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June 27, 2016

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Filed Electronically

Cynthia T. Brown, Chief
Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington, D.C. 20423-0001

ENTERED
Office of Proceedings
June 27, 2016
Part of
Public Record

Re: Docket No. NOR 42142, Consumers Energy
Company v. CSX Transportation, Inc.

Dear Ms. Brown:

On June 24, 2016, counsel for Consumers Energy Company (“Consumers”) was served with a “Motion to Strike” that apparently was filed on the same day by CSX Transportation, Inc. (“CSXT”), defendant in the referenced proceeding. CSXT’s Motion purports to challenge certain elements of Consumers’ Rebuttal Evidence in the referenced proceeding, which was filed on May 20, 2016.¹

The Board’s Rules of Practice (49 C.F.R. Part 1104.13) provide that a party may file “a reply or motion addressed to any pleading within 20 days after the pleading is filed with the Board...”. This rule specifically applies to motions to strike evidence submitted in a proceeding under the *Coal Rate Guidelines*. See, e.g. *AEP Texas North Co. v. The Burlington Northern and Santa Fe Railway Company*, STB Docket No. 41191 (STB served August 12, 2004). Under the Rule, any motion that CSXT sought to submit in response to Consumers’ Rebuttal Evidence was due on or before June 9, 2016.

¹ A routine *errata* filing was made by Consumers on June 3, 2016. None of the arguments included in CSXT’s Motion to Strike are directed at the *errata*.

Ms. Cynthia T. Brown

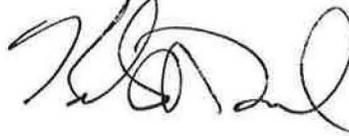
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CSXT did not seek to file its June 24 Motion to Strike out of time. Therefore, Consumers assumes that the Board will reject the Motion as out of compliance with 49 C.F.R. Part 1104.13, and not include it in the record of the referenced proceeding. Consumers respectfully requests confirmation of this understanding.

Thank you for your consideration in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kelvin J. Dowd', written in a cursive style.

Kelvin J. Dowd
An Attorney for Complainant
Consumers Energy Company

KJD:lad

cc: Eric V. Luoma, Esq. (via e-mail)
Counsel for Defendant (via e-mail and hand delivery)