

revenue adequacy constraint, which the Board specifically confirmed Consumers has a right to invoke when it denied CSXT's Motion to Dismiss Consumers' revenue adequacy claim.² Thus, CSXT's threshold objection to answering Interrogatories or producing documents related to "Consumers' assertion of a meritless revenue adequacy claim"³ must be overruled. In light of the Board's denial of CSXT's Motion to Dismiss, the revenue adequacy claim plainly cannot be deemed meritless for discovery purposes, and Consumers thus is allowed to obtain "information ... reasonably calculated to lead to the discovery of admissible evidence" regarding CSXT's revenue adequacy status. 49 C.F.R. § 1114.21(a)(2).

The Board's Decision denying CSXT's Motion to Dismiss also rejected CSXT's contention that revenue adequacy for purposes of the *Guidelines* must be adjudicated solely on the basis of annual revenue adequacy determinations that compare CSXT's return on net investment to the industry average cost of capital. The Board agreed that Consumers "may present other competent and probative evidence to make its case." Decision at 2. CSXT's relevance objections to the discovery of this "other competent and probative evidence" likewise should be overruled. This motion to compel should also be granted in keeping with the Board's policies on broad discovery practices because the information sought is "relevant to matters in dispute in [the] proceeding." *Ill. Railnet, Inc. – Acquisition & Operation Exemption – BNSF Ry. Co.*, STB Docket No. 34549 (STB served Apr. 15, 2005).

² Decision served June 15, 2015.

³ CSXT Objections at 3.

The remainder of this Motion addresses Consumers' individual discovery requests, grouped by subject matter.

I. CSXT's Cost of Equity and Cost of Capital

Interrogatories Nos. 14 and 15, and Request for Production Nos. 135, 136, and 139 seek information and documents regarding CSXT's calculation of its own cost of equity ("COE") and cost of capital ("COC"). Whether a carrier is earning its COC, of which the COE is the largest and typically the most difficult component to calculate, is one of the criteria relevant to evaluating a carrier's revenue adequacy, both under the Board's current annual determination methodology and under the approach to implementation of the *Guidelines*' revenue adequacy constraint advocated by Consumers in *Ex Parte No. 722*.⁵ A carrier's own calculation of its COE and COC, including its methodology, assumptions, and inputs plainly is useful in ascertaining an accurate COE and COC for that carrier.

In objecting to producing any information regarding its calculations of its own COE and/or COC,⁶ CSXT asserted that "[w]hatever internal cost of capital calculations CSXT may have made would be utterly irrelevant to any issue in this rate case" because "STB precedent is clear that the industry-average cost of capital as calculated by the Board is the appropriate cost of capital to use in rate reasonableness cases" as "the Board has adopted an industry-average cost of capital calculation by rule."

⁵ See *Railroad Revenue Adequacy*, EP 722, Joint Opening Comments of the Western Coal Traffic League, Consumers Energy Company and South Mississippi Electric Power Association, filed September 5, 2014 at 17-23.

⁶ CSXT did not deny the existence of such internal calculations.

CSXT Objections at 2 (footnote omitted but addressed below). This position is without merit.

First, in denying CSXT's Motion to Dismiss, the Board rejected the notion that revenue adequacy for purposes of the *Guidelines* was to be assessed solely on the basis of the annual determinations that compare a carrier's return on net investment to the industry average cost of capital. The Board instead agreed with Consumers, and prior precedent, that "other competent and probative evidence" may be presented and considered. *See* Decision at 2; *Bituminous Coal-Hiawatha, Utah, to Moapa, Nev.*, 6 I.C.C.2d 1, 20 (1989) ("We have stated that any other competent and probative evidence relative to the carrier's revenue adequacy may be submitted in individual rate reasonableness proceedings."). Evidence that a carrier considers its own COE or COC to be below the level estimated by the Board should be considered competent and probative, especially since the Board's annual determinations do not correspond to the conclusions reached by the financial and investment community.⁷ Moreover, use of an industry average COC entails a virtual certainty that at least one carrier will have a COE and/or COC *below* the average. If a carrier is earning its own individual COC, it meets the applicable criteria under 49 U.S.C. § 10704(a)(2) and should trigger application of the revenue adequacy constraint under the *Coal Rate Guidelines*. Furthermore, the Board's current COC methodology relies on an average of the MSDCF and CAPM methodologies.

⁷ Consumers included in its Reply to CSXT's Motion to Dismiss a report from Morningstar stating that the railroad industry and its major members, including CSXT, will outearn their cost of capital on a long-term basis.

To the extent that CSXT does not use both methodologies, or weights or applies them differently than the Board, it would be relevant both as to how the COC and COE methodologies should be utilized, and what weight should be given to other indicia of revenue adequacy. At this early stage, it is impossible to conclude that such evidence could not be “competent and probative.”

Second, the Board decisions on which CSXT relies for the proposition that parties may not make collateral attacks on the industry average cost of capital in individual rate cases⁸ apply only to the SAC constraint, not revenue adequacy. They are of no import here, given the Board’s openness to other “competent and probative evidence” in assessing revenue adequacy. Decision at 2. Furthermore, even those SAC cases acknowledge that “[p]arties are free ... to argue that a different level of capital costs tailored to the SARR at issue should be used because that SARR’s underlying characteristics are unique to the industry at large.” *AEPCO* at 137. If parties can show that the industry average COC is not appropriate for a make-believe SARR, it clearly follows that they should be allowed to show that the industry-average COC is not appropriate for determining the revenue adequacy of an individual, real-world carrier, with its “underlying characteristics [that] are unique to the industry at large.” *Id.* The pendency of *Ex Parte No. 664 (Sub-No. 2)*⁹ is further evidence that the industry average COC may not accurately depict CSXT’s COE

⁸ CSXT Objections at 2 n.1, citing *AEPCO v. BNSF Ry. Co. & Union Pac. R.R.*, NOR 42113 (STB served Nov. 22, 2011) at 137, and *Western Fuels Ass’n v. BNSF Ry. Co.*, NOR 42088 (STB served Feb. 18, 2009) at 23.

⁹ *Petition of the Western Coal Traffic League to Institute a Rulemaking to Abolish the Use of the Multi-Stage Discounted Cash Flow Model in Calculating the R.R. Indus.’s Cost of Equity Capital*, EP 664 (Sub-No.2) (STB served Dec. 20, 2013).

and COC, and that reliance solely on the industry-average COC may distort CSXT's revenue adequacy status.

With respect to CSXT's claims of undue burden, it is reasonable to assume that CSXT has a discrete set of materials at the corporate level that will depict its official COE and COC, and explain the key assumptions and methodologies used to determine them. CSXT makes no suggestion that it lacks responsive information, and it is implausible that CSXT would ignore its COE and COC in conducting its regular business planning and strategic development. Even so, as was stated in the Second Requests,¹⁰ Consumers is prepared to work with CSXT to secure relevant documents expeditiously and with minimal burden.

Accordingly, the Board should order CSXT to produce the information and documents sought in Interrogatory Nos. 14 and 15 and Document Requests 135, 136, and 139 (as applicable) so that Consumers will not be deprived of a full opportunity to present competent and probative evidence regarding CSXT's revenue adequacy.¹¹

II. Replacement Costs

In its failed Motion to Dismiss, CSXT implied that any defense it may present in response to Consumers' revenue adequacy claim would include evidence regarding the Replacement Costs of its assets, referring to the costs of replacing all of CSXT's assets at once for purposes of evaluating CSXT's asset base. *See* Motion to

¹⁰ Second Requests at 1.

¹¹ *See* Decision at 2, and *Bituminous Coal-Hiawatha, Utah, to Moapa, Nev.*, 6 I.C.C.2d 1, 20 (1989).

Dismiss at 16. Accordingly, Consumers' Interrogatory Nos. 20 and 21 and Document Request 139 seek information regarding CSXT's Replacement Costs. Consumers defined "Replacement Costs" to have the same meaning as in CSXT's Motion to Dismiss and in CSXT's written comments in *Ex Parte No. 722*. See Second Requests at 2.

CSXT's primary objection to these Interrogatories and Document Requests is that it has already presented information regarding its "replacement costs" in the sense that it "is making a 'replacement cost calculation' every time it calculates the cost for replacing a tie, a rail, or any other piece of infrastructure." CSXT Objections at 5. It also states that its Enterprise Asset Management ("EAM") program, referenced in its Annual Reports to the SEC and the subject of Interrogatory No. 21, addresses such costs (*id.* at 6-7), though it objects to producing further information or documents regarding the EAM program. However, the concept of Replacement Costs as described by CSXT in its Motion to Dismiss and its Comments in *Ex Parte No. 722* is far broader than the ongoing repair, renewal, and replacement of assets that occur through normal capital expenditures, and are referenced in CSXT's Objections. See CSXT Objections at 6.

To the extent that CSXT intends to pursue a defense against Consumers' revenue adequacy claim founded upon the argument that revenue adequacy should be measured against the Replacement Costs of a railroad system, then CSXT has failed to answer the Interrogatory accurately or completely. If CSXT utilizes this broader definition, then it becomes relevant: (a) how CSXT calculates Replacement Costs and how often it updates these calculations; (b) whether and how CSXT utilizes Replacement Costs in the regular course of its business; and (c) whether and how Replacement Costs are

reflected in EAM. These are the subjects of Interrogatory Nos. 20 and 21, and Request for Production No. 139.

Accordingly, CSXT should be ordered to clarify its definition of “replacement costs” for purposes of its intended defense to Consumers’ revenue adequacy claim, and to the extent that it plans to employ the definition reflected in its Motion to Dismiss and its *Ex Parte No. 722* Comments, it should be compelled to produce the information requested by Consumers.

III. CSXT’s Statements to Financial Analysts

Consumers’ Interrogatory No. 22 and Request for Production No. 139 seek information regarding communications between CSXT and financial analysts regarding the indicia of financial health and revenue adequacy enumerated in 49 U.S.C. § 10704(a)(2), and CSXT’s success in earning returns equal to or exceeding its COC or COE. In its Objections, CSXT explains that this is “a stunningly overbroad request that borders on the punitive” as it “could not possibly reveal any relevant evidence” because the revenue adequacy determination “is an objective determination for the Board and does not depend on subjective beliefs about financial prospects that may or may not have been expressed by or to financial analysts.” CSXT Objections at 7. The objection should be overruled.

Contrary to CSXT’s misconstruction, Consumers’ focus is not on the subjective beliefs of analysts.¹² Discovery regarding the discussions with and inquiries

¹² Nonetheless, characterizing representations to analysts or their views as “subjective” obscures their significance. The MSDCF COE, for example, is founded upon analysts’ projections of growth in earnings per share. The projections may not be purely

made by analysts and/or rating agencies, and/or information provided by CSXT relating to its capital expenditure plans, access to funds for needed capacity expansions or asset replacements, ability to attract capital and investors, and success in earning returns at levels equal to or above its COC or COE – all of which relate to the statutory criteria for revenue adequacy – is reasonably calculated to lead to relevant evidence regarding whether the financial and investment community considers those criteria to be met, and how they are applied when assessing CSXT’s attractiveness as an investment. The documents associated with such discussions and inquiries will provide objective information regarding the same matters.

To the extent that Consumers’ data and document requests impose a genuine burden on CSXT beyond that typically associated with discovery under the *Guidelines*, Consumers is willing to work with CSXT to minimize the burden to the extent practicable. However, the discovery requests are reasonably calculated to lead to admissible evidence, and CSXT should be compelled to provide responsive information.¹³

IV. Management Compensation

Consumers’ Interrogatory No. 23 and Request for Production No. 139 seek information regarding whether and to what extent CSXT’s executive compensation program relies on corporate financial performance metrics such as returns on equity or

mathematical, but the level of projection is treated as an objective input under the MSDCF model.

¹³ *Ballard Terminal R.R. - Acquisition & Operation Exemption- Woodinville Subdivision*, AB 6 (Sub-No. 465X) (STB served Aug. 22, 2013), at 3-4 (noting that relevant matter is any information that may “affect the outcome of a proceeding.”).

other criteria consistent with the standards of 49 U.S.C. §10704(a)(2). CSXT claims that how it calculates executive compensation has no relevance to the revenue adequacy constraint, but nonetheless refers Consumers to its “SEC filings that explain the company’s executive compensation program.” CSXT Objections at 8.

Executive compensation is relevant to revenue adequacy to the extent that it is linked to a company’s financial performance or to improvements in company or stockholder value. CSXT’s annual stockholder proxy materials state as much. While CSXT is correct that *some* information regarding executive compensation is available in its SEC filings, those materials do not disclose the pricing metrics that are referred to generally, the benchmarks used to determine return on assets (an acknowledged metric for executive compensation), and other indicia of CSXT’s current and long-term projected financial stability. Under the liberal discovery rules that apply to this case,¹⁴ Consumers is entitled to information regarding what those benchmarks are and the basis on which they were established.

¹⁴ *Ocean Logistics Mgmt., Inc. v. NPR, Inc. & Holt Cargo Sys., Inc.*, WCC-102 (STB served Jan. 12, 2000), at 2 (reminding parties that the proceeding calls for a broad scope of discovery); *CSX Corp. & CSX Transp., Inc., Norfolk S. Corp. & Norfolk S. Ry. Co.- Control & Operating Leases/Agreements- Conrail Inc. & Consolidated Rail Corp.*, FD 33388 (STB served Sept. 18, 1997), at 3 n.9 (relevance standard is the broad standard applicable to discovery matters unless it requires the disclosure of “extraordinarily sensitive information.”).

V. CSXT Corporate-Level Performance Projections

Consumers' Interrogatory No. 24 and Request for Production No. 139 seek information regarding CSXT's projection of corporate-level performance metrics such as annual revenues, costs, earnings, profits, operating ratios, return on investment, return on invested capital and/or return on equity. CSXT's response was that it already has produced strategic plan forecast documents, and that anything more is overbroad, duplicative, and not reasonably calculated to lead to the discovery of admissible evidence. CSXT Objections at 8-9.

CSXT's strategic plan does provide useful information for determining the hypothetical stand-alone railroad's SARR's traffic group and associated revenues. However, the strategic plan documents contain no useful information regarding associated costs, much less the other information regarding the measures of corporate-level performance specified in Interrogatory No. 24 that is relevant to a revenue adequacy analysis. A key issue under the *Guidelines* is whether CSXT should be considered revenue adequate on a long-term basis, and CSXT's own projections of the specified metrics, such as annual revenues, costs, earnings, profits, operating ratios, return on investment, return on invested capital and/or return on equity, are directly pertinent to that issue.

CSXT almost certainly develops such information in the ordinary conduct of its operations, and CSXT's Objections do not claim otherwise. To give one example, in CSXT's earnings call on April 15, 2015, its Chief Financial Officer stated that "[g]oing forward we're expanding our target [dividend] payout range to 30% to 40% which reflects our confidence in the future earnings power of the company." CSXT could not realistically

make such a statement without having some estimate of what those earnings and associated financial figures will be. Similarly, on April 14, 2015, CSXT issued a press release and filed an SEC Form 8-K announcing its plan to repurchase \$2 billion of its stock over the next 24 months.¹⁵ It is highly implausible that CSXT could have committed \$2 billion to such a plan without a thorough financial analysis that considers all or at least most of the specific metrics.

The information and documents sought by Interrogatory No. 24 and Request for Production No. 139 are relevant and should not be burdensome to produce, since it is highly likely that they already exist and are utilized in the regular course of business. CSXT should be compelled to produce them.

VI. Unconsolidated Shortlines

Interrogatory No. 25 seeks an explanation as to why CSXT stopped including three Indiana shortline railroads in its consolidated R-1 reports starting in 2012. CSXT objects on relevance grounds, claiming that the pre-2012 treatment of those entities is irrelevant and that current information is available in the R-1 reports.

Consumers reviewed CSXT's R-1 reports and their discussion of the shortlines before submitting Interrogatory No. 25. The R-1 reports reveal the change in treatment starting in 2012, but do not provide a meaningful explanation for the change. To the extent that continued inclusion of the shortlines' revenues and other financial information in the CSXT consolidated R-1 would have pushed CSXT's overall rate of

¹⁵ CSXT's 8-K filing is available at http://www.sec.gov/Archives/edgar/data/277948/000027794815000015/pressrelease_q12015.htm.

return in the years from 2012 forward closer to or even over the industry COC, CSXT's decision to exclude them would have direct implications for its revenue adequacy status, and CSXT's explanation for the change would be highly relevant. CSXT has not articulated any actual reason why responding to Interrogatory No. 25 would be unduly burdensome, and so it should be directed to do so.

VII. Stock Repurchases

Interrogatory No. 26 seeks information relating to CSXT's stock repurchases. CSXT refers to public statements regarding its share repurchases and objects to producing anything more on grounds of relevance.

CSXT's most recent statement on its repurchase plans, made April 14, 2015, reveals a plan to repurchase \$2 billion of shares over the next 24 months, but says nothing about the underlying analysis supporting the plan. The relevance of a large stock repurchase plan to the criteria set out in 49 U.S.C. § 10704(a)(2) is clear, since the revenues used for the repurchase otherwise would be available for reinvestment in CSXT's system assets, *if* there was a capital shortfall in that area. Likewise, the information underlying a major stock repurchase plan bears on a range of factors that might reasonably be considered in a revenue adequacy analysis, including expected returns, need for funds, effective returns on assets, invested capital and equity, and operating ratio. A company does not make a \$2 billion revenue commitment lightly, and the supporting analysis is likely to address a number of matters that bear on CSXT's financial health and revenue adequacy under the criteria specified at 49 U.S.C. § 10704(a)(2), including the carrier's ability to attract or retain capital. The public statements that CSXT references in its

Objections do not reveal any of the specified information covered by Interrogatory No. 26. Accordingly, CSXT should be required to respond meaningfully to the Interrogatory.

VIII. Internal Assessments Regarding Revenue Adequacy

Request for Production No. 134 seeks documents related to any CSXT internal assessments whether its revenues and/or earnings meet the criteria specified in 49 U.S.C. § 10704(a)(2). CSXT objects, somewhat paradoxically, that (a) the production of any such information to Consumers is unnecessary because ample information is publicly available and also is contained in its strategic plan, and (b) any responsive documents would be privileged work product.

CSXT's objections are without merit. Public information may offer certain accounting and other data, but it says little about whether CSXT actually considers itself to be revenue adequate. While CSXT refers to its strategic plan (CSXT Objections at 10-11), that plan consists of traffic and revenue projections; it lacks both corporate-level performance information of the sort specified in the revenue adequacy criteria, as well as CSXT's own assessment of the adequacy of its current financial status and prospects.

CSXT's claim regarding work-product is unfounded in two basic respects. First, the revenue adequacy criteria under 49 U.S.C. §10704(a)(2) address the basic financial health of the carrier. CSXT is likely to have considered and addressed such information in the ordinary course of its affairs, *e.g.*, whether it is viable on a long-term basis, and if not, what is required to achieve such viability. Indeed, if CSXT did *not* have an internal record of assessing such matters, CSXT would have been unlikely to have achieved its present degree of financial success. Second, Consumers' revenue adequacy

claim in this case is the first filed against CSXT under the *Guidelines*. Any analysis of CSXT's achievement of revenue adequacy under the statutory criteria done in advance of the filing of Consumers' complaint is unlikely to have been prepared in anticipation of litigation, and it certainly is not plausible that *all* such analyses fall into that category.

CSXT should be compelled to respond substantively to Request for Production No. 134.

CONCLUSION

For the reasons stated above, CSXT should be compelled to produce the information and documents that are the subject of this Motion.

Respectfully submitted,

CONSUMERS ENERGY COMPANY

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Dated: June 25, 2015

Attorneys and Practitioners

CERTIFICATE OF SERVICE

I hereby certify that this 25th day of June, 2015, I caused a copy of the foregoing Second Motion to Compel Discovery to be served by hand delivery and electronic mail on the following counsel for Defendant CSX Transportation, Inc.:

G. Paul Moates, Esq.
Raymond A. Atkins, Esq.
Paul A. Hemmersbaugh, Esq.
Matthew J. Warren, Esq.
Sidley Austin LLP
1501 K Street, NW
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I also caused the foregoing Motion to be served by overnight delivery on the following counsel for CSXT:

Peter J. Shudtz, Esq.
Paul R. Hitchcock, Esq.
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CSX Transportation, Inc.
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/s/ Katherine F. Waring

APPENDIX 1

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

CONSUMERS ENERGY COMPANY)	
)	
Complainant,)	
)	
v.)	Docket No. NOR 42142
)	
CSX TRANSPORTATION, INC.)	
)	
Defendant.)	
)	

**COMPLAINANT'S SECOND SET OF INTERROGATORIES
AND REQUESTS FOR PRODUCTION OF
DOCUMENTS TO DEFENDANT**

Complainant Consumers Energy Company ("Consumers"), pursuant to 49 C.F.R. Part 1114.30, hereby submits its Second Set of Interrogatories and Requests for Production of Documents to Defendant CSX Transportation, Inc. ("CSXT").

Answers to the Interrogatories, and copies of documents responsive to the Requests for Production, should be delivered to the offices of Slover & Loftus LLP, 1224 Seventeenth Street, N.W., Washington, D.C. 20036, within thirty (30) days from the date hereof, unless otherwise agreed by the parties. Consumers is prepared to cooperate with CSXT to facilitate the expeditious production of documents with the minimum practical burden.

I. NEW DEFINITIONS

The following newly defined terms are used herein:

1. "Congestion Pricing," unless otherwise specified, has the meaning as indicated or intended at page 15 of CSXT's Motion to Dismiss Revenue Adequacy Claim, dated March 24, 2015 ("CSXT Motion").

2. "Replacement Costs," unless otherwise specified, has the same meaning as used in the CSXT Motion, and in CSXT's written comments to date in STB Docket Ex Parte No. 722, *Railroad Revenue Adequacy*.

3. "Revenue Adequacy Criteria" means earning revenues that are:

(a) adequate, under honest, economical, and efficient management, to cover (1) total operating expenses, including depreciation and obsolescence, and (2) a reasonable and economic profit or return (or both) on capital employed in the business;

(b) provide a flow of net income plus depreciation adequate to (1) support prudent capital outlays, (2) assure the repayment of a reasonable level of debt, (3) permit the raising of needed equity capital, and (d) cover the effects of inflation; and (c) attract and retain capital in amounts adequate to provide a sound transportation system in the United States.

Subject to the foregoing, capitalized terms used herein shall be defined in the same manner as set forth in Consumers' First Requests for Admissions, Interrogatories, and Requests for Production of Documents dated February 4, 2015 ("First Requests").

II. INSTRUCTIONS

Consumers hereby incorporates the Instructions set forth in its First Requests.

III. INTERROGATORIES

Interrogatory No. 14

Please state whether CSXT has calculated its current cost of equity capital (“COE”) or current weighted average cost of capital (“COC”) during the period January 1, 2010 through the present. If it has, please identify (a) the COE and/or COC values that CSXT calculated and the periods (including future periods) for which the values were calculated; (b) the methodology, assumptions and inputs used to determine the values; (c) whether and how CSXT utilized the values that were calculated; and (d) any adjustments that CSXT made in calculating and/or utilizing the values. Please identify all documents that support your response and/or that memorialize your calculations.

Interrogatory No. 15

Please describe your methodology and inputs for calculating CSXT’s COE and COC for the time periods specified in response to the previous Interrogatory. Please describe any adjustments that were made to the COE and COC values in performing the calculations. Please identify all documents that support your response.

Interrogatory No. 16

Please state whether the Challenged Rates reflect Congestion Pricing. If so, please explain (a) what is meant by Congestion Pricing in this context; (b) how Congestion Pricing was used in establishing the level of the Challenged Rates;

(c) whether and how Congestion Pricing is compatible with the Stand-Alone Cost Constraint under the STB's *Coal Rate Guidelines*; (d) how and why Congestion Pricing is not subsumed within application of the MMM (Maximum Markup Methodology) under the *Guidelines*; and (e) how or why Congestion Pricing allows CSXT to charge a rate higher than that identified under MMM. Please identify all documents that show how Congestion Pricing was taken into account in establishing the Challenged Rates.

Interrogatory No. 17

Please state whether Congestion Pricing takes into account CSXT's costs of providing Consumers service, and any other service over any portion of Consumers route(s). If so, please identify and describe (a) the costs for Consumers service and other service that was accounted for; (b) the cost factors; and (c) the costing system that was utilized to take these costs into account. Please state whether and describe the extent to which those costs include opportunity costs.

Interrogatory No. 18

To the extent that the cost system(s) used by CSXT that is described in Interrogatory No. 17 differs from the STB's Uniform Rail Costing System, please identify (a) the cost system(s) utilized; (b) the inputs used to develop costs using such system(s); (c) the mathematical calculations used to develop the costs; and (d) the underlying support for the choice of inputs and mathematical calculations.

Interrogatory No. 19

Please state whether and describe the manner in which Congestion Pricing and the cost system(s) described in Interrogatory Nos. 17 and 18 take into account the

Replacement Costs of CSXT's assets. Please identify all documents that show how Replacement Costs are taken into account in Congestion Pricing as applied in the determination of the Challenged Rates.

Interrogatory No. 20

Please state whether CSXT calculates, tracks and/or utilizes Replacement Costs in the regular course of business. If so, please describe how CSXT calculates, tracks and/or utilizes Replacement Costs, including but not limited to your choice of inputs, assumptions, and methodologies. Please identify all Replacement Cost calculations that CSXT has performed since January 1, 2010, and explain whether and how Replacement Costs are used by CSXT to determine rates, dividends, stock buybacks, capital expenditures, and/or executive compensation.

Interrogatory No. 21

Page 23 of CSXT's 2014 Annual Report includes the following statement: "EAM [Enterprise Asset Management] helps reduce the overall expense associated with asset ownership by monitoring the overall condition of equipment, helping proactively schedule maintenance, increasing utilization and also effectively managing the investment required for new or replacement assets." Please describe the design, operation and effectiveness of EAM. Please explain what is meant by "the investment required for new or replacement assets," including but not limited to (a) whether and how it differs from capital expenditures that CSXT makes in the regular course of business; (b) whether it contemplates replacing all of CSXT's capital assets with new assets, and if so, whether such replacement occurs at one time or on an annual or other regularly

recurring basis; and (c) whether the meaning of “the investment required for new or replacement assets” is the same as Replacement Costs as used in CSXT’s Motion. If it has a different meaning, please explain how it differs.

Interrogatory No. 22

Please identify any discussions since January 1, 2005 between representatives of CSXT and representatives of equity and debt analysts and/or rating agencies relating to (a) CSXT’s Replacement Costs, their calculation or their use in financial planning or the setting of revenue goals; (b) CSXT’s ability to meet the Revenue Adequacy Criteria; and (c) CSXT’s success or lack of success in earning returns on invested capital equal to its COC or COE. Please describe in detail the substance of all such discussions. Please identify all documents that support your Answer or that relate to or memorialize any of those discussions.

Interrogatory No. 23

Please state whether, and if so describe how the determination of compensation paid to CSXT executives takes into account (a) CSXT’s COC or COE; (b) whether CSXT’s earnings or return on investment have matched or exceeded its COC or COE; and (c) whether CSXT’s earnings are sufficient to cover Replacement Costs. If the COC or COE is taken into account, please identify the COC and/or COE percentages used, the methodology for calculating the COC and/or COE, and all inputs utilized. If CSXT’s earnings relative to the COC or COE are taken into account, please identify how the earnings and investment base used in that accounting are determined. If Replacement

Costs are taken into account, please identify how Replacement Costs are determined.

Please identify all documents that support your Answer.

Interrogatory No. 24

Please identify and describe any corporate or enterprise-level projections that CSXT has made from January 1, 2012 to the present of CSXT's future annual revenues, costs, earnings, profits, operating ratios, return on investment, return on invested capital and/or return on equity for any time period(s) subsequent to December 31, 2014. Please identify all documents that support your response and/or that memorialize your projections.

Interrogatory No. 25

Please confirm that until 2012, CSXT included The Indiana Rail Road Company ("IRR"), Paducah and Louisville Railway, Inc. ("PAL"), and the Evansville Western Railway, Inc. ("EWR") as part of the consolidated CSXT R-1 consolidated reporting entity, and that CSXT did not include IRR, PAL, and EWR in its R-1 consolidated reporting entity for 2012, 2013, and 2014. If so, please explain the basis for not including IRR, PAL, and EWR in the CSXT R-1 consolidated reporting entity starting in 2012, after having included them in earlier years. If you contend that CSXT's interests in IRR, PAL and EWR were not at levels that required or permitted their inclusion in the CSXT R-1, please specify CSXT's direct and indirect ownership percentages of the common stock and preferred stock (if any) of IRR, PAL and EWR during each of the years 2012 through 2014.

Interrogatory No. 26

Please describe the purposes and objectives of CSXT stock repurchases, or planned stock repurchases that CSXT has made since January 1, 2010. The description should include, without limitation: (a) why CSXT decided to make such repurchases or planned repurchases; (b) whether CSXT determined that shares that were or would be repurchased were worth more or less than, or the same as, the purchase price, and by what measure; (c) any comparisons of the return or benefits that CSXT obtained or produced, or expected to obtain or produce, on such repurchases or planned repurchases, both in general and relative to other potential uses of the funds used, or to be used, in the repurchases; (d) any return on assets, investment, capital, invested capital, and/or equity, or change in operating ratio, considered, achieved, and/or anticipated in conjunction with such repurchases or planned repurchases; and (e) whether and/or how such repurchases or planned repurchases increased or decreased, or were expected to increase or decrease, the value or price of CSXT stock or CSXT earnings per share.

IV. DOCUMENT PRODUCTION REQUESTS

Request for Production No. 134

Please produce all documents related to any internal assessments made by or for CSXT as to whether the company meets the Revenue Adequacy Criteria. To the extent that this Request is burdensome, counsel for Consumers is willing to confer to determine if the burden can be reduced, particularly by producing representative documents in various categories.

Request for Production No. 135

Please provide documents sufficient to show the COE and COC values utilized for the time periods specified in Interrogatory Nos. 14 and 15, and the purpose for which those values are utilized. To the extent that this Request is burdensome, counsel for Consumers is willing to confer to determine if the burden can be reduced, particularly by producing representative documents in various categories.

Request for Production No. 136

Please provide documents sufficient to show in detail the methodology used for calculating the COE and COC for the time periods specified in Interrogatory No. 14. To the extent that this Request is burdensome, counsel for Consumers is willing to confer to determine if the burden can be reduced, particularly by producing representative documents in various categories.

Request for Production No. 137

Please produce documents sufficient to show all revenues, fees, rents or other compensation received by CSXT in 2013 and 2014 from any source that was related to a third party's use or exercise of subsurface rights below any CSXT right-of-way in Illinois, Indiana or Michigan.

Request for Production No. 138

Please produce documents sufficient to show the information described in Consumers' Request for Production No. 106 for the years 2013 and 2014.

Request for Production No. 139

Please produce all documents identified in response to, or relied upon in providing Answers to Interrogatory Nos. 14 through 23.

CONSUMERS ENERGY COMPANY

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Dated: May 15, 2015

APPENDIX 2

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

CONSUMERS ENERGY COMPANY

Complainant,

v.

CSX TRANSPORTATION, INC.

Defendant.

Docket No. NOR 42142

**DEFENDANT'S RESPONSES TO COMPLAINANT'S
SECOND SET OF INTERROGATORIES AND REQUESTS FOR
PRODUCTION OF DOCUMENTS**

Pursuant to 49 C.F.R. Part 1114, CSX Transportation, Inc. ("CSXT") responds as follows to Consumers Energy Company's ("Consumers") Second Set of Interrogatories and Requests for Production of Documents.

CSXT incorporates and adopts the twenty-three General Objections made in its March 6, 2015 Responses and Objections to Consumers's First Requests for Admission, Interrogatories, and Requests for Production of Documents, including CSXT's objections to the Definitions and Instructions that were set forth in those discovery requests.

I. INTERROGATORIES

INTERROGATORY NO. 14

Please state whether CSXT has calculated its current cost of equity capital ("COE") or current weighted average cost of capital ("COC") during the period January 1, 2010 through the present. If it has, please identify (a) the COE and/or COC values that CSXT calculated and the periods (including future periods) for which the values were calculated; (b) the methodology, assumptions and inputs

used to determine the values;(c) whether and how CSXT utilized the values that were calculated; and (d) any adjustments that CSXT made in calculating and/or utilizing the values. Please identify all documents that support your response and/or that memorialize your calculations.

Response: CSXT objects to Interrogatory 14 because it is not reasonably calculated to lead to the discovery of admissible evidence. Whatever internal cost of capital calculations CSXT may have made would be utterly irrelevant to any issue in this rate case. STB precedent is clear that the industry-average cost of capital as calculated by the Board is the appropriate cost of capital to use in rate reasonableness cases.¹ A railroad's internal analyses relating to its capital costs are thus not relevant. Consumers' assertion of a meritless revenue adequacy claim does not change this analysis. Any internal cost of capital analyses that may or may not have been conducted by CSXT are irrelevant, because the Board has adopted an industry-average cost of capital calculation by rule. CSXT further objects to this Interrogatory because its request for over five years of internal calculations is overbroad and unduly burdensome.

INTERROGATORY NO. 15

Please describe your methodology and inputs for calculating CSXT's COE and COC for the time periods specified in response to the previous Interrogatory. Please describe any adjustments that were made to the COE and COC values in performing the calculations. Please identify all documents that support your response.

¹ See, e.g., *AEPCO v. BNSF Ry. Co. & Union Pac. R.R. Co.*, STB Docket No. 42113, at 137 (served Nov. 22, 2011) ("It is not appropriate for a party in an individual rate case to challenge the Board's methodology for determining the industry cost of capital"); *Western Fuels Ass'n v. BNSF Ry. Co.*, STB Docket No. 42088 at 23 (served Feb. 18, 2009) (Board does "not generally consider collateral attacks on the cost-of-capital methodology in the context of an individual rate case due to the settled expectations our findings create").

Response: CSXT incorporates its objections to Interrogatory 14.

INTERROGATORY NO. 16

Please state whether the Challenged Rates reflect Congestion Pricing. If so, please explain (a) what is meant by Congestion Pricing in this context; (b) how Congestion Pricing was used in establishing the level of the Challenged Rates; (c) whether and how Congestion Pricing is compatible with the Stand-Alone Cost Constraint under the STB's *Coal Rate Guidelines*; (d) how and why Congestion Pricing is not subsumed within application of the MMM (Maximum Markup Methodology) under the *Guidelines*; and (e) how or why Congestion Pricing allows CSXT to charge a rate higher than that identified under MMM. Please identify all documents that show how Congestion Pricing was taken into account in establishing the Challenged Rates

Response: CSXT objects to Interrogatory 16 because it inappropriately asks CSXT to disclose its substantive legal arguments in a discovery response. See *Minnesota Power, Inc. v. Duluth, Missabe and Iron Range Ry. Co.*, STB Docket No. 42038, at 4 (served May 11, 1999) (disallowing discovery requests that “appear to be an attempt to preview the evidence that [a party] will submit in its case-in-chief”). CSXT further objects because Interrogatory 16’s request that CSXT detail how congestion in Chicago factored into its rate-setting process is not reasonably calculated to lead to the discovery of admissible evidence. The only question in a Constrained Market Pricing case is whether a railroad’s rates are objectively reasonable under the Board’s standards; what factors a railroad considered when establishing that rate are irrelevant. Subject to these objections and the General Objections, CSXT responds that Consumers’ discovery inquiries about “Congestion Pricing” seriously misconstrue the language from the CSXT Motion to Dismiss Revenue Adequacy Claim that Consumers purports to reference. CSXT’s passing reference in that motion to the fact that the SAC analysis will need to account for

“Chicago congestion issues” meant only that the SAC model is required to incorporate the full economic costs of the issue movement. In this case that principle means that the SAC analysis must account for the full economic costs of operating coal trains over one of the most congested rail corridors in the United States.

INTERROGATORY NO. 17

Please state whether Congestion Pricing takes into account CSXT’s costs of providing Consumers service, and any other service over any portion of Consumers route(s). If so, please identify and describe (a) the costs for Consumers service and other service that was accounted for; (b) the cost factors; and (c) the costing system that was utilized to take these costs into account. Please state whether and describe the extent to which those costs include opportunity costs.

Response: CSXT incorporates its objections and response to

Interrogatory 16. In addition, CSXT objects to Interrogatory 17 because it requests information about internal costing systems that the Board has long held are not discoverable for any purpose in rate reasonableness proceedings. *See, e.g., Total Petrochemicals USA, Inc. v. CSX Transp., Inc.*, STB Docket No. NOR 42121, at 3-4 (served Dec. 22, 2010); *M&G Polymers USA, Inc. v. CSX Transp., Inc.*, STB Docket No. NOR 42123, at 3-4 (served Dec. 22, 2010); *Kan. City Power & Light Co. v. Union Pac. R.R.*, STB Docket No. NOR 42095, at 2-3, (served Feb. 15, 2006); *Entergy Ark., Inc. v. Union Pac. R.R.*, STB Docket No. NOR 42104, at 4 (STB served May 7, 2008); *Tex. Mun. Power Agency v. Burlington N. & Santa Fe Ry.*, STB Docket No. NOR 42056, at 3 n.8 (STB served Feb. 9, 2001); *Potomac Elec. Power Co. v. CSX Transp., Inc.*, 2 S.T.B. 290, 292-94 (1997)).

INTERROGATORY NO. 18

To the extent that the cost system(s) used by CSXT that is described in Interrogatory No. 17 differs from the STB’s Uniform Rail Costing System, please identify (a) the cost system(s) utilized; (b) the inputs used to develop costs using

such system(s); (c) the mathematical calculations used to develop the costs; and (d) the underlying support for the choice of inputs and mathematical calculations.

Response: CSXT incorporates its objections to Interrogatory 17.

INTERROGATORY NO. 19

Please state whether and describe the manner in which Congestion Pricing and the cost system(s) described in Interrogatory Nos. 17 and 18 take into account the Replacement Costs of CSXT's assets. Please identify all documents that show how Replacement Costs are taken into account in Congestion Pricing as applied in the determination of the Challenged Rates.

Response: CSXT incorporates its objections to Interrogatories 16 and 17.

INTERROGATORY NO. 20

Please state whether CSXT calculates, tracks and/or utilizes Replacement Costs in the regular course of business. If so, please describe how CSXT calculates, tracks and/or utilizes Replacement Costs, including but not limited to your choice of inputs, assumptions, and methodologies. Please identify all Replacement Cost calculations that CSXT has performed since January 1, 2010, and explain whether and how Replacement Costs are used by CSXT to determine rates, dividends, stock buybacks, capital expenditures, and/or executive compensation.

Response: CSXT objects to Interrogatory 20 because it is overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Consumers's request for "all internal Replacement Cost calculations that CSXT has performed since January 1, 2010" is massively overbroad, since CSXT is making a "replacement cost calculation" every time it calculates the cost for replacing a tie, a rail, or any other piece of infrastructure. CSXT has made significant data on its actual replacement cost spending available to Consumers, and Consumers is not entitled to further "replacement cost calculations." Subject to and without waiving these objections or the General Objections, CSXT responds that it calculates and utilizes the replacement cost of assets every time it replaces

an asset, because replacement costs are by definition the true cost necessary to replace railroad infrastructure.

INTERROGATORY NO. 21

Page 23 of CSXT's 2014 Annual Report includes the following statement: "EAM [Enterprise Asset Management] helps reduce the overall expense associated with asset ownership by monitoring the overall condition of equipment, helping proactively schedule maintenance, increasing utilization and also effectively managing the investment required for new or replacement assets." Please describe the design, operation and effectiveness of EAM. Please explain what is meant by "the investment required for new or replacement assets," including but not limited to (a) whether and how it differs from capital expenditures that CSXT makes in the regular course of business; (b) whether it contemplates replacing all of CSXT's capital assets with new assets, and if so, whether such replacement occurs at one time or on an annual or other regularly recurring basis; and (c) whether the meaning of "the investment required for new or replacement assets" is the same as Replacement Costs as used in CSXT's Motion. If it has a different meaning, please explain how it differs.

Response: CSXT objects to Interrogatory 21 because it is not reasonably calculated to lead to the discovery of admissible evidence. The operation of internal CSXT management programs is not relevant to either the SAC test or to any potential revenue adequacy constraint. Subject to and without waiving this objection and the General Objections, CSXT responds that Enterprise Asset Management refers to CSXT strategic initiatives to encourage better asset performance, in part by improving information on reliability and utilization of assets and by ensuring optimal maintenance strategies and lifecycle management. In response to subpart (a) of the Interrogatory, CSXT states that the reference in CSXT's 2014 Annual Report to "the investment required for new and replacement assets" was a reference to the capital investments CSXT makes in the ordinary course of business. In response to subpart (b), CSXT states that EAM does not

“contemplate[] replacing all of CSXT’s capital assets with new assets”; EAM is rather a set of initiatives to improve CSXT’s current asset management. In response to subpart (c), CSXT states that “the investment required for new and replacement assets” self-evidently means the actual costs required for new or replacement assets, which are replacement costs.

INTERROGATORY NO. 22

Please identify any discussions since January 1, 2005 between representatives of CSXT and representatives of equity and debt analysts and/or rating agencies relating to (a) CSXT’s Replacement Costs, their calculation or their use in financial planning or the setting of revenue goals; (b) CSXT’s ability to meet the Revenue Adequacy Criteria; and (c) CSXT’s success or lack of success in earning returns on invested capital equal to its COC or COE. Please describe in detail the substance of all such discussions. Please identify all documents that support your Answer or that relate to or memorialize any of those discussions

Response: CSXT objects to Interrogatory 22 because it is unduly burdensome, overbroad, and not reasonably calculated to lead to the discovery of admissible evidence. Asking CSXT to identify and “describe in detail” over a decade’s worth of conversations between CSXT and financial analysts is a stunningly overbroad request that borders on the punitive—particularly because compliance with Consumers’ request could not possibly reveal any relevant evidence. Whether CSXT’s rate should be subjected to a revenue adequacy constraint is an objective determination for the Board and does not depend on subjective beliefs about financial prospects that may or may not have been expressed by or to financial analysts.

INTERROGATORY NO. 23

Please state whether, and if so describe how the determination of compensation paid to CSXT executives takes into account (a) CSXT’s COC or COE; (b) whether CSXT’s earnings or return on investment have matched or

exceeded its COC or COE; and (c) whether CSXT's earnings are sufficient to cover Replacement Costs. If the COC or COE is taken into account, please identify the COC and/or COE percentages used, the methodology for calculating the COC and/or COE, and all inputs utilized. If CSXT's earnings relative to the COC or COE are taken into account, please identify how the earnings and investment base used in that accounting are determined. If Replacement Costs are taken into account, please identify how Replacement Costs are determined. Please identify all documents that support your Answer.

Response: CSXT objects to Interrogatory 22 because it is unduly burdensome, overbroad, and not reasonably calculated to lead to the discovery of admissible evidence. The manner in which CSXT calculates executive compensation has no relevance to either stand alone costs or to a potential revenue adequacy constraint. Subject to and without waiving these objections or the General Objections, CSXT refers Consumers to CSX Corp. SEC filings that explain the company's executive compensation program.

INTERROGATORY NO. 24

Please identify and describe any corporate or enterprise-level projections that CSXT has made from January 1, 2012 to the present of CSXT's future annual revenues, costs, earnings, profits, operating ratios, return on investment, return on invested capital and/or return on equity for any time period(s) subsequent to December 31, 2014. Please identify all documents that support your response and/or that memorialize your projections.

Response: CSXT objects to Interrogatory 24 because it is overbroad and unduly burdensome. CSXT already has produced detailed strategic plan forecasts in response to Request for Production 16, and Interrogatory 24 is thus largely duplicative. To the extent that Consumers intends Interrogatory 24 to require a broader search for any projections relating to CSXT's financial performance, it is plainly overbroad and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving these objections or the General

Objections, CSXT refers Consumers to the strategic plan forecast documents CSXT produced on CSX-CNSMR-HC-009.

INTERROGATORY NO. 25

Please confirm that until 2012, CSXT included The Indiana Rail Road Company ("IRR"), Paducah and Louisville Railway, Inc. ("PAL"), and the Evansville Western Railway, Inc. ("EWR") as part of the consolidated CSXT R-1 consolidated reporting entity, and that CSXT did not include IRR, PAL, and EWR in its R-1 consolidated reporting entity for 2012, 2013, and 2014. If so, please explain the basis for not including IRR, PAL, and EWR in the CSXT R-1 consolidated reporting entity starting in 2012, after having included them in earlier years. If you contend that CSXT's interests in IRR, PAL and EWR were not at levels that required or permitted their inclusion in the CSXT R-1, please specify CSXT's direct and indirect ownership percentages of the common stock and preferred stock (if any) of IRR, PAL and EWR during each of the years 2012 through 2014.

Response: CSXT objects to Interrogatory 25 because it is not reasonably calculated to lead to the discovery of admissible evidence. The pre-2012 treatment of IRR, PAL, and EVR in CSXT's R-1 reporting has no conceivable relevance to any issues in this case. Moreover, this request is unnecessary and unduly burdensome because CSXT's R-1 forms clearly indicate how these entities were treated in each R-1. Subject to and without waiving these objections or the General Objections, CSXT refers Consumers to its R-1 filings.

INTERROGATORY NO. 26

Please describe the purposes and objectives of CSXT stock repurchases, or planned stock repurchases that CSXT has made since January 1, 2010. The description should include, without limitation: (a) why CSXT decided to make such repurchases or planned repurchases; (b) whether CSXT determined that shares that were or would be repurchased were worth more or less than, or the same as, the purchase price, and by what measure; (c) any comparisons of the return or benefits that CSXT obtained or produced, or expected to obtain or produce, on such repurchases or planned repurchases, both in general and relative to other potential uses of the funds used, or to be used, in the repurchases; (d) any return on assets, investment, capital, invested capital, and/or equity, or change in operating ratio, considered, achieved, and/or anticipated in conjunction with such repurchases or

planned repurchases; and (e) whether and/or how such repurchases or planned repurchases increased or decreased, or were expected to increase or decrease, the value or price of CSXT stock or CSXT earnings per share.

Response: CSXT objects to Interrogatory 26 because it is unduly burdensome, overbroad, and not reasonably calculated to lead to the discovery of admissible evidence. The purposes and objectives of CSXT's stock repurchases are matters of public record that are discussed in CSXT statements about those repurchases. Consumers's demand for detailed nonpublic internal analyses of share repurchases has no relevance to either the stand alone cost analysis or to a potential revenue adequacy constraint. Subject to and without waiving these objections or the General Objections, CSXT refers Consumers to CSXT public statements regarding its share repurchase programs.

II. REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 134

Please produce all documents related to any internal assessments made by or for CSXT as to whether the company meets the Revenue Adequacy Criteria. To the extent that this Request is burdensome, counsel for Consumers is willing to confer to determine if the burden can be reduced, particularly by producing representative documents in various categories.

Response: CSXT objects to Request for Production 134 because it is an overbroad and burdensome request for internal information that is completely unnecessary to supplement public information about CSXT's financial performance. Substantial information about CSXT's financial performance is in the public record, including the R-1 Annual Reports of CSXT, the SEC filings of CSX Corporation, and other public statements such as earnings releases, conference call transcripts, and presentations to analyst conferences. And CSXT has produced substantial

nonpublic information about its financial prospects, including its most recent strategic plan forecast. Any further discovery of CSXT internal financial information is duplicative and unnecessary. Moreover, any documents that specifically analyzed CSXT's progress toward revenue adequacy as defined by the Interstate Commerce Act would be privileged work product.

REQUEST FOR PRODUCTION NO. 135

Please provide documents sufficient to show the COE and COC values utilized for the time periods specified in Interrogatory Nos. 14 and 15, and the purpose for which those values are utilized. To the extent that this Request is burdensome, counsel for Consumers is willing to confer to determine if the burden can be reduced, particularly by producing representative documents in various categories.

Response: CSXT incorporates its objections to Interrogatory 14.

REQUEST FOR PRODUCTION NO. 136

Please provide documents sufficient to show in detail the methodology used for calculating the COE and COC for the time periods specified in Interrogatory No. 14. To the extent that this Request is burdensome, counsel for Consumers is willing to confer to determine if the burden can be reduced, particularly by producing representative documents in various categories.

Response: CSXT incorporates its objections to Interrogatory 14.

REQUEST FOR PRODUCTION NO. 137

Please produce documents sufficient to show all revenues, fees, rents or other compensation received by CSXT in 2013 and 2014 from any source that was related to a third party's use or exercise of subsurface rights below any CSXT right-of-way in Illinois, Indiana or Michigan.

Response: CSXT objects to Request for Production 137 to the extent that it is duplicative of information already requested in Request for Production 92 and produced on CSX-CNSMR-HC-DVD-07. Subject to this objection and the General Objections, CSXT will produce additional responsive information to the extent that it exists and can be found in a reasonable search.

REQUEST FOR PRODUCTION NO. 138

Please produce documents sufficient to show the information described in Consumers' Request for Production No. 106 for the years 2013 and 2014.

Response: Subject to and without waiving the General Objections, CSXT states that it already has produced 2013 state tax returns for Illinois, Indiana, and Michigan on CSX-CNSMR-HC-DVD-004. CSXT's 2014 tax returns in those states are not due until the fourth quarter of 2015 and thus will not be available until well after the close of discovery.

REQUEST FOR PRODUCTION NO. 139

Please produce all documents identified in response to, or relied upon in providing Answers to Interrogatory Nos. 14 through 23.

Response: CSXT incorporates all objections it made in response to Interrogatories 14 through 23. Subject to and without waiving those objections or the General Objections, CSXT will produce any responsive documents identified in its interrogatory responses.

Respectfully submitted,



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Counsel to CSX Transportation, Inc.

Dated: June 15, 2015

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of June, 2015, I caused a copy of the foregoing Responses of CSX Transportation, Inc. to Complainant's Second Set of Interrogatories and Requests for Production of Documents to be served on the following parties by first class mail, postage prepaid, or more expeditious method of delivery:

Kelvin J. Dowd
Robert D. Rosenberg
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Matthew J. Warren