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ACRONYMS

The following acronyms are used:

AAR	Association of American Railroads
AEI	Automatic Equipment Identifier
AEO	2015 Annual Energy Outlook Update Forecast
AII-LF	All-Inclusive Less Fuel Index, published by AAR
AMTO	Assistant Manager of Train Operations
ATC	Average Total Cost
ATF	Across-the-Fence
BNSF	BNSF Railway Company
BRC	Belt Railway Company of Chicago
CAPM	Capital Asset Pricing Model
CERR	Consumers Energy Railroad
CMM	Coal Marketing Module
CMP	Constrained Market Pricing
CN	Canadian National Railway
COC	Cost of Capital
COD	Cost of Debt
COE	Cost of Equity
CP	Canadian Pacific Railway
CSXIT	CSX Intermodal Terminals, Inc.
CSXT	Defendant CSX Transportation, Inc.
CTC	Centralized Traffic Control
CWR	Continuous Welded Rail
DCF	Discounted Cash Flow
DOT	Department of Transportation
DP	Distributed Power Configuration
DTL	Direct To Locomotive
EIA	Energy Information Administration
EPA	Environmental Protection Agency
ERM	Environmental Resources Management
FAS-PAS	Fail-Safe Audible Signal—Power Activated Switch
FED	Failed/Dragging Equipment Detector
FRA	Federal Railroad Administration
GAAP	Generally Accepted Accounting Principles
GTM	Gross Ton-Mile
GWR	Gross Weight on Rail
HDF	On-Highway Diesel Fuel Index
IHB	Indiana Harbor Belt Railroad
MERC	Midwest Energy Resources Company
MGT	Million Gross Tons

MISO	Mid-Continent Independent System Operator
MLO	Manager of Locomotive Operations
MMM	Maximum Markup Methodology
MOW	Maintenance of Way
MRP	Market Risk Premium
MSDCF	Multi-Stage Discounted Cash Flow
MSRR	Michigan Shore Railroad
MTO	Manager of Train Operations
NS	Norfolk Southern Railway Company
PPI	Producer Price Index
PRB	Powder River Basin
PTC	Positive Train Control
RCAF-A	Rail Cost Adjustment Factor, adjusted for productivity
RCAF-U	Rail Cost Adjustment Factor, unadjusted for productivity
ROI	Return On Net Investment
ROW	Right of Way
R/VC	Revenue-to-Variable Cost
RSIA	Rail Safety and Improvement Act of 2008
RTC	Rail Traffic Controller Model
S&P	Standard & Poor's
SAC	Stand-Alone Cost
SARR	Stand-Alone Railroad
STEO	Short-Term Energy Outlook
T&E	Train & Engine
UP	Union Pacific Railroad Company
URCS	Uniform Railroad Costing System
WCTL	Western Coal Traffic League

CASE GLOSSARY

The following short form case citations are used:

<i>AEPCO 2002</i>	<i>Ariz. Elec. Power Coop., Inc. v. BNSF Ry. & Union Pacific R.R.</i> , Docket No. 42058 (STB served Aug. 20, 2002)
<i>AEPCO 2011</i>	<i>Ariz. Elec. Power Coop., Inc. v. BNSF Ry. & Union Pacific R.R.</i> , STB Docket No. 42113 (STB served Nov. 22, 2011)
<i>AEP Texas</i>	<i>AEP Tex. N. Co. v. BNSF Ry.</i> , Docket No. 41191 (Sub-No. 1) (STB served Sept. 10, 2007)
<i>APS</i>	<i>Ariz. Pub. Serv. Co. and Pacificorp. v. The Atchison, Topeka & Santa Fe Ry.</i> , 2 S.T.B. 367 (1997)
<i>Cargill</i>	<i>Cargill, Inc. v. BNSF Railway</i> , STB Docket No. 42120 (STB served Aug. 12, 2013)
<i>Coal Rate Guidelines or Guidelines</i>	<i>Coal Rate Guidelines, Nationwide</i> , 1 I.C.C.2d 520 (1985), <i>aff'd sub nom. Consolidated Rail Corp. v. United States</i> , 812 F.2d 1444 (3d Cir. 1987)
<i>Coal Trading</i>	<i>Coal Trading Corp. v. The Baltimore & Ohio R.R.</i> , 6 I.C.C.2d 361 (1990)
<i>CP&L</i>	<i>Carolina Power & Light Co. v. Norfolk S. Ry.</i> , 7 S.T.B. 235 (2003)
<i>Duke/CSXT</i>	<i>Duke Energy Corp. v. CSX Transp. Inc.</i> , 7 S.T.B. 402 (2004)
<i>Duke/NS</i>	<i>Duke Energy Corp. v. Norfolk S. Ry.</i> , 7 S.T.B. 89 (2003)
<i>DuPont/NS</i>	<i>E.I. DuPont De Numours and Co. v. Norfolk S. Ry.</i> , Docket No. 42125 (STB served March 24, 2014, updated Oct. 3, 2014)
<i>Ex Parte No. 664</i>	<i>Petition of the Western Coal Traffic League to Institute a Rulemaking Proceeding to Abolish the Use of the Multi-Stage Discounted Cash Flow Model In Determining the Railroad Industry's Cost of Equity Capital</i> , Ex Parte No. 664 (Sub-No. 2) (pending)

<i>Ex Parte No. 715</i>	<i>Rate Regulation Reforms</i> , Ex Parte No. 715 (STB served July 18, 2013)
<i>Ex Parte No. 722</i>	<i>Railroad Revenue Adequacy</i> , Ex Parte No. 722 (pending)
<i>FMC</i>	<i>FMC Wyo. Corp. v. Union Pac. R.R.</i> , 4 S.T.B. 699 (2000)
<i>IPA</i>	<i>Intermountain Power Agency v. Union Pac. R.R.</i> , STB Docket No. 42136 (Complaint filed May 30, 2012)
<i>KCP&L</i>	<i>Kansas City Power & Light Co. v. Union Pac. R.R.</i> , STB Docket No. 42095 (STB served May 19, 2008)
<i>Major Issues</i>	<i>Major Issues in Rail Rate Cases</i> , Ex Parte No. 657 (Sub-No. 1) (STB served Oct. 30, 2006)
<i>M&G</i>	<i>M&G Polymers USA, LLC v. CSX Transp., Inc.</i> , NOR 42123 (STB served Sept. 27, 2012, updated Dec. 7, 2012)
<i>Nevada Power II</i>	<i>Bituminous Coal - Hiawatha, Utah to Moapa, Nevada</i> , 10 I.C.C.2d 259 (1994)
<i>OG&E</i>	<i>Oklahoma Gas & Electric Co. v. Union Pac. R.R.</i> , Docket No. 42111 (STB served July 24, 2009)
<i>Otter Tail</i>	<i>Otter Tail Power Co. v. BNSF Ry.</i> , Docket No. 42071 (STB served Jan. 27, 2006)
<i>Sunbelt</i>	<i>Sunbelt Chlor Alkali Partnership v. Norfolk S. Ry.</i> , Docket No. 42130 (STB served June 20, 2014)
<i>TMPA</i>	<i>Texas Mun. Power Agency v. Burlington N. and Santa Fe Ry.</i> , 6 S.T.B. 573 (2003)
<i>TPI</i>	<i>Total Petrochemicals & Refining USA, Inc. v. CSX Transp., Inc.</i> , Docket No. 42121 (Complaint filed May 3, 2010)
<i>WFA I</i>	<i>Western Fuels Ass'n, Inc. & Basin Electric Power Coop. v. BNSF Ry.</i> , STB Docket No. 42088 (STB served Sept. 10, 2007)
<i>WFA II</i>	<i>Western Fuels Ass'n, Inc. & Basin Electric Power Coop. v. BNSF Ry.</i> , Docket No. 42088 (STB served Feb. 18, 2009)

- WPL* *Wisconsin Power & Light Co. v. Union Pac. R.R.*, 5 S.T.B. 955 (2001)
- WTU* *West Tex. Utils. Co. v. Burlington N. R.R.*, 1 S.T.B. 638 (1996), *aff'd sub nom. Burlington N. R.R. v. STB*, 114 F.3d 206 (D.C. Cir. 1997)
- Xcel I* *Public Service Co. of Colorado d/b/a Xcel Energy v. Burlington N. & Santa Fe Ry.*, 7 S.T.B. 589 (2004)
- Xcel II* *Public Serv. Co. of Colorado d/b/a Xcel Energy v. Burlington N. & Santa Fe Ry.*, Docket No. 42057 (STB served Jan. 19, 2005)

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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

PART I

COUNSEL’S ARGUMENT AND SUMMARY OF THE EVIDENCE

This is the Rebuttal Evidence of Complainant, Consumers Energy Company (“Consumers”), in support of its Complaint seeking the prescription of just and reasonable rates for the rail transportation of coal by Defendant, CSX Transportation, Inc. (“CSXT”) from rail interchanges in the area of Chicago, IL to Consumers’ J.H. Campbell Generating Station near West Olive, MI. Herein, in accordance with the standards governing the submission of rebuttal evidence¹ and the Board’s July 15, 2015 and April 20, 2016 procedural orders, Consumers responds to the substantive elements of CSXT’s March 7, 2016 Reply Evidence (hereinafter “CSXT Reply”).² In certain specifically identified respects,

¹ See, e.g., *Duke/NS*, 7 S.T.B. at 101.

² CSXT’s Reply Evidence is rife with exaggerated rhetoric that all too often crosses the line into the realm of insult and invective. Consumers respectfully submits that such language adds nothing of value to this proceeding, and is as

Consumers makes adjustments to components of its November 2, 2015 Opening Evidence in direct response to data presented or points raised in the CSXT Reply. By and large, however, Consumers herein shows that CSXT's critiques, revisions, arguments and evidentiary adjustments are without basis or merit, and should be rejected.

The better evidence of record clearly demonstrates that (1) the Board has jurisdiction over the transportation to which the Tariff CSXT-13952 rates at issue in this proceeding apply, within the meaning of 49 U.S.C. § 10707; (2) the rates established by Tariff CSXT-13952 for application to Consumers' Campbell coal traffic – which as of the First Quarter of 2016 stood at 559% of the unadjusted system average variable cost of service – are unreasonable and unlawful under 49 U.S.C. § 10707(d)(1) pursuant to the Stand-Alone Cost Constraint of the *Coal Rate Guidelines*³; (3) the rate increase imposed by CSXT on Consumers' Campbell traffic effective January 1, 2015 was unlawful under the *Guidelines*' Revenue Adequacy Constraint and 49 U.S.C. § 10701(d)(1); (4) the maximum lawful rate for the subject service pursuant to 49 U.S.C. §§ 10704(a)(1) and 11701(a) as of January 1, 2015 was \$ 10.22 per ton; (5) Consumers is entitled to a prescription of the maximum rates that can be assessed by CSXT for coal

disrespectful to the Board as it is to Consumers. A few of the charges leveled by CSXT are so egregious that they demand a response, and in those instances Consumers does set the record straight. In choosing to ignore the rest, however, Consumers should not be taken as excusing or accepting CSXT's derogatory style.

³ *Coal Rate Guidelines – Nationwide*, 1 I.C.C. 2d 520 (1985), *aff'd. sub nom., Consol. Rail Corp. v. United States*, 812 F.2d 1444 (3d Cir. 1987).

transportation service to Campbell for the period January 1, 2015 through December 31, 2024, as set forth in Part III-H hereof; and (6) Consumers is entitled to a payment of reparations by CSXT for all charges collected under Tariff CSXT-13952 in excess of the maximum rates prescribed by the Board, between January 1, 2015 and the date of CSXT's compliance with the prescription order, together with interest calculated in accordance with 49 C.F.R. Part 1141.1, *et seq.*

SUMMARY OF REBUTTAL EVIDENCE

PREFACE

In the remainder of this Part I, Consumers briefly summarizes the evidence presented in Parts II, III and IV of this Rebuttal. The overall weight of the evidence in this case clearly entitles Consumers to the rate relief sought in its Original Complaint.

A. MARKET DOMINANCE

1. Quantitative Market Dominance

CSXT concedes that the challenged rates exceed 180% of the variable cost of the subject service, and thus satisfy the quantitative jurisdictional threshold prescribed by 49 U.S.C. § 10707(d)(1). Nevertheless, CSXT advocates an adjustment to one (1) of the nine (9) traffic and operating inputs used in the Board's URCS model: miles in the loaded direction.⁴ The proposed adjustment should be rejected.

⁴ CSXT Reply at II-A-2-5.

At the core of CSXT's complicated explanation for its adjustment is the fact that CSXT generally handles empty Consumers trains returning to Chicago about six (6) miles farther than it moves trains in the loaded direction. This is a typical occurrence in unit train coal movements. URCS procedures, however, count only loaded miles traveled by the carrier whose costs are being measured, and adjustments to address scenarios such as those raised by CSXT here were both considered and rejected by the Board in *Major Issues* and following decisions.⁵ See II-2-5, *infra*.

Tables II-A-1-5, *infra*, show the updated variable costs for CSXT service to Campbell through the First Quarter of 2016, based on the Board's 2014 CSXT URCS system average unit costs⁶ and the Board's "OG&E" indexing procedures.⁷

⁵ *Major Issues* at 58; *KCP&L* at 6.

⁶ Subsequent to the filing of Consumers' Opening Evidence, which calculated variable costs using 2014 CSXT unit costs developed by Consumers' experts, the Board released its 2014 URCS. CSXT Reply at II-A-6 n.10. Subsequent to *that*, however, CSXT's Form R-1 for 2015 became available. Consumers' Rebuttal variable cost presentation uses 2015 CSXT URCS unit costs developed by Consumers' experts.

⁷ *Oklahoma Gas & Electric Co. v. Union Pac. R. Co.*, STB NOR 42111 (STB served July 24, 2009 and October 26, 2009).

2. Qualitative Market Dominance

CSXT claims that its rates for coal service to Campbell – which currently stand at 559% of variable costs – are the product of and are constrained by effective competition, not from transportation alternatives that actually exist, but from alternatives that allegedly *could* exist if Consumers was to commit to a massive capital spending program. The hypothetical options advanced by CSXT are: (1) a lake vessel movement from the KCBX South Terminal near Chicago to an as-yet unbuilt vessel unloading platform and conveyor to be installed in the middle of Pigeon Lake near the Campbell site; and (2) a lake vessel movement from KCBX to the dock previously used by Consumers’ now-shuttered Cobb Station near Muskegon, MI, followed by a rail movement to Campbell handled by the Michigan Shore Railroad (“MSRR”), over trackage leased from CSXT and new as-yet unbuilt rail infrastructure at Cobb and connected to the CSXT tracks near Campbell.⁸ The Board has never endorsed such theoretical claims as demonstrating the absence of market dominance.⁹ As Consumers conclusively shows in Part II-B, none of the key claims advanced by CSXT in support of its fantasy theories is valid.

CSXT first argues that vessel service to Campbell via Pigeon Lake must be feasible, because that body of water is “nearly identical” to Muskegon

⁸ See II-8, *infra*.

⁹ *TMPA*, 6 S.T.B. at 584; *WTU*, 1 S.T.B. at 651.

Lake, where the Cobb dock is located.¹⁰ However, as Consumers shows, the actual facts are quite different. Muskegon Lake is over *sixteen times* the size of Pigeon Lake and over twice as deep, and has been used for regular industrial, commercial vessel transportation since early in the last century. In contrast, Pigeon Lake is a relatively pristine and environmentally sensitive recreational body, which has no history of meaningful commercial use. A detailed examination of the respective geographies, shoreline characteristics, environmental conditions, bottom sediment characteristics and other factors relevant to suitability for coal vessel traffic shows that the two (2) lakes are far from “identical.”¹¹

CSXT goes on to offer distorted characterizations both of Consumers’ previous statements concerning the potential study of transportation alternatives and the reports of consultants retained for this purpose¹² to argue that they had confirmed the feasibility of competitive “water options,” and that Consumers’ expert witness in this case – Dr. Ralph Barbaro – now seeks to contradict them.¹³ As the authors of the study that CSXT principally invokes

¹⁰ See, e.g., CSXT Reply at I-7.

¹¹ See Consumers Rebuttal at II-28-36, *infra*; Petro and Bovitz V.S. at 28-46.

¹² In its Opening Evidence, Consumers explained how it had reviewed the potential for opening Campbell up to vessel transportation in the past, but concluded that the costs were too high and the permitting and regulatory obstacles too great to warrant more detailed studies of potential feasibility. See Consumers Opening at II-16-32.

¹³ CSXT Reply at I-9-10.

clearly explain in their Statement included in this Rebuttal, however, CSXT has grossly misrepresented both the scope of their previous work and their conclusions, and invented conflicts with Dr. Barbaro's far more detailed analysis which do not exist.¹⁴ These authors confirm that they were not asked to opine on the economic feasibility or competitiveness of the scenarios that they reviewed; that they did not do so; and that their preliminary work did *not* include a number of issues and cost quantifications that would be central to any true feasibility analysis. Dr. Barbaro, whose Opening Evidence Report *did* examine all relevant factors before concluding that no feasible transportation alternatives to CSXT existed,¹⁵ updated, refined and expanded upon the prior consultants' work. He did not "attack" it.

In opposition to Dr. Barbaro's detailed expert Report, CSXT principally offers the views of TranSystems, Inc., a consulting firm.¹⁶ Relying on a "desktop analysis," TranSystems claims that Consumers could access the so-called Direct Water Route to Campbell for a total equivalent cost (including all necessary capital investment and operating expenses) of only { }, and the alternative Cobb-Rail Route at a cost of { }. On the

¹⁴ Petro and Bovitz V.S. at 18-28.

¹⁵ Consumers Opening at II-32-52.

¹⁶ CSXT also invokes the opinions of its witnesses Professor Kevin Murphy and a certain Captain Edward Hogan, on issues related to market dominance. However, Professor Murphy acknowledges his reliance on CSXT and its other witnesses for the factual underpinnings of his opinions, and the views attributed to Captain Hogan are not supported by any written statement, documentation, workpapers, or actual evidence of any kind.

“strength” of this analysis, CSXT claims that Consumers could divert enough coal traffic away from its rail route (supposedly 75% of Campbell’s annual volume) to effectively discipline CSXT’s pricing. Herein, and in Dr. Barbaro’s Rebuttal Report, all of these claims are shown to be fallacious.

First, as unproven projects that would require as much as {
} in Consumers’ capital to execute, prudent utility practice and Board precedent¹⁷ support the position that TranSystems’ alternatives would have to be able to completely replace CSXT in order to *ensure* effective competition. As Consumers showed on Opening and CSXT does not dispute, the lack of coal storage capacity at KCBX and the terms of Consumers’ origin rail and coal supply contracts makes that impossible.¹⁸

Second, even if the “partial diversion” envisioned by CSXT is entertained, the plans sponsored by TranSystems are not feasible. For example:

- The mid-lake platform designed for its Direct Water Route would violate applicable zoning laws.
- Capacity limitations at KCBX and at TranSystems’ unloading platform would limit the actual “diversion” potential to less than 50% of Campbell’s annual coal shipments.
- The articulated tug vessels specified for use in the TranSystems Direct Water Route do not exist.

¹⁷ *TMPA*, 6 S.T.B. at 584.

¹⁸ Consumers Opening at II-16-19.

- The terms of MSRR’s track lease agreement with CSXT
 {
 }
- TranSystems ignores the significant obstacles to permitting the facilities needed for its plans, including in particular Section 404 of the Clean Water Act, which could mandate denial of an essential permit for the Direct Water Route due to the availability of CSXT rail service.

Third, if the foregoing barriers to feasibility are ignored, CSXT’s consultants’ plans dramatically understate the capital and operating costs for each “alternative.” Correcting only two (2) of the most obvious errors – their use of an outdated KCBX Terminal fee, and their failure to account for the higher rates that CSXT would charge on the share of Campbell’s annual shipments that could not be diverted – adds { } to TranSystems’ artificially low cost estimates, and pushes them significantly above the rates that Consumers currently pays. Correcting for all of TranSystems’ errors and omissions, as Dr. Barbaro does in his Rebuttal Report, the capital and operating costs for the Direct Water Route actually range between { }, and the corresponding Cobb-Rail costs increase to { }.

Finally, while it is obvious from the corrected costs that neither of CSXT’s proffered “alternatives” could represent effective competition, consideration of the Board’s Limit Price Test and the real world example of CSXT’s pricing on a *competitive* Consumers coal movement confirm the carrier’s

market dominance. CSXT's legal challenges to the Limit Price Test are without merit, and previously have been rejected by the Board. Its fallback efforts to concoct a "false positive" test outcome using an imaginary rail movement, or to manufacture adjustments to the Board's RSAM calculations that would justify its monopoly pricing at Campbell, are without foundation and obviously results-oriented. And it has no real explanation for the significant rate disparity that CSXT previously maintained between shipments bound for Campbell and nearly identical shipments routed to Consumers' Karn-Weadock complex, beyond the obvious facts that the former is captive while the latter enjoys actual, effective transportation competition.

The Board clearly has jurisdiction over CSXT's unreasonable tariff rates on coal shipments to Campbell.

B. THE CHALLENGED RATES ARE UNREASONABLY HIGH UNDER THE SAC CONSTRAINT

The rates at issue comprise approximately { } for Consumers to transport coal from Wyoming to Campbell, even though CSXT handles less than 13% of the overall line-haul, and as already shown, they exceed 500% of the variable cost of service. Nevertheless, CSXT asserts in its Reply that “the challenged rate is reasonable under a proper application of the SAC test.”¹⁹

In this Rebuttal, Consumers responds in detail to CSXT’s substantive criticisms of and proposed adjustments to Consumers’ Opening Evidence under the SAC Constraint. In those instances where Consumers agrees that an adjustment is appropriate, the adjustment is reflected in Consumers’ Rebuttal restatement. As to the significant majority of CSXT’s critiques, however, Consumers shows why they are without basis or merit. Consumers’ Rebuttal restatement confirms the conclusion that was supported by its Opening Evidence: the challenged rates substantially exceed maximum reasonable levels under the SAC Constraint, and both prescriptive relief under 49 U.S.C. §§ 10704(a)(1) and 11701(a), and an award of reparations under 49 U.S.C. § 11704(b), together with interest, should be granted by the Board.

Consumers presented its full and complete case-in-chief in its Opening Evidence,²⁰ and has met its *prime facie* responsibility to design the

¹⁹ CSXT Reply at I-14.

²⁰ *General Procedures for Presenting Evidence in Stand-Alone Cost Rate Cases*, 5 S.T.B. 441, 445 (2001).

CERR and “support[] the feasibility of all components of its design and cost elements.”²¹ This is confirmed further by the evidence presented in Part III of this Rebuttal, which is summarized briefly in the following sections of this Part I.

Taken together, Consumers’ Opening and Rebuttal SAC evidence represents the better evidence of record.

1. **Traffic and Revenues**

In Part III-A, Consumers responds in detail to the various criticisms offered by CSXT of the processes by which the CERR traffic group was selected, the volume and nature of the traffic that would be handled were determined, and the revenues that would be earned by the CERR over the 2015-2024 time period were calculated. Some of the principal elements of Consumers’ Rebuttal with respect to these issues are summarized briefly here.

First, Consumers demonstrates that its basic selection in methodology – which prioritizes operational efficiency as well as traffic density – is firmly rooted in the grouping principles at the core of the *Coal Rate Guidelines*,²² and consistent with prior precedent. *See* III-A-2-11. Contrary to CSXT’s selective reading of the *Guidelines*, the focus of the grouping concept is on *traffic*, not individual *customers*,²³ and as CSXT itself elsewhere has acknowledged, a complaining shipper under the SAC Constraint selects its traffic

²¹ *FMC*, 4 S.T.B. at 723.

²² *Coal Rate Guidelines*, 1 I.C.C. 2d at 544.

²³ *TMPA*, 6 S.T.B. at 586.

group in its “sole and informed discretion,” and is entitled to exercise that discretion “to select traffic in a manner that most advantages it under the ATC methodology.”²⁴ Nothing in the Board’s precedents supports CSXT’s theory that a SARR must agree to handle *all* of the traffic of any third party shipper that it elects to serve; indeed, previous coal rate proceedings offer numerous examples of SARRs that select a given shipper’s unit train coal traffic, while declining to handle the same shipper’s lower volume limestone movements that travel over the same lines in the real world.²⁵

Likewise, nothing in the Board’s *Ex Parte No. 715* decision²⁶ obligates Consumers to propose modifications to the ATC methodology to address a “problem” that does not exist.²⁷ Under ATC, any costs associated with the assembly of trains before they are interchanged to the CERR, and/or the distribution of segments of trains after they leave the CERR, are properly assigned to the carrier(s) that perform those functions, and the ATC revenue allocation follows the costs. *See* III-A-11-13, *infra*. In this case, Consumers has

²⁴ Joint Reply Comments of CSX Transportation, Inc. and Norfolk Southern Ry., *Rate Regulation Reforms*, Ex Parte No. 715 (filed December 7, 2012) at 23.

²⁵ *See WFA II* at 11; *WPL*, 5 S.T.B. at 967; *WTU*, 1 S.T.B. at 657.

²⁶ *See Ex Parte No. 715* at 28.

²⁷ CSXT Reply at I-19.

scrupulously followed the Board’s precedents; there has been no “shunning” of its “concerns.”²⁸

Second, Consumers shows that CSXT’s proposed exclusion of certain petcoke trains from the CERR traffic group is based on a misrepresentation of the carrier’s *own data*, and totally unfounded, and that its deletion of other trains moving between Calumet Park and Curtis, IN on grounds of “inferior service”²⁹ ignores key metrics and service reliability, and highlights CSXT’s exploitation of a fixed, hypothetical “dwell time” that Board procedures compel Consumers to add to each interline movement.³⁰ In both cases, the flaws in CSXT’s claims were only discernable after close, painstaking and time-consuming analyses of complex data that was produced by CSXT in discovery, but then misrepresented by CSXT in its evidence.³¹

Third, CSXT’s charge that Consumers sought to “mislead[]” the Board regarding forecasted coal volumes to the Campbell Station³² is beyond the pale. The September 2015 Michigan Public Service Commission filing that CSXT contends was withheld by Consumers was among a wide class of documents that was excused from production *by written agreement between the parties*, based upon discovery closure dates. Moreover, as shown in Section III.A.2.a., *infra*, the

²⁸ CSXT Reply at I-19.

²⁹ CSXT Reply at III-A-13.

³⁰ *See* Section III.A.1.a.

³¹ *Id.*

³² CSXT Reply at I-20.

computer model run provided to the MPSC was *not* an update of Consumers’ long-term coal forecast, which is prepared using a different model designed for that purpose. Indeed, when the results of a September 2015 run of the actual long-range forecast model are compared to Consumers’ Opening Campbell coal forecast (which was produced by the same model and provided to CSXT and the Board), the total consumption figures over the 2017-2024 time period are within 0.9% of each other, with the September 2015 forecast showing slightly *higher* volumes.³³

In the balance of Part III-A, Consumers addresses and rebuts the remainder of CSXT’s challenges to Consumers’ Opening Evidence concerning the CERR’s traffic volumes and revenues over the 2015-2024 study period.

Consumer’ Rebuttal restatement includes minor adjustments that result in a { } reduction in total volumes, and a { } reduction in total revenues.

2. **Stand-Alone Railroad System**

As discussed in detail in Part III-B, the parties are in general agreement regarding the CERR’s route, constructed miles, joint facility miles, mainline tracks and branch lines (or lack thereof). The relatively few, meaningful objections that CSXT’s Reply raised to Consumers’ Opening Evidence are summarized below. With one exception, all of CSXT’s proposed additions or adjustments to the CERR’s structure and configuration are without merit.

³³ See Table III-A-4, *infra*.

Consumers accepts one of CSXT's proposed changes to the CERR's interchange configurations: the addition of the 0.6 mile so-called Buffington Connection at the Pine Junction interchange. The related materials and costs for this extra track are described in Part III-F, *infra*. Two (2) other interchange modifications suggested by CSXT, however, are unnecessary.

First, CSXT proposes to change CERR's plan for its Dolton Interchange by re-routing the track around certain existing facilities, adding both to the length and cost of the interchange track. However, CSXT does not challenge – or even address – Consumers' Opening explanation of the reasons for its initial design, and the adequacy of that design to meet the CERR's needs. Since CSXT offers nothing beyond a more expensive “option” to accomplish the same purpose, Consumers rejects the proposed change.³⁴

Second, CSXT advocates another costly change for the Dolton Interchange: the addition of a highway overpass at Cottage Grove Avenue to alleviate delays allegedly occurring as a result of parked CERR trains. As Consumers shows, however, its Opening Operating Plan took account of the potential for a train to block the at-grade crossing, and specifically designed the relevant portion of the plan to avoid the blockage. Consumers' RTC model results confirmed that none of the CERR trains moving through the interchange during the peak period blocked the crossing. CSXT's proposed highway overpass is unnecessary.

³⁴ See Section III.B.1.c, *infra*.

Next, CSXT argues for the addition of a new siding near the Campbell Station, and another new bad order holding track in the Barr Yard. As Consumers explains in Section III.C.B.1, *infra*, however, neither of these tracks is needed. Consumers' RTC model results showed that no additional facilities were needed to handle trains at Campbell,³⁵ and Consumers' experts already provided track space for bad ordered cars near Barr Yard as part of the train inspection plan, which CSXT accepted.

Finally, CSXT challenges Consumers' plan for the CERR to access the IHB's Blue Island Yard via trackage rights, as CSXT does in the real world, and pay the fee for such access pursuant to the trackage rights agreement to which CSXT is a party today. Consumers did not include any road property investment for this joint facility because CSXT does not own it (in whole or in part).³⁶ However, CSXT claims that the CERR should pay for a { } interest in the IHB, because CSXT's *parent* company has such an interest.

The position advanced by CSXT here is identical to that argued by the defendant in *DuPont*, and rejected by the Board. There, as here, Norfolk Southern Railway's corporate parent had an indirect ownership interest in a shortline, and the railroad sought to impose the cost of that investment on the SARR. The Board rejected the adjustment, ruling that because the shortline

³⁵ Indeed, CSXT's own RTC run revealed that no Campbell trains actually used the siding that CSXT added.

³⁶ See Section III.B.3, *infra*.

interest was held by the parent, and not the defendant railroad, the railroad had to “present a valid argument for ignoring this structure” and demonstrate that the *railroad* incurred costs beyond the use fees for the joint facility. *DuPont* at 49. As Consumers shows in Section III.B.4.a, *infra*, CSXT has offered nothing beyond what the defendant in *DuPont* presented and the Board rejected. CSXT does not own any portion of the IHB; the corporate distinctions between CSXT and its parent are real and scrupulously adhered to; the share of IHB controlled by the parent is not listed in schedule 310 of CSXT’s R-1; and CSXT has not shown that it enjoys preferential terms governing its trackage rights.³⁷ The fact is that CSXT and its predecessor railroads have been accessing the Blue Island facilities for over 100 years, and have always done so as a fee-paying trackage rights tenant of the facility. Because CSXT does not own any part of the IHB, the CERR need not make any investment in that company or its road property either.

The parties are in agreement on all other issues of consequence related to the CERR’s configuration, as explained fully in Part III-B. The RTC model simulations with respect to operations over the CERR are addressed in Part III-C.

3. CERR Operating Plan

The operating plan for the CERR was designed by recognized railroad operations experts, including Mr. John Orrison, former Vice President – Network Planning for CSXT and an individual intimately familiar with railroad

³⁷ *DuPont* at 47-49.

operations in the Chicago area and on many of the actual lines replicated by the CERR. The feasibility of the CERR plan was confirmed through a simulation of CERR operations during its peak traffic period, using the Board-approved RTC Model.

In Part III-C of this Rebuttal, Consumers responds in detail to the many criticisms of the CERR plan leveled by CSXT in its Reply, the vast majority of which are unfounded, and are intended simply to erode the efficiency of the CERR and drive up its costs. Some of the principal claims raised by CSXT are addressed in summary fashion below. Tellingly, however, despite the many arguments, speculations, unsupported claims and specious proposed adjustments included in CSXT's Reply, the carrier's own competing RTC Model run also confirms the feasibility of the CERR plan.³⁸

CSXT's first major assertion is that Consumers underestimated the complexity of rail operations in the Chicago area.³⁹ However, most of the statistics that CSXT cites in support of its dire picture are dated, and the carrier deliberately ignores the many recent and ongoing operational and infrastructure improvements in the area, which are catalogued by Consumers' experts.⁴⁰ CSXT also ignores both the fact that the portion of its system replicated by the CERR is some 12 miles southeast of downtown Chicago – not in the heart of the city – and

³⁸ See Section III.C.B.2.e, *infra*.

³⁹ See, e.g., CSXT Reply at III-C-7.

⁴⁰ See Section III.C.A.

the impact of the CERR's reduced train counts as compared to CSXT. As Consumers shows, the CERR handles only 54% of the trains that CSXT operates in the same territory, but moves them over a system that replicates *almost all* of the same mainline track infrastructure that CSXT has in place today. Moreover, 50% of CERR's traffic is unit trains, and all traffic is moved over the CERR in intact trainloads. The smaller scale of CERR's operations easily explains the improvements in speed and fluidity observed in Consumers' RTC Model as compared to historic periods.⁴¹

Another criticism raised by CSXT is that Consumers' plan did not include enough time for delays caused by foreign railroad operations. On Opening, Consumers modeled delays that were identified by CSXT in the data produced in discovery, maintaining the same relationship to peak period operations that was observed in the disclosed data vis-à-vis historic operations. In Reply, however, CSXT claimed *for the first time* that the data produced in discovery was not complete, and offered additional delays for incorporation into the RTC Model. Consumers rejects this belated offering, as should the Board. It is well-established that complainants in SAC cases are entitled to rely on data produced by the defendant in discovery, and that the defendant generally cannot impeach its own information.⁴² Moreover, as Consumers shows, CSXT's claimed

⁴¹ See Section III.C.B.2, *infra*. While not required to do so, Consumers offers some examples of inefficiencies in current CSXT operations through the territory that the CERR avoids.

⁴² See *AEPCO 2011* at 103.

delays are not corroborated by reliable evidence. Consumers' approach to foreign line delays was reasonable and well supported by the delay data that was produced by CSXT in discovery. CSXT's assumptions regarding additional delays and/or different delay locations are unfounded.

Also unfounded are CSXT's claims that the CERR operating plan doesn't account for all the trains needed to transport the peak period traffic volumes. For example, CSXT argues that Consumers' expectation that CERR train sizes will grow in the 2015-2024 time period is inconsistent with the realities of real-world railroading,⁴³ while the evidence shows that real-world Class I railroads – and *specifically CSXT* – plan to lengthen trains and sidings in order to improve productivity.⁴⁴ Similarly, CSXT claims that CERR train lengths could not increase without violating alleged limits in Interline Service Agreements (ISA) with other railroads, even though its own evidence and the documented practices of its interline partners shows that ISA “limits” are actually targets, and routinely are exceeded without consequence.⁴⁵ And CSXT's distortion of Consumers' train list development procedures, coupled with its flawed reliance on 365 individual daily operating plans instead of a single, comprehensive plan as the *Guidelines*

⁴³ CSXT Reply at III-C-27.

⁴⁴ See Section III.C.B.1, *infra*.

⁴⁵ *Id.*

contemplate,⁴⁶ lead to absurd growth train additions and built-in inefficiencies that serve only to artificially drive up the CERR's costs.

Finally, CSXT makes the unprecedented claim that a SARR's operating plan must guess at and account for the actions of third party carriers handling bad-ordered cars off-SARR, and their hypothetical impacts on-SARR. CSXT's claim relates to only 82 out of over 41,000 cars moving to Campbell in the base year.

CSXT's absurd claim concerns a few loaded cars bound for Campbell that are bad-ordered by BNSF while on that carrier's lines. CSXT assumes – without evidence – that those cars end up in Barr Yard, then criticizes Consumers for not accounting for these cars in the CERR operating plan. As confirmed by Consumers' expert Mr. Orrison (who once served as a BNSF Assistant Vice-President), however, BNSF's standard practice for a bad-ordered Consumers car in the loaded direction would be to set it out for repair on BNSF's lines, then return it for delivery on a following BNSF train headed for Chicago. Thus, not only is there no evidence to support CSXT's scenario, what reliable evidence there is indicates that it doesn't happen. There is no justification for any adjustments to the CERR operating plan or RTC Model to address CSXT's bad-order claims.

As shown in the balance of Part III-C, for all the colorful rhetoric employed by CSXT, the fact is that it generally accepts the parameters of

⁴⁶ See, e.g., *Sunbelt* at 12.

Consumers' plan, and most of the evidence offered by Consumers on Opening. What differences remain are addressed specifically by Consumers, and in most cases CSXT's criticisms are shown to be without merit. In those few instances where a minor adjustment to Consumers' plan and RTC Model inputs would be appropriate, Consumers makes the change. Its Rebuttal RTC Model simulation confirms the feasibility of the CERR operating plan.

4. CERR Operating Expenses

As noted *supra*, the CERR is a very modest-sized railroad, with 50% of its traffic comprised of unit train movements and the balance consisting of intact trainload shipments. The CERR operating plan is sized to the railroad, and Consumers' calculation of annual operating expenses is based on the plan and the output of the RTC Model simulation of CERR operations.

In Reply, CSXT predictably advocates a dramatic 22% write-up of the CERR's operating expenses, using an approach that reflects the mindset of a large, unionized Class I railroad with procedures and layers of supervision that are unnecessary to manage an efficient, new Class II carrier. Consumers responds in detail to CSXT's evidence concerning the CERR's operating expenses in Part III-D, and briefly summarizes the salient points here.

Consumers' Rebuttal plan increases the number of road locomotives from 12 to 15, based on accepted adjustments to certain dwell times, and adds dedicated helper service for the issue traffic at Saugatuck Hill, as that is less costly

than the run-through approach that CSXT ignored.⁴⁷ However, there is no basis for the further additions proposed by CSXT, as Part III-C shows that the purported justifications – foreign line delays and increased train holds – are not supported by the facts. Likewise, CSXT’s proposed increase in the number of railcars needed by the CERR for non-issue traffic is not based on credible evidence, as the data on foreign cars produced by CSXT in discovery do not permit verification of its claims.⁴⁸

As a Class II railroad with a small system configuration, one (1) local customer and only one (1) locally served facility, the CERR plainly does not have to be staffed like a Class I railroad. CSXT ignores this, however, and advocates a totally unnecessary 30% increase in operating personnel based on a desktop mathematics exercise sponsored by a witness with no experience staffing railroad operations, rather than an actual analysis of CERR operations. Among other obvious flaws, CSXT’s overstaffing plan includes re-crewing 58% of the trains moving to Campbell, even though CSXT’s *own RTC Model* shows no need for it.⁴⁹ Similarly, CSXT ignores the fact that a crew starting a shift at one end of the CERR would not necessarily have to return to the start point before beginning a second run, and appears to assume that the CERR must mimic every feature and

⁴⁷ See Section III.D.1.a, *infra*.

⁴⁸ *Id.* at III.D.2.

⁴⁹ See Section III.D.3.a, *infra*.

experience of the current CSXT operation, which is flatly contrary to SAC theory.⁵⁰

CSXT takes a similar approach to non-operating personnel, adding staff that are not needed to perform any functions of the CERR that Consumers had not already provided for an Opening, and proposing “managers over managers.”⁵¹ CSXT’s fringe benefits calculations also are inflated, both by virtue of the addition of “fluff” employees, and by CSXT’s use of a three year (2012-2014) average of railroad fringe benefits ratios when the evidence clearly shows a consistent trend of reductions, due to enhanced management efficiencies. CSXT also excludes the Kansas City Southern Railway’s data, which showed the lowest fringe ratio among the carriers. On Rebuttal, Consumers continues to use 2014 fringe data (the most recent and representative information as of the CERR’s start date), and includes data for KCS.⁵²

Consumers’ Opening Evidence on the CERR’s general and administrative (G&A) costs included a benchmark comparison to the Board’s findings in other recent cases, including *Sunbelt*, to demonstrate the conservative nature of Consumers’ staffing.⁵³ Despite the fact that CSXT itself has presented

⁵⁰ *Id.* See *Sunbelt* at 12; *AEPCO 2011* at 16.

⁵¹ See Section III.D.3.a.iii, *infra*.

⁵² See Section III.D.3.a.iv, *infra*.

⁵³ Consumers Opening at III-D-35-42.

the same SARR revenue measures in its own benchmark analyses in prior cases,⁵⁴ it nevertheless proposes to almost *double* the CERR's G&A staffing, though it presents no case precedent or real-world Class II railroad comparisons that would support such an extreme staffing increase. As Consumers shows in Part III.D.3.b, *infra*, the average of the G&A ratios approved by the Board in ten (10) recent decisions under the SAC Constraint was 1.43 staff members per \$10 million of SARR revenue. In the *TPI* case – which involves a more complex SARR operation than this case – *CSXT* advocated a G&A ratio of 1.16 staff members per \$10 million. In comparison, Consumers' conservative G&A cost determination reflects a ratio of 2.3 staff members per \$10 million of revenue. There is no sound basis for *CSXT*'s inflated proposals in the present case,⁵⁵ which would produce an absurd ratio of 4.84 staff members per \$10 million and would yield commensurately excessive costs.⁵⁶

CSXT's critiques of Consumers' Opening Evidence regarding the CERR's information technology requirements are addressed in Section III.D.3.b.vi. For the most part, *CSXT* accepts Consumers approach, but writes up some costs, either because of *CSXT*'s artificially inflated personnel roster or by

⁵⁴ *Id.*

⁵⁵ *CSXT* inflates G&A through such inefficiencies as assuming that the most senior staff member responsible for a given function effectively would perform no substantive work. See Section III.D.3.b.ii, *infra*. *CSXT*'s material, supplies and equipment cost are derived from the same G&A overstaffing, and should be rejected as well.

⁵⁶ See Section III.D.3.b.ii and iii, *infra*.

proposing systems used by Class I railroads that the CERR wouldn't need.

CSXT's additions are unwarranted, and should be rejected.

Similarly, CSXT's proposal to expand the CERR's maintenance-of-way (MOW) staffing by 18 employees is without merit. Consumers' Opening Evidence on this subject was sponsored by its expert Mr. R. Lee Meadows, who served for 33 years in the Engineering Department of the Norfolk Southern Railway. In Rebuttal Section III.D.4, which Mr. Meadows also sponsors, Consumers shows that the MOW plan designed for the CERR takes careful account of the different types of line segments on the system (including what CSXT pointedly refers to as the "urban" and "rural" portions), and for the more maintenance critical areas provides for one MOW staffer for every 2.62 miles of line, a higher employee concentration than those found sufficient by the Board in each of the five (5) recent case that CSXT references in its Reply.⁵⁷

CSXT's inflated MOW expenses rely heavily on bogus comparisons for their "validity." For example, CSXT proposes to add a Public Projects Engineer and an assistant, based on the outcome in *Sunbelt*. However, the SARR at issue in *Sunbelt* was three (3) times the size of the CERR, and included a much broader range of "public projects" territory. Consumers' Rebuttal MOW presentation is the better evidence of record.

In Section III.D.5, Consumers responds to CSXT's claim that the trackage rights fee paid by the CERR to NS for rights to operate between Rock

⁵⁷ See Rebuttal Table III-D-12.

Island and Porter should be increased substantially from the rate specified in the relevant trackage rights agreements, due to “reciprocal” arrangements between CSXT and NS to which the CERR would not be a party. These arrangements supposedly provide additional consideration for the Rock Island-Porter trackage rights fee set out in the agreements produced to Consumers in discovery.

However, the connection between the CSXT-NS reciprocal arrangement and the Rock Island-Porter trackage rights was not disclosed by CSXT until it filed its Reply Evidence,⁵⁸ and {

}⁵⁹

Therefore, if the Board does not ignore CSXT’s proffered reciprocal arrangement evidence entirely,⁶⁰ it should set the fee paid by the CERR based on the fees in place under the governing agreements prior to the CSXT-NS reciprocal arrangement, adjusted to current levels ({ }).⁶¹ Under the circumstances, however, the better evidence is the fee used by Consumers on Opening ({ }).

Finally, in section III.D.9, *infra*, Consumers explains why CSXT is wrong that the CERR should pay more than an actual cost-based lift fee⁶² on cars

⁵⁸ See Section III.D.5.e, *infra*.

⁵⁹ *Id.*

⁶⁰ *Cf. FMC*, 4 S.T.B. at 733.

⁶¹ See Section III.D.5.e, *infra*.

⁶² CSXT did not present any evidence in Reply that contradicted the fee calculated by Consumers on Opening.

originating at CSXIT's 59th Street intermodal facility. Contrary to CSXT's claims, and as explained further in Section III-A-3.b.iii, CSXIT is not properly considered an "affiliate" of CSXT, and there is no legitimate basis to require the CERR to assume any investment costs or operating expenses in connection with the 59th Street facility. The agreement between CSXIT and CSXT addressing terminal services clearly contemplates that the facility would handle traffic for third parties (such as the CERR) for compensation. Consistent with CSXT's Intermodal Service Directory No. 1, that compensation is the cost of one lift at origin and one lift at destination, which Consumers calculated and included in its Opening Evidence of CERR Operating Expenses.⁶³

5. Non-Road Property Investment

CSXT did not raise any issues with respect to Non-Road Property Investment that are separate from its claims regarding Operating Expenses, which Consumers addresses in Part III-D of this Rebuttal.

6. CERR Road Property Investment

Consumers' Opening Evidence on road property costs for the CERR was supported by real-world data from projects in the areas where the CERR system would be built, developed by recognized experts in their respective fields, and consistent with Board precedent. Nevertheless, but predictably, CSXT inflates the CERR's road property costs by more than 60%, through a combination of faulty theories, defective analyses, and outright "padding of the bill." In its

⁶³ See Section III.D.9, *infra*.

Rebuttal restatement, Consumers adjusts the appropriate components of road property investment to accommodate the addition of the 0.6 mile Buffington Connection, referenced *supra*. Otherwise, as detailed in Part III-F and summarized briefly in major respects below, CSXT’s principal Reply claims are without merit, and should be rejected.

CSXT’s land value witness presented an analysis with so many unsourced “hard coded” values that a complete evaluation is not possible, in direct contradiction of the Board’s July 15, 2015 Procedural Order.⁶⁴ What can be concluded, however, is that he unnecessarily divided the CERR into small segments unrelated to property use or characteristics, which led to an artificial increase in parcel appraised values; he used unscreened sales data, which led to his including appraisals for parcels far away from the CERR configuration; and he erroneously represented sales recordations, such that actively farmed land was claimed as residential, and listed acreage was understated by 50%, so a claimed \$65,696.00 sales price was really \$33,287.00.⁶⁵ All told, the errors and omissions in CSXT’s Reply on land value⁶⁶ preclude its acceptance in preference to Consumers’ well-sourced and documented evidence.

Similarly, Consumers’ Opening Evidence presented efficient costs for CERR roadbed preparation, based on data from the Michigan Department of

⁶⁴ See Order served July 15, 2015, Appendix, Paragraph 9.

⁶⁵ See Section III.F.1.b, *infra*.

⁶⁶ CSXT’s proposed 16% land acquisition “adder” is also unsupported. See Section III.F.1.b.iv; *Sunbelt* at 103-104, *DuPont* at 140-141.

Transportation on actual, publicly bid projects for virtually identical common excavation work, consistent with Board precedent.⁶⁷ CSXT argues for a doubling of the cost, citing *R.S. Means*, but even the authority that it cites – *DuPont* – rejected the shipper’s actual cost evidence only because the benchmark project was very small in comparison to the SARR.⁶⁸ In this case, Consumers analyzed over 1,000 MDOT projects, and selected 21 that were located within 100 miles of the CERR route, and have characteristics that match well with the CERR’s requirements. Consumers confirmed its cost estimates using CSXT project authorization records and actual invoices to CSXT for the AFE work, and demonstrates that CSXT’s various cost-adding stratagems have no merit.⁶⁹

CSXT’s Reply proposes a significant write-up of the costs for track materials presented by Consumers on Opening, in part because of the unnecessary additional construction that CSXT suggests is needed at Campbell, Barr Yard and the Dolton Interchange. As shown in Part III-A and summarized *supra*, those extra assets are not needed by the CERR, so the material and transportation costs associated with them should be excluded. As shown in Section III.F.3.a-c,

⁶⁷ See *AEPCO 2011* at 86-87; *WFA I* at 86.

⁶⁸ *DuPont* at 148-149 (project covered 1.3 miles while the SARR was over 7,000 miles in length).

⁶⁹ See Section III.F.2.a.iv. These include CSXT’s addition of embankment costs that already were included in the MDOT bids, the proposal for additional mobilization costs when the Board’s standard SAC model already covers them, and CSXT’s argument for using data from totally unrelated and unrepresentative property in Wayne County (Detroit) in lieu of the Means Location Factor Index (which CSXT also uses), to drive up CERR road preparation costs.

however, CSXT also inflates the CERR's costs for track materials that are required by proposing the use of premium rail where Consumers has shown it is not justified by the train speeds and traffic density that characterize the CERR, and by using a high "ballpark" estimate of transportation costs for ballast, ties and rail. *See* Section III.F.3.b.ii-iv and c.iii. In contrast, Consumers uses more reasonable transportation rates which have been approved by the Board in prior cases,⁷⁰ and are verified by an actual 2015 invoice received by CSXT and produced in discovery.⁷¹

A principal difference between the parties with respect to bridges on the CERR concerns the Calumet Sag Channel Bridge and the Chicago Sanitary Channel Bridge, in the Chicago area. Consumers did not include costs for construction of these bridges on Opening, because the evidence showed that construction had been funded by the City of Chicago, not CSXT's predecessor. Consistent with precedent, since CSXT did not have to incur the expense when it lines were built, the CERR does not have to absorb the cost either.⁷² CSXT includes costs for these bridges in its Reply, but presents no evidence that the carrier originally incurred them. Based on further research, Consumers confirms

⁷⁰ *See, e.g., AEPCO 2011* at 99-100.

⁷¹ It is this contemporary verifying evidence that distinguishes Consumers' presentation from that which was not accepted by the Board in *Sunbelt*. As the Board held there, reliance on facts determined in prior cases is proper where current confirming evidence also is present. *Id.* at 131. Consumers has offered such evidence here.

⁷² *See, e.g., DuPont* at 156; *TMPA*, 6 S.T.B. at 798; *FMC*, 4 S.T.B. at 802.

in this Rebuttal that the bridges in fact were public projects, and no associated costs properly should be borne by the CERR.⁷³ In all other consequential respects, Consumers' presentation on the types and costs of bridges on the CERR adheres to previous Board decisions,⁷⁴ and represents the better evidence of record.

The physical buildings requirements for the CERR are quite modest, in keeping with its small size and relatively simple traffic base. CSXT proposes various write-ups of the building costs, most of which are derived from its inflated staffing levels, or adds deliberately redundant facilities for functions such as fueling of locomotives or various maintenance activities that are unnecessary or already accounted for in Consumers' Opening Evidence.⁷⁵ While some adjustments proposed by CSXT are legitimate and have been made in Consumers' Rebuttal restatement, most of the nearly \$15 million in costs that CSXT seeks to add are unsupported, and should be rejected.

In contrast to the vast majority of CSXT's proposed road property cost estimates, which are unsupported and without merit, Consumers' Rebuttal restatement accepts a number of CSXT's changes to the costs for signals and communications. However, its proposed 15% across-the-board labor mark-up on materials double-counts labor costs for the CERR's construction that Consumers already accounted for directly, and CSXT has overstated costs for foundations,

⁷³ See Section III.F.5.a, *infra*.

⁷⁴ *E.g.*, *Sunbelt* at 138-143.

⁷⁵ See Section III.F.7, *infra*.

fencing and a site engineer. *See* Section III.F.6.a and b. Consumers rejects these adjustments.

In sum, Consumers' Rebuttal restatement revises its Opening total for road property investment by about 8.6%, from \$539.20 million to \$585.61 million. This amount, which is the product of the better evidence of record, is \$294.29 million less than the hyper-inflated costs proposed by CSXT.

7. **Discounted Cash Flow Analysis**

CSXT substantively raises two (2) challenges to Consumers' Opening CERR cost of capital calculations,⁷⁶ neither of which has merit.

Proffering a made-for-litigation review of selectively identified, non-public data, CSXT argues for the addition of a 6% equity flotation cost to the CERR's cost of equity calculation, reprising a position that the Board has consistently rejected in every SAC proceeding where (as here) the complainant has contested the additional cost. CSXT's proposal both conflicts with the Board's established antipathy to litigation studies based on non-public data,⁷⁷ and it fails to meet the Board's standard – most recently articulated in *Sunbelt*⁷⁸ – for even considering an equity flotation cost adjustment, which requires that the railroad present evidence “of the equity flotation fee for stock issuances of a

⁷⁶ In its Rebuttal restatement, Consumers corrects a transposition error in its initial presentation of the 2013 cost of debt, which CSXT noted in its Reply. *See* III-G-1, *infra*.

⁷⁷ *Duke/NS*, 7 S.T.B. at 145; *TMPA*, 6 S.T.B. at 603.

⁷⁸ *Sunbelt* at 184-185.

similar size (*and for transportation companies or other companies with a similar profile*) as that needed by the SARR.”⁷⁹ The “study” that CSXT offers in support of its 6% flotation fee, which is dramatically higher than the proposed fees that have been rejected by the Board in previous cases, reflects no transportation firm data, and because of its proprietary nature, cannot even be probed to verify the claimed costs or analyze the profiles of the included firms.

The Board has acknowledged that “the costs of debt and equity are related to the debt-to-equity ratio.”⁸⁰ Reflecting the Modigliani-Miller theorem,⁸¹ this means, for example, that if debt is cheaper than equity and a firm in the real world attempts to lower its overall cost of capital by replacing equity with an increased debt load, the resulting higher risk from the added leverage would push up the cost of debt, rebalancing the overall cost of capital at the previous level. It follows, then, that if equity is made more expensive by adding an external factor, such as a flotation cost, a firm in the real world would respond by adjusting its capital structure to increase the share represented by debt, in order to mitigate or balance the higher cost of equity. The CERR, however, is prevented from using this real world tool by the Board’s SAC methodology, which effectively requires the CERR to adopt and maintain the railroad industry average debt/equity capital

⁷⁹ *Id.* (emphasis supplied).

⁸⁰ *Methodology to be Employed in Determining the Railroad Industry’s Cost of Capital*, STB Ex Parte No. 664 (STB served Aug. 20, 2007) at 8.

⁸¹ Modigliani, F. and Miller, M.H., *The Cost of Capital, Corporation Finance, and the Theory of Investment*, 47 *Am. Economic Rev.* 261-97 (June 1958).

structure. CSXT's equity flotation cost adjustment neither acknowledges this disconnect, nor considers the obvious availability of lower cost sources of equity available to the CERR, such as a private placement.⁸² Particularly given the facts that real-world railroads amass their equity over time through a combination of public offerings and accumulated equity, and the Board has never accepted a challenged argument that a SARR should be forced to raise all of its equity at once in a single public offering, the burden on CSXT of proving that its 6% equity flotation cost adjustment is justified can only be met by the clearest showing under the *Sunbelt* standard.⁸³ CSXT has not carried its burden in this case.

Consumers' Part III-G also presents the many valid reasons why the Board should reconsider elements of its *Sunbelt* and *DuPont* decisions and recognize the CERR's ability to structure its interest payments on debt capital in the same manner as CSXT and the other Class I railroads. Consumers shows that the CERR's debt payment structure as presented on Opening is fully consistent with the SAC Constraint's assumption that a SARR's capital structure does not change over time, and explains both how the CERR's approach does reflect market scrutiny, and why previously-expressed concerns over the full coverage of

⁸² See III-G-6-12, *infra*.

⁸³ It should be noted that the proffered equity flotation costs rejected by the Board in the past all have been substantially lower than the 6% proposed by CSXT. See *Sunbelt* at 185; *DuPont* at 274; *AEPCO 2011* at 138; *Duke/CSXT*, 7 S.T.B. at 433.

capital costs (*i.e.*, principal) are assuaged.⁸⁴ Consumers also dispels CSXT's lesser criticisms, demonstrating that the railroad's claim that Consumers assumes a single 20-year debt issuance is simply wrong,⁸⁵ and showing that the CERR's approach to changing future interest rates and the retirement of debt over time is fully consistent with the Board's DCF model.⁸⁶

Consumers' presentations on the issue of the CERR's cost of capital are the better evidence of record. Consumers and CSXT concur on the inflation indices to be applied to the CERR's road property, with the exception of the land value index, which is addressed in Part III-F.⁸⁷ There are no differences between the parties with respect to tax liability for the CERR, or those aspects of the capital cost recovery calculations other than the issues referenced above.

8. Results of the SAC Analysis

In Part III-H, Consumers responds to the arguments raised by CSXT in opposition to Consumers' execution of the DCF model, beyond those already addressed *supra* and in Part III-G.

First, Consumers shows that it properly corrected the DCF model's capital carrying charge to reflect the constant capital structure assumed by the Board, by including a terminal interest value. CSXT's proposal to add interest

⁸⁴ See III-G-13-16, *infra*.

⁸⁵ See III-G-17-18, *infra*.

⁸⁶ See III-G-18-19, *infra*.

⁸⁷ See III-G-21-22 *infra*.

payments for future replacement assets double-counts interest, and therefore should be rejected. *See* Section III.H.i.e, *infra*.

Second, Consumers demonstrates how the CERR's access to and use of bonus depreciation made available through certain statutes enacted and/or in effect during its construction period, is fully consistent with prior agency precedent,⁸⁸ which recognizes both a SARR's right to realize benefits and its obligation to assume costs that would be experienced by a real world company constructing a rail system during that time, regardless of whether the incumbent (CSXT here) experienced exactly the same benefits and costs at an earlier time.⁸⁹ CSXT's arguments to the contrary set up an improper double-standard, whereby it would retain all the advantages (in terms of prevailing prices, tax laws, timing of investment, etc.) that it enjoyed while its system was being built and assembled, while limiting the CERR only to those beneficial conditions that CSXT also experienced during the 2011-2014 time period, contrary to basic SAC theory.⁹⁰ *See* Section III.H.1.f.

Third, Consumers' execution of the Board's capital recovery methodology and its terminal value calculation incorporates the same correction of the historic model mismatch between the SARR's cost of capital and its cash-

⁸⁸ *WTU*, 1 S.T.B. at 714; *McCarty Farms*, 2 S.T.B. at 525-529.

⁸⁹ *Sunbelt* at 188-189; *DuPont* at 277-279.

⁹⁰ *WTU*, 1 S.T.B. at 671-672.

flows that the Board incorporated in *DuPont* and *Sunbelt*.⁹¹ While CSXT appears to dispute the validity of the correction, the Board made clear in *Sunbelt* that the terminal value adjustment made by Consumers is appropriate. *Sunbelt* at 193. In its Reply, CSXT claims that there are both conceptual and mathematical errors in the Board-approved approach, but neither criticism has merit. CSXT’s “conceptual” error confuses the model’s use of 20 years as a *maximum* amortization period with a fixed assumption for all purposes (a distinction which existed prior to *Sunbelt*), and its asserted “mathematical” error ignores the fact that lower than average interest payments during the second half of the 20-year amortization period are offset by higher than average payments during the first half.⁹² Consumers’ reliance on the *Sunbelt* approach represents the better evidence of record.

Finally, Consumers shows that CSXT’s proposed adjustments to the standard URCS index used by Consumers to calculate the MMM ratios are without merit, for the same reasons as were acknowledged by the Board in *Sunbelt* and *DuPont*,⁹³ and that its argument for the belated introduction of a cross-subsidy analysis once the Board finds that CERR revenues exceed cost fails based on

⁹¹ See Section III.H.1.h, *infra*; *Sunbelt* at 193; *DuPont* at 282-284.

⁹² See Section III.H.1.h, *infra*.

⁹³ See Section III.H.3, *infra*; *Sunbelt* at 196; *DuPont* at 285-286.

CSXT's own failure to identify any portion of the CERR that allegedly is not self-supporting.⁹⁴

Consumers' Rebuttal restatement shows that total CERR revenues exceed SAC by significant margins in each year of the analysis period. Applying MMM properly and consistent with the Board's most recent and applicable precedent, Rebuttal Table III-H-2 shows the maximum R/VC ratios for each year of the model. As of the First Quarter of 2015, the maximum lawful rate for CSXT coal service to Campbell under the *Guidelines*' SAC Constraint was \$10.22 per ton, based upon an updated variable cost of \$2.85 per ton⁹⁵ and a MMM ratio of 358.6% for 2015.

**C. CSXT'S JANUARY 1, 2015 RATE INCREASE
VIOLATED THE REVENUE ADEQUACY CONSTRAINT**

In its Opening Evidence (Part IV), Consumers showed that (1) CSXT had achieved revenue adequacy under the criteria set out in 49 U.S.C. § 10704(a)(2) on a long-term basis, and was likely to remain so into the future; and (2) as a result, under a proper application of the *Guidelines*' Revenue Adequacy Constraint, the January 1, 2015 rate increase imposed by CSXT on Consumers' Campbell traffic through Tariff 13952 was unlawful.

CSXT's Reply advances two (2) principal arguments in opposition to relief for Consumers under the Revenue Adequacy Constraint. First, CSXT

⁹⁴ See Section III.H.3, *infra*; *WFA II* at 10.

⁹⁵ See Table II-A-1, *infra*.

claims that Consumers cannot pursue relief under both the SAC Constraint and the Revenue Adequacy Constraint of the *Guidelines* at the same time.⁹⁶ Second, CSXT asserts that it cannot be found revenue adequate for purposes of reviewing an individual rate under the *Guidelines*, because it never has been found revenue adequate under the Board’s annual industry “snapshot” test utilized in the *Ex Parte No. 552* series.

In Part IV of this Rebuttal, Consumers responds to and refutes every claim and assertion offered by CSXT, in detail and with clear and convincing evidence. As summarized below, neither of the carrier’s cornerstone arguments has merit.

Consumers’ right to simultaneously pursue relief under two (2) of the four (4) *Guidelines*’ constraints is well-established under prior, court-approved precedent. Starting with the *Guidelines* themselves, it long has been settled that “the various constraints contained in the CMP may be used individually or in combination” to determine whether a given rate or rate increase is reasonable.⁹⁷ In practice, the Board and its predecessor repeatedly have adjudicated rate cases brought by shippers under both the SAC and Revenue Adequacy Constraints,

⁹⁶ See CSXT Reply at I-32. CSXT also advocates for the elimination of the Revenue Adequacy Constraint altogether, though it stipulates that “[t]he Board need not reach these issues” in this case. *Id.* at I-31.

⁹⁷ *Guidelines*, 1 I.C.C. 2d at 548. See also *Consol. Rail Corp.*, 812 F.2d at 1451.

ruling in some cases that relief should be awarded under the former test,⁹⁸ and in another that it would be granted under the latter.⁹⁹ Notably, in *CF Indus., Inc.*, the Board granted rate relief under the Revenue Adequacy Constraint despite the defendant's evidentiary assertion that the challenged rates were reasonable under SAC. *Id.*, 4 S.T.B. at 656-662.

CSXT does not attempt to dispute the governing precedents (realistically, it cannot), so much as it tries to ignore them, arguing that if its Campbell rates can be defended under the SAC Constraint, then any relief awarded under the Revenue Adequacy Constraint would give rise to an impermissible cross-subsidy.¹⁰⁰ CSXT's claim misstates the law in this area.

As the "logical first constraint" on a market dominant carrier's pricing,¹⁰¹ the Revenue Adequacy Constraint applies before and independent of the SAC test. It would turn the entire theoretical predicate for CMP on its head if a methodological component that exists exclusively within the context of SAC was used to undermine the primary limitation on differential pricing represented by a different constraint. See IV-5-9, 32-37, *infra. Guidelines* makes clear that (a)

⁹⁸ See *Bituminous Coal – Hiawatha UT to Moapa, NV*, 6 I.C.C. 2d 1, 7 (1989); *Ark. Power & Light Co., v. Burlington N. R.R., et al.*, 3 I.C.C. 2d 757, 782-783 (1987).

⁹⁹ *CF Indus., Inc. v. Koch Pipeline Co., L.P.*, 4 S.T.B. 637, 664 (2000) *aff'd sub nom. CF Industries, Inc. v. S.T.B.*, 255 F. 3d 816, 828 (D.C. Cir. 2001).

¹⁰⁰ CSXT Reply at I-33, citing *PPL Montana v. BNSF Ry.*, 6 S.T.B. 286 (2002) and *Otter Tail*. Neither of these cases involved claims raised under the Revenue Adequacy Constraint.

¹⁰¹ *Guidelines*, 1 I.C.C. 2d at 535.

“CMP provides two approaches [Revenue Adequacy and SAC] for determining the revenue requirements of an efficient carrier;” (b) those requirements “can be calculated for the existing carrier by applying the revenue adequacy and management efficiency constraints;” (c) under either SAC or the Revenue Adequacy Constraint, “CMP will have defined the total amount of unattributable costs to which the shipper must contribute and focused on the traffic which can reasonably be expected to pay those costs;” (d) “[t]he result of this process is a rate structure which reflects long-run marginal costs, demand elasticity, and the differential pricing of unattributable costs--the same result that occurs under Ramsey pricing;” and (e) under the Revenue Adequacy Constraint, “the total unattributable costs of the existing system are subject to recovery via differential pricing.”¹⁰² The Revenue Adequacy Constraint thus provides a top-down check against impermissible cross-subsidies.

In contrast, the rule against cross-subsidization cited by CSXT is exclusively a feature of the bottom-up SAC Constraint, as is clear from the Board’s standard summary of CMP:

CMP contains three main constraints on the extent to which a railroad may charge differentially higher rates on captive traffic. The revenue adequacy constraint is intended to ensure that a captive shipper will ‘not be required to continue to pay differentially higher rates than other shippers when some or all of that differential is no longer necessary to ensure a financially sound carrier capable of meeting its current

¹⁰² *Id.* at 534 and n.35. Consumers is not required to invoke the management efficiency constraint, and has not done so.

and future service needs.’ Coal Rate Guidelines, Nationwide, 1 I.C.C. 2d at 535-36. The management efficiency constraint is intended to protect captive shippers from paying for avoidable inefficiencies (whether short-run or long-run) that are shown to increase a railroad’s revenue need to a point where the shipper’s rate is affected. Coal Rate Guidelines, Nationwide, 1 I.C.C. 2d at 537-42. *The SAC constraint is intended to protect a captive shipper from bearing costs of inefficiencies or from cross-subsidizing other traffic by paying more than the revenue needed to replicate rail service to a select subset of the carrier’s traffic base.*

Sunbelt at 5 (emphasis supplied).¹⁰³

As Part IV, *infra*, and the Rebuttal Report of Dr. John Hennigan explain in detail, the Revenue Adequacy Constraint provides a Ramsey-efficient allocation of the attributable and unattributable costs of the defendant, as it actually exists. Real-world railroads such as CSXT routinely engage in the exercise of market power and internal cross-subsidization that causes one class of traffic (usually the captive traffic) to pay more so that another (usually competitive traffic) can pay less, and avoid bypass. That is the essence of differential pricing. The *Guidelines*’ Revenue Adequacy Constraint is intended to set the limit on such differential pricing,¹⁰⁴ and the prospect of a potential cross-subsidy plays no part in the determination, as a revenue adequate carrier is recovering its cost of capital on

¹⁰³ The Board’s *PPL Montana* decision was a precursor. 6 S.T.B. at 291 (“The SAC test is intended to ensure that a shipper does not bear the costs of any facility from which it derives no benefit and that it does not otherwise cross-subsidize other traffic.”).

¹⁰⁴ *Guidelines*, 1 I.C.C. 2d at 535-536.

a system-wide basis and therefore is not entitled to any further differential pricing. *Guidelines* 1 I.C.C. 2d at 535-536.

Rate relief under the Revenue Adequacy Constraint is just as valid as that under SAC. Indeed, the Revenue Adequacy Constraint benefits from addressing real-world costs and real-world rates on a system-wide basis, as opposed to SAC, which entails the calculation of, *inter alia*, replacement costs, hypothetical construction and operations, future revenues and cross-over divisions of those revenues, future costs, the real cost of capital, and residual values, in order to determine the hypothetical revenue requirement, which is then allocated based on the system-average URCS costs of the real-world defendant. The Revenue Adequacy Constraint provides a less complicated implementation of Ramsey-pricing principles.

As noted, the SAC Constraint is a “bottom-up” test, where the focus is on a hypothetical, optimally efficient substitute for that portion of the defendant’s system that is used to provide the service to which the challenged rate applies. The Board’s cross-subsidy limits as developed in *PPL Montana* and *Otter Tail* apply solely in the context of this hypothetical substitute. As the Board stated in *PPL Montana*, “a basic purpose of the SAC test is that traffic not be subsidized by other traffic. Indeed, the purpose of the SAC test is to remove such cross-subsidies....” *Id.* 6 S.T.B. at 295, quoting *Arizona Electric Power Corp. v. B.N. and S.F. Ry. Co., et al.*, STB Docket 42058 (STB served December 31, 2001) at 6. CSXT’s attempt to elevate those limits to the status of a transcendent governor of

all aspects of CMP, including Revenue Adequacy, is without legal or theoretical support.¹⁰⁵

CSXT’s second principal argument – that it cannot be found revenue adequate for purposes of the *Guidelines* and this case because it has not been found revenue adequate in the Board’s *Ex Parte No. 552* annual industry “snapshot” series – was rejected by the Board on June 15, 2015 when it denied CSXT’s Motion to Dismiss, which was *based on the same argument*. That Consumers can successfully pursue relief under the Revenue Adequacy Constraint using “other competent and probative evidence relative to the carrier’s revenue adequacy”¹⁰⁶ stands as the law of this case.

In Part IV, Consumers responds in detail to, and effectively rebuts each challenge offered by CSXT to the comprehensive evidence of the carrier’s revenue adequacy under 49 U.S.C. § 10704(a)(2) that Consumers presented on Opening. Likewise, Consumers shows that CSXT’s hyperbolic complaints about a “system-wide rate freeze” or “Nixon-era price controls” are distortions of the reality of the rate relief sought by Consumers under the Revenue Adequacy Constraint, relief that the clear weight of record evidence shows Consumers is entitled to receive.

¹⁰⁵ See IV-32-37, *infra*.

¹⁰⁶ Decision served June 15, 2015 at 2.

D. RATE RELIEF AND DAMAGES

Based upon the evidence presented herein, and in Consumers' Opening Evidence, the Board should find that CSXT possesses market dominance over the transportation of coal from the BSNF interchange designated in Tariff CSXT-13952 to Campbell, in accordance with 49 U.S.C. §10707. The Board further should find that the rates set forth in Tariff CSXT-13952, as applied to Consumers' Campbell coal traffic, exceed maximum reasonable levels as determined under the SAC Constraint and the Revenue Adequacy Constraint of the *Coal Rate Guidelines*, and therefore are unlawful under 49 U.S.C. §10701(d).

1. Prescription of Maximum Rates

In accordance with the provisions of 49 U.S.C. §10704(a), Consumers is entitled to a Board order prescribing the maximum rates that lawfully may be charged by CSXT to transport coal to Campbell. The maximum rate should be the lower of the SAC rate and the Revenue Adequacy rate, subject to the 180% RVC jurisdictional threshold. For 2015, and through the first quarter of 2016, the maximum rates per ton for the predominant railcar type used in Campbell service¹⁰⁷ are as follows:

¹⁰⁷ See Rebuttal Exhibit III-H-2.

<u>Quarter</u>	<u>SAC Maximum</u>	<u>Rev. Adequacy Maximum¹⁰⁸</u>	<u>Maximum Rate</u>
1Q15	\$10.22	{ }	\$10.22
2Q15	\$10.36	{ }	\$10.36
3Q15	\$10.29	{ }	\$10.29
4Q15	\$10.15	{ }	\$10.15
1Q16	\$11.51	{ }	\$11.51

The corresponding maximum reasonable rates under the SAC Constraint (expressed as RVC ratios) for the remainder of the DCF period are set forth below.

As noted *supra*, maximum rates over the same period under both the SAC Constraint and the Revenue Adequacy Constraint – and, thus, the maximum rates to be prescribed for application to Consumers’ Campbell coal traffic – must be determined quarterly following the Board’s publication of the RCAF-A for the subject quarter, starting with the Third Quarter of 2016.

¹⁰⁸ As published by the Board, the changes in RCAF-A index values for 1Q2015 through 2Q2016 were (3.6%), (7.2%), (5.9%), (3.7%), (0.3%) and (3.3%) respectively. See *Quarterly Rail Cost Adjustment Factor*, Ex Parte No. 290 (Sub-No.8), (STB served December 17, 2014, March 20, 2015, June 18, 2015, September 18, 2015, December 18, 2015 and March 18, 2016). Over the full year, the RCAF-A experienced a net decline of 16.6%, so there is no change in the maximum Revenue Adequacy rate. In future quarters, the Revenue Adequacy rate would remain unchanged until and only to the extent that future increases in the RCAF-A fully offset the 16.6% net decline, as the same may be augmented by future declines in that index.

<u>Year</u>	<u>Maximum SAC RVC Ratio¹⁰⁹</u>
2016	419.9%
2017	310.6%
2018	325.4%
2019	327.3%
2020	302.3%
2021	298.8%
2022	280.3%
2023	282.0%
2024	252.4%

2. Award of Damages

Since January 1, 2015, Consumers has paid CSXT freight charges for coal transportation service to Campbell at tariff rates significantly higher than the maximum lawful rates summarized in the previous table. Pursuant to 49 U.S.C. §11704(b), upon the conclusion of this proceeding Consumers will be entitled to an award of damages in the principal amount of the difference between the charges that it actually paid from January 1, 2015 through the date of CSXT's compliance with the Board's prescription order, and recalculated charges for the same period based on the applicable maximum rates, together with interest from the first date of payment of the unlawful charges calculated using the U.S. Prime Rate as published in the *Wall Street Journal*.¹¹⁰

¹⁰⁹ See Exhibit III-H-2.

¹¹⁰ See *Ex Parte No. 715* at 34-35 and Appendix A.

Respectfully submitted,

CONSUMERS ENERGY COMPANY

By: Catherine M. Reynolds
Senior Vice President and General Counsel
Eric V. Luoma
Assistant General Counsel
Consumers Energy Company
One Energy Plaza
Jackson, Michigan 49201

Kelvin J. Dowd
Robert D. Rosenberg
Andrew B. Kolesar III
Daniel M. Jaffe
Katherine F. Waring
SLOVER & LOFTUS LLP
1224 Seventeenth St., N.W.
Washington, D.C. 20036
(202) 347-7170



OF COUNSEL:

SLOVER & LOFTUS LLP
1224 Seventeenth St., N.W.
Washington, D.C. 20036

Dated: May 20, 2016

Attorneys & Practitioners

CERTIFICATE OF SERVICE

I hereby certify that this 20th day of May, 2016, I have caused copies of the Rebuttal Evidence of Complainant Consumers Energy Company to be served by hand upon counsel for Defendant CSX Transportation, Inc. as follows:

G. Paul Moates, Esq.
Raymond A. Atkins, Esq.
Matthew J. Warren, Esq.
Sidley Austin LLP
1501 K Street, N.W.
Washington, D.C. 20005



Daniel M. Jaffe

II Market Dominance

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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

PART II

MARKET DOMINANCE

The evidence establishes that the Board has jurisdiction to prescribe the maximum reasonable rates that CSXT can charge for common carrier coal transportation service from the Chicago interchange to the Campbell Station, which currently takes place under Tariff CSXT-13952. CSXT does not dispute that the challenged rate substantially exceeds the 180% jurisdictional RVC ratio prescribed by 49 U.S.C. § 10707(d)(1), and when one cuts through the hyperbole, misrepresentations and ungrounded speculation offered by CSXT in Part II of its Reply, the better evidence of record shows that Consumers cannot avail itself of an operationally and economically feasible modal alternative to CSXT rail service that would compel CSXT to maintain reasonable rates to Campbell.

II. A. QUANTITATIVE EVIDENCE

CSXT concedes that the challenged rates exceed the 180% revenue/variable cost ratio threshold for quantitative market dominance prescribed by 49 U.S.C.

§ 10707(d)(1). CSXT Reply at II-A-1.¹

1. Traffic and Operating Characteristics

The only point of dispute between the parties concerning the variable costs for the subject movement relates to the “loaded miles” component of the nine (9) traffic and operating characteristics used in the Board’s Phase III URCS model. As Consumers predicted,² CSXT advocates an adjustment to the URCS-prescribed convention that the number of miles that CSXT moves Consumers’ trains in the loaded direction is doubled to set the total round-trip miles used for the URCS variable cost calculation.³

CSXT’s proposed, movement-specific adjustment purportedly accounts for the interchange arrangement that CSXT has with BNSF Railway, whereunder each operates over a few miles of the other’s track in the loaded (BNSF) and empty (CSXT) directions.⁴ CSXT argues that it is not seeking a movement-specific adjustment to URCS because it wants to add miles in the loaded direction (when BNSF handles the trains)

¹ As was the case with its Opening Evidence, Consumers’ Rebuttal calculations of variable costs and other evidence presented in Part II-A are sponsored by L.E. Peabody & Associates, Inc. Vice President, Timothy D. Crowley.

² See Consumers Opening at II-5.

³ See *Major Issues* at 58.

⁴ See CSXT Reply at II-A-2-3.

rather than the empty direction (where the “extra” CSXT-operated miles actually are).⁵ In reality, however, CSXT is only offering variants on arguments that parties have advanced in prior cases to no avail,⁶ in collaterally attacking the Board’s rulings in *Major Issues*.⁷ Every petitioner has claimed a valid reason for its proposed departure from unadjusted system average URCS costs using only the nine (9) designated inputs, and every petitioner has been turned away by the Board. There is no basis for CSXT to be treated any differently here.

CSXT insists that it “is *not* proposing an URCS adjustment to add empty movement miles”⁸ because the six (6) miles in question are described as CSXT track miles over which BNSF – but not CSXT – handles the loaded Consumers train. However, it is not BNSF’s variable costs that are at issue here.⁹ The miles that are “excluded” by the *Major Issues* rule against adjustments are the six (6) miles of BNSF track over which CSXT handles Consumers’ trains in the empty direction, because they

⁵ *Id.* at II-A-5.

⁶ *See, e.g., Kansas City Power & Light Co.*, at 6.

⁷ *Major Issues* at 60.

⁸ *See* CSXT Reply at II-A-5 (emphasis in original).

⁹ CSXT wrongly suggests that the relevant input is the number of CSXT-owned track miles that are used to transport loaded movements. *See* CSXT Reply at II-A-5. The correct input is the number of miles that *CSXT handles the train* in the loaded direction. *See* ICC, Uniform Rail Costing System, Phase III Movement Costing Program User’s Manual, October 1989, at 4.

exceed the number of miles that *CSXT* handles the trains in the loaded direction.¹⁰ As the Board held in *Major Issues* when addressing this very issue:

While we recognize the carriers' desire to have the URCS calculation reflect more accurately the actual cost of moving the issue traffic, we find that such piecemeal adjustments would tend to bias the results in favor of the railroads. As discussed above, selective replacement of system-average statistics – which tend to benefit the railroads – without allowing for counterbalancing adjustments that benefit shippers – which often require information not maintained in sufficient detail or at all by the railroads – may bias the entire analysis, rendering the modified URCS output unreliable. Shippers note this potential for unfairness and bias in their reply.

Major Issues at 58 (footnotes omitted).

CSXT also argues that Consumers' ATC calculations for purposes of the SAC analysis reflect the same adjustment for the BNSF loaded move between 22nd Street and 71st Street that *CSXT* seeks for purposes of variable costs. *CSXT Reply* at II-A-5. This is incorrect. Variable costs for jurisdictional threshold purposes focus on the issue traffic. For ATC, in contrast, the focus is on non-issue traffic, and under *Major Issues* variable costs are based on the on-SARR and off-SARR segments. *Id.* at 20. The 22nd Street – 71st Street segment, which the CERR assumes the cost of building and maintaining, is part of the “on-SARR” route, so traffic that enters the CERR at 22nd Street

¹⁰ *CSXT* asserts that its proposed increase in the number of loaded miles would be “offset” by the exclusion of the six (6) miles that *CSXT* handles empty trains over BNSF's lines (*see CSXT Reply* at II-A-4), but that is not true. The net effect would still be to adjust the movement miles for URCS purposes upward by six (6), as it is the loaded miles that serve as the relevant URCS input.

has its on-SARR variable costs calculated from that point. If that procedure was not followed for ATC purposes, then CSXT would be credited with revenue that it did not earn, and the CERR would be denied any revenue allocation to cover that portion of its on-SARR costs. The Board always has acknowledged a difference between variable costs calculated for purposes of the jurisdictional threshold, and those determined under ATC, *inter alia*, because a SARR is not expected to operate in the same manner as the defendant railroad, and typically does not. Assuming *arguendo* that one could detect any theoretical inconsistency between the two models, however, it would be a consequence of the Board's *Major Issues* ruling,¹¹ and would be immaterial in this case since the maximum reasonable rates for CSXT service to Campbell under the *Guidelines* are well above 180% of variable costs in each year of the DCF period.

2. Variable Costs

As CSXT notes,¹² subsequent to Consumers' filing of its Opening Evidence the Board released its 2014 URCS. In its Rebuttal, Consumers accepts CSXT's update and recalculates variable costs using the Board's 2014 CSXT URCS. Tables II-A-1-5, below, update Consumers' previous calculations of variable costs using the Board's 2014 CSXT URCS. As updated to 1Q2016 levels, the relevant variable cost for the

¹¹ If the Board decides to revisit its current ban on movement-specific adjustments to Phase III URCS costs for jurisdictional determinations, it always can do so in an appropriate, public notice-and-comment rulemaking proceeding.

¹² See CSXT Reply at II-A-6, n. 10.

transportation to which the challenged rate applies is \$2.74 per ton.¹³ As of January 1, 2016, CSXT had increased the common carrier rate under Tariff CSXT-13952 applicable to Consumers' Campbell coal traffic to \$15.33 per ton.¹⁴ The RVC ratio for that rate is 559%.¹⁵

Table II-A-1
1Q 2015 URCS Phase III Unit Costs 1/

<u>Route</u>	<u>Consumers</u>	<u>CSXT</u>	<u>Consumers</u>
(1)	<u>Opening</u>	<u>Reply</u>	<u>Rebuttal</u>
	(2)	(3)	(4)
1. Loaded Miles	164.0	170.0	164.0
2. Base Year URCS Dataset	Consumers 2014 URCS	STB 2014 URCS	STB 2014 URCS
3. Variable Costs Per Ton	\$3.04	\$3.13	\$3.04
4. Index to 1Q 2015	0.93673	0.93673	0.93673
5. Indexed Variable Cost	\$2.85	\$2.93	\$2.85
6. Rate per Ton	\$14.95	\$14.95	\$14.95
7. R/VC	525%	510%	525%

1/ See CSXT Rebuttal e-workpaper "Consumers Rebuttal VC_JT.xlsx," tab "Tables for II-A Text."

¹³ See Consumers Rebuttal e-workpaper "Consumers Rebuttal VC__JT.xlsx." tab "1Q16," cell M33.

¹⁴ See *id.*, tab "1Q16," cell M39. See also Consumers Rebuttal e-workpaper "Tariff CSXT-13952."

¹⁵ $\$15.33 \div \$2.74 = 5.5949$.

Table II-A-2
2Q 2015 URCS Phase III Unit Costs 1/

<u>Route</u>	<u>Consumers</u> <u>Opening</u>	<u>CSXT</u> <u>Reply</u>	<u>Consumers</u> <u>Rebuttal</u>
(1)	(2)	(3)	(4)
1. Loaded Miles	164.0	170.0	164.0
2. Base Year URCS Dataset	Consumers 2014 URCS	STB 2014 URCS	STB 2014 URCS
3. Variable Costs Per Ton	\$3.04	\$3.13	\$3.04
4. Index to 2Q 2015	0.94856	0.94856	0.94856
5. Indexed Variable Cost	\$2.89	\$2.97	\$2.88
6. Rate per Ton	\$14.95	\$14.95	\$14.95
7. R/VC	517%	503%	519%

1/ See CSXT Rebuttal e-workpaper "Consumers Rebuttal VC_JT.xlsx," tab "Tables for II-A Text."

Table II-A-3
3Q 2015 URCS Phase III Unit Costs 1/

<u>Route</u>	<u>Consumers</u> <u>Opening</u>	<u>CSXT</u> <u>Reply</u>	<u>Consumers</u> <u>Rebuttal</u>
(1)	(2)	(3)	(4)
1. Loaded Miles	164.0	170.0	164.0
2. Base Year URCS Dataset	Consumers 2014 URCS	STB 2014 URCS	STB 2014 URCS
3. Variable Costs Per Ton	\$3.04	\$3.13	\$3.04
4. Index to 3Q 2015	0.94269	0.94269	0.94269
5. Indexed Variable Cost	\$2.87	\$2.95	\$2.87
6. Rate per Ton	\$14.95	\$14.95	\$14.95
7. R/VC	521%	507%	521%

1/ See CSXT Rebuttal e-workpaper "Consumers Rebuttal VC_JT.xlsx," tab "Tables for II-A Text."

Table II-A-4
4Q 2015 URCS Phase III Unit Costs 1/

<u>Route</u>	<u>Consumers</u> <u>Opening</u>	<u>CSXT</u> <u>Reply</u>	<u>Consumers</u> <u>Rebuttal</u>
(1)	(2)	(3)	(4)
1. Loaded Miles	164.0	170.0	164.0
2. Base Year URCS Dataset	Consumers 2014 URCS	STB 2014 URCS	STB 2014 URCS
3. Variable Costs Per Ton	\$3.04	\$3.13	\$3.04
4. Index to 4Q 2015	0.92915	0.92915	0.92915
5. Indexed Variable Cost	\$2.83	\$2.91	\$2.82
6. Rate per Ton	\$15.07	\$15.07	\$15.07
7. R/VC	533%	518%	534%

1/ See CSXT Rebuttal e-workpaper "Consumers Rebuttal VC_JT.xlsx," tab "Tables for II-A Text."

Table II-A-5
1Q 2016 URCS Phase III Unit Costs 1/

<u>Route</u>	<u>Consumers</u> <u>Opening</u>	<u>CSXT</u> <u>Reply</u>	<u>Consumers</u> <u>Rebuttal</u>
(1)	(2)	(3)	(4)
1. Loaded Miles	164.0	170.0	164.0
2. Base Year URCS Dataset	Consumers 2014 URCS	STB 2014 URCS	STB 2014 URCS
3. Variable Costs Per Ton	\$3.04	\$3.13	\$3.04
4. Index to 1Q 2016	0.90092	0.90092	0.90092
5. Indexed Variable Cost	\$2.74	\$2.82	\$2.74
6. Rate per Ton	\$15.33	\$15.33	\$15.33
7. R/VC	559%	544%	559%

1/ See CSXT Rebuttal e-workpaper "Consumers Rebuttal VC_JT.xlsx," tab "Tables for II-A Text."

II. B. QUALITATIVE MARKET DOMINANCE

“Simply put, all it takes is a dock costing roughly \$2.87 per ton of delivered coal.”¹⁶

To hear CSXT tell the story, Consumers Energy Company – a public utility under the regulatory scrutiny of the Michigan Public Service Commission and bound by law to control costs and serve the interests of its ratepayers – sat idle for decades and refused to take advantage of readily available and inexpensive options to permanently maintain reasonable coal transportation rates to Campbell through effective competition; *i.e.*, choosing instead to spend millions of dollars on a proceeding before the Board, in an effort to secure a temporary prescription of rates averaging over 300% of CSXT’s system average variable costs.¹⁷ Well.

As part of its Opening Evidence, Consumers demonstrated that despite several investigative efforts – the most recent of which took place in 2014 – it was never able to identify a feasible and economically supportable competitive transportation alternative to CSXT for the delivery of coal from the Chicago area to Campbell. Consultants retained by Consumers studied both direct and “indirect” hypothetical options,¹⁸ but in each case there were operational, legal and/or economic impediments to their feasibility. Evaluating the collective work of its consultants in 2014, Consumers prepared internal economic summaries of the capital and operating costs associated with

¹⁶ See CSXT Reply at II-B-51.

¹⁷ See III-H-4, *infra*.

¹⁸ See Consumers Opening at II-16-32.

each “option,” which demonstrated that none represented effective alternatives to CSXT.¹⁹ Consumers’ previous preliminary analyses were verified, updated and supplemented by its expert witness, Dr. Ralph Barbaro, who confirmed the lack of effective, competitive transportation alternatives to CSXT rail service to Campbell.²⁰

In Reply, CSXT concedes that the only form of hypothetical competition that is relevant to the market dominance determination in this case is direct competition; *i.e.*, transportation between the Chicago area BNSF interchange or the KCBX vessel terminal, and the Campbell Station.²¹ However, CSXT goes on to argue for an unprecedented ruling by the Board: a finding that CSXT does not possess market dominance over coal deliveries to Campbell, not because Consumers enjoys any *actual* alternative to CSXT service, but because Consumers allegedly *could create* such an alternative through massive and risky capital investments in two (2) projects that also would be subject to extensive federal and state permitting requirements and regulations: (1) a lake vessel movement from the KCBX South Terminal to an as-yet unbuilt coal unloading platform in Pigeon Lake, near the Campbell Station; or (2) a vessel move from

¹⁹ *Id.* at II-26-27, 31-32, 46-49. CSXT’s statement that “Consumers cannot cite a single contemporaneous document to support its claims” (CSXT Reply at II-B-27) is absolutely false. {

} *both* of which were produced to CSXT in discovery.

²⁰ See Consumers Opening at II-32-35, 51-52, and Exhibit II-1 (“Barbaro Report”) at 48-53, 66-69, 86-91, 114-120.

²¹ See CSXT Reply at II-B-8. See also Consumers Opening at I-21-23.

KCBX to Consumers' now-shuttered Cobb Station near Muskegon, MI, for further transfer to the MSRR for delivery to Campbell over as-yet unbuilt new rail facilities.²²

In all of the cases decided under the *Coal Rate Guidelines* since their adoption, the Board has never made a market dominance ruling in the nature of that sought by CSXT here. As shown in this Part II-B,²³ there is no merit to CSXT's claims, and the Board should confirm the carrier's market dominance at Campbell.

First, as Consumers showed on Opening, "effective competition" means considerably more than theoretical access to a hypothetical option. Under governing law, the alternative must pose a threat sufficient to compel a pricing response from the defendant railroad, and must be shown to discipline the railroad's rates at reasonable levels. Even with the unrealistically low capital and operating cost estimates offered by CSXT, its proffered alternatives only reflect per ton charges that are near or actually higher than the tariff rate *under challenge*, which at over 500% of variable costs cannot be presumed to be reasonable. *See FMC*, 4 S.T.B. at 718. Similarly, while CSXT refers repeatedly to {

²² *See* CSXT Reply at II-B-6.

²³ Facts related to actions taken by Consumers as described in this Part are verified by Brian D. Gallaway, Consumers' Executive Director of Fossil Fuel Supply. Mr. Gallaway's qualifications are detailed in Part V of Consumers' Opening Narrative. This Rebuttal Part II-B also is supported by the Rebuttal Report of Dr. Barbaro Rebuttal (Rebuttal Exhibit II-B-1), whose qualifications also are detailed in Opening Narrative Part V, and by the Verified Statement of Michael Petro and Paul Bovitz of Advisian Inc., a unit of WorleyParsons Resources & Energy (Rebuttal Exhibit II-B-2). Messrs. Petro and Bovitz's qualifications and experience are detailed in Part V of this Rebuttal.

}

Second, while coal obviously does move on the Great Lakes generally, and was delivered by vessel to the Cobb Station (which was designed for vessel service and is now closed), there are significant geographic, physical, historical and regulatory differences between the circumstances at Cobb and those at Campbell that completely contradict CSXT's claims that the feasibility of water transport to Cobb "proves" its feasibility at Campbell. One key feature that the two (2) stations do have in common, however, is that each is captive: Campbell to rail and Cobb to water. As shown herein, rail service to Cobb was never considered a realistic alternative by Consumers, {

} CSXT's position that "ferocious" competition at Cobb provides a benchmark for evaluating competition at Campbell is a fallacy.

Third, as shown herein and in Dr. Barbaro's Rebuttal Report, neither the Direct Water nor the Cobb-Rail Routes advanced by CSXT are feasible alternatives that would pose an effective competitive threat to CSXT rail service. As unproven projects that would entail tens or even hundreds of millions of dollars in new capital investment by Consumers, prudence and Board precedent support the assumption that they would have to be able to replace CSXT service entirely, in order to *ensure* the benefits of actual competition. However, the undisputed seasonality of vessel transportation on Lake Michigan coupled with Consumers' longstanding contractual commitments {

} – commitments that cannot be ignored or assumed away – means that reliance on CSXT *cannot* be avoided, due to the lack of essential coal storage capacity at KCBX (another fact that CSXT does not dispute). Under these circumstances, neither the Direct Water nor the Cobb-Rail “option” is operationally viable.

Even if one assumes – as CSXT obviously does – that Consumers would only need to replace CSXT for a percentage of Campbell’s annual coal requirements, with CSXT continuing to deliver the balance, the better evidence shows that neither of CSXT’s proffered options is viable.²⁴ As Dr. Barbaro details, and as summarized herein, CSXT and its witnesses ignore or irrationally minimize numerous legal and regulatory obstacles both to a Pigeon Lake unloading facility and the Cobb-Rail “option,” including (but not limited to): (i) the virtual “taking” of Pigeon Lake and the complete disruption of its longstanding recreational use that would result from the Direct Water movement, which would render dock permitting unlikely; (ii) the failure of CSXT’s consultants’ Pigeon Lake platform design to comply { }; (iii) the lack of any evidence of sufficient available vessels of the size that CSXT’s consultants say is needed for the Pigeon Lake alternative; and (iv) the terms of MSRR’s lease from

²⁴ CSXT’s Reply is predicated on the presumed diversion of 75% of Consumers’ Campbell requirements. However, as Dr. Barbaro shows, limitations on capacity at KCBX and errors in the overly optimistic assumptions by CSXT’s consultants make it more likely that the actual hypothetical diversion percentage { } which in turn means an even lesser likelihood that the “option” could discipline CSXT’s pricing, and an even higher rail rate premium cost for the portion of Campbell’s annual requirements that would remain wholly captive to CSXT. *See* Barbaro Rebuttal Report at 52-53.

CSXT, which {
} alternative.

CSXT offers the opinions of a certain “Captain Hogan” on such crucial matters as the design of the Pigeon Lake dock facilities (CSXT Reply at II-B-7) and vessel availability (*id.*, at II-B-38). However, Mr. Hogan authored no report or statement, and submitted no workpapers or supporting data of any kind to allow for an evaluation of the opinions that are attributed to him. Under Board rules, therefore, those opinions are entitled to no weight. *FMC Wyoming*, 4 S.T.B. at 733. *See also AEPCO 2011* at 46.

CSXT also grossly understates the relevant capital and operating costs properly attributable to each offered alternative. While they are detailed *infra* and in Dr. Barbaro’s Rebuttal Report, some of the more notorious errors are: (i) omitting entirely the cost to both options of covering the premium that CSXT certainly would charge to transport lesser percentages of the Campbell coal volumes after losing the rest to an alternative mode, which the best evidence shows is *at least* { } per ton and in actuality would be as much as { } (ii) artificially reducing the KCBX terminal transfer charge by more than { } per ton based on an outdated contract that does not reflect current or even recent conditions; and (iii) omitting the vessel and rail demurrage costs that inevitably would result from CSXT’s consultants’ overly optimistic vessel operations assumptions. Corrected for demonstrable errors and omissions, a more accurate estimate of the per ton costs of CSXT’s “alternatives” confirms that they do not represent effective, competitive options:

	<u>CSXT</u>	<u>Corrected</u> ²⁵
Direct Water	{ }	{ }
Cobb-Rail	{ }	{ }

Fourth, CSXT seriously misrepresents both the nature and the results of Consumers’ previous internal reviews of potential transportation alternatives for Campbell. The studies that Consumers discussed on Opening were preliminary analyses that never offered conclusions regarding whether particular alternatives represented effective competition for CSXT. The consultants’ scope of work was limited to a first level review of operational feasibility, principally from an engineering standpoint. Neither was asked for or offered an opinion regarding economic feasibility, and each identified for further, detailed study a number of permitting and regulatory challenges that stood as potential obstacles to each project’s moving forward. This is confirmed herein by the Verified Statement of the authors of the 2014 WorleyParsons Report.²⁶ Dr. Barbaro’s Opening Report, which the WorleyParsons authors verify did not contradict their own limited analyses, updated the prior cost estimates and extended the analyses’ scope and detail, leading to confirmation of the conclusions reached by Consumers internally in 2014: that when all associated operating and capital costs are considered,

²⁵ See Barbaro Rebuttal Report at Figures 1-1 and 1-3.

²⁶ See Petro and Bovitz V.S. at 25-28. This Verified Statement is submitted in direct response to two (2) false factual assertions made by CSXT on Reply that Consumers had no reason to anticipate: (1) that the WorleyParsons and Spicer reports actually concluded that vessel transportation represented an effective competitive alternative to rail; and (2) that Muskegon Lake and Pigeon Lake are virtually identical bodies of water.

none of the studied “options” represented a feasible, economically competitive alternative to CSXT rail service.

Fifth, as Consumers showed on Opening, application of the Board’s Limit Price Test further confirms the captivity of Campbell to CSXT. CSXT’s various objections to the use of this tool have been addressed and rejected by the Board in previous cases, and do not warrant an extended, repetitive response in this Rebuttal. However, as shown *infra*, if the Board chooses to apply the test in this case, there is no justification for CSXT’s results-oriented “short-haul” adjustment,²⁷ and CSXT’s “false positives” claim²⁸ is undermined by the fact that the Cobb Station never was an example of effective intermodal competition, as CSXT {
} to make the significant investment needed to make Cobb accessible to rail service.

Finally, if the Board is looking for a point of comparison among Consumers’ facilities against which to gauge the effect of competition, CSXT’s pricing at Karn-Weadock is the proper standard. While CSXT attempts to avoid the obvious with a “some destinations are more competitive than others” feint, the CSXT pricing history at this undeniably competitive (because all serving modes regularly bid for the business) station demonstrates Campbell’s captivity: though the distance from Chicago to

²⁷*Id.* at 67-69.

²⁸ *See* CSXT Reply at II-B-62-64.

Essexville, MI is twice that from Chicago to Campbell, Karn-Weadock enjoyed rates from CSXT that were some { } than Campbell on a *nominal* basis.

1. **Market Dominance Is The Absence of *Effective Competition***

As the Board has held repeatedly, and with court approval, the core criterion of qualitative market dominance is not simply whether a transportation alternative (real or hypothetical) exists, but whether it is shown to have exerted pressure on the incumbent railroad “to perform up to standards and at reasonable prices, or lose desirable business.” *Mkt. Dominance Determinations & Consideration of Prod. Competition*, 365 I.C.C. 118, 129 (1981), *aff’d sub nom. W. Coal Traffic League v. United States*, 179 F. 2d 772 (5th Cir. 1983) (en banc). *See also DuPont*, at 17, citing *Ariz. Pub. Serv. Co. v. United States*, 742 F. 2d 664, 651 (D.C. Cir. 1984).

In addressing the question whether an alleged alternative is “sufficiently competitive...to bring market discipline to [a railroad’s] pricing,”²⁹ a particularly relevant consideration is the relationship between the price (or cost) of the erstwhile alternative and the rates set by the dominant railroad. If the cost to the shipper of accessing a potential alternative transporter is at a level that still allows the incumbent to price like a monopolist, effective competition does not exist.³⁰ As the Board held in *FMC*:

²⁹ *West Tex. Utils. Co.*, 1 S.T.B. at 645 (quoting *Metro. Edison Co.*, 5 I.C.C. 2d at 410).

³⁰ *DuPont*, at 17.

The fact that [the railroad] matches prices set by alternatives with significantly higher costs, while maintaining a dominant market share, is not enough to demonstrate effective competition for the traffic at issue.

4 S.T.B. at 718. CSXT’s Reply presentation fails this test.

Viewed properly through the lens of a firm faced with a decision whether to risk tens or hundreds of millions of dollars in capital to create “effective” competition where it does not exist – which prudently has to consider only options that completely replace the incumbent – neither the CSXT Direct Water alternative nor its Cobb-Rail option are operationally feasible, *inter alia*, due to the unavailability of essential winter coal storage capacity at KCBX.³¹

If the Board nevertheless enters CSXT’s partial diversion scenario, and assumes away all the other obstacles to feasibility addressed in this Part (*e.g.*, dock permitting challenges, the MSRR lease terms {

} etc.), the cost estimates offered by CSXT for each of its “alternatives” are unrealistically low.³² However, even accepting CSXT’s consultants’ deeply flawed calculations at *face value*, CSXT has posited alternatives with prices that, respectively, are just { } the challenged tariff rate, which itself is more than 500% of the variable cost of service. All CSXT has “shown” is that the only

³¹ See Consumers Opening at II-16-19.

³² Correcting for only two (2) of the more obvious errors made by CSXT’s consultants – artificially discounting the terminal transfer costs at KCBX and omitting the *minimum* CSXT monopoly rate premium on the Campbell coal that still would have to move by rail – increases those costs by at least { } for each option.

potential alternatives to CSXT rail service to Campbell don't "prevent [CSXT] from charging rates above 500% of variable costs," which precedent holds is "not placing sufficient discipline on the carrier's behavior" to constitute effective competition.

TPI at 5. *See also M&G* at 4.

CSXT's Reply likewise fails to contradict Consumers' showing on Opening that notwithstanding the parties' periodic discussions of Consumers' potential investigation of possible transport "options" during negotiations over past contracts, CSXT never made any meaningful rate concessions in response to the prospect of losing the Campbell business to another carrier or mode.³³ While CSXT is fond of referencing {

}³⁵ None of the agreements that followed { }

And while CSXT indeed may have *considered* whether Consumers might pursue some of the actions discussed in negotiations, documents related to negotiations over the past

³³ *See* Consumers Opening at II-55-56.

³⁴ *See* CSXT Reply at II-B-25.

³⁵ *See* e-workpaper { }

decade, and especially in 2014,³⁶ clearly show that the {
} CSXT.³⁷

The Board acknowledges the significant difference between statements made in the course of negotiations and concrete pricing actions taken by a railroad in response to genuine competition. As it explained in *FMC*, in the context of allegations of effective competition from a motor carrier transload operation:

Our conclusions here are not altered by statements made by FMC officials over the past five years – in rate negotiations with UP, in internal FMC memoranda, and in a verified statement submitted to us in the UP/SP merger proceeding – indicating that UP’s soda ash transportation is ‘competitive.’ Statements made to UP in the course of rate negotiations can only be regarded as posturing in aid of FMC’s negotiation position.

The internal memoranda (presumably prepared in support of those same negotiations) are not necessarily inconsistent with FMC’s position here. The transload alternative does impose an outer limit on the rate that UP can charge, although UP can exercise considerable market power before reaching that outer limit. In other words, there is a competitive constraint, even though there is not effective competition.

³⁶ The law is clear that the most relevant time period for assessing market dominance is the period covered by the shipper’s complaint, which in this case is from January 1, 2015 forward. *Consol. Papers, Inc.*, 7 I.C.C. 2d at 345, 347.

³⁷ See {

}

4 S.T.B. at 718, citing *Ariz. Pub. Serv. Co.*, 742 F. 2d at 650-51 (footnote omitted). As Consumers showed on Opening and CSXT does not really contest with actual evidence, the same conclusions apply in this case. Given the many serious flaws in the merits of CSXT’s market dominance claims, which are addressed in the remainder of this Part II-B, the Board’s jurisdiction over the challenged rate is clear.

2. There Is No Effective Competitive Replacement for CSXT Service

Consumers’ Opening Evidence established that (i) because winter conditions on Lake Michigan confine vessel transportation to nine (9) months each year; (ii) Consumers’ { } and (iii) the KCBX Terminal at Chicago lacks the capacity to store coal over the winter, vessel transportation through KCBX could not represent an effective, competitive replacement for CSXT as the transporter of Campbell’s annual coal requirements.³⁸

CSXT does not dispute any of these facts, which means they now stand as the best evidence of record. *DuPont* at 108; *Simplified Standards for Rail Rate Cases*, STB Ex Parte No. 646 (Sub. No. 1) (STB served Sept. 5, 2007) at 92. Instead, CSXT argues that it is not necessary that the massive capital planning projects that its Direct Water and Cobb-Rail Routes contemplate must assume complete replacement of CSXT in order to produce “effective completion,” and that Consumers simply should

³⁸ Consumers Opening at II-16-19; Barbaro Report at 21-25, 35-36.

renegotiate { } to remove {

} delivered during the Lake Michigan shipping season, thereby eliminating the need for the non-existent storage at KCBX. CSXT Reply at II-B-29-33.

On the particular facts of this case, neither of CSXT's claims is valid, and the Board should conclude that there is no direct, effective transportation competition available for CSXT coal delivery service to Campbell.

a. Full Replacement of CSXT Is Required to Justify the Necessary Investment

Consumers' Opening Evidence analyzed the infeasibility – both operationally and economically – of several hypothetical “alternatives” to CSXT rail service for coal deliveries to Campbell, including approaches similar to the two (2) that CSXT's Reply Evidence claims represent “effective competition”: (1) a vessel movement from the KCBX Terminal at Chicago to a to-be-built unloading facility and conveyor in Pigeon Lake; and (2) a vessel movement from KCBX to Consumers' Cobb site, followed by a transfer to MSRR for delivery to Campbell over a to-be-built rail line constructed alongside CSXT's existing right-of-way.⁴⁰ Consistent with Consumers' own

³⁹ See CSXT is silent on Consumers' coal supply arrangements, which impose similar obligations.

⁴⁰ See CSXT Reply at II-B-6. Because the lack of coal storage at KCBX disqualified that terminal as an option for full replacement of CSXT's rail service, Dr. Barbaro's engineering analysis considered vessel movements from the MERC dock at Superior, WI. See Barbaro Report at 70-92 and 92-120.

previous, internal studies of these hypothetical “options,”⁴¹ its Opening Evidence demonstrated that neither represents an effective competitive alternative to CSXT for the transportation of Campbell’s annual coal requirements.⁴²

In its Reply, CSXT argues that it is not necessary to consider whether effective competition would exist for *all* of Consumers’ annual coal shipments to Campbell. Invoking several prior Board and ICC decisions in cases where shippers actually enjoyed access to multiple transportation options, CSXT claims *in this case* that “Consumers does not need to be able to shift 100% of its rail volumes to alternative modes for these alternatives to be effective competitive options that preclude a finding of market dominance.”⁴³ Relying on the opinion of its witness Murphy,⁴⁴ CSXT claims that “a competitive alternative that handles 75% of Consumers’ coal needs is more than sufficient” to provide effective competition.⁴⁵ CSXT then uses this “75% solution” in its calculation of the capital and operating costs associated with its vessel and vessel-rail “alternatives.”⁴⁶

⁴¹ *See, e.g.,* {

}

⁴² *See* Consumers Opening at II-16-34.

⁴³ CSXT Reply at II-B-14.

⁴⁴ CSXT Reply, Exhibit II-B-2 at 15-17.

⁴⁵ CSXT Reply at II-B-30.

⁴⁶ *See, e.g.,* CSXT Reply at II-B-42-50.

As Dr. Barbaro's Rebuttal Report shows, capacity constraints at KCBX and gross inefficiencies built into CSXT's vessel transportation plan effectively limit the hypothetical diversion percentage to less than { } of Campbell shipments.⁴⁷ This fact alone undermines the foundation of CSXT's theory. Moreover, even assuming a 75% replacement of CSXT service, the actual costs associated with its two (2) hypothetical options show that they do not represent legitimate, effective competitive alternatives to CSXT rail service.⁴⁸ But commercial and regulatory reality also must play roles in the market dominance determination. Under the circumstances of this case – where the issue is whether Consumers should be deemed compelled to expend as much as { } in capital to buy its way out of captivity at Campbell⁴⁹ – it is necessary to evaluate potential options based on a complete shift of Campbell coal volumes away from CSXT, which would be the only assurance of “effective competition.”

The compelling difference between the decisions relied upon by CSXT and this case is that in the prior proceedings, the complainant actually had existing and available transportation alternatives,⁵⁰ and the question before the agency was whether

⁴⁷ Barbaro Rebuttal Report at 52-53.

⁴⁸ *Id.* at Figures 2-26 and 3-12.

⁴⁹ *Id.* at Figure 2-25.

⁵⁰ See *DuPont* at 17, 317 (motor carriage); *DuPont/CSXT* at 3 (barge); *FMC*, 4 S.T.B. at 712 (motor carriage); *Consol. Papers, Inc.*, 7 I.C.C. 2d at 337 (motor carriage); *Southwestern Railroad Car Parts Co. v. Missouri Pacific Railroad*, STB NOR 40073 (STB served Feb. 20, 1998) at 6 (geographic competition); *Salt River Project v. United States*, 762 F. 2d 1053, 1057 (D.C. Cir. 1985) (motor carriage); *Aluminum Association, Et. Al. v. Akron, Canton & Youngstown Railroad Co., Et Al.*, 367 I.C.C. 475, 481-83 (1983) (motor carriage).

these very real physical options offered effective competition for the defendant railroad. Where the Board made references to new “construction,” the facilities at issue were expansions of or additions to existing alternative transportation infrastructure, and the estimated cost of construction was modest.⁵¹ In expressing the view in these cases that the ability to divert less than 100% of the issue traffic could represent effective competition, the Board did not purport to set down a “bright line” rule concerning how much diversion was “enough,” because the specific facts of each case have to be evaluated in determining whether a proposed alternative actually pressures the defendant “to perform up to standards and at reasonable prices....” *DuPont* at 17.

In stark contrast, this case presents circumstances in which there are *no existing* alternatives to CSXT rail service to Campbell. The issue presented is whether effective competition can be *created*, and if so, at what cost. Given the enormous capital investments that Consumers would have to make, a critical question is whether it would be reasonable to assume that something less than a 100% diversion capability can *ensure* reasonable rates for Campbell coal deliveries. CSXT’s witness Murphy expresses the view that 75% would be sufficient, but not only is his potential diversion assumption inconsistent with the evidence, neither he nor his sponsor is offering to finance the necessary construction in reliance on that opinion.⁵² Consumers is the party that would

⁵¹ See *DuPont* at 317; *FMC*, 4 S.T.B. at 712.

⁵² Witness Murphy concludes that CSXT would have “no incentive” to eschew offering a “competitive” rate for 100% of Consumers’ Campbell coal traffic and try to make up the profits lost on the diverted 75% through rate increases on the rail-captive remainder. CSXT Reply at II-B-30. However, this observation assumes that a vessel

be putting as much as { } in capital at risk, and it would be unreasonable and imprudent to assume that Consumers could roll the dice for less than a guarantee of full access to effective competition. Consistent with Consumers' actual, prior "real world" analyses of hypothetical alternatives, the market dominance assessment in this case should assume the need for complete avoidance of reliance on CSXT for Campbell coal deliveries. *Cf., West Tex. Utils. Co.*, 1 S.T.B. at 651.

The Board's evaluation of the "build-out option" claim at issue in *TMPA* supports this conclusion. In that case, the defendant (BNSF) argued that the complainant could create access to a second carrier (Union Pacific) by building a new, 13.5 mile rail line at an estimated cost of \$49 million. 6 S.T.B. at 584. The Board found the hypothetical alternative to be infeasible, because there was no evidence that Union Pacific would offer the shipper a rate savings (determined to be \$3.21 per ton) sufficient to amortize the necessary investment. *Id.* The necessary savings calculation in that case was based on the *full* annual coal shipment volume to the power plant, not an arbitrary and speculative lesser percentage.⁵³

The proper approach to assessing the feasibility of CSXT's vessel and vessel-rail "options" is to evaluate their operational practicality and costs as if they were

"option" is in place, and that CSXT is facing an actual, effectively competitive rival. It assumes away the *real* question here: the diversion capability that provides sufficient assurance of effective competition to justify a { } an investment that would be wasted if an overall reasonable cost for the transportation of Campbell's entire annual volume was not achieved.

⁵³ *TMPA*, 6 S.T.B. at 584 and n.11, citing Reply Evidence of BNSF Railway, January 15, 2002, Narrative at II-58 and Exhibit II. B-3.

required to be complete substitutes for the transportation currently provided by CSXT under the rates at issue in this proceeding.

b. Consumers' Origin Rail Contract Requirements Cannot be Ignored

Consumers' Opening Evidence presented the indisputable evidentiary fact that the terms of its {

} Coupled with the equally indisputable fact that Lake Michigan freezes and becomes unusable for about three (3) months each year, the contractual {

} means that if Consumers even was to attempt to arrange for vessel coal transportation to Campbell without continued reliance on CSXT, it would have to provide for the storage of between 1.2 and 1.5 million tons of coal at the KCBX Terminal each winter. *See* Consumers' Opening at II-17. As Consumers established, however, such storage capacity does not exist. *Id.* at II-16-18.⁵⁴

In its Reply, CSXT does not challenge Consumers' evidence or dispute the {

} Instead, CSXT argues that the Board should {

} as one of Consumers' contracts for vessel transportation to the

⁵⁴ Consumers showed, and CSXT has not disputed, that it is not possible to store any coal at KCBX. Consumers Opening at II-7-18; Barbaro Report at 21-25.

Cobb Station did.⁵⁵ CSXT’s claim is echoed by its witness Murphy, who opines that he is {

} CSXT’s argument is meritless both as a matter of law and commercial reality,⁵⁷ and should be rejected.

Board precedent under the *Coal Rate Guidelines* clearly establishes that the terms of any actual contract that is relevant to a particular issue are to be taken as written, and applied as they are in the real world. *See, e.g., TMPA*, 7 S.T.B. at 820-21; *W. Tex. Utils. Co.*, 1 S.T.B. at 658. In that regard, the Board generally has rejected claims that contract terms should be ignored or set aside, or should be assumed to be subject to amendment or modification, in the absence of specific supporting evidence presented by the party advocating the amendment. *TMPA*, 7 S.T.B. at 820-21.⁵⁸ CSXT has offered no such evidence, and its argument {

}

⁵⁵ *See* CSXT Reply at II-B-33 and n. 98.

⁵⁶ *See* CSXT Reply, Exhibit II-B-2, at 13.

⁵⁷ CSXT’s witness Murphy claims no legal expertise, and his statement of qualifications gives no indication that he has had any experience in actually negotiating utility coal transportation contracts, so his opinion on this issue should be given no independent weight.

⁵⁸ An important exception to this rule allows a SARR to step into the shoes of an incumbent railroad for a portion of what in the real world is a single-line movement governed by a contract. As the Board has noted, this is necessary in order to protect a SAC complainant’s ability to take full advantage of the broad “grouping” principle under the *Coal Rate Guidelines*. *TMPA*, 6 S.T.B. at 590.

CSXT also ignores the realities of rail coal transportation contracts. As the Board is well aware from testimony offered during public hearings examining the general state of competition in the rail industry, all four (4) major U.S. railroads largely have standardized their contract forms, and generally are unwilling to deviate from those preferred positions in negotiations.⁵⁹ The {

} serves a railroad’s interests in predictable traffic flows and overall system fluidity, and provisions { } as evidenced by the origin service contracts that preceded the current BNSF agreement, which have {

}⁶⁰ That they are “important” to the railroads also is confirmed by CSXT itself, which in the very same section of its Narrative { } and important

volume commitments” among the “normal consideration” included in a modern coal transportation contract. CSXT Reply at II-B-81-82 (emphasis supplied).⁶¹

⁵⁹ See, e.g., *Competition in the Railroad Industry*, STB EP 705, Comments of the Western Coal Traffic League, April 12, 2011, V.S. Richards at 13-19; *The 25th Anniversary of the Staggers Rail Act of 1980*, STB EP 658, Statement of the Western Coal Traffic League, October 12, 2005 at 29, 33.

⁶⁰ See, e.g., Consumers Rebuttal e-workpapers “BNSF - C - 12112_1998 - 2002.pdf,” at 12 (Section E); “BNSF 2010-2013 Rail Transportation.pdf,” at 2 (Section 9).

⁶¹ That Consumers was party to a vessel transportation contract with American Steamship Company for shipments to Cobb (CSXT Reply at II-B-33, n. 98) that called for deliveries to be scheduled between April and the end of December is irrelevant. Vessels cannot operate on the Great Lakes in winter, so it is neither remarkable nor a sign of bargaining power for either party that a shipping contract would recognize this reality.

Consumers' legal obligation to {
} is a contractual reality that must be respected. When combined with the undeniable fact that the resulting, essential coal storage capacity at KCBX Terminal does not exist, it firmly establishes that Consumers cannot entirely avoid reliance on CSXT rail service for the transportation of its annual Campbell coal requirements.⁶² On the particular facts of this case, the proper conclusion is that neither of CSXT's proffered "options" can provide effective transportation competition, and that CSXT therefore enjoys qualitative market dominance over coal transportation to Campbell.

3. CSXT's Direct Water Route Cannot Provide Effective Competition for Even a Share of Campbell's Requirements

As shown, it would be contrary both to economic reality and prior Board precedent to assume that Consumers could assure itself of access to effective transportation competition by designing and investing the capital needed to construct a system that could not completely replace CSXT rail service to Campbell. Should the Board nevertheless entertain CSXT's "75% solution," however, the better evidence demonstrates that neither of the carrier's proposed options is feasible.

CSXT advances four (4) basic points in support of its claim that its Direct Water Route could provide effective competition for CSXT's all-rail service: (a) a vessel move to Campbell via Pigeon Lake is "a mirror image" of past vessel transportation to

⁶² As Consumers demonstrated on Opening, this is the case whether Campbell's annual needs are 4.8 million tons, 6 million tons, or any volume in between. *See* Consumers Opening at II-17.

the Cobb Station; (b) the Direct Water Route is operationally feasible; (c) all permits needed for construction of the Direct Water Route could be obtained without undue cost or delay; and (d) the cost of the Direct Water Route would be low enough to discipline CSXT's pricing and keep Campbell's rates reasonable.

None of these claims is borne out by the evidence.

a. Pigeon Lake Is Not Muskegon Lake

An articulated tug barge movement⁶³ from Chicago to a dock in Pigeon Lake would bear little resemblance to the large vessel moves that have been seen in Muskegon Lake for the past century, including the coal movements to Cobb, because the two (2) bodies of water are radically different.

As is detailed in the accompanying Verified Statement of Messrs. Petro and Bovitz, and further shown in Dr. Barbaro's Rebuttal Report, Muskegon Lake, where the Cobb site is located, encompasses an area of approximately 6.48 square miles and is open to Lake Michigan via a wide channel. Pigeon Lake, by contrast, covers a mere 225 acres (less than 0.4 square miles), and must be accessed by a narrow channel that requires jetties and regular dredging in order to remain clear for boat traffic.⁶⁴ At an average depth of 24 feet and a maximum of over 75 feet, Muskegon Lake is up to three times as

⁶³ The type of vessel that CSXT's consultants propose to use for the Direct Water movement is discussed in detail *infra*, and in Dr. Barbaro's Rebuttal Report. This is a different vessel than those considered by Consumers' past internal evaluations and evaluated by Dr. Barbaro on Opening. Until CSXT submitted its Reply, Consumers had no reason to address the many shortcomings of attempting to use an articulated tug barge to transport coal to Campbell.

⁶⁴ See Petro and Bovitz V.S. at 30-31.

deep as Pigeon Lake at its *deepest* point, which is in the middle of the lake and not near the shore where vessel unloading would have to take place.⁶⁵ Muskegon Lake has decades of history with commercial vessel shipping in support of industries along its shoreline, while Pigeon Lake has seen only four (4) barge shipments of heavy specialty equipment over four (4) years, each of which was an occasion for road closures, special police and traffic controls, and extensive media coverage.⁶⁶ The rest of the time, Pigeon Lake's exclusive use has been recreational, with vacation homes, private docks, retreat host facilities and nature parks all located around its shoreline.⁶⁷

In addition to the extensive geographic and physical nature differences between Muskegon and Pigeon Lakes, which obviously would adversely affect the initiation of commercial vessel traffic in the latter, the legal and regulatory environment that CSXT's Direct Water alternative would face is far more extensive and intrusive than the minimalist regime that prevailed when development of the Port of Muskegon began almost a century ago. The key regulatory and permitting obstacles, which were addressed in detail in Consumers' Opening Evidence,⁶⁸ are explained further in Dr. Barbaro's Rebuttal Report and in the Verified Statement of Messrs. Petro and

⁶⁵ As discussed *infra*, CSXT's consultants have proposed a dock platform design that {
Barbaro Rebuttal Report at 21.

⁶⁶ Articles reporting on these rare events were included in CSXT's Reply workpapers as "2011 Environmental Equipment Delivery," "2013 Barge Deliveries to Campbell" and "2011 Barge Deliveries to Campbell."

⁶⁷ See Petro and Bovitz V.S. at 34-39.

⁶⁸ See Consumers Opening at II-22-27; Barbaro Report at 53-56, 81.

Bovitz.⁶⁹ However, just some of the statutes and orders with which the CSXT Direct Water Route would have to contend that didn't even exist when Muskegon was developed are the following:

- Water Quality Act of 1965
- National Historical Preservation Act of 1966
- National Environmental Policy Act (1970)
- Clean Water Act
- Federal Water Pollution Control Act Amendments
- Great Lakes Water Quality Amendments of 1972
- Endangered Species Act (1973)
- Great Lakes Critical Programs Act (1990)
- Executive Order 12898 – Federal Actions to Address Environmental Justice

CSXT's assertion that a vessel movement of coal to Pigeon Lake would be a "mirror image of the transportation that Consumers used to the Cobb plant for many years" is a fantasy.

Another component of CSXT's market dominance theory as it relates to Cobb that falls into the realm of fantasy is the claim that vessel transportation of coal to the Cobb Station⁷⁰ over the years was so "robust" and effective a competitor that it

⁶⁹ See, e.g., *Petro and Bovitz V.S.* at 42-46.

⁷⁰ As Consumers explained on Opening, Cobb's coal-fired generating units have been retired, as part of a broad consent decree that settled lengthy environmental litigation with the U.S. Government. See Consumers Opening at I-7 and Exhibit I-2.

prevented CSXT from gaining any rail market share, even though tracks previously operated by CSXT (and now leased to MSRR) pass relatively near to the Cobb property. *See* CSXT Reply at I-4. The alleged availability of effective transportation competition for Cobb’s coal traffic, which CSXT insists is subject to “unassailable proof”⁷¹ and invokes repeatedly in its Reply Narrative,⁷² is key both to its theory of effective water transportation competition at Campbell, and its assault on the Board’s Limit Price Test.⁷³

There is one major problem with CSXT’s picture of Cobb: it is a fake. The reality is that Cobb, like Campbell, always has been a captive plant – captive to vessel transportation – and this fact further undermines CSXT’s theses both as to Campbell and the usefulness of the Limit Price Test as an indicator of qualitative market dominance.

As described above, in Messrs. Petro and Bovitz’s Verified Statement, and in Dr. Barbaro’s Rebuttal Report, the natural Port of Muskegon has been an active commercial and industrial port facility since early in the 20th Century, handling vessels of all sizes (including the largest Class I vessels) carrying myriad commodities, including coal.⁷⁴ When the Cobb Station first was planned more than 60 years ago, the port had been operating for many years and the site was a logical one for Consumers’ predecessor. While CSXT notes that the rail lines that it leased to MSRR in 2005 are located relatively

⁷¹ *See* CSXT Reply at II-B-51.

⁷² *See, e.g.*, CSXT Reply at I-1, I-7, I-13, II-B-1, II-B-8-9, II-B-13 and II-B-51-53.

⁷³ *Id.* at II-B-54.

⁷⁴ Petro and Bovitz V.S. at 31-32, 34-35.

near the Cobb property,⁷⁵ the modest coal volumes delivered annually to the plant⁷⁶ made it a poor candidate for the development of an alternative rail delivery system.

CSXT's Reply Narrative contains the following statement:

{

}

Consumers assumes that CSXT chose its words carefully, and that its reference to {
} and not to any actual efforts with or proposals
made to Consumers. This is significant, because in fact, {

} To the

contrary, CSXT's own internal documents {

⁷⁵ *E.g.*, CSXT Reply at I-4.

⁷⁶ Cobb regularly consumed no more than {

}

⁷⁷ *See* CSXT Reply at II-B-53.

⁷⁸ *See* {

}

} on rail and moved to Great Lakes docks (such as Toledo) for further shipment to the plant.⁷⁹

One possible reason for { } especially in recent years, may be the threat that a truly competitive rate offering for the rail delivery of 1.6 million tons or less of coal annually to Cobb from Chicago could pose for CSXT's ability to defend the exploitation of its monopoly over the 4.8 – 6 million tons moving every year to Campbell, some 25-30 miles south along the same rail line. As discussed *infra*, CSXT contorts logic in attempting to explain why setting rates to Campbell { } higher – on a nominal basis – than those to the genuinely competitive Karn-Weadock complex (which is twice as far from Chicago) is not indicative of market dominance over the Campbell traffic. It is possible that CSXT determined that the acrobatics needed to justify Campbell rates in excess of 400% of variable costs (in 2014) when significantly lower rates were in effect on lower volumes “just up the road” were simply impossible to perform.

Another plausible reason why CSXT never seriously considered Cobb as a candidate for rail deliveries concerns the costs associated with the conversion. While CSXT generally suggests that such a project would have been relatively easy and inexpensive,⁸⁰ in fact the cost always has been a major obstacle. To convert Cobb – which was sited in the 1940's as a vessel-served plant—to rail deliveries would require

⁷⁹ See CSXT Reply { }

⁸⁰ See CSXT Reply at II-B-39.

considerably more than the installation of tracks linking the property to the CSXT/MSRR lines serving Muskegon. The receipt of trainloads of coal at Cobb also would entail the construction of staging and car storage tracks for incoming shipments,⁸¹ and the installation of unit train/trainload unloading facilities. Consumers analyzed some of these costs in 1996, and {

} However, this

analysis looked only at the movement of very small volumes (about 350,000 tons per year), which impacts the quantities and costs for facilities such as track, and it did not include {

} Particularly for a 1.6 million ton

(maximum) facility where the erstwhile “competitor” showed no interest, conversion was not studied further and never was considered a realistic option.⁸³

⁸¹ CSXT’s own consultants’ report shows that {

}

⁸² See {
}

⁸³ CSXT asserts that it {
II-B-53), but its only support for this claim is a {

} (CSXT Reply at

}

CSXT’s claims in this litigation that coal transportation to Cobb has been the subject of “robust”⁸⁴ or “fierce”⁸⁵ competition are false. The *facts* are that {

}

pursue conversion. CSXT simply left Cobb to dominance by the water transport mode that it had been designed to use. The lack of any actual transportation competition at that station upends CSXT’s “tale of two Consumers coal plants”⁸⁶ myth, as well as its critique of the Board’s Limit Price Test.⁸⁷ It should be axiomatic that a destination {

} and that has never received a single carload of coal by rail, cannot serve as a benchmark for qualitative market dominance at another, exclusively rail-served destination, or as a “false positives” indication for a test designed solely to assess railroad market power.

⁸⁴ See CSXT Reply at I-4.

⁸⁵ *Id.* at II-B-64.

⁸⁶ *Id.* at II-B-1.

⁸⁷ *Id.* at II-B-61-64.

b. The Direct Water Alternative Is Not Operationally Feasible

As Dr. Barbaro's Rebuttal Report explains, the plan proposed by CSXT's consultants to move 3.5 million tons of coal per year from KCBX to a new Pigeon Lake unloading platform using articulated tug barges is operationally infeasible.⁸⁸

First, a detailed analysis of the capacity of the KCBX South Terminal⁸⁹ conducted by Dr. Barbaro shows that even if all permitting and regulatory obstacles are assumed away, the capacity available at KCBX to accommodate vessel shipments to Campbell similar to those contemplated by CSXT would not exceed 2.52 million tons per year, *if* three (3) suitable Class III vessels were available to be dedicated to the service. If only two (2) vessels could be secured, the maximum annual capacity is reduced further, to 2.35 million tons.⁹⁰ Factors contributing to these constraints include:

- Limits on direct-loading capacity and the lack of coal storage at KCBX;
- Commitments to other transloading customers;

⁸⁸ CSXT's consultants, TranSystems, Inc., actually propose two (2) alternative plans for the Direct Water Route, designated as Alternative 1-A and Alternative 1-B. As Dr. Barbaro points out, however, Alternative 1-B's design essentially would require that coal be fed directly from the unloading platform into the Campbell Station boilers, a procedure that is inconsistent with prudent utility practice. Barbaro Rebuttal Report at 48-49. Consumers is under no obligation to re-design CSXT's fatally flawed Alternative 1-B in an effort to make it workable, so its focus here, and Dr. Barbaro's, is on CSXT's Alternative 1-A.

⁸⁹ The South Terminal is the only currently functioning facility for handling coal at KCBX.

⁹⁰ See Barbaro Rebuttal Report at 34.

- The difficulty of scheduling the arrival of BNSF origin coal trains to coincide with vessel availability;
- Limitations on railcar holding track capacity at KCBX; and
- TranSystems’ plan to “light load” 18,000 ton capacity vessels with one trainload of coal { } each.⁹¹

Second, while CSXT and its Captain Hogan simply assume the availability of vessel capacity,⁹² Dr. Barbaro’s review of *actual data* shows that there are no 18,000 ton capacity articulated tug barges that meet TranSystems’ specifications currently available on the Great Lakes.⁹³ While there *may* be several Class III vessels meeting these specifications that are not committed to other customers,⁹⁴ CSXT has offered no evidence concerning the use of these vessels as part of its Alternative 1-A, including their impact on dredging requirements in Pigeon Lake, loading and unloading times and procedures, and their need for tug assistance.⁹⁵ As Dr. Barbaro observes, these and other

⁹¹ *Id.* at 29-35.

⁹² *See* CSXT Reply at II-B-37-38. As noted *supra*, there are no studies, analyses or documents of any kind that have been presented by CSXT to verify or support the views attributed to Captain Hogan.

⁹³ Barbaro Rebuttal Report at 37-39.

⁹⁴ *Id.* at 39-42.

⁹⁵ CSXT did not account for tug operations or costs, specifically on the basis of its plan to utilize the non-existent articulated tug barges. *See* CSXT Reply at II-B-47.

factors associated with the use of Class III vessels would significantly increase the costs of Alternative 1-A as presented by CSXT.⁹⁶

Third, CSXT's consultants posit an unloading scenario in which a tethered but unstabilized and undocked vessel unloads coal to a platform and conveyor 250 feet away, linked to shore. As Dr. Barbaro explains, *no* facility on the Great Lakes that handles coal does so without a dock to secure the vessel and prevent drifting with water currents and wind.⁹⁷ TranSystems' scheme would risk spillage, vessel and platform damage and shut-downs of the unloading process on a regular basis,⁹⁸ increasing costs significantly and dramatically reducing the practical efficiency of the entire Alternative 1-A system itself.

Finally, CSXT rests the alleged feasibility of its Direct Water alternative in large part on two (2), fabricated claims: the factually false assertion that a vessel operation in Pigeon Lake for Campbell would be the "mirror image" of previous vessel movements to the now-closed Cobb Station,⁹⁹ which is debunked *supra*;¹⁰⁰ and blatant misrepresentations of the results of work performed in the past by various consultants to

⁹⁶ Barbaro Rebuttal Report at 59-62, 70-74.

⁹⁷ *Id.* at 45-48.

⁹⁸ TranSystems points to a gypsum unloading facility near Norfolk, VA as an example of its plan in action, but an aerial photograph of that facility shows that it *has a dock* to secure and stabilize vessels during unloading. Barbaro Rebuttal Report, Figure 2-12.

⁹⁹ *See* CSXT Reply at II-B-18.

¹⁰⁰ *See also* Petro and Bovitz V.S. at 28-46; Barbaro Rebuttal Report at 42-44.

Consumers. The latter includes recasting as a “study” a 1996 powerpoint¹⁰¹ that
{
} ¹⁰² and repeated references to the 2014
WorleyParsons and Spicer analyses discussed by Consumers on Opening¹⁰³ as
endorsements of vessel transportation to Campbell as a “feasible option,”¹⁰⁴ when in fact
they concluded no such thing. In their joint Verified Statement submitted with this
Rebuttal, the authors of the 2014 WorleyParsons study specifically refute CSXT’s false
descriptions of their work, and explain both the limits of their preliminary analyses and
cost estimates, and the *absence* of any definitive conclusions regarding operational
feasibility, regulatory approvals and permits, or total costs for what CSXT has proposed
as its Direct Water Route.¹⁰⁵ They also dispel CSXT’s false assertion that Dr. Barbaro’s
Opening Report in this case, which evaluated various vessel hypotheticals in detail and
concluded that none represented an effective competitive alternative for CSXT,¹⁰⁶
somehow ignored or contradicted their work.¹⁰⁷

¹⁰¹ See CSXT Reply at II-B-21.

¹⁰² Consumers Opening at II-19-21.

¹⁰³ *Id.* at II-21-28.

¹⁰⁴ See, e.g., CSXT Reply at II-B-25, II-B-27.

¹⁰⁵ Petro and Bovitz V.S. at 15-18, 25-28.

¹⁰⁶ Barbaro Report at 3-7.

¹⁰⁷ Petro and Bovitz V.S. at 18-24.

The better evidence of record clearly demonstrates that CSXT’s Direct Water Route, as proposed by the carrier, is not operationally feasible.

c. The Direct Water Route Would Face Daunting Permitting Obstacles

On Opening, Consumers and its expert Dr. Barbaro catalogued the numerous and very difficult and expensive environmental permitting and other regulatory hurdles that would be faced – with no assured prospect of success – by any large coal facility development project in the modern era, much less one that would place a coal vessel unloading dock in a small, recreational body like Pigeon Lake.¹⁰⁸ In its Reply, CSXT (without presenting any evidence) dismisses the permitting barriers as part of “any potential new project,”¹⁰⁹ and essentially rests on its mischaracterization of Worley Parson’s 2014 work and the suggestion that TranSystems’ Pigeon Lake plan would have “even less environmental impact” than the hypothetical options previously examined (and discarded) by Consumers.¹¹⁰

In their Verified Statement, the WorleyParsons authors set the record straight regarding their study’s views on permitting – which clearly do not support CSXT’s attribution.¹¹¹ Turning specifically to the Direct Water plan proposed by

¹⁰⁸ See Consumers Opening at II-21-26, II-42-45; Barbaro Report at 53-56.

¹⁰⁹ See CSXT Reply at II-B-37.

¹¹⁰ *Id.* at II-B-36.

¹¹¹ Petro and Bovitz V.S. at 25-27.

TranSystems, however, it is equally clear that CSXT’s blithe dismissal of permitting obstacles is unfounded.

First, and most obviously, the mid-lake platform and hopper that
TranSystems designed¹¹² { } As
Dr. Barbaro explains,¹¹³ {

} The mid-lake platform proposed by CSXT’s
litigation consultants, in an effort to make their plan look more environmentally benign,
{ }

Additionally, as Consumers showed in Opening¹¹⁵ and Messrs. Petro and Bovitz outline in their Statement,¹¹⁶ the structure that TranSystems proposes for Pigeon Lake would be subject to a number of different federal, state and even international environmental review and protection statutes and rules that did not exist when the coal dock at the Cobb site was constructed, all of which are basically ignored by CSXT. Prominent among these is Section 404 of the Clean Water Act, which mandates that any

¹¹² See CSXT Reply, Exhibit II-B-1 at 7-10.

¹¹³ Barbaro Rebuttal Report at 21.

¹¹⁴ *Id.* at 21 and n.14.

¹¹⁵ See, e.g., Consumers Opening at II-23-26; Barbaro Report at 80-81.

¹¹⁶ Petro and Bovitz V.S. at 42-46.

facility project proposing to discharge dredged or fill materials into U.S. waters must secure a permit from the U.S. Army Corps of Engineers. Significantly, the published guidelines for Section 404(b) state that “no discharge of dredged or fill material shall be permitted if there is a practicable alternative to the proposed discharge which would have less adverse impact on the aquatic ecosystem....”¹¹⁷ There obviously is a “practicable alternative” to the vessel unloading platform that TranSystems proposes for Pigeon Lake: the CSXT rail service on which Campbell currently depends. Clean Water Act Section 404 and the Army Corps guidelines would present a major hurdle to securing the necessary permits to build in Pigeon Lake, if they did not preclude issuance of a permit altogether. As Dr. Barbaro notes, the Army Corps just recently denied a CWA permit for the Gateway Pacific Terminal project in Washington State, citing local waterway use impacts.¹¹⁸

Yet another feature of the TranSystems plan that would raise red flags when it came to permitting and environmental impact is its proposal for dredging Pigeon Lake. As Messrs. Petro and Bovitz explain,¹¹⁹ the flow of sediment into the lake coupled with the lack of commercial vessel activity has produced a sandy and near-pristine lake bottom, with extensive vegetation and a thriving underwater ecology. TranSystems proposes to dredge almost a *third* of the entire lake bottom area¹²⁰ in order to install its

¹¹⁷ See EPA Compliance with the Guidelines, 40 C.F.R. § 230.10(a).

¹¹⁸ Barbaro Rebuttal Report at 45

¹¹⁹ Petro and Bovitz V.S. at 29-33.

¹²⁰ *Id.* at 33-34.

unloading platform, and would have to continue with annual maintenance dredging to maintain required depths and keep the Pigeon Lake inlet open.¹²¹ The introduction of regular commercial vessel traffic in turn would introduce toxic vessel discharge and other pollutants that both would despoil the existing lake bottom, and create the need for a disposal plan for dredging waste, which could not simply be left in the lake once it was contaminated.¹²² The permitting challenges raised by this feature of the TranSystems plan are ignored by CSXT.

CSXT's consultant devotes a single paragraph to the issue of environmental impacts,¹²³ and does not discuss the permitting issues at all. CSXT's Narrative dedicates a few more words to the subjects,¹²⁴ but presents no "evidence" beyond a false representation of WorleyParsons' 2014 review.¹²⁵ The permitting and environmental impact obstacles to a vessel unloading facility in Pigeon Lake that Consumers raised on Opening effectively stand unchallenged by CSXT.

d. CSXT Grossly Understates the Cost of Its Direct Water Alternative

In a plainly results-oriented effort to show that vessel coal transportation to Campbell somehow could be accomplished at costs approximating the challenged CSXT

¹²¹ Barbaro Rebuttal Report at 68.

¹²² Petro and Bovitz V.S. at 34.

¹²³ See CSXT Reply, Exhibit II-B-1 at 16.

¹²⁴ See CSXT Reply at II-B-36-37.

¹²⁵ Petro and Bovitz V.S. at 25-27.

rail rates, TranSystems assembled an incomplete capital and operating cost estimate that left out key components, and artificially discounted or simply underestimated most of those that were included. The omissions and underestimates are categorized in detail by Dr. Barbaro, and include the following:

- TranSystems omitted any type of dock facility to stabilize vessels during unloading in Pigeon Lake, understating capital costs by { }.¹²⁶
- TranSystems underestimated the amount of dredging that would be required even for its own flawed mid-lake platform design, understating those capital costs { }.¹²⁷
- TranSystems proposed a KCBX transloading fee of { } based on an expired 2010 contract rate adjusted for inflation.¹²⁸ As Dr. Barbaro shows, however, the correct fee { } recent *actual quotes* from KCBX and upon consideration of significantly higher operating costs at that terminal since 2010.¹²⁹
- TranSystems *ignored* the virtual certainty of litigation over the extensive and complex permitting process that would apply to its proposed Pigeon Lake project, and assumed that all permitting and mitigation issues could be resolved in a matter of weeks at a cost of only { }. The 2014 WorleyParsons report, on which

¹²⁶ Barbaro Rebuttal Report at 55, Figure 2-16.

¹²⁷ *Id.* at 59-62, Figure 16.

¹²⁸ *See* CSXT Reply at II-B-44.

¹²⁹ Barbaro Rebuttal Report at 63-65.

CSXT otherwise is quick to rely and frequently misrepresents, explained the likelihood of a protracted legal battle, concluding that total costs could be { } and that the process still could { }¹³⁰

- TranSystems underestimated the cost of vessel transportation from KCBX to Pigeon Lake by more than { }, by failing to apply all the terms of the 2015 American Steamships contract that was its reference point, and account for the fact that { } as each 18,000 ton vessel was loaded with an average of only one trainload of coal ({ } tons).¹³¹

- TranSystems understated or omitted operating costs at its Pigeon Lake platform, likely costs for BNSF locomotive detention due to vessel delays, and tug assist costs, generally because CSXT’s consultant failed to adjust its benchmark costs for volume, or neglected to correctly evaluate vessel transit time or account for the lack of available articulated tug barges.¹³² Correcting these errors collectively adds at least { } to TranSystems’ operating cost estimates.¹³³

Another key cost of the Direct Water Route (as well as the Cobb-Rail Route) that is completely ignored by CSXT and bears particular mention is the premium

¹³⁰ *Id.* at 62-63.

¹³¹ *Id.* at 65-68.

¹³² *Id.* at 68-72.

¹³³ *Id.* at Figure 2-25.

that Consumers would have to pay for the transportation of coal that could *not* be shifted to vessel. CSXT’s response to Consumers’ { } in the context of its “75% solution” is the simple assertion that during the winter months, when the Great Lakes are closed to commercial vessel traffic, “trains from the PRB may be interchanged with CSXT for delivery to Campbell.”¹³⁴ As explained *supra* and in Dr. Barbaro’s Rebuttal Report, the assumption that KCBX could handle 75% of the Campbell shipments (3.5 million tons per year, according to CSXT) is unsupported by the facts, given the limits on KCBX’s annual throughput capacity and the fact that as much as two (2) million tons of that capacity is committed to other shippers.¹³⁵ As Dr. Barbaro demonstrates, the actual maximum capacity at KCBX for coal destined to Campbell would be between 2.35 and 2.52 million tons per year, depending on the number of vessels that could be dedicated to the service. Totally absent from CSXT’s presentation, however, is *any* mention of the rates that it would charge to transport that share of Consumers’ Campbell volumes that could not move by vessel, under circumstances where it had “lost” the remainder to an alternative mode. Its witness Murphy offers the opinion¹³⁶ that “CSXT would have no incentive to price above the competitive water alternative and risk losing the vast majority of the business, with the false hope of making

¹³⁴ See CSXT Reply at II-B-33.

¹³⁵ Barbaro Rebuttal Report at 29-34.

¹³⁶ Witness Murphy’s observations are hypothetical. He has not professed any experience either in marketing or purchasing coal transportation service by rail.

up the lost profits during a few winter months.”¹³⁷ However, such speculation addresses the wrong question. From the standpoint of evaluating the effectiveness of a hypothetical vessel transportation alternative that *at most* would replace only 75% of Consumers’ coal needs, an important element of the overall cost of the alternative is the additional amount that Consumers would have to pay to transport the remainder of Campbell’s coal requirements via CSXT, if Consumers opted for vessel transportation during part of the year.

As CSXT acknowledges,¹³⁸ volume is a key consideration in the establishment of railroad rates for coal transportation. There is neither reason nor evidence to support an assumption that CSXT would not assess higher rates on 25% - 50% of Consumers’ traffic than it currently charges to transport 100% of Campbell’s annual coal requirements. Precedent confirms that a principal concern in any partial diversion scenario is the level of rates that the shipper would be exposed to for that portion of its traffic which cannot be diverted. *Ariz. Pub. Serv. Co.*, 742 F.3d at 654; *Ariz. Pub. Serv. Co. v. A. T. & S. F. Ry. Co.*, 2 S.T.B. 367, 377 n. 23 (1997) (“[I]f Arizona were to reduce its volume at Cholla to pressure Santa Fe to reduce rates, the utility would likely face higher rates on the remaining volume transported by the carrier”).

¹³⁷ See CSXT Reply, Exhibit II-B-2 at 15.

¹³⁸ See CSXT Reply at II-B-82.

The only evidence of record that is relevant to that issue in this case was presented by Consumers on Opening, where Consumers referenced the {
} that CSXT imposed on Consumers' Karn-Weadock traffic after most of it was diverted to another rail carrier and Consumers sought a common carrier rate for any coal shipments that might remain on CSXT. In response, CSXT established a rate (as of January 1, 2015) of \$14.95 per ton, { } higher than the rate in effect for the same movement immediately prior to the diversion. Particularly given the higher costs that CSXT would incur in dedicating train cars and locomotives to Campbell service for only part of a year,¹³⁹ it is reasonable to estimate that Consumers could expect at least a comparable increase in its current Campbell rate, for that portion of the station's annual requirements that would still "be interchanged with CSXT"¹⁴⁰ following a shift of the remainder of those requirements to the hypothetical vessel service. Indeed, this estimate is conservative, since CSXT would have the incentive to try to recover as much of the profits that it lost on the diverted volume as possible from the remaining tonnage, and under its theory there would be no rail market dominance at Campbell, and thus no potential regulatory constraint at all on CSXT's pricing. *See Burlington Northern, Et Al. – Merger – Santa Fe Pacific, Et Al.*, 10 I.C.C. 2d 661, 748 (1995) (a destination

¹³⁹ Barbaro Rebuttal Report at 25-26.

¹⁴⁰ *See* CSXT Reply at II-B-33.

monopolist will “always have the incentive of profit maximization.”); citing *UP/MP/WP*, 366 I.C.C. at 538; *CSX Control*, 363 I.C.C. at 572-73.¹⁴¹

As Dr. Barbaro explains, a { } in the January 1, 2015 Campbell rate translates into a charge of { } than the full volume rail rate now in effect. Assuming, as CSXT proffers, that the vessel share could be 3.5 million tons and total shipments to Campbell equaled only 4.8 million tons (despite the fact that the average of CSXT’s coal forecast is { } tons per year),¹⁴² recovery of the { } to the actual cost of the partial vessel “option.” If CSXT’s average forecast is used, the premium cost increases to { } And at the more realistic 2.35-2.52 million tons diversion potential that is a consequence of KCBX’s throughput limits and pre-existing commitments, the per ton vessel cost increase would be { }¹⁴³ depending on the number of dedicated vessels. These very predictable costs, which

¹⁴¹ Compare *FMC*, 4 S.T.B. at 714 (“We have been given no reason to believe, however, that UP is not now maximizing its returns (*to the extent permitted under constrained market pricing principles*) on its captive movement of other commodities.”) (Emphasis supplied).

¹⁴² See CSXT Reply at III-A-18, Table III-A-1. As Consumers demonstrates in Part III-A of this Rebuttal, CSXT’s arguments for reducing the forecasted volumes for Campbell below the levels presented by Consumers on Opening (about { } per year, on average) are without merit. For purposes of calculating the CSXT rate premium on undiverted tons, however, Consumers uses CSXT’s figures solely to be conservative.

¹⁴³ Barbaro Rebuttal Report at 26.

CSXT ignores, are included in Dr. Barbaro’s corrected restatement of CSXT’s absurdly low estimate of the costs associated with its vessel “options.”¹⁴⁴

As shown, when all of the necessary adjustments are made to TranSystems’ unrealistic and artificially understated capital and operating costs, the actual costs for the Direct Water Route are { } if three (3) vessels were dedicated to the service, and { } if only two (2) vessels could be secured.¹⁴⁵

**4. CSXT’s Cobb-Rail Route
Cannot Provide Effective Competition**

CSXT’s Cobb-Rail alternative, a variant of which Consumers examined in its Opening Evidence,¹⁴⁶ involves a seasonal (April to December) vessel movement from KCBX to the Cobb site, followed by a rail movement to Campbell via MSRR over to-be-built improvements to the existing track that it leases from CSXT. CSXT insists that such an arrangement is both operationally feasible for the handling of as much as 75% of Campbell’s annual coal requirements, and can be accessed at a total per ton cost that

¹⁴⁴ See *id.* at Figure 2-26.

¹⁴⁵ These corrected costs are higher than the costs determined by Dr. Barbaro in his Opening Report for the Pigeon Lake “option” that he examined, because the indirect scenario he analyzed involved transloading coal through the more efficient and lower cost MERC dock near Superior, WI, and moving it in larger vessels. Compare Barbaro Report at 89-90.

¹⁴⁶ Because the need for { } and the lack of coal storage capacity at KCBX ruled out direct shipments from that terminal, Consumers reviewed the operational and economic infeasibility of moving coal by vessel from the MERC dock at Superior, WI to Cobb, for transfer to the MSRR. See Consumers Opening at II-28-32. As noted *supra*, CSXT acknowledges that this sort of potential “indirect” competition is not relevant to the market dominance determination in this case. CSXT Reply at II-B-8 and n. 14.

offers an effective competitive alternative to CSXT rail service.¹⁴⁷ Neither claim has validity.

a. **The Terms of MSRR’s Lease Preclude Its Feasibility as a CSXT Competitor**

Significantly – and tellingly – CSXT’s Reply makes no serious mention¹⁴⁸ of the 2005 Lease, whereunder CSXT granted MSRR rights to use the tracks from the Muskegon area south to Holland, MI, tracks which would be essential to any hypothetical coal movement by MSRR to Campbell. It is not difficult to understand the reason for this omission, because – {

}

First, as the TranSystems schematic of the proposed new rail line shows,¹⁵⁰ the project obviously would entail an {

¹⁴⁷ See CSXT Reply at II-B-38-42, 48-51.

¹⁴⁸ CSXT only notes in passing that it leased this supposedly valuable, competitive link to Cobb to MSRR. *Id.* at II-B-62.

¹⁴⁹ See CSXT Reply, Exhibit II-B-1 at 83.

¹⁵⁰ *Id.*

¹⁵¹ See {

}

} without Consumers having any control over or ownership interest in the subject assets.¹⁵² No prudent electric utility subject to public regulation could undertake such a one-sided project.¹⁵³

Second, as the TranSystems schematic shows and the accompanying text in the consultants' report confirms,¹⁵⁴ much of the new trackage and connecting facilities would be built on CSXT property subject to the Lease, and all of the fixtures would be permanent installations. However, {

}

Particularly given CSXT's complete silence concerning the Lease in this proceeding, it may be assumed that {

¹⁵² See Consumers Opening at II-30.

¹⁵³ CSXT obviously is aware of the Lease, and {

}

¹⁵⁴ See CSXT Reply, Exhibit II-B-1 at 21-26.

¹⁵⁵ *Land & Track Lease Agreement between CSXT & MSRR* (Sept. 9, 2005) at ¶ 15.3, e-workpaper CSX-CNSMR-HC-018965.

} in Campbell's

coal traffic.

Third, as Consumers explained on Opening, {

}¹⁵⁶ The TranSystems schematic

(Appendix 7) clearly shows portions of the hypothetical, new MSRR track as lying outside the 50 foot wide right-of-way. CSXT's consultants ignored the subject (and costs) of real estate acquisition by MSRR entirely,¹⁵⁷ so it is not clear how much of the necessary property is within the bounds of the leasehold. To the extent that required property falls inside these boundaries, however, {

}.
}

Finally, on Opening Consumers presented evidence that the extensive commercial relationships between MSRR's parent company (Genesee & Wyoming) and CSXT, and the dependence of many members of the Genesee & Wyoming corporate family on CSXT for traffic and revenue, make it unlikely that MSRR would be a willing competitor with CSXT for coal destined for Campbell.¹⁵⁸ CSXT baldly asserts that there

¹⁵⁶ See Consumers Opening at II-31.

¹⁵⁷ See, e.g., CSXT Reply, Exhibit II-B-1, Appendix 8.

¹⁵⁸ See Consumers Opening at II-31-32, Barbaro Report at 104-112.

“is zero reason to think that the Michigan Shore would not jump at the opportunity” to play for { } in revenue,¹⁵⁹ though it offers nothing in the way of evidence to support the assertion.¹⁶⁰ However, as Dr. Barbaro explains in his Rebuttal Report, even if one generously assumes that *half* of the stipulated estimated MSRR rate { } a substantial share of which is derived from interline and other commercial arrangements with CSXT.¹⁶² There is no basis for assuming that MSRR’s parent would risk threatening those relationships by trying to deprive CSXT of revenues from the Campbell coal movement.

¹⁵⁹ See CSXT Reply at II-B-41-42.

¹⁶⁰ CSXT dismisses as “nonsense” the fact that MSRR never has presented Consumers with a rate and service proposal for transportation service from Cobb to Campbell, presumptively claiming the reason was that MSRR never was asked by Consumers’ consultants. *Id.* at II-B-42. In fact, Consumers’ statement on Opening that { }

¹⁶¹ As explained *supra*, the likely maximum volume that even hypothetically could be diverted from CSXT is between 2.35 and 2.52 million tons per year. At { }

¹⁶² Barbaro Rebuttal Report at 83-84.

b. CSXT Severely Underestimates the Cost of Its Cobb-Rail Route

As detailed in Dr. Barbaro's Rebuttal Report, CSXT's consultant's estimates of the costs of its Cobb-Rail Route omit key components – such as the CSXT rail rate premium¹⁶³ and rail demurrage costs – that also are left out of the carrier's Direct Water estimates, and dramatically understates others. The latter include the actual cost to transload coal at KCBX and the lake vessel rate, which CSXT's consultants wrongly base on rates for 50,000 ton Class I vessels that cannot be used at KCBX.¹⁶⁴ Correcting these four (4) errors alone adds over { } to CSXT's claimed { } Cobb-Rail total cost.¹⁶⁵

In addition to underestimating operating costs for the Cobb-Rail alternative, CSXT and its consultants significantly understate the capital costs associated with the new infrastructure that would be needed to accommodate a vessel-rail movement to the Cobb dock and over the MSRR (assuming *arguendo* that the provisions of the MSRR lease giving CSXT an effective veto over installation of that infrastructure did not exist). Specifically, these include:

¹⁶³ Due to a slightly faster vessel time to Cobb, which allows for the delivery of more tons of coal each year, Dr. Barbaro calculated that the CSXT premium in the two (2) vessel scenario would be { } for the Cobb-Rail Route, as compared to \$9.66 per ton for the Direct Water Route. *Id.* at Figure 3-12.

¹⁶⁴ *Id.*

¹⁶⁵ *Id.* at 84-85 and Figure 3-12.

- CSXT did not include the costs for any new rail sidings and other trackage at the MSRR yard near Cobb, assuming instead that MSRR would dedicate its existing trackage to Consumers' traffic. However, MSRR's rail yard already is heavily utilized; installing sufficient additional trackage adds { } in capital costs.¹⁶⁶

- CSXT included nothing for mobilization/demobilization, which is a standard component of any rail construction project.¹⁶⁷

- CSXT did not include any costs to upgrade the coal conveyor at Cobb, which only was designed for the approximately 1,000,000 tons per year that moved to that station when it was operational. An additional { } is needed to increase the conveyor capacity to meet CSXT's specifications.¹⁶⁸

- TranSystems' design only included a new 500-foot conveyor from the stockpile area to the rail loadout, when a 700-foot conveyor is needed. This correction adds about { } to the capital cost.¹⁶⁹

- TranSystems understated the cost of a new rail loadout, because they did not account for modern controls, dust suppression, and other associated facilities. These add approximately { } to the total.¹⁷⁰

¹⁶⁶ Barbaro Rebuttal Report at 87-90.

¹⁶⁷ *Id.* at 87.

¹⁶⁸ *Id.* at 90.

¹⁶⁹ *Id.*

- TranSystems did not include any mobile equipment to operate the coal yard. As Dr. Barbaro explains, the dozers, loaders and other equipment (along with spare parts) needed for the operation are estimated to cost { }¹⁷¹

- TranSystems improperly omitted the 6% Michigan sales tax.¹⁷²

- CSXT included no costs for environmental permitting, mitigation or likely litigation, either for the new facilities at Cobb or for the new rail construction to connect to the private trackage at Campbell. While perhaps not as onerous as the costs associated with environmental impact reviews, permitting and litigation in connection with constructing a coal hopper, conveyor and related facilities in the middle of Pigeon Lake, the Cobb-related costs still would be significant, totaling about { } for both “ends” of the project.¹⁷³

- While TranSystems acknowledged that MSRR would have to acquire land and rights-of-way, no costs were included in their calculations. Dr. Barbaro conservatively estimates { }, based on the 2014 WorleyParsons Report.¹⁷⁴

- CSXT’s consultants improperly calculated capital costs per ton, making the same errors with respect to the Cobb Rail alternative that they did in their examination of the Direct Water Route.¹⁷⁵

¹⁷⁰ *Id.* at 91.

¹⁷¹ *Id.*

¹⁷² *Id.*

¹⁷³ *Id.* at 91-92.

¹⁷⁴ *Id.* at 92.

As corrected and restated in Dr. Barbaro’s Rebuttal Report, the actual capital cost of the infrastructure needed for the Cobb-Rail plan that TranSystems designed for CSXT is { } as claimed by the railroad.¹⁷⁶ When the corrected capital costs are amortized and considered together with the actual operating costs for the Cobb-Rail Route, the totals – over { } – are more than { } than CSXT’s claimed { }, and some { } than the challenged tariff rate.¹⁷⁷ The Cobb-Rail Route plainly does not represent an effective competitive alternative to CSXT for coal delivery service to Campbell.

5. Application of the Limit Price Test Confirms CSXT’s Market Dominance at Campbell

CSXT devotes almost thirty (30) pages of its Reply to attacking the Board’s Limit Price Test,¹⁷⁸ starting with the condescending comment that “CSXT has long been *telling the Board* that this approach lacks any economic validity.”¹⁷⁹ It is not hard to understand why: as Consumers showed on Opening, application of the test in this case easily confirms CSXT’s market dominance over the Campbell coal traffic.¹⁸⁰ However, CSXT’s challenges either have been thoroughly considered and rejected by the Board

¹⁷⁵ *Id.* at 96-98.

¹⁷⁶ *Id.* at Figure 3-11.

¹⁷⁷ *Id.* at Figure 3-12.

¹⁷⁸ *See* CSXT Reply at II-B-53-81.

¹⁷⁹ *Id.* at II-B-54 (emphasis supplied).

¹⁸⁰ *See* Consumers Opening at II-53-54.

previously, or are predicated on results-oriented “adjustments” to the test, or distortions of reality (such as that respecting the historic transportation of coal to Cobb) that have no merit when it comes to assessing CSXT’s market power over Campbell.

**a. The Board Already Has Rejected
CSXT’s “Legality Challenge”**

CSXT acknowledges¹⁸¹ that the Board has ruled previously that the Limit Price Test can be used without the kind of prior, formal notice-and-comment rulemaking generally utilized for legislative rules. As the Board explained in *TPI*, the test is a further refinement of the existing qualitative guidelines for determining market dominance, introducing a measure of objectivity into what still remains a fact-specific adjudicatory inquiry. *TPI* at 22.¹⁸² Such a refinement to the market dominance guidelines also is analogous to features of the Board’s current application of the SAC constraint under the *Coal Rate Guidelines* that were adopted – often at the railroads’ behest or with their endorsements – in individual adjudications. Examples include the internal cross-subsidy tests¹⁸³ and the guidelines governing the SARR proponent’s ability to re-route traffic to maximize densities for SAC purposes.¹⁸⁴

¹⁸¹ See CSXT Reply at II-B-55-56.

¹⁸² As the Board noted, price-to-cost ratios long have been recognized as valid elements of the “flexible” rules for addressing market dominance from an evidentiary standpoint. *Id.*, citing *Market Dominance Determinations*, 365 I.C.C. at 122, 123. See also *Ariz. Pub. Serv. Co.*, 2 S.T.B. at 378.

¹⁸³ *Otter Tail Power Co. v. BNSF Railway Co.*, STB NOR 42071 (STB served Jan. 27, 2006); *PPL Montana v. BNSF Railway Co.*, 6 S.T.B. 752 (2003).

¹⁸⁴ See *TMPA*, 6 S.T.B. at 591-95.

Likewise, the Board in *TPI* disposed of the argument (repeated by CSXT here)¹⁸⁵ that 49 U.S.C. § 10706 (d)(2) – which by its terms only precludes drawing a presumption regarding market dominance from the relationship of the RVC ratio for the *challenged rate* to the 180% threshold – prohibits the use of *any* type of price-cost ratio for *any* purpose related to market dominance. *See TPI* at 22-24. While CSXT insults the Board with a charge that drawing distinctions between the RVC ratio for the challenged rate and the price-cost ratio applicable to an allegedly competitive alternative “is a shell game,”¹⁸⁶ the distinction in fact reflects a very meaningful difference. The RSAM benchmark is a useful tool for assessing the degree to which a particular rail rate reflects differential pricing: the higher the rate in relation to the average needed to maintain revenue adequacy, the greater the degree of differential pricing being exercised by the carrier and, by necessary implication, the more demand inelastic is the traffic subject to the rate.¹⁸⁷ By indicating the point on the price-cost curve where the railroad could no longer increase its rate without risking traffic diversion to the potential competitor, the

¹⁸⁵ *See* CSXT Reply at II-B-57-61.

¹⁸⁶ *Id.* at II-B-61.

¹⁸⁷ *See Mr. Sprout, Inc. v. United States*, 8 F.3d 118, 124 (2d Cir. 1993). CSXT offers to distinguish *Mr. Sprout* on the grounds that the court “never hinted at or endorsed” R/VC ratios above 180% as indicators of market dominance. CSXT Reply at II-B-60. But this misses the point. The *Mr. Sprout* court was examining qualitative market power, using low R/VC ratios as indicators that the traffic at issue benefitted from competition sufficient to obviate the need for regulation through revocation of an existing exemption. *See* 8 F.3d at 123. Where, as here, the issue also is a qualitative assessment of market power under circumstances where the parties have stipulated that the 180% R/VC threshold for *quantitative* market dominance has been crossed, *Mr. Sprout* supports the Board’s Limit Price Test.

Limit Price Test provides a gauge of (i) whether the subject traffic can be priced by the railroad as captive traffic; and (ii) if so, how much differential pricing (as measured against RSAM) the railroad can exert, which is a valid measure of the extent of the traffic's dependency on the carrier.

b. CSXT's "False Positives" and "Short Haul Adjustment" Claims Are Without Merit

In arguing that the Limit Price Test applied to this case would be "irrational," CSXT fashions two (2) basic claims: (i) that the test produces a "false positive" because the cost of vessel service to the supposedly competitive Cobb Station would allow a hypothetical rail rate with an RVC ratio higher than CSXT's RSAM;¹⁸⁸ and (ii) that as a system average calculation, RSAM is not a valid benchmark for this case without "adjustments" for the length of haul between Chicago and Campbell.¹⁸⁹ Neither bears up under scrutiny.

CSXT's "false positives" assertion depends entirely on a false notion: that the Cobb Station enjoyed "effective" transportation competition between the vessel and rail modes in the years prior to its retirement. As shown *supra*, {

}.
}

CSXT's Table II-B-9 posits costs for vessel transportation that never faced an intermodal challenge, and CSXT then uses those numbers to infer an entirely imaginary railroad rate

¹⁸⁸ CSXT Reply at II-B-62-64.

¹⁸⁹ *Id.* at II-B-67-72.

that it would measure against the Limit Price Test. The Board’s test only has been applied against verified prices for transportation service that posed an actual, potentially effective alternative to an existing rail movement. CSXT proposes to evaluate it using costs for a non-competitive, defunct water transportation movement, and a hypothetical railroad “alternative” that the { }. Its aim is obvious, as is the lack of merit to its argument.

The same holds true with respect to CSXT’s criticism that the Limit Price Test should be adjusted for length of haul.¹⁹⁰

First, CSXT’s claim that use of the average RSAM to benchmark the degree to which a particular movement appears to be rail captive “is bound to bias the results against short-haul movements”¹⁹¹ is an echo of its argument in *TPI* that a broad measure like RSAM cannot aid in the market dominance determination because it does not sufficiently recognize that some traffic must be priced above the average.¹⁹² The Board rejected this claim:

¹⁹⁰ *Id.* at 67-72.

¹⁹¹ *Id.* at II-B-67.

¹⁹² *TPI*, CSX Transportation, Inc.’s Petition for Reconsideration, June 20, 2013, V.S. Willig at 7-8.

Using RSAM as one component of the limit price approach is not inconsistent with differential pricing, given that it is the limit price R/VC ratio (rather than the actual R/VC ratio) that is compared to RSAM. Thus, carriers are free to employ differential pricing by charging rates above or below RSAM as long as there are alternatives that are priced low enough to exert competitive pressure.

TPI, STB served December 19, 2013 at 11. Consistent with this principle, in the three (3) cases where the Limit Price Test was used to aid the market dominance determination, the Board considered dozens of actual routings that were identified as sources of potential competition for the subject rail service, without making any distance adjustments prior to application of the test. The distance ranges were wide: 95-1,335 miles in *M&G*; 24-1,266 miles in *DuPont*; and 143-1,541 miles in *TPI*.¹⁹³ In each case, the defendant's average RSAM as determined by the Board served as the benchmark.

Second, the various “adjustments” that CSXT proposes are untethered to the purposes of RSAM or to its role in the Limit Price Test, and appear designed solely to justify a “write-up” of CSXT's RSAM (currently 265%¹⁹⁴) to levels that would make artificially understated cost estimates for its Direct Water and Cobb-Rail alternatives seem competitive.¹⁹⁵ For example, CSXT calculates what it claims is its “average

¹⁹³ See Rebuttal Exhibit II-B-3.

¹⁹⁴ See *Simplified Standards for Rail Rate Cases – 2014 RSAM and R/VC > 180 Calculations*, STB Ex Parte No. 689 (Sub-No.7) (STB served Feb. 26, 2016) at 3.

¹⁹⁵ Without acknowledging it, CSXT starts off by changing the weighting convention used by the Board in developing the annual RSAM ratios from the relationship of aggregate revenues to aggregate variable costs, to weighting based on total

markup” on potentially captive traffic where the route is fewer than 300 miles long, at 397% of variable costs.¹⁹⁶ The RSAM benchmark would tell us that CSXT appears to be exercising a considerable degree of differential pricing (on average) on its captive short-haul traffic. CSXT, however, proposes to revise the benchmark altogether, to create an artificial “short-haul RSAM” that resets the starting point for measuring market power from 265% to 397%, which CSXT raises to 429% by applying the 1.08 RSAM markup developed by the Board to apply to CSXT’s *entire system*. CSXT then offers up two (2) other alternative numbers tricks: a revision of the 1.08 factor to 1.25 based solely on an AAR witness’ contested claim in Ex Parte No. 722 that “competitive firms will earn at least 25% more than their cost of capital;”¹⁹⁷ and an even more generous write-up (to 1.60) based on a “replacement cost” approach that CSXT acknowledges is not related to CSXT’s own assets.¹⁹⁸ As executed by CSXT, these maneuvers produce R/VC ratios of 497% and 636%, respectively.¹⁹⁹ Obviously, if one inflates the CSXT RSAM high enough, then virtually any physically possible “alternative” could be made to appear cost

carloads. CSXT also purports to present a “RSAM” that reflects only one (1) year’s traffic, when the Board’s rules clearly prescribe a four (4) year average and CSXT was in possession of ten (10) years of data, based on its waybill sample request to the Board. *See* July 8, 2015 letter from Raymond A. Atkins to William F. Huneke, e-workpaper “Huneke Letter July 2015.pdf.”

¹⁹⁶ *See* CSXT Reply at II-B-68.

¹⁹⁷ *Railroad Revenue Adequacy*, STB Ex Parte No. 722, Comments of the Association of American Railroads, Sept. 5, 2014, V.S. Brinner, Exhibit 2.

¹⁹⁸ *See* CSXT Reply at II-B-71.

¹⁹⁹ *Id.* at II-B-70, 72.

competitive, as “at some point even a monopolist could price its services so high that patently ridiculous transportation alternatives would eventually serve to constrain rates.” *TPI* at 16, citing *Ariz. Pub. Serv.*, 742 F. 2d at 651.²⁰⁰ In essence, that is CSXT’s ploy here, and it should be rejected by the Board. The Limit Price Test looks to a carrier’s system average RSAM as a benchmark to measure the degree to which a shipper’s traffic may be captive, by assessing the extent to which the defendant carrier can and does differentially price that traffic. The reference point is the limit price ratio: the RVC produced by the price of a potentially feasible alternative and the variable cost of the service provided by the railroad. As shown in this Part II-B, the limit price ratios applicable to the costs of CSXT’s proposed Direct Water and Cobb-Rail alternatives – properly measured – are at least { }, respectively (at corresponding 1Q15 levels), far in excess of CSXT’s 265% RSAM ratio.²⁰¹ Assuming *arguendo* that these “alternatives” could be operationally feasible (which Consumers has shown they are not), application of the Limit Price Test confirms that they do not represent effective competition for CSXT rail service to Campbell.

²⁰⁰ It bears noting that if CSXT’s understated per ton costs for the Direct Water { } and Cobb-Rail { } alternatives are adjusted *solely* for CSXT’s failure to recognize the lowest estimated rail rate premium for winter shipments and use of the wrong KCBX transfer fee, as explained *supra* (which adds { } per ton to each Route), the resulting costs – { } and { } per ton, respectively – reflect RVC ratios ({ } at the corresponding 1Q15 levels) higher than even the super-inflated ratios that CSXT’s RSAM “adjustments” produce. See Table II-A-1, *supra*.

²⁰¹ See Barbaro Rebuttal Report at Figures 2-26 and 3-12, and Table II-A-1, *supra*.

6. **Properly Analogous Rate Comparisons**
Confirm CSXT's Market Dominance at Campbell

CSXT invites the Board to consider a rate comparison of sorts, as part of the market dominance analysis. For CSXT, this involves comparing vessel costs to Cobb, after an arbitrary write-up,²⁰² to CSXT's cost estimates for its Direct Water and Cobb-Rail alternatives, and ultimately to the challenged rate. Asserting that all fall within a comparable range, CSXT concludes that its rate to Campbell indeed has been constrained by effective competition.²⁰³ However, each element of CSXT's syllogism is undermined by the facts and the law. As shown by Dr. Barbaro,²⁰⁴ more rational estimates of the costs of CSXT's "alternatives" show the per ton equivalents to be dramatically higher than both the estimated vessel-captive costs at Cobb ({ }) by CSXT's calculation²⁰⁵), and the challenged rate. Moreover, the notion that "effective

²⁰² CSXT takes actual reported Cobb vessel costs ({ }) and adds { } on the grounds that if a third party operated the dock it would fold a capital recovery charge into its rate. CSXT Reply at II-B-80 and Exhibit II-B-2 at 20. However, the obvious reality is that a third party *didn't* operate the Cobb dock, and its invested capital was recovered long ago. CSXT's results-oriented write-up has no merit.

²⁰³ See CSXT Reply at II-B-80-81. CSXT again refers to its witness Murphy for the claim that "there are no unique features of the Campbell plant that make water deliveries impractical and uneconomic." *Id.*, Exhibit II-B-2 at 14. However, CSXT's witness acknowledges that he conducted no independent analysis of the physical, operational or economic challenges associated with vessel transportation to Campbell, and that he relied "on CSXT and its experts for the specifics" on which his opinion is based. *Id.* at 12. Witness Murphy's opinion, then, is undermined by the same evidence presented herein and by Consumers on Opening, that shows the infeasibility of vessel transportation of coal to Campbell.

²⁰⁴ See Barbaro Rebuttal Report at Figures 2-26 and 3-12.

²⁰⁵ See CSXT Reply at II-B-79.

competition” can be established simply by showing that the price of a hypothetical alternative is close to the challenged rate (which is not even the case here), has been rejected by the Board:

[T]he mere fact that a rail carrier prices its services right at the threshold where, if slightly higher, it might begin to lose traffic to an alternative does not indicate whether that alternative is constraining rates effectively.

M&G at 13. *See also TPI* at 17.

Far more probative on the issue of CSXT’s market dominance are two (2) other, different rate comparisons with respect to coal movements that are subject to effective transportation competition: the Campbell origin coal movement from the mines in the Powder River Basin to the Chicago interchange; and the rail transportation of coal from Chicago to Consumers’ Karn-Weadock complex near Essexville, MI.

As the Board is well aware, BNSF and Union Pacific both provide coal transportation service between the PRB mines and major Midwestern interchanges, including Chicago. As Consumers noted on Opening, BNSF has been and currently is the carrier that successfully competed for the origin portion of the overall Campbell coal movement.²⁰⁶ At the time that CSXT established the initial Tariff 13952 rate of \$14.95 per ton for deliveries from Chicago to Campbell, the BNSF origin rate (including a fuel surcharge) { } Both legs of the journey from the PRB to Campbell

²⁰⁶ *See* Consumers Opening at I-1, n. 1.

²⁰⁷ *See* { }

involve unit train shipments, using railcars supplied by Consumers at no additional cost to the railroads. The average one way distance via BNSF from the PRB to the Chicago interchange is approximately 1145 miles, while the CSXT route from Chicago to Campbell is only 164 miles in length.²⁰⁸ Thus, while CSXT's service comprises only 12.5% of the total coal movement, at the time this case began the CSXT delivery rate at issue comprised { } of Consumers' total transportation charge. The only way that a railroad with a 12.5% share of a coal movement can command { } for that movement is through the exercise of market dominance.

Similarly, Consumers showed on Opening that even before CSXT established the rate that initiated this case,²⁰⁹ CSXT was charging Consumers some { } more on a *nominal* basis for service from Chicago to Campbell than it was for transportation from the same interchange²¹⁰ to Karn-Weadock, an admittedly competitive station over twice as far from Chicago.²¹¹ On Reply, CSXT attempts to explain the disparity away by arguing, alternatively, that (i) "short haul movements have notoriously higher rates, on a per mile basis than larger-haul movements;" and (ii) Karn-Weadock's

²⁰⁸ See Consumers Opening at II-10.

²⁰⁹ As discussed *supra*, after Consumers awarded its regular Karn-Weadock volumes to another railroad, CSXT retaliated by setting a tariff rate on any remaining tons at a level { } than its previous Karn-Weadock price, and equal to the Campbell rate at issue.

²¹⁰ The Karn-Weadock trains traversed the same lines in the Chicago area that CSXT claims help justify its monopolistic pricing for Campbell. See CSXT Reply at II-B-65.

²¹¹ See Consumers Opening at II-55-57.

multiple-carrier and modal options produce measurably more competition than the “two-options” scenarios that CSXT hypothesizes for Campbell.²¹² The problem with the first point is that the Karn-Weadock move is only about 400 miles, and the rate to this competitive plant still was { } than the Campbell rate on a *nominal* basis. The operative difference is the lack of competition at Campbell, not the length of haul. As for CSXT’s second argument, it is contradicted by the Board’s several rulings in merger proceedings – which CSXT supported – that so long as shippers have access to two (2) competitive options, they suffer little adverse economic or other effects of increased market concentration resulting from the loss of a third alternative.²¹³ Neither the merger decisions nor the Board’s market dominance jurisprudence inquire into whether “some movements are more competitive than others;”²¹⁴ either a shipper benefits from effective competition, or it does not. For Consumers at Campbell, the evidence demonstrates that CSXT enjoys market dominance.

²¹² See CSXT Reply at II-B-82-83.

²¹³ See *Union Pacific Corp., Et Al. – Control and Merger – Southern Pacific Railway Corp., Et Al.*, 1 S.T.B. 233, 369 (concerns over a loss of competition in 3-2 markets were “greatly overstated”), 387 (agency merger policy focused “on preserving two-railroad competition, not on preserving three-railroad competition”) (1996); *Burlington Northern Et Al. – Merger – Santa Fe Pacific, Et Al.*, 10 I.C.C. 2d 661, 745 (1995) (conditions will not be imposed on merger if shipper does not show that the transaction “will make it captive where it was not captive before.”). See also *CSX Corp. Et Al. – Control – Conrail, Inc., Et Al.*, 3 S.T.B. 196, 231 (1998) (commenting on the applicants’ plan to avoid “whenever possible” situations where shipper options are reduced from two to one only).

²¹⁴ Cf., George Orwell, “Animal Farm,” 1947, p. 134 (Signet Classics ed. 1996).

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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

PART III

STAND-ALONE COST

III. A. STAND-ALONE TRAFFIC GROUP

As designed by Consumers, consistent with the *Guidelines*⁷ governing standards, the CERR replicates a portion of the existing CSXT system between a point near 22nd Street in Chicago, IL and the Campbell Station near West Olive, MI, consisting of 160.52 route-miles of CERR-constructed track and 73.83 route-miles that the CERR would operate over pursuant to trackage rights granted by other carriers.¹ In its Reply, CSXT generally accepts the scope and configuration of the CERR.²

¹ Consumers Opening at III-A-1-2.

² CSXT Reply at III-B-1.

Neither the Board's directions in *General Procedures for Presenting Evidence in Stand-Alone Rate Cases*³ nor its July 15, 2015 specific Procedural Order in this case includes a presentation category denoted "Pejorative Claptrap." Therefore, in this Part III-A of its Rebuttal, Consumers will skip the insulting and occasionally amusing rhetoric that peppers CSXT's Reply, and respond directly to the Defendant's substantive challenges to Consumers' Opening Evidence with respect to the traffic and revenues of the hypothetical CERR.

1. CERR Traffic Group

CSXT objects to Consumers' selection practices regarding the merchandise traffic moving over the CERR system, arguing in essence that a complaining shipper's SARR must transport *all* of the rail traffic of any third-party shipper that it elects to serve, if that traffic moves over lines replicated by the SARR in the real world. By not following this "all or nothing" approach, CSXT asserts that Consumers' Opening "blazes new ground" and utilizes a "novel approach" for selecting the merchandise traffic to be served by the CERR. *Id.* at III-A-1; *see also id.* at III-A-10.

Consistent with the goals of maximizing efficiency and minimizing costs, Consumers limited the class of merchandise traffic that would be handled by the CERR to traffic that entered the CERR in intact trains, and would move intact over the CERR to the point of exit without any intermediate switching. The

³ STB Ex Parte No. 347 (Sub-No. 3) (STB served March 12, 2001).

CERR traffic group also does not include certain types of traffic, such as Toxic by Inhalation (“TIH”) shipments. In objecting to Consumers’ selections, CSXT complains that the CERR would be required to “somehow identify and divert to its lines – on a real time basis – only merchandise trains that require no switching in Chicago and then only those merchandise trains that are not carrying any TIH shipments.” *Id.* at III-A-2. CSXT then argues that the CERR cannot elect to participate only in a subset of the rail traffic of a given shipper, and instead must transport either all or none of that shipper’s freight:

[Consumers] would shun traffic *from the same customer* to the same destination if it is delivered by a connecting carrier on a train that required any switching within the congested Chicago gateway.

Id. (emphasis in original).

In the point of fact, there is nothing “novel” about Consumers’ traffic group selection, as it is fully consistent with the broad flexibility accorded shipper complainants under the *Guidelines*, and with applicable precedent.

The only “authority” referenced by CSXT in support of its theory is an artificially semantic reading of the *Coal Rate Guidelines*, which CSXT says only allow a complainant to “group traffic ‘from other shippers’ by reference ‘to existing customer lists.’” CSXT claims that “[i]mplicit” in these guidelines is the principle that “when traffic from another shipper is selected (to enjoy greater economies of density), then the SARR must serve *all* of that customer’s needs, warts and all.” *Id.* at III-A-10 (emphasis in original). CSXT insists that the

Guidelines mandate an “all-or-nothing” approach to the inclusion of a given third-party shipper’s traffic in a SARR traffic group:

If 90% of [a shipper’s] traffic can be handled easily, while the other 10% requires more attention and infrastructure investment, it would be grossly improper to permit the SARR to minimize the expense of serving that individual customer by providing only the simple service, and refusing the more expensive. If permitted, the Board would be placing the SAC test on a perilous path where complainants carve up the demands of individual customers into those the hypothetical SARR wishes to serve and those it would abandon.

Id.

CSXT’s traffic selection objections are without merit, and should be rejected.

First, CSXT’s argument completely mischaracterizes the nature of the grouping principles articulated in the *Coal Rate Guidelines*. CSXT seizes upon references to “shippers” and “customer lists” in the *Guidelines* as a basis for imposing a narrow, “all-or-nothing” restriction upon complaining shippers. *See, e.g.*, CSXT Reply at III-A-7 (SAC is used to compute the rate a competitor would need to charge to serve a “captive shipper *or a group of shippers*”) (quoting *Guidelines*, 1 I.C.C.2d at 528) (emphasis in CSXT Reply); *id.* (“The ICC made it clear that ‘[t]he ability to group traffic *of different shippers* is essential to [the] theory of contestability.’”) (quoting *Guidelines*, 1 I.C.C.2d at 544) (emphasis in CSXT Reply); *id.* The actual overriding theme of the *Guidelines*’ “grouping”

principle is exactly the opposite, and emphasizes the broad flexibility to be afforded complaining shippers when designing their stand-alone systems:

The parties *will have broad flexibility* to develop the least costly, most efficient plant. The plant should be designed to minimize construction (or acquisition) and operating costs and/or maximize the carriage of profitable traffic. In selecting the route of a SAC railroad, for instance, an overriding factor may be the effort to lower costs by taking advantage of economies of density. *Generally, a stand-alone railroad would attempt to fully utilize plant capacity, adding other profitable traffic in order to reduce the average cost of operation.*

Coal Rate Guidelines, 1 I.C.C.2d at 543 (emphasis added). The *Guidelines*' broad flexibility in the grouping of traffic is "essential" to the theory of contestability:

The ability to group traffic of different shippers is *essential* to the theory of contestability. It allows the captive shipper to identify areas where production economies define an efficient subsystem or alternative system whose traffic is divertible to a hypothetical competitor. *Without grouping, SAC would not be a very useful test*, since the captive shipper would be deprived of the benefits of any inherent production economics. The railroads and shippers agree on the propriety of grouping to develop a SAC model, but they disagree on what traffic should be included in a stand-alone system.

We see no need for any restrictions on the traffic that may potentially be included in a stand-alone group.

Id. at 544 (emphasis added).

Nothing in the *Guidelines* purports to limit a complainant to a choice between including all of a given shipper's traffic in the stand-alone group, or none of it. Indeed, as the decisions implementing the *Guidelines* make clear, the plain

focus of “grouping” is “traffic,” not “shippers.” *See, e.g., TMPA*, 6 S.T.B. at 586 (“[t]he traffic group includes the complainant’s traffic (the issue traffic) and *other traffic* designated by the complainant (the nonissue traffic).”) (emphasis added); *West Tex. Utils. Co.*, 1 S.T.B. at 657 (“[T]he complaining shipper *can select any subset of available traffic* to determine the least cost at which that subset of traffic could be served independently of other traffic.”) (emphasis added). CSXT’s restrictive “all-or-nothing” theory is not supported by the *Guidelines*.

CSXT’s position regarding the supposed constraints on a shipper’s grouping flexibility also is contradicted by arguments that CSXT itself previously advanced in the Board’s *Ex Parte No. 715* proceeding. In Reply Comments in that proceeding addressing the question whether Average Total Cost (“ATC”) should be modified to account for low-rated movements in a SARR’s traffic group, CSXT argued against any modification in the shippers’ favor specifically because of the wide latitude that complaining shippers enjoy under the *Guidelines* in selecting traffic: “Given that complainants have the sole power to select traffic and designate on-SARR and off-SARR points to maximize density, the Board’s concern that low-rated traffic selected by the complainant might not cover the incumbent’s URCS variable cost is misplaced and wholly unnecessary.”⁴

Emphasizing the wide discretion afforded to complaining shippers, CSXT added

⁴ *Rate Regulation Reforms*, Ex Parte No. 715, Joint Reply Comments of CSX Transportation, Inc. and Norfolk Southern Ry. (filed December 7, 2012) at 23.

that a complainant selects traffic in its “sole and informed discretion,” and that the complainant “is allowed to select traffic in a manner that most advantages it under the ATC methodology.”⁵ Consumers agrees.

Second, CSXT’s argument is undermined by specific traffic selection decisions made by complainants in actual cases, with Board approval. CSXT seeks to create the impression that, in the long history of stand-alone rate cases, no complaining shipper ever has elected to transport only a portion of a given third-party shipper’s rail traffic. *See, e.g.*, CSXT Reply at III-A-1 (Consumers “blazes new ground in its novel approach”); *id.* at III-A-10 (“[T]he Board has never been exposed to this kind of traffic selection procedure . . .”). CSXT offers no evidence in support of this argument, and none exists. To the contrary, although the details of SAC case traffic selection decisions are not public, there is ample public evidence to support the conclusion that few if any of the prior SAC complainants (or prior SAC decisions) ever abided by CSXT’s novel “all-or-nothing” rule.

For example, many prior proceedings before the Board wherein the SAC Constraint was applied involved issue movements of coal by rail (or third-party shipper movements of coal by rail) to electric-generating stations. In virtually all of these cases, the approved traffic group excluded certain, seemingly less desirable traffic of those same shippers that moved over the same lines

⁵ *Id.*

replicated by the SARR: the limestone traffic that electric utilities typically move by rail to their generating stations. Electric utility companies utilize limestone at their generating facilities as part of the “scrubbing” process to minimize sulfur emissions, and this limestone very often is transported by the same railroad that hauls the utility’s coal. For example, a July 2014 article in Progressive Railroading refers to the “weekly” or even “daily” rail transportation of limestone to the many electric generating stations owned by American Electric Power:

American Electric Power (AEP) also counts Class Is amount the six railroads that deliver coal to about 15 of its plants. . . .

For the past 10 years, the utility also has used railroads and its rail infrastructure to take delivery of lime and limestone at plants for scrubbing and emission controls work. Although the lime and limestone arrives daily, or weekly in some cases, the volumes don’t come anywhere close to coal volumes, says Hume.

Jeff Stagl, *“Mines, utilities bolster rail infrastructure to keep power plants fueled,”*

Progressive Railroading (July 2014) (Consumers Rebuttal e-workpaper

“Progressive Railroading.pdf”); *see also* Ramesh Malhotra and Robert L. Major,

“Electric Utility Plant Flue-Gas Desulfurization: A Potential New Market for

Lime, Limestone, and Other Carbonate Materials,” Illinois State Geological

Survey (June 1974), at 2, 6-10 (identifying the volumes of limestone required for

desulfurization in electric generating plants and noting that Duquesne Light had

installed a 400-MW capacity scrubber system in 1974 and that Louisville Gas &

Electric was scheduled to do so in 1980) (Consumers Rebuttal e-workpaper “Desulfurization.pdf”).

The Board has issued a number of decisions in “coal only” SAC cases where the complainants’ traffic groups included efficient unit coal train movements, but excluded the smaller limestone shipments made by the same utilities. *See, e.g., WFA II* at 11 (“WFA’s modified traffic group includes 24 power plants that procure coal from the PRB coal fields.”); *TMPA*, 6 S.T.B. at 588 (“TMPA assumed that the GCRR would transport coal moving in unit-train service from PRB mine origins to electric utilities at 76 destinations.”); *WPL*, 5 S.T.B. at 967 (“The EWRR traffic group consists of coal shipments destined to 38 coal-burning electric generating facilities, including WPL’s Edgewater facility.”); *West Tex. Utils. Co.*, 1 S.T.B. at 657 (“In this case, the traffic selected by WTU for its hypothetical SARR . . . is limited to the coal traffic of 11 selected power plants . . .”). None of the Board’s decisions includes any suggestion that the complaining shippers violated SAC rules by declining to include the non-coal traffic tendered by unit train coal shipper members of the SARR’s selected traffic group. When viewed in light of this long-standing precedent, it is evident that it is CSXT’s “all-or-nothing” argument – and not Consumers’ third-party traffic selection – that “blazes new ground” and represents a “novel approach.”

Third, CSXT’s argument misstates the relationship between SARR traffic and traffic that is left out of the SARR group, wrongly arguing that the CERR would need to engage in some type of “real time” sorting of the trains that

approach its system. *See, e.g.*, CSXT Reply at III-A-6-7 (CSXT “harbors serious doubts that the [traffic] selection criteria can be administered on a real-time basis as Consumers assumes.”); *see also id.* at III-A-1-2 (Consumers “assumes that the hypothetical railroad would be able to somehow identify and divert to its lines – on a real time basis – only merchandise trains that require no switching in Chicago and then only those merchandise trains that are not carrying any TIH shipments.”).

Significantly, SAC theory does not require a complaining shipper to account for (or otherwise even to recognize) traffic of the defendant carrier that it elects not to include on its system. The SARR is purely a theoretical construct; it models actual operations, but does not actually conduct them. Customer interactions are not part of the modeling process, nor realistically could they be, as the SARR obviously does not really exist. The complainant is entitled to assume that the traffic that it elects not to include in the SARR group continues to move over the lines of the defendant carrier in the same manner as it does in the real world, while the selected traffic – and only the selected traffic – is assumed to move over the lines that the SARR has replicated, in a sort of “parallel universe” of rail service. The Board has never required a complaining shipper to address the real-time sorting of traffic as between SARR and “non-SARR” shipments moving via the defendant over the defendant’s replicated lines. Similarly, as noted above with respect to limestone movements to coal-fired electric generating facilities, the Board has never required a complaining shipper’s SARR to prove that it could

distinguish – in “real time” or otherwise – between selected shipments and excluded shipments arriving at an interchange point on its system.⁶

Fourth, CSXT’s argument miscasts the nature of the obligations that the SARR owes to its customer group, wrongly faulting Consumers that “[n]o real world customer would contract with a railroad” on terms that allowed for the movement of only a portion of its traffic. CSXT Reply at III-A-8; *see also id.* at III-A-8-9 (“What would the contract between the customer and the CERR look like for such erratic service? Would it provide that ‘CERR will handle customer’s shipment unless those shipments require too much work?’”) There is no requirement under SAC theory that the SARR proponent demonstrate an ability to persuade individual shippers to volunteer as members of the SARR’s traffic group. To the contrary, a complainant is entitled to select *any* traffic from the defendant’s traffic base, and can presume its inclusion in the group so long as the SARR demonstrates the capability to transport *that traffic* in a manner comparable or superior to the service provided by the defendant.⁷ Even here, however, the Board recognizes that the obligation must be understood to have limits.

For example, a given shipper may contract with the defendant carrier to provide single-line rail service. A complaining shipper, however, does not

⁶ CSXT complains that Consumers’ approach “carves up” Consumers’ own shipments of bad-ordered cars. *See* CSXT Reply at III-A-9. This argument, and its many flaws, are addressed in Part III-C.

⁷ *TMPA*, 6 S.T.B. at 591.

violate SAC principles by inserting its SARR into a bridge carrier position in the subject movement, thus converting the real-world, single-line contract traffic into an interline movement via the SARR.⁸ Similarly, a complaining shipper cannot be obligated to fulfill the literal volume commitment of a given rail transportation contract solely through its SARR since the defendant carrier exists in the “parallel universe” to carry whatever traffic the SARR elects to exclude from its traffic group. Accordingly, it is improper to attempt to evaluate compliance with the terms of a transportation contract without considering the incumbent carrier’s participation in that service.

Fifth, CSXT’s argument regarding supposed gaming of the ATC revenue allocation misstates the nature of ATC. *See* CSXT Reply at III-A-2 (“Consumer’s grouping approach undermines the essence of the ATC revenue allocation, which distributes revenues over the residual incumbent assuming that all necessary services required to move each shipment will be performed on a pro-rata basis over the incumbent’s system.”). ATC does not assume that “all necessary services” will be performed on a “pro-rata” basis. ATC relies upon the variable costing assumptions of the URCS system, which assigns additional costs to origin, destination, and interchange segments to reflect the additional terminal and switching work performed by carriers in such situations. The relative weight of the costs assigned to the origin, destination, and interchange segments of

⁸ *See TMPA*, 6 S.T.B. at 590.

interline traffic varies based upon the nature of the traffic transported (as between carload, multicar, and trainload traffic). Accordingly, there is no basis for CSXT’s “pro-rata” services assumption and its related objection to Consumers’ traffic selection. Furthermore, the ATC formula also considers fixed costs. As a result, the costs associated with services performed on high-density segments are allocated differently than the costs associated with the same services performed on low-density segments.

Sixth, the traffic data provided by CSXT in discovery was missing key data that would have been required for Consumers to identify and replicate the Chicago yard operations and potentially support the inclusion of other CSXT traffic. Specifically, CSXT produced a file titled “Yard Matrix.xlsx” in discovery⁹ that indicated { } yard jobs operated annually in Chicago’s Barr and Clearing Yards combined.¹⁰ However, CSXT car event data included events for only { } annual yard trains in Chicago¹¹ Therefore, only roughly { } percent of Chicago yard train activity was recorded in the provided car event data.¹² Similarly, CSXT train movement data included events for only { }

⁹ Consumers Opening e-workpaper “Yard Matrix_Consumers Open.xlsx,” tab “NOTES.”

¹⁰ *Id.* at tab “Matrix,” cell O5 and at tab “Cover,” cell A8.

¹¹ Consumers Opening e-workpaper “Yard Shipments by Train OnSARR Events.xlsx,” tab “Train Summary,” cells S3 + T3 + U3 ({ } yard trains with car events reported at both Barr and Clearing + { } yard trains with car events reported Barr only + { } yard trains with car events reported at Clearing only.)

annual yard trains in Chicago,¹³ or roughly { } percent.¹⁴ Consumers had no ability to even identify more than half of the carload traffic CSXT claims it failed to include, much less model its operations.

Following its threshold – and unmeritorious – criticism of Consumers’ traffic group selection, CSXT states that it “otherwise accepts [Consumers’] proposed traffic group, with three exceptions.”¹⁵ Specifically, CSXT proposes to remove: (1) select trains carrying petroleum coke (“petcoke”); (2) trains traversing the CERR between Calumet Park and Curtis; and (3) select carloads moving under the same waybill as carloads that traverse the SARR. Each of CSXT’s exclusions is discussed below.

a. Petroleum Coke

CSXT removed select K300-series¹⁶ trains carrying petcoke from its Reply traffic group. However, CSXT’s justification for removing the trains and the petcoke traffic moving on them does not stand up to critical review, so Consumers retains the trains and traffic in its Rebuttal analysis.

¹² { } Chicago yard trains included in CSXT car event data ÷ { } yard trains reported in CSXT yard matrix table = { }.

¹³ Consumers Opening e-workpaper “OnSARR Y train jobs.xlsx,” tab “O Stn Codes,” cells H1 + K1 ({ } yard trains with events reported Barr + { } yard trains with events reported at Clearing.)

¹⁴ { } Chicago yard trains included in CSXT train sheets data ÷ { } yard trains reported in CSXT yard matrix table = { }.

¹⁵ CSXT Reply at III-A-11.

¹⁶ K310-313, K370-371.

CSXT's removal of K300-series trains is based on blatant misrepresentations of its train data, and its Reply contains a narrative description of the movement of K300-series trains that CSXT supports with data that it knows to be erroneous. During the discovery phase of this proceeding, CSXT produced traffic data for this group of trains that CSXT represented as reliable, and that Consumers therefore used in developing its Opening Evidence. In its Reply, CSXT alleged that the very same data contained errors which, if corrected, justified the removal of the K300-Series trains from the CERR traffic group. However, CSXT failed to reveal a *second data error* that, if accounted for, shows that the traffic and associated revenues in fact do belong in the traffic group. Moreover, CSXT not only failed to disclose the second data error, it actually relied on the faulty data to support its false description of the way the trains are allegedly handled in the "real world".

As is the case with every proceeding under the *Guidelines*, CSXT controls the traffic data here, and it has a duty to produce it in a straightforward and accurate manner. Its failure to do so completely undermines its challenge to Consumers' inclusion of the petcoke trains in the CERR traffic group.

Consumers' methodology for defining train routes from historical data was thoroughly explained in its Opening Evidence in Section III-C-2.b., "Developing Base Year and Peak Week Train Data."¹⁷ Consumers relied on train

¹⁷ Consumers Opening at III-C-39-61.

sheet data produced by CSXT to identify train routes because CSXT had stated that, “[f]or purposes of this case, reliable information about the routing of particular Consumers trains through the Chicago terminal is available in the train sheet data.”¹⁸ CSXT accepted Consumers’ methodology, confirming in its March 21, 2016 Reply to Consumers’ Petition for a Technical Conference that “[b]ecause CSXT accepted Consumers’ configuration of the CERR, CSXT did not address this [train list development] argument in detail.”¹⁹

Consumers included K300-series trains carrying petcoke that terminated or originated in Chicago’s Barr Yard, according to the CSXT train sheet data produced in discovery, and, in most cases, the waybill data. On Reply, CSXT challenged this approach, and described the movement of the subject trains as follows:

Consumers includes hundreds of petroleum coke trains that in the real world do not traverse any of the lines replicated by the SARR... The K300-series trains that Consumers assumes traverse the Barr Subdivision—coke trains going to/from East Chicago (K310-313, K370-371)—do not move on the line replicated by the CERR beyond the Curtis interchange tracks. The inbound (*i.e.*, westbound) trains actually arrive at Curtis, and immediately leave the CERR lines at Pine Junction to stay on the east side of Chicago. They do not, as Consumers proposes, move on the Barr

¹⁸ July 1, 2015 letter from Matthew J. Warren to Kelvin J. Dowd at page 3 of 5, included in Consumers’ Rebuttal e-workpapers as “2015 07 01 MJW to Dowd Re CSX Traffic Data and Operating Information.pdf.”

¹⁹ CSXT’s March 21, 2016 Reply to Consumers’ Petition for a Technical Conference at Exhibit 1, page 5, lines 87-97.

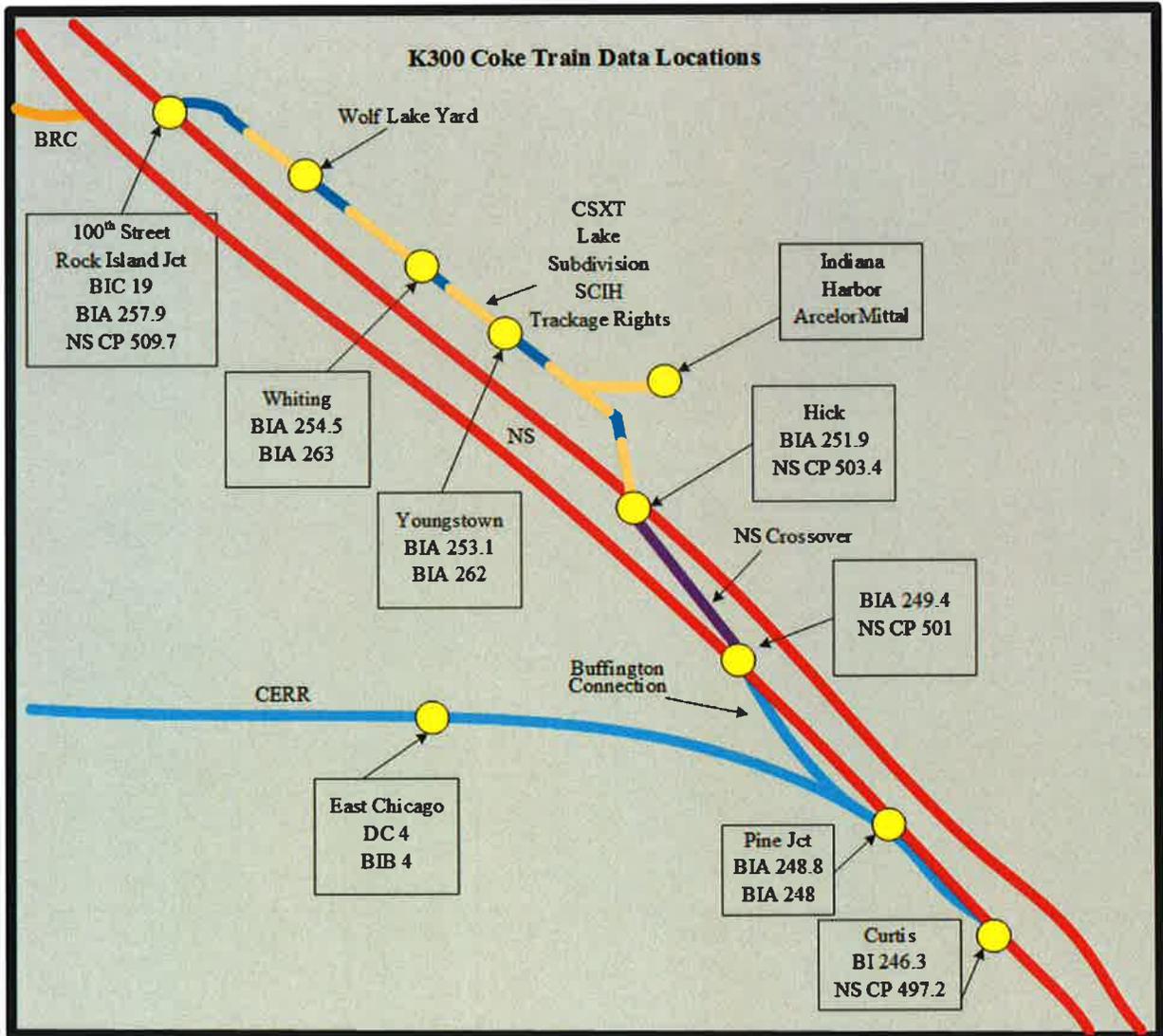
Subdivision. Based on CSXT train sheet data produced to Consumers in discovery, all but one of the 107 inbound trains report Curtis and Pine Junction, but stay on the Lake Subdivision, rather than turning left onto the Barr Subdivision.²⁰

Each of the underlined phrases in the foregoing statement is false, facts which emerged only after Consumers undertook a laborious, comprehensive review of CSXT's Reply workpapers and other materials produced in discovery. Consumers could not have known that additional review was necessary without being told that the train sheet data contained errors, information that CSXT withheld through the discovery process and only revealed in its Reply. CSXT's incomplete supporting analysis, the relevant information that it failed to disclose, and its use of erroneous data to support its Reply position are detailed below. The CERR, CSXT, NS, and the South Chicago & Indiana Harbor Railroad ("SCIH"), line segments discussed in the following sections are shown in Figure III-A-1²¹:

²⁰ CSXT Reply at III-A-11 (emphasis added, footnote omitted).

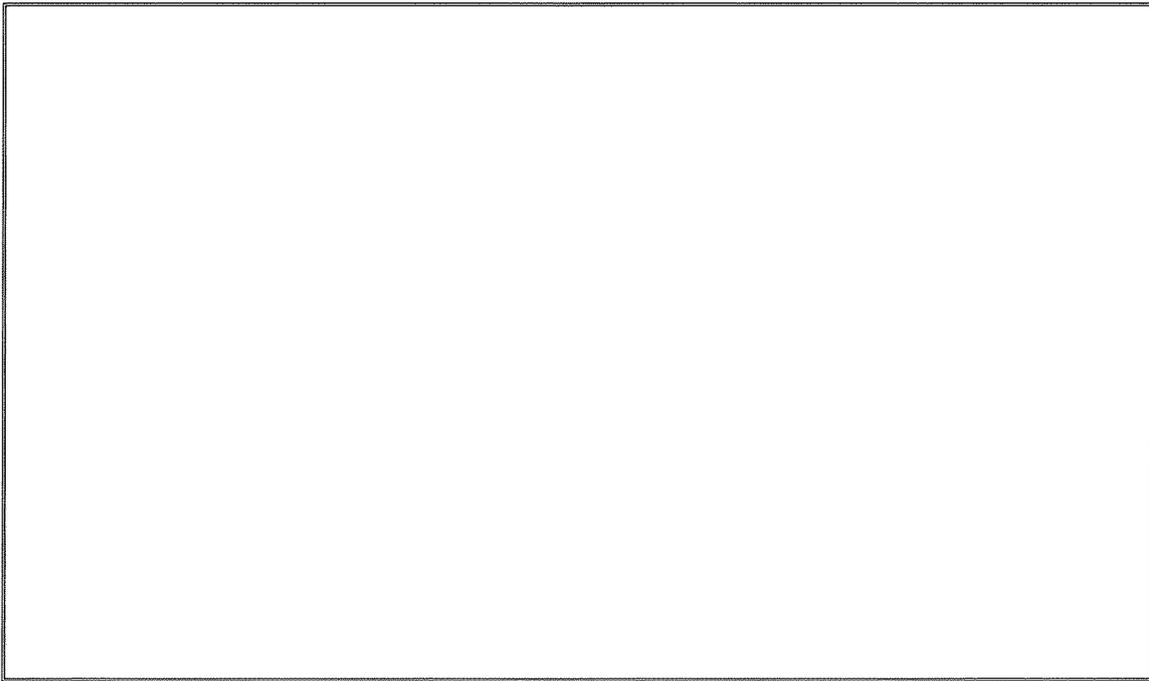
²¹ Source: Consumers Rebuttal e-workpapers, "Figure III-A-1.vsd" and "Buffington-NS-SCIH (Lake).pdf."

Figure III-A-1



The train sheet root records produced in discovery identify the origin and destination for a given train moving over a segment of CSXT’s network (e.g., Train X999 moved from Station A to Station Z). Train sheet data for an example K311 train is shown in Table III-A-1 below. This train will be used to illustrate both the defects in the data produced by CSXT, and CSXT’s failure to properly disclose the data errors.

{



}

As shown in Table III-A-1 above, train K311 had {

²² As shown in Table III-A-1 above, this particular train had six (6) train sheet records in the train sheet database, but only four (4) of them had underlying train event data associated with them. This was a common problem with the train data produced by CSXT, and Consumers' procedures properly included only the Train Sheet records with associated train events in its train routing methodology.

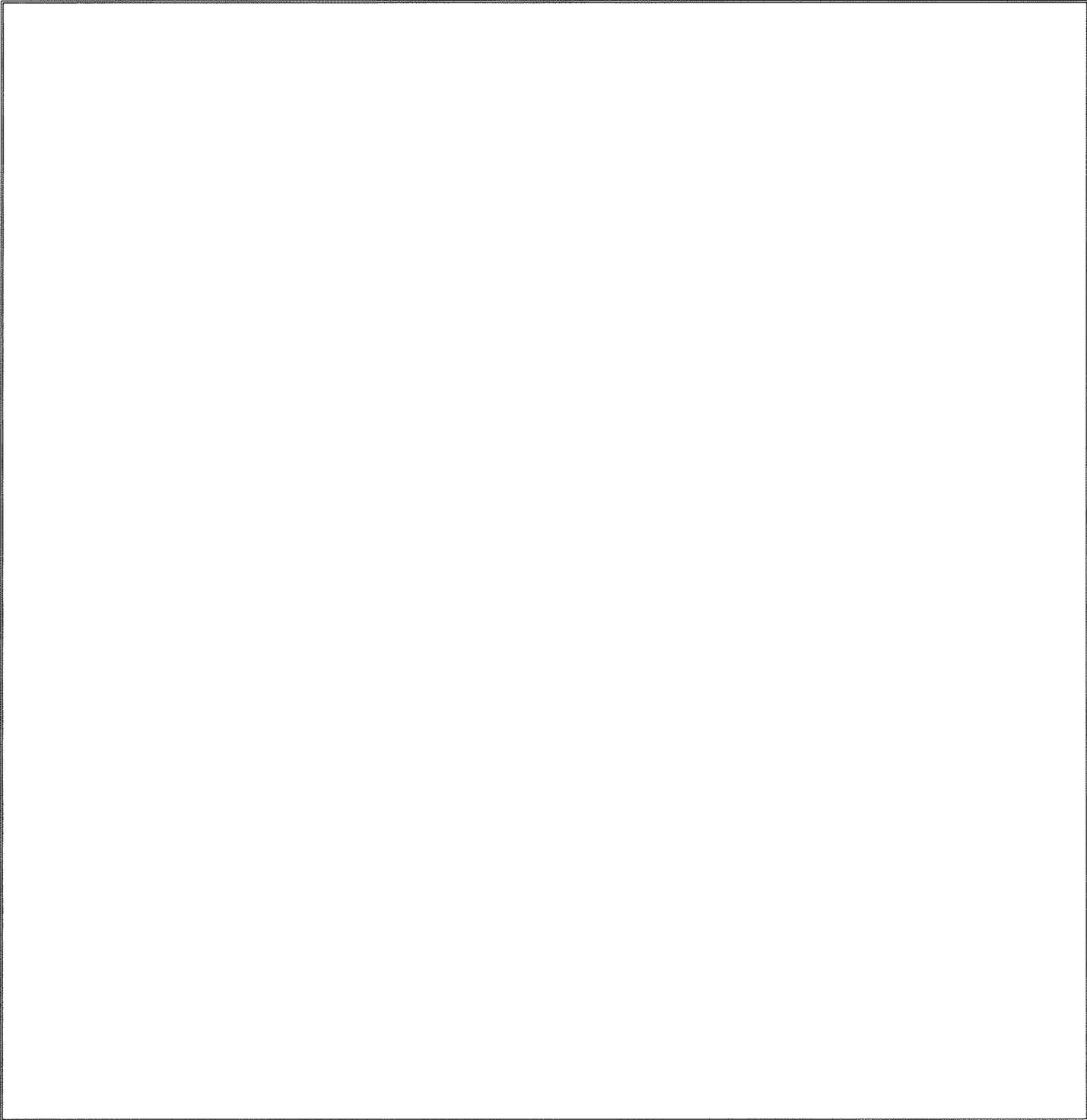
}

For each valid train sheet root record, there are several related train event records that contain information on the intermediate stations the train traversed between its train sheet origin and destination (e.g., Stations B through Y). Train event data records also contain timestamps associated with the times “reported across signals”²³ at the intermediate operating stations that each train passed en route. When combined, the train sheet origin (Station A) and destination (Station Z), and the intermediate event locations (Stations B through Y) provide the complete route for a given train segment.

Table III-A-2 below shows combined train data for the last segment of the example K311 train.

{

²³ July 1, 2015 letter from Matthew J. Warren to Kelvin J. Dowd at page 2 of 5, included in Consumers’ Rebuttal e-workpapers as “2015 07 01 MJW to Dowd Re CSX Traffic Data and Operating Information.pdf.”



}

{

24 { }
25 { }
26 { }
}

}

CSXT's statements quoted in the excerpt above are notable both for the language they include and for what they don't. {

²⁷ Consumers Rebuttal e-workpaper "Consumers Route File with Flagged Links 08152015.xlsx," tab "CERR Route," range A105:L107.

} CSXT admits that

Consumers was correct to rely on the terminal data included in the train sheets for other trains, just not for this particular group of trains:

While Consumers may be correct about some of the other eastbound trains discussed at Consumers Opening III-C-26 (*e.g.*, the L091 train), the same assertion that these coke trains are “similar anomalies” is not supported by the train sheet records produced to Consumers in discovery.²⁸

{

²⁸ CSXT Reply at III-A-11-12 n.9.

}

{

}

²⁹ {

}

³⁰ July 1, 2015 letter from Matthew J. Warren to Kelvin J. Dowd at page 2 of 5, included in Consumers' Rebuttal e-workpapers as "2015 07 01 MJW to Dowd Re CSX Traffic Data and Operating Information.pdf."

³¹ CSXT Reply e-workpaper "CERR K300 Coke Trains.xlsx," tab "train detail," columns G through X.

{

³² CSXT Reply e-workpaper “CERR K300 Coke Trains.xlsx,” tab “train detail,” noted with an “x” in Column A and highlighted yellow.

³³ CSXT Reply e-workpaper “Examining_CERR_TrainRoutings.xlsx,” tab “Intro,” cell A5.

³⁴ CSXT Reply e-workpaper “Examining_CERR_TrainRoutings.xlsx,” tab “SQL,” cell A50.

³⁵ CSXT Reply e-workpaper “Examining_CERR_TrainRoutings.xlsx,” tab “Summary_OnSARR_Curtis_LastOS,” row 1480, columns H, K, N, Q, and T.

³⁶ CSXT Reply e-workpaper “Examining_CERR_TrainRoutings.xlsx,” tab

}

In order to further clarify that the petcoke trains in question do in fact move over the CERR, Consumers examined data related to CSXT's movements over the NS track that parallels the Lake Subdivision and is included in the CERR network through trackage rights, the same way that the track is accessed by CSXT. {

"Summary_OnSARR_Curtis_LastOS," row 1480, columns F, G, and H.

³⁷ July 1, 2015 letter from Matthew J. Warren to Kelvin J. Dowd at page 2 of 5, included in Consumers' Rebuttal e-workpapers as "2015 07 01 MJW to Dowd Re CSX Traffic Data and Operating Information.pdf."

³⁸ *Id.*, page 3 of 5.

}

{

³⁹ See Consumers Rebuttal e-workpaper “Rebuttal-JFA Invoices_K300 series Comparison.xlsx,” tabs “K311” and “K312.”

⁴⁰ See Consumers Rebuttal e-workpaper “Rebuttal-JFA Invoices_K300 series Comparison.xlsx,” tabs “K311” and “K312,” columns N through Y. {

}

⁴¹ Publicly available NS timetables indicate that NS milepost CD501 is the location where CSXT’s Fort Wayne line connects with the NS. {

}

Based on the results of its analysis of (pre-base year) 2013 train data, Consumers reviewed the corresponding waybill data for the K300-series trains, along with the contract governing the movement of the trains. The waybill data for this traffic include some inconsistencies. {

}

⁴² Discovery produced to Consumers on July 24, 2015 and August 7, 2015 in Response to RFP #56. Consumers Opening/Rebuttal e-workpapers: “NS675_90092742.pdf,” “NS675_90084109.pdf,” and “NS675_90078429.pdf.”

⁴³ {

}

⁴⁴ {

}

⁴⁵ {

}

⁴⁶ Consumers Rebuttal e-workpaper, “Analysis of Base Year Coke Trains Removed in Reply V03 20160405.xlsx,” tab “K311 Car Waybills,” column AK.

⁴⁷ Consumers Rebuttal e-workpaper, “Analysis of Base Year Coke Trains Removed in Reply V03 20160405.xlsx,” tab “K311 Car Waybills,” column AC.

⁴⁸ Consumers Rebuttal e-workpaper, “Analysis of Base Year Coke Trains Removed in Reply V03 20160405.xlsx,” tab “K311 Car Waybills,” columns X, Y.

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⁵⁰ JFA Invoices for NS675, Consumers Opening/Rebuttal e-workpapers: “NS675_90092742.pdf,” “NS675_90084109.pdf,” and “NS675_90078429.pdf.” (Produced in Discovery to Consumers on July 24, 2015 and August 7, 2015 in Response to RFP #56.)

⁵¹ {

}

⁵² Consumers Rebuttal e-workpaper “Contract CSXT 85377.pdf.” (Produced in Discovery to Consumers on September 3, 2015 in Response to RFP #15.)

⁵³ In 2002, International Steel Group (“ISG”) purchased the assets of Acme Steel including Indiana Harbor West. In 2005, ISG, ISPAT International and LNM Holdings merged to create Mittal Steel USA. In 2007, Mittal Steel completed the merger with Arcelor, creating ArcelorMittal. *See* <http://usa.arcelormittal.com/globalassets/arcelormittal-usa/publications-reports/2013factbook.pdf>, pages 12-13 included in Consumers’ Rebuttal e-workpapers as “2014-arcelormittalusa-factbook.pdf.”

⁵⁴ Consumers Rebuttal e-workpaper, “Contract CSXT 85377.pdf,” page 1.

⁵⁵ Mittal Steel acquired control of ISG Railroads from the International

The SCIH Tariff⁵⁶ indicates that CSXT and SCIH interchange at South Chicago Yard (100th Street), which is consistent with the waybill data.

Based upon the foregoing, Consumers rejects CSXT's removal of the K300-series trains, and continues to include this traffic in the CERR traffic group (along with the associated revenues and operating expenses). {

Steel Group Inc., in *Mittal Steel N.V. - Acquisition of Control Exemption - ISG Railways Inc. - ISG South Chicago & Indiana Harbor Railway Co., and ISG Cleveland Works Railway Co.*, STB Finance Docket No. 34650 (STB served May 3, 2005).

⁵⁶ Consumers Rebuttal e-workpaper, "SCIH 8000.pdf," page 2.

⁵⁷ {

}

}

{

}

Consumers submits that there are only two (2) plausible operating scenarios for the petcoke trains. {

⁵⁸ {

}

⁵⁹ Consumers Rebuttal e-workpaper, “Contract CSXT 85377.pdf,” page 1.

}

The second plausible scenario {

}

The only scenario that is totally unsupported by the data is the one
CSXT offers, wherein the trains {

}

On Rebuttal, Consumers continues to include the petcoke trains and
traffic as it did on Opening, terminating/originating them at Barr Yard. {

} only Consumers' Opening

Evidence operations are supported by the data in the record.

b. Calumet Park-Curtis Trains

On Opening, Consumers showed that on average, the CERR would provide faster service than CSXT historically provided for trains moving less than 10 miles⁶⁰ between Calumet Park and Curtis. On Reply, CSXT argues that Consumers' comparison was flawed, and CSXT makes several adjustments to the analysis. CSXT concludes based on its recast comparison that on average, the CERR would provide slower service than CSXT historically provided over this segment and that the traffic "must be dropped because the CERR is providing inferior service."⁶¹

CSXT defines CERR service as "inferior" because its calculation of average CERR transit times exceeds its calculation of average historical CSXT transit times for corresponding trains by 7 minutes and 55 seconds in the westbound direction⁶² and 7 minutes and 22 seconds in the eastbound direction.⁶³ CSXT's justification for removing trains and the traffic moving on them do not

⁶⁰ Consumers Opening e-workpaper "CERR Route Miles Opening.xlsx," tab "CERR Miles," Cells R101:R145.

⁶¹ CSXT Reply at III-A-13.

⁶² CSXT Reply e-workpaper "RTC CSXT Actual Calumet Park.xlsx," tab "time comparison," row 11.

⁶³ CSXT Reply e-workpaper "RTC CSXT Actual Calumet Park.xlsx," tab "time comparison," cell D36 × D39 = 7 minutes and 22 seconds.

stand up to critical review. Accordingly, Consumers retains these trains and traffic in its Rebuttal analysis.

CSXT's removal of the traffic from the CERR traffic group is wrong for several reasons. First, CSXT's use of averages to define the CERR's service level as "inferior" ignores several key metrics. {

}

Second, CSXT's analysis of the transit time increase is placed completely out of context. CSXT evaluates the average increase as a percentage of the average historical transit time for the 9.9-mile segment between Calumet Park and Curtis. When placed in the context of the entire historical CSXT movement, with average transit times well over a day in length, 8 additional minutes of transit time is *de minimis*.

Third, and in a related vein, even with CSXT's adjustments, the average CERR transit time would be significantly faster than CSXT's but for the

requirement that Consumers arbitrarily assign 30 minutes “dwell time” at Curtis, to reflect the imaginary interchange that takes place between the CERR and CSXT. If one makes the entirely reasonable real-world assumption that an interchange of this nature could be executed, on average, within 20 minutes, for example, the minor transit time differential on which CSXT bases its entire argument for exclusion of the traffic disappears completely.

CSXT’s critique of Consumers’ transit time comparison is separated into two (2) sections based on the directional running of the trains. Each group of trains is addressed separately below.

i. Westbound Trains

CSXT alleges that Consumers used “the wrong timestamp from the CSXT timesheets” for trains moving westbound between Curtis and Calumet Park during the peak week.⁶⁴ This issue affects only one of the four (4) trains in the comparison. Specifically, the transit time for historical train {

}

This discrepancy was a result of Consumers’ SARR station normalization process during the development of the CERR train list, in which certain anomalies in the CSXT data were corrected so that On-SARR and Off-SARR stations were aligned with the CERR/CSXT interchange locations for each

⁶⁴ CSXT Reply at III-A-12.

train. As described in detail in Consumers’ Opening Narrative at Section III-C-2.b., which CSXT did not contest,⁶⁵ the adjustments were required because CSXT’s train events are sometimes recorded differently for multiple trains that physically travel in the same manner over the CSXT network.⁶⁶ The normalized On-SARR and Off-SARR locations (Curtis and Calumet Park) were used in the parties’ RTC models,⁶⁷ but the timestamp for the Off-SARR station was not adjusted for this one train in Consumers’ comparison. CSXT replaces the Harvey Junction timestamp with the Calumet Park timestamp for this train in its restated Reply comparison.⁶⁸

When this change is made, CSXT restates the average historical transit time for the four (4) trains as {

⁶⁵ CSXT’s March 21, 2016 Reply to Consumers’ Petition for a Technical Conference at Exhibit 1, page 5, lines 87-97: “Because CSXT accepted Consumers’ configuration of the CERR, CSXT did not address this argument in detail.”

⁶⁶ Consumers Rebuttal e-workpaper “TransitTimes_TrainDelay_Rebuttal.xlsx,” tab “Calumet – Curtis Transits,” columns P and Q.

⁶⁷ {

}

⁶⁸ CSXT Reply e-workpaper “RTC CSXT Actual Calumet Park.xlsx,” tab “time comparison,” cell B13.

⁶⁹ CSXT Reply e-workpaper “RTC CSXT Actual Calumet Park.xlsx,” tab “time comparison,” cell J11.

}⁷¹ CSXT concludes that all of the CERR trains traversing this route must be dropped because the CERR's service is "inferior" on average.

First, CSXT's 15 percent metric is out of context. {

⁷⁰ CSXT Reply e-workpaper "RTC CSXT Actual Calumet Park.xlsx," tab "time comparison," cell D11.

⁷¹ CSXT Reply e-workpaper "RTC CSXT Actual Calumet Park.xlsx," tab "time comparison," cell D12.

⁷² Consumers Rebuttal e-workpaper "TransitTimes_TrainDelay_Rebuttal.xlsx," tab "CalumetCurtisTrainSummary," cell M31.

⁷³ Consumers Rebuttal e-workpaper "TransitTimes_TrainDelay_Rebuttal.xlsx," tab "CalumetCurtisTrainSummary," cell U31.

⁷⁴ Consumers Rebuttal e-workpaper "TransitTimes_TrainDelay_Rebuttal.xlsx," tab "CalumetCurtisTrainSummary," cell M12.

}⁷⁵ And as noted above, the differential would disappear entirely (or swing in the CERR’s favor) if the mandated 30-minute “dwell time” addition at Curtis was adjusted to a more realistic average interchange time for what amounts to a hand-off of trains.

Second, review of the historical and RTC data for these four (4) trains individually shows that {

⁷⁵ { }

⁷⁶ CSXT Reply e-workpaper “RTC CSXT Actual Calumet Park.xlsx,” tab “time comparison,” cells J7:J8.

⁷⁷ { }

⁷⁸ CSXT Reply e-workpaper “RTC CSXT Actual Calumet Park.xlsx,” tab “time comparison,” cells D8:D9.

}

CSXT's removal of the traffic is results driven, and contradicts the real-world relationship between Curtis-Calumet Park transit time and CSXT's ability to retain traffic. Delays occur in the Chicago area. {

}⁸⁰ The traffic should

remain part of the CERR group as well.

ii. Eastbound Trains

CSXT makes three (3) adjustments to Consumers' Opening transit time comparison for eastbound Calumet Park-Curtis CERR trains. Specifically, CSXT altered the mix of trains included in the comparison, CSXT added average delay incurred by CSXT historical trains to the RTC transit times, and CSXT removed an historical train with a long transit time (what CSXT calls an "outlier") from the comparison.

CSXT alleges that Consumers used "a different mix of CSXT trains than the trains in the RTC model."⁸¹ This is partially true. First, Consumers included three (3) trains that moved in the peak period, but not the peak week, in

⁷⁹ CSXT Reply e-workpaper "RTC CSXT Actual Calumet Park.xlsx," tab "time comparison," cells J8:J9.

⁸⁰ Consumers Rebuttal e-workpaper "TransitTimes_TrainDelay_Rebuttal.xlsx," tab "Calumet – Curtis Transits," cell AQ34.

⁸¹ CSXT Reply at III-A-13.

its comparison.⁸² These trains were included in both the historical and RTC train lists. CSXT removed these trains from its comparison. Consumers accepts this adjustment. Second, Consumers included three (3) trains that were modeled between Calumet Park and Curtis in RTC in the list of historical trains included in the comparison for the Dolton-Curtis segment. This occurred due to the On-SARR station normalization process discussed above regarding the westbound trains. CSXT added these trains to its comparison. Consumers accepts this adjustment. As CSXT concedes, even after these adjustments are made, the CERR transit time “was 1.5 percent faster”⁸³ than historical CSXT times.

CSXT alleges that Consumers’ RTC model transit times do not reflect delays that their historical counterparts incurred “at the grade crossings at Republic and State Line.”⁸⁴ CSXT states that the comparison can be corrected in one of two ways:

[I]f Consumers is going to compare the CERR transit times to the historical CSXT transit times, it must either model the crossing delays or remove the delays from the CSXT transit times.⁸⁵

⁸² Consumers Rebuttal e-workpaper “TransitTimes_TrainDelay_Rebuttal.xlsx,” tab “Calumet – Curtis Transits.”

⁸³ CSXT Reply at III-A-13.

⁸⁴ *Id.*

⁸⁵ *Id.*

CSXT then claims, “[w]hen doing the latter, the RTC trains actually run 13% slower than the CSXT trains.”⁸⁶ However, CSXT did not “do the latter.” Specifically, CSXT did not “remove the delays from the CSXT transit times.” Rather, CSXT developed an average per-train at-grade crossing delay for the historical trains in the comparison, and then added that amount of delay to Consumers’ average RTC transit time.⁸⁷ The problems with this procedure are numerous. First, historical delay is specific to a particular train and the traffic it encountered at the moment it traversed the CSXT system. Delay incurred in the RTC model is specific to a different particular train and the different traffic it encountered at a different moment as it traversed the CERR. Absent extraordinary coincidence, a train modeled in RTC would not be “at the grade crossings at Republic and State Line”⁸⁸ at the same time as its historical counterpart. If one could make such an assumption, there would be no reason to conduct the RTC model at all, as one could assume the peak trains precisely mirrored the historical trains at every point on the time and space continuum. The fact is, RTC trains encounter different traffic and incur delays separate (and different in duration) from their historical counterparts. Therefore, historical delays incurred at specific locations cannot be assigned to RTC trains bearing the same symbol and date.

⁸⁶ *Id.* at III-A-14.

⁸⁷ CSXT Reply e-workpaper “RTC CSXT Actual Calumet Park.xlsx,” tab “time comparison,” cell D38.

⁸⁸ CSXT Reply at III-A-14.

Second, rather than recognizing that some trains incur significant delay while others incur none, CSXT’s addition of average delay minutes to the simulated trains defeats the purpose of the RTC analysis, which models each train and the traffic it encounters along its route to determine transit time.

Third, CSXT’s method fails to acknowledge that different types of trains are given different priority, and higher priority trains are less likely to incur delays than lower priority trains. CSXT developed its average delay as follows:

{

}⁹¹

There are three (3) types of eastbound trains moving from Calumet Park to Curtis in the peak week: {

⁸⁹CSXT Reply e-workpaper “RTC CSXT Actual Calumet Park.xlsx,” tab “time comparison,” column Q.

⁹⁰ CSXT Reply e-workpaper “RTC CSXT Actual Calumet Park.xlsx,” tab “time comparison,” cell Q36.

⁹¹ CSXT Reply e-workpaper “RTC CSXT Actual Calumet Park.xlsx,” tab “time comparison,” cell Q38.

}

If CSXT's comparison is separated by train priority group, the average RTC transit time {

⁹² CSXT Reply e-workpaper "RTC CSXT Actual Calumet Park.xlsx," tab "time comparison," cells Q24:Q25.

⁹³ CSXT Reply e-workpaper "RTC CSXT Actual Calumet Park.xlsx," tab "time comparison," cells Q28:Q29 and Q32.

⁹⁴ CSXT Reply e-workpaper "RTC CSXT Actual Calumet Park.xlsx," tab "time comparison," rows 20:27.

⁹⁵ { }

⁹⁶ { }

}⁹⁹ CSXT’s suggestion that this level of increase in end-to-end transit time would be unacceptable to shippers is absurd.

Fourth, CSXT added delay for select trains based on the wrong subset of delay table entries included in the CSXT train data.¹⁰⁰ {

} For the trains moving between Calumet Park and Curtis, CSXT

⁹⁷ Consumers Rebuttal e-workpaper “TransitTimes_TrainDelay_Rebuttal.xlsx,” tab “CalumetCurtisTrainSummary,” cell M30.

⁹⁸ Consumers Rebuttal e-workpaper “TransitTimes_TrainDelay_Rebuttal.xlsx,” tab “CalumetCurtisTrainSummary,” cell U30.

⁹⁹ { }

¹⁰⁰ This analysis is included in CSXT Reply e-workpaper “Trainsheet Delays for RTC_RR Crossings.xlsx,” which is supported by its related workpaper “Delay_Data_CERR_Trains.xlsx.”

¹⁰¹ CSXT Reply e-workpaper “Trainsheet Delays for RTC_RR Crossings.xlsx” tab “Filtered,” column AB.

¹⁰² *Id.*, column AC.

¹⁰³ *Id.*, column Y.

assumed all {

}¹⁰⁴

{

¹⁰⁴ *Id.*, tab “input to CSXT Reply RTC,” cells B1 and L4.

¹⁰⁵ CSXT Reply e-workpaper “Delay_Data_CERR_Trains.xlsx” tab “Dataset,” filter column AA for “10.”

¹⁰⁶ *Id.*, column AB.

¹⁰⁷ *Id.*, column X.

¹⁰⁸ *Id.*, level “Filtered,” cell B2.

¹⁰⁹ CSXT Reply e-workpaper “Trainsheet Delays for RTC_RR Crossings.xlsx,” tab “Filtered,” cell C3: Source: CSXT TM Trainsheets, Reply e-workpaper “Delay_Data_CERR_Trains.xlsx,” tab “Filtered.”

}

Notably, in another delay analysis submitted by CSXT on Reply,
CSXT assumed that {

¹¹⁰ CSXT Reply e-workpaper “Delay_Data_CERR_Trains.xlsx,” tab “Dataset,” filter Column AA for “10” and view column P.

¹¹¹ CSXT Reply e-workpaper “Delay_Data_CERR_Trains.xlsx,” tab “Dataset,” filter Column AA for “10” and view columns A-B. {

}

¹¹² CSXT Reply at III-C-60, and CSXT’s Reply e-workpaper “Trainsheet Delays for RTC_22ndOffSARR.xlsx,” which is supported by its related workpaper “Delay_Data_CERR_Trains.xlsx.”

¹¹³ CSXT Reply e-workpaper “Delay_Data_CERR_Trains.xlsx,” tab “Dataset,” filter Column AA for “HO.”

¹¹⁴ *Id.*, Column AB.

}

CSXT’s Reply argument is based on the premise that {

}

CSXT’s “final problem with Consumers’ transit-time calculations is that the CSXT transit times for the eastbound trains are skewed by an outlier.”¹¹⁷ Consumers proposes to remove the outlier, which “experienced an atypical delay of 2:44 hours at Pine Junction”¹¹⁸ from its comparison. CSXT’s argument for removing one of the trains that is used to develop average transit times undermines its entire argument, which uses average times as its foundation. It also conflicts with CSXT’s position that all historical delays (even “atypical” ones) must be reflected in the RTC model on the CERR side of the comparison.

¹¹⁵ *Id.*, Column X.

¹¹⁶ CSXT Reply e-workpaper “Trainsheet Delays for RTC_22ndOffSARR.xlsx,” tab “delay records,” cells B2 (“Enroute Train Delays to Westbound CERR Peak Period Trains Traveling Off-SARR onto BNSF or UP near 22nd Street”) and B3: (Source: CSXT TM Trainsheets, Reply e-workpaper “Delay_Data_CERR_Trains.xlsx,” worksheet “Filtered.”)

¹¹⁷ CSXT Reply at III-A-14.

¹¹⁸ *Id.*

However, this particular train is quite instructive on the lack of merit in CSXT's entire transit time theory. {

}

iii. Service Reliability

As discussed above, CSXT made some minor alterations to the timestamps and stations used in its Reply restatement of Consumers' Opening transit time comparison. Consumers generally accepts these changes on Rebuttal, but CSXT misrepresents their impact as it relates to the quality of "service" that

¹¹⁹ Consumers Rebuttal e-workpaper "TransitTimes_TrainDelay_Rebuttal.xlsx," tab "CalumetCurtisTrainSummary," cell M33.

¹²⁰ Consumers Rebuttal e-workpaper "TransitTimes_TrainDelay_Rebuttal.xlsx," tab "CalumetCurtisTrainSummary," cell M20.

CSXT provided to the CERR shippers in the historical base period. CSXT removed traffic moving on CERR trains between Calumet Park, IL and Curtis, IN because the CERR transit times, on average, are very slightly slower across this segment of track, claiming that the CERR service was therefore inferior to the historical CSXT service. As noted above, a *de minimis* difference that is dwarfed by the arbitrary 30-minute “dwell time” additive does not equate to inferior service. Complainants may include traffic in the SARR traffic group so long as the SARR “would meet the shipper’s transportation needs.”¹²¹ In truth, the CERR provides service that is superior to CSXT from a shipper’s point of view.

CSXT’s argument that the CERR failed to meet CSXT’s historical service standard is based on a narrow definition of service level that contradicts the definition it uses to gauge its performance in the normal course of business. In fact, when addressing its stockholders and customers, reliability – not transit time – is the core metric that CSXT cites.¹²²

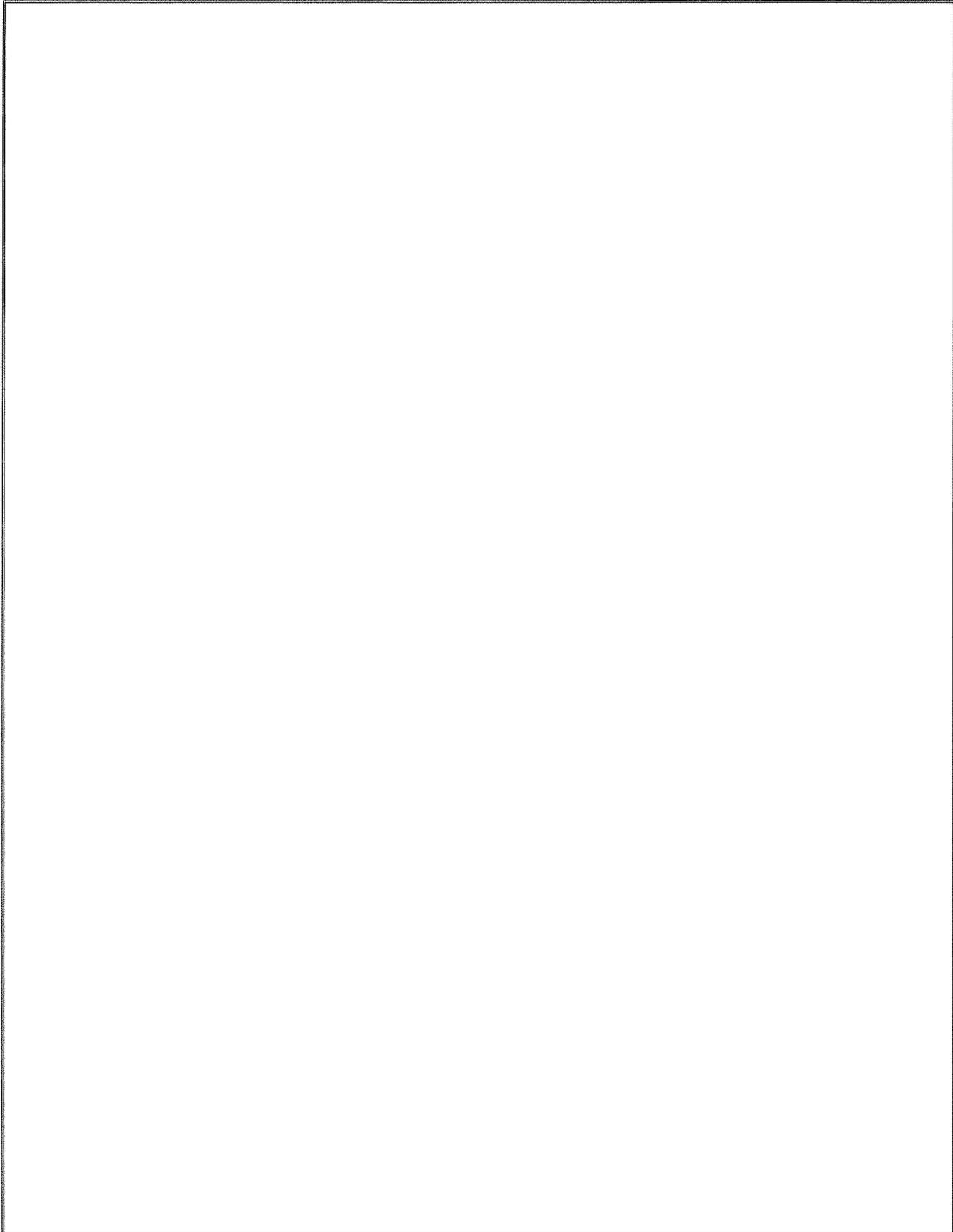
A review of the CSXT historical and RTC times for the 20 trains in the comparison illustrates why CSXT’s real-world use of reliability to measure performance levels makes more sense than its made-for-litigation reliance on

¹²¹ *TMPA*, 6 S.T.B. at 595.

¹²² See Consumers Rebuttal e-workpaper “CSXT Service Update Oct.2, 2015.pdf,” page 5. CSX measures this reliability through the “span” of on-time originations (OTO) on the scheduled train network versus the plan.

average times. Table III-A-3 below shows the transit times for the 20 trains on each railroad.

{



}

CSXT concludes that it historically provided a superior level of service because of the CERR's slightly longer average transit time. {

}¹²³ However, in the real world, shippers evaluate service levels in a more nuanced way. Average transit times only provide one characteristic of the rail service provided; namely, identifying the central mean tendency of the service. Average transit times do not reflect the dispersion characteristics of the service. The amount of dispersion as indicated by the standard deviation identifies how far from the average the service can be expected to vary. The lower the standard deviation, the more reliably and consistently the railroad is in meeting its average transit time, and its shippers' expectations.

{

}¹²⁴ On the whole, {

} but the uncertainty provided by CSXT's historical operations has real implications for a shipper's bottom line: reliability of its service. The CERR moves its trains between Calumet Park and

¹²³ {

}

¹²⁴ {

}

Curtis in essentially the same amount of time as CSXT, but does so on a much more reliable, consistent basis.

c. Waybill Selection

In its Reply, CSXT points to certain traffic included in the CERR traffic group based on the waybills associated with traffic carried by CERR trains, and argues that the traffic instead should be identified based on individual shipments moving on the CERR trains.¹²⁵ CSXT states that because not all traffic on the same waybill moves on the same train, Consumers’ approach overstated the amount of traffic actually carried by the CERR.

Consumers reviewed CSXT’s related workpapers, and agrees that a small percentage of the carloads identified in its Opening traffic group were not carried on CERR trains.¹²⁶ However, this does not mean that all split-waybill railcars that Consumers included in its Opening Evidence have to be removed from the CERR traffic group. As CSXT notes, railcars moving on the same waybill can be separated from each other and move on different trains.¹²⁷ In some cases, this means that one railcar on a waybill will move on a CERR train while another railcar on the same waybill will move on a non-CERR train. However,

¹²⁵ CSXT Reply at III-A-15 to III-A-16.

¹²⁶ {

}
Compare Consumers Opening e-workpaper “2014 - 1Q 2015 Car And Container Waybills.xlsx,” to Consumers Rebuttal e-workpaper “2014 - 1Q 2015 Car And Container Waybills_Rebuttal.xlsx.”

¹²⁷ CSXT Reply at III-A-15.

there are many instances where two (2) railcars moving on the same waybill will move on two (2) different CERR trains. Consumers has identified { } non-issue traffic carloads that moved on different CERR trains in 2014 than the trains with which they were identified in Consumers' Opening Evidence.¹²⁸ Therefore, Consumers has retained these movements in its Rebuttal traffic group, and adjusted the movements' On-SARR and Off-SARR locations to reflect the actual CERR trains on which they moved.

2. **Volumes (Historical and Projected)**

a. **Coal Traffic to Campbell**

CSXT begins its Reply to Consumers' evidence concerning coal volumes to Campbell over the 2015-2024 period with a scurrilous and unfounded charge that Consumers is attempting to "mislead" the Board by not relying on coal volumes that were reflected in a filing made by Consumers in September 2015 in a state utility rate proceeding before the Michigan Public Service Commission, or producing this data to CSXT.¹²⁹ As CSXT knows full well, both parties *agreed in writing* that with a few exceptions not relevant here, neither would be required to

¹²⁸ See Consumers Rebuttal e-workpaper "2014 - 1Q 2015 Car And Container Waybills_Rebuttal.xlsx," tab "2014 Carload," Column B. These movements are identified with a "Rebuttal" indicator in Column B. Because these carloads moved on different trains than identified in Consumers' Opening workpapers, and therefore may have different on- and off-SARR locations than indicated in Consumers' Opening workpapers, the number of Rebuttal carload records increased from its Opening workpapers.

¹²⁹ CSXT Reply at III-A-6.

produce any data or documents that were created after December 31, 2014.¹³⁰ This stipulation was fully consistent with standard practice before the Board, which allows parties to set temporal limits on data to be used so that they can prepare and present evidence based on a common set of parameters.¹³¹ Also, as CSXT is equally aware, the forecast model data submitted to the MPSC was influenced in large measure by eight (8) months of Consumers' experience paying the CSXT rates at issue in this proceeding, rates that have a negative impact on the level at which Campbell is dispatched by the Mid-Continent Independent System Operator, the entity that controls generation dispatch within the region that includes Consumers' service territory.¹³² Through its self-righteous objection, CSXT seeks to put its thumb on the SAC scale by defending its unreasonable tariff

¹³⁰ Consumers Rebuttal e-workpapers "April 7, 2015 Ltr. from K. Dowd to M. Warren.pdf" and "April 9, 2015 Ltr. from M. Warren to K. Dowd.pdf."

¹³¹ The Board's own approach to using updated forecasts of various types also reflects this concept. See, e.g., *WFA 2007* at 28; *AEP Tex. N. Co. v. BNSF Ry. Co.*, STB NOR 41191 (Sub-No. 1) (STB served Sept. 10, 2007) at 32 n.57. This differs from the treatment accorded to known, published metrics and data sources, such as the reported railroad industry cost of capital or the Board's annually published URCS data, where the most recent available iteration commonly is used.

¹³² See CSXT Reply e-workpaper "Consumers_Application_2015 09 30.pdf" at 38-41 (Jim K. Chilson Direct Test. at 6-9) ("the Company plans to use common carrier (i.e. tariff) rates for rail transportation for western coal from Chicago to the Campbell plant and for transportation of eastern coal to both the Campbell and Karn plants.").

rate using a consumption estimate¹³³ that reflects coal volumes depressed by that very rate. *That* is what the Board should not condone.

The Campbell coal volumes advanced by CSXT on Reply also are flawed because they are based on an apples-and-oranges mix of different computer models. Consumers' Opening forecasted volumes for Campbell were generated principally using the Ventyx Strategist model, which is employed by Consumers as a resource planning tool that provides coal use forecasts many years into the future, including through the end of the rate prescription period applicable in this case. The Strategist model forecast covered the years 2017 through 2024. For 2015 and 2016 *only*, Consumers used the output from the PROMOD model, which is an hourly unit commitment and production dispatch model used to assess near-term operations and generating unit reliability.¹³⁴

In its September 2015 filing before the MPSC, Consumers used PROMOD because of its hourly dispatch features, which more closely track the retail utility rate profile, and to have a consistent baseline for the annual updating of costs, fuel prices, electric demand and other calculations that go into the MPSC rate review process. Because of the “granularity” of the PROMOD analysis, and

¹³³ Another reason why it makes good sense to set a limit such as that agreed to by the parties here is that the output of models such as the one used by Consumers can change (in either direction) with each run, depending upon the status of the many variables that go into the model.

¹³⁴ See Consumers Rebuttal e-workpaper “Utility Information Request_Docket No. E015.RP-13-53.pdf” for a summary comparison of the two (2) models.

the large number of different dispatch-related variables that must be assumed,¹³⁵ a typical PROMOD run covers the months remaining in the then-current year and the twelve (12) subsequent months. Consumers’ Opening Evidence respected this limitation, and then properly relied on the Strategist model – which is favored for long-term planning – for the remainder of the 2015-2024 time period.¹³⁶ The rate schedules at issue before the MPSC, however, encompassed five (5) years, so for purposes of that proceeding (and the September 2015 filing) Consumers ran the PROMOD model out over five (5) years in a single iteration. This provided the full array of output data needed for the agency rate evaluation process, but carried an increased risk of inaccuracy over time with respect to an output such as forecasted coal volumes, given the large number of variables that have to be assumed in order to run PROMOD.¹³⁷

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} – CSXT’s

¹³⁵ These include projected system loads, weather, unit heat rates, maintenance schedules, random unit outage rates, fuel costs, and purchased and interchanged power availability and costs. *See* CSXT Reply e-workpaper “Consumers_Application_2015_09_30.pdf” at 134 (Sara T. Walz Direct Test. at 4).

¹³⁶ It should be noted that Consumers typically uses Strategist in all of its filings before the MPSC where long term forecasts (greater than five (5) years) are required.

¹³⁷ This portion of Consumers’ Rebuttal Narrative is sponsored and verified by Consumers’ Mr. Gallaway.

¹³⁸ CSXT Reply at III-A-18 and Table III-A-1.

approach improperly relies on a mix of the two (2) models that ensures inaccurate results. CSXT did not use the September 2015 PROMOD run through 2020 (as unreliable as its volume projections after 2016 may be compared to Strategist) then switch to the Strategist forecast for the remaining four (4) years of the DCF period. Instead, it applied the *rate of change* from the Strategist model to the nominal volumes reflected in the last year of the PROMOD model run. The rate of change is not a program input in Strategist; it simply is an observed feature of the outputs. The measured change between 2020 and 2021, therefore, is a function of Strategist’s 2020 forecasted volume. As applied to a 2020 PROMOD value, it is an arbitrary figure that produces skewed and inaccurate volumes for 2021 and following years, just as PROMOD’s short-term design and typical use renders suspect the volumes that it “projects” more than one year out from the year following its run date.¹³⁹

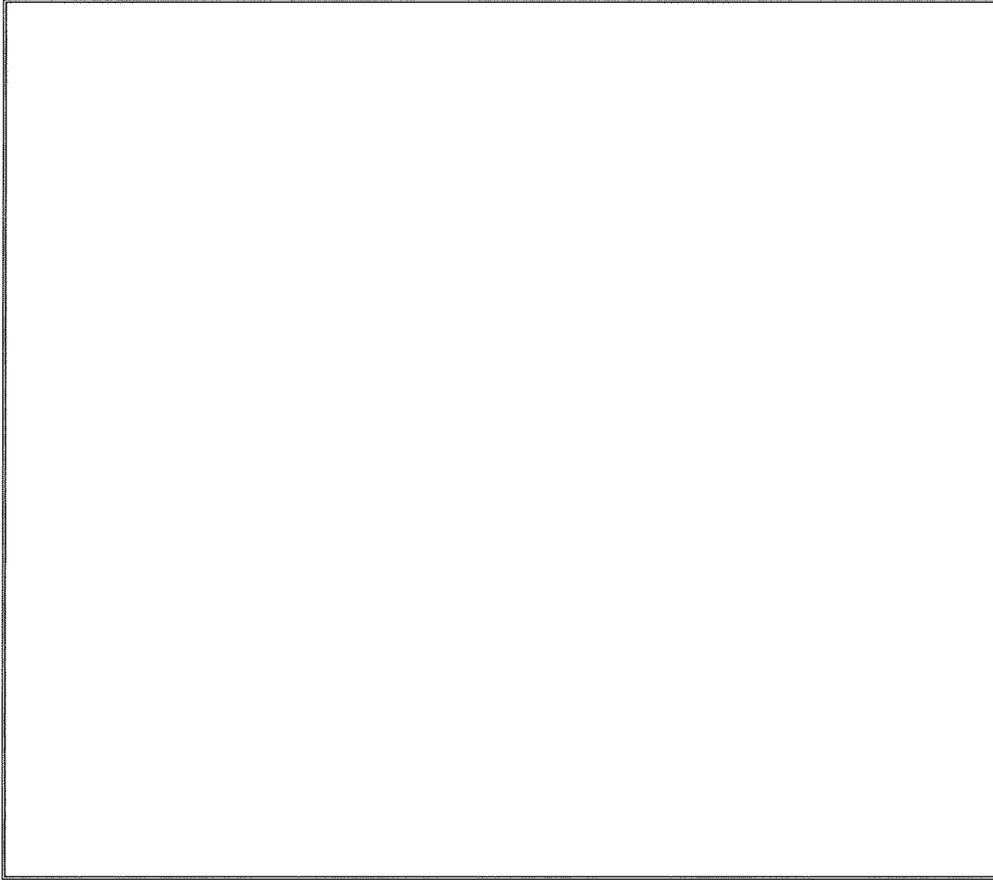
CSXT wrongly suggests that it is combining “older” and “newer” forecasts.¹⁴⁰ In fact, it is mixing models with very different structures and purposes, only one of which – Strategist – is used to project coal volumes over the longer term, which inevitably leads to unreliable results. This is confirmed in Table III-A-4, below, which shows the results of a Strategist model run for Campbell conducted in the same month as the MPSC filing relied upon by CSXT,

¹³⁹ *Id.* at III-A-17.

¹⁴⁰ *Id.*

as compared with Consumers' Opening volumes and the lower volumes proposed by CSXT.

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} The lower figures advocated by CSXT are not attributable to a

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“newer” forecast; they are a result of misapplication of a model that is not relied upon for longer-term projections.

CSXT next argues that the Campbell coal forecast should be impacted by declining coal consumption elsewhere in the country and on the CSXT system.¹⁴² However, the national trend in coal-fired electric generation is not in issue here; the relevant question concerns projected coal consumption at the *Campbell Station*, and the better evidence of record (Consumers’ own internal long-term forecast) establishes that {

}

¹⁴² CSXT Reply at III-A-18-19.

¹⁴³ {

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Finally, CSXT claims a “right to review the Board’s final analysis” of SAC in this case and present a “means of addressing what should happen” if future coal shipments to Campbell do not match the projections used in the SAC analysis.¹⁴⁴ It is not at all clear what CSXT has in mind, but it *is* clear that the “right” the carrier would have in the event of a material change in relevant circumstances is the same as any other litigant in a maximum rate proceeding: the right to petition the Board under 49 U.S.C. § 722 (c) to reopen the matter after conclusively demonstrating that the applicable statutory standards have been met.

As the Board held in *Major Issues*:

We do not intend...to change our longstanding policy that we will not reopen a SAC case to address short-term, year-to-year fluctuations that do not undermine the long-term projections relied upon in a SAC case. While we recognize that...there inevitably will be changes to forecasts and projections, we will be vigilant in ensuring that the standard we put in place today does not become a mechanism for serial reopening based on updated figures.

Id. at 72 (citations omitted).¹⁴⁵ There is no legal basis for CSXT to claim entitlement to any other type of post-decision adjustment to a Campbell rate prescription.

¹⁴⁴ CSXT Reply at III-A-20.

¹⁴⁵ The Board also observed that it would be considerably less likely that the standards of 49 U.S.C. § 722(c) could be met in a SAC case, given that the analysis and rate prescription period now only covers ten (10) years. *Id.* at 75.

b. General Freight and Non-Issue Coal Traffic

Consumers' Opening general freight volumes and non-issue coal volumes for the CERR in 2015 through 2024 were calculated by adjusting the 2014 and 1Q2015 traffic volumes produced by CSXT in discovery.¹⁴⁶ Specifically, the CERR carload traffic volume for 1Q2015 was based on actual CSXT traffic data, while 2Q2015 was based on actual 1Q2015 CERR volume forecasted to 2Q2015 levels using the change in CSXT system-wide coal and merchandise traffic volumes as reported in quarterly Securities and Exchange Commission ("SEC") filings. Consumers developed 3Q2015 and 4Q2015 traffic volumes by adjusting 3Q2014 and 4Q2014 CSXT traffic data to 3Q2015 and 4Q2015 levels based on actual and forecasted traffic included in CSXT's financial reports and internal traffic forecasts. The aggregation of this actual and forecasted data produces the 2015 CERR carload traffic volume. Consumers developed the CERR carload traffic volumes for the 2016-2019 time period from the forecasted change in traffic volumes shown in CSXT's internal forecast provided in discovery, while the 2020 to 2024 traffic volumes were adjusted by the compounded average growth rates ("CAGR") derived from CSXT's internal traffic forecast.

On Reply, CSXT accepted Consumers' development of 1Q2015 and 2Q2015 traffic volumes and the 2016 to 2019 traffic volumes, but challenges

¹⁴⁶ Consumers Opening at III-A-6.

Consumers' forecasts used to create 3Q2015 and 4Q2015 volumes and 2020 to 2024 volumes.¹⁴⁷ For the 3Q2015 and 4Q2015 volumes, CSXT urges the use of actual traffic volumes reported in CSXT's filings with the SEC, which were not available in time for Consumers' Opening Evidence filing. For the 2020 to 2024 volumes, CSXT asserts that government forecasts should be used instead of the CAGR reflected in CSXT's internal forecast of 2015-2019 traffic volumes. Consumers addresses each of these points below.

i. 3Q2015 and 4Q2015 Traffic

Consumers developed its 3Q2015 and 4Q2015 traffic volumes by indexing actual 3Q2014 and 4Q2014 traffic produced in discovery, using adjustment factors developed by comparing CSXT's actual traffic reported in its 2014 SEC Form 10-K to CSXT's forecasted 2015 traffic included in its internal traffic forecast produced in discovery.¹⁴⁸ Consumers relied upon the most current CSXT data available at the time.

On Reply, CSXT claims that Consumers' approach is "flawed" because CSXT's actual 3Q2015 and 4Q2015 traffic data are now available in its 2015 SEC Forms 10-Q and 10-K, and that the use of actual volume data is superior to relying upon the forecasted data provided in discovery.¹⁴⁹ CSXT also

¹⁴⁷ CSXT Reply at III-A-20.

¹⁴⁸ Consumers Opening e-workpaper "2015_CSXT Volume Growth Forecast.xlsx."

¹⁴⁹ CSXT Reply at III-A-21.

claims that the SEC 10-Q and 10-K data are presented on a more disaggregated business unit level than the general merchandise, coal and intermodal group levels used by Consumers.¹⁵⁰

On Rebuttal, Consumers generally accepts CSXT's Reply approach. However, CSXT's claim that Consumers' Opening Evidence was "flawed" is gratuitous and unfounded. Consumers filed its Opening Evidence in this proceeding on November 2, 2015, only 19 days after CSX filed its 3Q2015 SEC Form 10-K, which effectively meant that the 10-K data was unavailable. Consumers' Opening Evidence also was submitted 100 days *before* CSXT filed its 2016 SEC Form 10-K that contained the 4Q2015 traffic volumes. Consumers used the most current data available at the time; there was no "flaw" in its Opening approach.

ii. 2020 to 2024 Traffic Volumes

For the years beyond 2019, when CSXT's internal traffic forecast ended, Consumers' Opening Evidence utilized a CAGR based approach to develop traffic volumes for the years 2020 through 2024.¹⁵¹ Consumers developed the CAGR for the traffic included in CSXT's 2015 to 2019 internal forecast, and applied the calculated growth rate on a lane and commodity-specific basis.

¹⁵⁰ *Id.*

¹⁵¹ Consumers Opening at III-A-7.

On Reply, CSXT challenged the use of a CAGR, claiming that “extending those forecasts beyond the period developed by CSXT, instead of using published government forecasts, is inappropriate.”¹⁵² CSXT instead utilized an Energy Information Administration (“EIA”) Annual Energy Outlook (“AEO”) forecast to project non-issue coal and merchandise traffic volumes for the years 2020-2024.

CSXT offers two (2) different reasons for its departure from Consumers’ approach. {

}¹⁵³ Second, CSXT alleges broadly that the Board prefers using internal, course of business forecasts where available and reliable, but then turns to published government forecasts after the end of the internally produced forecast.¹⁵⁴

On Rebuttal, Consumers continues to utilize a CAGR approach developed from CSXT’s internal forecast to forecast growth in non-issue coal and merchandise traffic volumes for the period from 2020-2024. Consumers’ approach is superior to that promoted by CSXT, for at least the following four (4) reasons.

¹⁵² CSXT Reply at III-A-22.

¹⁵³ *Id.*

¹⁵⁴ *Id.* at III-A-22-23.

First, the use of a CAGR approach to forecast traffic beyond the end of an internal forecast is supported by long STB precedent. The Board accepted a CAGR approach to forecasting in *FMC*, *DuPont* and *Sunbelt*,¹⁵⁵ consistently finding that the multi-year CAGR methodology, which combines both actual and forecasted data for the specific traffic type at issue, mitigates single-year “spikes” and produces a more measured and reliable trend.¹⁵⁶

Second, {

} Forecasts are

by their very nature the best estimates of the future available at the time they are prepared. While they cannot anticipate all major setbacks that could occur, they are just as likely to understate the effect of major opportunities that may arise in the future.¹⁵⁷ The benefit of a CAGR based approach is that the potential highs and lows over the forecast horizon are reflected in the CAGR.

Third, CSXT’s use of EIA AEO data to forecast non-issue coal and merchandise traffic is unprecedented, and prone to manipulation. CSXT uses the annual rate of change in an EIA AEO forecast of Industrial Sector Macroeconomic Indicators for the non-manufacturing sector and the manufacturing sector to create growth rates for all 2-digit Standard Transportation Commodity Code (“STCC”)

¹⁵⁵ *FMC*, 4 S.T.B. at 730; *DuPont* at 261; *Sunbelt* at 173.

¹⁵⁶ *Sunbelt* at 173.

¹⁵⁷ *FMC*, 4 S.T.B. at 731.

shipments, except transportation equipment (STCC 37), which is based on the EIA AEO forecast of Light-Duty Vehicle Sales By Technology Type. Because neither of these EIA AEO forecasts are presented at a 2-digit STCC level, CSXT attempted to create a link between the forecast categories included in the EIA AEO forecasts and the 2-digit STCC for CSXT traffic. CSXT did this based on a tenuous linkage between 3-digit North American Industry Classification System (“NAICS”) codes to 2-digit STCC codes. The Board has never endorsed such an approach, and the reasons are fairly obvious. A trended analysis that relies on CSXT’s own actual data and traffic forecasts is superior to and more accurate than a CSXT-modified version of a measure designed for other purposes.

Fourth, the EIA industrial-level forecast CSXT relied upon for the 2020-2024 time period does not measure either generic growth in rail volumes or the specific growth in CSXT rail volumes. They are general economic forecasts of the U.S. economy, useful for some purposes but unrelated to CSXT’s traffic mix. The Board long has shown a preference for using more specific information in developing forecasted traffic volumes. In *McCarty Farms*, for example, the Board indicated that it favored the use of the railroad’s system-wide forecast in developing SARR future traffic volumes over a general industry-wide forecast.¹⁵⁸ The EIA forecasts that CSXT advocates for use with this segment of the CERR traffic group are economy-wide forecasts that are no way specific to the traffic

¹⁵⁸ *McCarty Farms*, 2 S.T.B. at 474.

moving over the CERR. The better and more accurate course is to rely on the CAGR approach used by Consumers.

On Rebuttal, Consumers continues to utilize the CAGR to forecast growth in volumes over the 2019-2024 time period.

c. Intermodal Traffic

Consumers' Opening intermodal traffic forecasts were developed in the same general manner as Consumers' general freight and non-issue coal traffic forecasts. CERR intermodal traffic volume for 1Q2015 was based on actual CSXT traffic data, while 2Q2015 was based on actual 1Q2015 CERR intermodal traffic volume forecasted to 2Q2015 levels based on the change in CSXT system-wide intermodal traffic as reported in quarterly SEC filings. Consumers developed 3Q2015 and 4Q2015 traffic volumes by adjusting 3Q2014 and 4Q2014 CSXT traffic data based on actual and forecasted traffic included in CSXT's financial reports and internal traffic forecast. The aggregation of this actual and forecasted data produced the 2015 CERR intermodal traffic volume. The CERR intermodal traffic volumes for the 2016-2019 time period were based on the forecasted change in traffic volumes shown in CSXT's internal intermodal forecast provided in discovery, while the 2020 to 2024 traffic volumes were adjusted by the CAGR developed from CSXT's internal intermodal traffic forecast.

As it did with Consumers' non-issue coal and general freight traffic, CSXT accepted Consumers' development of 1Q2015 and 2Q2015 intermodal

traffic volumes and the 2016 to 2019 intermodal traffic volumes on Reply, but challenged Consumers' forecast for 3Q2015 and 4Q2015 and 2020 to 2024 traffic volumes.¹⁵⁹ {

}¹⁶⁰

For the same reasons detailed above with respect to the general freight and non-issue coal traffic, Consumers rejects CSXT's intermodal forecast adjustments, with one exception. On Rebuttal, Consumers forecasts intermodal traffic for 3Q2015 and 4Q2015 using the same methodology that it uses for non-issue coal and general freight for the 3Q2015 and 4Q2015 time period. Specifically, Consumers utilizes the 2014 and 2015 SEC Form 10-Q data to forecast 3Q2015 and 4Q2015 CERR intermodal volumes.

d. Crude Oil

Consumers' Opening Evidence included crude oil as part of its general freight traffic, and treated this traffic no differently than any other commodity moving over the CERR.¹⁶¹ On Reply, CSXT attempts to spin the

¹⁵⁹ CSXT Reply at III-A-23.

¹⁶⁰ CSXT Reply at III-A-24 n.30.

¹⁶¹ Consumers Opening e-workpaper "CERR Car Traffic Forecast.xlsx," tab "CAR_Forecast," Columns (AE) to (AI).

recent decline in crude oil shipments as reasons to treat crude oil traffic separately from all other CERR merchandise traffic. CSXT argues that the recent decline in crude oil shipments is so anomalous that it justifies substitution of an allegedly updated internal traffic forecast, which CSXT provides for the first time in its Reply, for its internal forecast produced to Consumers in discovery. CSXT uses this new made-for-litigation forecast to project future crude oil shipments only.¹⁶²

The Board should reject CSXT's use of its new internal traffic forecast for crude oil shipments. The Board historically has rejected non-public forecasts introduced by the railroads in their Reply presentations. As the Board stated in *Duke/NS*, "forecasts that were prepared in the ordinary course of business before litigation arose are preferable to projections developed to further the litigating position of the parties."¹⁶³ CSXT's purportedly new crude oil forecast falls squarely in this category, particularly since CSXT provided no information concerning the forecast beyond a single spreadsheet in its Reply evidence.¹⁶⁴

Moreover, even if the new forecast used by CSXT was not prepared solely for purposes of this case, it would be improper to mix it with the forecast that CSXT provided to Consumers in discovery. Forecasts are customarily based upon underlying assumptions that drive the forecasted values. While one assumption may lead to a decline in forecasted traffic for one commodity group,

¹⁶² CSXT Reply at III-A-25 to 26.

¹⁶³ *Duke/NS*, 7 S.T.B. at 144. See also *TMPA*, 6 S.T.B. at 603.

¹⁶⁴ CSXT Reply e-workpaper "Updated CSXT Internal Forecast.xlsx."

the same assumption may lead to an increase in traffic for a different commodity group.¹⁶⁵ CSXT's selective use of two (2) different internal forecasts for different sets of traffic that were made with two (2) different assumptions creates an inconsistency that cannot be reconciled.¹⁶⁶

CSXT attempts to justify its change by citing to the Board's decision in *Duke/NS* to update the EIA's Central Appalachian coal production forecasts used in that proceeding after the closing of the record in the case.¹⁶⁷ However, the Board's action in the *Duke/NS* case is not comparable to the action taken by CSXT in its Reply in this case. In its *Duke/NS* reconsideration decision, the Board elected to substitute one independently produced, policy neutral, public forecast for an updated version of the same forecast. In contrast, CSXT is proposing to substitute a forecast for a single commodity from its own internal traffic forecast. Unlike the EIA forecasts, which are produced with extensive backup and support,¹⁶⁸ there is no way to verify the assumptions and underpinnings of the forecast offered by CSXT.

¹⁶⁵ *FMC*, 4 S.T.B. at 731, “[m]oreover, while UP’s forecasts cannot anticipate all major setbacks that could occur, neither can they anticipate all major marketing opportunities that may arise.”

¹⁶⁶ *TMPA*, 6 S.T.B. at 603; *Xcel I*, 7 S.T.B. at 639 discussing the need to use internally consistent forecasts.

¹⁶⁷ CSXT Reply at III-A-26.

¹⁶⁸ *Duke/NS*, 7 S.T.B. at 145.

For the reasons discussed above, Consumers continue to rely upon CSXT's internal traffic forecast provided in discovery to project future CERR crude oil volumes.

3. Revenues (Historical and Projected)

a. Historical

Consumers based its Opening historical revenues on the traffic and revenue data supplied by CSXT in discovery.¹⁶⁹

On Reply, CSXT accepts the approach used by Consumers in developing historical revenues, but noted one error in Consumers' workpapers that justifies a modification of revenues for purposes of this Rebuttal.¹⁷⁰ In developing the average revenues per car for the base year, Consumers divided historic 3Q2014 and 4Q2014 revenues by forecasted 3Q2015 and 4Q2015 carloads, respectively. Consumers should have divided 3Q2014 and 4Q2014 revenues by the historic 3Q2014 and 4Q2014 carloads, respectively. Consumers made a corresponding error in dividing historic 1Q2015 revenues by the forecasted 2Q2015 carloads, instead of dividing the 1Q2015 revenues by 1Q2105 carloads, to develop the average 1Q2015 revenues per carload. Consumers has adjusted its Rebuttal carload calculations and workpapers accordingly.¹⁷¹

¹⁶⁹ Consumers Opening e-workpapers "CERR Car Traffic Forecast.xlsx," and "CERR Container Traffic Forecast.xlsx."

¹⁷⁰ CSXT Reply at III-A-27.

¹⁷¹ Consumers Rebuttal e-workpaper "CERR Car Traffic Forecast-Rebuttal.xlsx," tab "CAR_1Q2Q2015," Column (AS), and tab "CAR_Forecast,"

b. Projected Revenues

As described in Consumers' Opening Evidence, the procedures used to forecast CERR revenues over the DCF period through December 31, 2024 were tailored to each particular category of traffic, utilizing the most specific and accurate data made available by CSXT in discovery, and/or public sources approved by and relied upon by the Board in previous cases.¹⁷² On Reply, CSXT accepted Consumers' procedures to forecast CERR revenues with the single exception of fuel surcharge revenues. Consumers addresses CSXT's criticism in Section III-A-3-c below.

On Rebuttal, Consumers continues to rely on the procedures utilized in its Opening Evidence to forecast revenues, but with one adjustment. Since the filing of Consumers' Opening Evidence, the AAR has published updated values for the Rail Cost Adjustment Factor, All-Inclusive Less Fuel and Railroad Cost Recovery Indices, and IHS Economics has published updated forecasts of these same indices. CSXT updated the actual and forecasted indices in its Reply Discounted Cash Flow ("DCF") model, but did not update the same indices in its Reply revenue forecast models.¹⁷³ To maintain consistency between its Rebuttal

Column (BN).

¹⁷² Consumers Opening at III-A-25-27.

¹⁷³ CSXT Reply at III-G-11, "Consumers used actual AAR cost indices and Global Insight's (IHS Economics) October 2015 RCAF forecasts to calculate annual inflation forecasts. CSXT does not dispute Consumers' road property asset and operating expense DCF inflation indices derived from these sources and,

revenue forecasts and its DCF model, Consumers has updated the actual and forecasted indices in both its Rebuttal forecast and DCF models.¹⁷⁴

The Board's 2001 decision in *General Procedures* directed that evidence of stand-alone system revenues be grouped under four (4) specific headings: (a) single-line; (b) divisions – existing interchanges; (c) divisions – cross-over traffic (*i.e.*, new interchanges with the residual CSXT); and (d) other. Consumers' Rebuttal presentation in this Part III-A-3 is organized accordingly.

i. Single-Line

As explained in Consumers' Opening Evidence, all of the CERR traffic is received from or delivered to other railroads, including the issue Consumers traffic.¹⁷⁵ Therefore, the CERR does not handle any single-line traffic. CSXT implicitly accepts this position in its Reply by not identifying any single-line movements in its Reply traffic group.¹⁷⁶

consistent with Board precedent, updates those indices in circumstances where new actual index forecast values have been available. CSXT Reply inflation forecasts for the CERR are based on Global Insight's January 2016 forecasts." [footnotes omitted].

¹⁷⁴ Consumers Rebuttal e-workpapers "CERR Car Traffic Forecast_Rebuttal.xlsx," "CERR Container Traffic Forecast_Rebuttal.xlsx," and "Exhibit III-H-1_Rebuttal.xlsx."

¹⁷⁵ See Consumers Opening at III-A-9.

¹⁷⁶ See CSXT Reply e-workpapers "CERR Car Traffic Forecast_Reply.xls," and "CERR Container Traffic Forecast_Reply.xlsx."

ii. Divisions – Existing Interchanges

Consistent with Board precedent,¹⁷⁷ the CERR's revenue or revenue division earned on traffic interchanged with other carriers when the CERR completely replaces CSXT equals the revenues earned by CSXT from that same traffic. Since the issue Consumers coal traffic is the only CERR traffic moving within this category, its revenues are calculated based on the rates and fuel surcharge established in Tariff CSXT-13952,¹⁷⁸ adjusted as described *infra*. CSXT implicitly accepts this position in its Reply by not identifying any CERR movements in its Reply traffic group, other than the issue traffic movements, where the CERR completely replaces CSXT.¹⁷⁹

iii. Divisions – Cross-Over Traffic

Cross-over traffic refers to traffic that the CERR interchanges with the residual CSXT at one or more new, hypothetical interchange points. All non-issue CERR traffic moves as cross-over traffic. As Consumers noted in its Opening Evidence, and CSXT confirms in its Reply, the inclusion of cross-over traffic in the design of a SARR is a long-established and judicially-affirmed

¹⁷⁷ See, e.g., *FMC*, 4 S.T.B. at 725.

¹⁷⁸ See Original Complaint, Exhibit A.

¹⁷⁹ See CSXT Reply e-workpapers "CERR Car Traffic Forecast_Reply.xls," and "CERR Container Traffic Forecast_Reply.xlsx."

simplification convention that is essential to making the SAC Constraint a workable and accessible regulatory remedy for many captive rail shippers.¹⁸⁰

In its Opening Evidence, Consumers applied the ATC division methodology adopted by the Board in *Ex Parte No. 715*.¹⁸¹ Under ATC as adopted in *Ex Parte No. 715*, total revenues from each segment of a cross-over movement (that is, the share of the movement handled by the SARR and the share handled by the residual defendant) are allocated in proportion to the average total cost of the on-SARR segment compared to the off-SARR segment, subject to a failsafe: if the revenue allocation to either the on-SARR or the off-SARR segment is insufficient to cover the variable cost of service for that segment as calculated under URCS, the revenue allocation is increased to equal 100 percent of the variable costs for the segment not covering its variable cost.¹⁸²

Consumers applied ATC as described in *Ex Parte No. 715* in allocating cross-over traffic revenue between the CERR and the residual CSXT. Using CSXT's 2014 URCS variable and fixed costs, and the density and miles of each segment, Consumers calculated CSXT's average total cost per segment for

¹⁸⁰ See Consumers Opening at III-A-10-11 and CSXT Reply at III-A-28.

¹⁸¹ See Consumers Opening at III-A-11.

¹⁸² *Ex Parte No. 715* at 30. If the total revenue from the full movement is less than total variable costs under URCS, then revenue is allocated to the on-SARR and off-SARR segments to maintain the existing RVC ratio on each segment. *Id.*, n.90.

movements in 2014, the last full calendar year of traffic and density data provided by CSXT.

In its Reply, CSXT challenges Consumers' use of the Board's *Ex Parte No. 715* ATC methodology, claiming that Consumers seeks to "bias" its revenue allocations in three (3) different ways by allegedly seeking revenue for services the CERR does not provide.¹⁸³ First, CSXT asserts that the CERR's transportation of single and multiple-carload movements in intact trainloads (as the CERR would receive them) over-compensates the CERR for terminal and switching services that it does not provide. Second, CSXT claims that Consumers is seeking revenues for empty cross-over traffic movements where the movements do not actually traverse the CERR system. Third, CSXT claims that Consumers overstates the revenues for intermodal traffic that the CERR originates or terminates at CSX Intermodal Terminal's ("CSXIT") 59th Street Yard in the same fashion that CSXT originates and terminates traffic at the terminal. CSXT also claims that Consumers made certain technical errors in its revenue division calculations that overstate (and in some cases understate) the CERR's revenues.¹⁸⁴

Contrary to CSXT's often over-heated rhetoric, Consumers' application of the Board and judicially approved ATC methodology does not bias the CERR's allocated revenues. It is CSXT that seeks to bias the revenue

¹⁸³ See CSXT Reply at III-A-32.

¹⁸⁴ See CSXT Reply at III-A-51 to 54.

allocation process by making unapproved movement specific adjustments to the Phase III variable costs used in the ATC revenue allocation process. CSXT also seeks to divert revenue from the CERR that CSXT retains in the real world for providing the same services as the CERR. Finally, most of the alleged technical errors that CSXT claims Consumer made in its division calculations are not errors at all, but result directly from CSXT's decision to produce an unrequested special study of traffic densities that CSXT claims provided more accurate results than its normal course of business density data. Consumers addresses each of these issues below.

(a) Divisions on Merchandise Traffic are Not Biased

CSXT devotes a major portion of its Reply to the claim that Consumers allegedly biased its merchandise traffic revenue divisions by selecting only traffic that moves in intact trains in overhead service while on the CERR.

CSXT claims that:

All of the costs of handling that kind of traffic (meaning the costs of originating, terminating, gathering and blocking the individual cars into a single train heading in the same direction) would be borne by the residual railroad.¹⁸⁵

CSXT misstates the facts. First, in many cases the residual CSXT does not incur any originating, gathering or terminating costs on the CERR merchandise traffic, because the CERR receives trains intact from carriers other

¹⁸⁵ See CSXT Reply at III-A-33.

than CSXT. Second, even where the CERR does originate or terminate traffic after it has been handled by CSXT, the Board's ATC methodology fairly compensates the residual incumbent for any originating or terminating services through its use of unadjusted Phase III URCS variable costs in the ATC revenue divisions calculation.

(1) The Residual CSXT Does Not Incur All of the Originating, Terminating or Gathering Costs Claimed by CSXT

CSXT's claim that the residual CSXT absorbs all of the originating, terminating and/or gathering costs of handling carload and multiple carload merchandise traffic is incorrect.¹⁸⁶ In its Opening Evidence, Consumers explained in detail the foundations of the CERR operating plan, including the locations and the manners in which it receives traffic from the residual CSXT and other rail carriers with which the CERR interchanges.¹⁸⁷ The CERR interchanges merchandise and intermodal traffic with five (5) different railroads, including the residual CSXT, BNSF, UP, IHB and BRC. In those instances where the CERR receives or delivers carload merchandise traffic with carriers other than the residual CSXT, the CERR steps directly into the shoes of CSXT, and receives or delivers the trains intact and pre-blocked just as CSXT does. This means for this traffic, which constitutes { } percent of the carload and intermodal traffic

¹⁸⁶ See CSXT Reply at III-A-33.

¹⁸⁷ See Consumers Open at III-C-8.

received or delivered by the CERR, CSXT expends no time originating, terminating, gathering or blocking railcars into complete trains in the area covered by the CERR.¹⁸⁸ The CERR is simply handling this traffic in the same manner in which the real world CSXT moves it.

**(2) The Board's ATC Methodology
Compensates the Residual Incumbent
for Originating and Terminating
SARR Traffic on Cross-Over
Movements**

In those instances where the CSXT does originate and/or terminate the merchandise traffic carried on the CERR, the Board's ATC methodology more than compensates the residual CSXT for any work that it performs. The ATC methodology explicitly allocates revenues to the railroad that originates and/or terminates the traffic carried by the SARR through the use of unadjusted Phase III URCS variable costs in the ATC calculation. The Board's URCS Phase III model includes specific costs for movements originated and/or terminated by the railroad, including carload and clerical costs and terminal costs.¹⁸⁹ If the residual CSXT

¹⁸⁸ See Consumers Rebuttal e-workpaper "Merchandise Traffic Interchange Ratio.xlsx." Consumers was able to identify this traffic through its ATC divisions analysis. Where the CERR interchanges traffic with a railroad other than the residual CSXT, it retains interchange related costs in the URCS Phase III costs used in the ATC revenue divisions. When the CERR interchanges with the residual CSXT, it removes the interchange related URCS Phase III costs pursuant to the Board's ATC procedures. Consumers was able to determine that { } of its merchandise and intermodal traffic was interchanged with carriers other than the residual CSXT. This traffic excludes unit trains, which by definition incur no switching.

¹⁸⁹ See the Board's Railroad Costs Program User's Manual at 8.

originates or terminates traffic, it is compensated for these operations by its higher Phase III URCS variable costs, which increases the average total costs for the residual incumbent compared to the SARR, and thus increases the residual incumbent's share of revenues.

Nor does the ATC approach understate the costs to originate or terminate traffic. ATC originally was conceived as a means by which the incumbent's revenues could be divided to reflect the *incumbent's* costs along discreet segments and operations of an end-to-end movement, and ensure that revenue allocations followed those costs. Prior to the STB's introduction of the ATC methodology, cross-over traffic revenues were allocated using the modified mileage-block prorate ("MMP"), and later the modified straight-mileage prorate ("MSP") approaches. Under both methodologies, the railroad originating or terminating the traffic (either the SARR or the residual incumbent) was awarded an additional mileage credit for performing those operations. In several decided cases using the MMP/MSP methodology, SARRs presented before the STB included traffic where the SARR would originate a shipment and move it a few dozen miles to interchange with the residual incumbent. The railroads argued – and the STB ultimately agreed – that SARRs were overcompensated for merely originating the movement and then handing off to the residual incumbent, who was undercompensated for the line-haul portion of the movement. The STB

introduced the ATC methodology in part to ensure that terminal and line-haul costs would be properly reflected in the revenue divisions.¹⁹⁰

CSXT now claims that where significant traffic is originated and terminated by the residual incumbent and moved by the SARR in line-haul service, the ATC revenue division formula overcompensates SARRs for performing the line-haul operations, while the residual incumbent is undercompensated for the terminal operations it “is left to” perform. However, CSXT offers no empirical proof of its claim, which flies in the face of a key purpose of the railroad-endorsed ATC methodology. Under the previous pre-ATC model, the STB believed that originating/terminating carriers (whether the SARR or residual incumbent) were *over*-compensated for performing terminal operations, so it changed the model to ensure that terminal and line-haul costs were properly weighted.

Also noteworthy is the irony that CSXT took the complete opposite position on the level of compensation for overhead movements in the *TPI* case. In *TPI*, the shipper included internal cross-over movements in which the SARR would originate and terminate the traffic and the incumbent CSXT would carry traffic on an overhead bridge basis. When designated as the bridge carrier in that

¹⁹⁰ See *Major Issues* at 26, “[u]sing the URCS variable and fixed costs for the carrier, and the density and miles of each segment, parties can calculate the railroad’s average total cost per segment of a move. The revenues from each portion of the movement would then be allocated in proportion to the average total cost of the movement on and off-SARR.”

proceeding, CSXT alleged that the ATC process *under*-compensated it for the intact trainload movements operated in bridge service over the residual CSXT.¹⁹¹

CSXT's position on ATC revenue allocations for overhead or bridge trainload movements appears to be driven purely by its role in litigation. In *TPI*, CSXT argued that the ATC division process understated the revenues allocated to overhead bridge traffic operating over the residual CSXT. In the instant proceeding, the same CSXT argues that the same ATC division approach overstates the CERR revenues on the same type of overhead bridge traffic. CSXT cannot have it both ways.

(3) The ATC Methodology Does Not Over-Compensate the CERR for Switching it Does Not Perform

CSXT argues that there is no meaningful difference between the trainload service that the CERR provides for its merchandise traffic and the unit train movements included in the CERR traffic group.¹⁹² What CSXT effectively is asserting is that if a SARR moves traffic in overhead trainload service, it is not performing any intra-train or inter-train ("I&I") switching, and should not be credited with costs attributable to such switching in its ATC calculation. Implicit in this position is that it is acceptable to assume that the residual incumbent performs I&I switching every 200 miles, based on the URCS system average, on

¹⁹¹ See *TPI*, Reply Evidence of CSX Transportation, Inc., July 21, 2014 at III-A-35 (Public Version).

¹⁹² See CSXT Reply at III-A-34.

the traffic over the off-SARR portions of the same movements, while simultaneously assuming that the SARR does not incur the same costs when it moves the same type of traffic over the same distance.

Regardless of the inconsistency in CSXT's logic, the fact is that the exclusion of I&I costs has no real impact on the ATC divisions regardless of the type of movement involved. This is because using the URCS Phase III model to estimate variable costs ensures that the incumbent's costs for all types of traffic are properly and adequately reflected in the ATC formula. This was illustrated in the evidence submitted in the *Ex Parte No. 715* proceeding, where ATC revenue divisions were developed for eight hypothetical cross-over movements, including single-car and multiple carload shipments.¹⁹³ The evidence showed that the inclusion of I&I costs had no appreciable impact on the revenue divisions for less than unit train shipments. In other words, the CERR is not over-compensated for I&I switching in the ATC revenue divisions.

**(4) CSXT's Movement Specific
Adjustments to Merchandise
Traffic are Unjustified**

CSXT promotes a number of what it considers "corrections" in the Board-approved ATC process to eliminate the alleged biases in Consumers'

¹⁹³ See the Verified Statement of Thomas D. Crowley and Daniel L. Fapp on behalf of Western Coal Traffic League, Concerned Captive Coal Shippers, American Public Power Association, the National Rural Electric Cooperative Association, Western Fuels Association, Inc., and Basin Electric Power Cooperative, Inc., October 23, 2012 at 43 to 45.

CERR revenue allocations for single and multiple carload merchandise traffic described above. It bases these so-called corrections on its claim that the calculation of variable costs for ATC purposes should mirror the characteristics of the services provided by the SARR, and not that provided by the incumbent railroad.¹⁹⁴ CSXT's proposal includes making movement-specific adjustments to the URCS Phase III variable costs for the SARR portion of the movement, adjusting the fixed costs for the SARR portion of the movement by removing fixed costs associated with switching services, and adjusting how the on-SARR and off-SARR variable costs are calculated.

In truth, CSXT is not offering to correct errors in the ATC methodology. It simply is arguing for results-oriented changes to the execution of ATC in this case. The Board should reject CSXT's proposed changes. On a fundamental level, CSXT's stated reasons for making these adjustments, *e.g.*, that the SARR variable and fixed costs must mirror those of the SARR's operations, is fundamentally at odds with the entire predicate for the ATC methodology. Additionally, the Board has continuously rejected the type of movement-specific adjustments that CSXT advocates in its treatment of the SARR portion of fixed and variable costs. Finally, from a theoretical stand-point, the adjustments proposed by CSXT make no logical sense.

¹⁹⁴ See CSXT Reply at III-A-34.

(i) **ATC Divisions are Based on the Incumbent's Operations, Not the SARR's Operations**

CSXT's basis for making adjustments to the variable and fixed costs used to develop the CERR portion of the cross-over revenues lies in its assertion that the method of calculating the costs for revenues attributable to the CERR should match the characteristics of the CERR's operations.¹⁹⁵ CSXT's fundamental assumption is wrong. As the Board has repeatedly noted, revenue divisions are intended to allocate the incumbent's revenues to discrete segments of the incumbent's end-to-end movements based on the relative costs of the *incumbent's* operations over those segments, and are not intended to allocate revenues based on the SARR's operations. The centrality of this principle is reflected, *inter alia*, in the fact that the stand-alone replacement for the incumbent does not even have to be another railroad. With its fundamental assumption undermined, CSXT's argument falls apart.

In *Major Issues*, railroads and shippers offered comments that the STB carefully considered in its development and implementation of the ATC formula. One of the issues left unclear from the STB's discussions in *Major Issues* was how traffic densities used in the ATC calculation would be determined.¹⁹⁶ The STB subsequently resolved the issue in *WFA II*, when it held

¹⁹⁵ See CSXT Reply at III-A-34.

¹⁹⁶ See *Major Issues* at 34. The STB stated that system average fixed cost should be combined with the actual route miles and "traffic tons" of a segment in

that the proper approach is to use the actual densities of the incumbent railroad, and not traffic densities based on the SARR's traffic. The STB noted that it was appropriate to use the incumbent's densities in the formula because revenue allocation has nothing to do with the SARR's operations, but rather with the incumbent railroad's relative costs of service over the relevant segments of its network. Moreover, the unadjusted URCS Phase III costs used in the ATC formula reflect the incumbent's operations, and it would be inherently inconsistent to combine variable costs based on the incumbent's cost of operations with average fixed costs based on the SARR's operations.

CSXT's attempt to align the SARR's operations with the ATC revenue divisions also is inconsistent with the fact that the stand-alone replacement for the incumbent railroad need not even be another railroad. The ICC stated in *Coal Rate Guidelines* that the stand-alone replacement does not need to be another railroad, but any other (theoretically) feasible alternative.¹⁹⁷ The STB affirmed this bedrock position in *WFA II*, indicating "...under SAC the hypothetical competitor to BNSF does not even need to be a railroad at all."¹⁹⁸

question, but never states whether the "traffic tons" are for the SARR or the incumbent carrier.

¹⁹⁷ See *Coal Rate Guidelines*, 1 I.C.C. 2d at 543.

¹⁹⁸ See *WFA II* at 14.

(ii) CSXT's Changes are Movement-Specific Adjustments Not Allowed in ATC Calculations

CSXT asserts that it modified the variable and fixed cost components of the ATC revenue allocation for the CERR's carload merchandise traffic to eliminate an alleged bias in the CERR's revenue divisions. To this end, CSXT made three (3) specific adjustments to the fixed and variable cost used to develop the CERR portion of the revenue divisions. First, instead of developing the unadjusted Phase III URCS variable costs using the actual movement size (single-car or multiple car) included on the shipment waybill, CSXT developed the Phase III variable costs assuming all movements were trainload size movements.¹⁹⁹ Second, instead of using the default trainload empty-loaded ratio used when costing trainload movements, CSXT substituted the empty-loaded ratio based on what it characterized as the actual movement type.²⁰⁰ Third, CSXT made movement specific adjustments to the fixed cost component of the ATC calculation.²⁰¹

Each one of CSXT's adjustments must be rejected, based on the simple and central fact that the Board's ATC methodology does not allow for movement specific adjustments to the URCS costs used to develop revenue divisions. In *Major Issues*, the Board found that "the use of movement specific-

¹⁹⁹ See CSXT Reply at III-A-34.

²⁰⁰ See CSXT Reply at III-A-35.

²⁰¹ See CSXT Reply at III-A-36 to 37.

adjustments is inordinately complex, time consuming, and expensive, and does not necessarily result in more reliable results than using the URCS system averages.”²⁰² The Board further warned that “selective replacement of system-average statistics ... may bias the entire analysis, rendering the modified URCS output unreliable.”²⁰³ CSXT’s focus on isolated aspects of the SARR and/or the residual incumbent segments constitutes exactly the sort of selective adjustment that was the subject of the Board’s warning in *Major Issues*. Far from removing bias in revenue allocations, CSXT’s selected movement specific adjustments introduces bias in its favor, which was the basis of the Board’s preclusion of the same type of adjustments in *Major Issues*.

Even if the movement-specific adjustments were allowed, which they are not, the adjustments CSXT made to the fixed cost component of the single and multiple car movements are flawed, for at least (3) three reasons.

First, fixed costs are, by definition, costs incurred by the railroad as a whole. While URCS makes a mathematical distribution of fixed costs in the D1 through D8 tables, the user cannot pick and choose which fixed costs are applicable to any movement. Separating out fixed cost by component, *i.e.*, identifying the amounts in tables D2 and D4, is nonsensical. No fixed cost (or constant cost) allocation methodology ever utilized by the ICC/STB for

²⁰² See *Major Issues* at 60.

²⁰³ *Id.* at 58.

ratemaking has separated fixed costs into separate components. In URCS Phase III, which is utilized in calculating ATC revenue divisions, line 697 shows the constant cost markup ratio. The value is one number for each individual URCS and is applied to ALL movements. For example, URCS and the STB do not calculate a separate markup ratio for railroad-owned or shipper-owned cars. CSXT's proposed approach contradicts these basic principles.

Second, CSXT proposes to exclude fixed costs related to tables D2 and D4 in the URCS because the SARR does not incur switching. However, this calculation fails to recognize that the variabilities in tables D2 and D4 of URCS are also tied to other parts of URCS, namely the D1 and D3 tables that deal with the running portion of a movement. A review of Table D2, lines 114 through 154, Column (1) shows that the variability percentage is based on URCS regression numbers 2 and 9. Similarly, a review of Part D4, lines 103 through 156, Column (1) shows that the variability percentages are based on regressions 2 and 6. These regressions are based on costs for both running and switching accounts. CSXT cannot eliminate the fixed costs for D2 and D4 without adjusting the variability percentages applicable to the running accounts, which would involve a recalculation of the entire URCS. Furthermore, road return, which is applicable to both D1 and D2, is based on the standard factor of 50 percent. In order to eliminate the switching fixed costs, CSXT (or the STB) would be required to re-evaluate the 50 percent variability which was determined considering both running and switching costs.

Third, both Consumers and CSXT have included switch locomotives on the CERR. The costs for the switch locomotives for ATC are considered as part of D2 and D4. CSXT cannot include the costs for switch locomotives in the CERR operating expenses and then exclude that item from the ATC division calculations.

**(b) CSXT's Movement Specific
Adjustments to Unit Train
Traffic Have No Merit**

As shown in its Opening Evidence, Consumers developed revenue divisions using the Board mandated ATC divisions process, including the use of unadjusted Phase III URCS variable costs to develop the on-SARR and off-SARR portions of CERR traffic movements.²⁰⁴ The Board's URCS Phase III model assigns an empty/loaded ratio of 100 percent to all unit train movements, and Consumers used this unadjusted factor when developing its URCS Phase III variable costs for its ATC calculations.²⁰⁵

In its Reply, CSXT states that the use of a 100 percent empty/loaded ratio creates a bias in the ATC divisions because not all empty unit train

²⁰⁴ See Consumers Opening at III-A-13.

²⁰⁵ The empty/loaded ratio, also called the empty/return ratio, reflects the amount of empty car movement before spotting for another shipment, which results from the loaded shipment distance. The two ratio extremes for the empty/loaded ratio are: 1.0 that implies no empty return mileage and 2.0, which implies a 100 percent empty return of the freight car. See the STB Railroad Cost Program User's Manual at page 21.

movements return over the same route as the loaded movements.²⁰⁶ In the real world, for example, CSXT avoids sending low-priority empty unit trains through the Chicago gateway. CSXT asserts that using the URCS Phase III default ratio overstates the CERR revenues because the CERR is implicitly paid for work it did not perform, namely the movement of empty unit trains back over its system. To remedy this alleged bias, CSXT changed the empty/loaded ratio on unit train movements from 100 percent to 85 percent to reflect what it claims is the empty/return ratio experienced by unit trains operating over the CERR route.

The Board must reject CSXT’s empty/loaded ratio adjustment because CSXT improperly interprets the empty/loaded ratio it adjusted. Implicit in CSXT’s methodology is the assumption that even though the on-SARR empty return ratio is less than the 100 percent utilized in Phase III costing of unit trains, the empty return ratio for off-SARR is still 100 percent. The fact is that unit trains do not always return empty to the same origin or interchange point. This is well known, and has been discussed by the Board in the specific context of railroad proposals to “adjust” for it.²⁰⁷ {

} Before CSXT can apply a movement specific empty return ratio for

²⁰⁶ See CSXT Reply at III-A-38-39.

²⁰⁷ See *Major Issues* at 58. See also Part II-A-2-5, *supra*.

²⁰⁸ CSXT Reply e-workpaper “2014 CSXT URCS Empty Load Ratios.xlsx,” tab “E2P1,” cell F28.

the on-SARR movement, CSXT would have to calculate the empty return ratios for the off-SARR trains, so that both sides of the ATC revenue division are calculated in a like manner.

CSXT's proposed movement specific adjustment, like the adjustments rejected by the Board in *Major Issues*, inevitably would lead to further adjustments both in this case and in future cases. For example, the CERR operates differently than CSXT does over the existing CSXT lines that the CERR replicates, and the CERR lines contain different track structure. Other traffic or cost inputs that will vary for the on-SARR and off-SARR movements would include:

1. Number of locomotives on the train;
2. Number of cars (or total weight) of the train;
3. Crew wages;
4. Road property investment; and
5. Maintenance of road property and equipment.

It is this very reason of ever-escalating adjustments that the Board in *Major Issues* chose to rely on URCS Phase III system average costs instead of allowing parties to make ad-hoc changes to the URCS variable costs.

CSXT also makes the absurd assertion that its change is appropriate because it is not a movement-specific adjustment to the URCS variable costs, but rather it is a CERR system-wide adjustment applied to all unit train movements.²⁰⁹

In *Major Issues*, The Board defined "movement-specific adjustment" as the use of

²⁰⁹ See CSXT Reply at III-A-40-41.

a figure different than an URCS system-average figure in the development of variable costs.²¹⁰ In this instance, CSXT advocates the replacement of the URCS system-average empty/loaded ratio with an empty/return ratio allegedly reflective of only the unit train traffic in the CERR traffic group. CSXT's proposed change is a clear example of a movement-specific adjustment.

Indeed, CSXT itself has called this type of change a "movement-specific" adjustment in a prior STB proceeding. In its *Ex Parte No. 715* notice of proposed rulemaking, the Board requested comments on proposed limitations to the use of cross-over traffic in SAC cases.²¹¹ In commenting on the proposed cross-over traffic limitations, CSXT stated that the issue was not with cross-over traffic, *per se*, but with allocating revenues to account for the unique attributes and characteristics of each particular SARR:²¹²

Thus, if the Board were able to adjust its revenue allocation method to account for the unique attributes and characteristics of each particular SARR, the use of crossover traffic would not necessarily need to be limited in the manner that the Board has proposed, either by limiting the use of crossover traffic to (1) movements originating or terminating on the SARR or (2) trainload movements. In particular, to address the distortions about which the Board is concerned would require movement-specific adjustments to URCS.²¹³

²¹⁰ See *Major Issues* at 22.

²¹¹ See *Ex Parte No. 715* at 16 to 17.

²¹² See Opening Comments of CSX Transportation Inc. and Norfolk Southern Railway Company, *Ex Parte No. 715*, October 23, 2013 at 17-18.

²¹³ *Id.* at 18.

The adjustments that CSXT now proposes to make to the empty/loaded ratio are the same adjustments that CSXT called “movement-specific” adjustments in its *Ex Parte No. 715* comments.

(c) CSXT’s Treatment of Traffic Originating or Terminating at the 59th Street Intermodal Facility is Incorrect

Consumers’ operating experts developed the CERR operating plan to provide the same or better levels of service as that provided by CSXT for traffic included in the CERR traffic group.²¹⁴ This includes intermodal traffic originating, terminating or moving through the 59th Street Intermodal facility owned and operated by CSXIT. Specifically, as CSXT does in its real world operations, the CERR originates and terminates some intermodal trains at CSXIT’s 59th St. Intermodal terminal, but the trains are handled at the terminal by CSXIT, a separate and distinct entity from CSXT.²¹⁵ For traffic that CSXT receives or delivers to the 59th Street Intermodal facility and is not terminated at the facility, the CERR interchanges with CSXT. Consumers accounted for the

²¹⁴ See Consumers Opening at III-C-78, “[t]his comparison illustrates that all of the cross-over traffic transit times are superior to the CSXT historic transit time over the same route.”

²¹⁵ See Consumers Opening at III-C-8.

difference in traffic originating/terminating or received/delivered in its development of ATC revenue divisions.²¹⁶

CSXT claims in its Reply that Consumers is “playing games” with intermodal traffic that originates or terminates at CSXIT’s 59th Street Intermodal terminal by taking revenues for originating or terminating intermodal traffic that CSXT originates or terminates at the 59th Street Intermodal terminal, but not performing the work associated with originating or terminating the traffic.²¹⁷ CSXT asserts that it is CSXIT that is actually originating or terminating the traffic, and not the CERR because it is CSXIT that is actually building the trains. Additionally, CSXT claims that the lift fees that the CERR pays CSXIT for building the trains are substantially below the actual costs incurred by CSXIT, and that Consumers has not included any of the investment and operating costs incurred by CSXIT to build, maintain and operate the 59th Street Terminal.²¹⁸

CSXT’s claims that Consumers is “playing games” with traffic originating or terminating at the 59th Street Intermodal terminal are groundless. The CERR originates or terminates traffic at the 59th Street Intermodal terminal in the same fashion as CSXT originates or terminates traffic at the facility, and therefore is entitled to the same revenues that CSXT receives. This is not changed

²¹⁶ See Consumers Opening workpaper “CERR Divisions.xlsx,” tab “Containers,” columns BP and BQ.

²¹⁷ See CSXT Reply at page III-A-42.

²¹⁸ See CSXT Reply at III-A-44.

by the fact that the 59th Street Terminal is owned by a separate company controlled by CSXT's corporate parent, CSX Inc. Consumers discusses CSXT's Reply claims about operating and investment costs for the 59th Street Terminal in Parts III-C, III-D and III-F, *infra*, and explains how Consumers accounted for all relevant operating costs and investment. Consumers addresses CSXT's false claim that there is no effective difference between CSXT and CSXIT, below.

Shippers must account for all the services provided by the defendant railroad for the transportation of issue traffic, and any non-issue traffic included in the stand-alone traffic group. This requirement, however, applies only to services provided by the defendant railroad, and not to services provided by a third-party company, even if the third-party company is a corporate affiliate of the defendant.

The Board addressed this issue in its *DuPont* decision. In that proceeding, DuPont proposed using trackage rights over four (4) different short line or switching railroads affiliated with the defendant NS.²¹⁹ Two (2) of these railroads, the BRC and Terminal Railroad Association of St. Louis ("TRRA"), were indirect subsidiaries of NS. The other two (2) railroads, the Conrail Shared Asset Areas ("SAA") and the IHB, were indirect subsidiaries of Norfolk Southern Corporation ("NSC"), the parent company of NS. NS argued that DuPont could not use trackage rights over the facilities of any four (4) of the railroads because the trackage rights fees paid by the DuPont SARR would not cover the full cost of

²¹⁹ See *DuPont* at 47.

ownership in the four (4) short lines. Instead, NS argued that DuPont had to pay for the replacement costs of these facilities proportional to NS' ownership in each of the railroads.²²⁰

The Board held that DuPont was required to account for the proportional construction costs of the BRC and TRRA, since these companies were indirect subsidiaries of the defendant NS, but *not* the costs of the SAA or IHB, since these companies were owned by NSC.²²¹ The Board noted that NSC elected to set up its ownership interests in SAA and IHB as separate legal entities from its primary railroad subsidiary, and that data used in SAC presentations must reflect the underlying corporate structure of NS and NSC. Because the SAA and IHB were not owned by NS, but instead were owned by NSC, the Board found that DuPont need not account for the construction costs and operations of these facilities beyond the trackage rights payment paid by NS to each of them.

The issue of corporate structure is germane in this case because like the SAA and IHB in *DuPont*, CSXIT is not owned by the defendant CSXT but by its corporate parent, CSX Inc. This fact is confirmed by CSX Inc.'s SEC Form 10-K and by CSXT's Annual Report Form R-1.

²²⁰ *Id.* at 48.

²²¹ *Id.* at 48-49.

CSX Inc. identifies CSXT as its primary subsidiary, but states that several other companies are subsidiaries of CSX Inc. As indicated in CSX's 2015 Form 10-K:

In addition to CSXT, the Company's (CSX's) subsidiaries include CSX Intermodal Terminals, Inc. ("CSX Intermodal Terminals"), Total Distribution Services, Inc. ("TDSI"), Transflo Terminal Services, Inc. ("Transflo"), CSX Technology, Inc. ("CSX Technology") and other subsidiaries. CSX Intermodal Terminals owns and operates a system of intermodal terminals, predominantly in the eastern United States and also performs drayage services (the pickup and delivery of intermodal shipments) for certain customers and trucking dispatch operations.²²²

As the foregoing shows, CSXIT is a subsidiary of CSX Inc., and is not a subsidiary of CSXT. This fact is further confirmed by CSX Inc.'s website, which includes a list of primary subsidiaries and identifies each as a separate and distinct company.

CSX Corporation is the parent company of several direct and indirect wholly-owned subsidiaries, including: CSX Intermodal Terminals, Inc.; CSX Real Property, Inc.; CSX Technology, Inc.; CSX Transportation, Inc.; Total Distribution Services, Inc. and TRANSFLO Corporation. Each subsidiary is a separate and distinct company.²²³

²²² See CSX Inc. 2015 SEC Form 10-K at 4. A copy of CSX's 10-K is found in Consumers Rebuttal e-workpapers at "CSX 2015 10-K.pdf."

²²³ See CSX Inc. corporate website accessed on April 25, 2016 at <https://www.csx.com/index.cfm/about-the-site/corporate-structure/>.

CSXT's lack of any ownership interest in CSXIT is further confirmed by its exclusion from the companies consolidated into CSXT's Form R-1, and its exclusion from Schedule 310A.²²⁴

Like the operations of the SAA and IBH in the *DuPont* case, CSXT's relationship to CSXIT is nothing more than a customer/supplier relationship. As shown in Parts III-D and III-F *infra*, Consumers has accounted for all the necessary costs due to CSXIT for the services that it provides, and therefore is entitled to the same origination or termination revenues received by CSXT for traffic the CERR originates or terminates at the 59th Street Intermodal facility.

**(d) Other Adjustments to ATC
Revenue Divisions**

CSXT asserts that it made two (2) sets of technical adjustments to Consumers' ATC revenue division calculations. First, CSXT updated the 2014 URCS used in the ATC revenue division allocation process to the Board's recently released 2014 CSXT URCS.²²⁵ As Consumers noted in its Opening Evidence, the STB had not yet released its 2014 CSXT URCS at the time of Consumers' filing, so Consumers developed the CSXT 2014 URCS variable costs using an URCS model based upon the STB's programs and procedures.²²⁶ Since the Board has

²²⁴ See CSXT Annual Report Form R-1.

²²⁵ See CSXT Reply at III-A-51.

²²⁶ See Consumers Opening at III-A-12.

now released its 2014 CSXT URCS, Consumers has updated its ATC revenue divisions to use the Board's 2014 CSXT URCS.

Second, CSXT claims it found errors in the fixed cost allocation affecting the ATC revenue divisions.²²⁷ In actuality, however, most of the alleged errors claimed by CSXT are the result of Consumers' reliance upon CSXT's own special study of density on the CSXT system. Consumers noted in its Opening Evidence that the route densities for each movement included in the CERR traffic group, both on-SARR and off-SARR, were developed using density data produced in discovery.²²⁸ CSXT initially provided gross tonnage density statistics that CSXT stated it developed in the normal course of its business. However, in a later data production, CSXT stated that use of the gross tonnage data initially provided could lead to overstatements of gross tonnages on individual segments, because the tons may reflect traffic that traverses only a small portion of the segment and not the full segment, especially around terminal areas.²²⁹ Given the alleged limitations of the gross tonnage density data, CSXT represented that it had performed its own special study to develop net tonnage statistics for each segment. Since CSXT held out its special study as more accurate than its normal course of business density data, Consumers relied upon CSXT's study for density statistics.

²²⁷ See CSXT Reply at III-A-51.

²²⁸ See Consumers Opening at III-A-19 and 20.

²²⁹ See the June 12, 2015 letter from Hanna M. Chouest to Kelvin J. Dowd included as Consumers Opening e-workpaper "June 12, 2015 Discovery Production.pdf." at 1 and 2.

CSXT now appears to have had second thoughts, and seeks to characterize any problems with its special study as “errors” committed by Consumers. CSXT cannot proffer a special study to Consumers as a reliable database, and then jettison the study when it does not like the results. Consumers addresses CSXT’s claims below.

(1) **Alleged Inaccurate Density Figures**

CSXT argues that Consumers made two (2) errors related to the traffic densities included in its special study. First, CSXT claims that Consumers understated the traffic densities between MP DC 15.0 and 15.35 in Chicago, which led to an overstatement of on-CERR allocated fixed costs.²³⁰ CSXT claims that this error is due to a “simplification in the routing algorithm used by CSXT to transform the CSXT car event data into segment densities produced to Consumers in discovery.”²³¹

Second, CSXT asserts that Consumers’ off-SARR fixed costs are overstated because certain movements over the residual CSXT use a small portion of a long, low-density segment between MP CGE 0 and CGE 47.1 that has high fixed costs per ton.²³² CSXT claims that it fixed this alleged error by eliminating all the off-SARR fixed costs associated with this segment.

²³⁰ See CSXT Reply at III-A-51-52.

²³¹ *Id.* at III-A-51.

²³² *Id.* at III-A-53-54.

CSXT's assertion that Consumers erred in developing the fixed costs for these segments is incorrect. Consumers calculated the fixed costs associated with the two (2) line segments that CSXT now takes issue with in the same fashion that it calculated the fixed cost for every other segment included in CSXT's special study, which CSXT accepted.²³³ It is simply not true that Consumers made an error in these calculations.

What CSXT really is objecting to is the results produced by its own special study. CSXT held out to Consumers, and thus to the Board, that its normal course of business density data should not be used because it could overstate segment traffic densities.²³⁴ CSXT therefore produced, on its own initiative, a special study of traffic densities based on car event data that would eliminate the problems that CSXT had identified in its normal course of business density data.

One suspects, of course, that CSXT overrode its normal course of business data because it was concerned that using that data would be too favorable to Consumers. But whatever the reason, CSXT cannot reject its own business records in favor of a special study, and then turn around and distance itself from its

²³³ *Compare* Consumers Opening e-workpaper "2014 Fixed Costs For ATC (Final).xlsx," tab "2014_Density," cells R336, R337 and R764, which include the fixed cost calculations for the line segments in question, to every other fixed cost calculation in Column (R) of the same worksheet.

²³⁴ *See* the June 12, 2015 letter from Hanna M. Chouest to Kelvin J. Dowd included as Consumers Opening e-workpaper "June 12, 2015 Discovery Production.pdf." at 1 and 2.

own study when it does not like the results.²³⁵ CSXT undertook its special density study and presented the results as more accurate and reliable than its course of business data. It is only after Consumers applied the results of CSXT's special density study that the railroad claimed it also produces inaccurate results.

Consumers continues to rely upon CSXT's special study of densities for the two (2) line segments at issue in its Rebuttal Evidence.²³⁶

(2) Consumers Did Not Overstate the Length of the Campbell Plant Segment

CSXT claims that Consumers' fixed cost calculations overstate the length of the line segment leading to the Campbell plant.²³⁷ Specifically, CSXT argues that Consumers' traffic only operates over 9.4 miles of the 37-mile segment included in CSXT's special study of traffic densities. The CSXT special density study, which is based on CSXT network link information included in CSXT's car movement data, identifies the specific segment as CGC24.33_CGC61.41, which is between MP CGD 24.33 and CGC 61.41 on the Grand Rapids Subdivision.

Because CERR traffic only operates over a portion of the segment, CSXT

²³⁵ See *Texas Municipal Power Agency v. Burlington Northern and Santa Fe Railway Company*, 7 S.T.B. 803, 813 (2004).

²³⁶ CSXT also asserts that it accounted for the impact of the low density on the CGE 0 and CGE 47.1 line segment by removing the fixed costs for this segment from its calculations; however, a review of CSXT's Reply workpapers shows that CSXT continued to include the fixed costs in its calculations. See CSXT Reply e-workpaper "aOffSarrFixedCosts_Upload.xlsx," tab "aOffSarrFixedCosts," cells I1855 and I2868.

²³⁷ See CSXT Reply at III-A-53.

unilaterally decided to split the link into two (2), which reduces the average fixed cost of traffic moving over the segments.²³⁸

CSXT's proposed change to its special study is wrong for several reasons. First, CSXT's proposed change is just another case of seller's remorse, where CSXT is attempting to distance itself from the results of its own special density study. Consumers did not define the length of the segments included in CSXT's special study. CSXT did.²³⁹ CSXT found that it did not like the results of its special study once Consumers applied them, and is now attempting to change the results after the fact.

Second, Consumers' fixed cost calculations already take into consideration that traffic moving to and from the Campbell plant only moves over a portion of the line segment. Consumers developed the average fixed cost per ton for each on-SARR line segment identified in CSXT's special density study by prorating the segment's average fixed cost per ton by the portion of the CERR miles moving over that segment. {

²³⁸ This occurs because the Board's ATC methodology calculates a system average fixed cost per mile, and then applies this fixed cost to segments along the incumbent railroad's route. Reducing the length of each segment reduces the allocated fixed cost to that segment, which, holding all else constant, reduces the average fixed cost per ton for traffic moving over the line segment.

²³⁹ See Consumers Opening e-workpaper "2014 Fixed Costs for ATC (Final).xlsx," tab "2014_Density," row 763. This worksheet came directly from CSXT's special density study provided in discovery.

}²⁴⁰ CSXT should

be familiar with this methodology, since it is the same methodology that CSXT used to allocate SARR revenues over segments in which the SARR only moved part of the way in the *TPI* case.²⁴¹

Again, CSXT should not be allowed to distance itself from its own special study just because the results of its use do not favor CSXT. Additionally, CSXT's proposed adjustment is unnecessary because Consumers' approach already accounts for the CERR operating over only a portion of the line segment. Consumers continues to use the correct methodology that it used in its Opening Evidence.

(3) Bi-Directional Density Segments

CSXT claims that Consumers' fixed cost segmentation file includes two (2) records each for 17 segments, reporting separately by direction the eastbound and westbound densities. However, in its fixed cost calculations, CSXT notes that Consumers only used the density in one direction.²⁴²

²⁴⁰ See Consumers Opening e-workpaper "2014 Fixed Costs for ATC (Final).xlsx," tab "On-SARR Miles and Fixed Cost," cells N72, N253 and U46. This adjustment only impacts the non-issue traffic moving to the Campbell Plant since the CERR receives 100 percent of the issue traffic moving to the station.

²⁴¹ See *TPI* Reply Evidence of CSX Transportation Inc., July 21, 2014 at III-A-41-43 (Public Version).

²⁴² See CSXT Reply at III-A-52 to 53.

Consumers reviewed CSXT's claim and agrees that 17 of the 1,674 segments included in CSXT's special study report eastbound and westbound densities. Consumers incorporated CSXT's adjustment into its Rebuttal fixed cost calculations.²⁴³

In reviewing CSXT's Reply fixed cost calculations, Consumers also found that CSXT's calculations developed incorrect costs on three (3) of the 17 bi-directional segments identified by CSXT. CSXT's error occurred because CSXT transposed the milepost in the segment name on three (3) of the segments. CSXT's special density study identified density segments by the beginning and ending milepost for each segment. In three (3) cases however, CSXT used the same origin and destination milepost identifiers on these bi-directional segments twice.²⁴⁴ This lead to a miscalculation of the bi-directional densities moving over these segments and incorrect fixed costs. Consumers corrected CSXT's error in its Rebuttal fixed cost calculations.²⁴⁵

²⁴³ See Consumers Rebuttal e-workpaper "2014 Fixed Costs For ATC (Rebuttal).xlsx," tab "2014_Density," Columns (H) and (I).

²⁴⁴ See CSXT Reply e-workpaper "2014 Fixed Costs For ATC (Final)_Reply.xlsx," tab "2014_Density," cells B398, B919 and B1411.

²⁴⁵ See Consumers Rebuttal e-workpaper "2014 Fixed Costs For ATC (Rebuttal).xlsx," tab "2014_Density," cells B398, B919 and B1411.

(4) Buffington Connection Traffic Densities

CSXT recategorized 0.6 miles on the Buffington Connection from trackage rights miles to a CERR owned segment.²⁴⁶ Because of this, CSXT adjusted the fixed costs calculations to account for traffic moving over a CERR owned line-segment instead of over NS via trackage rights.

As Consumers discusses in Section III-B-1-c, it accepts the change from trackage rights to CERR ownership for the 0.6 miles of track, and adjusted its fixed cost workpapers to reflect this change.²⁴⁷

(5) 22nd Street to Curtis Fixed Costs

In calculating the fixed costs for the traffic moving from 22nd Street to Curtis via the BRC route, Consumers failed to prorate the segment miles over which the CERR would operate. This led to overstatement on the CERR miles and fixed costs on CERR movements moving between 22nd Street and Curtis via the BRC.²⁴⁸ Consumers corrected this proration in its Rebuttal fixed cost calculation.²⁴⁹

²⁴⁶ See CSXT Reply at III-A-54.

²⁴⁷ See Consumers Rebuttal e-workpaper “2014 Fixed Costs For ATC (Rebuttal).xlsx,” tab “On-SARR Miles and Fixed Cost,” cells S14, S15, S59 and S60.

²⁴⁸ See CSXT Reply at III-A-53.

²⁴⁹ See Consumers Rebuttal e-workpaper “2014 Fixed Costs For ATC (Rebuttal).xlsx,” tab “On-SARR Miles and Fixed Cost,” cell R10.

**(6) Other Errors in CSXT
Reply Fixed Costs**

In addition to the errors made by CSXT discussed above, CSXT also erred in calculating the average CSXT fixed costs per mile by using off-SARR CERR miles instead of total CSXT system miles in its Reply Evidence.

In its Opening Evidence, Consumers developed the CSXT average fixed cost per mile by dividing the total CSXT URCS fixed costs by the CSXT system miles included in the CSXT special density study.²⁵⁰ It did this because Consumers found that the route miles included in CSXT's special study were significantly different than the route miles reported in CSXT's 2014 Annual Report. Since CSXT's net tonnage statistics were developed based on the miles included in the net density table, Consumers used the route miles included in the CSXT density data to develop the fixed cost per mile, to maintain a consistent approach to the cost calculation.²⁵¹

In its Reply workpapers, CSXT also used the mileages included in its special density study to develop the CSXT system average fixed cost per mile, but included only off-CERR miles in its calculation.²⁵² This leads to an understatement of CSXT network miles and an overstatement in average fixed

²⁵⁰ See Consumers Opening e-workpaper "2014 Fixed Costs for ATC (Final).xlsx," tab "CSXT 2014 Fixed Costs," cell G63.

²⁵¹ See Consumers Opening at III-A-21.

²⁵² See CSXT Reply e-workpaper "2014 Fixed Costs For ATC (Final)_Reply.xlsx," tab "CSXT 2014 Fixed Costs," cell G63.

cost per mile. Since the vast majority of the CSXT system miles are off-SARR miles to the CERR traffic, the overstated fixed costs would tend to overstate the off-SARR miles on each movement, and bias the ATC revenue divisions. Consumers rejects CSXT's adjustment and continues to rely upon its Opening Evidence fixed cost calculation methodology.²⁵³

c. Fuel Surcharge Revenue

In its Opening Evidence, Consumers based the CERR's fuel surcharge revenues on CSXT's contractual and published fuel surcharge mechanisms applicable to the selected traffic group.²⁵⁴ For traffic handled by the CERR that moves under contract with CSXT during the base year, Consumers calculated fuel surcharge revenue in accordance with the terms of each contact, and allocated the revenue to the CERR depending upon the surcharge methodology specified in the contract.

Subsequent to the base year, and for all traffic subject to an HDF-based fuel surcharge, Consumers applied the EIA forecast of HDF prices set forth in the most recently available editions of EIA's Short-Term Energy Outlook ("STEO") and Early Release AEO. Where a contract specified a fuel surcharge based on West Texas Intermediate Crude Oil ("WTI") prices, Consumers used the WTI price forecasts in the EIA STEO and AEO. Following contract expirations

²⁵³ See Consumers Opening e-workpaper "2014 Fixed Costs for ATC (Rebuttal).xlsx," tab "CSXT 2014 Fixed Costs," cell G63.

²⁵⁴ See Consumers Opening at III-A-27-31.

and through 2024, Consumers assumed that traffic would become subject to CSXT's HDF-based mileage or percent-of-rate surcharges, depending on the commodity. Consumers' approach is consistent with Board precedent both before and after the decision in *Major Issues*.²⁵⁵

CSXT generally accepted Consumers' Opening fuel surcharge approach, but then made three (3) changes to Consumers' fuel surcharge calculations. First, CSXT changed Consumers' Opening methodology for calculating the fuel surcharges on traffic moving during the third and fourth quarters of 2015. Second, CSXT argued that Consumers should have applied a different tariff when calculating fuel surcharges for certain merchandise traffic. Third, CSXT updated the fuel surcharge forecast using more recent EIA forecasts. Consumers addresses each of CSXT's changes below.

i. Third and Fourth Quarter 2015 Fuel Surcharges

CSXT challenged Consumers' approach of using third and fourth quarter 2014 fuel surcharge revenues together with third and fourth quarter 2015 forecasted carloads to calculate third and fourth quarter 2015 CERR fuel surcharge revenues, arguing that this incorrectly assumed that the same fuel surcharges collected by CSXT in 2014 also would be collected in 2015.²⁵⁶ Instead, CSXT

²⁵⁵ See, e.g., *Sunbelt* at 6; *West Tex. Utils. Co.*, 1 S.T.B. at 674-676.

²⁵⁶ See CSXT Reply at III-A-54-55.

developed third and fourth quarter 2015 fuel surcharges based on what it alleged were the actual parameters of the tariffs governing each movement.

CSXT's Reply approach should be rejected, because it selectively updates only one portion of the CERR's revenues while not updating the other revenue component. In data produced to Consumers in discovery, CSXT separated its revenues into two (2) general categories: net line-haul revenues and fuel surcharge revenues.²⁵⁷ Consumers' Opening revenue forecast methodology developed both third and fourth quarter 2015 net line-haul revenues and fuel surcharge revenues by calculating the third and fourth quarter 2014 line haul and fuel surcharge revenues, and adjusting the 2014 values by the expected growth in volumes between 2014 and 2015.²⁵⁸ This approach aligns the economic factors underlying the line-haul revenues and fuel surcharge revenues in accordance with the Board's preference for maintaining consistency between the various inputs to SARR traffic and revenue forecasts.²⁵⁹ CSXT accepted Consumers' approach for purposes of determining 2015 net line-haul revenues, but proposes a different methodology for fuel surcharge revenues, thereby giving rise to an improper data

²⁵⁷ See Consumers Opening e-workpaper "2014 - 1Q 2015 Car And Container Waybills.xlsx," tab "2014 Carload," Columns AT to BA. Net line-haul revenues are calculated by adjusting gross line-haul revenues by other revenue adjustments including, but not limited to, customer switch revenues, demurrage revenues, contract refunds and overcharge claims.

²⁵⁸ See Consumers Opening e-workpapers "CERR Car Traffic Forecast.xlsx," tab "CAR_Forecast," and "CERR Container Traffic Forecast.xlsx," tab "CONT_Forecast."

²⁵⁹ See *TMPA*, 6 S.T.B. at 603; *Xcel I*, 7 S.T.B. at 639.

inconsistency. Inasmuch as the line-haul revenues are the predominant component, to avoid this inconsistency Consumers continues to rely upon its Opening approach on Rebuttal.

ii. Incorrect Tariff

As noted, Consumers' Opening Evidence calculated fuel surcharge revenue in accordance with the terms and conditions of each contract or tariff applicable to a particular shipment.²⁶⁰ In some cases, Consumers relied on CSXT Tariff 8661, which provided for a fuel surcharge with a strike price of \$1.999 per gallon, and governed movements that occurred prior to 2015.²⁶¹ In other cases, Consumers used CSXT Tariff 8662, which provided for a fuel surcharge with a strike price of \$3.749 per gallon for movements that commenced beginning in 2015.²⁶² After the expiration of a contract or tariff, Consumers intended to utilize the terms of either Tariff 8661 or Tariff 8662, as applicable, to calculate the fuel surcharge revenues for the forecasted time period. This methodology is consistent with past proceedings before the Board.²⁶³

On Reply, CSXT argued that Consumers incorrectly calculated fuel surcharge revenue after the expiration of a contract or tariff wherever it utilized

²⁶⁰ See Consumers Opening at III-A-28.

²⁶¹ See Consumers Opening e-workpaper "CERR_TRAFFIC_CONTRACTS_RATEADJ_FSC.xlsx," tab "CSXT_FSC," cells C12 to M12.

²⁶² See Consumers Opening e-workpaper "CERR_TRAFFIC_CONTRACTS_RATEADJ_FSC.xlsx," tab "CSXT_FSC," cells C47 to M47.

²⁶³ See *AEPCO 2011* at 27-28.

the terms of Tariff 8661, and not Tariff 8662.²⁶⁴ CSXT claimed that Consumers should have used the terms of Tariff 8662 to calculate the fuel surcharge amount for the forecasted time periods on all traffic, after the expiration of a contract or tariff.

Consumers agrees that for approximately two (2) percent of merchandise shipments, it incorrectly applied the terms of Tariff 8661 to traffic that commenced moving after the start of 2015, in calculating fuel surcharge revenues after the expiration of the tariff.²⁶⁵ However, CSXT's objection to the application of the Tariff 8661 methodology to *any* merchandise traffic after the expiration of a contract or tariff and its insistence on applying of Tariff 8662, with its \$3.749 per gallon strike price, to all expiring contracts and tariffs governing the shipment of merchandise traffic in the CERR traffic group is not valid. The application of the Tariff 8662 fuel surcharge to shipments moving under freight rates that were developed prior to January 1, 2015 is improper.

CSXT's methodology creates a disconnect between the base rate component and the fuel surcharge component of the revenues for all affected shipments. In the real world, when railroads apply new fuel surcharge programs with an updated fuel strike price, they make corresponding adjustments to the base rates on current traffic, to ensure that the total revenues collected remain the same

²⁶⁴ See CSXT Reply at III-A-55.

²⁶⁵ See Consumers Rebuttal e-workpaper "CERR Car Traffic Forecast – Rebuttal," tab "CAR_Forecast," Column (AK).

before and after the update (i.e., the update is supposed to be revenue neutral). When the fuel strike price is increased (as in Tariff 8662), less revenue is collected via fuel surcharges at all fuel price levels, and so the base rates are increased accordingly to incorporate the pre-update fuel surcharge.²⁶⁶ The CERR's line-haul revenues were not increased in this manner on January 1, 2015 in Consumers' Opening Evidence, and CSXT's Reply does not implement a base revenue increase for all shipments that were previously subject to Tariff 8661, in order to maintain revenue neutrality. As such, its fuel surcharge adjustment must be rejected.

On Rebuttal, Consumers revises its forecast of fuel surcharge revenues for the merchandise shipments that should have been governed by Tariff 8662, to utilize the Tariff 8662 methodology and strike price of \$3.749 per gallon after the expiration of the contract or tariff. For all pre-2015 shipments, however, Consumers continues to utilize the Tariff 8661 methodology and \$1.999 strike price to calculate forecasted fuel surcharge amounts after the expiration of the relevant contract or tariff.

²⁶⁶ See, for example, the USDA Agricultural Marketing Service discussion of BNSF's rebasing of its fuel surcharge in 2010 due to higher base transportation rates paid by shippers. <https://www.ams.usda.gov/sites/default/files/media/08-05-10.pdf>.

iii. Updated EIA Forecast

CSXT stated that it updated Consumers' fuel surcharge forecast based on a more recent EIA fuel price forecast.²⁶⁷ Since CSXT filed its Reply, yet another, more recent EIA fuel price forecast was issued.²⁶⁸ Consumers updated its Rebuttal fuel surcharges to reflect this more recent forecast.

d. Results

Table III-A-5 below compares the aggregate annual CERR revenues calculated on Opening, Reply, and Rebuttal.

²⁶⁷ See CSXT Reply at III-A-55.

²⁶⁸ See Consumers Rebuttal e-workpaper "CERR_TRAFFIC_CONTRACTS_RATEADJ_FSC – Rebuttal.xlsx," tab "CSXT_FSC."

Table III-A-5
COMPARISON OF CERR REVENUES

<u>Year</u>	<u>Consumers Opening 1/</u>	<u>CSXT Reply 2/</u>	<u>Consumers Rebuttal 3/</u>	<u>Rebuttal less Reply 4/</u>
(1)	(2)	(3)	(4)	(5)
2015	\$139,420,104	\$109,400,637	\$139,628,736	\$30,228,099
2016	\$124,301,738	\$92,512,553	\$121,592,139	\$29,079,587
2017	\$157,697,963	\$109,547,375	\$155,739,878	\$46,192,502
2018	\$158,736,857	\$105,260,911	\$156,446,662	\$51,185,751
2019	\$164,015,897	\$109,595,518	\$161,400,726	\$51,805,208
2020	\$179,653,610	\$118,871,182	\$176,952,127	\$58,080,945
2021	\$186,273,795	\$120,610,726	\$183,545,475	\$62,934,749
2022	\$200,881,860	\$128,915,755	\$197,592,151	\$68,676,396
2023	\$202,646,215	\$124,810,157	\$198,740,607	\$73,930,450
2024	\$223,757,130	\$138,045,664	\$219,400,189	\$81,354,526
Totals	\$1,737,385,169	\$1,157,570,478	\$1,711,038,691	\$553,468,213
<p>1/ CSXT Reply e-workpaper "III-A Summary Tables.xlsx," tab "Revenue Summary," Column D x 1,000,000.</p> <p>2/ CSXT Reply e-workpaper "III-A Summary Tables.xlsx," tab "Revenue Summary," Column E x 1,000,000.</p> <p>3/ Consumers Rebuttal e-workpaper "Summary of CERR Traffic Volumes and Revenues_Rebuttal.xlsx," tab "Summary," column N.</p> <p>4/ Column (4) - Column (3).</p>				

As shown in table III-A-5 above, Consumers' CERR Rebuttal revenues equal \$1.711 billion over the 10-year analysis period.

**III-B Stand-Alone
Railroad System**

III. B. STAND-ALONE RAILROAD SYSTEM

Consumers designed the CERR to serve the Consumers Energy unit coal train traffic that BNSF originates in the Wyoming Powder River Basin and that CSXT moves from an interchange with BNSF in Chicago, IL to Consumers' Campbell plant located at West Olive, MI.¹ The facilities also serve additional traffic as selected in Consumers' Opening presentation and those same facilities are preserved on Rebuttal to serve the slightly reduced traffic group reflected in Part III-A. This portion of Consumers' Rebuttal Evidence is sponsored by Messrs. Orrison, Holmstrom and Stone, the same witnesses that sponsored Consumers' Opening Evidence.

As noted in the witness qualifications, Mr. Orrison has over 39 years of experience in the railroad industry, including many years of experience in senior management positions with CSXT and BNSF, including Vice President – Network Planning for CSXT and Assistant Vice President – Service Design & Performance for BNSF. Mr. Orrison also served as Division Superintendent—Detroit Division General Manager; this Division included certain of the lines in Michigan and Indiana being replicated by the CERR.

¹ The issue traffic uses two routes. The most common route used by the issue traffic is 71st St. (where the BNSF interchanges the loaded train)-Belt Railway segment-NS trackage rights to Porter-West Olive. The other route is 71st St.-Blue Island-Curtis-NS trackage rights to Porter-West Olive. *See* Consumers Opening Exhibit III-A-1 for a visual representation of each route.

Mr. Holmstrom spent his entire 42-year railroad career working in the Chicago area for CN and its predecessor railroads. Mr. Holmstrom was CN's most senior operations manager in the Chicago area, and he served as CN's representative to the Chicago Transportation Coordination Office.

Mr. Stone is a Professional Engineer with extensive experience in railroad construction and design. Complete details of his qualifications are included in Part V.

CSXT accepts most of the CERR configuration posited by Consumers. However, there are several points of disagreement, which are addressed below.

1. Route and Mileage

The CERR's Opening constructed route covered 168.65 route miles,² including 160.52 route miles³ of track being constructed by the CERR, and 8.13 route miles⁴ of BRC track where the CERR is contributing 25% of the current estimated construction costs required to replicate the existing facilities as a one-fourth owner of that carrier.⁵ The CERR operates via trackage rights or reciprocal

² See Consumers Opening e-workpaper "CERR Route Miles Opening.xlsx," tab "Summary," cell R38.

³ See Consumers Opening e-workpaper "CERR Route Miles Opening.xlsx," tab "Summary," cell R18.

⁴ See Consumers Opening e-workpaper "CERR Route Miles Opening.xlsx," tab "Summary," cell R19.

⁵ See CSXT 2014 R-1 Schedule 310, Line 3.

agreement with other carriers over 73.83 route miles⁶ (including the 8.13 miles of BRC track, where the CERR pays certain fees for its use).⁷ The CERR traverses parts of Illinois, Indiana and Michigan.

CSXT has largely accepted the constructed route miles posited by Consumers, but it has proposed several exceptions discussed herein. For the reasons described herein, on Rebuttal, Consumers has accepted only one of these changes, which results in the addition of 0.6 route miles to the CERR.⁸

a. Main Line

CSXT accepts Consumers' development of the CERR's main line route miles with one exception. CSXT argues that Consumers must include part of the road property investment costs associated with IHB's Blue Island Yard and adjacent track facilities where Consumers uses trackage rights to access those facilities.⁹ Confusingly, CSXT did not include such costs because it improperly excluded the traffic based on transit time results derived from its problematic

⁶ See e-workpaper "CERR Route Miles Opening.xlsx," tab "Summary," cell P33.

⁷ The primary trackage segment utilized by the issue traffic is the NS trackage rights segment from Rock Island Jct. to Porter. Likewise, the issue traffic, by reciprocal agreement, returns empty trains to BNSF's Cicero Yard. Details of the trackage rights fees are discussed in Part III-D-9.

⁸ See e-workpaper "CERR Route Miles Rebuttal.xlsx," tab "Summary," cell R17.

⁹ CSXT Reply at III-B-1-2, III-B-13-21.

Reply RTC Model run.¹⁰ In addition, organizationally, CSXT chose to discuss the IHB investment issues in both Section III-B-1-b (Branch Lines) and III-B-4 (Joint Facilities). Thus, Consumers addresses this issue in detail below, but notes here that it rejects CSXT's additional investment requirements.

b. Branch Lines

The parties agree that the CERR has no branch lines.¹¹ The parties also agree on the CERR's investment in the BRC's existing facilities. However, CSXT argues that the portion of track between Blue Island Yard and Calumet Park, over which Consumers assumed the CERR would use existing CSXT trackage rights, also requires that the CERR assume 21.42% of the road property investment costs for the existing facilities before the CERR can use the several miles of mainline and yard track. CSXT bases this road property investment requirement on its alleged 21.42% ownership interest in the IHB. As explained below in Section III-B-4, CSXT has no valid basis for the additional investment.¹²

c. Interchange Points

On Opening, Consumers provided the following table describing the interchange points of the CERR and a general description of such interchanges.

¹⁰ See Consumers Rebuttal Part III-A-1-b. CSXT did, however, calculate the costs of the IHB facilities. CSXT Reply at III-B-2.

¹¹ CSXT Reply at III-B-2.

¹² As noted above, CSXT did not actually include the costs for this facility due to its untenable position that the traffic transiting the Calumet Park to Curtis segment did not meet or exceed CSXT's historical transit times over this route. CSXT Reply at III-B-2.

Additional details of the interchange locations and proposed operations were also included in Consumers' Opening Evidence in Part III-C-1-a.

REBUTTAL TABLE III-B-1 CERR INTERCHANGE POINTS		
Interchange Point	Railroad(s)	Description
22 nd St./71 st St. Area	BNSF	<p>BNSF delivers trains to the CERR's 71st St. interchange tracks (including the mainline if necessary) via the "hole in the fence connection" at 22nd St. to the CERR. In the reverse direction, the CERR delivers trains to BNSF's Cicero Yard located 3.3 miles west of 22nd Street. CSXT and BNSF use the same procedure in the real world.</p> <p>In addition to traffic coming to and from Cicero, the CERR also delivers trains to BNSF's Corwith Yard located to the west of the CERR. The Corwith Yard is accessed via a turnout located just to the south of the "hole in the fence." This location is marked as MP 27.4 on Page 1 of Exhibit III-B-1.</p>
Ogden Jct./71 st St.	UP	<p>UP delivers trains originating at Proviso or the Global 1 intermodal facility to the CERR's 71st St. interchange tracks via UP track and the CERR connection to UP. CSXT and UP use the same procedure in the real world. Trains bound for Proviso or Global 1 are delivered to those locations by CERR crews. The connection is also used for a few trains to move from CP's Bensenville Yard to 71st Street.</p>
Blue Island, IL Connection with the IHB	IHB/CSXT	<p>Trains bound to or from the Blue Island connection with the IHB and/or CSXT are interchanged on the CERR's Barr Yard interchange tracks located just to the east of the interlocking (these tracks are also used for train inspections if necessary).</p>
Dolton, IL	CSXT	<p>The CERR interchanges with the residual CSXT at Dolton. From Dolton and moving south, CSXT uses the UP's Villa Grove Subdivision under a joint ownership agreement. These trains include southbound traffic headed to Woodland Jct. where they return to the CSXT-owned Woodland Subdivision. In the northbound direction, trains interchanged from CSXT to the CERR at Dolton move west and north to 22nd St. and the 59th St. intermodal facility as well as east to Curtis, IN or Holland, MI.</p> <p>All trains moving to/from Dolton are interchanged on the CERR's interchange track located south of the</p>

		CERR's east-west main line and south of the IHB lines that parallel the CERR's main line. However, trains coming north from UP's Villa Grove Subdivision and heading east to Curtis, IN over the CERR are interchanged on the CERR to the east of Dolton.
Curtis, IN	CSXT	The CERR interchanges with the residual CSXT at Curtis. The traffic interchanged at this location includes eastbound and westbound traffic moving over the Barr Subdivision through Willow Creek, IN and on to points east. The CERR also interchanges traffic moving over the BRC and the NS trackage rights segment from Rock Island that moves via Willow Creek. The interchange occurs on CERR interchange tracks located to the west of the turnout connecting to the residual CSXT.
Holland, MI (Waverly)	CSXT	The CERR interchanges trains with the residual CSXT at Holland, MI. The traffic interchanged at this location includes merchandise traffic moving to and from Grand Rapids, MI and several trains of Eastern coal bound for the Campbell plant which also move via Grand Rapids. The interchange occurs on CERR track located just to the south of the turnout connecting to the residual CSXT.

CSXT proposes changes to the configuration of three of the interchange locations: Dolton, Curtis and Pine. Consumers accepts CSXT's modification to the Pine Junction interchange. Specifically, CSXT notes that in order for interchange trains moving east or west from the Curtis Interchange to reach the NS's Lake Subdivision, the CERR must build the 0.6 miles of connecting track, the so-called Buffington Connection.¹³ CSXT indicates that this track is owned by CSXT and not NS. Consumers agrees and has added the 0.6 miles of track on Rebuttal.¹⁴

¹³ CSXT Reply at III-B-6.

¹⁴ See Consumers Rebuttal e-workpaper "CERR Route Miles Rebuttal.xlsx," tab "Summary," cell R17.

Consumers rejects CSXT's modification to the Dolton Interchange.

When describing the operation of the Dolton Interchange on Opening, Consumers explained, in Part III-C-1-v, that CSXT and UP each owned 50 percent of the facilities that lie to the south of the CSXT east-west mainline between Barr Yard and Curtis. CSXT agrees with Consumers' ownership description. However, CSXT then ignores how Consumers opted to build the interchange using a Board-approved SAC design. As Consumers explained on Opening:

The existing facilities between Dolton Jct. and Woodland Jct. are part of a double track joint facility dispatched and maintained by UPRR with costs split between CSXT and UP. However, as the CERR is not handling any of the UP traffic portion of this system, Consumers has treated this segment in the same manner that coal shippers typically treat the Joint Line in the Powder River Basin of Wyoming (*i.e.*, it has assumed away the other carrier). *See, e.g., AEPCO 2002* at 7 (explaining how the shipper replaces one carrier, but can use other trackage rights arrangements). There, BNSF and UP jointly own approximately 100 miles of track that serve a cluster of mines, including the Black Thunder Mine and Antelope Mine. However, in stand-alone cases, the shipper builds the necessary facilities to handle the traffic and then the other railroad and the residual incumbent are assumed to exist in a "parallel world," except when accessing third-party track such as mine leads. *Id.* The CERR is doing the same here by assuming that the UP exists in a parallel world and by constructing only the facilities it requires.

CSXT has no response to Consumers' theoretical approach. Rather, CSXT simply ignores this point and argues instead that the CERR's operations would not be well served by building through the existing facilities given the UP's

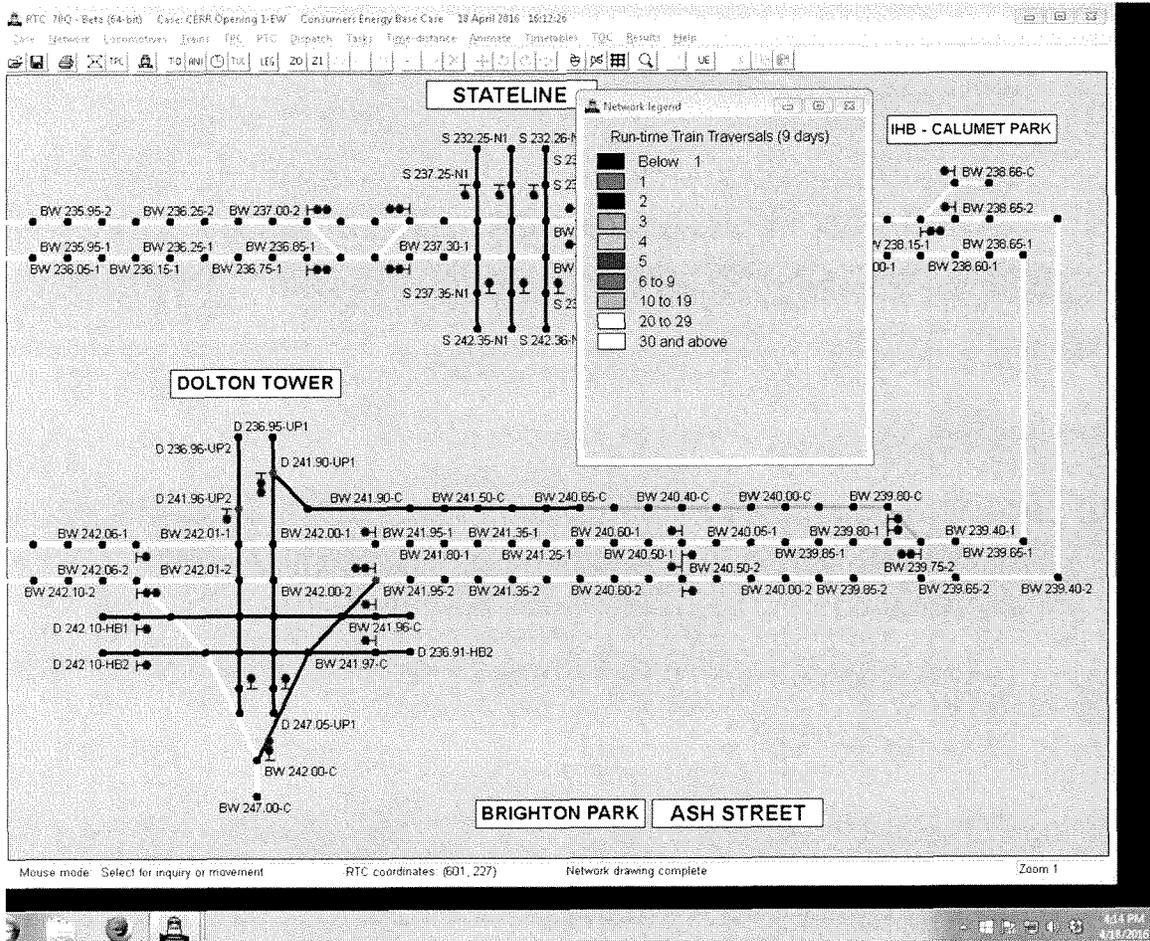
traffic and the presence of a yard facility. Thus, CSXT posits a “new” track that goes around the existing facilities. This “new facility” is unnecessary as the CERR is permitted to build whatever facilities it needs on the existing alignment.

As CSXT has no response to Consumers’ permissible configuration – other than to say there is another way to build the track – Consumers has continued to utilize its opening configuration of the Dolton Interchange.

CSXT proposes a further modification for the Dolton Interchange area near Cottage Grove Avenue. At this location, trains moving to/from Curtis and the UP’s Villa Grove Subdivision are interchanged between the CERR and residual CSXT on an interchange track located north and adjacent to the two mainline tracks running between Barr Yard and Curtis. CSXT argues that the configuration of the interchange will cause trains to be parked for 30 minutes, thereby blocking Cottage Grove Avenue and disrupting vehicular traffic. CSXT proposes to build a new, \$3.4 million highway overpass to alleviate this supposed concern. CSXT’s proposed modification is not required.

On Opening, Consumers’ operating experts were well aware of the potential for a CERR train to block the Cottage Grove at-grade crossing. Thus, the operating plan, reflected in Consumers’ RTC modeling, purposely positioned the interchange trains so that they would *not* block the crossing at Cottage Grove. Indeed, none of the 17 Curtis – Dolton-East (UP-Villa Sub) trains blocked the Cottage Grove Street grade crossing. The RTC Model results demonstrate this

point. In the below results diagram, the trains did not park west of the BW240.6 (northern track of the three tracks).



Consumers even avoided the crossing to its operational detriment. Specifically, if a train was longer than the distance on the interchange track between Cottage Grove St. and the switch at which it connects to #1 Main track, Consumers' experts even allowed the train to foul the main thereby taking a performance penalty for the system. In the modeling period, five (5) of the 17 interchange trains traversing the location exceeded the length of the interchange track between Cottage Grove Street and the #1 Main (7,656 feet).

Based on the foregoing, Consumers has not made any adjustments to the Cottage Grove Street-area interchange operations nor has it added a highway overpass.

d. Route Mileage

The parties generally agree on the constructed route mileage as shown in Rebuttal Table III-B-2. The parties disagree on the trackage rights operating miles owing to CSXT's contention that Consumers must drop the Calumet Park to Curtis traffic. As Consumers has rejected CSXT's arguments on this point, it has retained its Opening trackage rights operating miles.¹⁵

¹⁵ See Consumers Rebuttal e-workpaper "CERR Route Miles Rebuttal.xlsx," tab "Summary," cell P34.

REBUTTAL TABLE III-B-2 CERR LINE SEGMENTS AND ROUTE MILEAGE				
	Opening	Reply	Rebuttal	Difference (Reply v. Rebuttal)
Fully Owned Main Line Miles				
22 nd St/Ogden Jct. to Curtis	32.70	32.70	32.70	0.00
Porter to West Olive	122.20	122.20	122.20	0.00
Fully Owned Interchange Miles				
Dolton Interchange Track	3.24	3.24	3.24	0.00
Campbell Plant Lead Track	2.38	2.38	2.38	0.00
Buffington Connection	0.00	0.60	0.60	0.60
<i>Subtotal (Fully Owned)</i>	<i>160.52</i>	<i>161.12</i>	<i>161.12</i>	<i>0.00</i>
Partially Owned Main Line Miles				
BRC (75 th St. to Rock Island Jct.)	8.13	8.13	8.13	0.00
<i>Subtotal (Partially Owned)</i>	<i>8.13</i>	<i>8.13</i>	<i>8.13</i>	<i>0.00</i>
Total CERR Constructed Route Miles	168.65	169.25	169.25	0.60
Trackage Rights Operating Miles				
(NS) Rock Island Jct. to Curtis/Pine Jct.	12.50	12.50	12.50	0.00
(NS) Curtis/Pine Jct. to Porter, IN	12.60	12.60	12.60	0.00
(BNSF) 22 nd St. to Cicero	3.30	3.30	3.30	0.00
(UP) Ogden Jct. to Proviso/Global 2	12.40	12.40	12.40	0.00
(BNSF) Brighton Park to Corwith	3.50	3.50	3.50	0.00
(IHB) Calumet Park to IHB Blue Island Yard	6.40	0.00	6.40	-6.40
(UP) Ogden Jct. to Global 1	0.40	0.40	0.40	0.00
(UP/CP) Ogden Jct. to Bensenville	14.60	14.60	14.60	0.00
<i>Subtotal (Trackage Rights)</i>	<i>65.70</i>	<i>59.30</i>	<i>65.70</i>	<i>-6.40</i>
Total CERR Operating Miles	234.35	228.55	234.95	-5.80

2. Track Miles and Weight of Track

On Opening, Consumers developed the CERR's track and yard configurations to reflect the CERR's peak-year traffic volumes and flows, the trains that will move over the CERR system in the peak week of the peak traffic year, the CERR operating plan developed by Consumers' expert operating witnesses, Messrs. Orrison and Holmstrom, and a simulation of the CERR's peak-period operations executed by Consumers' witnesses Messrs. McLaughlin and Schuchmann using the Rail Traffic Controller ("RTC"). In total, the CERR included 233.38 constructed track miles. On Rebuttal, Consumers has accepted the addition of the Buffington Connection thereby adding 0.6 miles of track for a total of 233.98 track miles.

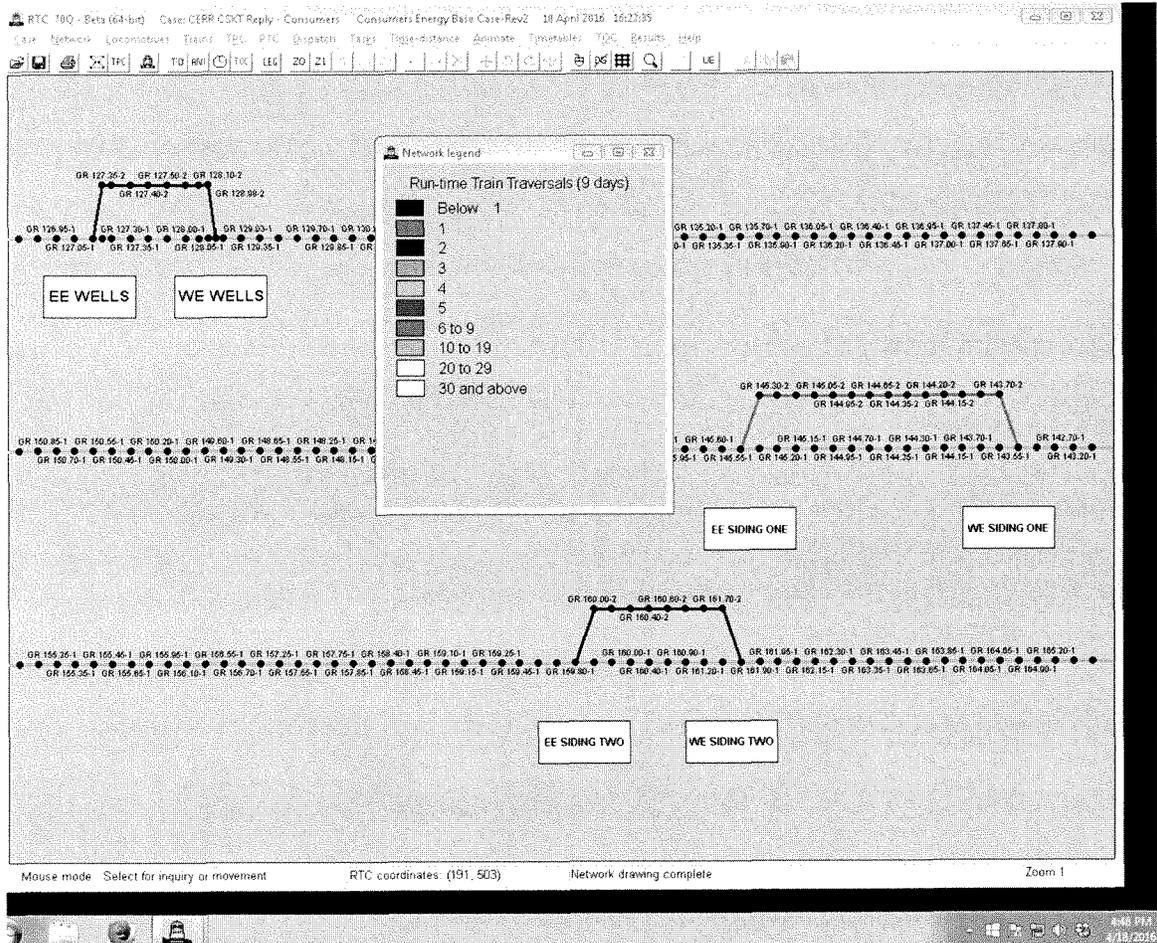
CSXT's Reply proposes to increase the total track by either 2.74 track miles or 15.74 track miles. It is difficult to discern because CSXT's text at page III-B-8 indicates the 15.74 track miles (when all of the items listed are added up) when compared to Consumers' Opening track miles. On the other hand, CSXT's Reply Table III-B-2 only includes an increase of 2.74 miles (a difference of 13.0 miles).¹⁶ Ostensibly, the difference stems from CSXT's supposed calculation of the route miles on the BRC (8.13 miles) and IHB (6.4 miles) that CSXT claims the CERR would partially own versus its final calculation where it

¹⁶ CSXT's Reply position is further complicated by additional inconsistencies in its mileage calculations in this section. For example, on page III-B-9 of its Reply, CSXT states that the CERR would have 10.86 miles of interchange track, however, page III-B-10, CSXT's Table III-B-2, indicates 10.66 miles of interchange track.

did not include the IHB track miles because CSXT believes that the Calumet Park to Curtis traffic should be eliminated. However, that is a total of 14.53 miles which does not match the 13.0 mile difference. Regardless, with the exception of the Buffington Connection, none of the additional track posited by CSXT is necessary.

First, CSXT proposes to add a siding near the Consumers plant, ostensibly to hold trains waiting to enter the plant. CSXT further suggests that its justified in adding this track because it mentioned its use of this track in response to a discovery request from Consumers. CSXT's addition of this siding is unwarranted.

Consumers developed the CERR's siding requirements on the Porter to West Olive segment through means of the RTC Model and the long experience in this territory of its expert witness, Mr. Orrison, who served as the Division Superintendent for CSXT overseeing this rail line. The RTC Model demonstrated that even in the peak week of the peak year, the CERR did not require any additional siding to handle the traffic moving to and from the Consumers plant. CSXT ignores this fact, but CSXT also ignores that even though it added this siding in its RTC Model, it too was never used by the Consumers' trains, as shown by the RTC Model results in the graphic below.



Even if the additional siding had been used in CSXT’s RTC Model, Consumers already demonstrated that service to the Campbell was more than adequate without the additional siding. As such, Consumers has not included this siding on Rebuttal.

Second, CSXT also added a 750-foot bad ordered car track in the Barr Yard. This unnecessary addition is addressed below.

Third, CSXT added the Buffington Connection, which Consumers accepts.

REBUTTAL TABLE III-B-3 CERR CONSTRUCTED TRACK MILES	
	Miles
Main line track – Single first main track ^{1/}	169.25
– Other main track ^{2/}	41.38
Total main line track	210.03
Interchange Tracks	10.66
Setout tracks and helper tracks	2.00
Yard tracks ^{3/}	11.29
Total track miles	233.98
<p>^{1/} Single first main track miles equal total constructed route miles, including the lead track to the Consumers Plant and the Dolton Interchange track. This also includes 8.13 route miles of the BRC and the Buffington Connection.</p> <p>^{2/} Equals total miles for constructed second main tracks/passing sidings, including the BRC segment.</p> <p>^{3/} Includes all tracks in the Barr Yard.</p> <p>Source: Rebuttal e-workpaper “2015 Ballast & subballast Worksheet_Rebuttal.xlsx,” tab “Rail Type By Subdivision,” column L.</p>	

a. Main Lines

The parties agree on the mainline tracks except for the addition of the siding on the Porter to West Olive segments, which Consumers has rejected as described above.

The parties agree on the type and weight of rail for all segments, except for certain curves in the Chicago area. As explained in Section III-F-3, Consumers rejects CSXT’s inclusion of premium rail in the applicable curves.

b. Branch Lines

The CERR has no branch lines.

c. Passing Sidings

The CERR's passing sidings are considered part of its main tracks and are addressed above.

d. Other Tracks

The parties agree on the track miles and weight of track for other track, including set-out and helper tracks.

3. Yards

a. Locations and Purpose

The parties agree on the configuration of the CERR's Barr Yard and purpose, except that CSXT adds a 750-foot storage track to accommodate bad ordered Consumers cars that it believes are delivered to Barr Yard. As explained, in Section C of the Introduction to Part III-C, CSXT's argument concerning such bad ordered cars is fundamentally flawed. Moreover, Consumers' experts already provided space on the various yard tracks for bad ordered car storage because the CERR conducts inspections of certain westbound trains in the Yard, which CSXT accepted.

b. Miles and Weight of Yard Track

The parties agree on the miles and weight of yard track, except that CSXT adds a 750-foot bad ordered track. As explained above and in Section C of the Introduction to Part III-C, there is no need for this additional track.

4. Other

a. Joint Facilities

The CERR trackage rights route miles include several joint facilities, as detailed in Opening Table III-B-1. On Reply, CSXT agrees with the CERR's arrangements for all but one of the joint facilities: the IHB facilities in and near the Blue Island Yard. For the reasons explained below, CSXT's arguments with respect to the IHB facilities have already been rejected by the Board. In any event, CSXT's rehash of the same failed position that NS took in *DuPont* does not warrant a modification to the Board's prior approach.

On Opening, Consumers' operating plan assumed that the CERR would use trackage rights to access the IHB's Blue Island Yard and adjacent track, including the connection to the CERR's mainline at Calumet Park, to allow for the flow of trains between Calumet Park and Curtis. These trains are originating or terminating at the Blue Island Yard, just as in the real world.

CSXT has a trackage rights agreement that covers the use of this track (IHB 101X). This agreement was included in Consumers' Opening electronic workpapers¹⁷ and the cost of such trackage rights were accounted for in the CERR's operating expenses.¹⁸ Consumers did not include any road property investment for this joint facility because CSXT does not own this facility. Indeed,

¹⁷ See Consumers Opening e-workpaper "JFA Part 2 of 4 (CSX-CNSMR-HC-28110 to 29506).pdf."

¹⁸ See Consumers Opening e-workpaper Open_ConsumersJointFacCharges2014.xlsx," tab "IHB101X."

unlike the BRC, where the CERR did include investment costs and which is listed in CSXT R-1, Schedule 310, the IHB does not appear in CSXT's R-1, Schedule 310. As CSXT itself points out, CSX Corporation, and *not* CSXT, owns a partial share of the IHB.¹⁹

Notwithstanding that CSXT does not own any portion of the IHB, CSXT argues on Reply that the CERR must include road property investment costs equivalent to 21.42% (CSX Corporation's ownership interest in the economic and voting interests of the IHB via Conrail) of the existing facilities utilized by the CERR. In support of its argument, CSXT suggests that the *DuPont* decision specifically requires that the SARR cover the same proportional share of such facilities owned by the *incumbent railroad* when it chooses to share those facilities.²⁰ This point is true, but of course, CSXT does not own 21.42% of the IHB, CSX Corp. does, albeit indirectly. That distinction is critical because, as CSXT itself acknowledges, the Board specifically rejected forcing the SARR to incur such investment costs in circumstances identical to those presented here (*i.e.*, NS Corporation owned a portion of the IHB and NS Rail did not). The *DuPont* Decision stated that:

[T]he Board will not require DuPont to account for the construction costs of the . . . IHB because these partially owned facilities are subsidiaries of NSC and not of NS. In this instance, the Board notes that NSC elected to set up its ownership interests in . . . IHB as

¹⁹ CSXT Reply at III-B-19

²⁰ CSXT Reply at III-B-14.

separate legal entities from its railroad subsidiary, and NS has to present a valid argument for ignoring this structure. . . . In this case, as DuPont notes, SAA and IHB are not listed NS's R-1 data. As a result, the Board will accept DuPont's use of trackage rights and associated payments to account for its use of these lines. The Board realized that partially owned facilities are a common corporate entity structure that allows multiple railroads to own and operate joint facilities. However, the burden is on the railroad to demonstrate the relationship of the joint facility entity and the costs and revenues realized by the railroad as a result of that relationship. With respect to the SAA and IHB, NS failed to meet this burden.²¹

The Board's decision clearly established that CSXT has the burden of proof to demonstrate that the CERR should incur the investment costs. CSXT has not met that burden. Nevertheless, CSXT advances the same arguments previously raised by NS and rejected by the Board in *DuPont*. Each of CSXT's arguments is addressed below.

i. Consumers Must Account For a Share of the IHB's Construction Costs If The CERR Is To Use CSXT's Operating Rights on the IHB²²

CSXT argues that CSX Corporation has a 21.42% ownership interest in the IHB that it acquired as a result of its joint acquisition of *Conrail* in 1999.²³ CSXT's operating rights over the IHB are, in CSXT's opinion, "part and parcel of the ownership interest that CSXT (or its parent CSX Corporation) holds in those

²¹ *DuPont* at 48-49

²² CSXT's argumentative heading is reused for the processing convenience of the Board. Consumers does not agree with CSXT's assertions for the reasons described herein.

²³ CSXT Reply at III-B-17.

railroads.”²⁴ CSXT then suggests that CSX Corporation’s indirect ownership in the IHB elevates CSXT from a trackage rights user to that of an owner, and that the CERR must therefore pay a share of the road property investment costs of the IHB facilities it uses.²⁵

In *DuPont*, NS raised precisely the same argument. Indeed, NS stated that “NS’s operating rights on the IHB are a function of its ownership interest. The IHB operating rights that DuPont claims that the DRR would use are rights that NS acquired in the Conrail transaction by succession to Conrail’s interests.”²⁶

On Rebuttal in *DuPont*, the complainant pointed out several pertinent facts, all of which are the same in this case:

1. NS Rail did not own any part of the IHB.²⁷ Here, CSXT admits that it does not own any assets of the IHB.²⁸
2. NS Corporation did not own the assets of the IHB.²⁹ Instead, NS Corporation only owned 58% of the economic and 50% of the voting interest

²⁴ CSXT Reply at III-B-13.

²⁵ CSXT Reply at III-B-13-14.

²⁶ See Reply Evidence of Norfolk Southern Railway, *DuPont*, at III-F-311 (filed Nov. 30, 2012; see also NS Petition for Reconsideration, *DuPont*, at 6 (filed Nov. 24, 2014)).

²⁷ See Rebuttal Evidence of E.I. DuPont De Numours and Co., *DuPont*, at III-F-149 (filed April 15, 2013) (“DuPont Rebuttal”).

²⁸ CSXT Reply at III-B-13.

²⁹ DuPont Rebuttal III-F-150.

in Conrail, Inc.³⁰ In turn, Conrail continues to own 51% of the IHB.³¹ Here, the same is true except that CSX Corporation has a lesser interest in the joint shareholder arrangement of the IHB than NS.

CSXT has not provided any new evidence or otherwise distinguished its arguments from those NS made and lost. The Board was well aware of these arguments and rejected them, holding that:

In this instance, the Board notes that NSC elected to set up its ownership interests in . . . IHB as [a] separate legal entit[y] from its railroad subsidiary, and NS has to present a valid argument for ignoring this structure. . . . In this case, as DuPont notes, SAA and IHB are not listed in NS's R-1 data. As a result, the Board will accept DuPont's use of trackage rights and associated payments to account for its use of these lines.³²

CSXT also ignores the long history that CSXT and its predecessors have with the IHB's facilities utilized by the CERR. The CSXT and IHB have a history of cooperating in this area dating back over 100 years. The acquisition of Conrail and its attendant interests in the IHB did not usher in a new era whereby CSXT, for the first time, gained access to the IHB. Instead, the Conrail acquisition simply continued CSXT's long-standing access to this facility.

CSXT also ignores that it was never a part owner of the IHB's Blue Island facilities used by the CERR, just as it is not today. A review of the joint facility agreements covering this area, and provided as an electronic workpaper in

³⁰ *Id.*

³¹ *Id.* at III-F-51.

³² *DuPont* at 48-49.

Consumers' Opening Evidence,³³ establishes that CSXT and IHB have long been accessing each other's facilities. The Conrail acquisition did not significantly modify the basic elements of the arrangement – presumably at CSX Corporation's election.

In contrast, CSXT *is* a joint owner with the IHB of the facilities located immediately west of Blue Island and extending to McCook, IL. There CSXT provides capital contributions and other services.³⁴ The contrast is plain and CSXT provides no evidence that CSX Corporation's indirect ownership makes CSXT's operating rights over this segment “part and parcel” of the ownership structure. Indeed, the arrangement suggests just the opposite.

Finally, CSXT does not suggest that the IHB's costs, currently or prior to the acquisition by NS Corporation and CSX Corporation of Conrail, are not met by the fees that CSXT and other carriers pay to utilize the facility. Nor does CSXT suggest that it is compensating CSX Corporation or Conrail separately for other costs associated with the IHB's Blue Island facilities.

³³ See Consumers Opening e-workpaper “JFA Part 2 of 4 (CSX-CNSMR-HC-28110 to 29506).pdf”

³⁴ *Id.* at CSX-CNSMR-HC-028814-898.

ii. **Assuming That a SARR Can Use “Trackage Rights” Over Joint Facilities Without Replicating CSXT’s Ownership Interest Violates SAC Principles and Board Precedent.**³⁵

As with the previous section, CSXT raises the same argument that NS raised in *DuPont*; namely, that the CERR’s use of the IHB facilities, as proposed by Consumers, is impermissible under stand-alone cost theory and prior Board precedent. Again, CSXT has not raised any new arguments that distinguish this situation from *DuPont*, and equally important, CSXT has not carried its burden of proof.

CSXT has not accurately described the Board precedent and SAC theory it cites, at least as it applies to this case. Specifically, CSXT relies on *PEPCO* and *DuPont*,³⁶ wherein the Board rejected efforts by the complainants to utilize trackage rights over track *owned* by one of the defendant railroads because SAC theory requires the replication of the full stand-alone costs. Again, there is no dispute on the thrust of those cases, but CSXT does not own any portion of the

³⁵ CSXT’s argumentative heading is reused for the processing convenience of the Board. Consumers does not agree with CSXT’s assertions for the reasons described herein.

³⁶ Consumers notes that CSXT also relies on *AEPCO 2011* at 8-11 for the proposition that the SARR cannot use the “the existing facilities of one of the two defendants and account for the costs of those facilities by paying a trackage rights fee.” CSXT Reply at III-B-16. That decision does not address the problem described by CSXT. Instead, it focuses on the use of a single SARR to challenge rates from New Mexico and the PRB at the same, which the Board concluded was permissible. Thus, the precedent is irrelevant to this dispute.

IHB. Instead, CSXT is a trackage rights tenant and the CERR can therefore use those rights on the same basis. Thus, the cases cited by CSXT are inapposite.

CSXT suggests, just as NS did in *DuPont*, that the fact that the IHB does not appear in its R-1, Schedule 310 asset ownership list is irrelevant and, therefore, that the *DuPont* decision was somehow flawed. In fact, CSXT goes so far as to suggest that there is no meaningful distinction between CSX Corporation and CSXT. CSXT's arguments are without merit and strain credulity.

The Board clearly considered and rejected CSXT's argument that the R-1 data is not determinative of ownership interests of the railroad versus its non-railroad corporate parent or another third-party such as Conrail. Indeed, the Board specifically noted in *DuPont* that NS had made the conscious decision to "set up ownership interest in . . . IHB as a separate legal entity from its railroad subsidiary." CSX Corporation made exactly the same decision in its corporate structure, and CSXT has not provided any evidence that distinguishes this situation from the one the Board expressly rejected in *DuPont*.

CSXT's further argument that there is no meaningful distinction between CSX Corporation and CSXT is not credible, and it suggests that CSXT is selectively blurring the lines between the entities when it would steadfastly refuse to do so in other circumstances.

For example, CSX Corporation sought, and was granted, a dismissal as a defendant in a lawsuit filed in the United States District Court for the Eastern

District of Louisiana.³⁷ There the plaintiff sought damages against, *inter alia*, CSX Corporation and CSXT, sustained as a “result of Hurricane Katrina and the failure of the levees which resulted in catastrophic flooding in the Greater New Orleans Metropolitan area.” In its Motion, CSX Corporation sought to be dismissed as defendant on the basis of lack of personal jurisdiction even though CSXT has extensive operations in the state.

CSX Corporation established to the court’s satisfaction that it does not “operate as a railroad, [and] has never operated as a railroad.”³⁸ CSX Corporation also established that had never been authorized to do business in the states, never had an office there, never had an employee working there, and never had any assets there (even though CSXT does).³⁹ The judge granted the dismissal determining that personal jurisdiction was lacking.⁴⁰

If CSX Corporation and CSXT are as indistinguishable as CSXT presently suggests, CSX Corporation would not have sought, nor been granted, dismissal from the District Court case. The distinctions between CSX Corporation and CSXT are obviously important and significant and CSXT should not be permitted to selectively blur those distinctions as a means of saddling the CERR with road property investment costs that CSXT itself never incurred.

³⁷ *Pere Marquette Hotel Partners, LLC v. United States, et. al*, No. 09-5921, 2010 WL 559112 (E.D. La. Feb. 10, 2010).

³⁸ *Id.* at *2.

³⁹ *Id.*

⁴⁰ *Id.* at *2-3.

iii. Because the CERR Only Can Step Into CSXT's Shoes on the Same Terms Applicable to CSXT, It Cannot Use CSXT Operating Rights on the IHB Without Replicating CSXT's Ownership Interests in Those Facilities.⁴¹

CSXT's third argument is largely duplicative of the arguments it raised in the previous two headings. CSXT complains that the CERR cannot step into CSXT's shoes without reflecting CSXT's ownership interest. CSXT further argues, however, that the CERR's fees to the IHB do not include an interest rental component, which CSXT claims it would pay to a non-owner.

Once again, as noted above, CSXT does not own any portion of the IHB; it is a trackage rights tenant. Thus, what CSXT pays in trackage rights fees is obviously reflective of what a non-affiliate railroad would pay. If a rental interest component were necessary to make all of the IHB owners whole, then CSXT, as a non-owner, would be paying it.

Moreover, the fact that CSX Corporation indirectly acquired a portion of the IHB does not suddenly give a non-owner affiliate of the indirect owner a discount on the trackage rights fee it pays. After all, how are Conrail and CP (the joint owners of the IHB) to recoup their operating costs, capital costs, interest rental component, etc. if the non-owner railroads operating over the facility are getting a break on the fees? Indeed, CSXT points out that it has to pay CSX Corporation for other services, such as technology and administrative

⁴¹ CSXT's argumentative heading is reused for the processing convenience of the Board. Consumers does not agree with CSXT's assertions for the reasons described herein.

activities; this begs the question: why does CSXT now posit that the fees it is paying indirectly to CSX Corporation via the IHB do not cover all such costs? CSXT's argument is, therefore, illogical *and* inconsistent.

CSXT also offers a cleverly worded suggestion that the current fees are not adequate because IHB has no reason to charge its owners a rental fee, but it provides no actual support for its assertion that CSXT's payments are insufficient. And, of course, CSXT is not an owner of the IHB. Thus, it is reasonable to presume that CSXT is paying such a rental fee; otherwise the real owners might not be adequately compensated. In other words, CSXT has failed to carry its burden of proof regarding the "relationship of the joint facility entity and the costs and revenues realized by the railroad as a result of that relationship."

iv. The Fact That The Partial Ownership Interest In IHB Is Held By CSX Rather Than CSXT Is Irrelevant to Whether Consumers Must Account for the Full Stand-Alone Costs of Operations Over the IHB.⁴²

In its fourth subheading, CSXT again rehashes its arguments: (i) that there is no "relevance to the fact that the IHB (as a CSX-owned facility) does not appear in Schedule 310 of CSXT's R-1 as a CSXT-owned facility;" (ii) that CSXT enjoys preferred terms for its payments to IHB due to CSX Corporation's indirect ownership interest in the IHB; and (iii) that somehow the full costs of serving the

⁴² CSXT's argumentative heading is recycled for the processing convenience of the Board. Consumers does not agree with CSXT's assertions for the reasons described herein.

CERR's traffic will not be accounted for if the CERR does not include road property investments for the IHB facilities.

As explained above in detail:

1. CSX Corporation does not directly own the assets of the IHB, but instead has interests in the economics and voting interest of Conrail, but Conrail still owns the assets of the IHB.

2. CSXT does not own a portion of the IHB.

3. CSXT operating rights are not part and parcel of CSX Corporation's acquisition of Conrail.

4. CSXT is a trackage rights tenant.

5. CSXT and CSX Corporation are not indistinguishable.

5. The Board has already considered and rejected CSXT's argument that the ownership data included in Schedule 310 is irrelevant.

6. CSXT has not established that it enjoys preferential trackage rights fees over the IHB, even though Conrail, CP and indirectly NS and CSX Corporation presumably expect to earn a reasonable rate of return on the IHB properties. Further, CSXT has not provided any evidence that it incurs additional interest rental payments to any of these other entities, including CSX Corporation.

7. The CERR stepping into CSXT's shoes on the same terms as CSXT is not inconsistent with SAC theory or Board precedent.

b. Signal/Communications System

The parties agree on Consumers' proposed signal and communications system.

c. Turnouts, FEDs and AEI Scanners

The parties agree on turnout sizes, FED and AEI location scanners.

d. RTC Model Simulation of CERR Configuration

RTC Model simulations are addressed in Part III-C.

III. C. STAND-ALONE RAILROAD OPERATING PLAN

On Opening, the CERR's operating plan was designed to provide for all of the needs of the traffic being handled by the CERR. The CERR's operating plan included all of the particulars about the CERR's operations, including how trains would move over the CERR's system, locomotive consists, train lengths, crew requirements, interchanges, inspections and operations at the Consumers plant.

The CERR's operating plan was developed principally by Consumers' Witnesses John Orrison and Robert Holmstrom. The plan was tested in the RTC Model, and Consumers demonstrated that the performance of the CERR during the peak week of the peak year of traffic being handled by the CERR met and/or exceeded the performance of CSXT. Indeed, the CERR outperformed the real-world CSXT by a considerable margin.¹

As Consumers described in detail in its Opening, its operating witnesses have over 80 years of combined railroad operating experience, particularly in and around Chicago and Michigan. Briefly summarized, Mr. Orrison served, *inter alia*, as CSXT's Vice President – Network Planning, Vice President – Service Design, General Manager Field Operations Development, and Division Superintendent – Detroit Division, where he oversaw the portion of the lines that the CERR is replicating between Porter and West Olive, as well as many

¹ See Rebuttal Table III-C-7 below.

other lines in Michigan, Ohio and Ontario, Canada. Mr. Orrison also served as CSXT's primary operating plan witness in the Conrail acquisition proceeding.²

Mr. Orrison also served as Vice President – Network Planning, for CSXT, and during that time he was elected Co-Chairman of the AAR's Special Committee Chicago Planning Group charged with analyzing and improving operations in Chicago. He was then appointed Chairman Corridor Development team, which identified and outlined plans for major Chicago corridors that were eventually integrated into the larger Chicago CREATE Program. Mr. Orrison was also involved in the establishment of the CTCO.

As Vice President – Service Design, Mr. Orrison developed and managed the CSXT train profiles, freight car blocks and freight car disposition rules, including most of the train profiles of the trains handled by the CERR. In addition, Mr. Orrison, as the expert witness for CSXT's Operating Plan for the Acquisition of Conrail, outlined CSXT's Intermodal plans for routes between Chicago and New York City, including the development of an intermodal facility at 59th Street in Chicago, IL.

As Division Superintendent – Detroit Division, Mr. Orrison oversaw all of the transportation operations for CSXT routes in Michigan, Ohio and

² *CSX Corp. & CSX Transp., Inc., Norfolk S. Corp. and Norfolk S. Ry – Control & Operating Leases/Agreements – Conrail Inc. and Consolidated Rail Corp.*, STB FD No. 33388.

Ontario, Canada. As noted above, he was responsible for the CSXT line between Porter and West Olive, which the CERR replicates.

Mr. Orrison also worked for BNSF Railway, where he served as Assistant Vice President – Service Design & Performance. In that role, he directed BNSF’s Merchandise Service Design & Performance Team. This team was responsible for the development of train plans for over 500 daily trains and 700 local jobs assigned to weekly switching of all customers operating over BNSF’s 32,000-mile network in 28 states and two provinces of Canada. He also directed the Velocity Program designed to improve car transit times and trains speeds. This program, which ran from 4Q 2005 to 4Q 2010, ultimately improved velocity by 30 percent over five years.

Mr. Holmstrom’s Chicago-related experience is unmatched in this proceeding. Indeed, Mr. Holmstrom’s spend his entire 42-year railroad career in Chicago. His experience includes holding the most senior position in the area for CN. Mr. Holmstrom was responsible for training all of the engineers and conductors on the rules and physical layouts of all the lines and rail yards where CN operated in Chicago. This position required an extensive and detailed understanding of all Chicago-area railroad operations.

Mr. Holmstrom’s duties also extended beyond CN operations. Mr. Holmstrom was part of an inter-railroad team tasked with developing a single regional operating guide for Chicago. This group assembled the first edition of the Chicago Operating Rules Association Guidebook. To develop this publication,

Mr. Holmstrom reviewed and checked the accuracy of the rail operations descriptions and maps for the entire rail infrastructure within a 45-mile radius of Midway Airport.

In 1999, when CN acquired the Illinois Central, Mr. Holmstrom was selected by CN's Executive Vice President Operations to serve as CN's Superintendent-level representative to the CTCO where he performed many functions that were detailed in Consumers' Opening.

In contrast, CSXT's primary operating witness, Mr. John Gibson, has no direct experience in day-to-day railroad operations. Indeed, Mr. Gibson's statement of qualifications makes it clear that he has never held an on-the-ground operating position at any railroad. Mr. Gibson, who worked with Mr. Orrison for several years, certainly has experience in planning for operations on a broad basis, but he does not even suggest that he is an expert on Chicago or Michigan rail operations. Such expertise is critical here as the CERR is operating within very specific parameters and in a territory where specific knowledge of the area is vital. This lack of Chicago-area and Michigan experience is consequential and evident in this case because much of CSXT's Reply operating evidence is predicated on outdated notions of Chicago operations and misunderstandings of the current environment. As a result, Mr. Gibson posits conditions in Chicago that do not necessarily exist for CSXT or the CERR, and he also posits supposed deficiencies in the CERR's operating plan that do not exist.

Notwithstanding Mr. Gibson's experience in planning, CSXT's complaints about the CERR's operating plan largely ignore or dismiss the fact that the CERR is handling only 54% of the trains that CSXT operated during the base year. This disconnect also creates a strange scenario in which CSXT's rhetoric about the flaws in Consumers' operating plan is then contradicted by its own Reply RTC Model results. Indeed, as explained below, CSXT's criticisms of Consumers' operating plan would suggest that once CSXT "fixed" Consumers' errors, its RTC results would show radically different results from those reached by Consumers. Instead, almost hidden near the end of CSXT's Reply operating plan evidence is Reply Table III-C-12, Comparison of Train Transit Times, which demonstrates that CSXT's complaints, fixes and modifications to the operating plan had almost no impact on the results and are virtually indistinguishable from Consumers' results. That CSXT has ignored the significant difference in trains handled by the CERR and CSXT sits at the roots of the improvement that the CERR has demonstrated and which CSXT has largely replicated through its own RTC modeling. To be sure, CSXT attempts to paint a picture that its RTC results are drastically different from Consumers' Opening, but as explained in Part III-A-1-b and below, the results differ by only a few minutes in most cases, a *de minimis* amount in actual time and from a railroad operating perspective according to Messrs. Orrison and Holmstrom – even when considering high priority intermodal trains. In other words, even CSXT's Reply demonstrates that Consumers'

operating experts, with their vast experience in this territory, and understanding of real world operations, got it right.

*REBUTTAL INTRODUCTION*³

CSXT largely accepts the parameters of Consumers' operating plan. But instead of acknowledging this point, CSXT devotes its Introduction to "flaws" that it claims it has identified in Consumers' operating plan. CSXT's rhetoric boils down to only three primary complaints:⁴ (i) Consumers underestimates delays in Chicago; (ii) some Consumers trains, when growth cars are added to them, are too long; and (iii) Consumers should have accounted for a few allegedly bad-ordered cars containing Consumers' coal. As explained herein, CSXT's complaints are without merit.

A. Consumers Accounted for Delays Attributable to the CERR Traffic Group and Its Operating Plan Specifically Accounted for the Realities of Chicago Operations

CSXT suggests that Consumers has ignored delays; that the CERR inexplicably moves through Chicago faster than CSXT trains in the real world;

³ CSXT inserted a new section, "Introduction," with three subsections in its Reply. As CSXT devoted 44 pages to this Introduction section, rather than placing its arguments under the appropriate headings within the existing structure that Consumers used on Opening. CSXT then rehashed, in summary form, the arguments raised in its Introduction section throughout the already established sections that follow. As CSXT's Introduction section is so large, Consumers has decided, for ease of processing, to respond to CSXT's Introduction with this Rebuttal Introduction and appropriate subheadings.

⁴ CSXT also complains that the CERR has no crew changes. As explained in Part III-C-2-xii, CSXT is simply wrong and mischaracterizes Consumers' evidence.

that fewer trains could not possibly account for the efficiency of the CERR; and, in essence, that Consumers somehow is trying to dupe the Board into believing that a stand-alone railroad could operate in Chicago and still be efficient.⁵ CSXT carefully ignores its own RTC results throughout the 20 pages in which it chastises Consumers on this point. Instead, CSXT focuses on Consumers' supposed faults, CSXT's supposed corrections, and the expected dire consequences that CSXT's revisions would cause. Almost without exception, CSXT's arguments are without merit and all of these complaints contradict CSXT's own RTC results.

Operating in Chicago. CSXT argues that Chicago is a busy terminal and that traffic congestion, capacity constraints and weather conditions result in service delays that the CERR somehow ignores.⁶ CSXT cites general statistics about total volumes of traffic through Chicago and other well-known issues about the terminal to suggest the difficulty of operating in Chicago.⁷ Consumers' operating experts recognized and considered the challenges of operating in Chicago. Indeed, Mr. Holmstrom has spent his entire career dealing with the particular issues that Chicago presents, and Mr. Orrison is also intimately familiar with CSXT's specific challenges in Chicago and how they affect operations in the terminal and beyond. That such care was taken is evident. For example, Mr. Orrison and Mr. Holmstrom provided for extensive daily closures of

⁵ CSXT Reply at III-C-7-27.

⁶ CSXT Reply at III-C-7.

⁷ CSXT Reply at III-C-2.

the crossing diamond at 75th St. where Metra trains, as well as NS and other carriers, cross the CERR line. CSXT accepted those closures, tacitly acknowledging that Consumers' operating witnesses are well-versed in the intricacies of operating in Chicago.

CSXT also largely ignores that Chicago rail operations have been transformed in recent years. As Consumers' operating experts explain below, CSXT effectively suggests that day-to-day operations are almost unbearable. But CSXT's description depicts rail operations of the 1980's and 1990's right up to the mid-2000's, and it ignores the many operational and infrastructure improvements that have inured to the benefit of the railroads operating in the terminal.

Historical Perspective. Messrs. Holmstrom and Orrison explain that operating in Chicago prior to the mid-2000's was problematic. There were numerous and frequent backups that brought the terminal to a near halt. The railroads had no coordinated recovery plans and each carrier was operating on its own terms. The carriers had no insight into what other carriers were doing in the terminal (*i.e.*, trains handled daily, cars processed in hump operations or number of passenger trains on their lines). Simply put, there was no sharing of information of any kind. This problem was further exacerbated by the sheer number of carriers operating through the terminal in recent times, up to 25 carriers at various periods.

As a result of the siloed atmosphere, all of the various carriers were running their own operations, which usually included scheduled and unscheduled

trains arriving and departing daily. Naturally, some trains operated on time, others were behind schedule, and some simply had no schedule and no preset plan for movement through the terminal. With each carrier focusing only on its own operations (and sometimes on the plan of its interline partner for a particular train), the Chicago terminal was essentially a huge maze of trains and cars coming from or going somewhere, and trains were effectively just moving or stopped everywhere with no coordination or game plan in place to improve the terminal overall. Thus, the largest rail terminal in North America was dysfunctional. These problems were well known inside and outside of the industry. That legacy is still in the minds of many, including CSXT's operating witness and the Blue Ribbon Commission that CSXT cites frequently.

A Challenging Time Sparks Change. The time period from the fall of 1998 through the winter of 1999 was one of the very worst periods in Chicago terminal train operations. The entire terminal struggled for throughput and this period was far worse than the troubles encountered in 2014. Traffic was backed up across many states as a result. Mr. Holmstrom worked a minimum of 14 hours every day for a period of 207 straight days from August 1998 until spring of 1999. By late spring of 1999, train operations returned to normal, but normal was far from optimal.

Then came even more difficulties. On June 1, 1999, Conrail was split. As the Board was aware, there were many operational challenges that occurred with this transaction. On July 1, 1999, CN purchased the Illinois Central.

All of these upheavals disrupted the terminal. The Class I carriers were all aware that the Chicago terminal was still problematic notwithstanding the reduction in carriers operating therein. Top executives were being pressured by regulators, legislators, and local officials to improve conditions.

The pressure being felt by railroads in Chicago conveniently dovetailed with an initiative, the Chicago Planning Group (“CPG”), that was begun in the spring of 1996 after a tough winter season. The move to form the CPG was spurred by the Class I railroads’ need to respond to growing customer complaints, as well as a concern that lack of oversight by the Chicago carriers would lead the STB to directing oversight measures, as it eventually did after the UP/SP merger of 1997.

The CPG, of which Mr. Orrison was a founding representative, reported directly to the AAR’s Safety and Operations Management Committee. The CPG developed a Strengths, Weakness, Opportunities, and Threats analysis; set up the Infrastructure Committee; and hi-railed every foot of railroad in Chicago with representatives from each railroad’s engineering department to evaluate, rate and rank each and every interlocking with respect to condition, capability and recommended modernization. One implicit goal was to eliminate all manned interlockings and to automate the dispatch of trains moving through Chicago.

The CPG set up monitoring points outside of Chicago on every railroad to document the time and date an inbound through train was entering Chicagoland to monitor the total elapsed transit time of the train until it departed

Chicagoland. In the beginning, the transit time of trains, moving from say BNSF to CSXT, was measured in days versus hours (per schedule).

The CPG also documented the number of hand-offs that occurred for a train trying to move through Chicago (for example, a single train crew would encounter 8 to 14 hand-offs from foreign RR dispatchers and manned towers to gain permission for movement authority over tracks and Interlockings).

The CPG led the efforts for the AAR from June 1996 - 2000 then handed over the initiative to CTCO in 2000. Unfortunately, it took almost two years for the AAR members' Chief Operating Officer leadership to approve the CTCO because certain railroads argued over location, co-location, non-co-location and rank-level of CTCO representatives (saying CTCO was redundant to their existing organizations). One underlying problem is that railroad COOs regarded Chicagoland as the end-point of their networks versus the mid-point of the national network. Regardless, following many complaints and pressure from political quarters, the CTCO initiated its operations in January 2000.

The CTCO Transforms Chicago. January 2000 ushered in a new era for Chicago's train operations. The CTCO started as a nine-member team, which was quickly joined by a Metra representative. The CTCO maintains its offices in the Metra train dispatching building in the heart of Chicago passenger operations. The representatives in the CTCO generally had dispatcher screen-level visibility of many of the Class I carrier mainline operations. Each CTCO member was at least a superintendent level operating officer, and all had extensive

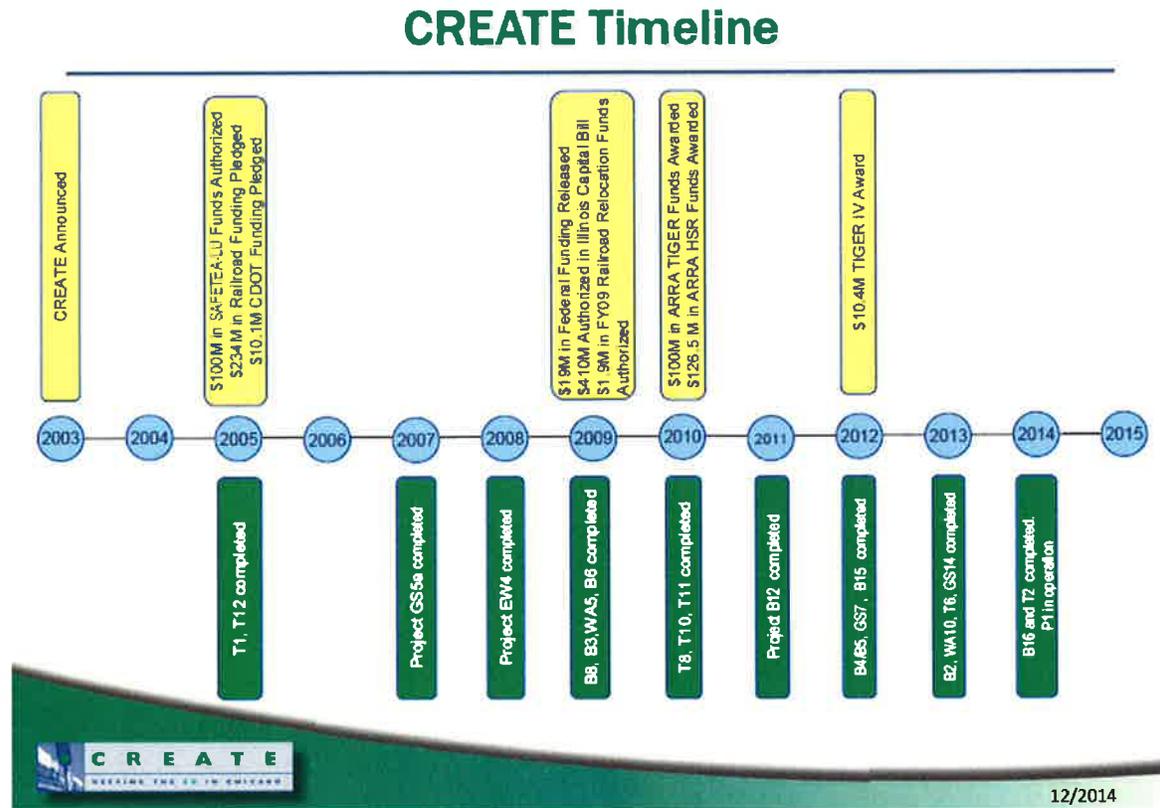
on-the-ground experience, as one would expect of senior operating personnel in Chicago. In other words, this group, then and now, works deep in the trenches of rail operations, and understand the challenges in Chicago.

With the CTCO in place, for the very first time, Chicago had a team fully devoted to making changes. The members set aside their home road's singular needs and put on neutral hats working for the good of all Chicago rail operations. Not long after forming, the CTCO had a vision of what it was going to take to move rail traffic faster and smoother, including how to handle irregular operations.

The improvements implemented by the CTCO included process improvements and technology upgrades. And there were many. For example, the CTCO: (i) developed computerized monitoring of trains moving into Chicagoland through an automated dispatcher line-up report; (ii) started scheduled shift-change conference calls and a morning call to review the planned and unplanned train movements, as well as track and signal outage; and (iii) developed alternative routes for each railroad to move trains through Chicago on each other's routes.

The CTCO also realized that infrastructure changes and additions were needed if the Chicago terminal was going to improve even further. The CTCO helped develop aspects the multi-billion-dollar infrastructure improvement plan that was later known as CREATE, which was announced on June 16, 2003 by

then-Mayor Daley.⁸ These process and infrastructure improvements have been implemented, more or less, nonstop from mid-2000 through 2015, as seen in the chart below.⁹



CREATE is now on slow track as funding has dried up. Indeed, Blue Ribbon Commission, so often cited by CSXT, represents a renewed attempt to garner interest in the unfinished projects. Nevertheless, the projects listed above resulted in a string of critical improvements as shown in the list below:

⁸ See <http://www.createprogram.org/about.htm>.

⁹ See http://www.createprogram.org/linked_files/timeline_final.pdf.

Proj. No.	Project Name	Location	Key Benefit†
<u>B1</u>	CP double & IHB connection	Franklin Park	Reduces delays to commuter and freight trains and to motorists at nearby at-grade crossings.
<u>B2</u>	Proviso 3rd Main	Bellwood/Berkeley/Elmhurst/Melrose Park	Adds capacity for commuter and freight trains and increases pedestrian safety at stations.
<u>B3</u>	Melrose connection	Bellwood	Adds capacity into and out of a major freight rail yard, and reduces delays on an adjacent freight railroad.
<u>B4*</u>	TCS LaGrange to CP Hill	LaGrange/LaGrange Park/McCook	Adds capacity and reduces delays for freight trains, and reduces delay to motorists at nearby at-grade crossings.
<u>B5*</u>	TCS LaGrange to CP Hill	Bellwood/Broadview/Melrose Park	Adds capacity and reduces delays for freight trains, and reduces delay to motorists at nearby at-grade crossings.
<u>B6</u>	McCook	McCook	Increases speed and capacity for freight trains, and reduces delay to intercity passenger trains.
<u>B8</u>	TCS Argo to Canal	Bedford Park/Bridgeview/Summit	Increases freight train speed and reduces delay to intercity passenger trains where their paths cross.
<u>B9**</u>	Argo	Chicago/Bedford Park/Bridgeview/Summit	Greatly increases freight train capacity and allows more evenly distributed train traffic throughout the regional rail network.
<u>B12</u>	CP Francisco	Alsip/Blue Island	Adds capacity and reduces delays for freight trains through a major corridor.
<u>B15</u>	TCS Blue Island	Blue Island/Dolton/Riverdale	Increases speed and capacity for freight trains, and reduces delay to intercity passenger trains where their paths cross.
<u>B16</u>	Thornton Jct	South Holland	Creates a track connection that allows more evenly distributed freight train traffic throughout the regional rail network

Proj. No.	Project Name	Location	Key Benefit†
<u>EW1**</u>	Argo	Chicago/ Bedford Park/ Bridgeview/Summit	Greatly increases freight train capacity and allows more evenly distributed train traffic throughout the regional rail network.
<u>EW2***</u>	80th Street	Chicago	Greatly increases freight and commuter train speed and capacity by removing the most severe rail bottleneck in the region; eliminates 9,000 annual passenger hours of delay for commuters.
<u>EW3</u>	Pullman Jct	Chicago	Adds capacity and reduces delay for freight trains through a major corridor.
<u>EW4</u>	CP 509	Chicago	Increases freight train speeds and capacity through a connection, reducing main line delays.
<u>GS1</u>	63rd St/Harlem Ave	Chicago	Eliminates grade crossing, reducing congestion and improving safety for 17,600 vehicles (1,100 of which are delayed) and 192 CTA/Pace buses per day. This is a "911 Critical Crossing."
<u>GS2</u>	Central Ave/54th St	Chicago	Eliminates grade crossing, reducing congestion and improving safety for 23,200 vehicles (700 of which are delayed) per day. This is a "911 Critical Crossing."
<u>GS3a</u>	Morgan St/Pershing Road	Chicago	Reduces traffic delays by either eliminating a grade crossing or installing dynamic signage to direct motorists to use alternative routes when the crossing is blocked.
<u>GS4</u>	Central Ave	Chicago Ridge/ Oak Lawn	Eliminates grade crossing, reducing congestion and improving safety for 20,000 vehicles (2,500 of which are delayed) per day.
<u>GS5a</u>	Grand Ave	Franklin Park	Eliminates a grade crossing, reducing congestion and improving safety for motorists and pedestrians.

Proj. No.	Project Name	Location	Key Benefit†
GS6	25th Ave	Melrose Park/ Bellwood	Eliminates grade crossing, reducing congestion and improving safety for 21,000 vehicles (5,000 of which are delayed) and 38 Pace buses per day.
GS7	Belmont Rd	Downers Grove	Eliminates grade crossing adjacent to a commuter train station, reducing congestion and improving safety for 20,000 vehicles (3,500 of which are delayed) per day.
GS8a	5th Ave	Maywood	Eliminates grade crossing, reducing congestion and improving safety for 6,600 vehicles (1,000 of which are delayed) and 66 Pace buses per day.
GS9	Archer Ave/Kenton Ave	Chicago	Eliminates grade crossing, reducing congestion and improving safety for 18,000 vehicles (2,600 of which are delayed) and 259 CTA buses per day. This is a "911 Critical Crossing."
GS10	47th St/East Ave	LaGrange/ McCook	Eliminates two grade crossings, reducing congestion and improving safety for 12,000 vehicles (2,200 of which are delayed) per day.
GS11	Columbus Ave/Maplewood Ave	Chicago	Eliminates grade crossing, reducing congestion and improving safety for 8,200 vehicles (1,200 of which are delayed) per day. This is a "911 Critical Crossing."
GS12	1st Ave	Maywood	Eliminates grade crossing, reducing congestion and improving safety for 29,000 vehicles (4,000 of which are delayed) per day.
GS13	31st St	LaGrange Park	Eliminates grade crossing, reducing congestion and improving safety for 18,000 vehicles (2,400 of which are delayed) per day.

Proj. No.	Project Name	Location	Key Benefit†
<u>GS14</u>	71st St	Bridgeview	Eliminates a grade crossing in a major industrial area adjacent to a 20,000-seat multipurpose stadium near the entrance to a major rail yard complex (which requires slow train movements and lengthy gate down times).
<u>GS15a</u>	130th St/Torrence Ave	Chicago	Eliminates two grade crossings adjacent to a major assembly plant, reducing congestion and improving safety for 32,000 vehicles per day. This is a "911 Critical Crossing."
<u>GS16</u>	Irving Park Rd	Bensenville	Eliminates grade crossing, reducing congestion and improving safety for 37,000 vehicles (6,400 of which are delayed) and 31 Pace buses per day.
<u>GS17</u>	Western Ave	Blue Island	Eliminates grade crossing, reducing congestion and improving safety for 9,000 vehicles (1,700 of which are delayed) and 80 Pace buses per day.
<u>GS18</u>	Harlem Ave	Berwyn /Riverside	Eliminates grade crossing, reducing congestion and improving safety for 32,000 vehicles (6,300 of which are delayed) and 139 Pace buses per day.
<u>GS19***</u>	71st St/Bell Ave	Chicago	Eliminates a grade crossing, reducing congestion and improving safety for motorists and pedestrians.
<u>GS20</u>	87th St/Rockwell St	Chicago/ Evergreen Park	Eliminates grade crossing, reducing congestion and improving safety for 32,000 vehicles (3,000 of which are delayed) and 193 CTA buses per day.
<u>GS21a</u>	95th St/Eggleston Ave	Chicago	Eliminates grade crossing, reducing congestion and improving safety for 27,500 vehicles (3,800 of which are delayed) and 885 CTA/Pace buses per day. This is a "911 Critical Crossing."

Proj. No.	Project Name	Location	Key Benefit†
<u>GS22</u>	115th St	Alsip	Eliminates grade crossing, reducing congestion and improving safety for 13,600 vehicles (2,800 of which are delayed) per day.
<u>GS23a</u>	Cottage Grove	Dolton	Eliminates grade crossing, reducing congestion and improving safety for 15,300 vehicles (1,700 of which are delayed) per day.
<u>GS24</u>	Maple Ave	Brookfield	Eliminates grade crossing, reducing congestion and improving safety for 12,000 vehicles (2,500 of which are delayed) per day.
<u>GS25</u>	Roosevelt Road	West Chicago	Eliminates grade crossing, reducing congestion and improving safety for 21,000 vehicles (3,800 of which are delayed) per day.
Proj. No.	Project Name	Location	Key Benefit†
<u>P1</u>	63rd & State	Chicago	Removes conflict point between commuter, passenger, and freight trains, eliminating 7,500 annual passenger hours of delay for commuters and Amtrak's most severe delay point in the Midwest; also increases commuter track capacity for future service (see project P2).
<u>P2***</u>	74th Street	Chicago	Frees up space for increased intercity passenger rail trains at Chicago Union Station by shifting a growing commuter rail line to another downtown terminal that has spare capacity, eliminating 18,500 annual passenger hours of delay for commuters and increasing speed and capacity for all trains.
<u>P3***</u>	75th Street	Chicago	Takes a growing commuter rail route out of the path of freight trains, eliminating 5,000 annual passenger hours of delay for commuters.
<u>P4</u>	Grand Crossing	Chicago	Provides a more direct routing for passenger trains from the south, shaving 10-15 minutes off of train schedules relative to current routing.

Proj. No.	Project Name	Location	Key Benefit†
<u>P5</u>	Brighton Park	Chicago	Removes conflict point between commuter, passenger, and freight trains, eliminating 4,500 annual passenger hours of delay for commuters and even greater delays for passenger trains.
<u>P6</u>	Canal	Summit	Removes conflict point between commuter, passenger, and freight trains, eliminating 3,000 annual passenger hours of delay for commuters and even greater delays for passenger trains.
<u>P7</u>	Chicago Ridge	Chicago Ridge	Removes conflict point between commuter and freight trains, eliminating 6,000 annual passenger hours of delay for commuters.
Proj. No.	Project Name	Location	Key Benefit†
<u>WA1</u>	Ogden Jct.	Chicago	Increases freight and commuter train speed and capacity by modernizing train control system; reduces delays for commuter trains.
<u>WA2</u>	TCS Blue Island Sub	Chicago	Adds capacity, increases speed, and reduces delays for freight trains.
<u>WA3</u>	Ashland Ave. & CJ Mains	Chicago	Adds capacity, increases speed, and reduces delays for freight trains.
<u>WA4</u>	BNSF Horseshoe	Chicago	Provides new connection between major freight yards and main line tracks, adding capacity and reducing delays.
<u>WA5</u>	Corwith Tower	Chicago	Increases freight train speed, reliability, and capacity at the eastern terminal of the busiest transcontinental intermodal corridor in the U.S.
<u>WA7</u>	Brighton Park	Chicago	Provides new connection between freight train routes, adding capacity and reducing delays.
<u>WA10</u>	Blue Island Jct.	Blue Island	Improves a track connection that allows more evenly distributed freight train traffic throughout the regional rail network
<u>WA11</u>	Dolton Interlocking	Chicago /Dolton/Riverdale	Increases freight train speed and reduces delay at a point where multiple train paths cross.

	Project Name	Location	Key Benefit†
	Common Operational Picture	Chicago and suburbs (Chicago Terminal District)	Allows dispatchers to identify congestion and reroute trains in real time, improving operations for all 1,300 daily freight, commuter, and passenger trains in the region.
	Viaduct Improvement Program	Chicago (various locations)	Improved roadways, sidewalks, and curbs under railroad viaducts to enhance safety and security for motorists, bicyclists, and pedestrians.
	Grade Crossing Safety Program	Suburbs (various locations)	Improves motorist and pedestrian safety at grade crossings where a grade separation is infeasible or not currently planned.
<u>T1-</u> <u>T12</u>	Towers	Various	Increases reliability of train operations at key crossings throughout the region, reducing commuter, passenger, and freight train delays.
Source: http://www.createprogram.org/projects.htm .			

As noted above, Mr. Orrison was active in organizing improvements in Chicago before the CTCO. In 1996, Mr. Orrison was co-chairman of the CPG and CSXT's representative appointed by EVP Ron Conway - former President of Conrail in 1996. He led and directed the infrastructure committee Spring-Summer 1996 to produce the "Red Book," which outlined the critical corridors and planned grouping of projects to gain the greatest level of benefits, as shown in the eventual CREATE map.¹⁰

¹⁰ See http://www.createprogram.org/linked_files/ProjectMap_print.pdf.



Note: Does not include Viaduct Improvement Program locations, Safety Improvement Program or Common Operational Picture

6/8/2011

Mr. Orrison was also on the selection committee that interviewed five different engineering and consulting companies to select the winning company to develop the RTC model for Chicago. The AAR purchased the completed model and hired a new full time employee to operate the model generating baseline analysis of train delay minutes for all of the identified critical corridors and then generating what-if analyses to determine if the critical corridors

were fixed, and to determine the train delay minute savings generated from the projects.

Even before that, in the 1980's, while working for the Norfolk Southern Railway, Mr. Orrison walked the 75th Street interlocking area studying the possible grade separation of Metra using a flyover at Ashland and 75th Street. However, the north-south CSXT interlocking was listed as a lower priority project in the 1996 Red Book due to the lower frequency of north/south trains; the ability to fleet two trains side-by-side when crossing the NS/Metra east/west track and the costly engineering estimate to completely separate Metra/NS/CSXT Operations (\$400-700 million in 1996 and now in excess of \$1 billion).

As noted, Messrs. Orrison and Holmstrom are extremely well versed in Chicago operations and they flatly disagree with CSXT's dated argument that Chicago is too complex and hard to understand and that a stand-alone railroad, in effect, could not work in this terminal.

CSXT also ignores that changes in traffic mix, traffic flows and other requirements also previously necessitated changes in Chicago. For example, many former switching yards were converted to intermodal and automotive facilities. CSXT, along with the other Class I railroads, identified its ability to block large volumes of traffic to bypass the former process of interchanging all off-line traffic to the nearest carrier interchange junction point or yard. For example, in the CSXT Operating Plan for the acquisition of Conrail, CSXT identified through blocks for BNSF interchange traffic bound to Northtown, MN,

Galesburg, IL and Pasco, WA. Reciprocal blocking was provided by BNSF for Willard, OH, Selkirk, NY and Cumberland, MD. The Interchange Service Agreements that are in place today were originally developed in 1996 using CSXT's Operation Research modeling of the AAR 1% Waybill sample and 100% CSXT/Conrail Waybill samples. The Service Design teams within each of the Class I railroads have constantly reviewed shipment databases to identify and implement operational plans that eliminate the need for switching and intermediate handlings of traffic within Chicagoland and to reduce each carrier's cost of operations in and around Chicago. These changes pushed freight switching and train building to other locations outside of the Chicago terminal, including CSXT's expansion of Willard Yard in Willard, OH to develop westbound blocking for BNSF and UP, and NS's modernization of Elkhart, IN to build bypass Chicago trains for BNSF and UP.

Today's Chicago Operations. The processes in place today, honed over many years by the CTCO and driven by changes such as moving train-building away from the terminal, provide for the orderly movement of rail traffic. Visibility of what is on hand and what is coming from all directions is no longer a mystery. All of the railroads have access to each other's train line-up information in the form of an electronic computer screen providing, by train ID, the expected estimate time of arrival (ETA), train consist, locomotive consist, crew hours on duty and other important information. Most of the train dispatch offices utilize live views of the other carriers' mainline operations and have dedicated telephone

lines between the offices to ensure prompt and efficient communications. To be sure, the winter of 2014 was difficult, but the underlying factors, such as constant snow storms around the nation, disrupted schedules all over the nation, not just in Chicago, but, of course, all roads lead to Chicago, so much attention was placed there. That said, no railroad will ever spend all of the money that would be needed to completely achieve the three R's of strategic planning for railway networks: Robust, Resilient and Redundant. Specifically, weather affects resiliency and, by definition, weather is recoverable, not preventable. However, Mr. Holmstrom and Mr. Orrison emphasize that the fundamentals of operations in Chicago were otherwise on a good footing during this period, but CP and BNSF, in particular, were deeply affected by network failures that occurred outside of Chicago (*e.g.*, North Dakota), which were exacerbated by inadequate infrastructure to support traffic inputs (*e.g.*, Sand) and outputs (*e.g.*, unit oil trains). Indeed, Mr. Orrison was the AVP Service design for BNSF between 2005-2011 and was involved in the planning for CBR unit trains and the design of customer facilities. The planning group recommended the expansion of facilities in Minot and Williston, double tracking, and taking back the Yellowstone Valley Railroad, but senior management did not decide to make the investment until service issues began arising in 2013-2014.

CSXT's Distorted Description of Chicago Operations and the CERR Territory. CSXT's Reply would lead the uninformed reader to believe that every day of every week of every year is a huge struggle in the terminal.

However, that simply is not true and it does not reflect the operations in the terminal today. For example, on page I-22 of CSXT's Reply, CSXT attempts to the startle the Board into thinking that the 75th Street interlocking is almost impassable because four carriers operate 90 trains a day. But Consumers' operating witnesses immediately identified this point as a red herring. In their direct experience, fluidity has never been better in this corridor. Specifically, the BRC's late general manager made this corridor surprisingly fluid, given the traffic volume. He held carriers accountable to adhere to their operating schedules and kept passenger trains flowing. To be sure, as the Blue Ribbon commission cited by CSXT noted, there is still work to be done at that interlocking – if the funding is ever made available – but the challenges at this interlocking are old news. The carriers have adapted to and improved this interlocking already.

CSXT's distortions and/or simple lack of knowledge about the particulars in this area are also manifest. In the same paragraph discussing the 75th Street interlocking, CSXT mentions the 80th Street Interlocking at Forest Hill junction. CSXT is confused here as these two are separate locations which are located 2.5 miles from one another.

In the same paragraph, CSXT describes how a train can take 15 to 20 minutes to traverse two miles, but this is a red herring as well. Simply put, 15 minutes to cover two miles in this area is often acceptable on some of the routes because the physical plant will not permit anything faster. For example, the straight route on BRC is rated at a 25 MPH maximum, but there are long sweeping

curves and long gradual dips on the tracks, which, by design, are undercut to allow double-stack container train clearance – Metra’s Rock Island Line passes over and there are streets below. So while the configuration is not ideal, CSXT’s portrayal of the area is incorrect, and, of course, CSXT selects the tricky operating points and suggests that they are typical of normal operations.

Likewise, CSXT suggests that the CERR somehow flies through the heart of Chicago.¹¹ Again, CSXT distorts the circumstances here. The CSXT route being replicated by the CERR is not in the heart of downtown Chicago or nestled among the skyscrapers. In reality the route is 12 miles southeast of downtown Chicago, touching up against the northwest Indiana state line at Hammond, Indiana. This is as far south and east as one can go within the Chicago city limits.

CSXT also suggests that Consumers has ignored that the NS trackage rights route used by some CERR trains is the most congested area in Chicago, and it implies that Consumers has somehow glossed over this point. Admittedly, this route handles a large number of trains. However, fluidity is the key, not the total number of trains. In Mr. Holmstrom’s extensive experience with trains in this corridor, NS is highly efficient. The NS train dispatchers are top-notch. In addition, CSXT fails to mention that NS’s fluidity was recently enhanced by the completion of the costliest of the CREATE infrastructure

¹¹ CSXT Reply at I-23.

improvement projects. This project, known as P1, was completed in 2014. This project grade-separated the high density Metra Rock Island Line from the high density NS Chicago Line. NS previously halted freight traffic for seven (7) hours to accommodate morning and evening rush hours, along with all day service. NS is now in a position to move freight and intermodal traffic over this corridor without scheduled delays.

But far more important to this case, Consumers did not model this segment in its RTC Model because it had no access to the traffic records for this segment. Instead, it relied on CSXT's data addressing the time it takes for the historical-period CSXT trains to traverse the segment – warts and all. Significantly, the CSXT *accepted* the transit times and methodology used by Consumers.¹² Thus, CSXT has no basis for complaining.

CSXT also ignores that the CERR is largely immune (except at the 75th Street Interlocking) from the impact of Metra trains. Metra passenger operations often have exclusive access to the mainline tracks of all the Class I carriers for a few hours in the morning and early evening. The one exception is CSXT. It does not have a single Metra train on its main tracks. Thus, all the other

¹² CSXT Reply at III-C-67.

freight in the terminal more or less stands still for roughly six hours per day.¹³

Yet, CSXT carefully ignores that it and the CERR are spared such problems.

Similarly, Amtrak comes to Chicago from all the cardinal compass points. Indeed, Amtrak trains are spotted on each carrier's routes throughout the day from dawn till midnight, and of course, freight must make way for passenger operations. But CSXT is again spared such inconvenience. CSXT has only one pair of Amtrak trains that runs on their low density Monon Subdivision (not replicated here), which extends from Chicago to Indianapolis. Moreover, the ridership on the route has dropped so low that the train consists of one locomotive and one passenger car, which will hardly impede operations.

CSXT also suggests that it often takes 30 hours to transit the terminal.¹⁴ CSXT's distortion here is troublesome. While such a statistic may be true for a boxcar switched at the BRC with a 20-hour dwell time, CSXT does not suggest, nor is it the case, that this statistic is true for the trains being handled by the CERR. From 1996-1999, the Chicago Planning Group set up measurements of a "corral" around Chicago to measure the On-Signal (OS) time of trains moving into Chicago on any line to moving out of Chicago on any line – given the condition of Chicago and the many manned towers – 30 hours was about right. But now that towers are automated and controlled remotely from dispatchers'

¹³ The CERR does experience interference at the 75th Street interlocking when Metra trains have a block of time in the morning and evening. Consumers accounted for this curfew and CSXT accepted Consumers' evidence on this point.

¹⁴ CSXT Reply at III-C-4-5.

desks, the protocol for railroads in Chicago is to move trains as quickly as possible. Indeed, even during Metra rush hours, a 30-hour figure would be an extreme outlier.

On the other hand, there is a very logical explanation as to why some freight cars take 30 or more hours traveling through Chicago. Mr. Holmstrom provides one example. Trains arrive at Clearing Yard 24/7/365, and those cars are bound for other carriers' trains. BRC attempts to, as a matter of policy, inspect and hump all cars into classification tracks within eight (8) hours of arrival. Cars placed on classification tracks are pulled to the departure yard tracks six (6) hours before the train's scheduled departure time. Consider how this works in practice. Train XYZ from BNSF arrives at Clearing Yard at 6:00 a.m. and is completely switched by 2:00 p.m. Now, one car on that train is destined for Waycross, GA on the CSXT, but that classification track is only pulled to the departure yard once a day at 10:00 a.m. for a 4:00 p.m. departure, then a freight car destined for Waycross, which is switched as early as 10:15, will not be pulled down to the departure yard until the following day. Thus, by design, the car may sit at Clearing Yard for 34 hours before departing, and that, of course, does not include the actual transit through Chicago.

To demonstrate that the 30-hour figure does not apply here, Mr. Holmstrom uses an example of a West Olive train. Assume that BNSF is operating the train near Chicago, but during a Metra rush hour period, thereby inhibiting movement. BNSF would hold the loaded train west of Chicago at

Aurora, IL, which is about 37 miles from the 22nd street connection with the CERR. Once the train is moving, BNSF's maximum speed is 45 mph until reaching the entrance to its main track No. 4, where it drops to 35 mph. Thus, there is roughly an hour running time once the train departs Aurora. Mr. Holmstrom then generously assumes one (1) hour to travel the six (6) miles from Cicero to 71st Street. Mr. Holmstrom then adds 3½ hours of dwell at 71st Street because CSXT has a reputation of waiting until a train arrives at a hand off location before a crew is ordered; even then there is no guarantee the crew is ordered upon the train's arrival; and finally the crew must perform the brake test and depart. By comparison, the CERR is planning for, and CSXT has accepted, a much shorter interchange time of 30 minutes, reflecting improved efficiencies. Once the train departs 71st Street, it could reach Dolton in less than one hour. Alternatively, if the route is across the BRC to Rock Island junction, the running time may be 15 minutes longer than to Dolton, but even if it were several hours longer it would still not approach 30 hours. A few minutes after passing Dolton, the train crosses the Illinois-Indiana state line and exits the terminal area. Thus, in total, even allowing for generous holds and slow transits, the West Olive trains can reach Indiana in less than 10 hours – and that 10-hour figure includes other possible delays and issues not specified by Mr. Holmstrom above.

In Chicago, all coal trains and unit trains in general, regardless of the identity of the receiving carrier, are included in a 2-day forecast of expected trains with regular updates on the ETA for those trains. A properly coordinated handoff

would allow for a transit time of less than seven (7) hours from Aurora to the Dolton Interlocking.

Mr. Holmstrom was involved in a study of coal train dwell time in Chicago. It was this study that revealed the delays in crew calling for West Olive trains parked at 71st Street. Despite this identification, Mr. Holmstrom's CSXT counterpart at the CTCO said that CSXT would not change their West Olive coal train crewing plan.

CSXT suggests that even a minor service disruption can cause a cascade of delays on train movements in the Chicago. Likewise, CSXT suggests, based on a quote from a United Parcel representative, that a "lone train stopped in Chicago" can result in held trains as far away as Los Angeles or Baltimore. Both of these points, again, signal antiquated theories of Chicago, as well as factually improbable scenarios.

Today, the railroads in the terminal have set up rapid responder MOW trucks and the addition of double track has made it easier to handle irregular operations. Through the efforts of the CTCO, the railroads have developed a universal line-up of train operations that maps out all of the carriers' annual maintenance plans for ties, rail and surfacing, as well as signal cutovers and testing. In addition, the carriers all have agreements to allow operations via foreign line routes when broken rails or other outages might be in place for a time. Thus, one event rarely cascades through Chicago.

One train held in Chicago does not hold up trains in Los Angeles and Baltimore. Mr. Orrison, who has worked for both CSXT and BNSF, points out that there is more capacity on the railroad networks than ever before and that the United Parcel employee experience displays a lack of knowledge. In fact, BNSF's Los Angeles corridor is, in many ways, worse than Chicago. For example, BNSF often moves intact container trains' flat cars (without the containers) eastward out of Los Angeles due to limited capacity within Los Angeles area. These trains usually operate eastward to Belen, NM and then return to Los Angeles. The trains are so common they even have a nickname: Condor trains.

As the above demonstrates, the CERR is operating in a complicated terminal, but its operations are relatively simply vis-à-vis many of the other carriers in the territory. Ultimately, despite all of CSXT's complaints, CSXT and Consumers agree on the core elements of the CERR's operation and vary only slightly in their RTC model results.

CSXT Largely Ignores the Impact of the CERR's Reduced Train Counts. CSXT suggests that the CERR's improved transit times, versus historical CSXT transit times, cannot be explained by the difference in traffic volumes.¹⁵ This assertion is surprising, given Mr. Gibson's planning experience. Consumers' witness Mr. Orrison, who has designed many operating plans, evaluated capacity for countless corridors, managed divisions of the CSXT, and

¹⁵ CSXT Reply at III-C-9.

was instrumental in the very group that spurred the many CREATE projects undertaken in the last 15 years, is well aware how transit times are strongly influenced by volume and types of trains operated. Here, Consumers is handling 54% of the trains that CSXT operates in this territory, and it is moving these trains over a system that has almost all of the same mainline track infrastructure that CSXT has in place today. Additionally, as explained below, CSXT's throughput in this territory is inefficient because it is trying to push more trains through the area than the infrastructure permits to operate fluidly. Not surprisingly, CSXT has been expanding its options through Chicago to alleviate this situation. In addition, the CERR's traffic is roughly 50% unit trains. As the Board is aware, unit trains are the most efficient trains from an operational perspective. The balance are intermodal trains coming from and to the 59th Street Intermodal facility – again no switching. Likewise, the merchandise trains are handled intact, but the CERR does inspect certain trains in Barr Yard.

A reduction of 46% of the trains being handled on the CERR's territory can easily explain the improvements in speed seen in the RTC model versus historic periods, especially when those trains are not local trains and do not require extensive switching. Moreover, the CERR has more than enough capacity. Indeed, the CERR has invested in double track most of the way from its 22nd Street terminus all the way to Curtis.

In addition to the more efficient trains, traffic reductions can have major impacts on speed. For example, BNSF's weekly car loadings for 2Q16 (to

date) are off from the same time in 2015 by approximately 22%. At the same time, average train speed system-wide has increased by 22%, and with few exceptions, the BNSF system is not already capacity restrained so improvement opportunities may be limited. The RTC model put forth by Consumers *and* CSXT plainly show that efficiency improvements are readily available when trains are reduced, operations are simplified, and capacity is maintained.

CSXT ignores that Class I railroads also are operating longer trains which result in fewer total train movements. From a dispatching perspective, infrastructure capacity is measured by train-dispatch time capacity or the time that a dispatcher must allow both ahead and behind the actual train being dispatched. Thus, short trains take up almost the same amount of dispatching capacity as long trains but, by reducing the number of train events, using longer trains results in greater infrastructure dispatching capacity without the need to expand the existing infrastructure (except receiving and departing tracks or certain sidings)

CSXT Inefficiencies in this Territory. CSXT also suggests that the CERR's superior performance to the real world CSXT is dubious because Consumers did not specifically identify any inefficiencies in CSXT's operations. CSXT's argument is irrelevant. The complainant is not required to laundry list the incumbent's inefficiencies or describe how the SARR has corrected or improved on the incumbent's operation. The SARR's operating plan is judged on its own merits.

Notwithstanding the fact that Consumers is under no obligation to list the deficiencies of CSXT's Chicago operations, Consumers' expert, Mr. Holmstrom, offers one such example. Prior to acquiring the CN Elsdon Subdivision, which occurred in 2013 but was not fully integrated in day-to-day operations until 2015 (after the historical base period of 2014), CSXT had a daily transfer freight train (100 cars) between Barr and Clearing yard, but it had no direct head-end route. CSXT would depart Barr Yard headed towards 59th Street. CSXT would then pull the train into the track reserved for West Olive coal trains. Once the train was clear of 71st Street, CSXT would cut away the power, run around the train, move the end-of-train device to the opposite end and conduct a brake test. This operation took roughly 90 minutes to perform, and CSXT handled it the same way in the reverse move. Thus, CSXT would block the track used by coal trains for three or more hours per day. Moreover, CSXT made the round trip with one crew, and of course they would sometimes expire under the hours of service rules. Mr. Holmstrom observed one incident, while working in the CTCO, where West Olive coal trains were refused by CSXT because they did not have a track to accept the train. The root cause was the fact that the transfer train from Clearing Yard going back to Barr Yard had expired. Amazingly, CSXT's operations/dispatchers permitted the train to sit for *four days* at that location. Mr. Holmstrom was the CTCO officer who was on the conference desk that week, and he documented that train daily on the CTCO scorecard train delay report. This

inefficiency is not incurred by the CERR – CSXT’s acquisition of the Elsdon Subdivision also created a better route.

Inefficiencies in CSXT’s operations have prompted other carriers to end certain relationships with CSXT. For example, the 1990’s, CP was looking for a faster route across the top of the Great Lakes. CP contracted with the CSXT to handle 10 trains daily between Detroit, MI and Bensenville, IL (CP’s Chicago Yard location). These trains traversed CSXT’s Grand Rapids and Barr Subdivisions. CP’s performance requirements were not met, and CP ended the program in 2006. CP elected to use NS instead, which involved using NS’s Chicago Line, which the West Olive trains use and which CSXT takes pains to criticize as “congested.”

CSXT’s Complaints Concerning the Specific Delays Selected by Consumers Operating Witnesses, the Locations of Those Delays, and the Application of Those Delays Are Without Merit.

After its lengthy criticisms regarding the troubles with Chicago, CSXT finally reaches the key point of its first argument of its Introduction: in its opinion, Consumers did not include enough delays. CSXT purports to fix this problem. As already noted, despite CSXT’s “fix,” CSXT’s RTC Model ran to completion with transit times very similar and sometimes faster than those developed by Consumers on Opening. Thus, CSXT’s extensive bluster is largely inconsequential. That said, CSXT’s additional delays are not warranted and its arguments are incorrect.

Specifically, CSXT complains that: (i) Consumers modeled delay events to occur at locations other than where the events occurred in the real-world; (ii) Consumers did not select enough foreign line delays; (iii) delayed trains are not held short at the interlocking, but instead are delayed at Barr Yard or elsewhere; (iv) Consumers did not model the delays and outages at the proper location and time; (v) Consumers did not model delays exiting the CERR system when heading towards BNSF or UP at 22nd Street, Ogden Junction, or Brighton Park. As explained below, CSXT's specific arguments are without merit.

Delay Event Locations. Consumers' explanation of the process by which it applied the foreign line delay data provided by CSXT in discovery, detailed below, illustrates that CSXT's Reply ignores the fact that there often are two locations associated with a train delay: (i) the location at which the cause of the delay occurs and (ii) the location at which the train dispatcher decides to hold a train as a result of the delay. Real-world railroad dispatchers consider many factors, such as the priority of the train to be delayed and its proximity to highway grade crossings, railroad crossings at-grade, including diamonds before deciding the location at which a delayed train will be held. The locations at which Consumers assigned trains to be delayed in its RTC model reflect this real-world understanding of train operations.

Additional Foreign Line Delays. In response to a discovery request, CSXT provided an Excel file titled "Foreign Line Delays.xlsx." This file, by its very title, purported to contain the foreign line delays incurred by CSXT

during various periods, including the period covered by Consumers' RTC Model. When producing this document, CSXT did not suggest that there was another source of data for such delays that was more reliable or complete. On Reply, CSXT suggests for the first time that a separate data table included in the Train Sheet database held a cache of foreign line delays that superseded and/or expanded the "Foreign Line Delays.xlsx" worksheet, which Consumers irresponsibly ignored in developing its Opening evidence. Indeed, CSXT suggests that the Train Sheets delay records include 203 "enroute train delays," lasting 15 minutes or more, that occurred on CERR trains near interlockings and that these entries prove that CERR trains were delayed by a foreign line moving through the crossing and that Consumers' failure to model them resulted in a gross underestimation of the total number of foreign line delays that the CERR would incur.¹⁶ CSXT then selected some of those delays to add to its Reply RTC Model. CSXT's argument is built on a totally unproven premise and its attempts to impeach its own data are impermissible.

First, it is well-established that a complainant may reasonably rely on data produced by the defendant railroad and that the defendant railroad is generally not permitted to impeach its own data.¹⁷ Here, CSXT produced a file purporting to represent foreign line delays. Consumers relied on that file to

¹⁶ CSXT Reply at III-C-12-13.

¹⁷ See, e.g., *AEPCO 2011* at 103 ("the parties are entitled to reasonably rely on evidence the other side supplied in discovery"); *WFA I* at 74.

determine foreign line delays. CSXT now suggest that “enroute train delays” coming from the Train Sheet data also represent foreign line delays – if coincidentally the delay occurred near an interlocking. As discussed at Section III-A-1.b.ii., all delays included in CSXT’s Reply analysis are associated with an “OH” entry in the “REASON CODE” field of the Train Sheet delay table data.¹⁸ The code “OH” events are accompanied by “ENROUTE TRAIN DELAY” in the “REMARKS” field,¹⁹ and are not clearly attributed to any specific issue or event. But CSXT assumed all “ENROUTE TRAIN DELAY[s]” reported between Calumet Park and Curtis were all attributable to trains being held at foreign crossings.²⁰ However, there are also several delays associated with other entries in the “REASON CODE” field of the Train Sheet delay table, including “10,”²¹ which are accompanied by “IHB CROSS TRAFFIC” in the “REMARKS” field.²² These delays are attributed specifically to instances where a train was being held due to a conflict at a foreign line crossing. The “IHB CROSS TRAFFIC” delays recorded in the CSXT data are typically only a few minutes in duration, and there are far fewer of them than there are “OH” delays. Specifically, there were 11 crossing delay records recorded at Pine Junction, State Line, and Calumet Tower;

¹⁸ CSXT Reply e-workpaper “Trainsheet Delays for RTC_RR Crossings.xlsx,” tab “Filtered,” column AB.

¹⁹ *Id.*, Column Y.

²⁰ *Id.*, tab “input to CSXT Reply RTC,” cells B1 and L4.

²¹ CSXT Reply e-workpaper “Delay_Data_CERR_Trains.xlsx,” tab “Dataset,” filter Column AA for “10.”

²² *Id.*, Column X.

10 with 1 minute of delay and one with 28 minutes of delay.²³ CSXT ignored these events in favor of the vague “ENROUTE TRAIN DELAYS” in its analysis of foreign line delays.

CSXT’s repudiation of its own data is impermissible and Consumers did not err by relying on the clearly marked data produced by CSXT.

Second, CSXT has not provided any evidence to corroborate its argument that an enroute delay shown on the Train Sheets is equivalent to a foreign line delay. Surely, CSXT could have matched up its supposed enroute crossing delays with those from the foreign line delay spreadsheet, but it did not. CSXT did not provide any decoder or other evidence to suggest that the enroute delay designation in its Train Sheets is meant to be treated as a foreign line delay when, coincidentally, the delay occurs near an interlocking. Thus, CSXT has no data-related basis for its inclusion of such delays – especially since the RTC Model, by design, will force enroute delays when such operations are required.

CSXT also ignores that enroute delays could easily occur near an interlocking for reasons unrelated to a foreign line delay. For example, a train could be held near an interlocking while a train in front of it is performing switching operations or setting out a bad order car. But naturally, a good dispatcher would not stop the train so as to foul the interlocking. Thus, the train could have sat for 20 minutes without any interference from a foreign line. In

²³ CSXT Reply e-workpaper “Delay_Data_CERR_Trains.xlsx,” tab “Dataset,” filter Column AA for “10” and view column P.

other words, just because a train stops here or there or cannot proceed due to an enroute delay, does not mean that it is caused by a foreign line delay. Moreover, the Train Sheet data does contain some references to other carrier operations for entries not identified by CSXT. In other words, the hold event could easily have been recorded under a different code – just like those found in the foreign line delay spreadsheet. Finally, CSXT does not suggest that its standard practice is to record foreign line delays as enroute delays. Indeed, CSXT did not provide any evidence that enroute delays are the equivalent of foreign delays or that its dispatchers and train crews regularly mis-record such data. Moreover, if CSXT had believed that enroute delays are tantamount to foreign line delays in certain circumstances, Consumers expects that CSXT would have made such a point during discovery – as it did with the reliability of car movement data versus train movement data.²⁴

CSXT also complains that Consumers did not select enough foreign line delays from the foreign line delay spreadsheet. CSXT ignores that its foreign delay spreadsheet is not particularly detailed or clear. Specifically, the data does not contain train symbols or train IDs to which the delays applied,²⁵ which CSXT

²⁴ See July 1, 2015 letter from Matthew J. Warren to Kelvin J. Dowd, included in Consumers’ Rebuttal e-workpapers as “2015 07 01 MJW to Dowd Re CSX Traffic Data and Operating Information.pdf.”

²⁵ Consumers Opening e-workpaper “Foreign Line Delays WORK.xlsx,” tab “Base 2014,” entire sheet.

admitted in Reply,²⁶ so Consumers had to randomly select the trains to which it applied the delays. Second, the data does not contain the times at which each delay began and ended. Instead, only the date and duration of each delay was provided. Consequently, Consumers' experts had to assign each delay to a train within the date on which the delay occurred, as long as the train would operate through the delay location and in the appropriate direction.

There were still more flaws in the data. After selecting the delays that occurred in the RTC modeling period, Consumers' operating witnesses attempted to identify the delay locations which fell within the CERR network²⁷ by researching the CSXT timetables provided in discovery, and the CSXT network locations data table produced in discovery, which is housed in Consumers' Opening and Rebuttal e-workpaper "Consumers Route File_with Flagged Links 08152015.xlsx," to match the Delay Milepost from the CSXT record with a location name and CSXT subdivision name.²⁸

The resulting analysis illustrates that a milepost reported by CSXT for a given foreign line delay, in the Delay Milepost field, does not usually

²⁶ CSXT Reply at III-C-17.

²⁷ Consumers Opening e-workpaper "Foreign Line Delays WORK.xlsx," tab "Peak Week 2014 Subs," Column E, "On CERR? (RLBA)."

²⁸ Consumers Opening e-workpaper "Foreign Line Delays WORK.xlsx," tab "Peak Week 2014 Subs," Column C, "Delay Milepost," Column G, "Milepost Name Confirmed in LEPA Route File (RLBA)" and "Subdivision Associated with Delay Milepost (RLBA)."

represent the same location reported by CSXT in the City field.²⁹ This is the case in 38 of the 42 foreign line delays identified during the Peak Week.³⁰ Further, there are four Delay Mileposts at which CSXT has associated a single Delay Milepost with multiple, different City locations.³¹ These four Delay Mileposts are associated with 39 delays.

The same general patterns hold true among the 22 foreign line delays³² which Consumers *randomly*³³ selected for entry into Consumers' RTC simulation, based upon the ratio (54%) of the number of trains projected to be operated by CERR during 2014 to the number of trains actually operated by CSXT, over the same territory, during 2014. While CSXT takes issue with the

²⁹ Consumers Opening e-workpaper "Foreign Line Delays WORK.xlsx," tab "Peak Foreign Delays for RTC." Compare the locations reported by CSXT in Column E, "City," with those identified by Mr. McLaughlin's research in Column D, "Milepost Name Confirmed in LEPA Route File (RLBA)." For example, the four "City" locations in cells F9:F15 should be compared with the "Milepost Name Confirmed in LEPA Route File (RLBA)" locations in cell D8.

³⁰ Consumers Opening e-workpaper "Foreign Line Delays WORK.xlsx," tab "Peak Foreign Delays for RTC." All delays except those in rows 31 – 33 and 48, reflect the milepost reported in "Delay Milepost" not representing the same location as reported in the "City" field.

³¹ Consumers Opening e-workpaper "Foreign Line Delays WORK.xlsx," tab "Peak Foreign Delays for RTC," column B "Delay Mileposts" (DC 10, DC 014, DD 2 and DCQ 25).

³² Consumers Opening e-workpaper "Foreign Line Delays WORK.xlsx," tab "Peak Forgn Delays for RTC 54pct," cells A6:T28.

³³ CSXT suggests that is unclear how the delays were selected. Consumers simply used a random selection process.

reduction from 42 to 22 foreign line delays, Consumers reasonably assumed that the relationship between delays and volume would be proportionate.³⁴

CSXT asserts on Reply that Consumers' RTC experts modeled delay events to occur at locations other than where those events occurred in the real world."³⁵ As noted above, Consumers' operating witnesses' point out that there often are two locations involved in the explanation of a delay to a particular train: (i) the location of the event which causes the train to be delayed; and (ii) the location at which a train is held (delayed) as a result of the delay event. This reality was overlooked in CSXT's Reply.

Several factors enter into the determination of the location at which a train dispatcher would decide to hold a train: expected duration of the delay; priority of the train being delayed; its length relative to the locations of nearby infrastructure such as public highway grade crossings, foreign railroad diamonds, passing sidings or crossovers; and the flow of other trains that are expected to arrive in the area of the delay. Consequently, the location at which a train incurs a delay often is different from the location at which the cause of the delay occurs. The two locations can be so close geographically as to effectively be the same location, or the two locations can be a mile or several miles apart. This

³⁴ Without the presence of a train, there can be no delay, therefore a reduction in the number of trains operated over a given territory should result in a proportionate reduction in the number of delays within that same territory.

³⁵ CSXT Reply at III-C-10.

understanding of real-world railroading guided Consumers' approach to selecting the locations at which the 22 CERR trains would be delayed.

Mr. McLaughlin and Mr. Orrison applied their understanding of real-world railroad delay reporting to interpret the CSXT foreign line delay data, particularly the Delay Milepost, State, City and Delay Reason Description fields. Each value in the Delay Milepost field was interpreted to represent the location at which the delay event (cause of the train delay) occurred because Mr. McLaughlin's research indicated that these mileposts correspond to connection interlockings (Pine Junction and Harvey Junction), yards (Barr Yard and 59th Street) and diamonds (Dolton) on CSXT³⁶ at which trains operated by foreign railroads (IHB, NS, UP, *etc.*) could logically cause the delay event reported by CSXT in the Delay Reason Description field. CSXT's Reply addresses only delays caused by foreign railroads at diamonds and ignored connection interlockings and yards.³⁷

Given that the location name indicated by the Delay Milepost does not consistently correspond with the location name reported in the State and City fields by CSXT, and the State and City fields do not clearly indicate their roles in

³⁶ Consumers Opening e-workpaper "Foreign Line Delays WORK.xlsx," tab "Peak Foreign Delays for RTC," Column D, "Milepost Name Confirmed in LEPA Route File (RLBA)."

³⁷ CSXT "Primary" RTC Simulation, CERR CSXT Reply – Consumers PERMIT File, "Description" field contains three diamond interlockings added by CSXT: "Diamond Crossing Cal Tower," "Diamond Crossing State Line" and "Diamond Crossing Dolton."

describing a delay, each location described by the combination of the State and City fields was interpreted to represent the next location, beyond the Delay Milepost, at which an activity associated with the train's operation, such as a termination point, crew change location or relay location, was reported.

The position of the Delay Milepost location relative to the location reported in the City and State fields was employed by Mr. McLaughlin to determine the direction of travel of the train that was delayed. Each foreign line delay was then assigned to a randomly selected train traveling in the appropriate direction³⁸ on the date reported in the Delay Occurred Date.

As discussed above, several factors enter into the location at which a real-world train dispatcher would decide to hold a train, including the priority of the train being delayed and its length relative to the locations of nearby infrastructure such as public highway grade crossings, foreign railroad diamonds, passing sidings or crossovers. Mr. McLaughlin and Mr. Orrison considered such factors when selecting the location³⁹ at which each train would be held (delayed) as a result of a foreign line delay.

From the above, it is clear that instead of changing the delay locations of trains, as asserted by CSXT, Consumers' experts had to determine the

³⁸ Consumers Opening e-workpaper "Foreign Line Delays WORK.xlsx," tab "Peak Foreign Delays for RTC," Column J, "Apply in RTC to..."

³⁹ Consumers Opening e-workpaper "Foreign Line Delays WORK.xlsx," tab "Peak Forgn Delays for RTC 54pct," Column G, "Apply at RTC Node" and Column H, "Node Location."

location at which each train was held because it was not provided in the CSXT data. In doing so, they applied a real-world understanding of delay reporting and analysis. Had CSXT's foreign line delay data identified the location at which each train was held, Mr. McLaughlin would have entered it into Consumers' RTC simulation.

CSXT also posits that specific train delays locations were misapplied for two (2) trains in Consumers' RTC simulation, relative to the direction in which the trains were traveling (*i.e.*, eastbound vs. westbound).⁴⁰ Mr. McLaughlin reviewed the two cases cited by CSXT and the balance of the delays and he found eight (8) trains, including the two cited by CSXT, in which the delay locations were misapplied.⁴¹ The errors have been corrected in Consumers' Rebuttal RTC simulation by re-allocating four of the delays (Record Numbers 17, 18, 28 and 32)⁴² to four trains to which delays of an incorrect direction had been applied. The remaining four delays (Record Numbers 16, 28, 31 and 37),⁴³ were removed from

⁴⁰ CSXT Reply at III-C-19-20 (refer to trains Z1-CURC59A07 and OE-CURC22A15).

⁴¹ Consumers Rebuttal e-workpaper "Foreign Line Delays WORK RTC 54pct.xlsx," tab "Peak Forgn Delays for RTC 54pct," see new work in cells S6:U28, in which the errors and corrective action are identified. Train symbols highlighted in red under Column B, "Seed Train Matched to Random Number" are impacted by the errors and corrective action.

⁴² Consumers Rebuttal e-workpaper "Foreign Line Delays WORK RTC 54pct.xlsx," tab "Peak Forgn Delays for RTC 54pct," Column A, "Record Number for Selecting 54% of the records."

⁴³ Consumers Rebuttal e-workpaper "Foreign Line Delays WORK RTC 54pct.xlsx," tab "Peak Forgn Delays for RTC 54pct," Column A, "Record Number

the trains to which they were applied in Consumers' Opening RTC simulation and then applied to four new trains, of appropriate direction, randomly selected from the Consumers RTC train file.

CSXT also complains that certain trains were held at Barr Yard instead of near the Dolton Tower or Stateline.⁴⁴ This is another red herring argument. Of course a dispatcher would hold the train at Barr Yard rather than run it straight up to the interlocking. Dolton is only 3,432 feet from the east end of Barr Yard and Stateline is not much further. There is no reason to move the train less than a mile to just stop it, and contrary to CSXT's assertions, dispatchers today have knowledge of foreign line train movements and they can even enter into chat sessions with the other dispatchers.

CSXT also suggests that an outage on the Barr Yard mainline track would somehow halt the movement of trains because trains would never use the adjacent yard tracks unless it was equipped with a dedicated "runaround" track.⁴⁵ Once again, CSXT's witnesses expose their obvious lack of on-the-ground experience. Mr. Orrison and Mr. Holmstrom have handled such situations many times and in their direct experience if a main track is blocked by a train or by a broken rail, dispatchers and yardmasters would route a train through a yard track, and it happens all the time in the real-world. Moreover, any open track in a yard is

for Selecting 54% of the records" and Column U, "Re-Apply Delays That Were Incorrectly Applied."

⁴⁴ CSXT Reply at III-C-16.

⁴⁵ CSXT Reply at III-C-22-23.

considered a potential runaround track. For example, CSXT's Hamlet, NC departure yard has a track labeled and call "The Run Around Track" – on a daily basis, CSXT uses the track like any other track to build trains. In turn, the crews then use any open track as a route to run locomotives around the trains being built in the yard. Each through track in any yard can be utilized as an escape route to move locomotives and cars around the yard, except possibly a hump yard lead.

CSXT also asserts that Consumers erred in its application of outage delays in one instance in which a broken rail outage at MP DC 23.01⁴⁶ (BRC Connection) was applied only to one train (Z1-CURC59A04) but not applied to two other trains (OL-C22CURA03 and OE-CURC22A04) that would have operated over the same track segment proximate in time to the first train.⁴⁷ Consumers accepts CSXT's modification and applies the same amount of outage delay (69 minutes) to OL-C22CURA03 and OE-CURC22A04 in its rebuttal RTC model as was applied to Z1-CURC59A04.⁴⁸

However, as with its approach to foreign line delays, in this instance CSXT confuses the location at which a train is held (delayed) with the location at which the cause of the delay occurs. Consumers has not posited "that the broken

⁴⁶ CSXT cites the "engineering" milepost 23.01, instead of the Transportation Dept. milepost, which is MP DC 25 and is the basis upon which Consumers applied this outage delay in its RTC model.

⁴⁷ CSXT Reply at III-C-21.

⁴⁸ Consumers Rebuttal e-workpaper "Outages 10-21 FILTERED WORK Rebuttal.xlsx, tab "peak_week_filtered JWM WORK," rows 23 -24.

rail occurs at Barr Yard”⁴⁹ in applying the delay to Z1-CURC59A04. Consumers understands that the cause of the delay is a broken rail at MP DC 25. It has then exercised the same judgement as would a real-world dispatcher and held the trains at locations (Barr Yard vicinity in the cases of Z1-CURC59A04 and OE-CURC22A04 and 71st St in the case of OL-C22-CURA03) given that the delay cause occurs on small segment of single-track territory.

Additional Delays Near 22nd Street are Unsupported

As with its foreign line crossing delay analysis discussed above, CSXT’s Reply analysis of delay data related to trains approaching BNSF and UP interchange locations is unsupported.

CSXT assumed that all “OH” delays identified as “ENROUTE TRAIN DELAY[s]” were attributable to trains being “held outside of a foreign carrier’s rail line or yard... until the foreign carrier is ready to accept the train,”⁵⁰ when they were reported near 22nd Street. In those instances, CSXT ignored several other delays associated with other entries in the “REASON CODE” field, including “HO,”⁵¹ which are accompanied by “HELD OUT OF TERMINAL” in the “REMARKS” field.⁵² These delays are clearly attributed specifically to

⁴⁹ CSXT Reply at III-C-22.

⁵⁰ CSXT Reply at III-C-60, and CSXT’s workpaper “Trainsheet Delays for RTC_22ndOffSARR.xlsx,” which is supported by its related e-workpaper “Delay_Data_CERR_Trains.xlsx.”

⁵¹ CSXT Reply e-workpaper “Delay_Data_CERR_Trains.xlsx,” tab “Dataset,” filter Column AA for “HO.”

⁵² *Id.*, Column X.

instances where a train was being held out of a terminal. CSXT ignored these events in its analysis in favor of the “ENROUTE TRAIN DELAY” events.⁵³

CSXT’s Reply argument is based on the premise that “ENROUTE TRAIN DELAY” always indicates a foreign line crossing delay when it occurs between Calumet Park and Curtis, but that it always indicates a delay awaiting access to BNSF/UP lines when it occurs near 22nd Street or Ogden Junction.

CSXT appears to be unsure of the number of trains to which it assigned hold-out delays. Its Reply narrative indicates 56 trains were assigned such delays in its Reply RTC model,⁵⁴ but its workpaper indicates such delays were to be assigned to only 36 trains.⁵⁵

Application of Certain Delays to Additional Trains

Consumers’ approach to foreign line delays was reasonable and well supported, particularly in light of the complications found with the foreign line delay data presented by CSXT. Moreover, Consumers has demonstrated that CSXT’s assumptions concerning specific enroute delays are indefensible. Finally, Consumers illustrated that CSXT’s rhetoric about the Chicago terminal does not

⁵³ CSXT Reply e-workpaper “Trainsheet Delays for RTC_22ndOffSARR.xlsx,” tab “delay records,” cells B2 (“Enroute Train Delays to Westbound CERR Peak Period Trains Traveling Off-SARR onto BNSF or UP near 22nd Street”) and B3 (“Source: CSXT TM Trainsheets, Reply e-workpaper “Delay_Data_CERR_Trains.xlsx,” tab “Filtered”).

⁵⁴ CSXT Reply at III-C-61.

⁵⁵ CSXT Reply e-workpaper “Trainsheet Delays for RTC_22ndOffSARR,” tab “input to CSXT Reply RTC,” Column P “Delay for RTC.”

represent the real-world of Chicago today. Moreover, Consumers' expert witnesses are the only experts with real-world Chicago experience, and they offer the superior view of operations in the terminal. As such, Consumers has not altered its operating plan or its RTC modeling approach to include the additional delays proffered by CSXT. The transit time results for Consumers' Rebuttal are shown in Rebuttal Table III-C-7 below.

B. Consumers' Operating Plan Accounts for All Trains Required to Handle the CERR's Peak Year Traffic

CSXT's claim that Consumers' operating plan fails to account for the additional trains required to transport the CERR's peak year traffic volumes is false. Consumers' operating plan relies on reasonable assumptions regarding peak year train consists and train counts. In its Reply narrative, CSXT mischaracterizes Consumers' operating plan and train list development methodology, but CSXT conveniently omits that it adopted many elements of Consumers' methodology in its Reply workpapers. However, CSXT also developed and applied several unsound procedures, which naturally overstate the number of trains and carloads allegedly required to move the CERR's peak period volumes. CSXT's overstated train and car statistics result in artificially inflated operating expenses as well.

Consumers' Growth Projections Are Not Overstated. CSXT's attack on Consumers' evidence begins with a claim that Consumers' growth projections are overstated.⁵⁶ As discussed at Part III-A-2, CSXT's position is

⁵⁶ See CSXT Reply at III-C-27 and III-C-29.

based on a series of unfounded assertions and misstatement of the facts in the case. Except for a minor adjustment to its forecast of third and fourth quarter 2015 projected carload and container volumes, Consumers retains its Opening traffic volume forecast procedures and results in Rebuttal. Consumers updated its peak period train list to reflect the volume changes resulting from its Rebuttal Forecast.⁵⁷

Trends in Merchandise Train Operations. CSXT's Figure III-C-5 at page III-C-28 shows that CERR merchandise trains will expand in consist size, but will not significantly increase in number, over the 10-year SAC analysis period. CSXT concludes that this is somehow "incredible" and "inconsistent with the realities of real-world railroading."⁵⁸ However, CSXT's incredulity concerning Consumers' CERR train list is directly contradicted by public statements made by CSXT regarding its current and future operations. For example: CSXT's Vice President of Service Design, Frank Lonegro, recently stated that:

Lengthening trains is on the productivity-boosting agenda... the railroad is striving to maximize the number of cars on trains to reduce the overall number of trains in operations.⁵⁹

⁵⁷ Consumers Rebuttal e-workpaper "CERR BASE YEAR TRAIN LIST DEVELOPMENT vF Rebuttal.xlsx," tab "Cerr Trn Stats," column BS, and tab "Cerr Peak Trains" columns BY-CS.

⁵⁸ See CSXT Reply at III-C-27.

⁵⁹ See Consumers Rebuttal e-workpaper "Rail Insider-CSX - A railroad in pursuit of optimum performance.pdf" at 4.

In addition, CSXT's 3Q15 Form 10-Q states:

The Company expects to build upon [its] service performance while driving continued service gains and productivity savings. Productivity gains will result from the Company's continued focus on increasing train length, improving employee efficiency and improving network fluidity.⁶⁰

CSXT's CEO, Michael Ward, is on record stating the following:

“Everybody has been pushing toward longer trains because that is one of the ways to get efficiency.”⁶¹

Consumers' model and assumptions are in fact credible, reasonable, and clearly reflect real-world railroading trends. If anything, Consumers' operating plan conservatively overstates the number of trains required to move peak year traffic because it does not incorporate efficiency improvement initiatives that are being implemented by CSXT in the present. For example:

CSX reconfigured a portion of the manifest train network — involving about 100 merchandise trains — to boost service reliability, improve asset utilization and enhance efficiency. In late March [2015], some trains that previously operated seven days a week with set departure and arrival times began to run six days a week and depart a yard four hours later each day, making train starts 28 hours apart instead of 24 hours. **The idea is to move seven days' worth of freight in six trains over six days to free up the locos and crews for other work on the seventh day.** Managers

⁶⁰ See Consumers Rebuttal e-workpaper “CSX 10-Q for 3Q2015.pdf” at 31 (emphasis added).

⁶¹ See Consumers Rebuttal e-workpaper “Sit Tight at Crossing as Coal Trains Double to 2 Miles Long - Bloomberg.pdf” at 2.

continue to assess results to determine if the initiative should be implemented elsewhere.⁶²

Likewise, *Trains Magazine* just ran, in the June 2016 issue, two articles discussing CSXT's move to longer trains.⁶³

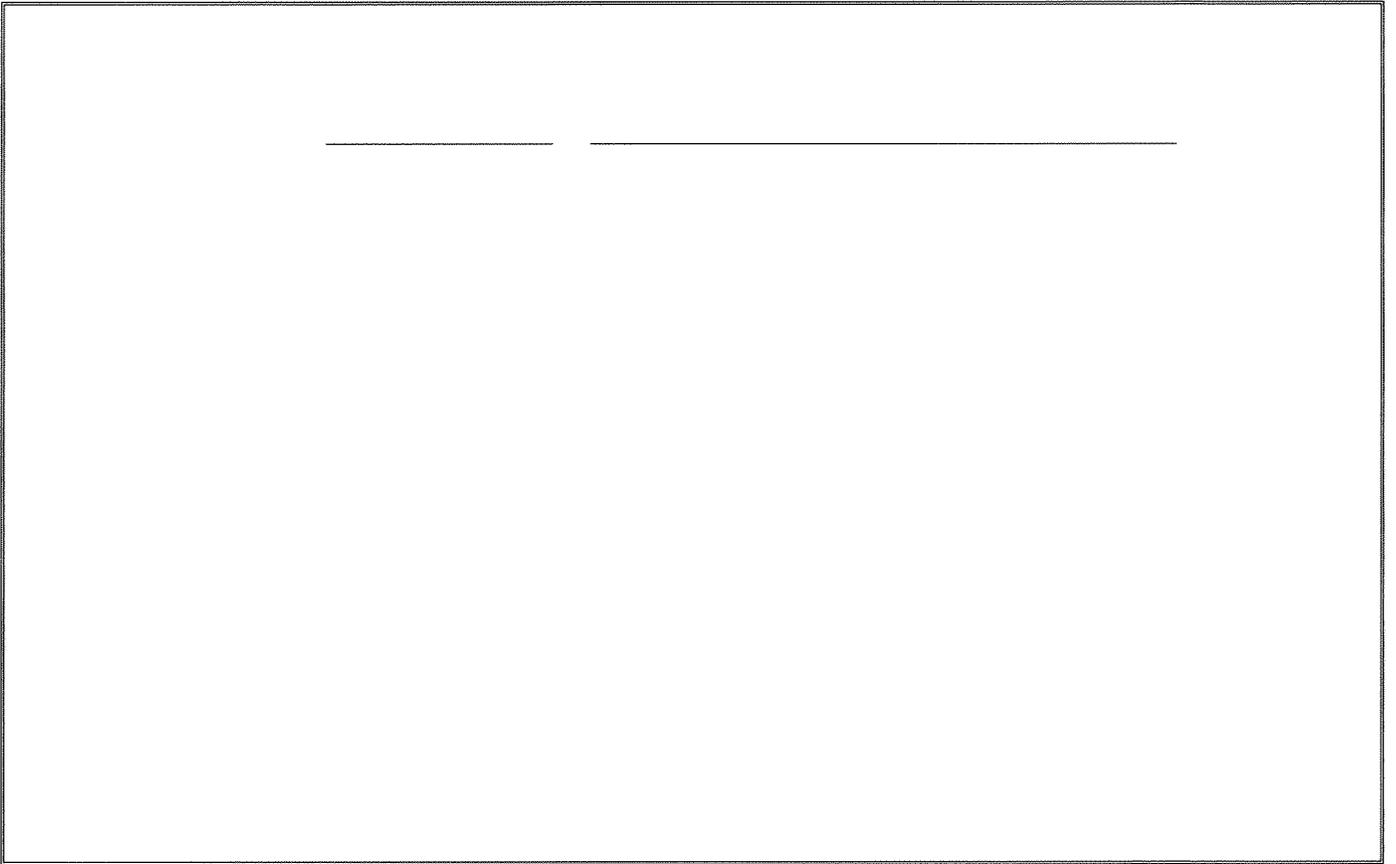
In other words, CSXT's claim that increases in merchandise train length will not be achievable ten (10) years in the future is belied by its aggressive pursuit of that very efficiency improvement in the present.

Furthermore, CSXT's Figure III-C-5 is conspicuously devoid of projected train length data. Rebuttal Table III-C-1 below expands CSXT's table to include this key data item.

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⁶² See Consumers Rebuttal e-workpaper "Rail Insider-CSX_ A railroad in pursuit of optimum performance.pdf" at 3 (emphasis added).

⁶³ See Consumers Rebuttal e-workpaper "Trains July 2016 articles.pdf."



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As shown above, Consumers’ projected manifest train lengths are reasonable and consistent with the realities of real-world railroading.

Additionally, Consumers’ average peak year train lengths are well below the Interline Service Agreement (“ISA”) train lengths (discussed in more detail in Section B of the Introduction below) for 12 of the 15 train symbols, and for the other three (3), both Consumers and CSXT use peak train lengths that modestly exceed the ISA train length, as shown in lines 4, 11, and 13, Column (8).

CSXT then continues its illogical argument that trains running on regular schedules could not be able to accommodate longer consists in ten (10) years by making the same argument in opposition to Consumers’ CERR peak year

intermodal trains. As with merchandise trains, CSXT is attempting to deny the CERR the productivity gains that it – and all other Class I railroads – are actively pursuing and implementing.

CSXT claims that the CERR cannot control the length of trains delivered to the CERR by connecting carriers, which is true. However, CSXT’s model relies on the questionable presumption that connecting carriers’ operations will not change between 2014 and 2024. The notion that connecting Class I carriers will not achieve greater productivity through increased train length – particularly for merchandise and intermodal traffic – is counter to industry trends and statements made by railroad executives.

In 2007, BNSF began experimenting with an intermodal 10,000-foot train between Southern California, Clovis, N.M., and Chicago. Since then, the railroad has operated more than 800 extended length trains to gain further economies of scale and accommodate more intermodal customers' freight. The longer units now typically run from Southern California or San Bernardino to Chicago.⁶⁴

When discussing the efficiency gains achieved from these longer intermodal trains bound for Chicago, Bob Gomez, BNSF’s Director of Operations at Belen Yard in New Mexico, said: “The 10,000 foot units take 2.5 trains out of the mix per week, which saves \$30,000 a week in crew labor.”⁶⁵

⁶⁴ See Consumers Rebuttal e-workpaper “On the Road _ Belen, New Mexico_ The Land of Enchantment and 10,000-foot Trains - Inbound Logistics.pdf” at 4.

⁶⁵ *Id.*

Moreover, the Chicago Metropolitan Agency for Planning reported that, “[a]ssuming future economic growth, rail companies foresee the length of trains increasing from 125 cars to 175 cars”⁶⁶

Contrary to CSXT’s claims, the railroads’ intent to operate ever-longer trains through Chicago is well documented. The CERR, as the “least cost, most efficient railroad” is entitled to benefit from industry-wide productivity gains.

Interline Service Agreements. CSXT devotes several pages of its narrative to describing the nature and terms of bilateral ISAs between CSXT and connecting carriers in an attempt to suggest that Consumers’ development of maximum peak year CERR train sizes is somehow contrary to those agreements. Specifically, CSXT claims that Consumers’ reliance on maximum historical train lengths to determine maximum peak year train lengths would result in the violation of ISA terms.⁶⁷ CSXT’s argument is a meritless red herring. Indeed, in much the same way CSXT exaggerated the issues with train delays, its ISA argument is belied by its own evidence and the actual practices used by the CSXT and its interchange partners.

Before turning to the specific changes CSXT made on Reply, Consumers notes that Mr. Orrison was directly involved in the negotiation of

⁶⁶ See Consumers Rebuttal e-workpaper “CMAP.illinois.gov Ch.7 train size increase.pdf” at 4.

⁶⁷ See CSXT Reply at III-C-34.

many of the ISAs (or their predecessor ISAs) during his time at CSXT, and he flatly denies that the ISA train sizes are were ever meant as a hard and fast limit – and obviously CSXT does not consider them to be so either because, as explained below, many of these trains regularly run with lengths far in excess of the supposed limits. In reality, the ISA agreements and real-world practices have evolved and will continue to evolve to favor longer train lengths, including by the time that the peak year train sizes will be observed. The ISA agreements are, at best, loosely defined arrangements between two railroads that outline particulars such as interchange location, interchange time or range of time, run-through power, blocking of the interchange train and train lengths.

All Class I railroads and many shortline railroads have developed ISAs and have representatives assigned to attend meetings on either a quarterly, bi-annual or annual basis to review and adjust the ISA to reflect real-world practices. Over the last several decades, Class I railroads have been testing and designing longer train lengths. Longer trains have been facilitated by the introduction of newer, higher horsepower, higher performance locomotives. Additionally, longer trains result in lower railroad crew costs. For example, the combination of two BNSF merchandise trains from Barstow, CA to Kansas City, MO and to Galesburg, IL resulted in a 1% savings of all merchandise crews in 2008-2009, an effort that Mr. Orrison led while servings as Assistant Vice President Service Design at BNSF.

Mr. Orrison also notes that the long-term network strategies being pursued by most Class I railroads are to reconfigure network sidings to 9,000 and 10,000 lengths, as described above, and to configure locations of even longer paired or double track segments to allow for “moving meets.” Indeed, Mr. Orrison recalls that one of the last efforts led by CSXT’s witness, Mr. Gibson, while at CSXT, was to develop new 10,000 foot sidings for the CSXT corridors between Chicago, Nashville, Birmingham, Waycross and Florida. Likewise, BNSF and UPRR are developing their networks of the future around the design and construction of 10,000-foot sidings. CP has already implemented the strategy along with CN.

Turning now to the specifics of CSXT’s alleged complaints, despite CSXT’s suggestion of a vast array of flaws in Consumers trains sizes, CSXT adopted Consumers’ maximum peak year train lengths – based on historical maximum train lengths – **for all but two (396 out of 398) train symbols.**⁶⁸ In Rebuttal, Consumers accepts and adopts CSXT’s adjusted maximum train length for these two train symbols.⁶⁹

⁶⁸ See CSXT Reply e-workpaper “Peak Period Trains.xlsx,” tab “Ref_MaxSize,” cell F4. As shown in this e-workpaper, the parties’ maximum peak year train lengths are identical for 396 out of 398 train symbols handled by the CERR. The only two (2) exceptions are train symbols Q388 (cell F327) and Q391 (cell F329).

⁶⁹ See Consumers’ Rebuttal e-workpaper “CERR BASE YEAR TRAIN LIST DEVELOPMENT vF Rebuttal.xlsx,” tab “Cerr Trn Stats,” range BL375:BN377 (changes are highlighted in orange).

In a footnote, CSXT cites two examples of what it claims are problems with Consumers' approach. First, CSXT claims:

Consumers compounded [its] error by basing its assumed maximum length for certain train symbols on Base Year trains that represent clear 'outliers.' For example, Consumers identified a single Base Year Q388 train that operated at 11,419 feet, 3,419 feet (or 43%) longer than the 8,000-foot length prescribed by CSXT's ISA with BRC. Because that train also exceeded the CERR's self-imposed limit of 1.9 miles, Consumers applied a maximum length of 10,028 feet to the CERR's Q388 trains. However, in the real world, *only two of the 107 Q388 trains that CSXT operated during the Base Year exceeded 10,000 feet in length.*⁷⁰

Train Q388 is one of the two trains for which CSXT changed Consumers' maximum train length in its Reply evidence. However, even CSXT did not use the 8,000 foot ISA train length as its maximum train length for Q388 trains. Instead, CSXT imposed a limit of 8,769 feet for Q388 trains.⁷¹ Consumers accepts this change and limits Q388 trains to 8,769 feet in its Rebuttal evidence.⁷² This change has no impact on Consumers' peak train list.

Second, CSXT states:

Likewise, Consumers culled from the event data one Q383 train that operated at 8,726 feet, 1,726 feet (or

⁷⁰ CSXT Reply at III-C-33 n.64.

⁷¹ See CSXT Reply e-workpaper "Peak Period Trains.xlsx," tab "Ref_MaxSize," cell J327. See also CSXT Reply e-workpaper "Peak Period Trains.xlsx," tab "Trains_Pk_Pd," cell AP273.

⁷² See Consumers Rebuttal e-workpaper "CERR BASE YEAR TRAIN LIST DEVELOPMENT vF Rebuttal.xlsx," tab "Cerr Trn Stats," cell BN375 (change is highlighted in orange).

25%) longer than the 7,000-foot limit prescribed by the ISA between CSXT and BNSF.... Based on that single movement, Consumers applied a limit of 8,726 feet in determining the length of the Q383 trains, resulting in five of the seven Q383 trains (71%) in Consumers' RTC Model exceeding the ISA-prescribed limit.⁷³

What CSXT failed to disclose was that four (4) of the seven (7) peak period Q383 trains (57%) exceeded the ISA train length (which is obviously not a limit) in the **base year**.⁷⁴ Furthermore, despite CSXT's criticism, CSXT adopted Consumers' maximum train size of 8,726 feet for Q383 trains in its own workpapers.⁷⁵ As a result, the same five (5) of the seven (7) Q383 trains (71%) in CSXT's RTC Model exceed the ISA train length as in Consumers' Opening Model.⁷⁶ Rebuttal Table III-C-2 below shows the seven base year peak period Q383 trains, the ISA train length, the historical train symbol maximum train length, the historical train length, the Consumers Opening RTC peak period train length, and the CSXT Reply peak period train length.

⁷³ CSXT Reply at III-C-33 n.64.

⁷⁴ See Consumers Rebuttal e-workpaper "Peak Period Trains_Rebuttal.xlsx," tab "Trains_Pk_Pd" column P.

⁷⁵ See CSXT Reply e-workpaper "Peak Period Trains.xlsx," tab "Ref_MaxSize," cell J325.

⁷⁶ See CSXT Reply e-workpaper "Peak Period Trains.xlsx," tab "Trains_Pk_Period": Compare cell AW262 (RTC train length) to cell AR262 (ISA train length).

**REBUTTAL TABLE III-C-2
COMPARISON OF ISA, BASE YEAR HISTORICAL,
AND PEAK YEAR RTC TRAIN LENGTHS FOR TRAIN Q383**

<u>Train ID</u> (1)	<u>Train Suffix</u> (2)	<u>ISA Train Length^{1/}</u> (3)	<u>Base Year Maximum Train Length^{2/}</u> (4)	<u>Base Year Train Length^{3/}</u> (4)	<u>Consumers Peak Year Train Length^{4/}</u> (5)	<u>CSXT Peak Year Train Length^{5/}</u> (5)
1. Q383	20140323	7,000	8,726	7,637	8,568	7,637
2. Q383	20140324	7,000	8,726	7,113	8,610	7,113
3. Q383	20140325	7,000	8,726	3,873	5,435	4,772
4. Q383	20140327	7,000	8,726	7,246	8,620	7,246
5. Q383	20140328	7,000	8,726	3,216	4,857	3,962
6. Q383	20140330	7,000	8,726	7,862	8,680	7,862
7. Q383	20140331	7,000	8,726	6,964	8,532	8,580

^{1/} CSXT Reply workpaper “Peak Period Trains.xlsx,” tab “Trains_Pk_Period,” range AR262:AR268.
^{2/} CSXT Reply workpaper “Peak Period Trains.xlsx,” tab “Trains_Pk_Period,” Range AP262:AP268.
^{3/} CSXT Reply workpaper “Peak Period Trains.xlsx,” tab “Trains_Pk_Period,” range O262:O268.
^{4/} Consumers Opening e-workpaper “CERR BASE YEAR TRAIN LIST DEVELOPMENT vF.xlsx,” tab “Cerr Peak Trains,” range CA263:CA269.
^{5/} CSXT Reply workpaper “Peak Period Trains.xlsx,” tab “Trains_Pk_Period,” range O262:O268.

As shown above, CSXT’s peak period treatment of the March 31 edition of train Q383 shows that CSXT used the same maximum train length as Consumers in developing peak trains. Specifically, the base year length of train Q383 20140331 was 6,964 feet,⁷⁷ which is less than the ISA length of 7,000 feet.⁷⁸ CSXT projected that in order to accommodate peak year volume growth, the corresponding peak year train would need to be 8,580 feet long.⁷⁹ CSXT’s workpapers compared its projected peak year length requirement for that train to

⁷⁷ See CSXT Reply e-workpaper “Peak Period Trains.xlsx,” tab “Trains_Pk_Pd,” cell O268.

⁷⁸ See CSXT Reply e-workpaper “Peak Period Trains.xlsx,” tab “Trains_Pk_Pd,” cell AR268.

⁷⁹ See CSXT Reply e-workpaper “Peak Period Trains.xlsx,” tab “Trains_Pk_Pd,” cell AQ268.

the historical base year maximum of 8,726 feet⁸⁰ for that train to determine whether a growth train would be required in the peak year. CSXT determined that no growth train was required⁸¹ and operated a peak year train 8,580 feet long,⁸² which is 1,580 feet longer than the ISA length of 7,000 feet. In fact, CSXT's methodology uses the greater of the historical maximum or the ISA length as the maximum peak year train length.⁸³

Oddly, after pages of arguing that Consumers failed to adhere to ISA maximum train lengths in developing its peak year train consists, CSXT states:

CSXT allowed trains to grow to the longest train (other than the "outlier" train lengths discussed above) that operated under the applicable train symbol during the base year. For example, the CSXT data indicate that virtually all of the Q388 trains that exceeded the 8,000-foot limit set forth in the CSXT-BRC ISA during the Base Year were between 8,000 and 8,800 feet in length. CSXT applied the high end of that range (8,800 feet) to determine the maximum length of trains that were allowed to grow beyond the 8,000-foot limit.⁸⁴

⁸⁰ See CSXT Reply e-workpaper "Peak Period Trains.xlsx," tab "Trains_Pk_Pd," cell AP268.

⁸¹ See CSXT Reply e-workpaper "Peak Period Trains.xlsx," tab "Trains_Pk_Pd," cell AS268.

⁸² See CSXT Reply e-workpaper "Peak Period Trains.xlsx," tab "Trains_Pk_Pd," cell AX268.

⁸³ See CSXT Reply e-workpaper "Peak Period Trains.xlsx," tab "Trains_Pk_Pd," cell AS268. The logic in CSXT's algorithm is as follows: IF not unit THEN ==> IF not dropped THEN ==> IF projected length > max length THEN ==> if projected length > ISA length THEN growth = 1.

⁸⁴ CSXT Reply at III-C-38.

Therefore, despite CSXT's many pages of argument, both parties' evidence use the same maximum peak period train lengths based on historical trains (with adjustments to trains Q388 and Q391), and neither party limits peak period trains to ISA-specified train lengths.

Because CSXT accepted and applied the historical maximum lengths Consumers' used in Opening, its ISA train length argument is moot. However, CSXT's argument contains many inaccuracies that must be corrected as they suggest, incorrectly, that Consumers' operating plan is fatally flawed. For example, CSXT claims that the ISAs "specify, among other things, the maximum length of trains that are handled on an interline basis through the Chicago terminal area."⁸⁵ This statement is simply not supported by the evidence of record.

CSXT's characterization of the "Length" field shown on the Train Plan Addendum to each ISA as the maximum length of trains governed by the relevant ISAs is factually incorrect and contradicted by the plain language of the cited documents. The word "maximum" does not appear as a qualifier in the "Length" field in the provided ISAs.⁸⁶ In reality, the "Length" field is an estimate of the train consist to be expected at interchange locations at the time the ISA was made. RailInc, the developer of the industry standard "ISA Repository," defines the "feet" field shown on the Train Plan Addendum as the "Estimated feet of the

⁸⁵ CSXT Reply at III-C-30.

⁸⁶ See Consumers Rebuttal e-workpaper "Interline Service Agreements (CSX-CNSMR-HC-25271 to 25493.pdf.)"

shipment” and further indicates that this field is optional.⁸⁷ Counter to CSXT’s claims, this field does not represent a maximum size limit. Nor is it even necessary information to include in an ISA. This reality is proven by CSXT’s train movement data, which demonstrates that the train lengths listed in the ISAs are exceeded by the railroads in the normal course of business. In fact, CSXT and its interline partners exceeded the ISA train lengths for 55% of the merchandise and intermodal train symbols governed by ISAs during the base year.⁸⁸

CSXT concedes that it “and its Chicago interchange partners do occasionally operate trains that exceed the lengths prescribed by their ISAs.”⁸⁹ CSXT offers several reasons for train length variation, including: (1) operating longer trains during recovery periods following a storm or other service disruption; (2) train length expansion “during periods of unusually high traffic volume;” and (3) doubling up a train operating under one train symbol or adding cars to a train operating under a different symbol if a scheduled train is cancelled or delayed. CSXT states that the decision to operate long trains “is predicated on decisions made by railroad personnel in response to current operating conditions.”⁹⁰

⁸⁷ See Consumers Rebuttal e-workpaper “ISARepository_UG.pdf,” p. 12.

⁸⁸ See Rebuttal e-workpaper “Peak Period Trains_Rebuttal.xlsx,” tab “ISA_Length”.

⁸⁹ CSXT Reply at III-C-32.

⁹⁰ *Id.*

CSXT's long-train exception examples are certainly reasonable, but CSXT's own data makes clear that longer trains are the norm not the exception. Indeed, Mr. Orrison was responsible for creating many of the ISA still in use today, and he never intended the lengths therein to be caps. Moreover, CSXT is moving ahead with much longer trains, but it does not suggest that a wholesale revision to the ISA would be necessary. Finally, traffic requirements and infrastructure restrictions are the real catalyst for train lengths, not a general parameter found in an ISA.

Consumers also notes that there is no better example of a period of "unusually high traffic volume" that would require operational responses than the peak period of the peak year. Therefore, CSXT's apples-to-oranges comparison of 6% of merchandise trains⁹¹ CSXT interchanged with other carriers in the Chicago terminal area in the **base year** that exceeded the ISA train lengths to 33% of merchandise trains⁹² in Consumers' **peak week** RTC Model that exceeded ISA train lengths is irrelevant. In fact, CSXT has inadvertently admitted the fallacy of this argument by exceeding the "prescribed ISA lengths" in 23% of its own peak period Merchandise trains.⁹³

Consumers' Peak Period CERR Trains. Throughout its narrative, CSXT mischaracterizes, misconstrues, and misstates Consumers' train list

⁹¹ CSXT Reply at III-C-32. $100\% - 94\% = 6\%$.

⁹² CSXT Reply at III-C-34.

⁹³ See Rebuttal e-workpaper "CERR Base Year Trains_Rebuttal.xlsx," tab "Train_Lengths".

development procedures. For example, in describing Consumers’ methodology for developing peak year train consists, CSXT first correctly observed that Consumers “assume[d] that the maximum train sizes for each unique train ID . . . will not exceed *the 2014 historical maximum train size recorded in the provided event data.*”⁹⁴ However, CSXT then restates this correct statement into one that is incorrect and misleading:

In other words, Consumers’ train service plan is premised on the notion that CSXT and other connecting carriers would expand *every* Peak Year train delivered to CERR to the Base Year maximum length before operating *any* additional “growth” trains. That premise is utterly inconsistent with the realities of real-world rail operations in the Chicago area.⁹⁵

CSXT’s attempt to restate Consumers’ narrative in “other words” changes the meaning of Consumers’ plain language. Consumers explained that no peak year train would exceed the length of the longest train of that symbol that moved during the base year. CSXT’s rewording claims that Consumers “expand[ed] every peak year train . . . to the maximum length.” This is not true.

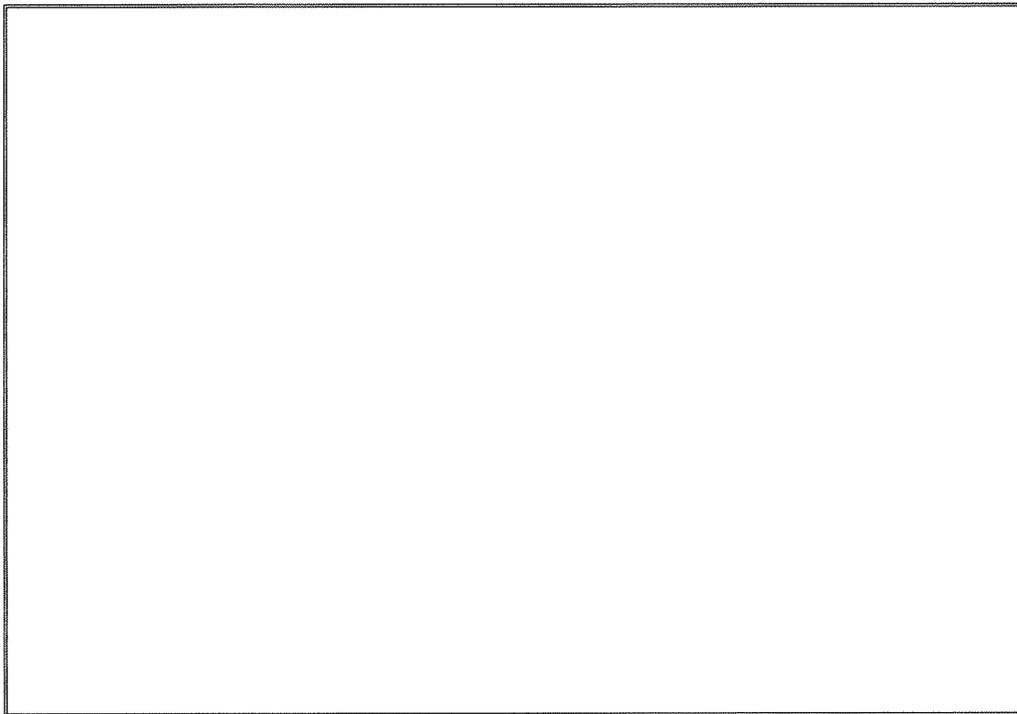
Consumers’ treatment of intermodal train { } illustrates CSXT’s spurious claims. Train { } is a regularly scheduled intermodal train that moves traffic from Chicago 59th Street intermodal yard to Atlanta, GA. The

⁹⁴ CSXT Reply at III-C-29 (quoting Consumers Opening, emphasis in original).

⁹⁵ CSXT Reply at III-C-29 (emphasis in original).

longest historical { } base year train was { } feet long.⁹⁶ In the nine-day peak period of the base year, CSXT operated seven { } trains with unique consists. Consumers added growth cars to the seven corresponding peak year trains, but did not expand them all to the maximum length. Rebuttal Table III-C-3 below shows the base year car counts, Consumers' train-specific peak year car counts, and Consumers' train-specific peak year train lengths for these seven trains.

{



}

As shown in Rebuttal Table III-C-3 above, peak year { } train consists were developed by adding cars to their base year consists and capping

⁹⁶ See Consumers Opening e-workpaper "CERR BASE YEAR TRAIN LIST DEVELOPMENT vF.xlsx," tab "Cerr Trn Stats," cell BN327.

them if the maximum length was reached, they were not simply assumed to be uniform at the maximum length. Indeed, while Consumers determined that individual { } trains could grow to the historical maximum of { } feet⁹⁷ if needed on a given day, two of Consumers' peak year { } trains remained below that threshold, with one ({ }) remaining 15% below the maximum based on projected daily demand.⁹⁸

Consumers simply did not increase all peak year trains to the historical maximum size. Yet, CSXT claims that Consumers did just that:

Consumers assumed that CSXT, BNSF, UP, BRC, and IHB would all disregard the terms of their ISAs and build trains delivered to CERR to the length of the absolute longest train that operated in the Base Year.⁹⁹

CSXT's statement mischaracterizes Consumers' approach and results. Consumers Rebuttal e-workpaper "Train Sizes CSXT vs Consumers.xlsx," tab "Peak Period Comp," cells E122, I122, and I124 contains a list of all CERR train symbols, the maximum train length used by both parties in this case, and the average base and peak year train lengths in Consumers' analysis. As shown in the e-workpaper, only 39 of the 321 (12%) trains in Consumers' Peak Period Opening evidence were expanded to the maximum threshold. Conversely, 282 of Consumers' Peak Period trains (88%) remain under the maximum length

⁹⁷ See Consumers Opening e-workpaper "CERR BASE YEAR TRAIN LIST DEVELOPMENT vF.xlsx," tab "Cerr Trn Stats," cell BN327.

⁹⁸ {
}

⁹⁹ CSXT Reply at III-C-33.

threshold. As such, Consumers' evidence flatly contradicts CSXT's claims that all CERR trains are running at maximum size.

Daily and Seasonal Volume. CSXT erroneously claims that Consumers' train list model fails to account for daily and seasonal volume fluctuations. Specifically, CSXT states:

[I]n developing its 'growth' train estimates, Consumers assigned additional cars to Base Year trains without regard to when such movements would occur.

Consumers' analysis disregarded entirely the ebb and flow of Base Year traffic, as reflected by changes in train sizes during the course of the year. Instead, Consumers added a "growth" train only when its projected growth traffic "could not be accommodated by *trains of that symbol with excess capacity in the base year.*" In other words, Consumers treated additional Peak Year volumes as fungible cars that could be assigned to any train on any date throughout the Peak Year. Based on that assumption, Consumers did not add a "growth" train for a particular train symbol unless every Base Year train operating under that merchandise symbol reached the maximum length that was achieved by few real world trains-and in many cases *one* train-throughout the year.¹⁰⁰

These claims are also incorrect. Here again, CSXT's attempt to describe Consumers' methodologies in "other words" results in CSXT misrepresenting what Consumers' operating witnesses actually did in developing growth trains.

¹⁰⁰ CSXT Reply at III-C-34-35 (footnote omitted).

As shown in the train { } and Q383 examples above, Consumers' methodology retained both the daily and seasonal variation reflected in the base year train data. Specifically, Consumers first developed peak year train consists by adding growth carloads to the historical consists of the corresponding base year trains that moved on the same calendar date in the base year. In doing so, Consumers explicitly retained the operational lumpiness on a day-to-day basis. As shown in Tables III-C-2 and III-C-3 above, each peak year { } and Q383 train (and each other CERR train) has a unique carload consist reflecting historical daily swings in volume demand.

When Consumers determined additional growth trains would be required, it added them to the peak period train list based on the historically observed peaking factor. For example, Consumers determined that projected peak year volumes would require the addition of { } growth trains.¹⁰¹ Next, Consumers developed a historical peaking factor ({ })¹⁰² based on the number of daily trains operating during the peak nine-day modeling period ({ })¹⁰³ relative to the number of daily trains operating during the full base year

¹⁰¹ Consumers Opening e-workpaper "CERR BASE YEAR TRAIN LIST DEVELOPMENT vF.xlsx," tab "Cerr Trn Stats," cell BU327.

¹⁰² Consumers Opening e-workpaper "CERR BASE YEAR TRAIN LIST DEVELOPMENT vF.xlsx," tab "Cerr Trn Stats," cell CD10 and level "LineHaul Peak Calc," cell N4.

¹⁰³ Consumers Opening e-workpaper "CERR BASE YEAR TRAIN LIST DEVELOPMENT vF.xlsx," tab "LineHaul Peak Calc," cell N3.

{ }¹⁰⁴ Because more trains operated in the nine-day peak modeling period than in an average nine-day period in the base year, Consumers applied the observed historical peak period distribution to determine that { } growth trains would need to operate in the peak modeling period of the peak year.¹⁰⁵ If Consumers had not accounted for seasonality, it would only have added { } growth trains during the peak modeling period.¹⁰⁶ Consumers rounded up its seasonally adjusted { } peak period growth trains and added three (3) full growth trains to its peak period train list.¹⁰⁷

CSXT also mischaracterizes Consumers' treatment of train Q393.

Pursuant to the ISA between CSXT and BRC, the maximum length of Train Q393 is 8,000 feet. Consumers assumed that the Q393 trains could grow to 8,811 feet (or 144 cars) in the Peak Year, providing a total of 1,205 available "car slots" on the 36 existing Base Year Q393 trains. Based on Consumers' growth projection of {{ }} for merchandise traffic, the

¹⁰⁴ Consumers Opening e-workpaper "CERR BASE YEAR TRAIN LIST DEVELOPMENT vF.xlsx," tab "LineHaul Peak Calc," cell N2.

¹⁰⁵ Consumers Opening e-workpaper "CERR BASE YEAR TRAIN LIST DEVELOPMENT vF.xlsx," tab "Cerr Trn Stats," cell CD327. { } growth trains ÷ 365 days in the year x 9 days in the modeling period x { } peaking factor = { } peak modeling period growth trains.

¹⁰⁶ {
}

¹⁰⁷ See Consumers Opening e-workpaper "CERR BASE YEAR TRAIN LIST DEVELOPMENT vF.xlsx," tab "Cerr Peak Trains" range BP325:CH327. Consumers' growth trains were assumed to be a uniform { } cars and { } feet. Notably, CSXT also assumed its growth trains would be uniform in length. For example, CSXT added four { } growth trains in its peak period train list, all of which were assumed to move { } cars. See CSXT Reply e-workpaper "Peak Period Trains.xlsx," tab "RTC_Add_Elim" range I142:I145.

CERR would be required to handle a total of {{ }} additional ‘growth’ cars on Q393 trains in the Peak Year. Consumers distributed those {{ }} cars among the available slots on the 36 Base Year Q393 trains without regard to the days upon which that additional traffic might be tendered for shipment.¹⁰⁸

Consumers’ methodology ignores the impact of seasonality and economic trends on customer shipment patterns, and results in train lengths that are divorced from market realities.¹⁰⁹

*That assumption flies in the face of the reality that fluctuations in rail traffic over the course of a year are driven by changes in customer demand, not railroad operating convenience.*¹¹⁰

First, the longest Q393 train in the base year was 150 cars and 8,835 feet.¹¹¹ Therefore, Consumers’ procedures ensure that no peak year train exceeds that limit. CSXT adopted and applied the historical maximum length of 8,835 feet – not the ISA train length of 8,000 feet – to its own train list development model.¹¹² Second, as with trains Q383 and { } in the examples shown above, individual Q393 trains (and all other trains) were grown based on the daily and

¹⁰⁸ CSXT Reply at III-C-35-36 (footnotes omitted).

¹⁰⁹ CSXT Reply at III-C-36 (footnotes omitted).

¹¹⁰ CSXT Reply at III-C-37 (emphasis in original).

¹¹¹ See Consumers Opening e-workpaper “CERR BASE YEAR TRAIN LIST DEVELOPMENT vF.xlsx,” tab “Cerr Trn Stats,” cells BL378 & BN378.

¹¹² See CSXT Reply e-workpaper “Peak Period Trains.xlsx,” tab “Trains_Pk_Pd,” cell AP279 and level “Ref_MaxSize,” cell J330.

seasonal demand observed in the base year train statistics. Specifically, one Q393 train operated during the peak period of the base year. That particular Q393 train operated with { } carloads,¹¹³ which was below the base year average of { } cars.¹¹⁴ For the corresponding peak year train, Consumers assumed it would operate with { } cars,¹¹⁵ which is below the peak year average of { } cars.¹¹⁶ Therefore, the relative seasonal demand observed in the historical base year was preserved in the peak period. Contrary to CSXT's assertions, Consumers did not smooth out seasonal volume fluctuations.

CSXT's Flawed Reply Growth Train Methodology Significantly Overstates Train and Car Requirement and Resulting Operating Expenses.

CSXT claims that Consumers' train development methodology "resulted in an understatement of the number of 'growth' trains required to accommodate the CERR's Peak Year traffic volumes."¹¹⁷ CSXT then states that it "corrected" Consumers' alleged flaws as follows:

CSXT established maximum lengths for CERR Peak Year trains based upon the real-world practices of the railroads serving Chicago. CSXT began by assigning

¹¹³ See Consumers Opening e-workpaper "CERR BASE YEAR TRAIN LIST DEVELOPMENT vF.xlsx," tab "Cerr Peak Trains," cell BA280.

¹¹⁴ See Consumers Opening e-workpaper "CERR BASE YEAR TRAIN LIST DEVELOPMENT vF.xlsx," tab "Cerr Trn Stats," cell R378.

¹¹⁵ Source: Consumers Opening e-workpaper "CERR BASE YEAR TRAIN LIST DEVELOPMENT vF.xlsx," tab "Cerr Peak Trains," cell BI280.

¹¹⁶ Source: Consumers Opening e-workpaper "CERR BASE YEAR TRAIN LIST DEVELOPMENT vF.xlsx," tab "Cerr Trn Stats," cell BW378.

¹¹⁷ CSXT Reply at III-C-38.

Peak Year cars to Base Year trains by applying CSXT's adjusted Peak Year growth factors ({{ }} for merchandise traffic and {{ }} for intermodal traffic) uniformly across all Base Year merchandise trains. Specifically, CSXT increased the number of cars on each merchandise train on its Reply RTC Model train list by {{ }}, and the number of units on each intermodal train by {{ }}.

For each train symbol and date, if the resulting train length exceeded the maximum length for that train symbol, CSXT added an “extra” train operating under that symbol on that date.¹¹⁸

CSXT’s growth train model contains two critical flaws which render its entire analysis invalid. First, rather than developing a peak year operating plan, CSXT developed 365 separate peak day operating plans, and then combined the results of the 365 individual daily plans to develop its operating statistics. CSXT’s treatment of train Q383 exemplifies the problem with this logic.

Specifically, CSXT’s methodology applied its { } growth factor¹¹⁹ to the { } to project that the peak period counterpart to historical Train { } would need to be { } feet in length.¹²¹ CSXT’s maximum train length for

¹¹⁸ CSXT Reply at III-C-38-39.

¹¹⁹ See CSXT Reply e-workpaper “Peak Period Trains.xlsx,” tab “Trains_Pk_Pd,” cell AN263.

¹²⁰ See CSXT Reply e-workpaper “Peak Period Trains.xlsx,” tab “Trains_Pk_Pd,” cell O263.

¹²¹ See CSXT Reply e-workpaper “Peak Period Trains.xlsx,” tab “Trains_Pk_Pd,” cell AQ263.

Q383 trains is { } feet, which represents the greater of the maximum historical length ({ } feet)¹²² and the governing ISA length (7,000 feet).¹²³ Therefore, CSXT determined that the peak period train would exceed its maximum length by { } feet.¹²⁴ { }¹²⁵ {

}

Meanwhile, on the very next day, CSXT projected that the peak period counterpart to train { } would need to be { } feet long.¹²⁶ This is { } feet shorter¹²⁷ than train Q383's maximum permissible length of 8,726 feet.¹²⁸ This train obviously has sufficient available capacity to deliver the prior day's excess volume of less than one carload on the very next calendar day. However, rather than holding one carload from train {

¹²² See CSXT Reply e-workpaper "Peak Period Trains.xlsx," tab "Trains_Pk_Pd," cell AP263.

¹²³ See CSXT Reply e-workpaper "Peak Period Trains.xlsx," tab "Trains_Pk_Pd," cell AR263.

¹²⁴ { }

¹²⁵ Historical train Q383 20140324 was 7,113 feet long and moved 144 cars. (7,113 feet ÷ 114 cars = 62.4 feet per car).

¹²⁶ See CSXT Reply e-workpaper "Peak Period Trains.xlsx," tab "Trains_Pk_Pd," cell AQ264.

¹²⁷ { }

¹²⁸ See CSXT Reply e-workpaper "Peak Period Trains.xlsx," tab "Trains_Pk_Pd," cell AP264.

} to move on train { }, CSXT’s plan inexplicably calls for two Q383 trains to operate on March 24, 2024.¹²⁹ CSXT’s model obviously imposes unnecessary and unrealistic operational inefficiencies on the CERR. Moreover, because train Q383 is interlined with BNSF, CSXT assumes BNSF will also incur the additional operating expenses associated with this inefficient operation.

CSXT’s model is predicated on the false premise that the stand-alone railroad, and its interline partners, and all connecting railroads, would be required to clear its entire inventory of traffic every day, and that the prior and subsequent days’ operations are completely unrelated to the current day. This approach again does not reflect “real-world” railroad operating practices.

Second, although CSXT adds growth trains based on its specific daily projected volume requirements for a given train symbol, CSXT completely abandons its projected daily volume once a growth train is “triggered.” In every instance in which CSXT determines a growth train will be required, CSXT operates two trains with combined car load statistics that far exceed CSXT’s own determination of the daily volume requirement.

Train { } from the above example exemplifies the impact of CSXT’s critical flaw in growth train additions. Specifically, CSXT

¹²⁹ See CSXT Reply e-workpaper “Peak Period Trains.xlsx,” tab “Trains_Pk_Pd,” cell AS263.

projects the need for { }¹³⁰ of train Q383 capacity on March 24, 2024. Based on the base year counterpart, this equates to { } carloads.¹³¹ As described above, because this requirement exceeds the maximum train Q383 train length by { } feet, CSXT interprets this as a need to operate two Q383 trains on March 24 of the peak year. The first train CSXT operates on March 24 is { } cars and { } feet¹³² in length, precisely mirroring the base year counterpart's consist.¹³³ The differential between CSXT's projected volume requirement of { } feet ({ } cars) and CSXT's first train consist of { } feet ({ } cars) is { } feet ({ } cars). However, rather than operate a second { } foot ({ } car) train, CSXT operates a second "growth" train that is { } feet ({ } cars) in length.¹³⁴ This "growth" train consist mirrors the average base year consist for train symbol Q383.¹³⁵

¹³⁰ See CSXT Reply e-workpaper "Peak Period Trains.xlsx," tab "Trains_Pk_Pd," cell AQ263.

¹³¹ { }

¹³² See CSXT Reply e-workpaper "Peak Period Trains.xlsx," tab "Trains_Pk_Pd," cell AW263.

¹³³ See CSXT Reply e-workpaper "Peak Period Trains.xlsx," tab "Trains_Pk_Pd," cell O263.

¹³⁴ See CSXT Reply e-workpaper "Peak Period Trains.xlsx," tab "Trains_Pk_Pd," cell BD263.

¹³⁵ See CSXT Reply e-workpaper "Peak Period Trains.xlsx," tab "RTC_Add_Elim" at range I124:K124.

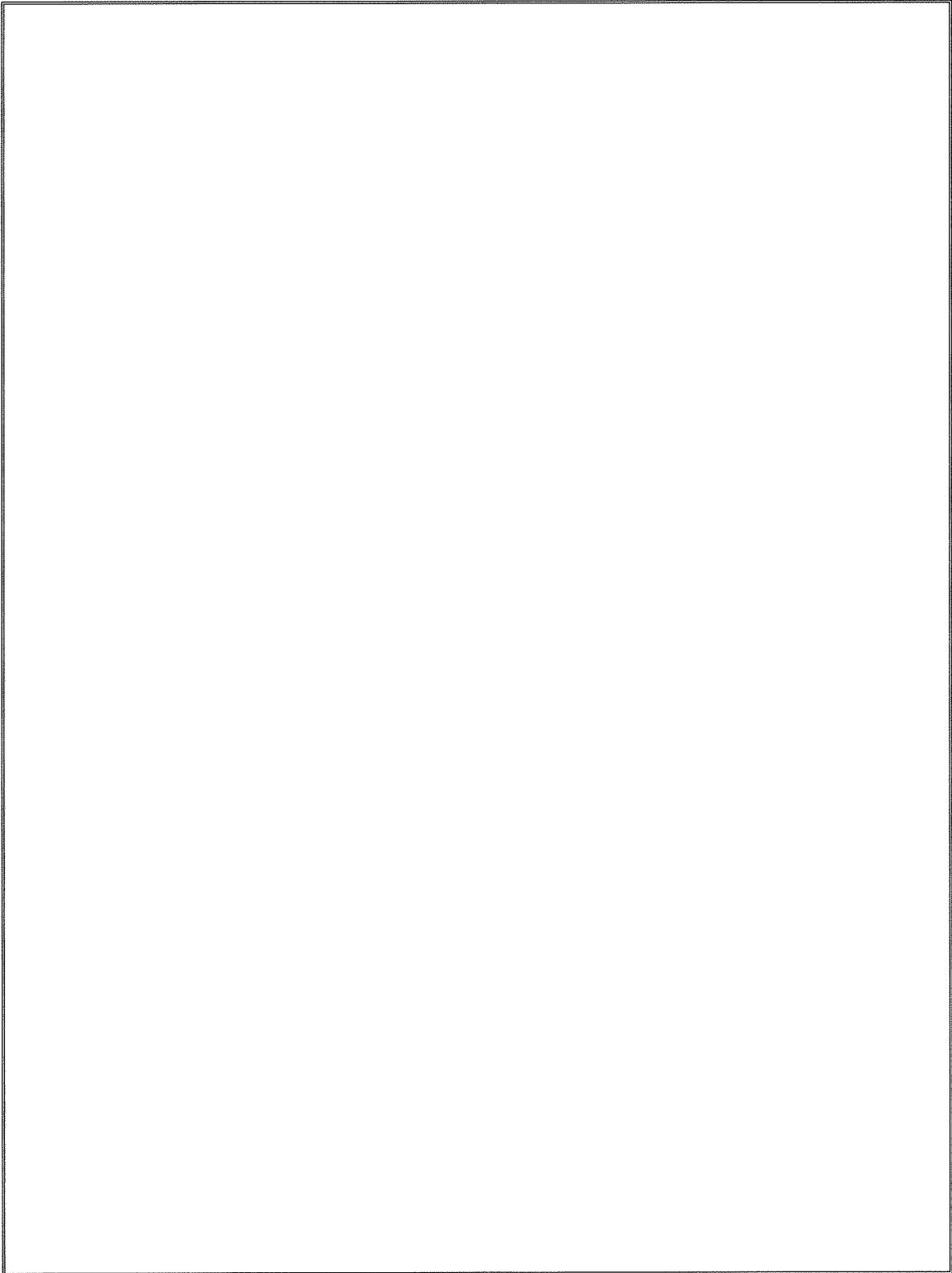
CSXT's two Q383 peak year March 24 trains have a combined length of { } feet¹³⁶ and { } cars.¹³⁷ This exceeds CSXT's projected volume requirement by { } feet¹³⁸ ({ } cars).¹³⁹ CSXT does not explain, or even acknowledge, its operation of two trains with combined lengths that exceed CSXT's calculated daily train length requirement by { }%.¹⁴⁰

Applying CSXT's erroneous model to all peak period trains results in a { }% overstatement of CSXT's projected volume requirement for its { } "growth trains" as demonstrated in Rebuttal Table III-C-4 below.¹⁴¹

{

136 { }
137 { }
138 { }
139 { }
140 { }

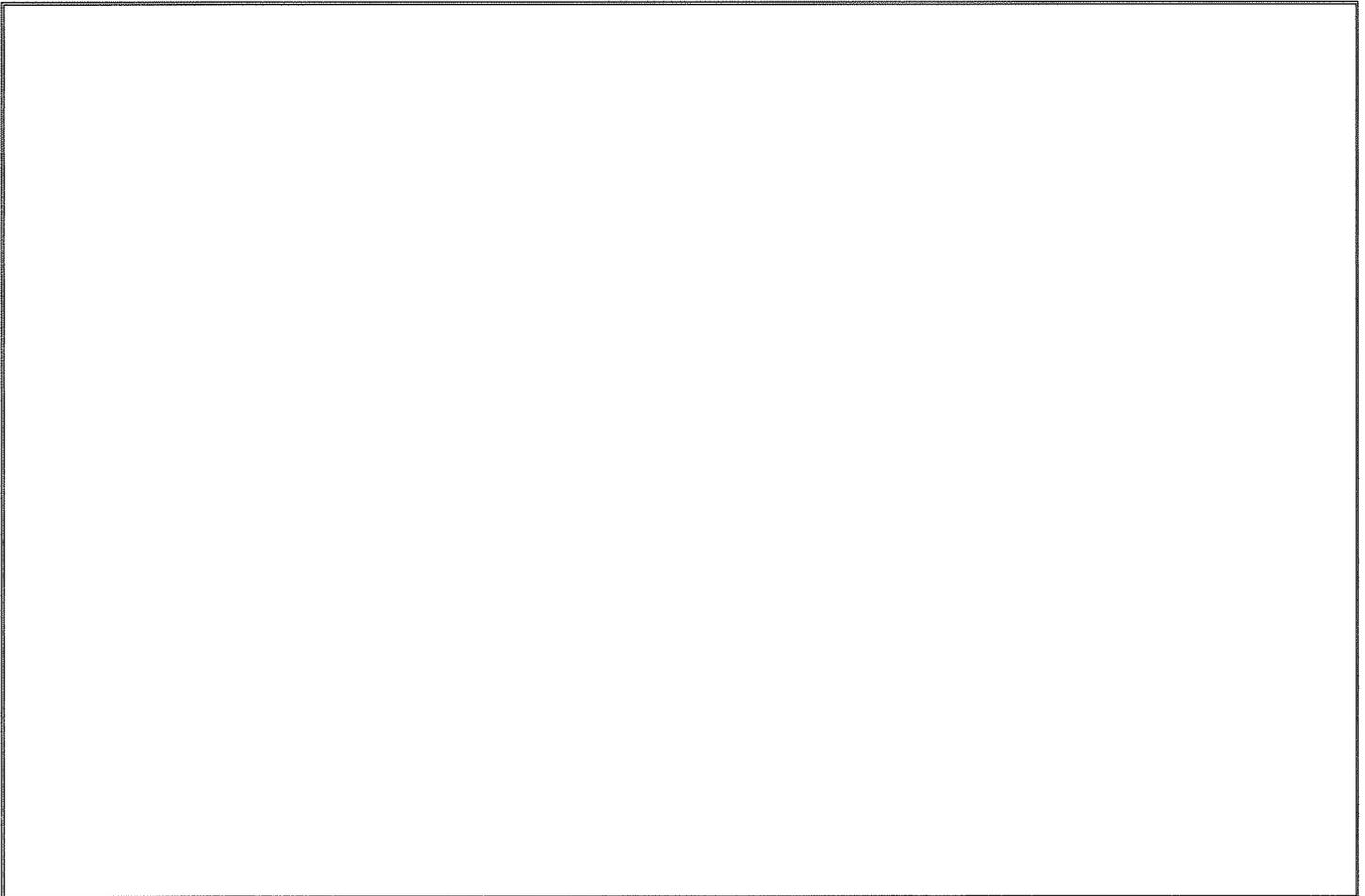
¹⁴¹ See Consumers Rebuttal e-workpaper "Peak Period Trains_Restated.xlsx," tab "CSXT Growth Train Summary."



}

This additional unnecessary volume serves no purpose other than to reduce the efficiency of the CERR and increase operating costs. Moreover, this additional volume has no basis in actual traffic growth, and the CERR gains no revenue benefits. In addition, by using base year average statistics as a surrogate for peak period growth trains, CSXT failed to reflect daily and seasonal volume fluctuations – the very thing CSXT accuses Consumers of ignoring.

Rebuttal Table III-C-5 below shows the tremendous inefficiency resulting from CSXT’s peak period train development methodology as applied to train Q383. {

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}

Column (3) of Rebuttal Table III-C-5 shows that over the course of the peak period, CSXT projects that both the CERR and BNSF – with whom train Q383 is interlined – would have the capacity to move { } feet of train Q383 consist without adding any growth trains. Column (4) shows that CSXT projects that BNSF and the CERR would need to move { } feet of volume on train Q383. Therefore, CSXT projects that train Q383 will have { } feet of excess capacity (Column (5) total) during the peak period without adding a single growth train. Yet, CSXT’s operating plan calls for the addition of four growth trains to move this traffic.

CSXT’s model, which bases CERR operations on 365 individual daily operating plans rather than a single comprehensive operating plan, would preclude the CERR operations department from making rational operating decisions based on available capacity. CSXT presumes that both the CERR and BNSF would somehow fail to consider the two Q383 trains operating with pointless excess capacity on March 25th and March 27th in their train building and dispatching operations on the surrounding days. Mr. Orrison and Mr. Holmstrom find such an unlikely scenario completely at odds with how real world railroads are operated. Any rational real world railroad would recognize that it had sufficient capacity on its seven (7) scheduled peak period trains, and it would not need to operate any “growth” trains, to move all of the projected Q383 traffic. In

other words, Consumers' operating plan plainly represents the best supported and rational approach to the growth of traffic.

Furthermore, Column (8) shows that over the course of the peak period, CSXT's operating plan would require BNSF and the CERR to move { } feet of train Q383 consist. However, as Column (4) shows, CSXT projects the need for both the CERR and BNSF to move only { } feet of volume on train Q383 during the peak period. Therefore, CSXT's operating plan requires the CERR to incur costs associated with moving { } feet (Column (9) total) of phantom Q383 consist for which it would receive no revenues (nor would the BNSF for that matter).

CSXT proclaims its model to be superior for the following reason:

CSXT's approach reflects the premise that customer shipment patterns during the Peak Year would, in all likelihood, be similar to those that CSXT experienced during the Base Year. **Absent any evidence to the contrary**, that premise is realistic--indeed it is far more credible than Consumers' assumption that the timing of "growth" shipments would precisely match the capacity available on existing CERR trains.¹⁴²

The problem with CSXT's claim is that its own evidence contradicts its position that its model reflects shipping patterns observed in the base year. To identify the need for a growth train, CSXT relies on its projection of daily required volumes, which it derives based on shipping patterns experienced during the base year. However, the growth trains CSXT added have consists that reflect average

¹⁴² CSXT Reply at III-C-39-40 (emphasis added).

base year train statistics. By adding this average consist to the consist of the corresponding daily historical train, CSXT expressly discarded its projection of daily required volumes that was used to trigger the growth train. As a result, CSXT grossly overstates CERR volumes on each day it claims a growth train is required and vastly overstates operating expenses.

It is CSXT's insistence that the CERR operating personnel would fail to utilize excess capacity on the days prior and subsequent to the days on which CSXT projects *de minimis* averages that lacks credibility. All five (5) of the Q383 merchandise trains CSXT added in the peak week were completely unnecessary, and CSXT dramatically overstates the number of intermodal growth trains required to move its projected peak week traffic. CSXT's model is illogical, results driven, and diametrically opposed to the premise of an efficient stand-alone railroad.

C. Consumers' Operating Plan Provides for the Delivery of All Issue Coal Cars to the Consumers Plant

CSXT argues that one of the three *major* flaws in Consumers' operating plan is that it failed to separately provide for the transportation of a few bad-ordered Consumers' coal cars to the Campbell Plant. Not only has no railroad ever argued that the a SARR operating plan must separately track and transport such a trivial number of cars, but if such a standard were applied, it suggests that the SAC process is broken beyond all repair because no operating plan could possibly be devised that would cover every random occurrence to a car being

transported *off* the SARR and its subsequent impact on the SARR. Yet, that is precisely what CSXT is proposing (*i.e.*, the cars are bad-ordered on the BNSF and the CERR must guess exactly how these random events will be handled).

Consumers urges the Board to reject such an untenable position as a matter of policy, lest the already daunting SAC process become a hopeless one.

CSXT's argument on this point is even more absurd because CSXT readily acknowledges that Consumers would have had no idea about this issue because the "CSXT data produced in discovery did not make clear how bad-ordered cars arriving at Clearing Yard were delivered to Barr Yard."¹⁴³

Moreover, CSXT provided a written explanation of how Consumers' traffic moves to the plant, including bad-ordered cars on the Grand Rapids Subdivision, and it never mentioned this alleged movement of cars to Clearing Yard by BNSF or the local CSXT move from Clearing Yard to Barr Yard.¹⁴⁴ CSXT ignores that these cars were not necessarily bad-ordered at all and that it has offered no proof they were bad-ordered. Likewise, CSXT does not even offer any evidence that BNSF handles Campbell-bound bad-ordered cars in the manner CSXT describes.

Instead, it simply makes a bald-face assertion that BNSF delivers these supposedly bad-ordered cars to the BRC's Clearing Yard. But this assertion is belied by real-world experience and common sense. Finally, and most frustratingly, CSXT has

¹⁴³ CSXT Reply at III-C-43 n.82.

¹⁴⁴ See Consumers Opening e-workpaper "Consumers INT 3 & 4 Response (CSX-CNSMR-C-19328 to 19336).pdf."

claimed that only 82 cars out of 41,288 cars (two tenths of one percent) moving to the Campbell plant in the base year are even at issue.¹⁴⁵ Thus, CSXT has sent Consumers on a chase for data over a trivial number of cars, especially compared to the over 40,000 cars moving to the Campbell plant each year.

Mr. Orrison, who has extensive experience with Consumers trains on the lines being replicated, as well BNSF operations, is dubious of CSXT's unsupported claims. Specifically, as an Assistant Vice President at BNSF, he witnessed an extensive program by BNSF Coal Operations to always return bad order, loaded coal cars back to the next loaded train for the consignee of the bad-ordered car. This return to the next loaded train occurs at major yard or crew changes points. Thus, trains taking the southern route from the Powder River Basin pick up bad-ordered cars at Alliance, NE; Aurora, NE; Lincoln, NE; Ottumwa, IA; Burlington, IA; and Galesburg, IL. Trains coming from the PRB on the northern route pick up bad order cars at Glendive, MT; Mandan, ND; Fargo, ND; St. Paul, MN; LaCrosse, WI. CSXT has not suggested that BNSF has changed this policy. Thus there is no reason to assume now, without any proof on CSXT's part, that the BNSF is delivering these cars to Clearing Yard for furtherance to the CSXT's Barr Yard via a local train. Indeed, such an operation is highly inefficient and directly contradictory to Mr. Orrison's real-world experience.

¹⁴⁵ See Consumers Rebuttal e-workpaper "2014 - 1Q 2015 Car And Container Waybills_Rebuttal.xlsx," tab "2014 Carload," column (D).

Mr. Orrison also points out that CSXT may have opted to remove such cars at 71st Street, if it concluded that further repairs were necessary, and then placed those cars on the daily train from Clearing Yard to Barr Yard that also stopped at 71st Street as Mr. Holmstrom explained above. But again, CSXT has no proof that these cars got to Barr Yard or even Clearing Yard in the manner it claims they did, nor does CSXT have any proof the cars were bad-ordered. Thus, CSXT is simply claiming its purported operation occurred, and yet it is strongly criticizing Consumers' for failing to account for such cars.

In order to provide additional insight into CSXT's manifest error on this point, it is necessary to delve into the details of CSXT's approach to identifying and handling these alleged bad-ordered cars.

On Reply, CSXT describes the handling of issue carloads that are bad-ordered on BNSF rail lines for the first time.¹⁴⁶ The operation requires, in CSXT's view, five steps:

- Step 1: BNSF delivers bad-ordered carloads to BRC's Clearing Yard in Chicago;
- Step 2: CSXT transfers the cars from BRC's Clearing Yard to CSXT's Barr Yard on Chicago yard trains Y130 and Y132;
- Step 3: CSXT places the cars on a merchandise train (usually Q326) and moves them from Barr Yard to Grand Rapids, MI;
- Step 4: CSXT places the cars on a second merchandise train (usually Q327) and moves them from Grand Rapids to Holland, MI; and

¹⁴⁶ CSXT Reply at III-C-41.

- Step 5: CSXT places the cars on an unidentified local train and moves them from Holland to West Olive, MI.

On Reply, CSXT presents a list of 82 carloads it claims were bad-ordered on BNSF lines, but notably omits an explanation of how it was able to determine which cars were bad-ordered. CSXT simply proclaims that “the Car Event data that CSXT produced in discovery indicate that, during the Base Year, one out of five Consumers’ loaded coal trains was required to set out a bad-ordered car.”¹⁴⁷

As noted above, there is nothing in the Car Event data to indicate that those cars were bad-ordered. The Car Event data as summarized by CSXT on Reply merely shows that these carloads were at some point switched on to one of four specific train profiles preselected by CSXT. This circumstance alone is insufficient evidence to prove that these particular cars were bad-ordered. Indeed, CSXT is aware that bad-order cars cannot be identified using Car Event data alone. As confirmed by statements CSXT made regarding its traffic data in discovery: “Car Event data do not detail . . . specific customer services required.”¹⁴⁸

Second, CSXT’s provided event data does not show the complete movement of the 82 carloads identified by CSXT as bad-order cars on Reply. In a

¹⁴⁷ CSXT Reply III-C-40-41.

¹⁴⁸ See July 1, 2015 letter from Matthew J. Warren to Kelvin J. Dowd at page 2 of 5, included in Consumers’ Rebuttal workpapers as “2015 07 01 MJW to Dowd Re CSX Traffic Data and Operating Information.pdf.”

footnote, described above, CSXT admits that Consumers could not possibly have determined its newly described bad-order shipment operation from the provided data. The lack of data is further confirmed by statements CSXT made regarding its traffic data in discovery: “[t]here may be limited or no detail for certain local and yard trains in the Car Event data.”¹⁴⁹ In addition, CSXT data produced in discovery did not make clear that bad-ordered cars were delivered to BRC’s Clearing Yard by BNSF. “Car Event data do not detail . . . connecting carrier information.”¹⁵⁰

As a result, Consumers had no way of identifying, tracking, or evaluating two of the five operational steps CSXT now claims it uses to deliver bad-ordered issue carloads to West Olive from the materials provided by CSXT in discovery.

Third, a review of the Car Event data reveals major holes in CSXT’s claims regarding the purported operations for handling bad-order cars. On Opening, Consumers developed a workpaper containing a list of “Y” trains compiled from aggregated CSXT car event data.¹⁵¹ This list contains a summary of all carloads reporting movements on yard trains in and between Clearing and Barr yards, including the Y130 and Y132 Yard trains CSXT identifies on Reply as the trains carrying bad-order issue cars from Clearing Yard to Barr Yard. This

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ *See* Consumers Opening e-workpaper “Yard Shipments by Train OnSARR Events.xlsx.”

workpaper identifies { } Y trains which pick up or set out cars at both Clearing and Barr Yard during the base year.¹⁵² As shown, the provided data indicates that { } Y130 yard trains moved cars between Clearing and Barr yards, but { } Y132 trains performed that service during the base year.¹⁵³ Additionally, the vast majority of the carload movement reported in the car event data on train Y130 occurred in the westward direction.¹⁵⁴ Specifically, the car event data shows that train Y130 originated { } cuts containing { } cars in Barr Yard, and it terminated { } cuts containing { } carloads in Clearing Yard.¹⁵⁵ Conversely, train Y130 originated only { } cuts containing { } cars in Clearing Yard, and it terminated { } cuts containing just { } carloads in Barr Yard.¹⁵⁶ Therefore, according to the provided car event data, Train Y130 set out

¹⁵² *Id.*, tab “Train Summary,” cell S3 and tab “Symbol Summary,” cell S3.

¹⁵³ *Id.*, tab “Symbol Summary,” cells S30 and S32.

¹⁵⁴ As documented in Consumers’ Opening e-workpapers, the Train Profiles data provided by CSXT in discovery also confirm that CSXT’s Y130 train’s operating plan calls for the movement of a block of cars from Barr Yard to Clearing Yard, not from Clearing Yard to Barr Yard. *See* Consumers Opening/Rebuttal e-workpaper “P3 Blocks Orig or Term at BARR.xlsx,” tab “Blocks O T at Barr” rows 540-541, Columns V, I, and K. Station “DD 2” (Column (I)) = Barr Yard, and Station “DC 27” (Column (K)) = Clearing Yard.

¹⁵⁵ *See* Consumers Opening e-workpaper “Yard Shipments by Train OnSARR Events.xlsx,” tab “Symbol Summary,” cells E30, K30, I30, and O30 respectively. The count of cuts and carloads do not precisely mirror one another at Barr and Clearing because some of the cuts were handled entirely within a single yard, usually Clearing.

¹⁵⁶ *Id.*, tab “Symbol Summary,” cells F30, L30, H30, and N30 respectively. As above, the count of cuts and carloads do not precisely mirror one another at Barr and Clearing because some of the cuts were handled entirely within a single yard, usually Clearing.

only { } total cars in Barr during the entire base year. However, of the 82 bad-ordered issue cars identified by CSXT in Reply, *not a single one* reported movement from Clearing to Barr on train Y130 or on train Y132, according to the provided car event data.¹⁵⁷ Despite CSXT’s claims that trains Y130 and Y132 typically move these bad-order cars, the data shows a different tale: that only 53 cars were moved to Barr during the base year and *none* of them were the bad-ordered cars identified by CSXT.

Fourth, CSXT’s methodology skips over the logical starting point for evaluation of these shipments – the delivery to Clearing Yard by BNSF and movement from Clearing to Barr on CSXT’s yard trains. Therefore, in order to identify the cars it claims were bad-order cars, CSXT began its analysis by querying the Car Event data to identify issue traffic loaded onto Merchandise road trains with the profiles Q324, Q326, S324 or S326.¹⁵⁸ CSXT was only able to develop this methodology because it claims to know that those four train profiles are used in the *third operational step* CSXT uses to deliver bad-ordered cars to West Olive during the normal course of business. However, neither the Board, nor Consumers, would know which Merchandise trains normally carry bad-ordered cars from Barr Yard to Grand Rapids.

¹⁵⁷ See CSXT Reply e-workpaper “BadOrdered Carloads in NonUnit Trains.xlsx,” tab “Dataset_Access,” column E.

¹⁵⁸ See CSXT Reply e-workpaper “IssueTraffic_CarEventData.accdb,” query “Trains_BadOrders.”

Moreover, the further movement of the 82 cars identified by CSXT rarely matches CSXT’s description of the operations in its Reply narrative. For example, CSXT’s Car Event data for Shipment Key { },¹⁵⁹ which CSXT identified as a bad-order shipment on Reply, indicates that the car left Chicago on eastbound merchandise train { } and traveled through { }.¹⁶⁰ At { }, it was cut onto westbound merchandise train { } and transported back to { },¹⁶¹ where it was placed on local train { } and moved to { }.¹⁶² At { }, it was placed on eastbound merchandise train { } and moved back to { }.¹⁶³ After the carload arrived at { } for the second time, it was placed on westbound local train { } and delivered to West Olive.¹⁶⁴

This peculiar movement of the car may be explained by further statements CSXT made regarding the data it provided in discovery. Specifically, CSXT stated that, “in some cases the routes identified in car event data do not perfectly correspond to the actual path of traffic,” and “[s]uch cases of routings

¹⁵⁹ See CSXT Reply e-workpaper “BadOrdered Carloads in NonUnit Trains.xlsx,” tab “Dataset_Access,” column C (Shipment Key), rows 2-73.

¹⁶⁰ *Id.*, columns E (Train ID), F (Train Suffix) and AG (city), rows 2-24.

¹⁶¹ *Id.*, rows 25-38, 40.

¹⁶² *Id.*, rows 39, 41-46.

¹⁶³ *Id.*, rows 47-58, 60.

¹⁶⁴ *Id.*, rows 59, 61-66.

that differ from the actual path of movement” occur because CSXT’s Car Event data “necessarily must make routing assumptions where multiple routes exist between reporting locations.”¹⁶⁵

Thus, as noted above, CSXT’s allegation that Consumers failed to adequately account for the movement of bad-ordered issue carloads rings hollow in light of the fact that the traffic data provided by CSXT in discovery, by CSXT’s own admission, did not record significant portions on the movement of those shipments, and even where it did record movement, the recorded route may differ from the actual route. CSXT simply asks that its new claims be accepted without proper support.

CSXT’s Reply bad-ordered car operations are also unnecessary, overstated and incorrectly modeled. As a threshold matter, even if CSXT’s evidence were adequately supported (which it is not), Mr. Orrison has already explained that BNSF’s policy is to place bad-ordered cars on a subsequent West Olive train on BNSF’s own network between the PRB and Cicero, IL. Instead, CSXT asserts that the CERR must “provide for one CERR coal unit train per week to make an intermediate stop at Barr Yard (after being received from BNSF at 71st

¹⁶⁵ See July 1, 2015 letter from Matthew J. Warren to Kelvin J. Dowd at pages 2-3 of 5, included in Consumers’ Rebuttal e-workpapers as “2015 07 01 MJW to Dowd Re CSX Traffic Data and Operating Information.pdf.”

Street) so that bad-ordered cars can be added to the train prior to movement to West Olive.”¹⁶⁶

However, CSXT’s RTC modeling of its proposed operation is at odds with its stated plan. First, CSXT provided for two CERR coal trains, not one, to make an intermediate stop at Barr Yard during the peak week.

Specifically, CSXT’s model requires both train { } (RTC train ID CL-C22WOLB02) and train { } (RTC train ID CL-C22WOLN01) to dwell in Barr Yard for the placement of bad-ordered cars.¹⁶⁷ CSXT stops the first train on the first day of the peak week and the second train on the last day of the peak week.

Second, CSXT improperly and unnecessarily rerouted train { } from the Belt Route via Barr in order to place bad-ordered carloads on that train when train { } was moving through Barr later in the peak week. The two bad-order cars should have been switched onto N910 20140329 rather than rerouting train { }.

The majority of Consumers’ loaded coal trains are routed like train { } eastward over the Belt Route at 75th Street ({ } in the Peak Period of the base year), while some are routed south at that junction over the CSXT line and through BARR yard ({ } in the Peak Period of the base

¹⁶⁶ CSXT Reply at III-C-43.

¹⁶⁷ See CSXT Reply e-workpaper “CERR CSXT Reply – Consumers.zip.”

year).¹⁶⁸ The CERR operating expenses associated with CSXT’s rerouted train { } reflect the actual historical route, and therefore account for the joint facilities payments made to NS and the BRC.¹⁶⁹ However, CSXT reroutes the train via Barr, which creates a disconnect between the joint facility agreement payments and operating expenses for this shipment. Because CSXT has improperly rerouted train { } off of the BRC and NS lines, and because it has unnecessarily modeled two trains during the peak week for this operation, Consumers rejects CSXT’s operations as modeled for train { }.

Although CSXT did not reroute train { }, CSXT failed to demonstrate that Consumers could reasonably have determined this operation is necessary from the data and explanatory materials CSXT provided in discovery. Consumers therefore rejects the changes applied to train { } as modeled in CSXT’s Reply RTC simulation to accommodate bad-order car switching in Barr Yard.

Given that CSXT’s evidence is inadequately supported by data and operational information CSXT provided in discovery, and given CSXT’s

¹⁶⁸ See Consumers’ Rebuttal e-workpaper “CERR BASE YEAR TRAIN LIST DEVELOPMENT vF Rebuttal.xlsx,” tab “Cerr Peak Trains” rows 136-141, columns CB (identifies Consumers trains) and BV (identifies trains traversing NS/BRC via trackage rights).

¹⁶⁹ See CSXT Reply e-workpaper “CERR Base Year Trains.xlsx,” tab “Trains,” cell AM4653 = 160.46 miles. This should be 162.33 miles like similarly routed train { }, see cell AM4834.

unforgivable tardiness in presenting this novel theory, Consumers has not adjusted its Rebuttal RTC model to reflect the transportation of these unexplained cars.

1. General Parameters

Briefly summarized, the CERR's operating plan is designed to handle trains operating between Ogden Jct./22nd St. in Chicago, IL and West Olive, MI. The CERR serves one local customer destination, Consumers' Campbell plant located at West Olive, MI. The CERR also serves CSXIT's 59th St. Intermodal facility, located adjacent to the CERR tracks and several miles south of the CERR's northern terminus at 22nd Street. The system has nine (9) interchange locations. The CERR has no branch lines. The CERR includes a 2.38-mile¹⁷⁰ lead track to reach the Consumers facility.

CSXT largely accepts the CERR's general parameters, except to the extent that it has issues with other elements of Consumers' Opening evidence (*i.e.*, configuration of interchanges (Part III-B), an additional siding near the Campbell plant (Part III-B), traffic selection (Part III-A), and removing certain Calumet Park traffic).

CSXT also suggests that the CERR insertion into Chicago, with the traffic selected, is "conceptually suspect."¹⁷¹ CSXT suggests that the insertion of new interchange points and related dwell times (forced on the shipper by the

¹⁷⁰ See Consumers Opening e-workpaper "CERR Route Miles Opening.xlsx," tab "Summary," cell R14.

¹⁷¹ CSXT Reply at III-C-44.

Board), would “exacerbate” the challenges faced by dispatchers, and that it would be the “epitome of *inefficiency*.”¹⁷² CSXT’s argument is nonsensical. The complaining shipper has no choice but to “insert” itself into the operations in a given area. The Board is well-aware that a stand-alone railroad is naturally burdened in some respects that are unavoidable, but it is not a genuinely separate carrier. Indeed, the Board has largely rejected this notion by virtue of its adoption of ATC rather than market-based revenue divisions and its view that the SARR is essentially just a miniature version of the incumbent railroad. Under CSXT’s argument, no matter how well a SARR performed vis-à-vis the incumbent, it could never succeed. Such a position is untenable and inconsistent with past cases and the key purposes of the *Coal Rate Guidelines*.

Mr. Orrison also observes that the CERR’s traffic selection, interchange points, operating plan and train dwells do not exacerbate the challenges faced by dispatchers in moving trains through the network nor does the addition of a “new” carrier into the Chicago region represent an epitome of inefficiency. The design of the CERR network and selection of traffic took into full consideration of the complexities of the Chicago region. Moreover, the CERR improves the operations and infrastructure therein by, for example, two new interchange tracks between MP 25.5 and MP 23.0 to provide additional network capacity within the Chicago region to receive and convey trains of the traffic

¹⁷² *Id.*

selected by the CERR. These interchange tracks also provide buffer capacity in the new CERR network to account for the level of diamond crossing activity that occurs on a daily basis at 75th Street Interlocking. Likewise, from Pine Junction to MP 246.3 Curtis Junction, the new CERR designed and constructed 2.50 miles of double main track and 7.86 miles of interchange tracks providing for up to six (6) train buffer network capacity between Pine Junction and Curtis Junction.

The new CERR does not increase the number of trains operating through Chicago – it actually moves the same number of selected trains over a newly built network, and it does it faster than the real-world CSXT. Thus, CSXT’s spurious comments are inapposite.

a. Traffic Flow and Interchange Points

CSXT accepts most of the Consumers’ traffic flow and interchange point evidence.¹⁷³ However, CSXT rehashes its proposed modifications to the interchange points at Dolton, Curtis and Pine Junction.¹⁷⁴ As explained in Part III-B, Consumers has rejected the modifications at Dolton and Curtis, and accepted the inclusion of the 0.6 mile Buffington Connection at Pine Junction.

b. Track and Yard Facilities

CSXT agrees with almost all of the track and yard facilities proposed by Consumers on Opening.¹⁷⁵ CSXT adds an additional siding near the Campbell

¹⁷³ *Id.* at III-C-46.

¹⁷⁴ *Id.* at III-C-46-47.

¹⁷⁵ *Id.* at III-C-47.

plant and an additional bad-ordered track in the Barr Yard for the Consumers coal cars it alleges were bad-ordered and delivered to Barr Yard.¹⁷⁶ Consumers rejects these additions.

Consumers' and CSXT's own RTC models both indicate there is no need for the additional siding near the plant. Indeed, in Part III-B, Consumers demonstrated that even though CSXT put this additional track in its Reply RTC Model, the trains did not use it. Moreover, Consumers has demonstrated through its Opening and Rebuttal RTC Model runs that Consumers' trains can operate efficiently between Porter and West Olive using the two sidings that Consumers provided on Opening and Rebuttal. Thus, there is no need for the additional siding.

CSXT also proposes to install air supply facilities for its additional sidings and possibly other sidings.¹⁷⁷ Air is not required. Consumers is not including the additional siding. Moreover, the other two sidings between Porter and West Olive specified by Consumers, and accepted by CSXT, do not block any public grade crossings. Thus, there is no need for the installation of air, especially since, unlike CSXT in the real-world, Consumers' operating plan does not call for the removal of the road locomotives when stopping a train on a siding (a practice observed by Mr. Orrison and Mr. Holmstrom during the inspection trip of the territory in July 2015). Mr. Orrison also determined that the installation of air by

¹⁷⁶ *Id.*

¹⁷⁷ *Id.* at III-C-48.

CSXT on certain real-world sidings between Porter and West Olive demonstrates clear and correctable inefficiencies in CSXT's operation – these facilities were apparently added after Mr. Orrison's tenure as General Manager of the territory. Mr. Orrison also observes that coal train car brakes are automatically in a “brake is on” mode when there is no air on the train. CSXT has installed air at a siding to keep the “brakes pumped off” leaving a charged train, which can be a danger to the public if someone “bottles the air” and releases the hand brakes. The result is a run-away trains and potential vehicle collision or derailment.

c. Trains and Equipment

i. Train Sizes

CSXT accepts Consumers' Opening approach to train sizes, except CSXT argues again for a slight modification to train sizes to its alleged inclusion of bad-ordered Consumers coal cars on certain West Olive-bound loaded trains. As explained above, CSXT's changes are unsupported and its alleged fix (*i.e.*, rerouting Consumers' trains through Barr Yard rather than the placing the cars on a Consumers train already moving through Barr Yard) is illogical.¹⁷⁸ Thus, Consumers has made no adjustment to its Rebuttal train sizes.

CSXT also mentions in passing its adjustments to growth trains due to its incorrect interpretation of CSXT's ISAs with other carriers. As explained above, CSXT's growth train adjustments are flawed, its interpretation of the ISAs is incorrect, and CSXT's rhetoric belies the fact that it only made adjustments to

¹⁷⁸ See CSXT Reply e-workpaper “CERR CSXT Reply - Consumers.zip.”

two train symbols.¹⁷⁹ Except as described above, Consumers has maintained its Opening train sizes and growth trains.

ii. Locomotives

(a) Road Locomotives

On Opening, Consumers determined that the CERR requires a total of 12 locomotives to transport its trains moving in the first year of operations, including spares.¹⁸⁰ In addition, all of the CERR's interline trains move in run-through service. This means that the locomotives generally are not removed from a train by either railroad at the interchange point, but stay with the train. Run-through power is used routinely by all Class I railroads (including CSXT) for interline unit and other trainload movements. Run-through power is a regular feature of SAC cases. *See, e.g., Xcel I* at 24.

As Consumers explained on Opening, under the run-through concept, the number of locomotives that each railroad provides for a particular joint movement is allocated on the basis of the amount of time the locomotives spend on each railroad as a percentage of total movement time, adjusted for any differences in locomotive horsepower (*i.e.*, horsepower hours). Each railroad provides the required number of locomotives, which are put into a pool for the specific movements in question. The CERR's road locomotive requirements take

¹⁷⁹ *See* CSXT Reply e-workpaper "Peak Period Trains.xlsx," tab "Ref_MaxSize," cell F4 and range F327:H329.

¹⁸⁰ *See* e-workpaper "CERR Operating Statistics Open.xlsx," tab "Summary," cell K41.

into account the need to equalize the locomotive power used in run-through service for interline trains, and an appropriate spare margin and peaking factor were applied as well.

In Consumers' RTC model, all CERR trains have two locomotives. If trains received by the CERR in interchange have additional locomotives, the configuration is not changed when the trains enter the CERR system. To the extent such trains contain more than two locomotives, the horsepower equivalent in ES44-AC locomotives is assumed since CSXT's train movement records do not show the locomotive types that were actually on the Base Year trains. However, all locomotives over and above two are isolated with throttles in the idle position while on the CERR since no more than two locomotives are needed to move most of the CERR's trains.

CSXT accepts Consumers' approach to run-through locomotives. However, CSXT erroneously argues that Consumers must also incur the costs associated with extra units that are not needed or used on the CERR, which are included on trains delivered by the CERR's interchange partners.¹⁸¹ In other words, CSXT accepts that these units are not needed and can be idled, but argues that the CERR must still pay for them. Consumers rejects this approach.

The CERR does not need these locomotives, and could remove them from the trains when received in interchange, but this would be pointlessly

¹⁸¹ CSXT Reply at III-C-50-52.

inefficient. Moreover, CSXT ignores that the interchange partner could also remove these locomotives if they were vital to maintaining locomotive balance or for other operational needs. Moreover, the extra locomotives are often on such trains for a reason that has nothing to do with the requirements of operating the train over the CERR segments (*e.g.*, to address potential imbalances in train movements). Thus, the CERR may be aiding the locomotive needs of its interchange partners, but it is not charging for this service. In other words, the interchange partners have no expectation of compensation; it is inconsistent with the actual requirements to move these trains, for which the CERR should not be forced to incur such costs; and since the records provide no data as to locomotive type, it is not practical to calculate the particular time-related costs for such locomotives. Thus, on Rebuttal, Consumers has not included these additional costs.

The count of road locomotives for the peak year includes a spare margin and a peaking factor, consistent with prior STB decisions (*e.g.*, *Sunbelt* at 35). The spare margin and peaking factor for the ES44-AC locomotives were calculated as described below.

(b) Yard and Helper Locomotives

On Opening, Consumers included one SD40 locomotive to handle the limited work required in the Barr Yard and to assist with certain work trains from time-to-time. CSXT adds a second SD40 yard locomotives arguing that the single locomotive cannot: (i) switch out bad-ordered cars; (ii) transfer cars to the

car shop; (iii) perform occasional switching in the yard; and (iv) power a work train from time to time.¹⁸² In CSXT's view, the CERR's locomotive would need a companion because it might break down; it cannot handle all of this work; and another locomotive would surely be needed to switch the alleged Consumers bad-ordered cars into Consumers' trains.¹⁸³ CSXT's additional SD40 for the Barr Yard is unnecessary.

CSXT's witnesses plainly do not understand how yard operations, as posited by the CERR, will work. For example, in many cases it is easier and more efficient to use road locomotives to switch out bad-ordered cars. The yard locomotive can certainly assist in this function, but it is not vital. The yard locomotive's principal work is moving those bad-ordered cars to and from the car shop. Moreover, there is no general switching work in Barr Yard, and Consumers has rejected the addition of such work for the alleged bad-ordered Consumers cars. Mr. Orrison also points out that CSXT's witnesses, due to their lack of on-the-ground experience, may not be aware that 75-80% of all bad-ordered cars can be repaired in-train and without the need for movement to a car shop. Moreover, even if the locomotive were unavailable for a day or two, the CERR would not grind to a halt because car repairs are generally not instantaneous and it may be some time before any given car is returned to a train. CSXT also ignores that the SD40 is located in a yard with a locomotive repair shop. Thus, general running

¹⁸² *Id.* at III-C-52-54.

¹⁸³ *Id.*

repairs are easily accomplished on-site. On the off chance a locomotive would need to be taken off-site, all of the major shops have units that can be used on a temporary basis. Thus, Consumers has not added an additional SD40 for the Barr Yard.

CSXT also adds two additional SD40 locomotives as helper locomotives to aid the Consumers trains up the grade at Saugatuck Hill near the Campbell plant.¹⁸⁴ As explained below, these units can be handled as run-through locomotives or dedicated locomotive. In either case, the CERR essentially needs dedicated units. Therefore, Consumers has added two dedicated units.

CSXT also drops a footnote in this section where it quietly proclaims the need for a wildly expensive and outdated turntable in the Barr Yard.¹⁸⁵ CSXT's argument is muddled and largely incomprehensible, but it appears that CSXT is arguing that Consumers' alleged unusual traffic selection process put it in a position where it will have little or no notice of when trains will arrive in Barr Yard for interchange, which as explained in above is nonsense, and that somehow having a turntable will make it faster to turn yard locomotives thereby reducing interruptions to mainline operations. CSXT's arguments are irrational.

First, the CERR will know what trains it is handling since it has regular insight to such trains, just as the other carriers do in Chicago. Thus, CSXT's argument on this point is a smokescreen. Second, the CERR already has

¹⁸⁴ *Id.* at III-C-54.

¹⁸⁵ *Id.* at III-C-54 n.97.

a wye track to make such turns if needed, and the turntable is, therefore, unnecessary. Third, no freight railroad installs turntables today. In Mr. Orrison's experience, the last time CSXT installed a turntable was at Clifton Forge in the 1990's, and that was only because it was not possible to construct a feasible wye track. Moreover, throughout the 1980's and 1990's, CSXT retired or removed most of its turntables in favor of wye tracks. For these reasons, Consumers has not added a turntable on Rebuttal.

iii. Spare Margin

On Opening, Consumers calculated a spare margin of { } for ES44AC locomotives and { } for SD40 locomotives. These figures were derived from locomotive utilization data provided by CSXT in discovery.¹⁸⁶ The spare margin calculations in Opening are based on a three-year average by locomotive type of Out-of-Service time divided by the sum of Available time, Out-of-Service time, Stored time and Unknown time. In Reply, CSXT claimed that Consumers' calculations for spare margins included the following three (3) flaws: (1) Consumers included Out-of-Service time in the total locomotive time used as the denominator of the calculation; (2) Consumers included Unknown time in the total locomotive-time denominator; and (3) Consumers failed to include Fallout and Repair time.¹⁸⁷

¹⁸⁶ See Consumers Opening e-workpaper "Locomotive Utilization_Opening.xlsx," which is based on CSXT discovery document "Locomotive Utilization.xlsx."

¹⁸⁷ CSXT Reply at III-D-20.

In its Reply workpapers, CSXT used Fallout and Repair times in the numerator of the spare margin calculation instead of using Out-of-Service time, which Consumers used in Opening. After an examination of CSXT's Reply evidence, Consumers agrees to exclude Out-of-Service time and Unknown time from the denominator of the spare margin calculations. However, CSXT's claim that Consumers should include Fallout and Repair time in the numerator of the spare margin calculation instead of Out-of-Service time is incorrect. Fallout and Repair times have been identified by CSXT as "Specific Time Loss Breakouts" and are not part of CSXT's definition of Total Known time. CSXT defines Total Known time as the sum of Available time, Out-of-Service time, Offline time and Stored time.¹⁸⁸ Also, CSXT defined Fallout time as:

Time spent from locomotive failure until it is "shopped" at a repair location. It will typically overlap - to some degree - with Out of Service (shop) time. Therefore it will overlap with both Available Time and Out of Service Time.¹⁸⁹

CSXT defined Repair time as:

Time spent from "shopping" until assigned to next train. It will typically overlap - to some degree - with Out of Service (shop) time. Therefore it will overlap with both Available Time and Out of Service Time.¹⁹⁰

¹⁸⁸ See CSXT discovery document "Locomotive Utilization.xlsx," tab "Data," columns E through I (included as a Rebuttal e-workpaper).

¹⁸⁹ See CSXT discovery document "Locomotive Utilization.xlsx," tab "Data Dictionary," cell B15 (included as a Rebuttal e-workpaper).

¹⁹⁰ See CSXT discovery document "Locomotive Utilization.xlsx," tab "Data Dictionary," cell B17 (included as a Rebuttal e-workpaper).

Based on CSXT’s own definitions, both Fallout time and Repair time overlap Available time and Out-of-Service time, and as a result, should not be included in the spare margin calculation in place of Out-of-Service time. CSXT’s use of Fallout and Repair time in the numerator of the spare margin calculation results in some Available time being included in what should be “unavailable” time. Out-of-Service time is the correct way to reflect unavailable time in the spare margin calculation.

On Rebuttal, with the modification noted above, Consumers calculates spare margins by dividing Out-of-Service time by the sum of Available time and Stored time. The resulting calculation produces spare margins of { } for ES44AC locomotives and { } for SD40 locomotives.¹⁹¹

iv. Peaking Factor

In its Reply, CSXT claims that Consumers incorrectly based the calculation of its peaking factor on a 9-day peak period and not a 7-day peak week as has been done in previous cases.¹⁹² Consumers agrees that use of a 7-day peak week is the correct methodology for calculating the peaking factor. As a result, on Rebuttal Consumers calculates the peaking factor by dividing the daily average locomotives for the peak week by the daily average locomotives for the peak year.

¹⁹¹ See Consumers Rebuttal e-workpaper “Locomotive Utilization_Rebuttal.xlsx,” tab “Sheet1.”

¹⁹² See CSXT Reply at III-C-55.

The result, which includes Consumers' revisions to peak period trains described above, is a peaking factor of 1.226.¹⁹³

d. Railcars

CSXT accepts Consumers' approach to the development data concerning car ownership and car types.¹⁹⁴ CSXT restates Consumers' car-related counts and figures to reflect its RTC Model analysis. Again, CSXT suggests that Consumers' RTC Model is fatally flawed and should be rejected in favor of CSXT's supposedly "correct" parameters.¹⁹⁵ Consumers has rejected most of CSXT's modifications to the RTC Model, for the reasons explained herein, and it has utilized its Rebuttal RTC Model statistics to develop car counts and costs as described in Part III-D-2.

2. Service Efficiency and Capacity

As explained on Opening, the CERR is designed to meet the transportation needs of the traffic that it is handling. *Sunbelt* at 12. Specifically, the CERR provides unit train, intermodal, and merchandise service using the same train configurations and routes that the CSXT uses in the real world. As the Board stated in *Sunbelt* at 12:

[A SARR's] operating plan must be able to meet the transportation needs of the traffic to be served, [but] it need not match the existing practices of

¹⁹³ See Consumers Rebuttal e-workpaper "CERR BASE YEAR TRAIN LIST DEVELOPMENT vF Rebuttal.xlsx," tab "Cerr Trn Stats," cell BW2.

¹⁹⁴ CSXT Reply at III-C-56.

¹⁹⁵ *Id.* at III-C-56-57.

the defendant railroad, as the objective of the SAC test is to determine what it would cost to provide the service with optimal efficiency. The assumptions used in the SAC analysis, including the operating plan, nonetheless must be realistic, *i.e.*, consistent with the underlying realities of real-world transportation.

Despite CSXT's many protestations, CSXT has not, in fact, made radical changes to Consumers' Opening RTC evidence as evidenced by CSXT's own RTC results. Likewise, CSXT's specious suggestions that the transit times for CERR trains are unrealistic is again belied by CSXT's own RTC results. As such, Consumers has largely retained its Opening RTC model. The minor modifications discussed herein are largely inconsequential and vary little from Consumers' Opening evidence.

Consumers notes that CSXT did not provide specific responses to Consumers' Opening evidence under parts of this subsection, including the following subsections:

- a. **Procedure Used to Determine the CERR's Configuration and Capacity**
- b. **Developing Base Year and Peak Week Train Data**
 - i. **Consumers' Reasonable Use of CSXT Provided Traffic Data to Develop Train Lists and Operating Evidence**
 - (a) **Train List Overview**
 - (b) **Analysis of Combined Waybill, Car Shipment and Car Event Data**
 - (c) **Analysis of Train Sheet Data**

CSXT did not specifically take issue with or address this section of Consumers Opening evidence. However, CSXT did argue that Consumers should have used this Train Sheet data to divine additional foreign road delays during the peak week. As explained above, CSXT's arguments on this point are without merit.

- (d) **Compiled Train List**
- (e) **Final Adjustments**
 - (i) **On-SARR and Off-SARR Junctions**
 - (ii) **Consist Data**
 - (iii) **Loading and Unloading (Consumers Eastern Coal Trains)**
 - (iv) **Trains Carrying Consumers' Issue Traffic**
- c. **Peak Week Train List Final Development Process**

CSXT did not specifically take issue with or address this section of Consumers' Opening evidence. However, CSXT did argue that Consumers'

Opening growth train development violated ISA terms and was unrealistic in its assumptions that train length would grow over time. As discussed in the Introduction above, CSXT's arguments are inconsistent with its own operations; inconsistent with CSXT's plan for future operations; inconsistent with the purpose of the ISA; and overblown because CSXT only made adjustments to train lengths for trains covered by two train symbols.

CSXT's silence concerning the above headings, which covered 28 pages of Consumers' Opening evidence, is telling. That evidence described Consumers' process for analyzing, selecting and perfecting a train list for analysis in the RTC Model, which is a daunting task. The fact that CSXT has almost no criticisms on the myriad of steps of the analyses it took to develop the train list, including all of the operating plan parameters that underlie the development, indicates, once again, that Consumers' operating witnesses got it right.

Finally, Consumers notes that as a result of the updates to the traffic volumes, particularly the use of actual 2015 volumes rather projected 2015 volumes, the peak period train list was modified slightly. Specifically, the 2015 volume update rippled through all subsequent years of the traffic forecast model, resulting in updated peak year volumes.¹⁹⁶ This resulted in changes to the volume

¹⁹⁶ See Consumers Rebuttal e-workpaper "Train Forecast table_09202015 v7 with TRN Idx_Rebuttal.xlsx," tab "Growth Calc," columns A-N.

indices Consumers used to develop CERR peak-year train requirements.¹⁹⁷

Applying the updated indices to the base year train list¹⁹⁸ resulted in the removal of four (4) peak period growth trains,¹⁹⁹ and it resulted in slight modifications to the peak period consists for 123 of the remaining trains.²⁰⁰

d. Operating Inputs to the RTC Model²⁰¹

On Opening, the following elements of the CERR’s operating plan for the CERR were inputted into the RTC Model for purposes of simulating the CERR’s peak-period operations, ensuring the sufficiency of the infrastructure, and developing train transit times:

REBUTTAL TABLE III-C-6 RTC MODEL INPUTS AND DESCRIPTIONS	
RTC Model Input	Description
Road Locomotives	Each train operates with two ES44-AC locomotives while on the CERR unless operational requirements differ as explained below.
Train Weight and Size	The forecasted actual size and trailing weight for each train carrying traffic in

¹⁹⁷ See Consumers Rebuttal e-workpaper “Train Forecast table_09202015 v7 with TRN Idx_Rebuttal.xlsx,” tab “Sheet1,” column H.

¹⁹⁸ See Consumers Rebuttal e-workpaper “CERR BASE YEAR TRAIN LIST DEVELOPMENT vF Rebuttal.xlsx,” tab “Cerr Trn Stats,” column BS. See also tab “Rebuttal Notes,” range B8:C16.

¹⁹⁹ See Consumers Rebuttal e-workpaper “CERR BASE YEAR TRAIN LIST DEVELOPMENT vF Rebuttal.xlsx,” tab “Cerr Peak Trains,” cell CW4.

²⁰⁰ See Consumers Rebuttal e-workpaper “CERR BASE YEAR TRAIN LIST DEVELOPMENT vF Rebuttal.xlsx,” tab “Cerr Peak Trains,” cell CU4 and columns CQ-CS.

²⁰¹ CSXT change the designation of this heading from “d” to a higher level “3”. Consumers has retained its Opening organization.

	the CERR traffic group in the peak week is used. Growth trains replicate trains that moved in the base year with consist adjustments to accommodate growth.
Maximum Train Speeds	The maximum track speed on the CERR is 40 MPH.
Dwell time at on-SARR interchange points	Each train interchanged on-SARR will dwell for 30 minutes.
Dwell time for 1,000 and 1,500 mile train inspections and fueling.	Each train requiring such an inspection, as explained below, is allotted 1:45 for such service.
Helper service	30 minutes is allotted for connecting the helper locomotives. No time was allotted for disconnecting the helpers because CERR has assumed it will employ "Helper Link" technology so helpers can be cutoff "on-the-fly."
Time to depart 59 th St. Intermodal facility.	30 minutes are allotted for the train crew to perform a set and release of the brakes and depart the terminal.
Dwell time at the Campbell plant	Average historical dwell time is 47 hours.
Time Allowed for Traversing Trackage Rights Segments	{ } from 75 th St. (BRC) to Porter via the NS; { } from Porter to 75 th St. (BRC) via the NS; { } from Curtis to Porter via the NS; { } from Porter to Curtis via the NS.
Time for foreign road delays	Crossing diamond delays were input in the RTC Model as described below.
Time for random outages	Random outages were input into the RTC Model as described below.
Crew change times	There are no crew changes required on the CERR.
Track inspection and program maintenance windows	As explained below, no separate time has been allotted for these activities.

As discussed below, CSXT has largely accepted the RTC inputs that Consumers used on Opening (notwithstanding foreign road delays, which are addressed in detail above). However, Consumers has accepted several modifications as discussed below.

i. Road Locomotive Consists

CSXT accepts Consumers' use of two ES44AC locomotives to move the CERR trains.²⁰² CSXT also accepts that additional locomotive received in interchange would be idled while operating on the CERR.²⁰³

ii. Train Size and Weight

CSXT accepts Consumers' Opening train size and weights for historical trains being replicated.²⁰⁴ As discussed in detail above, CSXT does not agree with Consumers' assumptions concerning growth trains. For the reasons Consumers details above, CSXT's arguments concerning growth trains are without merit. Consumers continues to use the same approach to growth trains on Rebuttal.

iii. Maximum Train Speeds

CSXT accepts Consumers' Opening maximum track speed of 40 MPH.²⁰⁵ However, CSXT again complains that Consumers' RTC results are unrealistic and that CSXT's more accurately represent conditions in Chicago.

²⁰² CSXT Reply at III-C-58.

²⁰³ *Id.*

²⁰⁴ *Id.* at III-C-58-59.

²⁰⁵ *Id.* at III-C-59.

However, as already explained, the parties' RTC results are almost indistinguishable. This is true again in Rebuttal as shown in Table III-C-7 below.

iv. On-SARR Interchange Dwell Times

On Opening, Mr. Orrison and Mr. Holmstrom allotted 30 minutes of dwell time at each of the CERR's on-SARR interchange locations. CSXT accepts the 30-minute interchange time.²⁰⁶ However, CSXT argues that Consumers ignored certain foreign line delays transiting to BNSF's Corwith and Cicero Yards, as well as the UP connection at Ogden Junction. As explained above in the Introduction, CSXT's argument concerning these alleged foreign line delays is unsupported. Indeed, these alleged foreign line delays are simply enroute delays that occurred, without explanation and without any suggestion that they were a foreign line delay, in the general vicinity of the BNSF and UP connection points. As a result, Consumers has made no changes to its Rebuttal RTC Model to accommodate these unproven alleged foreign line delays.

v. Dwell Times for 1,000 or 1,500 Mile Inspections

On Opening, Mr. Orrison and Mr. Holmstrom allotted 1 hour and 45 minutes for 1,000 and 1,500 mile inspections, as well as fueling, that are performed on certain trains at Barr Yard. CSXT accepts Consumers' approach.²⁰⁷

²⁰⁶ *Id.* at III-C-60.

²⁰⁷ *Id.* at III-C-61-62.

vi. Helper Service

As described on Opening, helper service is provided in the loaded direction for the issue traffic on Saugatuck Hill, which is located on the Grand Rapids Subdivision starting at MP CG 37.4 and continuing to MP 32.3. Specifically, Mr. Orrison and Mr. Holmstrom allotted 30 minutes for connecting the helper locomotives, and once the hill is crested, the helpers are disconnected using a standard Helper Engine Automated device while moving, which is the procedure used in the RTC Model. The helpers then return light back to the helper pocket track. CSXT accepted Consumers' helper procedure.²⁰⁸

CSXT, however, repeats its argument that the CERR should lease two dedicated SD40 locomotives to act as helpers.²⁰⁹ As explained above, Consumers accepted the dedicated helpers versus providing such helpers through a run-through lease agreement.

vii. Time to Depart CSXIT's 59th St. Intermodal Facility

On Opening, Consumers did not model the 59th Street Intermodal facility in the RTC Model because the facility is separately operated by CSXIT. However, Mr. Orrison and Mr. Holmstrom did allot 30 minutes of crew time for the purpose of originating these trains. Thus, the crews are already on the clock when the train enters the RTC Model thereby ensuring that the proper crew

²⁰⁸ *Id.* at III-C-62.

²⁰⁹ *Id.*

statistics are collected. As explained on Opening, this approach is very conservative because, in Mr. Holmstrom's experience, the road crews typically do not attach the power for such trains. Instead, this is handled by a contractor who also performs the brake test. The road crew members usually just board the train, perform a set and release the brakes and then depart.

On Reply, CSXT agrees with the 30 minutes of crew time allocated by Consumers for both originating and terminating a train at CSXIT's 59th Street Intermodal facility. However, CSXT points out that Consumers only counted the crew time, but it did not count the additional locomotive and cars hours associated with the 30 minute "interchange" time.²¹⁰

Consumers agrees that this time should have been included, but inadvertently omitted this time when developing its operating statistics. To correct this omission, Consumers has included 30 minutes of train dwell time at CSXIT's 59th Street Intermodal terminal, in addition to the 30 minutes of crew time.

viii. Dwell Time at Campbell

On Opening, Consumers encountered some difficulties linking inbound and outbound Consumers coal trains. Thus, Consumers opted to use a dwell time of just over 50 hours – after examining the records kept in the ordinary course of business by Consumers – to model the inbound and outbound operations. CSXT takes issue with this approach.

²¹⁰ *Id.* at III-C-63.

First, CSXT complains that, despite the average dwell time applied to the trains, Consumers' trains simply disappear in the model and that it would take at least 30 minutes to spot a train or pull a train.²¹¹ Second, CSXT complains that Consumers did not link the trains, which CSXT claims it has done.²¹²

Consumers linked the same four pairs of loaded/empty trains (as identified by train symbol) in its Rebuttal RTC model as CSXT entered in its Reply RTC model.²¹³ Consumers entered the same minimum dwell times at the Campbell Plant and delta days as entered by CSXT. This left six inbound loaded trains and one outbound empty train in Consumers' train list which were not linked.

As explained in Part III-D-1, when calculating locomotive requirements, CSXT did not rely on the RTC Model for dwell time at the Consumers plant. Instead, it used a figure of 19 hours. Consumers accepts this modification as explained in the same section.

ix. Time Allowed for Traversing Trackage Rights Segments

As explained on Opening, a majority of the issue traffic and some additional trains use the BRC facility between 75th St. and Rock Island Jct. and NS

²¹¹ *Id.* at III-C-65-66.

²¹² *Id.* at III-C-66.

²¹³ Consumers Rebuttal WP, "Leaders Seeds 10-14 Crosswalk – w RTC Symbol Lookup – Rebuttal Update 2016 04-21 WORK.xlsx, tab "Leaders & Seeds 10-14 CROSS", Rows 21, 22, 24, 25, 30,31, 207 and 208. Note that the linked pairs of trains appear twice. Once with the loaded train and once with the empty train.

trackage rights from Rock Island to Porter (the connection to the Grand Rapids Subdivision). Consumers' RTC Modeling experts developed average transit times for the peak week trains in the RTC Model by reviewing similar data for the peak week in the base year.²¹⁴ CSXT accepts the transit times for CERR traversing these segments.²¹⁵

x. Time for Foreign Road Delays

CSXT accepts the 75th Street Interlocking curfews, to accommodate Metra trains that Consumers' operating witnesses designated and which were applied in the RTC Model by Consumers.²¹⁶ CSXT also accepted Consumers' methodology for handling interference from Metra train operations.²¹⁷

As discussed in extensive detail above, CSXT does not agree with Consumers' development of foreign line delays. As such, CSXT's RTC Model includes an additional 77 foreign line delays. As explained above, CSXT's criticism of foreign line delays is without merit, and Consumers has not added these delays to Rebuttal RTC Model.

²¹⁴ See e-workpaper "Peak Period Base Year Train List With TrainsAllEvents LE.xlsx," tab "Train Transit Summary."

²¹⁵ CSXT Reply at III-C-67.

²¹⁶ *Id.* at III-C-68.

²¹⁷ *Id.*

xi. Time for Random Outages

CSXT accepts Consumers' evidence concerning random outages and their application to the RTC Model.²¹⁸

xii. Crew-Change Locations/Times

As explained on Opening, the CERR has no on-SARR crew change points. The trains that are handled by CERR are all moved from their on-SARR to off-SARR point using one crew.

CSXT does not take issue with the crew districts. Instead, CSXT wrongly suggests the assumptions that Consumers is using are not credible because any number of events could occur that would require a "crew change."²¹⁹ CSXT is mixing concepts here.

None of the CERR trains requires a scheduled crew change at a scheduled point. This is completely different from the "recrew" argument that CSXT is making. In other words, if the CERR were taking a train 1,000 miles, the CERR operating plan would include predetermined crew change points. CSXT, on the other hand, is talking about a crew going dead under the hours of service law and having to be replaced enroute (*i.e.*, a recrew). Thus, the parties are talking past each other.

Notwithstanding the strange nomenclature, Consumers flatly disagrees with CSXT's absurd proposal, on Reply, that 16% of the Consumers

²¹⁸ *Id.* at III-C-69.

²¹⁹ *Id.*

crews, operating in the Chicago terminal (not all the way to Campbell), need to be relieved.²²⁰ Specifically, CSXT complains that Consumers' RTC workpapers show that nine percent of the CERR's trains through Chicago take more than four hours from departure to arrival and that four percent have run times exceeding four hours.²²¹ Thus, by CSXT's reckoning, 25% of the crews will be into their fifth hour when they arrive at their first destination.²²² CSXT then makes the unexplained leap that trains moving the other direction would not be available or that many would need to be repositioned.²²³

CSXT offers no proof of these claims. CSXT's assumptions are also fatally flawed. As demonstrated in the average transit times shown in Rebuttal Table III-C-7, many of the transits through the area are not even two hours long. So if a train crew were on a five-hour move from 71st Street to Curtis, that same crew could take a shorter reverse trip to Blue Island or Dolton. Any dispatchers or crew callers worth their salt could easily avoid the need for recrews. Moreover, because most of these moves are of short duration, the dispatcher and crew caller will already have insight into how trains are moving across the system, thereby reducing the likelihood of a recrew.

²²⁰ *Id.* at III-C-70.

²²¹ *Id.*

²²² *Id.*

²²³ *Id.*

Consumers also demonstrated on Opening, and CSXT does not contest this point on Reply, that there is generally a balance in directional running from the various interchange points.²²⁴ Thus, the crews are statistical likely to pick up reverse runs without incident. Moreover, CSXT ignores that one crew may move make several moves in a day, not just two moves, but Consumers necessarily had to use a simplifying device in determining the number of crews. Indeed, it is likely that Consumers' Opening calculation of crew requirements was overstated. In addition to the above, Consumers further addresses the recrew issue in Part III-D-3-a-ii. Rebuttal Table III-D-2, in particular, demonstrates the feasibility of the CERR crews making at least two moves per day.

On Rebuttal, Consumers did find that two West Olive-bound trains required recrew because the change in Campbell plant operations (*i.e.*, linking the empties and adding several additional empties) necessitated a wait on a siding for two trains, which thereby required a recrew due to the delay while waiting for a passing train that was now moving at a time that was different from that used on Opening.

xiii. Track Inspections and Maintenance Windows

CSXT agrees with Consumers on how track inspections would be conducted.²²⁵ Likewise, CSXT agrees that no maintenance windows are required during the peak period.²²⁶

²²⁴ See Consumers Opening Table III-C-4.

²²⁵ CSXT Reply at III-C-72.

e. **Results of the RTC Model Simulation**

As noted above, CSXT repeatedly attempts to convince the Board that its RTC Model is vastly superior to Consumers' Opening RTC Model and that somehow there are major differences between the parties when the transit times are compared. Further CSXT continues to insist in this section that, since so many delays were ignored by both parties, if they had been included, the CERR's transit times would be almost identical to the historical CSXT transit times. As explained multiple times by Consumers, CSXT's complaints are simply not valid. The significant difference in trains being handled by the CERR; the types of trains being handled; and the simplified operations account for the major differences between CSXT's real-world data and those of the Consumers' and CSXT's RTC Models. Even with the extra delays added by CSXT, the differences are negligible. To be sure, CSXT suggests that the differences are as great as 34% between Reply and Opening, but that one example covers Dolton to 59th St. where CSXT added 30 minutes of dwell, and even then the difference was only 29 minutes. In other cases, CSXT's Reply transit times were *shorter* than Consumers' transit times.

On Rebuttal, Consumers' transit times have increased slightly or largely stayed the same as on Opening – except for those moving to and from CSXIT's 59th Street Intermodal facility, where 30 minutes of dwell time was

²²⁶ *Id.*

added. As shown in Rebuttal Table III-C-7, the CERR's transit times for crossover traffic remain superior to the historical CSXT times.

REBUTTAL TABLE III-C-7 COMPARISON OF TRAIN TRANSIT TIMES					
On-SARR Station	Off-SARR Station	Historical Peak Period Trains (HH:MM:SS)	OPENING RTC (HH:MM:SS)	CSXT REPLY RTC (HH:MM:SS)	CERR REBUTTAL RTC (HH:MM:SS)
22ND ST-71ST ST, IL	CURTIS, IN	{ }	2:56:20	3:22:00	3:05:35
CALUMET PARK CP, IL	CURTIS, IN	{ }	0:57:48		0:57:45
CHICAGO 59TH ST, IL	CURTIS, IN	{ }	1:55:54	2:17:00	2:26:46
CHICAGO 59TH ST, IL	DOLTON, IL	{ }	1:34:04	1:46:00	2:04:34
CHICAGO - BARR, IL	CURTIS, IN	{ }	1:42:14	1:48:00	1:41:54
CURTIS, IN	22ND ST, IL	{ }	3:17:26	3:19:00	3:21:16
CURTIS, IN	BRIGHTON PARK		2:38:45	2:38:00	2:51:41
CURTIS, IN	OGDEN JCT.		3:48:54	4:02:00	4:03:57
CURTIS, IN	BLUE ISL IHB CONN, IL	{ }	3:06:00	2:50:00	3:05:43
CURTIS, IN	CALUMET PARK CP, IL	{ }	0:59:55		0:59:40
CURTIS, IN	CHICAGO 59TH ST, IL	{ }	2:14:05	2:52:00	2:46:00
CURTIS, IN	CHICAGO - BARR, IL	{ }	1:45:04		1:45:07
CURTIS, IN	DOLTON, IL	{ }	1:30:55	1:36:00	1:30:29
DOLTON, IL (South)	OGDEN JCT.	{ }	3:34:39	3:26:00	3:38:24
DOLTON, IL (South)	CHICAGO 59TH ST, IL	{ }	1:22:35	1:51:00	2:01:07
DOLTON, IL (East)	CURTIS, IN	{ }	1:36:29	1:34:00	1:36:28
DOLTON, IL (South)	CURTIS, IN		1:49:47	1:41:00	1:48:31

Thus, the CERR has met the operational needs of its customers.

Moreover, Consumers has demonstrated that it has presented the best evidence of record and its operating plan, resulting RTC Model, operating statistics and operating costs should be accepted.

3. Other

a. Crew Districts

CSXT accepts the CERR's crew districts as proposed by Consumers on Opening.²²⁷ CSXT, however, argues again that the CERR should incur additional recrew costs.²²⁸ As explained above, CSXT recrew percentages are not credible and lack any credible basis or proof. Consumers has, therefore, rejected CSXT's additive.

b. Other Crew Assignments

Consumers' operating witnesses assigned a switching crew located at Barr Yard. The crew aids in the setting out of bad-order cars, the movement of such cars to the car shop if necessary, the inspection of trains and cars as necessary, and the movement of locomotives to and from the locomotive shop as needed. One person is on duty 24 hours a day for such services (12 hour shifts, 2 shifts per day). Each shift is 12 hours. In Part III-D, CSXT added an additional 24/7 crew member that would be available at Barr Yard.²²⁹ For the reasons explained in Part III-D, Consumers has rejected this additional crew member.

CSXT accepts Consumers' helper crewing plan.²³⁰

²²⁷ *Id.* at III-C-77.

²²⁸ *Id.* at III-C-78.

²²⁹ *Id.* at III-D-44.

²³⁰ *Id.* at III-C-79.

c. 1,000/1,500 Mile Inspections

CSXT accepts Consumers' plan for 1,000 and 1,500-mile inspections at West Olive and the Barr Yard.²³¹

d. Rerouted Traffic

The CERR internally rerouted certain intermodal trains originating at the 59th Street Intermodal facility over the CERR rather via the BRC and UP's Villa Grove Subdivision. CSXT accepts this reroute.²³²

e. Fueling of Locomotives

CSXT accepts Consumers' plan for fueling of locomotives at Barr Yard and West Olive.²³³

f. Train Control and Communications

CSXT accepts Consumers' plan for train control and communications in the territory, including the fact that PTC is not required on this system, except to the extent CERR will need certain PTC-enabled equipment when operating as run-through equipment on other railroads.²³⁴

g. Traffic Growth and Train Consists

As discussed at length above, the CERR's RTC Model incorporates growth traffic into the peak period train list by adding cars to existing consists (up to the maximum train length for that type) or by adding growth trains as necessary.

²³¹ *Id.*

²³² *Id.*

²³³ *Id.* at III-C-80.

²³⁴ *Id.*

CSXT disagrees with this approach. As explained above in the Introduction, CSXT's arguments are without merit. Consumers continues to use its Opening approach for growth trains and the addition of cars on trains.

h. Miscellaneous Aspects of the Operating Plan

CSXT had no response to this section.