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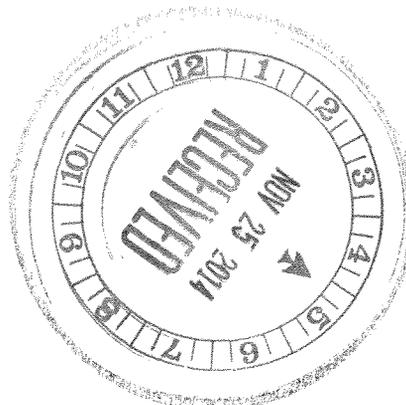
November 25, 2014

237113

By Hand-Delivery

Cynthia T. Brown
Chief, Section of Administration
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Surface Transportation Board
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**ENTERED
Office of Proceedings
November 25, 2014
Part of
Public Record**



Re: Total Petrochemicals & Refining USA, LLC v. CSX Transportation, Inc.
STB Docket No. NOR 42121

Dear Ms. Brown:

Enclosed for filing in the above-referenced matter is Defendant CSX Transportation, Inc.'s ("CSXT's") Reply in Opposition to Complainant's Petition to Supplement the Record. The filing includes an original and ten copies of the Reply and three disks containing the Reply in searchable pdf format.

Please date-stamp the extra copies and return them to our messenger. Thank you for your assistance in this matter. If you have any questions, please contact the undersigned.

Sincerely,

Matthew J. Warren

MJW:aat
Enclosures
cc: Jeffrey O. Moreno

**FILED
November 25, 2014
SURFACE
TRANSPORTATION BOARD**

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

**TOTAL PETROCHEMICALS & REFINING
USA, LLC**

Complainant,

v.

CSX TRANSPORTATION, INC.

Defendant.

Docket No. NOR 42121

**CSXT'S REPLY IN OPPOSITION TO
COMPLAINANT'S PETITION TO SUPPLEMENT THE RECORD**

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November 25, 2014

Filing Contains Color Images

Table of Contents

	Page
INTRODUCTION AND BACKGROUND	2
A. CSXT’s Extensive Document Production in Two Rounds of Discovery.	2
B. TPI’s Opening Evidence and CSXT’s Reply Evidence.	7
C. TPI’s Belated Petition to Supplement the Record.	8
ARGUMENT	9
I. THE PETITION SHOULD BE DENIED WITH RESPECT TO INTERMODAL FACILITIES BECAUSE TPI HAS NOT MET ITS BURDEN ON ANY OF THE ESSENTIAL REQUIREMENTS FOR PERMISSION TO SUPPLEMENT THE RECORD.	9
A. TPI Has Made No Showing That the Supplemental Evidence It Seeks to Introduce Could Not Reasonably Have Been Introduced Earlier.	11
B. Done Properly, Changing from TPIRR Owning and Operating its Intermodal Facilities to TPIRR Paying A Third Party to Own and Operate Those Terminals on its Behalf Would Not Materially Affect the Outcome of this Case.	16
C. The Supplemental Material TPI Seeks To Introduce Is Not Central To Its Case.	22
II. TPI HAS NOT DEMONSTRATED IT SHOULD BE ALLOWED TO SUPPLEMENT ITS EVIDENCE TO ADDRESS ITS OTHER PURPORTED ERRORS.	22
A. TPI Has Not Justified The Submission Of Additional Evidence To Modify Its Case-In-Chief Regarding Clearing And Grubbing And Bridge Abutments.	22
B. The Board Should Reject TPI’s Untimely Challenge To The Otter Tail Cross- Subsidy Test.	24
III. THE SCHEDULE TPI HAS PROPOSED FOR SUBMISSION OF SUPPLEMENTAL EVIDENCE IS UNFAIR AND UNWORKABLE.	29
CONCLUSION	30

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Pursuant to 49 C.F.R. § 1117.1 and other applicable authority, Defendant CSX Transportation, Inc. (“CSXT”) respectfully submits this Reply to Complainant Total Petrochemicals & Refining, USA, LLC’s (“TPI’s”) Petition to Supplement the Record, filed on November 5, 2014 (“Petition”). TPI’s Petition makes the extraordinary request for leave to supplement its case-in-chief with three categories of additional evidence, long after CSXT filed its Reply Evidence. As demonstrated below, the Petition should be denied because it fails to satisfy any one of the three essential elements required for granting such extraordinary relief.

Most significantly, TPI seeks leave to alter its case-in-chief so as to eliminate SARR capital investment for intermodal terminals, facilities, and equipment required to serve TPIRR customers. *See* Petition at 2-4. TPI also seeks permission to change its case-in-chief regarding two elements of road property investment (clearing and grubbing and bridge abutments) and to include a new challenge to established Board precedent on SARR cross-subsidies. *Id.* at 2, 5.

It is well established that the complainant is required to present its full case-in-chief in its opening evidence and may not seek to revise that case with respect to matters the defendant does

not contest. TPI decided on opening that the TPIRR would make the capital investment to build and equip the necessary intermodal yards and facilities; decided how it would determine certain roadbed preparation and bridge abutment quantities; and chose not to contest the Board's established cross-subsidy precedent. On Reply, CSXT accepted those positions. Under established Board rules, there is no basis for TPI to file either rebuttal or supplemental evidence regarding such proffered and accepted evidence. The Board should deny the Petition to Supplement, direct the parties to file final briefs in accordance with the governing procedural schedule, and begin its consideration of the case on the merits.

Finally, even if the Board were to consider TPI's proffered supplemental evidence despite the Complainant's failure to make the required showing, the supplemental evidentiary schedule TPI has proposed is unfair and unworkable. That schedule is unduly short and it would deprive CSXT of an opportunity to address any TPI rebuttal submission in CSXT's final brief. If the Board denies the Petition, there would be no need for further filings other than the final briefs provided for in the existing procedural schedule. But if the Board were to grant the Petition, it would need to establish a reasonable schedule for submission of supplemental evidence that would allow CSXT fair and adequate opportunity to develop and file responsive evidence.

INTRODUCTION AND BACKGROUND

A. CSXT's Extensive Document Production in Two Rounds of Discovery.

The parties engaged in two extensive rounds of discovery in this case. The initial discovery period commenced in June 2010 and continued through November 2010. *See TPI v. CSXT*, STB Docket No. 42121 at 1 (S.T.B. served June 23, 2010). During the initial discovery period TPI propounded seven sets of discovery requests on CSXT, including 25 interrogatories and 165 requests for production that amounted to over 700 distinct requests including subparts. Subsequently the Board bifurcated the case, staying the SAC phase until after it had made market

dominance determinations. *See TPI v. CSXT*, STB Docket No. 42121 (S.T.B. served April 5, 2011). The Board issued its market dominance decision on May 31, 2013 and later directed the parties to engage in supplemental discovery that would update the discovery record to cover the time period during which the Board was considering market dominance issues. *See TPI v. CSXT*, STB Docket No. 42121 at 5 (S.T.B. served July 19, 2013). Supplemental discovery concluded in October 2013, and TPI filed its Opening SAC Evidence on February 18, 2014.

In response to TPI's discovery requests in the initial phase of discovery,¹ CSXT produced substantial data and information showing in detail capital investments in intermodal yards, terminals, and facilities made by its affiliate CSX Intermodal Terminals ("CSX Terminals" or "Terminals"), and the annual operating expenses incurred by CSX Terminals to provide intermodal services to CSX Intermodal ("CSXI") and CSXT at those facilities.² The materials CSXT produced in the initial phase of discovery showed that CSXI (through its subsidiary CSX Terminals) owned the intermodal facilities and non-land assets used by CSXT intermodal traffic.

¹ *See, e.g.*, TPI Interrogatory Nos. 13, 14, 24 and TPI RFP Nos. 109 (seeking documents showing, for each intermodal yard or terminal in SARR states, each asset owned or leased by CSXT, each asset owned or leased by CSXI, each asset owned by another entity, and acquisition cost, lease and payment information for each); 113 (documents showing annual operating costs for each intermodal facility, separated by function); 115-116. Copies of each of these discovery requests are attached as Exhibit 1 hereto.

² *See, e.g.*, "Intermodal Costs and Volume.xls" (produced Sept. 23, 2010). CSX Intermodal ("CSXI") was formerly a subsidiary of CSX Corporation that purchased rail services from CSXT and purchased intermodal terminals operations, lifts, and other services from CSXI subsidiary CSX Terminals. As discussed below, a CSX restructuring in the summer of 2010 transferred certain CSXI functions to CSXT, CSXI ceased to exist, and CSX Terminals (which owns the intermodal yards, terminals, and facilities at issue in this case) became a first-tier subsidiary of CSX Corporation. Thus, with the exception of the CSXT track and the land on which the terminals are built (which CSXT owns) throughout this case CSX Terminals has owned and operated the intermodal facilities used to serve TPIRR intermodal traffic.

See “CSXI Terminals.xls” (produced Oct. 6, 2010); “CSXI Assets.xls” (produced Oct. 6, 2010).³
The initial discovery also showed that Terminals leased its land assets from CSXT.⁴

On or about June 26, 2010, CSX conducted a corporate restructuring that eliminated the former CSXI and consolidated most of its functions (including intermodal sales and marketing) into CSXT. See, e.g., CSX-TPI-41643 to 41674 (produced Oct. 15, 2010) (documents memorializing the restructuring and corresponding assignments and distributions of rights and responsibilities). That same restructuring elevated CSX Terminals—which throughout the relevant period owned the facilities and other non-land assets of CSX’s intermodal yards and terminals—to a first tier subsidiary of CSX Corporation, making CSX Terminals a sister company to CSX Transportation. See *id.*

CSXT also produced in the initial phase of discovery a copy of the agreement between CSX Terminals and CSXT, under which Terminals provides intermodal facilities services to CSXT in exchange for payments covering Terminals’ operating expenses plus a mark-up. See Terminal Services Agreement Between CSXT and CSXIT (June 2010) (“TSA”), CSX-TPI-HC-41670 to 41674 (produced Oct. 10, 2010).⁵ This agreement makes clear that CSXT, as the sole customer of CSX Terminals, “will pay [CSX Terminals] an amount equal to [Terminals’] costs

³ Discovery materials referenced in this Reply are included on CSXT Reply Exhibit 4.

⁴ Specifically, documents showing the transfer price calculations for intracorporate transactions between CSXT and CSXI include a separate tab for “Property Leases” showing the costs incurred by CSX Intermodal Terminals for its real estate leases. Monthly terminal price bills produced in discovery are included on the disk that is Reply Exhibit 4; details on lease costs can be found under the “Property Leases” tab. Additional evidence of the fact that CSX Terminals does not own the real estate underlying its intermodal facilities can be found in “CSXI Assets.xls” and “Intermodal Assets 2013.xls”; neither of these detailed asset inventories included land investments for any of the intermodal facilities replicated by the TPIRR.

⁵ Again, prior to the restructuring, the former CSX Intermodal (“CSXI”) contracted with CSXT to provide intermodal services, including intermodal terminal service. As CSXT explained to TPI in discovery, then-CSXI-subsiary CSX Terminals owned the terminals and provided terminal services to CSXT on behalf of Terminals’ then-parent company CSXI.

of . . . operations plus a reasonable rate of return.” *See id.* at CSX-TPI-HC-41671. As the TSA specifies, CSXT is responsible for paying the full amount of operating costs incurred by CSX Terminals at each of Terminals’ intermodal facilities, including a reasonable mark-up.

Near the end of the first discovery period, CSXT sent a letter and supplemental discovery responses to TPI expressly describing the restructuring summarized in the foregoing paragraph and directing TPI to previously produced documents memorializing those changes. *See* P. Hemmersbaugh Letter to J. Moreno (Nov. 5, 2010) (“November 2010 Letter”) (copy attached as Exhibit 2). This explanatory letter and the accompanying supplemental discovery responses further evidenced what previously produced documents already showed: as of June 26, 2010, CSX Terminals owned all relevant intermodal facilities and terminals except for the underlying land, and it operated those facilities to provide services to its sister company CSX Transportation. *See, e.g., id.*; TSA, CSX-TPI-HC-41670 to 41674 (produced Oct. 15, 2010); “Intermodal Costs and Volume.xls” (produced Sept. 23, 2010); “Intermodal and TDSI HC and Salaries.xls” (produced Oct. 6, 2010).

As the Letter summarized, the June 2010 restructuring

transferred [the former] CSXI’s terminal operations, trucking operations, and related rights, responsibilities, and agreements to Terminals . . . Following the Restructuring, CSXT and Terminals were sister corporations (both subsidiaries of CSX), with the former handling railroad operations and business and the latter responsible for intermodal terminal ownership and operations . . . CSXI merged into CSXT and CSXI ceased to exist.

Exhibit 2 at 2 (emphasis added). The letter left no doubt that CSXT *did not own* intermodal terminals (before or after the restructuring), and that *CSX Terminals*—not CSXT—provided intermodal terminal services to CSXT customers on behalf of CSXT in exchange for a fee.

See id.

In the supplemental phase of discovery, CSXT produced updated data and information, including updated statements of CSX Terminals' intermodal assets; Terminals' expenses incurred to provide services to CSXT and CSXT's intermodal customers; and an amended agreement providing for CSX Terminals to provide intermodal transfer and terminals services to CSXT in exchange for a monthly payment.⁶ The Amended and Restated Terminal Service Agreement ("ARTSA") between CSXT and CSX Terminals was effective November 27, 2010. That amended agreement provides that, in exchange for intermodal terminals services, CSXT will pay to CSX Terminals monthly a fee equal to 110% of all CSX Terminals operating costs. *See* ARTSA Exhibit A, CSX-TPI-HC-565550 to 56551.

Contrary to the suggestion of TPI's Petition, the November 2010 Letter was by no means the only evidence or notice TPI received demonstrating that CSXT did not own the assets of intermodal facilities replicated by the TPIRR. Rather, discovery materials produced before, contemporaneous with, and after the Letter made abundantly clear: who owned those assets (Terminals); who performed intermodal terminal services on behalf of CSXT (again, Terminals); and that, as Terminals' sole customer, CSXT paid a fee equal to Terminals' total operating expenses plus a 10 percent margin. The November 2010 Letter provided no new or unique information, and the relevant information it summarized was reiterated, updated and supplemented by CSXT's supplemental discovery productions in the fall of 2013.

⁶ *See* "Intermodal Assets 2013.xls" (produced Sept. 13, 2013); "Intermodal Operating Expense.xlsx" (produced Oct. 17, 2013); "Intermodal Terminal Cost and Volume Update.xlsx" (produced Oct. 17, 2013); "Intermodal and TDSI HC and Salaries Update.xls" (produced Oct. 4, 2013); "Intermodal Equipment 2013.xlsx" (produced Sept. 13, 2013); CSX-TPI-HC-56545 to 56551 (produced Sept. 13, 2013).

B. TPI's Opening Evidence and CSXT's Reply Evidence.

TPI filed its case-in-chief in its opening evidence in February 2013. In full possession of all relevant evidence, TPI made a tactical decision that the TPIRR would build and own the intermodal terminals and facilities necessary to serve its traffic group. *See, e.g.* TPI Op. WP “TPIRR Facilities.xlsx.” TPI also submitted other road property investment evidence and supporting calculations regarding clearing and grubbing quantities and the costs of bridges that it posited would replace oversized culverts on the lines replicated by the TPIRR. *See, e.g.*, TPI Op. WP “TPI Bridge Construction Costs.xlsx”; CSXT Reply Ev. at III-F-127 (addressing TPI's proposal to replace oversized culverts with bridges). Finally, TPI submitted its evidence and argument regarding the application of the Board's Maximum Mark-up Methodology under existing law, without any argument that the Board's established cross-subsidy rules and precedent should be revised or disturbed. *See* TPI Evidence at III-H. TPI has confirmed that “[c]onsistent with Board guidelines, TPI submitted its *complete case-in-chief* in its Opening Evidence.” TPI Rebuttal at I-1 (emphasis added).

Based upon TPI's opening evidence, CSXT prepared its Reply Evidence, which was filed on July 21, 2014. CSXT's Reply accepted TPI's case-in-chief with respect to the TPIRR's decision to make capital investments to construct and own intermodal terminals, facilities, and equipment; clearing and grubbing quantities and replacement of certain oversized culverts with bridges. *See, e.g.*, CSXT Reply WP “TPIRR Facilities CSXT Reply.xlsx”; TPI Rebuttal at III-F.2.b.i, III.F.5.b.ix (conceding that CSXT accepted TPI's opening evidence on these items). At no time from the filing of TPI's opening evidence until it filed its final Rebuttal evidence did TPI seek to supplement its case-in-chief. Nor did TPI advise either CSXT or the Board that TPI had identified errors in its case-in-chief or provide any notice that it would request to supplement its evidence to address those purported errors.

C. TPI's Belated Petition to Supplement the Record.

At the same time TPI filed its final Rebuttal evidence, it filed the present Petition to Supplement and (without first obtaining leave to supplement the record) lodged supplemental evidence seeking to change its case-in-chief with respect to evidence it submitted on opening and CSXT accepted in its Reply. Announcing that it had “discovered” evidence regarding CSX Terminals’ ownership of intermodal facilities at some unspecified time “while preparing its Rebuttal Evidence,” TPI now seeks to reverse field and change its case-in-chief by positing that instead of owning its intermodal facilities, the TPIRR would forego the necessary capital investment and purchase intermodal terminal services from third party CSX Terminals. *See, e.g.,* Petition at 3; TPI Rebuttal at III.F.7.a. To support this about-face, TPI relied upon newly submitted (but long ago produced by CSXT) evidence and materials regarding CSX Terminals’ ownership of assets and equipment at intermodal facilities used to served Terminals’ sole customer CSXT. *See, e.g.,* Exhibit 2. The Petition also seeks leave to supplement the record—although again TPI filed corresponding supplemental evidence without first obtaining Board leave to do so—and change its case-in-chief with respect to clearing and grubbing quantities; bridge abutment quantities; and the Board’s cross-subsidy rules as applied in the rate prescription context. *See* Petition at 1 (conceding that without leave to supplement, the changes and new material it submits “otherwise might be considered impermissible rebuttal.”).

In support of its request to change its case-in-chief with respect to intermodal terminals ownership and investment, the Petition relies entirely on its unsupported claim that it first “discovered” CSXT’s November 2010 Letter and accompanying additional discovery responses “while preparing its Rebuttal Evidence.” Petition at 3; *see* Exhibit 2. But even if TPI had first found or remembered the Letter *after* it filed rebuttal, that letter merely explained in narrative form what the documents and information that CSXT produced months earlier had shown,

including that CSX Terminals owns and operates the intermodal terminals in question and provides intermodal services to CSXT; that CSXT is Terminals' sole customer; and that CSXT pays Terminals a monthly fee equal to Terminals' total expenses plus ten percent. As demonstrated above, TPI had ample prior notice of all relevant information later summarized in the November 2010 Letter.

ARGUMENT

Four years to the day after CSXT's November 2010 Letter describing and explaining the ownership and operation of the intermodal terminals by CSX Terminals (not Defendant CSXT), TPI filed the present Petition to supplement the record. Given the documents and information CSXT produced in discovery—both before and after the November 10 letter—it defies credibility for TPI to assert it first learned of the intermodal facilities ownership structure and related matters when it was preparing its rebuttal evidence. And even if TPI actually overlooked this voluminous evidence, such negligence would provide no basis for changing its case-in-chief at this very late date. The Board should not excuse TPI from its obligations or the standard rules of the adversarial process merely because, at the last possible instant, it made an unsupported assertion that it “overlooked” evidence that CSXT produced in discovery. TPI was obliged to submit its full case-in-chief on opening. The Petition provides no reasonable basis for granting the extraordinary relief TPI belatedly seeks and allowing TPI to change that case.

I. THE PETITION SHOULD BE DENIED WITH RESPECT TO INTERMODAL FACILITIES BECAUSE TPI HAS NOT MET ITS BURDEN ON ANY OF THE ESSENTIAL REQUIREMENTS FOR PERMISSION TO SUPPLEMENT THE RECORD.

A petition to supplement the record in a SAC case may be granted only upon a showing by the petitioner that: (i) the material it seeks to introduce “could not reasonably have been introduced earlier”; (ii) the supplemental material “is central to its case”; *and* it (iii) “would

materially influence the outcome of the case.” *Duke Energy Corp v. CSX Transportation, Inc.*, STB Docket No. 42070, at 4 (S.T.B. served March 25, 2003) (“*Duke/CSXT*”); see *Intermountain Power Agency, v. Union Pac. R.R. Co.*, STB Docket No. 42127 at 2 (S.T.B. served April 4, 2012) (“*IPA*”) (applying *Duke/CSXT* standard to deny petition to supplement). As explained in the following sections, Petitioner TPI has not met its burden with respect to any of those three essential elements. *First*, TPI makes no real attempt to demonstrate that the materials at issue—which CSXT produced several *years* before TPI filed its opening evidence—“could not reasonably have been introduced earlier.”⁷ In fact, it is indisputable that TPI reasonably *could* have introduced that material at the time it filed its case-in-chief in its opening evidence.

Second, the only argument that TPI offers regarding whether the change it seeks to make is “central to its case” actually supports the opposite conclusion. TPI asserts that the supplemental evidence it seeks permission to submit “does not modify the foundation of TPI’s case.” Petition at 4. CSXT agrees that, properly implemented, the proposed change would not modify the foundation of TPI’s case and is not central to TPI’s case. The Petition thus fails to meet TPI’s burden on this second essential element of the *Duke/CSXT* test.

Third, TPI’s decision on opening to incur the capital costs to build the intermodal yards and facilities required to serve the TPIRR’s intermodal traffic—rather than pay the fees charged by a third party to provide those facilities and services on behalf of the TPIRR—should not materially influence the outcome of the case, *so long as* the resulting costs and fees are properly calculated and allocated to the TPIRR. As CSXT demonstrates below, the appropriate results of

⁷ See Petition at 2 (claiming only that TPI did not submit the material earlier because there was a large volume of discovery and the “length of time that . . . passed” between discovery and TPI’s submission of its opening evidence). This does not remotely approach a showing that TPI reasonably could not have submitted the evidence on opening as required by the Board’s longstanding rules and precedents.

the SAC analysis would not change materially if TPI changed its case-in-chief to assume that the TPIRR would purchase intermodal yard and facilities services from a third party rather than make the capital investment necessary to construct and own such facilities and then correctly accounted for the relevant costs. Properly derived and accounted for, the net costs (investments and expenses) to the TPIRR of either approach would be approximately the same.

TPI's Petition fails to make the requisite showing on any one of the three essential elements necessary to obtain the relief it seeks, and the Petition should be denied. *See, e.g., IPA* at 2 (denying petition to supplement where "all of [petitioner's] arguments fail the *Duke/CSX* standard). The Board should reject all supplemental evidence that TPI filed with its rebuttal submission and give that proffered evidence no consideration whatsoever.

A. TPI Has Made No Showing That the Supplemental Evidence It Seeks to Introduce Could Not Reasonably Have Been Introduced Earlier.

TPI has not satisfied its burden to demonstrate that the material it belatedly seeks to submit "could not reasonably have been introduced earlier." *See IPA* at 2. Indeed, TPI makes no real attempt to satisfy this requirement or to argue that it was unable to introduce the material earlier. Instead, it requests to be excused for failing to submit the material with its opening (or before it filed rebuttal) because CSXT produced a large volume of data and information in response to TPI's discovery requests and because there was a longer than normal period of time between the close of initial discovery and TPI's filing of its rebuttal evidence. These arguments are both irrelevant and unpersuasive.

As a threshold matter, the fact that TPI requested and received a significant volume of information in discovery is irrelevant to *whether* it could reasonably be expected to submit evidence in its case-in-chief regarding ownership and operation of the intermodal facilities used by its SARR. Indeed, TPI did submit opening evidence regarding ownership and operation of

the intermodal facilities used by its hypothetical railroad. It now seeks to change the position and evidence it used in that case-in-chief to one it now perceives as more favorable to its case. Compare TPI Op. WP “TPIRR Facilities.xlsx” with TPI Rebuttal at III-F-125-27. The obvious answer to the relevant question is that yes, TPI reasonably could have—and did—submit opening evidence regarding the proposed ownership and operation of intermodal facilities used by TPIRR traffic. If TPI wished to posit a different case, it reasonably could and should have done so in its opening evidence.

TPI’s failure to satisfy this first essential requirement for obtaining leave to submit supplemental evidence alone is sufficient to compel denial of the Petition. Because of this abject failure, the Board may deny the Petition on that basis alone, without further consideration. However, CSXT will also address TPI’s irrelevant argument that its unreasonable failure to submit this evidence on opening should somehow be excused or overlooked notwithstanding the Board’s governing standards.⁸

TPI’s sole argument for “supplementing” (*i.e.* changing) the record after CSXT has filed its Reply Evidence addresses a separate and distinct question: whether the Board should excuse TPI’s failure to present its “real” case on opening either (i) because TPI obtained voluminous discovery; or (ii) because of the elapsed time between the end of the first round of discovery and TPI’s filing of its case-in-chief in its opening evidence.

TPI’s first argument would excuse nearly any failure by a complainant to present evidence regarding its case-in-chief on opening. TPI contends that its “oversight” should be excused because of the “massive volume of discovery in this case.” Petition at 4. In the first

⁸ Contrary to TPI’s apparent perception, the applicable standard is not one of “excusable neglect.” Rather, the Board’s standard requires that TPI must show it could not have reasonably submitted the material in question earlier *and* that specific additional evidence would materially affect the outcome of the case.

place, the massive volume of discovery is the result of TPI's own discovery requests, which amounted to over 700 separate requests including subparts. TPI offers no limiting principle for the gaping hole such an exception would create in the Board's rule that a complainant must present its case-in-chief on opening. If ownership of facilities and equipment used by the SARR is subject to change in a supplemental submission based only on the fact that there was voluminous discovery in the case, what aspect of road property investment—indeed, what element of an entire SAC presentation—would not be subject to such revision? The new exception TPI seeks would swallow the Board's rule and eliminate any meaningful limit on permissible rebuttal or supplemental evidence.

Moreover, the Petition suggests that CSXT's November 2010 explanatory letter was the sole evidence TPI received in discovery that showed that CSXT did not own intermodal terminals but rather purchased intermodal terminal services from an affiliated company, and that TPI merely overlooked this single piece of evidence. Nothing could be further from the truth. The discovery record is replete with information and materials evidencing CSX Terminals' ownership and operation of the intermodal terminals that would be served by the TPIRR. As discussed above, CSXT produced to TPI numerous documents and interrogatory answers that made it abundantly clear that at all times relevant to this case (and going back to the 1990s), CSXT did not own intermodal terminals or facilities. *See supra* I; Ex. 4. In response to TPI discovery requests, CSXT also produced detailed documentation of the costs that Terminals incurs to provide intermodal services, and the contract between CSXT and Terminals that governs the cost-based charges and fees CSXT pays for those services. *See, e.g.*, CSX-TPI-HC-41643 to 41674 (produced Oct. 15, 2010); *supra* I. The November 2010 Letter simply summarized and reiterated information contained in previously produced documents, and

provided a narrative description of the relationships and information set forth in those documents and discovery responses—including a summary of Terminals’ ownership of intermodal assets and its provision of intermodal services to CSXT. *See* Exhibit 2.⁹ Then, in supplemental discovery, CSXT produced additional updated documents regarding the intermodal services agreement between Terminals and CSXT and payments made by CSXT pursuant to that agreement. *See, e.g.*, CSX-TPI-HC-56545 to 56551.

Beyond CSXT’s extensive discovery production to TPI, there was ample information in the public record—including CSXT’s annual R-1 reports submitted to the STB—that described the relationship between CSXT and CSX Intermodal Terminals, and the charges from CSX Terminals that CSXT pays. For example, Note 6 to Schedule 200 of CSXT’s 2010 R-1 stated “Also in 2010, the Respondent [CSXT] and Intermodal Terminals entered into a new agreement which created the payable this year.” *See* CSXT R-1 Schedule 200 at 15A (attached as Exhibit 3). The Note also included a section labeled “Detail of Related Party Service Fees” that identified a \$147 million payment from CSXT to Intermodal Terminals, with the accompanying description “Charges from Intermodal Terminals for services provided to the Respondent [CSXT] at intermodal terminal locations.” *Id.* at 15. In each R-1 that CSXT has filed since (*i.e.*, in 2011, 2012, and 2013), Note 6 has identified and explained the Related Party Service Fee paid by CSXT to CSX Terminals. The facts that Terminals provided the intermodal facilities and services for CSXT’s intermodal traffic, and that CSXT made significant payments to for use of

⁹ Because TPI’s discovery requests sought information concerning intermodal terminal assets leased or owned by the former *CSX Intermodal* (“CSXI”), the November 2010 Letter also clarified that the owner of the relevant assets and provider of intermodal terminal services to CSXT was *CSX Terminals*. *See id.* In June 2010, CSXI ceased to exist, but CSX Terminals continued to own and operate intermodal terminals used by CSXT traffic. *See* Exhibit 2.

those facilities and services, thus were well-established in both the public record and the discovery record.

Finally, TPI's suggestion that it did not know prior to the preparation of its rebuttal evidence that an entity other than CSXT owned and operated the intermodal yard and terminal assets is refuted by TPI's own discovery requests. For example, a TPI document request stated in part:

Please provide documents sufficient to show the following *for each intermodal yard or terminal served by CSXI* in the SARR States:

- a. Each asset owned or leased by CSXT;
- b. *Each asset owned or leased by CSXI;*
- c. Each asset owned or leased by an entity other than CSXT or CSXI

TPI RFP No. 109 (emphasis added). Thus, from the outset of this case TPI plainly knew of the existence of an entity called "CSX Intermodal" (CSXI) that provided intermodal terminal services to CSXT, and that CSXI either owned or leased intermodal assets (facilities and equipment) at the intermodal terminals it served. Similarly, in response to TPI interrogatories asking who owned the relevant intermodal terminal assets; who provided what services at those terminals; and who paid whom how much for those services, CSXT produced detailed information showing that *CSX Terminals*—not CSXT—owned the intermodal yard and terminal assets and provided the relevant intermodal services to CSXT in exchange for a fee. *See, e.g.*, Exhibit 2 at 4 (CSXT supplemental response to TPI Interrogatory No. 13).

TPI's second argument—that so much time elapsed between the end of the first round of discovery and the filing of its opening evidence that it forgot that CSXT did not own intermodal terminal assets—is belied by the supplemental round of discovery. That second round of

discovery commenced after the Board issued its market dominance ruling and concluded just a few months before TPI filed its opening evidence. In that round of discovery, CSXT produced additional updated documents showing the ownership and value of assets at intermodal facilities, relevant operating costs, and payments by CSXT to CSX Terminals for intermodal terminal services. *See supra* at note 6. Thus, even if TPI entirely lost track of the “massive volume” of materials and information produced in the first round of discovery, information produced in the supplemental round of discovery provided ample evidence showing the ownership and operation of intermodal terminal assets.

Neither the volume nor the timing of CSXT’s discovery production provides an adequate excuse for TPI’s request to be allowed to change its case-in-chief through supplemental evidence proffered at this very late date. TPI was in full possession of all CSXT-produced information it has today more than a year ago and months before it filed its opening evidence. With all of that information available, TPI made a strategic decision to posit that the TPIRR would own and operate the intermodal terminals it used, a decision it now apparently regrets. However, neither TPI’s change of heart nor its insufficient excuses can justify allowing it to submit supplemental evidence.

B. Done Properly, Changing from TPIRR Owning and Operating its Intermodal Facilities to TPIRR Paying A Third Party to Own and Operate Those Terminals on its Behalf Would Not Materially Affect the Outcome of this Case.

Even if TPI had shown that the change to its case-in-chief it belatedly seeks could not reasonably have been introduced earlier, it has not shown—and could not show—that a proper and complete adjustment of relevant TPIRR investments, costs, and revenues would materially affect the outcome of the case. *See IPA* at 2 (complainant must show that “material sought to be

introduced . . . would materially influence the outcome of the case.”).¹⁰ The incomplete change that TPI seeks in its proffered supplemental evidence would eliminate the capital investment necessary to construct the intermodal facilities without properly compensating CSX Terminals or other third party for the costs of constructing and operating intermodal facilities to serve its sole customer at those facilities, the TPIRR.¹¹ See Petition at 3; TPI Rebuttal III-F-7 (TPI removed investment for intermodal facilities costs); TPI Reb. WP “TPIRR Facilities Rebuttal.xlsx.”

On opening, TPI posited that the TPIRR would make capital investments necessary to construct and own the intermodal terminals assets, including land, facilities, and equipment.¹² TPI also assumed on opening that the TPIRR’s costs would reflect certain costs incurred by CSX Terminals in providing intermodal service (though not the full payment that CSXT makes to CSX Terminals for providing those services to CSXT’s intermodal traffic). See TPI Op. WP “Intermodal Terminal Cost and Volume Update lift 2010.xlsx,” which references as its source the discovery document “Intermodal Terminal Cost and Volume Update.xlsx.”¹³

¹⁰ The Board need not address this argument if it agrees that TPI has not shown that the material it seeks to introduce could not have been introduced earlier. TPI’s failure to make the necessary showing on one essential element renders the other elements immaterial.

¹¹ CSXT is the sole customer of CSX Terminals. CSX Terminals must recover all of its operating and capital costs and a reasonable return from the payments made by CSXT. See ARTSA (terminal services agreement produced to TPI in discovery).

¹² CSXT and TPI disagree on the parameters of the necessary and appropriate assets at those terminals and the amount of the corresponding capital investments, but on opening and reply they agreed that the TPIRR would make investments necessary to construct and own the necessary intermodal terminals and facilities.

¹³ To be clear, TPI did not properly account for the full costs the TPIRR would incur to provide intermodal terminal services in either its opening or in its supplemented rebuttal evidence. As CSXT explained on Reply, the limited intermodal lift and ramp costs that TPI’s opening evidence assumed the TPIRR would pay as owner of the intermodal facilities excluded many necessary costs, and did not cover nearly the full amount of the fee that CSXT actually pays to CSX Terminals for those services (that fee covers all relevant costs Terminals incurs in providing those services). See, e.g., CSXT Reply at III-D-247 to III-D-253. TPI provided no explanation for its exclusion from TPIRR costs numerous and significant costs (e.g. the costs of

On rebuttal (including the proffered supplemental evidence) however, TPI seeks to evade even more costs by assuming both (i) that the TPIRR would no longer construct and equip the intermodal facilities and thus would incur *no* capital investment for those assets; and (ii) that it would nonetheless continue to incur intermodal terminal services costs based only on an incomplete subset of the costs of the CSX Terminals subsidiary, and not the charge that CSXT pays for that service.¹⁴ But, contrary to TPI’s erroneous claim, the lift fee alone does not remotely cover the full costs that third party CSX Terminals incurs to provide intermodal services to CSXT.

In an attempt to defend its rebuttal/supplemental shell game attempt to eliminate the SARR’s responsibility for incurring any costs associated with the intermodal facilities and assets, TPI claims that “CSXT merely pays a lift fee to Terminals for the handling of containers and trailers at these facilities, which TPI has included in its evidence.” Petition at 3.¹⁵ This

utilities) necessarily incurred by Terminals to provide intermodal terminal services to its sole customer CSXT. *See id.*

¹⁴ While TPI’s proffered supplement would eliminate more than \$525 million in SARR investment in intermodal facilities that it had included in its opening case-in-chief, its corresponding operating expense for TPIRR intermodal service would remain virtually unchanged. *See* Table III-D-1, TPI Rebuttal at III-D-2 (2010 Intermodal Lift and Ramp Costs of \$67.2 million from Opening and \$65.2 million on Rebuttal). Under the ARTSA, CSXT is responsible for paying all attributable costs incurred by Terminals to provide intermodal services to CSXT, *including* depreciation expenses for Terminals’ facilities and equipment. *See, e.g.*, ARTSA Exhibit A; *see also* CSXT R-1 Schedule 200 notes (copy attached as Exhibit 3).

¹⁵ The Petition erroneously claims that CSXT’s November 2010 Letter stated that “CSXT merely pays a lift fee to Terminals for the handling of containers and trailers at these facilities. . .” Petition at 3. The Letter contains no such statement. Moreover, it expressly refers TPI to the source documents produced in discovery for details of the relevant relationships, costs, fees, and other specific information. *See* Exhibit 2 at 2 (“The foregoing description . . . is not intended to, and does not, describe the numerous steps necessary to effectuate the general transfer of functions, rights, and responsibilities described above . . . CSXT has previously produced documents and information memorializing the . . . [relevant] rights and responsibilities, including assignment of contracts and agreements with third parties.”).

statement mischaracterizes the agreement between CSXT and CSX Terminals and the content of the November 2010 Letter and misrepresents TPI's own evidence.

As materials produced in discovery (including the ARTSA¹⁶) clearly show, CSXT pays Terminals a fee based on *all* attributable costs and expenses incurred by Terminals plus a reasonable return. By relying only on selected discovery materials that detail *some*—but by no means *all*—of the CSXT Terminals' operating costs as the *entirety* of its TPIRR intermodal expense, TPI has *not* included in its evidence the full fee that CSXT pays to Terminals. This in turn results in a substantial understatement of TPIRR operating costs and expenses.

If, as TPI assumes in its supplemental evidence, the TPIRR were to step into CSXT's shoes and assume CSXT's rights and obligations with respect to intermodal facilities and services, it would necessarily incur the full costs that CSXT pays to CSX Terminals for those services under the ARTSA. More specifically, if the TPIRR no longer owned the intermodal facilities it relies upon to serve its intermodal traffic, it would incur substantial additional costs and expense to compensate a third party to construct, own, and operate those facilities on its behalf. CSX Terminals charges CSXT a fee for these services that is designed to cover all of its costs and expenses plus a modest return. *See* ARTSA. Terminals or an unrelated third party provider indisputably would charge the TPIRR at least as much as it charges CSXT to provide those same services. Stepping into CSXT's shoes, the TPIRR would acquire CSXT's responsibilities and expenses for Terminals' operation of those facilities for CSXT's sole benefit. That includes CSXT's obligation to pay a monthly "terminal services fee" to Terminals, equal to 110 percent of TPI's operating expenses (which includes tax depreciation of Terminals' assets

¹⁶ CSXT produced the Amended Restated Terminal Services Agreement ("ARTSA") in discovery on September 13, 2013 with document identification number CSX-TPI-HC-056550.

and equipment). *See* ARTSA at 6. This would result in additional TPIRR first-year operating expenses of approximately \$36 million above TPI’s Rebuttal estimate of \$65 million.¹⁷

In addition, TPI has incorrectly assumed that Terminals owns the land under the intermodal terminals and that the TPIRR would neither incur any investment cost nor, alternatively, pay a fee to Terminals sufficient to cover the cost of the land. While documents produced in discovery indicate that the former CSXI and its subsidiary CSX Terminals own intermodal facilities, equipment, and related assets, those assets do *not* include the land on which the intermodal terminals—required to serve the TPIRR’s intermodal traffic—are constructed. *See* “CSXI Assets.xls” (produced Oct. 6, 2010); “Intermodal Assets 2013.xls” (produced Sept. 13, 2013). Stepping into CSXT’s shoes, TPIRR would also be required to make the capital investment required to acquire that land, as it does for the other land that is necessary for the SARR network.

Eliminating the capital costs of owning the non-land intermodal facilities and assets would reduce TPIRR capital investment by nearly \$200 million, which equates to a reduction in the TPIRR’s first-year revenue requirement of \$23 million. Stepping into CSXT’s shoes, however, and incurring the payment to CSX Terminals would result in an increase to TPIRR first-year operating costs of \$36 million. Table 1 below summarizes the first-year costs that TPI assumed the SARR would incur in serving its intermodal traffic in the Opening and Rebuttal evidence, and presents the results when TPI’s Rebuttal assumption that the SARR would

¹⁷ Information sufficient to calculate the amount of terminal services payments and other costs described above was included in the documents and materials CSXT produced in discovery. *See, e.g.*, “Intermodal Operating Expense.xlsx” (produced Oct. 17, 2013), “Intermodal Terminal Cost and Volume Update.xlsx” (produced Oct. 17, 2013). The materials produced in discovery also identify costs incurred by CSX Terminals performing terminal and trucking functions. In order to align the costs for which the TPIRR would be responsible with the revenues it is claiming, CSXT deducted costs associated with trucking (drayage) activities before calculating the fee to be charged to the TPIRR.

replicate CSXT’s relationship with CSX Terminals is properly implemented to account for the charges paid by CSXT to CSX Terminals.

Table 1¹⁸
TPIRR First-Year Costs of Providing Intermodal Service
(\$ in Millions)

	TPI Opening	TPI Rebuttal	Corrected Rebuttal	TPI Rebuttal Position
Operating Expense	\$67.2	\$65.2	\$100.8	TPI only includes the operating costs that are incurred by CSX Terminals, and not the fee that CSXT is charged
Revenue Req.-Land	\$43.3	\$0.0	\$43.3	TPI incorrectly assumes that CSXT does not own the land
Revenue Req.-Facility	\$22.9	\$0.0	\$0.0	TPI excludes the capital investment, but does not account for the fee that CSXT is charged by the Intermodal subsidiary
Total First-Year Cost	\$133.4	\$65.2	\$144.1	

Table 1 shows that when properly implemented, TPI’s belated attempt to change its case-in-chief by modifying the ownership responsibility for intermodal facilities would result in a modest increase to the TPIRR’s first-year expenses of less than 10%. Because both the operating expenses and revenue requirements are inflated in the discounted cash flow analysis, this pattern would continue throughout the analysis period. CSXT estimates that the impact of TPI’s proposed change to treating the intermodal facilities as owned by a third party would increase the net present value of SAC costs by approximately \$125 million over 10 years. This would represent only 2% of the total overall “overpayments” as calculated by TPI in its rebuttal SAC evidence.

¹⁸ As indicated, Table 1 presents the results of correctly implementing TPI’s rebuttal assumption that the TPIRR steps into CSXT’s shoes and pays CSX Terminals for intermodal service.

C. The Supplemental Material TPI Seeks To Introduce Is Not Central To Its Case.

For much the same reasons that the supplemental material TPI seeks to submit would not materially affect the outcome of the case, it also is not central to TPI's case. *See IPA* at 2. TPI correctly concedes the additional material it seeks to introduce would "not modify the foundation of [its] case." Petition at 4. Whether or not the TPIRR owned and operated the intermodal facilities necessary to serve its intermodal traffic, it would be required to pay for the use of those facilities and services and, as CSXT has demonstrated, the net cost to the TPIRR over time would be approximately the same. *See II.B, supra*.¹⁹ Thus, TPI has failed to carry its burden on this third and final element as well. Because TPI has not made the required showing on any of the three essential elements for the relief it seeks, the Petition should be denied.

II. TPI HAS NOT DEMONSTRATED IT SHOULD BE ALLOWED TO SUPPLEMENT ITS EVIDENCE TO ADDRESS ITS OTHER PURPORTED ERRORS.

A. TPI Has Not Justified The Submission Of Additional Evidence To Modify Its Case-In-Chief Regarding Clearing And Grubbing And Bridge Abutments.

TPI also seeks to "supplement the record" by changing its opening evidence regarding quantities for clearing and grubbing and the number of abutments for bridges it used to replace oversized culverts. *See* Petition at 4. TPI's request for permission to supplement should be denied for three independently sufficient reasons.

First, the Petition utterly fails to satisfy the Board's three-part standard for allowing supplemental evidence.²⁰ TPI made no *attempt* to show it meets this standard in seeking the

¹⁹ Similarly, TPI has not shown that either a cross-subsidy analysis of a potential rate prescription for one lane or its "spreadsheet input errors" are central to its case. *See III infra*.

²⁰ As discussed, the Board requires a complainant seeking to supplement the record to show that the material it seeks to introduce: (i) could not reasonably have been introduced earlier; (ii) is central to the case; and (iii) is material to the outcome of the case. *See supra II.A*.

admission of supplemental evidence relating to these two issues. This failure alone compels denial of the Petition to supplement with respect to its proffered changes to clearing and grubbing and bridge abutment evidence.

Second, a complainant is required to make its best case on opening and Complainant TPI may not use “supplemental” evidence—submitted well after CSXT filed its Reply Evidence—to change its case-in-chief with respect to what it labels a “technical error” in its opening evidence. TPI now asserts that its opening evidence contained “spreadsheet input errors” that caused its case-in-chief to overstate TPIRR road property investment for those two items. *See* Petition at 4. But the Board has held that addressing such errors “brought on by the complainant’s own mistake” is not ground to allow a complainant to supplement its evidence presented in its case-in-chief. *See IPA* at 3. (rejecting request to revise evidence to correct a spreadsheet “linking error”).

In *IPA*, the Board rejected a complainant’s attempt to correct its opening evidence technical “linking error” through supplemental evidence because “it is the duty of the complainant to make its best case on opening.” *Id.* The same rule and logic apply equally here. The Board should enforce its rules and hold TPI to the same standard as other complainants by requiring it to stand by its opening evidence. If SAC cases are to proceed expeditiously and fairly, complainants must not be allowed—absent truly extraordinary circumstances—to modify and amend their case-in-chief and supporting evidence after their submission.

Third, TPI is foreclosed from revising evidence related to these two issues because its opening evidence was not challenged by CSXT on Reply. Rebuttal evidence is an opportunity for a complainant to address only those “issues challenged by the railroad.” *Duke Energy Corp. v. Norfolk So. Ry. Co.*, 7 S.T.B. 89, 101 (2004). But when Complainant’s evidence or position is

unchallenged, as is the case here, that is the end of the matter: evidence not challenged by the railroad is “not open to rebuttal.” *Id.* at 101, n.18. CSXT accepted the evidence TPI presented in its case-in-chief regarding clearing and grubbing quantities and the volume of abutments necessary for bridges replacing oversized culverts.²¹ Regardless of whether they are labeled as rebuttal evidence or supplemental evidence, the two items TPI addresses are not eligible for additional evidentiary submissions.

B. The Board Should Reject TPI’s Untimely Challenge To The *Otter Tail* Cross-Subsidy Test.

The Board also should reject TPI’s request for leave to supplement the record to assert the new argument that the Board should not apply the *Otter Tail* cross-subsidy test in this case. *See* Petition at 2. In *Otter Tail Power Co. v. BNSF Ry. Co.*, STB Docket No. 42071 at 10-11 (S.T.B. served Jan. 25, 2006) (“*Otter Tail*”), the Board held that the cross-subsidy analysis previously announced in *PPL Montana, LLC v. BNSF*, 6 S.T.B. 286 (2002), must be applied to potential rate relief “to ensure that the agency itself does not create a cross-subsidy when [it] set[s] a rate prescription.” In its proffered supplemental evidence, TPI argues for the first time that the *Otter Tail* cross-subsidy test is arbitrary. *See* TPI Rebuttal at III-H-34-35. TPI’s new supplemental argument is procedurally barred. But even if the Board does consider TPI’s arguments, it should also dismiss them as substantively meritless.

As an initial matter, TPI’s cross-subsidy rebuttal evidence does not meet the Board’s three-prong standard for submitting supplemental evidence. *See, e.g., Duke/CSXT* at 4. TPI has not even attempted to explain how this new evidence meets the Board’s standard, perhaps

²¹ *See* CSXT Reply at III-F-31 (“CSXT accepts TPI’s proposed method of determining clearing quantities and grubbing quantities and the resulting clearing and grubbing quantities.”); CSXT Reply WP “TPI Bridge Construction Costs CSXT Reply.xlsx,” Tab “Oversized Culverts” *cf* TPI Op. WP “TPI Bridge Construction Cost.xlsx,” Tab “Oversized Culverts.”

because it could not do so. Indisputably, TPI could have made this argument earlier, specifically in its opening case-in-chief. Furthermore, TPI's new cross-subsidy argument would apply to only one lane—out of 88 total lanes—at issue in this case. A potential prescribed rate for that single lane is hardly central to the case or material to its overall outcome. Because of TPI's failure to satisfy the governing standard, the Board should deny the Petition with respect to this argument without further consideration.

There are also several procedural reasons TPI's Petition should be denied as it relates to the cross-subsidy analysis. In the first instance, TPI is attempting to reverse settled law. Specifically, the *Otter Tail* case was decided more than eight years ago, and affirmed on appeal. *See Otter Tail Power Co. v. STB*, 484 F.3d 959 (8th Cir. 2007). TPI now belatedly attempts to re-open settled Board precedent without offering a compelling reason for the Board to take such an extraordinary step. Further, the request is untimely. If TPI wished to raise this issue it should have done so as part of its opening case-in-chief, rather than waiting to submit it as a supplemental evidence request. TPI's untimely request to supplement would further delay the resolution of this already lengthy proceeding.

Moreover, any further consideration of this issue is not ripe at this juncture because the Board has not even completed its SAC analysis, let alone determined that any challenged rate exceeds a maximum reasonable level. Even if the Board otherwise were inclined to address TPI's new argument proffered on rebuttal, it only would have occasion to do so if it first were to find that SAC revenues exceed SAC costs and the MMM process is implicated. In that event, the Board could request that the parties submit any specific cross-subsidy arguments they wish to make before the Board applied the cross-subsidy test. *See, e.g., Otter Tail Power Co. v. BNSF*

Ry. Co., STB Docket No. 42071 (S.T.B. served Dec. 13, 2004) (requesting supplemental evidence on cross-subsidy questions).

Even if the Board were to consider TPI's untimely argument on the merits—and it should not—TPI provides no basis for the Board to overrule its *Otter Tail* precedent. TPI makes two claims in support of overruling *Otter Tail*: (i) the cross-subsidy test is arbitrary; and (ii) the test purportedly violates other precedent. Both contentions are unavailing.

TPI's first claim is that the cross-subsidy test is arbitrary because it uses hypothetical rates. *See* TPI Rebuttal at III-H-34-35. According to TPI, the Board's cross-subsidy analysis erroneously assumes that rate reductions applied to issue movements also would apply to similar non-issue traffic in the SARR traffic group. *Id.* at III-H-35. TPI's argument is neither new nor correct. The same argument was cogently rejected by the Board when it established the *Otter Tail* cross-subsidy test.

Otter Tail explained that the fact that the Board's rate prescription authority is limited to the movements specified in a complaint did not mean the Board could not apply the cross-subsidy test to non-issue SARR traffic in the rate prescription context, because "other captive shippers in the traffic group could bring a challenge to their own rates in the future." *Otter Tail* at 11. Moreover, those rates that are "under contract will be renegotiated at some point, and the potential regulatory relief that might be available if a contract is not renewed or revised is the backdrop to such negotiations." *Id.* The Board went on to explain that the purpose of the SAC analysis is to "simulate the competitive market rate that would prevail in a contestable marketplace" and that the analysis "must assume the repeated application of the SAC test to all shippers in the traffic group." *Id.* Furthermore, the Board has previously found that to prescribe rates without considering non-issue SARR traffic would "inappropriate[ly] ...circumvent

Congress' intent by shifting any unregulated revenues from the railroad to a particular captive shipper.” *Id.* In short, the Board already considered and rejected TPI’s argument when originally adopting the *Otter Tail* test, and its ruling is settled law.

TPI’s second argument is that the Board’s decision in *Otter Tail* contradicted a previous Board discussion in *Wisconsin Power & Light Co. v. Union Pac. R.R. Co.*, 5 S.T.B. 955 (2001) (“*WP&L*”). *See* TPI Rebuttal at III-H-35-38. In the first instance, it is axiomatic that a decision in an older case may be overruled by a decision in a more recent case (such as the 2006 *Otter Tail* decision). Furthermore, *Otter Tail* did not address the 2001 *WP&L* decision for good reason—*WP&L* does not contradict the Board’s conclusion in *Otter Tail* in 2006 because *WP&L* involved an unrelated issue. The discussion in *WP&L* that TPI cites related to an adjustment to capital carrying charges in the DCF model advocated by the railroad to account for the risk that the SARR would not realize estimated revenue projections. It did *not* address internal cross-subsidies. *See WP&L*, 5 S.T.B. at 982-983. Although some of the arguments in *WP&L* related broadly to contestable markets theory, the specific discussion referenced by TPI was entirely different from the *Otter Tail* cross-subsidy analysis at issue here. Because nearly any issue in a SAC case could be tied to contestable market theory (which is a foundation of Constrained Market Pricing and the SAC test), a general common connection to contestable markets theory alone hardly implicates TPI’s argument that *Otter Tail* was wrongly decided. It is thus unremarkable that *Otter Tail* did not reference an unrelated discussion from a prior case in its analysis or address what TPI now—eight years later—mistakenly claims was a departure from that supposed precedent.

TPI’s attenuated argument for overruling *Otter Tail* also must be rejected because its proffered alternative to the *Otter Tail* cross-subsidy analysis is impractical. TPI essentially calls

for the regular re-opening of SAC cases to consider changes in real-world rail rates on SARR-replicated lines. *See* TPI Rebuttal at III-H-38. The Board certainly has the authority to reopen cases, but it does so very rarely and only to address extraordinary situations (primarily unforeseen changed circumstances that materially affect the outcome of the case). Even in the sole decision cited by TPI, the Board explained that petitions to reopen must be approached “cautiously, on a case-by-case basis, striving to achieve an appropriate balance between the interests of fairness to all parties and of administrative finality and repose.” *Arizona Pub. Serv. Co. & Pacificorp v. The Burlington N. & S. F. Ry. Co.*, 6 S.T.B. 851, 855 (2003) (quoting *Arizona Pub. Serv. Co. v. Atchison, T. & S. F. Ry. Co.*, 3 S.T.B. 70, 75 (1998)). The reopening of a case is an extraordinary measure and by no means the run-of-the-mill procedural step that TPI suggests. The *Otter Tail* cross-subsidy test allows rates to be prescribed appropriately at the time of the Board’s decision rather than requiring the Board to continuously monitor non-issue traffic rates and to reopen decided cases when other rates change. TPI’s proffered alternative to the *Otter Tail* cross-subsidy analysis would be costly and impractical and would create substantial administrative inefficiencies without a commensurate benefit to shippers, carriers, or the public.

* * * *

In sum, TPI has failed to make the minimum required showing necessary to allow it to make any supplementation of the record in this case and the Petition must be denied. As TPI essentially concedes, if the proffered evidence is not allowed for purposes of supplementing the record, it is “impermissible rebuttal” that must be excluded from the evidence in this case. *See*

Petition at 1.²² The Board should deny the Petition, order the supplemental evidence TPI submitted excluded from the record in this matter, and give that supplemental material no consideration in deciding the merits of this rate reasonableness case.

III. THE SCHEDULE TPI HAS PROPOSED FOR SUBMISSION OF SUPPLEMENTAL EVIDENCE IS UNFAIR AND UNWORKABLE.

Finally, even if the Board were to consider TPI’s supplemental evidence—despite the Complainant’s failure to make the required showing (including TPI’s failure to even *address* application of the governing standard for two of its three requests to supplement the record)—the supplemental evidentiary schedule TPI has proposed is unfair and unworkable. If the Board denies the Petition, of course, there would be no need for filings other than the Final Briefs provided for in the procedural schedule. If the Board were to grant the Petition, it would need to establish a schedule for submission of supplemental evidence that would allow CSXT a full and fair opportunity to develop and file responsive evidence.

TPI proposes that CSXT be required to file responsive supplemental evidence by December 5 (barely ten days after this response, including the Thanksgiving holidays). Should the Board grant the Petition sometime after November 25, any time remaining until December 5 would be far too short to allow CSXT a reasonable opportunity to develop and file responsive supplemental evidence. TPI compounds the unfairness of its proffered schedule by proposing that it be allowed to file further supplemental evidence (in the form of supplemental “rebuttal”

²² This concession is buttressed by TPI’s own determination that it was required to seek leave to file supplemental evidence. If TPI did not believe the material at issue was inadmissible as rebuttal evidence, there would have been no need for it to seek leave to supplement the record—TPI simply would have filed that material as rebuttal evidence without requesting leave to supplement the record. *See* Petition at 1.

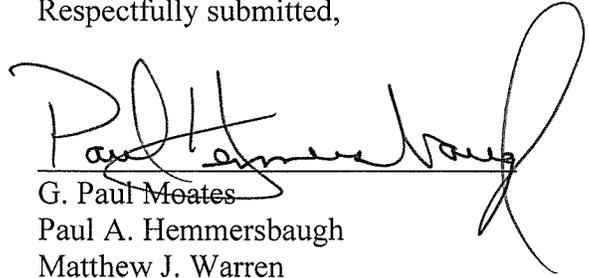
evidence) on the same date the parties file their Final Briefs.²³ This, of course, would deprive CSXT of any opportunity to address TPI's additional evidence in its Final Brief, effectively guaranteeing that any such supplemental rebuttal evidence would go untested. While TPI's Petition invokes "principles of equity and fairness," its proposed schedule would accomplish the opposite by denying CSXT any opportunity to address TPI's supplemental rebuttal material and arguments. Plainly, TPI's proposed supplemental evidence schedule is a non-starter that must be flatly rejected by the Board.

CONCLUSION

TPI's Petition to Supplement the Record should be denied in its entirety. If any portion of the Petition is granted, the Board should establish a procedural schedule that ensures that CSXT is afforded a fair and reasonable opportunity to provide responsive evidence and argument (including a reasonable period between the filing of any supplemental reply or supplemental rebuttal evidence and the due date for Final Briefs).

²³ TPI has not justified its supposition that it would be authorized to file yet another round of "rebuttal supplemental" evidence following CSXT's filing of responsive supplemental evidence. Its proposal would require the Board to either eliminate CSXT's right to address the full evidentiary record in its Final Brief or to delay the proceedings further—an ironic result in light of TPI's prior filings suggesting that it would file a writ of mandamus to speed up the regulatory process. *See* Letter from J. Moreno to Chairman Elliott at 3, STB Docket No. 42121 (filed Apr. 22, 2013).

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Paul A. Hemmersbaugh", written over a horizontal line.

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Dated: November 25, 2014

CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of November 2014, I caused a copy of the foregoing CSXT Reply to Complainant's Petition to Supplement the Record to be served via email and first-class U.S. mail upon:

Jeffrey O. Moreno
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Marc Korman

EXHIBIT 1

To

**CSXT's Reply In Opposition to Complainant's Petition
To Supplement The Record**

STB Docket No. 42121

Total Petrochemicals & Refining USA, LLC v. CSX Transp., Inc.

**Excerpts From Complainant TPI's Discovery Requests To
Defendant CSXT**

- e. The number and type of locomotives typically assigned to each of the Road Trains;
- f. The number and type of loaded and empty cars typically assigned to each of the Road Trains;
- g. The trailing length for each of the identified Road Trains;
- h. The trailing weight for each of the identified Road Trains;
- i. The scheduled frequency of service for each identified Road Train; and
- j. The scheduled time of departure and arrival at stations served by each of the identified Road Trains.

INTERROGATORY NO. 13

Please identify the location and name of each intermodal terminal or yard located on CSXT's rail lines in the SARR States, and provide the following information for each identified terminal or yard:

- a. Please describe the services CSXT provides at each intermodal terminal or yard identified in response to this interrogatory;
- b. For each terminal or yard, describe the yard and track layout, yard and track signaling, yard switching, and the track connection(s) to mainline track;
- c. If CSXT does not provide services at any of the intermodal terminals or yards, please identify the entity that provides service at each intermodal terminal or yard;
- d. State whether the loading and unloading facilities are owned and/or operated by CSXT and its personnel, or whether by an outside contractor at each facility. If owned or operated by a contractor, please identify lift and other charges contained in contracts for services provided by the contractor(s);

- e. Please describe all CSXT operations at each intermodal terminal or yard, including but not limited to:
- i. A description of each job assignment at each identified intermodal terminal or yard;
 - ii. The number of shifts assigned per day for each job assignment;
 - iii. The number of train crews assigned at each intermodal terminal or yard including a description of the services provided by each train crew, and;
 - iv. The number of annual lifts performed at each intermodal terminal or yard.
- f. Please describe the security procedures employed at each intermodal terminal or yard located on CSXT rail lines in the SARR States.

INTERROGATORY NO. 14

Please identify each scheduled Intermodal Train operating in the SARR states and for each of the identified Intermodal Trains, please identify the following:

- a. CSXT's train identifier or designation of each identified Intermodal Train and the beginning and end points served by each of the identified Intermodal Trains;
- b. The scheduled on-duty and off-duty locations for each crew assigned to the identified Intermodal Trains;
- c. The number of crew members typically assigned per shift to each of the identified Intermodal Trains;
- d. The number and type of locomotives typically assigned to each of the Intermodal Trains;
- e. The number and type of loaded and empty cars typically assigned to each of the Road Trains;
- f. The trailing length for each of the identified Road Trains;
- g. The trailing weight for each of the identified Road Trains;
- h. The scheduled frequency of service for each identified Intermodal Train; and

i. The scheduled time of departure from the initial terminal to scheduled time of arrival at final terminal destination on CSXT for each of the identified Intermodal Trains.

INTERROGATORY NO. 15

Please identify the location and name of each Automotive Distribution Center located on CSXT's rail lines in the SARR States, and provide the following information for each identified Automotive Distribution Center:

a. Please describe the services CSXT provides at each Automotive Distribution Center identified in response to this interrogatory;

b. If CSXT does not provide services at any of the Automotive Distribution Centers, please identify the entity that provides service at each Automotive Distribution Center;

c. Please describe CSXT operations at each Automotive Distribution Center, including but not limited to:

- i. A description of each job assignment at each Automotive Distribution Center;
- ii. The number of shifts assigned per day for each job assignment, and;
- iii. The number of train crews assigned at each Automotive Distribution Center including a description of the services provided by each train crew.

d. Please describe the security procedures employed by CSXT at each of the Automotive Distribution Centers.

INTERROGATORY NO. 16

Please identify each scheduled Automotive Train operating in the SARR states and for each of the identified Automotive Trains, please identify the following:

a. CSXT's train identifier or designation of each identified Automotive Train and the beginning and end points served by each of the identified Automotive Trains;

e. The STB account(s) in which CSXT records the payments made to CSX Technology for the "data processing charges" referenced in CSXT's 2009 Class I Annual Report Form R-1, page 15.

REQUEST FOR PRODUCTION NO. 108

Please produce documents identifying and explaining the procedures by which CSXT develops the bills or invoices to CSXI, TDSI and TRANSFLO for rail-related transportation services. For each component of each CSXT bill or invoice, please identify and produce documents identifying the STB accounts in which CSXT records the payments received from CSXI, TDSI and TRANSFLO, as well as the following information for CSXI, TDSI and TRANSFLO for each year or partial year 2008 to the present:

- a. Total revenues;
- b. Amounts received to cover transloading costs;
- c. Amounts received to cover payments for costs associated with other transportation modes, e.g., over-highway truck costs, water vessel costs, etc.;
- d. Amounts paid to CSXT
- e. Overhead and administrative costs; and
- f. Margin or profit.

REQUEST FOR PRODUCTION NO. 109

Please provide documents sufficient to show the following for each intermodal yard or terminal served by CSXI in the SARR States:

- a. Each asset owned or leased by CSXT;

- b. Each asset owned or leased by CSXI;
- c. Each asset owned or leased by an entity other than CSXT or CSXI; and
- d. All acquisition information and lease or other use payment information for each year or partial year 2008 to the present.

REQUEST FOR PRODUCTION NO. 110

Please provide documents sufficient to show the following for each Automotive Distribution Center served by TDSI in the SARR States:

- a. Each asset owned or leased by CSXT;
- b. Each asset owned or leased by TDSI;
- c. Each asset owned or leased by an entity other than CSXT or TDSI; and
- d. All acquisition information and lease or other use payment information for each year or partial year 2008 to the present.

REQUEST FOR PRODUCTION NO. 111

Please provide documents sufficient to show the following for each bulk terminal served by TRANSFLO in the SARR States:

- a. Each asset owned or leased by CSXT;
- b. Each asset owned or leased by TRANSFLO;
- c. Each asset owned or leased by an entity other than CSXT or TRANSFLO; and
- d. All acquisition information and lease or other use payment information for each year or partial year 2008 to the present.

REQUEST FOR PRODUCTION NO. 112

Please produce documents sufficient to show the location, size (including square footage, number and lengths of tracks, capacity, etc.), components (such as equipment and machinery), original cost and year built for each facility located on any portion of CSXT's system in the SARR States that falls within each of the following categories of facilities:

- a. Roadway maintenance facilities;
- b. Locomotive maintenance facilities;
- c. Locomotive servicing facilities;
- d. Administrative facilities;
- e. Rail yards;
- f. Dispatch centers;
- g. Freight car repair and maintenance facilities;
- h. Scales;
- i. Wastewater treatment plants;
- j. Snowshed facilities;
- k. Train, yard and engineman facilities;
- l. Automotive Distribution Centers;
- m. Intermodal terminals and yards;
- n. River transload facilities; and
- o. Lake transload facilities.

REQUEST FOR PRODUCTION NO. 113

Please provide for each year 2008 to the present for each facility identified in response to Request For Production No. 112, subparts (l), (m), (n) and (o):

- a. The annual costs to operate each facility separated by function; and
- b. The annual throughput of each facility (e.g., automobiles, containers, trailers, carloads, etc.).

REQUEST FOR PRODUCTION NO. 114

Please produce documents supporting the security procedures at each location identified in response to Interrogatory Nos. 7 (i), 13 (f), 15 (d) and 17 (f) including, but not limited to, the following for each year or partial year 2006 to the present:

- a. Staffing requirements by job classification;
- b. Material requirements;
- c. Transportation requirements;
- d. Facility requirements;
- e. Other requirements not included in a, b, c or d above;
- f. The annual costs incurred for the security at each location broken down by category of expense, e.g., labor, materials, purchased services, etc.;
- g. The entity responsible for paying the annual security costs at each location, e.g., CSX Corporation, CSXT, CSXI, TDSI, TRANSFLO, etc., and the portion paid by each entity in dollars or percentages; and
- h. The STB accounts where any costs incurred by CSXT are recorded.

REQUEST FOR PRODUCTION NO. 115

Please produce documents sufficient to describe, in detail, all personnel employed by CSXI, TDSI, and/or TRANSFLO in connection with the provision of services for which each receives freight revenue, for each year or partial year 2008 to the present, including but not limited to each employee's position and responsibilities; annual compensation (including all benefits); and for employees who do not dedicate 100% of their on-duty time to the provision of services described herein, the percentage of each such employee's time that is so dedicated.

REQUEST FOR PRODUCTION NO. 116

Please produce documents sufficient to describe, in detail, all services purchased by CSXI, TDSI and/or TRANSFLO from third parties that are necessary or incidental to the provision of services by each for which each receives revenue, including but not limited to all amounts paid for such third party services, for each year or partial year 2008 to the present.

REQUEST FOR PRODUCTION NO. 117

For each company identified as providing outsourced services in response to Interrogatory No. 18, please provide documents which describe the services outsourced, the fees paid for the outsourced services, and the analyses which developed the estimated and/or actual savings realized by CSX and each of its subsidiaries from such outsourcing.

REQUEST FOR PRODUCTION NO. 118

Please produce all documents relating to any contribution or payment by any governmental or quasi-governmental entity (including, without limitation, AMTRAK) for

II. INSTRUCTIONS

TPI hereby incorporates and references the Instructions in TPI's First Set of Requests for Admissions, Interrogatories, and Request for Production of Documents (dated May 17, 2010).

III. INTERROGATORIES

INTERROGATORY NO. 24

Please describe the services, if any, that CSXI provides at each intermodal terminal or yard identified in CSXT's response to Interrogatory #13.

INTERROGATORY NO. 25

Please state whether or not CSXT has information and/or data in a computer-readable format for the following items (each subpart cross-references the information sought in a Request for Production ("RFP") in TPI's First Set of Discovery Requests, served on May 17, 2010):

- a. Operating Timetables (or the data identified in the timetables) [RFP #13]
- b. Station Lists [RFP #13]
- c. Station Books [RFP #13]
- d. Track Charts (or the data contained on the track charts) [RFP #13]
- e. Schematics of trackage at Origins [RFP #13]
- f. Schematics of trackage at Destinations [RFP #13]
- g. Mileage between railroad stations [RFP #13 and #27]
- h. Number of feet between mileposts [RFP #13]
- i. Operating Statistics and Density Data (including but not limited to train miles, train hours, locomotive unit miles, loaded car-miles, empty car-miles, net ton-miles, gross ton-miles (both including and excluding locomotives), number of trains, etc.) [RFP #18]
- j. Density [RFP #19]
- k. Rail line elevation [RFP #39]
- l. Curves [RFP #39]
- m. Communications signals [RFP #40]
- n. Yards [RFP #41]
- o. Track Input files for the RTC Model [RFP #43]
- p. Train Input files for the RTC Model [RFP #43]
- q. Form A and Form B files for the RTC Model [RFP #43]
- r. Output files for the RTC Model [RFP #43]
- s. Cycle times and movement data [RFP #44]

- t. Cycle times (including actual, projected, standard, expected and/or contractual) [RFP #45]
- u. Locomotives [RFP #52]
- v. Locomotive fuel consumption [RFP #56]
- w. Locomotive utilization and performance (including unit-miles, hours running, hours switching, hours out-of-service for repairs and hours stored useable) [RFP #59]
- x. Crew districts (including "from" and "to" stations, route miles and number of locomotives per train by train type) [RFP #65]
- y. Train dispatch priority and methodology for scheduling trains [RFP #72]
- z. End-of-train telemetry devices [RFP #76]
- aa. CSXT freight cars [RFP #77]
- bb. CSXT trailers and/or containers [RFP #78]
- cc. CSXI trailers and/or containers [RFP #79]
- dd. CSXT auto rack cars [RFP #81]
- ee. Rail car repair and maintenance [RFP #85]
- ff. Rail car miles [RFP #85]
- gg. Shipper-owned and shipper-leased rail cars [RFP #86]
- hh. Intermodal and automotive railcars provided by a third party [RFP #86]
- ii. Locomotive repair and maintenance [RFP #88]
- jj. Locomotive unit-miles [RFP #88]
- kk. Number of shifts worked per year, years of employment and annual compensation for individual locomotive engineers, conductors, dispatchers and equipment inspectors [RFP #94]
- ll. Culverts [RFP #127]
- mm. Tunnels [RFP #131]
- nn. Bridges [RFP #133]
- oo. Highway Crossings [RFP #138]
- pp. Fences [RFP #146]
- qq. Geographic/Geospatial Information System ("GIS") [RFP #153 and Interrogatory #22]
- rr. CSX Track Chart and Engineering Information System [RFP #154 and Interrogatory #22]

IV. REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 155

For each subpart of Interrogatory #25, if CSXT answered in the affirmative, then produce the information and/or data in a computer-readable format to the extent not already produced in reply to any other Interrogatory or Request for Production.

EXHIBIT 2

To

**CSXT's Reply In Opposition to Complainant's Petition
To Supplement The Record**

STB Docket No. 42121

Total Petrochemicals & Refining USA, LLC v. CSX Transp., Inc.

Letter from P. Hemmersbaugh To J. Moreno Dated Nov. 5, 2010

November 5, 2010

By Email and U.S. Mail

Jeffrey O. Moreno
Thompson Hine LLP
1920 N Street, N.W., Suite 800
Washington, DC, 20036-1600

Re: Total Petrochemicals USA, Inc. v. CSX Transportation, Inc., STB Docket No. 42121

Dear Jeff:

We write to provide information that Complainant Total Petrochemicals USA, Inc. ("TPI") may find relevant to the above-captioned matter. As CSXT previously advised in response to TPI discovery requests, the former CSX Intermodal, Inc. ceased to exist on or about June 26, 2010. Below, we very briefly describe the restructuring of certain aspects of CSX's intermodal transportation business and related entities (referred to for purposes of this letter as the "Restructuring"), as well as changes to functions, rights, and responsibilities that may be relevant to this rate case.

Prior to the Restructuring, CSX Intermodal, Inc. ("CSXI") was an intermodal transportation marketing company which, in connection with that function, also operated a motor carrier business and intermodal terminals through subsidiary CSX Intermodal Terminals, Inc. (hereinafter "Terminals") and their agents). CSXI was a first-tier subsidiary of CSX Corporation ("CSX"). CSXI did not own or operate a railroad, but instead purchased freight rail services from railroads (including CSXT) in order to fulfill transportation agreements with intermodal customers. CSXI did not own trucks for drayage or directly employ truck drivers, but instead contracted with independent trucking companies and truckers to provide trucking service required by CSXI customers. CSXI retained the services of its then-subsiidiary Terminals, which owned and operated intermodal terminals, and provided container "lift" services for intermodal containers (from rail cars to trucks and vice versa) and other services for CSXI at those terminals.

"Terminals" has owned and operated a system of intermodal terminals since the early 1990s. At those facilities, Terminals (directly or through third party contractors) lifts containers from railcars and places them on truck chassis or trailers, and vice versa, thereby facilitating intermodal transportation of containerized cargo. Prior to the Restructuring, Terminals' direct "customer" was its then-parent CSXI.

Jeffrey O. Moreno
November 5, 2010
Page 2

In 2010, CSX decided to restructure its intermodal business and to integrate intermodal sales and marketing functions into CSX Transportation (“CSXT”), the Class I railroad that is the Defendant in the present rate case. The Restructuring accomplished that transfer of functions and responsibilities, making CSXT responsible for sales and marketing of intermodal service, as well as the provision of the rail transportation element of intermodal services it sells to customers. Following the Restructuring (effective June 26, 2010), any and all linehaul rail transportation services and functions formerly performed by CSXT on behalf of CSXI – as well as attendant rights and responsibilities – were transferred to CSXT. As part of the Restructuring, on June 26, 2010 the former Transportation Services Agreement between CSXT and CSXI was terminated. That terminated former agreement has no force or effect today.¹ Also as part of the Restructuring, rail transportation contracts between the former CSXI and third parties were assigned to CSXT.

The Restructuring also effectively transferred CSXI’s terminal operations, trucking operations, and related rights, responsibilities, and agreements to Terminals, which became a direct first tier subsidiary of CSX. Following the Restructuring, CSXT and Terminals were sister corporations (both subsidiaries of CSX), with the former handling railroad operations and business and the latter responsible for intermodal terminal ownership and operations. Once all of the former CSXI’s functions, rights and responsibilities were distributed to CSXT, Terminals or other CSX subsidiaries, CSXI merged into CSXT and CSXI ceased to exist.

The elements of the Restructuring described above were completed on or around June 26, 2010. On or about August 18, 2010, the federal Railroad Retirement Board agreed that, beginning June 26, 2010, CSX Intermodal Terminals, CSX Services Inc., and TDSI (an entity not directly related to the Restructuring) were “covered employers,” subject to applicable provisions and requirements of the Railroad Retirement Act.

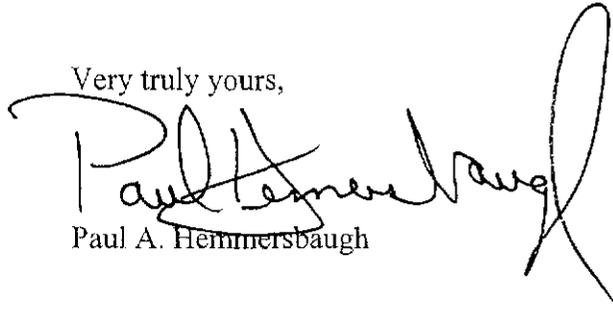
The foregoing description is very general and simplified for purposes of this rate case. It is not intended to, and does not, describe the numerous steps necessary to effectuate the general transfer of functions, rights, and responsibilities described above or the many other aspects of the Restructuring that are not directly relevant to this rail rate case. Significant results of the Restructuring, for purposes of this case, are that CSXI no longer exists and the functions, rights and responsibilities that survive the former CSXI have been assigned to CSXT or to Terminals. CSXT has previously produced documents and information memorializing the Restructuring and its distribution of surviving rights and responsibilities, including assignment of contracts and agreements with third parties. *See, e.g., CSX-TPI-HC-41643 to 41674.*

¹ CSX Services, Inc. was formerly a subsidiary of CSXI, which had approximately 25 employees who conducted billing and administrative services for CSXI. As part of the Restructuring, CSX Services became a subsidiary of CSXT.

Jeffrey O. Moreno
November 5, 2010
Page 3

Also attached are supplemental responses to TPI Interrogatories 13 and 24, which are consistent with this letter and provide additional responsive information. If you have questions concerning this letter, please contact me.

Very truly yours,

A handwritten signature in black ink, appearing to read "Paul Hemmersbaugh". The signature is fluid and cursive, with a large loop at the end of the last name.

Paul A. Hemmersbaugh

Enclosure

Supplemental Responses to Complainant TPI Interrogatories 13 and 24, in STB Dkt. No. 42121

Subject to, and without waiving, all of CSXT's previously asserted objections, CSXT hereby supplements its Response to TPI Interrogatory Numbers 13 and 14, as follows.

TPI INTERROGATORY NO. 13

Please identify the location and name of each intermodal terminal or yard located on CSXT's rail lines in the SARR States, and provide the following information for each identified terminal or yard:

- a. Please describe the services CSXT provides at each intermodal terminal or yard identified in response to this interrogatory;**

Response: CSXT arranges for the intermodal terminal services provided by CSX Intermodal Terminals, Inc. ("CSX Intermodal Terminals") identified on the attached list in accordance with Service Directory 1, which is publicly available on CSX's website. <http://www.csxi.com/share/csxicustomer/main/docs/servdirectory1csxt-REF25439.pdf>

Service Directory 1 is published by CSXT and specifies the terms and conditions under which CSXT arranges or provides transportation services and/or collects prices for such services.

See 2010_10_04 Term Dev Terminal Information.xls

- b. For each terminal or yard, describe the yard and track layout, yard and track signaling, yard switching, and the track connection(s) to mainline track;**

Response: See terminal maps produced in response to RFP 14 (from Ken Bodack)

- c. If CSXT does not provide services at any of the intermodal terminals or yards, please identify the entity that provides service at each intermodal terminal or yard;**

Response: CSX Intermodal Terminals, Inc. ("CSX Intermodal Terminals") together with its other agents provides the intermodal transportation services arranged by CSXT in accordance with Service Directory 1. <http://www.csxi.com/share/csxicustomer/main/docs/servdirectory1csxt-REF25439.pdf>

- d. State whether the loading and unloading facilities are owned and/or operated by CSXT and its personnel, or whether by an outside contractor at each facility. If owned or operated by a contractor, please identify lift and other charges contained in contracts for services provided by the contractor(s)**

Response: CSX Intermodal Terminals owns and operates the loading and unloading facilities. See Service Directory 1 for all lift accessorial charges. <http://www.csxi.com/share/csxicustomer/main/docs/servdirectory1csxt-REF25439.pdf>

CSX Intermodal Terminals together with its other agents provides the intermodal transportation services arranged by CSXT in accordance with Service Directory 1.

CSX Intermodal Terminals, Inc. ("CSX Intermodal Terminals") is a subsidiary of CSX Corporation. CSX Intermodal Terminals owns and operates a system of intermodal terminals as identified on the attached spreadsheet, and arranges drayage services for certain CSXT intermodal customers.

CSX Intermodal, Inc. ("Intermodal") was a subsidiary of CSX Corporation until it merged with CSXT on June 26, 2010. Prior to the merger, Intermodal was the parent company of CSX Intermodal Terminals, and conducted the sales and marketing activities associated with intermodal transportation service now provided by CSXT, as well as the drayage and trucking dispatch operations now being provided by CSX Intermodal Terminals.

CSXT arranges for the intermodal terminal services provided by CSX Intermodal Terminals. CSXT is now the sole customer of CSX Intermodal Terminals' operations.

TPI INTERROGATORY NO. 24

Please describe the services, if any, that CSXI provides at each intermodal terminal or yard identified in CSXT's response to Interrogatory #13.

Response: CSX Intermodal Terminals, Inc. ("CSX Intermodal Terminals") is a subsidiary of CSX Corporation. CSX Intermodal Terminals owns and operates a system of intermodal terminals as identified on the attached spreadsheet, and arranges drayage services for certain CSXT intermodal customers.

CSX Intermodal Terminals, Inc. together with its other agents provides the intermodal transportation services arranged by CSXT in accordance with Service Directory 1.
<http://www.csxi.com/share/csxicustomer/main/docs/servdirectory1csxt-REF25439.pdf>

CSX Intermodal, Inc. ("Intermodal") was a subsidiary of CSX Corporation until it merged with CSXT on June 26, 2010. Prior to the merger, Intermodal was the parent company of CSX Intermodal Terminals, and conducted the sales and marketing activities associated with intermodal transportation service now provided by CSXT, as well as the drayage and trucking dispatch operations now being provided by CSX Intermodal Terminals.

CSXT arranges for the intermodal terminal services provided by CSX Intermodal Terminals, Inc. CSXT is now the sole customer of CSX Intermodal Terminals' operations.

EXHIBIT 3

To

**CSXT's Reply In Opposition to Complainant's Petition
To Supplement The Record**

STB Docket No. 42121

Total Petrochemicals & Refining USA, LLC v. CSX Transp., Inc.

**Excerpts From CSX Transp., Inc.'s Form R-1 For
2010, 2011, 2012 and 2013**

NOTE 6. Related Party Transactions, Continued***Detail of Related Party Service Fees (Proceeds)***

<i>(Dollars in Millions)</i>	<u>2010</u>	<u>2009</u>
CSX Management Service Fee	\$ 303	\$ 386
Intermodal Inc.	(243)	(396)
CSX Technology	164	149
Intermodal Terminals	147	-
TDSI	56	37
CSX Trade Receivables	54	8
CSX Insurance	46	53
Other	1	28
	<u>\$ 528</u>	<u>\$ 265</u>
Total Related Party Service Fees	<u>\$ 528</u>	<u>\$ 265</u>

Related Party Service Fees (Proceeds) consists of amounts related to:

- CSX Management Service Fee – A management service fee charged by CSX as compensation for certain corporate services provided to the Respondent. These services include, but are not limited to, the areas of human resources, finance, administration, benefits, legal, tax, internal audit, corporate communications, risk management and strategic management services. The fee is calculated as a percentage of the Respondent's revenue.
- Intermodal Inc. Reimbursements – Reimbursement from Intermodal Inc. under an operating agreement for costs incurred by the Respondent related to intermodal operations. This reimbursement is based on an amount that approximates actual costs. The Respondent also collects certain revenue on behalf of Intermodal Inc. under the operating agreement.

Beginning in July 2010, Intermodal Inc. merged with the Respondent and, as a result all revenue is now fully included in the Respondent's revenue and the Respondent no longer receives these reimbursements from Intermodal Inc.

- CSX Technology, Inc. ("CSX Technology") Charges – Data processing charges from CSX Technology for the development, implementation and maintenance of computer systems, software and associated documentation for the day-to-day operations of the Respondent. These charges are based on a mark-up of direct costs.
- Intermodal Terminals Charges – Charges from Intermodal Terminals for services provided to the Respondent at intermodal terminal locations. These charges are calculated based on direct costs.
- Total Distribution Services, Inc. ("TDSI") Charges – Charges from TDSI for services provided to the Respondent at automobile ramps. These charges are calculated based on direct costs.
- CSX Trade Receivables, LLC ("CSX Trade Receivables") Charges – Charges from CSX Trade Receivables to the Respondent for sale of receivables from the Respondent to CSX Trade Receivables. These charges are based on the value of the receivables sold to CSX Trade Receivables.
- CSX Insurance Company ("CSX Insurance") – Charges from CSX Insurance for insurance premiums related to personal injury coverage.
- Other consists of proceeds from specialized services billed to CSX Business Management, Inc., CSX Real Property, Inc., and TRANSFLO Corporation and service fees paid to CSX de Mexico, S.A. de C.A.

CSX Technology, Intermodal Terminals, TDSI, CSX Trade Receivables, CSX Insurance, CSX Business Management, Inc., CSX Real Property, Inc., TRANSFLO Corporation and CSX de Mexico, S.A. de C.A. are wholly owned subsidiaries of CSX.

Detail of Payables (Receivables) to Affiliated Companies

<i>(Dollars in Millions)</i>	<u>2010</u>	<u>2009</u>
CSX Trade Receivables	\$ (369)	\$ (369)
CSX Corporation	(233)	318
CSX Business Management	(114)	(36)
CSX Technology	93	232
Intermodal Terminals	28	-
TRANSFLO	8	6
TDSI	6	4
CSX Insurance	(5)	5
Intermodal Inc	-	29
Other	1	1
Total Payable/(Receivable) to/from Affiliated Companies	<u>\$ (585)</u>	<u>\$ 190</u>

In 2010, Intermodal Inc merged out of existence and all payables were settled. Also in 2010, the Respondent and Intermodal Terminals entered into a new agreement which created the payable this year.

The Respondent and CSX Insurance have entered into a loan agreement whereby the Respondent may borrow up to \$125 million from CSX Insurance. The loan is payable in full on demand. \$55 million was outstanding under the agreement for both 2010 and 2009. Interest on the loan is payable monthly at 0.45% over the LIBOR rate, which was 0.71% and 0.68% at the end of 2010 and 2009, respectively. Interest expense related to the loan was \$0.4 million for both 2010 and 2009, respectively.

In 2009, the Respondent entered into an agreement to transfer eligible third-party receivables to CSX Trade Receivables, a bankruptcy-remote special purpose subsidiary of CSX Corporation. A separate subsidiary of CSX Corporation, CSX Business Management, will service the receivables. Upon transfer, the receivables become assets of CSX Trade Receivables and are shown above as due from CSX Trade Receivables.

As required by the *Related Party Disclosures Topic* in the ASC, the Respondent has identified amounts below owed to Conrail, or its subsidiaries, representing liabilities under the operating, equipment and shared area agreements with Conrail. The Respondent also executed a promissory note with a subsidiary of Conrail, which was included in long-term debt on the Schedule 200.

<i>(Dollars in Millions)</i>	<u>December 31, 2010</u>	<u>December 25, 2009</u>
Balance Sheet Information:		
CSXT Payable to Conrail ^(a)	\$ 84	\$ 65
Promissory Note Payable to Conrail Subsidiary	-	-
4.52% CSXT Promissory Note due March 2035 ^(b)	\$ 23	\$ 23

(a) Included on the Schedule 200 as accounts payable because it is short term in nature.

(b) Included on the Schedule 200 as long-term debt

	<u>Fiscal Years</u>	
	<u>2010</u>	<u>2009</u>
Income Statement Information:		
Interest Expense Related to Conrail Notes Payable	\$ 1	\$ 1

NOTE 5. Debt Agreements, continued

The valuation methods described below may produce a fair value calculation that may not be indicative of net realizable value or reflective of future fair values. Furthermore, while the Respondent believes its valuation methods are appropriate and consistent with other market participants, the use of different methodologies or assumptions to determine the fair value of certain financial instruments could result in a different fair value measurement at the reporting date.

Long-term debt is reported at carrying amount on the Schedule 200 and is the Respondent's only financial instrument with fair values significantly different from their carrying amounts. The majority of the Respondent's long-term debt has been estimated by applying market rates of similar instruments, provided by an independent third party, to the scheduled contractual debt payments and maturities. All of the inputs used to determine the fair value of the Respondent's long-term debt are Level 2 inputs.

The fair value of outstanding debt fluctuates with changes in a number of factors. Such factors include, but are not limited to, interest rates, market conditions, values of similar financial instruments, size of the transaction, cash flow projections and comparable trades. Fair value will exceed carrying value when the current market interest rate is lower than the interest rate at which the debt was originally issued. The fair value of a company's debt is a measure of its current value under present market conditions. It does not impact the financial statements under current accounting rules. The fair value and carrying value of the Respondent's long-term debt is as follows:

<i>(Dollars in Millions)</i>	<u>December 2011</u>	<u>December 2010</u>
Long-term Debt Including Current Maturities:		
Fair Value	\$ 1,477	\$ 1,563
Carrying Value	\$ 1,229	\$ 1,329

Long-term Debt Maturities

<i>(Dollars in Millions)</i>	<u>Maturities as of</u>
<u>Fiscal Years Ending</u>	<u>December 2011</u>
2012	\$ 105
2013	79
2014	327
2015	28
2016	19
2017 and Thereafter	671
Total Long-term Debt Maturities (including current portion)	<u>\$ 1,229</u>

NOTE 6. Related Party Transactions

The Respondent had a receivable of \$1,069 million and \$399 million in 2011 and 2010, respectively, relating to the Respondent's participation in the CSX cash management plan. The receivable is included in Receivables from Affiliated Companies in the Schedule 200. Under this plan, excess cash is advanced to CSX for investment and CSX makes cash funds available to its subsidiaries as needed for use in their operations. The Respondent and CSX are committed to repay all amounts due each other on demand should circumstances require. The companies are charged for borrowings or compensated for investments based on the short-term applicable Federal rate, which was 0.2% and 0.32% as of the end of 2011 and 2010, respectively. Net interest income related to this plan was \$2 million and 340 thousand in 2011 and 2010, respectively.

Detail of Related Party Service Fees (Proceeds)

<i>(Dollars in Millions)</i>	<u>Fiscal Years</u>	
	<u>2011</u>	<u>2010</u>
Intermodal Terminals	\$ 530	\$ 147
CSX Management Service Fee	387	303
Intermodal Inc.	-	(243)
CSX Technology	193	164
TDSI	63	56
Other	46	44
Total Related Party Service Fees (Proceeds)	<u>\$ 1,219</u>	<u>\$ 471</u>

Related Party Service Fees (Proceeds) consists of amounts related to:

- CSX Intermodal Terminals, Inc. ("Intermodal Terminals") – Charges from Intermodal Terminals for services provided to the Respondent at intermodal terminal locations. These charges are calculated based on direct costs.

NOTE 6. Related Party Transactions, continued

- CSX Management Service Fee – A management service fee charged by CSX as compensation for certain corporate services provided to the Respondent. These services include, but are not limited to, the areas of human resources, finance, administration, benefits, legal, tax, internal audit, corporate communications, risk management and strategic management services. The fee is calculated as a percentage of the Respondent's revenue.
- CSX Technology, Inc. ("CSX Technology") Charges – Data processing charges from CSX Technology for the development, implementation and maintenance of computer systems, software and associated documentation for the day-to-day operations of the Respondent. These charges are based on a mark-up of direct costs.
- Total Distribution Services, Inc. ("TDSI") Charges – Charges from TDSI for services provided to the Respondent at automobile ramps. These charges are calculated based on direct costs.
- Other consists of premiums paid to CSX Insurance Company ("CSX Insurance") for personal injury coverage and proceeds from specialized services billed to TRANSFLO Corporation ("TRANSFLO").

Intermodal Terminals, CSX Technology, TDSI, CSX Insurance, and TRANSFLO are wholly owned subsidiaries of CSX.

Detail of Payables (Receivables) to Affiliated Companies

<i>(Dollars in Millions)</i>	December	
	2011	2010
CSX Corporation	\$ (928)	\$ (233)
CSX Trade Receivables	(576)	(476)
CSX Technology	157	137
Intermodal Terminals	(67)	28
Other	17	4
Total Payable/(Receivable) to/from Affiliated Companies	<u>\$ (1,397)</u>	<u>\$ (540)</u>

The Respondent has an agreement to transfer eligible third-party receivables to CSX Trade Receivables, Inc., a bankruptcy-remote special purpose subsidiary of CSX. A separate subsidiary of CSX, CSX Business Management, Inc. will service the receivables. Upon transfer, the receivables become assets of CSX Trade Receivables, Inc. and are shown above.

The Respondent and CSX Insurance have entered into a loan agreement whereby the Respondent may borrow up to \$125 million from CSX Insurance. The loan is payable in full on demand. \$55 million was outstanding under the agreement for both 2011 and 2010, respectively. Interest on the loan is payable monthly at 0.45% over the LIBOR rate, which was 0.72% and 0.71% at the end of 2011 and 2010, respectively. Interest expense related to the loan was \$0.4 million for both 2011 and 2010, respectively.

As required by the *Related Party Disclosures Topic* in the ASC, the Respondent has identified amounts below owed to Conrail, or its subsidiaries, representing liabilities under the operating, equipment and shared area agreements with Conrail. The Respondent also executed a promissory note with a subsidiary of Conrail which was included in long-term debt on the Schedule 200.

<i>(Dollars in Millions)</i>	December	
	2011	2010
Balance Sheet Information:		
CSXT Payable to Conrail ^(a)	\$ 143	\$ 119
Promissory Notes Payable to Conrail Subsidiary		
4.52% CSXT Promissory Note due March 2035 ^(b)	\$ 23	\$ 23

(a) Included on the Schedule 200 as accrued accounts payable because it is short term in nature.

(b) Included on the Schedule 200 as funded debt unmatured.

Interest expense from the promissory note payable to a Conrail subsidiary was \$1 million for 2011 and 2010, respectively.

NOTE 6. Related Party Transactions, continued**Detail of Related Party Service Fees (Proceeds)**

(Dollars in Millions)	Fiscal Years	
	2012	2011
Intermodal Terminals	\$ 576	\$ 530
CSX Management Service Fee	456	387
CSX Technology	231	193
TDSI	75	63
Other	46	46
Total Related Party Service Fees (Proceeds)	\$ 1,384	\$ 1,219

Related Party Service Fees (Proceeds) consists of amounts related to:

- CSX Intermodal Terminals, Inc. ("Intermodal Terminals") – Charges from Intermodal Terminals for services provided to the Respondent at intermodal terminal locations. These charges are calculated based on direct costs.
- CSX Management Service Fee – A management service fee charged by CSX as compensation for certain corporate services provided to the Respondent. These services include, but are not limited to, the areas of human resources, finance, administration, benefits, legal, tax, internal audit, corporate communications, risk management and strategic management services. The fee is calculated as a percentage of the Respondent's revenue.
- CSX Technology, Inc. ("CSX Technology") Charges – Data processing charges from CSX Technology for the development, implementation and maintenance of computer systems, software and associated documentation for the day-to-day operations of the Respondent. These charges are based on a mark-up of direct costs.
- Total Distribution Services, Inc. ("TDSI") Charges – Charges from TDSI for services provided to the Respondent at automobile ramps. These charges are calculated based on direct costs.
- Other consists of premiums paid to CSX Insurance Company ("CSX Insurance") for personal injury coverage and proceeds from specialized services billed to TRANSFLO Corporation ("TRANSFLO").

Intermodal Terminals, CSX Technology, TDSI, CSX Insurance, and TRANSFLO are wholly owned subsidiaries of CSX.

Detail of Payables (Receivables) to Affiliated Companies

(Dollars in Millions)	December	December
	2012	2011
CSX Corporation	\$ (1,131)	\$ (928)
CSX Trade Receivables	(467)	(576)
CSX Technology	157	157
Intermodal Terminals	45	(67)
Other	10	17
Total Payable/(Receivable) to/from Affiliated Companies	\$ (1,386)	\$ (1,397)

The Respondent has an agreement to transfer eligible third-party receivables to CSX Trade Receivables, Inc., a bankruptcy-remote special purpose subsidiary of CSX. A separate subsidiary of CSX, CSX Business Management, Inc. will service the receivables. Upon transfer, the receivables become assets of CSX Trade Receivables, Inc. and are shown above.

The Respondent and CSX Insurance have entered into a loan agreement whereby the Respondent may borrow up to \$125 million from CSX Insurance. The loan is payable in full on demand. \$55 million was outstanding under the agreement for both 2012 and 2011, respectively. Interest on the loan is payable monthly at 0.45% over the LIBOR rate, which was 0.66% and 0.72% at the end of 2012 and 2011, respectively. Interest expense related to the loan was \$0.4 million for both 2012 and 2011, respectively.

As required by the *Related Party Disclosures Topic* in the ASC, the Respondent has identified amounts below owed to Conrail, or its subsidiaries, representing a promissory note as well as liabilities under the operating, equipment and shared area agreements with Conrail. Additionally, as a result of the change in consolidated R-1 reporting in 2012, the table below discloses a demand loan with a subsidiary of P&L Transportation, Inc., originally executed in 2011. See Note 1. Nature of Operations and Significant Accounting Policies for additional information on the principles of consolidation.

NOTE 5. Debt Agreements, continued**Long-term Debt Maturities**

<i>(Dollars in Millions)</i>	Maturities as of	
Fiscal Years Ending	December 2013	
2014	\$	433
2015		29
2016		20
2017		19
2018		19
2019 and Thereafter		<u>627</u>
Total Long-term Debt Maturities (including current portion)	<u>\$</u>	<u>1,147</u>

NOTE 6. Related Party Transactions

The Respondent had a receivable of \$1,824 million and \$1,270 million in 2013 and 2012, respectively, relating to the Respondent's participation in the CSX cash management plan. The receivable is included in Receivables from Affiliated Companies in the Schedule 200. Under this plan, excess cash is advanced to CSX for investment and CSX makes cash funds available to its subsidiaries as needed for use in their operations. The Respondent and CSX are committed to repay all amounts due each other on demand should circumstances require. The companies are charged for borrowings or compensated for investments based on the short-term applicable Federal rate, which was 0.25% and 0.24% as of the end of 2013 and 2012, respectively. Net interest income related to this plan was \$3 million and \$2 million in 2013 and 2012, respectively.

Detail of Related Party Service Fees

<i>(Dollars in Millions)</i>	Fiscal Years	
	2013	2012
Intermodal Terminals	\$ 602	\$ 576
CSX Corporation	457	456
CSX Technology	254	231
Total Distribution Services, Inc.	81	75
CSX Insurance Company	48	48
CSX Business Management, Inc.	24	22
Other	12	6
Total Related Party Service Fees	<u>\$ 1,478</u>	<u>\$ 1,414</u>

Related Party Service Fees consists of amounts related to:

- CSX Intermodal Terminals, Inc. ("Intermodal Terminals") – Charges from Intermodal Terminals for services provided to the Respondent at intermodal terminal locations. These charges are calculated based on a mark-up of direct costs.
- CSX Corporation – A fee charged by CSX as compensation for certain services provided to the Respondent. These services include, but are not limited to, the areas of strategic management, human resources, finance, legal, tax, and marketing. The fee consists of a base fee and a performance fee which include components of CSX's market capitalization and the Respondent's equity growth.
- CSX Technology, Inc. ("CSX Technology") – Data processing charges from CSX Technology for the development, implementation and maintenance of computer systems, software and associated documentation for the day-to-day operations of the Respondent. These charges are based on a mark-up of direct costs.
- Total Distribution Services, Inc. ("TDSI") – Charges from TDSI for services provided to the Respondent at automobile ramps. These charges are calculated based on a mark-up of direct costs.
- CSX Insurance Company ("CSX Insurance") – Charges from CSX Insurance for insurance premiums related to personal injury coverage.
- CSX Business Management, Inc. ("CBUS") – Charges are primarily related to the sale of receivables from the Respondent to CSX Trade Receivables, a subsidiary of CBUS. These charges are based on the value of the receivables sold to CSX Trade Receivables. CBUS services these receivables.
- Other consists of proceeds from specialized services billed to CSX Real Property, Inc. and TRANSFLO Corporation ("TRANSFLO").

Intermodal Terminals, CSX Technology, TDSI, CSX Insurance, CBUS and TRANSFLO are wholly owned subsidiaries of CSX.

NOTE 6. Related Party Transactions, continued**Detail of Receivables from Affiliated Companies**

<i>(Dollars in Millions)</i>	December	December
	2013	2012
CSX Corporation	\$ 1,851	\$ 1,314
CBUS	759	469
CSX Technology	(166)	(157)
Intermodal Terminals	(139)	(45)
Other	21	33
Total Receivable from Affiliated Companies	<u>\$ 2,326</u>	<u>\$ 1,614</u>

The Respondent has an agreement to transfer eligible third-party receivables to CSX Trade Receivables, Inc., a bankruptcy-remote special purpose subsidiary of CSX. A separate subsidiary of CSX, CSX Business Management, Inc. will service the receivables. Upon transfer, the receivables become assets of CSX Trade Receivables, Inc. and are shown above.

The Respondent and CSX Insurance have entered into a loan agreement whereby the Respondent may borrow up to \$125 million from CSX Insurance. The loan is payable in full on demand. \$55 million was outstanding under the loan agreement for both 2013 and 2012, respectively. Interest on the loan is payable monthly at 0.45% over the LIBOR rate, which was 0.62% and 0.66% at the end of 2013 and 2012, respectively. Interest expense related to the loan was \$0.4 million for both 2013 and 2012, respectively.

As required by the *Related Party Disclosures Topic* in the ASC, the Respondent has identified amounts below owed to Conrail, or its subsidiaries, representing a promissory note as well as liabilities under the operating, equipment and shared area agreements with Conrail. Additionally, as a result of the change in consolidated R-1 reporting in 2012, the table below discloses a demand loan with a subsidiary of P&L Transportation, Inc., originally executed in 2011. See Note 1. Nature of Operations and Significant Accounting Policies for additional information on the principles of consolidation.

<i>(Dollars in Millions)</i>	December	December
	2013	2012
Balance Sheet Information:		
CSXT Payable to Conrail ^(a)	\$ 172	\$ 175
Promissory Notes Payable to Conrail Subsidiary 4.52% CSXT Promissory Note due March 2035 ^(b)	\$ 23	\$ 23
Demand Loan to P&L Transportation, Inc. Subsidiary Variable interest rate CSXT Promissory Note due January 2014	\$ 100	\$ 100

(a) Included on the Schedule 200 as accrued accounts payable because it is short term in nature.

(b) Included on the Schedule 200 as funded debt unmatured.

Interest expense from the promissory notes payable to a Conrail subsidiary was \$1 million for 2013 and 2012, respectively. Interest expense from the demand loan payable to a subsidiary of P&L Transportation, Inc. was less than \$1 million for both 2013 and 2012.

EXHIBIT 4

To

**CSXT's Reply In Opposition to Complainant's Petition
To Supplement The Record**

STB Docket No. 42121

Total Petrochemicals & Refining USA, LLC v. CSX Transp., Inc.

Cited Discovery Materials

TPI v. CSXT
STB Docket No. 42121
CSXT's REPLY IN OPPOSITION TO
COMPLAINANT'S PETITION TO SUPPLEMENT
THE RECORD

Cited Discovery Materials
HIGHLY CONFIDENTIAL
Contains Highly Confidential Information
Subject to Protective Order

Exhibit 4