

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

239069

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

Complainant,

v.

CSX TRANSPORTATION, INC.

Defendant.

Docket No. NOR 42121

REPLY TO COMPLAINANT’S MOTION FOR LEAVE TO FILE REPLY TO REPLY

For the fifth time in this proceeding, Complainant Total Petrochemicals & Refining, USA Inc. (“TPI”) seeks leave to file a “reply to a reply” despite the Board’s longstanding prohibition against such filings. *See* 49 C.F.R. § 1104.13(c).¹ TPI claims that its latest submission (“TPI Surreply”) is necessary to correct “misrepresentations of fact” and “demonstrably false statement[s]” in CSX Transportation, Inc.’s (“CSXT’s”) Reply to TPI’s Petition for Reconsideration (“CSXT Reply”). TPI Motion at 1, 2. But TPI’s Surreply does no such thing—instead, TPI presents further arguments regarding certain issues discussed in CSXT’s Reply that TPI can, and should, proffer in TPI’s supplemental evidence or on brief. In short, the apparent purpose of TPI’s Surreply is to satisfy TPI’s desire to “have the last word.” TPI’s Motion should be denied, and the TPI Surreply should be stricken from the record.

TPI accuses CSXT of “blatantly misrepresenting” facts and “deliberately misleading” the Board. TPI Surreply at 4. One would think that a party making such serious allegations would

¹ TPI previously filed surreplies on October 27, 2010; November 29, 2010; December 28, 2010; and July 30, 2013.

present substantial credible evidence to support its accusations. TPI does not. While TPI's Surreply attempts to introduce a point-by-point rebuttal of certain elements of CSXT's Reply, it does not come close to demonstrating that CSXT misstated any fact.

For example, TPI takes issue with CSXT's rejection of TPI's claim that both parties used the same "methodology" to account for "Y" trains. TPI Surreply at 1-3.² But TPI does not identify any false or misleading statement by CSXT—to the contrary, TPI asserts that "in explaining the differences between the parties' methodologies, CSXT actually proves TPI's point." TPI Surreply at 1 (emphasis added). Thus, TPI itself acknowledges "differences" in the methodologies employed by the parties. However, pointing to the fact that CSXT included "Y" train operating expenses in its yard evidence (as did TPI), TPI argues that "[t]his is precisely what TPI meant when it claims both parties used the same methodology." TPI Surreply at 2. TPI's Surreply on this issue is nothing more than an attempt to explain what "TPI meant" when it claimed that the parties applied the same "methodology" in developing "Y" train operating expenses. That explanation (which can be made on brief) does not warrant a departure from the Board's rule against filing a "reply to a reply."

TPI reserves its strongest invective for its claim that the "Y" trains in CSXT's MultiRail analysis are not the "same" trains as those found in CSXT's historical event records. According to TPI, "CSXT blatantly misrepresents these [MultiRail trains] to be CSXT's 'historical' trains." TPI Surreply at 4. CSXT has done nothing of the sort—at no point has CSXT ever asserted that

² As CSXT explained, the parties applied markedly different approaches to determining the number of "Y" trains required to serve the TPIRR's customers. Based on TPI's stated assumptions that the TPIRR would operate the same trains and adopt the same car blocking and classification plan as CSXT, CSXT posited that the TPIRR would need to operate the same 506 daily yard assignments as CSXT does today at those yard locations replicated by the SARR. By contrast, TPI's yard assignment estimate was based upon an ill-conceived computer program that failed to account for car handlings between serving yards and customer facilities. *See* CSXT Reply at 6-7.

the “Y” trains in its MultiRail evidence are literally the very same trains that actually operated during the base year. Rather, as CSXT’s Reply explained, the “Y” trains in its MultiRail train list were based upon the profiles for the “Y” trains in CSXT’s real world operating plan as of June 2012 (the beginning of the base year). The MultiRail “Y” trains bear the same symbols, operate from the same home yards over the same routes, and are assigned to serve the same customer locations as CSXT’s historical “Y” trains. CSXT Reply at 9, n.10. In other words, the “Y” trains in CSXT’s Reply train list “represent” CSXT’s historical “Y” trains. *Id.* at 9.

TPI’s further attempt to discredit CSXT’s “Y” train evidence is both inappropriate and nonsensical. TPI observes that, in CSXT’s MultiRail analysis, the so-called “Terre Haute Yard Job” (Train Y101) operates five days per week over a three-mile route. TPI Surreply at 2. However, TPI notes, CSXT’s yard expense evidence assigned to the Terre Haute Yard Job the same 48 daily locomotive unit miles that were assigned to all 61 yard assignments operating at Terre Haute. *Id.* at 2-3. According to TPI, the fact that CSXT’s yard expense calculations assigned 48 (rather than three) daily locomotive unit miles to this “Y” train proves that it is not the “same” train as shown on CSXT’s train list.

As an initial matter, TPI’s argument in this regard constitutes a blatant example of improper surrebuttal. It does not address any alleged misstatement in CSXT’s Reply, which made no mention whatsoever of either the Terre Haute Yard Job or of the manner in which CSXT calculated locomotive unit miles for “Y” trains. There is no reason why TPI could not present this argument on brief—indeed, TPI had all of the information needed to make the argument as part of its Rebuttal Evidence. It would be utterly inconsistent with the Board’s regulations to permit TPI to interject the argument at this stage of the case.

Moreover, TPI's argument is itself highly misleading. As TPI well knows, parties to SAC cases do not develop locomotive unit miles for yard assignments on a train-specific basis. Such a level of granularity is simply not practicable because railroads do not maintain data regarding the specific number of miles traversed by yard trains (particularly those that operate entirely within the yard). Rather, locomotive unit miles for "Y" trains are customarily based upon an assumed "average" number of miles per shift. Indeed, as TPI's Surreply acknowledges, both CSXT and TPI calculated locomotive unit miles for yard trains based upon the assumption that each TPIRR yard train would operate at an average of 6 MPH over the course of an 8-hour shift, generating 48 locomotive unit miles per shift. TPI Surreply at 2-3. Of course, in reality, different "Y" trains operate over routes involving different mileages on a daily basis. The fact that CSXT (like TPI) calculated locomotive unit miles for "Y" trains on an "average" basis does not render CSXT's MultiRail analysis (which identified the miles traversed by the Terre Haute Yard Job and other trains with greater precision) "demonstrably false."

TPI's assertion that CSXT "misleadingly" described the 92 "Y" train symbols in its MultiRail evidence as "unique" (TPI Surreply at 3) is likewise meritless. Indeed, in the very sentence that follows this accusation, TPI admits that "the 92 symbols themselves undoubtedly are unique." But TPI goes on to complain that CSXT's MultiRail evidence contains added fields for "Y" trains that are not available in the historical train event data upon which TPI chose to base its operating plan. The fact that CSXT's MultiRail evidence contains more detailed information about "Y" trains than the historical data does not support TPI's accusation that CSXT's description of its "Y" train symbols is in any way false or misleading. Rather, TPI's

argument is a transparent attempt to have the last word regarding the burden associated with complying with the *July 24 Decision*.³

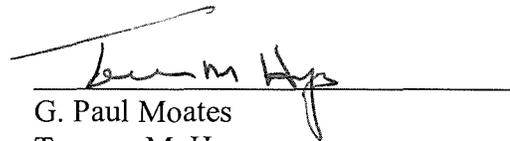
Finally, TPI criticizes as “deliberately misleading” CSXT’s showing that there is a high degree of correlation between the trains in its MultiRail evidence and the historical trains in CSXT’s Reply RTC simulation. TPI Surreply at 4. TPI bases this accusation solely on the fact that the correlation is based on train symbols, rather than a train-by-train comparison of individual train movements. *Id.* at 4-5. Again, CSXT did not claim that the trains in its MultiRail evidence are literally the same trains as those found in its historical data. To the contrary, CSXT explicitly stated that “those [MultiRail] trains represent the same trains found in the Base Year train event data from which TPI compiled its train list.” CSXT Reply at 12. In any event, this argument is one more properly made in TPI’s reply to CSXT’s supplemental evidence (which, per the Board’s instructions, will present a revised RTC simulation) or on brief.⁴

³ CSXT has acknowledged that compliance with the *July 24 Decision* will be challenging, which is why CSXT has filed a Motion seeking an extension of the time within which the parties must file their supplemental evidence and replies thereto. *See* CSXT Motion to Amend Procedural Schedule filed August 12, 2015.

⁴ In support of this argument, TPI cites the so-called Bowling Green Yard Job (Train Y150). According to TPI, CSXT’s MultiRail analysis posited that the Bowling Green Yard Job “would operate over an 89 mile route seven days a week, year round, despite the fact that it moves zero cars per year.” TPI Surreply at 5, n. 7. This statement is demonstrably incorrect. The references cited by TPI (CSXT WP “TPIRR Reply Train Lists.xlsx,” level “Road Non-Unit,” row 694, and CSXT Reply Ex. III-C-4 at Line 41) do not relate to the Bowling Green Yard Job but are actually a different train, denominated the “1st Shift Extra” on Line 41 of CSXT Ex. III-C- 4. (The Bowling Green Yard Job, which operates only 18 miles round-trip, appears on Line 46 of that Exhibit and at row 699 of CSXT WP “TPIRR Reply Train Lists.xlsx.”) The 1st Shift Extra actually departs from Erie, PA, operates 29 miles east to Westfield, NY, then and 15 miles west to Lake City PA, a total round trip distance of 89 miles. During the base year, the 1st Shift Extra handled 109 carloads of TPIRR’s selected traffic. *See* CSXT WP “YardJobs_OnSARR_w_Customers.xlsx;” CSXT WP “SARR19F_EstimatedTrainVolumes.xls.”

As the foregoing demonstrates, it is certainly true that the parties disagree about the interpretation of certain facts in the record. But TPI's characterization of any CSXT argument with which TPI disagrees as a "misrepresentation" or "deliberately misleading" is utterly groundless. Such unsupported accusations have no place in this proceeding.⁵ Because TPI has not identified any actual misrepresentation that warrants correction at this stage of the case, there is no justification for granting TPI's Motion to file what amounts to a garden variety "reply to a reply." TPI's Motion should be denied.

Respectfully submitted,



Peter J. Shudtz
Paul R. Hitchcock
John P. Patelli
CSX Transportation, Inc.
500 Water Street
Jacksonville, FL 32202

G. Paul Moates
Terence M. Hynes
Matthew J. Warren
Hanna M. Chouest
Marc A. Korman
Sidley Austin LLP
1501 K Street, N.W.
Washington, D.C. 20005
(202) 736-8000
(202) 736-8711 (fax)

Counsel to CSX Transportation, Inc.

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⁵ Cf. 49 C.F.R. § 1104.08 (Board has authority to strike objectionable matter from any filing).

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of August 2015, I served a copy of the foregoing Reply to Complainant's Motion for Leave to File Reply to Reply by email and hand-delivery upon:

Jeffrey O. Moreno
Thompson Hine LLP
1919 M Street, N.W., Suite 700
Washington, D.C. 20036



Jake Thorn