

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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**TOTAL PETROCHEMICALS & REFINING
USA, INC.**

Complainant,

v.

CSX TRANSPORTATION, INC.

Defendant.

Docket No. NOR 42121

**CSXT'S REPLY TO COMPLAINANT'S PETITION FOR
RECONSIDERATION AND CLARIFICATION**

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, Inc.'s ("TPI's") Petition for Reconsideration and Clarification¹ of a Decision served in the above-captioned proceeding on July 24, 2015.² The *July 24 Decision* and an accompanying decision directed TPI and CSXT to supplement their evidence with material that the Board deems necessary to help it decide this case. TPI's Petition asks the Board to reconsider two aspects of its decision: its requirement that TPI add industrial "Y" trains and other local trains to its train list and its requirement that CSXT re-run its RTC simulation with its MultiRail train list. TPI's Petition should be denied in its entirety.

In the first place, TPI's assertion that the Board has departed from its standards for granting supplemental evidence is erroneous and does not come close to showing the kind of

¹ See Pet. for Reconsideration and Clarification of TPI, *Total Petrochemicals & Ref. USA, Inc. v. CSX Transp., Inc.*, STB Docket No. NOR 42121 (July 31, 2015) ("TPI Petition").

² *Total Petrochemicals & Refin. USA, Inc. v. CSX Transp., Inc.*, STB Docket No. NOR 42121, (served July 24, 2015) ("*July 24 Decision*").

“material error” required for a petition for reconsideration. Moreover, TPI’s objection to adding “Y” trains to its operating plan wrongly claims that such trains were actually captured in its evidence, wrongly claims that CSXT did not account for such trains, and greatly overstates the difficulty that TPI would have in complying with that element of the *July 24 Decision*. TPI’s objection to the Board’s order that CSXT submit supplemental RTC evidence misstates the standard for supplemental evidence, ignores the substantial correlation between CSXT’s original RTC and the RTC with MultiRail trains that the Board has ordered, and grossly exaggerates the supposed prejudice to TPI caused by the Board’s consideration of that supplemental evidence.

While TPI’s Petition should be denied for these reasons and the others set forth below, CSXT agrees with TPI that the supplemental and compliance evidence that the Board has requested will be difficult for the parties to produce by September 22. *See* TPI Petition at 1 (claiming that “every hour” between now and September 22 would be needed to prepare supplemental evidence). CSXT therefore is filing today a motion to extend the procedural schedule to allow the parties an additional 30 days for each round of supplemental evidence.

I. TPI’S PETITION FAILS TO SATISFY THE WELL-ESTABLISHED STANDARD FOR RECONSIDERATION OF THE *JULY 24 DECISION*.

A petition for reconsideration is a “discretionary appeal.” 49 C.F.R. § 1115.3(a). The Board has adopted strict standards for considering such a request. Under the Board’s regulations, a petition for reconsideration will be granted “only upon a showing of one or more of the following points: (1) the prior action will be affected materially because of new evidence or changed circumstances; [or] (2) the prior action involves material error.” 49 C.F.R.

§ 1115.3(b).³ TPI’s Petition does not even address—much less satisfy—this well-established standard.

TPI has not proffered any “new evidence” in support of its Petition—to the contrary, TPI asks the Board to revoke its request that TPI and CSXT each submit certain additional evidence that the Board deems necessary to enable it to complete its regulatory review of the record. *See July 24 Decision* at 6. Nor does TPI allege the existence of any “changed circumstance” that would warrant granting the relief that it seeks. Accordingly, TPI has not satisfied the requirements of 49 C.F.R. § 1115.3(b)(1).

Similarly, TPI has not demonstrated that the *July 24 Decision* involved any “material error.” 49 C.F.R. § 1115.3(b)(2). The only “error” suggested by TPI’s Petition is its claim that the Board’s order directing CSXT to submit a supplemental RTC simulation based upon the train list that CSXT developed as part of its operating plan is “inconsistent with the agency’s precedent for requesting [supplemental] evidence.” TPI Petition at 10.⁴ That claim is meritless. TPI’s assertion that “[t]he Board previously has requested supplemental evidence only when the parties’ operating plans were so different as to preclude an apples-to-apples comparison” (*id.* (emphasis added)) is simply not true. The Board has instructed parties to file supplemental

³ *See, e.g., Western Fuels Ass’n v. BNSF Ry. Co.*, STB Docket No. NOR 42088, at 2 (served Feb. 29, 2008) (“A party may seek to have the Board reconsider a decision by submitting a timely petition that presents new evidence or substantially changed circumstances that would materially affect the case or that demonstrates material error in the prior decision.”); *AEP Texas N. Co. v. BNSF Ry. Co.*, STB Docket No. NOR 41191 (Sub-No. 1), at 2 (served May 29, 2008) (same); *Texas Municipal Power Agency v. BNSF Ry. Co.*, 7 S.T.B. 803, 804 (2004) (same); *Duke Energy Corp. v. Norfolk S. Ry. Co.*, 7 S.T.B. 862, 866 (2004) (same).

⁴ TPI does not allege that the Board’s order directing it to submit a revised operating plan that includes all trains necessary to serve its selected traffic group (*July 24 Decision* at 6) constitutes material error. Rather, TPI argues that such evidence is “unnecessary,” and that developing it would be “very difficult, costly and time-consuming.” TPI Petition at 2-9. As CSXT demonstrates below, TPI’s assertions are exaggerated and do not provide a basis for granting its Petition.

evidence in a variety of contexts in which the agency determined that additional evidence was necessary to assist it in carrying out its statutory duties. Indeed, the cases cited by TPI contradict the notion that the Board's authority to require the filing of supplemental evidence is so limited. In *AEP Texas*, the Board explained that “[w]e need not be confined to the parties’ evidentiary choices. When necessary to fulfill our responsibilities, we may seek additional evidence from the parties so that we will have an adequate record upon which to decide the case.” *AEP Tex. N. Co. v. BNSF Ry. Co.*, STB Docket No. 41191 (Sub-No. 1), at 2 (served Mar. 17, 2006); *see also Otter Tail Power Co. v. BNSF Ry. Co.*, STB Docket No. 42071, at 2 (served Dec. 13, 2004) (same).

The Board has mandated the filing of supplemental evidence in a variety of contexts and for a variety of reasons. For example, in *Mass. Dep’t of Transp.—Acquisition Exemption—Certain Assets of Housatonic R.R. Co., Inc.*, STB Docket No. 35866, at 5-6 (served Dec. 24, 2014), the Board instructed MassDOT to file supplemental information to explain more clearly the nature of certain passenger operating rights that the agency would acquire in connection with a proposed line sale transaction. In *Simplified Standards for Rail Rate Cases—Taxes in Revenue Shortfall Allocation Method*, STB Ex Parte No. 646 (Sub-No. 2) (served Sept. 23, 2009), the Board directed the AAR to submit supplemental evidence and calculations in a rulemaking proceeding in which the Board was considering a requirement that the AAR annually update carrier-specific weighted average state tax rates for each Class I railroad. The Board directed the parties to several SAC cases to file supplemental evidence in order to implement the changes in the Board’s rate case procedures adopted in *Major Issues in Rail Rate Cases*. *See Western Fuels Ass’n, Inc. v. BNSF Ry. Co.*, STB Docket No. 42088 and *AEP Texas N. Co. v. BNSF Ry. Co.*, STB Docket No. 41191 (Sub-No. 1) (joint decision served Nov. 8, 2006). In the *Western Fuels*

proceeding, the Board also instructed both parties to file supplemental RTC simulations based upon the Board’s resolution of certain disputes with respect to RTC Model inputs “so that the Board will have a full record upon which to analyze the traffic group and operating plan issues that have been raised in this case.” *Western Fuels Ass’n, Inc. v. BNSF Ry. Co.*, STB Docket No. 42088, at 1 (served March 17, 2006).

In short, the Board possesses—and has exercised—broad discretion to require parties to submit supplemental evidence where it determines that such materials are necessary to provide an adequate record upon which to base a decision. The Board made such a determination in the *July 24 Decision*, and its decision to require TPI and CSXT to submit certain additional evidence was fully consistent with Board precedent. TPI’s Petition fails to demonstrate any “material error” in the *July 24 Decision*.

II. TPI HAS NOT ARTICULATED ANY LEGITIMATE BASIS FOR RESCINDING THE BOARD’S DIRECTIVE THAT THE PARTIES FILE SUPPLEMENTAL EVIDENCE.

As the following discussion demonstrates, none of the grounds cited by TPI merits granting the relief that it seeks.

A. TPI’s Train List

“An operating plan must provide full service to the selected traffic group, including the trains necessary to move local traffic between yards and shipment origins and destinations.” *July 24 Decision* at 6 (citing *E.I. DuPont de Nemours & Co. v. Norfolk S. Ry. Co.*, STB Docket No. NOR 42125, at 38 (served Mar. 24, 2014) (“*DuPont*”). In its Reply Evidence, CSXT demonstrated that TPI’s operating plan failed to account for 44,694 base year trains that would be needed to serve the TPIRR’s customers in the same manner as CSXT does today.⁵ Those

⁵ The central premise underlying TPI’s operating plan is that “the TPIRR operates the same trains with the same consists as CSXT over the same routes and through the same yards in the

missing trains included (1) 5,940 local trains that serve customers at both on-SARR and off-SARR points; (2) 9,894 other local trains that provide critical first mile/last mile service; and (3) 28,860 “industrial yard trains” that perform pickups, setoffs and car switching at locations along the main line outside the yard limits. *See* CSXT Rep. III-C-15-36. On Rebuttal, TPI adopted the 5,940 “On/Off SARR local trains” but added only 5,433 of the 9,894 other missing local trains identified by CSXT. *See* TPI Reb. III-C-42, 74-78.⁶ TPI categorically rejected every one of the 28,860 industrial yard trains identified by CSXT as necessary to complete TPI’s train service plan, even though the car event data indicated that “Y” trains participated in the line-haul movement of TPIRR traffic, including issue traffic. In summary, while TPI made minor changes to its train list on Rebuttal, TPI’s operating plan still failed to account for 33,321 (or 75%) of the 44,694 missing trains identified by CSXT on Reply.

In its *July 24 Decision*, the Board correctly observed that “if we determine that the disputed local trains are necessary, we will not be able to accept TPI’s operating plan regardless of whether it would otherwise be acceptable,” and that such an omission would “leave[] us with an incomplete record.” *July 24 Decision* at 6.⁷ Therefore, the Board instructed TPI to submit a revised operating plan that “include[s] all historic trains that deliver and pick up SARR traffic at shipper locations.” *Id.* at 7.

TPI’s Petition recites a litany of reasons why TPI should not be required to comply with that requirement:

same locations to serve the same customers as the real world CSXT. . . .” TPI Reb. III-C-7 (emphasis added). *See also* TPI Op. III-C-5 (TPIRR trains “essentially mirror the movement of the corresponding CSXT traffic.”) (emphasis added). TPI’s approach necessarily requires it to adopt all of the trains in which the selected traffic historically moved.

⁶ TPI proffered no persuasive rationale for adopting some, but not all, of those 9,894 local trains.

⁷ *See also DuPont* at 38-39 (rejecting complainants’ operating plan in part because it failed to include all necessary trains).

First, TPI takes the position that it “already has accounted for ‘Y’ trains in its evidence, but through a different methodology.” TPI Petition at 3. Specifically, TPI asserts that its “yard train matri[x]” fully accounted for the work performed by CSXT industrial yard trains. *Id.* at 3-4. TPI’s claim that its yard evidence included all “yard” trains needed to provide pickups and setoffs at customer locations beyond the yard limits is demonstrably incorrect. The computer program that TPI created to develop car counts at TPIRR yards considered inter-train car classifications, car originations, and cars received in interchange, but ignored entirely car handlings in connection with movements to customer facilities.⁸ Moreover, in developing its yard staffing evidence, TPI explicitly assumed that TPIRR yard crews would handle the same number of cars per shift as CSXT crews do today. *See* TPI Reb. III-C-10, III-C-131-134. On its face, TPI’s methodology accounted only for the crews (and locomotives) required to switch cars within the yard, and did not provide additional yard assignments to perform line-haul movements, pick ups, setoffs, and switching at customer facilities outside the yard on a daily basis. Applying that faulty methodology, TPI posited that the TPIRR would require only 409 daily yard assignments, 97 fewer than the 506 that CSXT operates in the real world. The lion’s share of this difference between the parties’ yard job assignments is attributable to TPI’s failure to account for the work performed by industrial yard trains.⁹

TPI’s assertion that CSXT “adopted” TPI’s methodology for accounting for yard trains (TPI Petition at 4) is patently false. As TPI knows, CSXT posited that the TPIRR would require 506 daily yard assignments—the same number that CSXT employs today in its real world

⁸ *See* TPI Reb. WP “TPIRR Yard Operations_Rebuttal.xlsx,” Columns Q (“Daily Inter Train Switch Classification Events”), R (“Daily Pulled Cars”), S (“Daily IR [Interchange Received] Cars”), T (“Daily IR Cars Classified”).

⁹ The nearly 20% difference in the number of yard assignments posited by TPI and CSXT belies TPI’s assertion that “there is not a mismatch between the parties’ ‘Y’ train evidence.” TPI Petition at 4 (emphasis omitted).

operations. CSXT based its evidence on TPI's stated assumptions that the TPIRR would (1) adopt the same car blocking and classification plans as CSXT and (2) operate the same trains as the real world CSXT. TPI Reb. III-C-5, 7, 12.

Second, TPI argues that it should not be required to add the missing "Y" trains to its train list because (according to TPI) CSXT did not include those trains in its own evidence. TPI Petition at 3. TPI's suggestion that CSXT's Reply Evidence did not account for the 28,860 industrial yard trains is incorrect. CSXT's operating plan train list (developed as part of CSXT's MultiRail analysis) identified 555 weekly industrial yard trains operating under 92 unique train symbols.¹⁰ Those 555 weekly trains represent the 28,860 annual industrial yard trains that are missing from TPI's operating plan (555 weekly trains x 52 weeks = 28,860 annual trains). Indeed, TPI acknowledges elsewhere that 555 "Y" trains operating under 92 symbols "do physically appear" in CSXT's train list. TPI Petition at 4, n. 4. TPI's further assertion that "CSXT did not use those trains even in its own evidence to develop operating expenses" (*id.* at 9) is likewise wrong. While CSXT did not input all of the 555 weekly industrial yard trains into its RTC simulation (in order to generate operating statistics for those trains), CSXT did calculate the operating expenses (locomotives and crews) attributable to all of the required industrial yard trains as part of its yard operating expenses.¹¹ By contrast, TPI neither included those trains in its operating plan and RTC simulation, nor did it otherwise account for them in calculating the TPIRR's operating expense calculations.

Third, TPI complains that it would be "an extremely laborious, time-consuming and costly endeavor to identify [the] historical 'Y' trains" that would be required to handle the

¹⁰ See CSXT Rep. Ex. III-C-4, CSXT WP "TPIRR Reply Train List.xlsx," worksheet "Road_nonUnit," Rows A654-L745.

¹¹ As directed by the Board, CSXT will incorporate all required trains (including industrial yard trains) into its supplemental RTC simulation.

TPIRR's selected traffic. TPI Petition at 7. In support of this claim, TPI asserts that the "historic 'Y' trains in CSXT's traffic data [] are not the 28,860 'Y' trains that CSXT alleges are missing," and suggests that it would be required to review manually "millions of car event records" in order to identify the relevant historic "Y" trains. *Id.* at 6-7.

As an initial matter, any burden imposed on TPI in complying with the *July 24 Decision* is the direct result of TPI's methodological decision to develop its train list by culling trains from CSXT's historical data. Having elected to base its train service plan on CSXT's historical trains, it is incumbent on TPI to identify all trains that are required to transport each carload from its origin (or on-SARR location) to its destination (or off-SARR point). *See DuPont* at 38. Moreover, the task of identifying the required "Y" trains is not as insurmountable as TPI suggests. As TPI acknowledges (TPI Petition at 4, n.4), CSXT's Reply train list identifies the 92 unique "Y" symbols for those industrial yard trains that operated beyond yard limits to perform pickups and setoffs at customer facilities during the base year.¹² Those 92 train symbols (and the routes they serve in CSXT's MultiRail analysis) can be used by TPI as a guide to narrow its search of CSXT's records to find the corresponding "historic" trains. Alternatively, TPI could simply add to its train list the 555 weekly "Y" trains operating under the 92 train symbols shown on CSXT's Reply train list, which represent CSXT's historical "Y" trains. Either of these straightforward methods would avoid the need for TPI to review "millions of records" individually.

¹² *See* CSXT Rep. Ex. III-C-4, CSXT WP "TPIRR Reply Train List.xlsx," worksheet "Road_nonUnit," Rows A654 – L745. TPI's suggestion that there are significant differences between the 28,860 "Y" trains on CSXT's MultiRail train list and CSXT's historic "Y" trains ignores the fact that CSXT developed its train list from the profiles for the trains that CSXT actually operated as of June 2012 (the beginning of TPIRR's base year). *See* CSXT Rep. III-C-60-1. In other words, the "Y" trains identified in CSXT's train list operate at the same locations, and serve the same customers, as the "historic" industrial yard trains that CSXT operated during the base year.

Finally, TPI argues that it should not be required to incorporate its updated list of “Y” trains into its RTC simulation. TPI Petition at 8-9. In support of this claim, TPI asserts that “the RTC model would never capture the vast majority of “Y” trains anyway because those trains operate almost exclusively within yard limits.” *Id.* at 8 (emphasis added). This assertion is incorrect. As CSXT’s Reply (at III-C-27) illustrated, CSXT industrial yard trains operate up to 15 miles or more beyond their home yard to serve customer facilities. Such movements would be captured and their effects (if any) on the network measured by a RTC simulation. TPI’s assertion that CSXT did not include all of the industrial yard trains that operated during the peak week in its RTC simulation “because it could not do so” (TPI Petition at 9) is likewise incorrect. CSXT’s RTC simulation did not reflect the movement of all of the industrial yard trains on CSXT’s train list for the simple reason that CSXT based its RTC simulation on TPI’s “historical” train list (from which those “Y” trains were missing). Moreover, as the sample industrial yard trains that were input to CSXT’s RTC simulation demonstrate, those trains do not consume significant track capacity or generate conflicts with road and local train movements—indeed, the Model assigns industrial yard trains a priority that is subordinate to other train movements.¹³ Therefore, CSXT concluded that the effort required to input all 555 peak week industrial yard trains in the time available to prepare its Reply Evidence would not have generated a significant evidentiary benefit.¹⁴ CSXT will, of course, comply with the Board’s instructions that all “Y” trains in CSXT’s operating plan be included in CSXT’s supplemental RTC simulation.

¹³ A review of CSXT’s Reply RTC evidence shows that none of the 16 industrial yard trains included in the simulation generated a conflict that resulted in a delay to any road or local train.

¹⁴ To the extent that CSXT’s RTC simulation did not account for the impact of every local and yard train, its results could only understate the TPIRR’s track requirements—there is no scenario under which the addition of more trains to a rail network would reduce track capacity requirements.

In short, TPI has not proffered any persuasive reason why it should be excused from complying with the Board's request for supplemental evidence. However, CSXT agrees with TPI that it will be difficult for the parties to prepare and submit the requested evidence within the timeframe prescribed by the Board's *July 24 Decision*. Accordingly, CSXT is today filing a separate Motion to modify the filing dates set forth in the *July 24 Decision*.

B. CSXT's RTC Simulation

TPI argues that the Board should rescind its request to CSXT that it submit a supplemental RTC simulation based upon the train list developed in connection with CSXT's operating plan. TPI Petition at 9-14. None of the grounds cited by TPI supports reconsideration of that element of the *July 24 Decision*.

First, TPI claims that the Board's order directing CSXT to submit a supplemental RTC simulation is "inconsistent with the agency's precedent for requesting [supplemental] evidence." TPI Petition at 10. For the reasons set forth above (at pp. 3-5) that claim has no merit.

Second, TPI suggests that the *July 24 Decision* unfairly permits CSXT to correct a "failure of proof" in its Reply Evidence. TPI Petition at 11. Contrary to TPI's assertions, the RTC simulation submitted by CSXT on Reply generated both a realistic estimate of the track configuration required to execute CSXT's operating plan and reliable operating statistics upon which to base TPIRR operating expenses, and did not constitute a "failure of proof".

CSXT utilized TPI's Opening train list (augmented with certain trains missing from TPI's operating plan) in conducting its RTC simulation, rather than the train list generated by its MultiRail analysis, for several reasons. CSXT's MultiRail analysis identified the train service required during an average week. Focusing on that time period is appropriate in developing an operating plan because CSXT (and other railroads) design their day-to-day operations based on anticipated demand during a "typical" week, not the busiest week of the year. By contrast, in

order to determine a SARR's track capacity requirements, it is appropriate to evaluate traffic volumes likely to occur during periods of peak demand—that is why RTC simulations are based on the peak week of the Peak Year. Moreover, in the *DuPont* case, the complainant (represented by the same counsel and consultants as here appear for TPI) took the position that NS's RTC evidence was invalid because NS based its RTC evidence on a MultiRail train list.¹⁵ By adopting the augmented TPI peak week train list, CSXT eliminated that potential area of disagreement between the parties.¹⁶

TPI's assertion that CSXT's supplemental RTC simulation will be "based upon completely different trains" than its Reply RTC evidence (TPI Petition at 11) is incorrect. CSXT's MultiRail train list is based upon the train profiles for CSXT's real world operating plan as of June 2012. Accordingly, those trains represent the same trains found in the base year train event data from which TPI compiled its train list. *See* CSXT Rep. III-C-65-66. Indeed, there is a 98% correlation between road trains, a 97% correlation between intermodal trains and a 91% correlation between local trains included in CSXT's MultiRail train list and those found in the (augmented) TPI train list that CSXT used in performing its RTC simulation.¹⁷

In any event, TPI's suggestion that CSXT's Reply RTC evidence constitutes a "failure of proof" is undermined by TPI's own Rebuttal RTC simulation, which generated results virtually identical to those produced by CSXT's RTC simulation. For example, CSXT's Reply RTC

¹⁵ *See DuPont* at 37, n.53.

¹⁶ Indeed, in order to minimize differences between the parties, CSXT based its RTC Model not only on TPI's train list, but also the track network and various other inputs from TPI's Opening RTC Model.

¹⁷ *Compare* CSXT WP "TPIRR Reply Train List.xlsx" *with* CSXT WP "TPIRR Reply RTC Results.xlsx." The slightly lower correlation for local trains is attributable to the fact that CSXT did not add to its Reply RTC Model all of the local and industrial yard trains that were missing from TPI's Opening train list. Per the Board's direction, those trains will be included in CSXT's supplemental RTC simulation.

simulation resulted in a network consisting of 10,284 miles of “running” (main, secondary and branch line) track. That represented a difference of only 65 miles (or 0.6 percent) from the 10,219 running track miles posited by TPI on Opening. On Rebuttal, TPI accepted the 65 additional miles of running track proposed by CSXT, but modified its configuration by removing 19 miles of rail sidings that had been included in TPI’s Opening configuration, resulting in a network consisting of 10,265 miles of running track, only 19 miles (or 0.1 percent) fewer than posited by CSXT.¹⁸ Thus, the parties’ RTC simulations produced network configurations that were virtually identical.

The key operating statistics generated by CSXT’s Reply RTC simulation and TPI’s Rebuttal RTC simulation were also nearly the same. The average speed for road trains in TPI’s Rebuttal simulation (20.3 MPH) is identical to that produced by CSXT’s Reply simulation. The difference in average speed for local trains in the parties’ RTC simulations is negligible—indeed local trains travel slightly faster (11.1 MPH) in CSXT’s simulation than they do in TPI’s Rebuttal simulation (10.5 MPH).¹⁹ Likewise, TPI’s Rebuttal RTC simulation produced an average of 2.26 locomotives per train for TPIRR road trains, and 1.24 locomotives per train for TPIRR local trains, nearly the same as the 2.25 units for road trains and 1.21 units for local trains in CSXT’s RTC simulation.²⁰ The virtually identical results generated by CSXT’s Reply RTC

¹⁸ See TPI Reb. III-B-16-19. TPI’s removal of those 19 miles of siding track violated the Board’s proscription against changes by a complainant on rebuttal, after the defendant carrier has accepted the shipper’s position in its reply evidence. See, e.g., *FMC Wyoming Corp. v. Union Pacific R.R. Co.*, 4 S.T.B. 699, 790 (2000) (rejecting complainant’s change in triple-track configuration on rebuttal where carrier had accepted complainant’s configuration on reply); *DuPont* at 84, n.76 (“The complainant may not make changes on rebuttal when the defendant has accepted the opening submission and did not have an opportunity to reply to those changes.”).

¹⁹ See TPI Op. WP “REPORT.xlsx;” CSXT WP “TPIRR Reply RTC Results.xlsx;” TPI Reb. WP “TPI Rebuttal2 REPORT_Opr Stats.xlsx.”

²⁰ Compare TPI Reb. WP “Rebuttal2 REPORT_Opr Stats.xlsx” with CSXT WP “TPIRR Reply RTC Results.xlsx.”

simulation and TPI's own Rebuttal simulation discredits TPI's assertion that CSXT's RTC evidence constitutes a "failure of proof."

Third, TPI suggests that "CSXT cannot provide a working model that complies with the Board's request because CSXT cannot run RTC to completion without revising its narrative and spreadsheet evidence." TPI Petition at 12. Specifically, TPI claims that CSXT's narrative evidence posited different yard dwell times, and a different number of receiving and departure ("R&D") tracks at TPIRR yards, than were reflected in CSXT's RTC Model. *Id.*

TPI's suggestion that there exists a significant disconnect between the yard dwell times in CSXT's narrative evidence and its RTC simulation is incorrect. CSXT's Reply Evidence posited an average dwell time of 5.00 hours for trains originating or terminating on R&D tracks, 2.00 hours for trains making an intermediate stop and changing consist at a flat switching yard, and 30 minutes for trains that made an intermediate stop, but did not change consist, at a TPIRR yard. Each of those estimated dwell times was supported by witness Dirnberger's analysis as well as CSXT's real world experience.²¹ In performing CSXT's RTC simulation, witness Wheeler adopted the 5.00 hour dwell time for R&D tracks. For trains changing consist at a flat switching yard, witness Wheeler conservatively applied the 2.00 hour average dwell time only at those yards (shown on CSXT Ex. III-C-7) at which CSXT's real world data indicated an average dwell in excess of 2.00 hours. Where the real world dwell time was greater than the (unrealistic) 30 minutes posited by TPI but less than 2.00 hours, witness Wheeler accepted the 30 minute dwell posited by TPI.²² This conservative adjustment, which was explained in CSXT's Reply narrative, hardly constitutes a serious "disconnect" between CSXT's narrative and RTC evidence. With respect to R&D tracks, the Board has recognized that the RTC Model is not a

²¹ See CSXT Rep. III-C-100-125, CSXT Ex. III-C-7.

²² See CSXT Rep. III-C-191.

yard sizing tool and cannot reliably determine the track capacity needed to support yard operations.²³ Accordingly, CSXT’s R&D track estimate was based upon a detailed, location-specific analysis by witness Dirnberger—CSXT did not purport to rely upon the RTC Model for that purpose. There is no need for CSXT to change its narrative evidence relating to yard dwell times or R&D tracks in order to prepare its supplemental RTC simulation.

Finally, TPI complains that CSXT’s supplemental RTC simulation would “negate TPI’s rebuttal evidence to the extent that TPI adopted CSXT reply evidence and that evidence changes in CSXT’s supplemental evidence.” TPI Petition at 12-13. This assertion is nonsense. The only element of CSXT’s Reply Evidence that TPI cites in support of this claim is the 5.00 hour dwell time for trains occupying R&D tracks at TPIRR yards. *Id.* As discussed above, that estimate was developed by witness Dirnberger, and was not generated by CSXT’s RTC simulation. CSXT has no intention of modifying that dwell time estimate in connection with its supplemental RTC simulation. Moreover, even if CSXT were to posit a different R&D dwell time (or otherwise modify its operating plan) in its supplemental evidence, TPI would be free to continue to rely upon CSXT’s original evidence. TPI’s assertion that the *July 24 Decision* “effectively discards” CSXT’s Reply Evidence and “pull[s] the rug out from under TPI’s rebuttal evidence” is simply rhetoric. TPI’s further suggestion that the Board’s order raises “due process concerns” (*id.* at 13) is meritless. The *July 24 Decision* (at 9) provides both parties an opportunity to submit a reply to the other party’s supplemental evidence, and explicitly reserves for each party the right “[to] argue that its unrevised evidence is superior.”²⁴

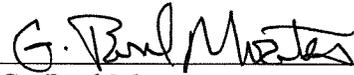
²³ See *SunBelt Chlor Alkali P’ship v. Norfolk S. Ry. Co.*, STB Docket No. NOR 42140, at 16 (served June 20, 2014) (rejecting complainant’s claim that RTC simulation confirmed yard track configuration, on grounds that “the RTC model does not model yard operations”).

²⁴ TPI’s “due process” argument is also supremely ironic and one-sided in nature given its own failed operating plan evidence. As the *July 24 Decision* clearly holds, “if we determine that the

CONCLUSION

For the reasons described above, the Board should deny TPI's Petition for Reconsideration and Clarification in its entirety.

Respectfully submitted,



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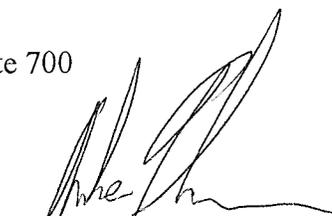
Dated: August 12, 2015

disputed local trains [which the Board has now afforded TPI an opportunity to add] are necessary, we will not be able to accept TPI's operating plan regardless of whether it would otherwise be acceptable. This omission leaves us with an incomplete record . . .". *July 24 Decision* at 6. As CSXT's Reply Evidence made clear, there is a fatal failure of proof in TPI's case, and the Board could (and CSXT respectfully submits, should) therefore dismiss the Complaint with prejudice. In short, under the normal rules of evidence, this case should be over now.

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of August 2015, I served a copy of the foregoing CSXT's Reply to Complainant's Petition for Reconsideration and Clarification by email and hand-delivery upon:

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