

PUBLIC VERSION

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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Ex Parte No. 733

EXPEDITING RATE CASES

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REPLY COMMENTS OF CSX TRANSPORTATION, INC.

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

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

*Counsel to CSX Transportation, Inc.*

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In Opening Comments, CSX Transportation, Inc. ("CSXT") encouraged the Board to only make procedural changes that are consistent with three principles.

First, any regulatory changes must be consistent with sound economics. Because the Stand Alone Cost test ("SAC") is only used for the highest-value cases, it is important to both railroads and shippers that the Board use the most precise methodology available. Congress wanted cases to be expedited, not for the Board to compromise the accuracy of the SAC methodology. That is particularly true because the Board already has developed several alternatives for shippers who would rather use a simpler methodology.

Second, the Board should ensure that any procedural changes encourage negotiated resolutions. Voluntary negotiations are always the best way to resolve rate disputes, and the Board should ensure that the opportunity for a negotiated resolution is not lost in an expedited litigation process. A pre-filing notice requirement would be a good way to ensure that the Board's mediation procedures are given a chance to work.

Third, accelerating the filing of discovery and the consideration of certain evidence would be a good way to help parties and the Board meet Congress's aggressive deadlines without affecting the substantive outcome of SAC cases. Some of the steps that would make it easier for parties to meet the discovery deadlines of the Reauthorization Act include prefiling notifications, the simultaneous filing of discovery requests with initial pleadings, and clarification of the appropriate time scope of discovery requests. And an excellent way to make it easier for parties and the Board to comply with the tight evidentiary and decision deadlines of the Reauthorization Act would be to require accelerated presentation of market dominance evidence. The proposal outlined in CSXT's Opening Comments would allow parties and the Board to resolve important issues earlier in litigation without delaying the overall schedule for presenting and ruling on SAC evidence.

CSXT's Reply Comments focus on four issues. First, this accelerated proceeding to examine ways to expedite SAC litigation is rightly focused on procedural reforms to speed up the resolution of cases. Any substantive changes to the SAC standard itself are outside the scope of this proceeding. The Board repeatedly has refined and improved the SAC standard over the years, and this proceeding is not the place to consider any alterations to that settled, economically sound, and judicially approved standard. Second, several of CSXT's proposals were echoed by other opening commenters, including both railroads and shippers. The Board should adopt these consensus proposals. Third, the Board should reject proposals by some parties for the Board to itself gather data for use in rate cases or to issue rules micromanaging how

traffic data is produced. Fourth, CSXT continues to believe that Board-sponsored mediation is a valuable tool for resolving rate disputes, and it offers a few examples from its own experience that contradict the suggestion of one commenter that Board-sponsored mediation is ineffective.

**I. THIS PROCEEDING IS ABOUT IMPROVING RATE CASE PROCEDURES, NOT ABOUT REVISITING ECONOMIC PRINCIPLES OR REVISING SUBSTANTIVE STANDARDS.**

This proceeding is properly aimed at improving the processing of rate cases through procedural improvements, not at changing any of the Board's well-established substantive rate standards or at questioning the economic principles that support those standards. The Board made clear in the June 15, 2016 Advance Notice of Proposed Rulemaking ("ANPRM") that the purpose of this proceeding was "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 before the Board."<sup>1</sup> In doing so, the Board is complying with Congress's command to examine "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."<sup>2</sup>

Parties agree that this is not the time or the place for the Board to consider substantive revisions to SAC. The Joint Coal Shippers "urge[d] the Board not to institute any . . . proceeding at this time" that would make "substantive changes to

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<sup>1</sup> ANPRM at 1.

<sup>2</sup> Surface Transportation Board Reauthorization Act, Pub. L. 114-110, § 11, 129 Stat. 2228, 2234 (2015).

SAC rules”.<sup>3</sup> Moreover, the Joint Coal Shippers continued that there is “no need” for a new proceeding “to address how to make Full SAC calculations.”<sup>4</sup> The Joint Coal Shippers believe SAC is working because “shippers and carriers can and do make reasonably accurate assessments of their positions, and likely case outcomes, using the SAC rules and precedents in place today.”<sup>5</sup> And the Joint Coal Shippers correctly recognize that this certainty fulfills “one of the principal objectives” for a well-functioning rate reasonableness regime:<sup>6</sup>

[A] benefit of these guidelines is to enable both the shipper and the railroad to estimate the maximum rate we would prescribe if the matter were brought to us for adjudication. We believe that this will encourage contract solutions which (as shown below) may often be more efficient and more beneficial to both parties than a prescribed rate.<sup>7</sup>

While the Joint Carload Shippers argue that the Board needs to develop “a meaningful alternative to SAC for carload traffic,”<sup>8</sup> they do not argue that the Board should try to do so in this proceeding.<sup>9</sup> CSXT disagrees that a “carload-specific” rate alternative needs to be developed, because SAC is flexible enough to be applied to both

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<sup>3</sup> See Joint Comments of The Western Coal Traffic League et al., STB Ex Parte No. 733, at 56 (filed Aug. 1, 2016) (“Joint Coal Shippers Comments”).

<sup>4</sup> *Id.* at 56.

<sup>5</sup> *Id.* at 57.

<sup>6</sup> *Id.* at 57-58.

<sup>7</sup> *Coal Rate Guidelines, Nationwide*, 1 I.C.C. 2d 520, 524 (1985).

<sup>8</sup> Comments of the Joint Carload Shippers, STB Ex Parte No. 733, at 3 (filed Aug. 1, 2016) (“Joint Carload Shippers Comments”).

<sup>9</sup> See also Joint Coal Shippers at 56 (“proper forum to address substantive changes to SAC rules is in a SAC rulemaking proceeding devoted to merits issues.”).

coal cases and carload cases. But CSXT concurs with all the shipper commenters that this proceeding is not the place to consider any substantive changes to SAC.

For these reasons, multiple stakeholders have agreed that standardizing or simplifying SAC evidence is not the solution.<sup>10</sup> CSXT expressed concern with the standardization proposals in the ANPRM because of the potential impact they could have on a “shipper’s right to propose efficiencies or a railroad’s right to test a shipper’s evidence against the realities of real-world railroading.”<sup>11</sup> Norfolk Southern (“NS”) also argued that standardization proposals could tilt the process in favor of one party or the other.<sup>12</sup> And both the Joint Coal Shippers and Joint Carload Shippers also raised objections to the standardization of evidence.<sup>13</sup> The Board should heed these stakeholders, and it should not take any steps that would alter substantive SAC results in the name of simplification.

Indeed, the standardization proposal to use accounting values for construction costs rather than current replacement values would deeply undermine the economic foundations of SAC. As the ICC stated at the inception of Constrained Market Pricing,

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<sup>10</sup> See ANPRM at 5-6.

<sup>11</sup> See Opening Comments of CSX Transportation, Inc., STB Ex Parte No. 733, at 29-34 (filed Aug. 1, 2016) (“CSXT Comments”).

<sup>12</sup> See Comments of Norfolk Southern Railway Company, STB Ex Parte No. 733, at 42-44 (filed Aug. 1, 2016) (“NS Comments”).

<sup>13</sup> See Joint Coal Shippers Comments at 52-58 (“Coal Shippers urge the Board not to consider evidence standardization”); Joint Carload Shippers Comments at 17-18 (“In many instances, however, such simplification has a potentially significant trade-off that could bake real-world inefficiencies into the operations of a theoretically more efficient SARR, thereby undermining a critical objective of the SAC analysis”).

“under the theory of SAC, which assumes that a new entrant can potentially enter the market today, asset value must be based on the cost of acquiring assets today (at their current value). Using the railroad’s historical cost of the assets . . . would not be consistent with the theory of SAC.”<sup>14</sup>

SAC’s use of current replacement costs have been criticized in some recent forums, but the criticism is unfounded. Replacement costs are not hypothetical costs – they represent the real-world value of railroad assets, which in a SAC case is replicated by looking at the real-world current costs of those assets. In contrast, accounting book values on a balance sheet are a function of accounting rules, not the actual value of the infrastructure that railroads must maintain and eventually replace. SAC’s basic goal of estimating a “simulated competitive price” that a new entrant would charge to serve the complaining shipper can only be met by estimating the actual cost of that new entrant’s infrastructure – not an artificial accounting value.<sup>15</sup> And critically for regulatory purposes, investors make investment decisions based on current replacement costs – not accounting book values.

The Board has repeatedly reaffirmed that using current replacement costs for railroad assets is the foundation of the SAC test,<sup>16</sup> and it has heard from a host of

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<sup>14</sup> *Coal Rate Guidelines*, 1 I.C.C.2d 520, 544-45 (1985) (internal footnote omitted).

<sup>15</sup> *Id.* at 528.

<sup>16</sup> See *DuPont v. NS*, STB Docket No. 42125, at 48 (STB served March 24, 2014) (“DuPont’s argument that the costs should be based on the cost of acquisition as opposed to replacement costs is inconsistent with Board SAC precedent. In SAC cases, RPI costs are developed by replacement costs, and not the cost the incumbent railroad paid for the line when it was acquired.”); *Rate Guidelines - Non-Coal Proceedings*, 1987

academic voices about the need to use current costs to judge rate reasonableness. CSXT showed in the *Consumers Energy* rate case that scores of leading economists have urged the agency to use current replacement costs rather than historic book values,<sup>17</sup> and in Ex Parte 722 the Board heard similar testimony from experts including Professor Joseph P. Kalt, Professor Bradford Cornell, and Professor Kevin M. Murphy.<sup>18</sup> Other agencies like the General Accounting Office and the Railroad Accounting Principles Board likewise have supported the economic validity of current replacement costs.<sup>19</sup> Moreover, using current replacement costs gives shippers the opportunity to identify the least-cost, most-efficient way of replacing the infrastructure it needs for its Stand Alone Railroad (“SARR”). Shippers can and do assume that the SARR could pay the

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LEXIS 390, at \* 8 (March 23, 1987) (“One of the major reasons for developing CMP was to provide railroads the opportunity to earn adequate revenues and replace assets expended in the provision of rail service at a current cost level. In describing the SAC test of maximum reasonableness in our Guidelines decision, we therefore emphasized that current replacement costs were to be used in the calculation of any proposed SAC test.”).

<sup>17</sup> See CSXT Reply Evidence at IV-12-14 & nn. 27-28, *Consumers Energy Co. v. CSX*, STB Docket No. 42142 (filed Mar. 7, 2016)

<sup>18</sup> See, e.g., Opening Comments of AAR, Kalt V.S. at 28-31, *Railroad Revenue Adequacy*, STB Ex Parte 722 (filed Sept. 5, 2014); Opening Comments of Norfolk Southern, Cornell V.S. at 13-18, *Railroad Revenue Adequacy*, STB Ex Parte 722 (filed Sept. 5, 2014); Opening Comments of Union Pacific, Murphy V.S. at 7-25, *Railroad Revenue Adequacy*, STB Ex Parte 722 (filed Sept. 5, 2014).

<sup>19</sup> See U.S. Gen. Accounting Office, GAO/RCED-87-15BR, *Railroad Revenues: Analysis of Alternative Methods to Measure Revenue Adequacy*, at 97 (1986); Railroad Accounting Principles Board, *Railroad Accounting Principles – Final Report*, Vol. II at 60 (1987); see also CSXT Opening Comments at 6-11, *Railroad Revenue Adequacy*, STB Ex Parte 722 (filed Sept. 5, 2014) (detailing history of expert agency support for using current replacement costs).

lowest possible unit costs, use the most efficient equipment and practices, and build the minimum facilities necessary for the operations the SARR proposes.

In short, the Board has no basis to alter the substantive SAC test at this time, and this proceeding should be focused exclusively on procedural changes that will expedite cases.

**II. SEVERAL OF CSXT'S PROPOSALS ARE BROADLY AGREED TO BY STAKEHOLDERS AND SHOULD BE ADOPTED BY THE BOARD.**

In the ANPRM, the Board sought comment on several of its own proposals and encouraged the parties to provide comments on any other relevant matters. CSXT and several other parties responded to the Board's request, and there are several areas where shippers and railroads are in accord. These consensus proposals should be adopted by the Board.

*Most Parties Agree That A Pre-Filing Requirement Would Be Helpful:* The Board proposed a pre-filing notification requirement.<sup>20</sup> CSXT put forth a specific recommendation for a 30 or 60 day pre-filing notification – depending on the type of case – to allow parties to begin preparing for discovery and to promote negotiated resolutions that would not affect the overall statutorily required rate case schedule.<sup>21</sup> Several other parties also promoted pre-filing notifications of 60 days, including the Joint Carload Shippers, who thought 60 days would be “optimal to afford sufficient

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<sup>20</sup> See ANPRM at 3.

<sup>21</sup> See CSXT Comments at 7-11.

time for scheduling and conducting mediation,”<sup>22</sup> and the Association of American Railroads (“AAR”).<sup>23</sup> Because the proposal has the broad support of both shippers and railroads, it should be included in any new Board procedural rules.

*Coal Shippers Agree That Initial Discovery Requests Should Be Filed With The*

*Complaint*: In the ANPRM, the Board discussed the prospect of having parties serve discovery requests concurrently with their complaints.<sup>24</sup> CSXT strongly supported the recommendation in its comments and noted that several weeks typically elapse between the filing of a rate reasonableness complaint and the initial discovery requests, which causes unnecessary delays in production.<sup>25</sup> The Joint Coal Shippers also called for “adopting rules that require (i) the complainant shipper file its initial discovery requests on the same day it files its complaint.”<sup>26</sup> In light of this consensus, the Board should require initial discovery requests be served simultaneously with the filing of a complaint in future cases.

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<sup>22</sup> Joint Carload Shippers Comments at 5.

<sup>23</sup> See Comments of the Association of American Railroads, STB Ex Parte No. 733, at 6 (filed Aug. 1, 2016) (“AAR Comments”) (“To that end, the AAR supports the proposal in the ANPRM that the Board establish a prefiling period ahead of the filing of a rate reasonableness complaint, and the AAR supports the Board's suggested period of 60 days.”).

<sup>24</sup> See ANPRM at 3.

<sup>25</sup> See CSXT Comments at 21 (delay of 22 days between filing of a complaint and initial discovery requests in one case). Other railroads shared this position. See, e.g., NS Comments at 36 (NS “supports the concept of requiring these initial discovery requests to be served concurrently with the complaint”).

<sup>26</sup> Joint Coal Shippers Comments at 4.

*Railroads and Carload Shippers Agree On Initial Market Dominance Disclosures:* In its Opening Comments, CSXT presented a detailed proposal for an accelerated market dominance determination that included initial market dominance disclosures by both parties.<sup>27</sup> NS also proposed initial market dominance disclosures from the complainant.<sup>28</sup> The Joint Carload Shippers supported initial disclosures.<sup>29</sup> Given the agreement between railroad and shipper parties that initial market dominance disclosures would be workable and effective, the Board should adopt a rule requiring them. CSXT continues to recommend that such disclosures be limited to the specific categories of information it discussed in its Opening Comments.<sup>30</sup>

*Railroads and Shippers Agree on a "Meet and Confer" Requirement for Most Motions to Compel:* The Board asked in the ANPRM whether it should require parties "to certify that they have attempted to confer with the opposing party" prior to filing motions to compel.<sup>31</sup> CSXT expressed support for such a requirement, which would be consistent with past decisions of the Board encouraging parties to meet and confer prior to bringing their disagreements to the agency.<sup>32</sup> The Joint Carload Shippers expressed no objection to such a rule as long as there was an exception for time constraints, such as

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<sup>27</sup> See CSXT Comments at 15-17.

<sup>28</sup> See NS Comments at 27.

<sup>29</sup> See Joint Carload Shippers Comments at 4-5. The Joint Carload Shippers support initial disclosures for both market dominance and SAC discovery.

<sup>30</sup> See CSXT Comments at 15-17.

<sup>31</sup> See ANPRM at 5.

<sup>32</sup> See CSXT Comments at 28-29.

an impending procedural schedule deadline.<sup>33</sup> The Joint Coal Shippers, similarly, supported the requirement but requested clarification on the Board's ten day deadline by which motions to compel must be filed.<sup>34</sup> As the parties generally agree to a meet and confer requirement, the Board should implement such a procedural rule.

Parties Agree That More Staff Involvement Would Be Useful: The Board proposed several options to increase Board staff involvement including written questions to clarify the record, early technical conferences, and assignment of a staff liaison to the parties.<sup>35</sup> CSXT welcomed the Board's suggestion that it increase staff interaction.<sup>36</sup> The Joint Carload Shippers expressed support for "greater interaction through technical conferences and written interrogatories,"<sup>37</sup> and the Joint Coal Shippers agreed that such interaction would be "very useful to the parties."<sup>38</sup> The Board should follow these unanimous recommendations and increase staff interaction with the parties in rate reasonableness cases.

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<sup>33</sup> See Joint Carload Shippers Comments at 16.

<sup>34</sup> See Joint Coal Shippers Comments at 51-52 (discussing 49 U.S.C. § 1114.31(a)).

<sup>35</sup> See ANPRM at 7.

<sup>36</sup> See CSXT Comments at 40-41. Other railroad parties also expressed a willingness to engage more with staff. See, e.g., AAR Comments at 6 (AAR does not object to "staff-led conferences focused on the actual SAC presentation later in the case"); NS Comments at 11-14 (acknowledging past Board success and calling for further "leveraging" of case management conferences).

<sup>37</sup> Joint Carload Shippers Comments at 26-27.

<sup>38</sup> Joint Coal Shippers at 62.

**III. THE BOARD SHOULD REJECT SHIPPER PROPOSALS FOR ALTERING HOW TRAFFIC AND REVENUE DATA ARE PRODUCED.**

Shipper groups have made several proposals about the production of traffic and event data that are misguided, including that the Board itself collect traffic and event records for use in rate cases, that the Board prescribe particular database formats, and that the Board require complete traffic and event data to be produced just 60 days after a complaint is filed. One common feature of these misguided proposals is a misunderstanding of how railroads maintain traffic and event data in the ordinary course of business and what railroad defendants in a SAC case must do to produce a usable, linked, and complete set of traffic and revenue files that the parties can rely upon for their SAC evidence. To correct this misunderstanding, CSXT is submitting a Verified Statement from Benton Fisher and Michael Matelis of FTI Consulting, who have worked with CSXT and other railroads to produce traffic and event records in several rate cases. Mr. Fisher's and Mr. Matelis's Verified Statement explains the steps that CSXT takes to produce traffic and revenue data from its internal systems to shippers and describes why shippers' proposals are not workable.

**A. Board Collection And Processing of Traffic and Revenue Data Would Impose Massive Burdens on the Board and Railroads With No Corresponding Benefit.**

The ANPRM relayed a suggestion from some stakeholders that the Board collect traffic data that would be available in rate cases, but noted that the Board had some

concerns with the proposal.<sup>39</sup> CSXT explained in its Opening Comments that the burden of such data collection on railroads and the Board would vastly outweigh any marginal reduction in the time required for discovery.<sup>40</sup> Other railroads shared these concerns as well.<sup>41</sup>

The Joint Carload Shippers dismissed the Board's concern about the burden of collecting and maintaining this data, and suggested that the collection, transmission, and maintenance of all Class I traffic and revenue data is comparable to the Board's compilation of the waybill sample.<sup>42</sup> But there is no valid comparison between the two. Waybill sample reporting only involves (1) a single railroad data source (waybills); (2) a sample of traffic (including just 1 out of 40 single-car shipments)<sup>43</sup>; (3) a single waybill per shipment (which will cover multiple carloads in any multiple-car or unit train shipment); and (4) a relatively discrete amount of fields per waybill. The full traffic and event data that is requested in a rate case, in contrast, involves (1) multiple railroad data sources to obtain information on revenues, car events, and train events; (2) all shipment records for the SARR states; (3) multiple records per carload (since a single shipment often generates dozens of separate event records as it is moved across the system); and

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<sup>39</sup> See ANPRM at 4 ("We are concerned, however, about how to standardize the data and the burdens collection of the data could impose.").

<sup>40</sup> See CSXT Comments at 25-26.

<sup>41</sup> See Comments of Union Pacific Railroad Company, STB Ex Parte No. 733, at 4-5 (filed Aug. 1, 2016); NS Comments at 37-38; AAR Comments at 10-11.

<sup>42</sup> See Joint Carload Shippers Comments at 7-9.

<sup>43</sup> 49 C.F.R. § 1244.4(c)(2).

(4) a long list of requested fields that often changes from case to case. *See* Fisher/Matelis V.S. at 11.

Producing such records on a rolling basis would be an unwarranted burden on railroads, who would face perpetual SAC discovery even when they faced no active cases. *See id.* And collecting and maintaining such records would be a daunting task for the Board, that would among other things require it to maintain a database containing terabytes of Sensitive Security Information. Simply determining what records to collect and how to process and maintain the constant flow of incoming data from railroads could distract the Board from more productive efforts. *See id.* at 10-11. And these significant burdens are not offset by any meaningful benefits. The Joint Carload Shippers assume that the Board would be able to immediately produce requested data at the outset of a rate case, but there is no reason to think that would be true. Even if the Board were able to create a massive database warehouse for all Class I railroad traffic data, it would not be able to instantly access and produce data for specific time periods and specific states.

In sum, the proposal that the Board collect and produce traffic data is unworkable and should be rejected.

**B. Requests that the Board Require Production of “Intact Relational Databases” Misunderstand How Railroads Maintain Data and Is Not Feasible.**

The Joint Carload Shippers call for traffic and revenue data content and format to be standardized across all railroads.<sup>44</sup> Specifically, they argue that railroads should be required to “provide intact relational databases rather than individual flat files culled from railroad databases.”<sup>45</sup> This proposal is based on incorrect assumptions about how railroads maintain traffic data and reflects a failure to understand the difficulties that producing such raw database data would generate for the complainant.

At bottom, the Joint Carload Shippers claim that railroads should produce their database systems “as is” to complainants, on the theory that railroads are already maintaining data in “intact relational databases” that are similar to the databases that shipper consultants develop from the flat traffic files railroads produce. If only it were that easy. Traffic data production would indeed be easier if all a railroad had to do was to download its database and send it to a complainant’s consultants, and if that were an actual workable alternative CSXT would gladly take that shortcut. {{

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<sup>44</sup> See Joint Carload Shippers Comments at 7-9.

<sup>45</sup> *Id.* at 7. See also Joint Carload Shippers Comments, Verified Statement at 6.

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CSXT's approach to producing traffic and revenue data has been developed so that complainants receive useable data they can manipulate for SAC purposes. *See Fisher/Matelis V.S.* at 4-5. The data is broken down into individual flat files so that it is readable and usable by the shippers in their own database programs for which they would not be required to separately obtain licenses. *See id.* at 6.

Even if there were any merit to parties' experimenting with different database formats for production, such data issues are best worked out between the parties in the context of individual cases, where parties can discuss the technical issues surrounding the use of different production formats and arrive at the best mutually-agreeable solution. Imposing specific production formats through Board fiat is unwarranted in any situation, and it is particularly unwise when shippers are requesting data be produced in a format that they will not be able to read and that will only increase delays and complications.

**C. A 60-Day Time Limit For Producing Complete Traffic Data Is Unrealistic And Unfair.**

The Joint Coal Shippers propose that fourteen categories of discovery – what they call “Core SAC data” – be produced by the 60th day of the procedural schedule.<sup>46</sup>

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<sup>46</sup> *See* Joint Coal Shippers Comments at 4.

This proposal is based on the erroneous claim that railroads “routinely delay the production”<sup>47</sup> of “Core SAC Data” (including all traffic and revenue data), and it would do nothing at all to expedite rate case litigation.

Shippers’ reckless accusation that railroads “routinely delay” production of traffic data for litigation purposes is not supported by any facts. What the facts show is that traffic data production is an intensive, time consuming process. It takes time for railroads to determine the ideal ways to extract the particular information and fields requested by the shipper (for the particular geography requested by the shipper) and to develop necessary decoders and explanations of the data. *See Fisher/Matelis V.S.* at 3. And it takes time for railroads to review that information to ensure the completeness and accuracy of the data, to check the reliability of links among the data, and to minimize errors and missing records. *See id.* at 7-8. Indeed, the Joint Carload Shippers complain of the “gaps and/or unexplained elements that require a time-consuming exchange of correspondence before the information is complete and fully usable.”<sup>48</sup> But there would be far more gaps and far more unexplained elements if railroads were required to produce data to shippers without taking the time necessary to review and quality control the data.

Moreover, the Joint Coal Shippers’ demand that railroads complete production of all major SAC discovery 60 days after a complaint is filed is unaccompanied by any explanation of how placing such a herculean burden on defendants would expedite the

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<sup>47</sup> *Id.* at 3.

<sup>48</sup> Joint Carload Shippers Comments at 7.

overall case. On the contrary, the discovery period would extend for another 90 days (until Day 150), a complainant would not have to file opening evidence for 150 days (Day 210), and the dates for evidentiary submissions and a final decision would be unchanged. This proposal would not expedite the case in any way; its primary impact would be give shippers a full five months after traffic production to submit opening evidence (while defendants would be still limited to 60 days for reply). The Board should not adopt an unworkable, one-sided proposal that will not do anything to expedite rate cases.

**IV. THE BOARD'S MEDIATION PROCESS HAS A RECORD OF HELPING PARTIES REACH NEGOTIATED RESOLUTIONS.**

CSXT explained on Opening that the Board's mandatory non-binding mediation process has been helpful in the negotiated resolution of cases. The Joint Coal Shippers dismiss the process as having "produced no case settlements (in whole or in part)."<sup>49</sup> According to the Joint Coal Shippers, parties engage in negotiations prior to complaints being filed and "mediation adds little to a pre-filing negotiation process between sophisticated parties that has already occurred."<sup>50</sup> These sentiments are not supported by CSXT's experience.

In CSXT's experience, mandatory mediation has been helpful in resolving rate cases early in the process.<sup>51</sup> The *NRG* case, for example, was settled shortly after

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<sup>49</sup> Joint Coal Shippers Comments at 40.

<sup>50</sup> *Id.*

<sup>51</sup> CSXT has made this point in prior proceedings. *See, e.g.,* Ex Parte 705 Hearing Transcript at 312 (July 22, 2011) ("At CSX, we've had three separate cases that were

mandatory non-binding mediation occurred and just over a month after the complaint was filed.<sup>52</sup> Similarly, in the *DuPont/CSXT* case, the parties settled approximately six months after the complaint was filed.<sup>53</sup> Other CSXT cases did not settle as quickly or early, but later settlements in both the *Seminole Electric* and *M&G* cases were informed by early mandatory mediation because that assisted the parties in narrowing the issues in dispute and assessing their litigation position.<sup>54</sup> In short, Board mediation has played an important role in spurring parties towards compromise and away from further litigation, and the Board should continue to encourage negotiated resolutions.

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brought, where the customer felt like the rates were not appropriate, and *through your mediation process we reached resolution every time.*”) (emphasis added) (Statement of M. Ward).

<sup>52</sup> See *NRG Power Marketing LLC v. CSX Transp., Inc.*, STB Docket No. 42122 (STB served July 8, 2010). The Board’s decision dismissing the case notes that the parties had participated in mandatory non-binding mediation facilitated by Board staff.

<sup>53</sup> See *E.I. du Pont de Nemours & Co. v. CSX Transp.*, STB Docket No. 42112 (STB served May 11, 2009).

<sup>54</sup> *Seminole Electric Cooperative, Inc. v. CSX Transp., Inc.*, STB Docket No. 42110; *M&G Polymers, LLC v. CSX Transp., Inc.*, STB Docket No. 42123.

Respectfully submitted,



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

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

*Counsel to CSX Transportation, Inc.*

August 29, 2016

**JOINT VERIFIED STATEMENT  
OF  
BENTON V. FISHER AND MICHAEL W. MATELIS  
TO  
REPLY COMMENTS OF CSX TRANSPORTATION, INC.**

*EX PARTE No. 733  
EXPEDITING RATE CASES*

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**I. Introduction and Background**

We are Benton V. Fisher and Michael W. Matelis. We are Senior Managing Director and Senior Director, respectively, in FTI Consulting's Network Industries Strategies practice with offices at 1101 K Street, NW, Washington, DC 20005. Together we have worked closely with CSX Transportation, Inc. ("CSXT") personnel in the recent Stand-Alone Cost ("SAC") cases to identify responsive traffic and revenue related discovery data within CSXT's information systems and produce those data in a format that considers both the size and scope of the responsive materials. Benton Fisher has overseen the discovery production process and preparation of evidence for CSXT and other railroads in multiple SAC cases. Michael Matelis has had primary responsibility for quality control and managing traffic and revenue data produced in CSXT's recent SAC cases. Statements of our qualifications are attached hereto.

We have been asked by CSXT to address certain recommendations proffered in response to the Surface Transportation Board's ("STB" or "Board") June 14, 2016 Advanced Notice of Proposed Rulemaking in this proceeding. Specifically we have been asked to address recommendations from the Joint Carload Shippers relating to traffic and revenue data, including a suggestion that the Board itself collect traffic and revenue data for use in rate reasonableness cases and a suggestion that the Board require traffic and revenue data to be produced in a "relational" database.

In response to the Board's solicitation of potential process changes to streamline full SAC cases, the Joint Carload Shippers assert that the traffic and revenue data are maintained internally by CSXT as a relational database and ask the Board to require that data "be provided in an

‘intact’ and ‘relational’ database format” rather than in flat files.<sup>1</sup> Complainants in SAC cases typically request production of detailed traffic and revenue data for each rail shipment that travels through the states of the proposed SARR. CSXT responds to these requests by identifying responsive traffic and revenue data from the various systems CSXT maintains in the normal course of business and providing those data to complainants in flat files, along with data layouts, diagrams, and dictionaries to help complainants use and interpret the data.

The Joint Carload Shippers assert that production in flat files requires complainants to incur the burden of restoring these data to a relational database. They conclude that if railroads simply provided these “complete functioning databases (limited to the specific records and fields required), and linked in the manner required to correlate data contained in the various tables, and supplemented with complete decoders, complainants could reliably develop SAC evidence within the procedural schedule.”<sup>2</sup>

In the alternative, the Joint Carload Shippers claim that “having the Board annually collect waybill and other traffic customarily used in SAC cases” would be the next best option.<sup>3</sup> As explained in more detail below, these recommendations would not shorten or simplify the process of developing SAC evidence. On the contrary, they would needlessly complicate and lengthen the process.

## **II. Problems With The Joint Carload Shippers’ Intact Database Recommendation**

The Joint Carload Shippers’ fundamental premise is wrong. The traffic, revenue, train movement, and car movement data typically requested by complainants in discovery for full-SAC proceedings do not exist in “intact relational databases.” A relational database is an

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<sup>1</sup> Verified Statement of Thomas D. Crowley and Robert D. Mulholland on behalf of The Joint Carload Shippers (“Crowley/Mulholland VS”) at 4.

<sup>2</sup> *Id.* at 6.

<sup>3</sup> *Id.*

organized set of tables storing various types of data that can be linked together through key fields. {{

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We have worked extensively with CSXT to identify, extract, verify, and produce requested materials in discovery. {{

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**III. Providing Flat Files Of Responsive Data Is The Most Efficient Means Of Providing Data**

CSXT's current practice of providing flat files of traffic and revenue data along with explanatory data layouts, diagrams, and dictionaries is the most technically straightforward and efficient means of providing complainants with the responsive data. When faced with a discovery request, CSXT identifies the source(s) of data being sought by the discovery requests and the appropriate framework to provide those data. Data layouts define the structure of each

type of record—*i.e.* the individual fields and the order of those fields within a record. Data diagrams depict the relationship among different record types and define what links those records together. Data dictionaries describe data and identify the type of data in each field—*e.g.* whether a value is stored as a character field, a number, a timestamp, etc. The flat files contain the data themselves, with special characters separating fields and records as described by the data layout. This is a universally recognized medium that enables the data to be easily read and incorporated into a new database environment. Using these materials, one can set up and design the appropriate tables and fields, import the data into those fields, and structure the data as the appropriate type. The Joint Carload Shippers' suggestion that this process is akin to the effort each railroad performs designing and developing their systems is incorrect. To create a relational database of the discovery data in a SAC case, Complainants simply need to develop and execute a basic script for each table, a process that should take no more than a few days, based on the reference materials that the railroad provides.

**IV. Other Technical Challenges Associated With The Joint Carload Shippers' Recommendations**

The Joint Carload Shippers' proposal that the Board order railroads to produce intact databases also faces a number of technical challenges. In order for complainants to restore a copy of a railroad internal database, they would need compatible, if not identical, technical environments. This would require complainants to acquire servers, hardware, and software programs that railroads have developed to support the applicable systems. {{

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In addition, producing a subset of CSXT's data in the format requested by shippers presents additional challenges, if it could be done at all. The Joint Carload Shippers describe a process that would require CSXT to create copies of the relevant data tables, delete certain fields and filter out certain records, then produce a copy of the database.<sup>5</sup> In order to limit the produced data only to the edited, responsive tables, however, {{

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<sup>5</sup> Crowley/Mulholland VS at 5.

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**V. The Joint Carload Shippers' Recommendations Would Require Additional Time**

The Joint Carload Shippers' recommendation for traffic and revenue data would not achieve any time savings but would cause greater challenges and confusion, leading to additional time in preparing SAC evidence. The Joint Carload Shippers claim the traffic and revenue data are "among the last information produced by the railroad and it nearly always contains gaps and/or unexplained elements that require a time-consuming exchange of correspondence before the information is complete and fully usable."<sup>6</sup> The Joint Carload Shippers believe their recommendation of producing intact databases would reduce the amount of time needed to produce, review, process, and understand the data, but in reality their suggestions would further complicate matters.

During the discovery phase, CSXT goes through a process to identify appropriate data sources, define the relevant selection criteria to identify the traffic and revenue data that are responsive to Complainants' discovery requests, and then review and validate the data before any data can be produced. Currently, CSXT compiles these data into traffic and revenue files, and prepares the corresponding data layouts, diagrams, and dictionaries. The Joint Carload Shippers suggest that railroads' databases are "easily deliverable" and "to the extent that any railroad databases require conversion from mainframe or older PC formatting, the Board should hold a technical conference to establish best practices for converting mainframe databases to Client Server databases for use in rate cases."<sup>7</sup> {{

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<sup>6</sup> Comments of The Joint Carload Shippers at 7.

<sup>7</sup> Crowley/Mulholland VS at 4.

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Finally, the format would present new challenges for complainants to understand the data. Currently, CSXT provides the data in the format requested, which has logical business relationships. Producing intact database systems, however, would confront complainants with new challenges to understanding the data. {{

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**VI. Despite The Joint Carload Shippers' Protestations, The Data Are Readily Usable**

In representing CSXT in SAC cases, we have been provided with the same data in the same format as the complainants. The Joint Carload Shippers claim that “the railroads practice of providing isolated flat files imposes a burden on the railroads themselves, as they (or their consultants and legal counsel) must expend significant resources responding to weeks (and often months) of follow-up questions, including time spent developing supplemental productions to fill in the inevitable gaps.”<sup>8</sup> Despite the Joint Carload Shippers’ claims, the process of importing and structuring flat files into a relational database presents relatively less burden and is a standard method of transferring large datasets.<sup>9</sup> The flat files are simply imported according to the data layout and structured according to the data dictionary. There are challenges working with the data—in some cases the data may be different than expected, anomalies can be found, or difficulties are encountered in applying the railroad’s business records to develop detailed SAC-related calculations, such as the ATC revenue allocation. Providing copies of the railroad’s systems containing the traffic and revenue data would not solve these issues, however. While the Joint Carload Shippers suggest that these data exist in a complete system suitable for SAC analyses, {{

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<sup>8</sup> Crowley/Mulholland VS at 9.

<sup>9</sup> See, e.g., *Fairmont Supply Co. v. Hooks Industrial, Inc.*, 177 SW 3d 529, 533 (Tex. Ct. App. 2005) (Use of flat files in discovery).

**VII. JCC’s Recommendation That Railroads Produce Systems To The Surface Transportation Board Is Not an Effective Solution**

Following their claim that the best option for expediting rate cases is for railroads to provide intact relational databases, the Joint Carload Shippers add that “having the Board annually collect waybill and other traffic customarily used in SAC cases” would be the next best option.<sup>10</sup> They propose that “rather than providing just the waybill table to the Board, the railroads would provide the intact database containing waybill data along with car and train movement data.”<sup>11</sup> This proposal presents the same challenges as if a railroad were to turn over intact systems to a complainant—and more. The STB would need to design environments compatible with railroads’ systems. It would need to purchase the hardware and software to operate those systems. It would need to coordinate with railroads to properly restore these systems. It would need to maintain these data and, when a complaint is filed, design a process to filter and extract the appropriate data to the complainant.

The challenges of this proposal that the Board maintain railroad traffic and revenue data do not stop there. The Joint Carload Shippers state that the STB would “provide the standardized information to the complainant,”<sup>12</sup> without offering any explanation of how the data would be standardized or who would pay for it. Each railroad has developed their own systems to support their operations, and each system will have its own design and application to meet its business needs. The data across systems and carriers is not standard, and it would take a concerted, fact-specific effort for the Board to develop parameters for different railroads to submit a standard data set.

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<sup>10</sup> Crowley/Mulholland VS at 6.

<sup>11</sup> Crowley/Mulholland VS at 8.

<sup>12</sup> Crowley/Mulholland VS at 6.

Moreover, under this proposal railroads would have to produce system-wide SAC data on a regular, ongoing basis, even when no complaint has been filed against them. The Joint Carload Shippers have compared this to a simple expansion of the Carload Waybill Sample. But this comparison is a gross oversimplification. The information in the Sample requires railroads to track and provide a relatively small number of common fields and values. The STB has defined the fields and expected values to be included in this collection. But such data represent a very small piece of the considerably more detailed traffic and revenue data necessary to analyze a SAC case. Collecting and reporting the Waybill Sample data to the STB requires a much less involved process than the process required to identify, extract, and provide the SAC-related traffic and revenue data. The bulk of the traffic and revenue data used in SAC cases consists of information describing the railroad operations performed to complete the movement of each shipment, tracking individual loaded and empty cars along their actual routes, along with the associated train, locomotive, and time information—none of which is included in the Waybill Sample.

**VERIFICATION & QUALIFICATIONS  
OF  
BENTON V. FISHER  
TO  
REPLY COMMENTS OF CSX TRANSPORTATION, INC.**

*EX PARTE No. 733  
EXPEDITING RATE CASES*

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**BENTON V. FISHER**

Mr. Fisher is Senior Managing Director in the Network Industries Strategies (“NIS”) Group of FTI Consulting, specializing in the economic analysis of network industries, including railroad transportation. His business address is 1101 K Street, Suite B100, Washington, DC 20005. Mr. Fisher has submitted a Joint Verified Statement regarding data collection, analysis, and discovery. Mr. Fisher has signed a verification of the truth of the statements contained therein. A copy of the verification is attached hereto.

Mr. Fisher is a graduate of Princeton University where he obtained a Bachelor of Science degree of Engineering, from the Civil Engineering and Operations Research department. He graduated with a concentration in Information and Decision Sciences, and also received a certificate for completing the requirements for the Engineering and Management Systems program. After graduating, Mr. Fisher served as the Deputy Controller for the U.S. Senate re-election campaign for Bill Bradley, and since April 1991 has been employed by FTI Consulting and Klick, Kent & Allen, an economic consulting firm that FTI Consulting acquired in 1998.

Much of the NIS group’s work focuses on the economic and financial analysis of network industries, in particular different aspects of transportation. Mr. Fisher has spent more than 20 years involved in the analysis of rates, costs, and service, and the factors that affect them. In the rail industry, he has worked extensively to develop expert testimony before the Surface Transportation Board examining the reasonableness of railroad rates, railroads’ applications for mergers and acquisitions, and rulemakings regarding the establishment, evaluation, revision, and implementation of rules and regulations. He has managed the development of expert testimony covering a variety of topics in numerous contract disputes in Federal court or Arbitration, requiring the analysis of economic and operating issues and response to service performance or other claims.

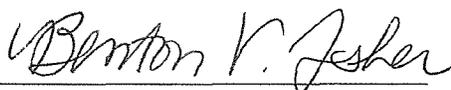
Much of Mr. Fisher's work for the railroad industry has required a detailed understanding of the regulations under which railroads operate, the rules by which rates are evaluated, and the costing approaches and models that are used. He has testified numerous times regarding stand-alone costs and URCS costs (Uniform Railroad Costing System, the STB's general purpose costing system) for individual movements, traffic groups, and entire networks. He has extensive experience with these costing approaches, including the detailed inputs and their sources, and the costing methodologies and formulae.

In addition to the rail industry, Mr. Fisher has been engaged with similar issues and disputes regarding the economic and financial analysis of telecommunications, postal, and energy matters. In those matters, as with rail, he has worked closely with detailed price, cost, and operational data and reviewed cost models and analyzed the sensitivity of multiple economic components, in evaluating rates, costs, and service in a variety of different contexts.

Mr. Fisher's complete curriculum vitae is attached.

### VERIFICATION

I, Benton V. Fisher, declare under penalty of perjury that the Joint Verified Statement is true and correct to the best of my knowledge, belief, and information. Further, I certify that I am qualified and authorized to file this statement.

  
Benton V. Fisher

Executed on this 26 day of August, 2016.

# Benton V. Fisher

Senior Managing Director – Economic Consulting

Benton.Fisher@fticonsulting.com

## **FTI Consulting**

**1101 K Street, NW**

**Suite B100**

**Washington, DC 20005**

Tel: (202) 312-9100

Fax: (202) 312-9101

## **EDUCATION**

B.S. in Engineering and  
Management Systems,  
Princeton University

**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.

# Benton V. Fisher

## 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
May 24, 2002	Docket No. 42069 Duke Energy Corporation v. Norfolk Southern Railway Company, Opening Evidence and Argument of Norfolk Southern Railway Company

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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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July 3, 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 Rebuttal Evidence of The Burlington Northern and Santa Fe Railway Company and Union Pacific Railroad
October 8, 2003	Docket No. 42071 Otter Tail Power Company v. The Burlington Northern and Santa Fe Railway Company, Reply Evidence of The Burlington Northern and Santa Fe Railway Company
October 24, 2003	Docket No. 42069 Duke Energy Corporation v. Norfolk Southern Railway Company Supplemental Evidence of Norfolk Southern Railway Company
October 31, 2003	Docket No. 42069 Duke Energy Corporation v. Norfolk Southern Railway Company, Reply of Norfolk Southern Railway Company to Duke Energy Company's Supplemental Evidence
November 24, 2003	Docket No. 42072 Carolina Power & Light Company v. Norfolk Southern Railway Company, Supplemental Evidence of Norfolk Southern Railway Company
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
March 22, 2004	Docket No. 42071 Otter Tail Power Company v. The Burlington Northern and Santa Fe Railway Company, Supplemental Reply Evidence of The Burlington Northern and Santa Fe Railway Company
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
October 20, 2005	Docket No. 42088 Western Fuels Association, Inc. and Basin Electric Power Cooperative, Inc. v. BNSF Railway Company, Surrebuttal Evidence of BNSF Railway Company
June 15, 2006	Docket No. 42088 Western Fuels Association, Inc. and Basin Electric Power Cooperative, Inc. v. BNSF Railway Company, Reply Supplemental Evidence of BNSF Railway Company
June 15, 2006	Docket No. 41191 (Sub-No. 1) AEP Texas North Company v. BNSF Railway Company, Reply Supplemental Evidence of BNSF Railway Company
March 19, 2007	Docket No. 41191 (Sub-No. 1) AEP Texas North Company v. BNSF Railway Company, Reply Third Supplemental Evidence of BNSF Railway Company
March 26, 2007	Docket No. 42088 Western Fuels Association, Inc. and Basin Electric Power Cooperative, Inc. v. BNSF Railway Company, Reply Second Supplemental Evidence of BNSF Railway Company
July 30, 2007	Docket No. 42095 Kansas City Power & Light v. Union Pacific Railroad Company, Union Pacific's Opening Evidence
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
April 4, 2008	Docket No. 42099 E.I. DuPont De Nemours and Company v. CSX Transportation, Inc., Rebuttal Evidence of CSXT
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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April 4, 2008	Docket No. 42101 E.I. DuPont De Nemours and Company v. CSX Transportation, Inc., Rebuttal Evidence of CSXT
July 14, 2008	Docket No. 42088 Western Fuels Association, Inc. and Basin Electric Power Cooperative, Inc. v. BNSF Railway Company, Third Supplemental Reply Evidence of BNSF Railway Company
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
October 17, 2008	Docket No. 42110 Seminole Electric Cooperative, Inc. v. CSX Transportation, Inc., CSX Transportation, Inc.'s Reply to Petition for Injunctive Relief, Verified Statement of Benton V. Fisher
August 24, 2009	Docket No. 42114 US Magnesium, L.L.C. v. Union Pacific Railroad Company, Opening Evidence of Union Pacific Railroad Company
September 22, 2009	Docket No. 42114 US Magnesium, L.L.C. v. Union Pacific Railroad Company, Reply Evidence of Union Pacific Railroad Company
October 22, 2009	Docket No. 42114 US Magnesium, L.L.C. v. Union Pacific Railroad Company, Rebuttal Evidence of Union Pacific Railroad Company
January 19, 2010	Docket No. 42110 Seminole Electric Cooperative, Inc. v. CSX Transportation, Inc., Reply Evidence of CSX Transportation, Inc.
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
January 6, 2011	Docket No. 42056 Texas Municipal Power Agency v. BNSF Railway Company, BNSF Reply to TMPA Petition for Enforcement of Decision, Joint Verified Statement of Michael R. Baranowski and Benton V. Fisher
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

## Benton V. Fisher

- 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 & QUALIFICATIONS  
OF  
MICHAEL MATELIS  
TO  
REPLY COMMENTS OF CSX TRANSPORTATION, INC.**

*EX PARTE No. 733  
EXPEDITING RATE CASES*

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## **MICHAEL MATELIS**

Mr. Matelis is a Senior Director in the Network Industries Strategies (“NIS”) Group of FTI Consulting, Inc., an economic and consulting firm with offices located at 1101 K Street, NW, Washington, DC 20005. Mr. Matelis has submitted a Joint Verified Statement regarding recommendations for the discovery of traffic and revenue data. Mr. Matelis has signed a verification of the truth of the statements contained therein. A copy of that verification is attached hereto.

Mr. Matelis holds a Bachelor of Arts degree in economics from the University of North Carolina at Chapel Hill. He also received a minor in Information Systems from the School of Information and Library Sciences. After graduating, Mr. Matelis worked as a management consultant. In this capacity, Mr. Matelis assisted a number of government and private organizations to develop information systems, to incorporate systems into their organizations, to develop data collection and reporting tools, to conduct survey efforts, and to perform quantitative and economic analyses.

Since January 2009, Mr. Matelis has been employed by FTI Consulting as part of the Network Industry Strategies (NIS) group, providing financial and economic consulting services to the transportation, energy, and telecommunications industries. He has worked to develop expert testimony before the Surface Transportation Board regarding railroad regulatory matters. He has led efforts managing data for various projects and incorporating that data into complex economic and quantitative analyses.

Mr. Matelis’s complete curriculum vitae is attached.

**VERIFICATION**

I, Michael Matelis, declare under penalty of perjury that the Joint Verified Statement is true and correct to the best of my knowledge, belief, and information. Further, I certify that I am qualified and authorized to file this statement.

  
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Michael Matelis

Executed on this 26 day of August, 2016.

# Michael Matelis

Senior Director – Economic Consulting

michael.matelis@fticonsulting.com

## FTI Consulting

1101 K Street, NW

Suite B100

Washington, DC 20005

Tel: (202) 312-9100

Fax: (202) 312-9101

## EDUCATION

BA in Economics from University of North Carolina at Chapel Hill

Michael Matelis is a Senior Director in the Network Industries Strategies group of the FTI Economic Consulting group, located in Washington, D.C. Mr. Matelis provides financial and economic consulting services to the transportation, energy and telecommunications industries.

Mr. Matelis has managed efforts to incorporate and apply data from various systems into complex economic and quantitative analyses. He has worked with clients to define data requirements, identify appropriate data sources, and generate appropriate data sets. He has led efforts reviewing and assessing data quality – ensuring proper configurations, linkages, and values contained within data sets. He has developed databases and managed data sets for various cases. He has performed economic and financial analysis and developed methodologies to model operations, examine costs, establish pricing rates, and ensure compliance with regulations.

Prior to joining FTI Consulting, Mr. Matelis worked as a management consultant leading projects specializing in analytical and data-driven efforts for various government and private organizations. These efforts included: creating data collection and analysis tools, developing and analyzing performance measures, designing and implementing national surveys, and developing information systems. His core skills include quantitative analysis, data management, and information system development.

Mr. Matelis holds a B.A. in Economics from the University of North Carolina at Chapel Hill with a minor in Information Systems from the School of Information and Library Sciences.

## TESTIMONY

### Surface Transportation Board

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

## Michael Matelis

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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

July 21, 2014 Docket No. NOR 42121 Total Petrochemicals & Refining USA, Inc. v. CSX Transportation, Inc., Reply Evidence of CSX Transportation, Inc.

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March 7, 2016, Docket No. NOR 42142 Consumers Energy Company v. CSX Transportation, Inc., Reply Evidence of CSX Transportation, Inc.