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ENTERED  
Office of Proceedings  
June 3, 2016  
Part of  
Public Record

Re: Docket No. 42142, Consumers Energy Company v.  
CSX Transportation, Inc.

Dear Ms. Brown:

Enclosed for filing in the above-referenced proceeding are the original and 25 copies of the Errata to Rebuttal Evidence Narrative of Complainant Consumers Energy Company. This filing includes corrected Public and Highly Confidential narrative pages as referenced in the Errata.

Kindly acknowledge receipt and filing of these materials by date-stamping the extra copy of this filing and returning it to our messenger.

Respectfully submitted,

Katherine F. Waring  
An Attorney for Complainant

Enclosure

cc: Counsel for Defendants per Certificate of Service

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**



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

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**ERRATA TO REBUTTAL EVIDENCE NARRATIVE  
OF COMPLAINANT CONSUMERS ENERGY COMPANY**

Complainant Consumers Energy Company (“Consumers”) submits the following Errata to its Rebuttal Evidence Narrative filed in this proceeding on May 20, 2016.

This Errata was prepared solely to correct inconsistencies between III-F summary tables and the e-workpapers, and to provide more precise e-workpaper references and citations. All of the pages and corrections are listed below.

- III-F-2      Rebuttal Table III-F-1 values were revised to be consistent with the formatting in Opening and on Reply, and totals were updated to reflect the values as reported in Consumers Rebuttal e-workpaper “III - F TOTAL Rebuttal.xlsx.”
  
- III-F-17     Corrections made to footnotes 31 and 32.
  
- III-F-21     *SunBelt* land acquisition cost value of \$823,100 listed in paragraph two (2) of text was corrected to \$8,233,100. Correct value was used for calculations and is listed in footnotes 54 and 55.

- III-F-61 Citation reference corrected for footnote 154, typographical errors corrected within footnotes 151 and 152.
- III-F-81 Page references corrected within footnotes 231-233.
- III-F-82 Page reference specified for footnote 238.
- III-F-97 IHB diamonds are rejected consistent with CERR operating plan, but the total number of diamonds accepted remains the same.
- III-F-104 Corrections made to footnotes 307 and 308.
- III-F-114 Rebuttal Table III-F-13 updated to correct the reported values of the headquarters building and the locomotive shop and office. The total building and facility costs remain unchanged. Corrections were also made to Rebuttal Table III-F-13, footnote 3.
- III-F-121 Corrections made to footnote 368.
- III-F-142 Corrections made to footnote 457.

Respectfully submitted,

CONSUMERS ENERGY COMPANY

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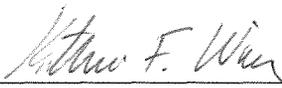
Dated: June 3, 2016

Attorneys & Practitioners

## CERTIFICATE OF SERVICE

I hereby certify that this 3<sup>rd</sup> day of June, 2016, I have caused copies of Consumers' Errata to Rebuttal Evidence Narrative, including corrected narrative pages to be served by hand on counsel for Defendant CSX Transportation, Inc. as follows:

G. Paul Moates, Esq.  
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\_\_\_\_\_  
Katherine F. Waring



**PUBLIC**

CSXT’s road property investment costs and accept those presented by Consumers on Rebuttal, as shown in Rebuttal Table III-F-1.

<b>REBUTTAL TABLE III-F-1</b>					
<b><u>CERR Road Property Investment Costs</u></b>					
(millions)					
<b>Item</b>	<b>Consumers Open<sup>1</sup></b>	<b>CSXT Reply<sup>2</sup></b>	<b>Consumers Rebuttal<sup>3</sup></b>	<b>Difference</b>	
1. Land	\$120.20	\$131.70	\$120.60	\$11.10	
2. Roadbed Preparation	\$30.30	\$82.20	\$36.80	\$45.40	
3. Track	\$186.80	\$252.00	\$209.20	\$42.80	
4. Tunnels	\$0.00	\$0.00	\$0.00	\$0.00	
5. Bridges	\$71.90	\$167.40	\$72.50	\$94.90	
6. Signals and Communications	\$33.80	\$46.50	\$42.00	\$4.50	
7. Buildings and Facilities	\$11.90	\$26.50	\$12.40	\$14.10	
8. Public Improvements	\$3.40	\$11.10	\$3.40	\$7.70	
9. Subtotal	\$458.20	\$717.30	\$496.80	\$220.50	
10. Mobilization	\$9.10	\$36.10	\$10.20	\$25.90	
11. Engineering	\$33.80	\$58.60	\$37.60	\$21.00	
12. Contingencies	\$38.10	\$68.00	\$42.40	\$25.60	
<b>13. Total Road Property Investment Costs</b>	<b>\$539.20</b>	<b>\$879.90</b>	<b>\$586.90</b>	<b>\$293.00</b>	

<sup>1</sup> Consumers Opening e-workpaper “III-F- TOTAL - 2015.xlsx”

<sup>2</sup> CSXT Reply e-workpaper “III-F- TOTAL - 2015\_Reply.xlsx”

<sup>3</sup> Consumers Rebuttal e-workpaper “III - F TOTAL Rebuttal.xlsx”

possible to determine where in the worksheet the mean price of the adjusted data was adjusted to fit the land segment. Consumers understands, at least in theory, how CSXT was making its adjustments; however, there are several references made within Mr. Rex's materials that when traced back, lead to hardcoded values.<sup>31</sup> This defect makes the analysis performed by Mr. Rex less than transparent, and in fact, transforms what should be a fairly straightforward statistical analysis with simple best-fit regressions being used in Excel into a black-box model. Therefore, while the underlying methods Mr. Rex uses theoretically were valid, the flawed execution of those methods makes them less than transparent and unreviewable, and as such, this CSXT analysis should be rejected by the Board.<sup>32</sup>

**iii. CSXT's Expert Failed to Perform an Adequate Review of the Comparable Sales Data and the Underlying Property of the CERR**

Mr. Smith makes no qualms that he did not highlight the "McMansions" or "one-offs" along the RoW because these are not representative of highest-and-best use.<sup>33</sup> However, Mr. Rex uses a more fine-grained approach,

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<sup>31</sup> For example, all of the following values within Mr. Rex's "CERR Land Valuation\_Reply.xlsx," were hardcoded: all cells in tab "UV Worksheet;" the "Conclusion" values in tab "UNITVALUES," column H; the per acre mean and median values in tab "UNITVALUES-report," columns F and G; and the mean, median, and conclusion values listed for 1/1/2013 in tab "UNITVALUES FULL – REPORT," columns P, Q, and R. *See* Consumers Rebuttal workpaper "CSXT Reply Evidence Procedural Violations Complete List.xlsx," tab "New GP Violations - Unsourced," rows 93-96.

<sup>32</sup> *See* Sunbelt at 98-99.

<sup>33</sup> Smith Rebuttal Report at 5.

does not reflect common sense. Much of the RoW passes through residential areas, particularly Chicago. It is evident that the cost of a house survey is more in the range of \$300 to \$800 rather than \$2,500. Similarly, the cost of a house appraisal is in the range of \$300 to \$400 rather than \$4,500. Thus, these two items alone would be \$600 to \$1,200 per residential parcel not the \$7,000 estimated by Mr. Rex. Additionally, in many comparable transactions, these settlement fees are split between buyer and seller, further magnifying the difference between Mr. Rex's costs and actual fees found in the market.

That aside, these costs are not on the same scale of acquisition costs previously allowed by the Board. In *Sunbelt*, the Board accepted NS's additional acquisition costs of \$8,233,100,<sup>51</sup> when the total acreage (excluding easements) was 6,936 acres,<sup>52</sup> and the total real estate costs were \$219,931,502.<sup>53</sup> As a percentage, the acquisition costs were 3.7%,<sup>54</sup> and the cost per acre was \$1,187.<sup>55</sup> Likewise, in *DuPont*, the Board accepted NS's acquisition costs of \$111,960,000,<sup>56</sup> when the total acreage (excluding easements) was 94,169 acres,<sup>57</sup> and the total real estate

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<sup>51</sup> *Sunbelt* at 103-104.

<sup>52</sup> *Sunbelt* at 97.

<sup>53</sup> *Sunbelt* at 97 (excluding easements at \$431,000).

<sup>54</sup>  $\$8,233,100/\$219,931,502 = 3.7\%$

<sup>55</sup>  $\$8,233,100/6,936 \text{ acres} = \$1,187/\text{acre}$

<sup>56</sup> *DuPont* at 140-141.

<sup>57</sup> *DuPont* at 142.

swell factor.<sup>150</sup> Specifically CSXT claims that “R.S. Means shows that its excavation unit costs are in BCY [bank cubic yards] and that the cost per unit for a 22 CY hauler are reported as LCY [loose cubic yards]. The density difference for two types of materials is 27% for loose rock quantities (using a 1.27 swell factor).”<sup>151</sup> CSXT tries a new spin on the same argument that failed in both *Sunbelt* and *DuPont*.<sup>152</sup> In *DuPont* and *Sunbelt* the carrier, NS, argued that the ICC Engineering Report quantities were in BCY, while the hauling unit cost was in LCY.<sup>153</sup> In the *Sunbelt* decision that rejected the NS proposed swell factor the Board stated that:

“NS does not cite any support for its claim that the Engineering Reports record earthwork quantities in bank cubic yards, and the fact is not self-evident. “Bank” means in place, undisturbed, natural ground, and the Engineering Reports address earthwork in its post-construction state.”<sup>154</sup>

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<sup>150</sup> See CSXT Reply at III-F-49.

<sup>151</sup> *Id.* at III-F-55.

<sup>152</sup> See Consumers Rebuttal e-workpaper “42130 SunBelt v NS STB Maximum Rate Decision.pdf” at 126, STB decision at 116, which states that the STB will “reject its [NS’s] additional costs stemming from hauler distance and from a shrinkage and swell factor.” See also Consumers Opening e-workpaper “42125 DuPont v. NS 2014.03.24 ID\_43717 CORRECTIONS TO DECISION.pdf” at 185, which states that “[t]he Board will reject NS’s adjustment for swell because we agree with DuPont’s assessment that Means’ earthwork costs already account for the costs of swell.”

<sup>153</sup> *Id.*

<sup>154</sup> See Consumers Rebuttal e-workpaper “42130 SunBelt v NS STB Maximum Rate Decision.pdf” at 126, STB decision at 116.

CSXT also disputes the \$0.035 ton-mile rate, stating that because this was rejected recently in *DuPont*, that it should be rejected here, and that the { } used by Consumers as evidence supporting the \$0.035 rate should be discounted. What CSXT fails to mention is that while the Board disallowed the \$0.035 rate in *DuPont* and *Sunbelt*, the carrier was the only party to submit new evidence of a rate that was not simply indexed from a previous STB rate case.<sup>231</sup> CSXT also fails to mention that in *Sunbelt*, the Board accepted NS's rate stating that "a recent cost example is superior to a historically updated cost for this purpose."<sup>232</sup> Here, the AFE that CSXT is disputing is from 2015 and is the most recent cost evidence. Additionally, the fact that this { } was provided by CSXT as part of discovery provides sufficient evidence that the \$0.035 ton-mile rate is not outdated and is a conservative estimate.

For the above reasons, Consumers continues to use its Opening transportation rates.

(b) **Ballast Material Distribution Along the CERR Right-of-Way**

CSXT tries to argue that Consumers did not include on-line transportation costs for ballast because the quote provided does not specify where

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<sup>231</sup> See *DuPont* at 193; *SunBelt* at 131.

<sup>232</sup> *SunBelt* at 131.

<sup>233</sup> See Consumers Opening e-workpaper "UP Rail Transportation Cost.pdf" at 8.

the delivery points are located “or how far apart they are spaced.”<sup>234</sup> However, it is of no consequence that the quote does not spell out the distances or include a map as to where these are located. The fact is that the quote states as item no. 4 that “[m]aterial transportation from delivery points is included in the quote.”<sup>235</sup> The quote specifies “points,” not “point,” therefore the quote clearly contemplates multiple destinations. The quote is also for installation of other rail materials, so this is not from a supplier that is unaware that this is for the construction of track. Further, Consumers is providing on Rebuttal a copy of the phone log that was made by Consumers’ engineers to Ohio Track requesting the bid.<sup>236</sup> From the phone log, it is clear that Ohio Track understood that there installation costs would include transportation of the materials from the railhead to the point of installation.<sup>237</sup>

**iii. Subballast**

**(a) Subballast Quantities**

Consumers and CSXT agree on the method for estimating the subballast quantities.<sup>238</sup> CSXT on Reply corrects a spreadsheet error and adjusts the quantities upwards to account for the changes CSXT proposes to the CERR

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<sup>234</sup> CSXT III-F-74.

<sup>235</sup> See Consumers Opening e-workpaper “Ohio Track Cost Estimate.pdf.”

<sup>236</sup> See Consumers Rebuttal e-workpaper “Ohio Track Phone Log.pdf.”

<sup>237</sup> See *id.*

<sup>238</sup> CSXT Reply at III-F-75; Consumers Opening at III-F-49.

Blue Island / MP 22.5 / NS (75th Street)	2	Accept. In the vicinity of Blue Island the CSXT line being replicated was originally installed by the CT-Chicago Terminal & Transfer (B&OCT) in 1895.
Blue Island / MP 22.6 / BRC (75th Street)	2	As such, it was the junior RR and would have incurred diamond costs at MPs 22.5, 22.6, 27.39, and 28.00.
Blue Island / MP 27.39 / CN (Brighton Park)	2	Accept. Diamonds at Brighton Park installed as part of CREATE but with RR funding.
Blue Island / MP 28.00 / CN (Ash Street)	2	Accept. Same as MPs 22.5 and 22.6.
IHB Dolton Interlocking	0	Reject.
<b>Total</b>		
<b>CERR Diamonds on BOCT 137.1-IL Segment</b>	{ }	
<b>CERR Diamonds on BOCT 136.1-IN Segment</b>	{ }	
<sup>1/</sup> See Consumers Rebuttal e-workpaper {		}
<sup>2/</sup> See Consumers Rebuttal e-workpaper “Dolton Diamond.pdf”		
<sup>3/</sup> See Consumers Rebuttal e-workpaper “1848-1910 Construction of RRs_Chicago.pdf”		
<sup>4/</sup> See Consumers Rebuttal e-workpaper “Pullman Junction Interlocking.pdf”		

(a) **Materials Transportation**

CSXT and Consumers both address materials transportation costs for an item within the relevant section discussing its costs, or in the applicable e-workpapers.

(b) **Track Construction Labor**

Consumers on Opening provided a bid from Ohio Track that covered both the installation and transport of materials from the railhead to the point of installation. CSXT on Reply contends that additional costs are required “to

absurd, that are in remote locations where reconnaissance photos were not taken.<sup>307</sup>

c. **Additional Responses to CSXT Bridge Design and Cost Corrections**

CSXT individually challenges almost every bridge configuration.<sup>308</sup>

This is despite the fact that individual bridge span lengths were not provided by CSXT in discovery. Instead, CSXT's bridge list provided just the overall length of the bridge and the number of spans.<sup>309</sup> An average span length was computed by dividing the length by the number of spans. For this reason, Consumers does not know every span length of every bridge because that information was not provided in discovery.

CSXT's engineers were very excited by the possibility that some individual spans might exceed the 50 feet span length of the Type 3 prototype bridge. CSXT's engineers specifically reference the bridge at MP 36.0 of the Grand Rapids Subdivision, which crosses the Kalamazoo River.<sup>310</sup> The overall length of the bridge is listed at 356'-0" and has 7 spans. The average span length is the 50.85 feet, or 50'-10." But this does not mean a completely different bridge type must be developed. The superstructure of the Type 3 Bridge is an

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<sup>307</sup> See Consumers Rebuttal e-workpaper "Bridge Costs\_Reply\_Rebuttal.xlsx," tab "Route Bridges," column Q (comments for individual bridges).

<sup>308</sup> See *id.* at column P.

<sup>309</sup> Consumers Rebuttal e-workpaper "Bridge Costs\_Reply\_Rebuttal.xlsx," tab "Route Bridges," columns L & M.

<sup>310</sup> See CSXT Reply e-workpaper "Bridge Costs\_Reply.xlsx," tab "Route Bridges" row 10," cells P10 & Q10.

are not justified given the scope of the CERR operations. Table III-F-13 below summarizes the differences between Consumers and CSXT’s proposed building and facilities investments for the CERR.

<b>REBUTTAL TABLE III-F-13</b>				
<b><u>CERR Road Property Investment Costs</u></b>				
<b>Section</b>	<b>Consumers Open<sup>1</sup></b>	<b>CSXT Reply<sup>2</sup></b>	<b>Consumers Rebuttal<sup>3</sup></b>	<b>Difference</b>
1. Headquarters Building	\$2,051,902	\$2,724,806	\$2,142,321	\$582,485
2. Locomotive Shop & Office	\$2,475,048	\$6,308,759	\$2,486,955	\$3,821,804
3. Roadway Buildings (Crew, MOW)	\$1,246,273	\$8,723,935	\$1,426,823	\$7,297,112
4. Yard Site Costs	\$6,092,900	\$8,719,636	\$6,326,132	\$2,393,504
<b>5. Total Building and Facilities</b>	<b>\$11,866,122</b>	<b>\$26,477,136</b>	<b>\$12,382,231</b>	<b>\$14,094,905</b>

<sup>1</sup> Consumers Opening e-workpaper “III-F- TOTAL - 2015.xlsx”

<sup>2</sup> CSXT Reply e-workpaper “III-F- TOTAL - 2015\_Reply.xlsx”

<sup>3</sup> Consumers Rebuttal e-workpaper “III - F TOTAL Rebuttal.xlsx”

**a. Headquarters Building**

Consumers on Opening provided for a headquarters building for the CERR at the West Olive yard in Michigan.<sup>341</sup> CSXT has accepted the location for the headquarters building, but has added several items including a headquarters support building.<sup>342</sup> Consumers’ engineers accepts CSXT’s site costs for the

<sup>341</sup> See Consumers Opening at III-F-77.

<sup>342</sup> See CSXT Reply at III-F-120-125.

4,000 gallons has a gross vehicle weight of approximately 56,000 lbs.<sup>366</sup> For the above reasons, Consumers rejects the additional costs for “a heavier industrial asphalt section” because the road as designed on Opening will accommodate the DTL fuel trucks.

**iii. Consumers Agrees to Revise Lighting Costs**

Consumers’ engineers reject CSXT’s proposed unit costs for the additional lighting fixtures at the fueling pads. Consumers’ engineers specified on Opening that there would be extra fixtures at the fueling pads;<sup>367</sup> however, Consumers’ engineers did not add the correct number of lights and omitted the pole boxes. The spreadsheet has been revised on Rebuttal and CSXT’s costs were used for the pole boxes.<sup>368</sup>

**d. Locomotive Shop & Office**

Consumers’ engineers based the design for the locomotive shop on the CSXT’s existing shop at Barr Yard.<sup>369</sup> Consumers’ engineers also modified

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<sup>366</sup> See generally Seneca Tank Inventory, <https://inventory.senecatank.com/tanktruck/Unit125655> (last accessed May 14, 2016).

<sup>367</sup> See Consumers Opening e-workpaper “FUELING PANS SITE.pdf.”

<sup>368</sup> See Consumers Rebuttal e-workpaper “2015 Building Sites\_Rebuttal.xlsx,” tab “YARD,” cell C3 (number of lights) and cell D3 (electrical enclosures, i.e. pole boxes); CSXT Reply e-workpaper “Electrical Enclosure - Unit Costs.pdf.”

<sup>369</sup> See Consumers Opening e-workpaper “Loco Shop Blueprint - Barr Yard (CSX-CNSMR-C-16616 to 16648).pdf” at 4-5; Consumers Opening at III-F-79-80 (“the only key differences” between the existing Barr Yard and the CERR’s Barr Yard, “is that the pit for CERR’s locomotive shop is a different size and there is a jib crane” instead “of an overhead crane”).

conduits. Consumers will accept CSXT's additional costs for electrical enclosures at Barr Yard, but rejects the additional costs for replacing the 2-inch conduit with a 4-inch conduit. CSXT contends that a 4-inch conduit is necessary because it will need to house "five electrical wires,"<sup>454</sup> and specifically 4 #2 wires and 1 #4 wire.<sup>455</sup> However, the 2-inch galvanized steel conduit is sufficient as it will hold 64 #10 wires, or alternatively, 16 #4 wires or 8 #2 wires.<sup>456</sup> Therefore, Consumers rejects these additional costs to increase the size of the conduit.

**ii. Yard Paving**

Consumers on Opening only provided for paving from the Barr Yard entrance to the fuel pad, and a turnaround area for the fuel trucks.<sup>457</sup> CSXT on Reply agreed to these quantities and unit costs, but then requests "paving to provide additional parking for additional headquarter support and MOW personnel at the expanded Barr Yard facilities."<sup>458</sup> In the first instance, Consumers does not agree to have all personnel reporting to the Barr Yard and rejects all increase in square footage and acreage. In the second instance, it makes no sense to provide for a few paved parking spaces when the rest of the lot is gravel. For these reasons, Consumers rejects these additional costs for yard paving.

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<sup>454</sup> See CSXT Reply at III-F-134.

<sup>455</sup> See CSXT Reply e-workpaper "2015 Building Sites\_Reply.xlsx," tab "Unit Costs," cells A84 & A85.

<sup>456</sup> See Consumers Rebuttal e-workpaper "NEC code table.pdf."

<sup>457</sup> See Consumers Opening e-workpaper "Barr Yard.pdf"; and "CERR STICK DIAGRAMS.pdf."

<sup>458</sup> CSXT Reply at III-F-134.