

October 30, 2007

The Honorable Vernon Williams
Secretary
Surface Transportation Board
395 E Street, SW
Washington, D.C. 20423

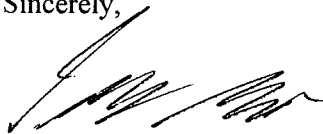
RE: Docket No. NOR 42101; *E.I. du Pont de Nemours and Company v. CSX Transportation, Inc.*

Dear Secretary Williams:

Please find enclosed for filing in the above referenced matter, E.I. du Pont de Nemours and Company's First Amended Complaint - **PUBLIC VERSION**.

If you have any questions, please do not hesitate to contact the undersigned.

Sincerely,



Nicholas J. DiMichael
Jeffrey O. Moreno
Karyn A. Booth

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PUBLIC VERSION

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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

FIRST AMENDED COMPLAINT

COMES NOW Complainant, E.I. du Pont de Nemours and Company ("DuPont"), 4417 Lancaster Pike, Wilmington, DE 19805, and files this First Amended Complaint against Defendant, CSX Transportation, Inc. ("CSXT"), 500 Water Street, Jacksonville, Florida 32202. DuPont brings this Complaint pursuant to 49 U.S.C. §§ 10701, 10704, 10707, 11701 and 11704, and 49 C.F.R. Part 1111. DuPont requests that the Surface Transportation Board ("STB" or "Board") prescribe reasonable rates and service terms for CSXT's transportation of the movements set forth in this Complaint. DuPont asks the Board to award damages, plus interest, to the extent that DuPont has paid or will pay common carrier rates in excess of a reasonable maximum rate for such transportation, for a period of five years beginning on June 16, 2007. DuPont requests that the Board handle this Complaint under the Three-Benchmark approach, adopted pursuant to 49 U.S.C. §10701(d)(3), in Ex Parte No. 646 (Sub-No. 1), *Simplified Standards for Rail Rate Cases* (served Sept. 5, 2007).

In support of this Complaint, DuPont states as follows:

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The Parties

1. DuPont is a corporation organized under the laws of the State of Delaware, with its principal place of business in Wilmington, Delaware. DuPont is a manufacturer of chemicals, additives, plastics, coatings and agricultural products, with numerous production facilities throughout the continental United States and around the globe. DuPont is a major user of rail service to transport commodities that it consumes and produces at its various facilities and that it sells to customers in the continental United States and around the world.

2. CSXT is a Class I common and contract carrier by railroad that engages in the transportation of property in interstate and intrastate commerce. Its headquarters are in Jacksonville, Florida. CSXT is subject to the Interstate Commerce Commission Termination Act of 1995 (49 U.S.C. §§ 10101 *et seq.*) and to the jurisdiction of the Board.

Description of the Issue Movements

3. In this Complaint, Dupont challenges the reasonableness of CSXT's rates for the movement of Nitrobenzene, STCC 2815147, from Pascagoula, Mississippi to Neuse, North Carolina ("Pascagoula – Neuse Movement").

4. Nitrobenzene is a "hazardous material" as that term is defined in 49 C.F.R. §171.8. However, it is not a "gas poisonous by inhalation," as that term is defined in 49 C.F.R. §173.115(c).

5. CSXT handles the Pascagoula – Neuse Movement in single-line service.

6. CSXT handles the Pascagoula – Neuse Movement in private tank cars (URCS Code 16), owned or leased by DuPont or others. Other information called for in 49 C.F.R. § 1111.1(a) is as follows:

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Movement	Loaded Miles	Average Cars Per Shipment	Average Tons per Car	Movement Type	Car Size
Pascagoula - Neuse	816.7	1	94	Single car	23,500 gal

7. In calendar year 2006, 269 carloads were tendered for the Pascagoula – Neuse Movement.

The Challenged Rates

8. On June 15, 2007, a contract between DuPont and CSXT covering the Pascagoula - Neuse Movement terminated by its terms. Even though the parties were still in negotiations over a new contract, CSXT refused a request by DuPont to extend the current contract for two weeks beyond the contract term to permit further negotiations.

9. Effective June 16, 2007, CSXT published the following common carrier rates for the Pascagoula – Neuse Movement:

Movement	Rate	Source
Pascagoula – Neuse	\$6,979.84 per car	CSXT 97249

10. Beginning June 16, 2007, CSXT also assessed a fuel surcharge calculated pursuant to CSXT 97249, on the date of each shipment, in addition to the rates listed in paragraph 9 of this Complaint. This fuel surcharge for the month of July is at the rate of \$0.20 per mile. The rate plus the applicable fuel surcharge is as follows:

Movement	Rate Including Fuel Surcharge
Pascagoula – Neuse	\$7,143.18 per car

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Jurisdictional Allegations

11. CSXT possesses market dominance over the Pascagoula – Neuse Movement. Therefore, pursuant to 49 U.S.C. § 10707, the Board has jurisdiction over the rates and services provided by CSXT and challenged by DuPont as unreasonable.

12. The rate charged by CSXT and challenged by DuPont for the Pascagoula – Neuse Movement greatly exceeds 180 percent of CSXT's variable cost for the service requested by DuPont, as determined in accordance with 49 U.S.C. § 10707(d)(1).

13. The following table presents DuPont's preliminary estimate of the variable cost and the revenue to variable cost ratio for the Pascagoula – Neuse Movement, using URCS Phase III procedures:

Movement	URCS Phase III Variable Cost	R/VC Ratio
Pascagoula – Neuse	\$2,080.56 per car	343%

DuPont believes that more accurate costing would result in a decrease in the estimated variable cost and an increase in the revenue to variable cost ratio.

14. There is a lack of effective competition from other rail carriers because CSXT is the only rail carrier that provides service at the destination of the Pascagoula – Neuse Movement. There is a lack of effective competition from non-rail modes. As required by 49 C.F.R. § 1111.1(a)(10), Exhibit A to this Complaint contains a narrative addressing the absence of any feasible transportation alternatives to the challenged movement.

Stipulation to Small Case Relief Caps

15. By electing to bring this complaint under the Three-Benchmark approach adopted in Ex Parte No. 646 (Sub-No. 1), *Simplified Standards for Rail Rate Cases* (served Sept. 5,

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2007), DuPont stipulates that its relief shall be capped at \$1 million for a five year period beginning on June 16, 2007.

Requested Relief

16. CSXT's common carrier rates for handling the Pascagoula – Neuse Movement are unreasonable and violate 49 U.S.C. §§ 10701(d)(1) and 10702, which require CSXT to establish reasonable rates. The Board should order CSXT to cease these violations and it should prescribe a maximum reasonable rate pursuant to 49 U.S.C. § 10704(a)(1).

17. The Board should award reparations to DuPont, as provided under 49 U.S.C. § 11704(b). The reparations should compensate DuPont for any and all amounts paid in excess of the reasonable rates prescribed by the Board pursuant to this proceeding, plus interest.

18. The Board should prescribe a maximum reasonable rate and award reparations for a combined period of five years, beginning June 16, 2007, not to exceed a value of \$1 million, excluding interest.

19. This Complaint includes any and all adjustments to the challenged rates, including adjustments to the applicable fuel surcharges, and any new rates established by CSXT for the services described herein.

WHEREFORE, Complainant, E.I. du Pont de Nemours and Company prays that the Board:

(1) require Defendant, CSX Transportation, Inc., to answer the charges alleged herein;

(2) assign this Complaint for hearing under 49 C.F.R. Part 1111 and the Three-Benchmark approach adopted in Ex Parte No. 646 (Sub-No. 2), *Simplified Standards for Rail Rate Cases* (served Sept. 5, 2007), pursuant to 49 U.S.C. §10701(d)(3);

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(3) after due hearing and investigation, find that the CSXT's common carrier rates applicable to the transportation of the commodity and movement named in this Complaint are unreasonable;

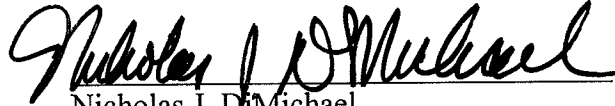
(4) prescribe just and reasonable rates and related rules and service terms for the future applicable to the rail transportation of DuPont's traffic, pursuant to 49 U.S.C.

§§ 10704(a)(1) and 11701(a);

(5) award DuPont reparations, plus applicable interest, in accordance with 49 U.S.C. § 11704 for unlawful rates set by CSXT for the period beginning June 16, 2007 to the effective date of a decision by the Board prescribing just and reasonable rates; and

(6) grant such other and further relief to DuPont as the Board may deem just and proper under the circumstances.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Nicholas J. DiMichael", written over a horizontal line.

Nicholas J. DiMichael
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Karyn A. Booth
Laurence W. Prange
Thompson Hine LLP
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Exhibit A

**E.I. du Pont de Nemours and Company v. CSX Transportation, Inc.
Docket NOR 42101**

Market Dominance Narrative

In this First Amended Complaint, E.I. du Pont de Nemours and Company (“DuPont” or “the Company”) has challenged the reasonableness of CSXT’s rate for the transportation of Nitrobenzene from Pascagoula, MS to Neuse, NC. CSXT possesses market dominance over the transportation of Nitrobenzene over this lane because it is the only rail carrier that serves the destination and because truck is not an economically viable option.

Nitrobenzene is a regulated material that can be absorbed through the skin and is flammable at a broad range of temperatures. Given Nitrobenzene’s hazardous nature and the Company’s commitment to safety and product stewardship, DuPont prefers to transport it by rail, although DuPont does move the product by truck in certain circumstances. In addition, most of the Company’s customers prefer to receive Nitrobenzene by rail.

In 2006, DuPont tendered only 59 loads of Nitrobenzene by bulk truck in the continental United States, or the equivalent of 15 rail cars,¹ compared with 434 loads by rail. All of these bulk truck loads originated at Pascagoula. The bulk trucks moved to just four destinations: Beaumont, TX; Greenville, SC; Laredo, TX; and Seaford, DE.² Of these four trucking destinations, only Beaumont is physically capable of receiving Nitrobenzene by both truck and rail. In 2006, DuPont shipped 153 rail cars to Beaumont compared with only 17 trucks, or the equivalent of less than five rail cars. As these facts suggest, DuPont ships Nitrobenzene by truck principally when deliveries cannot physically be made via rail.

¹ A single rail car can haul the equivalent of four trucks of Nitrobenzene.

² Laredo is not a destination, but an interchange point for shipments moving into Mexico.

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DuPont tendered 108 rail cars of Nitrobenzene for transport from Pascagoula to Neuse in 2006, but did not tender a single truck load of Nitrobenzene over that lane. The only time that DuPont has ever shipped Nitrobenzene to Neuse by truck was in 2005 after Hurricane Katrina, because damage to the Pascagoula facility prevented DuPont from shipping by rail.

The cost of shipping Nitrobenzene by truck from Pascagoula to Neuse is not competitive even with CSXT's significantly higher tariff rate. CSXT's tariff rate for this movement, including fuel surcharge, of approximately \$6979 per car is a [REDACTED]% increase over the previously effective contract rate. DuPont also has lease and maintenance costs of \$[REDACTED]/month associated with rail equipment. Given that the Company's rail fleet averages [REDACTED] cycles annually, its average equipment cost is \$[REDACTED] per shipment. This makes DuPont's total rail cost approximately \$[REDACTED] per car.

In contrast, the Company's cost to truck the equivalent of a single rail car of Nitrobenzene to Neuse is approximately \$[REDACTED], which is 39% above DuPont's rail cost. According to [REDACTED], the truck line haul rate would be \$[REDACTED] plus a fuel surcharge of approximately \$[REDACTED], or \$[REDACTED] per truck. This cost multiplied by four trucks equals \$[REDACTED]. This cost does not account for any accessorial charges that also are likely to apply to truck shipments.

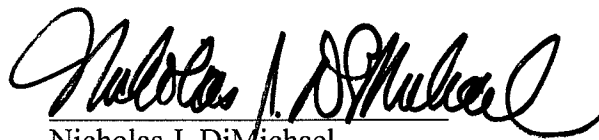
Another factor in the viability of trucks is the customer's willingness and ability to receive and unload trucks. The DuPont customer at Neuse has insisted upon receiving Nitrobenzene by rail. This customer has staffed its operations to unload rail cars and would have to acquire additional resources or pay overtime to handle large truck volumes. The customer has told DuPont that it paid overtime rates during the time that it was forced to receive Nitrobenzene by truck after Hurricane Katrina.

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of October, 2007, a copy of the foregoing First Amended Complaint was served by overnight courier and hand delivery in accordance with 49 C.F.R. 1111.3 upon the following:

Ellen M. Fitzsimmons
General Counsel
CSX Transportation, Inc.
Law Department
500 Water Street
Jacksonville, FL 32202

G. Paul Moates
Sidley Austin LLP
1501 K Street, NW
Washington, DC 20005


Nicholas J. DiMichael