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SERVICE DATE – APRIL 6, 2016

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. NOR 42142

CONSUMERS ENERGY COMPANY

v.

CSX TRANSPORTATION, INC.

Decided: April 6, 2016

On January 13, 2015, Consumers Energy Company (Consumers) filed a complaint challenging the reasonableness of rates established by CSX Transportation, Inc. (CSXT) for unit train coal transportation service in shipper-supplied rail cars to Consumers' generating station near West Olive, Mich., from CSXT's established railroad interchange with BNSF Railway Company in the vicinity of Chicago, Ill. Consumers alleges that CSXT possesses market dominance over the traffic and that CSXT's rates are unreasonable under both the stand-alone cost constraint and the revenue adequacy constraint. CSXT filed its answer to the complaint on February 2, 2015.

On June 23, 2015, Board staff held a conference with the parties' attorneys and consultants to discuss procedures for formatting evidence to be submitted for the market dominance inquiry and the stand-alone cost claim in this case. In a decision served on July 15, 2015 (July 2015 Decision), the Board adopted 13 general procedures as well as various specific procedures for formatting the evidence.

Pursuant to the current procedural schedule, CSXT filed its reply evidence on March 7, 2016. On March 14, 2016, Consumers filed a petition for technical conference, alleging that CSXT's reply failed to comply with the July 2015 Decision. In its petition, Consumers identifies 164 alleged instances of CSXT's failure to comply with seven of the 13 general procedures set forth in the July 2015 Decision. Consumers states that it would not object if the Board were to strike CSXT's reply or require CSXT to re-file it in a format that conforms to the July 2015 Decision. Should the Board not pursue either of those alternatives, however, Consumers argues that a technical conference is needed so that Board staff can advise Consumers as to how its rebuttal evidence should be organized.

CSXT filed a response to Consumers' petition on March 21, 2016. In its response, CSXT denies Consumers' allegations, arguing that Consumers' petition is based on an unreasonable reading of the July 2015 Decision. CSXT asserts that its evidence and workpapers were carefully crafted with that decision in mind. CSXT addresses each of the 164 items, and in detailing its compliance with the July 2015 Decision, provides additional information for many of the items that was not presented in its reply evidence.

The Board has reviewed each of the alleged violations and finds that most do not constitute actual violations of the July 2015 Decision. The general procedures set forth in the July 2015 Decision were intended to promote the Board’s efficient processing of this case, not to divert resources from consideration of the merits. CSXT notes in its reply that Consumers did not confer with CSXT prior to its filing the present motion. The Board strongly encourages parties to meet and confer on issues such as this prior to petitioning the Board for relief.

Based upon the Board’s review of the petition and CSXT’s reply, however, CSXT has violated the July 2015 Decision in some instances, though it has also sufficiently remedied most of those violations in its response. The violations that CSXT remedied in its response, as well as those that CSXT must clarify or supplement with additional information, are identified below. This decision also provides clarification to the parties on several of the general procedures in the July 2015 Decision.

General Procedure 1 (GP1): “Documents and evidence referenced in the narrative must be specifically cited and included in the workpapers.”

Many of CSXT’s alleged violations of GP1 stem from CSXT’s citation of tables, or alleged lack thereof. CSXT notes in its response, however, that, in these instances, the citation is typically discussed in the narrative discussion preceding the table. GP1 does not impose a drafting requirement that citations must be in specific locations. It is reasonable to include the relevant citation in the narrative preceding a table or other document or evidence referenced in the narrative. This type of citation is not a violation of GP1. However, the Board clarifies that, in order to meet the specificity standard of GP1, parties should refer to cell ranges or page numbers unless the relevant data is clear on the face of the spreadsheet or document. Citations should be specific enough that neither the opposing party nor the Board has to search for the referenced material. CSXT has not done so in every instance.

The following list identifies the items raised by Consumers that the Board finds to be violations of GP1, many of which CSXT sufficiently clarified in its response to Consumers’ petition. The Board will direct CSXT to remedy violations of GP1 that were not already remedied in CSXT’s response by April 11, 2016:

Item No.	Remedy
53	Remedied in CSXT’s response.
54	Remedied in CSXT’s response.
55	Remedied in CSXT’s response.
57	CSXT’s narrative states “CSXT identified 77 foreign line crossing delays of greater than 15 minutes’ duration that occurred during the peak period

	modeled in CSXT’s RTC simulation,” but in the workpaper locations cited in the reply to Consumers’ petition, there are 78 foreign line crossing delays. Provide the correct number.
58	Remedied in CSXT’s response.
59	Provide the calculations underlying Figure III-C-9 from the workpaper cited—“Received Locomotive Consists.xlsx”.
62	Remedied in CSXT’s response.
118	Remedied in CSXT’s response.
151	Remedied in CSXT’s response.
152	Remedied in CSXT’s response.

General Procedure 2 (GP2): “All data and claims in the narrative should have citations to the relevant spreadsheet or document. These citations should be as specific as possible (e.g., to the relevant cell or page number in which the data or claim is found).”

The Board clarifies that, to comply with GP2, parties need not cite to a specific cell range or page number when referencing an entire spreadsheet or document (provided a reference to the entire spreadsheet or document is the most specific citation possible), or where the relevant data is clear on the face of the spreadsheet or document. Additionally, as explained in GP1 above, it is acceptable to cite the source of a table or similarly presented evidence in the surrounding narrative.

The following list identifies the items raised by Consumers that the Board finds to be violations of GP2, many of which CSXT sufficiently clarified in its response to Consumers’ petition. The Board directs CSXT to remedy violations of GP2 that were not already remedied in CSXT’s response by April 11, 2016:

Item No.	Remedy
1	Remedied in CSXT’s response.
2	Remedied in CSXT’s response.
8	Provide an explanation as to how the 3% difference in transit times is calculated in the cited workpaper “5.1 TransitTimes Comparison Histv.RTC.xlsx”.
10	Provide an explanation as to how the 3% difference in transit times is calculated in the cited workpaper “5.1 TransitTimes Comparison Histv.RTC.xlsx”.
25	Remedied in CSXT’s response.
67	Remedied in CSXT’s response.
68	Remedied in CSXT’s response.

69	Clearly identify the examples of bad-ordered carloads from the rows highlighted in CSXT's response.
70	Remedied in CSXT's response.
72	Provide the calculation underlying this item. Neither of the two cells cited in CSXT's response corresponds to the number referenced in the narrative.
74	Remedied in CSXT's response.
120	Remedied in CSXT's response.
122	Remedied in CSXT's response.
123	Remedied in CSXT's response.
124	Remedied in CSXT's response.
125	Remedied in CSXT's response.
126	Provide the underlying calculations for Table III-D-24 from the workpaper "Inventories for MOW Reply.xlsx". CSXT has not explained how the table is derived.
127	Provide the underlying calculations for Table III-D-26 from the workpaper "Inventories for MOW Reply.xlsx". CSXT has not explained how the table is derived.
128	Provide the underlying calculations for Table III-D-27 from the workpaper "Inventories for MOW Reply.xlsx". CSXT has not explained how the table is derived.
134	Provide the workpaper(s) that include the chart and underlying calculations. The workpapers cited by CSXT do not explain how the figures used in the table are derived.
147	Remedied in CSXT's response.
153	Remedied in CSXT's response.
154	Remedied in CSXT's response.
158	Remedied in CSXT's response.
159	Remedied in CSXT's response.

General Procedure 3 (GP3): "The opening filing establishes the structure of the narrative for the entire case. Each subsequent filing can build upon the structure of the previous filing, but, to the extent possible, should remain consistent with the opening structure. Parties may insert sections if necessary, but should not remove sections."

Consumers alleges 59 violations of GP3, the majority of which are instances where CSXT deleted subsections of the narrative as set forth in Consumers' opening because CSXT either accepted Consumers' opening evidence and/or addressed the issue in a previous section/subsection. None of Consumers' allegations with respect to GP3 rise to the level of a violation of the July 15 Decision. GP3 was not intended to require parties to replicate each and

every subsection in a previous round of evidence where, as in many instances here, the party making the subsequent filing explicitly accepts the evidence previously presented, or clearly addresses the evidence in a summary way. To clarify, no section should be removed without explanation. Pursuant to GP3, the structure of CSXT's reply is consistent with that of Consumers' opening.

General Procedure 4 (GP4): "Each round of evidence should be able to stand on its own, and not merely reference evidence from prior rounds of evidence."

Consumers alleges seven violations of GP4, claiming that CSXT's reply discarded Consumers' subfolder structure from opening, included only a subset of opening files, and created new subfolders not consistent with the opening. To clarify, GP4 does not require parties to maintain the file folder structure of previous rounds of evidence, or include files from previous rounds of evidence upon which parties do not rely. Accordingly, none of these seven instances rises to the level of a violation of GP4.

As described above, although the Board finds that portions of the reply evidence do not strictly comply with the July 2015 Decision, none of the violations merit striking CSXT's reply as a whole, requiring CSXT to refile its reply, or bringing the parties in for a technical conference. Therefore, the Board denies Consumers' petition for technical conference.

It is ordered:

1. Consumers' petition for technical conference is denied.
2. CSXT is directed to provide the additional information described above by April 11, 2016.
3. This decision is effective on its date of service.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.