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SERVICE DATE – MAY 31, 2013  
UPDATED – AUGUST 19, 2013

SURFACE TRANSPORTATION BOARD  
UPDATED DECISION\* – PUBLIC VERSION

Docket No. NOR 42121

TOTAL PETROCHEMICALS & REFINING USA, INC.  
v.  
CSX TRANSPORTATION, INC.

Digest:<sup>1</sup> In this proceeding, Total Petrochemicals & Refining USA, Inc. (TPI) contends that 84 separate rates charged by CSX Transportation, Inc. (CSXT) for rail transportation are unreasonably high. Before it can evaluate the reasonableness of a particular rail rate, the Surface Transportation Board must find that the carrier has market dominance over the transportation at issue, meaning there is no effective competition from other railroads or other modes of transportation. At the request of CSXT, this case was bifurcated to first consider the threshold issue of market dominance separately before proceeding to consider the issue of the reasonableness of the 84 challenged rates.

CSXT has not contested its market dominance as to 21 of the rates challenged by TPI. As to the 63 rates for which market dominance is contested, the Board concludes that CSXT possesses market dominance with respect to 51 of those rates and lacks market dominance with respect to the other 12. TPI and CSXT shall confer and submit a proposed procedural schedule to govern the rate reasonableness phase of this proceeding within 30 days of this decision.

Decided: August 16, 2013

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\* This updated decision reflects the notice issued August 19, 2013, which added a public version of the appendix. The May 31, 2013 decision previously available on the Board's website remains unchanged in all other respects.

<sup>1</sup> The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

On May 3, 2010, Total Petrochemicals & Refining USA, Inc. (TPI)<sup>2</sup> filed a complaint challenging the reasonableness of various common carrier rail transportation rates established by CSX Transportation, Inc. (CSXT) for the transportation of polypropylene, polystyrene, polyethylene, styrene, and base chemicals (issue commodities)<sup>3</sup> between 104<sup>4</sup> origin and destination pairs,<sup>5</sup> located primarily in the Midwestern and Southeastern United States.<sup>6</sup> TPI alleges that CSXT possesses market dominance over the traffic and requests that maximum reasonable rates be prescribed using the Board's Stand-Alone Cost (SAC) test.

The default procedural schedule in SAC proceedings provides for evidence on market dominance and rate reasonableness to be submitted simultaneously. See Expedited Procedures for Processing Rail Rate Reasonableness, Exemption & Revocation Proceedings, 1 S.T.B. 754, 760 (1996). Here, however, we bifurcated the proceeding into separate market dominance and rate reasonableness phases, directed the parties to confine their initial submissions to the issue of market dominance, and held the rate reasonableness phase of this proceeding in abeyance pending review of the parties' market dominance evidence. Total Petrochemicals USA, Inc. v. CSX Transp., Inc., NOR 42121, slip op. at 6-8 (STB served Apr. 5, 2011).

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<sup>2</sup> On February 24, 2012, TPI filed a letter stating that it had changed its name from Total Petrochemicals USA, Inc. to Total Petrochemicals & Refining USA, Inc. The short form TPI will refer to both the former and current names of the entity.

<sup>3</sup> Polypropylene, polystyrene, and polyethylene are plastic pellet substances that are widely used in many consumer and industrial applications such as food packaging and carpet fiber. Styrene is mainly used in the production of resins. The base chemicals are additives to products such as lubricating oil, paint, and coatings. TPI Opening Market Dominance Evidence (Opening Evidence) II-B-3.

<sup>4</sup> The last amended complaint, filed by TPI on February 3, 2011, challenged the rates on 105 origin and destination pairs. However, in its opening market dominance submission filed on May 5, 2011, TPI states that it has elected not to pursue its complaint as to one of those movements.

<sup>5</sup> CSXT provides transportation in single-line service for one of the challenged rates. For the other 83 rates, CSXT operates in joint-line service with one or more other railroads. While both parties identify these categories with "A-" and "B-" designations, respectively, we will identify these categories with the alternative "SL-" (for single-line) and "J-" (for joint-line) designations (e.g., SL-1 rather than A-1, J-1 rather than B-1, etc.)

<sup>6</sup> We refer to fewer rates than origin and destination/commodity pairs (which the parties call lanes) because some rates apply to multiple pairs. For example, we consider the New Orleans-Covington rate to apply to both lane J-3, over which polystyrene ships between New Orleans and Covington, and lane J-43, over which polypropylene ships between New Orleans and Covington.

The Board's market dominance inquiry seeks to determine whether there is "effective competition from other carriers or modes of transportation for the transportation to which a rate applies." 49 U.S.C. § 10707(a). This inquiry comprises two components, the first of which is quantitative. The statute establishes a conclusive presumption that a railroad does not have market dominance if the rate charged produces revenues that are less than 180% of its variable costs<sup>7</sup> of providing the service. *Id.* § 10707(d)(1)(A). If this quantitative threshold is met, the Board moves to the second component, a qualitative analysis. Wis. Power & Light Co. v. Union Pac. R.R., 5 S.T.B. 955, 960-61 (2001). In this analysis, the Board determines whether there are any feasible transportation alternatives that are sufficient to constrain the railroad's rates to competitive levels, considering both intramodal competition—competition from other railroads—and intermodal competition—competition from other modes of transportation such as trucks, transload arrangements, barges, or pipelines. E.I. du Pont de Nemours & Co. v. CSX Transp., Inc. (DuPont I), NOR 42099, slip op. at 2 (STB served June 30, 2008). Even where feasible transportation alternatives are shown to exist, those alternatives may not provide "effective competition." See Mkt. Dominance Determinations & Consideration of Prod. Competition (Mkt. Dominance Determinations 1981), 365 I.C.C. 118, 129 (1981) ("Effective competition for a firm providing a good or service means that there must be pressures on that firm to perform up to standards and at reasonable prices, or lose desirable business.").

Market dominance is a complicated issue in this case. On the one hand, the movement origins and/or destinations can be served via rail (for the most part) only by CSXT.<sup>8</sup> However, the primary products at issue in this case are plastic pellet substances that physically can be transported via truck or rail, demonstrated most obviously by the fact that TPI transports annually a not insignificant amount of the products via truck or truck/rail combination. To find that market dominance is not present, it is not enough, however, to establish that truck or truck/rail service compete to some extent with CSXT rail service. As TPI correctly observes, at some point even a monopolist could price its services so high that even patently ridiculous transportation alternatives will eventually serve to constrain rates. Rather, the central issue in determining market dominance in this case is whether truck or truck/rail alternatives function as "effective" constraints on CSXT's pricing—i.e., whether they constitute competition sufficient to deter CSXT from charging monopoly prices for the transportation of TPI's products.

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<sup>7</sup> Variable costs are those railroad costs that vary with the level of output. The comparison of revenues to variable costs, reflected as a percentage figure, is known as a revenue-to-variable cost (R/VC) ratio.

<sup>8</sup> CSXT claims that there are direct rail alternatives for three origin and destination pairs. We address this claim in what is currently designated the highly confidential appendix that will be initially released only to the parties' outside counsel in conjunction with this decision. As explained more fully below, a public version of that appendix will be forthcoming.

There is a compelling need for a more objective approach to resolving market dominance given the rapidly escalating complexity of the market dominance inquiry in rate cases. Over the last two decades, rate cases were brought almost exclusively by utilities challenging rates for the transportation of large coal volumes. Truck or truck/rail alternatives are rarely a feasible alternative to direct rail service in such cases. Thus, the typical pattern in past rate cases has been either that (1) defendant railroads concede market dominance or (2) the questions relating to market dominance were relatively straightforward and easy to resolve. For several years now, however, the Board has been striving to make its rate review process more broadly available to shippers other than large utilities challenging coal transportation rates.

Neither party has offered a satisfactory approach to resolving market dominance here. Therefore, we will apply a methodology specifically designed to gauge objectively whether feasible direct rail, direct truck, or truck/rail transload alternatives are effectively constraining CSXT's pricing. See M&G Polymers USA, LLC v. CSX Transp., Inc., NOR 42123, slip op. at 12-18 (STB served Sept. 27, 2012). As a threshold matter, the Board will identify any transportation alternatives to the challenged movement that are feasible from a practical standpoint.<sup>9</sup> After this initial step, the Board will move to the following three components of the refined methodology, described in greater detail in the Discussions and Conclusions section. First, we calculate the "limit price," i.e., the highest price CSXT theoretically could charge TPI without causing a significant amount of the issue traffic on a particular rail movement to flee to a particular competitive alternative. Second, we calculate the "limit price R/VC ratio" by comparing the limit price to CSXT's variable costs of providing the service at issue. We then compare CSXT's most recent (2011) Revenue Shortfall Allocation Method (RSAM) figure—the measure of the average markup that CSXT would need to collect from all of its potentially captive traffic to earn a return on investment equal to the cost of capital—to the limit price R/VC ratio.<sup>10</sup> If the limit price R/VC ratio exceeds CSXT's 2011 RSAM figure, we preliminarily conclude that the alternative cannot exert competitive pressure sufficient to effectively constrain the rate at issue. If the limit price R/VC ratio falls below the RSAM figure, we preliminarily conclude that the competitive alternative effectively constrains the rate at issue. Finally, our

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<sup>9</sup> While we acknowledge that prior Board decisions have used the term "feasibility" differently, in this opinion we use the term to describe the concept of "practical feasibility"—i.e., whether an alternative is possible from a practical standpoint given real-world constraints. Determining whether or not such an alternative is effectively constraining the rate at issue is a distinct inquiry premised on the assumption that the alternative is practically feasible.

<sup>10</sup> The Board has previously indicated that the fact that a particular rate produces an R/VC ratio which falls below the carrier's RSAM number indicates that competitive transportation alternatives likely exist and are exerting downward pressure on the rate governing that traffic. See Simplified Standards for Rail Rate Cases (Simplified Standards 2007), EP 646 (Sub-No. 1), slip op. at 81 (STB served Sept. 5, 2007) (suggesting that a rate that falls below RSAM is "being constrained by...market forces").

preliminary conclusion could, in certain circumstances, be overcome by evidence demonstrating that the alternative upon which the limit price is based—or the challenged rail transportation itself—has certain intangible qualities that bear on the alternative’s ability to effectively constrain the rate at issue.

We believe this approach offers a sufficiently reliable indicator of whether a particular feasible alternative represents competition adequate to constrain the carrier’s rates effectively. Moreover, the approach provides some objective guidance in gauging whether or not a particular feasible alternative is effectively constraining the carrier’s pricing. For example, if a feasible alternative prevents the railroad from charging rates above 190% of variable costs, it would appear that the marketplace is capable of disciplining the carrier’s behavior. In contrast, if that same alternative serves only to prevent the railroad from charging rates above 500% of variable costs, then it would appear to us that the marketplace is not placing sufficient discipline on the carrier’s behavior and that Congress would have intended for the Board to investigate the reasonableness of those rates. Employing an objective methodology based on RSAM ensures that our market dominance analysis balances the revenue needs of the carrier with the need to protect captive shippers from the abuse of market power. While prior decisions addressing the issue of market dominance have considered whether feasible alternatives were effectively constraining carrier pricing, *see, e.g., McCarty Farms v. Burlington N., Inc.*, 3 I.C.C.2d 822, 827-32 (1987), we believe that development of a more objective methodology will help to better guide our inquiries in this respect.

We believe that this refined approach to the qualitative market dominance inquiry represents a reasoned and practical way of resolving the central issue in this case. “At the core of the ‘effective competition’ standard is the idea that there are competitive, market pressures on the railroads deterring them from charging monopoly prices for transporting goods,” *McCarty Farms*, 3 I.C.C.2d at 832 (quoting *Ariz. Pub. Serv. Co. v. United States* (Ariz. Pub. Serv. 1984), 742 F.2d 644, 650-51 (D.C. Cir. 1984)), and we believe that the limit price approach resolves the central market dominance inquiry—i.e., whether a feasible alternative is providing “effective competition” to the transportation at issue. After applying the limit price approach here, we conclude that CSXT possesses market dominance over 51 of the 63 rates for which CSXT contests market dominance.

## BACKGROUND

TPI filed its initial complaint on May 3, 2010, challenging the reasonableness of rates charged by CSXT for the transportation of the issue commodities under various tariff rates, alleging that CSXT possesses market dominance over the traffic, and requesting that maximum reasonable rates be prescribed using the Board’s full SAC test. By decision served on June 23, 2010, the Board established a procedural schedule and issued a protective order. On July 26, 2010, TPI filed an amended complaint deleting two lanes from the challenged traffic and adding 18 more, resulting in a total of 120 origin and destination pairs.

On October 1, 2010, CSXT filed a motion for expedited determination of jurisdiction over the challenged rates (motion to bifurcate). CSXT argued that its service over 97 of the 120 lanes that were challenged in the first amended complaint is subject to effective competition from rail, truck, or rail-truck transportation alternatives, and, therefore, not subject to the Board's rate reasonableness jurisdiction. On October 4, 2010, TPI filed a motion for leave to file a second amended complaint, and tendered the second amended complaint. TPI's second amended complaint: (1) joined 11 short line carriers as defendants; (2) modified the routings, origins, or commodities for eight origin and destination pairs; (3) added one new origin and destination pair; (4) relocated four origin and destination pairs from Exhibit A (local moves) to Exhibit B (joint moves); and (5) removed 16 origin and destination pairs. On October 21, 2010, TPI replied in opposition to the motion to bifurcate. On October 25, 2010, CSXT stated that it did not oppose the motion, but asked the Board to prohibit TPI from amending its complaint in the future.

On November 15, 2010, TPI and CSXT filed a joint motion to request an extension of time to file their joint submission of operating characteristics. On November 19, 2010, the Board served a decision granting TPI leave to file its second amended complaint and the joint motion to extend the deadline for the submission of operating characteristics. The parties made their joint submission of operating characteristics on November 29, 2010, in which they explained that they had reached agreement on all but two of the operating characteristics for each issue movement—"railroad miles" and "tons per car."<sup>11</sup>

On January 4, 2011, TPI filed a third amended complaint and a motion to dismiss five short line defendants from this proceeding, and on January 19, 2011, TPI filed a motion to dismiss four additional short line defendants. The Board granted the motion to dismiss those nine short line defendants in a decision served on January 21, 2011. On February 1, 2011, TPI filed a third motion to dismiss an additional short line defendant, and on February 2, 2011, TPI filed a fourth motion to dismiss the last remaining short line defendant. On February 3, 2011, TPI filed a fourth amended complaint, which reflected the changes requested in the motions to dismiss the shortline defendants. In a decision served on February 4, 2011, the Board granted the motions to dismiss the remaining shortline defendants, leaving 84 tariff rates at issue, and modified the procedural schedule as requested by TPI in a motion filed on January 10, 2011.

In a decision served on April 5, 2011 (April 2011 decision), the Board determined that it was appropriate to bifurcate this proceeding into separate market dominance and rate reasonableness phases, postponing the submission and consideration of rate reasonableness

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<sup>11</sup> TPI subsequently agreed to CSXT's "tons per car" calculations for all movements except lane J-30. Rebuttal Evidence II-A-16. However, we consider this issue moot for purposes of this decision because CSXT has effectively conceded market dominance with respect to lane J-30. Reply Evidence I-2; *infra* note 80. The parties' disagreement regarding "railroad miles" will be addressed in the highly confidential appendix.

evidence, if necessary, until after the Board has made a determination on the issue of market dominance. The Board's April 2011 decision also established a new procedural schedule for the submission of market dominance evidence. In accordance with that procedural schedule, TPI submitted its Opening Evidence on May 5, 2011. As part of its Opening Evidence, TPI submitted certain workpapers and exhibits under the "Highly Confidential" designation. On May 18, 2011, CSXT filed a motion to redesignate the contents of certain evidence from "Highly Confidential" to "Confidential." By decision served on June 3, 2011, the Board held in abeyance the deadline for CSXT's Reply Market Dominance Evidence (Reply Evidence) and all other remaining deadlines set by the prevailing procedural schedule pending further order of the Board following the resolution of CSXT's motion to redesignate. In a decision served July 15, 2011, the Board granted CSXT's motion in part and established a revised procedural schedule for filing of the Reply Evidence and TPI's Rebuttal Market Dominance Evidence (Rebuttal Evidence).

CSXT filed its Reply Evidence on August 5, 2011. TPI filed its Rebuttal Market Dominance Evidence (Rebuttal Evidence) on September 6, 2011. On September 29, 2011, CSXT filed a motion to strike certain portions of TPI's Rebuttal Evidence. CSXT argues in its motion to strike that TPI's Rebuttal Evidence includes the assertion of a new legal theory that directly contradicts positions contained in TPI's Opening Evidence relating to certain intermodal competitive options to CSXT rail service. CSXT also argues that certain other rebuttal evidence should be struck because it constitutes impermissible new evidence. TPI filed its reply to CSXT's motion on October 17, 2011, arguing that its new evidence and argument responded to issues raised by CSXT in its Reply Evidence and therefore were properly raised on rebuttal.

## PRELIMINARY MATTERS

### *CSXT's Motion to Strike*

CSXT moves that the Board strike four groups of evidence and arguments from TPI's Rebuttal Evidence: (1) evidence and arguments that the Board may not consider intermodal competitive options to CSXT rail service that do not originate at the origin and terminate at the destination specified by the challenged tariff rate; (2) evidence relating to product integrity concerns raised by transloading, including the supporting testimony of Robert Granatelli as it regards the product integrity issue; (3) evidence relating to support for inventory carrying costs; and (4) evidence relating to testimony from the proceeding addressing the merger of Union Pacific Corporation (UP) and Southern Pacific Rail Corporation (SP).<sup>12</sup>

Positions of the Parties Regarding Allowable Intermodal Competitive Options. In its Rebuttal Evidence, TPI argues for the first time that the Board should not consider the competitiveness of any intermodal alternative to a joint rail movement that does not begin at the

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<sup>12</sup> Union Pac. Corp.—Control & Merger—S. Pac. Rail Corp., 1 S.T.B. 233 (1996).

origin and terminate at the destination specified by the challenged tariff rate, even if those locations do not represent the movement's initial origin and ultimate destination. According to TPI, Board precedent governing "bottleneck" rate challenges like the instant one specifies that market dominance is to be evaluated solely with respect to the specific origin and destination covered by the bottleneck rate.<sup>13</sup> In other words, according to TPI, DMIR requires that "the Board ...only consider market dominance for the movement between the points covered by the challenged CSXT rate."<sup>14</sup> TPI further suggests that the Board "should find that market dominance conclusively exists"<sup>15</sup> on any lane where CSXT has failed to propose an alternative that would replace only CSXT's portion of a joint movement.<sup>16</sup>

CSXT argues in its motion to strike that raising this argument on rebuttal is improper because (1) TPI failed to assert its theory on opening in direct contravention of Board rules specifically limiting rebuttal evidence in SAC rate cases,<sup>17</sup> and (2) TPI's Opening Evidence itself relied on evaluations of potential competitive alternatives that were not limited solely to the origin and destination covered by the challenged bottleneck rates.<sup>18</sup> CSXT further argues that complainants must not be permitted to withhold arguments for rebuttal that could and should have been asserted on opening, and must not be allowed to "bait defendants into accepting and addressing the complainant's positions on opening only to attack those same positions on rebuttal."<sup>19</sup> In CSXT's view, simple fairness and a concern for protecting the integrity of the Board's proceedings dictate that the Board strike the new DMIR-related arguments and evidence presented by TPI for the first time on rebuttal.<sup>20</sup> CSXT asserts that even assuming the correctness of TPI's theory, the DMIR precedent does not apply here because it is distinguishable from the instant case on its facts.<sup>21</sup> Finally, CSXT argues that to the extent dicta

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<sup>13</sup> Rebuttal Evidence II-B-78 (citing Minn. Power, Inc. v. Duluth, Missabe & Iron Range Ry. (DMIR), 4 S.T.B. 288, 292 n.13 (1999)).

<sup>14</sup> Id.

<sup>15</sup> Id. at II-B-80.

<sup>16</sup> TPI identifies 35 such movements in its rebuttal. See id. at II-B-80 to II-B-89.

<sup>17</sup> See Gen. Procedures for Presenting Evidence in Stand-Alone Cost Rate Cases (Gen. Procedures), 5 S.T.B. 441, 445-46 (2001) ("Rebuttal presentations are limited to responding to the reply presentation of the opposing party. Rebuttal may not be used as an opportunity to introduce new evidence that could and should have been submitted on opening to support the opening submissions. New evidence improperly presented on rebuttal will not be considered.").

<sup>18</sup> CSXT Motion to Strike 5-10.

<sup>19</sup> Id. at 7.

<sup>20</sup> Id.

<sup>21</sup> Id. at 10-13.

from a single footnote in DMIR “suggests that in all cases the Board should ignore evidence of effective competitive options that does not precisely replicate the ‘origin’ and ‘destination’ of the defendant rail carrier’s section of a joint movement, that dicta should be rejected as inconsistent with” congressional intent.<sup>22</sup>

In its reply to CSXT’s motion, TPI states that asserting its DMIR-related theory for the first time on rebuttal is proper because it constitutes allowable responsive argument to evidence presented by CSXT on reply.<sup>23</sup> TPI argues further that its consideration (and subsequent rejection) of certain transportation alternatives on opening that did not comport with its DMIR-related theory does not render its Rebuttal Evidence improper or inconsistent because TPI was simply acting out of an abundance of caution by comparing CSXT’s rail transportation to the most efficient alternative transportation options regardless of whether they conformed to TPI’s interpretation of DMIR.<sup>24</sup> TPI also contends that CSXT’s motion fails to distinguish DMIR on its facts.<sup>25</sup> Finally, TPI asserts that DMIR concerns the Board’s subject matter jurisdiction and that, as a result, arguments relating thereto may neither be waived by the parties nor disregarded by the Board.<sup>26</sup>

Board Analysis of Motion to Strike Rebuttal Intermodal Competitive Options Argument. We will grant CSXT’s motion to strike TPI’s rebuttal arguments on intermodal competitive options. Board rules clearly direct that complainants put forth their best and most complete case on opening. Gen. Procedures, 5 S.T.B. at 445-46 (explaining that “the party with the burden of proof on a particular issue must present its entire case-in-chief in its opening evidence”). The shipper must “submit its best, least-cost, fully supported case on opening” and “may not hold back to see the railroad’s reply evidence before finalizing or supporting its own case.” Duke Energy Corp. v. Norfolk S. Ry. (Duke Energy), 7 S.T.B. 89, 101 (2003). Principles of fairness and the orderly handling of cases require that “parties submit their best evidence on opening, so that each party has a fair opportunity to reply to the other’s evidence.” Xcel Energy v. BNSF Ry., NOR 42057, slip op. at 2 (STB served Apr. 4, 2003). This principle of fairness would be subverted were the Board to allow TPI to present specific potential transportation alternatives in its Opening Evidence and then urge the Board in its Rebuttal Evidence to preclude consideration of those same alternatives particularly where (as here) CSXT relied on TPI’s initial discussion of those potential alternatives when preparing its Reply Evidence.

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<sup>22</sup> Id. at 12-13.

<sup>23</sup> TPI Reply to Motion to Strike 3-4.

<sup>24</sup> Id. at 6.

<sup>25</sup> Id. at 7-10.

<sup>26</sup> Id. at 10-11.

In the instant case, TPI includes evidence on opening regarding certain rail-truck and direct truck transportation alternatives in an effort to demonstrate that CSXT possesses market dominance over certain rates. CSXT counters on reply with evidence in support of its argument that the same alternatives identified by TPI on opening in fact constitute effective constraints on the exercise of market power. TPI then responds on rebuttal that CSXT's reply evidence discussing these very same alternatives may not be considered pursuant to the Board's decision in DMIR, despite TPI's concession that its Opening Evidence relied at least in part on an evaluation of these potential intermodal alternatives as "the most efficient, and thus lowest cost, alternatives."<sup>27</sup>

The theory advanced by TPI on rebuttal is inconsistent with the positions it adopted on opening. In previous rate cases, the Board has taken action to prevent a complainant from inappropriately altering its opening evidence on rebuttal by asserting arguments that are in direct conflict with those proffered on opening.<sup>28</sup> The Board granted a motion to strike the same argument in M&G, slip op. at 9-11. We believe similar action is required here, and therefore will grant CSXT's motion to strike.<sup>29</sup>

We further conclude that DMIR does not implicate the Board's subject matter jurisdiction. Specifically, TPI argues that because the Board does not have jurisdiction over transportation rates governed by contracts, any competitive alternatives that include a transportation segment governed by a contract rate are beyond the Board's jurisdiction and therefore must be excluded from our analysis.<sup>30</sup> TPI's argument, however, misapprehends both the boundaries of the Board's jurisdiction and the nature of the tools available to the Board when

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<sup>27</sup> Id. at 6.

<sup>28</sup> See, e.g., Otter Tail Power Co. v. BNSF Ry., NOR 42071, slip op. at 3-4 (STB served Jan. 27, 2006) (striking rebuttal evidence modifying the shipper's original cost-of-capital calculations because the railroad's reply evidence relied upon the shipper's original calculations and explaining that "a complainant may not... alter its position on rebuttal" in such circumstances); Duke Energy Corp. v. CSX Transp., Inc., NOR 42070, slip op. at 4 (STB served Mar. 25, 2003) (striking rebuttal arguments "in the interest of fairness and orderly handling of the case" where the complainant went "beyond simply seeking to support what it presented in its opening evidence or adopting evidence submitted by" the railroad).

<sup>29</sup> Because we decide CSXT's motion to strike on this basis, we need not address the issue of whether DMIR is distinguishable on its facts from the instant case. Likewise, we need not address the questions of whether DMIR correctly applied the principles set forth in Market Dominance Determinations—Product & Geographic Competition (Mkt. Dominance Determinations 1998), 3 S.T.B. 937 (1998), and, even if it did correctly apply those principles, whether DMIR should be overruled. See Motion to Strike 12-13.

<sup>30</sup> TPI Reply to Motion to Strike 10.

conducting its market dominance analysis. In this context, the Board may consider transportation alternatives involving modes over which the Board has no jurisdiction. For example, even though it lacks jurisdiction to determine the reasonableness of rates for transportation by barge,<sup>31</sup> the Board has considered barge alternatives when considering whether a defendant railroad is market dominant over a particular rail movement.<sup>32</sup> And while 49 U.S.C. § 10709(c) removes “all matters and disputes arising from rail transportation contracts from the Board’s jurisdiction,”<sup>33</sup> the Board properly considers freight contract rates when making determinations in contexts involving rail transportation over which the Board possesses jurisdiction.<sup>34</sup>

Positions of the Parties Regarding Motion to Strike Rebuttal Product Integrity

Arguments. CSXT claims that TPI’s Rebuttal Evidence introduced a “new and radically broader theory of product contamination” and requests that the Board strike that evidence because TPI could have introduced it on opening, allowing CSXT a fair opportunity to respond.<sup>35</sup> CSXT claims that TPI’s opening product integrity claims were limited to claims that a small subset of customers, those purchasing issue commodities for use in medical applications, prefer rail transportation because rail limits the need for transloading and therefore rail prevents product contamination. CSXT argues that TPI impermissibly expanded this argument on rebuttal to claims that all of its polymer customers prefer rail because of product integrity concerns.

TPI responds that its rebuttal product integrity arguments were proper because they responded to the transportation options CSXT proposed on reply, which TPI could not have anticipated that CSXT would propose.<sup>36</sup> TPI claims that on opening, its proposed transportation

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<sup>31</sup> The Board’s predecessor agency, the Interstate Commerce Commission, licensed water carriers until that authority was repealed in the ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (1995).

<sup>32</sup> See, e.g., E.I. du Pont de Nemours & Co. v. CSX Transp., Inc. (DuPont II), NOR 42100, slip op. at 4-5 (STB served June 30, 2008).

<sup>33</sup> TPI Reply to Motion to Strike 10 (quoting Rail Transp. Contracts Under 49 U.S.C. 10709, EP 676, slip op. at 2 (STB served Jan. 22, 2010)).

<sup>34</sup> For example, if a complainant challenged a common carrier rate established by Carrier 1 governing transportation from point A to point B, and there was evidence that Carrier 2 provided a transportation alternative from point A to point B under a rail transportation contract, the Board clearly would consider this transportation alternative for market dominance purposes (notwithstanding the fact that review of the reasonableness of the alternative rail transportation movement would fall outside our jurisdiction).

<sup>35</sup> Motion to Strike 14.

<sup>36</sup> TPI Reply to Motion to Strike 14-16.

options included a maximum of one transload for non-medical application customers, but that on reply CSXT proposed options that included double or triple transloading. TPI argues that while single transloads might be acceptable for non-medical application customers, double or triple transloads, including truck-to-rail transloading, would not be acceptable. Therefore, TPI continues, CSXT's Reply Evidence required TPI to present rebuttal evidence showing that the transloading proposed by CSXT was not viable. TPI also argues that because CSXT's proposed double transloading "simply is not done in the polymer industry,"<sup>37</sup> TPI could not have anticipated that CSXT would propose it.

Board Analysis of Motion to Strike Rebuttal Product Integrity Arguments. Applying our evidentiary standards, we find that TPI's evidence and argument on product integrity was not permissible rebuttal to the feasibility of the alternatives proposed in CSXT's reply evidence. TPI's opening arguments show that it was aware of the possibility that CSXT would propose direct truck or transload alternatives, as it admits that customers receive truck deliveries of up to nearly 15% total volume purchased on some case lanes.<sup>38</sup> Further, TPI's customer verified statements show that TPI was aware of the alleged product integrity issues on opening. The verified statements refer to a need for rail service to avoid contamination issues associated with trucks, but TPI does not raise product integrity issues in its narrative discussion beyond the narrow issue of the product integrity concerns of medical applications customers. Accordingly, on reply, CSXT merely states that "there are no legitimate product contamination concerns with the closed-system transloading that can be performed by vacuum pneumatic trucks and that TPI regularly uses to distribute the issue commodities" and asserts that TPI customers that raised product contamination concerns in their verified statements received significant volumes of truck shipments.<sup>39</sup>

On rebuttal, TPI argues that certain alternatives proposed by CSXT raise product integrity concerns.<sup>40</sup> According to TPI, the problematic alternatives involve double or triple transloading, truck-to-rail transloads, and use of leased tracks for transloads.<sup>41</sup> TPI also claims for the first time that, like medical applications customers, customers that produce non-woven fabrics are highly sensitive to contamination and need rail service. We conclude that TPI was aware of the potential non-medical product integrity issue on opening but did not address it at that time. By raising the issue for the first time on rebuttal, TPI deprived CSXT of the opportunity to respond to the product integrity arguments. Duke Energy, 7 S.T.B. at 101

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<sup>37</sup> Id. at 16 n.11.

<sup>38</sup> Opening Evidence II-B-18; id. at Exhibit II-B-11.

<sup>39</sup> Reply Evidence II-43; id. at n.52.

<sup>40</sup> Rebuttal Evidence II-B-21 to II-B-25, II-B-108 to II-B-111.

<sup>41</sup> Id. at II-B-108.

(shippers must “submit [their] best, least-cost, fully supported case on opening” and “may not hold back to see the railroad’s reply evidence before finalizing or supporting its own case.”) We will grant CSXT’s motion to strike TPI’s rebuttal product integrity arguments<sup>42</sup> and the supporting testimony of Robert Granatelli as it relates to product integrity.

Positions of the Parties Regarding Motion to Strike Rebuttal Inventory Carrying Costs Evidence. CSXT argues that TPI’s claimed inventory carrying costs were unsupported on opening, and TPI impermissibly introduced evidence supporting those costs on rebuttal.<sup>43</sup> Therefore, CSXT continues, it did not have a fair opportunity to respond to the evidence and the Board should strike it. CSXT explains that, after opening, it asked TPI to produce workpapers that supported “its factual assertions that it accounts for truck and rail shipments differently in a way that creates additional inventory costs for truck shipments” and “any workpapers supporting its underlying allegation that TPI is entitled to claim these additional costs in the first place.”<sup>44</sup> CSXT claims that TPI’s response was to produce two invoices and a reiteration of the statements it made on opening. CSXT states that it based its reply evidence on its belief that TPI had not supported the claimed inventory carrying costs. CSXT argues that TPI’s new rebuttal evidence—testimony from a witness with responsibility for TPI’s accounting, federal agency statements referencing inventory carrying costs, and an internal document supporting TPI’s arguments (the ASR Analysis workpaper)<sup>45</sup>—deprived CSXT of a fair opportunity to reply to evidence that TPI did not even produce in discovery.

TPI argues that its new rebuttal evidence was a permissible response to arguments made by CSXT on reply.<sup>46</sup> TPI claims that CSXT’s reply arguments misrepresented TPI’s inventory carrying costs as an accounting issue, which TPI could not have anticipated, and therefore TPI had to introduce new evidence to refute the misrepresentation. TPI claims that inventory carrying costs are a “well-established and commonly applied business concept”<sup>47</sup> that arises here because shipments to truck customers remain in TPI’s inventory longer than shipments to rail customers; therefore, TPI continues, inventory costs for truck customers are higher than for rail customers. TPI claims that it explained this to CSXT in letters exchanged after TPI filed its Opening Evidence, but CSXT’s misrepresentation of the issue on reply required TPI to introduce

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<sup>42</sup> We note that our rejection of TPI’s evidence does not include TPI’s rebuttal arguments on product integrity issues of medical applications customers.

<sup>43</sup> Motion to Strike 15-17. CSXT limits its request to strike to the evidence discussed at Rebuttal Evidence II-B-97 to II-B-99. Motion to Strike 17 n.13.

<sup>44</sup> Id. at 16.

<sup>45</sup> TPI Rebuttal Evidence II-B-99.

<sup>46</sup> TPI Reply to Motion to Strike 16-21.

<sup>47</sup> Id. at 16-17.

evidence showing that this is not an accounting issue, but an issue of “timing of the sale and thus the receipt of payment.”<sup>48</sup> In response to CSXT’s statement that the evidence was not produced in discovery, TPI states that only three Rebuttal Evidence documents on inventory costs were not produced; two of the documents were Google search results that are publically available, and the ASR Analysis workpaper was not responsive to any discovery requests, except one that was impermissible and overbroad.<sup>49</sup> In addition, TPI states that the three documents were all submitted to rebut assertions in the Reply Evidence.<sup>50</sup>

Board Analysis of Motion to Strike Rebuttal Inventory Carrying Costs Evidence. We will deny the motion to strike the rebuttal inventory carrying costs evidence, except we will not allow the ASR Analysis submitted as part of TPI’s rebuttal workpapers. As discussed above, shippers may submit rebuttal evidence that responds to issues raised on reply. The TPI accounting witness provided the rebuttal to CSXT’s arguments regarding the accounting treatment of inventory carrying costs.<sup>51</sup> The evidence replies to what TPI claims is CSXT’s mischaracterization on reply of the inventory carrying cost concept. The publically available federal agency statements were intended to show that inventory carrying costs are generally considered in transportation analyses. Contrary to CSXT’s assertion, this type of publically available evidence is permissible rebuttal evidence. As to CSXT’s argument that the ASR Analysis should have been produced in discovery, we agree. With the exception of the ASR Analysis, the evidence is permissible rebuttal evidence.

Positions of the Parties Regarding Motion to Strike Rebuttal Evidence Regarding Testimony from UP/SP Merger Proceeding. CSXT argues that TPI’s submission of 1996 testimony from the Society of Plastics presented in the UP/SP merger proceeding was impermissible and overbroad because the evidence could and should have been presented on opening.<sup>52</sup> TPI responds that the testimony supports its opening arguments that the polymer industry is organized around rail transportation and responds to CSXT’s reply arguments contesting TPI’s opening claims.

Board Analysis of Motion to Strike Rebuttal Evidence Regarding Testimony from UP/SP Merger Proceeding. We will deny the motion to strike the rebuttal evidence regarding testimony from the UP/SP merger proceeding. As discussed above, shippers may submit rebuttal evidence that responds to issues raised on reply. The testimony from the merger proceeding responds to

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<sup>48</sup> Id. at 19.

<sup>49</sup> Id. at 19 n.13.

<sup>50</sup> Id.

<sup>51</sup> Rebuttal Evidence II-B-96 n.160.

<sup>52</sup> Motion to Strike 17-18.

CSXT's claims that TPI manufactured customer preferences for rail for this litigation. In addition, the testimony is part of a public document to which CSXT had access.

Finally, we will deny CSXT's request that it be allowed to respond to any evidence as to which we deny its motion to strike. The inventory carrying costs and merger testimony evidence is properly submitted rebuttal evidence and our rules provide for no additional argument in such instances.

## DISCUSSION AND CONCLUSIONS

The Board may consider the reasonableness of a challenged rail rate only if the defendant carrier has market dominance over the traffic. 49 U.S.C. § 10707. Market dominance is defined as "an absence of effective competition from other rail carriers or modes of transportation for the transportation to which a rate applies." *Id.* § 10707(a). "At the core of the 'effective competition' standard is the idea that there are competitive, market pressures on the railroads deterring them from charging monopoly prices for transporting goods." *McCarty Farms*, 3 I.C.C.2d at 832 (quoting *Ariz. Pub. Serv.*, 1984, 742 F.2d at 650-51). Therefore, in rate cases the Board looks to see if there are any alternatives sufficiently competitive (whether singly or in combination) to bring market discipline to the carrier's pricing—i.e., whether there is effective competition adequate to restrain rates at or below a maximum reasonable level. *Id.* at 825, 831.

The Board's market dominance inquiry comprises two distinct parts. First, for quantitative market dominance, there is a conclusive presumption that a railroad does not have market dominance if the charged rate produces revenues that are less than 180% of its variable costs of providing the service. 49 U.S.C. § 10707(d)(1)(A).<sup>53</sup> In contrast, if the charged rate produces revenues that are greater than 180% of variable cost, the Board can draw no opposite presumption that the rail carrier has market dominance over such transportation. *Id.* § 10707(d)(2). Rather, it must instead move to the second part—referred to as the "qualitative market dominance" inquiry—in which the Board then examines whether there are any feasible transportation alternatives for the issue traffic that are sufficient to constrain the railroad's rates to competitive levels, considering both intramodal competition—competition from other railroads—and intermodal competition—competition from other modes of transportation such as trucks, transload arrangements, barges, and/or pipelines. *E.g., DuPont I*, slip op. at 2.

Whether certain transportation alternatives are sufficiently competitive to bring market discipline to the carrier's pricing—i.e., whether feasible alternatives constitute sufficient competition to deter the carrier from charging monopoly prices—is a complicated issue to resolve. The preliminary step is to determine the practical feasibility of any theoretical

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<sup>53</sup> In this case, the parties agree that CSXT's R/VC ratios exceed the 180% threshold for all the challenged rates. *See* Reply Evidence II-2; Rebuttal Evidence I-1.

transportation alternatives that could be used for the issue traffic (considering both intramodal and intermodal alternatives). Within this rubric the Board considers many factors, including, for example, whether and to what extent such alternatives might involve potentially prohibitive transport distances, product integrity concerns, capacity/infrastructure constraints, and the presence of any transportation requirements imposed by the complaining shipper's customers. If an alternative is not feasible, it cannot bring market discipline to a carrier's pricing adequate to restrain rates effectively.

Once the Board determines that a feasible transportation alternative exists, we move to the next step in assessing market dominance. This agency has long recognized that even when there is a feasible alternative mode or modes of transportation, a complainant can establish market dominance by demonstrating that the alternative mode or modes are not effectively constraining the carrier's ability to increase the rates on the issue traffic. See Mkt. Dominance Determinations 1981, 365 I.C.C. at 129 ("Effective competition for a firm providing a good or service means that there must be pressures on that firm to perform up to standards and at reasonable prices, or lose desirable business."). Again, as TPI correctly observes,<sup>54</sup> at some point even a monopolist could price its services so high that patently ridiculous transportation alternatives would eventually serve to constrain rates. See, e.g., Ariz. Pub. Serv. 1984, 742 F.2d at 651; DuPont I, slip op. at 7-8.

Resolving the question of whether feasible alternatives exert effective competitive pressure on CSXT's pricing is the central issue in this case. While the parties disagree on whether there is direct rail-to-rail competition for certain movements, the plastic pellet commodities<sup>55</sup> being transported by rail are also capable of being transported by truck or a truck/rail combination. TPI challenges the feasibility of those truck and truck/trainload alternatives (which, due to the competitively sensitive nature of that evidence will be addressed in our confidential workpapers provided only to the parties). But for most of the challenged movements, a viable truck or truck/rail alternative to CSXT's service exists. Therefore, we must decide whether the feasible alternatives are economically effective—i.e., whether they represent competition adequate to effectively restrain rates.

We are not satisfied with the approach urged by either party to determine whether the proposed alternatives represent competition sufficient to restrain rates effectively. CSXT simply

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<sup>54</sup> Rebuttal Evidence II-B-47.

<sup>55</sup> We refer to the plastic pellet products at issue in this market dominance decision. While TPI challenged the rates for other commodities, CSXT has conceded market dominance for those commodities. Compare Reply Evidence, Exhibit II-B-2 (describing the lanes on which CSXT challenges market dominance), with Opening Evidence, Exhibit II-A-1 (showing the commodities transported by lane). See also Opening Evidence II-B-3 (describing the commodities at issue).

compares the price of the alternative to the challenged rate. If the two figures are similar, CSXT declares that effective competition exists.<sup>56</sup> However, the mere fact that a rail carrier prices its services right at the threshold where, if slightly higher, it might begin to lose traffic to an alternative does not indicate whether that alternative is constraining rates effectively.

TPI, however, would compare the variable costs of providing the challenged rail service to an estimate of the variable cost of the alternative service,<sup>57</sup> an approach we believe is equally flawed. Putting aside the tremendous empirical difficulties of estimating the variable costs associated with a potential service alternative, this figure does not represent a constraint on a railroad's pricing. A carrier is constrained by the market price charged by its competitors for an alternative transportation service, not the variable costs incurred by those competitors when providing the alternative service.

Accordingly, we will use the approach described in M&G, slip op. at 12-18, to gauge whether a practically feasible alternative is functioning as an effective constraint on CSXT's pricing. First, for each challenged rate we will calculate the price that, if the railroad charged above that level, would result in a significant loss of traffic. In general, this "limit price" figure—calculated from the best evidence of record submitted by the parties—is a gauge of the highest price a carrier could theoretically charge a shipper without causing a significant amount of the issue traffic on a particular rail movement to be diverted to a competitive alternative, assuming all other factors are held constant. The method by which we calculate the limit price is as follows. With respect to an alternative that replaces the entire movement (in the context of transportation provided in single-line service) or just CSXT's portion of a joint-line movement, the limit price is calculated as the price of the transportation alternative to that CSXT service. With respect to an alternative that replaces the entire movement (in the context of transportation provided in joint-line service)—i.e., an alternative that replaces both CSXT's portion and the portion of the movement provided by one or more connecting carriers—the limit price is calculated according to the following formula:  $LP = ALT - (THRU - SEG)$ , where "ALT" represents the price of the alternative service from origin to ultimate destination, "THRU" represents the through rate applicable to the entire movement that includes the challenged tariff rate, and "SEG" represents the tariff rate applicable to the challenged CSXT portion of the movement.

Second, we then will compare this limit price to the railroad's variable costs of providing the service at issue. We will refer to the ratio of the limit price over variable costs as the "limit price R/VC ratio." If the limit price R/VC ratio exceeds CSXT's 2011 RSAM figure,<sup>58</sup> we will

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<sup>56</sup> Reply Evidence II-82 to II-B-86.

<sup>57</sup> Opening Evidence, Exhibit II-B-10.

<sup>58</sup> CSXT's 2011 RSAM figure—covering the 4-year period from 2008-2011—is 284%. See Simplified Standards for Rail Rate Cases—2011 RSAM and R/VC<sup>180</sup> Calculations

(continued . . .)

preliminarily conclude that the alternative cannot exert competitive pressure sufficient to restrain rates effectively. If, in contrast, the limit price R/VC ratio falls below this RSAM figure, we will preliminarily conclude that the competitive alternative effectively constrains the rate at issue. The further the limit price R/VC ratio is above or below the RSAM figure, the stronger the preliminary conclusion that the alternative is either effectively constraining or not effectively constraining the rate governing the issue traffic.<sup>59</sup>

Finally, when appropriate, we will consider whether the alternative has any intangible features sufficient to overcome the applicable preliminary conclusion. For example, if an otherwise uncompetitive alternative provides certain unquantifiable benefits to the shipper, or the challenged rail transportation involves certain unquantifiable costs, we might find that an alternative with a limit price R/VC ratio above the RSAM figure nonetheless effectively exerts market pressure on the railroad sufficient to deter it from charging monopoly prices.<sup>60</sup> Alternatively, if an otherwise competitive alternative involves certain unquantifiable costs to the shipper, or the challenged rail transportation provides certain unquantifiable benefits, we might find that an alternative with a limit price R/VC ratio below the RSAM figure nonetheless does not place effective market pressure on the railroad.<sup>61</sup>

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(continued . . .)

(Simplified Standards 2013), EP 689 (Sub-No. 4), slip op. at 3 (STB served Feb. 11, 2013). If in future cases there was no published figure for the defendant carrier, parties should address whether the use of a regional or national average would be most appropriate.

<sup>59</sup> In situations involving multiple proposed alternatives, we have utilized only the lowest priced feasible alternative—i.e., the feasible alternative with the lowest limit price and therefore the lowest limit price R/VC ratio—in our comparison with the carrier’s RSAM figure.

<sup>60</sup> See, e.g., M&G, slip op. at 59 (concluding that the proposed direct truck alternative provided advantages over the challenged Apple Grove-Clifton Forge rail transportation because direct trucking generally provides certain customer-related benefits, such as the ability to respond more quickly to customer delivery requests); id. at 37-38 (noting the possibility that direct truck alternatives generally might involve certain intangible benefits vis-à-vis rail transportation, such as increased reliability, better on-time performance, and the provision of certain inventory control benefits to the parties).

<sup>61</sup> See, e.g., id. at 58-59 (concluding that the challenged Apple Grove-Belpre rail transportation provided advantages over the proposed direct truck alternative because the movement's destination was a railcar storage facility and the alternative would have both (a) necessitated significant railcar repositioning simply for purposes of storage and (b) foreclosed the possibility of subsequent delivery via truck due to product integrity concerns); id. at 56 n.254 (noting the possibility that transportation via railcar generally might involve certain intangible benefits vis-à-vis transload alternatives, such as presumed shorter transport times).

The overall approach to evaluating potential transportation alternatives in this case—i.e., a threshold feasibility analysis, a comparison of the limit price to the defendant’s variable costs of providing the service at issue, and a consideration of intangible features—encompasses the same factors described by the market dominance guidelines originally set forth in Market Dominance Determinations & Consideration of Product Competition, 365 I.C.C. at 132-33, and cited by the parties.<sup>62</sup> Again, while prior decisions addressing the issue of market dominance have considered whether feasible alternatives were effectively constraining carrier pricing, see, e.g., McCarty Farms, 3 I.C.C.2d at 827-32, we believe that development of a more objective methodology will help to better guide our inquiries in this respect.<sup>63</sup>

Moreover, we believe this comparative approach offers a sufficiently reliable indicator of whether effective competition exists for several reasons. As an initial matter, a carrier’s RSAM figure is a measure of the average markup that the carrier would need to collect from all of its potentially captive traffic (i.e., all traffic priced at or above the 180% R/VC level) in order to earn adequate revenues as measured by the Board under 49 U.S.C. § 10704(a)(2) (i.e., earn a return on investment equal to the cost of capital). 2010 Tax Info. for Use in the Revenue Shortfall Allocation Method, EP 682 (Sub-No. 2), slip op. at 1 (STB served July 8, 2011). Furthermore, the RSAM methodology “takes into account the key economic and equity principles embodied in the Interstate Commerce Act. It provides for differential pricing and a railroad’s need to earn adequate revenues by directly linking its ‘revenue need shortfall’ to a benchmark markup for captive traffic.” Rate Guidelines—Non-Coal Proceedings, EP 347 (Sub-No. 2), slip op. at 4 (ICC served Nov. 16, 1992) (footnote omitted). While the RSAM number standing alone simply represents the system-wide average markup required to achieve revenue adequacy, the Board has explained that “[h]ow a particular carrier’s revenue requirements can and should be allocated within its traffic base—i.e., the proper markup to be applied to individual traffic components—is affected by such factors as the mix of competitive and captive traffic handled by that carrier[ and] the degree of competition that it faces on its competitive traffic.” Rate Guidelines—Non-Coal Proceedings, 1 S.T.B. 1004, 1033-34 (1996). Moreover, “because the average derived by the RSAM is the average for captive shippers only...the ratios for some captive shippers must be above and some below that figure.” BNSF Ry. v. STB, 453 F.3d 473, 481 (D.C. Cir. 2006). As a carrier’s RSAM number represents the average level at which the

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<sup>62</sup> See Opening Evidence I-5 to I-6; Reply Evidence II-19.

<sup>63</sup> TPI argues that rate increases without a loss of traffic show CSXT’s market dominance. Opening Evidence I-14 to I-15. CSXT notes that the 2007, 2008, and 2009 rate increases claimed by TPI were agreed to in a private contract, and that rate increases after the expiration of TPI’s contract were unsurprising as the contracts had lower rates based on volume commitments. Reply Evidence II-86 to II-87. We are not persuaded that the contract rate increases alone show CSXT’s market dominance. As CSXT argues, contract rates are often lower than tariff rates for a variety of reasons.

carrier would achieve system-wide revenue adequacy, the fact that a rate involving certain potentially captive traffic produces an R/VC ratio that falls below the carrier's RSAM number indicates that competitive transportation alternatives likely exist and are exerting downward pressure on the rate governing that traffic.<sup>64</sup> Likewise, the fact that a rate involving other potentially captive traffic produces an R/VC ratio that falls above the carrier's RSAM number is a useful indicator that competitive transportation alternatives—whether intermodal or intramodal—do not exist and are not effectively constraining the rate charged by the carrier for that traffic.

Thus, comparing the limit price R/VC ratio for a given movement to the carrier's RSAM number will be indicative of either the presence or absence of effective competition for that movement. The limit price R/VC ratio expresses the limit price figure as a percentage of the movement's variable costs.<sup>65</sup> Effective competition likely exists if the highest price the carrier theoretically could charge to move that potentially captive traffic falls below the average point at which the carrier could achieve revenue adequacy.<sup>66</sup> Likewise, the fact that the highest price the carrier theoretically could charge to move the potentially captive traffic falls above the average point at which the carrier could achieve revenue adequacy indicates that effective competition for that movement likely does not exist.

We believe use of this metric to gauge the effectiveness of potential competitive alternatives is appropriate given that the “rates that would be charged by a competing mode [of transportation] are relevant to an evaluation of whether that mode provides effective intermodal competition” to the movement at issue. Ariz. Pub. Serv. Co. v. Atchison, Topeka & Santa Fe Ry. (Ariz. Pub. Serv. 1997), 2 S.T.B. 367, 375 n.15 (1997).<sup>67</sup> Furthermore, while the Board's qualitative market dominance guidelines “contemplate the use of” considerations such as the capacity, reliability, speed, and safety of potential transportation alternatives, “they do not exclude the application of quantitative analysis as well.” CF Indus., Inc. v. STB, 255 F.3d 816, 822 (D.C. Cir. 2001) (citing Mkt. Dominance Determinations 1981, 365 I.C.C. at 119 n.5).

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<sup>64</sup> See Simplified Standards 2007, slip op. at 81 (suggesting that a rate which falls below RSAM is “being constrained by...market forces”).

<sup>65</sup> In other words, the limit price R/VC ratio differs from the typical R/VC ratio in that the former utilizes the postulated limit price in the numerator while the latter utilizes the actual revenue generated by a particular tariff rate in the numerator.

<sup>66</sup> See Simplified Standards 2007, slip op. at 81.

<sup>67</sup> See also Salt River Project Agric. Improvement & Power Dist. v. United States, 762 F.2d 1053, 1060 (D.C. Cir. 1985); Ariz. Pub. Serv. 1984, 742 F.2d at 650 (“The [ICC's] guidelines state that evidence of effective competition may include ‘the transportation costs of the rail and motor carrier alternatives.’”) (quoting Mkt. Dominance Determinations 1981, 365 I.C.C. at 133).

We have reviewed the comments we received regarding our refined approach to market dominance from various parties in the earlier case where the limit price approach was introduced, as well as our ongoing proceeding for refining our rate procedures,<sup>68</sup> and no comments have convinced us to abandon or alter our use of the limit price methodology. For purposes of this and future proceedings, we believe that it would be useful for us to address certain of these comments now.

The first category of comments suggest that we are prohibited from utilizing the refined approach either by virtue of 49 U.S.C. § 10707(d)(2) or the prevailing market dominance guidelines originally set forth in the ICC's 1981 Market Dominance Determinations & Consideration of Product Competition decision. We do not agree. Section 10707(d)(2) precludes the Board from establishing market dominance and rate reasonableness presumptions based solely on the fact that the R/VC ratio "for the transportation to which the rate applies" is equal to or greater than 180%. The refined approach to qualitative market dominance establishes no such presumption. For that matter, it establishes no presumptions of any kind. Rather, this approach reflects a set order of considerations relevant to the issue of qualitative market dominance that are to be examined in turn—1) a threshold practical feasibility analysis; 2) calculation of the limit price ratio and its comparison to the defendant railroad's RSAM figure; and 3) a consideration of intangible features. Moreover, the plain language of the statute only prevents the Board from creating a presumption of market dominance based on the fact that the challenged rate produces a markup at or above 180% of variable cost. The statute is silent as to whether a presumption could be drawn from a higher markup (e.g., above 500% of variable cost or above RSAM).<sup>69</sup> In addition, the limit price methodology does not utilize the challenged rail rate in its calculation of the limit price R/VC ratio. The limit price R/VC ratio—a calculation

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<sup>68</sup> See M&G Polymers USA, LLC v. CSX Transp., Inc., Docket No. NOR 42123; Rate Regulation Reforms, Docket No. EP 715.

<sup>69</sup> The statute is ambiguous on this point. While some commenters believe that § 10707(d)(2) prevents our use of R/VC ratios for any purpose, a more reasonable interpretation is that the statute simply prohibits us from using 180% as the demarcation point for market dominance purposes. Arguments that the statute establishes an absolute prohibition on the use of presumptions from any R/VC ratio level (no matter how high) in the market dominance context are unpersuasive, particularly given the historical prevalence of their use in that precise context. Cf. Mr. Sprout, Inc. v. United States, 8 F.3d 118, 124 (2d Cir. 1993) (recognizing that the ICC, federal courts, and Congress have all employed R/VC ratios "as a valid and reliable measure of market power in the rail industry" and concluding that the ICC's use of such ratios in its "threshold inquiry" on the issue of market dominance was not an abuse of discretion). Had Congress wished to prevent the establishment of any and all potential R/VC-based presumptions—as opposed to the very specific 180% figure—it could have done so easily and clearly.

based on the price of a proffered alternative to that particular rail movement according to the best evidence of record submitted by the parties—reflects the highest price the rail carrier theoretically could charge the shipper without causing a significant amount of the issue traffic to be diverted to the proffered alternative, if all other factors are held constant. Therefore, assuming arguendo that the limit price methodology does include a presumption, and even that the statute prevents any presumptions based on the R/VC ratio of the challenged rate (no matter how high), our approach still would not run afoul of § 10707(d)(2) because it does not utilize the challenged rail rate in its calculation of the limit price R/VC ratio.

We also disagree with the notion that we may not use the refined approach until it has been adopted via notice-and-comment rulemaking on the ground that the prevailing market dominance guidelines set forth in Market Dominance Determinations & Consideration of Product Competition were adopted in this manner. Such a proposition would be true only if (1) the current market dominance rules were considered binding legislative rules rather than flexible evidentiary guidelines; and (2) our refinement represented a departure from those rules. Even if the market dominance rules were deemed to be legislative in nature, an issue that we need not and do not decide here, the limit price approach is plainly not a departure from those rules. The overall framework for evaluating potential transportation alternatives reflected in the refined approach—including consideration of issues related to practical feasibility, economic feasibility, and the existence of any intangible features related either to the proffered alternative or the challenged rail transportation—encompasses the same factors described by the prevailing guidelines.<sup>70</sup> The refined approach excludes no factor the Board has previously stated it will consider in its qualitative market dominance analysis. Moreover, even if the refined approach incorporates some additional new element within this analysis, the ICC's Market Dominance Determinations & Consideration of Product Competition decision adopted flexible rules for the submission of qualitative market dominance evidence—specifically stating that: (1) such evidence “may include price-cost ratios;”<sup>71</sup> (2) the evidence was to focus on the central question of whether “[e]ffective competition” existed; and (3) “types of evidence [regarding] the feasibility or nonfeasibility of” proposed alternatives other than those specifically enumerated would be considered. 365 I.C.C. at 122, 133.

The second category of comments focuses on our use of the limit price methodology—i.e., a comparison of the limit price to the rail carrier's variable costs of providing the service at

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<sup>70</sup> These factors were also cited by the parties in this case. See Opening Evidence I-5 to I-6; Reply Evidence II-16, II-19.

<sup>71</sup> This statement makes it clear that rather than constituting a flat prohibition on the use of R/VC ratios in the qualitative market dominance context, the 1981 Market Dominance Determinations & Consideration of Product Competition decision specifically contemplated such use.

issue—in the refined approach to qualitative market dominance.<sup>72</sup> These comments argue that use of the limit price methodology is inappropriate because high R/VC ratios standing alone are not reliable indicators of market dominance, an argument that misapprehends (whether intentionally or unintentionally) both the overall structure of the refined approach and the very nature of the limit price methodology. We are aware that the Board has in the past expressed a reluctance to rely on a high R/VC ratio, standing alone, to demonstrate a carrier's exercise of market dominance over a particular movement.<sup>73</sup> The Board has also explained, however, that high R/VC ratio levels can be used to support ultimate conclusions regarding the competitive effectiveness of transportation alternatives when such conclusions are supported by other evidence. McCarty Farms, 3 I.C.C.2d at 832. Calculation of the limit price R/VC ratio is but a single component of the refined approach, which is specifically structured to consider a variety of other factors relevant to the qualitative market dominance inquiry separate and apart from the limit price R/VC ratio.<sup>74</sup> Because conclusions regarding qualitative market dominance under the

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<sup>72</sup> We note here that the limit price framework generally comports with accepted economic representations of market power such as the Lerner Index—a figure calculated by subtracting marginal cost from the market price, and dividing the result by the market price—which has been described as “the best-known’ measure of monopoly power.” Kenneth G. Elzinga & David E. Mills, The Lerner Index of Monopoly Power: Origins and Uses, 101(3) *Am. Econ. Rev.* 558, 560 (2011) (quoting F.M. Scherer, Industrial Market Structure and Economic Performance 50 (Rand McNally College Publishing Co. 1970)).

<sup>73</sup> See Potomac Elec. Power Co. v. CSX Transp., Inc., 2 S.T.B. 290, 294 (1997) (“Apart from the 180% jurisdictional threshold, which has been set by law, we do not use rate-cost relationships as a basis for qualitative market dominance determinations.”); Mkt. Dominance Determinations 1981, 365 I.C.C. at 122 (questioning whether actual R/VC ratios “reliably indicate the presence or absence of market dominance” because there “are any number of reasons why a high price/cost ratio may not be indicative of true market power on the part of the railroad”). See generally Laurits R. Christensen Associates, Inc., A Study of Competition in the U.S. Freight Railroad Industry and Analysis of Proposals That Might Enhance Competition—Revised Final Report (Christensen Study) at ES-12 to ES-20 (Nov. 2009) (noting relative weakness of R/VC ratio as indicator of market power abuse in Board-commissioned independent study), available at <http://www.stb.dot.gov/stb/elibrary/CompetitionStudy.html>. But cf. Mr. Sprout, 8 F.3d at 124 (recognizing that the ICC, federal courts, and Congress have all employed R/VC ratios “as a valid and reliable measure of market power in the rail industry” and concluding that the ICC’s use of such ratios in its “threshold inquiry” on the issue of market dominance was not an abuse of discretion).

<sup>74</sup> Again, the refined approach is not intended to exclude any factor the Board has previously stated it will consider in the qualitative market dominance context. Our qualitative market dominance inquiry continues to consider direct evidence of marketplace competition that has been used in the past to identify the presence or absence of effective competition.

refined approach will be premised on more than simple reliance on high ratios, we are confident that the approach does not implicate the Board's previously expressed concerns on this score. As a result, criticisms of the limit price methodology characterizing it as a rigid and single-minded focus on the limit price R/VC ratio, to the exclusion of other evidence that is relevant to the issue of qualitative market dominance, fundamentally misunderstand the overall structure of the refined approach.

Furthermore, the question of whether or not high R/VC ratios are reliable indicators of market dominance is ultimately irrelevant in the limit price context given that the limit price R/VC ratio—a calculation based on the price of a proffered alternative to a particular rail movement—is conceptually distinct from the actual R/VC ratio generated by the rail rate governing that movement. Again, in general the limit price figure—calculated from the best evidence of record submitted by the parties—is intended to reflect the highest price the rail carrier theoretically could charge the shipper without causing a significant amount of the issue traffic on the particular rail movement to be diverted to the proffered alternative, assuming all other factors are held constant. While the actual R/VC ratio governing a particular movement does not tell us whether the rate upon which that R/VC ratio is based “will actually move traffic over an extended period of time,”<sup>75</sup> the limit price R/VC ratio reflects an estimate of the price point at which the carrier would retain the issue traffic even in a competitive market. Criticisms of the limit price methodology that seek to equate the limit price R/VC ratio associated with a challenged movement with the actual R/VC ratio associated with that movement thus misconstrue the essential nature of that methodology.

The comments regarding our use of the limit price methodology also suggest that it is inappropriate to assess qualitative market dominance by reference to a carrier's variable costs, citing the Christensen Study as support. However, the prevailing market dominance guidelines specifically contemplate consideration of the costs associated with the challenged rail movement. See Mkt. Dominance Determinations 1981, 365 I.C.C. at 122, 133.<sup>76</sup> Thus, even though the Christensen Study expressed skepticism about using R/VC ratios as an accurate measure of market power abuse,<sup>77</sup> the costs of providing the transportation at issue are undeniably relevant

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<sup>75</sup> Mkt. Dominance Determinations 1981, 365 I.C.C. at 122.

<sup>76</sup> See also Ariz. Pub. Serv. 1997, 2 S.T.B. at 375 n.15 (asserting that the “rates that would be charged by a competing mode [of transportation] are relevant to an evaluation of whether that mode provides effective intermodal competition” to the movement at issue); Salt River Project, 762 F.2d at 1060 (identifying the ICC's consideration of cost evidence in the course of its market dominance inquiry); Ariz. Pub. Serv. 1984, 742 F.2d at 650 (explaining that the prevailing “guidelines state that evidence of effective competition may include ‘the transportation costs of the rail and motor carrier alternatives’”).

<sup>77</sup> The Christensen Study concerns about R/VC ratios were largely based on problems related to the calculation of variable costs. See, e.g., Christensen Study at ES-11 (“[C]aptivity  
(continued . . .)

to the qualitative market dominance inquiry in accordance with the prevailing guidelines. Furthermore, URCS is the Board's general purpose costing system adopted for all regulatory costing purposes. While we are working to update URCS, we continue to have confidence in it and it remains the Board's tool for calculating costs, including those used in market dominance determinations.

The third category of comments criticizes our use of the RSAM benchmark to infer the presence or absence of market power. These comments generally argue that use of a rail carrier's RSAM figure—again, a measure of the average markup the carrier would need to collect from all of its potentially captive traffic to be considered revenue adequate—in the qualitative market dominance context is inappropriate for a variety of reasons, such as: (1) RSAM is a system-wide figure that provides little information with regard to prevailing competitive conditions in a particular transportation market; (2) because RSAM varies by rail carrier, the same competitive alternative could produce different market dominance results for different carriers; (3) the use of RSAM inappropriately introduces the concept of revenue adequacy into the market dominance inquiry; (4) because RSAM data are stale, Board reliance thereon exacerbates the problem of regulatory lag; and (5) because RSAM fluctuates annually, the same competitive alternative could produce different market dominance results in different years for the same carrier. We lay out our reasons for choosing the RSAM metric and address these comments below.

While we recognize that the RSAM benchmark is not a perfect indicator of the absence or presence of market power, we believe it is sufficiently accurate for our purposes here. See BNSF Ry., 453 F.3d at 482; Pennsylvania v. ICC, 535 F.2d 91, 96 (D.C. Cir. 1976). First, it provides the necessary objective guidance in gauging whether or not a particular feasible alternative is effectively constraining the railroad's pricing. For example, if a feasible alternative prevents the railroad from charging rates above 190% of variable costs, it would appear that the marketplace is capable of disciplining the carrier's behavior. In contrast, if that same alternative serves only to prevent the railroad from charging rates above 500% of variable costs, then it would appear to us that the marketplace is not placing sufficient discipline on the carrier's behavior and that Congress intended for the Board to investigate the reasonableness of those rates. RSAM provides a reasonable benchmark that reflects the average amount of differential pricing on potentially captive traffic the carrier needs to earn adequate revenues. Second, using RSAM ensures that our market dominance analysis balances the revenue needs of the carrier

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measures based on categorizing the shipment-level R/VC (or markup) data are dependent on good alignment of actual and measured costs, particularly for extreme values of R/VC, but the large shares of tons and ton-miles with R/VC below 100 percent suggest that measured and actual variable costs are not well-aligned in the tails of the R/VC distribution.”).

with the need to protect captive shippers from the abuse of market power. We feel it is appropriate to introduce the concept of revenue adequacy into the market dominance inquiry because the degree of differential pricing a carrier may lawfully pursue is a function of that carrier's revenue needs. Third, because RSAM is not a constant value, but one that will both vary from carrier to carrier and change over time to reflect gradual changes in the degree of differential pricing a particular carrier needs, we believe it provides a reasonable measure of effective competition specific to the case at hand. In future cases, parties may advocate alternative benchmarks or methods for determining whether a particular feasible transportation alternative provides effective competition.

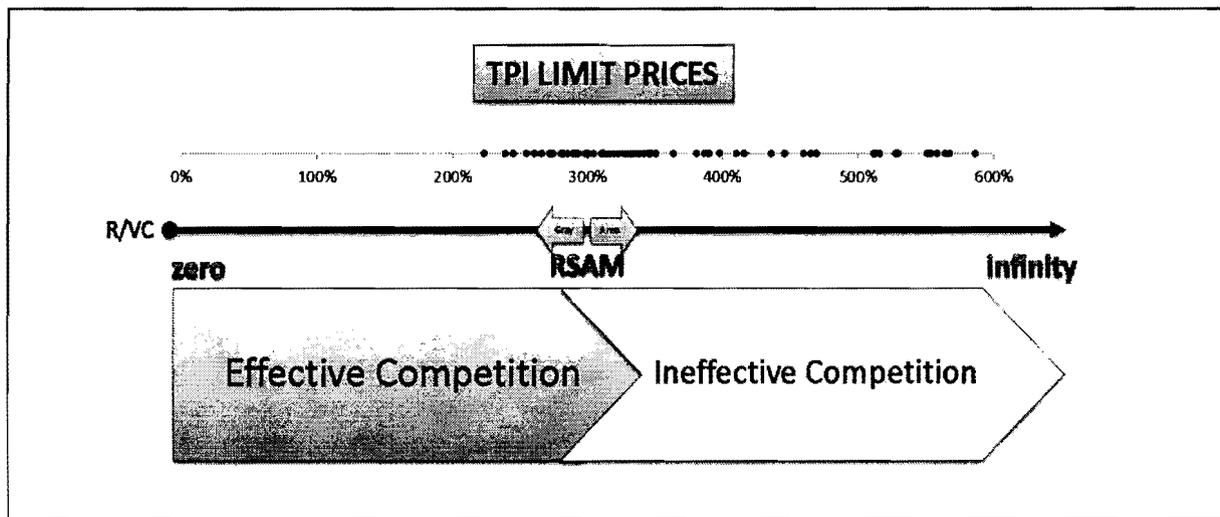
While the comments we received in other proceedings provide several arguments against the use of the RSAM benchmark, they offer no workable alternative solution to the underlying problem we have identified—the compelling need to develop a more objective approach for resolving the issue of effective competition, given the rapidly escalating complexity of the market dominance inquiry in a number of our rate cases.<sup>78</sup> As we have noted, “the mere

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<sup>78</sup> In M&G, we “strongly encouraged” interested parties to comment on whether there might be “a better general approach to this [central] issue” or “a superior benchmark that can be used to guide this inquiry,” slip op. at 5, a solicitation to which we received but a single response. The shipper in that case urged us to utilize the limit price approach only for purposes of determining the absence of competition, and to replace RSAM with the revenue-to-variable cost greater than 180 ( $R/VC_{>180}$ ) ratio—the measure of the average markup over variable cost earned by a railroad on its potentially captive traffic, Simplified Standards 2013, slip op. at 1—in cases involving revenue inadequate carriers. While we appreciate this suggestion, we do not believe the  $R/VC_{>180}$  ratio represents an improvement over RSAM. As we stated previously, in rate cases we look to see if there are any alternatives sufficiently competitive (whether singly or in combination) to bring market discipline to the carrier's pricing—i.e., whether there is effective competition adequate to restrain rates at or below a maximum reasonable level. McCarty Farms, 3 I.C.C.2d at 825, 831. RSAM provides a superior benchmark to help judge whether a particular constraint is effectively constraining rates within a *reasonable* range because it takes into account the revenue need of the defendant railroad, a central inquiry in the reasonableness of rail rates. In contrast,  $R/VC_{>180}$  merely shows the average markup the defendant railroad is charging potentially captive traffic. If the defendant railroad was grossly revenue adequate (or vice versa), the fact that a feasible competitive alternative was constraining the defendant railroad from charging more than the  $R/VC_{>180}$  figure would not provide much help in deciding whether that particular competitive alternative was adequate to restrain the defendant railroad's rates at or below a reasonable level. The shipper in M&G further suggested that the limit price approach be used only for a limited purpose—i.e., to demonstrate the absence of competition—and that we engage in our traditional qualitative market dominance analysis in situations where the limit price falls below RSAM. This proposal offers only a partial solution to the underlying problem we have identified, and as such does not represent “a better general approach” to the central issue (continued . . .)

existence of some alternative does not in itself constrain the railroads from charging rates far in excess of the just and reasonable rates that Congress thought the existence of competitive pressures would ensure.” Ariz. Pub. Serv. 1984, 742 F.2d at 651. At the core of the limit price analysis is an effort to determine whether there are any transportation alternatives sufficient to deter the railroad from charging monopoly prices for the transportation of goods.

We offer the following illustration to emphasize our reasoning for initiating the LP approach. In this case, the record evidence reveals a large spectrum of transportation alternatives.



Some of the limit prices are in excess of 600% of the variable costs incurred by the carrier for the transportation at issue. We cannot find that those expensive transportation alternatives represent effective competition simply because CSXT may be aware of the relevant constraint on its pricing and may have priced the traffic at or just below that constraint. The difficult task at hand is the identification of an objective method for drawing a rough line between those feasible transportation alternatives that effectively constrain carrier pricing and those that do not. Absent a superior benchmark, we will continue to use RSAM as the preliminary point of demarcation. Subsequent inquiry into intangible factors will allow for additional tailoring of the approach to each challenged lane.

(continued . . .)

in this case. Suggestions by the railroads that the limit price approach be used only to demonstrate the presence of competition likewise suffer from the same inherent flaw.

Application to this case. In the qualitative market dominance inquiry, the complainant bears the burden of establishing the absence of effective competition from other rail carriers or modes of transportation for the traffic to which the challenged rate applies.<sup>79</sup> TPI demonstrates in its Opening Evidence, and CSXT effectively concedes on reply, that no effective intermodal or intramodal competition exists with regard to 26 of the challenged movements.<sup>80</sup> The parties disagree on whether effective intermodal competition exists for 63 rates on the other 78 movements challenged by TPI. The parties contest whether effective intramodal competition exists for three of the challenged rates.<sup>81</sup>

The majority of the evidence submitted by the parties in this case—relating primarily to the presence or absence of effective competitive alternatives for the challenged rates—was filed under seal and is competitively sensitive. Pursuant to our protective order, this information has been shared only with outside counsel and experts; the marketing employees of neither TPI nor CSXT have been allowed to access this information for any purpose. In light of the prevalence of competitively sensitive information in this case, our analysis of the record in the highly

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<sup>79</sup> See 49 U.S.C. § 10707. See also CSX Corp.—Control & Operating Leases/Agreements—Conrail Inc., 3 S.T.B. 196, 266 (1998); Gov't of the Territory of Guam v. Sea-Land Serv., Inc., WCC-101, slip op. at 5-6 (STB served Feb. 2, 2007) (“In rail cases, because a finding of market dominance is a threshold jurisdictional requirement, we place the burden of proof on the shipper to show that there is not effective competition.”).

<sup>80</sup> See Opening Evidence II-B-42 to II-B-147; Reply Evidence I-2 (indicating that CSXT was submitting “evidence showing that CSXT does not possess market dominance over the transportation [for only] 78 of the 104 [movements] at issue”). Sixty-three separate rates govern the 78 contested movements. The following 21 separate rates govern solely uncontested movements: Clinton-Atherton (polypropylene), New Orleans-Hope Hull (polystyrene), New Orleans-Oneco (polypropylene), New Orleans-Galloway (aromatics (styrene)), East St. Louis-Painesville (aromatics), Effingham-Terre Haute (polystyrene), New Orleans-De land (polyethylene HD), Effingham-Ivyland (polystyrene), New Orleans-Hollywood (polypropylene), New Orleans-Lakeland (polystyrene), New Orleans-Ansley (polystyrene), New Orleans-Orlando (polyethylene HD), New Orleans-Atlanta (aromatics), Memphis-Lewisburg (polypropylene), New Orleans-Evergreen (polyethylene HD), Chicago-Lockport (polypropylene), New Orleans-Tarboro (polyethylene HD), Social Circle-Covington (polypropylene), Social Circle-Athens (polypropylene), Social Circle-Conyers (polypropylene), Chicago-Evansville (polystyrene). The following four rates govern both contested and uncontested movements: Memphis-Glasgow (uncontested as to polystyrene, contested as to polypropylene), Memphis-Evansville (uncontested as to polystyrene, contested as to polypropylene), Chicago-Utica (uncontested as to polypropylene, contested as to polyethylene HD), Memphis-Galloway (uncontested as to polystyrene, contested as to polypropylene and polyethylene HD).

<sup>81</sup> See Reply Evidence II-17; Rebuttal Evidence II-B-2.

confidential appendix is initially being provided only to the parties' outside counsel. Given the importance of guiding party conduct in future cases and educating the public, however, we will release a public version of this appendix after TPI and CSXT have been given the opportunity to propose redactions of any confidential and highly confidential information contained therein.

Based upon the refined approach described above, we conclude that CSXT lacks market dominance over the following rates:

- New Orleans-Winchester (polystyrene);
- New Orleans-North Cove (polyethylene HD);
- New Orleans-Monroe (polypropylene);
- New Orleans-Stanley (polypropylene);
- Chicago-Westboro (polyethylene HD);
- New Orleans-Augusta (polypropylene);
- New Orleans-Baltimore (polyethylene HD);
- Memphis-Galloway (polypropylene and polyethylene HD);<sup>82</sup>
- New Orleans-Green Spring (polypropylene);
- New Orleans-Matthews (polyethylene HD);
- New Orleans-Pendergrass (polypropylene); and
- New Orleans-Dalton (polypropylene).

Most of these rates have a limit price R/VC ratio that falls at or below CSXT's RSAM figure and have no intangible features that might otherwise suggest market dominance. In contrast, we conclude that CSXT has market dominance over the remaining rates, most of which have limit price R/VC ratios above CSXT's RSAM figure, and for which we believe there are no other factors which demonstrate that the alternatives, even if feasible, are placing competitive pressure on CSXT adequate to restrain rates effectively. No later than 30 days from the effective date of this decision, TPI and CSXT shall confer and submit a proposed procedural schedule to govern the rate reasonableness phase of this proceeding. Furthermore, no later than 30 days from the effective date of this decision, TPI and CSXT each shall prepare and submit a version of the highly confidential appendix that specifically identifies proposed redactions of any confidential and highly confidential information contained therein.<sup>83</sup>

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<sup>82</sup> Because CSXT has effectively conceded market dominance with respect to the Memphis-Galloway movement of polystyrene, TPI's challenge to that movement is not dismissed.

<sup>83</sup> Although the Board invited all interested parties to comment on the limit price approach following issuance of M&G, there is no need for such a step here. The parties in this case have an adequate opportunity to raise any concerns through petitions for reconsideration.

This decision will not significantly affect the quality of the human environment or the conservation of energy resources.

It is ordered:

1. CSXT's motion to strike is granted as to TPI's rebuttal evidence on allowable competitive options, as to the TPI ASR Analysis workpaper, and as to TPI's rebuttal evidence on product integrity. CSXT's motion to strike is otherwise denied.

2. No later than 30 days after the effective date of this decision, TPI and CSXT shall confer and submit a proposed procedural schedule to govern the rate reasonableness phase of this proceeding. No later than 30 days after the effective date of this decision, TPI and CSXT each shall prepare and submit a version of the highly confidential appendix that specifically identifies proposed redactions of any confidential and highly confidential information contained therein.

3. This decision is effective on the date of service.

By the Board, Chairman Elliott, Vice Chairman Begeman, and Commissioner Mulvey. Vice Chairman Begeman dissented with a separate expression.

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VICE CHAIRMAN BEGEMAN, dissenting:

The Board's decision correctly recognizes that the market dominance determination portion of recent rate cases has become extremely difficult to resolve. I agree that parties would benefit if the Board developed and consistently applied a more objective approach to resolving the market dominance question. However, given the critical issue it is seeking to determine, *i.e.*, whether a rate can be challenged at the Board, I believe the Board should develop and impose such an approach only after first inviting public comment, and then, importantly, acting on those comments, as appropriate, ideally through formal rulemaking.

I had serious concerns when the Board first rolled out its new "refined" approach last year in M&G Polymers USA, LLC v. CSX Transp., Inc., NOR 42123 (STB served September 27, 2012). For example, the Board's rate case processes already use a hypothetical railroad in determining the extent to which a contested rate is reasonable. I questioned the Board's plan to apply yet another hypothetical scheme, this time using a "theoretical" price calculation to determine market dominance rather than using the actual challenged rate at issue. I was also concerned about using RSAM and introducing the concept of revenue adequacy here, when the agency has yet to decide how the revenue adequacy constraint will be applied long term. See Coal Rate Guidelines, Nationwide (Coal Rate Guidelines), 1 I.C.C. 2d 520 (1985), aff'd sub nom. Consol. Rail Corp. v. United States, 812 F.2d 1444 (3d Cir. 1987).

Similar to the case at issue, the M&G case had also been bifurcated and pending at the Board for too long. Therefore, despite my reservations and in an effort to move the M&G case forward, I agreed to provide my support for it only because there would be an opportunity for public comment on the new limit price methodology before it became final.

The comments received were resoundingly critical, from shippers and carriers alike. Even M&G, after learning that most of its contested rates would be market dominant under the Board's approach, filed a motion for the Board to reconsider its limit price methodology. Rather than act on these comments, the Board has rejected them in their entirety without any alteration to the limit price methodology.

While some commenters suggested that the public solicitation was an attempt to circumvent the formal rulemaking process, that certainly was not my motive. Rather, I believed then, as I do now, that a proposal as important as this which would be used to determine whether a matter can be litigated at the agency only benefits from public participation and sunshine. Although I preferred a formal rulemaking at the time, the alternative to inviting public comment there would have been to have none. That is exactly what is occurring here. I believe the comments received in the M&G case were very informative and constructive, and provide far more in determining whether the limit price methodology should move forward as proposed than if I had dissented and the opportunity for public comment had been lost.

I do not dispute that the Board has broad discretion to act through adjudication or rulemaking, depending on the circumstance. But we have a responsibility as regulators to conduct our business in as open and transparent process as possible. In my view, establishing a new methodology to determine market dominance is a major change of industry-wide importance and deserves to be the subject of a notice-and-comment rulemaking, as does a rulemaking on revenue adequacy. I can understand how one can argue over whether or not we *must* proceed under such a formal process, but I don't see how we can disagree on whether or not we *should*.

For these reasons, I dissent from the Board's decision.

# **PUBLIC APPENDIX**

PRELIMINARY ISSUES*Calculation of Variable Costs*

As noted in the decision, the parties have reached agreement as to seven of the Uniform Railroad Costing System (URCS) inputs used to calculate the variable costs—and the attendant R/VC ratio—associated with each of the issue movements.<sup>84</sup> The parties continue to disagree about the proper method for calculating “railroad miles,” at least insofar as certain lanes are concerned. In its Rebuttal Evidence, TPI accepts CSXT’s mileage calculations for all but 17 of the lanes at issue in this proceeding.<sup>85</sup> However, CSXT has effectively conceded that it possesses market dominance over seven of the 17 lanes identified by TPI.<sup>86</sup> Thus, the parties’ dispute with regard to “railroad miles” is limited to ten lanes, governed by the following six rates: Memphis-Gallaway (polyethylene HD and polypropylene), Memphis-Jackson (polypropylene), New Orleans-Baltimore (polyethylene HD), Memphis-Horse Cave (polystyrene), New Orleans-Matthews (polyethylene HD), Chicago-Terre Haute (polyethylene HD and polypropylene), and New Orleans-Covington (polystyrene and polypropylene).

The basic dispute between the parties on this issue can be summarized as follows. TPI argues that the presence of significant variations in route miles for identical origin and destination pairs contained in CSXT’s car event database—variations that TPI claims are the result of misroutes, errors, or data anomalies—necessitate the use of a “predominant route” approach—i.e., selection of the routing most commonly used by CSXT for each origin and destination pair and CSXT’s portion of each joint movement.<sup>87</sup> CSXT counters that the most reliable and representative approach is to use a weighted average of mileages for all of the TPI movements between each origin and destination pair, an approach that reflects the relative frequency of each routing.<sup>88</sup>

We agree with CSXT’s weighted average approach to calculating “railroad miles” in this case because such an approach is more consistent with real-world operations than TPI’s predominant route approach. See DuPont II, slip op. at 18 n.53 (accepting the railroad’s actual mileage rather than PC\*Miler/Rail calculation). This is particularly true given that (a) TPI’s shipments move in carload traffic rather than unit trains, and (b) CSXT uses a dynamic

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<sup>84</sup> See supra p. 6.

<sup>85</sup> Rebuttal Evidence II-A-5.

<sup>86</sup> See supra note 80.

<sup>87</sup> Opening Evidence II-A-2 to II-A-4, Exhibit II-A-5.

<sup>88</sup> Reply Evidence II-3 to II-8.

network.<sup>89</sup> Thus, particular circumstances and network demands may make it more efficient for TPI's traffic to be moved via one route at one time and over other routes at other times, and it makes little sense to exclude certain routes from our mileage calculations simply because one route may be used slightly more often than another. See FMC Wyo. Corp. v. Union Pac. R.R., 4 S.T.B. 699, 748-49 (2000). TPI argues that in general, CSXT arbitrarily excluded routes that handled less than 10% of traffic, but then in certain cases did not follow its own rule about excluding such routes; because of this, TPI claims, CSXT's routings on certain lanes are arbitrary.<sup>90</sup> However, even though CSXT did not follow its own rule in its mileage calculation, we accept its evidence because CSXT's mileage calculations include more traffic overall than TPI's calculations,<sup>91</sup> and CSXT's mileages are therefore a better representation of routes at issue. Finally, we note that CSXT argues that the 401-mile difference between the parties for the Memphis-Gallaway lanes results from the infrequent nature of those shipments and the need to send the shipments to classification yards.<sup>92</sup> TPI does not address this argument,<sup>93</sup> and we find it to be a sufficient explanation of the mileage difference.

#### *Calculation of Tariff Rates and Fuel Surcharges*

TPI and CSXT have submitted different tariff rates and assessed fuel surcharges.<sup>94</sup> Neither party has offered an explanation for the differences. We adopt CSXT's rate and fuel surcharge figures for purposes of our market dominance analysis because doing so is more consistent with our use of CSXT's other data. However, we recalculated those figures for consistency with CSXT's variable costs and R/VC ratios. Given that we have adopted CSXT's mileage and variable cost calculations, we believe that use of CSXT's rate and fuel surcharge data will avoid the possibility of inappropriate comparisons. All data will be normalized to 1Q2011.

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<sup>89</sup> See id. at II-4. The fact that TPI's shipments move in carload traffic means that the shipments must often be transported to one or more classification yards to be blocked and assembled into the appropriate trains for delivery. Id. In a dynamic network, for maximum efficiency traffic moving between the same origin and destination pair may be routed differently at different times. Id.

<sup>90</sup> Rebuttal Evidence II-A-4.

<sup>91</sup> Reply Evidence II-7 n.8.

<sup>92</sup> Id. at II-11 to II-12.

<sup>93</sup> See Rebuttal Evidence II-A-6 to II-A-7.

<sup>94</sup> Opening Evidence, Exhibit II-A-7; Reply Evidence, Exhibit II-B-2.

FEASIBILITY ARGUMENTS*Customer Requirements*

TPI claims that its customers require and/or clearly prefer delivery by rail, thereby rendering other transportation alternatives infeasible.<sup>95</sup> TPI makes a variety of arguments in support of this one basic point. First, TPI contends that issue commodities supply contracts with a number of its customers “explicitly require rail delivery,” thereby rendering delivery by truck infeasible, and that even customers whose contracts do not require rail may only accept truck delivery under special circumstances.<sup>96</sup> Second, it argues that a clear customer preference for rail delivery of the issue commodities can be discerned from the fact that, by case lane, TPI has delivered less than 15% of all issue commodities shipments to any customer by truck from 2006-2010.<sup>97</sup> Third, TPI asserts that most of its customers store the issue commodities inventory in railcars, rendering bulk shipment by truck generally cost-prohibitive; TPI claims that certain customers have no silo storage.<sup>98</sup> TPI explains this point by stating that construction and maintenance of storage silos at its production facilities makes little sense given the high volumes of the issue commodities that already move by rail, while the fact that most of TPI’s customers maintain little on-site storage capacity prevents them from receiving significant volumes by truck because trucks—in contrast to railcars—“cannot be used for storage.”<sup>99</sup>

Fifth, TPI claims that the facilities of and infrastructure around certain “high-volume” customers cannot accommodate additional truck traffic, rendering issue commodity delivery by truck infeasible for these customers.<sup>101</sup> Sixth, TPI claims that because certain customers have their purchased commodities delivered to compounders and third-party processors, both of which are types of manufacturers that receive many different grades and specifications of polymers, these deliveries must be made by rail for railcar storage to separately store the range of polymers that the

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<sup>95</sup> Opening Evidence II-B-16 (citing DuPont I, slip op. at 7; McCarty Farms, 3 I.C.C.2d at 829).

<sup>96</sup> Id. at II-B-16 to II-B-17 (citing E.I. du Pont de Nemours & Co. v. CSX Transp., Inc. (DuPont III), NOR 42101, slip op. at 6 (STB served June 30, 2008)).

<sup>97</sup> Id. at II-B-17 to II-B-18.

<sup>98</sup> Id. at II-B-20 to II-B-21.

<sup>99</sup> Id. at II-B-20.

<sup>100</sup> Id. at II-B-21.

<sup>101</sup> Id. at II-B-22.

compounders and third-party processors receive.<sup>102</sup> Seventh, TPI asserts that customers that use its polymers in medical applications require rail delivery to limit contamination from transloading.<sup>103</sup> Eighth, TPI argues that direct truck shipment cannot replace shipment to leased tracks, which TPI uses to stage product for quick delivery to customers, allowing TPI to provide high-quality service.<sup>104</sup> Ninth, TPI claims that off-grade product, which is product that fails to meet the specifications of a particular polymer grade, must ship by rail because customers do not want to store off-grade product in their silos to avoid mixing with standard product.<sup>105</sup> Finally, TPI argues that it is powerless to influence the delivery location when customers select a bulk terminal or leased track as their delivery location, where the customer will often store the product in railcars.<sup>106</sup>

CSXT responds to TPI's "customer requirement" arguments as follows. First, CSXT asserts that TPI's evidence regarding alleged customer preference for rail transportation rests on the flawed assumption that customer preferences are "completely unaffected by market forces" and that those preferences would not change if the relative prices of rail and truck service changed.<sup>107</sup> CSXT asserts that DuPont I does not support TPI's claims because the infeasibility of truck transportation in that case was based on the particular physical characteristics of the commodity that made truck transportation difficult.<sup>108</sup> Second, CSXT claims that TPI's evidence regarding customer preferences is lacking because [REDACTED]

[REDACTED] (b) an email from a customer that TPI claims shows a requirement for rail is inconsistent with the significant number of truck deliveries that customer received and, in any event, relates to a lane for which CSXT has not challenged market dominance;<sup>110</sup> [REDACTED]

<sup>102</sup> Id. at II-B-22 to II-B-23.

<sup>103</sup> Id. at II-B-24.

<sup>104</sup> Id. at II-B-24 to II-B-25.

<sup>105</sup> Id. at II-B-25.

<sup>106</sup> Id. at II-B-25 to II-B-27.

<sup>107</sup> Reply Evidence II-34 to II-37.

<sup>108</sup> Id. at II-37 to II-38.

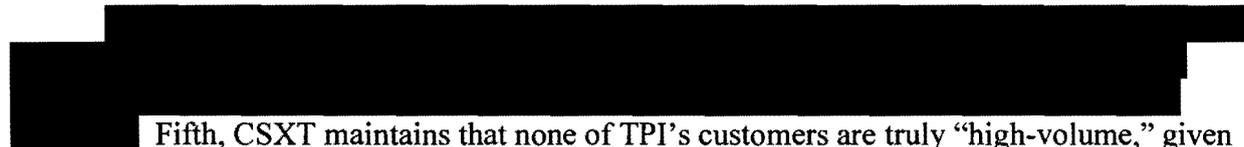
<sup>109</sup> Id. at II-39 to II-46.

<sup>110</sup> Id. at II-47 to II-48.

<sup>111</sup> Id. at II-48.

(d) the contracts that TPI claims show a requirement for rail in several cases were with customers that received many truck deliveries; and (e) the contracts can be renegotiated.<sup>112</sup>

Third, CSXT argues that TPI has produced no direct evidence to support the theory that its customers require rail delivery because they lack silo space and therefore need railcars in order to fulfill their post-delivery storage needs.<sup>113</sup> CSXT claims that other customer preference categories TPI asserts essentially raise storage issues.<sup>114</sup> CSXT notes that TPI has identified nine lanes that allegedly lack any silo storage, but CSXT claims that customers on four of these lanes have received truck deliveries, and, on two of the nine lanes, there are multiple customers, but only one of the customers alleges no silo storage.<sup>115</sup> CSXT claims that trucks can load into railcars for storage as easily as they can load into silos, and that trucks offer other advantages, such as speed, over rail.<sup>116</sup> CSXT also asserts that among customers who claim a need for railcar storage, many have received significant truck shipments and that many that fall into one of the storage-related preferences categories—such as off-grade shipments—also receive shipments that do not fall into any of the specialized preference categories.<sup>117</sup>

  
Fifth, CSXT maintains that none of TPI's customers are truly "high-volume," given that (a) shifting all of the issue commodity shipments of the highest-volume lane at issue from railcars to trucks would require only a total of 33 trucks per week, and (b) most other lanes would require on average only 3 trucks per week if the entire volume currently transported were shifted from rail to truck.<sup>119</sup> Sixth, CSXT argues that medical applications customers have received product by truck, and that the transloading process poses a low risk of contamination.<sup>120</sup> Seventh, CSXT claims movements to leased tracks are not automatically market dominant because trucks could deliver product to a leased track and blow it into a railcar for storage.<sup>121</sup>

<sup>112</sup> Id. at II-48 to II-49.

<sup>113</sup> Id. at II-50 to II-55.

<sup>114</sup> Id. at II-50, II-B-55.

<sup>115</sup> Id. at II-50; id. at n.63.

<sup>116</sup> Id. at II-51.

<sup>117</sup> Id. at II-52 to II-55.

<sup>118</sup> Id. at II-55.

<sup>119</sup> Id. at II-55 to II-56.

<sup>120</sup> Id. at II-56.

<sup>121</sup> Id. at II-57 to II-58.

CSXT also argues that because the leased track is a waystation rather than a true destination, competitive alternatives to the ultimate destination can provide effective competition.<sup>122</sup> Finally, CSXT argues that TPI has not provided any evidence supporting its claim that customer selection of a particular transloading facility establishes market dominance, and, in fact, the claims regarding lanes with a transloading facility as a destination should be dismissed because trucking is a competitive alternative for those movements, as those customers will accept truck shipments.<sup>123</sup>

On rebuttal, TPI argues that the polymer industry is structured around rail transportation, which prevents supply disruptions<sup>124</sup> and that bulk trucks have only a niche role in polymer shipment because they must be unloaded immediately upon arrival at delivery locations.<sup>125</sup> TPI claims that because customers need bulk truck orders to be filled within 48 hours<sup>126</sup> and because direct trucking is cost-competitive with rail only at distances up to 250 miles, to deliver by truck TPI must stage product at bulk terminals.<sup>127</sup> TPI therefore contests CSXT's assumption that the product can simply move through the bulk terminals without incurring storage fees.<sup>128</sup>

[REDACTED] a customer's commitment to a rail infrastructure makes truck service more expensive.<sup>129</sup> TPI also argues that contrary to CSXT's claim, truck shipments have higher labor costs for customers than rail.<sup>130</sup> In response to CSXT examples of its own experience with customers that threatened to switch to truck shipping, TPI claims that there is either insufficient evidence regarding the credibility of the threats, or the examples are related to products other than polymers.<sup>131</sup> TPI asserts that CSXT misrepresents TPI's use of trucks and also misrepresents examples of instances where TPI has considered truck shipping or has switched to truck shipping.<sup>132</sup>

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<sup>122</sup> Id. at II-58.

<sup>123</sup> Id. at II-58 to II-59.

<sup>124</sup> Rebuttal Evidence II-B-12 to II-B-38.

<sup>125</sup> Id. at II-B-17 to II-B-18.

<sup>126</sup> Id. at II-B-17.

<sup>127</sup> Id. at II-B-18 to II-B-19.

<sup>128</sup> Id.

<sup>129</sup> Id. at II-B-19 to II-B-20.

<sup>130</sup> Id. at II-B-20.

<sup>131</sup> Id. at II-B-28 to II-B-31.

<sup>132</sup> Id. at II-B-31 to II-B-37.

TPI argues that CSXT is wrong to suggest that the historical data reflects customer preference for lower rates rather than customer preference based on the advantages inherent in delivery by rail.<sup>133</sup> TPI reiterates its contention that the advantages of delivery by rail—e.g., the ability of the customer to use the railcar for storage, lower handling and administrative costs associated with rail delivery, and the avoidance of product integrity concerns—are the primary drivers of customer decisions regarding the preferred mode for transportation of the issue commodities.<sup>134</sup>

TPI defends its contract evidence by asserting that references to truck deliveries in contracts that purportedly require delivery by rail simply reflect provision for the emergency truck shipments that customers occasionally require on an expedited basis, or refer to delivery at customer locations not served by rail in instances where the contract covers delivery to multiple customer locations.<sup>135</sup> TPI also maintains that its ability to renegotiate expiring contracts has no impact on customer preferences, and that its failure to accommodate such preferences when negotiating new contracts will result in the loss of customers.<sup>136</sup>

TPI renews its storage-related arguments. TPI claims that it has provided evidence of customer-specific on-site storage capacity in the form of average number of days that each case customer held TPI's railcars before releasing them empty.<sup>137</sup>

TPI claims that despite some truck deliveries to compounders and third-party processors, such truck deliveries have been minimal and are acceptable for these customers only under special circumstances.<sup>139</sup> TPI responds to CSXT's argument that off-grade customers likely also purchase standard product with the claim that the off-grade case customers have purchased only off-grade product with one minor exception.<sup>140</sup>

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<sup>133</sup> Id. at II-B-46 to II-B-48.

<sup>134</sup> Id. at II-B-39 to II-B-46.

<sup>135</sup> Id. at II-B-48 to II-B-50.

<sup>136</sup> Id. at II-B-50.

<sup>137</sup> Id. at II-B-51.

<sup>138</sup> Id. at II-B-54 to II-B-55.

<sup>139</sup> Id. at II-B-57 to II-B-58.

<sup>140</sup> Id. at II-B-62. TPI notes that one off-grade customer purchased one railcar of standard product. Id.

TPI disputes CSXT's contention that TPI has no true "high-volume" customers.<sup>141</sup> TPI claims that CSXT overstates the volume required for a customer to be high volume because replacing truck with rail would result in higher labor and storage costs.<sup>142</sup> TPI argues that the Board should consider these additional costs when it determines what volume is required for a customer to be high-volume.<sup>143</sup>

TPI argues that medical applications customers will accept the contamination risks of truck delivery only when the alternative is a plant shut down.<sup>144</sup> TPI claims that CSXT's evidence provides insufficient information to conclude that all medical applications customers would accept truck shipments.<sup>145</sup>

TPI objects to CSXT's treatment of customers that have TPI ship to leased tracks and bulk terminals. TPI claims that CSXT's argument that such leased track customers will respond to economic incentives to ship to other destinations fails because TPI charges its customers an all-inclusive rate that includes transportation, and customers choose delivery to particular leased tracks for reasons of which TPI may have no knowledge, such as incentives from the railroad or leases of track in particular locations.<sup>146</sup> TPI asserts that bulk terminals may be used by brokers for storage in a similar manner to leased tracks, and while the broker will eventually ship the product to its customer, the broker is TPI's customer, and therefore transloading to a customer facility is not an alternative for such shipments.<sup>147</sup>

TPI defends [REDACTED] TPI first claims that [REDACTED] it produced other evidence of market dominance that meets the Board's standards.<sup>149</sup> [REDACTED]

[REDACTED] TPI asserts that CSXT is advocating for an impossible market dominance standard

<sup>141</sup> Id. at II-B-55 to II-B-57.

<sup>142</sup> Id.

<sup>143</sup> Id.

<sup>144</sup> Id. at II-B-58.

<sup>145</sup> Id. at II-B-58 to II-B-59.

<sup>146</sup> Id. at II-B-62 to II-B-65.

<sup>147</sup> Id. at II-B-65.

<sup>148</sup> Id. at II-B-66 to II-B-77.

<sup>149</sup> Id. at II-B-66 to II-B-67.

<sup>150</sup> Id. at II-B-67 to II-B-68.

by claiming that both TPI's objective evidence and [REDACTED] are insufficient proof of market dominance.<sup>151</sup> TPI argues that CSXT oversimplified the issues when it made arguments relating to [REDACTED] on high-volume lanes, product integrity, shipment to bulk terminals, and the costs of truck delivery, and TPI restates its position on these issues.<sup>152</sup>

In general, with exceptions discussed below, the evidence presented by TPI regarding customer preferences/requirements is insufficient to demonstrate that delivery of the issue commodities by truck to TPI's customers is infeasible.<sup>153</sup> For purposes of determining whether a direct truck or transload option is practically feasible, the fact that significant volumes of the issue commodities shipped from TPI to its customers via truck is particularly relevant. From 2006 to 2010, TPI made [REDACTED] shipments of the issue commodities by direct truck or transload (out of the equivalent of [REDACTED] truck shipments had all shipments, including rail, been made by truck).<sup>154</sup> TPI thus shipped a weekly average of [REDACTED] truckloads of the issue commodities during this time period. Such statistics belie TPI's assertion that overwhelming customer preference for delivery of the issue commodities by rail renders delivery by truck practically infeasible. TPI's evidence that it delivered no more than 15% of all issue commodities to any case lane customer by truck in any year from 2006-2010, and no more than 2-11% (varying by commodity) when considering all of TPI's customers with a choice between rail and truck,<sup>155</sup> is likewise insufficient to demonstrate that overwhelming customer preference for delivery of the issue commodities by rail renders delivery by truck practically infeasible. See Amstar Corp. v. Atchison, Topeka & Santa Fe Ry., ICC Docket No. 37478, slip op. at 7 (ICC served Dec. 8, 1987) (concluding that the fact that complainants had shipped 98.5% of the issue movements by

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<sup>151</sup> Id. at II-B-70 to II-B-71.

<sup>152</sup> Id. at II-B-72 to II-B-77.

<sup>153</sup> CSXT's evidence regarding its experiences with customers that threatened to or moved business to trucks, Reply Evidence II-25 to II-27, was not a factor in reaching this conclusion, as we did not have enough information about CSXT's claims of lost business.

<sup>154</sup> Id. at II-30. While CSXT states that the total was [REDACTED], our review of TPI's evidence, workpaper "TPI Op Ex. II-B-2.xls" results in a total of [REDACTED]. Of this total, [REDACTED] occurred over the lanes at issue in this case. Id. We reach the equivalent of [REDACTED] truck shipments by adding the total truck shipments [REDACTED] to the total rail pound shipments converted to a truck equivalent. "TPI Op Ex. II-B-2.xls" supplies the total pounds shipped by rail. We divided that by the standard volume in one truck shipment (47,745 pounds), resulting in an estimate that the equivalent of [REDACTED] truck shipments occurred by rail over the 2006-2010 period.

<sup>155</sup> The fact that TPI regularly supplies the issue commodities to customers whose transportation options are limited to motor carriage is a strong indicator that truck delivery as a general matter is not infeasible.

rail failed to demonstrate that effective competition did not exist).<sup>156</sup> We note that these TPI figures are for customers on case lanes only.<sup>157</sup> As to all of its customers during the period 2006-2010, TPI shipped 17-21% of polyethylene, 12-14% of polypropylene, and 30-38% of polystyrene by truck.<sup>158</sup> TPI discounts these significant truck shipments by arguing that they include customers that cannot receive rail deliveries,<sup>159</sup> but that argument also supports the feasibility of receiving these commodities by truck.

TPI cites DuPont I for the proposition that customer preference for rail transportation demonstrates the infeasibility of alternative modes.<sup>160</sup> The Board's decision in that case, however, does not stand for the blanket proposition that subjective customer preference for a particular mode of transportation standing alone necessarily renders other potential modes infeasible. Indeed, "customer preference" was only one of many factors which led the Board to conclude that trucking did not provide effective competition for the relevant movement in that case. DuPont I, slip op. at 7-8. Moreover, our conclusion regarding "customer preference" in DuPont I was predicated on direct evidence regarding the unusually sensitive physical characteristics of the issue commodity, id. at 6, as well as "the lack of specialty equipment needed for carriage of synthetic powder plastics by truck," id. at 7. The customer in DuPont I "preferred" delivery by rail because the particular characteristics of that commodity presented significant logistical complications for purposes of potential delivery by truck. Id. at 6. We will discuss the evidence that TPI claims establishes a customer preference for rail [REDACTED] below.

Further, TPI cites McCarty Farms for the proposition that the "'needs of the shipper or receiver' may determine" the feasibility of proposed alternatives.<sup>162</sup> While this statement is true

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<sup>156</sup> TPI argues that Amstar Corp. does not support a finding of effective competition in this proceeding because in Amstar Corp. many lanes were at issue but only two were found to be market dominant. Rebuttal Evidence I-8 to I-9. TPI notes that the 98.5% rail shipment figure included the many lanes that the ICC found to have effective competition, and that the ICC stated that the 98.5% figure was suggestive of a lack of competition, although not completely persuasive. Id. Here, however, we are considering the percentages of truck shipments as an indicator of feasibility of truck shipments, not as a measure of effective competition on the lanes.

<sup>157</sup> See Opening Evidence II-B-18.

<sup>158</sup> Id. at II-B-7 to II-B-8.

<sup>159</sup> Id. at II-B-8.

<sup>160</sup> Opening Evidence II-B-16 (citing DuPont I, slip op. at 7).  
[REDACTED]

<sup>162</sup> Id. at II-B-16 (citing McCarty Farms, 3 I.C.C.2d at 829).



Although TPI claims that the average number of days that each case customer held TPI's railcars before releasing them empty shows the need for railcar storage,<sup>168</sup> even assuming that certain TPI customers lack on-site silo space, other evidence contradicts TPI's claims that its customers require railcars for storage. We cannot draw a broad conclusion about a general lack of storage among TPI's customers when, as discussed above, the evidence shows significant truck shipments of the issue commodities.<sup>169</sup>

[REDACTED]

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<sup>168</sup> Rebuttal Evidence II-B-51.

<sup>169</sup> Similarly, our conclusion that TPI has not shown a general customer need for storage applies to third party processors and compounders. See Reply Evidence II-50 n.62. [REDACTED]

<sup>170</sup> TPI has also presented a customer email that TPI claims establishes a customer preference for rail. Opening Evidence, Exhibit II-B-9. We note CSXT's comment that it is not challenging market dominance on the relevant lane, Reply Evidence II-48, and do not believe that one customer email would establish a preference for all customers, but we address the email regardless. [REDACTED]

[REDACTED]

<sup>171</sup> The customers either receive deliveries at the lanes' destinations or they direct TPI to deliver the product to a third party at the lanes' destinations.

<sup>172</sup> We have reached this conclusion by reviewing Opening Evidence, Exhibit II-B-11 [REDACTED]

Accordingly, we conclude that the two lanes for customers [REDACTED] with the Social Circle destination do not have storage issues, leaving 41 lanes with potential storage issues [REDACTED]

[REDACTED] We find this statement too ambiguous and qualified because [REDACTED] purports to speak on behalf of its customers and does not explain which customers and destinations its statement applies to. We therefore do not find the [REDACTED]

We also will not give weight to [REDACTED] customers<sup>173</sup> that have received at least 10% of their traffic on at least one lane via trucks from 2006 to 2010.<sup>174</sup> In such instances, where [REDACTED] received at least 10% of its past shipments via truck for some or all of its facilities [REDACTED]

Perhaps TPI could have explained this incongruity, but here it has not even attempted to reconcile [REDACTED]

Although TPI claims that some truck shipments can be explained by the fact when a customer is low on inventory, product shipped by truck goes directly into the production process,<sup>175</sup> [REDACTED]

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173 [REDACTED]

174 [REDACTED]

<sup>175</sup> Rebuttal Evidence II-B-51.

[REDACTED] This leaves [REDACTED] further consideration as evidence of insufficient storage at particular locations.<sup>176</sup>

We find [REDACTED]<sup>177</sup> provide evidence of insufficient storage capacity as to individual customers. Direct truck and transloading alternatives are therefore infeasible for the following lane/customer combinations:

[REDACTED]

In those instances, we cannot find that truck options are infeasible for those customers. In other words, TPI cannot demonstrate that CSXT is market dominant as to all customers on a lane with evidence of one customer's storage limitations.

[REDACTED]

<sup>176</sup> [REDACTED]

[REDACTED]

<sup>177</sup> [REDACTED]

[REDACTED]

<sup>178</sup> Relevant here, we find that CSXT did not adequately support its argument that TPI's customers could preposition railcars at their facilities to use as storage for product that arrives by truck. See Reply Evidence II-51. As TPI demonstrates, CSXT did not provide sufficient information for us to assess the feasibility of the option (logistics of trucks on sidings at customer facilities) or the costs of leasing and cleaning the cars. See Rebuttal Evidence II-B-53 to II-B-54.

<sup>179</sup> [REDACTED]

[REDACTED]

[REDACTED]

With respect to the broader feasibility argument, we agree with CSXT that TPI's arguments regarding [REDACTED] purportedly high-volume customers fail to demonstrate that delivery of the issue commodities by truck is an infeasible alternative.

[REDACTED]

Finally, while we acknowledge that the infrastructure surrounding certain high-volume customers might pose insurmountable impediments to delivery by truck under certain circumstances, we conclude that none of the movements at issue in this case involve shipments of a magnitude significant enough to justify such a conclusion here. For example, the contested movement with the highest carload volume is [REDACTED] over which TPI ships an annual average of [REDACTED]. Shifting this entire volume from railcar to truck would translate to only approximately five trucks per day.<sup>182</sup> This falls far below volume levels the Board has deemed infeasible in the past. See, e.g., W. Tex. Utils. v. Burlington N. R.R., 1 S.T.B. 638, 652 (1996) (concluding that trucking alternative is not an option if it would require an additional 200 truck shipments daily).

180 [REDACTED]

<sup>181</sup> Opening Evidence, Exhibit II-B-11. We note that CSXT states that the highest volume lane is [REDACTED] over which TPI ships an annual average of [REDACTED] and CSXT estimates that switching this lane to truck delivery would require [REDACTED]. Reply Evidence II-55 to II-56.

<sup>182</sup> We divided the lane average carload by an assumed 250 business days per year and multiplied by four, the number of trucks we assume it takes to equal the volume of one railcar. While TPI claims that rail-to-truck transloads may result in a "heel" (more than four trucks of product but less than five full trucks), Rebuttal Evidence II-B-23 to II-B-24, TPI assumed on opening a conversion of one railcar to four trucks, and we therefore accept that assumption. Opening Evidence II-B-42 n.49.

TPI has submitted no evidence to support its claims that medical applications customers require rail service because of product contamination concerns. [REDACTED]

[REDACTED] Issues related to medical applications customers therefore do not establish a customer preference or need that rises to the level required by Dupont I or McCarty Farms.

[REDACTED] do not sufficiently support TPI's claims that off-grade customers have unique storage issues. In response to CSXT's arguments that off-grade customers also buy standard product, TPI asserts that its off-grade customers purchase only off-grade product the vast majority of the time and that its off-grade customers are brokers that require railcars for storage until resale to an end user.<sup>184</sup> We note, however, that while TPI claims that it reviewed the purchase history of its off-grade customers,<sup>185</sup> TPI does not cite to anything in the record that supports this claim, and we did not find any supporting evidence. Moreover, TPI's claim that its off-grade customers have purchased only off-grade product with one minor exception is at odds with [REDACTED] alleged purchase of off-grade product, and also being on the list of those that have accepted truck deliveries.<sup>186</sup>

TPI's arguments that direct-to-customer truck or transload shipments cannot replace service to leased tracks<sup>187</sup> and that customer preferences related to leased tracks and bulk terminals<sup>188</sup> are set<sup>189</sup> also fail. TPI's customers must be presumed to understand that their

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<sup>183</sup> Reply Evidence II-56 to II-57.

<sup>184</sup> Rebuttal Evidence II-B-62.

<sup>185</sup> Id.

<sup>186</sup> Compare Opening Evidence [REDACTED] with id. at Exhibit II-B-11.

<sup>187</sup> Of lanes that TPI claims are market dominant because they have leased tracks as destinations, CSXT challenges market dominance for the following: J-1, J-4, J-8, and J-28. Compare Opening Evidence II-B-25 with Reply Evidence, Exhibit II-B-2. Of the lanes that TPI claims are market dominant because they have customer-selected destinations, CSXT challenges market dominance for the following: J-2, J-48, J-60, J-61, J-66, J-70, J-97, J-98, J-102, J-109, J-110, and J-112. Compare Opening Evidence II-B-27 with Reply Evidence, Exhibit II-B-2.

<sup>188</sup> CSXT raises a valid claim that "[s]uch brokers are well able to take advantage of competitive alternatives in the marketplace." Reply Evidence II-59 (citing Coal Trading Corp. v. Balt. & Ohio R.R., 6 I.C.C.2d 361, 375-76 (1990)). However, TPI is correct that in that case the broker at issue was an actual complainant before the agency. Rebuttal Evidence II-B-65. Here, (continued . . .)

choices of delivery mode and location influence the total price they pay for the issue commodities. Even if TPI lacks knowledge of certain factors, such as rebates, influencing a customer's choice of mode and delivery location, we assume that the customer is aware of transportation alternatives and undoubtedly factors transportation costs into the total price it is willing to pay TPI for the issue commodities. While TPI claims that replacing rail transportation to leased tracks with direct truck or transload transportation to customers would decrease the quality of service, we will not exclude consideration of alternatives that are feasible on these grounds as it is more properly addressed as another factor in the limit price analysis.<sup>190</sup>

As a result, we conclude that the evidence presented by TPI regarding customer preferences/requirements is insufficient to demonstrate that delivery of the issue commodities by truck to TPI's customers is infeasible as a general matter.

#### *Shipments to Broker-Customers with Bulk Terminal Destinations*

TPI argues that CSXT's transloading alternatives are inefficient and extremely difficult logistically for lanes on which the customer is a broker that directs TPI to ship to a bulk terminal.<sup>191</sup> From the bulk terminal, the broker ships the products to its customers, the locations of which are not on the record. CSXT's proposed alternatives involve rail to one bulk terminal, trucking to the destination bulk terminal, and transloading into a railcar to await shipment to end customers. While these transloading alternatives may not be an ideal approach, nothing on the record establishes that they are infeasible. We will consider them as viable transportation alternatives.

#### *Bulk Terminal Network*

On opening, TPI claims that it has designed a bulk terminal network that minimizes overlapping terminal coverage and distance to customers while meeting TPI's needs for volume

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(continued . . .)

we are required to address the transportation at issue, and the relevant inquiry concerns the transportation alternatives put forth by the parties.

<sup>189</sup> Opening Evidence II-B-24 to II-B-27; Rebuttal Evidence II-B-62 to II-B-65.

<sup>190</sup> In the lane-specific discussion, we find that CSXT is market dominant as to most of the lanes listed in footnote 187 on the basis of the lowest limit price R/VC ratios without requiring consideration of any intangible factors in TPI's favor. The exceptions are J-60 and J-112 where we note that the concerns over a customer's preference are not enough to overcome the preliminary conclusion of an effective transportation alternative.

<sup>191</sup> Rebuttal Evidence II-B-223, II-B-251, II-B-320, II-B-324, II-B-333, II-B-360.

handling and quality standards.<sup>192</sup> TPI claims that in order to serve its rail customers by truck, it would have to significantly expand its bulk terminal network, a project which TPI states could not be “undertaken easily or quickly.”<sup>193</sup> On reply, CSXT argues that TPI ships from facilities that are not part of its approved bulk terminal network, and that the facilities that CSXT proposes that are outside TPI’s network have the capacity to handle the traffic.<sup>194</sup> On rebuttal, TPI objects to CSXT’s proposed transportation alternatives that involve 10 terminals outside of TPI’s bulk terminal network.<sup>195</sup> TPI argues that it cannot add terminals to its network just to get a lower transportation cost; instead, it must consider that additional terminals would increase inventory, rail storage, and administrative costs.<sup>196</sup>

TPI has not adequately supported its arguments as to why terminals could not be added to its network, and we will consider the alternative terminals proposed by CSXT except for the facility at Greer,<sup>197</sup> which TPI has shown to be closed.<sup>198</sup> TPI has raised no specific quality or capacity concerns related to CSXT’s proposed terminals, and has not quantified the claimed time and administrative costs of adding terminals to its network (except for a generalized example).<sup>199</sup> We therefore conclude that the terminals proposed by CSXT are feasible.

#### Intramodal Alternatives

For lane J-44, CSXT proposes a direct rail option via Norfolk Southern Railway Company (NS).<sup>200</sup> According to CSXT, Advanced Composites (the compounder to which TPI’s customer on this lane ships) receives deliveries at both its facility and a leased track, and although NS cannot access the leased track, NS can serve the facility.<sup>201</sup> CSXT asserts that since 2007, NS has delivered three cars to Advanced Composites.<sup>202</sup> TPI responds that availability of

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<sup>192</sup> Opening Evidence II-B-31 n.23.

<sup>193</sup> Id.

<sup>194</sup> Reply Evidence II-B-32 to II-B-33.

<sup>195</sup> Rebuttal Evidence II-B-105.

<sup>196</sup> Id. at II-B-105 to II-B-106.

<sup>197</sup> As noted in the lane-specific discussion below, we therefore conclude that CSXT’s transloading alternative for lanes J-21, J-105, and J-106 are infeasible.

<sup>198</sup> Id. at Exhibit II-B-30.

<sup>199</sup> Id. at II-B-108.

<sup>200</sup> Reply Evidence, Exhibit II-B-2.

<sup>201</sup> Id. at II-17.

<sup>202</sup> Id.; id. at Exhibit II-B-7 at 4.

NS service to one location is insufficient because at the time of shipping TPI does not know whether the customer will require delivery to the facility or to the leased track and therefore TPI must use CSXT.<sup>203</sup> TPI also contests whether NS was able to deliver the three cars to the destination.<sup>204</sup> Finally, for all of CSXT's intramodal options, TPI notes that it is not seeking a prescribed rate for the competitive move, but only rate relief for the captive location.<sup>205</sup>

In this instance, we find that the NS direct rail alternative is feasible for lane J-44 regardless of whether NS can deliver to the leased track. TPI admits that when it ships to Advanced Composites, it does not know whether it will be directed to deliver to the facility or the leased track. We therefore conclude that the NS alternative is feasible at the time of shipping because the leased track is not a unique destination but rather a special service that CSXT provides to TPI and its customer. We seek to make an "apples-to-apples" comparison when considering what alternatives are feasible, and we will not eliminate alternatives because the transportation at issue includes a special service that the railroad is not required to provide (the leased track option). See Dupont III, slip op. at 5. Therefore, while it appears that NS can only ship directly to the facility, that ability still provides an alternative at the time of shipping, and we will consider that alternative as part of our limit price analysis.

For lanes J-67 and J-108, CSXT also proposes a direct rail alternative with NS service to an interchange with the Wheeling & Lake Erie Railroad Company (WE) at Bellevue, Ohio and an interchange with Akron Barberton Cluster Railway Company (AB) at Barberton, Ohio for service to Akron. CSXT explains that TPI regularly ships its products to multiple customers in Akron that can receive service from the proposed direct rail alternative.<sup>206</sup> CSXT contends that while the Akron customer [REDACTED] that TPI claims as the captive shipper on this lane cannot receive service from the proposed direct rail alternative, CSXT's rate for this lane is not customer-specific; rather, the rate applies to all TPI customers in Akron, many of which have access to service from the proposed alternative. Therefore, CSXT concludes, its ability to increase rates for [REDACTED] is constrained by the fact that other customers shipping under the same rate have direct rail alternatives.<sup>207</sup> TPI responds that CSXT controls the customers to which a particular rate applies and has the ability to make a tariff that applies to some locations

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<sup>203</sup> Rebuttal Evidence II-B-6.

<sup>204</sup> Id. at II-B-6 to II-B-7; id. at Exhibits II-B-2, II-B-3, II-B-4.

<sup>205</sup> Id. at II-B-5.

<sup>206</sup> Reply Evidence II-17.

<sup>207</sup> Id. at II-18 to II-19.

and not others.<sup>208</sup> As previously discussed, TPI also states that it “is not seeking prescribed rates for competitively[ ]served destination locations.”<sup>209</sup>

We find that CSXT’s proposed alternative does not reach the specific customer’s delivery location and therefore is not a feasible alternative.<sup>210</sup> The direct rail alternative that CSXT proposes is therefore irrelevant because it does not provide an alternative for the issue traffic. However, as requested by TPI,<sup>211</sup> any rate that we may prescribe will apply only to the traffic to [REDACTED] not to TPI’s other Akron customers. The transportation at issue is for delivery only to [REDACTED] which CSXT admits is an entirely captive destination. Evidence of competition for other locations in and around Akron would in fact represent the kind of geographic competition the Board does not consider.<sup>212</sup>

For lanes J-109 and J-110, CSXT proposes direct rail service via NS from East St. Louis, Ill. for delivery by the Indiana & Ohio Railroad (IORY) to Lima, Ohio.<sup>213</sup> On opening, TPI claims that the customers on these lanes direct TPI to send shipments to a trucking facility, Luckey Logistics (Luckey),<sup>214</sup> at 401 E. Robb Avenue in Lima.<sup>215</sup> CSXT claims there are two Luckey facilities in Lima; one Luckey facility is open to both CSXT and NS-IORY service while the other is served only by CSXT.<sup>216</sup> CSXT asserts that despite TPI’s claim that its customers direct TPI to ship to the captive Luckey facility, TPI shipped [REDACTED] to Lima using the alternative NS-IORY service and [REDACTED] using CSXT.<sup>217</sup> CSXT argues that its rate for this lane is not specific to either Luckey location; rather, the same rate applies to both facilities. Therefore, CSXT concludes, its ability to increase rates for the captive Luckey facility is

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<sup>208</sup> Rebuttal Evidence II-B-8.

<sup>209</sup> Id. at II-B-5.

<sup>210</sup> See id. at II-B-265.

<sup>211</sup> Id. at II-B-5.

<sup>212</sup> Geographic competition occurs when “the complaining shipper can avoid using the defendant railroad by obtaining the same product from a different source, or by shipping the same product to a different destination.” Mkt. Dominance Determinations 1998, 3 S.T.B. at 937. The Board has concluded that it will not consider geographic competition. Id. at 950.

<sup>213</sup> Reply Evidence, Exhibit II-B-2.

<sup>214</sup> TPI also refers to this facility as Luckey Trucking. Opening Evidence II-B-137, II-B-138 (Luckey Trucking); Rebuttal Evidence II-B-8 to II-B-9 (Luckey Logistics).

<sup>215</sup> Opening Evidence II-B-137.

<sup>216</sup> Reply Evidence II-18.

<sup>217</sup> Id.



CSXT also argues that the use of TPI's bulk terminal data is not relevant because TPI uses bulk terminals to stage product until it is requested by customers.<sup>228</sup> In contrast, CSXT claims, under its proposed alternatives the product would move through transload facilities within the typical 10-day free storage window.<sup>229</sup> On rebuttal, TPI argues that its proposed costs are based on its current real-world operations, and as such are the best evidence of record.<sup>230</sup> TPI claims that to make transloading attractive to rail-served customers, it must store product at bulk terminals in anticipation of orders; otherwise, customers will be subjected to both the slow transit times of rail and the lack of railcars for storage.<sup>231</sup>

We conclude that TPI's bulk terminal storage fees are excessive and will not include them in our calculation of limit prices for transloading options. TPI's claimed average number of bulk terminal storage days is inflated by loaded railcars that are prepositioned at the terminal before customers place orders. While TPI may choose to preposition its product at bulk terminals in advance of orders, this allows TPI to provide a higher quality service to its customers than rail provides and therefore should not be part of a direct comparison of the costs of the transportation alternatives. *Cf. DuPont III*, slip op. at 5. While TPI cites *DuPont III* in support of its claimed costs,<sup>232</sup> the costs at issue in that case were presumably included in the adjusted rail rate in order to account for a comparable level of service between rail and truck. *Cf. id.* For the transloading alternatives under consideration here, we believe that the product can move through bulk terminals more quickly than instances where TPI prepositions the product for customer service purposes.

#### *Car lease and maintenance costs*

On opening, TPI asserts that for certain customers and movements, transloading will increase car lease and maintenance costs, while for other customers and movements, transloading will decrease those costs.<sup>233</sup> TPI calculated the expected effect on each customer and lane and applied it to inventory carrying costs (discussed below).<sup>234</sup> CSXT replies that because TPI's

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<sup>227</sup> *Id.*

<sup>228</sup> *Id.* at II-72 to II-73.

<sup>229</sup> *Id.* at II-73.

<sup>230</sup> Rebuttal Evidence II-B-92 to II-B-96.

<sup>231</sup> *Id.* at II-B-94 to II-B-95.

<sup>232</sup> *Id.* at II-B-90.

<sup>233</sup> Opening Evidence II-B-33 to II-B-34.

<sup>234</sup> *Id.* at II-B-34.

calculations are based on the inflated assumption that railcars will spend █ days in storage at bulk terminals, and that if the assumption is adjusted, TPI will actually save money.<sup>235</sup> On rebuttal, TPI argues that its proposed costs are based on its current real-world operations, and as such are the best evidence of record.<sup>236</sup> TPI claims that to make transloading attractive to rail-served customers, it must store product at bulk terminals in anticipation of orders; otherwise, customers will be subjected to both the slow transit times of rail and the lack of railcars for storage.<sup>237</sup>

We will not include the additional car lease and maintenance costs in our calculation of limit prices for transloading options. TPI assumes that the hold time at terminals would be equal to TPI's current average terminal hold time, but this assumption does not recognize that reliance on railcar storage varies among TPI's customers. Instead, hold time at bulk terminals is likely to be the same as the time railcars are currently stored at a customer's facility, resulting in no additional storage time and therefore no additional railcar lease and maintenance costs. Further, as explained above, TPI's claimed average number of hold days is inflated by loaded railcars that are prepositioned at the terminal before customers place orders in order to provide a higher quality service, and therefore should not be part of a direct comparison of the costs of the transportation alternatives. Cf. DuPont III, slip op. at 5.

#### *Inventory carrying costs*

On opening, TPI claims that except for lanes that involve shipments to █ leased tracks, the transload alternatives will result in higher inventory carrying costs.<sup>238</sup> TPI asserts that when it ships a railcar directly to a customer it invoices the customer immediately and the customer takes title to the product.<sup>239</sup> In contrast, according to TPI, transload shipments through bulk terminals are not invoiced until the truck ships from the bulk terminal, and product is staged at bulk terminals before shipping to a final destination, and TPI's costs are therefore allegedly higher for transload shipments.<sup>240</sup>

On reply, CSXT argues that the inventory carrying costs are unsupported.<sup>241</sup> CSXT describes the cost as an "accounting gimmick" that does not affect TPI's actual revenues or

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<sup>235</sup> Reply Evidence II-73 to II-74.

<sup>236</sup> Rebuttal Evidence II-B-92 to II-B-96.

<sup>237</sup> Id. at II-B-94 to II-B-95.

<sup>238</sup> Opening Evidence II-B-32.

<sup>239</sup> Id.

<sup>240</sup> Id.

<sup>241</sup> Reply Evidence II-76 to II-80.

costs.<sup>242</sup> CSXT claims that TPI failed to produce workpapers that show it considers inventory carrying costs in its normal course of business.<sup>243</sup> In fact, CSXT argues, various TPI internal analyses show that it does not consider inventory carrying costs.<sup>244</sup> [REDACTED]

[REDACTED] CSXT argues that the Generally Accepted Accounting Principles do not support such a cost.<sup>246</sup> Finally, CSXT claims that the costs are inflated by assumptions of excessive storage time and cost of capital.<sup>247</sup>

On rebuttal, TPI argues that it does incorporate the asserted costs into its internal analyses.<sup>248</sup> TPI submits a workpaper that it claims shows its internal consideration of the costs.<sup>249</sup> TPI argues that the “Distribution Cost Analysis” that CSXT asserts shows TPI’s failure to actually consider inventory carrying costs does not show such consideration because that analysis considered bulk terminal shipment to a customer-designated terminal and the ownership is transferred upon arrival at the terminal, resulting in no inventory carrying costs to TPI.<sup>250</sup> TPI claims that the “Modal Analysis” cited by CSXT was an incomplete draft and therefore its failure to consider inventory carrying costs is meaningless.<sup>251</sup> [REDACTED]

[REDACTED] TPI claims that unlike CSXT, it has supported its cost of capital, and that at any rate, CSXT apparently misunderstands what TPI means by cost of capital.<sup>253</sup>

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<sup>242</sup> Id. at II-77.

<sup>243</sup> Id. at II-77 to II-78.

<sup>244</sup> Id. at II-78.

<sup>245</sup> Id. at II-78 to II-79.

<sup>246</sup> Id. at II-79 to II-80.

<sup>247</sup> Id. at II-80.

<sup>248</sup> Rebuttal Evidence at II-B-99 to II-B-100.

<sup>249</sup> Id. at II-B-99 (referring to Rebuttal Workpaper “ASR Analysis.”)

<sup>250</sup> Id. at II-B-100.

<sup>251</sup> Id.

<sup>252</sup> Id.

<sup>253</sup> Id. at II-B-101.

In this case, we will not include inventory carrying costs in our calculation of limit prices for transloading options. Inventory carrying costs are a legitimate factor to consider in a market dominance inquiry. These costs are the opportunity costs that are incurred while the inventory languishes in the transportation distribution chain between the producer and the consumer. Therefore, if a proposed competitive transportation alternative would impose significant additional inventory carrying costs on the complainant or its customers, that factor might render the proposed competitive transportation alternative ineffective in constraining the pricing of the railroad to a reasonable level. That might happen if the proposed transportation alternative was much slower than the challenged rail movement, such that the added time the inventory spends in the transportation system is a legitimate factor to consider. However, in this case the record does not support a finding that the total inventory carrying costs will increase materially. For the challenged rail movements, the inventory carrying costs are borne by TPI's customers, because when it ships a railcar directly to a customer it invoices the customer immediately and the customer takes title to the product. Under the transloading alternative proposed by CSXT, the inventory carrying costs are borne instead by TPI, because (according to TPI) transload shipments through bulk terminals are not invoiced until the truck ships from the bulk terminal. Yet the difference in billing practice does not mean the transloading alternative is increasing inventory carrying costs; inventory carrying costs are the same, it is simply a question of who bears those costs: TPI or its customers. Absent evidence that the inventory will spend more time in the transportation chain under the proposed alternative, thereby increasing the inventory carrying costs, we find no basis to consider these costs in our analysis.

#### *Personnel costs*

On opening, TPI claims that each rail or truck shipment requires a delivery note, which takes a TPI employee [REDACTED] hours to prepare at a cost [REDACTED].<sup>254</sup> TPI asserts that because a rail-truck transload requires five delivery notes (for four trucks and one railcar) as opposed to one delivery note for rail the additional personnel cost for transload alternatives is [REDACTED].<sup>255</sup>

On reply, CSXT disputes the validity of the personnel costs.<sup>256</sup> CSXT claims that TPI does not support its asserted [REDACTED] of processing time for each delivery note, and expresses skepticism that it would take a TPI employee [REDACTED] to process the delivery notes for each rail-truck shipment that moves through a transload facility.<sup>257</sup> CSXT argues that because TPI did not explain what a delivery note is or why it takes so long to complete, the Board should

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<sup>254</sup> Opening Evidence II-B-31 to II-B-32.

<sup>255</sup> Id.

<sup>256</sup> Reply Evidence II-74 to II-76.

<sup>257</sup> Id. at II-74 to II-75.

reject the asserted personnel costs.<sup>258</sup> CSXT maintains that although TPI calculated the time to process a delivery note based on the number of its polymer order fulfillment staff and their annual working hours, TPI assumed that the staff had no other responsibilities, an assumption which CSXT argues is unsupported and difficult to believe.<sup>259</sup> CSXT also contests TPI's assumption that its polymer order fulfillment staff works 40 hours a week and 52 weeks a year with no leave.<sup>260</sup> CSXT claims that TPI did not provide any supporting evidence for the salary and mark-up on which the costs are based.<sup>261</sup>

On rebuttal, TPI claims that [REDACTED] hours includes time to complete other tasks in addition to the delivery note.<sup>262</sup> TPI asserts that its assumptions regarding employee hours and leave actually lower personnel costs.<sup>263</sup> TPI argues that the personnel costs are based on its entry-level salary and reflect a markup based on information provided by its human resources department.<sup>264</sup>

We do not consider TPI's personnel costs a necessary additional cost of transloading. As previously discussed, none of these lanes have a particularly high annual volume of shipments, and we find that CSXT is market dominant for many of them. The additional burden on TPI's staff therefore appears to be limited. In addition, TPI did not explain the contents of a delivery note on opening or why, when presumably significant amounts of information would be the same on the additional delivery notes, the additional delivery notes could not be completed more quickly. We therefore conclude that TPI has not shown that its existing staff would be insufficient to process additional transloaded shipments.

### RATE-SPECIFIC ANALYSES

#### *Memphis-Social Circle*

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<sup>258</sup> Id. at II-75.

<sup>259</sup> Id. at II-75 to II-76.

<sup>260</sup> Id. at II-76.

<sup>261</sup> Id.

<sup>262</sup> Rebuttal Evidence II-B-101 to II-B-102.

<sup>263</sup> Id. at II-B-102.

<sup>264</sup> Id. at II-B-102 to II-B-103.

One contested lane, J-1, is governed by the Memphis-Social Circle rate. On opening, TPI does not propose a transportation alternative.<sup>265</sup> CSXT proposes rail to Doraville, Ga. and trucking to Social Circle or to the customer,<sup>266</sup> which has a price of [REDACTED]<sup>267</sup> On rebuttal, TPI restates the costs of for CSXT's transloading alternative<sup>268</sup> as [REDACTED]. The price of CSXT's alternative generates the lowest limit price. Thus, the lowest limit price R/VC ratio for this movement is [REDACTED] above CSXT's 284% RSAM figure. Although CSXT has changed its routing protocol and all movements of polypropylene to Social Circle now are routed through New Orleans on lane J-28,<sup>270</sup> TPI argues that this movement should remain under consideration because historical volumes entitle TPI to reparations and because TPI may need to use the lane in the future,<sup>271</sup> and we agree. We therefore preliminarily conclude that the alternative with the lowest limit price does not exert competitive pressure sufficient to restrain CSXT's Memphis-Social Circle rate effectively, and conclude that this alternative has no intangible features sufficient to overcome this preliminary conclusion. As a result, we conclude that CSXT is market dominant with regard to the Memphis-Social Circle (polypropylene) rate.<sup>272</sup>

### *Memphis-Evansville*

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<sup>265</sup> Opening Evidence II-B-45.

<sup>266</sup> Reply Evidence, Exhibit II-B-2.

<sup>267</sup> The price and the limit price of CSXT's proposed alternatives are the same.

<sup>268</sup> As discussed above, TPI includes certain costs (bulk terminal storage fees, inventory carrying costs, and personnel costs) in its prices for transloading alternatives that we do not consider to be a part of the transportation costs at issue here. See supra pp. 53-58. Accordingly, throughout these rate-specific analyses—unless otherwise noted—we do not accept TPI's restatement of the costs of CSXT's transportation alternatives. However, when we calculated limit prices for transloading alternatives proposed by TPI on opening, we removed the bulk terminal storage fees, inventory carrying costs, and personnel costs.

<sup>269</sup> Rebuttal Evidence II-B-119. We note that while TPI's rebuttal estimate includes costs that we have rejected as described above, TPI's restatement of CSXT's transloading cost does not provide the lowest limit price.

<sup>270</sup> Opening Evidence II-B-45.

<sup>271</sup> Id. at II-B-45 n.57; Rebuttal Evidence II-B-120 n.203.

<sup>272</sup> [REDACTED]

One contested lane, J-2, is governed by the Memphis-Evansville rate. On opening, TPI proposes a direct truck alternative.<sup>273</sup> That alternative has a price of [REDACTED] and a limit price of [REDACTED]. TPI also proposes transloading through Louisville, Ky. with TPI-stated costs of [REDACTED] to [REDACTED] and a limit price of [REDACTED]. CSXT proposes rail to Louisville and trucking to the customer,<sup>274</sup> which has a price of \$4,030. On rebuttal, TPI restates the costs of CSXT's transloading alternative as [REDACTED]. The price as stated by CSXT for its transloading alternative generates the lowest limit price. Thus, the lowest limit price R/VC ratio for this movement is [REDACTED] above CSXT's 284% RSAM figure. We therefore preliminarily conclude that the alternative with the lowest limit price does not exert competitive pressure sufficient to restrain CSXT's Memphis-Evansville rate effectively, and conclude that this alternative has no intangible features sufficient to overcome this preliminary conclusion. As a result, we conclude that CSXT is market dominant with regard to the Memphis-Evansville (polypropylene) rate.<sup>276</sup>

### *New Orleans-Covington*

Two contested lanes are governed by the New Orleans-Covington rate, the first of which is lane J-3. On opening, TPI proposes a direct truck alternative.<sup>277</sup> That alternative has a price of [REDACTED] and a limit price of [REDACTED]. TPI also proposes transloading through Doraville, Ga. with TPI-stated costs of [REDACTED] and a limit price of [REDACTED]. CSXT proposes rail service to Doraville and trucking to the customer.<sup>278</sup> CSXT's transloading alternative has a price of [REDACTED]. On rebuttal, TPI restates the cost of CSXT's alternative as [REDACTED]. The price as stated by CSXT for its transloading alternative represents the lowest limit price. Thus, the lowest limit price R/VC ratio for this movement is [REDACTED] above CSXT's 284% RSAM figure. We therefore preliminarily conclude that the alternative with the lowest limit price does not exert competitive pressure sufficient to restrain CSXT's New Orleans-Covington

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<sup>273</sup> Opening Evidence II-B-46.

<sup>274</sup> Reply Evidence, Exhibit II-B-2.

<sup>275</sup> Rebuttal Evidence II-B-123.

<sup>276</sup> [REDACTED]

<sup>277</sup> Opening Evidence II-B-47.

<sup>278</sup> Reply Evidence, Exhibit II-B-2.

<sup>279</sup> Rebuttal Evidence II-B-130.

(polystyrene) rate effectively, and conclude that this alternative has no intangible features sufficient to overcome this preliminary conclusion.

Lane J-43 is also governed by the New Orleans-Covington rate. On opening, TPI proposes a direct truck alternative.<sup>280</sup> That alternative has a price of [REDACTED] and a limit price of [REDACTED]. TPI also proposes transloading through Doraville with TPI-stated costs of [REDACTED] to [REDACTED] and a limit price of [REDACTED]. CSXT proposes rail service to Doraville and trucking to the customer.<sup>281</sup> CSXT's transloading alternative has a price of [REDACTED]. On rebuttal, TPI restates the cost of CSXT's alternative as [REDACTED]. The price as stated by CSXT for its transloading alternative generates the lowest limit price. Thus, the lowest limit price R/VC ratio for this movement is [REDACTED] above CSXT's 284% RSAM figure. We therefore preliminarily conclude that the alternative with the lowest limit price does not exert competitive pressure sufficient to restrain CSXT's New Orleans-Covington (polypropylene) rate effectively, and conclude that this alternative has no intangible features sufficient to overcome this preliminary conclusion.

As demonstrated above, the lowest limit price R/VC ratio for each of the lanes governed by the New Orleans-Covington rate is [REDACTED] above CSXT's RSAM figure, and we therefore preliminarily conclude that the lowest limit price alternative proposed for movements governed by the New Orleans-Covington rate does not exert competitive pressure sufficient to restrain that rate effectively. Furthermore, none of the lowest limit price alternatives have intangible features sufficient to overcome this preliminary conclusion. As a result, we conclude that CSXT is market dominant with regard to the New Orleans-Covington (polystyrene and polypropylene) rate.

#### *Chicago-Clinton*

One contested lane, J-4, is governed by the Chicago-Clinton rate. [REDACTED]

[REDACTED] As a result there are no transportation alternatives for this lane, and we conclude that CSXT is market dominant with regard to the Chicago-Clinton (polypropylene) rate.

#### *New Orleans-Amphill*

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<sup>280</sup> Opening Evidence II-B-83.

<sup>281</sup> Reply Evidence, Exhibit II-B-2.

<sup>282</sup> Rebuttal Evidence II-B-216.

<sup>283</sup> See *supra* p. 46.

One contested lane, J-5, is governed by the New Orleans-Amphill rate. [REDACTED]

[REDACTED] As a result there are no transportation alternatives for this lane, and we conclude that CSXT is market dominant with regard to the New Orleans-Amphill (polyethylene HD) rate.

#### *Memphis-Bowling Green*

One contested lane, J-6, is governed by the Memphis-Bowling Green rate. On opening, TPI proposes a direct truck alternative.<sup>285</sup> That alternative has a price of [REDACTED] and a limit price of [REDACTED]. TPI also proposes transloading through Louisville with TPI-stated costs of [REDACTED] and a limit price of [REDACTED]. CSXT proposes rail to Louisville and trucking to the customer,<sup>286</sup> which has a price of [REDACTED]. On rebuttal, TPI restates the costs of CSXT's transloading alternative as [REDACTED]. The price as stated by CSXT for its transloading alternative generates the lowest limit price. Thus, the lowest limit price R/VC ratio for this movement is [REDACTED] above CSXT's 284% RSAM figure. We therefore preliminarily conclude that the alternative with the lowest limit price does not exert competitive pressure sufficient to restrain CSXT's Memphis-Bowling Green rate effectively, and conclude that this alternative has no intangible features sufficient to overcome this preliminary conclusion. As a result, we conclude that CSXT is market dominant with regard to the Memphis-Bowling Green (polypropylene) rate.

#### *New Orleans-Conyers*

Two contested lanes are governed by the New Orleans-Conyers rate, the first of which is lane J-7. [REDACTED]

[REDACTED] As a result there are no transportation alternatives for this lane.

Lane J-120 is also governed by the New Orleans-Conyers rate. On opening, TPI proposes a direct truck alternative.<sup>289</sup> That alternative has a price of [REDACTED] and a limit price of [REDACTED]. TPI also proposes transloading through Doraville with TPI-stated costs of [REDACTED] and a

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<sup>284</sup> See *supra* p. 46.

<sup>285</sup> Opening Evidence II-B-50.

<sup>286</sup> Reply Evidence, Exhibit II-B-2.

<sup>287</sup> Rebuttal Evidence II-B-143.

<sup>288</sup> See *supra* p. 46.

<sup>289</sup> Opening Evidence II-B-147.

limit price of [REDACTED] CSXT proposes rail service to Dalton, Ga. and trucking to the customer.<sup>290</sup> CSXT's transloading alternative has a price of [REDACTED]. On rebuttal, TPI restates the costs of CSXT's alternative as [REDACTED]. The price of TPI's transloading alternative generates the lowest limit price. Thus, the lowest limit price R/VC ratio for this movement is [REDACTED] above CSXT's 284% RSAM figure. We therefore preliminarily conclude that the alternative with the lowest limit price does not exert competitive pressure sufficient to restrain CSXT's New Orleans-Conyers (polypropylene) rate effectively and conclude that this alternative has no intangible features sufficient to overcome this preliminary conclusion.<sup>292</sup>

As demonstrated above, CSXT has not presented a feasible transportation alternative for lane J-7. In addition, the lowest limit price R/VC ratio for lane J-120 [REDACTED] exceeds CSXT's RSAM figure, and we therefore preliminarily conclude that the lowest limit price alternative proposed for that movement governed by the New Orleans-Conyers rate does not exert competitive pressure sufficient to restrain that rate effectively. Furthermore, the lowest limit price alternative does not have intangible features sufficient to overcome this preliminary conclusion. As a result, we conclude that CSXT is market dominant with regard to the New Orleans-Conyers (polystyrene and polypropylene) rate.

*New Orleans-Barnett*

One contested lane, J-8, is governed by the New Orleans-Barnett rate. On opening, TPI does not propose any transportation alternatives.<sup>293</sup> CSXT proposes rail to Augusta, Ga. and trucking to the customer,<sup>294</sup> which has a price of [REDACTED]. On rebuttal, TPI restates the costs of CSXT's transloading alternative as [REDACTED]. The price as stated by CSXT for its transloading alternative generates the lowest limit price. Thus, the lowest limit price R/VC ratio for this movement is [REDACTED] above CSXT's 284% RSAM figure. We therefore preliminarily conclude that the alternative with the lowest limit price does not exert competitive pressure sufficient to restrain CSXT's New Orleans-Barnett rate effectively, and conclude that this alternative has no intangible features sufficient to overcome this preliminary conclusion. As

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<sup>290</sup> Reply Evidence, Exhibit II-B-2.

<sup>291</sup> Rebuttal Evidence II-B-372.

<sup>292</sup> [REDACTED]

<sup>293</sup> Opening Evidence II-B-52.

<sup>294</sup> Reply Evidence, Exhibit II-B-2.

<sup>295</sup> Rebuttal Evidence II-B-149.

a result, we conclude that CSXT is market dominant with regard to the New Orleans-Barnett (polypropylene) rate.

#### *New Orleans-Athens*

One contested lane, J-9, is governed by the New Orleans-Athens rate. On opening, TPI proposes a direct truck alternative.<sup>296</sup> That alternative has a price of [REDACTED] and a limit price of [REDACTED]. TPI also proposes transloading through Doraville with TPI-stated costs of [REDACTED] and a limit price of [REDACTED]. CSXT proposes rail to Doraville and trucking to the customer,<sup>297</sup> which has a price of [REDACTED]. On rebuttal, TPI restates the costs of CSXT's transloading alternative as [REDACTED]. The price as stated by CSXT for its transloading alternative generates the lowest limit price. Thus, the lowest limit price R/VC ratio for this movement is [REDACTED] above CSXT's 284% RSAM figure. We therefore preliminarily conclude that the alternative with the lowest limit price does not exert competitive pressure sufficient to restrain CSXT's New Orleans-Athens rate effectively, and conclude that this alternative has no intangible features sufficient to overcome this preliminary conclusion. As a result, we conclude that CSXT is market dominant with regard to the New Orleans-Athens (polypropylene) rate.

#### *Memphis-Vine Hill*

Three contested lanes are governed by the Memphis-Vine Hill rate, the first of which is lane J-10. On opening, TPI proposes a direct truck alternative.<sup>299</sup> That alternative has a price of [REDACTED] and a limit price of [REDACTED]. TPI also proposes transloading through Chattanooga, Tenn. with TPI-stated costs of [REDACTED] and a limit price of [REDACTED]. CSXT proposes rail service to Chattanooga and trucking to the customer.<sup>300</sup> CSXT's transloading alternative has a price of [REDACTED]. On rebuttal, TPI restates the costs of CSXT's alternative as [REDACTED]. The price as stated by CSXT for its transloading alternative represents the lowest limit price. Thus, the lowest limit price R/VC ratio for this movement is [REDACTED] above CSXT's 284% RSAM figure. We therefore preliminarily conclude that the alternative with the lowest limit price does not exert competitive pressure sufficient to restrain CSXT's Memphis-Vine Hill

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<sup>296</sup> Opening Evidence II-B-53.

<sup>297</sup> Reply Evidence, Exhibit II-B-2.

<sup>298</sup> Rebuttal Evidence II-B-152.

<sup>299</sup> Opening Evidence II-B-54.

<sup>300</sup> Reply Evidence, Exhibit II-B-2.

<sup>301</sup> Rebuttal Evidence II-B-155.

(polypropylene) rate effectively and conclude that this alternative has no intangible features sufficient to overcome this preliminary conclusion.<sup>302</sup>

Lane J-53 is also governed by the Memphis-Vine Hill rate.<sup>303</sup> On opening, TPI proposes a direct truck alternative.<sup>304</sup> That alternative has a price of [REDACTED] and a limit price of [REDACTED]. TPI also proposes transloading through Chattanooga with TPI-stated costs of [REDACTED] and a limit price of [REDACTED]. CSXT proposes rail service to Chattanooga and trucking to the customer.<sup>305</sup> CSXT's transloading alternative has a price of [REDACTED]. On rebuttal, TPI restates the costs of CSXT's alternative as [REDACTED]. The price as stated by CSXT for its transloading alternative generates the lowest limit price. Thus, the lowest limit price R/VC ratio for this movement is [REDACTED] above CSXT's 284% RSAM figure. We therefore preliminarily conclude that the alternative with the lowest limit price does not exert competitive pressure sufficient to restrain CSXT's Memphis-Vine Hill (polyethylene HD) rate effectively and conclude that this alternative has no intangible features sufficient to overcome this preliminary conclusion.

Lane J-74 is also governed by the Memphis-Vine Hill rate. On opening, TPI proposes a direct truck alternative.<sup>307</sup> That alternative has a price of [REDACTED] and a limit price of [REDACTED]. TPI also proposes transloading through Chattanooga with TPI-stated costs of [REDACTED] and a limit price of [REDACTED]. CSXT proposes rail service to Chattanooga and trucking to the customer.<sup>308</sup> CSXT's transloading alternative has a price of [REDACTED]. On rebuttal, TPI restates the costs of

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<sup>302</sup> [REDACTED]

<sup>303</sup> We note conflicting evidence on whether lane J-53 should be considered under the Memphis-Vine Hill rate or whether it should be considered as a separate Memphis-Nashville rate. However, the parties describe this rate as the Memphis-Vine Hill rate in their lane summaries. Opening Evidence II-B-91; Reply Evidence, Exhibit II-B-2; Rebuttal Evidence II-B-232. According to TPI, the three lanes we have included in this rate group interchange through Vine Hill, have the same tariffs, and the same R/VC ratios. Opening Evidence II-B-91. We therefore conclude the same rate applies to all three movements.

<sup>304</sup> Opening Evidence II-B-91.

<sup>305</sup> Reply Evidence, Exhibit II-B-2.

<sup>306</sup> Rebuttal Evidence II-B-232.

<sup>307</sup> Opening Evidence II-B-109.

<sup>308</sup> Reply Evidence, Exhibit II-B-2.

CSXT's alternative as [REDACTED]. The price as stated by CSXT for its transloading alternative generates the lowest limit price. Thus, the lowest limit price R/VC ratio for this movement is [REDACTED] above CSXT's 284% RSAM figure. We therefore preliminarily conclude that the alternative with the lowest limit price does not exert competitive pressure sufficient to restrain CSXT's Memphis-Vine Hill (polyethylene HD) rate effectively and conclude that this alternative has no intangible features sufficient to overcome this preliminary conclusion.

As demonstrated above, the lowest limit price R/VC ratio for each of the lanes governed by the Memphis-Vine Hill rate [REDACTED] exceeds CSXT's RSAM figure, and we therefore preliminarily conclude that none of the lowest limit price alternatives proposed for movements governed by the Memphis-Vine Hill rate exert competitive pressure sufficient to restrain that rate effectively. Furthermore, none of the lowest limit price alternatives have intangible features sufficient to overcome this preliminary conclusion. As a result, we conclude that CSXT is market dominant with regard to the Memphis-Vine Hill (polypropylene and polyethylene HD) rate.

#### *New Orleans-Winchester*

One contested lane, J-14, is governed by the New Orleans-Winchester rate. On opening, TPI proposes a direct truck alternative.<sup>310</sup> That alternative has a price of [REDACTED] and a limit price of [REDACTED]. TPI also proposes transloading through Philadelphia with TPI-stated costs of [REDACTED] and a limit price of [REDACTED]. CSXT proposes rail to Crafton/Pittsburgh, Pa. and trucking to the customer,<sup>311</sup> which has a price of [REDACTED]. On rebuttal, TPI restates the costs of CSXT's transloading alternative as [REDACTED]. The price as stated by CSXT for its transloading alternative generates the lowest limit price. Thus, the lowest limit price R/VC ratio for this movement is [REDACTED] below CSXT's 284% RSAM figure. We therefore preliminarily conclude that the alternative with the lowest limit price does exert competitive pressure sufficient to restrain CSXT's New Orleans-Winchester rate effectively, and conclude that this alternative has no intangible features sufficient to overcome this preliminary conclusion. As a result, we conclude that CSXT is not market dominant with regard to the New Orleans-Winchester (polystyrene) rate.

#### *Chicago-Orangeburg*

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<sup>309</sup> Rebuttal Evidence II-B-280.

<sup>310</sup> Opening Evidence II-B-58.

<sup>311</sup> Reply Evidence, Exhibit II-B-2.

<sup>312</sup> Rebuttal Evidence II-B-159.

One contested lane, J-15, is governed by the Chicago-Orangeburg rate. [REDACTED]  
 [REDACTED] As a result there are no transportation alternatives for this lane, and we conclude that CSXT is market dominant with regard to the Chicago-Orangeburg (polyethylene HD) rate.

*Chicago-Anderson*

One contested lane, J-17, is governed by the Chicago-Anderson rate. On opening, TPI proposes a direct truck alternative.<sup>314</sup> That alternative has a price of [REDACTED] and a limit price of [REDACTED]. TPI also proposes transloading through Louisville with TPI-stated costs of [REDACTED] and a limit price of [REDACTED]. CSXT proposes rail via BNSF to interchange with CN at Chicago, rail via CN to East Morris, and trucking to the customer,<sup>315</sup> which has a price of [REDACTED]. On rebuttal, TPI restates the costs of CSXT’s transloading alternative as [REDACTED]. The price as stated by CSXT for its transloading alternative generates the lowest limit price. Thus, the lowest limit price R/VC ratio for this movement is [REDACTED] above CSXT’s 284% RSAM figure. We therefore preliminarily conclude that the alternative with the lowest limit price does not exert competitive pressure sufficient to restrain CSXT’s Chicago-Anderson rate effectively, and conclude that this alternative has no intangible features sufficient to overcome this preliminary conclusion. As a result, we conclude that CSXT is market dominant with regard to the Chicago-Anderson (polypropylene) rate.<sup>317</sup>

*Chicago-Cincinnati*

One contested lane, J-18, is governed by the Chicago-Cincinnati rate. [REDACTED]  
 [REDACTED] As a result there are no transportation alternatives for this lane, and we conclude that CSXT is market dominant with regard to the Chicago-Cincinnati (polyethylene HD) rate.

<sup>313</sup> See *supra* p. 46.

<sup>314</sup> Opening Evidence II-B-61.

<sup>315</sup> Reply Evidence, Exhibit II-B-2.

<sup>316</sup> Rebuttal Evidence II-B-165.

<sup>317</sup> [REDACTED]  
 [REDACTED]

<sup>318</sup> See *supra* p. 46.

*Chicago-Cumberland*

One contested lane, J-20, is governed by the Chicago-Cumberland rate. On opening, TPI proposes a direct truck alternative.<sup>319</sup> That alternative has a price of [REDACTED] and a limit price of [REDACTED]. TPI also proposes transloading through Philadelphia with TPI-stated costs of [REDACTED] and a limit price of [REDACTED]. CSXT proposes rail to Crafton/Pittsburgh and trucking to the customer,<sup>320</sup> which has a price of [REDACTED]. On rebuttal, TPI restates the costs of CSXT's transloading alternative as [REDACTED]. The price as stated by CSXT for its transloading alternative generates the lowest limit price. Thus, the lowest limit price R/VC ratio for this movement is [REDACTED] above CSXT's 284% RSAM figure. We therefore preliminarily conclude that the alternative with the lowest limit price does not exert competitive pressure sufficient to restrain CSXT's Chicago-Cumberland rate effectively, and conclude that this alternative has no intangible features sufficient to overcome this preliminary conclusion. As a result, we conclude that CSXT is market dominant with regard to the Chicago-Cumberland (polypropylene) rate.

*New Orleans-Hamlet*

Three contested lanes are governed by the New Orleans-Hamlet rate, the first of which is lane J-21. On opening, TPI proposes a direct truck alternative.<sup>322</sup> That alternative has a price of [REDACTED] and a limit price of [REDACTED]. TPI also proposes transloading through Charlotte, N.C. with TPI-stated costs of [REDACTED] and a limit price of [REDACTED]. CSXT proposes rail service to Greer, S.C. and trucking to the customer.<sup>323</sup> However, the transloading facility at Greer is closed,<sup>324</sup> and therefore this is not a feasible alternative. The price of TPI's transloading alternative represents the lowest limit price. Thus, the lowest limit price R/VC ratio for this movement is [REDACTED] above CSXT's 284% RSAM figure. We therefore preliminarily conclude that the alternative with the lowest limit price does not exert competitive pressure sufficient to restrain CSXT's New Orleans-Hamlet (polypropylene) rate effectively and conclude that this alternative has no intangible features sufficient to overcome this preliminary conclusion.

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<sup>319</sup> Opening Evidence II-B-64.

<sup>320</sup> Reply Evidence, Exhibit II-B-2.

<sup>321</sup> Rebuttal Evidence II-B-172.

<sup>322</sup> Opening Evidence II-B-65.

<sup>323</sup> Reply Evidence, Exhibit II-B-2.

<sup>324</sup> Rebuttal Evidence, Exhibit II-B-30.

Lane J-105 is also governed by the New Orleans-Hamlet rate. On opening, TPI proposes a direct truck alternative.<sup>325</sup> That alternative has a price of [REDACTED] and a limit price of [REDACTED]. TPI also proposes transloading through Charlotte with TPI-stated costs of [REDACTED] and a limit price of [REDACTED]. CSXT proposes rail service to Greer and trucking to the customer,<sup>326</sup> but, as previously stated, this is not a feasible alternative. The price of TPI's transloading alternative generates the lowest limit price. Thus, the lowest limit price R/VC ratio for this movement is [REDACTED] above CSXT's 284% RSAM figure. We therefore preliminarily conclude that the alternative with the lowest limit price does not exert competitive pressure sufficient to restrain CSXT's New Orleans-Hamlet rate (polyethylene HD) effectively and conclude that this alternative has no intangible features sufficient to overcome this preliminary conclusion.

Lane J-106 is also governed by the New Orleans-Hamlet rate. On opening, TPI proposes a direct truck alternative.<sup>327</sup> That alternative has a price of [REDACTED] and a limit price of [REDACTED]. TPI also proposes transloading through Charlotte with TPI-stated costs of [REDACTED] and a limit price of [REDACTED]. CSXT proposes rail service to Greer and trucking to the customer,<sup>328</sup> but, as previously stated, this is not a feasible alternative. The price of TPI's transloading alternative generates the lowest limit price. Thus, the lowest limit price R/VC ratio for this movement is [REDACTED] above CSXT's 284% RSAM figure. We therefore preliminarily conclude that the alternative with the lowest limit price does not exert competitive pressure sufficient to restrain CSXT's New Orleans-Hamlet (polystyrene) rate effectively and conclude that this alternative has no intangible features sufficient to overcome this preliminary conclusion.

As demonstrated above, the lowest limit price R/VC ratio for each of the lanes governed by the New Orleans-Hamlet rate exceeds CSXT's RSAM figure, and we therefore preliminarily conclude that none of the lowest limit price alternatives proposed for movements governed by the New Orleans-Hamlet Hill rate exert competitive pressure sufficient to restrain that rate effectively. Furthermore, none of the lowest limit price alternatives have intangible features sufficient to overcome this preliminary conclusion. As a result, we conclude that CSXT is market dominant with regard to the New Orleans-Hamlet (polypropylene, polyethylene HD, and polystyrene) rate.

#### *Chicago-Mentor*

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<sup>325</sup> Opening Evidence II-B-134.

<sup>326</sup> Reply Evidence, Exhibit II-B-2.

<sup>327</sup> Opening Evidence II-B-135.

<sup>328</sup> Reply Evidence, Exhibit II-B-2.

One contested lane, J-22, is governed by the Chicago-Mentor rate. On opening, TPI proposes a direct truck alternative.<sup>329</sup> That alternative has a price of [REDACTED] and a limit price of [REDACTED]. TPI also proposes transloading through Euclid, Ohio with TPI-stated costs of [REDACTED] to [REDACTED] and a limit price of [REDACTED]. CSXT proposes rail to Crafton/Pittsburgh and trucking to the customer,<sup>330</sup> which has a price of [REDACTED]. On rebuttal, TPI restates the costs of CSXT's transloading alternative as [REDACTED]. The price of TPI's opening transloading alternative generates the lowest limit price. Thus, the lowest limit price R/VC ratio for this movement is [REDACTED] above CSXT's 284% RSAM figure. We therefore preliminarily conclude that the alternative with the lowest limit price does not exert competitive pressure sufficient to restrain CSXT's Chicago-Mentor rate effectively, and conclude that this alternative has no intangible features sufficient to overcome this preliminary conclusion. As a result, we conclude that CSXT is market dominant with regard to the Chicago-Mentor (polypropylene) rate.<sup>332</sup>

#### *New Orleans-North Cove*

One contested lane, J-23, is governed by the New Orleans-North Cove rate. On opening, TPI proposes a direct truck alternative.<sup>333</sup> That alternative has a price of [REDACTED] and a limit price of [REDACTED]. TPI also proposes transloading through Charlotte with TPI-stated costs of [REDACTED] and a limit price of [REDACTED]. CSXT proposes rail to Augusta and trucking to the customer,<sup>334</sup> which has a price of [REDACTED]. On rebuttal, TPI restates the costs of CSXT's transloading alternative as [REDACTED]. The price of TPI's opening transloading alternative generates the lowest limit price. Thus, the lowest limit price R/VC ratio for this movement is [REDACTED] below CSXT's 284% RSAM figure. We therefore preliminarily conclude that the alternative with the lowest limit price does exert competitive pressure sufficient to restrain CSXT's New Orleans-North Cove rate effectively, and conclude that this alternative has no intangible features sufficient to overcome this preliminary conclusion. As a result, we conclude

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<sup>329</sup> Opening Evidence II-B-66.

<sup>330</sup> Reply Evidence, Exhibit II-B-2.

<sup>331</sup> Rebuttal Evidence II-B-179.

<sup>332</sup> [REDACTED]

<sup>333</sup> Opening Evidence II-B-67.

<sup>334</sup> Reply Evidence, Exhibit II-B-2.

<sup>335</sup> Rebuttal Evidence II-B-183.

that CSXT is not market dominant with regard to the New Orleans-North Cove (polyethylene HD) rate.

#### *Memphis-Guthrie*

One contested lane, J-25, is governed by the Memphis-Guthrie rate. On opening, TPI proposes a direct truck alternative.<sup>336</sup> That alternative has a price of [REDACTED] and a limit price of [REDACTED]. TPI also proposes transloading through Chattanooga with TPI-stated costs of [REDACTED] and a limit price of [REDACTED]. CSXT proposes rail to Chattanooga and trucking to the customer,<sup>337</sup> which has a price of [REDACTED]. On rebuttal, TPI restates the costs of CSXT's transloading alternative as [REDACTED]. The price as stated by CSXT for its transloading alternative generates the lowest limit price. Thus, the lowest limit price R/VC ratio for this movement is [REDACTED] above CSXT's 284% RSAM figure. We therefore preliminarily conclude that the alternative with the lowest limit price does not exert competitive pressure sufficient to restrain CSXT's Memphis-Guthrie rate effectively, and conclude that this alternative has no intangible features sufficient to overcome this preliminary conclusion. As a result, we conclude that CSXT is market dominant with regard to the Memphis-Guthrie (polystyrene) rate.

#### *New Orleans-Beech Island*

Two contested lanes are governed by the New Orleans-Beech Island rate, the first of which is lane J-26. On opening, TPI proposes a direct truck alternative.<sup>339</sup> That alternative has a price of [REDACTED] and a limit price of [REDACTED]. TPI also proposes transloading through Charlotte with TPI-stated costs of [REDACTED] and a limit price of [REDACTED]. CSXT proposes rail to Pineville, N.C. and trucking to the customer,<sup>340</sup> which has a price of [REDACTED]. On rebuttal, TPI restates the costs of CSXT's transloading alternative as [REDACTED]. The price as stated by CSXT for its transloading alternative generates the lowest limit price. Thus, the lowest limit price R/VC ratio for this movement is [REDACTED] above CSXT's 284% RSAM figure. We therefore preliminarily conclude that the alternative with the lowest limit price does not exert competitive pressure sufficient to restrain CSXT's New Orleans-Beech Island (polystyrene) rate effectively, and conclude that this alternative has no intangible features sufficient to overcome this preliminary conclusion.

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<sup>336</sup> Opening Evidence II-B-68.

<sup>337</sup> Reply Evidence, Exhibit II-B-2.

<sup>338</sup> Rebuttal Evidence II-B-186.

<sup>339</sup> Opening Evidence II-B-69.

<sup>340</sup> Reply Evidence, Exhibit II-B-2.

<sup>341</sup> Rebuttal Evidence II-B-189.

Lane J-103 is also governed by the New Orleans-Beech Island rate. On opening, TPI proposes a direct truck alternative.<sup>342</sup> That alternative has a price of [REDACTED] and a limit price of [REDACTED]. TPI also proposes transloading through Charlotte with TPI-stated costs of [REDACTED] and a limit price of [REDACTED]. CSXT proposes rail to Augusta, Ga. and trucking to the customer,<sup>343</sup> which has a price of [REDACTED]. On rebuttal, TPI restates the costs of CSXT's transloading alternative as [REDACTED]. The price as stated by CSXT for its transloading alternative generates the lowest limit price. Thus, the lowest limit price R/VC ratio for this movement [REDACTED] is above CSXT's 284% RSAM figure. We therefore preliminarily conclude that the alternative with the lowest limit price does not exert competitive pressure sufficient to restrain CSXT's New Orleans-Beech Island (polypropylene) rate effectively, and conclude that this alternative has no intangible features sufficient to overcome this preliminary conclusion.

As demonstrated above, the lowest limit price R/VC ratio for each of the lanes governed by the New Orleans-Beech Island rate exceeds CSXT's RSAM figure, and we therefore preliminarily conclude that none of the lowest limit price alternatives proposed for movements governed by the New Orleans-Beech Island rate exert competitive pressure sufficient to restrain that rate effectively. Furthermore, none of the lowest limit price alternatives have intangible features sufficient to overcome this preliminary conclusion. As a result, we conclude that CSXT is market dominant with regard to the New Orleans-Beech Island (polystyrene and polypropylene) rate.

#### *New Orleans-Social Circle*

One contested lane, J-28, is governed by the New Orleans-Social Circle rate. On opening, TPI does not propose a transportation alternative.<sup>345</sup> CSXT proposes rail to Doraville and trucking to Social Circle, Ga. or the customer,<sup>346</sup> which has a price of [REDACTED]. On rebuttal, TPI restates the costs of CSXT's transloading alternative as [REDACTED]. The price as stated by CSXT for its transloading alternative generates the lowest limit price. Thus, the lowest limit price R/VC ratio for this movement is [REDACTED] above CSXT's 284% RSAM figure. We therefore preliminarily conclude that the alternative with the lowest limit price does not exert competitive pressure sufficient to restrain CSXT's New Orleans-Social Circle rate

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<sup>342</sup> Opening Evidence II-B-132.

<sup>343</sup> Reply Evidence, Exhibit II-B-2.

<sup>344</sup> Rebuttal Evidence II-B-337.

<sup>345</sup> Opening Evidence II-B-70.

<sup>346</sup> Reply Evidence, Exhibit II-B-2.

<sup>347</sup> Rebuttal Evidence II-B-192.

effectively, and conclude that the alternatives have no intangible features sufficient to overcome this preliminary conclusion. As a result, we conclude that CSXT is market dominant with regard to the New Orleans-Social Circle (polypropylene) rate.

*Memphis-Piqua*

One contested lane, J-29, is governed by the Memphis-Piqua rate. [REDACTED]

As a result there are no transportation alternatives for this lane, and we conclude that CSXT is market dominant with regard to the Memphis-Piqua (polystyrene) rate.

*New Orleans-Monroe*

One contested lane, J-31, is governed by the New Orleans-Monroe rate. On opening, TPI proposes a direct truck alternative.<sup>349</sup> That alternative has a price of [REDACTED] and a limit price of [REDACTED]. TPI also proposes transloading through Charlotte with TPI-stated costs of [REDACTED] and a limit price of [REDACTED]. CSXT proposes rail to Augusta and trucking to the customer,<sup>350</sup> which has a price of [REDACTED]. On rebuttal, TPI restates the costs of CSXT's transloading alternative as [REDACTED]. The price of TPI's opening transloading alternative generates the lowest limit price. Thus, the lowest limit price R/VC ratio for this movement is [REDACTED] below CSXT's 284% RSAM figure. We therefore preliminarily conclude that the alternative with the lowest limit price does exert competitive pressure sufficient to restrain CSXT's New Orleans-Monroe rate effectively. Moreover, for this lane transloading does not have intangible disadvantages sufficient to overcome our preliminary conclusion. As discussed above, TPI argues that customers prefer direct rail for various reasons, including for the ability to use railcars for storage. TPI claims that while direct rail offers storage as an advantage and direct truck service offers speed, transloading alternatives have neither speed nor storage advantages; therefore, to make transloading attractive to customers, railcars filled with product must be prepositioned at bulk terminals in advance of orders.<sup>352</sup> However, TPI also argues that prepositioning enables it to fulfill just-in-time orders.<sup>353</sup> We have concluded that TPI's claimed customer preference categories do not render transloading or truck service infeasible in general,

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<sup>348</sup> See *supra* p. 46.

<sup>349</sup> Opening Evidence II-B-73.

<sup>350</sup> Reply Evidence, Exhibit II-B-2.

<sup>351</sup> Rebuttal Evidence II-B-198.

<sup>352</sup> *Id.* at II-B-94 to II-B-95.

<sup>353</sup> Opening Evidence II-B-24.

and we also do not believe that any of those categories implicate issues associated with transloading service sufficient to change our preliminary conclusion. TPI has not proven any product integrity issues associated with transloading.<sup>354</sup> As for the delivery timing issues associated with transloading, unless a substantial percentage of the issue movements are found to be not market dominant, we believe that transloading need not be as slow of a delivery method as TPI claims, and as such conclude that neither mode has a clear timing advantage that would change our preliminary conclusion. As a result, we conclude that CSXT is not market dominant with regard to the New Orleans-Monroe (polypropylene) rate.

### *Chicago-Terre Haute*

Two contested lanes are governed by the Chicago-Terre Haute rate, the first of which is lane J-33. On opening, TPI proposes a direct truck alternative.<sup>355</sup> That alternative has a price of [REDACTED] and a limit price of [REDACTED]. TPI also proposes transloading through Louisville with TPI-stated costs of [REDACTED] and a limit price of [REDACTED]. CSXT proposes rail service via BNSF to Chicago, switch to IHB for service to Hammond, and trucking to the customer.<sup>356</sup> CSXT's transloading alternative has a price of [REDACTED]. On rebuttal, TPI restates the costs of CSXT's alternative as [REDACTED]. The price as stated by CSXT for its transloading alternative represents the lowest limit price. Thus, the lowest limit price R/VC ratio for this movement is [REDACTED] above CSXT's 284% RSAM figure. We therefore preliminarily conclude that the alternative with the lowest limit price does not exert competitive pressure sufficient to restrain CSXT's Chicago-Terre Haute (polyethylene HD) rate effectively, and conclude that this alternative has no intangible features sufficient to overcome this preliminary conclusion.<sup>358</sup>

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<sup>354</sup> See *supra* pp. 12-13, p. 48. Compare to *M&G*, slip op. at 34, where the Board found that the record supported a conclusion that alternatives involving more than two transloads would not be feasible due to product integrity concerns.

<sup>355</sup> Opening Evidence II-B-75.

<sup>356</sup> Reply Evidence, Exhibit II-B-2.

<sup>357</sup> Rebuttal Evidence II-B-201.

<sup>358</sup> [REDACTED]

Lane J-56 is also governed by the Chicago-Terre Haute rate. On opening, TPI proposes a direct truck alternative.<sup>359</sup> That alternative has a price of [REDACTED] and a limit price of [REDACTED]. TPI also proposes transloading through Louisville with TPI-stated costs of [REDACTED] and a limit price of [REDACTED]. CSXT proposes rail service via BNSF to interchange with CN in Chicago, switch to East Morris, and trucking to the customer.<sup>360</sup> CSXT's transloading alternative has a price of [REDACTED]. On rebuttal, TPI restates the costs of CSXT's alternative as [REDACTED]. The price as stated by CSXT for its transloading alternative generates the lowest limit price. Thus, the lowest limit price R/VC ratio for this movement is [REDACTED] above CSXT's 284% RSAM figure. We therefore preliminarily conclude that the alternative with the lowest limit price does not exert competitive pressure sufficient to restrain CSXT's Chicago-Terre Haute (polypropylene) rate effectively, and conclude that this alternative has no intangible features sufficient to overcome this preliminary conclusion.

As demonstrated above, the lowest limit price R/VC ratio for each of the lanes governed by the Chicago-Terre Haute rate exceeds CSXT's RSAM figure, and we therefore preliminarily conclude that none of the lowest limit price alternatives proposed for movements governed by the Chicago-Terre Haute rate exert competitive pressure sufficient to restrain that rate effectively. Furthermore, none of the lowest limit price alternatives have intangible features sufficient to overcome this preliminary conclusion. As a result, we conclude that CSXT is market dominant with regard to the Chicago-Terre Haute (polyethylene HD and polypropylene) rate.

#### *New Orleans-Cartersville*

One contested lane, J-35, is governed by the New Orleans-Cartersville rate. On opening, TPI proposes a direct truck alternative.<sup>362</sup> That alternative has a price of [REDACTED] and a limit price of [REDACTED]. TPI also proposes transloading through Doraville with TPI-stated costs of [REDACTED] and a limit price of [REDACTED]. CSXT proposes rail to Chattanooga and trucking to the customer,<sup>363</sup> which has a price of [REDACTED]. On rebuttal, TPI restates the costs of CSXT's transloading alternative as [REDACTED]. The price of TPI's opening transloading alternative generates the lowest limit price. Thus, the lowest limit price R/VC ratio for this movement is [REDACTED] above CSXT's 284% RSAM figure. We therefore preliminarily

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<sup>359</sup> Opening Evidence II-B-94.

<sup>360</sup> Reply Evidence, Exhibit II-B-2.

<sup>361</sup> Rebuttal Evidence II-B-239.

<sup>362</sup> Opening Evidence II-B-77.

<sup>363</sup> Reply Evidence, Exhibit II-B-2.

<sup>364</sup> Rebuttal Evidence II-B-204.

conclude that the alternative with the lowest limit price does not exert competitive pressure sufficient to restrain CSXT's New Orleans-Cartersville rate effectively, and conclude that this alternative has no intangible features sufficient to overcome this preliminary conclusion. As a result, we conclude that CSXT is market dominant with regard to the New Orleans-Cartersville (polypropylene) rate.

#### *New Orleans-Stanley*

One contested lane, J-36, is governed by the New Orleans-Stanley rate. On opening, TPI proposes a direct truck alternative.<sup>365</sup> That alternative has a price of [REDACTED] and a limit price of [REDACTED]. TPI also proposes transloading through Charlotte with TPI-stated costs of [REDACTED] and a limit price of [REDACTED]. CSXT proposes rail to Augusta and trucking to the customer,<sup>366</sup> which has a price of [REDACTED]. On rebuttal, TPI restates the costs of CSXT's transloading alternative as [REDACTED]. The price of TPI's opening transloading alternative generates the lowest limit price. Thus, the lowest limit price R/VC ratio for this movement is [REDACTED] below CSXT's 284% RSAM figure. We therefore preliminarily conclude that the alternative with the lowest limit price does exert competitive pressure sufficient to restrain CSXT's New Orleans-Stanley rate effectively, and conclude that this alternative has no intangible features sufficient to overcome this preliminary conclusion. As a result, we conclude that CSXT is not market dominant with regard to the New Orleans-Stanley (polypropylene) rate.

#### *New Orleans-Laurens*

One contested lane, J-37, is governed by the New Orleans-Laurens rate. [REDACTED]  
[REDACTED] As a result there are no transportation alternatives for this lane, and we conclude that CSXT is market dominant with regard to the New Orleans-Laurens (polypropylene) rate.

#### *New Orleans-Lawrenceville*

One contested lane, J-39, is governed by the New Orleans-Lawrenceville rate. On opening, TPI proposes a direct truck alternative.<sup>369</sup> That alternative has a price of [REDACTED] and a

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<sup>365</sup> Opening Evidence II-B-78.

<sup>366</sup> Reply Evidence, Exhibit II-B-2.

<sup>367</sup> Rebuttal Evidence II-B-207.

<sup>368</sup> See *supra* p. 46.

<sup>369</sup> Opening Evidence II-B-81.

limit price of [REDACTED] TPI also proposes transloading through Doraville with TPI-stated costs of [REDACTED] and a limit price of [REDACTED] CSXT proposes rail to Doraville and trucking to the customer,<sup>370</sup> which has a price of [REDACTED] On rebuttal, TPI restates the costs of CSXT's transloading alternative as [REDACTED]<sup>371</sup> The price as stated by CSXT for its transloading alternative generates the lowest limit price. Thus, the lowest limit price R/VC ratio for this movement is [REDACTED] above CSXT's 284% RSAM figure. We therefore preliminarily conclude that the alternative with the lowest limit price does not exert competitive pressure sufficient to restrain CSXT's New Orleans-Lawrenceville rate effectively, and conclude that this alternative has no intangible features sufficient to overcome this preliminary conclusion. As a result, we conclude that CSXT is market dominant with regard to the New Orleans-Lawrenceville (polyethylene HD) rate.<sup>372</sup>

*East St. Louis-Sidney*

One contested lane, J-44, is governed by the East St. Louis-Sidney rate. On opening, TPI proposes a direct truck alternative.<sup>373</sup> That alternative has a price of [REDACTED] and a limit price of [REDACTED] TPI also proposes transloading through Louisville with TPI-stated costs of [REDACTED] and a limit price of [REDACTED] CSXT proposes rail service via BNSF to interchange with CN in Chicago, switch to East Morris, and trucking to the customer,<sup>374</sup> which has a price of [REDACTED] On rebuttal, TPI restates the costs of CSXT's transloading alternative as [REDACTED] As discussed above, CSXT also proposes direct rail via NS,<sup>376</sup> and we find that direct rail is a feasible alternative.<sup>377</sup> The direct rail alternative has a price of [REDACTED] The price of CSXT's direct rail alternative generates the lowest limit price. Thus, the lowest limit price R/VC ratio for this movement is [REDACTED] above CSXT's 284% RSAM figure. We therefore preliminarily conclude that the alternative with the lowest limit price does not exert competitive pressure sufficient to restrain CSXT's East St. Louis-Sidney rate effectively, and conclude that

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<sup>370</sup> Reply Evidence, Exhibit II-B-2.

<sup>371</sup> Rebuttal Evidence II-B-212.

<sup>372</sup> [REDACTED]

<sup>373</sup> Opening Evidence II-B-84.

<sup>374</sup> Reply Evidence, Exhibit II-B-2.

<sup>375</sup> Rebuttal Evidence II-B-219.

<sup>376</sup> Reply Evidence, Exhibit II-B-2.

<sup>377</sup> See supra pp. 50-51.

this alternative has no intangible features sufficient to overcome this preliminary conclusion. As a result, we conclude that CSXT is market dominant with regard to the East St. Louis-Sidney (polypropylene) rate.

*New Orleans-Ackerman*

Two contested lanes are governed by the New Orleans-Ackerman rate, the first of which is lane J-48. [REDACTED]

[REDACTED] As a result there are no transportation alternatives for this lane, and we conclude that CSXT is market dominant with regard to the New Orleans-Ackerman (polypropylene) rate.

Lane J-102 is also governed by the New Orleans-Ackerman rate. On opening, TPI does not propose a transportation alternative.<sup>379</sup> CSXT proposes rail service to Chattanooga and trucking to the customer.<sup>380</sup> CSXT's transloading alternative has a price of [REDACTED]. On rebuttal, TPI restates the costs of CSXT's alternative as [REDACTED]. The price as stated by CSXT for its transloading alternative generates the lowest limit price. Thus, the lowest limit price R/VC ratio for this movement is [REDACTED] above CSXT's 284% RSAM figure. We therefore preliminarily conclude that the alternative with the lowest limit price does not exert competitive pressure sufficient to restrain CSXT's New Orleans-Ackerman (polyethylene HD) rate effectively and conclude that this alternative has no intangible features sufficient to overcome this preliminary conclusion.<sup>382</sup>

As demonstrated above, the lowest limit price R/VC ratio for each of the lanes governed by the New Orleans-Ackerman rate significantly exceeds CSXT's RSAM figure, and we therefore preliminarily conclude that none of the lowest limit price alternatives proposed for movements governed by the New Orleans-Ackerman rate exert competitive pressure sufficient to restrain that rate effectively. Furthermore, none of the lowest limit price alternatives have

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<sup>378</sup> See *supra* p. 46.

<sup>379</sup> Opening Evidence II-B-131.

<sup>380</sup> Reply Evidence, Exhibit II-B-2.

<sup>381</sup> Rebuttal Evidence II-B-333.

<sup>382</sup> [REDACTED]

intangible features sufficient to overcome this preliminary conclusion. As a result, we conclude that CSXT is market dominant with regard to the New Orleans-Ackerman (polypropylene and polyethylene HD) rate.

#### *Chicago-Westboro*

One contested lane, J-49, is governed by the Chicago-Westboro rate. On opening, TPI proposes a direct truck alternative.<sup>383</sup> That alternative has a price of [REDACTED] and a limit price of [REDACTED]. TPI also proposes transloading through Fitchburg, Mass. with TPI-stated costs of [REDACTED] and a limit price of [REDACTED]. CSXT proposes rail to Worcester, Mass. and trucking to the customer,<sup>384</sup> which has a price of [REDACTED]. On rebuttal, TPI restates the costs of CSXT's transloading alternative as [REDACTED]. The price of TPI's opening transloading alternative generates the lowest limit price. Thus, the lowest limit price R/VC ratio for this movement is [REDACTED] below CSXT's 284% RSAM figure. We therefore preliminarily conclude that the alternative with the lowest limit price does exert competitive pressure sufficient to restrain CSXT's Chicago-Westboro rate effectively and conclude that this alternative has no intangible features sufficient to overcome this preliminary conclusion. Although this lane's lowest limit price R/VC ratio is [REDACTED] below CSXT's 284% RSAM figure, transloading of polyethylene HD does not, in general, have intangible disadvantages sufficient to overcome our preliminary conclusion, and no particular characteristics of this lane change our preliminary conclusion. As a result, we conclude that CSXT is not market dominant with regard to the Chicago-Westboro (polyethylene HD) rate.

#### *Memphis-Bridgeport*

One contested lane, J-52, is governed by the Memphis-Bridgeport rate. On opening, TPI proposes a direct truck alternative.<sup>386</sup> That alternative has a price of [REDACTED] and a limit price of [REDACTED]. TPI also proposes transloading through Chattanooga with TPI-stated costs of [REDACTED] and a limit price of [REDACTED]. CSXT proposes rail to Chattanooga and trucking to the customer,<sup>387</sup> which has a price of [REDACTED]. On rebuttal, TPI restates the costs of CSXT's transloading alternative as [REDACTED]. The price as stated by CSXT for its transloading alternative generates the lowest limit price. Thus, the lowest limit price R/VC ratio for this movement is [REDACTED].

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<sup>383</sup> Opening Evidence II-B-88.

<sup>384</sup> Reply Evidence, Exhibit II-B-2.

<sup>385</sup> Rebuttal Evidence II-B-227.

<sup>386</sup> Opening Evidence II-B-90.

<sup>387</sup> Reply Evidence, Exhibit II-B-2.

<sup>388</sup> Rebuttal Evidence II-B-229.

██████████ above CSXT's 284% RSAM figure. We therefore preliminarily conclude that the alternative with the lowest limit price does not exert competitive pressure sufficient to restrain CSXT's Memphis-Bridgeport rate effectively, and conclude that this alternative has no intangible features sufficient to overcome this preliminary conclusion. As a result, we conclude that CSXT is market dominant with regard to the Memphis-Bridgeport (polystyrene) rate.

#### *New Orleans-LaGrange*

One contested lane, J-54, is governed by the New Orleans-LaGrange rate. On opening, TPI proposes a direct truck alternative.<sup>389</sup> That alternative has a price of ██████████ and a limit price of ██████████. TPI also proposes transloading through Doraville with TPI-stated costs of ██████████ (TPI states that the rate varies by customer) and a limit price of ██████████. CSXT proposes rail to Doraville and trucking to the customer,<sup>390</sup> which has a price of ██████████. On rebuttal, TPI restates the costs of CSXT's transloading alternative as ██████████.<sup>391</sup> The price as stated by CSXT for its transloading alternative generates the lowest limit price. Thus, the lowest limit price R/VC ratio for this movement is ██████████ above CSXT's 284% RSAM figure. We therefore preliminarily conclude that the alternative with the lowest limit price does not exert competitive pressure sufficient to restrain CSXT's New Orleans-LaGrange rate effectively, and conclude that this alternative has no intangible features sufficient to overcome this preliminary conclusion. As a result, we conclude that CSXT is market dominant with regard to the New Orleans-LaGrange (polypropylene) rate.

#### *Memphis-Hopkinsville*

One contested lane, J-57, is governed by the Memphis-Hopkinsville rate. On opening, TPI proposes a direct truck alternative.<sup>392</sup> That alternative has a price of ██████████ and a limit price of ██████████. TPI also proposes transloading through Louisville with TPI-stated costs of ██████████ and a limit price of ██████████. CSXT proposes rail to West Memphis, Ark. and trucking to the customer,<sup>393</sup> which has a price of ██████████. On rebuttal, TPI restates the costs of CSXT's transloading alternative as ██████████.<sup>394</sup> The price as stated by CSXT for its transloading alternative generates the lowest limit price. Thus, the lowest limit price R/VC ratio for this movement is ██████████ above CSXT's 284% RSAM figure. We therefore

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<sup>389</sup> Opening Evidence II-B-92.

<sup>390</sup> Reply Evidence, Exhibit II-B-2.

<sup>391</sup> Rebuttal Evidence II-B-235.

<sup>392</sup> Opening Evidence II-B-95.

<sup>393</sup> Reply Evidence, Exhibit II-B-2.

<sup>394</sup> Rebuttal Evidence II-B-241.

preliminarily conclude that the alternative with the lowest limit price does not exert competitive pressure sufficient to restrain CSXT's Memphis-Hopkinsville rate effectively, and conclude that this alternative has no intangible features sufficient to overcome this preliminary conclusion. As a result, we conclude that CSXT is market dominant with regard to the Memphis-Hopkinsville (polyethylene HD) rate.

#### *New Orleans-Augusta*

One contested lane, J-59, is governed by the New Orleans-Augusta rate. On opening, TPI proposes a direct truck alternative.<sup>395</sup> That alternative has a price of [REDACTED] and a limit price of [REDACTED]. TPI also proposes transloading through Louisville with TPI-stated costs of [REDACTED] and a limit price of [REDACTED]. CSXT proposes rail to Louisville and trucking to the customer,<sup>396</sup> which has a price of [REDACTED]. On rebuttal, TPI restates the costs of CSXT's transloading alternative as [REDACTED]. The price of TPI's transloading alternative generates the lowest limit price. Thus, the lowest limit price R/VC ratio for this movement is [REDACTED] below CSXT's 284% RSAM figure. We therefore preliminarily conclude that the alternative with the lowest limit price does exert competitive pressure sufficient to restrain CSXT's New Orleans-Augusta rate effectively, and conclude that this alternative has no intangible features sufficient to overcome this preliminary conclusion. As a result, we conclude that CSXT is not market dominant with regard to the New Orleans-Augusta (polypropylene) rate.

#### *New Orleans-Baltimore*

One contested lane, J-60, is governed by the New Orleans-Baltimore rate. On opening, TPI proposes a direct truck alternative.<sup>398</sup> That alternative has a price of [REDACTED] and a limit price of [REDACTED]. TPI also proposes transloading through Philadelphia with TPI-stated costs of [REDACTED] and a limit price of [REDACTED]. CSXT proposes rail to Bethlehem, Pa. and trucking to the customer,<sup>399</sup> which has a price of [REDACTED]. On rebuttal, TPI restates the costs of CSXT's transloading alternative as [REDACTED]. The price of TPI's transloading alternative generates the lowest limit price. Thus, the lowest limit price R/VC ratio for this movement is [REDACTED] below CSXT's 284% RSAM figure. We therefore preliminarily conclude that the alternative with the lowest limit price does exert competitive pressure sufficient to restrain

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<sup>395</sup> Opening Evidence II-B-97.

<sup>396</sup> Reply Evidence, Exhibit II-B-2.

<sup>397</sup> Rebuttal Evidence II-B-244.

<sup>398</sup> Opening Evidence II-B-98.

<sup>399</sup> Reply Evidence, Exhibit II-B-2.

<sup>400</sup> Rebuttal Evidence II-B-247.

CSXT's New Orleans-Baltimore rate effectively. While the customers on this lane have selected a bulk terminal as their destination, [REDACTED]

[REDACTED] we conclude that this alternative has no intangible features sufficient to overcome this preliminary conclusion. As a result, we conclude that CSXT is not market dominant with regard to the New Orleans-Baltimore (polyethylene HD) rate.<sup>401</sup>

#### *Chicago-Utica*

One contested lane, J-61, is governed by the Chicago-Utica rate. On opening, TPI proposes a direct truck alternative.<sup>402</sup> That alternative has a price of [REDACTED] and a limit price of [REDACTED]. TPI also proposes transloading through Philadelphia with TPI-stated costs of [REDACTED] and a limit price of [REDACTED]. CSXT proposes rail to Philadelphia and trucking to the customer,<sup>403</sup> which has a price of [REDACTED]. On rebuttal, TPI restates the costs of CSXT's transloading alternative as [REDACTED]. The price as stated by CSXT for its transloading alternative generates the lowest limit price. Thus, the lowest limit price R/VC ratio for this movement is [REDACTED] above CSXT's 284% RSAM figure. We therefore preliminarily conclude that the alternative with the lowest limit price does not exert competitive pressure sufficient to restrain CSXT's Chicago-Utica rate effectively, and conclude that this alternative has no intangible features sufficient to overcome this preliminary conclusion. As a result, we conclude that CSXT is market dominant with regard to the Chicago-Utica (polyethylene HD) rate.

#### *Chicago-Clarksburg*

Two contested lanes are governed by the Chicago-Clarksburg rate, the first of which is lane J-62. On opening, TPI proposes a direct truck alternative.<sup>405</sup> That alternative has a price of [REDACTED]

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<sup>401</sup> [REDACTED]

<sup>402</sup> Opening Evidence II-B-99.

<sup>403</sup> Reply Evidence, Exhibit II-B-2.

<sup>404</sup> Rebuttal Evidence II-B-251.

<sup>405</sup> Opening Evidence II-B-100.

██████████ and a limit price of ██████████ TPI also proposes transloading through Euclid with TPI-stated costs of ██████████ and a limit price of ██████████ CSXT proposes rail service to Pittsburgh and trucking to the customer.<sup>406</sup> CSXT's transloading alternative has a price of ██████████ On rebuttal, TPI restates the costs of CSXT's alternative as ██████████<sup>407</sup> The price as stated by CSXT for its transloading alternative represents the lowest limit price. Thus, the lowest limit price R/VC ratio for this movement is ██████████ above CSXT's 284% RSAM figure. We therefore preliminarily conclude that the alternative with the lowest limit price does not exert competitive pressure sufficient to restrain CSXT's Chicago-Clarksburg (polypropylene) rate effectively, and conclude that this alternative has no intangible features sufficient to overcome this preliminary conclusion.<sup>408</sup>

Lane J-113 is also governed by the Chicago-Clarksburg rate. On opening, TPI proposes a direct truck alternative.<sup>409</sup> That alternative has a price of ██████████ and a limit price of ██████████ TPI also proposes transloading through Euclid with TPI-stated costs of ██████████ and a limit price of ██████████ CSXT proposes rail service to Euclid and trucking to the customer.<sup>410</sup> CSXT's transloading alternative has a price of ██████████ On rebuttal, TPI restates the costs of CSXT's alternative as ██████████<sup>411</sup> The price as stated by CSXT for its transloading alternative generates the lowest limit price. Thus, the lowest limit price R/VC ratio for this movement is ██████████ above CSXT's 284% RSAM figure. We therefore preliminarily conclude that the alternative with the lowest limit price does not exert competitive pressure sufficient to restrain CSXT's Chicago-Clarksburg (polyethylene HD) rate effectively and conclude that this alternative has no intangible features sufficient to overcome this preliminary conclusion.

As demonstrated above, the lowest limit price R/VC ratio for each of the lanes governed by the Chicago-Clarksburg rate exceeds CSXT's RSAM figure, and we therefore preliminarily conclude that none of the lowest limit price alternatives proposed for movements governed by the Chicago-Clarksburg rate exert competitive pressure sufficient to restrain that rate effectively. Furthermore, none of the lowest limit price alternatives have intangible features sufficient to

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<sup>406</sup> Reply Evidence, Exhibit II-B-2.

<sup>407</sup> Rebuttal Evidence II-B-255.

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<sup>409</sup> Opening Evidence II-B-141.

<sup>410</sup> Reply Evidence, Exhibit II-B-2.

<sup>411</sup> Rebuttal Evidence II-B-365.

overcome this preliminary conclusion. As a result, we conclude that CSXT is market dominant with regard to the Chicago-Clarksburg (polypropylene and polyethylene HD) rate.

#### *Memphis-Madisonville*

One contested lane, J-63, is governed by the Memphis-Madisonville rate. On opening, TPI proposes a direct truck alternative.<sup>412</sup> That alternative has a price of [REDACTED] and a limit price of [REDACTED]. TPI also proposes transloading through Louisville with TPI-stated costs of [REDACTED] and a limit price of [REDACTED]. CSXT proposes rail to West Memphis and trucking to the customer,<sup>413</sup> which has a price of [REDACTED]. On rebuttal, TPI restates the costs of CSXT's transloading alternative as [REDACTED]. The price as stated by CSXT for its transloading alternative generates the lowest limit price. Thus, the lowest limit price R/VC ratio for this movement is [REDACTED] above CSXT's 284% RSAM figure. We therefore preliminarily conclude that the alternative with the lowest limit price does not exert competitive pressure sufficient to restrain CSXT's Memphis-Madisonville rate effectively, and conclude that this alternative has no intangible features sufficient to overcome this preliminary conclusion. As a result, we conclude that CSXT is market dominant with regard to the Memphis-Madisonville (polypropylene) rate.

#### *New Orleans-Wareco*

One contested lane, J-66, is governed by the New Orleans-Wareco rate. On opening, TPI proposes a direct truck alternative.<sup>415</sup> That alternative has a price of [REDACTED] and a limit price of [REDACTED]. TPI also proposes transloading through Doraville with TPI-stated costs of [REDACTED] and a limit price of [REDACTED]. CSXT proposes rail to Augusta and trucking to the customer,<sup>416</sup> which has a price of [REDACTED]. On rebuttal, TPI restates the costs of CSXT's transloading alternative as [REDACTED].<sup>417</sup> The price of TPI's opening transloading alternative generates the lowest limit price. Thus, the lowest limit price R/VC ratio for this movement is [REDACTED] above CSXT's 284% RSAM figure. We therefore preliminarily conclude that the alternative with the lowest limit price does not exert competitive pressure sufficient to restrain CSXT's New Orleans-Wareco rate effectively, and conclude that this alternative has no intangible features

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<sup>412</sup> Opening Evidence II-B-101.

<sup>413</sup> Reply Evidence, Exhibit II-B-2.

<sup>414</sup> Rebuttal Evidence II-B-258.

<sup>415</sup> Opening Evidence II-B-103.

<sup>416</sup> Reply Evidence, Exhibit II-B-2.

<sup>417</sup> Rebuttal Evidence II-B-261.

sufficient to overcome this preliminary conclusion. As a result, we conclude that CSXT is market dominant with regard to the New Orleans-Wareco (polypropylene) rate.<sup>418</sup>

### *Chicago-Akron*

Two contested lanes are governed by the Chicago-Akron rate, the first of which is lane J-67. On opening, TPI proposes a direct truck alternative.<sup>419</sup> That alternative has a price of [REDACTED] and a limit price of [REDACTED]. TPI also proposes transloading through Euclid with TPI-stated costs of [REDACTED] and a limit price of [REDACTED]. CSXT proposes rail service to Euclid and trucking to the customer,<sup>420</sup> which has a price of [REDACTED]. On rebuttal, TPI restates the costs of CSXT's transloading alternative as [REDACTED].<sup>421</sup> CSXT also proposes a direct rail alternative, but as discussed above TPI has limited its request for rate relief to the captive customer on this lane<sup>422</sup> and therefore direct rail is not a feasible alternative.<sup>423</sup> The price of CSXT's transloading alternative represents the lowest limit price. Thus, the lowest limit price R/VC ratio for this movement is [REDACTED] above CSXT's 284% RSAM figure. We therefore preliminarily conclude that the alternative with the lowest limit price does not exert competitive pressure sufficient to restrain CSXT's Chicago-Akron (polypropylene) rate effectively and conclude that this alternative has no intangible features sufficient to overcome this preliminary conclusion.

Lane J-108 is also governed by the Chicago-Akron rate. On opening, TPI proposes a direct truck alternative.<sup>424</sup> That alternative has a price of [REDACTED] and a limit price of [REDACTED]. TPI also proposes transloading through Euclid with TPI-stated costs of [REDACTED] and a limit price of [REDACTED]. CSXT proposes rail service to Euclid and trucking to the customer.<sup>425</sup> CSXT's transloading alternative has a price of [REDACTED]. CSXT also proposes a direct rail alternative with NS service to interchange with the Wheeling & Lake Erie Railroad Company at

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<sup>418</sup> [REDACTED]

<sup>419</sup> Opening Evidence II-B-104.

<sup>420</sup> Reply Evidence, Exhibit II-B-2.

<sup>421</sup> Rebuttal Evidence II-B-265.

<sup>422</sup> Id. at II-B-5.

<sup>423</sup> See id. at II-B-265.

<sup>424</sup> Opening Evidence II-B-136.

<sup>425</sup> Reply Evidence, Exhibit II-B-2.

Bellevue, Ohio and interchange with Akron Barberton Cluster Railway Company at Barberton, Ohio for service to Akron. However, as discussed above, TPI has limited its request for rate relief to the captive customers on this lane<sup>426</sup> and therefore direct rail is not a feasible alternative.<sup>427</sup> On rebuttal, TPI restates the costs of CSXT's transloading alternative as [REDACTED]<sup>428</sup>. The price of CSXT's transloading alternative generates the lowest limit price. Thus, the lowest limit price R/VC ratio for this movement is [REDACTED] above CSXT's 284% RSAM figure. We therefore preliminarily conclude that the alternative with the lowest limit price does not exert competitive pressure sufficient to restrain CSXT's Chicago-Akron (polyethylene HD) rate effectively and conclude that this alternative has no intangible features sufficient to overcome this preliminary conclusion.

As demonstrated above, the lowest limit price R/VC ratio for each of the lanes governed by the Chicago-Akron rate exceeds CSXT's RSAM figure, and we therefore preliminarily conclude that none of the lowest limit price alternatives proposed for movements governed by the Chicago-Akron rate exert competitive pressure sufficient to restrain that rate effectively. Furthermore, none of the lowest limit price alternatives have intangible features sufficient to overcome this preliminary conclusion. As a result, we conclude that CSXT is market dominant with regard to the Chicago-Akron (polypropylene and polyethylene HD) rate.

#### *Memphis-Gallaway*

Two contested lanes are governed by the Memphis-Gallaway rate, the first of which is lane J-69. On opening, TPI proposes a direct truck alternative.<sup>429</sup> That alternative has a price of [REDACTED] and a limit price of [REDACTED]. TPI also proposes transloading through Memphis, Tenn. with TPI-stated costs of [REDACTED] and a limit price of [REDACTED]. CSXT proposes rail service to West Memphis and trucking to the customer.<sup>430</sup> CSXT's transloading alternative has a price of [REDACTED]. On rebuttal, TPI restates the costs of CSXT's alternative as [REDACTED]<sup>431</sup>. The price as stated by CSXT for its transloading alternative represents the lowest limit price. Thus, the lowest limit price R/VC ratio for this movement is [REDACTED] below CSXT's 284% RSAM figure. We therefore preliminarily conclude that the alternative with the lowest limit price exerts competitive pressure sufficient to restrain CSXT's Memphis-Gallaway (polypropylene) rate

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<sup>426</sup> Rebuttal Evidence II-B-5.

<sup>427</sup> See id. at II-B-345.

<sup>428</sup> Id.

<sup>429</sup> Opening Evidence II-B-105.

<sup>430</sup> Reply Evidence, Exhibit II-B-2.

<sup>431</sup> Rebuttal Evidence II-B-268.

effectively and conclude that this alternative has no intangible features sufficient to overcome this preliminary conclusion.

Lane J-100 is also governed by the Memphis-Galloway rate. On opening, TPI proposes a direct truck alternative.<sup>432</sup> That alternative has a price of [REDACTED] and a limit price of [REDACTED]. TPI also proposes transloading through Memphis with TPI-stated costs of [REDACTED] and a limit price of [REDACTED]. CSXT proposes rail service to West Memphis and trucking to the customer.<sup>433</sup> CSXT's transloading alternative has a price of [REDACTED]. On rebuttal, TPI restates the costs of CSXT's alternative as [REDACTED].<sup>434</sup> The price as stated by CSXT for its transloading alternative generates the lowest limit price. Thus, the lowest limit price R/VC ratio for this movement is [REDACTED] below CSXT's 284% RSAM figure. We therefore preliminarily conclude that the alternative with the lowest limit price exerts competitive pressure sufficient to restrain CSXT's Memphis-Galloway (polyethylene HD) rate effectively and conclude that this alternative has no intangible features sufficient to overcome this preliminary conclusion.

As demonstrated above, the lowest limit price R/VC ratio for each of the lanes governed by the Memphis-Galloway rate is below CSXT's RSAM figure, and we therefore preliminarily conclude that the lowest limit price alternatives proposed for movements governed by the Memphis-Galloway rate exert competitive pressure sufficient to restrain that rate effectively. Furthermore, none of the lowest limit price alternatives have intangible features sufficient to overcome this preliminary conclusion. As a result, we conclude that CSXT is not market dominant with regard to the Memphis-Galloway (polypropylene and polyethylene HD) rate.

#### *New Orleans-Chattanooga*

One contested lane, J-70, is governed by the New Orleans-Chattanooga rate. On opening, TPI does not propose any transportation alternatives.<sup>435</sup> CSXT proposes rail to Chattanooga and trucking to the customer,<sup>436</sup> which has a price of [REDACTED]. On rebuttal, TPI restates the costs of CSXT's transloading alternative as [REDACTED].<sup>437</sup> The price as stated by CSXT for its transloading alternative generates the lowest limit price. Thus, the lowest limit price R/VC ratio for this movement is [REDACTED] above CSXT's 284% RSAM figure. We therefore preliminarily conclude that the alternative with the lowest limit price does not exert

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<sup>432</sup> Opening Evidence II-B-129.

<sup>433</sup> Reply Evidence, Exhibit II-B-2.

<sup>434</sup> Rebuttal Evidence II-B-327.

<sup>435</sup> Opening Evidence II-B-106.

<sup>436</sup> Reply Evidence, Exhibit II-B-2.

<sup>437</sup> Rebuttal Evidence II-B-271.

competitive pressure sufficient to restrain CSXT's New Orleans-Chattanooga rate effectively, and conclude that this alternative has no intangible features sufficient to overcome this preliminary conclusion. As a result, we conclude that CSXT is market dominant with regard to the New Orleans-Chattanooga (polypropylene) rate.

#### *New Orleans-Eton*

One contested lane, J-71, is governed by the New Orleans-Eton rate. [REDACTED]

[REDACTED] As a result there are no transportation alternatives for this lane, and we conclude that CSXT is market dominant with regard to the New Orleans-Eton (polypropylene) rate.

#### *New Orleans-Tyner*

One contested lane, J-72, is governed by the New Orleans-Tyner rate. On opening, TPI proposes a direct truck alternative.<sup>439</sup> That alternative has a price of [REDACTED] and a limit price of [REDACTED]. TPI also proposes transloading through Chattanooga with TPI-stated costs of [REDACTED] and a limit price of [REDACTED]. CSXT proposes rail to Chattanooga and trucking to the customer,<sup>440</sup> which has a price of [REDACTED]. On rebuttal, TPI restates the costs of CSXT's transloading alternative as [REDACTED]. The price as stated by CSXT for its transloading alternative generates the lowest limit price. Thus, the lowest limit price R/VC ratio for this movement is [REDACTED] is above CSXT's 284% RSAM figure. We therefore preliminarily conclude that the alternative with the lowest limit price does not exert competitive pressure sufficient to restrain CSXT's New Orleans-Tyner rate effectively, and conclude that this alternative has no intangible features sufficient to overcome this preliminary conclusion. As a result, we conclude that CSXT is market dominant with regard to the New Orleans-Tyner (polypropylene) rate.

#### *Memphis-Jackson*

One contested lane, J-75, is governed by the Memphis-Jackson rate. On opening, TPI proposes a direct truck alternative.<sup>442</sup> That alternative has a price of [REDACTED] and a limit price of [REDACTED]. TPI also proposes transloading through Memphis with TPI-stated costs of [REDACTED] and a

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<sup>438</sup> See *supra* p. 46.

<sup>439</sup> Opening Evidence II-B-108.

<sup>440</sup> Reply Evidence, Exhibit II-B-2.

<sup>441</sup> Rebuttal Evidence II-B-277.

<sup>442</sup> Opening Evidence II-B-110.

limit price of [REDACTED] CSXT proposes rail to West Memphis and trucking to the customer,<sup>443</sup> which has a price of [REDACTED]. On rebuttal, TPI restates the costs of CSXT's transloading alternative as [REDACTED]. The price as stated by CSXT for its transloading alternative generates the lowest limit price. Thus, the lowest limit price R/VC ratio for this movement [REDACTED] is above CSXT's 284% RSAM figure. We therefore preliminarily conclude that the alternative with the lowest limit price does not exert competitive pressure sufficient to restrain CSXT's Memphis-Jackson rate effectively, and conclude that this alternative has no intangible features sufficient to overcome this preliminary conclusion. As a result, we conclude that CSXT is market dominant with regard to the Memphis-Jackson (polypropylene) rate.

#### *New Orleans-Helena*

One contested lane, J-78, is governed by the New Orleans-Helena rate. On opening, TPI proposes a direct truck alternative.<sup>445</sup> That alternative has a price of [REDACTED] and a limit price of [REDACTED]. TPI also proposes transloading through Doraville with TPI-stated costs of [REDACTED] and a limit price of [REDACTED]. CSXT proposes rail to Doraville and trucking to the customer,<sup>446</sup> which has a price of [REDACTED]. On rebuttal, TPI restates the costs of CSXT's transloading alternative as [REDACTED].<sup>447</sup> The price as stated by CSXT for its transloading alternative generates the lowest limit price. Thus, the lowest limit price R/VC ratio for this movement is [REDACTED] above CSXT's 284% RSAM figure. We therefore preliminarily conclude that the alternative with the lowest limit price does not exert competitive pressure sufficient to restrain CSXT's New Orleans-Helena rate effectively, and conclude that this alternative has no intangible features sufficient to overcome this preliminary conclusion. As a result, we conclude that CSXT is market dominant with regard to the New Orleans-Helena (polypropylene) rate.

#### *New Orleans-Newnan*

One contested lane, J-79, is governed by the New Orleans-Newnan rate. On opening, TPI proposes a direct truck alternative.<sup>448</sup> That alternative has a price of [REDACTED] and a limit price of [REDACTED]. TPI also proposes transloading through Doraville with TPI-stated costs of [REDACTED] and a limit price of [REDACTED]. CSXT proposes rail to Doraville and trucking to

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<sup>443</sup> Reply Evidence, Exhibit II-B-2.

<sup>444</sup> Rebuttal Evidence II-B-283.

<sup>445</sup> Opening Evidence II-B-113.

<sup>446</sup> Reply Evidence, Exhibit II-B-2.

<sup>447</sup> Rebuttal Evidence II-B-286.

<sup>448</sup> Opening Evidence II-B-114.

the customer,<sup>449</sup> which has a price of [REDACTED]. On rebuttal, TPI restates the costs of CSXT’s transloading alternative as [REDACTED].<sup>450</sup> The price as stated by CSXT for its transloading alternative generates the lowest limit price. Thus, the lowest limit price R/VC ratio for this movement is [REDACTED] above CSXT’s 284% RSAM figure. We therefore preliminarily conclude that the alternative with the lowest limit price does not exert competitive pressure sufficient to restrain CSXT’s New Orleans-Newnan rate effectively, and conclude that this alternative has no intangible features sufficient to overcome this preliminary conclusion. As a result, we conclude that CSXT is market dominant with regard to the New Orleans-Newnan (polypropylene) rate.<sup>451</sup>

*New Orleans-Green Spring*

One contested lane, J-80, is governed by the New Orleans-Green Spring rate. On opening, TPI proposes a direct truck alternative.<sup>452</sup> That alternative has a price of [REDACTED] and a limit price of [REDACTED]. TPI also proposes transloading through Euclid with TPI-stated costs of [REDACTED] and a limit price of [REDACTED]. CSXT proposes rail to Crafton/Pittsburgh and trucking to the customer,<sup>453</sup> which has a price of [REDACTED]. On rebuttal, TPI restates the costs of CSXT’s transloading alternative as [REDACTED].<sup>454</sup> The price of TPI’s transloading alternative generates the lowest limit price. Thus, the lowest limit price R/VC ratio for this movement is [REDACTED] below CSXT’s 284% RSAM figure. We therefore preliminarily conclude that the alternative with the lowest limit price does exert competitive pressure sufficient to restrain CSXT’s New Orleans-Green Spring rate effectively, and conclude that this alternative has no intangible features sufficient to overcome this preliminary conclusion. Transloading of polypropylene does not, in general, have intangible disadvantages sufficient to overcome our preliminary conclusion, and no particular characteristics of this lane change our preliminary

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<sup>449</sup> Reply Evidence, Exhibit II-B-2.

<sup>450</sup> Rebuttal Evidence II-B-289.

<sup>451</sup> [REDACTED]

<sup>452</sup> Opening Evidence II-B-115.

<sup>453</sup> Reply Evidence, Exhibit II-B-2.

<sup>454</sup> Rebuttal Evidence II-B-292.

conclusion. As a result, we conclude that CSXT is not market dominant with regard to the New Orleans-Green Spring (polypropylene) rate.<sup>455</sup>

### *Chicago-Indianapolis*

Two contested lanes are governed by the Chicago-Indianapolis rate, the first of which is lane J-81. On opening, TPI proposes a direct truck alternative.<sup>456</sup> That alternative has a price of [REDACTED] and a limit price of [REDACTED]. TPI also proposes transloading through Louisville with TPI-stated costs of [REDACTED] and a limit price of [REDACTED]. CSXT proposes rail service via BNSF to interchange with CN in Chicago, switch to East Morris, and trucking to the customer.<sup>457</sup> CSXT's transloading alternative has a price of [REDACTED]. On rebuttal, TPI restates the costs of CSXT's transloading alternative as [REDACTED].<sup>458</sup> The price as stated by CSXT for its transloading alternative represents the lowest limit price. Thus, the lowest limit price R/VC ratio for this movement is [REDACTED] above CSXT's 284% RSAM figure. We therefore preliminarily conclude that the alternative with the lowest limit price does not exert competitive pressure sufficient to restrain CSXT's Chicago-Indianapolis (polystyrene) rate effectively and conclude that this alternative has no intangible features sufficient to overcome this preliminary conclusion.

Lane J-115 is also governed by the Chicago-Indianapolis rate. On opening, TPI proposes a direct truck alternative.<sup>459</sup> That alternative has a price of [REDACTED] and a limit price of [REDACTED]. TPI also proposes transloading through East Morris with TPI-stated costs of [REDACTED] and a limit price of [REDACTED]. CSXT proposes rail service via BNSF to interchange with CN in Chicago, switch to East Morris, and trucking to the customer.<sup>460</sup> CSXT's transloading alternative has a price of [REDACTED]. On rebuttal, TPI restates the costs of CSXT's transloading

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<sup>455</sup> [REDACTED]

<sup>456</sup> Opening Evidence II-B-116.

<sup>457</sup> Reply Evidence, Exhibit II-B-2.

<sup>458</sup> Rebuttal Evidence II-B-295.

<sup>459</sup> Opening Evidence II-B-142.

<sup>460</sup> Reply Evidence, Exhibit II-B-2.

alternative as [REDACTED]<sup>461</sup> The price as stated by CSXT for its transloading alternative generates the lowest limit price. Thus, the lowest limit price R/VC ratio for this movement is [REDACTED] above CSXT's 284% RSAM figure. We therefore preliminarily conclude that the alternative with the lowest limit price does not exert competitive pressure sufficient to restrain CSXT's Chicago-Indianapolis (polypropylene) rate effectively and conclude that this alternative has no intangible features sufficient to overcome this preliminary conclusion.<sup>462</sup>

As demonstrated above, the lowest limit price R/VC ratio for each of the lanes governed by the Chicago-Indianapolis rate exceeds CSXT's RSAM figure, and we therefore preliminarily conclude that none of the lowest limit price alternatives proposed for movements governed by the Chicago-Indianapolis rate exert competitive pressure sufficient to restrain that rate effectively. Furthermore, none of the lowest limit price alternatives have intangible features sufficient to overcome this preliminary conclusion. As a result, we conclude that CSXT is market dominant with regard to the Chicago-Indianapolis (polystyrene and polypropylene) rate.

#### *Chicago-Livonia*

One contested lane, J-82, is governed by the Chicago-Livonia rate. [REDACTED]

[REDACTED] As a result there are no transportation alternatives for this lane, and we conclude that CSXT is market dominant with regard to the Chicago-Livonia (polyethylene HD) rate.

#### *Chicago-Wapakoneta*

One contested lane, J-84, is governed by the Chicago-Wapakoneta rate. On opening, TPI proposes a direct truck alternative.<sup>464</sup> That alternative has a price of [REDACTED] and a limit price of [REDACTED]. TPI also proposes transloading through Euclid with TPI-stated costs of [REDACTED] and a limit price of [REDACTED]. CSXT proposes rail service via BNSF to Chicago and a switch to IHB for service to Hammond, and trucking to the customer,<sup>465</sup> which has a price of [REDACTED]. On rebuttal,

<sup>461</sup> Rebuttal Evidence II-B-368.

<sup>462</sup> [REDACTED]

<sup>463</sup> See supra p. 46.

<sup>464</sup> Opening Evidence II-B-119.

<sup>465</sup> Reply Evidence, Exhibit II-B-2.

TPI restates the costs of CSXT's transloading alternative as [REDACTED]<sup>466</sup>. The price as stated by CSXT for its transloading alternative generates the lowest limit price. Thus, the lowest limit price R/VC ratio for this movement is [REDACTED] above CSXT's 284% RSAM figure. We therefore preliminarily conclude that the alternative with the lowest limit price does not exert competitive pressure sufficient to restrain CSXT's Chicago-Wapakoneta rate effectively, and conclude that this alternative has no intangible features sufficient to overcome this preliminary conclusion. As a result, we conclude that CSXT is market dominant with regard to the Chicago-Wapakoneta (polypropylene) rate.

#### *New Orleans-Thomson*

One contested lane, J-86, is governed by the New Orleans-Thomson rate. On opening, TPI proposes a direct truck alternative.<sup>467</sup> That alternative has a price of [REDACTED] and a limit price of [REDACTED]. TPI also proposes transloading through Doraville with TPI-stated costs of [REDACTED] and a limit price of [REDACTED]. CSXT proposes rail to Augusta and trucking to the customer,<sup>468</sup> which has a price of [REDACTED]. On rebuttal, TPI restates the costs of CSXT's transloading alternative as [REDACTED]. The price of TPI's transloading alternative generates the lowest limit price. Thus, the lowest limit price R/VC ratio for this movement is [REDACTED] above CSXT's 284% RSAM figure. We therefore preliminarily conclude that the alternative with the lowest limit price does not exert competitive pressure sufficient to restrain CSXT's New Orleans-Thomson rate effectively, and conclude that this alternative has no intangible features sufficient to overcome this preliminary conclusion. As a result, we conclude that CSXT is market dominant with regard to the New Orleans-Thomson (polyethylene HD) rate.

#### *Memphis-Horse Cave*

One contested lane, J-89, is governed by the Memphis-Horse Cave rate. On opening, TPI proposes a direct truck alternative.<sup>470</sup> That alternative has a price of [REDACTED] and a limit price of [REDACTED]. TPI also proposes transloading through Louisville with TPI-stated costs of [REDACTED] and a limit price of [REDACTED]. CSXT proposes rail to Chattanooga and trucking to the customer,<sup>471</sup> which has a price of [REDACTED]. On rebuttal, TPI restates the costs of CSXT's transloading

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<sup>466</sup> Rebuttal Evidence II-B-300.

<sup>467</sup> Opening Evidence II-B-120.

<sup>468</sup> Reply Evidence, Exhibit II-B-2.

<sup>469</sup> Rebuttal Evidence II-B-303.

<sup>470</sup> Opening Evidence II-B-122.

<sup>471</sup> Reply Evidence, Exhibit II-B-2.

alternative as [REDACTED]<sup>472</sup> The price of TPI's transloading alternative generates the lowest limit price. Thus, the lowest limit price R/VC ratio for this movement is [REDACTED] above CSXT's 284% RSAM figure. We therefore preliminarily conclude that the alternative with the lowest limit price does not exert competitive pressure sufficient to restrain CSXT's Memphis-Horse Cave rate effectively, and conclude that this alternative has no intangible features sufficient to overcome this preliminary conclusion. As a result, we conclude that CSXT is market dominant with regard to the Memphis-Horse Cave (polystyrene) rate.

#### *New Orleans-Matthews*

One contested lane, J-91, is governed by the New Orleans-Matthews rate. On opening, TPI proposes a direct truck alternative.<sup>473</sup> That alternative has a price of [REDACTED] and a limit price of [REDACTED]. TPI also proposes transloading through Charlotte with TPI-stated costs of [REDACTED] and a limit price of [REDACTED]. CSXT proposes rail to Augusta and trucking to the customer,<sup>474</sup> which has a price of [REDACTED]. On rebuttal, TPI restates the costs of CSXT's transloading alternative as [REDACTED]. The price of TPI's opening transloading alternative generates the lowest limit price. Thus, the lowest limit price R/VC ratio for this movement is [REDACTED] below CSXT's 284% RSAM figure. We therefore preliminarily conclude that the alternative with the lowest limit price does exert competitive pressure sufficient to restrain CSXT's New Orleans-Matthews rate effectively, and conclude that this alternative has no intangible features sufficient to overcome this preliminary conclusion. Transloading of polyethylene HD does not, in general, have intangible disadvantages sufficient to overcome our preliminary conclusion, and no particular characteristics of this lane change our preliminary conclusion. As a result, we conclude that CSXT is not market dominant with regard to the New Orleans-Matthews (polyethylene HD) rate.

#### *Chicago-North Vernon*

One contested lane, J-93, is governed by the Chicago-North Vernon rate. On opening, TPI proposes a direct truck alternative.<sup>476</sup> That alternative has a price of [REDACTED] and a limit price of [REDACTED]. TPI also proposes transloading through Louisville with TPI-stated costs of [REDACTED] and a limit price of [REDACTED]. CSXT proposes rail from East St. Louis to

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<sup>472</sup> Rebuttal Evidence II-B-305.

<sup>473</sup> Opening Evidence II-B-123.

<sup>474</sup> Reply Evidence, Exhibit II-B-2.

<sup>475</sup> Rebuttal Evidence II-B-308.

<sup>476</sup> Opening Evidence II-B-124.

Louisville and trucking to the customer,<sup>477</sup> which has a price of [REDACTED]. On rebuttal, TPI restates the costs of CSXT's transloading alternative as [REDACTED].<sup>478</sup> The price as stated by CSXT for its transloading alternative generates the lowest limit price. Thus, the lowest limit price R/VC ratio for this movement is [REDACTED] above CSXT's 284% RSAM figure. We therefore preliminarily conclude that the alternative with the lowest limit price does not exert competitive pressure sufficient to restrain CSXT's Chicago-North Vernon rate effectively, and conclude that this alternative has no intangible features sufficient to overcome this preliminary conclusion. As a result, we conclude that CSXT is market dominant with regard to the Chicago-North Vernon (polyethylene HD) rate.<sup>479</sup>

#### *New Orleans-Pendergrass*

One contested lane, J-94, is governed by the New Orleans-Pendergrass rate. On opening, TPI proposes a direct truck alternative.<sup>480</sup> That alternative has a price of [REDACTED] and a limit price of [REDACTED]. TPI also proposes transloading through Doraville with TPI-stated costs of [REDACTED] and a limit price of [REDACTED]. CSXT proposes rail to Doraville and trucking to the customer,<sup>481</sup> which has a price of [REDACTED]. On rebuttal, TPI restates the costs of CSXT's transloading alternative as [REDACTED]. The price as stated by CSXT for its transloading alternative generates the lowest limit price. Thus, the lowest limit price R/VC ratio for this movement is [REDACTED] below CSXT's 284% RSAM figure. We therefore preliminarily conclude that the alternative with the lowest limit price does exert competitive pressure sufficient to restrain CSXT's New Orleans-Pendergrass rate effectively, and conclude that this alternative has no intangible features sufficient to overcome this preliminary conclusion. Transloading of polypropylene does not, in general, have intangible disadvantages sufficient to overcome our preliminary conclusion, and no particular characteristics of this lane change our preliminary conclusion. As a result, we conclude that CSXT is not market dominant with regard to the New Orleans-Pendergrass (polypropylene) rate.

#### *Chicago-Francesville*

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<sup>477</sup> Reply Evidence, Exhibit II-B-2.

<sup>478</sup> Rebuttal Evidence II-B-310.

<sup>479</sup> [REDACTED]

<sup>480</sup> Opening Evidence II-B-125.

<sup>481</sup> Reply Evidence, Exhibit II-B-2.

<sup>482</sup> Rebuttal Evidence II-B-314.

One contested lane, J-96, is governed by the Chicago-Francesville rate. On opening, TPI proposes a direct truck alternative.<sup>483</sup> That alternative has a price of [REDACTED] and a limit price of [REDACTED]. TPI also proposes transloading through East Morris with TPI-stated costs of [REDACTED] to [REDACTED] and a limit price of [REDACTED]. CSXT proposes rail to Hammond and trucking to the customer,<sup>484</sup> which has a price of [REDACTED]. On rebuttal, TPI restates the costs of CSXT's transloading alternative as [REDACTED]. The price as stated by CSXT for its transloading alternative generates the lowest limit price. Thus, the lowest limit price R/VC ratio for this movement is [REDACTED] above CSXT's 284% RSAM figure. We therefore preliminarily conclude that the alternative with the lowest limit price does not exert competitive pressure sufficient to restrain CSXT's Chicago-Francesville rate effectively, and conclude that this alternative has no intangible features sufficient to overcome this preliminary conclusion. As a result, we conclude that CSXT is market dominant with regard to the Chicago-Francesville (polyethylene HD) rate.

#### *New Orleans-Jefferson*

Two contested lanes are governed by the New Orleans-Jefferson rate, the first of which is lane J-97. On opening, TPI proposes no alternatives.<sup>486</sup> CSXT proposes rail to Doraville and trucking to the customer,<sup>487</sup> which has a price of [REDACTED]. On rebuttal, TPI restates the costs of CSXT's transloading alternative as [REDACTED].<sup>488</sup> The price as stated by CSXT for its transloading alternative generates the lowest limit price. Thus, the lowest limit price R/VC ratio for this movement is [REDACTED] above CSXT's 284% RSAM figure. We therefore preliminarily conclude that the alternative with the lowest limit price does not exert competitive pressure sufficient to restrain CSXT's New Orleans-Jefferson (polystyrene) rate effectively, and conclude that this alternative has no intangible features sufficient to overcome this preliminary conclusion.

The second lane governed by the New Orleans-Jefferson rate is lane J-98. On opening, TPI proposes no alternatives.<sup>489</sup> CSXT proposes rail to Doraville and trucking to the

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<sup>483</sup> Opening Evidence II-B-126.

<sup>484</sup> Reply Evidence, Exhibit II-B-2.

<sup>485</sup> Rebuttal Evidence II-B-317.

<sup>486</sup> Opening Evidence II-B-127.

<sup>487</sup> Reply Evidence, Exhibit II-B-2.

<sup>488</sup> Rebuttal Evidence II-B-320.

<sup>489</sup> Opening Evidence II-B-128.

customer,<sup>490</sup> which has a price of [REDACTED]. On rebuttal, TPI restates the costs of CSXT's transloading alternative as [REDACTED]. The price as stated by CSXT for its transloading alternative generates the lowest limit price. Thus, the lowest limit price R/VC ratio for this movement is [REDACTED] above CSXT's 284% RSAM figure. We therefore preliminarily conclude that the alternative with the lowest limit price does not exert competitive pressure sufficient to restrain CSXT's New Orleans-Jefferson (polypropylene) rate effectively, and conclude that this alternative has no intangible features sufficient to overcome this preliminary conclusion.

As demonstrated above, the lowest limit price R/VC ratio for each of the lanes governed by the New Orleans-Jefferson rate exceeds CSXT's RSAM figure, and we therefore preliminarily conclude that none of the lowest price alternatives proposed for movements governed by the New Orleans-Jefferson rate exert competitive pressure sufficient to restrain that rate effectively. Furthermore, none of the lowest price alternatives have intangible features sufficient to overcome our preliminary conclusion. As a result, we conclude that CSXT is market dominant with regard to the New Orleans-Jefferson (polystyrene and polypropylene) rate.

#### *Memphis-Glasgow*

One contested lane, J-101, is governed by the Memphis-Glasgow rate. On opening, TPI proposes a direct truck alternative.<sup>492</sup> That alternative has a price of [REDACTED] and a limit price of [REDACTED]. TPI also proposes transloading through Louisville with TPI-stated costs of [REDACTED] and a limit price of [REDACTED]. CSXT proposes rail to West Memphis and trucking to the customer,<sup>493</sup> which has a price of [REDACTED]. On rebuttal, TPI restates the costs of CSXT's transloading alternative as [REDACTED]. The price of TPI's opening transloading alternative generates the lowest limit price. Thus, the lowest limit price R/VC ratio for this movement is [REDACTED] above CSXT's 284% RSAM figure. We therefore preliminarily conclude that the alternative with the lowest limit price does not exert competitive pressure sufficient to restrain CSXT's Memphis-Glasgow rate effectively, and conclude that this alternative has no intangible features sufficient to overcome this preliminary conclusion. As a result, we conclude that CSXT is market dominant with regard to the Memphis-Glasgow (polypropylene) rate.

#### *Chicago-Lima*

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<sup>490</sup> Reply Evidence, Exhibit II-B-2.

<sup>491</sup> Rebuttal Evidence II-B-324.

<sup>492</sup> Opening Evidence II-B-130.

<sup>493</sup> Reply Evidence, Exhibit II-B-2.

<sup>494</sup> Rebuttal Evidence II-B-330.

Two contested lanes are governed by the Chicago-Lima rate, the first of which is lane J-109. On opening, TPI proposes no alternatives.<sup>495</sup> CSXT proposes rail service via BNSF to Chicago, switch to IHB for service to Hammond, and trucking to the customer,<sup>496</sup> which has a price of [REDACTED]. On rebuttal, TPI restates the costs of CSXT's transloading alternative as [REDACTED]. CSXT also proposes direct rail service,<sup>498</sup> but, as discussed above, TPI has limited its request for rate relief to the captive customers on this lane<sup>499</sup> and therefore direct rail is not a feasible alternative.<sup>500</sup> The price as stated by CSXT for its transloading alternative generates the lowest limit price. Thus, the lowest limit price R/VC ratio for this movement is [REDACTED] above CSXT's 284% RSAM figure. We therefore preliminarily conclude that the alternative with the lowest limit price does not exert competitive pressure sufficient to restrain CSXT's Chicago-Lima (polyethylene HD) rate effectively, and conclude that this alternative has no intangible features sufficient to overcome this preliminary conclusion.

The second lane governed by the Chicago-Lima rate is lane J-110. On opening, TPI proposes no alternatives.<sup>501</sup> CSXT proposes rail service via BNSF to Chicago, switch to IHB for service to Hammond, and trucking to the customer,<sup>502</sup> which has a price of [REDACTED]. On rebuttal, TPI restates the costs of CSXT's transloading alternative as [REDACTED].<sup>503</sup> CSXT also proposes direct rail service,<sup>504</sup> but, as discussed above, TPI has limited its request for rate relief to the captive customers on this lane<sup>505</sup> and therefore direct rail is not a feasible alternative.<sup>506</sup> The price as stated by CSXT for its transloading alternative generates the lowest limit price. Thus, the lowest limit price R/VC ratio for this movement is [REDACTED] above CSXT's 284% RSAM figure. We therefore preliminarily conclude that the alternative with the

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<sup>495</sup> Opening Evidence II-B-137.

<sup>496</sup> Reply Evidence, Exhibit II-B-2.

<sup>497</sup> Rebuttal Evidence II-B-349.

<sup>498</sup> Reply Evidence, Exhibit II-B-2.

<sup>499</sup> Rebuttal Evidence II-B-5.

<sup>500</sup> See supra pp. 52-53.

<sup>501</sup> Opening Evidence II-B-138.

<sup>502</sup> Reply Evidence, Exhibit II-B-2.

<sup>503</sup> Rebuttal Evidence II-B-353.

<sup>504</sup> Reply Evidence, Exhibit II-B-2.

<sup>505</sup> Rebuttal Evidence II-B-5.

<sup>506</sup> See supra pp. 52-53.

lowest limit price does not exert competitive pressure sufficient to restrain CSXT's Chicago-Lima (polypropylene) rate effectively, and conclude that this alternative has no intangible features sufficient to overcome this preliminary conclusion.

As demonstrated above, the lowest limit price R/VC ratio for each of the lanes governed by the Chicago-Lima rate exceeds CSXT's RSAM figure, and we therefore preliminarily conclude that none of the lowest price alternatives proposed for movements governed by the Chicago-Lima rate exert competitive pressure sufficient to restrain that rate effectively. Furthermore, none of the lowest price alternatives have intangible features sufficient to overcome our preliminary conclusion. As a result, we conclude that CSXT is market dominant with regard to the Chicago-Lima (polyethylene HD and polypropylene) rate.

#### *Chicago-Pittsfield*

One contested lane, J-111, is governed by the Chicago-Pittsfield rate. [REDACTED]

[REDACTED] As a result there are no transportation alternatives for this lane, and we conclude that CSXT is market dominant with regard to the Chicago-Pittsfield (polypropylene) rate.

#### *New Orleans-Dalton*

One contested lane, J-112, is governed by the New Orleans-Dalton rate. On opening, TPI proposes no alternatives.<sup>507</sup> CSXT proposes rail to Dalton and trucking to the customer,<sup>509</sup> which has a price of [REDACTED]. On rebuttal, TPI restates the costs of CSXT's transloading alternative as [REDACTED]. The price as stated by CSXT for its transloading alternative generates the lowest limit price. Thus, the lowest limit price R/VC ratio for this movement is [REDACTED] below CSXT's 284% RSAM figure. We therefore preliminarily conclude that the alternative with the lowest limit price does exert competitive pressure sufficient to restrain CSXT's New Orleans-Dalton rate effectively. While the customers on this lane have selected a bulk terminal as their destination [REDACTED]

[REDACTED] and we conclude that this alternative has no intangible features sufficient to overcome this preliminary conclusion.

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<sup>507</sup> See *supra* p. 46.

<sup>508</sup> Opening Evidence II-B-140.

<sup>509</sup> Reply Evidence, Exhibit II-B-2.

<sup>510</sup> Rebuttal Evidence II-B-360.

As a result, we conclude that CSXT is not market dominant with regard to the New Orleans-Dalton (polypropylene) rate.<sup>511</sup>

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