup> to present a detailed overview of their respective businesses and the competitive pressures they face. CSXT was aware that DuPont was planning the June 7<sup>th</sup> meeting before CSXT reached an internal agreement for the short-term extension of the existing contract. Coincidentally, June 7<sup>th</sup> is the day CSXT has elected to publish the rates proposed on March 9 in a private tariff for effect on June 16.

Business leaders from DuPont's Performance Materials (PM) and Safety & Protection (S&P) platforms are disappointed that, on the very day they are presenting their business cases, CSXT has chosen to begin publication of its originally proposed rates. DuPont feels strongly that these rates prohibit the serving of our mutual markets at a price to remain competitive in the global marketplace. When the PM and S&P platforms were advised of the CSXT decision not to extend the joint CSXT/DuPont agreement for two months, they expressed their continued disappointment with CSXT's inability to allow appropriate time to reach a mutually acceptable agreement.

It truly remains in both our interests to ensure a satisfactory agreement is reached without the added confusion of multiple pricing documents. We believe CSXT would agree that time is much better spent continuing with the negotiations rather than administratively processing the price changes only to turn around and perform that same task over again in the near future.

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To ensure both teams maintain the momentum to secure a mutually satisfactory agreement and taking into consideration the upcoming business meetings on the June 7 date, DuPont respectfully requests an extension to CSXT-1847 through June 30, 2007. It is firmly believed that interruption of the current efforts to complete this deal will have negative ramifications for both parties and this short term extension demonstrates CSXT's continued commitment to DuPont .

We appreciate your consideration and look forward to your response.

Very truly yours,

A handwritten signature in cursive script, reading "Mary Pileggi".

Mary Pileggi  
US / Canada Region Logistics Manager  
DuPont Sourcing & Logistics

# **EXHIBIT 8**

"Kuzma, Bruce" <Bruce\_Kuzma@csx.com>

06/08/2007 04:39 PM

To Mary L Pileggi/AE/DuPont@DuPont

cc "Piacente, Dean" <Dean\_Piacente@csx.com>, "Overbey, Randy"  
<Randy\_Overbey@CSX.com>

Subject RE: DuPont Request for Contract Extension

Mary:

Following up on our phone conversation of earlier today and your June 7th email to Dean, CSXT is not agreeable to extending the rates, terms and conditions of CSXT-1847 beyond the current expiration of June 15th, 2007. As previously outlined in our May 22nd and May 25th emails to you and your team, we will publish several temporary rate authorities to provide DuPont with rate coverage effective June 16th. Our Marketing and Pricing Services teams started that process this afternoon. This includes notifying all foreign roads that CSXT-1847 has expired as well as our participation in any of their master contracts. Please let me know if you need any additional details to properly load your rail car billing and freight payment systems.

To keep the current negotiations moving forward, Randy and other members of the CSX team will continue to make ourselves available to sit down with appropriate DuPont representatives. This will allow us to continue to negotiate in good faith on rates, terms and conditions to replace the temporary rate authorities and the expired rates, terms and conditions of CSXT-1847.

If there is anything I can do to assist in speeding along our ongoing negotiations, please let me know.

Regards,

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

-----Original Message-----

From: Piacente, Dean  
Sent: Thursday, June 07, 2007 7:02 PM  
To: Kuzma, Bruce; Lube, Steve; Overbey, Randy  
Subject: Fw: DuPont request

----- Original Message -----

From: Mary L Pileggi <Mary.L.Pileggi@usa.dupont.com>  
To: Piacente, Dean  
Sent: Thu Jun 07 12:34:31 2007  
Subject: DuPont request

Dean,

This will confirm our conversation of this morning and I would have sent the note earlier, but we were consumed in the S&P meeting of today.

Additionally, DuPont prefers to send these type of requests only after having dialogue with our suppliers/carriers, and with our inability to connect the past few days, this was not sent earlier than now.

We respectfully ask that CSXT consider this request and we await your decision.

Best regards,  
Mary

This communication is for use by the intended recipient and contains information that may be Privileged, confidential or copyrighted under applicable law. If you are not the intended recipient, you are hereby formally notified that any use, copying or distribution of this e-mail, in whole or in part, is strictly prohibited. Please notify the sender by return e-mail and delete this e-mail from your system. Unless explicitly and conspicuously designated as "E-Contract Intended", this e-mail does not constitute a contract offer, a contract amendment, or an acceptance of a contract offer. This e-mail does not constitute a consent to the use of sender's contact information for direct marketing purposes or for transfers of data to third parties.

Francais Deutsch Italiano Espanol Portugues Japanese Chinese Korean

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This email transmission and any accompanying attachments may contain CSX privileged and confidential information intended only for the use of the intended addressee. Any dissemination, distribution, copying or action taken in reliance on the contents of this email by anyone other than the intended recipient is strictly prohibited. If you have received this email in error please immediately delete it and notify sender at the above CSX email address. Sender and CSX accept no liability for any damage caused directly or indirectly by receipt of this email.

This communication is for use by the intended recipient and contains information that may be Privileged, confidential or copyrighted under applicable law. If you are not the intended recipient, you are hereby formally notified that any use, copying or distribution of this e-mail, in whole or in part, is strictly prohibited. Please notify the sender by return e-mail and delete this e-mail from your system. Unless explicitly and conspicuously designated as "E-Contract Intended", this e-mail does not constitute a contract offer, a contract amendment, or an acceptance of a contract offer. This e-mail does not constitute a consent to the use of sender's contact information for direct marketing purposes or for transfers of data to third parties.

Francais Deutsch Italiano Espanol Portugues Japanese Chinese Korean

[http://www.DuPont.com/corp/email\\_disclaimer.html](http://www.DuPont.com/corp/email_disclaimer.html)

# **EXHIBIT 9**

**From:** Mary L Pileggi [mailto:Mary.L.Pileggi@usa.dupont.com]  
**Sent:** Thursday, June 14, 2007 5:13 PM  
**To:** Kuzma, Bruce  
**Cc:** Piacente, Dean; Overbey, Randy; Kevin G Acker  
**Subject:** RE: DuPont Request for Contract Extension

Bruce:

Thanks for your note of June 6, 2007 in which you indicated that CSXT is unwilling to extend our long term master contract for an additional two weeks to complete negotiations and implement new rate schedules. Needless to say, we were again disappointed as we know that we will not be able to complete these negotiations and fully implement any new pricing schedule into our computer system by June 15, 2007. It is highly likely that we will both experience difficulties in our billing and payment processes as a result of this refusal.

We were, however, encouraged by your statement that current negotiations will continue. Both of our companies have a long and successful history of working together for the benefit of our mutual customers and the success of our respective businesses. Hopefully, we will be able to complete our negotiations in a positive and timely manner and get back to serving our mutual customer base.

Upon receipt of your proposed circular, we will amend our master contract with connecting carriers to include your temporary rates and reflect current billing practice. Billing practices with all connecting carriers will continue under current prepaid/collect terms.

In the interim, and until we complete our negotiations, DuPont will, commencing June 16, 2007, pay the base rates set forth in your circulars as common carriage, non-contract moves. We do not, however, agree that these circular rates are acceptable for future inclusion in our master rail contract.

Regards,  
Mary

# **EXHIBIT 10**

"Kuzma, Bruce" <Bruce\_Kuzma@csx.com>

06/15/2007 12:02 PM

To Mary L Pileggi/AE/DuPont@DuPont

cc "Piacente, Dean" <Dean\_Piacente@csx.com>, "Overbey, Randy"

<Randy\_Overbey@CSX.com>, Kevin G Acker/AE/DuPont@DuPont

Subject RE: DuPont Request for Contract Extension

Mary:

Based on our phone conversations yesterday and your email below, I want to make sure we are on the same page with respect to publication of rates for joint-line moves originating on other carriers versus rates originating on CSX. As we originally outlined in previous emails, our original intention was to publish all rates in our CSX circulars. However, you indicated yesterday that you wanted to issue amendments to your existing master agreements with the other carriers. We are ok with that provided they reflect the rates, effective dates and expiration dates as outlined in the attached spreadsheet. We will provide the other carriers with divisions.

So, based on the above, CSX will publish the CSX originated traffic in our circulars and allow DuPont to publish the rates originating on other railroads in your agreements with them. We will forward copies of our circulars to you shortly. In the mean time, please use the attached spreadsheet to load all rates as necessary in your internal systems.

Please call me if you have any additional questions or concerns.

Thanks,

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

# **EXHIBIT 11**

All previous issues of CSXT 97247 are cancelled as  
of the effective date shown below.



## **TRANSPORTATION**

### **PRIVATE PRICE LIST CSXT 97247**

**Containing**  
***Confidential Information***  
**for**  
**DUPONT PATRON GROUP**

**CONTAINING PRICES ON**

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## **MISCELLANEOUS COMMODITIES**

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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](http://www.ShipCSX.com)  
Jacksonville, FL 32202

June 22, 2007

**CSX**  
TRANSPORTATION  
PRIVATE PRICE LIST CSXT 97247

**PARTICIPATING  
CARRIERS**

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**ABBREVIATION**

**NAME OF CARRIER**

|            |                                                                           |
|------------|---------------------------------------------------------------------------|
| AR.....    | ABERDEEN AND ROCKFISH RAILROAD COMPANY                                    |
| BNSF.....  | BURLINGTON NORTHERN SANTA FE RAILWAY COMPANY                              |
| CN .....   | CANADIAN NATIONAL RAILWAYS                                                |
| CPDR ..... | CAROLINA PIEDMONT DIVISION SOUTH CAROLINA CENTRAL<br>RAILROAD COMPANY INC |
| CPRS.....  | CANADIAN PACIFIC RAILWAY                                                  |
| CSXT.....  | CSX TRANSPORTATION, INC.                                                  |
| EARY.....  | EASTERN ALABAMA RAILWAY                                                   |
| EVWR.....  | EVANSVILLE WESTERN RAILWAY                                                |
| KCS .....  | KANSAS CITY SOUTHERN RAILWAY COMPANY                                      |
| NERR ..... | NASHVILLE AND EASTERN RAILROAD CORP                                       |
| NS.....    | NORFOLK SOUTHERN RAILWAY COMPANY (NORFOLK SOUTHERN)                       |
| RSOR ..... | RICEBORO SOUTHERN RAILWAY, LLC.                                           |
| RSR.....   | ROCHESTER & SOUTHERN RAILROAD INC                                         |
| ST .....   | ST RAIL SYSTEM                                                            |
| UP.....    | UNION PACIFIC RAILROAD COMPANY                                            |
| WE.....    | WHEELING & LAKE ERIE RAILWAY COMPANY                                      |
| WNYP.....  | WESTERN NEW YORK & PENNSYLVANIA RAILROAD LLC                              |

**CSX**  
TRANSPORTATION  
PRIVATE PRICE LIST CSXT 97247

**PUBLICATION  
INFORMATION**

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**CANCELLATION NOTICE**

All prior issues of this document are cancelled.

**CONTACT PERSONNEL**

Please refer to [www.ShipCSX.com](http://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 97247 (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 97247 (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 97247 (0) workbook, sheet tab labeled CSXT Price List.

**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, OPPL 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 97247 (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](http://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 97247 (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.

**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 97247 (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.

# **EXHIBIT 12**

All previous issues of CSXT 43006.1 are cancelled as  
of the effective date shown below.



## TRANSPORTATION

### PRIVATE PRICE LIST CSXT 43006.1

Containing  
*Confidential Information*  
for  
**DUPONT E I DENEMOURS**

CONTAINING PRICES ON

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## CHEMICALS

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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:** November 30, 2007

CSX TRANSPORTATION  
CHEMICALS  
[www.ShipCSX.com](http://www.ShipCSX.com)  
Jacksonville, FL 32202

June 22, 2007

**CSX**  
TRANSPORTATION  
PRIVATE PRICE LIST CSXT 43006.1

**PARTICIPATING  
CARRIERS**

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**ABBREVIATION**

**NAME OF CARRIER**

|           |                                                     |
|-----------|-----------------------------------------------------|
| BNSF..... | BURLINGTON NORTHERN SANTA FE RAILWAY COMPANY        |
| BPRR..... | BUFFALO & PITTSBURGH RAILROAD INC                   |
| CN .....  | CANADIAN NATIONAL RAILWAYS                          |
| CSXT..... | CSX TRANSPORTATION, INC.                            |
| NS.....   | NORFOLK SOUTHERN RAILWAY COMPANY (NORFOLK SOUTHERN) |
| PAL.....  | PADUCAH & LOUISVILLE RAILROAD                       |
| UP.....   | UNION PACIFIC RAILROAD COMPANY                      |

**CANCELLATION NOTICE**

All prior issues of this document are cancelled.

**CONTACT PERSONNEL**

Please refer to [www.ShipCSX.com](http://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 43006.1 (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 43006.1 (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 43006.1 (0) workbook, sheet tab labeled CSXT Price List.

**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, OPPL 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 43006.1 (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](http://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 43006.1 (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.

**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 43006.1 (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.

# **EXHIBIT 13**

All previous issues of CSXT 41248.1 are cancelled as  
of the effective date shown below.



## TRANSPORTATION

### PRIVATE PRICE LIST CSXT 41248.1

Containing  
*Confidential Information*  
for  
DUPONT E I DENEMOURS

CONTAINING PRICES ON

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## CHEMICALS

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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:** December 31, 2007

CSX TRANSPORTATION  
CHEMICALS  
[www.ShipCSX.com](http://www.ShipCSX.com)  
Jacksonville, FL 32202

June 21, 2007

**CSX**  
TRANSPORTATION  
PRIVATE PRICE LIST CSXT 41248.1

**PARTICIPATING  
CARRIERS**

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**ABBREVIATION**

**NAME OF CARRIER**

|           |                              |
|-----------|------------------------------|
| CSXT..... | CSX TRANSPORTATION, INC.     |
| IAIS..... | IOWA INTERSTATE RAILROAD LTD |

**CANCELLATION NOTICE**

All prior issues of this document are cancelled.

**CONTACT PERSONNEL**

Please refer to [www.ShipCSX.com](http://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 41248.1 (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 41248.1 (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 41248.1 (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 1/10<sup>th</sup> 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](http://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](http://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, OPCL 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 41248.1 (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](http://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 41248.1 (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.

**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 41248.1 (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.

# **EXHIBIT 14**



## **TRANSPORTATION**

### **PRIVATE PRICE LIST CSXT 97249**

**Containing**  
***Confidential Information***  
**for**  
**DUPONT PATRON GROUP1**

**CONTAINING PRICES ON**

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## **CHEMICALS**

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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](http://www.ShipCSX.com)  
Jacksonville, FL 32202

June 21, 2007

**CSX**  
TRANSPORTATION  
PRIVATE PRICE LIST CSXT 97249

**PARTICIPATING  
CARRIERS**

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**ABBREVIATION**

**NAME OF CARRIER**

CSXT ..... CSX TRANSPORTATION, INC.

**CSX**  
TRANSPORTATION  
**PRIVATE PRICE LIST CSXT 97249**

**PUBLICATION  
INFORMATION**

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**CONTACT PERSONNEL**

Please refer to [www.ShipCSX.com](http://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 1/10<sup>th</sup> 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](http://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](http://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, OPSP 6000, UFC 6000, Rules Circular CSXT 4048 Series (Waste Shipments) when applicable, and CSXT Tariff 8100 (Merchandise)/8200 (Coal) Series, unless otherwise noted.

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## **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.

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CSX Transportation, Inc. - J605  
6737 Southpoint Drive South, 2nd Floor  
Jacksonville, FL 32216-6177  
904-279-4764

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**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](http://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.

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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.

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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.

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# **EXHIBIT 15**

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**From:** Placente, 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

# **EXHIBIT 16**

**CONFIDENTIAL MATERIAL**

**FILED UNDER SEAL**

**SUBJECT TO MOTION FOR PROTECTIVE ORDER**

# **ATTACHMENT B**

All previous issues of CSXT 28151 are cancelled as  
of the effective date shown below.



**TRANSPORTATION**

**PUBLIC PRICE LIST CSXT 28151**

**CONTAINING PRICES ON**

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**PETROCHEMICALS**

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Prices are subject to increase, change or expiration. Any change to the 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:** July 15, 2007  
(except as otherwise noted)

CSX TRANSPORTATION  
CHEMICALS  
[www.ShipCSX.com](http://www.ShipCSX.com)  
Jacksonville, FL 32202

May 23, 2007

**CSX**  
TRANSPORTATION  
PUBLIC PRICE LIST CSXT 28151

**PARTICIPATING  
CARRIERS**

| ABBREVIATION         | NAME OF CARRIER                                    |
|----------------------|----------------------------------------------------|
| AF.....              | ALABAMA & FLORIDA RAILWAY CO                       |
| AGR.....             | ALABAMA & GULF COAST RAILWAY LLC                   |
| AO.....              | APPALACHIAN & OHIO RAILROAD INC.                   |
| AR.....              | ABERDEEN AND ROCKFISH RAILROAD COMPANY             |
| ATN.....             | ALABAMA & TENNESSEE RIVER RAILWAY LLC              |
| ATW.....             | ATLANTIC & WESTERN RAILWAY, L P                    |
| BAYL.....            | BAY LINE RAILROAD L L C, THE                       |
| BB.....              | BUCKINGHAM BRANCH RAILROAD COMPANY                 |
| BCLR.....            | BAY COLONY RAILROAD CORPORATION                    |
| CA.....              | CHESAPEAKE & ALBEMARLE                             |
| CFE.....             | CHICAGO, FT. WAYNE & EASTERN                       |
| CIRR.....            | CHATTAHOCHEE INDUSTRIAL RAILROAD                   |
| CKIN.....            | CHESAPEAKE AND INDIANA RAILROAD COMPANY INC.       |
| COEH.....            | CONECUH RAILROAD                                   |
| CPDR.....            | CAROLINA PIEDMONT DIVISION SOUTH CAROLINA CENTRAL  |
| RAILROAD COMPANY INC |                                                    |
| CSO.....             | CONNECTICUT SOUTHERN RAILROAD INC.                 |
| CSXT.....            | CSX TRANSPORTATION, INC.                           |
| CUOH.....            | COLUMBUS & OHIO RAILROAD COMPANY                   |
| DGVR.....            | DURBIN & GREENBRIER VALLEY RAILROAD INC.           |
| DLWR.....            | DEPEW, LANCASTER & WESTERN RAILROAD CO., INC.      |
| EARY.....            | EASTERN ALABAMA RAILWAY                            |
| EFRR.....            | EFFINGHAM RAILROAD COMPANY                         |
| ETRY.....            | EAST TENNESSEE RAILWAY, L P                        |
| FCEN.....            | FLORIDA CENTRAL RAILROAD CO                        |
| FCRD.....            | FIRST COAST RAILROAD INC.                          |
| FEC.....             | FLORIDA EAST COAST RAILWAY COMPANY                 |
| FMID.....            | FLORIDA MIDLAND RAILROAD CO INC                    |
| FNOR.....            | FLORIDA NORTHERN RAILROAD COMPANY INC              |
| FRR.....             | FALLS ROAD RAILROAD CO INC.                        |
| GC.....              | GEORGIA CENTRAL RAILWAY, L.P.                      |
| GFRR.....            | GEORGIA & FLORIDA RAILNET, INC.                    |
| GR.....              | GRAND RAPIDS EASTERN RAILROAD INC                  |
| GSWR.....            | GEORGIA SOUTHWESTERN RAILROAD INC                  |
| GWRC.....            | GEORGIA WOODLANDS RAILROAD CO                      |
| HESR.....            | HURON AND EASTERN RAILWAY COMPANY INC              |
| HOG.....             | HEART OF GEORGIA RAILROAD, INC.                    |
| HSRR.....            | HARDIN SOUTHERN RAILROAD INC                       |
| IERR.....            | INDIANA EASTERN RAILROAD LLC                       |
| ILW.....             | ILLINOIS WESTERN RAILROAD COMPANY                  |
| KWT.....             | KWT RAILWAY INC                                    |
| LC.....              | LANCASTER AND CHESTER RAILWAY COMPANY              |
| MCER.....            | MASSACHUSETTS CENTRAL RAILROAD CORPORTATION        |
| MHWA.....            | MOHAWK ADIRONDACK & NORTHERN RAILROAD CORP.        |
| MMID.....            | MARYLAND MIDLAND RAILWAY INC                       |
| MMRR.....            | MID-MICHIGAN RAILROAD INC                          |
| MNBR.....            | M&B RAILROAD LLC                                   |
| MQT.....             | MARQUETTE RAIL LLC                                 |
| MS.....              | MICHIGAN SHORE RAILROAD INC                        |
| NCVA.....            | NORTH CAROLINA & VIRGINIA RAILROAD CO INC          |
| NCYR.....            | NASH COUNTY RAILROAD CORP                          |
| NERR.....            | NASHVILLE AND EASTERN RAILROAD CORP                |
| NWR.....             | NASHVILLE & WESTERN RAILROAD CORP                  |
| NYA.....             | NEW YORK & ATLANTIC RAILWAY COMPANY                |
| NYNJ.....            | NEW YORK NEW JERSEY RAIL LLC                       |
| PDRR.....            | PEE DEE RIVER RAILROAD CORP                        |
| PVRR.....            | PIONEER VALLEY RAILROAD COMPANY, INCORPORATED      |
| RJCC.....            | R J CORMAN RAILROAD COMPANY/CENTRAL KENTUCKY LINES |

**CSX**  
TRANSPORTATION  
**PUBLIC PRICE LIST CSXT 28151**

**PARTICIPATING  
CARRIERS**

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|           |                                               |
|-----------|-----------------------------------------------|
| RJCL..... | R J CORMAN RAILROAD COMPANY/CLEVELAND LINE    |
| RJCR..... | R J CORMAN RAILROAD CORPORATION               |
| RJCV..... | R J CORMAN RAILROAD COMPANY/WV LINE           |
| RJCW..... | R J CORMAN RAILROAD COMPANY/WESTERN OHIO LINE |
| SCR.....  | SOUTH CAROLINA CENTRAL RAILROAD CO INC        |
| SGLR..... | SEMINOLE GULF RAILWAY L P                     |
| SRNJ..... | SOUTHERN RAILROAD COMPANY OF NEW JERSEY       |
| TBRY..... | THERMAL BELT RAILWAY                          |
| TNHR..... | THREE NOTCH RAILROAD CO. INC.                 |
| TYBR..... | TYBURN RAILROAD COMPANY                       |
| VR.....   | VALDOSTA RAILWAY L P                          |
| WGCR..... | WIREGRASS CENTRAL RAILROAD CO INC             |
| WVC.....  | WEST VIRGINIA CENTRAL RAILROAD                |

**CSX**  
TRANSPORTATION  
PUBLIC PRICE LIST CSXT 28151

**PUBLICATION  
INFORMATION**

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**CANCELLATION NOTICE**

All prior issues of this document are cancelled.

**CONTACT PERSONNEL**

Please refer to [www.ShipCSX.com](http://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 public Price List will alternate with prices, with similar price conditions, published in other 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 Public CSXT 28151 (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 Public CSXT 28151 (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 Public CSXT 28151 (0) workbook, sheet tab labeled CSXT Price List.

**FUEL SURCHARGE**

Fuel surcharges as provided for in CSXT Fuel Surcharge Publication 8661 as of the date of shipment tender shall apply.

**GROUP DEFINITION**

For CSXT group definitions, see CSXT 5 Region Groups Station Listing on [www.ShipCSX.com](http://www.ShipCSX.com).

**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, OPSL 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:

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CSX Transportation, Inc. - J815  
P.O. Box 44085  
Jacksonville, FL 32231-4085  
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