

ENTERED
Office of Proceedings
December 4, 2015
Part of
Public Record

SLOVER & LOFTUS LLP

ATTORNEYS AT LAW
1224 SEVENTEENTH STREET, N.W.
WASHINGTON, D.C. 20036-3003

WILLIAM L. SLOVER
C. MICHAEL LOFTUS
JOHN H. LE SEUR
KELVIN J. DOWD
ROBERT D. ROSENBERG
FRANK J. PERGOLIZZI
ANDREW B. KOLESAR III
PETER A. PFOHL
DANIEL M. JAFFE
KATHERINE F. WARING
BRADFORD J. KELLEY

TELEPHONE:
(202) 347-7170

FAX:
(202) 347-3619

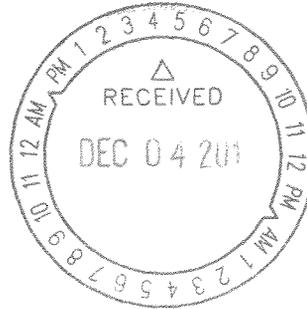
WRITER'S E-MAIL:

December 4, 2015

OF COUNSEL
DONALD G. AVERY
CHRISTOPHER A. MILLS

BY HAND DELIVERY

Cynthia T. Brown, Chief
Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington, D.C. 20423-0001



Re: Docket No. 42142, *Consumers Energy Company v. CSX Transportation, Inc.*

Dear Ms. Brown:

Enclosed for filing in the above-referenced proceeding are the original and 25 copies of the Supplement to the Errata to Opening Evidence of Complainant Consumers Energy Company. This filing also includes corrected public and highly confidential narrative pages and additional e-workpapers, as referenced in the Supplement to the Errata. Please note that the Supplement to the Errata is Public and contains no Highly Confidential information. However, there are two revised narrative pages marked **Highly Confidential**. The disk containing the additional e-workpapers is also designated **Highly Confidential**.

Kindly acknowledge receipt and filing of these materials by date-stamping the extra copy of this filing and returning it to our messenger.

Respectfully submitted,

Katherine F. Waring
An Attorney for Complainant

Enclosure

cc (w/enclosure): Counsel for Defendants per Certificate of Service

scope and straightforward, the DCF and MMM models are sufficiently complicated that this Supplement is warranted to make the results of the Errata corrections easily available.² Thus, Consumers is submitting this Supplement, the replacement pages of the Narrative and Exhibits that contained the DCF and MMM results, as well as an updated hard disk that contains a complete collection of Consumers' Opening workpapers. The electronic workpaper index also was updated to reflect these changes and to clarify several entries. *See* e-workpaper "Consumers_November 2015_Opening Electronic Workpaper Index Annotated.xlsx."

I. UPDATES TO THE OPENING EVIDENCE NARRATIVE

To assist the Board staff and CSXT in evaluating Consumers' Opening Evidence, the narrative pages that show the maximum reasonable rates for CSXT coal service to the Campbell Station were revised, as described below.

I-4, the maximum reasonable rate for the Third Quarter of 2015 was revised.

I-44, the maximum reasonable revenue-to-variable cost ("R/VC") ratios under the SAC Constraint for each year of the DCF period (2015-2024) were revised.

I-61, the maximum rates per ton were revised for the first three (3) quarters of 2015.

I-62, the maximum reasonable RVC ratios under the SAC Constraint for years 2016 to 2024 were revised.

69. In total, correcting for the disparity between 15 ft and 25 ft track centers resulted in a reduction of the road property investment costs by \$3,500,650.13.

² Consumers' also determined that the link for crossing maintenance costs in its Opening MOW cost spreadsheet had not updated properly when the DCF model was executed. The link has been updated. *See* e-workpaper "CERR Opening MOW Costs.xlsx," tab "Crossing Repaving," cell E8.

III-D-117, line 14, the total cost of crossing paving was revised from \$299,936 to \$329,236. See Footnote 2 for details.

III-D-142, line 13, the ad valorem tax value for the CERR was revised as the ad valorem taxes for Illinois are calculated, *inter alia*, on expenses incurred. As the updating of the link in “CERR Opening MOW Costs.xlsx” caused a minor change in total operating expenses, the corresponding update of the ad valorem tax spreadsheet “CERR Ad Valorem Taxes_Open.xlsx,” also resulted in a minor change, which is reflected in the revised text.

III-H-9, values in columns (2), (4), (5), and (6) were revised in Table III-H-1, which summarizes the DCF results.

III-H-12, revisions were made to the MMM values expressed as maximum R/VC ratios in Table III-H-2, and revisions were made to the second line of the text discussing the ratios range; and to the 1Q15 values in Table III-H-3.

III-H-13, the MMM ratios and maximum rate per ton values listed in Table III-H-4 were revised.

II. UPDATES TO THE OPENING EVIDENCE ELECTRONIC WORKPAPERS

The supplemental e-workpaper “Exhibit III-H-2 (Errata).pdf” shows the MMM ratios resulting from incorporating the corrected investment and operating expense files into the DCF and MMM models. All e-workpapers that were revised after Consumers’ Opening Evidence was filed on November 2, 2015, are in red text in the supplemental e-workpaper “Consumers_November 2 2015_Opening Electronic Workpaper Index Annotated.xlsx,” and explanations of these changes are in column E, under “Errata Notes.”

Respectfully submitted,

CONSUMERS ENERGY COMPANY

By: Catherine M. Reynolds
Senior Vice President and General Counsel
Eric V. Luoma
Assistant General Counsel
Consumers Energy Company
One Energy Plaza
Jackson, Michigan 49201

Kelvin J. Dowd
Robert D. Rosenberg
Andrew B. Kolesar III
Daniel M. Jaffe
Katherine F. Waring *Kater Waring*
SLOVER & LOFTUS LLP
1224 Seventeenth St., N.W.
Washington, D.C. 20036
(202) 347-7170

OF COUNSEL:

SLOVER & LOFTUS LLP
1224 Seventeenth St., N.W.
Washington, D.C. 20036

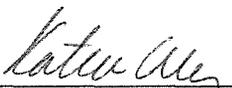
Dated: December 4, 2015

Attorneys & Practitioners

CERTIFICATE OF SERVICE

I hereby certify that this 4th day of December, 2015, I have caused copies of Consumers' Supplement to the Errata to Opening Evidence to be served by hand on counsel for Defendant CSX Transportation, Inc. as follows:

G. Paul Moates, Esq.
Raymond A. Atkins, Esq.
Matthew J. Warren, Esq.
Sidley Austin LLP
1501 K Street, N.W.
Washington, D.C. 20005



Katherine F. Waring

PUBLIC

Revised Narrative Pages

§10701(d)(1); (3) a Board determination that CSXT is “revenue adequate” as defined by 49 U.S.C. §10704(a)(2), for purposes of application of the Revenue Adequacy Constraint in the Board’s *Guidelines*; (4) a Board determination that the rate increase that CSXT imposed on Consumers’ Campbell coal traffic effective January 1, 2015 was unreasonable under the *Guidelines*’ Revenue Adequacy Constraint, and therefore violates 49 U.S.C. §10701(d)(1); (5) the prescription by the Board of lawful maximum rates for coal transportation from the BNSF interchange with CSXT near Chicago to Campbell for each of the years 2015 through 2024, at the lower of the maximum rates indicated by application of the SAC Constraint and the Revenue Adequacy Constraint, pursuant to 49 U.S.C. §§ 10704 (a)(1) and 11701(a); and (6) an award by the Board of reparations payable by CSXT to Consumers for all charges collected under CSXT-13952 in excess of the maximum rates prescribed by the Board, between January 1, 2015 and the date of CSXT’s compliance with the Board’s prescription order, together with interest calculated in accordance with the standard adopted by the Board in *Ex Parte No. 715*.⁶

As of the Third Quarter of 2015, the maximum rate which the evidence demonstrates the Board should prescribe for coal delivery service to Campbell – and which clearly illustrates the degree of monopoly pricing that CSXT has imposed on Consumers and its ratepayers – is \$10.01 per ton.

⁶ *Rate Regulation Reforms*, Ex Parte No. 715 (STB served July 18, 2013).

e. A “time-based” capital recovery period is used, consistent with *Duke/NS* and *TMPA*.

f. The distribution of total excess stand-alone revenues over stand-alone costs in each year of the DCF Model – and, therefore, the measure of annual rate relief to which Consumers is entitled under the SAC Constraint – is performed using the Maximum Markup Methodology adopted by the Board in *Major Issues* and applied, e.g., in *AEPCO 2011*, with variable costs forecast in accordance with the Board’s *OG&E* procedures. See Part III-H-2.

As set forth in Table III-H-2, the maximum rates allowed by the SAC Constraint for CSXT coal service to the Campbell Station in each year of the DCF Period, expressed as RVC ratios, are as follows:

<u>Year</u>	<u>RVC Ratio</u>
2015	348.8%
2016	403.4%
2017	301.9%
2018	316.4%
2019	318.5%
2020	291.0%
2021	282.4%
2022	262.4%
2023	263.9%
2024	237.4%

D. CSXT IS REVENUE ADEQUATE UNDER THE *GUIDELINES*, AND ITS JANUARY 1, 2015 RATE INCREASE WAS UNLAWFUL

Wholly independent of the unreasonableness of the challenged tariff rates under a proper application of the SAC Constraint, the rate increase that CSXT imposed on Consumers’ Campbell coal traffic effective January 1, 2015,

Revenue Adequacy Constraint of the *Coal Rate Guidelines*, and therefore are unlawful under 49 U.S.C. §10701(d).

1. Prescription of Maximum Rates

In accordance with the provisions of 49 U.S.C. §10704(a), Consumers is entitled to a Board order prescribing the maximum rates that lawfully may be charged by CSXT to transport coal to Campbell. The maximum rate should be the lower of the SAC rate and the Revenue Adequacy rate, subject to the 180% RVC jurisdictional threshold. For the first three (3) quarters of 2015, the maximum rates⁵⁹ per ton are as follows:

<u>Quarter</u>	<u>SAC Maximum</u> ⁶⁰	<u>Rev. Adequacy</u> <u>Maximum</u> ⁶¹	<u>Maximum Rate</u>
1Q15	\$ 9.94	{ }	\$ 9.94
2Q15	\$10.08	{ }	\$10.08
3Q15	\$10.01	{ }	\$10.01

⁵⁹ See Table III-H-3.

⁶⁰ As noted in Part II (II-3 n.5), while 95% of Consumers' Campbell coal traffic moves in gondola-type railcars, 5% of the shipments move in hopper cars, and the parties have stipulated to a methodology to calculate variable costs for each car type. The SAC and maximum rates shown here are for shipments in gondola-type cars. Maximum rates for both car types are set out in Table III-H-3.

⁶¹ As published by the Board, the changes in RCAF-A index values for 1Q2015 through 4Q2015 were (3.6%), (7.2%), (5.9%) and 3.7%, respectively. See *Quarterly Rail Cost Adjustment Factor*, Ex Parte No. 290 (Sub-No.8), (STB served December 17, 2014, March 20, 2015, June 18, 2015 and September 18, 2015). Over the full year, the RCAF-A experienced a net decline of 13%, so there is no change in the maximum Revenue Adequacy rate. In future quarters, the Revenue Adequacy rate would remain unchanged until and only to the extent that future increases in the RCAF-A fully offset the 13% net 2015 decline, as the same may be augmented by future declines in that index.

The corresponding maximum reasonable rates under the SAC Constraint (expressed as RVC ratios) for the remainder of the DCF period are set forth below. As noted *supra*, maximum rates over the same period under both the SAC Constraint and the Revenue Adequacy Constraint – and, thus, the maximum rates to be prescribed for application to Consumers’ Campbell coal traffic – must be determined quarterly following the Board’s publication of the RCAF-A for the subject quarter, starting with the First Quarter of 2016.

<u>Year</u>	<u>Maximum SAC RVC Ratio</u> ⁶²
2016	403.4%
2017	301.9%
2018	316.4%
2019	318.5%
2020	291.0%
2021	282.4%
2022	262.4%
2023	263.9%
2024	237.4%

2. Award of Damages

Since January 1, 2015, Consumers has paid CSXT freight charges for coal transportation service to Campbell at tariff rates significantly higher than the maximum lawful rates summarized in the previous table. Pursuant to 49 U.S.C. §11704(b), upon the conclusion of this proceeding Consumers will be entitled to an award of damages in the principal amount of the difference between the charges that it actually paid from January 1, 2015 through the date of CSXT’s compliance with the Board’s prescription order, and recalculated charges for the

⁶² See Exhibit III-H-2.

periodic brush clearing as needed. Nevertheless, to be conservative, Consumers has included brush cutting contracting as well.

Crossing Repaving. At-grade, highway-rail crossings must be repaved periodically. Asphalt pavement is typically used with treated hardwood crossing timbers in many public grade crossings. The life of asphalt pavement is largely a function of highway/road traffic, at least beyond 24 inches outside each rail, although rail traffic is also a factor within the crossing zone proper. A typical pavement application will last eight to twelve years, or longer. Consequently, there should be little need for the CERR to begin re-paving activities immediately. However, to be conservative, and consistent with the approach used in the DCF model, Mr. Meadows assumed that paving would begin in the CERR's first year of operations. As the paving should last at least ten years, Mr. Meadows assumed that ten percent of the total crossing paving quantity would be re-paved each year. The total cost of crossing paving is \$329,236 (assuming 10% of crossings must be repaved each year). *See* e-workpaper "CERR Opening MOW Costs.xls," tab "Annual MOW Expenses," cell G21.

Equipment Maintenance. Normal maintenance of company-owned or leased equipment is contracted out, although the CERR employs one in-house mechanic who performs routine maintenance and repairs to the basic equipment used by its field track forces. Equipment that may require additional maintenance/repair by contractors (because it may be beyond the capability of the CERR's mechanic) includes hi-rail trucks, excavators and backhoes, ballast

by the weighted average cost of capital used for the CERR. *See* e-workpaper “CERR Ad Valorem Taxes_Open.xlsx,” tab “IL Income Calc,” lines 6 and 7. Consumers then applied the same adjustments applied by the state of Illinois to capitalized value to arrive at an assessed value for the CERR. *See* e-workpaper “CERR Ad Valorem Taxes_Open.xlsx,” tab “IL Income Calc,” lines 8 and 11. As all of CERR’s Illinois track resides in Cook County, Consumers applied the effective tax rate for Cook County to the CERR assessed value. This tax calculation was applied to the weight Illinois uses for income based calculations to determine the portion of CERR’s ad valorem taxes attributable to the Illinois income-based approach.

After the ad valorem taxing approaches described above were weighted by state assigned weights, Consumers arrived at a first year total ad valorem tax for CERR of { }. *See* e-workpaper “CERR Ad Valorem Taxes_Open.xlsx,” tab “Summary,” cell G13.

9. Intermodal Lift Costs

As described in Section III-C-1 above, the CERR originates intermodal traffic out of CSXIT’s 59th Street facility. Since line-haul revenues for this traffic includes the cost of lifting containers onto railcars, Consumers must include the cost of a lift charged by CSXIT in its operating expenses. The total cost for intermodal container lifts in the first year equals { }. This cost for the CERR was developed by applying an estimate of CSXIT’s cost to lift a container onto a railcar by the 173,848 containers carried by CERR out of the 59th

TABLE III-H-1
SUMMARY OF DCF RESULTS – JAN. 1, 2015 TO DECEMBER 31, 2024
(\$ in millions)

<u>Year</u> (1)	<u>Annual Stand-Alone Requirement</u> (2)	<u>Stand-Alone Revenues</u> (3)	<u>Overpayments or Shortfalls</u> (4)	<u>PV Difference</u> (5)	<u>Cumulative PV Difference</u> (6)
2015	\$112.4	\$139.4	\$27.0	\$25.5	\$25.5
2016	\$108.9	\$124.3	\$15.4	\$12.9	\$38.4
2017	\$118.6	\$157.7	\$39.1	\$29.2	\$67.5
2018	\$123.3	\$158.7	\$35.4	\$23.5	\$91.0
2019	\$128.5	\$164.0	\$35.5	\$20.9	\$112.0
2020	\$134.0	\$179.7	\$45.7	\$24.0	\$136.0
2021	\$138.0	\$186.3	\$48.3	\$22.6	\$158.5
2022	\$144.2	\$200.9	\$56.6	\$23.5	\$182.1
2023	\$149.2	\$202.6	\$53.4	\$19.8	\$201.8
2024	\$157.0	\$223.8	\$66.7	\$21.9	\$223.7

Source: e-workpaper “Exhibit III-H-1.xlsm,” tab “Netting,” cells P12 to W21.

Where, as in this case, stand-alone revenues are shown to exceed costs, rates for the members of the CERR traffic group – including Consumers in particular – must be adjusted to bring revenues and SAC into equilibrium. In *Major Issues*, the Board adopted MMM as its rate prescription approach for use in proceedings under the *Coal Rate Guidelines*. See *Major Issues* at 14-23.

Under MMM, maximum reasonable rates for each year of the DCF period are expressed as a ratio of each movement’s stand-alone revenues to the variable cost of providing the subject service over the CERR route. Revenues are expressed as each movement’s annual stand-alone revenue calculated using the ATC methodology detailed in Part III-A-3. Revenues are categorized based on traffic type (*i.e.*, coal and other carload traffic, and intermodal), CSXT origin and

TABLE III-H-2 MMM RESULTS	
<u>Year</u>	<u>Maximum R/VC</u>
2015	348.8%
2016	403.4%
2017	301.9%
2018	316.4%
2019	318.5%
2020	291.0%
2021	282.4%
2022	262.4%
2023	263.9%
2024	237.4%
Source: Exhibit III-H-2.	

As indicated in Table III-H-2, the maximum R/VC ranges from 237.4% to 403.4% over the 10-year DCF period.

As applied to the unadjusted Phase III URCS variable costs for the issue movements, the following MMM maximum reasonable rates apply to shipments to Campbell from the Chicago interchange at the 1Q15 wage and price levels:

TABLE III-H-3 CONSUMERS MMM RATES PER TON – 1Q15 MAXIMUM REASONABLE RATES FOR COAL MOVEMENTS TO CAMPBELL			
<u>CSXT Origin</u>	<u>Car Type</u>		<u>1Q15</u>
Chicago, IL	Gondola		\$9.94
Chicago, IL	Hopper		\$9.84
Source: e-workpaper “1Q15 to 3Q15MMM Rates.xlsx,” worksheet “Rates,” cells D22 and E22.			

The maximum lawful rates for the transportation of coal from the origin covered by Tariff CSXT-13952, Amendment 1, equals the greater of the jurisdictional threshold or the MMM maximum rates. Table III-H-4 compares CSXT's rates to Consumers as of January 1, 2015 to the jurisdictional threshold and the MMM maximum. The issue rates are greater than both the jurisdictional threshold and the MMM rates.

TABLE III-H-4 MAXIMUM RATE SUMMARY FOR 1Q15 TO 3Q15				
Quarter	CSXT Rate Level (Including fuel surcharge)	Jurisdictional Threshold per Ton	MMM Rate Per Ton	Maximum Rate Per Ton^{1/}
Gondola				
1Q 2015	\$14.95	\$5.13	\$9.94	\$9.94
2Q 2015	\$14.95	\$5.20	\$10.08	\$10.08
3Q 2015	\$14.95	\$5.17	\$10.01	\$10.01
Hopper				
1Q 2015	\$14.95	\$5.08	\$9.84	\$9.84
2Q 2015	\$14.95	\$5.15	\$9.98	\$9.98
3Q 2015	\$14.95	\$5.11	\$9.91	\$9.91
^{1/} The Maximum Rate Per Ton equals the greater of the Jurisdictional Threshold or MMM Rate per ton. Source: e-workpaper "1Q15 to 3Q15MMM Rates.xlsx," worksheet "Rates," cells D12 and E29.				

3. Reparations

As described in Part I, Consumers has been paying rates under Tariff CSXT-13952, Amendment 1, in excess of the maximum reasonable rates per ton