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August 29, 2016
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August 29, 2016

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423

Re: EP 733, *Expediting Rate Cases*

Dear Ms. Brown:

Pursuant to the Advance Notice of Proposed Rulemaking served in the above docketed proceeding on June 15, 2016, the Association of American Railroads respectfully submits the attached reply comments.

Sincerely,

Timothy J. Strafford
Counsel for the Association
of American Railroads

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Ex Parte No. 733

EXPEDITING RATE CASES

REPLY COMMENTS OF THE
ASSOCIATION OF AMERICAN RAILROADS

Pursuant to the Advance Notice of Proposed Rulemaking (“ANPRM”) issued in this proceeding by the Surface Transportation Board (“STB” or “Board”) on June 15, 2016, the Association of American Railroads (“AAR”) submits these reply comments. The AAR’s reply comments are supported by the attached verified statement of Benton V. Fisher, Senior Managing Director of FTI Consulting (“Fisher V.S.”).

In its opening comments, the AAR expressed support for the Board’s efforts to eliminate unnecessary delay in stand-alone cost (“SAC”) cases. Because private sector solutions avoid the time and expense of litigation altogether, the AAR supported aspects of the ANPRM that would facilitate non-binding mediation and settlement, like a 60-day pre-filing period for complaints. The AAR’s opening comments also expressed support for certain proposed procedural reforms, like the increased use of technical conferences and timely disposition of motions to dismiss that could expedite SAC litigation before the Board. In contrast, the AAR strongly opposed any proposal for the Board to collect and store railroad data for use in potential rate cases because such an approach would be

unworkable for the Board and unduly burdensome on railroads. Finally, the AAR suggested that reforming the qualitative market dominance inquiry by abandoning the limit price rule would simplify the market dominance determination and help expedite SAC cases.

The AAR submits the following reply comments in response to comments filed by groups that advocate on behalf of some rail customers, specifically, the Rail Customer Coalition (“RCC”), the American Chemistry Council, Dow Chemical Company, and M&G Polymers USA, LLC (“Joint Carload Shippers”), and the Western Coal Traffic League, American Public Power Association, Edison Electric Institute, National Association of Regulatory Utility Commissioners, National Rural Electric Cooperative Association, and Freight Rail Customer Alliance (“Coal Shippers”).

Despite the various interests of railroads and shipper groups that filed comments in this proceeding, there are areas of consensus among stakeholders that illustrate that the most promising opportunities for the Board to improve its SAC cost procedures by proceeding with proposals that implement some incremental procedural improvements. In the reply comments that follow, the AAR highlights such areas that the Board should pursue in a Notice of Proposed Rulemaking (“NPRM”). However, the AAR strongly opposes suggestions made in the opening comments that the Board should propose requirements that would impose unreasonable record keeping, discovery or reporting requirements on railroads in the guise of expediting rate cases.

Comments

I. The Board Should Focus on Areas of Agreement Among Stakeholders and Propose Incremental Process Changes to Expedite SAC Litigation

The Board issued the ANPRM pursuant to the direction of Section 11(c) of the Surface Transportation Board Reauthorization Act of 2015¹ to “initiate a proceeding to assess procedures that are available to parties in litigation before courts to expedite such litigation and the potential application of any such procedures to rate cases.” As such, the Board’s focus in this proceeding should be on process changes that can expedite litigation and avoid unnecessary delay. *See* Coal Shippers Opening Comments at 53 (“The focus of this proceeding should be what Congress directed the STB to study – procedural rules.”). To the extent shipper groups’ opening comments ask the Board to pursue alternative rate reasonableness methodologies, they should be rejected as beyond the scope of this proceeding. *See, e.g.*, Joint Carload Shippers Opening Comments at 3-4; RCC Opening Comments at 1-2. The Board should not proceed to propose rules in this proceeding that make substantive changes to the SAC test or take any action that would undermine the economic underpinnings of its rate reasonableness methodology.

Not only are substantive changes to the SAC test beyond the scope of this proceeding, such changes would actually be counter-productive toward the Board’s stated goal of reducing the time and expense associated with SAC cases. As the Coal Shippers correctly point out, substantive changes to the SAC test have led to litigation and delay, at least in the short term. *See* Coal Shippers Opening Comments at 55-57. In the last ten

¹ P.L. 114-110 (2015).

years, the Board has undertaken multiple rate case related rulemakings and has made significant changes to both SAC and market dominance methodologies in individual cases. *See, e.g., Major Issues in Rail Rate Cases*, EP 657 (Sub-No. 1) (STB served Oct. 30, 2006); *Rail Rate Reforms*, EP 715 (STB served July 18, 2013). The AAR agrees with the Coal Shippers that “[t]he Board should give these changes a chance to work, rather than endlessly tinkering with SAC. . . .” Coal Shippers Opening Comments at 5.

The ANPRM repeats a misconception that has appeared in a number of recent Board decisions: that a lack of cases at the Board indicates a regulatory defect in need of administrative remedy. *See, e.g., Reciprocal Switching*, EP 711 (Sub-No. 1) (STB served July 27, 2016), slip op. at 8-9; *Rail Transportation of Grain, Rate Regulation Review*, EP 665 (Sub-No. 1) (STB served Dec. 12, 2013), slip op. at 2. But the Coal Shippers correctly point out that regulatory certainty facilitates settlement of disputes and results in few cases being filed at the agency. *See* Coal Shippers Opening Comments at 57-58 (“Fewer cases fulfills one of the principal objectives the ICC emphasized when it initially adopted the Coal Rate Guidelines in 1985 – establishing a set of guidelines that would assist coal shippers and coal railroads in negotiating, rather than litigating coal rate disputes.”). As the Coal Shippers rightly note, the principal reason why the number of coal rate cases filed at the Board has decreased is the stability and predictability of SAC rules and precedent. *See* Coal Shippers Opening Comments at 57.

There is no doubt that a SAC case is complex and when one is brought to the agency and litigated to completion, it will be time-consuming and expensive. In estimating the competitive outcome of a contestable market, the Board is called on to a complete a difficult task: judge competing evidence that demonstrates how much

revenue would be needed for an efficient market entrant to build, operate, and maintain a rail network capable of hauling a subset of the defendant railroad's traffic and earn a reasonable return on investment. But the complexity does not confer benefits solely to one side or the other. Both parties to a case will seek to provide the most comprehensive and effective evidence that supports their case. Shippers recognize that some of the complicating and time-consuming aspects of SAC litigation benefit their cases. Coal Shippers Opening Comments at 55 ("Nor should shippers be forced to give up better answers (and a fair result) in a Full SAC case simply because use of a 'standardized' procedure makes case processing faster."). As such, there is no consensus that the Board should standardize unit cost data for SAC cases. *See* Coal Shippers Opening Comments at 53-57; Joint Carload Shippers Opening Comments at 17-18.

Instead of proposing substantive changes in this proceeding that could bias the SAC test in favor of one group or another, the Board should instead pursue targeted process improvements that stakeholders agree would expedite SAC litigation and eliminate unnecessary delay. For example, three proposals enjoy support from both railroads and shippers. First, timely disposition of pending motions would clarify issues and streamline cases. The timely application of a fair standard to dismiss a case that is based on a defective operating plan would eliminate protracted litigation caused by a failure within the control of the complainant. *See* Joint Carload Shippers Opening Comments at 21; Coal Shippers Opening Comments at 58-59. Second, both railroads and shippers have endorsed the increased use of staff-led technical conferences. Coal Shippers Opening Comments at 62 ("increased staff involvement . . . would be very useful to the parties"); Joint Carload Shippers Opening Comments at 26 ("greater

interaction through technical conferences and written interrogatories could have several valuable benefits”). *See also* Union Pacific Opening Comments at 2; CSXT Opening Comments at 40. Third, there were no objections to a requirement that parties certify that they have conferred before filing motions to compel or requests to change the procedural schedule. Joint Carload Shippers Opening Comments at 16; Coal Shippers Opening Comments at 51. The Board should pursue these reforms in an NPRM.

II. The Board Should Not Impose Additional Requirements on Railroads to “Standardize” Traffic and Revenue Data or File Such Data with the Board

The Joint Carload Shippers’ opening comments suggest that standardized disclosures of “traffic and revenue data” could significantly reduce the amount of time that complainants need to compile their opening evidence. Joint Carload Shippers Opening Comments at 7. The Joint Carload Shippers urge the STB to require railroads to provide traffic and revenue data “in an intact relational format” “with functioning links, and accompanied by complete decoders,” claiming that it is “nonsensical” for complainants to rebuild this relational database from the flat files produced by railroads when the railroads already maintain such databases in the ordinary course of business. Joint Carload Shippers Opening Comments at 3-4. As explained in the *Fisher V.S.*, this claim is based on a fundamental misunderstanding of how railroads maintain data.

Individual railroads maintain traffic and revenue data in the ordinary course of business, not for SAC litigation. *See Fisher V.S.* at 5. Each railroad has its own record keeping and computer systems that it employs to run its business. Although there is no single way railroads maintain revenue and traffic data, there is commonality on one fact: railroads do not maintain databases to facilitate rate cases.

What the Joint Carload Shippers refer to as traffic and revenue data are pieces of information drawn from a wide variety of sources. Fisher V.S. at 6. The vast majority of the underlying revenue and traffic data is never used in litigation. Moreover, even “Core SAC data” can vary from case to case and represents a small subset of railroad data. For revenue and traffic data that is relevant to a SAC complaint, complainants seek discovery on pieces of those data. Railroads then cull the relevant data from their databases and turn them over to complainants. Fisher V.S. at 5-7. As stated in Union Pacific’s Opening Comments,

. . . compiling the relevant information into a useable format requires substantial efforts on the part of railroad employees, consultants, or both who are familiar with the data. To produce the extensive data typically requested in a SAC case, data must be extracted from several different databases and linked together using procedures that are not performed in the ordinary course of business. Because the data are not compiled or produced in the ordinary course of business, substantial quality control efforts are required to ensure that the production is correct and complete. Even so, there are many follow-up questions about the data after its production.

Union Pacific Opening Comments at 5. As noted in the Fisher V.S., by producing responsive data in this manner, railroads have actually decreased the burden faced by shippers. Fisher V.S. at 6.

The practical effect of the Joint Carload Shippers’ proposal would be to require railroads to identify and pull data responsive to a complainant’s discovery requests and then to construct relational databases for the complainant, at significant additional expense to the railroad. Fisher V.S. at 6-7. Such a requirement would go well beyond appropriate burden to place on any party to respond to discovery requests, and

particularly beyond the appropriate burden to place on the railroad pursuant to the STB's statutory mandate.²

The AAR's opening comments opposed the ANPRM's suggestion that the Board might collect and maintain data from the railroads on an ongoing basis for use in rate cases. Such a regime would be burdensome for railroads and the Board; and, those burdens could not be justified by the minimal benefits, if any, they would confer. *See* AAR Opening Comments at 10-11. Several Class I railroads have never had a rate reasonableness complaint filed against them at the Board, and others have gone several years between cases. Because the Board could not know whether a rate complaint would be filed against a railroad, and what traffic and line segments would be at issue, the Board would have to collect and maintain a huge trove of data for the entire railroad industry. Such an undertaking also would impose substantial burdens on all railroads to routinely collect, prepare, refine, and report this huge trove of data, most of which would never be put to any practical use, contrary to the Paperwork Reduction Act and the Interstate Commerce Act, as amended.³

The Joint Carload Shippers blithely suggest that the burdens associated with reporting standardized traffic and revenue data to the Board would be minimal. The Joint Carload Shippers claim that “[m]ost of the data collected in the waybill sample is also data sought and used in SAC cases,” and “if the railroads are following the Board's prescribed procedures as stated in the *Sampling Procedures*, they have already gathered

² *See* 49 U.S.C. § 10101(13) (rail transportation policy of “minimizing the burden on rail carriers of developing and maintaining the capability of providing” information in regulatory proceedings).

³ *See id.*; 49 U.S.C. § 11164 requiring the Board's accounting rules to be “[c]ost effective and compatible with and not duplicative of the managerial and responsibility accounting requirements” of rail carriers).

and formatted the required waybill data.” Joint Carload Shippers Opening Comments at 7; Joint Verified Statement of Thomas D. Crowley and Robert D. Mulholland, Exhibit No. 1. But even if most of the data collected for the Waybill Sample are used in rate cases, it does not also follow that most of the data sought and used in rate cases are collected for the Waybill Sample. In fact, they are not. The data relevant to a SAC case far exceeds the data required for the Waybill Sample, which is by definition only a small sample of a certain type of railroad traffic data.

The Joint Carload Shippers also assume that any additional information necessary for a SAC case “is contained in the same databases in which the waybill data resides, and would merely require the railroads to capture and produce these linked tables along with their current waybill reporting.” Joint Carload Shippers Opening Comments at 8-9. But that assertion is not accurate, either. Relevant data in SAC cases come from many other sources, in addition to the databases which are sampled for the Waybill Sample. *See Fisher V.S.* at 13-14.

The Joint Carload Shippers also fail to consider the substantial burdens such a collection would place on the Board. As explained in the AAR’s opening comments, the Board would need to carefully protect this data, as data used in rate cases contain highly confidential shipper information and, in the case of toxic-by-inhalation hazards, sensitive security information. The Board would also need to create space to store the data; and, in the event a complaint was filed and such data were eventually to be used in a case, the Board’s staff would need the expertise and ability to quickly identify and pull the relevant data and provide it in a useable format to complainants. Even after the burden of maintaining and producing this data, in the end, this data would not be sufficient to shape

the complainant's SAC presentation. Discovery would still be necessary for various aspects of the complainant's case. As such, there would be minimal benefits associated with such an approach and substantial burdens on the Board and railroads.

Conclusion

Based on the foregoing, the Board should take steps to make incremental changes to its procedures that can eliminate unnecessary delay in SAC cases. Specifically, the Board should focus on areas of agreement among stakeholders that have participated in this proceeding and propose rules that both railroads and shippers believe could expedite SAC cases, as detailed above. Any proposal for rules related to SAC cases should also take into account the AAR's Opening Comments. Consistent with its statutory mandate and in light of railroad procedures and SAC discovery needs, the Board must not propose any rules that would impose any requirement on railroads to maintain relational databases of, or file with the STB on a regular basis, data for use in rate cases.

Respectfully submitted,



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August 29, 2016

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

EXPEDITING RATE CASES

Docket No. EP 733

VERIFIED STATEMENT OF

Benton V. Fisher

August 29, 2016

I. Introduction

A. Overview

I am Benton V. Fisher, a Senior Managing Director in FTI Consulting's Network Industries Strategies practice with offices at 1101 K Street NW, Washington DC. Details of my background and experience are set forth in Exhibit 1 to this statement. I have been asked by the Association of American Railroads ("AAR") to submit this verified statement with the AAR's Reply Comments in the Surface Transportation Board's ("STB" or "Board") Ex Parte 733 *Expediting Rate Cases* proceeding.

In an Advance Notice of Proposed Rulemaking served June 15, 2016, the Board instituted a proceeding to identify and assess potential procedures to expedite rate cases, and solicited comments to be filed August 1. The AAR has requested that I respond to certain of the opening comments filed by the Joint Carload Shippers (Carload Shippers),¹ which include a verified statement from Thomas D. Crowley and Robert D. Mulholland, both of L.E. Peabody & Associates ("Peabody VS"). In those comments, Carload Shippers claim that the production of traffic and revenue data² "is the single most significant bottleneck" in a rate case, and argue that the railroads' actions in producing responsive data contribute to the delay and could readily be remedied by making certain modifications to their production procedures that Carload Shippers propose. Based on my extensive experience working with the railroads to identify, extract, and produce such data and using those same data to prepare reply evidence for the largest of the

¹ The Joint Carload Shippers include the American Chemistry Council, the Dow Chemical Company, and M&G Polymers USA. Carload Shippers Comments at 1.

² For the purposes of this statement, I use the Carload Shippers' term "traffic and revenue data." As described below, such data include information detailing a wide variety of revenue, cost, and operating statistic data used by the railroads' to manage operations and finances, which must be collected from multiple sources.

Board's rate cases – stand-alone cost (“SAC”) cases, where the SAC test is applied – I find that the Carload Shippers' claims are off the mark, and do not adequately represent the situation.

While the Complainant shippers' discovery requests in SAC cases are extensive, the information they seek represents a small subset of the data that the railroads collect and store in their information management systems in the normal course of business. The process used by the defendant railroads to extract the requested SAC-related traffic and revenue data from the internal systems and the format in which they are produced to Complainants are, in my view, the most efficient and effective means of responding to the myriad requests for detailed information and voluminous data records. Contrary to Carload Shippers' claims, the modifications to that process that they seek will not “shave a significant amount of time.”³

Changing the production of traffic and revenue data from the current approach involving multiple flat files with key fields necessary to combine and use the individual files to one that requires a full “intact” relational database that the Carload Shippers request will increase considerably the data production burden on the railroads. The main reason for this is a misperception by the Carload Shippers that such an intact relational database already exists or could be copied in the railroad's processing environment and exported in a form that would be readily usable by Complainants. In fact, their proposal would require the railroads to combine data from a variety of individual source systems and files. Assuming that can be done for the multiple years of traffic and revenue data typically requested by shippers, the database would be prohibitively large and thus inefficient to export to a PC environment without again breaking the file into multiple parts. As such, railroads would suffer an increased burden and shippers would still be required to rebuild files before they can be used.

³ Carload Shippers Comments at 7.

Further, it is my experience that restoring the discovery data to a working database and building a relational database by combining separate flat files from the railroad's source information systems, while somewhat tedious, is not terribly time-consuming. Based on my detailed review of SAC evidence, it is more likely that the vast majority of the shippers' time is spent after the creation of a formatted, linked database, in performing iterative analyses to identify and optimize the SARR configuration and traffic group. Changes to the format of the data received by Complainants will not mitigate the analytical burdens that shippers incur to develop and defend their positions in individual cases.

In this statement, I expand on this conclusion and respond to other specific claims raised by the Joint Carload Shippers.

B. Background

I have spent more than 25 years involved in various aspects of transportation consulting, including conducting economic studies of revenues and costs, traffic and operating analyses, and working with systems that track the finances and operations of freight railroads. I have testified before the Board in dozens of proceedings involving issues related to the regulation of railroad transportation, and have participated in virtually all rate-reasonableness cases and Ex Parte proceedings regarding the evaluation of the rates and costs for individual movements, traffic groups, and entire networks. Much of my work requires a detailed understanding of the data, the models, and the analytical processes that are used to meet the evidentiary requirements for rate cases before the Board.

In particular, I have extensive experience in working with the traffic and revenue data that is central to the large rate cases where the SAC test is applied. In those cases, Complainant shippers serve extensive discovery requests on the Defendant railroad(s), seeking information

and data detailing most aspects of the railroad's operations, finances, practices, and assets.⁴ Not surprisingly, railroads do not maintain their internal systems with the focus on responding to discovery requests from shippers in SAC cases. The data fields typically requested by shippers are spread across a mix of accounting and operational datasets maintained by the railroads and the responsive information and data must be identified and then extracted from those systems and databases. In my experience, I have seen that railroads collect, store, and report data that include information that is potentially responsive to Complainants' requests using a variety of different tools and systems. These systems can differ by vintage, by the varying types of data they contain, and they routinely vary across railroads, as a matter of course. There is no "one size fits all." While such circumstances are unsurprising, they present particular challenges in SAC cases, as the traffic and revenue data represent a large and critical subset of the information requested by Complainants.

Finally, it bears noting three additional reasons that the railroads have already committed extensive resources to develop processes that ensure the efficient and effective production of the traffic and revenue data that are used in SAC cases: such data 1) are among the most commercially sensitive material in the railroads' possession, providing detailed insights regarding customers and rates; 2) reveal the timing, routing, frequency, and location of individual shipments of Toxic-by-Inhalation Hazards ("TIH"), and thus constitute Sensitive Security Information ("SSI"); and 3) are critically important to the development of evidence in a SAC case, and often to the outcome of the case.

⁴ It would not be practical to attempt to list here all the different types of information that are necessary to process a SAC case. Carload Shippers included as Exhibit No. 3 to their filing Complainants' discovery requests from the SAC rate case involving DuPont and Norfolk Southern Railway, STB Docket No. NOR 42125. That exhibit indicates that Complainants' first set of discovery included 180 separate interrogatories and requests for production, consuming more than 90 pages.

II. The Carload Shippers' Claims are Misleading, and their Proposed Changes to the Production of Traffic and Revenue Data are Highly Unlikely to Reduce the Amount of Time it Takes to Develop SAC Evidence

A. Carload Shippers Are Wrong to Suggest that the Data Requested by Complainants and Necessary to Perform the SAC Test Are Already Assembled in the Railroads' Systems and Can Be Readily Extracted "Intact"

Carload Shippers state that the traffic and revenue data typically requested in SAC cases "already exist within a relational database where all fields and tables are linked and keyed appropriately."⁵ Carload Shippers' following claim that the railroads effectively go out of their way to disassemble the data from their original format for production is absurd. The insinuation that the railroads are purposefully making the process more difficult or less efficient is an affront to the hundreds of hours that railroad employees spend identifying and developing responsive information and producing them in a useable format. The railroads' source systems and databases contain billions of records in thousands of different databases or tables. Only a small subset of this information is responsive to Complainants' discovery requests. The railroads incur significant effort and expense to identify the source systems and databases, and to determine a workable method of extracting usable data.⁶ While certain fields can be used to link or join to information from other tables, the notion that there are "relational databases" for which the SAC-related subset can be pinpointed and readily extracted mischaracterizes the situation, and ignores the disparate business functions for which the railroads collect and use the different types of data that are requested by Complainants.

⁵ Peabody VS at 4.

⁶ The primary focus of these systems is to support running the railroad and other business needs in real time, which does not typically involve extractions of detailed information for historical shipments from prior years.

It is important to note the diverse types of traffic and revenue data that are requested by Complainants to develop SAC evidence, and their different sources. In their statement, Carload Shippers refer generally to three types of information that they receive: waybill tables, car event tables, and train event tables.⁷ While these are general categories, each of these “tables” is in fact the result of the railroads’ identification and extraction of voluminous information from many different sources. As examples, the waybill table includes traffic details such as the origin, destination, and commodity, as well as further information about the price authority and individual revenue components (*e.g.*, fuel surcharge), often requiring additional effort to identify and access different source databases. Also, while the car event table includes shipment information such as the time and location reported along the route at intermediate stations, Complainants also request further characteristics about the individual cars or the specific intermodal containers associated with individual flat cars that must be obtained from different sources. Further, data responsive to shippers’ requests for train movements include railroads’ train dispatch information (*e.g.*, “trainsheets”) which contains details regarding train operations, routing, delays, and crew and locomotive assignments that are relevant to the SAC analysis, and are typically maintained in systems that are removed from the waybill and car-event information.

Railroads match shippers’ requests to the available information in their systems, and cull the relevant fields and responsive records to produce. Railroads produce the data in universally recognized formats, and identify the key or ID fields by which at least some of the information can be coordinated or combined. While the requested discovery data are voluminous, the format is very conducive for Complainants to process upon receipt. Today’s large-data management and processing solutions allow Complainants to import the “flat files” and build the joins with a

⁷ Peabody VS at 5.

straightforward process. Further, as the scope of the data captured by the railroads as well as the scope of Complainants' requests have both expanded, the burden on the railroads to identify and provide the responsive data has increased. While the universe of the railroads' total data that is responsive to discovery is a much smaller component, the railroads' isolation and extraction of the SAC-related subset has decreased the burden faced by Complainants, not increased it.

It is unclear whether Carload Shippers understand how the effort that the railroads undertake to process the data in their different systems and produce the responsive subset better meets their needs. It is also unclear how Carload Shippers surmise that if they received something different – seemingly something much larger – that they would be able to process the data and prepare their case in considerably less time.

B. The Carload Shippers' Claim that Complainants' Reconstruction of a Traffic and Revenue Database is the "Number One Factor Driving the Cost and Complexity of Rate Cases"⁸ is Exaggerated

Carload Shippers claim that "The number one contributing factor to the cost and complexity of rate cases is the requirement for complainants to reconstruct a functional traffic and revenue database from the disparate parts provided by the railroads in discovery."⁹ Mr. Crowley mistakenly assumes that the traffic and revenue data already exist in the format and structure complainants' consultant would find convenient and that railroads break it down and then produce it in separate pieces "for complainants to reconstruct." In reality, databases for revenue purposes organized around waybill data serve distinct business purposes than databases with the operating detail and history for trains and cars. Accordingly, railroads do not "construct" databases that compile such information except to the extent they extract and compile such data in response to complainants' discovery. There is no database to reconstruct because it does not

⁸ Carload Shippers Comments at 9

⁹ Peabody VS at 9.

exist. While I do not have firsthand knowledge of the specific working arrangements for Complainants and their counsel and outside consultants, as a frequent practitioner in SAC cases, my experience suggests that Carload Shippers are confusing 1) the effort involved in building a database from formatted flat files with 2) the effort required to perform the series of analyses associated with preparing SAC evidence. In fact, the Carload Shippers' own comments belie the suggestion that construction of a database is the most time-consuming effort, as the very statement following the quote cited above is "This critical process must be done in short order."¹⁰ It is inconsistent for Carload Shippers to argue that "the Board could shave a significant amount of time" by modifying a process that they recognize is "done in short order."

Notwithstanding its reliance on superlatives and colorful characterizations,¹¹ Carload Shippers have provided no estimate of the amount of time that is actually required to "restore each table into a proper database file and then subsequently rebuild the relational database from scratch."¹² Moreover, the fact that shippers in SAC cases engage in "re-assembling" the data – uploading it to the environments and systems in which they prefer to review the information – is a function of the analyses that they perform to take the railroads' normal-course business records and prepare their SAC case. This process is unavoidable. For example, one of the opportunities that shippers typically pursue in building their case is the selection of the SARR traffic group, identifying a subset of the traffic that moves over certain portions of the railroad's network – and also traffic that moves over other portions of the network but that could be considered, subject to meeting the Board's re-routing criteria. This traffic-selection inquiry is understandably detailed,

¹⁰ Peabody VS at 9.

¹¹ *See, e.g.*, Carload Shippers Comments at 8 ("It is nonsensical to put complainants to this enormous expense of time and effort . . .")

¹² Carload Shippers Comments at 8, Peabody VS at 4.

as Complainants’ assessment of whether to include an individual shipment in their SAC analysis typically involves reviewing elements of the railroads’ waybill, car event, and train event tables. To pick and choose, Complainants often perform an iterative process in order to align the traffic selection with other SAC assumptions and litigation strategies in attempting to design the least-cost, most profitable railroad that they can envision.

No matter how much Complainant shippers – or anyone, for that matter – would prefer not to incur the effort and time associated with presenting a case, it is no surprise that a major rate case with tens to hundreds of millions of dollars at stake is fact-intensive and requires extensive analysis. Other shipper groups have acknowledged in this proceeding that some of the complicating and time-consuming aspects of SAC litigation benefit their cases: “Nor should shippers be forced to give up better answers (and a fair result) in a Full SAC case simply because use of a ‘standardized’ procedure makes case processing faster.”¹³ Carload Shippers’ attempt to shift blame for incurring that time – and “the cost and complexity” of SAC cases more broadly – to the railroads’ actions and data should be given no weight.

C. The Carload Shippers’ Purported Time Savings Wrongly Assume that Follow-Up Questions about the Data Would No Longer Arise

Carload Shippers identify that the railroads’ traffic and revenue data “nearly always contains gaps and/or unexplained elements that require a time-consuming exchange of correspondence before the information is complete and fully usable.”¹⁴ I am familiar with this aspect of SAC rate cases: as the railroads collect and produce hundreds of millions of records from different systems across multiple years, it is not surprising that a small percentage will not entirely align with one another, let alone with Complainants’ expectations or interpretations.

¹³ Joint Comments of Western Coal Traffic League *et.al.* (Coal Shippers/NARUC) at 55.

¹⁴ Carload Shippers Comments at 7.

Follow-up occurs between the parties, railroads and their consultants investigate Complainants' observations, and explanations are provided. Such follow-up often confirms occurrences of operating exceptions – *e.g.*, cars being re-billed or bad-ordered, trains being re-routed or held – and anomalies in the capture or the reporting of the data – all of which are realities of real-world railroading.

It is doubtful that such follow-up would be reduced materially if the data could be provided in a different format. Even if Complainants' vision of "entire databases" existed and could be produced, the same mis-matching among records and other issues related to fields not populated or contents not clearly defined would occur, as the railroads' systems and databases contain the same information that is extracted and produced to Complainants. Carload Shippers claim that time would be saved if the railroad skipped extracting only the relevant records and instead produced more data earlier. This would not be the case. Not only would Complainants have to spend additional time and money to upload, identify, and then weed out the irrelevant records, the railroads' production of less-refined data will almost certainly result in Complainants' raising more questions and flagging more items to be investigated in the "time-consuming exchange."

Further, many of Complainants' observed gaps and unexplained elements result from efforts to take data that are collected and used by the railroad for the purpose of meeting its various business needs, and converting them to fit the needs of building and presenting a SAC case. This can involve attempting to match different types of records and develop calculations that the railroad typically does not try to do in the normal course of business. As the railroads' traffic and revenue data are not maintained for the purposes of undertaking such SAC-related analyses, it is expected that "additional time [will be] needed to review, process, and understand

this data”¹⁵ – but it is not time that would be saved by modifying the format of the railroads’ data production.

D. The Carload Shippers’ Proposal that the Board Regularly Collect Traffic and Revenue Data from Railroads to Provide Standardized Information to a Complainant Would Consume Tremendous Resources, and Most of the Information Would Go Unused

Carload Shippers also propose that the Board collect traffic and revenue data annually, from each railroad.¹⁶ While Carload Shippers characterize this “as an even more expedient alternative,” it is hard to fathom how this would be the case. Standardizing would be inefficient, extremely burdensome for the railroads and for the Board, and would not provide any guarantee that shippers would require less follow-up or be able to prepare their cases in less time. While the AAR already identified that the costs of this proposal greatly outweigh any potential benefits,¹⁷ I identify certain additional challenges and shortcomings of this proposal that confirm it should not be considered.

First, Carload Shippers have not fully explained how or where the data would be standardized – and who would bear the considerable costs of collecting, standardizing, and storing such voluminous data from all Class I railroads. As indicated above, the data collection, tracking, and reporting systems are considerably different across individual railroads – as are the software and the processes that each uses to extract the subset data that are relevant to SAC cases. Even if agreement could be reached on how to standardize the data, such agreement could quickly become outdated, and would continually need to be reviewed as either the discovery requests or the SAC-case issues changed. As indicated above, Complainants’ discovery requests

¹⁵ Carload Shippers Comments at 7.

¹⁶ Carload Shippers Comments at 8.

¹⁷ See AAR Opening Comments at 10-11.

have expanded in breadth and depth over time. Further, the individual circumstances relevant to each case require a particular focus or drill-down on detailed issues that differ from one case to the next. As a result, in order for any such standardization efforts to be effective, all railroads would be required to collect and the Board would be required to maintain an overly expansive set of data.

Also, Carload Shippers claimed expediency is based on a faulty assumption. In suggesting that time savings would result when Complainants received a railroad's standardized data, Carload Shippers mistakenly assert that this approach would be "without the additional time frequently required to understand the data and/or address data gaps."¹⁸ Even if the data could be provided in a standardized format, they contain the same gaps and data anomalies that are revealed when Complainants examine the discovery extracts under the current process. In fact, as these standardized data will include records for all of a railroad's shipments on its entire system, they will be likely to contain more such gaps and sources of follow-up than are associated with the selective production process that railroads perform today. Not only will it take Complainants more time to upload, review, and identify the subset of records that are relevant to the particular case, the presence of larger databases with more non-responsive information will result in more questions, not fewer – quickly consuming the time associated with Complainants' earlier access to data.

Finally, review of the recent history of SAC cases suggests that the vast majority of collected and standardized data will go unused. In the 10 years since the Board clarified certain approaches to be used in SAC cases in Ex Parte No. 657, *Major Issues in Rail Rate Cases*,

¹⁸ Carload Shippers Comments at 8.

railroads produced traffic and revenue data for eight SAC cases.¹⁹ Even recognizing the production of multiple years of data in each case, eight cases in a decade would have resulted in most of the data that were collected going unused.²⁰ And as three of the Class I railroads that would be subject to the Carloads Shippers' collection proposal – CN, CP, and KCS – have not had any SAC complaints in the last decade, the time and effort to gather, standardize, and store these data would have been unnecessary.

E. Joint Shippers' Attempt to Analogize the Railroads' Production of Traffic and Revenue Data for a SAC Rate Case to their Submissions for the Waybill Sample Is Wildly Inaccurate

Carload Shippers seek to depict that their proposals would not create additional burdens for the railroads or for the Board by likening this to the process by which data are provided by the railroads and standardized for the Board's Waybill Sample. This analogy is totally inapplicable. The Waybill Sample 1) requires limited accounting-related information, including the origin, interchange and destination (at a SPLC level), commodity, and car identification supplied by the destination railroad; 2) relies upon algorithmic surrogates for the route and revenue divisions that are developed by a contractor for the Board rather than supplied by the reporting railroad; and 3) provides no visibility whatsoever of train operations, empty-car movements, the service level being provided for the shipment, or the time associated with any aspect of the operations.

¹⁹ While the Board's website identifies a longer list of SAC cases, many settled before the production of traffic and revenue data. https://www.stb.dot.gov/stb/industry/Rate_Cases.htm.

²⁰ A reasonable estimate is that less than one-third of the collected data would have been used if Carload Shippers' proposal had been in place for the last decade. Under the proposal, the Board would collect system-wide data for each of the seven Class I railroads in each year, comprising a total of 70 carrier-years' worth of data over 10 years. Overlap in the periods covered by two of the CSXT cases and the periods covered by two of the NS cases, and joint defendants in another case indicate that only 21 carrier-years' worth of data would have been provided in actual SAC cases during that same period (7 cases x 3 years).

By contrast, the traffic and revenue data used in SAC cases require much more from both 1) accounting sources – detailed information to identify the specific customer and location of the shipper, consignee, and freight payer, the price authority, and individual revenue components – and 2) operating sources – including routings of individual cars and trains (which, unlike the Waybill Sample, will account for the multiple routings that can be used by shipments between the same Origin-Destination pair), times (transit times, as well as loading, unloading, and intermediate dwell), blocking and train assignments, train and yard handlings, crew and locomotive assignments, and the trains, routings, and handlings used to move empty cars. While Carload Shippers recognize that “additional information beyond that collected by the waybill sample would be needed for SAC purposes,” they wrongly claim that “that information also is contained in the same databases in which the waybill data resides, and would merely require the railroads to capture and produce these linked tables along with their current waybill reporting.”²¹ The detailed traffic and revenue data produced in response to discovery requests in SAC cases extends far beyond the much smaller subset of accounting-related fields that are included in the Waybill Sample.

²¹ Carload Shippers Comments at 9.

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Benton V. Fisher is a Senior Managing Director of FTI's Economic Consulting group, located in Washington, D.C. Mr. Fisher has more than 20 years of experience in providing financial, economic and analytical consulting services to corporate clients dealing with transportation, telecommunications, and postal subjects.

North America's largest railroads have retained FTI both to assist them in making strategic and tactical decisions and to provide expert testimony in litigation. FTI's ability to present a thorough understanding of myriad competitive and regulatory factors has given its clients the tools to implement and advance their business. Mr. Fisher has worked extensively to develop these clients' applications for mergers and acquisitions and expert testimony justifying the reasonableness of their rates before the Surface Transportation Board. In addition to analyzing extensive financial and operating data, Mr. Fisher has worked closely with people within many departments at the railroad as well as outside counsel to ensure that the railroads' presentations are accurate and defensible. Additionally, Mr. Fisher reviews the expert testimony of the railroads' opponents in these proceedings, and advises counsel on the course of action to respond.

AT&T and MCI retained FTI to advance its efforts to implement the Telecommunications Act of 1996 in local exchange markets. Mr. Fisher was primarily responsible for reviewing the incumbent local exchange carriers' (ILEC) cost studies, which significantly impacted the ability of FTI's clients to access local markets. Mr. Fisher analyzed the sensitivity of multiple economic components and incorporated this information into various models being relied upon by the parties and regulators to determine the pricing of services. Mr. Fisher was also responsible for preparing testimony that critiqued alternative presentations.

Mr. Fisher assisted in reviewing the U.S. Postal Service's evidence and preparing expert testimony on behalf of interveners in Postal Rate and Fee Changes cases. He has also been retained by a large international consulting firm to provide statistical and econometric support in their preparation of a long-range implementation plan for improving telecommunications infrastructure in a European country.

Mr. Fisher has sponsored expert testimony in rate reasonableness proceedings before the Surface Transportation Board and in contract disputes in Federal Court and arbitration proceedings.

Mr. Fisher holds a B.S. in Engineering and Management Systems from Princeton University.



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TESTIMONY

Surface Transportation Board

January 15, 1999	Docket No. 42022 FMC Corporation and FMC Wyoming Corporation v. Union Pacific Railroad Company, Opening Verified Statement of Christopher D. Kent and Benton V. Fisher
March 31, 1999	Docket No. 42022 FMC Corporation and FMC Wyoming Corporation v. Union Pacific Railroad Company, Reply Verified Statement of Christopher D. Kent and Benton V. Fisher
April 30, 1999	Docket No. 42022 FMC Corporation and FMC Wyoming Corporation v. Union Pacific Railroad Company, Rebuttal Verified Statement of Christopher D. Kent and Benton V. Fisher
July 15, 1999	Docket No. 42038 Minnesota Power, Inc. v. Duluth, Missabe and Iron Range Railway Company, Opening Verified Statement of Christopher D. Kent and Benton V. Fisher
August 30, 1999	Docket No. 42038 Minnesota Power, Inc. v. Duluth, Missabe and Iron Range Railway Company, Reply Verified Statement of Christopher D. Kent and Benton V. Fisher
September 28, 1999	Docket No. 42038 Minnesota Power, Inc. v. Duluth, Missabe and Iron Range Railway Company, Rebuttal Verified Statement of Christopher D. Kent and Benton V. Fisher
June 15, 2000	Docket No. 42051 Wisconsin Power and Light Company v. Union Pacific Railroad Company, Opening Verified Statement of Christopher D. Kent and Benton V. Fisher
August 14, 2000	Docket No. 42051 Wisconsin Power and Light Company v. Union Pacific Railroad Company, Reply Verified Statement of Christopher D. Kent and Benton V. Fisher
September 28, 2000	Docket No. 42051 Wisconsin Power and Light Company v. Union Pacific Railroad Company, Rebuttal Verified Statement of Christopher D. Kent and Benton V. Fisher
December 14, 2000	Docket No. 42054 PPL Montana, LLC v. The Burlington Northern Santa Fe Railway Company, Opening Verified Statement of Christopher D. Kent and Benton V. Fisher
March 13, 2001	Docket No. 42054 PPL Montana, LLC v. The Burlington Northern Santa Fe Railway Company, Reply Verified Statement of Christopher D. Kent and Benton V. Fisher
May 7, 2001	Docket No. 42054 PPL Montana, LLC v. The Burlington Northern Santa Fe Railway Company, Rebuttal Verified Statement of Christopher D. Kent and Benton V. Fisher
October 15, 2001	Docket No. 42056 Texas Municipal Power Agency v. The Burlington Northern Santa Fe Railway Company, Opening Verified Statement of Benton V. Fisher
January 15, 2002	Docket No. 42056 Texas Municipal Power Agency v. The Burlington Northern Santa Fe Railway Company, Reply Verified Statement of Benton V. Fisher
February 25, 2002	Docket No. 42056 Texas Municipal Power Agency v. The Burlington Northern Santa Fe Railway Company, Rebuttal Verified Statement of Benton V. Fisher
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June 10, 2002	Docket No. 42072 Carolina Power & Light Company v. Norfolk Southern Railway Company, Opening Evidence and Argument of Norfolk Southern Railway Company
July 19, 2002	Docket No. 42059 Northern States Power Company Minnesota v. Union Pacific Railroad Company, Union Pacific's Opening Evidence
September 30, 2002	Docket No. 42069 Duke Energy Corporation v. Norfolk Southern Railway Company, Reply Evidence and Argument of Norfolk Southern Railway Company
October 4, 2002	Northern States Power Company Minnesota v. Union Pacific Railroad Company, Union Pacific's Reply Evidence
October 11, 2002	Docket No. 42072 Carolina Power & Light Company v. Norfolk Southern Railway Company, Reply Evidence and Argument of Norfolk Southern Railway Company
November 1, 2002	Docket No. 42059 Northern States Power Company Minnesota v. Union Pacific Railroad Company, Union Pacific's Rebuttal Evidence
November 19, 2002	Docket No. 42069 Duke Energy Corporation v. Norfolk Southern Railway Company, Rebuttal Evidence and Argument of Norfolk Southern Railway Company
November 27, 2002	Docket No. 42072 Carolina Power & Light Company v. Norfolk Southern Railway Company, Rebuttal Evidence and Argument of Norfolk Southern Railway Company
January 10, 2003	Docket No. 42057 Public Service Company of Colorado D/B/A Xcel Energy v. The Burlington Northern and Santa Fe Railway Company, Opening Evidence and Argument of The Burlington Northern and Santa Fe Railway Company
February 7, 2003	Docket No. 42058 Arizona Electric Power Cooperative, Inc. v. The Burlington Northern and Santa Fe Railway Company and Union Pacific Railroad, Opening Evidence of The Burlington Northern and Santa Fe Railway Company and Union Pacific Railroad
April 4, 2003	Docket No. 42057 Public Service Company of Colorado D/B/A Xcel Energy v. The Burlington Northern and Santa Fe Railway Company, Reply Evidence and Argument of The Burlington Northern and Santa Fe Railway Company
May 19, 2003	Docket No. 42057 Public Service Company of Colorado D/B/A Xcel Energy v. The Burlington Northern and Santa Fe Railway Company, Rebuttal Evidence and Argument of The Burlington Northern and Santa Fe Railway Company
May 27, 2003	Docket No. 42058 Arizona Electric Power Cooperative, Inc. v. The Burlington Northern and Santa Fe Railway Company and Union Pacific Railroad, Joint Variable Cost Reply Evidence of The Burlington Northern and Santa Fe Railway Company and Union Pacific Railroad
May 27, 2003	Docket No. 42058 Arizona Electric Power Cooperative, Inc. v. The Burlington Northern and Santa Fe Railway Company and Union Pacific Railroad, Reply Evidence of The Burlington Northern and Santa Fe Railway Company
June 13, 2003	Docket No. 42071 Otter Tail Power Company v. The Burlington Northern and Santa Fe Railway Company, Opening Evidence of The Burlington Northern and Santa Fe Railway Company

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December 2, 2003	Docket No. 42072 Carolina Power & Light Company v. Norfolk Southern Railway Company, Reply of Norfolk Southern Railway Company to Carolina Power & Light Company's Supplemental Evidence
January 26, 2004	Docket No. 42058 Arizona Electric Power Cooperative, Inc. v. The Burlington Northern and Santa Fe Railway Company and Union Pacific Railroad Company, Joint Supplemental Reply Evidence and Argument of The Burlington Northern and Santa Fe Railway Company and Union Pacific Railroad Company
March 1, 2004	Docket No. 41191 (Sub-No. 1) AEP Texas North Company v. The Burlington Northern and Santa Fe Railway Company, Opening Evidence and Argument of The Burlington Northern and Santa Fe Railway Company
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April 29, 2004	Docket No. 42071 Otter Tail Power Company v. The Burlington Northern and Santa Fe Railway Company, Rebuttal Evidence of The Burlington Northern and Santa Fe Railway Company
May 24, 2004	Docket No. 41191 (Sub-No. 1) AEP Texas North Company v. The Burlington Northern and Santa Fe Railway Company, Reply Evidence of The Burlington Northern and Santa Fe Railway Company
July 27, 2004	Docket No. 41191 (Sub-No. 1) AEP Texas North Company v. The Burlington Northern and Santa Fe Railway Company, Rebuttal Evidence of The Burlington Northern and Santa Fe Railway Company
March 1, 2005	Docket No. 42071 Otter Tail Power Company v. BNSF Railway Company, Supplemental Evidence of BNSF Railway Company
April 4, 2005	Docket No. 42071 Otter Tail Power Company v BNSF Railway Company, Reply of BNSF Railway Company to Supplemental Evidence
April 19, 2005	Docket No. 42088 Western Fuels Association, Inc. and Basin Electric Power Cooperative, Inc. v. BNSF Railway Company, Opening Evidence of BNSF Railway Company

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July 20, 2005	Docket No. 42088 Western Fuels Association, Inc. and Basin Electric Power Cooperative, Inc. v. BNSF Railway Company, Reply Evidence of BNSF Railway Company
September 30, 2005	Docket No. 42088 Western Fuels Association, Inc. and Basin Electric Power Cooperative, Inc. v. BNSF Railway Company, Rebuttal Evidence of BNSF Railway Company
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August 20, 2007	Docket No. 42095 Kansas City Power & Light v. Union Pacific Railroad Company, Union Pacific's Reply Evidence
February 4, 2008	Docket No. 42099 E.I. DuPont De Nemours and Company v. CSX Transportation, Inc., Opening Evidence of CSXT
February 4, 2008	Docket No. 42100 E.I. DuPont De Nemours and Company v. CSX Transportation, Inc., Opening Evidence of CSXT
February 4, 2008	Docket No. 42101 E.I. DuPont De Nemours and Company v. CSX Transportation, Inc., Opening Evidence of CSXT
March 5, 2008	Docket No. 42099 E.I. DuPont De Nemours and Company v. CSX Transportation, Inc., Reply Evidence of CSXT
March 5, 2008	Docket No. 42100 E.I. DuPont De Nemours and Company v. CSX Transportation, Inc., Reply Evidence of CSXT
March 5, 2008	Docket No. 42101 E.I. DuPont De Nemours and Company v. CSX Transportation, Inc., Reply Evidence of CSXT
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April 4, 2008	Docket No. 42100 E.I. DuPont De Nemours and Company v. CSX Transportation, Inc., Rebuttal Evidence of CSXT

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August 8, 2008	Docket No. 41191 (Sub-No. 1) AEP Texas North Company v. BNSF Railway Company, Fourth Supplemental Evidence of BNSF Railway Company
September 5, 2008	Docket No. 41191 (Sub-No. 1) AEP Texas North Company v. BNSF Railway Company, Fourth Supplemental Reply Evidence of BNSF Railway Company
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August 24, 2009	Docket No. 42114 US Magnesium, L.L.C. v. Union Pacific Railroad Company, Opening Evidence of Union Pacific Railroad Company
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May 7, 2010	Docket No. 42113 Arizona Electric Power Cooperative, Inc. v. BNSF Railway Company and Union Pacific Railroad Company, Joint Reply Evidence of BNSF Railway Company and Union Pacific Railroad Company
October 1, 2010	Docket No. 42121 Total Petrochemicals USA, Inc. v. CSX Transportation, Inc., Motion for Expedited Determination of Jurisdiction Over Challenged Rates, Verified Statement of Benton V. Fisher
November 22, 2010	Docket No. 42088 Western Fuels Association, Inc. and Basin Electric Power Cooperative, Inc. v. BNSF Railway Company, Comments of BNSF Railway Company on Remand, Joint Verified Statement of Michael R. Baranowski and Benton V. Fisher
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July 5, 2011	Docket No. 42123 M&G Polymers USA, LLC v. CSX Transportation, Inc., Reply Market Dominance Evidence of CSX Transportation, Inc.
August 1, 2011	Docket No. 42125 E.I. DuPont De Nemours and Company v. Norfolk Southern Railway Company, Norfolk Southern Railway's Reply to Second Motion to Compel, Joint Verified Statement of Benton V. Fisher and Michael Matelis
August 5, 2011	Docket No. 42121 Total Petrochemicals USA, Inc. v. CSX Transportation, Inc. , Reply Market Dominance Evidence of CSX Transportation, Inc.

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- August 15, 2011 Docket No. 42124 State of Montana v. BNSF Railway Company, BNSF Railway Company's Reply Evidence and Argument, Verified Statement of Benton V. Fisher
- October 24, 2011 Docket No. 42120 Cargill, Inc. v. BNSF Railway Company, BNSF Railway Company's Reply Evidence and Argument, Verified Statement of Benton V. Fisher
- October 28, 2011 Docket No. FD 35506 Western Coal Traffic League - Petition for Declaratory Order, Opening Evidence of BNSF Railway Company, Joint Verified Statement of Michael R. Baranowski and Benton V. Fisher
- November 10, 2011 Docket No. 42127 Intermountain Power Agency v. Union Pacific Railroad Company, Reply Evidence of Union Pacific Railroad Company
- November 28, 2011 Docket No. FD 35506 Western Coal Traffic League - Petition for Declaratory Order, Reply Evidence of BNSF Railway Company, Joint Reply Verified Statement of Michael R. Baranowski and Benton V. Fisher
- December 14, 2011 Docket No. 42132 Canexus Chemicals Canada L.P. v. BNSF Railway Company, BNSF Motion to Permit Consideration of 2011 TIH Movements from BNSF Traffic Data in Selecting Comparison Group, Verified Statement of Benton V. Fisher
- February 13, 2012 Docket No. 42132 Canexus Chemicals Canada L.P. v. BNSF Railway Company, Opening Evidence of BNSF Railway Company, Verified Statement of Benton V. Fisher
- March 13, 2012 Docket No. 42132 Canexus Chemicals Canada L.P. v. BNSF Railway Company, Reply Evidence of BNSF Railway Company
- April 12, 2012 Docket No. 42132 Canexus Chemicals Canada L.P. v. BNSF Railway Company, Rebuttal Evidence of BNSF Railway Company
- May 10, 2012 Docket No. 42056 Texas Municipal Power Agency v. BNSF Railway Company, BNSF Reply to TMPA Petition to Reopen and Modify Rate Prescription, Joint Verified Statement of Michael R. Baranowski and Benton V. Fisher
- November 30, 2012 Docket No. 42125 E.I. DuPont De Nemours & Company v. Norfolk Southern Railway Company, Reply Evidence of Norfolk Southern Railway Company
- January 7, 2013 Docket No. 42130 SunBelt Chlor Alkali Partnership v. Norfolk Southern Railway Company, Reply Evidence of Norfolk Southern Railway Company
- April 12, 2013 Docket No. 42136, Intermountain Power Agency v. Union Pacific Railroad Company, Reply Evidence of Union Pacific Railroad Company
- June 20, 2013 Ex Parte 431 (Sub-No. 4) Review of the General Purpose Costing System, Comments of the Association of American Railroads, Joint Verified Statement of Michael R. Baranowski and Benton V. Fisher
- September 5, 2013 Ex Parte 431 (Sub-No. 4) Review of the General Purpose Costing System, Reply Comments of the Association of American Railroads, Joint Verified Statement of Michael R. Baranowski and Benton V. Fisher

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- September 23, 2013 Docket No. 42113 Arizona Electric Power Cooperative, Inc. v. BNSF Railway Company and Union Pacific Railroad Company. BNSF's Position on Disputed Issues Relating to Reinstating the Rate Prescription
- June 26, 2014 Ex Parte 665 (Sub-No. 1) Rail Transportation of Grain, Rate Regulation Review, Joint Verified Statement of Benton V. Fisher and Kaustuv Chakrabarti Supporting BNSF Opening Filing
- July 21, 2014 Docket No. 42121 Total Petrochemicals & Refining USA, Inc. v. CSX Transportation, Inc., Reply Evidence of CSX Transportation, Inc.
- August 25, 2014 Ex Parte 665 (Sub-No. 1) Rail Transportation of Grain, Rate Regulation Review, Joint Verified Statement of Benton V. Fisher and Kaustuv Chakrabarti Supporting BNSF Reply Filing
- September 19, 2014 Docket No. 42088 Western Fuels Association, Inc. and Basin Electric Power Cooperative, Inc. v. BNSF Railway Company, BNSF Railway Company's Reply Comments on Remand, Joint Verified Statement of Benton V. Fisher and Robert Fisher
- September 4, 2015 Docket No. FD 35743 Application of the National Railroad Passenger Corporation Under 49 U.S.C. § 24308(a) - Canadian National Railway Company, Opening Evidence of Illinois Central Railroad Company and Grand Trunk Western Railroad, Joint Verified Statement of Michael Baranowski and Benton Fisher
- October 7, 2015 Docket No. 42121 Total Petrochemicals & Refining USA, Inc. v. CSX Transportation, Inc., Supplemental and Compliance Evidence of CSX Transportation, Inc.
- November 20, 2015 Docket No. NOR 42121 Total Petrochemicals & Refining USA, Inc. v. CSX Transportation, Inc., CSX Transportation, Inc.'s Reply to Supplemental and Compliance Evidence
- March 7, 2016 Docket No. NOR 42142 Consumers Energy Company v. CSX Transportation, Inc., Reply Evidence of CSX Transportation, Inc.
- July 26, 2016 Ex Parte No. 704 (Sub-No. 1) Review of Commodity, Boxcar, and TOFC/COFC Exemptions, Comments of the Association of American Railroads, Verified Statement of Michael R. Baranowski and Benton V. Fisher
- August 26, 2016 Ex Parte No. 704 (Sub-No. 1) Review of Commodity, Boxcar, and TOFC/COFC Exemptions, Reply Comments of the Association of American Railroads, Verified Statement of Michael R. Baranowski and Benton V. Fisher

U.S. District Court for the Eastern District of North Carolina

- March 17, 2006 Civil Action No. 4:05-CV-55-D, PCS Phosphate Company v. Norfolk Southern Corporation and Norfolk Southern Railway Company, Report by Benton V. Fisher

U.S. District Court for the Eastern District of California

- January 18, 2010 E.D. Cal. Case No. 08-CV-1086-AWI, BNSF Railway Company v. San Joaquin Valley Railroad Co., et al.

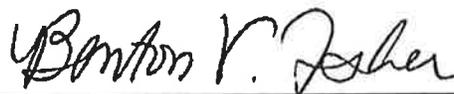
Arbitrations and Mediations

- July 10, 2009 JAMS Ref. # 1220039135; In the Matter of the Arbitration Between Pacer International, Inc., d/b/a/ Pacer Stacktrain (f/k/a APL Land Transport Services, Inc.), American President Lines, Ltd. And APL Co. Pte. Ltd. And Union Pacific Railroad Company; Rebuttal Expert Report of Benton V. Fisher

VERIFICATION

I declare under penalty of perjury that the foregoing is true and correct. I further certify that I am qualified and authorized to sponsor and file this testimony.

Executed on August 29, 2016

A handwritten signature in black ink that reads "Benton V. Fisher". The signature is written in a cursive style with a large initial "B".

Benton V. Fisher