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May 27, 2016

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By Hand Delivery

Cynthia T. Brown, Chief
Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
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ENTERED
Office of Proceedings
May 27, 2016
Part of
Public Record

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

Dear Ms. Brown:

On May 26, 2016, six days after Consumers Energy Company ("Consumers") filed its Rebuttal Evidence in this docket, Defendant CSX Transportation, Inc. ("CSXT") filed an "Errata" to the Reply Evidence that it had filed over two months ago (*i.e.*, on March 7, 2016). Through its filing, CSXT seeks to add a new footnote to Part III-D of its Reply, and to supply the Board with a copy of a superseded joint facility agreement referenced in the footnote. CSXT's Errata is untimely and improper, and the Board should reject its inclusion in the record.

CSXT's effort to file its Errata after the submission of Rebuttal Evidence prejudices Consumers by foreclosing any opportunity for Consumers to respond to the new workpaper. Significantly, the Board previously has explained that it looks "with disfavor upon the filing of errata that curtail the ability of parties to respond fully and adequately to the record within the time frames established [by the Board]." *Potomac Electric Power Co. v. CSX Transp., Inc.*, Docket No. 41989, slip op. at 7 (STB served Nov. 24, 1997) (rejecting CSXT's filing of errata after PEPCO had filed its Rebuttal evidence).

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CSXT's submission of its "missing" workpaper is particularly egregious in this instance because CSXT failed to identify or provide the joint facility agreement in discovery, despite Consumers' request for such agreements. Moreover, this is not a situation in which CSXT simply failed to submit an electronic copy of a workpaper it had cited on Reply. To the contrary, page III-D-155 n. 310 of CSXT's Reply fails even to mention the "missing" workpaper. CSXT's effort to rectify its multiple omissions should not be countenanced, especially not at this late date.

Sincerely,

A handwritten signature in cursive script that reads "Daniel M. Jaffe". The signature is written in black ink and is positioned above the printed name and title.

Daniel M. Jaffe
An Attorney for Complainant
Consumers Energy Company

cc: Counsel for Defendant CSX Transportation, Inc.