

SHORT FORMS FOR FREQUENTLY CITED CASES

The following short form case citations are used herein:

<i>AEPCO 2001</i>	<i>Arizona Electric Power Cooperative, Inc. v. Burlington Northern & Santa Fe Railroad Co. & Union Pacific Railroad Co.</i> , STB Docket No. 42058 (served Dec. 31, 2001)
<i>AEPCO 2002</i>	<i>Arizona Electric Power Cooperative, Inc. v. Burlington Northern & Santa Fe Railroad Co. & Union Pacific Railroad Co.</i> , 6 S.T.B. 322 (2002)
<i>AEPCO 2005</i>	<i>Arizona Electric Power Cooperative, Inc. v. Burlington Northern & Santa Fe Railroad Co. & Union Pacific Railroad Co.</i> , STB Docket No. 42058 (served Mar. 15, 2005)
<i>AEPCO 2011</i>	<i>Arizona Electric Power Cooperative, Inc. v. Burlington Northern & Santa Fe Railroad Co. & Union Pacific Railroad Co.</i> , STB Docket No. 42113 (served Nov. 16, 2011)
<i>AEP Texas I</i>	<i>AEP Texas North Co. v. BNSF Railway, Co.</i> , STB Docket No. 41191, (Sub-No. 1) (served Nov. 8, 2006)
<i>AEP Texas II</i>	<i>AEP Texas North Co. v. BNSF Railway Co.</i> , STB Docket No. 41191, (Sub-No. 1) (served Sept. 10, 2007)
<i>Ark. Power</i>	<i>Arkansas Power & Light Co. v. Burlington Northern Railroad</i> , 3 I.C.C. 2d 757 (1987)
<i>Bituminous Coal</i>	<i>Bituminous Coal – Hiawatha, Utah, To Moapa, Nevada</i> , 6 I.C.C.2d 1 (1989)
<i>BNSF 2006</i>	<i>BNSF Railway, Co. v. Surface Transp. Bd.</i> , 453 F.3d 473 (D.C. Cir. 2006)
<i>Coal Rate Guidelines</i>	<i>Coal Rate Guidelines, Nationwide</i> , 1 I.C.C.2d 520 (1985)
<i>Coal Rate Guidelines NPRM</i>	<i>Coal Rate Guidelines, Nationwide</i> , ICC Docket Ex Parte No. 347 (Sub-No. 1) (served Feb. 24, 1983)

<i>CP&L</i>	<i>Carolina Power & Light Co. v. Norfolk Southern Railway Co.</i> , 7 S.T.B. 235 (2003)
<i>Conrail Acquisition Order</i>	<i>CSX Corp.—Control—Conrail, Inc.</i> , 3 S.T.B. 196, 265 (1998)
<i>CF Indus.</i>	<i>CF Indus., Inc. v. Koch Pipeline Co.</i> , 4 S.T.B. 637 (2000)
<i>Duke/CSXT</i>	<i>Duke Energy Corp. v. CSX Transportation, Inc.</i> , 7 S.T.B. 402 (2004)
<i>Duke/NS</i>	<i>Duke Energy Corp. v. Norfolk Southern Railway Co.</i> , 7 S.T.B. 89 (2003)
<i>Duke/NS Reconsideration</i>	<i>Duke Energy Corp. v. Norfolk Southern Railway Co.</i> , 7 S.T.B. 862 (2004)
<i>DuPont</i>	<i>E.I. DuPont de Nemours & Co. v. Norfolk Southern Railway Co.</i> , STB Docket No. 42125 (served Mar. 24, 2014)
<i>FMC</i>	<i>FMC Wyoming Corp. v. Union Pacific Railroad Co.</i> , 4 S.T.B. 699 (2000)
<i>M&G</i>	<i>M&G Polymers USA, LLC v. CSX Transportation, Inc.</i> , STB Docket No. 42123 (served Sept. 27, 2012)
<i>Major Issues</i>	<i>Major Issues in Rail Rate Cases</i> , STB Ex Parte No. 657 (Sub-No. 1) (served Oct. 30, 2006), <i>aff'd sub nom. BNSF v. STB</i> , 526 F.3d 770 (D.C. Cir. 2008)
<i>McCarty Farms</i>	<i>McCarty Farms, Inc. v. Burlington Northern, Inc.</i> , 2 S.T.B. 460 (1997)
<i>Omaha Power</i>	<i>Omaha Public Power Dist. v. Burlington Northern R.R. Co.</i> , 3 I.C.C. 2d 123 (1986)
<i>Otter Tail</i>	<i>Otter Tail Power Co. v. BNSF Railway Co.</i> , STB Docket No. 42071 (served Jan. 27, 2006)
<i>PPL Montana 2002</i>	<i>PPL Montana v. BNSF Railway Co.</i> , 6 S.T.B. 286 (2002), <i>aff'd sub nom. PPL Montana, LLC v. Surface Transp. Bd.</i> , 437 F.3d 1240 (D.C. Cir. 2006)

<i>PPL Montana 2003</i>	<i>PPL Montana v. BNSF Railway Co.</i> , 6 S.T.B. 752 (2003)
<i>PEPCO</i>	<i>Potomac Elec. Power Co. v. Consolidated Rail Corp.</i> , 367 I.C.C. 532 (1983)
<i>Rate Regulation Reforms NPRM</i>	<i>Rate Regulation Reforms</i> , STB Ex Parte No. 715 (served July 25, 2012)
<i>Rate Regulation Reforms</i>	<i>Rate Regulation Reforms</i> , STB Ex Parte No. 715 (served July 18, 2013)
<i>SAC Procedures</i>	<i>General Procedures for Presenting Evidence in Stand-Alone Cost Rate Cases</i> , 5 S.T.B. 441 (2001)
<i>Simplified Standards</i>	<i>Simplified Standards for Rail Rate Cases</i> , STB Docket Ex Parte No. 646 (Sub-No. 1) (served July 5, 2007)
<i>Standards I</i>	<i>Standards For Railroad Revenue Adequacy</i> , 364 I.C.C. 803 (1981)
<i>Standards II</i>	<i>Standards For Railroad Revenue Adequacy</i> , 3 I.C.C.2d 261 (1986)
<i>SunBelt</i>	<i>SunBelt Chlor Alkali Partnership v. Norfolk Southern Railway Co.</i> , STB Docket No. 42130 (served June 20, 2014)
<i>SSW (1985)</i>	<i>St. Louis Southwestern Railway Company – Trackage Rights Over Missouri Pacific Railroad Company – Kansas City To St. Louis</i> , 1 I.C.C.2d 776 (1985)
<i>SSW (1987)</i>	<i>St. Louis Southwestern Ry. Co. Compensation – Trackage Rights</i> , 4 I.C.C.2d 668 (1987)
<i>TMPA I</i>	<i>Texas Municipal Power Agency v. Burlington Northern & Santa Fe Railway Co.</i> , 6 S.T.B. 573 (2003)
<i>TMPA II</i>	<i>Texas Municipal Power Agency v. Burlington Northern & Santa Fe Railway Co.</i> , 7 S.T.B. 803 (2004)

TPI Market Dominance

Total Petrochemicals & Refining USA, Inc. v. CSX Transportation, Inc., STB Docket No. 42121 (served May 31, 2013)

West Texas

West Texas Util. Co. v. Burlington Northern Railroad Co., 1 S.T.B. 638 (1996).

WFA I

Western Fuels Ass'n & Basin Elec. Power Cooperative v. BNSF Railway Co., STB Docket No. 42088 (served Sept. 10, 2007)

WFA II

Western Fuels Ass'n, Inc. v. BNSF Railway, STB Docket No. 42088 (served Feb. 17, 2009)

WP&L

Wisconsin Power & Light v. Union Pac. R.R. Co., 5 S.T.B. 955 (2001)

Xcel

Public Service Co. of Colorado d/b/a Xcel Energy v. Burlington Northern & Santa Fe Railway Co., 7 S.T.B. 589 (2004)

ACRONYMS

AAR	Association of American Railroads
AC	Alternating Current
AEI	Automatic Equipment Identification
AEO	Annual Energy Outlook
AFE	Authorizations for Expenditure
AMLO	Assistant Manager Locomotive Operations
AMTO	Assistant Manager Train Operations
APA	Administrative Procedure Act
AREMA	American Railway Engineering and Maintenance-of-Way Association
ARRA	American Recovery and Reinvestment Act
ATC	Average Total Cost
AVP	Assistant Vice President
BEA	Bureau of Economic Analysis
BNSF	Burlington Northern Santa Fe Railway Company
BRC	Belt Railway of Chicago
B&V	Black & Veatch
CAGR	Compound Annual Growth Rate
CERR	Consumers Energy Railroad
CFS	Commodity Flow Survey
CMA	Chemical Manufacturers Association
CMP	Aluminized Corrugated Metal Pipe
CN	Canadian National Railway Company
CNW	Chicago & North Western Railway Company

CP	Canadian Pacific Railway
CREATE	Chicago Region Environmental and Transportation Efficiency Program
CSX	CSX Corporation
CSXIT	CSX Intermodal Terminals
CSXT	CSX Transportation, Inc.
CTC	Centralized Traffic Control
CTCO	Chicago Transportation Coordination Office
CWA	Clean Water Act
CWR	Continuous Welded Rail
CY	Cubic Yards
DCF	Discounted Cash Flow
DOT	Department of Transportation
DTL	Direct-to-Locomotive
ECY	Embankment Cubic Yard
EIA	Energy Information Administration
EPA	Environmental Protection Agency
ERM	Environmental Resources Management
ETMS	Electronic Train Management System
EVA	Energy Ventures Analysis, Inc.
FAS	Financial Accounting Standards
FASB	Federal Accounting Standards Board
FCC	Federal Communications Commission
FED	Failed Equipment Detector
FHWA	Federal Highway Administration

FRA	Federal Railroad Administration
FSC	Fuel Surcharges
G&A	General & Administrative
GAO	Government Accountability Office
GDP	Gross Domestic Product
GE	General Electric
GIS	Geographic Information System
GPS	Global Positioning System
HSL	Hours of Service Law (49 U.S.C. Ch. 211)
HVAC	Heating, Ventilation, and Air Conditioning
ICC	Interstate Commerce Commission
IHB	Indiana Harbor Belt Railway
INRD	Indiana Rail Road Company
ISA	Intercarrier Service Agreement
ISS	Interline Settlement System
IT	Information Technology
KCBX	KCBX Terminals, Inc.
KCS	Kansas City Southern Railway
LCY	Loose Cubic Yard
LUM	Locomotive Unit Mile
MDOT	Michigan Department of Transportation
MERC	Midwest Energy Resources Company
MGT	Million Gross Ton
MLO	Manager Locomotive Operations

MMBtu	million British Thermal Units
MMM	Maximum Markup Methodology
MOW	Maintenance-of-Way
MP	Mile Post
MPSC	Michigan Public Service Commission
MSA	Managed Services Agreement
MSP	Modified Straight-Mileage Prorate
MSRR	Michigan Shore Railroad
MTO	Manager Train Operations
NPRM	Notice of Proposed Rule Making
NROI	Net Railway Operating Income
NS	Norfolk Southern Railway Company
NYMEX	New York Mercantile Exchange
NYSW	New York, Susquehanna & Western Railway
OSHA	Occupational Safety and Health Administration
P&L	Paducah & Louisville Railway
PRB	Powder River Basin
PTC	Positive Train Control
P&W	Providence and Worcester Railroad
R/VC	Revenue to Variable Cost
RCAF	Rail Coal Adjustment Factor
RCP	Reinforced Concrete Pipe
RCRA	Resource Conservation and Recovery Act
RIP	Repair In Place

ROW	Right-of-Way
RPMS	Real Property Management System
RSAM	Revenue Shortfall Allocation Method
RSC	Rail Security Coordinator
RSIA	Rail Safety Improvement Act of 2008
RTC	Rail Traffic Controller
SAC	Stand-Alone Cost
SARR	Stand-Alone Railroad
SCTG	Standard Classification of Transportation Goods
SFAS	Statement of Financial Accounting Standards
SFC	Specific Fuel Consumption
SOX	Sarbanes-Oxley Act
SP	Southern Pacific Railroad
STB	Surface Transportation Board
STCC	Standard Transportation Commodity Code
T&E	Train & Engine
TIH	Toxic-by-Inhalation Hazard
UP	Union Pacific Railroad Company
URCS	Uniform Rail Costing System
USDOT	U.S. Department of Transportation
WTI	West Texas Intermediate

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II. MARKET DOMINANCE

A. Quantitative Evidence

CSXT agrees with Consumers that using the challenged rate and URCS system-average variable costs, the issue movement generates a revenue-to-variable cost (“R/VC”) ratio in excess of the 180% jurisdictional threshold specified by 49 U.S.C. § 10707(d)(1). CSXT also agrees with Consumers about eight of the nine operating characteristics required for the URCS variable cost calculations. But Consumers undercounts the loaded miles for the issue movement and thus underestimates the issue movement’s variable costs. CSXT’s Reply Evidence corrects the loaded miles characteristic and recalculates the issue movement variable costs.

1. Traffic and Operating Characteristics

The Board established in *Major Issues* that the system-average variable costs of the issue movements are to be calculated using the unadjusted Phase III movement costs generated by the Uniform Railroad Costing System (“URCS”).¹ The nine operating characteristics required for the URCS variable cost calculations are (1) railroad; (2) loaded miles; (3) shipment type; (4) cars per train; (5) car type; (6) car ownership; (7) tons per car; (8) commodity; and (9) movement type.² Here,

¹ See *Major Issues*, STB Ex Parte 657 (Sub-No. 1), at 60 (“The variable costs used in rate reasonableness proceedings will be the system-average variable cost generated by URCS, using the nine movement-specific factors inputted into Phase III of URCS.”).

² See *Kansas City Power & Light v. Union Pac. R.R. Co.*, STB Docket No. 42095, at 6 (served May 19, 2008).

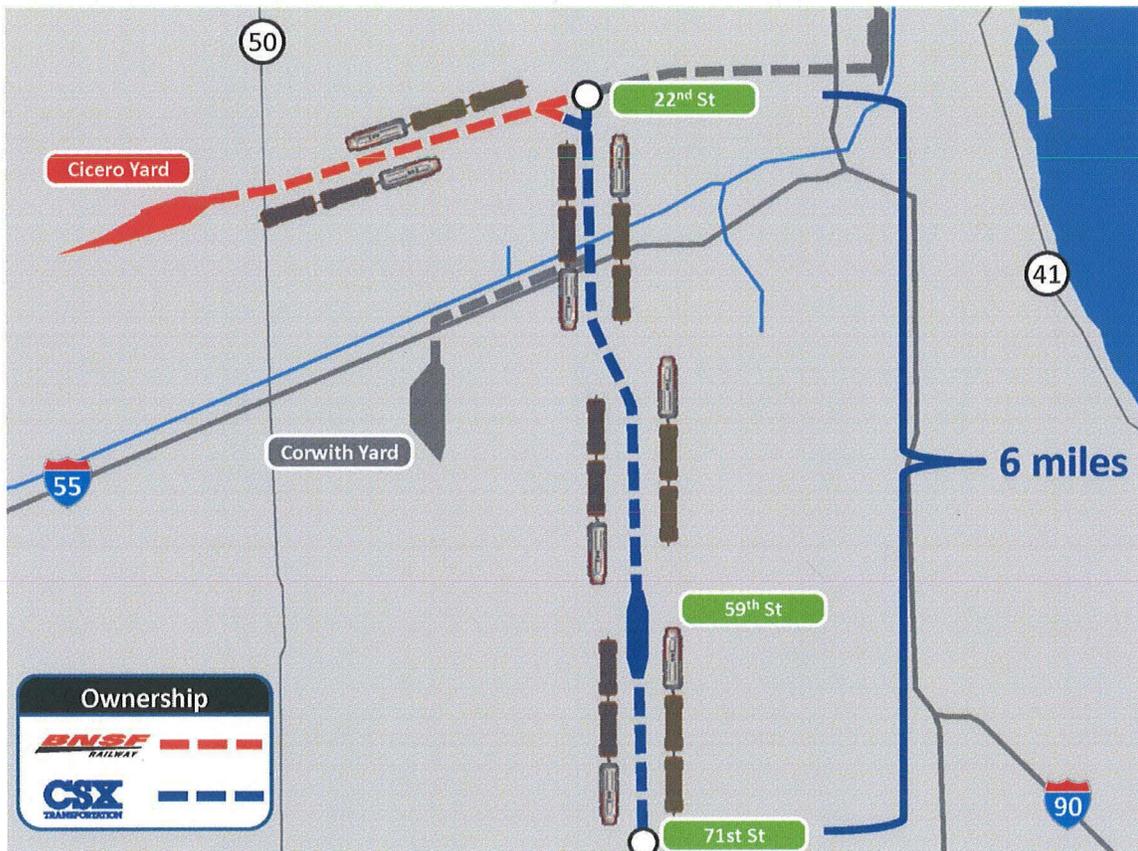
the parties previously reached agreement on all of the characteristics except loaded miles.³

The dispute over loaded miles arises from the complex operations required for coal unit train interchanges in the congested Chicago area. One common arrangement to expedite interchanges is for interchanging railroads to reciprocally operate over each other's track rather than create choke points by interchanging at the precise spot where their tracks meet. Here, BNSF and CSXT have agreed to an interchange arrangement in which BNSF crews operate on CSXT lines to deliver loaded trains at 71st Street, and CSXT crews conversely operate on BNSF lines to deliver empty trains at BNSF's Cicero Yard. As Figure II-A-1 illustrates, BNSF operates loaded issue trains from its Cicero Yard over three miles of its own track and then continues operating on CSXT tracks for six miles⁴ from 22nd Street to 71st Street, where the train is handed off to CSXT. CSXT operates empty trains over the same route in the reverse direction, including moving trains over the three-mile segment of BNSF track between 22nd Street and Cicero.

³ See *Consumers v. CSXT*, STB Docket No. 42142, Joint Submission of Operating Characteristics (filed July 15, 2015).

⁴ See, e.g., CSXT track charts included as Consumers Op. WP "Track Charts IL (CSX-CNSMR-C-13849 to 13987).pdf" at 13935-13936, Consumers WP "CERR Route Miles Opening.xlsx," worksheet "CERR Miles," rows 18-45.

Figure II-A-1
Illustration of BNSF and CSXT Reciprocal Operations For Issue Movement



While this arrangement was clearly explained to Consumers in discovery,⁵ Consumers nonetheless only counts loaded miles between 71st Street and West Olive—thus giving CSXT zero credit for the six miles of CSXT track between 22nd Street and 71st Street over which BNSF crews operate loaded trains and CSXT crews operate empty trains. But because both the eastbound loaded trains and the westbound empty trains move over the CSXT-owned 22nd Street to 71st Street segment, CSXT is entitled to those costs regardless of who is operating the train.

⁵ See CSXT Reply WP “Description of Movements in Chicago.pdf.”

The costs of the tracks and infrastructure of that segment are included in CSXT's R-1 Report, and therefore in its URCS costs. Failure to account for the six-mile CSXT segment when calculating CSXT's variable costs means that CSXT would not be able to recover the costs of that infrastructure from the traffic using the segment's facilities. Similarly, in the event of a rate prescription—for which the maximum rate would be determined by applying an R/VC ratio to an estimate of CSXT's variable costs—it would distort the results not to include the costs that CSXT incurs for a segment that is necessary for both railroads to provide service to Consumers.

Put differently, Consumers' approach assumes that all variable costs for the movement through 22nd Street should be attributed to BNSF—even though six miles of that movement travel over lines that CSXT owns and maintains and even though CSXT reciprocally operates empty trains over both those six miles and three miles of BNSF's track. Consumers' approach is simply not a fair representation of the actual miles of the movement attributable to CSXT.

A fair and straightforward approach to identify the loaded miles for this interline move is to use the division of ownership between the participating railroads to determine where the BNSF miles end and the CSXT miles begin. This approach would give CSXT credit for operations over the six miles of track that it owns, maintains, and over which it operates empty trains. And the fact that BNSF operates loaded trains over that segment is offset by the fact that CSXT reciprocally

operates empty trains over BNSF lines that are not included in the loaded miles count.

Consumers misses the point when it argues that the URCS costing model assumes that empty miles equal loaded miles for unit-train shipments.⁶ CSXT is *not* proposing an URCS adjustment to add empty movement miles. On the contrary, Consumers' approach fails to account for six miles of CSXT track that are used for *loaded* movements of issue traffic. While the fact that CSXT uses these miles (and other BNSF trackage) for empty movements is all the more reason to count all the CSXT tracks used for loaded shipments, CSXT is not advocating for a movement-specific adjustment. CSXT is simply saying that Consumers is not counting all the CSXT miles that are used to transport loaded movements.

Indeed, the approach that CSXT advocates here is identical to what Consumers itself used in its ATC calculations. Some of the cross-over shipments that Consumers selected for the CERR are interchanged in the same way as the issue traffic—*i.e.*, BNSF operates trains over CSXT tracks from 22nd Street to 71st Street, where CSXT crews take the train.⁷ For its ATC calculations for such shipments, Consumers gave its SARR credit for the mileage between 22nd Street and 71st Street.⁸ In other words, Consumers *excluded* miles operated by BNSF over CSXT-owned lines from its calculation of CSXT's variable costs for Consumers'

⁶ See Consumers Op. II-5 to II-6.

⁷ See Consumers Op. III-C-15.

⁸ Consumers Op. WP "2014 Fixed Costs For ATC (Final).xlsx," worksheet "On-SARR Miles and Fixed Cost" provides the basis for Consumers' assignment of variable costs and fixed costs to the On-SARR portion of cross-over shipments.

shipments, but *included* those very same miles when allocating revenues for its SARR. Consumers cannot have it both ways, and for the reasons explained above the loaded miles calculations should include all CSXT mileage used for loaded issue movements.

Table II-A-2
CSXT Loaded Mileages for Consumers Issue-Traffic Shipments⁹

	Consumers Opening (From 71st Street)	CSXT Reply (From CSXT Division of Ownership)
Belt Route	163.7	169.7
Barr Route	165.6	171.6

2. Variable Costs

CSXT calculates URCS variable costs for Consumers’ issue traffic movement based on the corrected mileage input as described above, the other agreed upon operating characteristics, and the URCS dataset.¹⁰ CSXT Table II-A-3 presents CSXT’s indexed URCS variable costs and resulting R/VC ratios and compares CSXT’s results to Consumers’ corresponding calculations from its opening evidence

⁹ See Consumers Op. WP “Consumers Issue Miles.xlsx”; CSXT Reply WP “CSXT Track Chart 22nd to 71st.pdf.”

¹⁰ CSXT notes that at the time Consumers filed its Opening evidence, the Board had not released its 2014 URCS, and Consumers followed the practice of relying upon a preliminary set of costs. Consumers Op. II-6. Since then, the Board has released its 2014 URCS dataset, which CSXT uses to calculate variable costs for this Reply, and includes the Board’s CSXT URCS spreadsheet as CSXT Reply workpaper “CSXT2014.xlsx.”

for shipments in gondolas, indexed to Third Quarter 2015.¹¹ CSXT's workpapers also include the results of its calculations for shipments in hopper cars.¹²

Table II-A-3
URCS Variable Costs and R/VC Results
For Consumers' Issue-Traffic Shipments in Gondolas,
2014 URCS Indexed to 3Q 2015

	Consumers Opening	CSXT Reply
Loaded Miles (weighted)	164.0	170.0
Base Year URCS Dataset	Consumers 2014 URCS	STB 2014 URCS
Variable Costs per Ton	\$3.05	\$3.13
Index to 3Q 2015	0.943	0.943
Indexed Variable Costs	\$2.87	\$2.95
Rate per Ton	\$14.95	\$14.95
R/VC	521%	506%

¹¹ See Consumers Op. II-8 to II-10, Tables II-A-1, II-A-2, and II-A-III.

¹² CSXT Reply WP "CSXT Reply URCS Calculations.xlsx."

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II. MARKET DOMINANCE

B. Qualitative Evidence

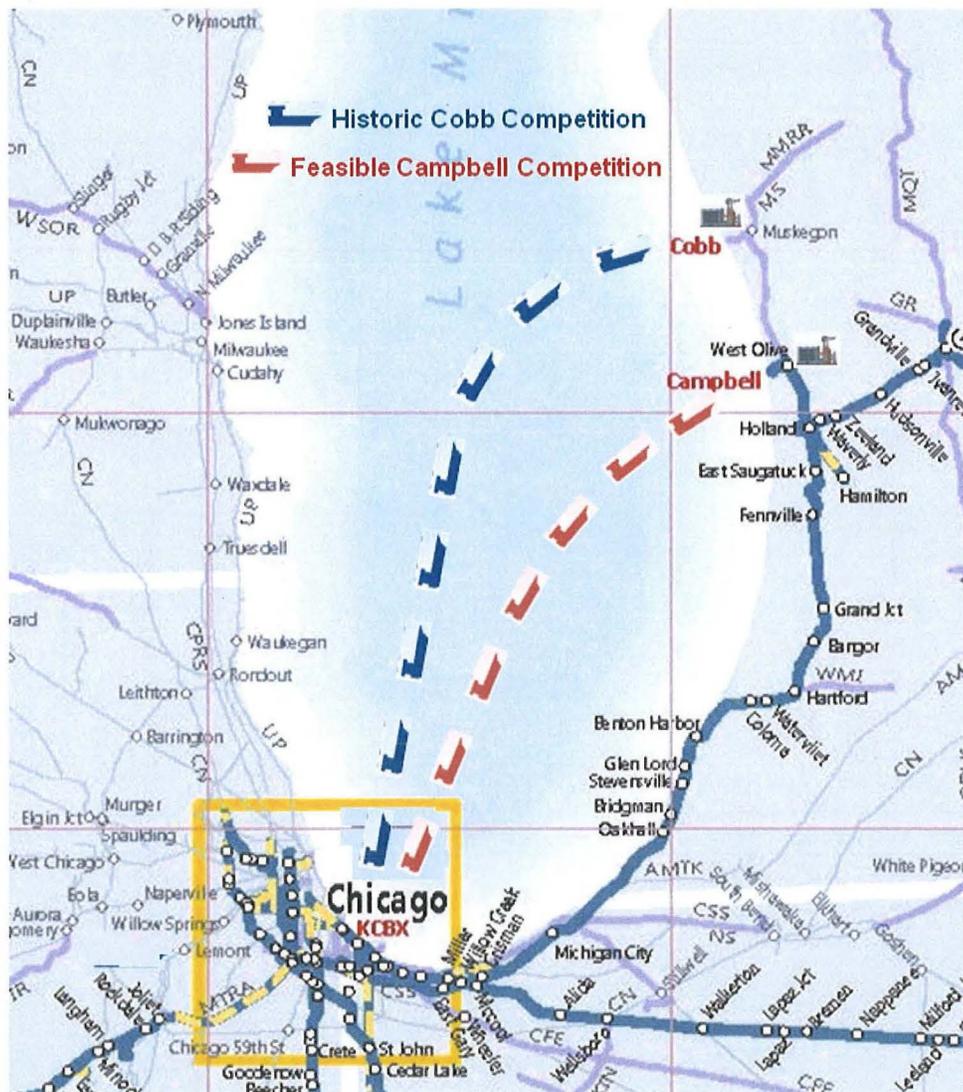
This case presents a tale of two Consumers coal plants. The first plant is the B.C. Cobb plant located on Lake Muskegon, a small inlet on the shores of Lake Michigan. The Cobb plant historically received its coal exclusively via water transportation, both from the MERC dock in Duluth in vessels moving across Lake Superior and from the KCBX terminal in Chicago in vessels moving across Lake Michigan. This is not because rail is not an option for Cobb. It is. The main line of the Michigan Shore Railroad runs right next to the plant, and before the Michigan Shore leased the line from CSXT in 2005 it was operated by CSXT and its predecessor Conrail. But water was such an effective competitive option that Consumers historically has chosen to exclusively use water transportation for coal deliveries to Cobb.

The second plant is the J.H. Campbell Generating Facility, located just 25 miles south of Cobb. Like Cobb, the Campbell facility is located on a small inlet on the shores of Lake Michigan known as Pigeon Lake. Like Lake Muskegon, Pigeon Lake is navigable and has been regularly used for commercial water transportation, including several barge deliveries to the Campbell plant.¹ Unlike at Cobb, where Consumers chose a water delivery option, at Campbell Consumers historically has chosen to rely on rail transportation. But that choice is the only material

¹ These barge deliveries of equipment for use at the Campbell plant were reported in newspaper articles that CSXT has attached as CSXT Reply workpapers “2011 Environmental Equipment Delivery,” “2013 Barge Deliveries to Campbell,” and “2014 Barge Deliveries to Campbell.”

transportation difference between Cobb and Campbell, which have virtually equal access to the Great Lakes marine transportation network that so many utilities rely upon.²

Figure II-B-1
Water Competition at Cobb and Campbell



This case also presents a tale of two competitive landscapes. The first is the real-world competitive landscape in which CSXT and Consumers have operated

² The Cobb plant is being closed later this year pursuant to a consent decree. See Consumers Op. Ex. II-B-1 at ¶ 12.

over the past quarter-century. It is a landscape where Consumers' ability to convert Campbell coal transportation from rail to water has consistently colored the parties' commercial relationship. Over the years Consumers has made abundantly clear to CSXT that it had viable commercial alternatives to CSXT service. Indeed, {

}

{

} {{

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³ {

}

⁴ See *infra* at II-B-24-27.

⁵ See *id.* {

}

⁶ See *infra* at II-B-28.

Despite this competitive landscape, Consumers chose to file this rate case. It is not the first litigant to believe that it might achieve a lower rate from a regulatory remedy than a market remedy; as the D.C. Circuit has observed, “It is certainly plausible that some shippers would consider regulators’ hands to be friendlier than invisible ones.”⁷ But Consumers’ choice to bring a rate case meant that it needed to paint a new picture. For the Interstate Commerce Act does not allow litigants to bring rate cases simply because they would prefer filing a rate case to pursuing a market option. On the contrary, Congress has made clear that a shipper with an effective competitive option is required to rely on the market to constrain railroad rates and has no legal right to a regulatory rate reduction.⁸

Enter Consumers’ market dominance witness Mr. Barbaro. Mr. Barbaro’s difficult task was to paint a new picture of a competitive landscape where Consumers is a “captive” coal plant with no reasonable alternative to CSXT rail service. To do this he had to somehow show that {

} In carrying out his charge, Mr. Barbaro piles assumption upon

⁷ See *AAR v. STB*, 306 F.3d 1108, 1111 (D.C. Cir. 2002).

⁸ See H. Rep. 96-1430, at 89 (1980) (where competition is effective “such competition should continue to function as the regulator of the rate”); *Consolidated Papers, Inc. v. Chicago & N.W. Transp. Co.*, 7 IC.C. 2d 330, 336 (1991) (“Congress has decided that, to the greatest extent possible, railroad rates should be governed by competitive forces.”); *PEPCO*, 367 I.C.C. 532, 536 (Congress “intended to allow[] the forces of the marketplace to regulate railroad rates whenever possible”).

assumption in an attempt to make alternatives to rail transportation seem
impossibly expensive and impractical. Where {
estimated { } to construct a dock alternative, Mr. Barbaro claims that the
capital costs for a similar alternative could exceed {{ }}⁹ Where
Consumers internally estimated operating costs of {{ }} for a water
alternative, Mr. Barbaro claims the alternative would actually cost {{

}}¹⁰ Such astronomical estimates are inherently incredible—not just because
they contradict the careful and well-supported analysis that CSXT presents here—
but because they are irreconcilable with the unbiased analyses that Consumers and
its experts performed before this litigation.

Primary among Mr. Barbaro’s incorrect assumptions is his assertion that any
effective competitive option would have to handle six million tons of coal per year
and thus would require massive storage facilities for winter months when the lake
is impassible.¹¹ But Mr. Barbaro makes both the significant factual error of relying
on an outdated Consumers coal volume forecast (rather than the September 2015
forecast it provided to the Michigan Public Service Commission) and the equally

⁹ {{

}}

¹⁰ {{

}}

¹¹ See Consumers Op. Ex. II-B-1 at 32-33.

significant legal error of assuming that an alternative cannot constitute effective competition unless it handles 100% of the issue traffic. When these errors are corrected, most of the practical and cost obstacles Mr. Barbaro has conjured up vanish.

Ultimately Mr. Barbaro cannot show that the water transportation options that Consumers actually uses at Cobb and that {
} fail to provide effective competition.

On the contrary, the evidence shows that Consumers has at least two viable alternatives to CSXT rail service. The first option—the “Direct Water Option”—is vessel shipments from the KCBX dock in Chicago direct to the Campbell plant. The Direct Water Option would thus mirror how coal historically has been transported to Cobb. The Direct Water Option requires Consumers to construct a dock at Campbell similar to the dock that Consumers constructed at Cobb, but the cost of that dock amounts to just \$2.87 per ton when using generous calculations that incorporate Consumers’ claimed cost of capital and provide for interest during construction. The second option—the “Cobb-Rail Option”—precludes the need to construct a new dock at Campbell, and instead would have Consumers ship coal by vessel to the existing Cobb dock just as it has in the past. From Cobb, that coal could be shipped via the Michigan Shore Railroad to Campbell. Only minor rail infrastructure upgrades at Cobb and at Campbell would be necessary for Consumers to avail itself of this option.

{

} CSXT's experts

reviewed these Options and confirmed that they are reasonable. CSXT's experts include Captain Ed Hogan, a longtime captain on the Great Lakes. Captain Hogan is Vice President of Operations at Port City Marine Services, a provider of Great Lakes shipping based in Muskegon, site of the Cobb plant. Captain Hogan confirmed the operational feasibility of both vessel shipments direct to Campbell and vessel shipments to Cobb, and he consulted with CSXT's Market Dominance Engineering Experts about necessary dock facilities to accommodate water transportation.

Working closely with Captain Hogan, CSXT's Market Dominance Engineering Experts developed capital infrastructure proposals and costs for both the Direct Water Option and the Cobb-Rail Option. CSXT's Market Dominance Engineering Experts are employed by TranSystems, Inc. and possess a wealth of experience in marine engineering, rail engineering, and project management. For each option, CSXT's Market Dominance Engineering Experts built upon the work done by Consumers' own pre-litigation studies. CSXT's Market Dominance Engineering Experts are (1) David Maas, a professional engineer with over thirty

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}

years of experience in railroad infrastructure issues; (2) Matt Gehman, a marine engineering expert with almost 15 years of experience related to maritime and lake vessel analysis; (3) Michael Bell, another railroad infrastructure engineer with over 30 years of experience; and (4) Monique Whitehead, an experienced Project Management Professional.¹³ The analysis presented below and in CSXT Reply Exhibit II-B-1 by these experts confirms that the Direct Water Option and the Cobb-Rail Option are feasible and cost-competitive.¹⁴

There is no doubt that these feasible and cost-competitive options constitute effective competition. While in some cases the Board has been concerned about whether an alternative whose cost approximates the challenged rail rate is “effective” competition, here there is no question that water transportation to Campbell is competitive with rail transportation. For here, a virtually identical water movement to Cobb was such effective competition that it entirely displaced rail transportation to Cobb. There can be no better measure of the effectiveness of competition than a historical example of how that competition worked in the real

¹³ The Market Dominance Engineering Experts’ qualifications are explained more fully below in Section V.

¹⁴ These two options are not the only real-world competition that Consumers faces. For example, Cobb has also received shipments of PRB coal through the MERC terminal on Lake Superior, and similar MERC-originating shipments could be used to serve Campbell. But to simplify the analysis here, CSXT is only presenting the Direct Water Option and Cobb-Rail Options as alternatives. Consumers’ argument that the *DMIR* decision precludes consideration of MERC alternatives is thus irrelevant, as are its arguments about the infeasibility of trucking or rail buildout alternatives. CSXT believes that Consumers’ interpretation of *DMIR* is incorrect, and respectfully submits that the Board’s decision in *DuPont* that consideration of whole-route alternatives is prohibited geographic competition is not well founded and fails to address contrary agency precedent. But the Board has no need to reach that issue in this case.

world. History shows that vessel transportation of coal to Cobb was competitively potent enough to win 100% of that business, and that history teaches that similar water transportation of coal to Campbell would be effective competition. Professor Kevin Murphy, the George J. Stigler Distinguished Professor of Economics at the University of Chicago's Booth School of Business, has reviewed the evidence here and concluded that the actual historic competition at Cobb is strong evidence that a similar movement to Campbell would constitute an effective competitive constraint on the pricing of CSXT's rail service. Mr. Murphy's Verified Statement is attached as CSXT Reply Ex. II-B-2.

This real-world example of effective competition is a far superior means of addressing the Board's concerns in *M&G* than the limit price test used in that proceeding. CSXT respectfully submits that the limit price test is legally unfounded and economically flawed and that it should be rejected in its entirety. And here, the real world example of Cobb water transportation is a strong benchmark of effective competition that the Board can rely upon to assure itself that the feasible and cost-competitive alternatives Consumers has for coal transportation to Campbell are effective competition.

Subsection 1 reviews the central role that Congress intended market dominance to have in limiting the scope of the Board's jurisdiction, and Congress's insistence that wherever possible competition should control rates, not government regulators. Subsection 1 also reviews some of the important legal principles governing market dominance determinations that are relevant here. Subsection 2

demonstrates why both the Direct Water Option and the Cobb-Rail Option are feasible, a fact that is confirmed by {

} Subsection 2 also disproves the multiple assumptions that Mr. Barbaro relies upon to support his post-litigation opinion that the options are infeasible. Subsection 3 then sets forth the costs of each option. Subsection 4 concludes by showing that the real-world evidence of competition at Cobb should be used to dispel any concern whether water competition is “effective,” and that the flawed limit price test should not be used in place of that persuasive evidence of actual effective competition.

1. Qualitative Market Dominance Limits the Board’s Jurisdiction and Precludes Review Even If a Shipper Would Prefer a Regulatory Option.

At one time the federal government had all-powerful authority over rail rates. Every railroad rate was under Interstate Commerce Commission jurisdiction, and attempts by railroads to change rates for particular lanes of traffic often would be met by protests and extensive regulatory proceedings. Even in competitive transportation markets, the ICC substituted its regulatory judgment for rates determined by the marketplace and the business judgment of rail carriers whose economic success and survival depended on setting market-based rates. The result was an intrusive regulatory process that significantly impeded railroads’ ability to secure adequate revenues and that Congress found contributed to the financial crisis that brought the railroad industry to the brink of collapse.¹⁵

¹⁵ See Senate Report No. 94-499, at 2 (1976) (report on Revitalization and Regulatory Reform Act of 1976 finding that “[t]he cumbersome, slow process of

Congress responded to this problem with a solution that was simple and elegant: it removed the agency's authority to determine the reasonableness of a rate that was subject to effective competition from either other railroads or other modes of transportation such as trucks, barges, and vessels.¹⁶ In those cases, the competitive transportation market—not government regulation—would ensure that railroads charged reasonable rates.

Under Congress's scheme, shippers unsatisfied with their rail rate do not get to choose to forgo a market remedy because filing a lawsuit seems easier or potentially more profitable than pursuing a transportation alternative. If a feasible and effective alternative is available, the shipper must use that alternative and not look to see if it can get a better deal from a regulator. Congress has made this crystal clear:

If a shipper can rely on a transportation alternative, which could include another railroad, a barge, or a truck, at a transportation cost which is not substantially greater than the rail transportation cost, then competition is present. Competition will serve to hold down rates, and the railroad involved would not have market power.¹⁷

According to Congress, therefore, effective competition is present wherever a shipper can use an option “at a transportation cost which is not substantially

making rates was one of the regulations that has drastically slowed change needed in the industry and discouraged innovation and investment in the industry”).

¹⁶ See 49 U.S.C. § 10707(a), *adopted in* Railroad Revitalization and Regulatory Reform Act of 1976, Pub. L. 94-210, §§ 202(b, c), 90 Stat. 31, 35 (1976); *see also id.* at 47 (describing market dominance standard as “an entirely new concept” designed “[t]o achieve the dual goals of assisting the railroads and protecting the public interest”).

¹⁷ H. Rep. 96-1430, at 89 (1980).

greater than the rail transportation cost.” Both courts and the agency have long recognized that Congress’s command is that the government not intervene in the transportation marketplace if a shipper has an effective alternative to rail service.¹⁸ Rather, where there is effective competition “such competition should continue to function as the regulator of the rate.”¹⁹

The Board thus has jurisdiction to determine the reasonableness of a rate only if there is “an absence of effective competition from other rail carriers or modes of transportation for the transportation to which a rate applies.”²⁰ Traditionally the Board weighed multiple factors when assessing whether a water carriage alternative constituted effective competition, including the compatibility of the product with water transportation, the shipper’s access to water, and the costs of water transportation.²¹

In more recent cases, the Board has adopted a two-step process for evaluating market dominance. First, the Board evaluates whether the alternative is feasible. Then, the Board evaluates whether it is “effective” competition.²² In recent cases

¹⁸ See *Consolidated Papers*, 7 I.C.C. 2d at 336 (“Congress has decided that, to the greatest extent possible, railroad rates should be governed by competitive forces.”); *Midtec Paper Corp. v. United States*, 857 F.2d 1487, 1506 (D.C. Cir. 1988) (Congressional policy is to “preclude[e] the Commission from scrutinizing rates where ‘effective competition’ exists”); *PEPCO*, 367 I.C.C. at 536 (Congress intended to “allow[] the forces of the marketplace to regulate railroad rates whenever possible”).

¹⁹ H. Rep. 96-1430, at 89 (1980).

²⁰ 49 U.S.C. § 10707(a).

²¹ *Market Dominance Determinations*, 365 I.C.C. 118, 133 (1981).

²² See *M&G*, STB Docket No. 42123, at 12 (“The preliminary step is to determine the feasibility of any theoretical transportation alternative[] Once the Board

the Board has done so based on the “limit price test,” but it has made clear that “the agency would be open to other ways to address the competitiveness of suggested transportation alternatives.”²³ Here, CSXT has perhaps the most powerful possible evidence that the alternative it proposes is effective—namely, evidence that the proposed alternative has near-identical logistics and costs to a water movement actually used to serve Consumers’ nearby Cobb plant that was so effective that it entirely displaced rail transportation.

Four legal principles are particularly important to evaluating market dominance in this case. First, as the complainant, Consumers has the burden to prove a lack of effective competition.²⁴ As demonstrated below, Consumers cannot meet that burden, because each of its objections to the effectiveness of its competitive alternatives collapses upon examination. And the time for Consumers to raise new arguments has passed. Where a complainant has waited until its

determines that a feasible transportation alternative exists, we move to the next step . . . [of] whether feasible alternatives exert effective competitive pressure”).

²³ *DuPont*, STB Docket No. 42125, at 19; *M&G*, STB Docket No. 42123, at 5 (encouraging parties to identify “a better general approach to this issue” or “a superior benchmark that can be used to guide this inquiry”).

²⁴ *See DuPont*, STB Docket No. 42125, at 29 (“In the qualitative market dominance inquiry, the complainant bears the burden of establishing the absence of effective competition from other rail carriers or modes of transportation for the traffic to which the challenged rate applies.”); *E.I. du Pont de Nemours & Co. v. CSXT*, STB Docket No. 42100, at 2 (served June 30, 2008) (“*DuPont (Chlorine)*”) (“[T]he complainant bears the burden of establishing the absence of effective competition from other rail carriers or modes of transportation for the traffic to which the challenged rate applies.”); *Government of the Territory of Guam v. Sea-Land Serv., Inc.*, STB Docket No. WCC-101, at 5-6 (served Feb. 2, 2007) (“In rail cases, because a finding of market dominance is a threshold jurisdictional requirement, we place the burden of proof on the shipper to show that there is not effective competition.”).

Rebuttal to unveil a new objection to a competitive alternative, the Board rightly has refused to accept that improper rebuttal.²⁵

Second, as a matter of law and basic economics Consumers does not need to be able to shift 100% of its rail volumes to alternative modes for those alternatives to be effective competitive options that preclude a finding of market dominance. The Board has made clear that “[f]or an alternative mode to provide effective competition, it need not necessarily be ‘capable of handling substantially all or even a majority of the subject traffic.’”²⁶ The Board instead “seek[s] to determine . . . whether the alternative mode places ‘considerable competitive pressures’ on the defendant railroad.” *Id.* Indeed, effective competition can exist where an alternative transportation option accounts for half or less than half of the total volume.²⁷

Third, alternative transportation can constitute effective competition even where it would require significant shipper investment in additional facilities.²⁸ In *FMC*, the Board found that the potential for the shipper to convert its facilities to

²⁵ See *M&G*, STB Docket No. 42125, at 9 (striking objection on intermodal competitive alternatives that was not raised until rebuttal); *TPI Market Dominance*, STB Docket No. 42121, at 9-13 (striking objections on intermodal competitive alternatives and product integrity argument that were not raised until rebuttal).

²⁶ *DuPont (Chlorine)*, STB Docket No. 42100, at 4 (citing *Amstar Corp. v. Great Alabama S. R.R.*, I.C.C. Docket No. 38239S (served Nov. 10, 1987)); see also *Aluminum Ass’n v. ACY R. Co.*, 367 I.C.C. 475, 484 (1983) (“[w]e reiterate that not all aluminum has to move by truck for motor carriage to exert competitive pressure on the railroads.”).

²⁷ See *Consolidated Papers*, 7 I.C.C.2d at 337-38 (trucks provided effective intermodal competition where 55% of issue traffic moved via truck).

²⁸ See *FMC*, 4 S.T.B. at 712-14.

accommodate large-scale truck deliveries constituted effective competition that precluded a finding of market dominance. The evidence showed that the shipper had relied on rail for a substantial majority of its coke shipments; the only actual truck usage noted by the Board was FMC's use of trucks for 12% of its coke needs in 1983 (seventeen years before the Board's decision).²⁹ And it was undisputed that FMC would need to "convert[] its facilities to accommodate large-scale trucking operations—which would include significant investment [in new equipment and structures]."³⁰ Nonetheless, the Board found that FMC's "potential for conversion to motor carriage is sufficient to discipline UP's rail rates" and that FMC therefore failed to demonstrate market dominance for coke shipments.³¹ This principle has been followed in recent cases, where the Board recognized that the need to invest in infrastructure was not a bar to a transportation alternative.³²

Fourth, and relatedly, the Board has made clear that "[t]he fact that it may take some time for a shipper to exercise its competitive alternatives does not preclude a finding of no market dominance."³³ Consumers' decision to bring a rate

²⁹ See *id.* at 712.

³⁰ *Id.*

³¹ *Id.* at 713.

³² See, e.g., *DuPont*, STB Docket No. 42125, at 317 (observing that alleged need for shipper to build truck unloading rack and storage facility presented "no clear bar" to feasibility of transportation alternative).

³³ *Southwest R.R. Car Parts Co. v. Missouri Pac. R.R. Co.*, STB Docket No. 40073, at 2 (Feb. 20, 1998); see *FMC*, 4 S.T.B. at 712-13 (potential for shipper to build truck loading facility was effective competition); cf. *Seminole Elec. Cooperative, Inc. v. CSX Transp., Inc.*, STB Docket No. 42110 (served May 19, 2010) (ordering oral argument on issue of whether potential for shipper to undertake project to construct barge dock precluded finding of market dominance).

case at the conclusion of the parties' contract rather than pursue one of the competitive options { } cannot create market dominance. In other words, Consumers cannot manufacture market dominance through its own inaction.

2. The Direct Water Option and Rail-Cobb Option Are Feasible Competitive Alternatives To CSXT Rail Service.

a. Water Transportation Is Widely Used To Transport Coal To Great Lakes Utilities.

It is no secret that water delivery of coal over the Great Lakes is a robust competitive option. Indeed, in recent years Michigan utilities received a substantial percentage of coal via water transportation, as illustrated by Table II-B-2:

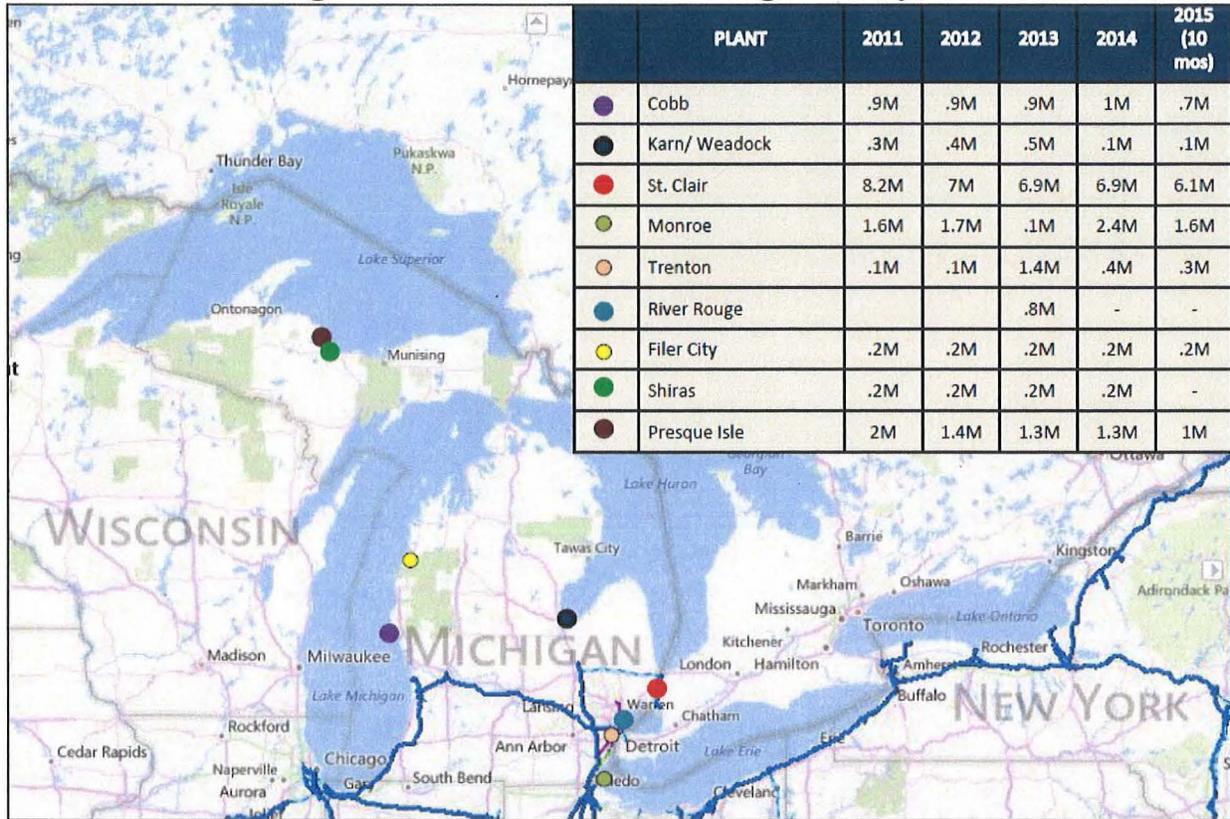
**Table II-B-2
Coal Deliveries to Michigan Power Plants 2011-2015³⁴
(In thousands of tons)**

	Rail Deliveries	Water Deliveries
2011	19,145	13,964
2012	17,124	12,208
2013	16,570	12,562
2014	17,832	12,685
2015	13,609	10,290
Total	84,280	61,709

The extent to which Michigan utilities rely on lake delivery of coal is illustrated below in Figure II-B-3, which shows the locations of plants that have received coal by water transportation over the last five years.

³⁴ The shipment data in this table was compiled by CSXT witness Seth Schwartz from publicly available EIA data. A detailed breakdown is available at CSXT Reply WP "Coal shipments to Michigan.xls."

Figure II-B-3
Michigan Power Plants Receiving Coal By Water³⁵



When including all industrial receivers of coal, over 20 million tons of coal were moved by vessel on the Great Lakes in 2011.³⁶ Twenty-eight coal facilities on the Great Lakes receive coal by water delivery (including, for example, Consumers' Cobb and Karn/Weadock facilities).³⁷ The fact that water transportation is so commonly used for coal shipments to Cobb and other utilities similarly situated to the Campbell plant is strong evidence that such movements are feasible. Evidence that a shipper has used a transportation alternative is "particularly relevant"

³⁵ The source for the volumes in this figure is CSXT Reply WP "Coal shipments to Michigan.xls."

³⁶ See CSXT Reply WP "Status of the U.S.-Flag Great Lakes Water Transportation Industry.pdf" at 10.

³⁷ *Id.* at 45.

evidence for determining whether that alternative is “practically feasible.”³⁸

Moreover, the agency has long acknowledged the competitive effect of potential water delivery and has previously found that a complainant that failed to prove it would be impractical to ship by water had not demonstrated market dominance.³⁹

b. The Direct Water Alternative

i. The Direct Water Alternative Is Nearly Identical to the Cobb Movement.

The Direct Water Alternative is a mirror image of the transportation that Consumers used to the Cobb plant for many years. Moreover, it is an option that { }. The Direct Water Alternative presented by CSXT’s experts here is based upon

{ }.

In the Direct Water Option, inbound coal shipments from the Powder River Basin that are currently interchanged to CSXT in Chicago would instead be delivered to a Chicago marine terminal: KCBX. {{

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The KCBX terminal is equipped to directly load coal trains to vessels—a process that obviates the need to store coal on the ground in a way that might run

³⁸ See *TPI Market Dominance*, STB Docket No. 42121, at 41; see also *M&G*, STB Docket No. 42123, at 13 (feasibility of truck alternatives “is demonstrated most obviously” by fact that M&G used truck alternatives for some shipments).

³⁹ See *Increased Rates on Coal, Ala. To Boykin, Fla.*, 364 I.C.C. 263, 266 (1980).

⁴⁰ {{ } }

afoul of local ordinances. Consumers' own workpapers confirm this fact, and as described further below Consumers' assertion that the KCBX terminal could not be used for coal shipments to Campbell is nonsense.⁴¹ Perhaps the best evidence of this is the fact that Consumers regularly shipped coal to Cobb through KCBX until as recently as 2015.⁴²

At KCBX, coal would be loaded into articulated tug barges. An articulated tug barge consists of a large barge with a notch at one end, in which a tug can be positioned and connected to the barge. This arrangement allows the tug to propel and maneuver the barge. These small Class III vessels are well-equipped to handle the short-haul shipments to Campbell, for three reasons. First, they have a smaller width and draft than larger Class I and Class II vessels, and building a dock to accommodate them in Pigeon Lake would require significantly less dredging and environmental impact than other vessels. Second, articulated tug barges are highly maneuverable and their integrated tug makes it unnecessary for other tugboats to assist them. Third, the volume of an articulated tug barge closely corresponds to that of an average unit train, thus making an articulated tug barge an ideal vessel to use for direct train-to-vessel loading. The articulated tug barges posited by

⁴¹ See *infra* at II-B-33 through 36.

⁴² See CSXT Reply WP "Coal shipments to Michigan.xlsx" at "2015" Tab, Cell I-10, "2014" Tab, Cell I-10, "2013" Tab, Cell I-10, "2012" Tab, Cell I-10, and "2011" Tab, Cell I-10.

CSXT's experts have a capacity of 18,000 tons, which can readily accommodate the { } carried by an average Consumers PRB unit train.⁴³

Articulated tug barges would proceed to the Campbell plant on Pigeon Lake, in a journey that is near-identical to the journey that vessels historically took to Cobb. At Campbell, docking and unloading facilities would need to be constructed that are similar to those at Cobb. As detailed below and in CSXT Reply Exhibit II-B-1, the capital costs would amount to \$73 million, or approximately \$2.87 per ton when accounting for a reasonable cost of capital.

ii. The Direct Water Alternative Is Nearly Identical { } }

This Direct Water Option is not only a mirror of Consumers' historic movements to Cobb, it is also an option that Consumers itself studied and concluded was {

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⁴⁶ See CSXT Reply WP "Consumers December 2014 analysis.xlsx" at Cells K16, K17, L16, and L17.

about the viability of the Direct Water Option are thus reflections of {

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} The record shows Consumers' consistent

exploration of water transportation to Campbell and a consistent answer: the

options are available if Consumers chooses to use them.

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⁴⁸ *See id.*

⁴⁹ { }

⁵⁰ *See id.* at 19-20.

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53 Consumers Op. II-19.

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55 See Consumers Op. II-20. {

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⁶² See { }

⁶³ See, e.g., { }

⁶⁴ See *id.* at 3-4.

⁶⁵ See { }

⁶⁶ *Id.*

⁶⁷ *Id.* at 35-36.

⁶⁸ See { }

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Indeed, Consumers' ability to use water transportation has been a constant feature of the parties' commercial relationship. {{

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}} In short, the record shows that Consumers cited its potential competitive options when negotiating with CSXT and that CSXT took those threats seriously.

Of course, Mr. Barbaro now says that all these studies only showed that water transportation was infeasible. But that claim is not supported by any evidence in the record. The studies themselves and internal presentations related to those studies clearly concluded that water transportation is a feasible option, and Consumers cannot cite a single contemporaneous document to support its claims that “Consumers determined that neither alternative represented a feasible and effective competitive alternative to CSXT.”⁸¹ {

} The sheer volume of this documentation—and the lack of any documents

⁷⁹ See {{

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⁸⁰ See {{

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⁸¹ Consumers Op. II-22.

explaining why these options are not feasible—is strong evidence that Mr. Barbaro’s current claims that Consumers determined that a market alternative was infeasible are wishful thinking.⁸² What is more likely is that Consumers hoped to obtain a better rate from the Board than it could from the market—perhaps with the hope that the Board might accept a SARR that ignored the real-world-realities of railroading through Chicago. {

} But while a strategic choice to pursue regulation rather than the market is understandable, Congress plainly removed the Board’s jurisdiction from these cases. Like it or not, a shipper with market alternatives must rely on the market for its rates—not the government.

iii. Consumers’ Objections To the Feasibility of a Direct Water Alternative Are Meritless.

Consumers and its witness Mr. Barbaro identify a series of issues that they assert makes a direct water alternative infeasible. These claims are suspect on their face because they are so completely contradictory to {

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⁸³ See {

} Moreover, each of

Consumers' claimed feasibility obstacles collapses upon examination.

(a) The Direct Water Alternative Does Not Need To Handle 100% of The Issue Traffic to Constitute Effective Competition.

Many of Consumers' feasibility objections and claimed costs stem from Mr. Barbaro's assumption that a water alternative to CSXT transportation must transport 100% of the issue traffic in order to provide effective competition (the "100% assumption"). Using this assumption—and a demonstrably overstated Consumers forecast⁸⁴—Mr. Barbaro concludes that (1) a water alternative would have to transport over six million tons of coal a year, (2) that Campbell would need storage for up to three million tons of coal to see the plant through the several months each winter when the Great Lakes are nonnavigable, and (3) that further storage facilities would be needed at terminal locations.⁸⁵ The 100% assumption thus is the basis for Mr. Barbaro to posit tens of millions of dollars of storage and stockpile costs { } And the 100% assumption is the predicate for his claim that the KCBX terminal that Consumers used for years to deliver coal to Cobb is unable to serve Campbell. Specifically, Mr.

⁸⁴ As detailed in Section III-A, Consumers based its SAC evidence on an outdated forecast that predicted significantly higher volumes than did the forecast that it submitted to its own regulator in September 2015. The Board should use the current forecast, and CSXT uses the current forecast in this Reply Evidence.

⁸⁵ See Consumers Op. Ex. II-B-1 at 18.

Barbaro argues that KCBX cannot accommodate the terminal storage that he claims would be necessary if a water alternative were handling 100% of Campbell traffic.⁸⁶

But the 100% assumption that is the basis for so much of Mr. Barbaro's testimony has no foundation in either STB precedent or economic theory. Board precedent is crystal clear: "[f]or an alternative mode to provide effective competition, it need not necessarily be 'capable of handling substantially all or even a majority of the subject traffic.'"⁸⁷ Consumers has presented no reason to depart from this precedent. And economic theory is irreconcilable with the 100% assumption as well. As Professor Murphy's Verified Statement explains, a competitive alternative that handles 75% of Consumers' coal needs is more than sufficient to provide an effective competitive alternative.⁸⁸ In his view, "CSXT would have no incentive to price above the competitive water alternative and risk losing the vast majority of the business, with the false hope of making up the lost profits during a few winter months."⁸⁹

The fact that water transportation typically would be unavailable during the winter months is of no moment. *DuPont (Chlorine)* is instructive here, for it addressed a situation where a competitive water alternative was not capable of handling 100% of the issue traffic. The complainant argued that the railroad

⁸⁶ See Consumers Op. Ex. II-B-1 at 24.

⁸⁷ *DuPont (Chlorine)*, STB Docket No. 42100, at 4 (citing *Amstar Corp. v. Great Alabama S. R.R.*, I.C.C. Docket No. 38239S (served Nov. 10, 1987)).

⁸⁸ See CSXT Reply Ex. II-B-2 at 15-17.

⁸⁹ See *id.* at 15.

nonetheless possessed market power because occasionally river conditions made it impossible for it to use barge transportation.⁹⁰ Relying on D.C. Circuit precedent, the Board concluded that the time periods where water transportation was unavailable were “the sorts of transitory and short-term problems that this agency has long held are insufficient to establish the absence of effective competition.”⁹¹

DuPont (Chlorine) relied upon *Salt River*, in which the D.C. Circuit rejected an argument that alternatives to the challenged rail movement did not put pressure on the defendant carrier’s rates because the carrier knew that its rail service was only required when the alternatives were not available.⁹² The *Salt River* court explained that it was irrelevant that from time to time the shipper might be forced to use rail service. While “there may be short term and exceptional situations” where none of the shipper’s competitive alternatives were available, a rail carrier does not become market dominant every time the unavailability of other options may give it “transitory market power.”⁹³ “[N]othing in the [Interstate Commerce] Act or its legislative history suggest[s] that Congress intended to guarantee shippers ‘at any given time’ a number of equally attractive transportation alternatives. Rather, Congress intended to protect shippers who are *truly* subject to

⁹⁰ See *DuPont (Chlorine)* at 3.

⁹¹ *DuPont (Chlorine)*, STB Docket No. 42100, at 4 (citing *Salt River Project v. United States*, 762 F.2d 1053, 1062 (D.C. Cir. 1985) (“We do not believe Congress, in formulating the market dominance inquiry, had in mind situations such as the present in which a particular railroad arguably may have transitory market power.”)).

⁹² See *Salt River Project*, 762 F.2d at 1064.

⁹³ *Id.* at 1065.

transportation is unavailable, trains from the PRB may be interchanged with CSXT for delivery to Campbell. Such transitory shipments when lake transportation is unavailable do not create market dominance. {{

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(c) KCBX Is An Available and Feasible Alternative.

Mr. Barbaro further argues that the KCBX Terminal that Consumers has historically used to serve the Cobb facility would be unavailable to serve Campbell.⁹⁹ Mr. Barbaro's primary claim is that KCBX lacks the capacity to store coal and that local regulations may preclude it from storing coal on the ground in

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⁹⁹ See Consumers Op. Ex. II-B-1 at 20-25.

uncovered facilities.¹⁰⁰ This claim, of course, flows directly from Mr. Barbaro's misguided assumptions that a water alternative must handle 100% of Consumers' traffic and that {{

}}—assumptions that lead Mr. Barbaro to conclude that a massive storage facility would be required at the terminal to store all the coal that would keep rolling in during winter months. As discussed above, the Direct Water Alternative would not handle 100% of Consumers' traffic and it would not require any storage at the lake terminal.

Mr. Barbaro's further claims that KCBX will not be permitted to store coal in open piles is a red herring. The Direct Water Alternative does not contemplate that any coal will be stored in open piles. Rather, coal will be directly loaded from trains onto vessels. {{

}} And while

Mr. Barbaro reports that {

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}} Using a

terminal that Consumers historically used for Cobb shipments and that is

¹⁰⁰ *See id.*

¹⁰¹ *See Consumers Op. WP "2015_08_20 - KCBX phonecall notes.pdf."*

¹⁰² *See id.*

continuing to offer terminal services to load coal from unit trains onto vessels is plainly a feasible option.

The direct loading that KCBX offers is not unusual. CSXT’s own Toledo Docks exclusively use a direct loading system to transfer coal into vessels from railcars. The direct loading system uses a tandem car dumper that transfers coal to a ship loader system using a series of conveyor belts.¹⁰³ Over the past five years CSXT has handled as much as {{ }} tons of coal annually through the Toledo Docks.

**Table II-B-4
2011-2015 CSXT Coal Tonnage Railed To Toledo Docks¹⁰⁴**

2011	{{ }}
2012	{{ }}
2013	{{ }}
2014	{{ }}
2015	{{ }}

Mr. Barbaro asserts without support that it might be difficult to coordinate vessel and train deliveries. But the logistics of coordination are not so difficult in a large-scale operation with vessels regularly cycling over the 107-mile trip from KCBX to Campbell. CSXT Witness Ed Hogan, an experienced Great Lakes captain, has estimated that the total round-trip for a vessel transporting coal from KCBX to Campbell (including loading and unloading time) would be approximately three days. This estimate is more conservative than Mr. Barbaro’s estimate of {{ }}

¹⁰³ See CSXT Reply WP “Toledo Docks Description.pdf.”

¹⁰⁴ CSXT Reply WP “2011-2015 CSXT Coal Tonnage Railed to Toledo Docks.xls.”

hours.¹⁰⁵ These short cycle times mean that with careful planning Consumers should always have a vessel readily available to load a unit train shipment. {{

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(d) The Direct Water Alternative Is Permittable.

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} Mr. Barbaro, of course, has a different opinion. But while he identifies “permitting challenges” to building a dock to accommodate Class III vessels, even he stops short of saying that permitting issues would be insurmountable. Indeed, CSXT’s experts have designed a dock with even less environmental impact than the one that {

} And CSXT’s experts have included the cost of potential environmental mitigation efforts in their capital cost analysis.

¹⁰⁵ See Consumers Op. Ex. II-B-1 at 47.

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It is true that any potential new project may face community opposition and that Consumers would need to obtain necessary permits and mitigate environmental impact. But speculation about potential opposition to a project is no reason to assume that the project would be infeasible, particularly when the environmental footprint of the project is relatively low.

(e) Vessels Are Available for the Direct Water Alternative.

Consumers asserts that “there likely are not enough vessels to accommodate a shift of Campbell traffic from rail to vessel.”¹¹⁰ Consumers points to 2013 vessel capacity data from the Lake Carrier’s Association that it claims show that the current utilization rate of vessels is 87% (leaving a capacity of over 283,000 tons).¹¹¹ Consumers’ use of such outdated numbers is noteworthy, because current numbers

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¹¹⁰ See Consumers Op. II-38.

¹¹¹ See <http://www.lcaships.com/wp-content/uploads/2014/08/Utilization-Rates.pdf>. Consumers’ expert report says these are 2014 utilization rates in a footnote. See Consumers Op. Ex. II-1 at n.49. But Consumers accurately refers to these figures as May to October 2013 utilization rates in its evidence. See Consumers Op. II-39.

from the exact same source tell a completely different story. Great Lakes bulk shipments have dropped precipitously in recent years. According to the Lake Carrier's Association, "U.S.-flag lakers moved 7 million tons less cargo between December 1, 2013 and May 30, 2014 compared to the same period in 2012/2013."¹¹² Moreover, LCA numbers show a drop in coal transported of nearly 3.8 million tons between 2010 and 2015.¹¹³ In short, there is ample vessel capacity should Consumers wish to use it.

Captain Ed Hogan, an experienced and active Great Lakes Captain, disagrees with Mr. Barbaro's claims. In Captain Hogan's opinion, marine operators would jump at a major coal transportation opportunity, and vessel capacity would not be a concern for this option. {

}

c. The Cobb-Rail Alternative

i. The Cobb-Rail Alternative Is Feasible.

A second competitive alternative for the Consumers plant is to use the existing KCBX-Cobb route and the Michigan Shore railroad to transport coal to Campbell. This Cobb-Rail Alternative would require minimal capital investment and permitting, because it would rely on Consumers' existing dock infrastructure at the Cobb plant. Like the Direct Water Alternative, the Cobb-Rail Alternative was

¹¹² See CSXT Reply WP "Lake Carriers' Association State of the Lakes 2015.pdf" at 2.

¹¹³ See *id.* at 6.

studied by Consumers' own experts prior to this litigation, and those experts determined that it was "feasible."¹¹⁴

The first steps of the Cobb-Rail Alternative are identical to those of the Direct Water Alternative. Inbound BNSF coal shipments from the Powder River Basin would be delivered to KCBX {{

The KCBX terminal then would directly load coal from those trains onto articulated tug barges or larger vessels.

The loaded vessels would proceed to the existing Cobb dock on Lake Muskegon. There the coal would be unloaded just as it has been for past deliveries to Cobb and transported via conveyor to the Michigan Shore Railroad. The Michigan Shore Railroad is an active short line railroad with a north-south line that is within sight of the Cobb plant and just 3.7 miles from Campbell. With a modest buildout to the Michigan Shore Railroad at Cobb and Campbell, rail would be used to transport coal from the Cobb dock to the Campbell plant for a total capital cost of just \$18.66 million, or just \$0.74 per ton. The capital costs and logistical alignment are detailed in CSXT Reply Exhibit II-B-1.

ii. Consumers' Experts Confirm That The Cobb-Rail Alternative Is Feasible.

{

114 {

}

}

iii. Consumers' Objections to the Feasibility of The Cobb-Rail Alternative Are Meritless.

Most of the alleged feasibility obstacles that Consumers raises to the Cobb-Rail Alternative are identical to those it posed for the Direct Water Alternative discussed above. For the reasons detailed above, the Cobb-Rail Alternative does not need to account for 100% of the issue traffic to be an effective competitive alternative; it is not inconsistent with any Consumers contractual requirement; KCBX is a viable terminal; and there is ample vessel capacity available to Consumers.

Consumers attempts to raise a unique barrier to water delivery to Cobb, arguing that Consumers has agreed to cooperate with plans to convert the Cobb property for other uses and thus Cobb will be unavailable for continued coal shipments.¹¹⁸ But Consumers concedes that it {{

115 {

}

116 *Id.* at 6-7.

117 {

}

118 *See Consumers Op.* at II-29.

}} to any particular future plan for Cobb.¹¹⁹ Moreover, Consumers goes too far when it claims that {

} “likely would doom any efforts to secure the permits needed to expand coal handling capacity and construct new private rail trackage to connect to the dock.”¹²⁰ Consumers’ argument that {

} is a flight of fantasy. And importantly, it is a flight of fantasy that was not engaged in by Consumers’ own experts, who concluded that Cobb-Rail options were a viable, permissible option.

Consumers also asserts that the Michigan Shore would be reluctant to compete with CSXT because the Michigan Shore’s parent company Genesee & Wyoming controls other railroads who have interchanges with CSXT.¹²¹ There is zero reason to think that the Michigan Shore would not jump at the opportunity to handle 3.5 million tons of coal annually. At Consumers’ assumed { } rate, this tonnage would represent { } in annual revenue per year to the Michigan Shore—a substantial sum for any railroad, and particularly for a small Class III railroad. Consumers cites nebulous “business relationships” between CSXT and other Genesee railroads, but does not point to any concrete relationship or business loss that could motivate MSRR to turn up its nose at { } in annual revenue. And Consumers’ suggestion that the Michigan Shore might refuse

¹¹⁹ *See id.* at II-30.

¹²⁰ *See id.*

¹²¹ *Id.*

to compete with CSXT because it “did not provide a rate and service proposal for Worley Parsons’ use in its evaluation” is nonsense.¹²² {

} Consumers’ reliance on *TMPA I* is thus completely misplaced.¹²⁴ In *TMPA I*, a potential rail competitor was asked “on numerous occasions” over a three year period for rate estimates and the railroad “declined to discuss rates or negotiate.”¹²⁵ {

}

3. The Competitive Alternatives Are Cost-Competitive.

The above-described Direct Water Alternative and Cobb-Rail Alternative not only are physically feasible; they also are economically feasible options with costs in the range of the Cobb vessel options that Consumers has used previously. Because there is no question that Cobb vessel transportation is effective competition—so effective that it entirely displaced rail service—these comparably-priced options for service to Campbell are also effective competition.

a. The Costs of The Direct Water Alternative are { { } }.

The per-ton cost for transporting coal from Chicago to the Campbell facility is
{ { } } than the challenged \$14.95 CSXT tariff rate for

¹²² See Consumers Op. II-31.

¹²³ See { }.

¹²⁴ See Consumers Op. II-31 n.99.

¹²⁵ *TMPA I*, 6 S.T.B. at 584.

coal shipments from Chicago to the Campbell facility. This cost has five components, several of which are not in dispute. For those components that are in dispute, CSXT's cost evidence is well-supported by the record and in line with Consumers' historical studies of the costs of vessel transportation.¹²⁶

The first cost component is the {{ }} cost of rail transportation to the KCBX terminal in Chicago rather than to interchange with CSXT. Consumers calculates this cost as {{

}}.¹²⁷ CSXT accepts this cost.

The next component is the cost of transloading coal into vessels at the KCBX terminal. Consumers claims that this cost would be {{ }} per ton, because that was the cost {

¹²⁶ CSXT's Reply Workpaper "Financial Analysis.xlsx" develops costs for CSXT's Alternatives using the same basic framework, formulas, and cost categories that Mr. Barbaro used for his analysis. As detailed in this section, CSXT Reply WP "Financial Analysis.xlsx" changes certain of Mr. Barbaro's inputs and assumptions to produce corrected costs for both the Direct Water Option and the Cobb-Rail Option.

¹²⁷ See Consumers Op. Ex. II-B-1 at 118.

¹²⁸ {{

}}

}}

Table II-B-5

{{

}}

Tier	2010 Rate	2015 Rate
{{ }}	{{ }}	{{ }}
{{ }}	{{ }}	{{ }}
{{ }}	{{ }}	{{ }}
{{ }}		{{ }}

The third component of vessel transportation to Campbell is the lake vessel rate. {{ }} the cost of transportation from KCBX to Campbell in a Class III vessel is {{ }}.¹³¹ This rate (including an assumed fuel surcharge) was used by Mr. Barbaro in his analysis, and CSXT accepts it here.

¹²⁹ {{ }}

¹³⁰ {{ }}

¹³¹ See Consumers Op. Ex. II-B-1 at 47.

The fourth cost component is dock operating costs at Cobb. Consumers estimated this cost to be {{ }} per ton, and CSXT accepts this estimate.¹³²

The final cost is the capital cost of construction. Exhibit II-B-1 details complete capital costs for a Pigeon Lake dock, which were developed by CSXT witnesses at TranSystems. These costs include (1) costs for a fixed, pile-supported platform; (2) costs for jetty improvements; (3) costs for channel widening and improvements; (4) costs for a conveyor system to unload coal from vessels; and (5) costs of permitting and environmental mitigation. CSXT's experts included an additive for engineering and contingencies.

CSXT's experts developed two alternative locations for the fixed platform and conveyor. The first, Alternative 1-A, proposes a conveyor system that would link to Consumers' existing transfer house for maximum flexibility in distributing coal to different areas of the stockpile. Alternative 1-A has a total capital cost of \$86.8 million. The second, Alternative 1-B, is a less expensive \$73.0 million alternative that would transfer coal to a landside hopper.¹³³

CSXT also accounted for Consumers' cost of capital. In doing so, CSXT accepted Mr. Barbaro's proposed cost of capital calculations, with three adjustments. First, Mr. Barbaro artificially increases capital recovery costs by assuming that all capital would be recovered in a compressed time frame. Specifically, he assumes that work on a competitive option would not commence until December 31, 2015 and thus that Consumers would have to wait several years

¹³² See *id.* at 90.

¹³³ See CSXT Reply WP "Opinion of Anticipated Cost Direct Water.xlsx."

before beginning to recover the costs. But Consumers has no one but itself to blame for any delay. It has been aware of its competitive options for some time, and if it wished to have a dock option in place at the time CSXT's contract expired it could have done so. The Direct Water Option would take less than three years for permitting and construction,¹³⁴ and {

} Second, Mr. Barbaro assumes that the usefulness of the dock would be diminished in 2030 when Consumers Units 1 and 2 are scheduled to close—even though Unit 3 is projected to be operational until 2040. But the dock would be useful to serve Unit 3 at least until 2040, and Mr. Barbaro gives no reason why the eventual closures of these two smaller units would impact the usefulness of the dock for the remaining unit. Third, Mr. Barbaro incorporates an additional factor for added real estate taxes—even though Consumers would not be acquiring any new property to build a dock and unloading facilities on its existing property. CSXT removes that factor.¹³⁵ CSXT also includes interest during construction at a rate of 4%.

Consumers included certain operating costs that are unnecessary and that CSXT rejects. As discussed above, CSXT is not proposing an alternative that would replace 100% of CSXT rail service, and as such the storage and stockpile fees

¹³⁴ See CSXT Reply Ex. II-B-1 at 15. Indeed, infrastructure for a Cobb Rail Option could be constructed in a year or less. *Id.* at 30.

¹³⁵ CSXT's adjustments to Consumer's capital recovery factor are shown in CSXT Reply WP "Financial Analysis.xlsx," Tab "Capital Recovery."

posited by Mr. Barbaro are unnecessary. TranSystems has evaluated Consumers' stockpile needs, and determined that it would need to keep inventory of 251,000 tons on hand to ensure 99.99% service reliability.¹³⁶ Campbell currently has stockpile capacity for { }, which is ample to accommodate the Direct Water Option.¹³⁷ Mr. Barbaro's asserted terminal storage fees, stockpile capital costs, stockpile operating costs, and inventory carrying costs are thus all unnecessary. Moreover, the articulated tug barges proposed by CSXT's experts do not need harbor tug assistance, so those assumed costs are unnecessary as well. CSXT also has not accounted for any railcar cost savings, since its plan contemplates that Consumers would supplement vessel transportation with rail service when necessary. This assumption is quite conservative, since it is likely that Consumers could enter into different leasing arrangements allowing it to realize some railcar cost savings.

Table II-B-6 summarizes the above costs.

¹³⁶ See CSXT Reply Ex. II-B-1 at 12.

¹³⁷ See *id.* at 12.

**Table II-B-6
Costs of Direct Water Alternative¹³⁸**

	Alternative 1-A	Alternative 1-B
Net Lake Vessel Costs (\$/ton)		
- Operating Costs		
<u>Lake Shipping costs thru KCBX</u>		
KCBX Transloading Fee	{{ }}	{{ }}
Lake Vessel Rate	{{ }}	{{ }}
Total lake vessel cost	{{ }}	{{ }}
Unloading dock operating cost	{{ }}	{{ }}
{{ }}	{{ }}	{{ }}
Net Operating Cost	{{ [] }}	{{ [] }}
- Capital Costs (\$/ton)	\$3.46	\$2.87
- Net Lake Vessel Trans. Cost	{{ [] }}	{{ [] }}

b. The Costs of the Cobb-Rail Alternative are {{
}}

The Cobb-Rail Alternative has slightly different costs than the Direct Water Alternative. While terminal fees and vessel fees are identical in both options, the Cobb-Rail Alternative has an additional operating cost for the Michigan Shore Line segment. Partially offsetting that additional cost is the substantially lower capital costs of the Cobb-Rail Alternative. The result is a per-ton cost of {{
}} than the challenged CSXT rate.

¹³⁸ See CSXT Reply WP “Financial Analysis.xlsx,” Tab “Direct Water Cap & Ops. Cost.”

The Cobb-Rail alternative would have many cost components identical to those for direct vessel shipments to Campbell. Specifically, the {{

}} KCBX terminal costs, and vessel costs would be identical. Vessel costs could be even lower if larger vessels were used for shipments to Cobb, but to be conservative CSXT assumes the same vessel costs for both options.

Other cost components are somewhat different than the Campbell direct option. Dock unloading costs at Cobb were estimated by Consumers to be {{

}} and CSXT accepts that estimate.¹³⁹ And CSXT Exhibit II-B-1 shows that the capital costs of this option are substantially lower than at Campbell—approximately \$18.66 million—and amount to just \$0.74 per ton.¹⁴⁰

The one additional operating cost associated with this option is of course the cost of the short line rail service. {

}¹⁴¹ While this cost seems high for an operationally simple short-haul movement, CSXT is of course not in a position to obtain a rate quote from MSRR. CSXT therefore accepts the cost estimate, but notes that it is {

¹³⁹ See Consumers Op. Ex. II-1 at 7.

¹⁴⁰ See CSXT Reply Ex. II-B-1 at 30; CSXT Reply WP “Financial Analysis.xlsx,” Tab “Cobb-Rail Cap & Ops. Cost”; CSXT Reply WP “Opinion of Anticipated Cost Cobb-Rail.xlsx.”

¹⁴¹ *Id.* at 120.

¹⁴² See CSXT Reply WP “CSXT Reply URCS Calculations.xlsx.”

}

As with the Direct Water Alternative, Consumers' added costs related to supposed storage needs are inapplicable. Consumers' total storage needs are only 251,000 tons for a transportation alternative that assumes CSXT deliveries when vessel transportation is impossible. Its stockpile can easily accommodate that volume. {

}¹⁴³

Table II-B-7 summarizes the above costs.

¹⁴³ See CSXT Ex. II-B-1 at 12.

**Table II-B-7
Costs of Cobb-Rail Alternative¹⁴⁴**

	Cobb Rail Alternative
Net Lake Vessel Costs (\$/ton)	
Operating Costs	
 Lake Shipping cost thru KCBX	
KCBX Transloading Fee	{{ }}
Lake Vessel Rate	{{ }}
Total lake vessel cost	{{ }}
Dock operating cost	{{ }}
MSRR rail cost From Cobb	{{ }}
{{ }}	{{ }}
}} Net Lake Shipping Cost	{{ [] }}
Capital cost	\$0.74
Net Lake Vessel Trans. Cost	{{ [] }}

4. The Transportation Alternatives Provide Effective Competition.

Consumers' many internal studies confirm that it has feasible transportation alternatives to receive coal at the Campbell plant. Simply put, all it takes is a dock costing roughly \$2.87 per ton of delivered coal. The plant on Lake Michigan would then be *identically situated* to the Cobb plant. And there is unassailable proof of effective water competition at Cobb. Alternatively, Consumers can become dual-rail

¹⁴⁴ See CSXT Reply WP "Financial Analysis.xlsx," Tab "Cobb-Rail Cap & Ops. Cost."

served with a short buildout to the nearby shortline costing roughly { } per ton. If Consumers did both, the Campbell plant would be served by two railroads and direct water vessels, a competitive environment that would make Consumers the envy of most utilities nationwide.

The final question therefore is whether the two feasible water alternatives provide effective competition. “At the core of the ‘effective competition’ standard,” explains the Board, “is the idea that there are competitive, market pressures on the railroads deterring them from charging monopoly prices for transporting goods.”¹⁴⁵ The Board has observed that in some circumstances a feasible alternative may only impose an “outer limit” on the rate a carrier can charge: “In other words, there is a competitive constraint, even though there is not effective competition.”¹⁴⁶

The Board tries to distinguish between a “competitive constraint” and “effective competition” with its Limit Price Test.¹⁴⁷ If the competitive constraint falls above the carrier’s most recent RSAM benchmark, then the Board will presume there is no effective competition. The Board justified this new approach—untested by the rigors of notice and comment rulemaking—because of the fear that “at some point even a monopolist could price its services so high that patently ridiculous transportation alternatives would eventually serve to constrain rates.”¹⁴⁸ The Board therefore perceives the question of whether feasible alternatives exert

¹⁴⁵ *TPI Market Dominance*, STB Docket No. 42121, at 5 (quoting *McCarty Farms v.* 3 I.C.C.2d at 832).

¹⁴⁶ *FMC*, 4 S.T.B. at 718.

¹⁴⁷ See *TPI Market Dominance*, STB Docket No. 42121, at 4.

¹⁴⁸ *Id.* at 16.

effective competitive pressure on a carrier's pricing as "the central issue."¹⁴⁹ But the Board has "strongly encouraged" parties to provide "a better general approach to this central issue" or "a superior benchmark that can be used to guide this inquiry."¹⁵⁰

CSXT is providing the Board with a vastly superior general approach to dealing with this "central issue." The Board can easily compare the direct water option from Chicago to Campbell against the direct water option to Cobb. The logic is simple. If Alternative X is effective competition to rail, and Alternative Y is the same as Alternative X, then Alternative Y is also effective competition.

Here, the direct water alternative from Chicago to Cobb provided competition so effective that not only did it impose market pressures on railroads deterring them from charging monopoly prices for transporting coal to this plant—the water alternative *captured the entire market for decades!* {{

}}

Consumers cannot challenge the effectiveness of that direct water alternative to Cobb. And the feasible water alternatives from Chicago to Campbell (particularly the direct water alternative) are the same for all practical purposes as the Chicago to Cobb water alternative. Indeed, including an estimate of the cost of

¹⁴⁹ *Id.*

¹⁵⁰ *Id.* at 26 n.78 (quoting *M&G*, STB Docket No. 42123, at 5).

¹⁵¹ *See* {{

}}

the Cobb dock—to present an apples-to-apples comparison—makes the two alternatives virtually identical.

This case also shatters the illusion that the Limit Price Test can distinguish between a “competitive constraint” and “effective competition.” CSXT has long been telling the Board that this approach lacks any economic validity.¹⁵² The proof is now simple: does the Board’s new test conclude that rail has market dominance over the transportation of coal from Chicago *to Cobb*. We know what a reliable test would say: No! The direct water alternative dominated that market.¹⁵³ Yet the Limit Price Test would generate a false positive—labeling the direct water alternative ineffective and presuming market dominance where none exists.

The Board may have found an “objective” and “mechanical” test for effective competition with the Limit Price Test. A coin toss would also be objective and mechanical. But the Board’s approach cannot be relied on here because it generates spurious results.¹⁵⁴

¹⁵² See, e.g., CSX Transp., Inc.’s Comments on the Proposed “Limit Price” Approach to Determining Qualitative Market Dominance, *M&G v. CSXT*, STB Docket No. 42123, at 21-29 (filed Nov. 28, 2012). CSXT has not been alone in this view. See, e.g., Comments of Amicus Curiae Western Coal Traffic League, *M&G v. CSXT*, STB Docket No. 42123, at 3 (filed Nov. 28, 2012) (“This new approach has significant legal and economic flaws.”); Comments of the Association of American Railroads, *M&G v. CSXT*, STB Docket No. 42123, at 11 (filed Nov. 28, 2012).

¹⁵³ See CSXT Reply WP “Coal Shipments to Michigan.xls” (showing that 100% of coal transported to Cobb was transported via water).

¹⁵⁴ Cf. *In re Rail Freight Surcharge Antitrust Litig.*, 725 F.3d 244, 254 (D.C. Cir. 2013) (rejecting class certification premised on a “questionable model” with “propensity toward false positives”).

CSXT presents in three parts its evidence why the feasible water alternatives described above provide effective competition. **Subsection a** explains why the Board's limit price test is unlawful. **Subsection b** shows the Limit Price Test generates spurious results and explains the key defect with the RSAM benchmark that corrupts the test. **Subsection c** responds to the Board's "strong" encouragement for a superior general approach to deal with this central issue. Finally, **Subsection d** explains that market dominance cannot be inferred from differences between contract rates and tariff rates or between different competitive markets.

a. The Limit Price Test Is Unlawful.

The application of the Limit Price Test is unlawful in two respects. *First*, the test violated the Administrative Procedure Act by departing from agency market dominance standards without notice and comment. CSXT argued in *TPI* that this new mechanical test reflects a departure from governing market dominance standards without the required notice and comment rulemaking. The Board claimed those were not legislative rules, or if they were that the Limit Price Test is not a departure from those legislative standards. CSXT respectfully disagrees with the Board's characterization of its prior standards and its attempt to explain how the transformational test announced in *M&G* can be consistent with guidelines that

rejected any sort of mechanical test. Accordingly, CSXT hereby renews its APA argument set forth in *TPI* and urges the Board to reconsider that ruling.¹⁵⁵

Second, the test violates the statutory prohibition against presumptions based on revenue-to-variable-cost ratios. Congress has instructed the Board that:

(2) A finding by the Board that a rate charged by a rail carrier results in a revenue-variable cost percentage for the transportation to which the rate applies that is equal to or greater than 180 percent does not establish a presumption that --

(A) such rail carrier has *or does not have* market dominance over such transportation; or

(B) the proposed rate exceeds *or does not exceed* a reasonable maximum.¹⁵⁶

Congress understood the danger of drawing inferences about the presence or absence of market dominance based on R/VC ratios, given the high fixed costs that prompted Congress to promote demand-based differential pricing with the Staggers Act.

But the Board has resurrected the prohibited presumptions with its Limit Price Test. The current RSAM for CSXT is 265%. Under the Limit Price Test, the Board reasons that CSXT has market dominance over the transportation at issue if the competitive constraint permits CSXT to enjoy a revenue-to-variable cost (R/VC) ratio above 265%. The Board asserts that “the fact that a rate involving certain traffic produces an R/VC ratio that falls below the carrier’s RSAM number indicates

¹⁵⁵ See CSXT Petition for Reconsideration, *CSXT v. TPI*, STB Docket No. 42121 (filed June 20, 2013); Brief of Petitioner, *CSX Transp., Inc. v. STB*, Case No. 13-1313 (filed in D.C. Circuit March 25, 2014).

¹⁵⁶ 49 U.S.C. 10706(d)(2) (emphasis added).

that competitive transportation alternatives likely exist and are exerting downward pressure on the rate governing that traffic.”¹⁵⁷ From this flawed premise, the Board then infers the opposite must also be true: that R/VC ratios above RSAM “[are] a useful indicator that competitive transportation alternatives—whether intermodal or intramodal—do not exist and are not effectively constraining the rate charged by the carrier for that traffic.”¹⁵⁸ CSXT explains below that the agency precedent relied on for these assertions offers no support for them, and in fact proves the opposite. But in any event, Section 10706(d)(2) prohibits the Board from drawing precisely this kind of inference based on R/VC ratios.

The Board has offered three defenses. *First*, the Board believes that the plain language of the statute only prevents the Board from creating a presumption of market dominance based on the fact that the challenged rate produces a markup at or above 180% of variable cost. The statute is silent, so the Board believes, “as to whether a presumption could be drawn from a higher markup (*e.g.*, above 500% of variable cost or above RSAM).”¹⁵⁹ *Second*, the Board claims that the Limit Price Test “establishes no presumptions of any kind.”¹⁶⁰ *Third*, the Board claims it is not violating Section 10706(d)(2) because—if there is a presumption—the presumption

¹⁵⁷ *TPI Market Dominance*, STB Docket No. 42121, at 20.

¹⁵⁸ *Id.*

¹⁵⁹ *Id.* at 21.

¹⁶⁰ *Id.*

is not based on the fact that the challenged rate exceeds RSAM but rather on the fact that the competitive constraint exceeds RSAM.¹⁶¹

The Board's first claim is wrong, for the statute is not silent or ambiguous about the sort of presumptions drawn from the Limit Price Test. The key to unlocking the true nature of the prohibition lies in the words "does not have." The statute says:

A finding by the Board that a rate charged by a rail carrier results in a revenue-variable cost percentage for the transportation to which the rate applies that is equal to or greater than 180 percent does not establish a presumption that such rail carrier . . . **does not have** market dominance over such transportation.¹⁶²

The Board's strained reading renders this language superfluous. The Board believes that the statute only prohibits a presumption based on the rate being above 180%, but permits a presumption based on a higher markup above 180%. Yet Congress already compels the Board to find no market dominance where "the rate charged results in a revenue-variable cost percentage for such transportation that is less than 180 percent."¹⁶³ It would be passing strange for Congress to write into the statute a meaningless prohibition on a presumption of no market dominance based *only* on the fact that the challenged rate produces a markup at or above 180% of variable cost, while permitting a presumption if the markup were below 190% of variable cost, or in this case below 265% of variable cost

¹⁶¹ *Id.*

¹⁶² 49 U.S.C. 10706(d)(2) (emphasis added).

¹⁶³ 49 U.S.C. 10706(d)(1)(A).

Rather, the statute is clear. First, if the rate produces an R/VC ratio below 180%, then the Board must find no market dominance.¹⁶⁴ Then, if the rate produces an R/VC ratio “at or above 180%” the Board cannot presume market dominance exists, or does not exist, based on that R/VC ratio. Congress prohibited presumptions that run either way. Yet the Limit Price Test would here create a presumption of no market dominance if the direct-water competitive constraint is below 265% of variable cost and a presumption of market dominance if the constraint is above 265% of variable cost. Such a presumption is unlawful.

The Board rejected arguments that the statute establishes an absolute prohibition on the use of presumptions from any R/VC ratio level (no matter how high) in the market dominance context, “particularly given the historical prevalence of their use in that precise context.”¹⁶⁵ But Board precedent has long rejected using R/VC ratios to presume the presence of market dominances.¹⁶⁶ Recognizing this, the agency nonetheless relied heavily on *Mr. Sprout*¹⁶⁷ to support the so-called “historical prevalence” for using high R/VC ratios as evidence of market dominance.

¹⁶⁴ 49 U.S.C. 10706(d)(1)(A).

¹⁶⁵ *TPI Market Dominance*, STB Docket No. 42121, at 21 n.69.

¹⁶⁶ See, e.g., *Potomac Elec. Power Co. v. CSX Transp., Inc.*, 2 S.T.B. 290, 294 (1997) (“we do not use rate-cost relationships as a basis for qualitative market dominance determinations”); *Market Dominance Determinations*, 365 I.C.C. 118, 122 (1981) (“There are any number of reasons why a high price/cost ratio may not be indicative of true market power on the part of the railroad. Reliance on such ratios will, therefore, not only be misleading, but will preclude more relevant information from being introduced.”).

¹⁶⁷ *Mr. Sprout Inc. v. United States*, 8 F.3d 118, 124 (2d Cir. 1993).

Mr. Sprout offers no such refuge. The issue in that case was whether the ICC's "use of *low* revenue-to-variable cost ratios to establish *a lack of market power* was inappropriate and contrary to precedent."¹⁶⁸ The rates to transport potatoes produced R/VC ratios of 113% and 117%. Based on those low R/VC ratios, the ICC refused to revoke the exemption for the transportation of potatoes, finding no evidence of market power. The Court affirmed. It first observed that "revenue-to-cost ratios have been employed by the Commission, the courts, and Congress as a valid and reliable measure of market power in the rail industry."¹⁶⁹ It then observed that by statute there can be no market dominance if the rates produce such low markups. The Court was "satisfied that the ICC's use of Conrail's 117 percent ratio as one compelling sign of the carrier's lack of market power was neither unwarranted, nor arbitrary and capricious."¹⁷⁰ But the *Mr. Sprout* Court never hinted at or endorsed the use of R/VC ratios above 180 as a threshold determination of market dominance.

The Board's other two defenses provide thin reeds of support. It is clear that the Limit Price Test creates a presumption based on whether the constraint falls above or below RSAM. The Board cannot change the nature of its test by replacing the term "presumption" with a neologism like "initial conclusion." The two terms are synonymous. And the defense that the presumption is based on a hypothetical rate priced at the level of the competitive constraint—not the challenged rate

¹⁶⁸ *Id.* at 123 (emphasis added).

¹⁶⁹ *Id.* at 124.

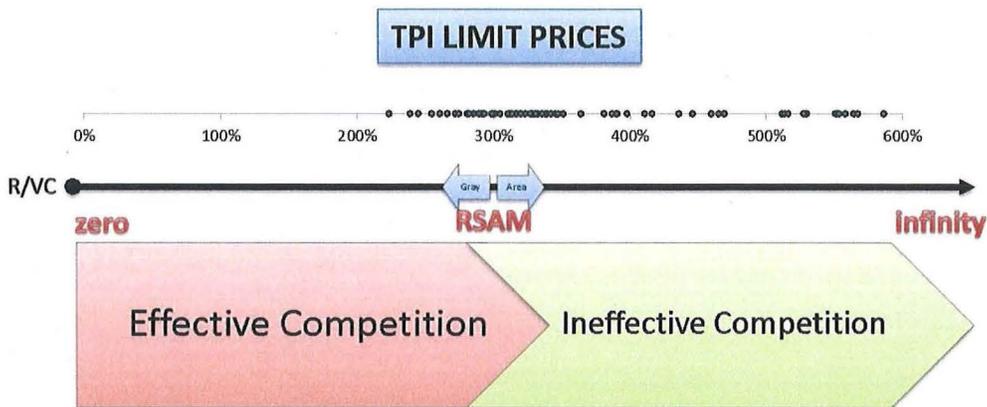
¹⁷⁰ *Id.*

itself—is a shell game. Congress’s instruction that the Board not make presumptions based on the R/VC ratio of a challenged rate was not an invitation for the Board to instead make presumptions based on hypothetical rates. That is particularly so when the hypothetical Limit Price R/VC is a transparent proxy for the actual R/VC—as it will be in any case where the price of an alternative is in the range of the challenged rate.

b. The Limit Price Test Is Irrational.

In addition to being unlawful, the Limit Price Test is irrational. At the heart of the test lies the RSAM benchmark. RSAM measures the average markup a carrier would need to charge traffic with R/VC ratios above 180% to earn a return on investment equal to the industry average cost of capital. The Board will presume that any constraint that lies above this RSAM benchmark is ineffective competition, and vice versa. The importance of RSAM is revealed by this chart, reproduced from *TPI Market Dominance* (at 27).

Figure II-B-8



The Board believes that comparing the limit price R/VC ratio for a given movement to the carrier's RSAM number "will be indicative of either the presence or absence of effective competition for that movement." But CSXT demonstrates below that this benchmark provides no useful guidance as to the presence or absence of market dominance.

i. The Limit Price Test Produces False Positives

While the Limit Price Test is flawed in a number of ways, the flaws are obvious when the test is applied to short-haul coal movements through Chicago. This conclusion follows from an unchallengeable truth: no railroad has market dominance over the transportation of coal from Chicago to Cobb. The Cobb plant located at Muskegon, Michigan, could be served by rail. CSXT owned a rail line that runs right by the plant. In 2005, CSXT leased the line to a shortline in part because Consumers chose to take all its coal requirements at Cobb via water.

Yet examination of the hypothetical question of market dominance under the Limit Price Test yields a different answer. The cost of the direct water movement from Chicago to Cobb is summarized again below:

Table II-B-9¹⁷¹

Category	Per-Ton Cost
{{ }}	{{ }}
KCBX Terminal Transloading	{{ }}
Vessel Transportation	{{ }}
Cobb Dock Operating Costs	{{ }}
Cobb Dock Construction Costs	unknown
Total (less dock costs)	{{ }}

Consider the hypothetical question of whether the rail alternative has “market dominance” over the transportation of coal from Chicago to Cobb. To apply the Board’s mechanical Limit Price Test requires an estimate of the variable cost to provide rail service from Chicago to Cobb. To keep the question simple, this hypothetical assumes that CSXT would provide the rail transportation service from Chicago to Cobb and that Consumers has spent the small expense per ton needed to connect to the existing rail line at Cobb. In this hypothetical, the URCS variable costs to provide direct rail service from Chicago to Cobb would be \$3.29 per ton.¹⁷²

From these figures it is possible to calculate the “limit price” of a direct water movement to Cobb that the Limit Price Test would treat as presumptively ineffective competition. CSXT’s RSAM benchmark is 265%. The Board would

¹⁷¹ See CSXT Reply WP “Financial Analysis.xlsx,” Tab “Cobb-Rail Cap & Ops. Cost.”

¹⁷² See CSXT Reply WP “Cobb Variable Cost Calculations.xlsx.”

therefore treat any transportation alternative to Cobb—including the variable costs and the return on capital investment in the dock—that exceeds \$8.71 per ton as ineffective competition.¹⁷³ But fierce real world competition from direct water movements to Cobb produce rates that are {{ }} than what the Board would treat as effective competition (depending on the inclusion of dock costs at Cobb). *And the direct water option to Cobb cannot be the upper bound on what is effective competition!* Congress did not imagine that effective competition would exist only where the competition was so fierce that kept the railroad from the market entirely.

The Board's Limit Price Test is irrational because it produces absurd results. The facts show that the direct KCBX to Cobb water alternative has presented successful competition to the pricing of rail movements through Chicago. But this example of fierce, real world competition would fail the Board's Limit Price Test by a wide margin.

ii. RSAM Benchmark Is a Terrible Measure of Effective Competition.

As CSXT has long maintained, the Limit Price Test lacks any coherent economic foundation. To put a finer point on it, the linchpin of the Board's new test is a hopelessly imprecise measure of market dominance: the RSAM benchmark. This benchmark was created for an entirely different purpose, to be used together with two other benchmarks as an "imprecise" and "crude" means of gauging the reasonableness of rail rates when the value of the case cannot justify a Full-SAC or

¹⁷³ \$3.29 variable costs × 265% RSAM = \$8.71.

Simplified-SAC presentation.¹⁷⁴ It was not designed to simplify the market dominance inquiry.

It is an average, not a maximum. By design, RSAM only captures the *average* markup needed by a carrier to earn returns equal to the industry average cost of capital. It is a mathematical truism that half of all observations must lie above the average. Rates above RSAM are not presumptively unreasonable, just a natural consequence of demand-based differential pricing where traffic with less elastic demand will bear a larger share of joint and common costs. The fact that CSXT must earn *on average* a markup of 265% is thus irrelevant to the question of whether it has market dominance over a particular movement. The Board and the federal courts have long concluded that this measurement of system-wide revenue needs provides “no guidance” on the reasonableness of a particular rate.¹⁷⁵ It can offer no guidance on the presence of market dominance either.

It fails to capture the true operating costs of the congested Chicago gateway. The Board understands that its general purpose costing model provides, at best, a rough approximation of the variable costs of a particular movement. Here, however, the movement at issue traverses the most congested terminal in America. A mechanical test of market dominance that rests on a general measure of variable costs will be wildly inaccurate for movements that differ vastly (in distance or geography) from the “average” CSXT movement.

¹⁷⁴ *Simplified Standards*, STB Ex Parte No. 646 (Sub-No. 1) at 28.

¹⁷⁵ *BNSF 2006*, 453 F.3d at 481 (quoting *Burlington N. R.R. Co*, 985 F.2d at 596 (D.C. Cir. 1993)).

It is not based on replacement costs. RSAM only captures the average R/VC ratio needed to earn a return equal to the industry average cost of capital, based on historic, depreciated book values. However, as is discussed in depth in Section IV of this Reply Evidence, this is a flawed measurement. Competitive prices are based on the real value of assets, not historical values. As such, any market dominance benchmark that is based on historical values—which understate the true value of railroad facilities—will create dangerous false positives and invite the Board to regulate rather than rely on competitive market forces.

The benchmark assumes market dominance from any tiny return above the cost of capital. Even putting aside its serious measurement errors, RSAM only shows the average markup needed to earn *exactly* the industry average cost of capital. It is illogical and irrational to assume that Congress intended for the Board to regulate freight rates any time the carrier earns a modest return above the cost of capital. For example, the 2014 cost of capital for the railroad industry was 10.65%. Is it a sign of “market dominance” if CSXT earned a return of 10.70%? Is it reasonable to assume Congress intended the Board to regulate rates where competitive market forces keep CSXT from earning returns 1% above its cost of capital? Clearly not. In regulating the railroad industry, the first and second policies of the United States Government are “to allow, *to the maximum extent possible*, competition and the demand for services to establish reasonable rates for transportation by rail” and “*to minimize the need* for Federal regulatory control

over the rail transportation system.”¹⁷⁶ Yet by using RSAM as a mechanical benchmark of market dominance, the Board turns this national policy on its head. It is relying on competition to the minimum extent possible—only where the competition is so fierce it keeps a railroad from earning its cost of capital—and is maximizing the degree of Federal regulatory control over freight rates.

RSAM is not tailored to the short-haul movement at issue in this case. This case involves a very short haul movement of coal. As the Board is aware, short haul movements have revenues on ton-mile or variable cost bases that are high when compared to longer movements. This is not a sign of market power—indeed, trucking is widely known to be effective competition for shorter haul movements. Rather, the high costs of originating and terminating the short-haul traffic (which are not fully captured by URCS) result in higher than average rates per mile. The inability to compare R/VC ratios of short haul movements against longer-haul movements is why in Three-Benchmark cases the Board always controls the comparison group for distance. Yet RSAM is calculated by taking the average R/VC markup for traffic with rates above 180% of variable cost and adding a markup needed to make up the revenue shortfall from the annual revenue adequacy determination. Blind adherence to this RSAM benchmark to distinguish between a competitive constraint and effective competition is bound to bias the results against short-haul movements, which are precisely the kind of movements *most likely* to face effective competition.

¹⁷⁶ 49 U.S.C. § 10101 (emphasis added).

CSXT has quantified the magnitude of the inaccuracy from using RSAM as the centerpiece of the Limit Price Test.¹⁷⁷ It is not possible to address all the flaws described above, particularly the flawed use of an average markup instead of an estimate of the maximum markup. (Because CSXT is revenue inadequate, the maximum markup needed to earn its cost of capital—some kind of system-wide MMM—cannot be calculated). It is possible, however, to examine the magnitude of three other serious conceptual problems: (1) the failure to calibrate RSAM to the kind of short-haul movement at issues here; (2) the failure to rely on competition to the “maximum extent practical” by finding market dominance where a carrier earns any marginal return above the cost of capital; and (3) the failure to measure returns against the current value of railroad assets.

CSXT began with the most recent year 2013 Waybill Sample for CSXT. Using the most recent year minimizes the degree of regulatory lag when comparing a current market rate against stale markups from prior years.

CSXT then tailored the RSAM benchmark to reflect the short-haul nature of this movement. CSXT first calculated the average markup on similar, potentially captive traffic coal movements traveling a similar distance (0-300 miles) with rates also above 180% of variable cost. (CSXT excluded from the comparison group the Consumers traffic to Campbell to avoid any circularity issues.) The average R/VC ratio for 737 movements in the 2013 STB Waybill Sample of these coal shipments traveling less than 300 miles was 397%. CSXT then applied the same revenue

¹⁷⁷ See CSXT Reply WP “2013 CSXT RSAM.xlsx.”

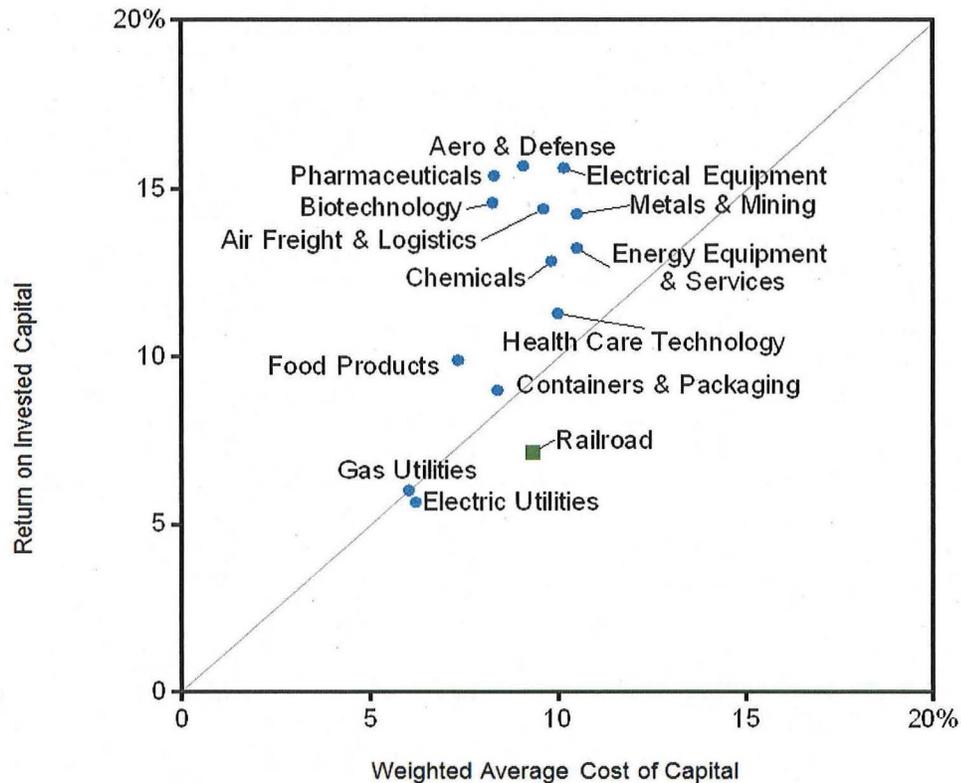
shortfall markup used by the Board to calculate RSAM (1.08). The *average* 2013 markup CSXT therefore needs to earn on these short-haul coal movements to be “revenue adequate” (as measured annually by the Board) would be 429% ($397\% \times 1.08$).

But, it is illogical to assume the absence of a well-functioning competitive market for short-haul coal movements simply because a carrier earns returns modestly in excess of the cost of capital. As noted *infra*, firms in unregulated competitive markets routinely earn returns in excess of their cost of capital. A review of the testimony submitted by Dr. Brinner on behalf of AAR in Ex Parte 722¹⁷⁸ (reproduced below at Table II-B-10) shows that competitive firms will earn at least 25% more than their costs of capital.

¹⁷⁸ Opening Comments of the Association of American Railroads, *Railroad Revenue Adequacy*, STB Ex Parte No. 722 (filed Sept. 5, 2014).

Table II-B-10¹⁷⁹

Weighted Average Cost of Capital and ROIC by Industry, 10 Year Average (2004-2013),
Bloomberg calculations assembled by Parthenon



Note: Bloomberg calculations are a total annual invested capital weighted average of S&P 500 companies within the industry during 2014
Source: Parthenon using Bloomberg data

For illustrative purposes, it is possible to substitute a competitive return of 25% higher than the railroad industry cost of capital to re-calculate the revenue shortfall. Doing so raised the 2013 revenue shortfall markup from 1.08 to 1.25, and demonstrates that the *average* markup CSXT needs to earn on short-haul, coal movements with R/VC ratios above 180—to earn returns comparable to other unregulated competitive industries—becomes 497% ($397\% \times 1.25$).

Alternatively, the 2013 revenue shortfall based on historical costs (1.08) can be adjusted to measure “adequate returns” based on a competitive benchmark that

¹⁷⁹ See *id.* at Brinner Exhibit 2.

would use the real, current value of railroad assets. BEA is one of the world's leading statistical agencies. Although it is a relatively small agency, BEA produces closely watched economic statistics that influence the decisions made by government officials, business people, households, and individuals. BEA's economic statistics, which provide a comprehensive, up-to-date picture of the U.S. economy, are key ingredients in critical decisions affecting monetary policy, tax and budget projections, and business investment plans. BEA produces economic accounts statistics that enable government and business decision-makers, researchers, and the American public to follow and understand the performance of the Nation's economy. To do this, BEA collects source data, conducts research and analysis, develops and implements estimation methodologies, and disseminates statistics to the public. Each year, BEA publishes data that contrast the current value of railroad assets against the historic, depreciated book value.

CSXT used this BEA published data that tracks the difference between historical, depreciated book values and current, replacement costs of those depreciated assets. CSXT appreciates that the BEA measure of current costs is necessarily rough and is not tailored just to CSXT's assets. But it is the best publicly available information from the leading U.S. provider of statistical information. Adjusting the net book value of railroad assets to current values raises the percent revenue shortfall from 1.08 to 1.60. Now the *average* markup CSXT

needs to earn on short-haul movements to be “revenue adequate” (now better measured on current costs) is 636% ($397\% \times 1.6$).¹⁸⁰

The Board need not try to rehabilitate the RSAM benchmark for use in the Limit Price Test. As Professor Murphy explains, “the Board’s limit price tests fails to distinguish between effective and ineffective competition” and “the Board should rely on actual market evidence on what alternatives are competitive where such evidence is available, as it is here, and not the limit price test to evaluate whether a railroad faces effective competition.”¹⁸¹ It is worth noting, however, that the direct water alternative to Campbell easily passes the deeply flawed Limit Price Test if the key benchmark is adjusted to reflect the short-haul nature of the movement at issue and to reflect the same kind of competitive returns observed in other unregulated industries. And the rail-Cobb alternative similarly easily passes the mechanical test using a metric properly based on current costs of railroad assets, instead of historical book values. In the end, however, it is clear that the RSAM benchmark is replete with profound theoretical flaws that seriously bias the market dominance inquiry, contrary to the governing U.S. policy to rely on competition “to the maximum extent practical” and to “minimize the need for Federal regulatory control.”

¹⁸⁰ Because CSXT is only indexing a single year to current values, use of the nominal cost of capital will not result in a double-count of inflation. See *Western Coal Traffic League—Petition for Declaratory Order*, STB Docket No. 35506, at 23 (served July 25, 2013).

¹⁸¹ See CSXT Reply Ex. II-B-2 at 21.

iii. **No Agency Precedent Supports the Use of RSAM.**

The intellectual integrity of the Limit Price Test rests entirely on the RSAM benchmark. The Board understands that RSAM only measures the average markup needed to achieve revenue adequacy. But it attempted to set forth its logic and defense for using RSAM in the market dominance inquiry in *TPI*:

Effective competition likely exists if the highest price the carrier theoretically could charge to move that potentially captive traffic falls below the average point at which the carrier could achieve revenue adequacy. Likewise, the fact that the highest price the carrier theoretically could charge to move the potentially captive traffic falls above the average point at which the carrier could achieve revenue adequacy indicates that effective competition for that movement likely does not exist.¹⁸²

The Board offered little support for this key assumption. It only cited *Simplified Standards* (at 81), which the Board mistakenly repeated as authority for the proposition “that a rate which falls below RSAM is ‘being constrained by . . . market forces.’”¹⁸³

The discussion of RSAM in *Simplified Standards* offers no support for the idea that rates above RSAM “indicate that effective competition for that movement likely does not exist.” Ironically, it supports the opposite assumption for a railroad that is revenue inadequate.

¹⁸² *TPI Market Dominance*, STB Docket No. 42121, at 20.

¹⁸³ *M&G*, STB Docket No. 42123, at 4, n.6; *Id.* at 15, n.42; *TPI Market Dominance*, STB Docket No. 42121, at 4, n.10; *Id.* at 20, n.64; *TPI Market Dominance Reconsideration*, STB Docket No. 42121, at 11, n.27 (Dec. 19, 2013).

As its name suggests, the Three-Benchmark approach uses three benchmarks as a crude measure of the reasonableness of a particular rate. The approach begins with a comparison group of movements with similar characteristics and demand elasticity. However, the Board declined to use the average markup from this comparison group to set the maximum lawful rate when a railroad is not earning adequate revenues. “If there is a shortfall,” the Board reasoned, “this indicates that the carrier is not engaging in the full spectrum of demand-based differential pricing that the law permits *because market forces prevent it from doing so.*”¹⁸⁴ “As the goal of this comparison approach is to gauge where that legal limit is (rather than the market limit), the shortfall should be allocated only to the potentially captive traffic, thereby increasing the degree of permissible demand-based differential pricing.”¹⁸⁵

The Board then used two benchmarks together to adjust the rates in the comparison movements to reflect better the maximum lawful rates the carrier can charge. It is the relationship between RSAM and $R/VC_{>180}$ that shows the presence, or absence, of a revenue shortfall. The Board explained that if there was a revenue shortfall, this means the carrier is not engaging in the full degree of differential pricing that the law permits:

If, for example, the railroad is not yet charging traffic enough to earn a reasonable return on its investment, this means the carrier is not engaging in the full degree of differential pricing that the law permits. The comparison

¹⁸⁴ *Simplified Standards*, STB Docket No. Ex Parte 646 (Sub-No. 1) at 81 (emphasis added).

¹⁸⁵ *Id.*

rates must therefore be adjusted upwards, as they do not reflect the maximum lawful rates the carrier can charge, ***but rather are apparently being constrained by other market forces.***¹⁸⁶

The Board now latches onto this language about “being constrained by other market forces” and incorrectly characterizes this statement as referring only to rates below RSAM. That is wrong. The Board was referring to ***all*** comparison rates. Where there is a revenue shortfall, then all the comparison rates are adjusted upwards because none reflects the maximum lawful rates the carrier can charge, “but rather are apparently being constrained by other market forces.”

This natural reading of the agency’s precedent is confirmed by every single rate case decided under *Simplified Standards*. In every case, the defendant carrier had a revenue shortfall. In every case, the comparison group R/VC ratio exceeded the defendant carrier’s RSAM benchmark. And in all these cases, the Board adjusted the comparison group R/VC ratio upwards based on the logic set forth in *Simplified Standards* that those comparison rates did not reflect the legal limit, but rather the market limit.

The error that crept into the Board’s justification for the Limit Price Test was to equate “shortfall” with RSAM. The Board did suggest that, where there is a shortfall, the carrier’s distribution of rates were below the lawful limit because the carrier was being constrained by market forces. But notwithstanding its name (Revenue Shortfall Allocation Method), “RSAM was never designed to measure the revenue ‘shortfall’ or how to allocate such a shortfall.” *Id.*

¹⁸⁶ *Id.* (emphasis added).

In sum, the legal support for the use of RSAM in the Limit Price Test is premised on a flawed description of agency precedent. The STB “cannot rely on an erroneous description of its precedent.”¹⁸⁷ That precedent supports the idea that where there is a system-wide revenue shortfall (as is the case here), the proper assumption is that the carrier is not engaged in the full degree of demand-based differential pricing permitted by law. Absent specific evidence to the contrary, the Board assumes that all rates are being constrained below the maximum lawful levels, to different degrees, by competitive market forces. RSAM thus provides no intellectual basis for distinguishing among rates constrained by competitive market forces.

c. The Limit Price Test Is Unnecessary.

To summarize, the Board’s Limit Price test is unlawful, because it violates the statutory prohibition against market dominance presumptions based on R/VC ratios. And it is irrational, because it relies on a benchmark that offers no intellectual basis to distinguish between effective and ineffective competition.

It is also unnecessary. CSXT expert witness Kevin Murphy, the George J. Stigler Distinguished Professor of Economics at the University of Chicago’s Booth School of Business, sponsors a superior approach to assure the Board that the feasible water alternatives for the Campbell plant are providing “effective competition,” and are not practical alternatives only because CSXT is charging

¹⁸⁷ *Burlington Northern and Santa Fe Ry. Co. v. STB*, 403 F.3d 771, 778 (D.C. Cir. 2005) (vacating decision that overlooked binding ICC precedent from 1912).

option, which offers another observation about what constitutes “effective” competitive water pricing.

If the water transportation alternatives to Cobb provided such fierce competition that they kept rail from the market entirely, then there can be no basis to find ineffective the same kind of feasible direct water alternative to Campbell.

Below is a table contrasting the four water transportation alternatives: (1) direct water from Chicago to Cobb; (2) direct water from Chicago to Campbell; (3) water to Cobb-Rail to Campbell; (4) direct water from MERC to Cobb.

Table II-B-11
Costs of Water Transportation Alternatives¹⁹¹

Category	KCBX to Cobb	KCBX to Campbell	KCBX-Cobb-Rail-Campbell	MERC to Cobb
{{ }}	{{ }}	{{ }}	{{ }}	{{ }}
Terminal Transloading	{{ }}	{{ }}	{{ }}	{{ }}
Vessel Transportation	{{ }}	{{ }}	{{ }}	{{ }}
Dock Operating Costs	{{ }}	{{ }}	{{ }}	{{ }}
Dock Construction Costs	Unknown	{{ }}	Unknown	Unknown
Rail Transportation from Cobb to Campbell	NA	NA	{{ }}	NA
Rail Build Out Construction Costs	NA	NA	{{ }}	NA
Total:	{{ }}	{{ }}	{{ }}	{{ }}

There is no basis to assume that either the feasible direct water option, or the water-rail option, are only practical alternatives because CSXT has engaged in supra-competitive pricing. Rather, those alternatives are similar to real world

191 {{

}}

should end there. Doing so is consistent with the view that competition rather than regulation should be the basis for setting rates where competition is effective.”¹⁹⁴

d. Price Differentials Between Contract and Tariff Rates Or Between Different Competitive Markets Do Not Disprove The Effectiveness of Competition.

Consumers raises two additional arguments to further its claim of market dominance. First, Consumers infers a lack of effective competition from the fact that CSXT increased the rate by { } when its prior contract expired.¹⁹⁵ Second, Consumers observes that {

}¹⁹⁶ Neither fact supports a finding of market dominance.

Railroads routinely charge more in tariffs than in expired contract movements. As Chairman Elliot has opined, “it is difficult to treat contract rates and tariff rates as apples-to-apples comparisons because contract rates are often lower for a variety of reasons, including volume commitments.”¹⁹⁷ The Board shares this perspective.¹⁹⁸ In this case, CSXT raised its rate when the prior contract expired. But the tariff provides none of the normal consideration in a standard coal

¹⁹⁴ *Id.*

¹⁹⁵ Consumers Op. I-26.

¹⁹⁶ *Id.* I-26, II-56.

¹⁹⁷ *DuPont*, STB Docket No. 42125, at 57 n.3 (Chairman Elliott, concurring) (rejecting DuPont argument that the rate increases it has experienced, without NS losing DuPont’s traffic, conclusively demonstrate NS’s market dominance).

¹⁹⁸ *U.S. Magnesium, L.L.C. v. Union Pac. R.R. Co.*, STB Docket 42114, at 18 (served Jan. 27, 2010) (“UP observed, and the Board agrees, that contract rates can in some instances be lower than tariff rates for a number of reasons (for instance, shippers in certain settings could negotiate indemnity or volume assurances with the carrier in exchange for a better rate).”).

transportation contract, such as the certainty provided by a set term, the ratability requirements, service and equipment understandings, and important volume commitments. Moreover, while the long-term contract was in place, concerns about congestion in Chicago become more and more pronounced, a fact of which the STB is well aware. As such, any difference between the expired contract rate and the new tariff rate offers no insights into the presence, or absence, of effective competition.

Nor can the Board draw an inference of market dominance by comparing the Chicago to Campbell rate against the Chicago to Karn/Weadock rate. In the first place, Consumers is drawing this inference by comparing two expired contracts. The current tariff rates for transportation through Chicago are now the same for either location: \$14.95 per ton.¹⁹⁹ Furthermore, short haul movements have notoriously higher rates, on a per mile basis, than longer-haul movements. Consumers would have the Board draw an inference that these higher rates-per-ton-mile are evidence of market dominance, even though alternative modes of transportation like trucks compete most effectively against short haul rail movements.

But more fundamentally, “effective competition” does not mean a customer will receive the same transportation rate as another customer in a more competitive marketplace. As Professor Murphy advises, competition comes in different shapes, sizes, and degrees.²⁰⁰ The Karn/Weadock facility illustrates the apex of competition.

¹⁹⁹ See Compl. Ex. A at 1 (showing that same Rule 11 tariff rate applies to Chicago-originating shipments to West Olive, Essexville, and Whiting).

²⁰⁰ See CSXT Reply Ex. II-B-2 at 10.

The plant is served by two railroads, permitting Consumers to play those railroads against each other. The plant also has direct access to Lake Huron and regularly receives hundreds of thousands of tons of coal from the lake. This places even more competitive pressure on the railroads. So unlike the vast majority of coal-fired utilities in America, the Karn/Weadock facility benefits from robust intermodal competition (rail) *and* intramodal competition (water).

That degree of intense competitive forces will produce low transportation rates; indeed, they may fall well below 180% of variable cost, the statutory threshold for beginning the market dominance inquiry. But the search for “effective competition” *starts* where markups exceeds this threshold. Congress contemplated that “effective competition” will produce a range of competitive results, but nevertheless insists that the Board remain vigilant and avoid unnecessary federal control of rail rates where the competitive markets are functioning and effective.

* * *

Consumers does not want to exercise self help and construct the dock at Campbell or buildout to the nearby shortline. It prefers the visible hand of STB rate regulation to the invisible hand of competition. But Congress intended the market dominance inquiry to force a company like Consumers to take advantage of competitive alternatives to the maximum extent practical. The Staggers Act reflects a national vision of limited, targeted rate regulation, understanding that there will be “government failure” when the agency tries with limited resources to replicate competitive market forces. Only with evidence of a clear market failure is

the STB to intrude. And the more concerns the Board has about the increasing complexity of its rate regulatory process, the more demanding it should be on Consumers, which bears the burden of proof.

Consumers has failed to meet its burden. The Campbell plant is not located in the great plains of Kansas, hundreds of miles from a feasible competitive alternative. It is located on the shore of Lake Michigan, which has been served for over a century by a highly competitive water transportation industry. {

} It has used the threat of water competition in negotiations with CSXT, and the credible threat places market discipline on the rates CSXT can charge. Consumers may not be able to use the threat to negotiate a rock bottom rate of its liking, but that result is neither provided for by competitive markets nor promised by federal law.

As CSXT does not have “market dominance” over the transportation at issues, the complaint should be dismissed.

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III. STAND ALONE COSTS

A. TRAFFIC AND REVENUE OVERVIEW

Consumers seeks to lull the Board into believing this case is a routine application of established SAC rules and procedures. It suggests that its approach to selecting the traffic group served by its hypothetical railroad is consistent with the general approach approved by the STB in prior rates cases. Consumers Op. III-A-3 n.6. And it observes that the hypothetical railroad is smaller in size, simpler in layout, and more modest in scope than the ambitious hypothetical railroads seen in the *DuPont* and *TPI* cases. This case is indeed vastly smaller than the gargantuan prior cases that replicated the majority of the eastern rail network. But the modest scope and simpler layout mask the mischief of Consumers' simplistic and deceptive assumptions.

This case is a poster child for the gamesmanship that complainants play with the SAC test. First, Consumers blazes new ground in its novel approach for selecting the merchandise traffic to be served by its hypothetical railroad. Consumers is proposing to shoehorn a new railroad into the heart of the most congested gateway in America. Yet it eschews the cooperation and coordination among carriers that is paramount to smooth operations through Chicago and skims for itself only merchandise shipments that traverse Chicago as complete trains to and from the residual CSXT and its connecting partners. Consumers refuses to replicate all the service provided by CSXT to its customers, or even fully serve a subset of those customers. Rather, it assumes that the hypothetical railroad would

be able to somehow identify and divert to its lines—on a real time basis—only merchandise trains that require no switching in Chicago and then only those merchandise trains that are not carrying any TIH shipments. It would shun traffic *from the same customer* to the same destination if it is delivered by a connecting carrier on a train that required any switching within the congested Chicago gateway.

This is a tortured application of grouping principles under *Coal Rate Guidelines*. A complainant may seek to maximize economies of density by selecting an optimal group of customers to serve. But Consumers is proposing a hypothetical railroad that will not serve all merchandise customers, or even an identified subset of those customers. Unlike past applications of the Board's grouping principles that focused on a single commodity (*e.g., Coal Trading*), maximized economies of density (*e.g., DuPont*) or maximized contribution (*e.g., Western Fuels*), here Consumers groups traffic based on the amount of relative effort required to move the traffic through Chicago, leaving the more onerous handlings to the residual CSXT. Not only does this novel grouping approach run afoul of practicality and fairness, it takes advantage of a SARR revenue allocation mechanism that is insensitive to the relative effort undertaken by the SARR.

Indeed, Consumers' grouping approach undermines the essence of the ATC revenue allocation, which distributes revenues over the residual incumbent assuming that all necessary services required to move each shipment will be performed on a pro-rata basis over the incumbent's system. By selecting only

merchandise traffic that has had all of its necessary switching and blocking work performed outside of the route replicated by the SARR, Consumers is gaming the revenue allocation process. Under its view, Consumers is conceptually maximizing its economies of density by serving a fraction of a customer's total traffic, because providing the infrastructure and crews needed to serve the remainder is deemed too expensive. This may indeed be the most "efficient" way to maximize economies of density, to carve up a customer's business to prune expensive, unwanted demand. But it makes a mockery of the customer relationship and is a meaningless way to gauge the reasonableness of rates where no real-world railroad could unilaterally dictate to its customers in that fashion. Taken to its logical end, Consumers would approach a customer to participate in a route only when it is not required to perform switching, yet would demand a revenue division comparable to the residual CSXT, which is performing all of the required work.

Second, by plopping itself into the congested Chicago gateway as a separate entity offering only hook-and-haul service, the proposed hypothetical railroad cannot provide the same level of service for certain traffic it has selected as that offered by CSXT in the real world. The CERR can only justify its inclusion of this traffic in its traffic group by ignoring the realities of operating in Chicago. But even assuming its own inflated train speeds, Consumers' Opening Operating Plan fails under its own measurements to provide the same level of service for certain short haul cross-over movements. When the CERR injects itself into a portion of a CSXT movement, under the Board's rules it does so assuming hypothetical interchanges

with the residual CSXT. These interchanges take time—time that must be made up through more efficient movement over its network. Consumers purported to show that the CERR would operate 58% faster through the Chicago Gateway.¹ But for a subset of traffic, the CERR purports to provide superior service by only a few minutes. The problem is that for that subset of traffic, Consumers mischaracterized the historical transit times and level of service provided by CSXT by counting time on the residual CSXT for movement over segments that are not part of the CERR. It turns out that for some traffic, the CERR cannot travel fast enough over its relatively short distance to overcome the new interchange delay. As a result, the SARR fails in its attempts to provide the same level of service provided by CSXT for those customers. This traffic must be removed from the traffic group. Consumers cannot challenge the rates CSXT provides by proposing a hypothetical SARR that would offer inferior service to its selected traffic group.

Third, Consumers ignores the Board's serious and very public concerns that including merchandise cross-over traffic exclusively in hook-and-haul service biases the SAC analysis. The STB proposed to sharply limit this kind of cross-over traffic or eliminate it entirely in Ex. Parte 715, but decided to let parties address its concerns in individual cases, by (for example) adjusting how ATC allocates revenues. Consumers stands mute on this issue, however. It proposes no solution to fix the bias introduced by its decision to include merchandise cross-over traffic in pure hook-and-haul service. CSXT should not be obligated to solve a problem of

¹ See Consumers Op. WP "5.1 Transit Times Comparison Hist v. RTC.xlsx."

Consumers' own creation. The fact is that the Board should penalize Consumers for shunning its concerns and throw out all the merchandise traffic from its traffic group. CSXT recognizes the Board's reluctance in past proceedings to eliminate traffic from the SARR traffic group and proposes that, at a minimum, the Board should apply a logical way to adjust the revenue allocation (and the allocation under MMM) to correct the bias.

Fourth, Consumers is manipulating the Board's revenue allocation methodology to claim revenue for services the CERR would not provide. For example, Consumers constructed its hypothetical railroad to run right up to the steps of CSXT's 59th Street intermodal facility, *and then stop*. CSX is left to provide all the complicated and expensive services to terminate and originate those intermodal customers at the 59th Street facility while charging the CERR only the partial cost of a lift. Yet Consumers takes credit for a massive revenue allocation for all those services that its hypothetical railroad has vowed it would not perform. This creates a multi-million dollar discrepancy between the services performed by the CERR and the revenues provided by the ATC methodology.

Fifth, Consumers has ignored recent and dramatic changes in the crude-by-rail market and is grossly overestimating the volume and expected revenue from crude oil customers. In fairness to Consumers, this failing cannot be attributed to gamesmanship. Consumers—as an electric utility—may be unaware that the crude-oil-by-rail market has receded. {{

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Finally, Consumers misleads the Board about its very own forecast demand at Campbell. The issue traffic comprises 43% of Consumers' Opening traffic group, a significant departure from most rate cases where the issue traffic has been a small fraction of the total traffic group. Accurate volume projections for the issue traffic are therefore critical to the integrity of the SAC analysis, and all that information lies in Consumers' hands. Yet on Opening, Consumers materially overestimated the forecast coal requirements at Campbell. CSXT discovered that a month before filing its Opening Evidence, Consumers submitted completely different (and materially lower) forecasts to its state regulator. Consumers did not disclose this updated forecast to the STB (or CSXT). This is not a mathematical mistake or minor oversight—it materially overstates volumes for a large segment of the CERR traffic group, and overstates the revenue CSXT will earn from Consumers over the 10-year analysis period by \$55.3 million. The Board should not condone transforming the SAC process into a game of “catch me if you can.”

These and other flaws in Consumers' Opening revenue and traffic submission are described below.

1. CERR Traffic Group.

CSXT strenuously objects to the novel approach used by Consumers to select the merchandise traffic that would be served by the hypothetical SARR and harbors serious doubts that the selection criteria can be administered on a real-time basis as

Consumers assumes. The SAC test “is used to compute the rate a competitor in the market-place would need to charge in serving a captive shipper *or a group of shippers* who benefit from sharing joint and common costs.”² The ICC made it clear that “[t]he ability to group traffic *of different shippers* is essential to theory of contestability.”³ It allows Consumers to identify areas where production economies define an efficient subsystem or alternative system whose traffic is divertible to a hypothetical competitor. Without grouping, the ICC has stated, SAC would not be a very useful test, “since the captive shipper would be deprived of the benefits of any inherent production economies.”⁴ Thus, the SAC evidence will usually be based on a rail plant of optimal size, and “potential users of a stand-alone facility can be identified by referring to the railroad’s *existing customer list*.”⁵ The theme of selecting a “group of shippers” from the “existing customer list” permeates *Coal Rate Guidelines*.

But Consumers did not select a group of merchandise shippers for its hypothetical railroad to serve, or even a group of shipments moving between certain originations and destinations. It selected a group of merchandise trains and uses the revenue and traffic characteristics of the cars on those trains as surrogates for prospective SARR revenues and tons. Consumers will say this is the same thing, but there is a world of difference. The CERR would serve a particular merchandise

² *Coal Rate Guidelines*, 1 I.C.C.2d at 528 (emphasis added).

³ *Id.* at 544 (emphasis added).

⁴ *Id.*

⁵ *Id.* at 543 (emphasis added).

customer only if the traffic arrived in a way that minimized the cost of serving that customer: *i.e.*, on trains with no switching in Chicago, with no TIH shipments. Customers with railcars on trains that show up meeting that screen would be served by the CERR; while the CERR would reject the traffic of *the same customer* if its railcar arrived on a train that was too burdensome or not cost effective to serve. This traffic selection criterion would be akin to proposing a hypothetical SARR that would optimize its rail plant by only serving a customer who tendered traffic on Monday, Wednesday, and Friday, leaving the residual CSXT to serve that same customer on other days. Further, under its approach, Consumers has no way of knowing whether shipments from a customer whose cargo happens to be moving on a selected train in the base year will appear on the same selected train, or any other train selected by Consumers, beyond the base year.

No real world customer would contract with a railroad on such restrictive terms. Imagine a hypothetical merchandise customer of the CERR. On Monday, the customer tenders a railcar that is handled by the CERR through Chicago. On Tuesday, the customer tenders another railcar with the same commodity destined for the same ultimate destination—but the CERR rejects that railcar because it arrives at the point of interchange on a train with a TIH tank car. On Wednesday, another identical railcar from the same customer arrives at interchange, and this time it is again accepted by the CERR. Yet on Thursday, the doors are closed—the CERR refuses to handle the customer’s shipment because this time it arrives on a merchandise train that requires switching somewhere in Chicago. What would the

contract between the customer and the CERR look like for such erratic service? Would it provide that “CERR will handle customer’s shipment unless those shipments require too much work?” It surely would not remotely resemble the existing contract with CSXT into whose shoes the CERR purports to step, yet without offering service as good as that provided by CSXT.

It is also ironic that by applying this novel selection criteria, Consumers *carved up its own traffic*. Consumers’ own railcars that are bad-ordered during transit over the BNSF are removed by BNSF from unit-train service, repaired, and then delivered separately to CSXT at Clearing Yard, not where the loaded or empty unit trains are interchanged. To handle these bad-order cars in the real world, CSXT builds a merchandise train that includes these repaired bad-order cars, so they can be transported through Chicago and delivered to the Campbell plant. Yet those merchandise trains do not meet Consumers’ rigid desire to avoid any switching in Chicago and were not selected to be part of the CERR traffic group. As a result, the CERR failed to capture those movements or provide any way to deliver those bad-order railcars to Campbell. This is a small but potent illustration of the bigger problem.

Coal Rate Guidelines do not contemplate this kind of traffic grouping, which makes a mockery of the customer relationship and the common carrier obligation that prevents CSXT or any real-world railroad from enjoying the kind of production economies Consumers has created for itself by refusing to include as part of its traffic group shipments that require switching in Chicago. Rather, *Coal Rate*

Guidelines speaks repeatedly of the ability to group traffic “from other shippers” by reference to “existing customer lists.”⁶ Implicit in these guidelines is that when traffic from another shipper is selected (to enjoy greater economies of density), then the SARR must serve *all* of that customer’s needs, warts and all. If 90% of its traffic can be handled easily, while the other 10% requires more attention and infrastructure investment, it would be grossly improper to permit the SARR to minimize the expense of serving that individual customer by providing only the simple service, and refusing the more expensive. If permitted, the Board would be placing the SAC test on a perilous path where complainants carve up the demands of individual customers into those the hypothetical SARR wishes to serve, and those it would abandon.

In *Coal Rate Guidelines*, the ICC cautioned that the “potential traffic draw and attendant costs and revenues that the hypothetical stand-alone provider could expect are open to scrutiny in individual cases. The proponent of a particular stand-alone model must identify, and be prepared to defend, the assumptions and selections it has made.”⁷ Consumers has offered no defense for its novel traffic selection and CSXT submits that all the merchandise traffic that it has selected through its gerrymandered process should be excluded from the SAC analysis.

Nonetheless, defendant railroads bear great risk when they choose to drop traffic unless its inclusion violates clear agency precedent. As the Board has never been exposed to this kind of traffic selection procedure, there is not yet any direct

⁶ *Coal Rate Guidelines* at 543-44.

⁷ *Id.* at 544.

precedent on which CSXT can rely. As a result, CSXT has assumed the merchandise traffic will remain part of the CERR traffic group in its Reply evidence without waiving its challenge to the selection approach used by Consumers in this case. If the Board agrees with CSXT, it should follow past precedent and require the parties to submit technical corrections to remove the merchandise traffic and describe any other changes that flow from that decision.⁸

With this important qualifier in mind, CSXT otherwise accepts the proposed traffic group, with three exceptions. First, Consumers includes hundreds of petroleum coke trains that in the real world do not traverse any of the lines replicated by the SARR. CSXT has excluded these trains from its Reply evidence. The K300-series trains that Consumers assumes traverse the Barr Subdivision—coke trains going to/from East Chicago (K310-313, K370-371)—do not move on the line replicated by the CERR beyond the Curtis interchange tracks. The inbound (*i.e.*, westbound) trains actually arrive at Curtis, and immediately leave the CERR lines at Pine Junction to stay on the east side of Chicago. They do not, as Consumers proposes, move on the Barr Subdivision. Based on CSXT train sheet data produced to Consumers in discovery, all but one of the 107 inbound trains report Curtis and Pine Junction, but stay on the Lake Subdivision, rather than turning left onto the Barr Subdivision.⁹

⁸ See, *e.g.*, *Otter Tail*, STB Docket No. 42071, at 2-3 (served Dec. 13, 2004) (providing parties 45 days to file supplemental evidence showing the effect if the disputed traffic were excluded/included from the traffic group).

⁹ See CSXT Reply WP “CERR K300 Coke Trains.xlsx.” The 107 inbound coke trains comprise 85% of the westbound shipments that Consumers references at III-C-26 to

Second, Consumers' traffic group includes trains that, because of the time required to complete hypothetical interchanges with the residual CSXT, cannot meet the CSXT service standard. One set are the trains that would travel briefly on the CERR for only 9.9 miles between Calumet Park and Curtis. In both eastbound and westbound directions, Consumers' own transit-time comparison between the CERR and the residual CSXT for merchandise trains traversing this segment found that the RTC trains averaged only three percent faster than CSXT's actual historical performance.¹⁰ Consumers' transit time comparison is flawed, however. For its transit time comparison of trains moving in the westbound direction—from Curtis to Calumet Park—Consumers pulled the wrong timestamp from the CSXT timesheets. It used a timestamp further west of Calumet Park that is off the CERR. When the correct timestamp records for transit between Curtis and Calumet Park are used, Consumers' RTC simulation transit times average 15% *slower* than CSXT.¹¹ As such, this traffic fails to meet Consumers' own test after correcting a simple technical error. Even using Consumers' optimistic train speeds, the

27, in its discussion of "Barr Yard Interchange Anomalies." While Consumers may be correct about some of the other eastbound trains discussed at Consumers Opening III-C-26 (e.g., the L091 train), the same assertion that these coke trains are "similar anomalies" is not supported by the train sheet records produced to Consumers in discovery.

¹⁰ Consumers Op. WP "5.1 Transit Times Comparison Hist v. RTC.xlsx."

¹¹ CSXT Reply WP "RTC CSXT Actual Calumet Park.xlsx."

merchandise trains moving *westbound* between Curtis and Calumet Park must be dropped because the CERR is providing inferior service.¹²

The *eastbound* traffic between Calumet Park and Curtis must also be dropped. Again, Consumers applied its service-standard test and concluded that the CERR would provide service that was three percent faster than the service provided by CSXT.¹³ But again, its analysis is flawed in three key respects. The first minor problem is that Consumers transit time comparison used a different mix of CSXT trains than the trains in the RTC model. When corrected to compare the RTC trains to the historical performance of the same trains on CSXT, the CERR would only provide service that was 1.5% faster.¹⁴ The second more significant problem is that Consumers' modeling of the CERR failed to reflect *any* of the delays at the grade crossings at Republic and State Line that CSXT does not control. In the real world, the CSXT trains, when delayed at either of these crossings of foreign railroads, incur an average delay time of just over 33 minutes. To calculate the average delay per train, the total delay should be spread over all comparable CSXT eastbound trains. But if Consumers is going to compare the CERR transit times to the historical CSXT transit times, it must either model these crossing delays or remove the delays from the CSXT transit times. Otherwise, the comparison is hopelessly

¹² Reflecting the real delays on this corridor would just make matters worse. Consumers' RTC model runs do not incorporate any of the delays typically experienced by CSXT when traversing this route. Had the delays been properly captured by Consumers' RTC, the deficit would be even greater than 15%.

¹³ Consumers Op. WP "5.1 Transit Times Comparison Hist v. RTC.xlsx."

¹⁴ CSXT Reply WP "RTC CSXT Actual Calumet Park.xlsx."

apples-to-oranges. When doing the latter, the RTC trains actually run 13% **slower** than the CSXT trains,¹⁵ which fails Consumers' service standard criteria.

The final problem with Consumers' transit-time calculations is that the CSXT transit times for the eastbound trains are skewed by an outlier. A single historical eastbound train moving between Calumet Park and Curtis experienced an atypical delay of 2:44 hours at Pine Junction.¹⁶ (Consumers did not model a comparable delay in its RTC.) This single outlier has a tremendous impact on Consumers' comparison analysis. If the outlier is removed from CSXT's transit times, and we exclude the actual grade crossings delays at Republic and State Line that Consumers failed to model, then the CERR would provide service that would be 40% **slower** than the historical service provide by CSXT for these eastbound trains.¹⁷

In sum, Consumers purported to show that its operating plan would provide the same or superior service to all customers in the traffic group.¹⁸ CSXT accepts the proposition from Consumers that it must propose a hypothetical operating plan that provides the same or superior level of service as CSXT does in the real world. Otherwise, Consumers would be asking the Board to judge the reasonableness of rates with a hypothetical railroad that would offer inferior service. But due to Consumers' miscalculation of the historical transit time, and its failure to properly

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Consumers Op. WP "5.1 Transit Times Comparison Hist v. RTC.xlsx."

model train delays at Republic and State Line, the CERR will provide inferior service for the eastbound and westbound traffic between Calumet Park and Curtis, even with Consumers' optimistic train speeds through Chicago.¹⁹ CSXT therefore eliminates those trains from the traffic group.

Third, Consumer's selects its traffic from the CSXT files produced in discovery at a waybill level by identifying all waybills carried by CERR trains. When Consumers associates a particular waybill with a train, it queries the CSXT waybill data and selects all of the cars moving under that waybill number for inclusion in the CERR. Consumers' process assumes that all traffic on a waybill always stays together throughout the entire movement. This is not necessarily so. Frequently shipments from the same waybill move on different trains due to operating requirements (e.g., when a single shipment on a waybill is bad ordered). In such cases, even though certain shipments move on trains Consumers excluded from their operations, as long as there is at least one shipment from a waybill moving on a CERR train, Consumers selects all shipments on the waybill for inclusion in the CERR traffic group. In some cases this means single cars bad-ordered and separated from the rest of its waybills' shipments will be included in the traffic base. In other cases, the bad-ordered car itself is the only shipment from a waybill moving on a train operated by the CERR, yet Consumers selects all of the

¹⁹ See CSXT Reply WP "RTC CSXT Actual Calumet Park.xlsx."

shipments on the waybill as part of the CERR traffic group even though it explicitly rejected the train on which most of the shipments actually moved.²⁰

Consumers' approach overstates the number of carloads in the CERR traffic group. In its Reply, CSXT identifies the CERR-selected traffic at an individual shipment level, ensuring consistency between the SARR traffic group and the SARR train operations that Consumers proposes would be provided.

2. Volumes (Historical and Projected).

a. Consumers' Coal Traffic to Campbell.

Consumers forecasts the coal demands at Campbell using an internal forecast that it produced to CSXT in discovery. As the issue traffic comprises a huge percentage of the selected traffic group, the results of the SAC analysis depend disproportionately on the integrity of those projections. This means that, more so than in other SAC proceedings where issue traffic volumes are only a small percentage of the SARR traffic group, Consumers' forecasts must be carefully scrutinized, lest any aggressive or rosy projections artificially and inappropriately drive down the maximum lawful rate under the SAC constraint.

²⁰ See CSXT Reply WP "Examples_ConsumersWaybillLogic.xlsx."

In this case, while Consumers was presumably preparing its Opening Evidence using rosy projections for the Campbell plant based on forecasts generated in January 2015, it simultaneously submitted lower tonnage projections for the Campbell plant to its own state regulator. Consumers submitted its Opening Evidence in this case on November 2, 2015. *Yet two months earlier*, Consumers submitted a request to the Michigan Public Service Commission for permission to raise its rates. To support that request, Consumers provided its state regulator lower projections of the coal demands for Campbell from 2015 to 2020.

In its Reply, CSXT rejects Consumers' projected volumes based on its January 2015 forecasts submitted in discovery and uses instead projected volumes from Consumers' more recent submission to the Michigan Public Service Commission. Consumers did not provide its state regulator a forecast for 2021-2024. For those four years, CSXT assumed the same growth rates as shown in Consumers' old forecasts. For example, if the old forecast was showing a five percent increase from 2020 to 2021, CSXT used that same growth rate to project the new 2020 forecast to 2021, and so forth.²¹ The net result—contrasting Consumers' older forecast versus the newer forecasts CSXT uses in this Reply—is set forth in Table III-A-1 below.

²¹ See CSXT Reply WP "CERR Car Traffic Forecast_Reply.xlsx", tab "CP Forecast", cells R8 to AB 11.

Table III-A-1
CERR Issue-Traffic Tonnages

Year	Consumers Opening	CSXT Reply
2015	{ }	4,950,008
2016	{ }	4,308,417
2017	{ }	5,393,561
2018	{ }	5,001,969
2019	{ }	5,025,023
2020	{ }	5,344,787
2021	{ }	{ }
2022	{ }	{ }
2023	{ }	{ }
2024	{ }	{ }

Consumers may cast the differences between these forecasts as immaterial. They are not. The cumulative difference between the two forecasts, over the 10-year SAC analysis period, is 4,124,600 tons (or 7.6%). Using the challenged rate of \$14.95 (before adjusting for inflation), Consumers overestimated the revenue CSXT will earn under the challenged rate by ***\$55.3 million***. To place that figure into context, the total cumulative “excess revenue” in Consumers’ opening submission (with its miracle train speeds and inflated revenue allocations) was \$223.8 million.

CSXT believes that even these coal forecasts are a pipedream. The Board does not consider the impact on transportation rates from the pressures of product and geographic competition. But they are real and the effects are dramatic. All over the country, coal-fired utilities are shuttering or reducing coal burn. Reports of coal producers on the verge of bankruptcy are increasingly common. And as the *Wall*

Street Journal reports, “CSX Revenue Falls 13% as Coal Shipments Decline.” In that recent article, the *Journal* observed that:

[T]he retreat of coal shipments, a key source of revenue for railroads, has been the stiffest headwind. Coal is the sector’s single-largest source of U.S. carloads, accounting for about a third of the total. Coal volumes have slumped as power plants have switched to nature gas, whose prices in 2015 hit its lowest annual average since 1999, according to the U.S. Energy Information Administration.²²

In recent years, CSXT’s coal revenues have decreased dramatically, in large measure a result of these product and geographic competitive market forces, causing the company to restructure its workforce and rationalize its coal network. The mantra before the Board from coal shippers for years about their “captivity,” and “base-load demand,” and the absence of competitive pressure from natural gas alternatives, have turned out to be hogwash. Without a volume commitment in a binding contract, CSXT faces tremendous risk that the national pattern will repeat itself here, with Consumers promising to burn at maximum capacity and then suddenly announcing dramatic reductions or closures.²³

The risk of the future not playing out as predicted *should be shared* by CSXT and Consumers. But if the Board uses these most recent forecasts, then all the risk is borne by CSXT. The evidence shows that the challenged rate is reasonable even using these best-case projections submitted to the state regulators

²² Ezequiel Minaya, *CSX Revenue Falls 13% as Coal Shipments Decline*, WALL ST. J. (Jan. 12, 2016), available at <http://www.wsj.com/articles/csx-revenue-falls-13-as-coal-shipments-decline-1452637962> (last visited Mar. 1, 2016).

²³ The abrupt closure of the Cobb plant, and the already anticipated shutdown of two units at Campbell, illustrate the stranded cost risk facing CSXT.

for Campbell. However, if the Board were to discard the remainder of the evidence submitted herein, and find the challenged rates unreasonable, CSXT reserves the right to review the Board's final analysis (including its decision on forecasts for the issue traffic) and to provide a means of addressing what should happen if Consumers fails to ship the projected volume of coal promised in this proceeding.

b. General Freight and Non-Issue Coal Traffic.

Consumers develops its first quarter 2015 traffic volumes for general freight and coal traffic not destined to its Campbell plant based on CSXT actual traffic shipments. For the second quarter of 2015, Consumers indexes first quarter 2015 volumes by the reported change in the CSXT 10-Q reports between the first and second quarter of 2015.²⁴ CSXT accepts Consumers approach for developing first and second quarter 2015 CERR traffic volumes.

In two respects, however, Consumers' forecasting beyond 2Q2015 is flawed. First, Consumers is using dated projections rather than real traffic volumes to develop traffic volumes in 3Q and 4Q of 2015. Those dated projections also provide an aggregated approach that combine general merchandise, coal, and intermodal business units, rather than using disaggregated information that shows different growth for each business unit. Second, for the years 2020-24 (when internal CSXT forecasts are unavailable) Consumers has abandoned the practice of turning to policy-neutral government forecasts, but instead forecasts 2020-2024 based on the 2015-2019 internal forecasts. We elaborate below.

²⁴ See Consumers Op. WP "2015_CSXT Volume Growth Forecast.xlsx."

3Q & 4Q 2015: Consumers develops its third and fourth quarter 2015 traffic volumes by indexing actual movements from the third and fourth quarters of 2014 to assumed 2015 levels using a factor it calculates based on 2014 annual actual carloads reported in CSXT's 2014 10-K, compared to projected carloads in CSXT's 2015 internal forecast.²⁵

Far superior public information is now available to develop 3Q and 4Q 2015 traffic volumes. Actual volumes for the full 2015 year, including volumes that occurred in the third and fourth quarters of 2015, are now available in CSXT's 2015 10-K and 10-Q reports. It is clearly superior to use the actual volumes experienced by CSXT rather than those projected earlier. Moreover, the forecasts that Consumers applies to the third and fourth quarter 2014 actual volumes and the first quarter 2015 actual volumes are aggregated into general merchandise, coal, and intermodal levels. The CSXT 10-K and 10-Q data reports volumes at the more disaggregated business unit level for merchandise traffic (*e.g.*, Chemicals, Automotive, Metals). Using the recent 10-K and 10-Q data would also be consistent with Consumers' approach in applying the CSXT internal forecast at the lane and commodity level when forecasting 2016 through 2019 volumes.

Accordingly, CSXT rejects Consumers' approach for calculating the 3Q and 4Q 2015 traffic volumes and instead uses the superior, less aggregated business unit level information contained in the most recent 10-K and 10-Q data. Specifically, CSXT applies the calculated change between third and fourth quarter

²⁵ See Consumers Op. WP "2015_CSXT Volume Growth Forecast.xlsx."

2014 and third and fourth quarter 2015 volumes as reported in the CSXT 2014 and 2015 10-Ks and 10-Qs to Consumers' third and fourth quarter 2014 actual volumes.²⁶

2020-2024: To forecast CERR volumes beyond 2019—the last year of CSXT's internal forecast—Consumers calculates and applies the compound annual growth rate (CAGR) observed at the lane level from the CSXT internal forecast through 2019 to project volumes from 2020 to 2024. CSXT rejects this approach for two reasons. First, {{

}} Second, this forecasting approach is a departure from agency

²⁶ See CSXT Reply WP “2015_CSXT Volume Growth Forecast_Reply.xlsx.”

²⁷ See CSXT Reply WP “Updated CSXT Internal Forecast,” tab “Revised Forecast 2016-18.”

precedent, which will use internal forecasts where available and reliable, but then turn to published government forecasts thereafter. “[T]he Board regards the forecasts developed by EIA, a neutral governmental source, as more reliable than forecasts developed by private parties for litigation, which are inherently subject to manipulation.”²⁸

CSXT therefore adheres to the Board’s stated preference for the use of published forecasts and uses EIA, which produces industry-level forecasts that align closely to 2-digit STCC commodities, as the basis for CERR volume forecasts developed for the 2020 to 2024 period.²⁹

c. Intermodal Traffic.

Consumers develops CERR intermodal volumes for 2015 through 2024 by applying the same techniques that it used to develop and forecast merchandise and non-Consumers coal volumes discussed above. CSXT applies the same forecast changes to intermodal traffic as it does to carload and non-Consumers coal traffic. Specifically, CSXT rejects Consumers’ proposed use of the calculated change between the CSXT 2014 10-K reported annual volumes and the 2015 forecasted annual volumes as the basis for indexing third and fourth quarter 2014 CERR traffic volumes to third and fourth quarter 2015 levels and uses instead the actual third and fourth quarter to quarter volume changes derived from the CSXT 2014

²⁸ *TMPA II*, 7 S.T.B. at 822. See also *DuPont*, STB Docket No. 42125 at 266 (“Just as we look to policy-neutral, independent EIA forecasts volumes, we prefer the EIA forecast for fuel prices.”).

²⁹ See CSXT Reply WP “EIA AEO Forecast.xlsx,” tab “Summary.”

and 2015 10-Ks and 10-Qs.³⁰ For 2016 through 2019 intermodal volumes, CSXT accepts Consumers' application of the CSXT internal forecast produced in discovery,

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}}.³¹ CSXT also substitutes the EIA forecast as the source for 2020 through 2024 forecasted CERR volumes in place of Consumers'

CAGR.³²

d. Crude Oil Traffic.

Banner headlines are splashing across news outlets nationwide describing the recent collapse of crude oil by rail shipments. "Once In High Demand, North Dakota Oil-By-Rail Shunned On East Coast," heralds Reuters.³³ "California Crude-By-Rail Plummets Amid Oil Price Collapse," cries Bloomberg Business.³⁴ "Shifting Energy Markets End Crude By Rail's Reign," announces Environment & Energy

³⁰ CSXT notes that the disaggregation of Consumers' application of the 10-K reported volumes for estimating 2015 traffic volumes does not affect intermodal, which is already separately reported as an individual business unit in the 10-K.

³¹ See CSXT Reply WP "Updated CSXT Internal Forecast," tab "Revised Forecast 2016-18."

³² See CSXT Reply WP "CERR Container Traffic Forecast_Reply.xlsx," tab "EIA AEO Forecast."

³³ Jarrett Renshaw, *Once in high demand, North Dakota oil-by-rail shunned on East Coast*, REUTERS (Jan. 25, 2016), <http://www.reuters.com/article/us-railways-crude-plains-all-amer-idUSKCN0V31CX> (last visited Mar. 1, 2016).

³⁴ Brian Wingfield, *California Crude-by-Rail Plummets Amid Oil Price Collapse*, BLOOMBERG BUSINESS (Jan. 28, 2016), <http://www.bloomberg.com/news/articles/2016-01-29/california-crude-by-rail-plummets-amid-oil-price-collapse> (last visited Mar. 1, 2016).

Publishing.³⁵ The reason? As Reuters reports, “Crashing oil prices and the end in December of a four-decade U.S. crude export ban have whipsawed the economics for East Coast refiners, pushing them back to imported crude oil just a few years after forswearing it in favor of domestic shale. *This has hammered the oil-by-rail industry.*”³⁶

Consumers’ forecast for crude oil shipments were based on prior internal CSXT forecasts that are dated and have become now wildly and inaccurately optimistic. The market has undertaken another transformational change. Crashing oil prices have caused crude-by-rail shipments to plummet. The CSXT internal forecast produced to Consumers in discovery was prepared in early 2015 and downloaded from CSXT’s system for production to Consumers in April of 2015. At that time, the price for West Texas Intermediate crude—the bellwether of crude oil prices—was \$56.25 and on the rise. Today the price is \$32.74 with no forecast of a rebound for the foreseeable future.³⁷ {{

³⁵ Blake Sobczak, *Shifting Energy Markets End Crude By Rail’s Reign*, ENVIRONMENT & ENERGY PUBLISHING (Feb. 8, 2016), <http://www.eenews.net/stories/1060031956> (last visited Mar. 1, 2016).

³⁶ Renshaw, *supra* n.33 (emphasis added).

³⁷ See CSXT Reply WP “EIA WTI Price History and Forecast.xlsx.”

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For its CERR traffic forecast, CSXT is replacing the dated crude oil forecasts used by Consumers with the updated internal forecasts that better reflect the new state of the world. {{

}} Swapping out the dated internal forecast for the revised internal forecasts is fully appropriate. This is not a case of normal fluctuating traffic levels that failed to match precisely forecasts in a particular period. Rather, this is an unforeseen long-term shift in traffic patterns that undermines the multi-year internal projections relied on by Consumers. In these circumstances, the Board is obligated to “judge the reasonableness of a carrier’s rates based on the best evidence available at the time of its decision.”³⁹

Table III-A-2 below summarizes the parties’ CERR volumes.

³⁸ See CSXT Reply WP “CERR Car Traffic Forecast_Reply.xlsx”, tab “CAR_Forecast.”

³⁹ *Duke/NS Reconsideration*, STB Docket No. 42070, at 4 (STB served Oct. 20, 2004) (applying on reconsideration new EIA coal forecasts that reflected an unforeseen long-term shift in traffic patterns).

Table III-A-2
CERR Volumes
(Carloads and Containers in 000s)

Year	Consumers Opening	CSXT Reply	Difference
2015	803.4	762.6	-40.7
2016	805.0	728.6	-76.4
2017	884.1	744.8	-139.3
2018	911.2	757.0	-154.2
2019	947.6	792.5	-155.1
2020	996.1	811.6	-184.5
2021	1,043.6	825.0	-218.6
2022	1,098.2	843.4	-254.8
2023	1,151.2	857.2	-294.0
2024	1,217.3	879.0	-338.3

3. Revenues (Historical and Projected).

a. Historical.

CSXT does not object to the historical revenues used by Consumers as a baseline to calculate the revenue divisions for the cross-over traffic. CSXT corrects an error in Consumers' calculations that understates revenues. In brief, when calculating revenues per car for the base year, Consumers understates revenues by dividing first quarter 2015 revenues by second quarter 2015 forecasted carloads. Because the second quarter carloads reflect Consumers' calculated increase in volumes over those reported in the first quarter of 2015, the denominator used by Consumers is overstated. Similarly, Consumers calculates third and fourth quarter 2015 revenues per carload by dividing by carloads that have been forecasted to the third and fourth quarter 2015 levels. CSXT corrected Consumers' calculations to divide first quarter 2015 revenues by first quarter 2015 carloads and to divide third

and fourth quarter 2014 revenues by third and fourth quarter 2014 carloads.⁴⁰ This correction increases Consumers' baseline CERR per carload revenues.

b. Projected.

Aside from fuel surcharge revenues discussed at the end of this Section III-A, CSXT does not challenge Consumers' development of forecasted CERR revenues.

c. Divisions—Cross-Over Traffic.

i. General Theory – Unbiased Allocations

Since 1994 the Board has permitted complainants to use “cross-over traffic” to simplify a full-SAC presentation.⁴¹ Cross-over traffic refers to those movements included in the traffic group that would be routed over the SARR for only a part of their trip over the defendant carrier. In such circumstances, the SARR would not replicate all of the defendant railroad's service, but would instead interchange the traffic with the residual portion of that railroad's system. In 2004, the agency concluded that “[w]ithout cross-over traffic, captive shippers might be deprived of a practicable means by which to present their rate complaints to the agency.” *Id.* at 603. At the time, the Board acknowledged that, as with any simplifying assumption, “the inclusion of cross-over traffic necessarily introduces some degree of imprecision into the SAC analysis.” *Id.* But the agency concluded that “the value of this modeling device—both in keeping the analysis focused on the facilities and services used by the complainant shipper, and in streamlining and simplifying already

⁴⁰ See CSXT Reply WP “CERR Car Traffic Forecast_Reply.xlsx”, tab “CAR_Forecast”, Column BN.

⁴¹ See *Xcel*, 7 S.T.B. at 600-03.

complicated undertakings—outweighs the concerns raised by [the defendant railroad].” *Id.*

The goal in allocating revenue from cross-over traffic is to minimize the degree of bias and imprecision that follows inevitably from this modeling device. In other words, the goal is to ensure that a truncated SAC analysis using cross-over traffic approximates the outcome of a truly “stand-alone” analysis where the hypothetical SARR would provide complete origin-to-destination service for the entire traffic group.⁴² The D.C. Circuit observed that “The pursuit of precision in rate proceedings, as in most things in life, must at some point give way to the constraints of time and expense, and it is the agency’s responsibility to mark that point.”⁴³ But it also cautioned that its endorsement of this modeling device might change if the record revealed that the revenue allocation was biasing the results.⁴⁴

In Ex Parte 715, the Board set forth its current approach for allocating revenue from cross-over traffic.⁴⁵ Under the Average Total Cost (“ATC”) approach

the total revenues from each portion of the cross-over traffic movement will be allocated in proportion to the average total cost of the movement on and off-SARR. But if the revenue allocation to the on-SARR (or off-SARR) segment would result in revenues falling below URCS variable costs for that segment, the revenue allocation to the on-SARR (or off-SARR) segment would then be raised

⁴² *Rate Regulation Reforms*, STB Docket EP 715 at 6-8.

⁴³ *BNSF 2006*, 453 F.3d at 482.

⁴⁴ *Id.* at 483 (“Our view of this matter might be different if [the defendant railroad] had presented evidence to establish that the imprecision implicit in the use of cross-over traffic tends to overestimate the revenues generated by a SARR to a degree that outweighs any efficiency gains.”).

⁴⁵ *See Rate Regulation Reforms*, STB Docket EP 715, at 30.

to equal 100% of the defendant's URCS variable costs of providing service over that segment."

Id. "If the total revenue from the cross-over movement were below our measure of total variable cost for the entire movement, revenue would be allocated between the two segments to maintain the existing total R/VC ratio on both segments." *Id.* at 30, n.90. Mindful of the need to avoid biasing the results, the Board recently expressed "significant and growing concern" about a troubling "disconnect between the revenue allocation and the costs of providing service" by the hypothetical SARR.⁴⁶ The Board observed that in recent cases, complainants have included large amounts of carload and multi-carload cross-over traffic. But this created a disconnect between the hypothetical cost of providing service to these movements over the segments replicated by the SARR and the revenue allocated to those facilities:

When the proposed SARR includes cross-over traffic of carload and multi-carload traffic, it generally would handle the traffic for only a few hundred miles *after* the traffic would be combined into a single train. As such, the 'cost' to the SARR of handling this traffic would be very low. In recent cases, litigants have proposed SARRs that would simply hook up locomotives to the train, would haul it a few hundred miles without breaking the train apart, and then would deliver the train back to the residual defendant. All of the costs of handling that kind of traffic (meaning the costs of originating, terminating, and gathering the single cars into a single train heading in the same direction) would be borne by the residual railroad. However, when it comes time to allocate revenue to the facilities replicated by the SARR, URCS treats those movements as single-car or multi-car movements, rather than the more efficient, lower cost trainload movements that they would be. As a result, the SAC analysis appears

⁴⁶ *Rate Regulation Reforms NPRM*, STB Docket EP 715, at 16.

to allocate more revenue to the facilities replicated by the SARR than is warranted.⁴⁷

The Board therefore proposed to restrict this kind of cross-over traffic because it had no “means of correcting or minimizing the bias that is created by the disconnect between the revenue allocation and the costs of providing service.”⁴⁸

But after listening to the public comments, the Board changed course. The STB acknowledged the joint position of CSXT and NS that there is an alternative way to correct or minimize the bias that is created by the disconnect between the revenue allocation and the costs of providing service. Rather than restrict the traffic, the Board could address the bias “if it adjusts the revenue allocation method to account for the unique attributes and characteristics of each SARR, particularly, by allowing movement-specific adjustments to URCS.”⁴⁹ As such, shippers and a “significant portion of the carrier community agree[d] that the disconnect can be cured by a more accurate allocation of costs to the SARR, and that restrictions on such traffic are unnecessary assuming allocation improvements are made.” *Id.*

The STB promised to begin a rulemaking to address how to correct bias where there is a disconnect between the revenue allocation and the services provided by the SARR. “We will seek broader public input,” promised the agency, “on approaches that have been proposed by litigants in pending cases, but which would require adjustments to our costing model to implement.” *Id.* at 28. In the

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Rate Regulations Reforms*, Docket EP 715, at 27.

meantime, “parties in pending cases are free to advocate in their individual proceedings ways to address this issue.” *Id.*

The STB has not yet begun the foreshadowed rulemaking.

ii. Consumers seeks allocations that bias the results by providing revenue for services CERR does not offer.

This case illustrates perfectly how the simplifying tool of cross-over traffic can be used to bias the results against the railroad. First, Consumers has included the type of “hook-and-haul” merchandise traffic that raises the same “significant concern” in *Rate Regulation Reforms*. Second, Consumers is seeking revenue for “empty” cross-over traffic movements where, in reality, those empties are routed around the congested Chicago gateway and thus the cost of providing that service is not included in Consumers’ own SAC analysis. Third, Consumers is grossly biasing the results of the SAC analysis by constructing a hypothetical railroad that runs right up to the steps of the 59th Street intermodal yard, and then stops, yet seeks a full revenue allocation under ATC that reflects the high costs of originating and terminating intermodal traffic.

In addition to the disconnects between the ATC revenue allocation methodology and Consumers’ CERR traffic grouping, Consumers’ ATC application includes a number of conceptual and implementation errors that further overstate the amount of CSXT revenue allocated to the CERR. Further elaboration on each point is provided below.

(a) Merchandise Traffic

Consumers makes no bones about the fact that it is proposing to serve precisely the kind of carload, merchandise cross-over traffic that creates significant bias in the SAC analysis. Consumers is proposing a SARR that would accept only trains in run-through service, with crews stepping on and off at interchanges, haul them a few miles through Chicago without breaking any train apart, and then deliver the entire train back to the residual defendant or a CSXT interchange partner. All of the costs of handling that kind of traffic (meaning the costs of originating, terminating, gathering and blocking the individual cars into a single train heading in the same direction) would be borne by the residual railroad. The Board articulated its concern as follows:

However, when it comes time to allocate revenue to the facilities replicated by the SARR, URCS treats those movements as single-car or multi-car movements, rather than the more efficient, lower cost trainload movements that they would be.⁵⁰

The Board concluded, “as a result, the SAC analysis appears to allocate more revenue to the facilities replicated by the SARR than is warranted.”⁵¹

Consumers is willfully oblivious to the bias it has created in its Opening SAC analysis by the presence of this kind of cross-over traffic. It offers no solution, notwithstanding the clearest of signposts provided by the STB. Instead, it grabs too large a revenue allocation given its calculated design to select only the most efficient low-cost, trainload movements of merchandise traffic.

⁵⁰ *Rate Regulation Reforms NPRM*, at 16.

⁵¹ *Id.*

As discussed above, CSXT believes that the calculated way that Consumers carves up traffic from merchandise customers stretches the bounds of reasonableness and should be rejected by the Board as inconsistent with *Coal Rate Guidelines*, a mockery of the common carrier obligation, and a violation of the principles of real world railroading. But if the Board disagrees, CSXT has identified a number of corrections that need to occur within Consumers' ATC revenue allocation process that will eliminate the significant bias introduced by Consumers in selecting only this kind of hook-and-haul carload traffic.

At the conceptual level, the method for calculating the variable cost attributable to the CERR's contribution to serving this merchandise traffic should mirror the trainload characteristics of the service the CERR provides. For the service provided by the CERR, there is no meaningful difference between the trainload movements of coal, crude oil, ethanol, grain trains, or other unit trains included in the traffic group and the trainload movements of its selected merchandise traffic. If a train spotter stood by the roadside watching these hypothetical trains speed through Chicago, there would be nothing to distinguish the trains from an operating perspective. The only difference would be that, unlike the unit trains that are comprised of cars dedicated to a single customer, these trainloads of merchandise traffic would be transporting a mix of different types of cars and shipments, albeit intact over the CERR lines.⁵²

⁵² CSXT notes that by replicating only a trainload bridge in the middle of the move, the CERR will leave to the residual CSXT and other foreign railroads the work

CSXT therefore implemented the following modifications to the variable cost component of the ATC revenue allocation for the CERR's merchandise traffic to eliminate the bias created by the disconnect between the efficient service replicated by the CERR and the excessive revenue allocation that is premised on a different level of service entirely.

- **First:** Calculate the total variable cost to haul the merchandise traffic from CSXT origin (or interchange) to CSXT destination (or interchange) using unadjusted URCS.
- **Second:** Calculate the total variable cost to haul the merchandise traffic over the facilities replicated by the SARR as a trainload movement, but adjusting the URCS default trainload empty-loaded ratio to match the empty-loaded ratio used in step 1.⁵³ This adjustment to URCS is needed to reflect the fact that merchandise traffic does not have the same empty/loaded ratio as a unit train of coal or crude oil, where the empties are more frequently returned to the origin and is consistent with the goal of having the URCS variable cost for the on-SARR portion mirror the service provided by the SARR.
- **Finally:** the off-SARR variable costs are determined by subtracting from the total variable cost (step 1) the estimate for the variable cost over the facilities replicated by the SARR (step 2).

This sequence differs from that used by Consumers in its Opening. Specifically Consumers, in addition to developing URCS variable costs as single car shipments for the CERR merchandise shipments, calculated separately the on-SARR and off-SARR variable costs. This approach assumes explicitly that the CERR is providing on a pro-rata basis all of the services produced by CSXT in serving the merchandise

responsible for building and breaking down the train, switching the cars, and serving the ultimate customers.

⁵³ See CSXT Reply WP "2014 CSXT URCS Empty Load Ratios.xlsx" and "Carload URCS_SARR Inputs_Reply.xlsx," Columns AB-AC.

customers today. This is not the case. Under the CSXT Reply approach, the residual CSXT gets revenue credit for all of the work it performs in serving the merchandise traffic customers beyond the portion of its main line replicated by the CERR, and the CERR gets revenue credit for the line haul service it provides.

As an illustration, assume a merchandise train in the traffic group that originates in Chicago on the CERR, traverses 15 miles on its lines, and then travels on the residual CSXT to Washington D.C. through various classification yards. For the ATC revenue allocation, assume the total variable cost for that carload averaged \$10 per ton, using unadjusted URCS. The CSXT Reply process would then calculate URCS costs for the car as a part of a 15-mile trainload movement, substituting the same empty-loaded ratio used to cost the entire movement. Assuming for this example that the on-SARR variable cost estimate is \$0.25 per ton, then the ATC revenue allocation would use \$9.75 as the off-SARR variable cost estimate.⁵⁴

In addition to the correction to the ATC variable cost component, CSXT has determined that Consumers' edict that it will perform no switching anywhere along its system necessitates an adjustment to the fixed cost component of the ATC allocation as well. Historically the SARR networks evaluated by the Board find shippers replicating all of the functionality of the incumbent for the portion of the incumbent it chooses to replace, including switching and blocking functionality.

Unlike those systems, in this case Consumers is replicating only the line haul

⁵⁴ Workpapers applying this costing approach to the selected merchandise traffic are provided herein. See CSXT Reply WP "Carload URCS_SARR Inputs_Reply.xlsx," worksheet "Inputs_SARR" and "CERR and Residual CSXT ATC URCS Inputs_Reply.xlsx."

portion of the CSXT facility in Chicago and leaving all of the burdens and responsibilities of performing switching and blocking to the residual CSXT. Under these circumstances, an adjustment to the fixed cost component of the Board ATC allocation formula is also required to ensure that the ATC formula does not allocate revenues to the CERR for facilities that it does not replicate.

The necessary correction is straightforward and easy to implement. URCS variable costs are easily distinguished between those costs related to performing line haul services and those costs related to performing switching services.⁵⁵ Because URCS variable costs are a subset of full costs, the URCS fixed costs are also readily distinguished between the line haul and switching related portions. Because the CERR is not replicating any of the residual CSXT's switching functionality, CSXT adjusted the fixed cost allocation to the CERR to include only those fixed costs attributable to the line haul functionality that the CERR replicates.⁵⁶

These necessary corrections address the serious bias concerns raised by the Board in *Rate Regulation Reforms*. The disconnect for CERR merchandise traffic is addressed (although perhaps not completely cured) by a superior allocation of costs

⁵⁵ In the Board's URCS "Phase II" files that develop variable unit costs, worktables D1 and D3 include costs assigned to running tracks and road operations, respectively, and worktables D2 and D4 include costs assigned to switching tracks and yard operations. See CSXT Reply WP "CSXT2014.pdf."

⁵⁶ To calculate the URCS fixed cost per mile factor used for the CERR-owned segments, CSXT eliminated the URCS costs from worktables D2 and D4 that Consumers had included in its factor. CSXT did not adjust the factor used to allocate fixed costs to trackage rights segments over which the CERR would operate. See CSXT Reply WP "2014 Fixed Costs For ATC (Final)_Reply.xlsx," worksheet "CSXT 2014 Fixed Costs," column P.

to the SARR, such that restrictions on this kind of cross-over traffic are unnecessary “assuming allocation improvements are made.”⁵⁷

We anticipate that Consumers will object. Perhaps it will then reveal its own solution on rebuttal, or tinker with CSXT’s proffered remedy. If so, however, the Board should reject that evidence as improper rebuttal. The Board has made it clear that it expects parties to provide a solution to the problem presented by this kind of merchandise traffic. Yet Consumers was mute. As it was Consumers’ decision to include this traffic in the first place, it should bear the burden of offering a solution *on opening*. It would be grossly unfair, contrary to Board rebuttal rules, and a violation of basic principles of Due Process for Consumers to unveil its solution—if it has one—on rebuttal.

Although no rate prescription is called for in this case, any prescription under the Board’s Maximum Markup Methodology (MMM) should also use the same on-SARR variable cost estimates for this merchandise traffic. The MMM approach would otherwise over-allocate the share of total SAC costs to the merchandise traffic based on services the CERR would not provide.

(b) Empty Unit Trains.

A second issue of bias is caused by a significant disconnect between the empty/loaded ratio implicit in the ATC revenue allocation (100%) and the actual empty-loaded ratio for unit trains handled by the CERR (85%). In simple terms, CSXT avoids sending lower-priority empty unit trains back through the congested

⁵⁷ *Rate Regulation Reforms*, Docket No. EP 715, at 27.

Chicago gateway wherever possible. Consumers' traffic selection process mirrors CSXT's actual balance of empty-loaded unit trains through Chicago. This assumption is proper, since the Board's rerouting principles would not permit Consumers to increase economies of density by rerouting empty traffic to the SARR: these would be off-SARR reroutes prohibited by Board precedent.

This creates, however, a serious disconnect between the services provided by the SARR and the revenue allocation it receives for this category of cross-over traffic. The Board's standard URCS model incorporates a default assumption of a 100% empty/loaded ratio for unit trains. As a result, Consumers is seeking a revenue allocation for work that the CERR would not perform. Specifically, it seeks a share of revenue that assumes the CERR is bearing the full operating costs—and constructed the necessary rail facilities—to flow 100% of the empty unit trains back through Chicago. But only 85% of those empty trains move over its system. This disconnect plainly biases the SAC result in Consumers' favor. Since the residual CSXT is doing more of the work, it must be allocated more of the revenue.

CSXT adopts a simple solution. CSXT examined all the unit trains in the selected traffic group and calculated the total on-SARR car miles loaded and on-SARR car miles empty. As shown, only 85% of the time does the empty unit train return through the Chicago gateway in Consumers' SAC analysis.⁵⁸ CSXT accordingly developed variable cost estimates for the on-SARR portion of the unit train movement by replacing the default 100% empty/loaded ratio with this 85%

⁵⁸ See CSXT Reply WP "2014 CSXT URCS Empty Load Ratios.xlsx."

ratio that directly matches the services being replicated and analyzed in the SAC analysis.⁵⁹ The off-SARR variable costs are estimated in an identical manner as described above for the merchandise traffic: the off-SARR variable cost will equal the total variable cost of the movement using unadjusted URCS, subtracted by the on-SARR variable cost estimate using the 85% empty/loaded ratio, thereby leaving the revenue for the empty unit trains that do not traverse the CERR properly with the residual CSXT.

This adjustment is both necessary and permissible. The Board has already advised the public that it will entertain adjustments to the ATC revenue allocation—which relies on the URCS model—to address this kind of bias. There is no logical reason to permit adjustments to the costing of merchandise cross-over traffic, yet refuse a simple adjustment to address the same kind of bias from unit train cross-over traffic.

Consumers may argue that this kind of adjustment is a prohibited movement-specific adjustment, citing *Entergy Ark., Inv. & Entergy Serv., Inc. v. Union Pacific Railroad, et al.*, Docket No. NOR 42104 (STB served Nov. 26, 2012). Not so. This is not a movement-specific adjustment. CSXT is not substituting for the 100% default assumption movement-specific adjustments that vary for each individual unit train in the traffic group (thousands of movements). Rather, CSXT develops a system-average statistic based on all CERR unit trains subject to the ATC revenue allocation and replaces a single default factor with a single system-

⁵⁹ See CSXT Reply WP “Carload URCS_SARR Inputs_Reply.xlsx,” Column W.

wide average.⁶⁰ Moreover, the rule against movement-specific adjustment was adopted for the quantitative market dominance inquiry, in part because “the Board believed that Congress intended, in adopting the 180% R/VC limitation on Board rate review, to create an administratively quick and easy-to-determine regulatory safe harbor for the railroads.”⁶¹ That overarching congressional intent is absent here, and is replaced by the important goal of minimizing where feasible the degree of bias introduced into the SAC analysis by this simplifying modeling device.

Finally, this simple adjustment is needed to correct an obvious bias in the revenue allocation for unit train cross-over traffic. Just as with the merchandise traffic, there is a serious disconnect between the services the CERR would provide and the revenue allocation it would enjoy. The Board must permit the parties to correct this bias, lest “imprecision implicit in the use of cross-over traffic [will]

⁶⁰ As there is no revenue allocation for the issue traffic, the SARR is responsible for providing full empty service. Review of Consumers’ selected train list confirms that the CERR handles an even mix of loaded and empty trains for the issue traffic. See Consumers Op. WP “Base Unit Merch Trains v6_Statistics.xlsx,” worksheet “2014 Full Base Year Unit Merch.”

⁶¹ See *Major Issues*, STB Docket No. 657 (Sub-No. 1) at 51 (“The immense costs and complexity of [movement-specific] adjustments to URCS conflicts with what Congress intended in adopting the 180% R/VC limitation on Board rate review: to create an administratively quick and easy-to-determine regulatory safe harbor for the railroads. The R/VC ratio was first announced in the Staggers Act of 1980 as a way to ‘simplify rate regulation by setting forth a clear threshold test . . .’ The Commerce Committee report stated that the new rate provisions, including the R/VC test, provide ‘simpler threshold tests than existing law’ and serve the goals of ‘administrative feasibility and timely regulatory action.’ We believe that Congressional intent was that, if a railroad chooses to price its traffic within this safe harbor, it should not need to worry about regulatory intervention. This goal is ill-served by allowing exhaustive discovery, volumes of evidence, significant consulting fees, and months of effort before parties can determine whether the Board has jurisdiction to consider the reasonableness of a rate.”) (internal citations omitted).

tend[] to overestimate the revenues generated by a SARR to a degree that outweighs any efficiency gains.”⁶²

Again, no rate prescription is called for in this case. But any prescription under the Board’s MMM should also use the same on-SARR variable cost estimates for this unit train cross-over traffic. The MMM approach would otherwise over-allocate the share of total SAC costs to the unit train traffic based on services the CERR would not provide.

(c) Intermodal Trains.

Consumers is playing games with the intermodal traffic that originates or terminates at the 59th Street intermodal terminal. This intermodal facility has a complex ownership structure. The relationship between CSXT and CSX Intermodal Terminals (“CSX Terminals” or “CSXIT”) was on public display in the TPI case. See CSXT Reply in Opposition to Petition to Supplement the Record, STB Docket No. 42121 (filed Nov. 25, 2014). Here is a quick summary of the salient public facts drawn from that filing. CSXT and CSX Terminals are sister companies, both first-tier subsidiaries of CSX Corporation. As of June 26, 2010, CSX Terminals owns the 59th Street intermodal terminal, except for the underlying land, and CSXT is the only customer at the 59th Street intermodal terminal. Under the agreement between CSXT and CSX Terminals, CSXT pays to CSX Terminals a fee equal to 110% of all CSX Terminals’ operating costs. The payments between CSXT and CSX Terminals are sometimes referred to as “lift fees.” For this rate reasonableness analysis, it is

⁶² *BNSF 2006*, 453 F.3d at 483.

thus important to start with the understanding that all the expenses of providing intermodal terminal services are either incurred directly by CSXT (e.g., land ownership and train inspections) or indirectly through the payment to CSX Terminals for all its operating costs.

The CERR will serve the 59th Street intermodal terminal. Consumers explains in its Operating Plan:

The CERR originates intermodal trains at CSXIT's 59th St. Intermodal terminal, but the trains are loaded and built by CSXIT. The CERR also interchanges intermodal trains bound for the 59th St. Intermodal terminal with the residual CSXT.⁶³

To be clear, however, Consumers' assertion that it "originates" intermodal trains is false. It is CSXT and CSX Terminals, not the CERR, that originates, builds, and inspects all the intermodal trains at the 59th Street intermodal terminal. The CERR's only function is to pull complete trains from and deliver complete trains to the 59th Street intermodal terminal. Beyond that, all of the work required to block cars and build and break down trains is performed by CSXT and CSX Terminals. Like all of the other services for which it steps into CSXT's shoes, CERR performs only a line haul service. The only difference is rather than interchanging with the residual CSXT on a designated main line interchange track, this hypothetical interchange occurs on the 59th Street intermodal terminal's departure and arrival tracks.

⁶³ Consumers Op. III-C-8.

As a result of its design choice, Consumers failed to include any of the investment in the 59th Street intermodal terminal itself, nor does it include the cost for maintaining the facility, utilities to keep the lights on, clerical labor necessary to support the facility's functions, or any staffing or equipment provided by CSXT. Instead, it proposes that the CERR would pay CSX Terminals a fraction (30%) of the total operating costs incurred by CSX Terminals (and paid by CSXT) to originate intermodal trains at the 59th Street intermodal terminal. Consumers took a scalpel to the total payments by CSXT, going line-by-line and carving away any expense items that it felt were not directly linked to the intermodal trains that would be handled by the CERR.⁶⁴ (In other words, Consumers tried to carve away many of the direct operating expenses and all of the indirect operating expenses at the 59th Street intermodal terminal). Once done with the scalpel, it picked up the cleaver, chopping the direct expenses by nearly one-half to reflect the pro-rata share Consumers deems attributable to its selected intermodal traffic.⁶⁵ The final results are shown below in Table III-A-3.

⁶⁴ See Consumers WP "CERR CSXIT Lift Charge_Open.xlsx," CSXT Reply WP "Consumers 59th Street Costs.xlsx."

⁶⁵ It is also apparent that Consumers' aim with the cleaver was poor. Although the CERR would serve a huge majority of CSXT's intermodal shipments flowing to and from this intermodal terminal, Consumers cleaved the expenses using a number of lifts that represented barely one-half of CSXT's activity at the terminal. Like its exclusion of certain expense categories, Consumers offered no justification or explanation for what it was leaving behind.

Table III-A-3
59th Street Intermodal Terminal Costs (2014)

<u>Excluded by</u>		<u>Included by Consumers</u>	
Consumers			
Clerical Labor	{ }	Lift Contractor Cost	{ }
Depreciation – Fixed	{ }	Lift Maintenance	{ }
Terminal Maintenance	{ }	Lift Labor	{ }
Exempt Labor	{ }	Snow Removal	{ }
Clerical Benefits	{ }	Terminals – Security	{ }
Exempt Benefits	{ }	Lift Fuel	{ }
Road Use Fees	{ }	Lift Benefits	{ }
Purchase Labor	{ }	Lift Overtime	{ }
Utilities	{ }	Flat Car Inspections	{ }
Other	{ }		
Excluded	{ }	Included	{ }
		CERR Usage Adjustment	54%
		Total Included	{ }

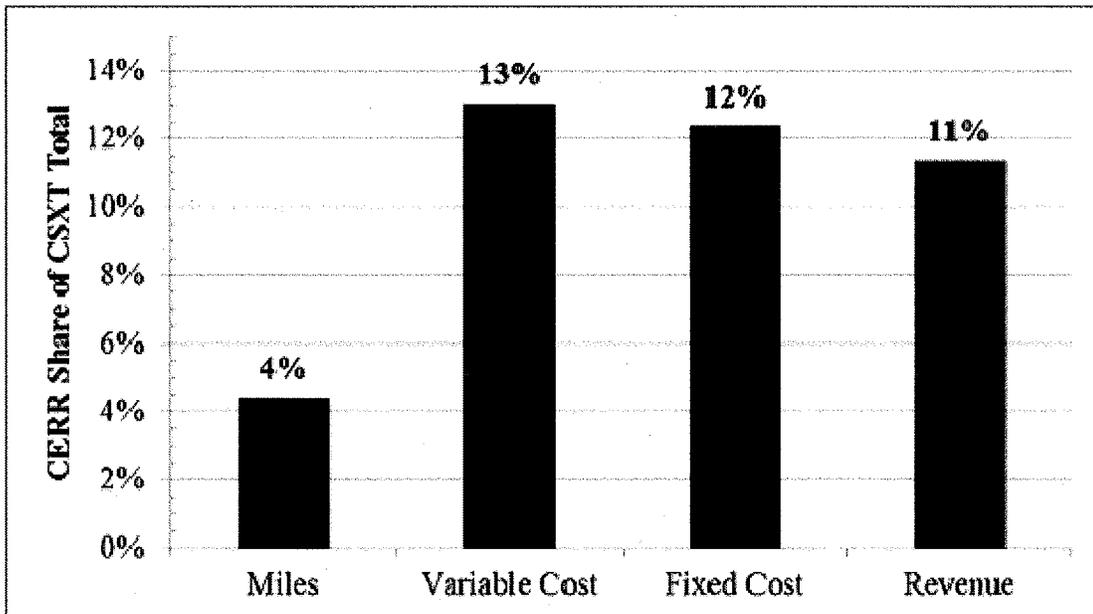
Consumers also excluded all operating expenses incurred by CSXT (rather than CSX Terminals), such as inspection employees and switch crews. And it failed to include the price of the real estate owned by CSXT within the intermodal terminal. The net result is the CERR would pay for only 30% of the operating expenses incurred by CSX Terminals (and paid by CSXT) at the 59th Street intermodal terminal, 0% of the operating expense incurred directly by CSXT, and 0% of the road property investment.

Consumers then rewards itself with the full originating and terminating ATC revenue allocation credit for the 173,848 intermodal shipments that originate or terminate at the 59th Street intermodal terminal.⁶⁶ The ATC allocation, however, rests on variable cost calculations that include 100% of the operating expense (“lift

⁶⁶ See Consumers Op. WP “2014 - 1Q 2015 Car And Container Waybills.xlsx,” Tab 2014 Container, columns BP and BQ.

costs”) incurred by CSX Terminals (and paid for by CSXT), 100% of the operating costs incurred directly by CSXT, and the normal return on road property investment. The result is a gross over-allocation of revenues for the services performed (or paid for) by CERR. Figure III-A-4 below illustrates that Consumers assumes that the CERR would operate the intermodal shipments for 4% of their through movement on CSXT, yet its ATC allocation assigns the CERR 13% of the variable costs and 12% of the fixed costs of their through movement. This results in the CERR receiving 11% of CSXT’s total revenue for these shipments, for handling them less than 30 miles across Chicago.

**Figure III-A-4
Consumers’ ATC Allocation for CERR Intermodal Shipments⁶⁷**



⁶⁷ See CSXT Reply WP “Consumers Intermodal ATC.xlsx,” based on Consumers Op. WP “CERR Divisions.xlsx.”

Consumers will likely argue that payment of a prorated subset of CSXT's lift costs entitles the CERR to the full revenue allocation for originating and terminating the intermodal traffic. Not so. First, the chosen lift costs are only a fraction of the full cost to originate and terminate the intermodal shipments. Consumers has understated the cost per lift by excluding indirect costs incurred by CSX Terminals (and paid for by CSXT) in operating the 59th Street intermodal terminal and by using an unexplained and obviously flawed approach for cleaving those direct costs attributable to the selected intermodal traffic.⁶⁸ Second, CSXT itself incurs substantial crew, locomotive and facility costs in addition to what is reflected in the cost per lift that the CERR does not incur, but that are reflected in the ATC revenue allocation. Third, the lift costs that Consumers included as CERR operating expenses are obviously not providing any return on road-property investment incurred by CSXT at the 59th Street intermodal terminal. Consumers' selected lift costs for the CERR in no way justify the full originating and terminating credit to which it claims to be entitled under its ATC application.

The full ATC revenue allocation would be proper only if the hypothetical SARR is actually constructing the 59th Street intermodal terminal and incurring all the lift, switching, train-building, and inspecting functions associated with originating or terminating intermodal shipments. This was the case in the recent TPI case, where the complainant received the full revenue allocation for originating

⁶⁸ As discussed in Section III-D-9, the lift costs that Consumers assumes the CERR will pay are significantly understated and ignore critical cost elements that are, ironically, included in the lift costs used by URCS to develop intermodal origination and termination costs.

and terminating intermodal traffic at this same 59th Street intermodal terminal because it constructed the intermodal facility and included the full expense of building the intermodal trains.

Board rules provide complainants significant leeway in how they design the geographic scope of the hypothetical SARR, bound only by the cardinal rule that it must embrace the traffic at issue. In this case, Consumers is trying to take advantage of that leeway by hypothesizing a railroad that will provide service right up to the doorstep of the 59th Street intermodal facility, *and then stop*. This approach raises the “troubling” and “serious” questions in *McCarty Farms* that a complainant cannot isolate facilities from the remainder of the CSXT network.⁶⁹ Moreover, providing a massive revenue allocation for the terminating and originating services to the CERR would create a gross bias, a bias that is not corrected by including selected lift costs instead of the full expense of building and operating the intermodal yard located on valuable real estate in the heart of downtown Chicago.

CSXT addresses this serious bias by adjusting the revenue allocation to match the services that the proposed CERR would perform and assumes a

⁶⁹ *McCarty Farms*, 2 S.T.B. at 468 (“More troubling is McCarty’s exclusion of certain branch lines necessary to serve some of the traffic included in the [SARR] traffic group. McCarty assumes that BN would continue to own and operate these lines, even though they would be stranded from the rest of the BN rail system, and that the ‘crossover’ traffic originating or terminating on BN branch lines would be interlined with the [SARR] at new interchange points. However, McCarty has not shown that it would be feasible for BN to maintain lines that would be isolated from the remainder of BN’s system. Thus, we seriously question the propriety of the [SARR] configuration.”).

hypothetical interchange between the CERR and the residual CSXT/CSXIT on the arrival and departure tracks of the 59th Street intermodal terminal.

CSXT is deeply concerned, however, that future litigants will see this as a “green light” to engage in similar gamesmanship. In future cases, a complainant would weigh the cost of constructing the terminating (or originating) facilities and operating those facilities against the incremental revenue provided by the ATC revenue allocation. Where the incremental revenues exceed the construction and operating costs, the complainant will build and perform the train-building functions associated with originating or terminating traffic. Where, however, those expenses are higher than normal (as here, where the facility is located in downtown Chicago), complainants will follow Consumers’ lead and stop just short of the expensive intermodal yard to avoid the high construction and operating expenses, accepting instead the reduced revenue. Such unbridled discretion is a recipe for future bias. CSXT therefore urges the Board to provide guidance for *future* cases. The Board should make clear it will not permit a complainant to design a hypothetical SARR that would provide service right to the steps of an expensive facility, but then leave the high cost of that service for the residual defendant to provide.

For this case, the Board should accept CSXT’s adjustment to the revenue allocation for all intermodal traffic in the traffic group that originates or terminates at the 59th Street intermodal terminal. A conceptual depiction of the application of ATC to these circumstances is shown below.

iii. Other ATC Adjustments.

CSXT also makes two sets of technical corrections to the ATC allocation by Consumers. The first is relatively uncontroversial: CSXT updated Consumers' ATC calculations to reflect the 2014 URCS recently released by the Board.⁷² However, CSXT also found numerous significant errors in the fixed cost allocation affecting Consumers' ATC allocation of revenue.

First, the density for a 0.35-mile segment within Chicago is grossly inaccurate. This seemingly small error has significant consequences. Specifically, the ATC allocation assumes that the 0.35-mile segment from milepost DC 15.00 to milepost DC 15.35 on CSXT's mainline route through Chicago has virtually no density, only 100,000 gross tons.⁷³ This supposedly empty stretch, however, is sandwiched between two segments with over 80 million gross tons.⁷⁴ The error in the density of this 0.35-mile stretch is due to a simplification in the routing algorithm used by CSXT to transform the CSXT car event data into segment densities produced to Consumers in discovery. Where CSXT has parallel mainline tracks near the IHB's line between its Blue Island Yard and Bedford Park that was not replicated by the CERR, the algorithm routed all of the cars that move over both

⁷² See CSXT Reply WP "2014 Fixed Costs For ATC (Final)_Reply.xlsx," Tab 2014 URCS Inputs.

⁷³ Consumers WP "2014 Fixed Costs For ATC (Final).xlsx," worksheet "2014_Density," row 337.

⁷⁴ While CSXT recognizes that the incumbent's actual densities are the appropriate input for the fixed-cost calculations in ATC, it notes that even Consumers' CERR densities over this segment exceed 50 million gross tons. See Consumers Op. Table III-C-5 at III-C-12, row "75th St. to IHB Blue Island Connection."

parallel lines onto one segment, leaving the other empty. Indeed, the parallel IHB segment that is not part of the CERR from DIH 14.90 to milepost DIH 15.06 reports over 125 million gross tons in the density records—over 100 million gross tons more than connecting segments on either side of that parallel track. In other words, the data suggest that the parallel IHB tracks have 125 million gross tons, sandwiched between two sections averaging approximately seven million gross tons.

CSXT corrects the densities between milepost DC 15.00 and DC 15.35 based on actual train movements over that segment and corrected Consumers' fixed cost allocation.⁷⁵ Although the error affects just 0.35 miles of the CERR route, the glitch has a material impact on the revenue allocation and must be corrected. For example, for the 32-mile CERR route between 22nd Street and Curtis that is traversed by nearly one-half of all CERR trains, Consumers calculated total On-SARR fixed costs of 73 cents per ton.⁷⁶ The 0.35-mile low-density link – 1% of the route – represents 62 cents per ton, or 84% of the total.⁷⁷

Second, Consumers' fixed cost segmentation file includes two records each for 17 segments, reporting separately by direction the eastbound and westbound densities. In its fixed-cost calculations, Consumers uses only the density in one direction, which understates the actual total density and results in overstated fixed

⁷⁵ See CSXT Reply WP "ATC_FixedCosts_Adjustments.xlsx," Tab AdjustingTonnages_Chicago, "2014 Fixed Costs For ATC (Final)_Reply.xlsx," Tab 2014_Density, rows 356, 336, 337.

⁷⁶ Consumers WP "2014 Fixed Costs For ATC (Final).xlsx," worksheet "On-SARR Miles and Fixed Cost," cell N27.

⁷⁷ Consumers WP "2014 Fixed Costs For ATC (Final).xlsx," worksheet "On-SARR Miles and Fixed Cost," cells N11 plus N12.

costs per ton for those 17 segments. CSXT combined these duplicate segments into single segments and combined the directional densities.⁷⁸

Third, Consumers' fixed cost file overstates the length of the segment leading to the Campbell plant. CSXT reduced the length of the segment from over 30 miles to the 9.4 miles over which the volumes to the Campbell plant actually move.⁷⁹

Fourth, in calculating the fixed costs to be assigned to the CERR, Consumers overstates the segment miles from 22nd Street to Curtis via the Belt Route. For shipments from 59th Street that use the Belt route, Consumers properly prorated the miles for the CSXT segment that is only partially traversed—but failed to apply the prorate to the calculations for shipments from 22nd Street, which traverses the same portion of that CSXT segment.⁸⁰ CSXT corrects the prorated segment length to 2.2 miles.

Fifth, Consumers' calculation of off-SARR fixed costs for the CERR traffic group in total are overstated five-fold because certain movements over the residual CSXT uses a very small portion of a long, low-density segment that has high fixed costs per ton. Specifically, CSXT identified an approximately \$1 billion

⁷⁸ See CSXT Reply WP "2014 Fixed Costs For ATC (Final)_Reply.xlsx," Tab 2014_Density.

⁷⁹ See CSXT Reply WP "2014 Fixed Costs For ATC (Final)_Reply.xlsx," Tab 2014_Density, rows 1682-1683 and Tab On-SARR Miles and Fixed Cost, routes to West Olive include the new link CGC24.33_CGC33.6 rather than CGC24.33_CGC61.41.

⁸⁰ See Consumers Op. WP "2014 Fixed Costs For ATC (Final).xlsx," Tab On-SARR Miles and Fixed Cost, cell R10 versus cells R22, R37, R53.

overstatement of off-SARR fixed cost⁸¹ that is attributable to one link:

CGE0_CGE47.1.⁸² The link itself is mostly a low-density branch line that extends for 47.1 miles, although certain shipments in the CERR traffic group traverse 0.03 miles of this link in the vicinity of Grand Rapids. Because Consumers calculated fixed costs on a segment basis, the CERR traffic that touches only a portion of this segment are assigned the full complement of fixed cost for all 47.1 miles. CSXT corrects this overstatement by conservatively eliminating from the residual CSXT fixed costs all of the fixed costs for this link in its ATC restatement.⁸³

Finally, because as described in Section III-B, CSXT moved 0.6 route miles on the Buffington Connection from Consumers' assumption of trackage rights to a CERR owned segment, CSXT added on-SARR fixed costs for this new segment in its revised ATC calculations.

d. Fuel Surcharge Revenue

CSXT makes three changes to Consumers' calculation of fuel surcharges for the CERR. First, Consumers' approach of using 2014 third and fourth quarter revenues as a proxy for 2015 third and fourth quarter CERR revenues assumes incorrectly that the same fuel surcharges collected by CSXT in 2014 would also be collected in 2015. Because of the decline in fuel prices, this assumption is incorrect and overstates CERR revenues. CSXT corrects Consumers' calculations and

⁸¹ See Consumers Op. WP "CERR Divisions.xlsx," Tab Carloads, total of Column BU – OffSarrTotalFixedCost.

⁸² See CSXT Reply WP "ATC_FixedCosts_Adjustments.xlsx," Tab Adjusting_Link_Fixed_Costs.

⁸³ See CSXT Reply WP "URCs_Scripts_Steps4-6.sql," line 85.

calculates fuel surcharges for 2015 based on the parameters of the applicable tariffs.⁸⁴

Second, although Consumers explains that it developed fuel surcharges for CERR merchandise traffic that moves in common carriage on CSXT using tariff item 8662 and its strike price of \$3.749 per gallon, a review of Consumers' workpapers reveals that for certain types of traffic, including traffic that moves after its contract term expires that Consumers assumes would become subject to CSXT's standard HDF-based fuel charges, it actually and inappropriately developed fuel surcharges using tariff item 8661 and its \$1.999 strike price.⁸⁵ CSXT corrected Consumers' fuel surcharge charge calculations to use tariff item 8662.⁸⁶

Third, CSXT updates Consumers' fuel surcharge calculations based on the update EIA fuel forecast.⁸⁷

⁸⁴ See CSXT Reply WPs "CERR Car Traffic Forecast_Reply.xlsx", tab "CAR_Forecast", Column CL; "CERR_TRAFFIC_CONTRACTS_RATEADJ_FSC_Reply.xlsx," Tab CSXT_FSC, cells R40:R69.

⁸⁵ See Consumers Op. III-A-27.

⁸⁶ See CSXT Reply WP "CERR_TRAFFIC_CONTRACTS_RATEADJ_FSC_Reply.xlsx," Tab CSXT_FSC, cells C30:M31.

⁸⁷ In *DuPont*, STB Docket 42125 at 265, the Board explained "that consistency and logic require the use of the same forecast (or consistent forecasts) for both fuel costs and fuel surcharge revenues." CSXT concurs. In this case, however, the EIA fuel forecast and the Global Insights/HIS forecast in the RCAF used by Consumers are "consistent." As there is no material disconnect between these two forecasts, there is no need to substitute the EIA forecast for the Global Insights/HIS forecast in the RCAF forecast. As such, the Board need not address Consumers' challenge to the very logical preference for consistent forecasts announced in *DuPont*.

Table III-A-5 below summarizes the parties' CERR revenues. Exhibit III-A-1 provides a more detailed presentation of the impacts of CSXT's corrections and adjustments to Consumers' calculation of CERR revenues.

Table III-A-5
CERR Revenues
(\$ in Millions)

Year	Consumers Opening	CSXT Reply	Difference
2015	\$139.4	\$109.4	-\$30.0
2016	\$124.3	\$92.5	-\$31.8
2017	\$157.7	\$109.5	-\$48.2
2018	\$158.7	\$105.3	-\$53.5
2019	\$164.0	\$109.6	-\$54.4
2020	\$179.7	\$118.9	-\$60.8
2021	\$186.3	\$120.6	-\$65.7
2022	\$200.9	\$128.9	-\$72.0
2023	\$202.6	\$124.8	-\$77.8
2024	\$223.8	\$138.0	-\$85.7

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III. STAND-ALONE RAILROAD SYSTEM

B. STAND-ALONE RAILROAD SYSTEM

1. Routes and Mileage

The rail network that Consumers posited for the CERR totals 168.65 route miles, including 160.52 route miles of track constructed and owned by the CERR, and 8.13 route miles of BRC track to which CERR contributes 25% of the current estimated construction costs required to replicate the existing facilities as a one-fourth owner of that carrier. Consumers Op. III-B-4 to III-B-5. The CERR operates over 73.83 miles of track owned by other railroads (over which the CERR would operate pursuant to CSXT's existing trackage rights and joint facility agreements).¹ The CERR replicates a portion of the current CSXT system in parts of Illinois, Indiana, and Michigan. CSXT accepts the general scope and configuration of the CERR posited by Consumers, with certain modifications identified in this Section III-B. CSXT's Reply Exhibit III-B-1 are the stick diagrams depicting the CERR system posited by CSXT.

a. Main Line

CSXT accepts Consumers proposed main line configuration for the CERR (described at Consumers Op. III-B-5 to III-B-6) with one exception. Consumers failed to include in its main line configuration the IHB lines over which CSXT maintains partial ownership, as described at III-B-13 *et seq.* below.

¹ This 73.83 miles includes the 8.13 miles of BRC track. Consumers Op. III-B-5.

b. Branch Lines

The CERR has no branch lines. However, as Consumers acknowledges, the CERR trains operate over “8.13 miles of BRC track between 75th Street and Rock Island Junction.” Consumers Op. III-B-6. Because CSXT maintains a 25% ownership interest in the BRC, the CERR must step into CSXT’s shoes and account for 25% of the necessary investment, as well as the required contributory charges to utilize this track. *Id.* at III-B-6 to III-B-7.

In addition, Consumers assumed that the CERR will operate over trackage rights on the IHB between Calumet Park and Blue Island Yard, over which CSXT has an ownership stake and for which it is responsible for the payment of certain capital-related expenditures. Because CSXT maintains a 21.42% interest in IHB, the CERR must step into CSXT’s shoes and account for 21.42% of the necessary investment for the segment utilized on the IHB between Calumet Park and Blue Island Yard. *See infra* III-B-13 *et seq.* As discussed in III-A, above, certain trains moving over the IHB segment fail to meet CSXT’s transit time service standard. As a result, CSXT has excluded that traffic from its traffic base. If the Board rejects CSXT’s removal of this traffic, Consumers must account for the CERR’s usage and ownership of this segment of the IHB. CSXT has included in its workpapers² the costs for the necessary CERR infrastructure, including 6.4 miles of double mainline track and a 1.9 mile long interchange track at Blue Island Yard where CERR trains will hold during crew changes that would be needed if the Board allows the CERR

² See CSXT Reply WPs “III - F TOTAL - 2015_Reply.xlsx”, “CERR Grading_Reply.xlsm”, and “Bridge Costs_Reply.xlsx”

to handle this traffic. Because CSXT does not include this traffic, these costs are not included in CSXT's Reply analysis.

c. Interchange Points

Consumers posited that the CERR would interchange traffic with three Class I railroads (BNSF, UP, and CSXT) as well as with the IHB, with whom CSXT interchanges traffic today. See Consumers Op. III-B-7 to III-B-8, Table III-B-1. CSXT rejects Consumers' proposed configuration at three interchange locations—Dolton, Curtis, and Pine Junction—but otherwise accepts Consumers' proposed configuration.

Dolton Interchange:

In order to accurately reflect real world operations, CSXT made two alterations to Consumers' proposed configuration at Dolton. First, CSXT modified the CERR configuration to travel around rather than through the jointly owned UP/CSXT Yard Center facility. Second, as proposed, the CERR would block crossings at Cottage Grove Avenue and the intersection of Lincoln Avenue and Park Avenue. CSXT has modified the configuration at that location in order to avoid blocking the crossing.

Yard Center. At the Dolton interchange south towards Woodland Junction, Consumers proposes to build a 2.89 mile interchange track through the middle of a co-owned UP/CSXT Yard Center Facility. This is a joint facility in which UP and CSXT each have 50% ownership.³ The CERR may not simply build an interchange

³ CSXT Reply WP "UP205 Joint Facility Agreement.pdf."

track in the middle of this yard. Any such construction would infringe upon UP's operations and is expressly prohibited by the joint facility agreement entered into between UP and CSXT. For the following two reasons, if the CERR wishes to use the Yard Center Facility, it must step into the shoes of CSXT's ownership stake in its entirety.

First, pursuant to the UP/CSXT joint facility agreement, all of the joint facility property is explicitly non-severable. *Id.* at 91 ("Neither party shall have the right or power to assign or transfer any interest or right under this Agreement separate and apart from a sale, assignment, transfer or lease of all or substantially all of its lines of railroad, except with the written consent of the other Party."). As a result, Consumers cannot assume that it would have access to a small part of Yard Center without fully accounting for all of the costs incurred by CSXT in the real world.

Second, although CSXT does not use Yard Center to conduct interchanges in the real world, it holds a 50% ownership interest in that facility. Accordingly, the CERR would have to account for this same share of ownership in order to use Yard Center for interchanges. The agreement explicitly recognizes the responsibility of each party paying its ownership share even if usage of the respective facility is low. In particular, the agreement provides that "Cost and expense, when related to the ownership interests of the Parties or to the protection and preservation thereof shall be apportioned equally as ownership costs, and when related to use thereof shall be apportioned on the use basis applicable" *Id.* at 78.

To avoid incurring the costs of stepping into CSXT's shoes in order to gain access to the Yard Center facility, on Reply CSXT provides that the CERR build a greenfield 2.89 mile interchange track around the east side of the Yard Center facility.⁴ This interchange track connects back with the jointly owned UP/CSXT mainline at virtually the same point as in Consumers' original configuration. This modification to the CERR configuration requires the relocation of one railroad bridge and one overpass included in Consumers' Opening Evidence. As recognized by Consumers, it is necessary to grade separate these crossings to maintain the 1.8 mile distance clear required for CERR trains to hold during interchanges without obstructing traffic. This modification will result in significant savings to the CERR as construction of the 2.89 mile interchange track is a fraction of the expense that would result from acquisition of 50% of the entire yard, which includes an intermodal facility and more than 50 yard tracks. It is estimated that the cost to build Yard Center would exceed \$50 million, resulting in at least a \$25 million charge to the CERR. In comparison, the cost to construct this relocated 2.89 mile interchange track and associated bridges is approximately \$4 million above Consumers original cost.

Cottage Grove Avenue. CSXT modifies the configuration of the CERR's 2.2 mile interchange track at Dolton going north to CSXT. Consumers' proposed configuration has this track blocking the intersection of Lincoln and Park Avenue and Cottage Grove Avenue while CERR trains sit for 30 minutes during

⁴ See CSXT Reply Ex. III-B-2.

interchange. Since the intersection of Lincoln and Park Avenue is less than a tenth of a mile east of the connection with UP, CERR trains may hold on the interchange track east of the crossing, but Cottage Grove Avenue is over half a mile east of the connection and divides the clear length of the interchange track so that the CERR's longer trains may not hold without blocking the crossing. CSXT engineers determined the most cost effective manner to provide for a track allowing the CERR's longer trains to interchange without blocking road crossings is to construct a greenfield highway overpass carrying Cottage Grove Avenue over the CERR's double main and interchange tracks. This modification is depicted in CSXT Reply Exhibit III-B-3.

Curtis Interchange

Consumers' proposed configuration of Curtis junction includes one 2.4 mile long interchange track that fouls Clark Road. This clear length is necessary to hold CERR coal trains for 30 minutes during interchange. CSXT engineers determined the most cost effective way to facilitate this interchange is to build a greenfield flyover that carries the long interchange track over Clark Road. This modification is depicted in CSXT Reply Exhibit III-B-4.

Pine Junction

Consumers did not account for CSXT's Buffington Connection at Pine Junction, which provides access to the NS line north towards Rock Island Junction at CP501. Since CERR trains moving to and from the Willow Creek Subdivision to the BRC via NS trackage require this connection, CSXT engineers added this

0.6 mile connection track. The Buffington Connection is depicted in CSXT Reply Exhibit III-B-5.

d. Total Route Mileage

The route miles for CSXT's and Consumer's proposed configurations compare as follows:

**Table III-B-1
CSXT Reply CERR Route Miles**

	Opening	Reply	Difference
<u>Fully Owned Main Line Miles</u>			
22 nd St/Ogden Jct. to Curtis	32.70	32.70	0.00
Porter to West Olive	122.20	122.20	0.00
<u>Fully Owned Interchange Miles</u>			
Dolton Interchange Track	3.24	3.24	0.00
Campbell Plant Lead Track	2.38	2.38	0.00
Buffington Connection	0.00	0.60	0.60
<i>Subtotal (Fully Owned)</i>	<i>160.52</i>	<i>161.12</i>	<i>0.60</i>
<u>Partially Owned Main Line Miles</u>			
BRC (75 th St. to Rock Island Jct.)	8.13	8.13	0.00
IHB (Calumet Park to IHB Blue Island Yard)	0.00	6.40 – 1/	n/a
<i>Subtotal (Partially Owned)</i>	<i>8.13</i>	<i>8.13</i>	<i>0.00</i>
Total CERR Constructed Route Miles	168.65	169.25	0.60
<u>Trackage Rights Operating Miles</u>			
(NS) Rock Island Jct. to Curtis/Pine Jct.	12.50	12.50	0.00
(NS) Curtis/Pine Jct. to Porter, IN	12.60	12.60	0.00
(BNSF) 22 nd St. to Cicero	3.30	3.30	0.00
(UP) Ogden Jct. to Proviso/Global 2	12.40	12.40	0.00
(BNSF) Brighton Park to Corwith	3.50	3.50	0.00
(IHB) Calumet Park to IHB Blue Island Yard	6.40	0.00 – 1/	-6.40
(UP) Ogden Jct. to Global 1	0.40	0.40	0.00
(UP/CP) Ogden Jct. to Bensenville	14.60	14.60	0.00
<i>Subtotal (Trackage Rights)</i>	<i>65.70</i>	<i>65.70</i>	<i>-6.40</i>
Total CERR Operating Miles	234.35	228.55	-5.80
1/ - CSXT develops construction costs for this 6.4 route mile segment but does not include them in its final cost or route mile calculations because it excludes the CERR traffic that uses this segment for a separate reason			

Source: CSXT Reply WP "CERR Route Miles_Reply", tab "Tables"

2. Track Miles and Weight of Track

Consumers assumed that the CERR would require a total of 233.38 miles of main line, interchange, setout, and yard tracks. See Consumers Op. III-B-12, Table III-B-3.

CSXT's Reply Evidence provides the additional trackage the CERR would need to serve its selected traffic group. With the additions and modifications posited by CSXT, the CERR would have a total of 249.12 miles of track, consisting of 224.83 miles of main line track, 10.86 miles of interchange track, 2.0 miles of setout and helper track, and 11.43 miles of yard track. As discussed above, this includes 8.13 miles of partially owned route miles on the BRC and 6.40 miles of partially owned route miles on the IHB, pro-rated by CSXT's ownership share of those lines, which the CERR must account for if the Board allows Consumers to include the traffic that moves over this segment.

**Table III-B-2
CSXT Reply CERR Constructed Track Miles⁵**

	Opening	Reply	Difference
Main line track – Single first main track ^{1/}	168.65	168.65	0.00
– Other main track ^{2/}	<u>41.38</u>	<u>43.38</u>	<u>2.00</u>
Total main line track	210.03	212.03	2.00
Interchange Tracks	10.06	10.66	0.60
Setout tracks	2.00	2.00	0.00
Yard tracks ^{3/}	11.29	11.43	0.14
Total track miles	233.38	236.12	2.74
^{1/} Single first main track miles equal total constructed route miles, including the lead track to the Campbell Plant and the Dolton Interchange track. This also includes 8.13 route miles of the BRC (but does not include the 6.4 route miles of IHB in Reply)			
^{2/} Equals total miles for constructed second main tracks/passing sidings including the BRC segment but not the IHB segment.			
^{3/} Includes all tracks in the Barr Yard.			

a. Main Lines

Consumers posited that the CERR would construct and operate two mainline segments, the first between 22nd Street/Ogden Junction and Curtis and the second between Porter and West Olive. The 22nd Street to Curtis segment totals 32.70 miles and the Porter to West Olive segment totals 122.20 miles. CSXT generally accepts Consumers’ configuration, but adds one 2.0 mile siding on the Porter to West Olive line, which is necessary to accommodate the issue traffic coal trains that are often held outside of the plant until Consumers is ready to accept them.⁶

⁵ See CSXT Reply WP “CERR Route Miles_Reply”, tab “Tables.”

⁶ CSXT described the need for this siding to Consumers in discovery. See CSXT Reply WP “Description of Movements in Chicago.pdf” at 5.

The CERR main line track and passing sidings between 22nd Street and Curtis, IN would be constructed with new 136-pound continuous welded rail (“CWR”). *See* Consumers Op. III-B-13. The main line track between Porter and West Olive would be constructed with new 115-pound CWR. *Id.* CSXT accepts Consumers’ proposed specifications for main line tracks with the exception of certain curved track on CERR high density lines that CSXT replaces with premium rail.

b. Branch Lines.

The CERR has no branch lines.

c. Sidings

The miles and specifications of sidings are discussed above. CSXT generally accepts the specifications of the CERR’s sidings. However, as described above, Consumers failed to build a siding located near the Campbell plant that Consumers’ trains utilize with regularity in the real world. Accordingly, in Reply, CSXT requires that the CERR build an additional 2.0 mile siding between West Olive and Porter. This siding is referred to as the Wells Siding, located between mileposts CG 41.4 and CG 43.4. Daily coal reports and trainsheets produced in discovery show Consumers frequently has CSXT hold trains on this siding while it clears tracks at its J.H. Campbell generating station.⁷

⁷ See CSXT Reply WP “Holding Consumers Loaded Trains.xlsx” and “Description of Movements in Chicago.pdf” at 5.

d. Other Tracks

Consumers' proposed CERR configuration includes certain other categories of track, including yard tracks, interchange tracks, maintenance-of-way equipment storage tracks, and set-out tracks. CSXT's proposed track configuration likewise includes such facilities.

Consumers proposed using doubled-ended tracks, 860 feet in length placed on either side of Failed Equipment Detectors. Consumers Op. III-B-14. Set out and helper tracks will consist of 115-pound new CWR. *Id.* CSXT accepts Consumers' configuration of helper pocket and other setout tracks.

3. Yards

CSXT accepts Consumers' proposed yard configuration with the exception of adding a 750-foot bad ordered car storage track at Barr Yard. This is necessary to store bad ordered issue traffic cars that are delivered by BNSF and must be held for the next train to West Olive. As described in Section III-C below, Consumers failed to account for any cars that are bad ordered while en route on the BNSF system. Rather than require that Consumers mirror CSXT's operations identically, CSXT proposes that the bad ordered cars would be delivered to the CERR at Barr Yard. Accordingly, the CERR will require a storage track within the yard upon which to store these cars prior to being switched into a train for transport to Campbell.

Consumers specifies that all yard tracks use 115-pound new CWR rail, which CSXT accepts.

4. Other

a. Joint Facilities

In addition to the CSXT/UP Yard Center facility discussed above, Consumers contemplates that the CERR will operate over two railroads in which CSX maintains partial ownership. CSXT modified the CERR's operations in order to avoid the cost of joint ownership at Yard Center. *See supra* III-B-3 to III-B-5. And Consumers acknowledged that it must account for CSXT's ownership share of the BRC. Consumers Op. III-B-6 to III-B-7. Yet Consumers does not account for CSX's ownership share over the IHB. In the event that the Board allows Consumers to keep the traffic it selected that operates over this line, Consumers must account for the costs that CSX incurs in the real world.

i. **Consumers Must Account For A Share Of The IHB's Construction Costs If The CERR Is To Use CSXT's Operating Rights On The IHB.**

Consumers contemplates that the CERR would operate over two terminal railroads that are partially owned by CSX. CERR trains would operate in Chicago over BRC lines from 75th Street to Rock Island Junction; CSXT owns 25% of BRC. And CERR trains would operate over IHB lines from Calumet Park to Blue Island; CSX has a 21.42% ownership interest in IHB that it acquired in the *Conrail* transaction.⁸ CSXT's operating rights on each of these railroads are part and parcel of the ownership interest that CSXT (or its parent CSX Corporation) holds in those railroads. CSXT's rights are the rights of an owner—not the rights of a mere

⁸ *Conrail Acquisition Order*, 3 S.T.B. at 292 (“NS and CSX will hold 29.58% and 21.42% interests in IHB, respectively, with [Soo Line Railroad Company] continuing to hold a 49% share.”).

trackage rights user—and the SAC analysis must account for that partial ownership interest.

The Board recognized in *DuPont* that if a SARR intends to step into the shoes of an incumbent railroad to use its operating rights on facilities in which the incumbent railroad has an ownership interest, the SARR must account for construction costs proportional to that ownership interest.⁹ To its credit, Consumers acknowledges this principle as to the BRC, and accounts for CSXT's BRC ownership share by including 25% of the construction costs for BRC lines used by the railroad. But Consumers does not account for CSXT's partial ownership of the 6.4 miles of IHB track over which the CERR would operate, and instead treats them as mere "trackage rights." It does so even though CSXT acquired those rights in the same *Conrail* transaction in which CSX paid for a share of Conrail's ownership interest in the IHB. CSXT's rights are thus not rights acquired in an arms-length transaction between unaffiliated carriers—they are the rights of an owner, and if the CERR wants to use those rights it cannot ignore that ownership.

ii. Assuming That a SARR Can Use "Trackage Rights" Over Joint Facilities Without Replicating CSXT's Ownership Interest Violates SAC Principles and Board Precedent.

SAC theory rests on the principle that the SARR will replicate the full stand-alone costs of providing service. As a result, the Board and its predecessor have long been skeptical of proposals that a SARR would use trackage rights to operate over lines owned by the defendant railroad. The ICC expressed this skepticism in

⁹ See *DuPont*, STB Docket No. 42125, at 27-28.

its foundational *Coal Rate Guidelines*, stating “a SAC presentation based on trackage rights over the very facilities to which the rate at issue applies is not useful, since the SAC determination would be no different from the ultimate issue in the case.”¹⁰ This principle was expanded upon in *PEPCO* and *AEPCO 2011*, and led to the Board’s decision in *DuPont* that a SARR must account for construction costs of partially-owned facilities.

In *PEPCO v. Conrail*, the first case to be decided under the SAC constraint, the ICC rejected the complainant’s assumption that its SARR could “operate using trackage rights over Conrail’s existing system.”¹¹ The ICC found that PEPCO’s proposal was “entirely at odds with the very nature and purpose of stand-alone costing in our constrained market pricing approach.”¹² The ICC concluded that the trackage rental fee proposed by PEPCO was based on marginal costs, and did not account for fixed common costs.¹³ The ICC did not entirely foreclose use of trackage rights in future cases, but it made clear that trackage rights would have to be valued in a way that fully accounted for all fixed costs.¹⁴

In *AEPCO 2011*, the Board reaffirmed that a SAC complainant cannot avoid construction costs by assuming that the SARR would use trackage rights over a

¹⁰ *Coal Rate Guidelines*, 1 I.C.C.2d at 543 n.60.

¹¹ *Potomac Elec. Power Co.*, 367 I.C.C. 532, 551 (1983) (hereinafter, “*PEPCO*”).

¹² *Id.* at 552.

¹³ *Id.*

¹⁴ *Id.* at 552-53.

defendant carrier's facilities.¹⁵ Specifically, the Board rejected AEPCO's assumption that its SARR could use the existing facilities of one of the two defendants and account for the costs of those facilities by paying a trackage rights fee.¹⁶ The STB found that AEPCO failed to show that the trackage rights fee would cover the full costs of the facilities and therefore that it failed to satisfy the purpose of the SAC test.¹⁷

In *DuPont*, the Board specifically considered these principles in the context of a railroad with operating rights over a partially-owned joint facility.¹⁸ The Board concluded that SAC principles required that the SARR account for construction costs proportional to the incumbent's ownership interests in the joint facility, so long as the railroad meets its burden to "demonstrate the relationship of the joint facility entity and the costs and revenue realized by the railroad as a result of that relationship."¹⁹ In *DuPont* the Board refused to account for construction costs of Conrail Shared Asset Areas and the IHB after accepting an argument DuPont made on Rebuttal that those entities were owned by NS's parent and thus "are not listed in NS's R-1 data."²⁰ NS petitioned for reconsideration on the issue, pointing out that there is no meaningful distinction between facilities partially owned by NS Rail and NS Corp. and that the stand alone costs of providing rail service has

¹⁵ See *AEPCO 2011*, STB Docket No. 42113, at 8-11.

¹⁶ See *id.*

¹⁷ See *id.*

¹⁸ See *DuPont*, STB Docket No. NOR 42125, at 27-28.

¹⁹ *Id.* at 49.

²⁰ *Id.*

nothing to do with whether the Board's reporting rules require particular corporate entities to be listed on Schedule 310 to NS's R-1. However, the Board did not reach the issues presented in Norfolk Southern's Petition for Reconsideration because the challenged rates were found to be reasonable.²¹

iii. Because the CERR Only Can Step Into CSXT's Shoes on the Same Terms Applicable to CSXT, It Cannot Use CSXT Operating Rights on the IHB Without Replicating CSXT's Ownership Interests in Those Facilities.

The record is clear that CSXT acquired its operating rights on the IHB at the same time and in the same transaction in which CSX became a partial owner of the IHB. As such, the stand-alone costs of SARR operations using those rights must include CSX's partial ownership interest.

The Board's approval of the acquisition of Conrail recognized that Norfolk Southern and CSX jointly acquired Conrail's 51% interest in the IHB.²² The *Conrail Acquisition Order* stated that following the transaction "NS and CSX will hold 29.58% and 21.42% interests in IHB, respectively, with [Soo Line Railroad Company] continuing to hold a 49% share."²³ The *Conrail Acquisition Order* recognized that CSX would be acquiring Conrail's operating rights over the IHB as

²¹ See Norfolk Southern's Pet. for Reconsideration, STB Docket No. 42125 (November 12, 2014); *E.I. DuPont de Nemours & Co. v. Norfolk S. Ry. Co.*, STB Docket No. 42125 (served Dec. 23, 2015).

²² See *Conrail Acquisition Order*, 3 S.T.B. at 229. In the *Conrail Acquisition Order*, the Board referred to CSX Corp. and CSXT (and other affiliates) collectively as "CSX," implying that the ICC recognized that the entire CSX family would be benefitting from the acquisition of Conrail, including the acquisition of the ownership interest in the IHB. See *id.* at 207 n.3.

²³ *Id.* at 292.

part of the transaction.²⁴ It did so by succeeding to Conrail's interest in IHB 101X, the operating rights agreement that Consumers proposes that the CERR could use.²⁵

For the reasons detailed above, the CERR is only allowed to assume CSXT rights under the "stepping into the shoes" construct if the CERR's rights are subject to the same terms and conditions that apply to CSXT's rights. A SARR is permitted to "have the benefit of the same opportunities under the same terms" as the incumbent, but it may not hypothesize different or more favorable arrangements.²⁶ Here, that means that Consumers cannot assume that the CERR could have the benefit of using IHB 101X without accounting for the IHB ownership share that CSX acquired to obtain those operating rights.

In essence, Consumers is proposing that a third party railroad with no ownership in IHB should pay the same rate as a co-owner of IHB—even though the owners' rate that CSX pays would not include an interest rental component. Owning carriers are entitled to charge trackage rights fees that recover both costs and rent.²⁷ Rent is based on an allocated share of return on the value of property.²⁸ Because CSXT's rights to operate on the IHB are part and parcel of its

²⁴ See *id.* at 229 (ordering that "certain trackage rights of Conrail over IHB will be assigned or made available . . . to be operated by CSX").

²⁵ See CSXT Reply WP "IHB101X.pdf" at CSX-CNSMR-HC-028500 (January 3, 2002 letter in the IHB contract file noting that "CSX acquired the 1907 Trackage Rights Agreement between the [IHB] and the former Consolidated Rail Corporation.").

²⁶ *AEPCO 2002*, 6 S.T.B. at 328 (citing *West Texas*, 1 S.T.B. at 673 n.74).

²⁷ See *SSW 1987*, 4 I.C.C.2d at 668.

²⁸ See *id.* at 670.

simultaneously-acquired ownership interests in the IHB, the fees that CSXT pays to the IHB do not include any interest rental component.²⁹ There is no reason for the IHB to charge a rental fee to its owners. But it would surely charge a rental fee to a non-owner.

While it might be possible for the CERR to posit a trackage rights fee that includes an additional rental fee component, it did not do so. Accordingly, the simplest solution is to include CSX's share of the investment. But whichever path is taken, in a contestable market the simulated competitive rate must include the rental component to which the owner of the property is entitled. A hypothetical SARR could not enter the marketplace and use the IHB facilities without paying a rental fee for the use of the property.

iv. The Fact That The Partial Ownership Interest In IHB Is Held By CSX Rather Than CSXT Is Irrelevant to Whether Consumers Must Account for the Full Stand-Alone Costs of Operations Over the IHB.

In *DuPont* the Board held that a SARR did not have to account for the costs of operating over Norfolk Southern-owned IHB lines on the theory that Norfolk Southern's ownership interest was held by NS Corp. and thus was not reflected in its R-1.³⁰ Respectfully, this reasoning does not accord with the realities of real-world railroading, and it results in a SAC analysis that allows the reasonableness of

²⁹ *SSW Compensation (1984)*, 1 I.C.C.2d at 779-80 (holding that compensation must be designed to account for "an interest rental component representing return on investment").

³⁰ *DuPont*, STB Docket No. NOR 42125, at 27-28.

a rate to be determined without accounting for the full costs of serving the traffic at issue.

It is well established that a SARR does not have to replicate the structure of the incumbent railroad. Several Class I railroads have multilayered organizational structures, in which the railroad is a wholly-owned operating entity of a broader holding company. For example, CSXT is a wholly-owned operating subsidiary of CSX Corp., and CSXT receives a variety of services from CSX Corp., as well as from its sister subsidiaries. As detailed in CSXT's R-1, CSXT compensates CSX Corp. through service fees for certain services in "the areas of strategic management, human resources, finance, legal, tax, and marketing."³¹ CSXT also compensates sister subsidiaries for some services, including services related to technology and insurance.³²

The CERR is of course not required to replicate this corporate structure. But at the same time, the CERR can not simply ignore necessary functions just because they are performed by CSX Corp., CSX Technology, or CSX Insurance rather than CSXT. The SARR is required to account for all the costs of serving the traffic it selects, regardless of which CSX corporate entity performs analogous work in the real world. Put differently, it would be unreasonable to assume that CSX Technology would provide technological support to the CERR or that CSX Corp. would provide human resources, tax, or finance support to the CERR without

³¹ See CSXT, *Class 1 R.R. Annual Report to the Surface Transportation Board for the Year Ending December 26, 2014*, at 14A (2014).

³² See *id.*

compensation. But that is exactly what Consumers is assuming when it claims that the CERR does not have to account for ownership interests held by CSX. It is assuming that CSXT's corporate parent would allow an unaffiliated CERR to operate over joint facilities partially owned by CSX Corp. under the same terms that apply to CSXT itself. That is not a reasonable assumption.

Nor is there any relevance to the fact that the IHB (as a CSX-owned facility) does not appear in Schedule 310 of CSXT's R-1 as a CSXT-owned facility. Whether entities are listed in Schedule 310 is a function of the STB's reporting rules and has no impact on the SAC analysis.

In short, CSXT's corporate structure is not relevant to the SAC analysis—the only relevant question is whether the CERR is fully accounting for all the stand-alone costs of providing its service. To do so here, it must account for CSX Corp.'s ownership stake in the IHB.

b. Signal/Communications System

CSXT accepts Consumers proposed CTC traffic control system between Ogden Junction, IL and Curtis, IL and proposed non CTC “dark” territory signaling between Porter, IN and West Olive, MI.

c. Turnouts, FEDs and AEI Scanners

CSXT accepts Consumers' proposed FED locations, AEI scanners, and turnout specifications, except that it modifies the turnout types on the partially

owned BRC line between 75th Street and Rock Island Junction to match those currently in place³³.

d. RTC Model Simulation of CERR Configuration

A simulation of a SARR's operations can be used to test whether a complainant's proposed SARR configuration (including main line track capacity, yards, and other facilities) are adequate to enable the SARR to provide the necessary level of service to its selected traffic group.³⁴ CSXT conducted a simulation of the CERR's peak year operations utilizing the Rail Traffic Controller ("RTC") Model, based upon the physical infrastructure provided for in this Section III-B. The specific inputs to the RTC Model used by CSXT, and the results of that simulation, are discussed in Section III-C.

³³ See CSXT Reply WP "BRC Turnout Counts.pdf"

³⁴ See, e.g., *WFA II*, STB Docket No. 42088, at 16 (RTC model enables complainant to "test the adequacy of the configuration (to make sure the [SARR] would have sufficient capacity to handle the peak forecast demand)").

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III. STAND-ALONE COST

C. OPERATING PLAN

INTRODUCTION

A critical element of any SAC presentation is the operating plan for the SARR. The operating plan must be specifically tailored to serve the traffic group (including the issue traffic) selected by the complainant.¹ It must account for all of the traffic to be served, all of the services required to handle that traffic, and the location and terrain where the SARR will operate.² The complainant has the evidentiary burden to demonstrate that its operating plan is “feasible.”³ The Board’s requirements for a feasible SARR operating plan are well-established. While a complainant need not replicate exactly the existing practices of the defendant railroad, its operating plan must be capable of providing all of the services required to meet the needs of the SARR’s customers.⁴ Moreover, ***“the assumptions used in the SAC analysis, including the operating plan, must be realistic, i.e., consistent with the underlying realities of real-world***

¹ *AEPCO 2011*, STB Docket No. 42113, at 4; *see also Rate Regulation Reforms*, STB Ex Parte No. 715, at 5; *Xcel*, 7 S.T.B. at 610 (“The operating plan must be able to meet the transportation needs of the traffic the SARR proposes to serve.”); *TMPA I*, 6 S.T.B. at 589 (“[T]he SARR must meet the transportation needs of the traffic in the group by providing service that is equal to (or better than) the existing service for that traffic.”).

² *CP&L*, 7 S.T.B. at 245; *Otter Tail*, STB Docket No. 42071, at 6; *Xcel*, 7 S.T.B. at 598; *TMPA I*, 6 S.T.B. at 586.

³ *See, e.g., CP&L*, 7 S.T.B. at 259 (complainant carries the burden to provide a feasible operating plan).

⁴ *Duke/NS*, 7 S.T.B. at 99; *see also AEPCO 2011*, STB Docket No. 42113, at 28; *Xcel*, 7 S.T.B. at 610.

railroading.”⁵ Finally, “[t]he parties must provide appropriate documentation to support their [operating plan and expense] estimates.”⁶

Consumers’ operating plan fails to satisfy the Board’s standards for feasibility, for several reasons. Most importantly, the train operations portrayed in Consumers’ operating plan and RTC Model simulation are utterly inconsistent with the realities of real-world railroading. Every one of the trains selected by Consumers for inclusion in its SARR operates within and through the Chicago terminal area. As the Board knows, Chicago is the nation’s most important—and most congested—rail hub.⁷ Six Class I carriers operate lines in and through Chicago. Terminal railroads, including the Belt Railway of Chicago (“BRC”) and the

⁵ *WFA I*, STB Docket No. 42088, at 15 (emphasis added).

⁶ *See Rate Regulation Reforms*, STB Ex Parte No. 715, at 6; *AEPCO 2011*, STB Docket No. 42113, at 4-5.

⁷ Report of the Amtrak Chicago Gateway Blue Ribbon Panel, at 8 (Oct. 2015), available at <https://www.amtrak.com/ccurl/873/180/Chicago-Gateway-Amtrak-Blue-Ribbon-Panel-Final-Report.pdf> (hereinafter, the “Blue Ribbon Panel Report”); *Doing the Locomotion*, THE ECONOMIST (Feb. 13, 2016), available at <http://www.economist.com/news/business/21692867-second-golden-age-american-railroads-drawing-close-consolidation-may> (noting that Chicago still has “pressing congestion problems” and is “a bottleneck through which much of America’s freight is rammed”); Micah Maidenbergl, *Chicago is at the center of a railroad ‘street fight’*, CRAIN’S CHICAGO BUSINESS (Dec. 16, 2015), available at <http://www.chicagobusiness.com/article/20151216/NEWS10/151219876/chicago-is-at-the-center-of-a-railroad-street-fight> (describing Chicago as “the center of the North American freight rail system” and the “infamous bottleneck where virtually all the significant railroads have operations”); Jon Hilkevitch, *Study takes aim at rail gridlock in Chicago*, CHICAGO TRIBUNE (Oct. 1, 2015), available at <http://www.chicagotribune.com/news/local/breaking/ct-amtrak-rail-gridlock-met-1002-20151001-story.html> (“[R]ail gridlock [] is choking the flow of freight and passenger trains through northern Illinois and Indiana.”); John Schwartz, *Freight Train Late? Blame Chicago*, N.Y. TIMES (May 7, 2012), available at <http://www.nytimes.com/2012/05/08/us/chicago-train-congestion-slows-whole-country.html> (“When it comes to rail traffic, Chicago is America’s speed bump.”).

Indiana Harbor Belt Railroad Company (“IHB”), conduct extensive switching and transfer operations in the Chicago terminal area. One third of all rail freight traffic in the United States, and approximately 60% of all rail intermodal traffic,⁸ moves through the Chicago gateway. Approximately 500 freight trains carrying 50,000 freight cars traverse the Chicago terminal area every day, moving nearly 600 million tons of freight annually.⁹ The volume of rail freight moving in and through the Chicago region is projected to increase 62% by 2040.¹⁰

In addition to that massive volume of freight traffic, Chicago is home to extensive passenger rail operations. Daily passenger service is provided by Amtrak and Chicago’s “Metra” commuter rail service. Chicago is “the most important hub in Amtrak’s national network.”¹¹ Metra has the second largest ridership of any commuter rail operator in North America. Amtrak and Metra operate a combined 800 passenger trains in and around Chicago every weekday.¹²

The rail lines operated by freight and passenger railroads serving Chicago are interconnected, crossing one another at numerous rail “interlockings.” The SARR configuration posited by Consumers includes seven such points of intersection.¹³ A train approaches these diamonds approximately once every 15

⁸ Blue Ribbon Panel Report at 14.

⁹ *Id.*

¹⁰ *Id.* at 16.

¹¹ Blue Ribbon Panel Report at 10-12. Chicago’s Metra carries more than 83 million passengers a year and its ridership is second only to New York City. *See id.*

¹² *Fixing Chicago* at 31.

¹³ Consumers Op. III-C-73.

minutes.¹⁴ At one of the interlockings over which the CERR would operate—75th Street—“90 freight trains operated by four different carriers, 30 Metra trains and two Amtrak routes converge daily on a four-square-mile area.”¹⁵ With approximately 1,200 daily trains traversing the interconnected network of freight and passenger lines serving Chicago, congestion and delays are a part of life—even on the best of days. As witnessed in 2014, winter weather can severely disrupt rail operations through Chicago.¹⁶ Delays caused by severe weather conditions during the winter of 2014 resulted in “an unprecedented surge of railroad traffic across the northern part of the U.S.” which required “all year to clear up.”¹⁷ Even relatively minor service disruptions such as a broken rail or defective signal on one segment of the Chicago rail network can have a “cascading” effect on train movements throughout the city. Significant delays within the Chicago terminal area do not impact rail operations in the Chicago region alone. “A lone train stopped in Chicago can force other trains to stop or slow as far away as Los Angeles or Baltimore. It’s a ripple effect—everything in my system backs up.”¹⁸ Despite recent service improvements made possible by the CREATE project and other investments in rail

¹⁴ *Fixing Chicago* at 29.

¹⁵ Greg Hinz, *What will it take to unclog Chicago’s creaky rail network?*, CRAIN’S CHICAGO BUSINESS (Oct. 2, 2015), available at <http://www.chicagobusiness.com/article/20151002/BLOGS02/151009961/what-will-it-take-to-unclog-chicagos-creaky-rail-network>.

¹⁶ *Id.* at 16-17. In Fiscal Year 2014, the on-time percentages for six out of the eight Chicago-based Amtrak routes were less than 50%. *See id.*

¹⁷ *Fixing Chicago* at 29.

¹⁸ Blue Ribbon Panel Report at 36 (statement by Scott Haas, Vice-President, United Parcel Service).

infrastructure and technology, it can still take an average of 30 hours to cross Chicago—“about the same amount of time it takes the same train to travel from Chicago to the East Coast.”¹⁹

Consumers Opening Evidence posits a SARR that is virtually immune to the operating challenges that affect all railroads serving Chicago. Among the implausible assumptions upon which Consumers’ operating plan and RTC evidence are based are the following:

- Delays Transiting Chicago Terminal. CERR trains would be able to traverse the Chicago terminal in a fraction of the time that it takes CSXT and other railroads to do so. The 321 CERR trains in Consumers’ RTC simulation collectively encounter only 22 delays at rail interlockings over the nine-day modeling period, even though the data set forth in Consumers’ own workpapers document literally hundreds of such delays experienced by the real-world trains that the CERR purports to replicate.
- Altered Foreign Line Delay Locations. Consumers’ RTC modeling experts altered the real-world locations at which foreign line delays and other track outages occur in Consumers’ RTC simulation in a manner designed to enable other CERR trains to bypass such delays. Indeed, certain trains assigned a foreign line delay in Consumers’ RTC simulation dwell at a point *beyond* the interlocking at which the delay occurred in the real-world—effectively permitting the train to operate through a blocked rail crossing. As a result of Consumers’ modeling manipulations, CERR trains do not experience the “cascading” effect of delays and random track outages that affect all railroads serving Chicago.
- “Growth” Trains. Consumers posits that the CERR could handle {{ }} more merchandise traffic (more

¹⁹ Blue Ribbon Panel Report at 35.

than {{ }} additional cars) in the Peak Year, while operating only four “growth” merchandise trains. Indeed, Consumers’ RTC simulation does not contain a single “growth” train to accommodate increased merchandise traffic during the peak period of the Peak Year. Consumers’ “growth” train estimate is constructed on the faulty premise that connecting carriers would abandon the Interline Service Agreements (“ISAs”) pursuant to which the maximum length of trains moving through Chicago have been established, and that customers would alter their shipment patterns in a manner that would enable the CERR to avoid the need to operate “extra” train assignments. Because the CERR is an overhead carrier that would not classify or build any trains, the length of all CERR trains would be determined by the carriers with which the CERR would interchange traffic, *not by the CERR*.

- Complete Movement of Issue Traffic Carloads. Consumers’ operating plan fails to provide all of the train service required to transport the issue traffic. Specifically, while Consumers selected the unit trains in which its issue coal shipments move, it made no provision for the transportation of loaded issue cars that are bad-ordered on BNSF’s lines prior to their arrival in Chicago. In the real-world, bad-ordered Consumers cars are delivered to Chicago on a BNSF merchandise train. A CSXT yard transfer job brings the cars from BRC’s Clearing Yard to Barr Yard, where they are placed into a CSXT merchandise train for line-haul movement. The track network posited by Consumers does not include any route via which the CERR could replicate CSXT’s transfer service, nor does Consumers’ operating plan include any of the CSXT yard transfer or merchandise trains in which Consumers’ bad-ordered cars are transported—to the contrary, Consumers posits that the CERR would not be required to build any train or classify any cars.²⁰
- Crew Changes. Based on the absurdly understated train transit times generated by its RTC simulation,

²⁰ Consumers Op. III-C-28.

Consumers posits that “[t]here are no crew changes required on the CERR.”²¹ Indeed, Consumers’ train crew staffing estimate assumes that every CERR crew operating in Chicago could complete *two train movements through the busy Chicago terminal area during a single shift, every day.*

As a result of these (and other) flaws in Consumers’ Opening Evidence, its operating plan and RTC simulation do not reflect the realities of railroading in the Chicago terminal area and are not credible.

A. Consumers Posits A SARR That Is Virtually Immune From The Congestion And Delays That Affect All Trains Operating In The Chicago Terminal Area.

The train operations portrayed in Consumers’ Opening Evidence are, on their face, inconsistent with the realities of real-world railroading. Every train selected by Consumers for inclusion in its SARR operates in the Chicago terminal—indeed, all CERR trains other than the unit trains handling Consumers’ issue traffic operate *exclusively* within the greater Chicago area. Chicago is by far the busiest and most congested rail hub in the United States. The challenges experienced by real-world carriers in operating through and within Chicago, and the service delays resulting from traffic congestion, capacity constraints, weather conditions and other daily occurrences are well-documented. The fundamental premise underlying Consumers’ operating plan is that the CERR would inject itself as an additional “overhead” carrier in the interline operations conducted by CSXT and its Chicago interchange partners, thereby further complicating the movement of Consumers’

²¹ Consumers Op. III-C-65.

selected traffic. Yet Consumers posits a SARR that is virtually immune to the operating difficulties that affect all railroads serving Chicago.

In Consumers' RTC simulation, the vast majority of CERR trains traverse the Chicago terminal area in a fraction of the time that it takes real-world trains to do so. For example, Consumers posits that CERR trains moving westbound from Curtis, IN (one of three locations at which the CERR would establish a new interchange with CSXT) to CSXIT's 59th Street intermodal facility would, on average, traverse that segment in 2:14:05²²—less than half of the 5:38:39 that it took the real-world CSXT trains during the Base Year.²³ CERR trains operating in the opposite direction from 59th Street to Curtis make the journey in only 1:55:54, again less than half of the 4:07:17 average transit time experienced by CSXT's trains in the real-world.²⁴ Likewise, in Consumers' RTC simulation, CERR trains operating between Curtis and 22nd Street (the east and west termini of the CERR system) complete the journey in only 3:01:23 eastbound and 3:13:26 westbound, compared to CSXT's real-world average transit times of 5:30:04 eastbound and

²² Average transit times are shown in the Hours:Minutes:Seconds format.

²³ See Consumers Op. WP "5.1 Transit Times Comparison Hist vs. RTC.xlsx," tab "Train Transit Summary WORK," Line 13. The transit times projected by Consumers include the dwell time required for CERR to receive trains in interchange from CSXT and other connecting carriers. Thus, *the difference between Consumers' projected over-the-road transit times and CSXT's real-world transit times is even greater.*

²⁴ See *id.*, Line 6.

8:22:33 westbound.²⁵ Consumers posits similarly expedited transit times over virtually every CERR track segment in the Chicago terminal area.²⁶

Consumers does not explain how its SARR could achieve such a dramatic improvement in train velocity. *Consumers does not identify any alleged inefficiencies in CSXT's current train operations*—to the contrary, the CERR purports to operate the CSXT trains that Consumers selected for its traffic group over the same routes and on the same schedule as real-world CSXT trains. Nor can the fact that the CERR operates fewer road trains than CSXT explain the enormous disparity between the train transit times generated by Consumers' RTC simulation and CSXT's real-world experience. The most substantial delays incurred by CSXT trains moving through Chicago occur at locations where its lines cross the lines of foreign railroads at interlockings that are not controlled by CSXT. The lines replicated by the CERR cross those same foreign-controlled interlockings at seven locations, and CERR trains would experience the same delays at those locations as CSXT does today.²⁷

The unrealistic train transit times posited by Consumers are generated by an RTC Model that fails to account in any meaningful fashion for delays attributable to conflicting train movements, or the cascading effect that a delay to one CERR train would have on following CERR train movements. As CSXT demonstrates below, Consumers' RTC Model accounts for only a tiny fraction of the delays that CERR

²⁵ See *id.* Lines 1 and 10.

²⁶ See *id.*

²⁷ See Consumers Op. III-C-73-74.

trains would encounter as they move through the Chicago terminal area— Consumers ignored hundreds of additional foreign crossing delays that appear elsewhere in Consumers’ own workpapers. Consumers’ RTC Model also fails to account properly for the significant delays that CERR trains would incur waiting for authorization to move beyond the SARR lines at Brighton Park (to BNSF’s Corwith Yard), 22nd Street (to BNSF’s Cicero Yard) and Ogden Junction (to UP’s Proviso Yard).

Moreover, *Consumers’ RTC experts modeled delay events to occur at locations other than where those events occurred in the real-world.* Indeed, 15 of the 22 foreign crossing delays in Consumers’ RTC simulation were modeled to occur at CERR’s Barr Yard, rather than at the foreign interlockings at which the subject trains were actually held during the Peak Year. This enabled Consumers to posit that the subject trains would dwell in Barr Yard rather than on the main line near the blocked interlocking, thereby avoiding any interference with (or delays to) other CERR trains. These modeling decisions had the effect of eliminating entirely the cascading effect that a blocked crossing or other unplanned track outage would have on following CERR trains. Indeed, Consumers’ RTC Model assumes that such delays would affect only a single train, and that *following CERR trains could “pass” the stopped train on an adjacent track.* Obviously, this assumption fails to treat the crossing as “blocked.” In essence, Consumers’ RTC experts modeled the CERR’s lines as if they were a self-contained system not subject to the effects of any external circumstances or foreign carrier operations, rather than part

of the complex and densely utilized rail network serving the Chicago terminal area. As a result of these fatal flaws in Consumers' RTC Model, the transit times generated by its RTC simulation do not reflect the reality of everyday railroading in the Chicago terminal area and are not credible.

The data upon which Consumers' RTC experts relied in modeling delays at foreign-controlled interlockings is set forth in Consumers' workpaper "Foreign Line Delays WORK.xlsx," tab "Peak Forgn Delays for RTC 54pct." (referred to hereinafter as "Consumers' Foreign Line Delays Workpaper").²⁸ According to Consumers, its experts "analyzed this data and included such delays corresponding to the peak week being analyzed in the RTC Model."²⁹ Specifically, Consumers whittled down records for hundreds of "Foreign Line Delays" listed in that workpaper to a group of 42 delays that (Consumers concluded) applied to the nine-day period modeled by Consumers. Consumers then selected 22 of those delay events to input to its RTC Model.³⁰ The workpaper suggests that the 22 selected foreign crossing delays were assigned "randomly" to trains in Consumers' RTC Model.³¹

Consumers' methodology for modeling the impact of foreign line crossing delays on CERR's peak period trains is fatally flawed:

²⁸ Consumers Op. III-C-73 to III-C-74.

²⁹ Consumers Op. III-C-74.

³⁰ The 22 delay incidents set forth on the top half of Consumers Foreign Line Delays Workpaper were input to Consumers' RTC Model, while the 20 additional incidents in the lower half of that workpaper were not.

³¹ See Consumers Op. WP "Foreign Line Delays WORK.xlsx," tab "Peak Forgn Delays for RTC 54pct," Column B ("Seed Train Matched to Random Number").

First, the 22 delays that Consumers input to its RTC Model represent a tiny fraction of the delays that the real-world CSXT trains selected by Consumers for its SARR actually experienced during the Base Year. The delays set forth in Consumers' Foreign Line Delays Workpaper include only those delay events that were reported specifically by the CSXT train crew as a "Foreign Line Delay." The Train Sheet data produced by CSXT in discovery—which Consumers utilized for a variety of purposes³²—identified *hundreds* of additional instances during the peak period in which trains selected by Consumers for its SARR reported an "Enroute Train Delay" at or near a foreign-controlled interlocking. Consumers was certainly aware of those delays to its selected trains—Consumers' workpaper "Peak Unit Merch Trains v5 20151009 w Peak LE Consist and Growth Trains w delayv4.xlsx" specifically identifies 1,195 delay events—including *642 "Enroute Train Delays"—that Consumers associated with a CERR peak period train.*³³ As Figure III-C-1 shows, 203 of the "Enroute Train Delays" included in the Consumers workpaper occurred at or near a foreign-controlled grade crossing.

³² See Consumers Op. III-C-50 to II-C-60 "Analysis of Train Sheet Data," (describing how Consumers used the CSXT Train Sheet data in identifying which trains moved on SARR lines, selecting trains, identifying the on-SARR and off-SARR locations for its selected trains, developing train consist information such as number of loaded and empty cars, and developing timestamps for transit time comparison).

³³ See Consumers Op. WP "Peak Unit Merch Trains v5 20151009 w Peak LE Consist and Growth Trains w delayv4.xlsx," worksheet "peak_week," columns V and W.

FIGURE III-C-1
Enroute Train Delays To SARR Trains at Certain CERR Locations³⁴

Delay Reporting Locations	10-15 Mins	15-60 Mins	1+ Hour	Total
At/Near Northern Terminus of CERR (where CERR would operate to BNSF or UP (e.g. Brighton Park, 22 nd Street))	20	82	42	144
At/Near Foreign RR Grade Crossings (e.g., State Line, Dolton)	43	126	34	203
Total	63	208	76	347

Nearly 80% of the 203 “Enroute Train Delays” at or near foreign grade crossings shown in Figure III-C-1 resulted in a delay of 15 minutes or more, and 34 (or 17%) of those delays caused the train to stop for an hour or more. In the real world, delays of similar duration affect trains operated by CSXT and other carriers in the Chicago terminal area on a daily basis. Consumers’ inexplicable failure to account for the “Enroute Train Delays” at or near foreign crossing locations *that appear in Consumers’ own workpapers* renders the transit times generated by its RTC simulation unreliable.³⁵

Second, Consumers compounded its failure to account for foreign crossing delays reported as “Enroute Train Delays” by dropping nearly half of the 42 delay

³⁴ Consumers Op. WP “Peak Unit Merch Trains v5 20151009 w Peak LE Consist and Growth Trains w delayv4.xlsx.”

³⁵ Consumers Op. WP “Peak Unit Merch Trains v5 20151009 w Peak LE Consist and Growth Trains w delayv4.xlsx,” tab “peak_week” contains a total of 1,195 delays to CSXT trains during the peak period. The RTC Model is ill-suited to account for every type of event that may delay a train movement. CSXT’s Reply RTC Model incorporates those delays shown in the data that were caused by foreign train crossing conflicts and random track outages such as a broken rail or signal failure. The hundreds of other train delays listed on Consumers’ workpapers reflect the cascading impact of delay events on multiple trains.

incidents identified in Consumers' Foreign Line Delays Workpaper. A note in that workpaper explains that 20 delay incidents were removed "to reduce number of trains impacted with delays to 54% of number of trains with [real-world] delays. Puts CERR in proportion, 54% of CSX traffic, to CSX [sic]."³⁶ In other words, Consumers' decision to drop 20 of the 42 delay incidents was premised on the assumption that, because the CERR would operate only 54% of the road trains operated by CSXT on the lines replicated by the SARR during the Base Year, its trains would encounter delays at foreign crossings only 54% as frequently as CSXT did during the Base Year.

This underlying premise is demonstrably incorrect. The number of instances in which a CERR train would encounter a delay at a foreign-controlled interlocking would not (as Consumers' analysis assumes) be directly proportional to the total number of trains that the CERR would operate. Rather, the likelihood that any particular CERR train would be held by a dispatcher controlling a foreign rail crossing would depend on a variety of factors, including traffic volume on the *foreign carrier's* line and the time of day (and day of the week) on which that CERR train was attempting to cross the interlocking. Train conflicts at interlocking locations are not distributed uniformly throughout the day—train delays are both more frequent and longer in duration during peak operating hours and on the busiest days of the week. Moreover, a delay to one train held at a foreign-controlled interlocking can have a cascading impact on trains moving behind the stopped

³⁶ See Consumers Op. WP "Foreign Line Delays WORK.xlsx," tab "Peak Forgn Delays for RTC 54pct," cell A38.

train—that is why many of the trains selected by Consumers reported “Enroute Train Delays” at locations “upstream” of an interlocking. Consumers’ approach to accounting for train delays at foreign crossings ignores these realities of real-world railroad operations.³⁷

Consumers does not explain how it selected which of the 42 incidents on Consumers Foreign Line Delays Workpaper to include in its RTC Model and which to discard. A review of that workpaper indicates that the delay events excluded by Consumers had an average duration of 72 minutes, compared to an average duration of 49 minutes for those delays that Consumers did include in its RTC Model.³⁸ As a result, Consumers’ RTC evidence also assumes (without any basis) that foreign crossing delays encountered by the CERR would be significantly shorter in duration than those experienced by CSXT in its real-world operations. That assumption is demonstrably incorrect—the duration of a “hold” at a foreign-controlled interlocking is determined by the nature and duration of the conflicting train movement(s) occurring *on the foreign carrier’s lines*. Consumers has proffered no basis for assuming that crossing delays in the Peak Year would be shorter in duration than they are today.

³⁷ Consumers’ assumption that the CERR would experience only 54% of the foreign crossing delays that occurred in the real-world because the CERR operates only 54% of the trains that CSXT did during the Base Year also ignores the fact that the CERR would be required to operate additional “growth” trains to accommodate its Peak Year traffic volumes.

³⁸ See Consumers Op. WP “Foreign Line Delays WORK.xlsx,” tab “Peak Forgn Delays for RTC 54pct” Columns I-J (Delay Duration Hours and Minutes).

In short, the number of foreign rail crossing delays during the RTC peak period posited by Consumers is simply not credible. Consumers' RTC simulation modeled the movement of 321 CERR trains over a nine-day period, or approximately 36 trains per day.³⁹ Virtually all of those trains must traverse one or more Chicago interlockings that are controlled by a foreign dispatcher—indeed, trains operating on the Barr Subdivision between Barr Yard and Curtis would be required to operate over four such foreign rail crossings, at Dolton Tower (UP), Stateline (IHB), Republic (NS) and Calumet Tower (CN/IHB). Yet, Consumers posits that CERR's 36 daily trains would *collectively* experience only three delays per day on account of conflicting train movements at a foreign interlocking.

The nonsensical nature of Consumers' position is illustrated by its modeling of 23 CERR trains that operate between Calumet Park and Curtis during the nine-day peak period. In Consumers' RTC simulation, each of those 23 trains must cross four foreign-controlled interlockings, including Dolton Tower, one of the busiest rail crossings in the Chicago terminal area. In Consumers' RTC simulation, *not one of those 23 trains is held even once at a foreign interlocking—rather, they complete a collective 92 foreign line crossings without incurring a single minute of delay.* Such a fanciful result is not only flatly contradicted by the real-world data that CSXT produced in discovery (and by Consumers' own workpapers), it is utterly inconsistent with the reality of rail operations in America's busiest rail hub.

³⁹ Consumers Op. III-C- 62-63.

Third, Consumers modeled foreign line crossing delays (and various other peak period delays) in a manner designed to obscure the impact of those incidents on the fluidity of the CERR network. Because the data source that Consumers utilized to select foreign crossing delays for its RTC Model did not identify the specific trains that experienced those delays, Consumers' RTC experts chose the trains, dates, and times at which those delay incidents would occur in its RTC simulation. (The Train Sheet data, which Consumers elected *not* to use, included that information on a train-specific basis.) While Consumers Foreign Line Delays Workpaper suggests that Consumers assigned the 22 selected foreign crossing delays "randomly" to trains in Consumers' RTC Model, the manner in which those delays were modeled was anything but random.

Specifically, Consumers' RTC experts applied 15 of the 22 "Foreign Line Delays" in its RTC Model at mileposts located within the boundaries of CERR's Barr Yard (MP 242.99 to MP 245.20), rather than at the actual location of the blocked interlocking.⁴⁰ This enabled Consumers' RTC experts to "hold" the affected CERR trains in Barr Yard for the duration of the delay. For example, three of four "Foreign Line Delays" to eastbound CERR trains due to conflicting train movements at the UP-controlled Dolton Tower interlocking were modeled to occur at Barr Yard, rather than on the CERR main line in the vicinity of Dolton Tower.⁴¹ Several "IHB Foreign Line Delays" were likewise modeled to occur at Barr Yard, rather than at

⁴⁰ See Consumers Op. WP "Foreign Line Delays WORK.xlsx," tab "Peak Forgn Delays for RTC 54pct" Column G.

⁴¹ See Consumers Op. WP "Foreign Line Delays WORK.xlsx," tab "Peak Forgn Delays for RTC 54pct" Lines10, 11, 12, 26, Column G.

the State Line interlocking or other locations where the data show they actually occurred.⁴² Modeling foreign interlocking delays in that manner assumes that the CERR would know of the blocked interlockings before eastbound trains reached Barr Yard so that those trains could be held in the yard rather than on the main line. Such advance notice and perfect coordination of train movements rarely occurs in real-world operations in Chicago. This modeling decision was transparently designed to eliminate interference on the CERR main line and to prevent a foreign crossing delay to one train from having a cascading effect on following CERR train movements.

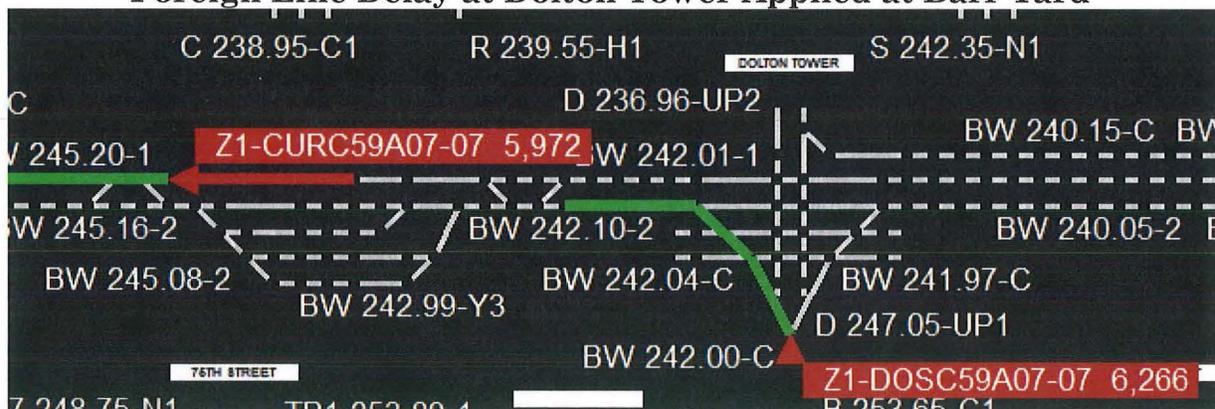
Consumers' Foreign Delays Workpaper also indicates that "[i]f a train [assigned one of the 15 selected delay events] already has an inspection dwell scheduled at Barr Yard, add the delay to the dwell." *Id.* In other words, Consumers sought to apply foreign crossing delays to trains that were already scheduled to stop at Barr Yard for an inspection, thereby avoiding multiple stops for that train and preventing the delay event from affecting other trains. The notion that a foreign crossing delay or other outage would conveniently coincide with a scheduled train inspection is both unsupported and unrealistic.

Even more bizarrely, Consumers' RTC experts modeled certain foreign crossing delays to *westbound* trains to occur at Barr Yard, even though the actual location of the blocked interlocking was several miles *east* of the yard. For example, the foreign crossing delays selected by Consumers for inclusion in its RTC

⁴² See Consumers Op. WP "Foreign Line Delays WORK.xlsx," tab "Peak Forgn Delays for RTC 54pct" Lines 16, 21, 22, Column G.

Model included a delay to Train Z1-CURC59A07, a westbound train operating on March 29, 2014. Consumers' Foreign Delay Workpaper describes the delay as a "UP Foreign Line Delay" with a duration of 27 minutes occurring at Dolton Tower (MP DC 10.7).⁴³ However, the workpaper indicates that the delay was applied to Train Z1-CURC59A07 at the west end of Barr Yard BW 245.20 ("W Barr XO"), approximately four miles west of Dolton Tower.⁴⁴ Figure III-C-2, a screenshot from Consumers' RTC simulation, depicts this delay event. While Train Z1-DOSC59A07 (properly) dwells south of the Dolton interlocking during the crossing blockage, Train Z1-CURC59A07 has (improperly) proceeded beyond Dolton to Milepost 245.20, where it dwells for 27 minutes.

FIGURE III-C-2
Foreign Line Delay at Dolton Tower Applied at Barr Yard



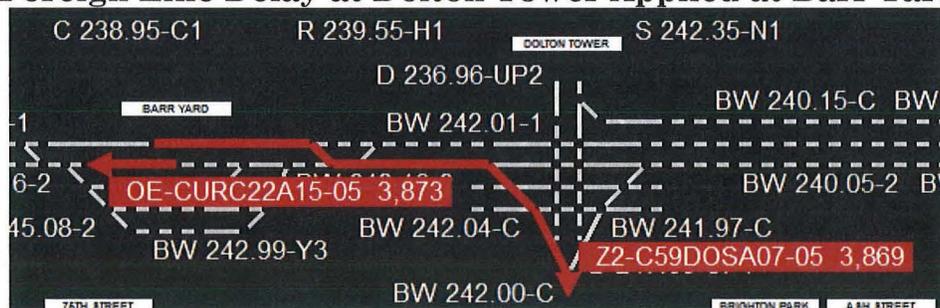
⁴³ See Consumers Op. WP "Foreign Line Delays WORK.xlsx," tab "Peak Forgn Delays for RTC 54pct," Line 19.

⁴⁴ See Consumers Op. WP "Foreign Line Delays WORK.xlsx," tab "Peak Forgn Delays for RTC 54pct," Line 19, Column G ("Apply at RTC Node").

In other words, *Consumers' RTC model permitted Train Z1-CURC59A07 to operate through a "blocked" crossing at Dolton,* and to incur its 27-minute delay at Barr Yard rather than on the main line east of Dolton.

Likewise, Consumers' RTC experts assigned to Train OE-CURC22A15, a westbound train, a foreign crossing delay that (the data indicate) occurred near Dolton Tower (UP MP 236.6).⁴⁵ However, Consumers applied that delay event to Train OE-CURC22A15 at the west end of Barr Yard, several miles to the west of Dolton.⁴⁶

FIGURE III-C-3
Foreign Line Delay at Dolton Tower Applied at Barr Yard



Consumers' manipulation of the locations of foreign crossing delays placed those delays at a location (Barr Yard) where following trains could "pass" a stopped train by operating through the yard. Moreover, Consumers' RTC experts modeled foreign crossing delays (and certain other incidents) in a manner that affected only the single train to which it was "assigned," rather than as a delay that would impact all train movements at the subject milepost. For example, in Consumers' RTC

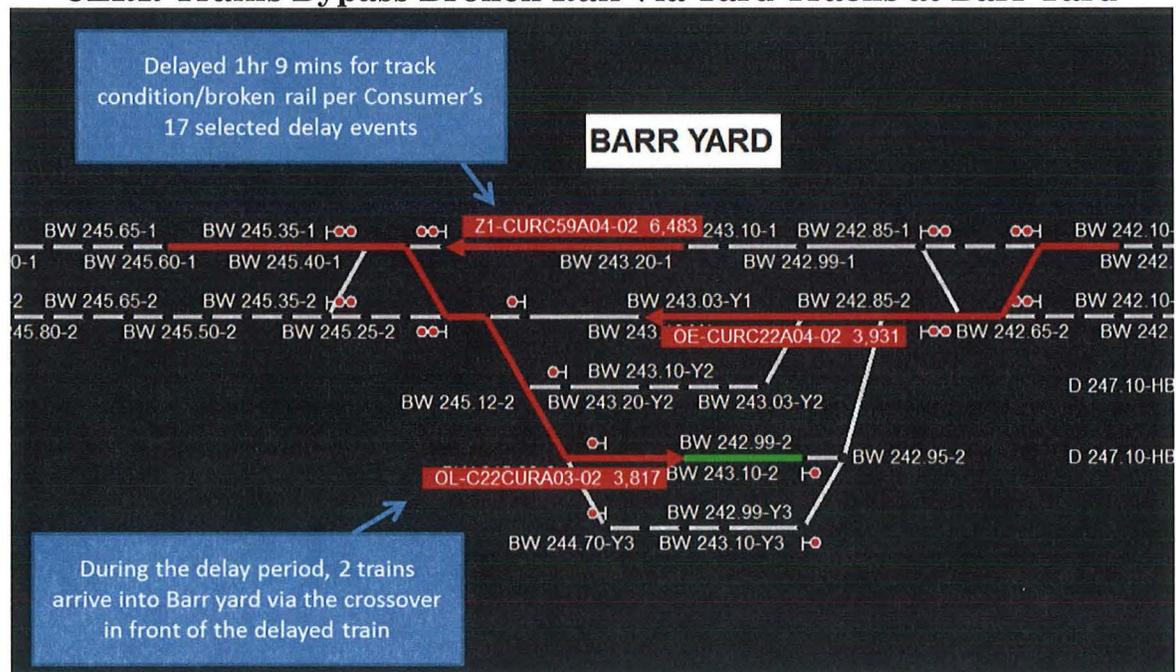
⁴⁵ See Consumers Op. WP "Foreign Line Delays WORK.xlsx," tab "Peak Forgn Delays for RTC 54pct" Line 17.

⁴⁶ See Consumers Op. WP "Foreign Line Delays WORK.xlsx," tab "Peak Forgn Delays for RTC 54pct" Line 17, Column G.

simulation, CERR Train Z1-CURC59A04-02, a westbound train operating on March 24, 2014 between Curtis and CSXIT's 59th Street Intermodal terminal, encounters a delay of 1 hour and nine minutes (1:09) due to a broken rail.⁴⁷ The actual location of that random track failure is Belt Connection CP (MP DC 23.01, which is nearly 10 miles west), but Consumers modeled the event to occur at Milepost 245.20 at Barr Yard. As Figure III-C-4 illustrates, while Train Z1-CURC59A04-02 is stopped on the main line at that location, Consumers' RTC Model permits two other trains (eastbound Train OL-C22CURA03-02 and westbound Train OE-CURC22A04 to run around Train Z1-CURC59A04-02 via yard tracks in Barr Yard. In doing so, both Train OL-C22CURA03-02 and Train OE-CURC22A04) are permitted to proceed over and through a track segment that has been taken out of service due to the broken rail.

⁴⁷ See Consumers Op. WP "Outages 10-21 FILTERED WORK.xlsx," Line 14, Column O.

FIGURE III-C-4
CERR Trains Bypass Broken Rail Via Yard Tracks at Barr Yard



This occurs because Consumers' RTC experts input the broken rail as an incident affecting only one train (Train Z1-CURC59A04-02) rather than a "track outage" that would prevent movement by any train in either direction over the affected track. In the real-world, a broken rail would halt all train activity across the affected line segment. In Consumers' RTC simulation, the broken rail affects only Train Z1-CURC59A04-02—other trains are permitted to proceed on schedule. Moreover, the "solution" reflected in Consumers' RTC simulation is inconsistent with real-world railroad operating practice. The RTC Model is designed to utilize any available track to keep trains moving across the network. By positing that the broken rail occurs near Barr Yard, Consumers' RTC experts made it possible for the Model to permit other trains to "bypass" the delay event. However, in the real-world, railroads would not utilize yard tracks to bypass a stalled train on the main

line unless the yard was equipped with a “runaround track.” (Consumers’ proposed configuration for Barr Yard does not include a runaround track.) Moreover, any train seeking to enter a yard would be required to obtain authority to do so from the person controlling yard movements (rather than the main line dispatcher). The manner in which Consumers modeled the movement of the trains depicted on Figure III-C-4 is simply not consistent with the way real-world railroads operate.

Consumers’ creative (and transparently self-serving) approach to modeling delay events eliminates entirely the cascading effect of such delays on the rail network. In the real-world, a delay to one train as it moves through the busy Chicago terminal affects not only that train but following trains that are traveling over the same route. Likewise, a delay on one railroad’s lines may impact trains moving on another carriers’ lines, due to the numerous interlockings at which the carriers’ systems intersect. The Chicago terminal area is a complex (and operationally fragile) network of interdependent rail lines over which a substantial portion of all North American rail traffic moves. But the SARR portrayed in Consumers’ RTC simulation is (thanks to Consumers’ creative modeling techniques) virtually immune to such network effects.

CSXT’s Reply RTC simulation more accurately captures the impact of foreign line crossing delays and random track outages on the CERR’s operations through the busy Chicago terminal area. The methodology that CSXT employed to identify and input foreign line crossing delays and random outages to its Reply RTC Model was as follows:

CSXT utilized the Train Sheet data for those trains selected by Consumers for inclusion in its SARR as the source for foreign line crossing delay events. That is the same data from which Consumers extracted the 642 “Enroute Train Delays” shown on Consumers’ workpaper “Peak Unit Merch Trains v5 20151009 w Peak LE Consist and Growth Trains w delayv4.xlsx.” For each train, CSXT identified events designated as “Foreign Line Delays” or “Enroute Train Delays” and which occurred at a milepost at or in close proximity to a foreign-controlled crossing or interlocking. Based on its analysis of the Train Sheet data, CSXT identified 77 foreign line crossing delays of greater than 15 minutes’ duration that occurred during the peak period modeled in CSXT’s RTC simulation.⁴⁸ The number of applicable foreign line delay events identified by CSXT (77) is lower than the 203 events identified in Consumers’ workpaper “Peak Unit Merch Trains v5 20151009 w Peak LE Consist and Growth Trains w delayv4.xlsx.” for several reasons:

First, CSXT eliminated delay events associated with CERR trains that CSXT removed from its Reply operating plan based on the adjustments to Consumers’ Peak Year traffic volumes discussed in Part III-A above. Second, as discussed in Part III-A, CSXT posits that certain CERR trains operating between Calumet Park and Curtis should likewise be removed from Consumers’ Peak Year traffic group (and operating plan) because *Consumers’ own evidence demonstrates that those trains cannot meet customers’ service requirements*. CSXT eliminated foreign crossing delay events associated with those 23 trains. Third, CSXT

⁴⁸ See CSXT Reply WP “Delay_Data_CERR_Trains.xlsx,” worksheet “RR crossings.”

analyzed separately the delays that CERR trains would incur as they waited for authorization to operate beyond the western terminus of the SARR to BNSF's Cicero and Corwith Yards and UP's Proviso Yard. Those delays are discussed at pages III-C-61 to III-C-62, *infra*.⁴⁹ Finally, CSXT conservatively eliminated any foreign crossing delay event of less than 15 minutes' duration. (By contrast, Consumers' already-truncated list of 22 foreign crossing delays included four events of 7 minutes or less.)⁵⁰

CSXT witness Wheeler input each of the 77 foreign crossing delay events identified from the Train Sheet data to CSXT's Reply RTC Model. In doing so, witness Wheeler assigned each delay event to the specific train(s) that actually incurred the delay in CSXT's real-world Base Year operations (rather than distributing them "randomly" as Consumers purported to do). Unlike Consumers' RTC experts, witness Wheeler input each event to occur on the date, at the time and at the milepost location shown in CSXT's Train Sheet data—not where and when they best suited the CERR's operating convenience.

Witness Wheeler assigned a duration to each of the 77 foreign line delay events as follows: events with a duration of 15-29 minutes were input to CSXT's RTC Model as a 15-minute event; events with a duration of 30-44 minutes were assigned a duration of 30 minutes; and events lasting 45 minutes or more were

⁴⁹ CSXT accepts Consumers' analysis of delays associated with conflicting Metra commuter train operations at the 75th Street interlocking (*see* Consumers Op. III-C-74). Witness Wheeler adopted Consumers' approach to modeling those delay events.

⁵⁰ *See* Consumers Op. WP "Foreign Line Delays WORK.xlsx," Tab "Peak Forgn Delays for RTC 54pct," Columns I, J.

assigned a duration of 45 minutes. As stated above, events with a duration of less than 15 minutes were not included in the Model. These assigned durations are conservative—indeed, 15% of the 99 events had a real-world duration in excess of one hour.

Witness Wheeler accepted the 17 random outage events that Consumers included in its Opening RTC simulation, and incorporated them into CSXT's Reply RTC Model. Random outages were input on the date, at the time and milepost location, and for the actual duration, shown in CSXT's Train Sheet data.

The impact of delays to CERR trains on network fluidity and train transit times reflected in CSXT's Reply RTC simulation is conservative. As the CSXT Train Sheet data (and Consumers' workpaper "Peak Unit Merch Trains v5 20151009 w Peak LE Consist and Growth Trains w delayv4.xlsx") make clear, the real-world CSXT trains adopted by the CERR collectively experienced nearly 1,200 delay events during the period modeled in the parties' RTC simulations. CSXT's Reply RTC Model reflects the impact of only a fraction of those real-world events (including 77 foreign train crossing delays, 56 train delays at 22nd Street/Brighton as CERR trains await authorization to operate over BNSF, CN, and UP track segments) and 17 random track outages. Limitations on the RTC Model's ability to accommodate each and every type of event that can affect real-world train movements made it impracticable for witness Wheeler to attempt to model them all. Nevertheless, based on the more accurate analysis set forth in CSXT's Reply RTC simulation, it is clear that the train transit times generated by Consumers' RTC

Model are unrealistic. Figure III-C-12 (at page III-C-75 below) compares the train transit times generated by Consumers' and CSXT's respective RTC simulations, as well as CSXT's real-world experience during the Base Year.

B. Consumers' Operating Plan Fails To Account For The Additional Trains Required To Handle The CERR's Peak Year Traffic.

Consumers posits that the CERR would enjoy robust traffic growth during the DCF period. According to Consumers, Peak Year merchandise traffic would grow by {{ }} above Base Year volumes, and intermodal traffic would increase by approximately {{ }} by the Peak Year.⁵¹ As CSXT demonstrates in Part III-A above, those traffic projections are significantly overstated. Nevertheless, even with the adjusted Peak Year traffic volumes posited by CSXT, the CERR would experience an increase of approximately {{ }} in merchandise traffic and {{ }} in its intermodal volumes by the Peak Year.⁵²

Consumers' operating plan fails to account for the additional trains required to transport its Peak Year traffic. Incredibly, *Consumers did not include in its RTC simulation a single "growth" train to accommodate its projected increase in merchandise traffic.* Indeed, as Figure III-C-5 shows, Consumers posits that only four "growth" trains would be required over the course of the entire Peak Year to accommodate nearly {{ }} additional carloads of traffic moving

⁵¹ See Consumers Op. "Train Forecast table_09202015 v7 with TRN Idx.xlsx," worksheet "Growth Calc."

⁵² See CSXT Reply WP "Train Forecast table_09202015 v7 with TRN Idx_Reply.xlsx," worksheet "Growth Calc."

under the 15 merchandise train symbols that account for the vast majority of the CERR's merchandise traffic.⁵³

Figure III-C-5
15 Major CERR Merchandise Train Symbols:
To Handle {{ }} Growth Carloads in the Peak Year,
Consumers Added 4 Trains⁵⁴

{{

}}

⁵³ See Consumers Op. WP "CERR BASE YEAR TRAIN LIST DEVELOPMENT vF.xlsx," worksheet "Cerr Trn Stats." All of the 4 "growth" trains posited by Consumers operate under the Q267 train symbol. Consumers assumed that none of those "growth" train movements would occur during the peak week of the Peak Year analyzed in Consumers' RTC simulation.

⁵⁴ Includes all CERR Merchandise trains that ran 26+ times in the Base Year. See Consumers Op. WP "CERR BASE YEAR TRAIN LIST DEVELOPMENT vF.xlsx," tab "Cerr Trn Stats."

Likewise, Consumers' operating plan and RTC evidence assume that only 20 "growth" trains would be needed to accommodate {{ }} more intermodal units during the peak period of the Peak Year that it modeled in its RTC simulation.⁵⁵

Consumers' "growth" train estimates are based on several methodological assumptions that are demonstrably inconsistent with the realities of real-world railroading:

First, Consumers' assumption regarding the length of Peak Year trains is patently inconsistent with the operating practices of the carriers with which the CERR would interchange traffic in Chicago. In developing its growth train estimates, Consumers identified (for each CSXT train symbol) the single longest train that CSXT operated on the lines replicated by the CERR during the Base Year. Consumers then "assume[d] that the maximum train sizes for each unique train ID will not exceed *the 2014 historical maximum train size recorded in the provided event data.*"⁵⁶ In other words, Consumers' train service plan is premised on the notion that CSXT and other connecting carriers would expand *every* Peak Year train delivered to CERR to the Base Year maximum length before operating *any* additional "growth" trains. That premise is utterly inconsistent with the realities of real-world rail operations in the Chicago area.

⁵⁵ See CSXT Reply WP "CERR Base Year Trains.xlsx," worksheet "Intermodal Growth." Consumers also added 14 "growth" unit trains to its RTC simulation. Consumers Op. WP "List of All RTC Trains with RTC IDs.xlsx," worksheet "RTC freight trains." CSXT accepts Consumers' "growth" unit trains.

⁵⁶ Consumers Op. III-C-29 (emphasis added).

As an initial matter, the CERR would have no control over the length of the trains delivered to it by connecting carriers. Consumers chose to design a SARR that does not perform any train blocking, classification or switching, and does not build any of the trains that move over its network.⁵⁷ Rather, according to Consumers, the CERR would operate only “intact” trains received in interchange from BNSF, UP, IHB, BRC, and CSXT.⁵⁸ Because all of the trains tendered to the CERR in interchange at Chicago would be built by other railroads, the length of those trains would be determined by those carriers, *not* the CERR. *See McCarty Farms*, 2 S.T.B. at 476 (“connecting railroads determine train length for traffic received in interchange”).

The same is true of intermodal trains originating at CSXIT’s 59th Street intermodal terminal. Consumers posits that “[t]he CERR originates intermodal trains at CSXIT’s 59th Street Intermodal terminal, but *the trains are loaded and built by CSXIT*.”⁵⁹ Accordingly, the length of those trains would be determined by CSXIT, not the CERR.

CSXT and other carriers serving Chicago have entered into bilateral “Interline Service Agreements” (or “ISAs”) that specify, among other things, the maximum length of trains that are handled on an interline basis through the Chicago terminal area. Those agreements were produced to Consumers in

⁵⁷ Consumers Op. III-C-28.

⁵⁸ *Id.*

⁵⁹ *See* Consumers Op. III-C-8 (emphasis added).

discovery.⁶⁰ As Figure III-C-6 demonstrates, the ISAs between CSXT and its Chicago connections limit most merchandise trains to a maximum length of 8,000 feet. Some trains (including Train Q383, which the CERR would interchange with BNSF on a daily basis) are limited to 7,000 feet.

FIGURE III-C-6⁶¹
Maximum Chicago Merchandise Train Lengths

Connecting Railroad	CSXT Train Symbol	Maximum Length
BNSF	Q383	7,000
BNSF	Q171, Q172	8,000
BRC	Q386, Q335, Q500, Q592, Q389, Q597, Q388, Q647, Q648, Q393	8,000
CP	Bulk, K203, K202	8,000
IHB	Q244, Q209, Q206, Q248, Q246	8,000
IHB	Q200	9,000
UP	Q391, Q091	10,000
UP	Q090, Q147	8,000

Real-world railroads agree to limit the size of interline trains for a variety of reasons, including the length of available sidings along the route of movement, service design (*i.e.*, a decision to run shorter trains more frequently rather than longer trains less frequently), seasonality of traffic flows, and weather.

Establishing (and adhering to) agreed-upon train lengths makes interline train operations more consistent and predictable. In congested terminals like Chicago, limiting train length also contributes to network fluidity by reducing the likelihood

⁶⁰ See CSXT Reply WP “Chicago ISAs.pdf,” from discovery document “Interline Service Agreements (CSX-CNSMR-HC-25271 to 25493).pdf.”

⁶¹ See CSXT Reply WP “Chicago ISAs.pdf,” from discovery document “Interline Service Agreements (CSX-CNSMR-HC-25271 to 25493).pdf.”

that a long train held at one rail crossing or control point will block other crossings or control points that the train has already traversed.

CSXT and its Chicago interchange partners do occasionally operate trains that exceed the lengths prescribed by their ISAs. This can happen for a number of reasons. For example, carriers may mutually agree to operate longer trains during the “recovery” period following a storm or other service disruption. Train lengths may be expanded during periods of unusually high traffic volume. Or a carrier may “double up” a train operating under one train symbol (or add cars to a train operating under a different symbol) if a scheduled train is cancelled or delayed. In each case, the operation of a train that is longer than permitted by the carriers’ agreement is predicated on decisions made by railroad personnel in response to current operating conditions. However, as the data produced to Consumers demonstrate, the vast majority of trains that CSXT interchanges with other carriers in the Chicago terminal area comply with the maximum lengths to which the parties have agreed in their ISAs. Indeed, during the Base Year, *94% of the merchandise trains, and 98% of the intermodal trains, selected by Consumers for its SARR operated within the limits prescribed by the ISAs* to which CSXT is a party.⁶²

In developing its operating and RTC evidence, Consumers ignored both the ISA-prescribed train lengths and the event data demonstrating that the vast

⁶² See CSXT Reply WP “CERR Base Year Trains.xlsx,” tab “Train_lengths.”

majority of the real-world trains that it selected for the CERR complied with those limits. Instead,

Consumers assumed that the average peak year train size would increase to the base year maximum train size, unless the base year maximum train size exceeded 1.9 miles [10,028 feet], where the peak year train size would be capped.⁶³

In other words, Consumers assumed that CSXT, BNSF, UP, BRC, and IHB would all disregard the terms of their ISAs and build trains delivered to CERR to the length of the absolute longest train that operated in the Base Year.⁶⁴ Consumers' Opening Evidence likewise assumes that CSXIT would alter its train loading practices to suit the CERR's desire to operate longer trains. These assumptions not only fly in the face of real-world operating practice in the Chicago terminal area, but also violate the well-established SAC principle that a SARR may not

⁶³ Consumers Op. III-C-29, n. 28 (emphasis added).

⁶⁴ Consumers compounded that error by basing its assumed maximum length for certain train symbols on Base Year trains that represent clear "outliers." For example, Consumers identified a single Base Year Q388 train that operated at 11,419 feet, 3,419 feet (or 43%) longer than the 8,000-foot length prescribed by CSXT's ISA with BRC. Because that train also exceeded the CERR's self-imposed limit of 1.9 miles, Consumers applied a maximum length of 10,028 feet to the CERR's Q388 trains. However, in the real world, *only two of the 107 Q388 trains that CSXT operated during the Base Year exceeded 10,000 feet in length.* See CSXT Reply WP "CERR Base Year Trains.xlsx," tab "Base_Year_ISA." Likewise, Consumers culled from the event data one Q383 train that operated at 8,726 feet, 1,726 feet (or 25%) longer than the 7,000-foot limit prescribed by the ISA between CSXT and BNSF. See Consumers Op. WP "CERR BASE YEAR TRAIN LIST DEVELOPMENT vF.xlsx," tab "CERR Trn Stats" cell BN373. Based on that single movement, Consumers applied a limit of 8,726 feet in determining the length of the Q383 trains, resulting in five of the seven Q383 trains (71%) in Consumers' RTC Model exceeding the ISA-prescribed limit. See CSXT Reply WP "CERR Base Year Trains.xlsx," tab "Train_lengths."

unilaterally impose operating changes (including revised train lengths) upon shippers or other rail carriers.⁶⁵

Overall, 33% of the merchandise trains, and 27% of the intermodal trains in Consumers' RTC Model exceed the lengths prescribed by the ISAs between CSXT and connecting carriers from which the CERR would receive those trains. Such a result is flatly inconsistent with the reality that only six percent of the merchandise trains, and two percent of the intermodal trains operated by CSXT during the Base Year exceeded the lengths specified in CSXT's interchange agreements.

Second, in developing its "growth" train estimates, Consumers assigned additional cars to Base Year trains without regard to when such movements would occur. While it is not possible to identify the precise date(s) upon which hypothetical Peak Year "growth cars" would move, it is likely that Peak Year traffic patterns (including seasonality, customer production schedules and fluctuations in demand) would be similar to those that existed during the Base Year. But Consumers' analysis disregarded entirely the ebb and flow of Base Year traffic, as reflected by changes in train sizes during the course of the year. Instead,

⁶⁵ See, e.g., *McCarty Farms*, 2 S.T.B. at 476 ("Car loading factors and *train lengths cannot be set without regard to the practices and preferences of shippers and connecting railroads. . . . connecting railroads determine train length for traffic received in interchange.*")(emphasis added); *Duke/CSXT*, 7 S.T.B. at 427 (rejecting increased train lengths and noting that "the proponent of a SARR may not assume a changed level of service to suit its proposed configuration and operating plan, unless it also presents evidence showing that the affected shippers, connecting carriers, and receivers would not object."); *West Texas*, 1 S.T.B. at 667 (rejecting an operating plan that would have increased average train length, because "*train sizes must reflect the operational constraints and restrictions faced by connecting railroads, coal mines, and utilities*")(emphasis added).

Consumers added a “growth” train only when its projected growth traffic “could not be accommodated by *trains of that symbol with excess capacity in the base year.*”⁶⁶ In other words, Consumers treated additional Peak Year volumes as fungible cars that could be assigned to any train on any date throughout the Peak Year. Based on that assumption, Consumers did not add a “growth” train for a particular train symbol unless every Base Year train operating under that merchandise symbol reached the maximum length that was achieved by few real-world trains—and in many cases *one* train—throughout the year.

For example, among the trains selected by Consumers is CSXT Train Q393, a merchandise train that operates from Selkirk, NY to Clearing Yard in Chicago. The CERR would receive the Q393 trains from CSXT at Curtis, IN and operate them to Dolton. Pursuant to the ISA between CSXT and BRC, the maximum length of Train Q393 is 8,000 feet.⁶⁷ Consumers assumed that the Q393 trains could grow to 8,811 feet (or 144 cars) in the Peak Year, providing a total of 1,205 available “car slots” on the 36 existing Base Year Q393 trains.⁶⁸ Based on Consumers’ growth projection of {{ }} for merchandise traffic, the CERR would be required to handle a total of {{ }} additional “growth” cars on Q393 trains in the Peak Year.⁶⁹ Consumers distributed those {{ }} cars among the available slots on the 36 Base

⁶⁶ See Consumers Op. III-C-30, n.29.

⁶⁷ See Figure III-C-6 above.

⁶⁸ See Consumers Op. WP “CERR BASE YEAR TRAIN LIST DEVELOPMENT vF.xlsx,” worksheet “Cerr Trn Stats,” row 378, columns BO-BR.

⁶⁹ See Consumers Op. WP “CERR BASE YEAR TRAIN LIST DEVELOPMENT vF.xlsx,” worksheet “Cerr Trn Stats,” cell BT378.

Year Q393 trains without regard to the days upon which that additional traffic might be tendered for shipment. As a result, Consumers concluded that the {{ }} additional cars could all be accommodated in existing trains, and did not add a single Q393 train to its Peak Year train list.⁷⁰

Consumers' methodology is not only inconsistent with the operating practices of real-world railroads in Chicago, it is utterly at odds with the economic factors that affect individual customers' shipment volumes. The number of cars tendered to CSXT for shipment by each customer is larger when that customer's need for transportation service is greatest, and smaller during periods of weaker demand. Consumers' methodology turns that economic reality on its head—by adding more cars to the “shorter” trains that CSXT operated during the Base Year, Consumers implicitly assumed that the CERR would experience the greatest demand in the Peak Year during those periods in which customers' Base Year demand for service was weakest. Conversely, Consumers added fewer cars to CSXT's “longer” Base Year trains (rather than adding an additional train), thereby assuming that the CERR's customers would experience the least traffic growth at those times. Consumers' methodology ignores the impact of seasonality and economic trends on customer shipment patterns, and results in train lengths that are divorced from market realities.

Consumers' counterintuitive approach is transparently designed to “smooth out” traffic volumes across the entire Peak Year in order to avoid the need to

⁷⁰ See Consumers Op. WP “CERR BASE YEAR TRAIN LIST DEVELOPMENT vF.xlsx,” Worksheet “Cerr Trn Stats,” Cell BU378.

operate additional trains. In essence, Consumers assumed that “growth” cars would conveniently appear on those days when the CERR had excess capacity on its existing trains. That assumption flies in the face of the reality that *fluctuations in rail traffic over the course of a year are driven by changes in customer demand, not railroad operating convenience.*

A core SAC principle is that the SARR must meet the transportation needs of the traffic it would serve. Thus, the proponent of a SARR may not assume a changed level of service to suit its proposed configuration and operating plan, unless it also presents evidence showing that the affected shippers, connecting carriers and receivers would not object.⁷¹

In *Duke/CSXT*, the Board rejected an operating plan that was based on the assumption that all traffic would move in uniform 115-car unit trains “regardless of historical traffic patterns or customer preferences.”⁷² The Board should likewise reject Consumers’ attempt to alter the train sizes and shipment patterns reflected in CSXT’s historical data in order to avoid the need to operate “growth” trains during the Peak Year.

* * * * *

In short, Consumers’ assertion that “[its] train sizes reflect real-world train sizes” is demonstrably false.⁷³ Consumers’ operating plan and RTC evidence are constructed on the faulty premise that other railroads serving Chicago would abandon their longstanding practice of building trains to the lengths that they have

⁷¹ *Duke/CSXT*, 7 S.T.B. at 427 (citing *McCarty Farms* 2 S.T.B. 460, 476 (1997)).

⁷² *Id.* at 426.

⁷³ Consumers Op. III-C-28.

agreed to in their ISAs, and that customers would alter their customary shipment patterns in a manner that would enable the CERR to minimize the need to operate “extra” train assignments. That premise, which is demonstrably inconsistent with real-world railroad practices and shipper preferences, resulted in an understatement of the number of “growth” trains required to accommodate the CERR’s Peak Year traffic volumes.

CSXT’s Reply Evidence corrects the fundamental flaws in Consumers’ “growth” train analysis in the following manner:

CSXT established maximum lengths for CERR Peak Year trains based upon the real-world practices of the railroads serving Chicago. CSXT began by assigning Peak Year cars to Base Year trains by applying CSXT’s adjusted Peak Year growth factors ({{ }} for merchandise traffic and {{ }} for intermodal traffic) uniformly across all Base Year merchandise trains. Specifically, CSXT increased the number of cars on each merchandise train on its Reply RTC Model train list by {{ }}, and the number of units on each intermodal train by {{ }}. CSXT allowed trains to grow to the longest train (other than the “outlier” train lengths discussed above) that operated under the applicable train symbol during the base year. For example, the CSXT data indicate that virtually all of the Q388 trains that exceeded the 8,000-foot limit set forth in the CSXT-BRC ISA during the Base Year were between 8,000 and 8,800 feet in length. CSXT applied the high end of that range (8,800 feet) to determine the maximum length of trains that were allowed to grow beyond the 8,000-foot limit. With those adjustments, the train lengths reflected in CSXT’s

Reply RTC Model accurately reflect real-world operating practice. And by applying the growth on a train-by-train basis, CSXT avoids replicating Consumers' unrealistic assumption that growth volumes can be re-distributed on any day throughout the year, claiming disproportionately higher growth on those days that were historically lighter without justification.

For each train symbol and date, if the resulting train length exceeded the maximum length for that train symbol, CSXT added an "extra" train operating under that symbol on that date. If adding more cars did not cause the train to exceed the maximum, no "growth" train was added to the Model. As discussed above, CSXT permitted no more than six percent of the CERR's merchandise and two percent of the intermodal trains on its RTC train list to exceed the ISA-prescribed lengths, consistent with the Chicago railroads' real-world practices.

CSXT's approach reflects the premise that customer shipment patterns during the Peak Year would, in all likelihood, be similar to those that CSXT experienced during the Base Year. Absent any evidence to the contrary, that premise is realistic—indeed it is far more credible than Consumers' assumption that the timing of "growth" shipments would precisely match the capacity available on existing CERR trains. Based on its analysis, CSXT added five "growth" merchandise trains, and 23 "growth" intermodal trains, to the list of peak period

trains modeled in its Reply RTC simulation.⁷⁴ The Board should adopt CSXT's analysis of the CERR's "growth" train requirements.

C. Consumers' Operating Plan Makes No Provision For the Delivery Of Loaded Issue Coal Cars That Are Bad-Ordered Enroute From the PRB To Chicago.

Consumers asserts that "[t]he CERR network and train operations allow for the CERR to provide service to the issue traffic in the same manner that CSXT provides in the real-world."⁷⁵ This assertion is incorrect. Consumers' Opening narrative contains an extensive discussion of the methodology that it employed to identify the 10,278 road trains and six local trains included in its Base Year operating plan.⁷⁶ While that process correctly identified the loaded unit trains that transport the issue traffic from the point of interchange with BNSF at 71st Street in Chicago to Consumers' plant at West Olive, MI, Consumers failed to account for the train service required to deliver loaded cars of issue traffic that become bad-ordered on the lines of BNSF during their journey from the Powder River Basin to Chicago.

Like all railroads, BNSF and CSXT experience occurrences of loaded coal cars breaking down or failing an inspection at a point along their route of movement. The Car Event data that CSXT produced in discovery indicate that, during the Base

⁷⁴ The train symbols and dates of operation for the "growth" trains added to the Base Year train list in CSXT's RTC Model are identified in CSXT Reply workpaper "Peak Periods Trains.xlsx," tab "Train_Lengths."

⁷⁵ Consumers Op. III-C-61. *See also* Consumers Op. III-C-43 to III-C-44 (claiming that Consumers "separately analyzed" CSXT's Train Sheet data and Car Event/Waybill data to "ensure[] that the CERR provided complete round-trip service for [its] unit and merchandise traffic . . .").

⁷⁶ *See* Consumers Op. III-C-39 to III-C-59.

Year, one out of five Consumers' loaded coal trains was required to set out a bad-ordered car during its journey from the mine in Wyoming to the BNSF-CSXT interchange point in Chicago. A total of 82 loaded Consumer's coal cars experienced problems enroute that resulted in their being bad-ordered on BNSF's lines in 2014.⁷⁷ When a carload of issue traffic is bad-ordered, it must be removed from the unit train and repaired before further movement. When the car has been returned to a serviceable condition, it is placed in a BNSF merchandise train for movement to BRC's Clearing Yard in Chicago. CSXT transfers the cars from BRC's Clearing Yard to CSXT's Barr Yard by one of two local train assignments (Trains Y130 and Y132) that CSXT operates between those yard facilities. At Barr Yard, the cars are placed into a merchandise road train (typically Train Q326) that originates at Barr Yard and operates east via CSXT's Grand Rapids Subdivision along the route replicated by the CERR. Merchandise trains carrying loaded Consumers coal cars move to Grand Rapids, MI, where the cars are switched into a westbound train (Train Q327), which makes an intermediate stop at Holland, MI to set off those cars. The cars are delivered to the Consumers plant by a CSXT local train assignment operating out of Holland. The CSXT Car Event records indicate that, during the Base Year, 57 different CSXT merchandise trains (more than one per

⁷⁷ The loaded issue traffic cars that were bad-ordered on BNSF's lines during the Base Year are identified in CSXT Reply WP "BadOrdered Carloads in NonUnit Trains.xlsx."

week) participated in the movement of Consumers repaired bad-ordered cars from Barr Yard.⁷⁸

Consumers' revenue calculations include the CSXT revenues associated with the 82 cars of issue traffic that were bad-ordered on BNSF during the Base Year and were handled by CSXT in the manner described above.⁷⁹ However, Consumers' operating plan makes no provision for the transportation of those issue cars from Chicago to West Olive—indeed, Consumers' Opening Evidence makes no mention whatsoever of the manner in which the CERR would handle cars that are bad-ordered enroute. The track network posited by Consumers does not include any route via which the CERR could replicate CSXT's transfer service between Clearing Yard and Barr Yard. Moreover, Consumers' operating plan does not include any of the merchandise trains in which CSXT transports Consumers' bad-ordered cars to Holland, because "Consumers' traffic selection experts specifically excluded

(ii) *any non-intermodal trains where the CERR would have to build the train*; and (iii) any trains where the CERR would have to classify or block some or all of the cars on the train."⁸⁰

⁷⁸ See CSXT Reply WP "BadOrdered Carloads in NonUnit Trains.xlsx."

⁷⁹ See Consumers Op. WP "2014 - 1Q 2015 Car And Container Waybills_Train.xlsx," worksheet "SQL," cells A170-A258.

⁸⁰ Consumers Op. III-C-28 (emphasis added). Consumers' failure to provide the necessary train service for loaded issue cars that are bad-ordered on BNSF's lines appears to be direct result of the unorthodox methodology that Consumers employed in selecting the CERR's traffic. If Consumers had followed the customary procedure of querying the CSXT event data to identify all trains that were involved in handling the issue traffic, and including all such trains in its operating plan, this "gap" in service would not have occurred. Instead, Consumers' "experts" categorically eliminated all trains that required classification or switching at Barr

CSXT corrected this flaw in Consumers' operating plan and RTC evidence by providing for one CERR coal unit train per week to make an intermediate stop at Barr Yard (after being received from BNSF at 71st Street) so that bad-ordered cars can be added to the train prior to movement to West Olive, consistent with the frequency with which CSXT provides the service described above to deliver bad-ordered cars to the Campbell plant in the real-world. CSXT witness Wheeler applied a 45-minute dwell at Barr Yard in CSXT's Reply RTC simulation for those trains to accomplish the necessary switching.⁸¹ Consumers loaded unit trains are the only CERR trains that travel eastbound over the SARR from Curtis to West Olive. Stopping those trains to add the repaired cars is a lower cost option than the alternative of requiring the CERR to operate additional trains and dedicate a locomotive and crew to transport the repaired cars to West Olive.⁸²

Yard, thereby failing to include the road trains in which CSXT moves the bad-ordered cars from Chicago to Holland today.

⁸¹ There were multiple instances of Consumers' bad-ordered cars being handled by CSXT merchandise trains during the peak period modeled by Consumers' RTC simulation. For example, CSXT's Car Event records for Consumers' loaded issue traffic shipments indicate that cars CEFX 61227 and PSTX 2007 were transported by merchandise train Q326 from Barr Yard over the CERR route on March 25, 2014, and car FSTX 5808 moved on the Q326 on March 30, 2014. CSXT Reply WP "BadOrdered Carloads in NonUnit Trains.xlsx."

⁸² Consistent with SAC principles, Consumers could be required to build the track facilities and provide the train operations necessary to enable the CERR to pick up bad-ordered issue cars at Clearing Yard, as CSXT does today. Because the CSXT data produced in discovery did not make clear how bad-ordered cars arriving at Clearing Yard were delivered to Barr Yard, CSXT does not propose to require Consumers to construct those facilities in this case. However, the data produced to Consumers *did* associate the road trains that transported the bad-ordered shipments from Barr Yard to Grand Rapids to Holland. Accordingly, Consumers must account for the road train service required to complete such movements.

1. General Parameters

Consumers posits a SARR that operates almost exclusively as a bridge carrier through the Chicago terminal. The notion that a new railroad inserting itself as an overhead carrier whose operations were largely confined to the Chicago terminal could be a “least cost, most efficient” transportation option is conceptually suspect. The CERR’s traffic selection and operating plan necessitate the creation of new interchange points (and corresponding train dwells) in an already congested terminal area characterized by complex rail operations. Increasing the number of railroads operating trains through Chicago would exacerbate the challenges faced by dispatchers in moving trains through the network. On its face, the introduction of a new carrier into the Chicago region posited by Consumers is the epitome of *inefficiency*.

Nevertheless, CSXT generally accepts the parameters of the SARR identified by Consumers on Opening. As discussed in Part III-B, above, with the exception of certain modifications to the physical layout of three CERR interchanges and the addition of a siding near the Consumers plant, CSXT makes few modifications to the CERR’s track configuration.

CSXT likewise accepts Consumers unorthodox train-based traffic selection methodology. However, as discussed above in Part III-A, CSXT makes certain adjustments to the CERR’s Peak Year traffic volumes. In addition, CSXT contends that that the traffic moving in 23 CERR trains operating between Calumet Park and Curtis—which fail to meet customers’ service requirements even when

compared to the vastly understated transit times generated by Consumers' RTC simulation—should likewise be excluded from the SAC analysis.⁸³

CSXT's Reply operating plan reflects the operations of a bridge carrier through the Chicago terminal. CSXT's Reply operating plan is feasible, whereas Consumers' Opening plan is not. Accordingly, the modifications set forth in CSXT's operating plan should be accepted.

a. Traffic Flow and Interchange Points

Consumers proposes that the CERR will transport 16.7 million tons of coal traffic, 12.5 million tons of intermodal traffic, and 23.3 million tons of merchandise traffic in 2015. Consumers Op. III-C-9. To do so, Consumers proposes that the CERR operates 10,278 road trains and six local trains during the Base Year. As discussed in Part III-A, CSXT made certain adjustments to the CERR's Peak Year traffic volumes, and made a corresponding adjustment to the number of CERR trains. Based upon those adjustments, CSXT's Reply operating plan includes the following Base Year train volumes:

**Table III-C-7
Base Year Train Volumes**

Train Type	Consumers Opening	CSXT Adjustments	CSXT Reply
Unit	5,107	-264	4,843
Intermodal	3,593	0	3,593
General Freight	1,578	-423	1,155
Local	6	0	6
CERR Total	10,284	-687	9,597

⁸³ See CSXT Reply III-A-12 to III-A-15.

In general, CSXT accepts Consumers' traffic flows for the CERR, including one internal re-route that alters the movement of certain intermodal trains to operate over the SARR between the 59th Street Intermodal Facility and the Dolton interchange with CSXT.

As described in Section III-B, CSXT makes modifications to the track layout at three of the CERR's interchange points in order to reflect the physical characteristics of the proposed interchange locations and to provide for interchange operations that are consistent with real-world operating practice. The three affected interchange locations are at Dolton, Pine Junction and Curtis.

At Dolton, rather than allow the CERR to commandeer the center of a right-of-way for which CSXT has only a 50% ownership interest (in order to use it for the CERR's proposed interchange activities), CSXT proposes to relocate the CERR's 2.89-mile interchange track to a location around the east side of the busy Yard Center facility. This adjustment would enable the CERR to hold trains on the track during interchanges without obstructing other traffic movements to and from Yard Center. In addition, CSXT posits that the CERR would construct a highway overpass over the CERR's double main and interchange tracks at Cottage Grove Avenue, in order to avoid blocking the intersection for 30 minutes (or more) every time a train is interchanged between the CERR and CSXT.

Similarly, the proposed CERR interchange with CSXT at Curtis would, as proposed by Consumers, block Clark Road. In order to ensure a clear track to conduct the CERR's 30-minute interchanges without impeding vehicular traffic

several times per day, CSXT proposes that the CERR would construct a flyover that will carry the CERR's 2.4-mile long interchange track over Clark Road.

Finally, Consumers' track configuration failed to account for CSXT's Buffington Connection at Pine Junction. The Buffington Connection provides access to the NS line north of Rock Island Junction. Because certain CERR trains moving to the BRC via NS trackage rights would need to use this connection, CSXT has incorporated it into its operating plan and track configuration for the CERR.

b. Track and Yard Facilities

As described in Section III-B, CSXT generally accepts Consumers' proposed track and yard facilities. However, in order to account for the need to hold and switch bad-ordered cars at Barr Yard, CSXT has included an additional yard track at Barr Yard to accommodate those cars. In addition, as explained in Section III-D, Consumers' track configuration failed to account for the fact that more than half of all Consumers issue traffic trains must be held outside the Campbell plant prior to delivery, due to the fact that Consumers is not ready to receive them.⁸⁴ Figure III-C-8 identifies the frequency with which Consumers' loaded trains must be held on a siding outside the plant.

⁸⁴ See CSXT Reply III-D-39.

**Table III-C-8
Incidence of Holding Consumers' Loaded Trains
on Grand Rapids Sidings⁸⁵**

Year	Wells (MP 42)	Grand Junction (MP 54)	Kirk (MP 71)	Total for 3 Sidings
2014	31%	20%	8%	58%

CSXT's Reply track configuration provides an additional 2.0-mile long siding on the CERR line between West Olive and Porter to provide the necessary capacity for the CERR to hold loaded trains until Consumers is ready to receive them. CSXT also accounts for the fact that the trains held on these sidings will require air to maintain the air brakes. Accordingly, CSXT has provided air on both sides of the roads crossing these sidings. Any other sidings where trains are held will require air on both sides of all street crossings.

c. Trains and Equipment

i. Train Sizes

Consumers posits a SARR that operates purely as an overhead carrier through Chicago. As a result, Consumers contemplates that train sizes will not change as they move across the CERR, because the CERR would not provide any intermediate switching, blocking or classification for any of its trains.⁸⁶ CSXT generally accepts the assumption that the CERR would not perform any classification or switching, with one exception. As described above, Consumers failed to account for the need to transport issue-traffic carloads that are bad-ordered

⁸⁵ See CSXT Reply WP "Held Consumers Loaded Trains.xlsx"

⁸⁶ See Consumers Op. III-C-28.

on the BNSF system prior to arrival in Chicago. Rather than require Consumers to build the track and facilities required to move that traffic in the precise manner in which it moves today, CSXT has assumed, for purposes of this case, that those cars will be tendered to the CERR at Barr Yard. Bad-ordered cars (which occur at least once per week, based upon the historical data) must be switched into a CERR coal unit train at Barr Yard on a weekly basis. This switching will increase the size of CERR unit trains that stop at Barr Yard to pick up bad-ordered cars.

As discussed above, Consumers' RTC Model is premised on wildly implausible assumptions regarding the size of the CERR's Peak Year trains. In conducting its Reply RTC simulation, CSXT adjusted Consumers' Peak Year train sizes to conform them to the ISA agreements, and real-world practices, of CSXT and its interchange partners in the Chicago area.

ii. Locomotives

Consumers posits that the CERR will operate with a locomotive fleet consisting of 12 ES44AC road locomotives and 1 SD40-2 locomotive for use in switching operations in the Barr Yard.⁸⁷ CSXT accepts Consumers' specification of ES44AC locomotives for CERR road trains and SD40-2 locomotives for yard service. However, Consumers understates the number of locomotives that would be required to support the CERR's proposed train operations.

⁸⁷ Consumers Op. III-C-30.

(a) Road Locomotives

The fleet of 12 ES44AC locomotives posited by Consumers is inadequate to support the CERR's road train operations. Consumers' calculation of the CERR's locomotive requirements is based upon the faulty operating statistics generated by its RTC simulation. As CSXT has demonstrated, Consumers' RTC simulation suffers from numerous flaws—not the least of which is failure to account for delay events that affect train transit time on a daily basis. Accordingly, Consumers' estimate of the CERR's locomotive requirements is not supported by any credible record evidence.

Moreover, Consumers' assumption that the CERR would incur the cost of only two locomotives for all trains is inconsistent with CSXT's run-through locomotive arrangements with connecting carriers, which the CERR purports to adopt.⁸⁸ Consumers cannot alter the existing practices of foreign railroads regarding the number of locomotives on trains delivered to the CERR.⁸⁹ Indeed, Consumers acknowledges that “the locomotives generally are not removed from a train by either railroad at the interchange point, but stay with the train.”⁹⁰ Nor did Consumers make any provision in its RTC Model for the time that would be needed to remove surplus locomotives from the trains. To the contrary, Consumers stated

⁸⁸ Consumers Op. III-C-31 (“All of the CERR's interline trains move in run-through service.”).

⁸⁹ *Duke/CSXT*, 7 S.T.B. at 427 (rejecting increased train lengths and noting that “the proponent of a SARR may not assume a changed level of service to suit its proposed configuration and operating plan, unless it also presents evidence showing that the affected shippers, connecting carriers, and receivers would not object.”).

⁹⁰ Consumers Op. III-C-31.

that “[i]f trains received by the CERR in interchange have additional locomotives, the configuration is not changed when the trains enter the CERR system.”⁹¹

Therefore, if Consumers receives a train from an interchange partner that is equipped with three locomotives, based on Consumers own assumptions, that locomotive will remain with the train as it traverses the CERR.

Consumers attempt to avoid the cost of such additional locomotives by claiming that the CERR would idle the third (or fourth) engines and would not rely on them to power the trains on the CERR system is unavailing.⁹² While Consumers might be able to reduce its fuel costs by idling the locomotives, Consumers cannot escape responsibility for the cost of the units themselves. Once the CERR accepts a run-through train from its interchange partner, *all* of the locomotives in the consist are in the CERR’s account. If BNSF tenders a train to the CERR at Chicago with three locomotives, BNSF does not care whether or not the CERR actually uses all of the locomotives to power the train on the CERR’s lines. However, while the BNSF locomotives are on the CERR’s system, BNSF has no ability to use them. Under any run-through locomotive arrangement, BNSF will require that the CERR compensate it for all of the time during which BNSF locomotives are located in CERR’s lines. Consumers must account for *all* of the locomotives that it receives in run-through service—it cannot assume away the cost of assets that are on the CERR’s lines.

⁹¹ *Id.* at III-C-32.

⁹² *See* Consumers Op. III-C-65.

CSXT determined that 22% of the Base Year trains that the CERR selected arrive at an on-SARR interchange with at least three locomotives.⁹³ As indicated in Figure III-C-9, the average number of locomotives for all CERR base year trains exceeds 2:

**Figure III-C-9
Actual Locomotives at On-SARR Interchanges
or CERR Base Year Trains**

	Avg. Locos	Avg. HP	Increase to Consumers
Unit	2.30	9,770	11%
Intermodal	2.20	9,361	6%
Merchandise	2.40	9,741	11%

In order to properly account for all of the power that would be needed to support the CERR's road train operations, CSXT's Reply operating plan provides the CERR a fleet of 18 ES44AC road locomotives.⁹⁴

(b) Yard Locomotives

Consumers posits the CERR would need only one SD40 locomotive to perform all required work at Barr Yard.⁹⁵ According to Consumers, that single locomotive would provide all of the power needed to (1) switch out bad-ordered cars identified during train inspections; (2) transfer cars to and from the car shop; (3) perform all

⁹³ See CSXT Reply WP "CERR Base Year Trains.xlsx," Tab "Trains."

⁹⁴ See CSXT Reply WP "Barr Yard_Reply.xlsx" and "CERR Operating Statistics_Reply.xlsx."

⁹⁵ Consumers Op. III-C-30.

switching movements in the yard; and (4) power CERR work trains as necessary.⁹⁶ Consumers asserts that a single yard engine would be sufficient to handle all of this work at Barr Yard, every day all year long. Furthermore, Consumers appears to assume that the sole SD40 unit assigned to Barr Yard would never break down, nor would it ever need to move to an off-site facility for repairs or periodic maintenance. Consumers' assumption that all of the work at Barr Yard could be performed by a single yard locomotive is, on its face, unrealistic.

Consumers' position is all the more implausible when one considers that Consumers failed to account for bad-ordered issue cars. As discussed above, CSXT corrected this flaw in Consumers' operating plan by providing for one CERR coal unit train per week to make an intermediate stop at Barr Yard to pick up bad-ordered cars. The switching required to transfer bad-ordered issue coal cars into unit trains at Barr Yard further increases the workload that the CERR would assign to its only SD40 unit.

Furthermore, if Consumers' sole yard locomotive broke down or needed to visit an off-site maintenance facility, daily operations at Barr Yard would come to a halt. Such an occurrence could, in turn, impact train operations across the CERR network, as the CERR does not have any alternate yard location from which to "borrow" a locomotive. It is unreasonable for Consumers to place its SARR in a position that could result in significant train delays and an inability to meet

⁹⁶ *Id.*

customers' service requirements. No railroad would risk the serious disruption to service that would inevitably occur if that locomotive broke down.⁹⁷

In order to ensure sufficient locomotive power at Barr Yard, and to avoid an interruption of yard operations in the event of a locomotive failure, CSXT witness Gibson has provided for one additional SD40-2 locomotive at Barr Yard. In addition, CSXT's Reply operating plan includes two SD-40-2 locomotives that would be dedicated to performing helper service at Saugatuck Hill. Thus, the CERR locomotive fleet would include four SD40-2 locomotives, rather than the single unit posited by Consumers.⁹⁸

Table III-C-10 reflects the difference in locomotive power posited by Consumers and CSXT.

**Table III-C-10
CERR Would Require Significantly More Locomotives
than Consumers Estimated for the Base Year**

	Road Engines	Helper Engines	Yard Engines	Total
Consumers	12*	0*	1	13
CSXT	18	2	2	22
Difference	6	2	1	9

*Consumers' total of 12 road engines includes a fractional helper unit.

⁹⁷ In addition to adding a locomotive to support the CERR's yard switching service, CSXT also included a locomotive turntable at Barr Yard. The CERR is required to provide through train service in a timely fashion while performing two interchanges in Chicago. Consumers' traffic selection process contributes additional uncertainty regarding the timing and flow of trains, as the CERR will have to exchange information with connecting carriers will little time to determine whether and when it is receiving a train. Accordingly, a turntable at Barr Yard will facilitate locomotives movements in the yard with less disruption to the other yard or mainline operations.

⁹⁸ See CSXT Reply WP "Barr Yard_Reply.xlsx" and "CERR Operating Statistics_Reply.xlsx."

iii. Spare Margin

Consumers' road locomotive estimate includes a spare margin of { }.⁹⁹ That estimate is understated. In calculating its out-of-service factor, Consumers included time that was not linked to a particular activity and was identified only as "Unknown Time."¹⁰⁰ This indeterminate metric renders Consumers' spare margin estimate unreliable. CSXT corrected Consumers' spare margin calculation by removing any time associated with that metric. CSXT's corrected calculations result in spare margins of { } for CERR's ES44AC units.¹⁰¹

iv. Peaking Factor

Consumers' claims that it determined the CERR's peak locomotive requirements by following past precedent.¹⁰² Consumers identified the peaking factor by "[d]ividing the average number of train starts per day in the peak week by the average number of train starts per day in the peak year."¹⁰³ Consumers claims that the result of this analysis is a peaking factor of 14.3%.¹⁰⁴ However, Consumers workpapers indicate that, rather than calculating the average for the peak *week*,

⁹⁹ See Consumers Op. III-C-33.

¹⁰⁰ See Consumers Op. WP "Locomotive Utilization_Open.xlsx," Tab "Data Dictionary."

¹⁰¹ See CSXT Reply WP "Locomotive Utilization_Reply.xlsx."

¹⁰² Consumers Op. III-C-33.

¹⁰³ *Id.*

¹⁰⁴ *Id.*

Consumers based its calculation on a *nine-day* period.¹⁰⁵ When Consumers' methodology is corrected to consider only the peak week, as Board precedent requires,¹⁰⁶ their peaking factor increases to 22.7%.

CSXT also adjusted the peaking factor based on the elimination of certain CERR trains from CSXT's Reply train list. Once CSXT removed the off-SARR coke trains and the Calumet Park trains that fail to meet customers' service requirements (*see* CSXT Reply III-A-12-15), CSXT determined that the peaking factor would be 19.5%.¹⁰⁷

v. Railcars

Consumers utilized shipment data produced by CSXT to determine car ownership.¹⁰⁸ Consumers' car ownership percentages are consistent with those developed by CSXT and CSXT accepts Consumers' mix of system cars and shipper-provided cars.

Nevertheless, Consumers' car requirement estimate is significantly understated because it is based upon the faulty operating statistics generated by Consumers' RTC Model simulation. As CSXT demonstrated above, Consumers' Opening operating statistics are invalid because the Model upon which its RTC simulation was based suffers from fatal flaws and omissions, not the least of which

¹⁰⁵ See Consumers Op. WP "CERR BASE YEAR TRAIN LIST DEVELOPMENT vF.xlsx," tab "Cerr Trn Stats," cell BW2.

¹⁰⁶ *Xcel Reconsideration*, STB Docket No. 42057 at 13; *AEPCO 2011*, STB Docket No. 42113 at 32-33.

¹⁰⁷ See CSXT Reply WP "CERR Base Year Trains.xlsx" tab "Peaking_Factor."

¹⁰⁸ See Consumers Op. III-C-34.

is Consumers' failure to account in any meaningful way for the delays experienced by real-world trains as they operate through Chicago. Accordingly, Consumers' railcar estimates are not supported by credible evidence.

As CSXT explains in greater detail in Part III-D below, CSXT's railcar fleet estimates are based upon the number of car-miles and car-hours derived from CSXT's detailed operating plan, which properly accounts for all of the activities required to handle the traffic moving in CERR trains, and CSXT's more realistic train transit times. CSXT's car fleet estimate is the best evidence of record, and should be adopted by the Board.

2. Service Efficiency and Capacity

Consumers acknowledges the Board's requirement that a SARR's "operating plan must be able to meet the transportation needs of the traffic to be served."¹⁰⁹ While Consumers admits that "the CERR has some modifications in track facilities and handling," Consumers maintains that "[d]espite these differences, the CERR still meets the needs of the traffic being served."¹¹⁰ As CSXT illustrates throughout its evidence, the CERR train transit times operations portrayed in Consumers' Opening evidence are unrealistic. CSXT's Reply Evidence makes the adjustments to Consumers' CERR operating plan that are necessary to meet customer requirements in a "real-world" operating environment.

¹⁰⁹ Consumers Op. III-C-35 (quoting *SunBelt*, STB Docket 42130 at 12).

¹¹⁰ Consumers Op. III-C-35 to III-C-36.

3. Operating Inputs to the RTC Model

a. Road Locomotive Consists

Consumers posits that trains will operate on the CERR system with two ES44AC locomotives.¹¹¹ CSXT accepts Consumers' specification of ES44AC model locomotives for CERR road trains, and CSXT's Reply RTC Model incorporates those units on all CERR road trains.¹¹² CSXT also accepts Consumers' assumption that when road trains are delivered to the CERR with more than two locomotives, the CERR would isolate the 3rd or 4th locomotive in the idle position. Consistent with this operation, Consumers assumed virtually all trains in its RTC simulation were powered by two locomotives, which CSXT accepts for its Reply RTC analysis.¹¹³

b. Train Size and Weight

Consumers based its peak week trains in the RTC Model on "the average and maximum base year trains adjusted to accommodate peak year growth."¹¹⁴ As CSXT discusses above at III-C-33-35, Consumers' analysis of the extent to which the CERR would need to operate "growth" trains in the Peak Year is inconsistent with the maximum train lengths prescribed by the ISAs between CSXT and its Chicago interchange partners. Consumers' approach also ignores the historical

¹¹¹ Consumers Op. III-C-65.

¹¹² For helper service on the Grand Rapids Sub, CSXT relies upon two SD40-2 locomotives, which its operating expert determined would be powerful enough to provide the necessary assistance to trains climbing Saugatuck Hill.

¹¹³ As described in Section III-D below, while the CERR can isolate the engines and avoid incurring fuel and servicing expense, they must still compensate the owners for the time that the engines are on the SARR lines.

¹¹⁴ Consumers Op. III-C-66.

shipment patterns of its customers. By disregarding the dates upon which hypothetical Peak Year “growth” cars would move, Consumers failed to take into consideration customers’ schedules and the reality of fluctuations in rail traffic throughout the year as a result of customer demand.¹¹⁵

CSXT’s Reply RTC evidence adjusted the maximum length of CERR trains to comport with the real-world practices of the railroads with which the CERR would interchange traffic in Chicago. CSXT’s analysis identified a need for five growth merchandise trains and 23 growth intermodal trains during the peak period modeled in CSXT’s Reply RTC simulation, which were included in the Base Year train list.

c. Maximum Train Speeds

Consumers input to its RTC Model a maximum train speed of 40 MPH.¹¹⁶ Consumers bases its maximum speed on CSXT real-world timetable restrictions for the lines being replicated by the CERR and it imposes maximum speeds below 40 MPH where such restrictions are required in CSXT’s operating timetables.¹¹⁷

CSXT accepts the maximum train speeds posited by Consumers as reasonable, and input the same maximum train speeds to its Reply RTC Model. However, as discussed above, the transit times across the CERR system generated by Consumers’ RTC Model are unrealistic, because Consumers failed to account in any meaningful way for the real-world delays that impact all carriers operating in

¹¹⁵ See *supra* at III-C-35.

¹¹⁶ Consumers Op. III-C-66.

¹¹⁷ *Id* at III-C-67.

the Chicago area on a daily basis.¹¹⁸ While CSXT adopts the maximum train speeds posited by Consumers, the overall transit times generated by CSXT's Reply RTC simulation more accurately reflect the realities of operating through the Chicago terminal.

d. On-SARR Interchange Dwell Times

Consumers imposes a 30-minute dwell at each of the CERR's on-SARR interchange locations.¹¹⁹ CSXT accepts, and incorporates into its Reply RTC Model, the 30-minute interchange time posited by Consumers for trains received in interchange from a foreign carrier.

However, Consumers' RTC Model ignores entirely the time required for CERR trains to move *off-SARR* to BNSF's Cicero and Corwith Yards, and to UP's Proviso Yard. In Consumers' RTC simulation, CERR trains moving off-SARR to be delivered to BNSF and UP do not incur any dwell time waiting for authority to proceed beyond the end of the CERR network – those trains simply “disappear” upon arrival at 22nd Street. In essence, Consumers' analysis assumes that every time the CERR wishes to tender a train to UP or BNSF, that carrier will immediately be ready and able to accept that train. That assumption ignores the realities of railroading in the Chicago terminal area, where trains are often held outside of a foreign carrier's rail line or yard for a significant period of time until the foreign carrier is ready to accept the train. This aspect of real-world railroading is

¹¹⁸ See *supra* at Section III-C-A.

¹¹⁹ Consumers Op. III-C-68.

reflected in CSXT's Train Sheet records, produced to Consumers in discovery.¹²⁰ CSXT's data indicate that 80% (or 63 of 79) of the real-world CSXT peak period trains that operate off-SARR to BNSF and UP in Consumers' RTC simulation experienced delays prior to exiting the CSXT system. The delays ranged from ten minutes to several hours. CSXT adjusted its Reply RTC Model to reflect those delays. In order to be conservative, CSXT did not include any additional dwell time for trains that experienced less than 15 minutes of delay at the point where the train waited to exit the CSXT system. For trains that were delayed for 15-29 minutes, CSXT included 15 minutes of dwell in its Reply RTC model. CSXT included a 30 minute dwell for all trains delayed 30-44 minutes and a 45 minute dwell for all trains delayed 45-59 minutes. For trains delayed an hour or more in the Base Year, CSXT included a 60 minute dwell on the CERR. Based on those parameters, Witness Wheeler modeled delays for 56 trains, with an average dwell time of 43 minutes, in CSXT's Reply RTC Model.¹²¹ Those delays conservatively reflect the real-world experience of a carrier that would operate beyond its lines to BNSF's Cicero and Corwith Yards, and to UP's Proviso Yard.

e. Dwell Times for 1,000 and 1,500 Mile Inspections

Consumers posits that the CERR will perform 1,000 and 1,500 mile inspections "for certain westbound trains."¹²² Consumers allots 1 hour and 45

¹²⁰ See CSXT Reply WP "ConsumersOpening -20151022-Compressed.bak" SQL database file, "wTrainSheets" and "wTrainMovements" tables.

¹²¹ See CSXT Reply WP "Delay_Data_CERR_Trains.xlsx," worksheet "offSARR."

¹²² Consumers Op. III-C-69.

minutes for those inspections, including DTL locomotive fueling. CSXT accepts Consumers' proposed time for inspections at Barr Yard.

f. Helper Service

The CERR utilizes helper service in the loaded direction for issue traffic trains climbing Saugatuck Hill, located on the Grand Rapids Subdivision just south of the Consumers plant. Consumers allocates 30 minutes for connecting the helper locomotives to the loaded coal trains.¹²³ CSXT accepts Consumers' 30 minute dwell for connecting helper locomotives. CSXT's Reply RTC Model incorporated the same helper service location and dwell as Consumers' Opening RTC simulation.

However, Consumers failed to provide a dedicated locomotive to provide helper service at Saugatuck Hill. Instead, Consumers purports to include helper service in its calculation of total run-through power locomotive requirements. In doing so, Consumers effectively assumes that two helper units would be automatically available at that location any time they are needed, rather than having dedicated helper locomotives assigned to Saugatuck Hill 24 hours per day.¹²⁴

In order to ensure that helper service is available as needed, CSXT witness Gibson includes two SD40-2 dedicated helper locomotives at Saugatuck Hill.¹²⁵

g. Time to Depart the 59th Street Intermodal Facility

Consumers did not model the 59th Street Intermodal facility in RTC because of its assumption that "the facility is separately operated by CSXIT."¹²⁶ Instead,

¹²³ Consumers Op. III-C-70.

¹²⁴ See Consumers Op. WP "CERR Operating Statistics_Reply.xlsx," worksheet "Summary."

¹²⁵ See CSXT Reply WP "CERR Operating Statistics_Reply.xlsx."

Consumers purports to account for the activities associated with originating intermodal trains at 59th Street by “allot[ing] 30 minutes of crew time” to originate intermodal trains entering the CERR from the 59th Street facility.¹²⁷ While this allotment may account for the crew time associated with originating trains, Consumers’ RTC Model does not include any time to originate trains in the CERR’s operating statistics. Consumers cannot simply assume that some other party will bear the other costs (e.g., locomotive and car costs) associated with the time required to originate and terminate trains at this facility. Such an assumption is particularly invalid where (as here) Consumers assumes that it is the customer (CSXIT) that would build the trains. Unlike a typical run-through agreement with another railroad, which would equalize such time between the parties, CSXIT would not be responsible for the costs of the locomotives and cars associated with that time.

Consumers’ RTC Model allocates *one second* of dwell time for all of the intermodal trains that the CERR originates from the 59th Street terminal during the peak period. For CERR trains terminating at 59th Street, Consumers’ RTC Model includes *either one second or two minutes* of dwell.¹²⁸ Consumers does not explain why trains should be treated any differently at the 59th Street facility than at other SARR interchanges, such as Curtis and Dolton, where Consumers did include a 30 minute dwell in its RTC simulation. In order to accurately reflect the

¹²⁶ Consumers Op. III-C-70.

¹²⁷ *Id.*

¹²⁸ See Consumers’ RTC simulation, e.g., “CERR Opening.TRAIN.”

cost of SARR operations, CSXT has assigned 30 minutes of dwell time to all trains that the CERR picks-up and drops-off at the 59th Street Intermodal Terminal.

CSXT's inclusion of a 30 minute dwell at the 59th Street facility is fully consistent with CSXT's treatment of the CERR revenue credit for performing originations and terminations at the facility. As described in Section III-A above, CSXT rejects Consumers' attempt to claim that revenue credit. Consumers did not build the 59th Street facility, does not staff that facility, and the lift charge that Consumers pays does not account for the full costs that CSXT incurs to operate the facility. Because Consumers did not choose to take ownership of the facility and to incur those costs, the CERR cannot claim the revenue credit for doing so. Rather than require the SARR to incur the operating expenses that Consumers omitted, CSXT treats the originations and terminations at the 59th Street terminal as a SARR interchange. As such, the inclusion of the 30 minute interchange dwell time is fully consistent with CSXT's—and Consumers'—treatment of interchanges at other locations.¹²⁹

Finally, CSXT notes that Consumers does not provide for any dedicated train inspectors at the 59th Street facility. Because CSXT is treating the CERR activity at the 59th Street facility as an interchange, CSXT also does not include inspectors at this location. However, if the Board ultimately allows Consumers to earn a revenue credit for originations and terminations at this facility, the CERR will need to include a dedicated inspector at this location. Indeed, as indicated in CSXT's

¹²⁹ See Consumers Op. III-C-68 (including 30 minutes of dwell time at each on-SARR interchange location).

discovery file “Inspections.xlsx”, in 2014, CSXT inspected more than 1,600 intermodal trains at 59th Street, which Consumers selected as CERR traffic. Staffing a 2-person inspection crew 24/7 would require 9 people.¹³⁰

h. Dwell Time at Campbell

Consumers posits that, on average, trains dwell at the Consumers plant for 50.17 hours.¹³¹ Consumers also assumes that locomotives do not stay with the trains at the plant, but rather are removed from an inbound train, fueled, and then placed on an outbound empty train.¹³² Consumers’ approach to modeling the CERR’s operations at Campbell significantly understates the amount of time that locomotives would dwell at the plant.

In Consumers’ RTC Model, loaded trains arrive at the plant, *dwell for one second*, then “disappear” from the Model.¹³³ Consumers’ empty trains instantaneously materialize in the Model, *dwell for one second*, and then depart.¹³⁴ Consumers’ Model assumes that every time a loaded train arrives at the plant, there is an empty train positioned and ready for departure. Even if this were true (which it is not), such arrivals and departures of unit trains would certainly take more than two seconds. According to CSXT Witness Gibson, it would take at least 30 minutes to spot an inbound loaded train. It would then take an additional

¹³⁰ Nine people covering 8-hours shifts around the clock would work an average of 243 shifts annually. (3 shifts x 365 days x 2 inspectors = 2190 total assignments, divided by 9 = 243.3)

¹³¹ Consumers Op. III-C-72.

¹³² *Id.* at III-C-71.

¹³³ Consumers Op. WP “CERR Opening.TRAIN.”

¹³⁴ *Id.*

30 minutes to detach the locomotives from the inbound train, attach them to an outbound empty train, perform an air test, and depart.

In addition to failing to account for dwell time at the Campbell plant, Consumers did not link loaded and empty trains at Campbell in its RTC Model. The consequence of that modeling decision is a failure on Consumers' part to evaluate whether the holding tracks at Campbell are adequate. In essence, Consumers' RTC Model assumes that the Campbell facility has infinite capacity to store rail cars. But, as Consumers itself knows, there are capacity constraints at the Campbell plant. In the real-world, CSXT and Consumers correspond on a daily basis to discuss available track capacity at Campbell, determine when Consumers can accept incoming loaded trains, and identify when empty trains will be ready for departure. As CSXT described to Consumers in discovery,¹³⁵ in many cases, Consumers cannot accept the inbound loaded train immediately. CSXT estimates that more than 50% of loaded Consumers trains must be held outside Campbell while CSXT waits for Consumers to indicate an ability to accept the train.¹³⁶ Those trains are stored on tracks outside the plant—most often on passing sidings on the Grand Rapids Subdivision at Grand Junction or Wells—until Consumers can accept them. Trains typically are stored for 24 to 36 hours, and sometimes significantly longer.¹³⁷ In order to accurately reflect the impact of capacity at the plant on CSXT's operations, Witness Wheeler reviewed the records of the actual timing of

¹³⁵ See CSXT Reply WP "Description of Consumers Train Movements.pdf" at 5.

¹³⁶ See CSXT Reply at III-D-40, Figure III-D-7.

¹³⁷ See CSXT Reply WP "Description of Consumers Train Movements.pdf" at 5.

the movements of inbound loaded trains and outbound empty trains during the peak period, March 23-31, 2014, and linked the inbound and outbound trains in CSXT's Reply RTC Model. Thus, unlike Consumers' disconnected simulation that fails to account for the CSXT's real-world experience operating Consumers' loaded and empty trains, CSXT's RTC analysis accounts for the actual dwell that the cars spent at the plant, which for certain carsets during the Peak Period was more than two days.

i. Time To Traverse Trackage Rights Segments

In order to determine the time that a CERR train would require to traverse trackage rights segments, Consumers' reviewed the Base Year train list and identified the transit times in the Train Sheet data for movements between 75th Street and Michigan City.¹³⁸ Consumers then prorated those transit times based on the slightly shorter mileage between 75th Street and Porter (or Curtis to Porter) to adjust for the fact that Michigan City is approximately eight miles east/north of Porter.¹³⁹ Consumers explains that this methodology was necessary because Consumers did not have access to actual traffic or track data for the NS and BRC segments.¹⁴⁰ CSXT similarly did not have access to actual traffic data for those segments. Accordingly, CSXT accepts Consumers' proposed transit times for CERR trains traversing the trackage rights segments as reasonable given the data available to the parties.

¹³⁸ Consumers Op. III-C-72 to III-C-73.

¹³⁹ *Id.* at III-C-73.

¹⁴⁰ *Id.* at III-C-72.

j. Time for Foreign Road Delays

As discussed above Consumers assumed that CERR trains would experience only 22 delays at foreign-controlled rail crossings during the peak period.¹⁴¹ The delays posited by Consumers are vastly understated, and do not reflect real-world operations through Chicago. In order to properly account for foreign line delays that the CERR would experience, CSXT Witness Wheeler input 77 foreign line delays based on CSXT's Train Sheet data, and applied those events to the trains, and at the locations, where they were incurred in CSXT's real-world operations.¹⁴²

Consumers separately accounted for delays due to passenger trains operated by Metra by imposing curfew periods on train operations at the 75th Street crossing diamond and at the BRC Belt Junction interlocking.¹⁴³ These curfews occur at 75th Street twice daily during the weekday between 6:20 AM and 8:16 AM and between 5:11 PM and 7:09 PM and at the BRC Belt Junction between 6:00 AM and 9:00 AM and between 4:15 PM and 6:30 PM. Consumers also included 36 Metra trains that operate outside of the curfew windows into the RTC Model.¹⁴⁴

CSXT accepts Consumers' methodology for accounting for interference from Metra train operations.¹⁴⁵

¹⁴¹ Consumers Op. WP "Foreign Line Delays WORK.xlsx," tab "Peak Forgn Delays for RTC 54pct.," cells A5:T28.

¹⁴² See CSXT Reply WP "Delay_Data_CERR_Trains.xlsx," worksheet "RR crossings."

¹⁴³ Consumers Op. III-C-74.

¹⁴⁴ *Id.* at III-C-75.

¹⁴⁵ See CSXT Reply WP "CSXT Reply WP RTC Train File in Excel.xls."

k. Time for Random Outages

In addition to the foreign line delays, Consumers included certain random outages in its RTC Model. Consumers identified those delays using the Train Event data.¹⁴⁶ Consumers identified four operational outages and 13 track/signal outages that would impact CERR operations during the Peak Week and that were therefore included in the RTC model.¹⁴⁷

CSXT accepts the random outages posited by Consumers, and input them to its Reply RTC Model.

l. Crew-Change Locations/Times

Consumers assumes that the CERR has no on-SARR crew change points because “trains that are handled are all moved from their on-SARR to off-SARR point using one crew.”¹⁴⁸ That assumption is simply not credible. Any number of issues could arise that would require a crew-change somewhere on SARR: mechanical failure, maintenance of way disruption, weather delay, congestion delay, rail accident, crew member illness, etc. For Consumers to assume that none of these day-to-day realities of railroading would ever impact CERR crews is absurd.

Consumers’ failure to account for any crew changes is rendered all the more impractical given Consumers’ assumption that most CERR crews operate as turn-

¹⁴⁶ Consumers Op. III-C-75.

¹⁴⁷ *Id.* at III-C-76.

¹⁴⁸ Consumers Op. III-C-76.

crews.¹⁴⁹ In Consumers' crew calculations, *100% of CERR crews operating trains in the Chicago terminal area complete two train assignments per shift, every day, without exceeding their hours of service.*¹⁵⁰ The notion that CERR crews could complete turn-crew operations through Chicago on a regular basis is not realistic—indeed it is belied by Consumers' own evidence. Consumers' own RTC workpapers show that nine percent of the CERR's trains through Chicago take more than four hours from departure to arrival.¹⁵¹ Four percent of CERR's own trains have run times exceeding five hours. When taking into consideration that it requires an hour for a crew to complete check-in and safety procedures prior to beginning train operations, another 16% of the CERR movements in Consumers' RTC Model exceed five hours. Therefore, at least one-quarter of Consumers' CERR crews will be into their fifth hour when they arrive at their first destination. Consumers cannot assume that a train moving in the opposite direction would always be ready to depart at the precise moment that each crew completed its first run. Indeed, in many instances crews would need to be repositioned to another location to begin their second train assignment of the day. This would require crews to contend with Chicago's notoriously congested roads, resulting in inevitable delays which will eat up more of the crew's service time. Consumers' assumption

¹⁴⁹ Consumers Op. III-C-80.

¹⁵⁰ See Consumers Op. WP "Base Unit Merch Trains v6_Statistics.xlsx," tab "2014 Full Base Year Unit Merch" column Y (reflecting 0.5 crews for all 9600 Chicago trains operating west of Curtis). The figures totaled at the bottom of the spreadsheet indicate that Consumers determined that those 9,600 trains would be operated by 4,800 crews; see also *id.* cell V10302 ("Recrew – no Recrews").

¹⁵¹ See Consumers Op. WP "RTC Report output v2.xlsx."

that 100% of CERR crews could complete one run through the busy Chicago terminal, be assigned a second train, taxi to that train (when necessary), and complete a second journey through the gauntlet that is the Chicago terminal area, in less than 12 hours, is simply not credible.

Consumers' assumption that train crews would average 270 shifts per year is likewise unrealistic.¹⁵² Furthermore, Consumers failed to properly calculate a realistic re-crew rate.¹⁵³ CSXT made appropriate adjustments to Consumers' crew staffing requirements to account for the actual number of shifts a crew member could reasonably be expected to work, and for appropriate re-crewing rates. Table III-C-11 reflects the difference between the number of crews posited by Consumers and by CSXT.

**Table III-C-11
The CERR Would Require Significantly More Crewpersons
Than Consumers Estimated for the Base Year**

	Road Crews	Yard Crews	Helper Crews	Total
Consumers	46	3	3	52
CSXT	61	4	3	68
Difference	15	1	0	16

m. Track Inspections and Maintenance Windows

Consumers does not allocate any time for scheduled track inspections or maintenance windows in its RTC Model.¹⁵⁴ Because the CERR's peak week traffic period occurs at the end of March, it falls outside of CSXT's customary program

¹⁵² See *infra* III-D-41-42.

¹⁵³ See *infra* III-D-39-40.

¹⁵⁴ Consumers Op. III-C-76.

maintenance window in this northern region of the country. As a result, Consumers did not include any delays due to any program maintenance in its RTC Model.¹⁵⁵ Consumers also assumed that all required track inspections could be performed between train movements without interrupting the flow of traffic.¹⁵⁶

CSXT generally accepts Consumers' assumptions regarding track inspections and maintenance windows for purposes of the RTC Model. However, CSXT notes that, in practice, both inspections and maintenance windows would undoubtedly impact the CERR's operations at some point during the year. Consumers' assumption that all inspections will occur between train movements is dubious at best, particularly in the congested Chicago area where clear track space is at a premium. It is highly likely that hi-rail inspection vehicles would interfere with train operations at certain times throughout the year.¹⁵⁷ Furthermore, the CERR would inevitably have to perform program maintenance on its system during the 10-year DCF period. Particularly in a northern region like Chicago, track work following the winter months is inevitable. In the real-world, the CERR would experience interruptions to its operations as a result of those necessary activities. These operational complications, while not replicated in the RTC Model, further

¹⁵⁵ *Id.* at III-C-77.

¹⁵⁶ *Id.*

¹⁵⁷ Witness Gibson's field notes, documenting his inspection of the CERR route on November 30 and December 1-2, 2015, reflect numerous conflicts between the hi-rail vehicle used to conduct that inspection and other train movements. See CSXT Reply WP "Gibson Field Notes.pdf."

illustrate the implausibility of the CERR's posited transit times through the busy Chicago terminal.

n. Results of the RTC Model Simulation

Unlike Consumers' Opening RTC simulation, CSXT's RTC Model and simulation accurately reflect the number (and length) of the merchandise and intermodal trains that the CERR would be required to operate during the peak period of the Peak Year. CSXT's Reply RTC simulation portrays more realistically the impact of foreign train movements, and foreign-controlled interlockings, on the CERR's train operations in the congested Chicago terminal area. CSXT's Reply evidence also accounts for the operations required to complete the movement of loaded issue coal cars that are bad-ordered on BNSF's lines, and the dwell time that CERR trains would incur as they wait for authority to operate on BNSF and UP lines beyond the end of the CERR network at 22nd Street.¹⁵⁸

¹⁵⁸ CSXT submits two versions of its Reply RTC simulation. CSXT's "Primary" RTC simulation excludes both (1) those trains eliminated by CSXT as a result of adjustments it proposes to Consumers' Peak Year traffic volumes and (2) 23 peak period CERR trains operating between Calumet Park and Curtis, which CSXT removed because *Consumers' own transit time comparison indicated that CERR train service did not equal or exceed the transit time achieved by CSXT's real-world trains*. See III-A-12 to III-A-15, *supra*. The Board should adopt CSXT's Primary RTC simulation as the basis for decision in this case. CSXT is also submitting an "Alternative" RTC simulation from which it eliminated only those trains impacted by CSXT's adjustments to Consumers' Peak Year traffic volumes. The "Alternative" RTC simulation *does* include the 23 Calumet Park-Curtis trains that CSXT removed from its "Primary" RTC simulation. See CSXT Reply WP "RTC Train File in Excel.xls."

**FIGURE III-C-12
Comparison of Train Transit Times**

RTC Route	On-SARR	Off-SARR	Consumers Opening	CSXT Reply	Difference
C22CUR	22nd Street	Curtis	2:56	3:22	15%
C59CUR	59th Street	Curtis	1:55	2:17	19%
C59DOS	59th Street	Dolton	1:34	1:46	13%
BARCUR	Chicago-Barr	Curtis	1:42	1:48	6%
DOECUR	Dolton	Curtis	1:36	1:34	-2%
DOSC59	Dolton	59th Street	1:22	1:51	34%
DOSCUR	Dolton	Curtis	1:49	1:41	-8%
DOSOGD	Dolton	Ogden Jct	3:34	3:26	-4%
CALCUR	Calumet Park	Curtis	0:57	Dropped	
		Blue Island			
CURBLU	Curtis	Conn.	3:06	2:50	-8%
CURBRI	Curtis	Brighton Park	2:38	2:38	0%
CURC22	Curtis	22nd Street	3:17	3:19	1%
CURC59	Curtis	59th Street	2:14	2:52	29%
CURCAL	Curtis	Calumet Park	0:59	Dropped	
CURDOE	Curtis	Dolton	1:30	1:36	6%
CUROGD	Curtis	Ogden Jct	3:48	4:02	6%

Figure III-C-12 compares the average train transit times generated by Consumers' Opening RTC simulation and CSXT's Reply RTC simulation. As Figure III-C-12 demonstrates, the average train transit times generated by CSXT's Reply RTC simulation are, overall, slower than those produced by Consumers' defective RTC Model. In particular, CSXT's correction of several flaws in Consumers' RTC Model results in significantly longer transit times for trains carrying time-sensitive intermodal traffic to and from the 59th Street Intermodal Terminal: westbound trains received by the CERR at Dolton and moving to 59th Street require 34% more time to traverse the Chicago terminal, while trains interchanged to the CERR at Curtis require 29% more time to reach 59th Street. Eastbound intermodal trains originating at 59th Street and moving to Dolton and Curtis (for interchange with

CSXT) require 13% and 19% more time, respectively, to traverse the Chicago terminal area. Merchandise trains traveling the length of the CERR network from Curtis to 22nd Street do so 15% slower in CSXT's more realistic RTC simulation. The seven highest volume On-SARR/Off-SARR pairs on Figure III-C-12—which collectively represent 7,930 trains, or 77% of all CERR trains operated by the CERR in the Base Year—experienced an average increase in transit time of 16% in CSXT's RTC simulation.¹⁵⁹

The average transit times set forth in Figure III-C-12 indicate that CERR trains moved through certain portions of the CERR network in *less* time in CSXT's Reply RTC simulation. This seemingly anomalous result is attributable to the reduced number of trains moving over those CERR line segments in CSXT's Reply simulation.¹⁶⁰ Given the downward adjustments to the CERR's Peak Year traffic volumes posited by CSXT in Part III-A, CSXT's Reply RTC Model included 78 fewer

¹⁵⁹ See CSXT WP "RTC Output Time Comparisons.xlsx."

¹⁶⁰ For example, eastbound trains operating between Dolton and Curtis, and westbound trains moving between Curtis and the Blue Island Connection, achieved an average transit time that was eight percent faster than the transit time generated by Consumers' RTC simulation. As discussed above, CSXT eliminated from its RTC Model 23 peak period CERR trains that operate between Calumet Park and Curtis, because Consumers' own evidence shows that CERR train service did not meet customer requirements. See III-A-12 to III-A-15. The removal of those 23 trains—and 83 other trains based on CSXT's downward adjustments to Consumers' Peak Year traffic projections—reduced the number of trains moving over the CERR between Barr Yard and Curtis in CSXT's Reply RTC simulation. Eliminating the potential interference caused by those trains enabled other trains moving over that segment to perform better in CSXT's Reply simulation than they did in Consumers' RTC simulation.

peak period trains than Consumers' Opening RTC Model.¹⁶¹ However, an “apples to apples” comparison of average transit times for the 158 trains that were included in both Consumers' and CSXT's RTC train lists indicates that the transit time for those common trains was, on average 17% slower in CSXT's Reply RTC simulation.¹⁶² In fact, nearly 60% of the trains in CSXT's Reply RTC simulation experienced transit times at least 10% longer than Consumers' and more than 40% were at least 25% longer. *Id.*

The train transit times generated by CSXT's Reply RTC simulation are conservatively understated. It is impracticable to capture in an RTC simulation all of the events that delay trains operating through the Chicago terminal area on a daily basis. As discussed above, the CSXT Train Sheet data (which Consumers' utilized for several purposes in preparing its Opening Evidence) indicate that the trains selected by Consumers for the CERR actually incurred nearly 1,200 delay events during the nine-day period covered by the parties' RTC simulations.¹⁶³ CSXT's RTC Model includes 77 delay events at foreign-controlled interlockings, 56 delays to CERR trains waiting for authority to operate off-SARR to BNSF's Cicero and Corwith Yards, or UP's Proviso Yard, and the same 17 “random outages” that Consumers' input to its RTC Model. Those 150 delay events represent a fraction of the occurrences that affected the real-world operation of Consumers' selected trains.

¹⁶¹ See Consumers Op. WP “RTC Report output v2.xlsx” and CSXT Reply “RTC Report Output v2_Reply.xlsx.”

¹⁶² See CSXT Reply WP “RTC Output Time Comparisons.xlsx.”

¹⁶³ See Consumers Op. WP “Peak Unit March Trains v5 20151009 w Peak 6E Consist and Growth Trains w delay v4.xlsx.”

Moreover, the RTC Model is inherently incapable of accounting for weather conditions, which have a major impact on train operations in Chicago during the winter season.¹⁶⁴ Because of these limitations of the RTC Model, the effect of real-world operating conditions on the CERR's train service reflected in CSXT's Reply RTC simulation is understated—indeed it is more likely that the CERR's average train transit times would be similar to CSXT's Base Year experience.

The train transit times generated by CSXT's Reply RTC simulation constitute the best evidence of record, and should be adopted as the basis for estimating the CERR's operating expenses in this case.

4. Other

a. Crew Districts

Consumers assumes that the CERR will comprise one crew district with some crews working as straightaway crews and other working as turn crews.¹⁶⁵ CSXT accepts Consumers' assumption regarding crew districts; however, CSXT does not accept Consumers' assumption that 100% of the crews in the Chicago area would be able to operate in turn service every day throughout the year. Consumers' train crew average shifts per year are also grossly inflated.

¹⁶⁴ While the RTC Model was utilized to conduct certain operating studies for the Chicago CREATE program, the simulations performed in connection with CREATE were likewise conservative. The CTCO members who participated in those studies clearly understood the limitations of the RTC Model, including its inability to capture the effects of weather, track and signal outages, and other unanticipated delays. The RTC simulations performed in connection with CREATE did not attempt to measure the effects of delays at foreign interlocking and at-grade crossings, delays incurred during dispatch handoffs, or as a result of weather conditions in Chicago.

¹⁶⁵ Consumers Op. III-C-79 to III-C-80.

Moreover, Consumers' crew calculations are based solely on Consumers' RTC analysis, which fails to account for delay, interference, and the off-SARR operations required for CERR crews that handle trains to Cicero, Corwith, or Proviso. Merely prorating the time required for those off-SARR runs (by imposing the on-SARR average train speed to the off-SARR segments) more than doubles the proportion of movements that would exceed a four-hour run time, resulting in 19%—or nearly one out of every five movements—exceeding four hours.

Based on the more realistic transit times generated by CSXT's Reply RTC Model, 23% of Westbound trains and 16% of Eastbound trains exceed the four hour threshold.¹⁶⁶ It is evident that CERR crews would not be able to operate as turn crews without the real risk of expiring on route under the Hours of Service Regulations.

b. Other Crew Assignments

Consumers assumes that the CERR would operate a single switch crew at Barr Yard.¹⁶⁷ That crew would assist in setting out bad-order cars, transferring cars to and from the car shop, and inspecting trains as necessary.¹⁶⁸ Consumers assumes that a crew member would be available at Barr Yard 24 hours a day on 12 hour shifts. CSXT increases the staffing at Barry Yard by one position, as described at III-D-44, *infra*.

¹⁶⁶ CSXT Reply WP. "CERR Turn Crews.xlsx."

¹⁶⁷ Consumers Op. III-C-81.

¹⁶⁸ *Id.*

Consumers also provides for one utility crew member to provide helper service on the Grand Rapids Sub. Consumers Op. III-C-81. Consumers assumes that that crew member will also perform duties at West Olive, including fueling locomotives, back-up car inspection, and paperwork at the crew change facility. Consumers assumes each person will work a 12 hour shift. CSXT accepts Consumers' proposed helper crew staffing.

c. 1,000/1,500 Mile Inspections

Consumers assumes that the CERR will perform 1,000 and 1,500 mile inspections on certain trains at West Olive and at Barr Yard.¹⁶⁹ CSXT does not contest Consumers' description of the CERR's inspection practices, based on the trains that are stopped to be inspected in the RTC Model.

d. Rerouted Traffic

On Opening, Consumers proposes one class of internally rerouted traffic.¹⁷⁰ Rather than having certain intermodal trains that originate at the 59th Street Intermodal Facility operate east over the BRC to 80th Street and then south to Dolton Junction, Consumers proposed that the CERR route all intermodal trains originating at 59th Street over the CERR's Blue Island and Barr Subdivisions to Dalton.¹⁷¹ CSXT accepts this internal re-route and routes these trains in the same manner in its Reply RTC Model.

¹⁶⁹ Consumers Op. III-C-82.

¹⁷⁰ Consumers Op. III-C-86.

¹⁷¹ *Id.*

e. Fueling of Locomotives

Consumers proposes to fuel locomotives at two locations on the CERR—at West Olive and Barr Yard.¹⁷² Consumers proposes to fuel locomotives by truck at designated pads.¹⁷³ CSXT accepts Consumers' proposed fueling practices.

f. Train Control and Communications

Consumers proposes to equip the CERR lines between Ogden Junction and Curtis, IL with a CTC traffic control system, and to the line operate between Porter, IN and West Olive, MI as “dark” territory with no CTC system.¹⁷⁴ CSXT accepts Consumers' proposed communications systems.

g. Traffic Growth and Train Consists

CSXT's Reply RTC Model adjusts the length of CERR trains, and the number of “growth” trains required in the Peak Year, in the manner discussed above at III-C-39-40.

¹⁷² Consumers Op. III-C-86.

¹⁷³ *Id.*

¹⁷⁴ Consumers Op. III-C- 27 (“ . . . CTC is not needed on the remainder of the railroad between Porter and West Olive due to the light volume of traffic.”).

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III. STAND-ALONE COST

D. OPERATING EXPENSES

In Section III-D of its Opening Evidence, Consumers presents its estimate of the CERR's annual operating expenses based on the traffic group and operating plan posited in Parts III-A and III-C, respectively. As shown in Consumers' Table III-D-1, Consumers estimates that the CERR's Base Year operating expenses would total \$54.3 million, based on 1Q 2015 cost levels.¹ As CSXT demonstrates below, Consumers understates by more than \$10 million the annual costs of providing the services and functions necessary to handle the traffic that Consumers selected for the CERR.

Consumers' operating expense estimates are based directly on its ill-conceived traffic selection methodology and faulty RTC simulation.² As CSXT demonstrated in Sections III-A and III-C, Consumers' traffic selection abuses even the broad grouping leeway afforded shippers in SAC proceedings, and its RTC simulation is deeply flawed. Accordingly, the foundation upon which Consumers builds its CERR operating expenses is unsound. This combined with Consumers'

¹ Consumers Op. III-D-7.

² See Consumers Op. III-C-78 ("The RTC Model simulation demonstrates that the CERR's system configuration and operating plan are feasible, and that the CERR's operations in the peak period of the peak year meet its customers' requirements."); *id.* III-D-1 ("Consumers Witnesses John McLaughlin developed train speeds and locomotives per train from the RTC Model simulation of the CERR's operations ...").

disregard of railroad operations reinforces the need for the Board to reject those estimates.

In this Section III-D, CSXT identifies numerous ways in which Consumers understates the expenses that would actually be incurred in operating the CERR. The most fundamental reasons are a function of Consumers' dependence on two flawed constructs. First, Consumers relies upon an unconventional method to select traffic that would require additional costs to implement and sustain.³ Consumers traffic selection approach effectively would result in a new operating plan, *every day*, for dozens of train crews and many operations support personnel. These operations would be further complicated by the fact that the CERR's operations involve almost exclusively overhead train movements through the busy Chicago terminal area, resulting in a need to continuously coordinate with six other railroads (BNSF, BRC, CP, CSXT, IHB, and UP) to identify the specific subset of CSXT trains that the CERR desired to handle—and then operate those trains across the nation's busiest railroad terminal.

Second, Consumers relies upon an RTC simulation that fails to account accurately for the delays and interference that all railroads operating in Chicago encounter, many of which are beyond CSXT's (and the CERR's) control. See CSXT Reply Section III-C. Consumers posits that by including only a subset of CSXT's trains, it could make pro-rata reductions to certain delays, while ignoring others entirely. Consumers' assumption ignores the fact that *all* CERR trains in Chicago

³ It is in fact doubtful that Consumers' proposed operations, based upon its traffic selection methodology, are sustainable.

will traverse foreign grade crossings at interlockings that CSXT does not control. In fact, many CERR trains must traverse three or more such crossings. And fully 30% of CERR trains will operate on the lines of foreign railroads. An RTC simulation used to develop the costs of navigating on CSXT's and other railroad's facilities in the busy Chicago terminal must account for these "realities of real-world railroading." Consumers' analysis does not.

For its CERR operating expenses, Consumers assumed unit costs for equipment, personnel, and facilities that do not reflect the full costs that a railroad would incur in providing the required services to the CERR's customers. In the areas of Operating Managers, Maintenance of Way, and General & Administrative, Consumers' Opening Evidence reflects staffing that would not be adequate to manage the CERR's operations safely and effectively, maintain its right-of-way and facilities, or perform the myriad administrative functions for a railroad that is required to coordinate with and then provide a critical bridge between two other interline partners for nearly 95% of its trains.⁴ In fact, the CERR would be responsible for operations across the busiest (and therefore most resource-dependent) portion of many of these shipments' entire end-to-end routes. By undersizing critical elements of the CERR's operations and omitting others entirely, Consumers' operating plan and operating expense evidence fail to account for all of

⁴ The CERR will operate all of its trains between two other railroads, with the exception of only the issue traffic loads and empties, which the CERR will interchange with BNSF.

the activities, equipment, facilities, and personnel (and the corresponding costs) required to operate the CERR.

Table III-D-1 below summarizes the parties' CERR annual operating expenses, at 1Q 2015 levels. The bases for CSXT's adjustments to the expense estimates posited by Consumers follow.

Table III-D-1
CERR 2015 Operating Expenses (1Q 2015 Levels)⁵
(\$ in Millions)

	Consumers	CSXT	Difference
Locomotive Ownership	{ }	{ }	\$0.8
Locomotive Maintenance	{ }	{ }	1.5
Locomotive Operations	{ }	{ }	(0.3)
Railcar Lease	5.0	4.7	(0.3)
Material & Supply Operating	0.6	0.7	0.1
Train and Engine Personnel	7.1	9.0	1.9
Operating Managers	5.0	6.9	1.9
General & Administrative	6.9	11.2	4.3
Loss & Damage	{ }	{ }	0.0
Ad Valorem Tax	{ }	{ }	(0.4)
Maintenance-of-Way	8.6	13.2	4.6
Joint Facilities	1.5	4.4	2.8
Intermodal Lift and Ramp	5.9	0.0	(5.9)
Insurance	2.0	2.4	0.4
Startup and Training	2.7	3.3	0.7
Total Annual Costs	\$54.3	\$66.3	\$12.1

1. Locomotives

Consumers posits that the CERR would use two classes of locomotives: high-horsepower General Electric ES44-AC units ("ES44s") for road service and SD40

⁵ CSXT Reply WP "CERR Operating Expense_Reply.xlsx," worksheet "DCF Transfer." Figures in the above table may not reconcile due to rounding.

units for yard switching service.⁶ CSXT accepts the use of those locomotive types.⁷ As explained in Section III-C above, the numerous errors in Consumers' operating plan and RTC Model result in a substantial understatement of the number of locomotives required to handle the CERR's selected traffic. Those errors, as well as others that lead Consumers to understate the CERR's locomotive acquisition, maintenance, and fueling costs, are discussed in detail below.

a. Locomotive Acquisition

i. Consumers Understates The Number Of Locomotives Required To Support CERR Operations.

Consumers posits that the CERR would need only 12 road locomotives and a single yard engine to handle its Base Year traffic.⁸ Consumers' total locomotive count is understated in part because Consumers understates the locomotive time required to serve the CERR's traffic group through a number of errors and omissions in its RTC simulation. CSXT describes Consumers' faulty RTC analysis in detail in Section III.C above, and repeats here the two major omissions by which its analysis understates locomotive time.

1. Failure to account fully or properly for the interference that CERR trains would incur at interlockings controlled by other railroads.

⁶ Consumers Op. III-D-7.

⁷ As described below, Consumers included helper locomotives in its calculation of ES44s, yet models them in its RTC simulation as SD40s. To calculate costs for the CERR's two helper units, CSXT accepts the less expensive SD40 type that is modeled in the RTC.

⁸ Consumers Op. III-D-7 to III-D-8.

2. Failure to account for the delays that CERR trains would incur waiting to gain access to BNSF or UP lines to operate off-SARR to deliver trains to Cicero, Corwith and Proviso yards.

In addition to the understatement of locomotive time due to Consumers' failure to depict real-world Chicago operations in its RTC simulation, CSXT identified six other shortcomings in Consumers' development of the CERR's locomotive expenses that must be corrected.

1. Failure to account for the time that locomotives would spend at the Campbell Plant delivering and picking up Consumers' issue-traffic trains, and at CSXIT's 59th Street terminal delivering and picking up CERR intermodal trains.
2. Miscalculation of the number of helper locomotives the CERR would need to acquire.
3. Failure to account for all of the locomotives on trains that the CERR would receive in run-through service at interchange.
4. Understatement of the number of yard engines that would be required to support the CERR's operations adequately.
5. Miscalculation of the peaking factor necessary to ensure that adequate power is available in times of peak traffic flows.
6. Understatement of the spare margin to account for time that locomotives are out of service.

Locomotives at Consumers' Campbell Plant and CSXIT's 59th Street

Intermodal Facility. Consumers includes virtually no time—and therefore assigns no measurable costs—for locomotive dwell at either West Olive or 59th Street. As a result, its locomotive utilization time is significantly understated.

West Olive. Consumers' RTC Model assumes that *loaded issue-traffic trains dwell for only one second* upon arrival at West Olive, and that *empty trains dwell for one second before departing* for their return trip. This is yet

another example of the failure of Consumers' RTC simulation to reflect the realities of real-world railroading. The assumption by Consumers' experts that locomotives arrive with a loaded train and instantaneously depart with an empty train is not just infeasible, it's ridiculous.

CSXT provided Consumers with a detailed description of the operations at the Campbell Plant in West Olive. As described in those materials, the issue-traffic trains are powered predominately by BNSF locomotives throughout their route of movement.⁹ Under the terms of the run-through agreement, CSXT owes BNSF for the total horsepower-hours for *the entire time* that those locomotives are off of BNSF's lines, *including the time spent dwelling at West Olive*. Consumers incorrectly assumes, however, that the locomotives somehow come out of the CERR's account, and BNSF would be not compensated for any time that its locomotives spend at West Olive spotting loaded trains at the plant, fueling,¹⁰ and re-configuring and inspecting empty trains before departure for the return trip.¹¹ Consumers' experts recognize that these activities must occur,¹² but its cost

⁹ See CSXT Reply WP "Description of Consumers Train Movements.pdf."

¹⁰ Consumers acknowledges that the run-through agreement requires CSXT to return BNSF's locomotives with a certain amount of fuel, and that CERR would fuel units there. Consumers Op. III-C-31, III-C-86 to III-C-87.

¹¹ Consumers also acknowledges that CSXT provides 1,500-mile inspections for empty trains at West Olive, and that the CERR would too. Consumers Op. III-C-31.

¹² Consumers Op. III-C-71 ("... the plant does not have a loop for unloading and the trains must be cut in order to run them through the dumper. Further, cars receive regular in-depth inspections at the on-site car shop. Consequently, this combination of circumstances creates relatively long dwell times versus a typical western coal burning plant. Mr. Holmstrom and Mr. Orrison observed, however, that the locomotives do not stay with the trains. Instead, the typical practice is to remove,

calculations do not include any time—locomotive or otherwise—to perform them. And even if, as Consumers claims, there were an empty train available to depart immediately upon the arrival of an inbound loaded train, Consumers has failed to allow even the minimum time needed for the power to turn around, let alone uncouple from the loaded cars, be fueled and then couple to the empties.

In response to Consumers' claim, CSXT reviewed the horsepower-hour equalization data produced to Consumers in discovery.¹³ These data track the use of CSXT's locomotives on BNSF lines, and the use of BNSF's locomotives on CSXT lines, including the engines that power Consumers' loaded and empty trains. CSXT identified the individual records for the locomotives for six loaded issue trains that BNSF delivered to CSXT during the peak period (March 23-31, 2014).¹⁴ Those records indicate that the locomotives were on CSXT's lines for periods ranging from { } hours, for which CSXT incurred a horsepower-hour debit to BNSF. The two quickest round trips were { } hours. In performing its comparison of CSXT's real-world transit times to those generated by its RTC simulation, Consumers calculated an average CSXT loaded and empty transit time—excluding the dwell at the Campbell Plant—of 44 hours.¹⁵ Thus, even if the CERR were able to achieve consistently the turnaround experience of the fastest one-third of the Consumers' trains, the locomotives would still incur dwell at West Olive averaging

fuel, and then place the locomotives on the next outbound empty train, thereby reducing locomotive requirements.”)

¹³ See, e.g., CSXT WP “2014 03 BNSF-CSX.xlsx” and “2014 04 BNSF-CSX.xlsx.”

¹⁴ CSXT Reply WP “2014 03 BNSF-CSX.xlsx,” worksheet “BNSF on CSXT.”

¹⁵ Consumers Op. WP “5.1 Transit Times Comparison Hist vs RTC.xlsx.”

19 hours (63-44=19). In light of the real-world data, Consumers' claim that the locomotives would instantaneously depart is nonsensical.

In its Reply locomotive expense calculations, CSXT includes locomotive time at West Olive consistent with CSXT's real-world experience. This includes time that the locomotives are dependent upon Consumers' operations at the plant, while CSXT is continuously accruing a horsepower-hour debt to BNSF. Recognizing that the CERR will face the same circumstances, CSXT uses the two fastest trains during the peak period and calculates an average locomotive dwell time of 19 hours, which is much more realistic than Consumers' estimate of 2 seconds.¹⁶

59th Street Facility. Consumers' RTC simulation similarly fails to include a realistic measure of the time that CERR locomotives would spend at the 59th Street intermodal facility. Consumers' RTC Model includes *only one second of dwell* before every outbound train departs, and *either one second or two minutes* of dwell upon arrival for inbound trains. As a result, for the 30% of all CERR trains that begin or end their trip at the 59th Street facility, *Consumers includes an average of 1 minute of locomotive costs.* This is nonsensical. In the section of its Opening narrative labeled "Time to Depart the 59th St. Intermodal Facility," Consumers states its assumptions:

The 59th St. Intermodal facility is not modeled in the RTC Model because the facility is separately operated by CSXIT. However, CERR crews originate such trains before they enter the CERR and the RTC Model.

¹⁶ CSXT Reply WP "bnsf runthrough times.xlsx."

Mr. Orrison and Mr. Holmstrom have allotted 30 minutes of crew time for this purpose.¹⁷

While Consumers' experts indicate that they allotted 30 minutes of "*crew time*" for outbound trains, that time is *not* also included in Consumers' calculation of *locomotive* costs. Consumers cannot assume away the fact that locomotives will spend time at 59th Street delivering inbound intermodal trains and picking up outbound trains. Further, this operating assumption is particularly inconsistent with Consumers' assumption in its ATC revenue allocation that the CERR would receive a full origination or termination revenue credit for more than 40% of the CERR's containers, and receive a revenue credit for an interchange for virtually all of the other intermodal shipments, as explained in Section III.A above.

On Reply, CSXT corrects Consumers' revenue allocation to align with the services, functions, and facilities that the CERR would actually provide, and treats the delivery and pick-up of the trains as a hypothetical "interchange" for the CERR. Consistent with that approach, CSXT's Reply RTC Model includes 30 minutes of locomotive dwell for both inbound and outbound intermodal trains at the 59th Street facility.

Helper Locomotives. Consumers acknowledges that the CERR must provide the helper service that is required for loaded issue traffic trains to ascend Saugatuck Hill, on the Grand Rapids Subdivision roughly 25 miles from West Olive.¹⁸ Consumers indicates that the helper units would be "stationed in the

¹⁷ Consumers Op. III-C-70.

¹⁸ Consumers Op. III-C-70.

helper pocket track located at MP 39.25,” and would operate between MP 37.4 and MP 32.3.¹⁹ In its RTC Model, Consumers stops loaded trains before the grade, adds two SD40-2 locomotives, and operates with the additional power for 5 miles.²⁰ But when calculating the number of locomotives that the CERR would acquire, rather than include *two* helper units as it suggests,²¹ Consumers includes the costs for *0.04 units*.²² Consumers incorrectly costs these units as if they were part of the run-through pool of road locomotives for which the CERR’s responsibility can be determined based on the time the locomotives are powering trains. Consumers’ proposal that the CERR’s helper-locomotive requirements can be met by 0.04 units is absurd—each loaded train must be assisted by two helper units.

Furthermore, Consumers’ approach represents a break from parties’ long-standing practice in SAC cases of identifying helper districts for which the SARR will provide *dedicated* engines, as railroads do in the real world.²³ In fact, in this case, the helper units at Saugatuck Hill are the *only* CERR locomotives that would not run-through to another carrier’s lines, as *all* CERR trains are interchanged with the residual CSXT or other foreign railroads. Consumers’ calculations indicate that an average of one train per day must be helped at that location, including every

¹⁹ *Id.*

²⁰ See Consumers’ RTC simulation, *e.g.*, “CERR Opening.TRAIN.”

²¹ Consumers Op. III-C-30 (“The CERR also operates two helper locomotives on the Grand Rapids Subdivision.”).

²² CSXT Reply WP “Calculation of Consumers Helper Units.xlsx.”

²³ See, *e.g.*, *DuPont*, STB Docket No. 42125 at 70 (accepting defendant’s locomotive allocation for helper service); *AEPCO 2011*, STB Docket No. 42113 at 41 (same).

loaded train carrying the issue traffic. Therefore, two units must be available every day to help trains over Saugatuck Hill. Accordingly, the CERR will be responsible for the full costs associated with providing two locomotive units for helper service.

While Consumers' RTC simulation properly depicted the CERR's recurring need for helper operations, its cost calculations do not. Rather than include the costs of dedicating two SD40s to ensure fluid operations over Saugatuck Hill at all times, Consumers manipulated the results of its RTC simulation in the following manner to include the costs of only a fractional unit: First, as indicated above, Consumers' RTC simulation assumes that two additional helper units operate for five miles on every loaded issue-traffic train. Consumers then concludes that the additional helper units increase the average consist size for these trains from 2.00 to 2.07 units,²⁴ and it uses this higher figure to calculate the total locomotive hours for all northbound trains operating over Saugatuck Hill.²⁵ Increasing the average consist size from 2.00 to 2.07 results in an additional 373 CERR locomotive hours in Consumers' total.²⁶ Finally, Consumers calculates the CERR's locomotive requirements by dividing CERR locomotive hours by 8,760 (the total number of hours in a year),²⁷ so that its operating expenses include the costs for 0.04 helper

²⁴ Consumers Op. WP "RTC Report output v2.xlsx," worksheet "Pivot-Average Locos and MPH," cell M6.

²⁵ Consumers Op. WP "Base Unit Merch Trains v6_Statistics.xlsx," worksheet "2014 Full Base Year Unit Merch," columns W and AB.

²⁶ CSXT Reply WP "Calculation of Consumers Helper Units.xlsx."

²⁷ Consumers Op. WP "CERR Operating Statistics_Open.xlsx," worksheet "Summary," cell K21.

locomotives.²⁸ As indicated above, CSXT corrects this clear understatement by including the costs for two SD40 helper locomotives, consistent with the operations modeled in Consumers' RTC simulation.

CERR Trains Received with More Than 2 Locomotives. As described in the preceding section, Consumers uses an average consist size of 2.07 locomotives for the one issue traffic train per day that operates northbound on the Grand Rapids Subdivision. For 99.7% of all other CERR trains, Consumers calculates CERR locomotive costs based on an assumption of 2.00 locomotives.²⁹ This calculation is directly at odds with the description of the run-through operations that Consumers proposes for every CERR train, without exception.³⁰ Consumers' use of 2.00 locomotives understates the number of units that would actually be on many of the trains that the CERR would receive in interchange, and for which the CERR would be responsible.

Many of the trains that the CERR proposes to transport across the Chicago terminal operate in the real world with three or more locomotives, in order to ensure that they meet applicable service requirements and transit time commitments. These include time-sensitive trains for which it is critical to maintain schedules and make cut-off times to meet the service commitments of CSXT and the CERR's other prospective interline partners. While Consumers'

²⁸ $373 / 8,760 = 0.04$.

²⁹ Consumers Op. WP "Base Unit Merch Trains v6_Statistics.xlsx," worksheet "2014 Full Base Year Unit Merch," column W.

³⁰ Consumers Op. III-C-31.

experts may have concluded that operations over the CERR would not require more than two ES44 locomotives, the fact is that CSXT, BNSF, and UP frequently deliver trains to one another in Chicago with more than 8,800 horsepower.³¹ The receiving carrier may need the third locomotive to facilitate fluid operations beyond the lines replicated by the CERR, and having the power on the train is a more effective operating solution to maintain speeds and re-accelerate after stopping than picking-up and setting-off locomotives at multiple locations along the route, which would jeopardize meeting the trains' schedule.³²

Consumers' own evidence adopts these operating practices, which are standard in the Chicago area. However, its cost calculations do not reflect the process set forth in the narrative. Specifically, Consumers states:

If trains received by the CERR in interchange have additional locomotives, the configuration is not changed when the trains enter the CERR system. To the extent such trains contain more than two locomotives, the horsepower equivalent in ES44-AC locomotives is assumed since CSXT's train movement records do not show the locomotive types that were actually on the Base Year trains.³³

³¹ In fact, CSXT's Interline Service Agreements with BNSF specify minimum horsepower-to-trailing ton requirements for trains being interchanged at Barr, Cicero, and 59th Street. See CSXT WP "Select Chicago ISAs.pdf" at pages 6 and 10 (CSX-CNSMR-HC-025276 and 280).

³² Further, as described in Section III-C, the CERR will be exclusively a bridge carrier in Chicago, and thus will not control building the trains or assigning the locomotive consists that it receives at interchange. Any proposal to modify the existing operations and not transport to the receiving carrier all of the locomotives that carrier receives in the real world is prohibited, particularly without addressing the impact of the alterations to the off-SARR operations of other railroads,

³³ Consumers Op. III-C-32.

However, Consumers does not, in fact, include the “horsepower equivalent” for its trains; its calculations uniformly assume 2.00 ES44 locomotives, or 8,800 horsepower, for virtually all trains. CSXT examined the historical trainsheet and equipment records to identify the specific locomotives and corresponding horsepower that were actually on each train at the location where the CERR would receive it.³⁴ The following table presents the average number of locomotives and average total horsepower in the consist for CERR trains, by train type.

**Table III-D-2
Average Locomotive Consist Size for CERR Trains**

Train Type	Avg. Number of Locomotives	Avg. Total Horsepower	Increase to Consumers
Unit	2.30	9,770	11%
Intermodal	2.20	9,361	6%
Merchandise	2.40	9,741	11%

CSXT increases the CERR’s locomotive requirements to account for the additional locomotives that the CERR would receive in interchange, and be required to deliver to the receiving carrier to avoid altering the off-SARR operations of foreign railroads. CSXT accepts Consumers’ assumption that the throttles of the 3rd locomotives can be isolated in the idle position while operating on the CERR.³⁵ While this will allow the CERR to avoid incurring the full fuel consumption and servicing costs for such units, the CERR will continue to be responsible, under its

³⁴ CSXT matched the trainsheet records to data for individual locomotives in the Equipment data, specifically the “wEquipment” table in Consumers’ “ConsumersOpening.bak” SQL database file. See CSXT Reply WP “Received Locomotive Consists.xlsx.”

³⁵ Consumers Op. III-C-32.

run-through arrangements with connecting carriers, for the time that the locomotives are on its lines. Similar to the situation at West Olive described above, the CERR cannot simply assume that BNSF, CSXT, or UP would not be compensated for time when their locomotives are on another railroads' lines, and not available to the owner.

Yard Engines. Consumers proposes that one switch locomotive would be sufficient to perform all the functions required in Barr Yard, throughout the year. CSXT rejects this assumption, and concludes that the CERR would need two SD40 locomotives located at Barr Yard. Consumers explains that the switch locomotive “aids, as necessary, in the removal of bad order cars identified in inspections that occur in the yard. The switch locomotive also provides for the movement of cars to and from the Barr Yard car shop area. The switch locomotive is used for work train assignments as needed.”³⁶ Another required function that Consumers did not account for is the switching of issue traffic carloads that were bad-ordered and removed from a loaded unit train, which the CERR must deliver to West Olive with an alternative operation. As described in Section III.C, such bad-orders occur more than once a week on average, and require an additional storage track in Barr Yard as well as the capability to switch them into the next Consumers' loaded unit train that passes, without disrupting the other movements through the yard and on the adjacent mainline.

³⁶ Consumers Op. III-C-30.

It is not feasible to depend upon a single locomotive to cover all of these required activities 24/7, year-round. The tasks that Consumers has identified—inspections, car movements, work trains—occur regularly, and are critical to maintaining the fluidity of the railroad. Further, as explained below, Consumers’ train movements are not evenly distributed throughout the year, and a peaking factor of more than 20% is required to address the surge in shipments at certain times. Thus, the need “to keep the railroad moving” will be heightened, and relying upon a single locomotive to service all operations at the CERR’s only yard is far too risky. Because the work in Barr Yard alone will be sufficiently demanding, it is unlikely that Consumers’ lone switch locomotive would be available for work-train assignments as suggested—at least not without stranding its other functions. CSXT witness Gibson concluded that a second yard locomotive is necessary to support the required operations, and will allow the CERR to provide uninterrupted service in the event that the single yard locomotive provided by Consumers fails and incurs out-of-service time.

Peaking Factor. Consumers purports to follow Board precedent to ensure that the CERR will supply adequate power to meet the demands in periods of peak traffic flows.³⁷ Specifically, Consumers claims that it determined the peaking factor “by dividing the average number of train starts per day in the peak week by the average number of train starts per day in the peak year.”³⁸ Review of Consumers’ workpapers indicates, however, that it did not determine the peaking factor based

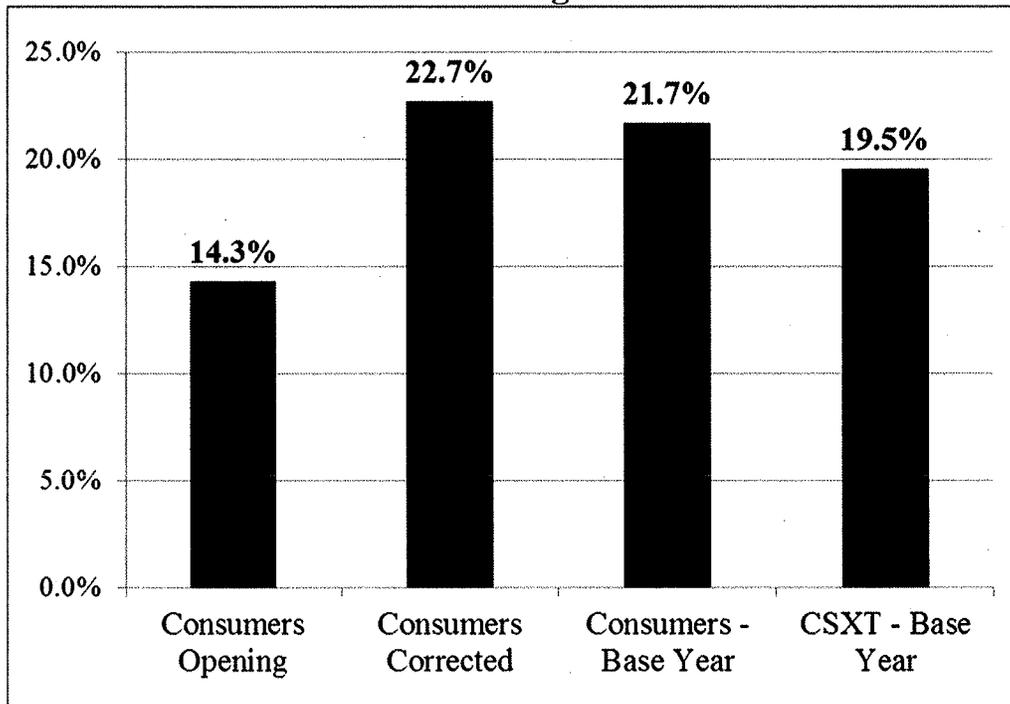
³⁷ Consumers Op. III-C-33.

³⁸ *Id.*

on the peak *week* (7 days) as previously adopted by the Board, but erroneously calculated the average number of train starts for the peak *period* (9 days, in this case). As Consumers' CERR peak period includes a warm-up day and a cool-down day that each have fewer train starts than the daily average for the 7-day peak week, Consumers' miscalculation results in an understated peaking factor, and a corresponding understatement of the CERR's locomotive costs.

CSXT corrects this error by replacing the calculation in Consumers' workpapers of 35.7 train starts per day in the peak period with the average of 38.3 for the peak week. Comparing this figure to the average daily number of train starts in the year (31.2) results in a peaking factor for CERR of 22.7%. CSXT confirmed the reasonableness of this higher factor by performing additional calculations of the peaking factor for each of the parties' Base Year traffic groups. Figure III-D-3 below shows that Consumers' 14.3% peaking factor is well below the factor that would be required to meet the CERR's locomotive needs throughout the year.

**Figure III-D-3
CERR Peaking Factors**



Spare margin: Consumers' locomotive estimate includes a spare margin of { } for ES44-AC units, which Consumers derived from locomotive utilization information that CSXT provided in discovery.³⁹ Review of Consumers' workpapers indicates that Consumers calculated spare margins by locomotive model for each year 2012-2014, and then developed a three-year average to use for the CERR. CSXT accepts the use of a three-year average by model.⁴⁰ Beyond those aspects, however, CSXT rejects the approach that Consumers followed in using CSXT's

³⁹ Consumers Op. III-C-33.

⁴⁰ To clarify, Consumers calculates one spare margin for all ES44 road units, regardless of the trains they are powering. Consumers' narrative may have left the impression that the factors varied by train, but they do not. See Consumers Op. III-C-33 ("[A] locomotive spare margin was developed and applied separately for coal and other unit trains, merchandise, and intermodal trains.")

utilization data to determine a spare margin that would apply to the CERR. CSXT identified three flaws in Consumers' approach: (1) including Out-of-Service time in the total locomotive time used as the denominator of the calculation; (2) including "Unknown" time in the total locomotive-time denominator; and (3) failing to include Fallout and Repair time (which is necessary to account for the entire time that locomotives are unavailable from failure to when they are powering trains again).

Out of Service Time. To calculate its spare margins, Consumers divided the total Out of Service time by the sum of the time reported to the following three categories: Active, Stored, and Unknown.⁴¹ The CSXT materials on which Consumers relied define Active time as "Time available to work plus its time out of service,"⁴² and the figures confirm that the Active total includes Out of Service time. As Consumers applied its spare margin to an estimate of CERR locomotive time that does *not* include Out of Service time, the Out of Service amount should have been removed from the total locomotive time used as the denominator of the calculation. As an example, if a locomotive reported total Active hours of 100 and Out of Service hours of 10, under Consumers' approach a spare margin of 10.0% would be calculated (10/100). Under Consumers' approach, that 10.0% would be applied to a locomotive's available time (90 hours), not its total time. In this example, that would result in total Out of Service time of 9 hours—10% less than was actually experienced. In order to correct this understatement, the Out of Service time must be excluded from the total Active time. In this example, that

⁴¹ Consumers Op. WP "Locomotive Utilization_Open.xlsx," worksheet "Sheet1."

⁴² *Id.* worksheet "Data Dictionary."

would result in a spare margin of 11.1%,⁴³ which when applied to the 90 available hours would fully account for the 10 hours of Out of Service time (90 x 0.111).

Unknown Time. As indicated above, Consumers increased the total locomotive time used to calculate the spare margin by adding Unknown time to the total of Active and Stored time. This is incorrect. Consumers' workpapers indicate that Unknown time is not time that the locomotive is available to perform work or to power trains. As indicated above, the CERR spare margin is applied to an estimate of SARR locomotive hours that reflects the time that locomotives are powering trains or dwelling at interchanges or customer locations, based on the operations and activities modeled in Consumers' RTC simulation. There is no Unknown time in Consumers' RTC simulation or estimate of CERR locomotive hours. But by including Unknown time in the total locomotive time (the denominator) used to calculate the spare margin, Consumers' approach improperly suppresses the proportion of available time that a CERR locomotive would be out of service. In order to align the development of CERR locomotive hours with the relationship of Out of Service time to the time that locomotives are available for service, Unknown time should not be included in the denominator of the spare-margin calculation. CSXT removes Unknown time from the estimate of total locomotive time to which Out of Service time is compared.

Fallout and Repair Time. CSXT's utilization materials define Out of Service time as "Time out of service (in the shop being repaired)."⁴⁴ While this includes

⁴³ $10 \text{ Out of Service hours} / (100 \text{ Active hours} - 10 \text{ Out of Service hours}) = 10 / 90 = 11.1\%$.

time that locomotives are in the shop, it does not capture the full extent to which locomotives are unavailable to power trains. The CSXT data also include categories that do account for that time, identified as Fallout (“Time spent from locomotive failure until it is “shopped” at a repair location”) and Repair (“Time spent from “shopping” until assigned to next train”).⁴⁵ The CERR’s more concentrated network is likely to result in situations where locomotives fail and take longer to be transported to a shop, in contrast with a larger railroad with a more extensive network of mechanical operations and shops at multiple locations. CSXT replaces Out of Service time with the total of Fallout and Repair time to calculate the factor by which the CERR’s locomotive hours will need to be increased to account for locomotives’ failing, getting transported to shops, and being repaired.

Summary. CSXT makes the corrections described above and calculates a spare margin of { } for CERR’s ES44 units.⁴⁶ Figure III-D-4 below contrasts Consumers’ spare margin to the results produced by (1) removing Out of Service and Unknown time from the total; and (2) replacing Out of Service time with Fallout and Repair.

⁴⁴ Consumers Op. WP “Locomotive Utilization_Open.xlsx,” worksheet “Data Dictionary.”

⁴⁵ *Id.*

⁴⁶ CSXT Reply WP “Locomotive Utilization_Reply.xlsx,” worksheet “Sheet1.”

**Figure III-D-4
CERR Spare Margins {**

}

In the above section, CSXT identified the specific differences between the parties' approaches to determining the CERR's locomotive requirements. In calculating the number of locomotives for CSXT's Reply evidence, CSXT follows Consumers' approach of applying the RTC simulation results to its train list, but applies those results to a revised traffic group that is smaller than Consumers' Opening traffic group.⁴⁷ CSXT also adopts Consumers' approach to increase the CERR's locomotive requirements to account for imbalances in the CERR train flows and to sustain fluid operations,⁴⁸ and adjusts those calculations to reflect its revised traffic group as well.⁴⁹

⁴⁷ CSXT Reply WP "CERR Base Year Trains.xlsx," worksheet "Trains," columns AN-BH.

⁴⁸ Consumers Op. WP "Base Unit Merch Trains v6_Statistics.xlsx," worksheet "Crew and Loco Balancing," columns W-Y.

⁴⁹ CSXT Reply WP "CERR Base Year Trains.xlsx," worksheet "Crew and Loco Balancing_Reply."

Table III-D-5 below summarizes the parties' Base Year locomotive requirements for the CERR.

Table III-D-5
The CERR Would Require Significantly More Locomotives than Consumers Estimated for the Base Year

	Road Engines	Helper Engines	Yard Engines	Total
Consumers	12*	0*	1	13
CSXT	18	2	2	22
Difference	6	2	1	9

*Consumers' total of 12 road engines includes a fractional helper unit.

ii. Consumers Understates the CERR's Locomotive Lease Costs

ES44-AC: In calculating the cost of acquiring high-horsepower ES44-AC locomotives for the CERR, Consumers developed a figure based on materials from *AEPCO*, a western coal SAC case involving defendants BNSF and Union Pacific.⁵⁰ Specifically, Consumers relied upon information from the Board's decision and public versions of the parties' filings in that case to posit an annual lease expense of \$97,419 per unit. Consumers does not explain how a Class II railroad like the CERR could "step into the shoes" of either of the two largest Class I railroads that often obtain hundreds of new locomotives annually, and negotiate similarly favorable terms to lease fewer than two dozen locomotives in a one-time transaction. Instead, Consumers merely presents an estimate of UP's cost of acquiring locomotives, without demonstrating why those costs are an appropriate

⁵⁰ Consumers Op. III-D-8.

basis for estimating the CERR's cost to acquire locomotives, or for evaluating the reasonableness of CSXT's rates.

Even assuming that the *AEPCO* lease costs are to be used as the basis for the CERR's costs (and they should not), it is clear that a further adjustment is required. Review of Consumers' workpapers indicates that the lease costs adopted in *AEPCO* were as of 2009.⁵¹ In order to inflate that figure to current cost levels, Consumers used the AAR's Equipment Rents index for *Eastern* railroads. But the *AEPCO* figure reflects the costs incurred by *Western* railroads. Consumers should have used the index for Western railroads, to account for the cost inflation experienced by the carrier Consumers adopted as the proxy for the CERR's locomotive costs. During the period over which Consumers indexed the *AEPCO* cost, Equipment cost inflation was 7.5% for Western Region railroads, vs. the 5.1% for Eastern railroads on which Consumers relied. CSXT applies the Western Region index to the Western railroad lease costs that Consumers proposes to use for the CERR.⁵²

SD40: CSXT accepts Consumers' use of CSXT's lease costs for CERR's yard power.

⁵¹ Consumers Op. WP "III-D-1 ES44AC Lease Cost.pdf."

⁵² CSXT Reply WP "ES44AC Loco Lease Cost_Reply.xlsx," worksheet "Sheet1," column E. CSXT notes that the actual cost inflation for high-horsepower units is much higher than the Equipment Rents index, based on UP's locomotive purchases reported in its R-1 Annual Reports. In Schedule 710S to its 2011 R-1 (UP reported no purchases of AC4400 units in its 2009 or 2010 R-1s), UP reported acquiring 60 AC4400-HP locomotives at an average cost of \$2.23 million. In its 2014 R-1, UP reported acquiring 156 such locomotives at an average cost of \$2.62 million. Thus, during this recent period, the actual cost of high-horsepower AC locomotives of the type that the CERR would operate increased by more than 17%.

b. Locomotive Maintenance

Consumers did not present a detailed plan for the locomotive maintenance functions that are required to sustain the CERR's operations. Rather than identifying the specific activities that would need to be performed and determining the associated costs, Consumers relied upon a { } locomotive maintenance agreement (Managed Services Agreement, or "MSA") between CSXT and { } that CSXT produced to Consumers in discovery.⁵³

Review of Consumers' workpapers, the maintenance agreement, and the invoices for services under that agreement reveals that Consumers failed to account for all of the maintenance-related expenses that CSXT incurs under the MSA, and thus the CERR would incur by stepping into CSXT's shoes and outsourcing the critical locomotive maintenance function to a third party.

Consumers assumes that the CERR would be able to cover all maintenance work associated with its fleet of ES44-AC locomotives at a cost of {

}.⁵⁴ Consumers bases this estimate on the sum of the {

} from the

December 2014 invoice billed to CSXT for services performed under the MSA. By relying on only those two items for the entirety of the CERR's road locomotive expense, Consumers failed to account for other costs that the CERR will incur.

The first maintenance cost item that Consumers failed to account for is the {

⁵³ Consumers Op. III-D-10.

⁵⁴ Consumers Op. WP "CERR Operating Expense_Open.xlsx."

which represents the difference between CSXT's payments before and after responsibility for this cost item shifted from the contractor to CSXT.⁵⁸

The third maintenance cost item that Consumers failed to account for is the cost of certain repairs resulting from accidents, as described { } of the MSA. For minor repairs, CSXT performs the work itself and incurs labor and materials costs. For major repairs, CSXT sends the locomotive to the contractor who performs the work and invoices CSXT. Consumers did not include the costs of either type of repair event in calculating the CERR's locomotive maintenance expense. CSXT produced in discovery the costs for these repairs, which were based on actual invoices and historical data.⁵⁹ In Reply, CSXT adds the average daily cost for these repairs.

In summary, CSXT's Reply locomotive maintenance calculation includes cost items that Consumers improperly omitted, and estimates the CERR's maintenance cost for the ES44-AC units to be { }.⁶⁰

For the lone SD40 yard locomotive that Consumers posits at Barr Yard, Consumers used CSXT's 2014 average maintenance expense per locomotive unit-

⁵⁸ See CSXT discovery files "GE CSX Invoices 2014-05.xlsx," "GE CSX Invoices 2014-06.xlsx," and "GE CSX Invoices 2014-12.xlsx," which show the change in the daily rate between the previous MSA and the June 2014 MSA.

⁵⁹ CSXT discovery file is included as Reply WP "CSXT Accident Repairs.xlsx."

⁶⁰ Consumers also failed to account for the maintenance cost for the { }, which is listed in Annex 4 (CSX-CNSMR-HC-015464) of the MSA and is an item in the December 2014 invoice. CSXT includes this cost. See CSXT Reply WP "Locomotive Maintenance.xlsx."

mile, which Consumers calculated from CSXT's 2014 R-1 Annual Report.⁶¹ Review of the underlying calculations indicates that Consumers included CSXT's operating expenses from Schedule 410. CSXT generally accepts Consumers' approach for estimating the SD40 locomotive maintenance cost but corrects one omission. Consumers included only certain maintenance expenses—including \$424 million in salary and wages—and failed to include fringe benefits.⁶² As Consumers posits that this cost would cover the entirety of the CERR's yard locomotive maintenance expense—and fringe benefits would not be added in a separate step⁶³—the cost per unit-mile must account for fringe benefits. CSXT includes its CERR fringe-benefit ratio of 41.6% (described in Section III.D.3 below) to develop a proper basis for estimating the full locomotive maintenance expense for the CERR's SD40 units.⁶⁴

c. Locomotive Servicing (Fuel, Sand, and Lubrication)

i. Fuel Cost

Consumers estimates the CERR's fuel costs based on materials that CSXT produced in discovery.⁶⁵ Consumers used those materials to develop location-specific fuel costs for West Olive and Barr Yard, the two locations where the CERR

⁶¹ Consumers Op. III-D-11.

⁶² Consumers Op. WP "III-D-1 Loco Maintenance and Servicing.pdf" (indicating that these CERR costs are based solely on costs reported to Line 202 Repair and Maintenance).

⁶³ For other cost components like train and engine crews, a fringe benefit ratio is applied to the total compensation to develop the total personnel expense. See Consumers Op. WP "CERR Operating Expense_Open.xlsx" By contrast Consumers' total personnel expense for locomotive maintenance for the SD40 consists solely of the cost per locomotive-unit mile derived from CSXT's R-1 Annual Report.

⁶⁴ See CSXT Reply WP "Locomotive Maintenance.xlsx."

⁶⁵ Consumers Op. III-D-14.

would fuel locomotives. Based on that information, Consumers calculated a cost per gallon of { }.⁶⁶ CSXT accepts this cost per gallon.

ii. Fuel Consumption

Consumers estimates the CERR's fuel consumption based on detailed data that CSXT produced in discovery.⁶⁷ Consumers uses these data to develop a fuel consumption rate that is specific to ES44-AC locomotives.⁶⁸ While Consumers correctly limited the information to the locomotive type that the CERR would operate, it failed to align the calculations with the mix of train services that the CERR would provide. Consumers used CSXT's overall system-wide average for ES44s, which reflects all the trains that CSXT operates. Consumers, however, specifically limited the CERR traffic group based on the train type, disproportionately selecting unit trains, and rejecting general freight trains, due to its objective of not handling trains that would require switching. As a result, the CERR's trains are predominately unit trains. CSXT's data indicate that locomotives powering unit trains consume more fuel per mile than those on non-unit trains. By using CSXT's overall average, Consumers understated the fuel that the CERR locomotives would consume.

Figure III-D-3 below contrasts the mix of trains reflected in the CSXT system-wide data with the profile selected by Consumers for the CERR. This shows

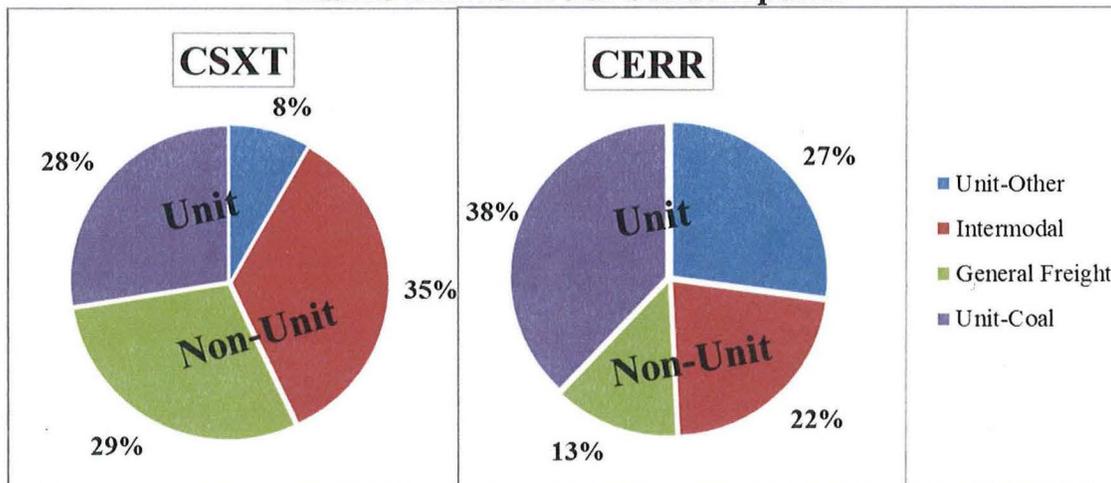
⁶⁶ Consumers Op. WP "CERR Fuel Pricing_Open.xlsx," worksheet "Summary," cell J10.

⁶⁷ Consumers Op. III-D-14.

⁶⁸ Consumers Op. WP "ERAD_2014_Open.xlsx."

that between the two groups, the mix of Unit to Non-Unit trains is essentially the inverse of one another. In the CSXT data, Unit trains comprise only 36% of total locomotive unit-miles, with Intermodal and General Freight accounting for 64%; in the CERR Base Year, Unit trains comprise 65% of total locomotive unit-miles, with Intermodal and General Freight accounting for 35%. In its Reply fuel cost calculation, CSXT tailors the consumption rate to reflect each train type’s share of unit-miles for *CERR* trains and not the total unit-miles of all CSXT trains.⁶⁹

**Figure III-D-6
Traffic Mix for Fuel Consumption**



CSXT accepts Consumers’ use of CSXT’s 2014 R-1 Annual Report to estimate fuel consumption for the SD40 yard engines.⁷⁰

iii. Locomotive Servicing

Consumers uses figures from CSXT’s 2014 R-1 Annual Report to estimate the CERR’s locomotive servicing costs.⁷¹ Review of the underlying calculations

⁶⁹ CSXT Reply WP “ERAD 2014_Reply.xlsx.”

⁷⁰ Consumers Op. III-D-14 to III-D-15.

indicates that Consumers includes CSXT's operating expenses from Schedule 410, and substitutes its CERR proposed fringe-benefit ratio (37.6%) for CSXT's actual fringe benefit ratio that Consumers included in its workpaper (44.7%).⁷² In Section III-D-3 below, CSXT rejects Consumers' fringe-benefit ratio as inapplicable to the CERR and inconsistent with Board precedent. CSXT substitutes its calculation of 41.6%, which it applies to the CERR's locomotive servicing costs as well.⁷³

2. Railcars

a. Leasing

Consumers calculated the CERR's freight-car acquisition expense based on a combination of car rental data from CSXT's R-1 Annual Report and lease cost information that was either produced to Consumers in discovery or publicly available.⁷⁴ Its development of freight-car acquisition costs is largely an arithmetic exercise that begins with car-miles and car-hours derived from Consumers' Opening RTC simulation—an RTC simulation that fails to reflect the realities of real-world railroading in the busy Chicago terminal, and thus understates the CERR's requirements, as described in Section III-C. For this Reply, CSXT (1) replaces Consumers' flawed analysis with the more realistic results from its RTC simulation, (2) replaces Consumers' understated peaking factor, as described in the prior section in the context of locomotive costs, and (3) otherwise accepts Consumers'

⁷¹ *Id.* III-D-15.

⁷² Consumers Op. WP "CERR Loco Servicing Cost_Open.xlsx."

⁷³ CSXT Reply WP "CERR Loco Servicing Cost_Reply.xlsx."

⁷⁴ Consumers Op. III-D-15 to III-D-16.

approach to determining the CERR freight-car requirements, with one exception. CSXT corrects an error in Consumers' calculation of the costs of using foreign equipment, which Consumers based on CSXT's 2014 R-1 Annual Report.⁷⁵ In calculating the average CSXT cost per mile and per hour, Consumers spread the CSXT payments of car-hire, which apply to foreign equipment, across the system equipment, thereby diluting the unit costs that it applied to the CERR's foreign equipment quantities to estimate the SARR's costs for using other railroads' cars. Documentation in Consumers' workpapers suggests that it recognized that an adjustment was necessary, but its spreadsheet did not incorporate the correct approach.⁷⁶ CSXT corrects that omission by assigning the CSXT car-hire payables only to foreign-car shipments, thereby eliminating Consumers' dilution by the CSXT system equipment to which they do not apply.⁷⁷

b. Maintenance

Consumers relied upon URCS to estimate the repair expense for coal and general freight equipment for which the CERR will not be reimbursed.⁷⁸ CSXT

⁷⁵ *Id.*

⁷⁶ Consumers Op. WP "CERR Car Costs_Open.xlsx," worksheet "Foreign Cars" includes two footnotes that state "x % foreign," indicating that the system-wide total car-miles and car-hours need to be adjusted to reflect only the share that are foreign cars. The figures in Columns I and L that are used to calculate the unit costs for foreign cars, however, are not adjusted, and reflect the total that includes *CSXT system cars and foreign cars*.

⁷⁷ CSXT Reply WP "CERR Car Costs_Reply.xlsx," worksheet "Foreign Cars," column S.

⁷⁸ Consumers Op. III-D-18.

accepts this approach, and adjusts the calculations based on its Reply traffic group.⁷⁹

c. Private Car Allowances

CSXT accepts Consumers' approach to calculating the cost that the CERR would incur for the use of private cars,⁸⁰ and adjusts the calculations based on its Reply traffic group.⁸¹

3. Operating Personnel

a. Train/Switch Crew Personnel

Consumers posits that the CERR would need a total of 52 train and engine ("T&E") crew members to handle all of the CERR's road, helper, and switch train functions.⁸² This number understates considerably the crews that the CERR would actually require.

There are four main sources of Consumers' understated crew requirements for the CERR.

1. Consumers' proposal that all Chicago crews would work in turnaround service operating two trains every day without relief is unrealistic.
2. Consumers fails to account for the relief crews that are required to deliver trains to the Campbell plant.
3. Consumers' CERR does not provide a sufficient number of crews to operate trains during the Peak Period and comply with federal Hours of Service law.

⁷⁹ CSXT Reply WP "CERR Operating Expense_Reply.xlsx," worksheet "Summary," cell D141.

⁸⁰ Consumers Op. III-D-19.

⁸¹ CSXT Reply WP "CERR Car Costs_Reply.xlsx," worksheet "General Freight."

⁸² Consumers Op. III-D-20.

4. Consumers' proposal that the CERR's yard crews would each average 2,920 workhours in a year is unrealistic and unsafe.

Turn Crews. As mentioned in the introduction to this III-D Section,

Consumers assumed that every crew in Chicago would work two trains

every day. Consumers describes its proposed CERR crew operations as follows:

Mr. Orrison and Mr. Holmstrom determined that the Chicago-area transit times from the various O-D pairs listed above would permit turn crews where possible. As noted in Table III-C-3, the traffic flows to and from most of the major interchange locations, such as Curtis, are relatively similar in each direction thereby enabling turn service on a regular basis.⁸³

Review of Consumers' workpapers reveals, however, that Consumers' experts interpret "where possible" as "possible everywhere." Consumers assumes that *every crew-run of less than 50 miles would always also operate a second train.*⁸⁴ CSXT recognizes that on certain higher-volume SARR routes, it may be possible for a CERR crew to operate a train across the SARR, and upon arrival at the Off-SARR interchange, have sufficient hours available to operate a second train in the opposite direction.⁸⁵ But to assume that *every* CERR crew operating *every* Chicago route would *always* have a train available to return, that the crew would be at the right location, or (alternatively) that a crew could be transported by taxi to

⁸³ Consumers Op. III-C-80.

⁸⁴ Consumers Op. WP "Base Unit Merch Trains v6_Statistics.xlsx," worksheet "2014 Full Base Year Unit Merch," column Y.

⁸⁵ As CSXT explained in detail in Section III-C, Consumers' estimates of CERR transit time were understated, due to its failure to incorporate fully the delays and interference that trains would incur.

meet a second train,⁸⁶ belies the realities of real-world railroading, especially in the busy Chicago terminal. Consumers' assumption ignores variations in train flows throughout the year, congestion into and out of terminals, and delays associated with crew travel that would be required to re-position crews to address the facts that the CERR interchanges trains at multiple locations and its train flows are not perfectly balanced.

To illustrate the challenge, Consumers' train selection results in the need for CERR crews to operate 1,069 trains from the 59th Street facility to Curtis and only 666 from Curtis to 59th Street in the Base Year.⁸⁷ For this SARR On-Off pair, at most only 62% of the trains would have a matched return trip. And that is before considering the variation in arrival and departure times of the trains during the day, let alone seasonal flows that increase that imbalance at different points throughout the year. CSXT recognizes that some of the 38% of crews that work outbound from 59th Street to Curtis that cannot work back to 59th Street could be available to operate other trains. However, those crews would need to be repositioned to other CERR interchange locations, requiring further coordination with crew management and transportation.

⁸⁶ For example, an average of 8 crews per day in the Base Year will operate CERR trains off the SARR's lines over BNSF and UP for delivery to Cicero, Corwith, and Proviso yards. As CERR crews will not originate trains from any of those locations, all of those crews will have to be taxied back to a CERR On-SARR location. See CSXT WP "Map of Off-SARR Routes.pdf."

⁸⁷ Consumers Op. WP "Base Unit Merch Trains v6_Statistics.xlsx," worksheet "2014 Full Base Year Unit Merch."

There are additional factors that highlight the infeasibility of Consumers' assumption. First, in determining the number of CERR train crews that would be required, Consumers assumed that no crews ever reach their Hours of Service limit and required a relief crew.⁸⁸ Second, CERR assumes that every interchange that the CERR has with foreign railroads can be completed in the tight window of 30 minutes, requiring CERR train crews to have reported for duty and checked in before the train arrives.

Any time that a crew spends traveling to a train assignment or waiting for the train to arrive counts towards the crew's Hours of Service limit.⁸⁹ CERR crews would need to report prior to the arrival of a train received in interchange. Given the critical coordination with multiple foreign railroads that is required to keep trains in the nation's busiest railroad terminal moving, trains simply cannot be held waiting for a CERR crew to arrive by taxi or on another train. Indeed, Consumers' experts explicitly assert that the CERR crews will arrive early and already be on-duty in advance of the train's departure,⁹⁰ further eroding the time they need for re-positioning between train assignments and operating a second train completely within a single shift. These additional constraints on the CERR crews' available

⁸⁸ The workpaper where Consumers calculates the crew requirements includes the note "Recrew - no Recrews." See Consumers Op. WP "Base Unit Merch Trains v6_Statistics.xlsx," Worksheet "2014 Full Base Year Unit Merch," Cell V10302.

⁸⁹ See, e.g., CSXT Reply WP "HOS_Manual Duty Tour.pdf" at 1-3 ("Time spent in deadhead transportation to a duty assignment is time on duty . . .").

⁹⁰ Consumers Op. III-C-70 (" . . . these crews are already on the clock when the train enters the RTC Model . . .").

time further decreases the likelihood that CERR Chicago crews could work two trains every day.

CSXT summarized the results of its Reply RTC simulation to assess the frequency with which CERR crews would complete a round-trip operating two CERR trains before reaching their Hours of Service limit. In the CSXT Reply RTC model, 23% of westbound CERR trains operating solely in Chicago⁹¹ took four hours or more to travel between On-SARR and Off-SARR interchanges, and another 16% took between three and four hours to traverse their SARR route.⁹² CSXT estimates that crews would require another hour—often more—to check-in and receive their train orders and to be transported from where they disembarked their first train to where they would board the second train. As a result, 39% of crews that operate westbound trains will be into their fifth hour by the time they arrive at an interchange with a foreign carrier to receive their next train assignment. And nearly one quarter of such crews will be in their sixth hour before they can board the second train, making it more likely that those crews would expire on the job if they accepted another assignment.

In light of this proportion, CSXT assumes that one quarter of its Chicago crews will be unable to accomplish a complete turn operating two trains, and

⁹¹ This analysis was limited to the CERR trains that operated west of Curtis, *i.e.*, it excluded the issue traffic and other trains for which Consumers did not assume turnaround crews.

⁹² CSXT refers here to the performance of the CERR's westbound trains. Consumers' proposed operations will of course require the crew to make a trip in each direction, and the CERR's westbound trips provide a good example of the challenges faced to complete the turn, as many crews operate off-SARR to Cicero, Corwith, and Proviso yards. See CSXT Reply WP "CERR Turn Crews.xlsx."

calculates the CERR's crew requirements based on the assumption that 75% will.⁹³ This estimate is conservative, as it considers only the overall RTC run times, and does not account for the time of day during which the crews are operating, or the specific locations of the crews, let alone the fluctuations and imbalances in train flows, and other operating vagaries of the Chicago terminal.

West Olive Re-crews. As described above, Consumers assumes that the CERR would require zero (0) re-crews. CSXT produced to Consumers a description of the operations that detailed the fact that Consumers regularly instructs CSXT that it is not able to receive a loaded train that is en route to the Campbell Plant, forcing CSXT to hold Consumers' trains on CSXT's sidings on the Grand Rapids Subdivision.⁹⁴ This results in CSXT incurring additional operating costs, including additional crew costs, because the original train crew often reaches its hours of service limit before the train can be restarted from the siding and delivered to the Consumers plant. A relief crew must then be transported to the waiting train.⁹⁵

Consumers' SAC analysis failed to consider this routine aspect of the operations required for CSXT to deliver the issue traffic. Consumers should not be permitted to rely upon an RTC simulation that assumes all trains zoom up the

⁹³ CSXT Reply WP "CERR Base Year Trains.xlsx," worksheet "Trains," column AP.

⁹⁴ See CSXT Reply WP "Description of Consumers Train Movements.pdf" at 5-6 ("In most cases Consumers informs CSXT that it is not able to accept the loaded train immediately. CSXT estimates that over 90% of loaded Consumers trains must be held outside Campbell while CSXT waits for Consumers to accept the train, which requires CSXT to store the train on tracks outside the plant until Consumers will accept it. Trains typically are stored for 24 to 36 hours . . .").

⁹⁵ *Id.*

Grand Rapids Sub unimpeded into the plant, every time, while Consumers’ own real-world service requirements result in delays and additional costs incurred by CSXT. In order to account for this reality, CSXT examined the Train Sheet records to identify the percentage of Consumers’ loaded trains that were held on sidings on the Grand Rapids Sub during the Base Year.⁹⁶ Table III-D-7 below summarizes the results of that analysis.

**Table III-D-7
Incidence of Holding Consumers’ Loaded Trains
on Sidings on the Grand Rapids Subdivision**

Year	Wells (MP 42)	Grand Junction (MP 54)	Kirk (MP 71)	Total for 3 Sidings
2014	31%	20%	8%	58%

Based on its real-world experience, CSXT includes the cost of a second CERR crew for 58% of the loaded West Olive trains.⁹⁷

Total CERR Crews Required During Peak Period/Hours of Service Rules.

The total number of T&E crews proffered by Consumers is insufficient. By failing to consider the higher train flows during the peak period and the applicable Hours of Service rules that govern both the duration and frequency of on-duty assignments, Consumers understates the workforce requirements necessary to

⁹⁶ CSXT Reply WP “Holding Consumers Loaded Trains.xlsx.”

⁹⁷ While this proportion is less than the frequency cited in CSXT’s description of the operations, CSXT notes that its workpaper includes the calculations for the First Quarter 2015, indicating that more than three-quarters of the loaded issue trains were held on one of the three sidings in the more recent period. See CSXT Reply WP “Holding Consumers Loaded Trains.xlsx,” worksheet “Summary.”

ensure that CERR trains are operated in a timely fashion across the Chicago terminal.

Consumers calculated that the CERR would require 42 T&E personnel to handle the 2014 Base Year trains selected for the CERR.⁹⁸ The 42 people include 1 for “Rebalancing,” but do not include the CERR’s yard and helper crews.⁹⁹ Review of the Base Year train list indicates, however, that the CERR would need more than 42 T&E employees to operate the CERR trains that moved during the peak period.

Further, determining accurately the number of crews that would be available to operate the peak-period trains requires consideration of the federal Hours of Service rules, as all 42 people cannot work all nine days in the peak period. For example, if Consumers’ 42 crew members were to work six days in a row, they would then each require two days rest. The combined effect of revised Hours of Service laws that require more rest between assignments and impose limits on total work with increased focus and emphasis on safety and training¹⁰⁰ have also reduced the ability for train crews to work 270 shifts (which is the number of shifts Consumers assumes all of its crew members will work in a year). In December 2013, the Federal Railroad Administration’s Office of Railroad Safety published the

⁹⁸ Consumers WP “CERR Operating Statistics_Open.xlsx,” worksheet “Summary,” cells S9-S12. In its calculations, Consumers then indexes this 2014 headcount figure to account for the CERR’s 2015 volume levels (rows 15-18).

⁹⁹ *Id.*

¹⁰⁰ In addition to the Federal rules test that train employees must spend at least one day every two years, CSXT requires an additional two days of classroom training every year, as well as another day spent meeting other OSHA and FRA requirements. These rules or training days are obviously work for the employees, and count towards Hours of Service regulations that invoke required rest periods.

“Hours of Service Compliance Manual for Freight Operations,” which is available online.¹⁰¹ The Introduction to the Manual states:

The most significant changes to the Hours of Service Law (“HSL”) resulted from the Rail Safety Improvement Act of 2008 (“RSIA”). Most of the changes were to § 21103, Limitations on duty hours of train employees, and include a monthly time limit on all service performed for a railroad and time spent waiting for or in deadhead transportation from duty to a point of final release after the 12-hour point in a consecutive service duty tour. The new provisions also restrict a train employee to six or seven consecutive days of initiating on-duty periods followed by 48 or 72 consecutive hours off duty, and also require a minimum statutory off-duty period of 10 hours. Several other important changes to the HSL that resulted from the RSIA are included and explained in this manual.¹⁰²

These new regulatory requirements rarely provide sufficient time for train crews to work 270 shifts on trains and in yards, meet current rules, safety, and training requirements, and weather the realities of illness, personal leave, vacation, or other real world interruptions.

CSXT evaluated the CERR Base Year trains during the 9-day peak period—March 23-31, 2014—and determined that the CERR would be responsible for a total of 151 train starts over that span.¹⁰³ On three of these days, 20 or more different

¹⁰¹ FRA, *Hours of Service Compliance Manual* (Dec. 6, 2013), available at <http://www.fra.dot.gov/eLib/details/L04876>. CSXT includes Part I regarding train employees as Reply Workpaper “HOS_Manual Duty Tour.pdf.”

¹⁰² CSXT Reply WP “HOS_Manual Duty Tour.pdf,” at IP-1.

¹⁰³ To show the understatement in Consumers’ Opening evidence, these counts incorporate Consumers’ assumption that all Chicago crews will operate in turnaround service and complete two train-assignments. See CSXT Reply WP “CERR Base Year Trains.xlsx,” worksheet “Crew_Peaking,” columns B-P.

two-person crews would be required, thereby exhausting Consumers' entire CERR roster. In fact, on Day 3 of the peak period (March 25) 42 people would be required, and on Day 8 (March 30), the CERR would require 46 crew members to operate all of its trains. Assuming that the CERR would meet its demand by having all 42 of Consumers' train crew personnel operate during that six-day stretch, they would exhaust their Hours of Service availability. As such, none of these personnel would be available to work on Day 2, when the CERR needs 16 crews, and therefore 32 people. Under this example, the CERR would require at least 74 different T&E personnel (42+32).¹⁰⁴

CSXT includes in its workpapers the series of calculations for each day of the peak period that would allow the CERR to provide the required crews to meet its train assignments, while ensuring those crews obtain sufficient rest without violating the Hours of Service rules. These calculations indicate that Consumers' CERR would require 50, not 42, T&E employees.¹⁰⁵ As indicated above, these counts incorporate Consumers' unrealistic assumption that 100% of Chicago crews operate in turnaround service, making the results conservative.

¹⁰⁴ Some of the 32 people that worked on Day 2 could be scheduled to be available to fill in the 4 positions on Day 8 that Consumers' 42-person staff could not cover.

¹⁰⁵ CSXT Reply WP "CERR Base Year Trains.xlsx," worksheet "Crew_Peaking," columns B-P. For this calculation, CSXT assumed that Consumers' one crewperson resulting from its "Rebalancing" calculations would be available to work during the peak period. CSXT did not, however, allow the CERR's yard switching or helper crews to change to road-train service for this period, as their own responsibilities will still occur. In particular, with only 3 people to cover the CERR's daily helper needs, any opportunity for them to cover additional shifts elsewhere will be limited due to the mandatory rest requirements in the Hours of Service rules.

CSXT also performed a similar series of calculations for two other scenarios, based on its Reply traffic group: one relying upon Consumers' fanciful 100% turn-crew assumption, and one using CSXT's Reply position of 75%. In each of these scenarios, CSXT determined that the CERR's T&E crew requirements would need to be increased by 18%,¹⁰⁶ which CSXT uses to determine the number of T&E crews for this Reply (61).¹⁰⁷

Yard Crews. Consumers assumes that its single CERR Barr Yard 24/7 switching assignment could be staffed by three crews, each working 12-hour shifts year round. Like its other crew assumptions, the number of hours these crews would have to work (2,920 hours/year) is not only unsafe, but is infeasible. Consumers' assumption leaves no room for training, or for days off due to illness or personal leave. Another reason that this very high utilization is objectionable is the yard crew member will be working alone for these long stretches, as there is only one assignment on duty at all times. To ensure that the CERR's yard is adequately and safely staffed, and that its yard crews have sufficient down-time, CSXT includes a fourth yard crew member.

Table III-D-8 below summarizes the parties' Base Year crew requirements for the CERR.

¹⁰⁶ CSXT Reply WP "CERR Base Year Trains.xlsx," worksheet "Crew_Peaking," columns R-AV.

¹⁰⁷ CSXT Reply WP "CERR Operating Statistics_Reply.xlsx," worksheet "Summary," S28.

Table III-D-8
The CERR Would Require Significantly More Crewpersons
Than Consumers Estimated for the Base Year

	Road Crews	Yard Crews	Helper Crews	Total
Consumers	46	3	3	52
CSXT	61	4	3	68
Difference	15	1	0	16

i. Compensation

Consumers states in its Opening narrative that it determined the salaries for the CERR’s train and engine personnel “based on data contained in CSXT’s 2014 Wage Form A&B Reports.”¹⁰⁸ However, review of Consumers’ workpapers reveals that for the CERR’s train and engine crews, it calculated an average based on the actual salaries associated with the very small number of CSXT train crew personnel who achieved Consumers’ lofty utilization goal.¹⁰⁹ In that workpaper, Consumers identified a group of CSXT employees who worked 260 or more shifts in 2014. While CSXT acknowledges that Consumers has relied upon an appropriate approach, as explained above, the CERR will need to hire far more train and engine personnel than Consumers calculated. As described above, fluctuations in the CERR’s train flows throughout the year, more realistic estimates of the number of crews that can operate two trains in a day, and federal Hours of Service laws all contribute to the need for more CERR crew members. As a result of hiring more employees, the average number of shifts worked by those employees will be lower.

¹⁰⁸ Consumers Op. III-D-30.

¹⁰⁹ Consumers Op. WP “T&E_Dispatchers_Inspectors_Salary_Open.xlsx,” worksheet “Pivot 2014.”

As the CERR's operations will require more people, their relatively lower utilization permits the use of correspondingly lower CSXT salaries for CERR's road train and yard switching crews, which CSXT applies for this Reply.¹¹⁰

ii. Fringe Benefits

Consumers proposes to account for CERR employee fringe benefits by using “the average fringe benefit ratio for all Class I railroad employees in the United States in 2014.”¹¹¹ Consumers' evidence thus directly violates Board precedent in two ways. First, it uses a nationwide average, not an average tailored to the railroads operating in the region in which the SARR operates. Second, it uses a one-year snapshot, not a multi-year average. Consumers does not proffer any reason why the Board should break with its precedent, and its approach should be rejected. CSXT replaces Consumers' 37.6% fringe-benefit ratio with the three-year average ratio for the six Class I railroad systems operating in Chicago, which is 41.6%.¹¹²

The Board has repeatedly held that fringe benefit ratios should be geography-specific—in other words, the ratio should be based upon the experience of railroads

¹¹⁰ CSXT Reply WP “T&E_Dispatchers_Inspectors_Salary_Reply.xlsx,” worksheet “Salary_Reply.” Of course, if the Board were to reject CSXT's arguments that Consumers' crew utilization assumptions are fanciful and to adopt Consumers' smaller staff, Consumers' higher salaries would be the appropriate basis for estimating the CERR's crew wage costs.

¹¹¹ Consumers Op. III-D-31.

¹¹² CSXT Reply WP “CERR Fringe Benefits_Reply.xlsx.”

operating in the same geographic region as the SARR.¹¹³ As the Board explained in *DuPont*, the ratio of benefits compensation to wage compensation can be different from location to location, and a SARR would need to offer benefits packages comparable to “railroads in the area.”¹¹⁴ Here, Consumers attempts to justify its use of an average of all Class I carriers by claiming that “each Class I carrier has a presence in the vicinity of the CERR.”¹¹⁵ But that is not quite true for the Kansas City Southern Railway (“KCS”), which does not have any tracks or facilities “in the vicinity” of Chicago, northern Indiana, Michigan or anywhere else near the CERR. While KCS may have some rights to access Chicago through trackage rights or haulage on other railroads, it has no physical presence in Chicago remotely comparable to other Class I railroads.¹¹⁶ KCS therefore should not be included in the average.

In addition, Consumers’ use of a single year of fringe-benefit data is less accurate than an approach based on multiple years. The Board has encouraged parties to use multi-year averages rather than single-year snapshots for fringe

¹¹³ See, e.g., *DuPont*, STB Docket No. 42125, at 79-80 (accepting a geographic-specific fringe-benefit ratio based on an average of NS and CSXT, the Class I carriers operating in the geographic footprint of the SARR); *WFA I*, STB Docket No. 42088, at 66 (accepting a geographic-specific fringe-benefit ratio based on “all railroad employees working in Wyoming”).

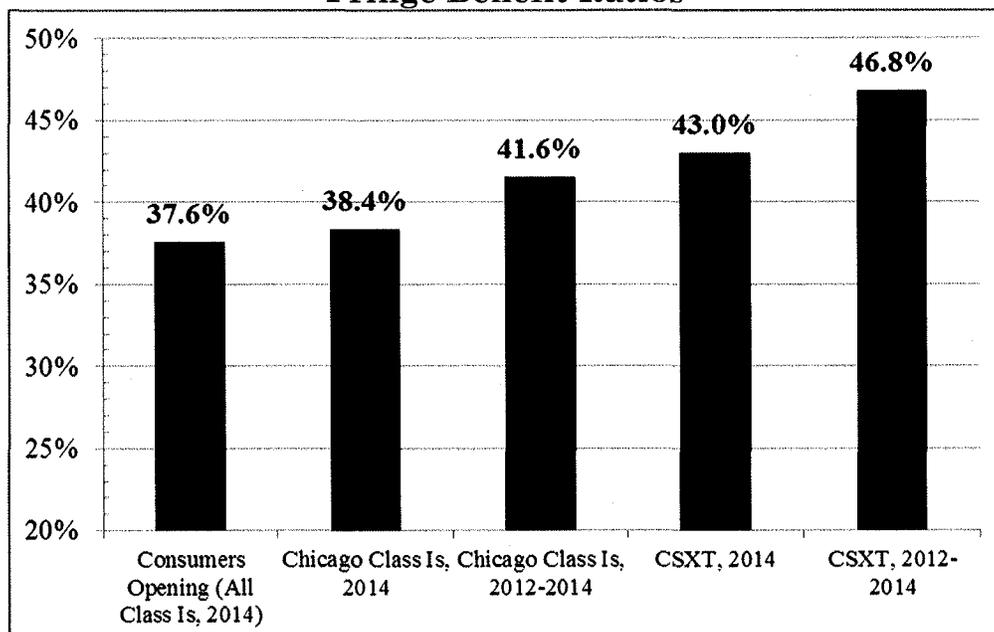
¹¹⁴ *DuPont*, STB Docket No. 42125, at 79.

¹¹⁵ Consumers Op. III-D-31.

¹¹⁶ It is no coincidence that, for example, KCS is not a member of the CTCO.

benefits.¹¹⁷ CSXT follows the approach accepted in *DuPont* and calculates fringe benefits for CERR employees by using a multi-year average for the six Class I railroads in the same geographic territory as the CERR (*i.e.*, all the Class I railroads in the same geographic territory as the CERR (*i.e.*, all the Class I railroads but KCS). The average for 2012 through 2014 (the latest three years that are currently available) is 41.6%. Figure III-D-9 below sets forth the average fringe-benefit ratios for the Chicago Class I railroads for 2014 and also for 2012-2014, and shows that each of these figures is lower than CSXT's ratios for each of the corresponding periods.¹¹⁸

**Figure III-D-9
Fringe Benefit Ratios**



¹¹⁷ See *DuPont*, STB Docket No. 42125, at 79 (“The Board favors use of evidence with a longer rather than a shorter period of historic data and believes that method results in better evidence here.”).

¹¹⁸ CSXT Reply WP “CERR Fringe Benefits_Reply.xlsx.”

iii. Taxi and Hotel Expense

In addition to the costs of compensation and fringe benefits, Consumers includes taxi and hotel expenses for train crews.¹¹⁹ Consumers' calculation of the CERR's taxi expense in Chicago incorporates the infeasible assumption that every crew will be able to operate two trains, every day. As discussed above, that assumption is simply not credible, and the CERR will require more train crews to work every day. Because many crews will work in one-way service—as they would be unable to complete a full turn before reaching their Hours of Service limit—the number of taxi trips would likewise be greater than Consumers' estimate.

Materials produced to Consumers in discovery, and included in Consumers' workpapers, as the source of its estimate of the CERR's crew lodging expense, indicate that CSXT averaged more than { } million annually for taxis to transport crews in the Chicago terminal over the 2012-2014 period.¹²⁰ This total does not include upwards of another { } million annually in other taxi/crew-hauling expenses reported as "Line of Road" for crews operating to and from Chicago from other locations. A portion of the Line of Road group represents taxi expenses that CSXT incurs in Chicago, including for crews operating trains that Consumers selected for the CERR. By contrast, Consumers proposes CERR taxi expenses of \$155,000.¹²¹ Thus, Consumers posits that the CERR would incur less

¹¹⁹ Consumers Op. WP "CERR Operating Expense_Open.xlsx," worksheet "Summary," rows 22-23.

¹²⁰ Consumers Op. WP "Transportation Travel Expense - 2012 - 2014_Revised.xlsx."

¹²¹ Consumers Op. WP "Base Unit Merch Trains v6_Statistics.xlsx," worksheet "Taxi and Overnight," cell U31.

than 10% of CSXT's real-world taxi expense in Chicago. Such a low cost is indefensible—indeed, Consumers does not explain how it could operate 54% of CSXT's real-world trains, but incur only 10% of the crew-hauling costs that CSXT does today. Consumers has not identified any inefficiencies in CSXT's crew-hauling service in Chicago, nor has it suggested how the CERR proposes to provide a vital function at a fraction of the cost that CSXT does. CSXT's Reply estimate conservatively proposes that the CERR's taxi expense would be twice Consumers' Opening estimate (\$310,000), reflecting the fact that when a realistic estimate of turn crews is applied, more crews will be working, and requiring taxis. This estimate still results in the CERR's incurring only { } of CSXT's actual taxi expense for hauling crews in Chicago.

CSXT accepts Consumers' reliance on CSXT's actual lodging costs to estimate the expense for CERR train crews that operate in straight-away service from West Olive and overnight in Chicago before returning to West Olive after their mandatory period of rest.¹²²

b. Non-Train Operating Personnel¹²³

i. Headquarters Transportation Staff.

On Opening, Consumers proposed a headquarters staff for the Transportation Management group that would be reasonable for a small railroad

¹²² Consumers Op. WP "Base Unit Merch Trains v6_Statistics.xlsx," worksheet "Taxi and Overnight," cell Q31.

¹²³ The following sections are being sponsored by witnesses Richard Brown of FTI Consulting and John Gibson of PC&N Consulting. Qualifications of Witness Brown and Witness Gibson are set forth in section V.

operating in a non-complex operating environment. The CERR, however, is not such a railroad. In its first year, the CERR will operate an average of 28 trains every day, the vast majority of which would move solely within the very complicated and congested Chicago Terminal. Not only would the CERR have to manage operations over its own lines, but it would have to interact on a daily basis with other railroads as well, in part because 30% of its trains operate over other railroads' lines.¹²⁴

As a result of these complicated operating conditions, and because of certain choices Consumers made in designing the CERR, additional staff will be required. In particular, because of Consumers' unconventional train selection methodology, and its assumption that train crews will operate in turn-service notwithstanding seasonality in train flows and federal hours of service laws, Consumers' management assumptions are unsupported. For example, Consumers' traffic selection criteria seeks to reduce CERR construction and operating costs by refusing to accept any TIH traffic or any cars that require switching in the Chicago area.¹²⁵ Real world railroads operate on the basis of a pre-determined service plan, which predicts volumes well in advance, allowing the railroad to plan for train crews, car inspections, and other service needs. In comparison, the CERR will need to prepare an operating service plan almost every day, with large portions of it subject to

¹²⁴ CSXT Reply WP "CERR OffSARR Trains.xlsx."

¹²⁵ As noted in Section III.A above, Consumers' approach flips typical SAC practice on its head by allowing a Complainant to identify the SARR "traffic group" by trains, and not by identifying customers or even originations or destinations that the SARR would serve.

change as a result of the trains tendered by BNSF, UP, BRC, IHB, and the residual CSXT. Because the CERR does not build its own train consists, and does not accept traffic as railroads do in the real world, the traffic operating over the CERR on any given day is unpredictable at best. To deal with these uncertainties, additional staffing will be required.

The following table summarizes the differences in the parties' proposals for Non-Train Operating Personnel.

Table III-D-10
Differences in the Parties' Non Train Operating Staffing

Operating Personnel	Consumers Opening	CSXT Reply	Difference
<u>Operations</u>			
VP Operations	1	1	0
Director of Operations Control	1	1	0
Manager of Operating Rules, Safety and Training	1	1	0
Subtotal Operations	3	3	0
<u>Transportation</u>			
Manager - Train Operations	3	4	1
Assistant Manager - Train Operations	3	4	1
Manager - Locomotive Operations	1	1	0
Assistant Manager - Locomotive Operations		1	1
Subtotal Transportation	7	10	3
<u>Mechanical</u>			
Chief Engineer	1	1	0
Manager of Mechanical Operation	1	1	0
Inspectors	9	12	3
Subtotal Mechanical	11	14	3
<u>Dispatch & Data Control</u>			
Director Crew, Dispatch and Data Control		1	1
Manager Crew and dispatch		5	5
Crew Callers	5	5	0
Dispatchers	9	9	0
Manager Customer Service and Support		1	1
Customer Service Managers	2	2	0
Subtotal Dispatch & Data Control	16	23	7
Total Non Train Operating	37	50	13

CSXT accepts Consumers' proposed VP Operations position based in West Olive.¹²⁶ However, CSXT rejects the proposition that the VP Operations would have oversight over Marketing. Instead, the CERR must have a Chief Marketing Officer who is a direct report to the President. This structure allows the CERR to ensure customers that they will have direct access to the executive office.

While CSXT generally accepts Consumers' Headquarters Transportation management team, Consumers' proposed HQ Operations is very short on support staff. Functions including Service Scheduling, Service Performance Measurement, Joint Facilities, and Freight Claims are either ignored or assumed to be handled by others without identifying specific responsibility. CSXT fixes these deficiencies by re-assigning four of Consumer's proposed positions to report directly to the VP-Operations,¹²⁷ and adding one more. The new direct report added by CSXT is the Director Crew, Dispatch and Data Control who will oversee Dispatch, Crew Calling, and all other operating staff support functions, including the coordination of day-to-day activities with other Chicago railroads. All of these positions are outlined in the organizational chart found in CSXT Reply workpaper "Organization Chart.pptx."

ii. Train Operations.

The Director of Operations Control will have complete responsibility for all of the day-to-day operational issues encountered by the CERR. Tactical operations control will be the responsibility of the Manager – Train Operations ("MTO") and

¹²⁶ See Consumers Op. III-D-23

¹²⁷ These positions include the Manager Rules & Safety, Director of Operations, Chief Engineer, and Manager of Mechanical Operations.

Assistant Manager – Train Operations (“AMTO”) positions, which will be based in Barr Yard. Consumers indicates that both these positions are staffed 24/7, but provides only three MTO’s and three AMTO’s to fill them.¹²⁸ Consumers’ proposal would result in each of the 6 employees working an average of 2,920 hours annually.¹²⁹ Even if some small subset of railroad employees worked that much, it is unrealistic to assume such productivity for every member of the critical Train Operations positions—before taking into consideration time for training, sick leave, or vacation. To ensure safe and effective operations, CSXT adds one MTO and one AMTO position.¹³⁰ This results in a much more realistic average of 2,190 hours per employee.¹³¹

In Opening, Consumers also proposed a Manager Locomotive Operations (“MLO”). Consumers Op. III-D-26. CSXT accepts this position, and adds an Assistant Manager Locomotive Operations (“AMLO”). The MLO and AMLO will be responsible for managing and monitoring locomotive operations; performing qualifying rides with new personnel; and conducting regular reviews of existing personnel and overseeing any required requalifications. Since these positions are based at the West Olive location, CSXT also assigns them the responsibility to inspect the BNSF locomotives that deliver the issue traffic and return the empties. These individuals can perform locomotive inspections and make minor repairs or

¹²⁸ Consumers Op. III-D-26.

¹²⁹ $365 \text{ days} \times 24 \text{ hours} / 3 = 2,920$ per person.

¹³⁰ CSXT Reply WP “CERR Operating Expense_Reply.xlsx,” worksheet “Operating-G&A.”

¹³¹ $365 \text{ days} \times 24 \text{ hours} / 4 = 2,190$ per person.

adjustments as required, as well as communicate with BNSF in the event of more serious issues. While the MLO/AMLO functions do not have to be staffed 24/7, CSXT recognizes that the manager and assistant manager would have to coordinate shift schedules in a manner to provide the broadest coverage possible.

iii. Manager Mechanical Operations

Consumers proposes a single Manager Mechanical Operations to oversee all of the car inspectors, the locomotive shop at Barr yard, and any and all staff work, including budgeting and paperwork as required. Consumers Op. III-D-29. CSXT accepts the functions proposed for the Manager.

iv. Equipment Inspectors

Consumers' proposed equipment inspector staffing is both understated at Barr Yard and overstated at West Olive. Specifically, Consumers includes two teams of two inspectors providing 24/7 coverage at Barr Yard, in addition to a separate two-person on call crew available on an as-needed basis. To cover all of these duties, Consumers suggests that only 6 people would be required.¹³² Consumers assumes that this light staffing could be supplemented by the MTO or the AMTO, who, according to Consumers, could be cross trained to carry out equipment inspections.¹³³ Consumers has already imposed considerable duties upon the MTO and the AMTO and it is not plausible that the CERR could divert the MTO or AMTO from their regular duties for the purpose of car inspections. In comparison, CSXT proposes that 11 inspectors would be required to fulfill the

¹³² Consumers Op. III-D-29 to III-D-30.

¹³³ Consumers Op. III-D-29.

inspection duties at Barr Yard.¹³⁴ A two person crew working 24/7 regardless of whether working 8-hour shifts or 12-hour shifts would require 9 employees to staff. The total number of hours to cover per year would be 17,520 (24hrs x 365days x 2). Consumers and CSXT agree on that number. The difference is that Consumers proposes it would do that with 6 people, which implies they would work 56 hours per week every week, while the CSXT proposal of 9 employees requires an average of 37 hours per week which allows time for vacation, sick leave, training, etc. In addition to the 9 people required to fill the 24//365 two person team, CSXT also includes two to cover the on call job at Barr Yard.¹³⁵ Each inspection team requires two carts (one cart on each side of the train).

At West Olive, Consumers provided for three car inspectors, but only one is necessary to complete all of the inspections at that facility.¹³⁶

To complete inspections, inspectors are provided with golf carts that contain the required tool kits. Consumers failed to include sufficient carts to properly equip all inspection crews with the necessary tools. CSXT includes an additional cart at West Olive to ensure that all CERR car inspectors have the required equipment.

¹³⁴ CSXT Reply WP “CERR Operating Expense_Reply.xlsx,” worksheet “Operating-G&A.”

¹³⁵ *Id.*

¹³⁶ Consumers’ evidence regarding car inspection at West Olive is inconsistent. In its operating plan, Consumers states that inspections are carried out by two inspectors working 12-hour shifts. Consumers Op. III-C-85. However, in its operating expense evidence, Consumers states that one inspector will be assigned to West Olive. Consumers Op. III-D-29 to III-D-30.

Table III-D-11 below compares the parties' assignments of inspector staffing and equipment.

**Table III-D-11
Inspection Staffing & Equipment**

Job Assignment	# of Jobs	Consumers Opening Staffing	Consumers Opening Carts	CSXT Reply Staffing ¹³⁷	CSXT Reply Carts
Barr Yard 24/7	2	6	2	9	2
Barr Yard On Call	2		2	2	2
West Olive	1	3		1	1
Total		9	4	12	5

v. Director Dispatch and Data Control

Consumers fails to provide adequate staff support to ensure effective operations through the complex Chicago Terminal area. A total of seven positions are added to accomplish these important functions. The need for these additional functions is directly related to the unusual method by which CERR proposes to select traffic, as discussed above.

First, a Director is added to bring focus, direction, and management to this team. He or she will also back up these lightly staffed functional areas as needed and provide added support during the peak times.

Second, CSXT adds a new 24/7 position that will be staffed by Manager – Crew and Dispatch. This position requires a total staffing of five to ensure rigorous 24/7 coverage. The primary function of this position will be to interact with connecting carriers to identify what trains will be tendered to the CERR and when.

¹³⁷ CSXT Reply WP “CERR Operating Expense_Reply.xlsx,” worksheet “Operating-G&A.”

The CERR trains moving between the residual CSXT and other carriers such as BNSF, UP, BRC, and IHB are only a small portion of the total traffic moving to the half-dozen interchange points that the CERR will serve. The determining factors whether a train is to be handled by CERR are that the train not include TIH traffic or shipments to be switched in Chicago. Consumers assumes it can ignore those trains, and leave them for handling and switching by the Class I carriers. It is only when the train consist is finalized that the CERR will know if it is a train it will handle. For hundreds of trains, that event will occur at Clearing Yard, less than 10 miles from where the CERR will—or will not—receive the train at interchange at Dolton. Many of the points where trains will be built by the connecting railroad will be less than 12 hours from Chicago, and most others will be less than 24 hours away. For example, BNSF builds connecting trains at Galesburg, which is less than 12 hours from Chicago. These are scheduled trains that are built through the day, right up to the departure time. However, it is the makeup of the train at departure that will decide whether it is a CERR candidate or not.

Because of the last-minute decisions required by CERR personnel, a Manager–Crew and Dispatch will be required on a 24/7 basis to capture all the relevant activity on the connecting lines, and ensure that the CERR receives only those trains it can handle.

The Manager–Crew Dispatch team will be responsible for ensuring that the waybills, bills of lading, and freight bills all correctly identify the CERR in the route of movement when required. Based on Consumers' proposed train-selection criteria,

Customers will not know what route their cars are taking when the original bills of lading are submitted to the connecting carriers. As a result, for non-issue traffic, the route will not be certain to include the CERR until the CERR ultimately determines that it will accept the train. Thus a mission critical task of this group will be to create actual routing instructions for those cars that are handled by CERR trains. Failure to take this step would preclude the CERR from collecting revenue.

An equally important function these individuals will undertake is to coordinate with many other railroads to develop clear paths for navigating the CERR trains through Chicago. They will essentially be designing a new service plan every shift to enable the random and inherently different train consists to move through Chicago. Dispatchers will be unable to serve this function, as their primary responsibility is to safely guide individual trains through Chicago. The FRA has strict guidelines on what activities dispatchers can perform while on duty, and they must be isolated from outside distractions so they can devote full attention to the safe and effective movement of trains through Chicago.

As indicated above, Consumers assumes that every train crew operating in Chicago will operate as turn crews, without relief, every day. As described at III-D-36-37, CSXT challenges Consumers' turn crew assumption. Nevertheless, in order to account for the possibility that some crews will operate in turn-service, the CERR will require the Manager Dispatch positions. These positions will have to monitor crew activity and make decisions as to which crews will be able to crew a second

train after coming off duty on their first train. While most of these trains will involve trips that should not take a full shift, the ability to make a second trip will depend upon what trains are ready for departure in what locations, the time of day, and what delays the crew encountered on its initial route. It is highly unlikely that a crew coming off duty at Proviso with five or six hours remaining before it expires under the law could be taxied across Chicago at rush hour to operate another train across town. Rather than taking these intricacies of Chicago operations into account, Consumers simply asserts that all crews will handle two trains during one shift, without defending its assumption.¹³⁸ There is no description whatsoever as to how Consumers will ensure that there are trains ready for departure at a point where a crew would be able to board following its first run, no evidence as to how the movements of crews will be coordinated, and more importantly, no technology provided to facilitate this matching.

In addition to the intricacies that would arise on the CERR itself, the CERR would need assurances from other railroads that its trains would be provided sufficient track access and time to ensure that the crews could complete their runs without coming up against the hours of service law limits. The likelihood that foreign line dispatchers would provide such assurances—particularly in the Chicago terminal—is miniscule. Even if the CERR could get such assurances, the CERR would still have to grapple with the fact that trains will arrive at interchange locations in sequences that are not likely to align with the crews' remaining time

¹³⁸ Consumers Op. III-C-80 to III-C-81.

against their hours of service limit. It would not be practical to juggle the inbound and outbound train flows to accommodate those constraints, as the CERR must be prepared to move trains when they arrive. The CERR will not have the luxury of holding trains, thereby delaying shipments and increasing the likelihood of failing to meet the service requirements of their customers, not to mention the expectations of the other connecting carriers in the busy Chicago terminal, simply to facilitate their turn-crew assumptions.

CSXT recognizes that many of Consumers' Chicago train crews will operate less than 50 miles, and require less than a full 12-hour shift. But the fact that their first train assignment will not consume their total available time does not mean that all crews can always operate two trains, between any two locations in Chicago, for all the reasons given above.

In addition to managing turn-crew operations, where feasible the Manager – Dispatch will be assigned staff functions including Service Design and Measurement; CTCO; and joint facilities management. CSXT recommends that these jobs be 12-hour shifts, with one manager being assigned the lead position, working shifts Monday to Friday during the day, and taking on the CTCO responsibility. Staffing of five will allow this function to be fully supported, allowing for vacation, sick days, training, etc.

Finally, CSXT adds a Manager – Customer Service and Data Control. CSXT agrees that the classical customer service functions that the CERR will need to cover are minimal. Consumers Op. III-D-25. Consumers describes a host of duties

that the customer service representatives will undertake, however most of the functions delineated are functions that would be done by stations or agency personnel on most railroads. *Id.* Including them in Operations is sensible, and having a staff of two should be adequate. The Manager position added by CSXT will oversee and focus these individuals, and coordinate actions between this group, marketing, and transportation. In addition, CSXT will task this position with handling and overseeing freight claims and collecting data to help assist in damage prevention efforts. The management and monitoring of freight claims is an important railroad function that has been completely ignored by Consumers. In *SunBelt*, the Board recognized the importance of this function and faulted complainants for not including it on opening and attempting instead to assert on rebuttal that those functions could be handled by a customer service staff.¹³⁹

vi. CERR Operating Material & Supplies

CSXT generally accepts Consumers' proposed costs for materials and supplies to equip its train and non-train operations employees, which are detailed in its workpapers.¹⁴⁰ CSXT's differences with Consumers are explained below:

Vehicles. Consumers proposes that the CERR will maintain a fleet of fifteen large Ford F150 pickup trucks that will be kept in a pool to be used interchangeably by all members of the CERR Operating and G&A staff. Consumers Op. III-D-76.

There are two problems with this approach. First, maintaining a pool of 15 trucks

¹³⁹ See *SunBelt*, STB Docket No. 42130, at 49.

¹⁴⁰ Consumers Op. WP "CERR Operating Expense_Open.xlsx" and "CERR Materials and Supplies_Open.xlsx."

to serve the entire CERR would be inefficient, particularly because there are two primary locations at which the vehicles will be used, located at opposite ends of the railroad over 160 miles apart. Because the CERR's headquarters is located at the Campbell plant in West Olive, but much of its operations will occur at Barr Yard in Chicago, sharing vehicles between those two locations would be both operationally challenging and inefficient. Second, Consumers proposes buying large full size, four-door, Crew Cab pickup trucks. These trucks are expensive to buy and operate, and many CERR staff who simply need a car for mobility will not need all of the high-end features with which these trucks are equipped.

CSXT opts for a more common sense approach that provides vehicles specifically matched to the functional needs of the employees and assigns them either individually, by department pool, or by location pool. While Consumers proposed a fleet of 15 vehicles each costing \$11,018 per year to own and operate,¹⁴¹ CSXT proposes a total of 11 vehicles for Operating personnel, with an average cost of \$9,781 per year, as well as an additional 15 cars for G&A staff, with an average cost of \$9,273.¹⁴² The increase of 11 vehicles is largely due to increases in staff, particularly police agents, as described below.¹⁴³ Rather than require vehicles to be shuttled back and forth between Campbell and Chicago, CSXT assigns vehicles to each of these locations. This is not only more efficient, but it will also provide

¹⁴¹ Consumers Op. WP "CERR Materials and Supplies_Open.xls," Tab "Automobiles."

¹⁴² *Id.*, Tab "Desk and Chair."

¹⁴³ *See infra* at III-D-101-02.

savings in terms of reduced fuel costs and employee time as it will avoid the cost of repeatedly repositioning the vehicles.¹⁴⁴

Office Supplies. CSXT accepts Consumers' cost estimate for desks, office supplies and copier equipment,¹⁴⁵ and applies these costs to the total staff proposed by CSXT. In addition, CSXT increases the number of desks that will be required for Dispatchers and Call Crews. Consumers proposed one desk for each position, for a total of three desks: one crew call desk and two dispatch desks. CSXT modifies this total to include an extra desk for each position to reflect the fact that these employees will have to multi-task. Each employee will be expected to perform both a primary business function and other ancillary business functions. Ancillary business functions, including email correspondence, car tracing, using accounting functions, and any other computer function other than dispatch or crew call will require a separate work environment. As a result, CSXT increases the total desk requirement by three, for a total of six desks.

Utilities. CSXT accepts Consumers' cost estimate for utilities for the shop building and for yard offices, and applies that cost to the buildings proposed by CSXT, including a shop and crew buildings.¹⁴⁶ CSXT modified the CERR's proposed building configuration in Barr Yard in order to account for the second headquarters

¹⁴⁴ The specific allocation of vehicles is set forth in CSXT reply workpaper "Vehicle Cost.xlsx."

¹⁴⁵ See Consumers Op. WP "CERR Operating Expense_Open.xlsx" and "CERR Materials and Supplies_Open.xls."

¹⁴⁶ CSXT Reply WP "CERR Operating Expense_Reply.xlsx," worksheet "Operating-G&A."

building in Chicago. In addition to the Barr Yard headquarters building, CSXT proposes crew on duty buildings at 71st Street; Curtis, and West Olive; as well as an MOW building at Grand Junction. Utility expenses for this headquarters building are calculated in the same manner that Consumers calculated expenses for its headquarters building at West Olive, at \$2.06 per sq ft.¹⁴⁷

Personal Safety Equipment. CSXT accepts Consumers' proposed cost per employee for safety equipment for Train and Engine employees and for Equipment inspectors,¹⁴⁸ and CSXT applies the per employee cost proposed by Consumers to the total number of employees CSXT has determined the CERR will require.¹⁴⁹ In addition, all operating department management employees will spend time in the field on occasion and will require safety equipment comparable to that provided for Train and Engine employees. As a result, 105 employees will be equipped with personal safety equipment for a total cost of \$2,723.

End of Train Units. CSXT accepts the cost per EOT device as proposed by Consumers, and accepts Consumers' proposal that the number of devices be equal to the number of locomotives.¹⁵⁰ CSXT applies this proposed cost per item to the total number of locomotives in CSXT's Reply Evidence.¹⁵¹

¹⁴⁷ See Consumers Op. WP "CERR Utility Cost_Open.xlsx."

¹⁴⁸ Consumers Op. WP "CERR Materials and Supplies_Open.xls," Tab "Safety Equipment."

¹⁴⁹ CSXT Reply WP "CERR Operating Expense_Reply.xlsx."

¹⁵⁰ Consumers Op. WP "CERR Materials and Supplies_Open.xls," Tab "EOTD."

¹⁵¹ CSXT Reply WP "CERR Operating Expense_Reply.xlsx."

Travel Budgets. CSXT accepts the Cost per Traveler approach to estimating travel cost.¹⁵² On reply, CSXT adds travel budgets to three additional Operating positions. First, the Manager – Operating Rules, Safety and Training is based at West Olive, but will do most of his or her field work in Chicago. As a result, this Manager will have to travel between the two locations on a regular basis. Similarly, the Manager Locomotive Operations is based in West Olive, but will complete most of his or her field work in Chicago. Finally, the Manager – Customer Service will be tasked in part with managing the Freight Claims and Damage Prevention functions, which will require travel around the network.

Car Inspector Equipment. CSXT accepts the unit costs of carts and tool kits proposed by Consumers, but rejects Consumers' allocation.¹⁵³ Two carts are needed at Barr Yard to cover the two-man crew that will be on duty 24/7. However, Consumers specifies that an on-call crew will also be needed at that location. CSXT assumes that means that when the on-call crew is on duty, there will be two Car Inspector teams working at the same time, requiring another set of two carts and two tool kits. CSXT also assumes that the inspector in West Olive will need a cart and tool kit. These adjustments increase the number of carts and tool kits to five.

Furthermore, Consumers does not provide any fuel costs for carts. CSXT's experts assume that the carts will collectively consume 20 gallons per day at \$2.50

¹⁵² See Consumers Op. WP "III-D-3 Travel.pdf."

¹⁵³ See Consumers Op. WP "CERR Materials and Supplies_Open.xls," Tab "Insp Tools Cart."

per gallon and estimate a total of \$18,250 in fuel costs for car inspector equipment.¹⁵⁴

c. General & Administrative

Consumers' evidence of the CERR's General and Administrative ("G&A") expenses suffers from the central flaw of Consumers' Opening Evidence: a failure to grapple with the complexities of real-world railroading in Chicago. Consumers' staffing plan might not be far off if the CERR were a small coal-only railroad moving single commodity unit trains in a remote area with a handful of customers, straightforward revenue streams, and little operational complexities. But this is Chicago. In Chicago it is not reasonable to think that a railroad could short-staff revenue accounting for a host of complex Rule 11 arrangements and simply assume that connecting carriers would handle the accounting. In Chicago it is not reasonable to think that a single railroad police officer for the entire state of Illinois could provide adequate security or asset protection for a railroad handling multiple intermodal trains that are at risk of theft when unprotected. In Chicago it is not reasonable to think that a single help desk technician based a hundred miles away in Michigan could adequately support operations that are primarily centered in Chicago.

To be sure, Consumers is entitled to propose an optimally efficient SARR and it may propose ways in which the SARR could be more efficient than real-world railroads. But such claimed efficiencies must be supported with specific, detailed

¹⁵⁴ CSXT Reply WP "CERR Operating Expense_Reply.xlsx," worksheet "Operating-G&A."

explanations of why the CERR could operate with far less personnel to accomplish necessary functions than a comparable, modern railroad operating in similar conditions. The fundamental SAC rule that a SARR must be “consistent with the underlying realities of real-world railroading” applies to G&A expenses just as much as it applies to other operating expense areas.¹⁵⁵ Consumers’ evidence contains no adequate explanations for the efficiencies it posits in the complicated environment of Chicago. Instead, Consumers largely clings to the discredited theory that the CERR would incur less G&A expenses because it could expect other railroads to perform G&A functions for its cross-over traffic, and it repeats general platitudes that are unaccompanied by any explanation of how and why the CERR could be significantly more efficient than real-world railroads.

Consumers argues that its G&A expenses must be reasonable because the CERR’s G&A staffing and spending as a percentage of revenue is higher than those in some past cases.¹⁵⁶ But while top-down benchmarking can be a useful tool, it is not so useful for comparing apples and oranges. That is what Consumers does here when it “benchmarks” its G&A staffing and spending to *WFA* on the grounds that the CERR’s revenues are closer to those of the *WFA* SARR than any other SARR.¹⁵⁷ But so what? The SARR in *WFA* moved 100% unit train coal traffic in rural

¹⁵⁵ See *WFA I*, STB Docket No. 42088, at 15 (“assumptions used in the SAC analysis . . . must be realistic, i.e., consistent with the underlying realities of real-world railroading”); *DuPont*, STB Docket No. 42125, at 83 (“The Board has consistently required parties to document their personnel and expense estimates with comparisons to real-world railroading”).

¹⁵⁶ See Consumers Op. III-D-35 to III-D-44.

¹⁵⁷ Consumers Op. III-D-42.

Wyoming and Nebraska, interchanging with just two Class I carriers at two interchanges.¹⁵⁸ A CERR operating in Chicago with multiple interchange partners and a diverse traffic base has far more extensive G&A needs than a rural coal-only SARR. The fact that Consumers nonetheless proposes a G&A budget comparable with that of the much simple *WFA* SARR is evidence that Consumers has missed the mark.

Consumers also compares apples and oranges when it asserts that its SARR can have the same relative spending and staffing as a percentage of revenues as the SARR in *TPI*. The *TPI* SARR was a vastly different SARR that could achieve economies of scale due to its size. Indeed, in *TPI*, CSXT used its real-world staffing as a point of comparison with the SARR because the SARR handled 90% of CSXT's carloads.¹⁵⁹ The SARR in that case and real-world CSXT were relatively comparable railroads and, therefore, the work that had to be done was relatively comparable. Indeed, oftentimes benchmarking to CSXT was done to err on the side of being conservative.¹⁶⁰ The CERR, in contrast, is in no way comparable to CSXT or to a 7,000 mile SARR like that at issue in *TPI*. And it makes no sense to assume that a 7,000 mile railroad with over \$6 billion in revenues would staff G&A functions at the same relative levels as a small SARR with \$140 million in

¹⁵⁸ See *WFA II*, STB Docket No. 42088, at 10.

¹⁵⁹ See CSXT Op. Evidence, *CSXT v. TPI*, STB Docket No. 42121, at III-D-2, III-D-61.

¹⁶⁰ For example, CSXT benchmarked marketing and revenue accounting functions to revenue but in the real world, those functions would more likely correlate with carloads. See, e.g., CSXT Op. Evidence, *CSXT v. TPI*, STB Docket No. 42121, at III-D-108 to III-D-109 ("This estimate is extremely conservative. . .").

revenues. For many G&A functions, a smaller railroad leads to an increase in relative staffing because the scale and scope of the railroad does not permit any economies of scale.

Ultimately the reasonableness of G&A evidence is not determined by a top-down comparison to past SARRs or SAC evidence, but rather by a bottom-up analysis of staffing needs in individual areas. Even in cases like *DuPont* and *SunBelt* where the Board's reasoning was informed by top-down comparisons, the ultimate decision was based on analyses of staffing needs in individual areas. Here, where Consumers has proposed a SARR with no parallel in the real world or in prior SAC cases, the Board will have to focus even more so on the staffing needs of various G&A departments. While there is no Class II railroad similar enough to the CERR to serve as an overall benchmark, some potentially useful comparisons in individual areas can be drawn from Class II railroads such as the New York, Susquehanna & Western Railway ("NYSW"), The Indiana Rail Road Company ("INRD"), and the Paducah & Louisville Railroad ("P&L"). CSXT does not suggest that any of these Class II railroads is identical to the CERR and, indeed, the differences among these railroads' operations demonstrate that no Class II railroad is like another. But these real-world Class II railroads do help to illustrate what staffing levels are consistent with real-world railroading.

CSXT's evidence of G&A expense requirements for the CERR was developed by CSXT witness Richard W. Brown. Mr. Brown, a Director with FTI Consulting, has almost 30 years of experience working in the North American railroad industry

for BNSF and its predecessor carriers. While at BNSF, Mr. Brown gained significant experience managing functional reorganizations and implementing technological solutions to streamline administrative functions. For the last sixteen years, he has managed rail carrier strategic planning and merger and acquisition studies for FTI. Mr. Brown's qualifications are further detailed in his statement of qualifications in Section V.

i. Staffing Requirements

(a) Executive Department

Consumers proposed that the Executive Department of the CERR would be made up of one President and one Administrative Assistant.¹⁶¹ There would be three direct reports to the President: Vice President-Operations; Vice President-Finance and Accounting; and Vice President-Law and Administration. Moreover, the Administrative Assistant would also be available to "work in a pool environment, supporting each of the four CERR Executives."¹⁶² Consumers has correctly identified many of the functions the Executive Department would be responsible for, including daily oversight of all of the functional areas of the railroad, as well as all external relations including community relations, government relations, and investor communications.¹⁶³ But it is not realistic to think that a company with over \$100 million in revenue could be run by a single President and a shared Administrative Assistant to handle all of these functions.

¹⁶¹ See Consumers Op. III-D-46.

¹⁶² *Id.*

¹⁶³ See *id.* III-D-46.

On Reply, CSXT proposes a slightly modified organization. *First*, CSXT proposes that Marketing and Information Technology have direct reports to the CERR's President. Consumers' evidence has a Director of Marketing report to the Vice President of Operations and an IT Director report to the Vice President-Law and Administration. But these are mission critical functions that need to be established as a higher priority in the CERR President's daily oversight of operations. Customers of the CERR, including Consumers, will want to know that their Marketing contact has a direct line to the President. Failure to provide for such a direct report will lead major customers to communicate with other areas of the organization—including, potentially, the railroad's President—creating major inefficiencies. A direct report between marketing and President is consistent with how many shortline railroads operate. For example, {{

}}.¹⁶⁴ Similarly, Information Technology is central to the operations of a 21st century railroad and permeates all aspects of its organization and function. Information Technology also represents a substantial capital and operating cost which requires the direct engagement of the President.¹⁶⁵

Second, CSXT proposes a Communications Manager to assist the President with all of the various communications functions the President must carry out in

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¹⁶⁵ Consumers expects \$2.2 million in IT and communications capital expenses. *See* Consumers Op. WP "CERR – Capital Budget (2).xls." There is also an almost \$4 million IT operating budget. *See* Consumers Op. WP "CERR – Operating Budget (2).xls."

addition to the operational oversight of the railroad. The Communications Manager would be specifically tasked with the various community, government, and investor relations responsibilities of the railroad, but could also assist the Executive Department or other Departments as part of the Administrative Assistant pool. As an example of the type of communications work a modern railroad must deal with, 16 identified Class II railroads have websites and seven of the railroads have a social media presence on Facebook, Twitter, or LinkedIn.¹⁶⁶ Managing these platforms and ensuring consistent, accurate, and appropriate messaging is a part of the communications demands on a 21st century railroad, along with the traditional roles of community, government, and investor communications. That is even more the case in an intense media environment like Chicago in which both local governments and community organizations actively lobby railroads about issues of local concern. A President whose primary responsibility is running a railroad would need at least one staff member to assist with these communications demands. Moreover, the Communications Manager can coordinate communications responsibilities throughout the G&A functions. The CERR's President will require assistance with the volume of work and engagement now required.

¹⁶⁶ See CSXT Reply WP "Class II Railroads Internet and Social Media Presence.pdf."

Table III-D-12
CSXT Reply Executive Department Staffing

Consumers Opening ¹⁶⁷	CSXT Reply	Difference
2	3	1

(b) Board of Directors

Consumers proposed a small, five person Board of Directors with three outside Directors. CSXT agrees that this is an appropriately sized Board. But CSXT questions whether it is appropriate for all three outside directors to have “a direct and substantial interest in the CERR’s affairs” and come from “the CERR’s customer group and its lenders.”¹⁶⁸ Directors have important duties and a governance role at their companies, even when the company is not publicly traded. Outside independent directors must provide oversight and guidance on many issues including auditing, executive compensation, and corporate governance, where it is important for the Board to serve as a potential check on the CERR’s management. It is unrealistic to think that three “outside” Directors could adequately perform this oversight if none are truly independent. CSXT proposes that the three outside Directors be independent to perform the necessary oversight role of a robust Board of Directors. Moreover, as discussed below, independent directors cannot be expected to serve for free. CSXT has provided reasonable market-based compensation for the CERR’s outside directors.

¹⁶⁷ Consumers proposed two Administrative Assistants. CSXT is assigning one to the Executive Department and one in the Finance and Accounting Department in describing Consumers’ Opening Evidence. *See* Consumers Op. III-D-46.

¹⁶⁸ *See id.* III-D-47.

(c) Marketing Department

Consumers has proposed a Marketing Department of just five people, a Director of Marketing who reports to the Vice President-Operations and four Marketing Managers with responsibilities organized by commodity.¹⁶⁹ As explained above, CSXT would make the Director of Marketing a direct report to the President. CSXT also agrees that Marketing Managers are best aligned by commodities. But there are four other changes CSXT proposes to Consumers' Marketing Department to make it consistent with real-world railroading.

First, Consumers has not fully justified its Marketing Managers proposal. Consumers has quantified the volume of trains each Marketing Manager would be responsible for and listed six different responsibilities.¹⁷⁰ But in determining that the CERR would need four Marketing Managers, Consumers has failed to take into account the volume of traffic that is Rule 11 at Chicago. For Rule 11 traffic, unlike other interline traffic, the CERR will be responsible for managing the customers and rate making process essentially independent from other carriers.¹⁷¹ Thus, some

¹⁶⁹ See Consumers Op. III-D-48.

¹⁷⁰ See *id.* III-D-52 to III-D-53. As explained below, Consumers failed to include one major marketing responsibility.

¹⁷¹ For example consider an intermodal shipment originating on UP in Oakland, CA and destined to Louisville, KY routed via Chicago IL under Rule 11. UP would negotiate and publish the rate with the customer covering UP's segment between Oakland, CA and Chicago, IL. UP would have the responsibility to bill and collect its revenue for that shipment. From Chicago IL, the CERR will be responsible for negotiating the rate to Louisville, KY which it will settle interline with residual CSXT. The CERR would have to negotiate and publish the rate as well as bill and collect from the shipper. Even though the CERR can opt for interline revenue divisions with residual CSXT, it cannot expect the originating carrier and customer

eastern carrier must establish and maintain a rate for all those shipments. That requires significantly more marketing work than Consumers anticipated on Opening. In fact, it appears that the CSXT Residual and CERR will be fully responsible for rate making for 53% of carload traffic and fully 93% of intermodal traffic.¹⁷² Typically, an originating carrier will handle the marketing responsibility although in this case, because of the extreme short haul on the CERR, it may be reasonable to assume that the residual CSXT will initiate most of the marketing work. Regardless, the CERR will still have to review all of the residual CSXT's rate proposals and approve them.

Second, implicit in Consumers' evidence is the presumption that other railroads will handle marketing responsibilities for overhead traffic. But the Board has previously determined that complainants cannot make this assumption. For example, in *AEPCO 2011*,¹⁷³ the Board rejected the proposition that marketing staff levels were lessened by the "large amount of overhead traffic." That traffic still required support from staff at the SARR. That was the case even though the SARR in *AEPCO 2011* was entirely a bridge carrier on the large volume of intermodal traffic and there was no Rule 11 jurisdiction for the SARR. The Board reconfirmed its view on bridge traffic in *DuPont*,¹⁷⁴ where the Board explained the need for

to abandon their Rule 11 business relationship and revert to an interline settlement process for the entire through rate.

¹⁷² See CSXT Reply WPs "CERR CarloadTraffic Summary.xlsx" and "CERR Intermodal Traffic Summary.xlsx."

¹⁷³ STB Docket No. 42113, at 57.

¹⁷⁴ STB Docket 42125, at 85.

marketing staff even where “traffic originates with connecting carriers.” Here, Consumers does not provide adequate staffing for the CERR to handle this marketing responsibility.

To address this issue, CSXT includes two additional Market Managers. One specifically to account for Consumers failure to recognize the Rule 11 traffic. A second Market Manager will be added to address the inevitable need that residual CSXT and CERR will have to quickly create additional rates in response to changes in traffic. In a typical railroad, the Marketing Department must be prepared to address churning in the traffic mix as different customers change their use of rail service over time. However the traffic selection criteria employed by Consumers in an attempt to limit construction and operating costs will result in far greater churn. The contracts that are required to handle the base year business represent the specific cars that moved on trains with no TIH and no local Chicago Switching. That does not represent the majority of cars moving interline through Chicago via CSXT. With no change in traffic in subsequent years there could still be significantly amounts of traffic not seen in the base year. CERR will need to quickly recognize when existing CSXT contracts and rate authorities will need to be amended to include an interline rate with CERR.

Third, Consumers has failed to include the major marketing responsibility of customer contact. Consumers has proposed a separate customer service function in Operations which is an acceptable approach to customer service. Those customer service officials “monitor train locations, maintain contact with the CERR’s

operating personnel and interchange partners, and answer customers' questions concerning the location of specific trains on the CERR system."¹⁷⁵ The role of customer contact from the Marketing Department is of a different nature and involves communications regarding rates, rules, accessorial charges, and maintenance programs that might alter service. Although the CERR has one major customer—Consumers—it has eleven other general freight customers that account for over \$1 million in CERR revenue and six intermodal customers that account for over \$1 million in revenue.¹⁷⁶ These customers will require some attention. CSXT proposes a Manager-Accounts to be tasked with this interactive role with its customers.

Fourth, Consumers accurately identifies several Marketing Manager responsibilities that will require coordination with other functions within the CERR organization, including service design, interline agreements, forecasting, and customer service.¹⁷⁷ These ancillary functions will require coordination within marketing as well, and CSXT proposes a Manager of Marketing Services to handle these responsibilities, as well as any other necessary administrative tasks for the Department such as assisting and providing input to the Manager Communications covering both direct marketing communications and management of the Customer Applications within the CERR Web site.

¹⁷⁵ Consumers Op. III-D-25.

¹⁷⁶ See CSXT Reply WPs "CERR CarloadTraffic Summary.xlsx" and "CERR Intermodal Traffic Summary.xlsx."

¹⁷⁷ See Consumers Op. III-D-53.

Table III-D-13
CSXT Reply Marketing Department Staffing

Consumers Opening	CSXT Reply	Difference
5	9	4

(d) Finance and Accounting Department

Consumers proposed a Finance and Accounting Department with a staff of only eight, including the Vice President and a shared Administrative Assistant.¹⁷⁸ Organizationally, Consumers has proposed a flawed structure as the Vice President has only two direct reports: a Treasurer—who is provided no staff—and a Controller. Such a vertical organization is inefficient and demonstrates that Consumers is overly ambitious in its view as to what can be accomplished by a small number of employees, particularly without adequate direct oversight from a Vice President. CSXT proposes a few changes to the Finance and Accounting Department so that it may meet the demands of a real-world railroad.

Treasurer: Perhaps the most glaring deficiency in Consumer’s proposed Finance and Accounting Department is the proposition that the Treasurer can accomplish all of the functions of the position with no staff assistance.¹⁷⁹ There is no evidence that the CERR could operate that way. Consumers misses the point when it argues that in some prior cases, the Board has allowed a combined

¹⁷⁸ See Consumers Op. III-D-54.

¹⁷⁹ Consumers accurately describes the Treasurer’s basic function as including working with the Interline Settlement System, managing operating expenses and traffic forecasts, maintaining bank accounts, shifting funds for cash flow needs, managing long-term investments for purposes of retirement programs, maintaining the CERR’s creditworthiness, and conducting customer credit checks. See Consumers Op. III-D-57.

Treasurer and Vice President of Finance and Accounting.¹⁸⁰ Consumers failed to observe that in those other cases, the combined Vice President and Treasurer had substantially more support staff than is being proposed for the CERR. In *AEP Texas II*,¹⁸¹ the Treasurer was assisted by three other people just in the Treasury function. In *TMPA*,¹⁸² the Treasurer was headed by a large ten person Finance and Accounting team providing support for the combined Vice President and Treasurer across numerous functional responsibilities.

The Treasurer, alone, cannot accomplish all of the tasks set out by Consumers.¹⁸³ In particular, the work of dealing with the Interline Settlement System (“ISS”) is complicated and time-consuming. The Treasurer must attempt to match cash flows from ISS with the relevant operating expenses, which will require daily activity. In addition, Consumers correctly noted that the Treasurer must maintain CERR’s “various bank accounts and will invest inflows in excess of cash needs and will shift funds between investment options as funds become available or are needed.”¹⁸⁴ But that dramatically understates the work involved in managing all bank accounts and balancing short and long term investments to be sure adequate cash is available for immediate expenses. The Treasurer will also be responsible for managing investments such as the CERR’s 401(k) and other

¹⁸⁰ See Consumers Op. III-D-57, n.33.

¹⁸¹ STB Docket No. 41191 (Sub-No. 1), at 52 (Table C-3).

¹⁸² 6 S.T.B. at 682 (Table C-12).

¹⁸³ See Consumers Op. III-D-57.

¹⁸⁴ See *id.*

retirement funds. Consumers outlined some of the necessary functions, but provided no evidence that a single employee could possibly handle them all. Moreover, the responsibilities vary widely from daily, mission-critical functions (such as managing the ISS process), to less time-intensive functions (*e.g.*, credit management), to long-term tasks necessary for the railroad's survival (such as investment planning and stewarding employee retirement funds). CSXT proposes the addition of a Cash Manager to assist with day-to-day responsibilities such as credit checks, short-term cash management, and monitoring of bank accounts. That assistance will allow the Treasurer to focus on long-term functions such as investment planning and overall cash flow. It will further allow the Treasurer to work with the Executive Department on communication of financial issues to CERR's lenders, as well as to coordinate updates and enhancement to the CERR website.

Controller: Consumers places an Assistant Controller and two Revenue Accountants under the Controller. But such a slim Revenue Accounting team is impractical for two reasons. First, Rule 11 traffic will complicate revenues, because all eastbound Rule 11 traffic will require a rate in place, billing, and collection by the eastern carrier. As explained above, the Board has found that complainants may not assume that SARRs do not need staff for revenue accounting just because traffic is overhead.¹⁸⁵ Second, CERR's traffic group calls for shipments moving on behalf of the same shipper and between the same origin and destination to move via

¹⁸⁵ See *AEPCO 2011*, STB Docket No. 42113, at 57; *DuPont*, STB Docket 42125, at 85.

different routes depending on issues over which the shipper has no control. For westbound shipments, the westbound carrier will select the route based on when specific traffic is available for blocking. On one day, the CERR might be in the route and the next day it might not. Therefore, determining for which traffic the CERR is entitled to receive revenue will be extremely difficult.¹⁸⁶ For example, a bill of lading will show the route as UP-CSXT, but on some days the CERR may be a bridge carrier between UP and CSXT. The CERR will need to be vigilant to make sure it is correctly compensated through the ISS process for any traffic it handles. That is not to suggest that an originating connecting carrier would try to shortchange the CERR, merely that a complicated and always changing practice of interchange will require close attention. A random error by either CSXT or the western carrier would eliminate revenue to the CERR and would likely not be discovered by the connecting carriers. CERR, therefore, must take full responsibility to ensure that it receives appropriate revenues for shipments it actually handles.

The Controller is also assigned responsibility for accounts payable and payroll, but little explanation is provided as to who would actually fulfill these responsibilities. Therefore, CSXT proposes a Manager of Disbursements to handle all accounts payable functions, payroll responsibilities, and any required reporting.

¹⁸⁶ On reply, CSXT includes a 24/7 Manager – Crew and Dispatch function to ensure the CERR has visibility into the trains that will be coming on to the CERR and when.

The additional position will allow the Revenue Accountants to focus on their primary responsibility, revenue accounting.

Budgets and Purchasing: The only additional Finance and Accounting Department position proposed by Consumers is the Manager of Budgets and Purchasing, who is a direct report of the Comptroller.¹⁸⁷ Consumers lists several functions that will presumably be this Manger's responsibility, such as audit management, tax, and financial reporting.¹⁸⁸

To address the volume of responsibility, CSXT proposes that a Director of Planning and Support be a direct report to the Vice President and be assisted by a Manager of Budgets and Purchasing and a Manager of Tax and Financial Reporting. Budgets and Purchasing are complimentary functions because the budgeting process will provide visibility into the required program maintenance for which purchased materials will need to be available. The new Manager of Tax and Financial Reporting will cover those eponymous responsibilities. Consumers minimize these functions by asserting that all required tax work will be performed by outsourced providers.¹⁸⁹ With no back-up evidence, Consumers has estimated that all property and income tax returns can be completed and filed for \$150,000.¹⁹⁰ Not only is this unsupported and unexplained estimate low, it ignores the

¹⁸⁷ See Consumers Op. III-D-60.

¹⁸⁸ See, e.g., *id.* III-D-59 (“[M]embers of the CERR Controller function staff will interact with outside audit and tax personnel and will prepare the data and documentation needed by the outside audit firm.”).

¹⁸⁹ See *id.*

¹⁹⁰ See Consumers Op. WP “CERR G&A Outsourcing_Open.xlsx.” The footnote “supporting” the \$150,000 cost says “Assumed” with no further explanation.

management and data collection responsibilities that would remain with the railroad even if a third party is used. The CERR would still have to be responsible for managing and collecting all required information for the outside provider, as well as verifying that all the property tax bills received are valid. Consumers also claimed the financial reporting requirements will be “minimal” and will use “financial accounting software to track all of its physical assets and asset replacements.”¹⁹¹ Even accepting that conclusion as valid, someone at the CERR will still need to be responsible for assembling and filing the reports, even if Oracle is being used for much of the analytical work.¹⁹²

CSXT’s proposed Finance and Accounting Department is necessary for the CERR to be consistent with real-world railroading. As a point of comparison, {{

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¹⁹¹ See Consumers Op. III-D-59.

¹⁹² Similarly, Consumers used a low percent of revenue for its internal and external audit costs. See Consumers Op. WP “CERR G&A Outsourcing_Open.xlsx.” CSXT accepts this proposal but suggests that the additional finance and accounting staff can assist with the audit functions.

¹⁹³ {{ }}

¹⁹⁴ {{ }}

Table III-D-14
CSXT Reply Finance and Accounting Staffing

Consumers Opening	CSXT Reply	Difference
8	12	4

(e) Law and Administration Department

Consumers has proposed a Law and Administration Department headed by a Vice President containing many important functions including legal, safety and claims administration, human resources and training, information technology, and security.¹⁹⁵ CSXT proposes some alternative organization and other corrections to comply with the necessities of real-world railroading. As discussed above, CSXT places Information Technology in its own Department and will discuss that function in the subsequent section.

(i) Law

CSXT accepts that the CERR could operate with a single in-house General Attorney and outsource the remainder of its legal expenses. As has become common in SAC cases, Consumers calculated its internal legal spending and subtracted that from its benchmark legal cost to determine its outsourced legal cost. CSXT accepts that general framework, but questions how Consumers calculated its internal legal spending figure. Specifically, Consumers attempted to include costs within its internal legal spending that are inappropriately counted towards the total legal cost benchmark. First, Consumers includes the cost of its Vice President—Law and Administration within the in-house legal cost it subtracts from the total legal

¹⁹⁵ See Consumers Op. III-D-60.

spending to determine its outsourced cost. The Vice President position, with an almost \$200,000 annual salary, cannot be entirely included in legal spending because Consumers has proposed that this individual will have administrative responsibilities apart from legal work. In addition to serving as General Counsel, the Vice President would be the head of Human Resources and Training and Security (and Information Technology in Consumers' proposed organization).¹⁹⁶ It is not reasonable to account for these administrative responsibilities in the CERR's legal budget, as Consumers does in its Opening. To account for the Vice President's split responsibilities, CSXT assigns half of the cost of the position to the legal spending figure and half to the nonlegal G&A staffing budget.

Second, Consumers placed the claims function¹⁹⁷ in the legal group and assumes that cost can be subsumed by the outsourced share of legal spending. But there is no evidence that Consumers' outside benchmark would encompass the internal claims function—nothing in Consumers' evidence suggests that it would.¹⁹⁸ The employee claims process requires that any incident be investigated, tracked, resolved, and recorded. CSXT below proposes adequate police staffing and would assign the police security agents the responsibility—in addition to their existing police and security functions—for investigating and processing claims. But CSXT also proposes an Administrative Assistant in the Law and Administration

¹⁹⁶ See *id.* III-D-60 to III-D-61. CSXT proposes that Information Technology be assigned its own Director outside the Law and Administration Department.

¹⁹⁷ Consumers entirely ignored the freight claims function, which CSXT addresses in the operating personnel section of its Reply Evidence.

¹⁹⁸ See Consumers Op. WP "ALM.pdf."

Department to manage the claims processing responsibility and to provide administrative support for the Department as a whole. Simply as a basis of comparison, CSXT had between { } on its Chicago Division between 2013 and 2015.¹⁹⁹ CSXT is proposing one Administrative Assistant to focus on what will likely be a comparable amount of claims for the CERR with support from the legal and asset protection staff.

(ii) Human Resources

Consumers proposed only one Human Resources Director, who supposedly could singlehandedly “manage training, recruiting, compliance, compensation and benefits, employee relations and training since most of these functions will be outsourced.”²⁰⁰ But the outsourcing upon which Consumers relies only reflects costs for start-up expenses such as recruitment and training.²⁰¹ The CERR would still be responsible for other HR functions including:

- Administering the in-house components of the recruiting and hiring process and interacting with any outside vendors;
- Managing its outsourced training and orientation programs;
- Investigating and resolving employee complaints;
- Administering disciplinary procedures;
- Setting compensation and benefits and managing any changes;

¹⁹⁹ See CSXT Reply WP “Claims Data.jpg.”

²⁰⁰ Consumers Op. III-D-65 to III-D-66.

²⁰¹ See *id.* III-D-66 (citing Consumers Op. WP “CERR Operating Expense_Open.xlsx,” Tab “Training.”).

- Ensuring compliance with federal immigration law—including the completion of a Form I-9 and E-Verify screening for each worker;
- Approving employees returning to work after injuries; and
- Ensuring compliance with a host of federal and state laws and regulations, including Equal Employment Opportunity reporting and Family Medical Leave Act compliance.²⁰²

Many of these responsibilities require interaction with CERR employees as well and are unaccounted for by Consumers.

Indeed, the total “outsourcing” budget for HR is so minimal as to provide little real assistance to in-house staff. Consumers’ workpaper cites to an outsourcing figure of \$2,687,684, but that is merely the initial hire and training budget for start-up.²⁰³ The annual amount in the DCF that could be attributable as ongoing HR outsourcing assistance is that number times the attrition rate. For purposes of this analysis, if the Consumers-proposed attrition rate of 4.35% were applied, that would mean an annual cost of \$117,041.²⁰⁴ Furthermore, Consumers’ workpaper says that 66% of total training and new hire costs are for the training of Conductors and Engineers, meaning that under Consumers’ proposal all other HR functions would be handled on an annual outsourcing budget of less than \$40,000 per year.²⁰⁵ This is not sufficient.

²⁰² Consumers does include a payroll processing outsourcing cost. See Consumers Op. WP “CERR G&A Outsourcing_Open.xlsx,” Row 5.

²⁰³ See Consumers Op. WP “CERR Operating Expense_Open.xlsx,” Tab “Training.”

²⁰⁴ As described below, CSXT corrects Consumers’ proposed attrition rate.

²⁰⁵ See Consumers Op. WP “CERR Operating Expense_Open.xlsx,” Tab “Training,” Rows 3-4.

Consumers' reliance on *WFA I* to support its proposal is misplaced. In *WFA I*, the Board found that the complainants' proposed Human Resources group made up of only a Director of Human Resources and outsourced expenses was "lean."²⁰⁶ But the Board further explained that the railroad's alternative was excessive and, therefore, it had to accept the complainant's approach as the best evidence. Here, CSXT's below proposal is not an excessive alternative, and the Board should accept it as the best evidence on this issue.

CSXT proposes that a second Human Resources position—a Manager of Human Resources—be added to support the Director in all of the important functions described above. The Manager of Human Resources could assist with any employee contacts related to the broad area of Human Resources jurisdiction, including such issues as payroll or benefits questions, clearing employees to return to work after injuries, and handling Federal Medical Leave Act requests.

(iii) Asset Protection

Consumers proposed an Asset Protection team of four employees: a Chief of Security and three Security Agents. In doing so, Consumers ignored the reality of crime and security in the Chicago region and the modern, 21st century environmental needs of a railroad.

Police: The security responsibility for the CERR will be significant. The CERR will have one large facility in Chicago at Barr Yard and will also have several major interchange tracks where trains could be stopped for long periods of time and

²⁰⁶ *WFA I*, STB Docket No. 42088, at 45.

will need to be protected. These interchange tracks are all grade level and not protected by fencing or other means of protection. Unfortunately, Chicago is an area of high crime and will pose significant security challenges for the CERR. As one basis of comparison, CSXT compared FBI crime statistics for Chicago, where most of the CERR’s facilities and operations are located, with Porter, which is also on the CERR system. Not surprisingly, the higher population City of Chicago has significantly more crime than suburban Porter. But as a percentage of the population, the crime rate is also much higher in Chicago for a range of relevant categories such as robbery and property crime (including burglary and larceny-theft).²⁰⁷ Selected CSXT police statistics for 2015 for Chicago also justify the need for appropriate police and security staffing.

**Table III-D-15
CSXT Police Chicago Selected Crime Statistics, 2015²⁰⁸**

Crime	Incidents Reported
Burglary	280
Theft	21
Vandalism	7
Seal Exception	77
Protection (Train)	4,938
Trespass	301

Because of these Chicago realities, every real-world railroad in Chicago (including BNSF, UP, NS, IHB, and CSXT) has a 24/7 police presence at their major yards. The Chicago area railroad police for each railroad and those figures are presented in Table III-D-16.

²⁰⁷ CSXT Reply WP “Crime Statistics.xls.”

²⁰⁸ CSXT Reply WP “CSXT Police Statistics Email.jpg.”

Table III-D-16
Railroad Police in Chicago²⁰⁹

Railroad	Number of Police in Chicago
CSXT	20
UP	20
NS	42
BNSF	20
CN	9
IHB	8

Given the size of other carriers' police presence in Chicago, Consumers' proposal to have a single Security Agent provide security in the Chicago area, with one Security Agent in Indiana available to provide back-up if necessary, is absurd.²¹⁰ Consumers justified this light staffing by citing *AEPCO 2011*, a case in which the Board approved one officer for each state.²¹¹ But the SARR in *AEPCO* traversed largely rural areas of the western United States and did not have yards or trains in the high population and high crime area of Chicago, or anything comparable.

²⁰⁹ CSXT Reply WP "CSXT Police Statistics Email.jpg."

²¹⁰ In this context, there is actually a difference between security and police. Security protects the integrity of the yard by controlling access and patrolling. The police protect trains, lading in trains, and employees, with the major priority being the protection of trains. An intermodal train, which could be up to 10,000 feet long, can routinely be held short of terminals on tracks that are not protected and present prime opportunities for property crimes. In the real-world, idle trains are boarded by thieves who open trailers and containers. Even trains moving slowly have the same vulnerability. Thieves will board trains and simply throw lading off of cars at pre-determined locations for pick-up by accomplices. That occurs in the real world despite the significant security and police presence used by the railroads. By comparison, the CERR can expect a higher rate of crime if Consumers' proposal is allowed to stand. *See, e.g.*, CSXT Reply WP "Gun Theft From Rail Yard Article.pdf" (describing a theft of over 100 guns from a freight train in a Chicago South Side rail yard).

²¹¹ *See* Consumers Op. III-D-71 (citing *AEPCO 2011*, STB Docket No. 42113, at 62).

Consumers uses the standard approach to estimating Freight Loss and Damage, which uses actual CSXT dollars per ton by commodity and scales that down by the percent of CSXT miles which CERR incurs. This has been used in virtually all previous SAC cases, and CSXT does not suggest changing that for this case. But the Loss and Damage number that is generated using this process by Consumers in Opening is only \$118,228.²¹² Theft of one flat screen TV per day would be more than that. The only way that CERR can hope to keep its losses in check is to provide a robust police and security function.

In addition to police, CERR would require security at Barr Yard. CSXT proposes that CERR could use outsourced security in a manner identical to what Consumers proposes for security at West Olive.²¹³

Environment: Consumers also asserted that its legal staff will handle environmental issues, which it argues will be “minimal given the absence of any hazardous materials in the CERR’s traffic group.”²¹⁴ That statement is simply incorrect, as the CERR traffic mix includes crude oil trains, over 900 ethanol unit trains, and over 185,000 carloads of hazardous materials in total. It is true that the CERR does not handle TIH, which is a particular class of hazardous materials. But the hazardous materials the CERR does move have many associated problems, including contamination if there is any type of release. Moreover, even non-

²¹² See Consumers Op. WP “CERR Operating Expense_Open.xlsx,” Tab “DCF Transfer.”

²¹³ See CSXT Reply WP “CERR G&A Outsourcing_Reply.xlsx.”

²¹⁴ See Consumers Op. III-D-61.

hazardous materials require careful environmental stewardship if there is a release.²¹⁵ FRA statistics show that in 2015, Class II railroads had 40 reported derailments, many of which required environmental response and assessment.²¹⁶ The CERR will not be immune from those real-world realities. Finally, any modern industrial business has environmental needs regardless of any spills or releases, particularly when industrial yards are located in the watershed of environmentally sensitive sites, such as Lake Michigan.

* * *

CSXT proposes a far more realistic staff for asset protection. The staff will be headed by a Director of Asset Protection who will be responsible for overseeing police, security, and environmental functions at the CERR. In addition, the Director will have oversight of outsourced security contracts. Consumers has proposed an outsourced security position at its West Olive headquarters.²¹⁷ CSXT proposes the same type of security for the CERR facility at Barr Yard using the same method for estimating costs put forth by Consumers.

CSXT also proposes the addition of a Manager of Environmental Control. In addition to being available for any hazardous material or other releases, the position will assist with necessary industrial hygiene functions such as obtaining necessary pollution discharge permits, providing necessary training for

²¹⁵ Consumers claimed to have included a \$10,000 annual cost for clean-ups. *See* Consumers Op. III-D-124. But Consumers' workpapers do not include these costs, which CSXT includes.

²¹⁶ *See* CSXT Reply WP "Class II Railroad Derailment.pdf."

²¹⁷ *See* Consumers Op. III-D-72 to III-D-73.

environmental regulatory compliance, and disposing of waste.²¹⁸ The Manager will need a small budget for permit fees and contractor/consultant costs, particularly as they will have no staff to assist them.²¹⁹

CSXT agrees that one Police Agent in Michigan and one Police Agent in Indiana is adequate. But to protect the major intermodal facility and interchange tracks in Chicago, CSXT proposes that there be an Assistant Chief of Police and nine Police Agents—in addition to the two Police Agents in the other states—to provide 24/7 police coverage. The Assistant Chief will coordinate police activities in Chicago, as well as fill in shifts as necessary to maintain the 24/7 schedule.

CSXT also proposes the purchase of radios for all CERR police officers. As a functioning police force, the CERR's police officers need radios that provide secure, interoperable communications consistent with federal laws and Federal Communications Commission rules ("FCC"). For example, the FCC has shifted from allowing radio licensees to operate on 25kHz channels to requiring they meet a new narrowbanding requirement of operating on a 12.5kHz channel—necessitating special equipment.²²⁰ The FCC has also been working to increase interoperability among radios, particularly for emergency responders and law enforcement.

²¹⁸ See CSXT Reply WP "Environmental Staffing.jpg."

²¹⁹ See *Id.* CSXT proposes that the \$10,000 annual cost Consumers stated it included in its narrative but failed to include in its workpapers also be used for this purpose.

²²⁰ Federal Communications Commission, "VHF/UHF Narrowbanding FAQs," <http://transition.fcc.gov/pshs/public-safety-spectrum/narrowbanding-faq.html> (last visited March 3, 2016).

Significant public attention was brought to this issue by the 9/11 Commission²²¹ and subsequent laws.²²² The FCC has adopted technical standards that all radio users must follow to improve interoperability.²²³ CSXT proposes that all CERR police officers be issued a Harris Unity XG-100P Full-Spectrum multiband portable radio.²²⁴ This equipment complies with all legal and FCC regulatory standards and allows CERR police officers to stay in touch with one another, coordinate in emergency situations, and communicate directly by radio with outside first responders during emergency situations.

Table III-D-17
CSXT Reply Law and Administration Staffing

Consumers Opening ²²⁵	CSXT Reply	Difference
7	20	13

(f) Information Technology Department

Consumers proposed a six person Information Technology team within the Law and Administration Department.²²⁶ As explained above, CSXT proposes a

²²¹ Thomas H. Kean, et al., *The 9/11 Commission Report*, available at <http://www.9-11commission.gov/report/911Report.pdf> (last visited March 3, 2016).

²²² See, e.g., *Implementing Recommendations of the 9/11 Commission Act of 2007*, Pub. L. No. 110-53, § 2201.

²²³ Federal Communications Commission, “Interoperability,” <http://transition.fcc.gov/pshs/emergency-information/interoperability.html> (last visited March 3, 2016).

²²⁴ See CSXT Reply WPs “Harris Unity Radio.pptx”; “Invoice showing price of radios.pdf”; and “Radio programming fees.pdf.”

²²⁵ Total excludes six IT employees included in the Law & Administration staff by Consumers on opening that CSXT is addressing in the next section.

²²⁶ See Consumers Op. III-D-68.

separate IT Department with a Director to head the function, reporting directly to the CERR's president. Beyond that, CSXT largely accepts Consumers' proposed staffing with one exception. The CERR's IT staff is primarily supporting RMI and various off-the-shelf software systems selected for different functions such as the SCAT Client Serve System for Crew Management, Alstom CTC for dispatching, and Oracle.²²⁷ There will need to be a variety of internal systems developed, implemented, and maintained to help tie these disparate systems together in an internal CERR interface that would allow all aspects of the CERR's management to work efficiently and effectively. Consumers only proposed one Programmer/Development employee to handle day-to-day support and maintenance of the systems, and to develop new applications necessary to provide for an effective business environment.²²⁸ That is insufficient. Moreover, Consumers provides only a single Help Desk Technician, which is not enough to provide for the necessary 24/7 IT support necessary in a modern enterprise.²²⁹ If an employee is not available 24/7 at the West Olive headquarters and there is an IT problem, the CERR's business would halt.

Consumers posited in its Opening Evidence that a large amount of the CERR's workload will actually take place in and around Chicago. They provide for a locomotive shop, crew on duty facilities, offices for MTO and AMTO, and Police. CSXT proposes to expand on that Chicago presence in reply. Supervisory offices for

²²⁷ See, e.g., Consumers Op. III-D-79 to III-D-85.

²²⁸ See *id.* III-D-69.

²²⁹ See *id.*

MoW will be located in Chicago, not West Olive. To facilitate crews being able to handle two trains in one shift, CSXT proposes three on duty points in Chicago. All these facilities will have IT equipment including desktops, desk printers, line printers, and other equipment, all of which will need to be tended to by the CERRs IT staff. For this reason, CSXT proposes adding an IT Help desk tech to work at Barr Yard. This individual would be primarily responsible for supporting employees and facilities in the Chicago area but could also provide phone back up support to West Olive as needed.

CSXT proposes to make the Programmer/Development employee part of the Help Desk team and add two additional Help Desk employees to create an overall four-person Help Desk and Development Group. Together, these four employees could fulfill both important IT functions for the CERR.

**Table III-D-18
CSXT Reply Information Technology Staffing**

Consumers Opening²³⁰	CSXT Reply	Difference
6	9	3

²³⁰ On Opening, Consumers placed these positions in the Law and Administration Department.

**Table III-D-19
Total G&A Staff Comparison**

Position	Consumers Opening	CSXT Reply	Difference
President and CEO	1	1	0
Administrative Assistants	1	1	0
Manager of Communications	0	1	1
Director of Marketing	1	1	0
Marketing Manager	4	4	0
Manager Marketing Services	0	1	1
Market Manager	0	2	2
Manager Accounts	0	1	1
Vice President-Finance and Accounting	1	1	0
Administrative Assistant	1	1	0
Treasurer	1	1	0
Cash Manager	0	1	1
Controller	1	1	0
Assistant Controller/Manager Revenue	1	1	0
Manager Disbursements	0	1	1
Revenue Accounting Managers	2	2	0
Director Planning and Support	0	1	1
Manager of Budgets/Purchasing	1	1	0
Manager Tax and Financial Reporting	0	1	1
Vice President-Law and Administration	1	1	0
General Attorney	1	1	0
Director-Human Resources	1	1	0
Manager Human Resources	0	1	1
Chief of Security/Police	1	1	0
Assistant Chief	0	1	1
Security Agents	3	11	8
Director Asset Protection	0	1	1
Manager Environmental Control	0	1	1
Administrative Assistant/Claims Specialist	0	1	1
Director-Information Technology	1	1	0
IT Specialists	5	8	3
Total	28	50	22

ii. Compensation

(a) Salaries for Non-Executives

CSXT accepts Consumers' proposed approach to use data from CSXT's Wage Forms A and B to calculate salaries for the CERR's non-executive personnel. Where CSXT's G&A expert corrected Consumers' staffing by adding positions, CSXT set salaries for those positions at a level consistent with salaries for other positions at that level. CSXT uses its fringe benefit ratios of 41.6%.²³¹

(b) Executive Compensation

CSXT accepts Consumers' proposed approach to use data from the P&W to calculate salaries for the CERR's executive personnel. Where CSXT's G&A expert has corrected Consumers' organization by having the Director of Marketing/Chief Marketing Officer and Director of Information Technology/Chief Information Officer report directly to the President, they are compensated commensurate with other executives. CSXT's executive compensation salaries are included with other salary calculations as set forth in CSXT Reply WP "CERR Operating Expense_Reply.xlsx," worksheet "Operating-G&A."

(c) Outside Director Compensation

Consumers also proposes that the Board of Directors would be uncompensated. As described above, Consumers posits that the three outside directors would be uncompensated. This is completely unrealistic for a large company where these directors would be expected to take on multiple oversight

²³¹ See CSXT Reply WP "CERR Operating Expense_Reply.xlsx," worksheet "Summary," cell D237.

responsibilities in critical areas like audit, compensation, and corporate governance. Moreover, Consumers' executive compensation benchmark, the P&W, provides both fees and stock options to its directors.²³² The P&W compensates its directors with a fee ranging from \$4,950 per year to \$13,500.²³³ The option awards range from \$1,955 to \$6,256.²³⁴ CSXT proposes to compensate the three outside directors at \$10,000 per year each.

iii. Materials, Supplies & Equipment

Consumers provided for a broad range of material and supplies for the CERR's G&A organization including motor vehicles, office furniture, supplies and equipment, building utilities, personal safety equipment, end of trains devices, motorized carts, tools and car part inventories. CSXT accepts most of these submissions with the following alterations.

Vehicles. Consumers proposed that the CERR would maintain a fleet of fifteen large pickup trucks that would be used interchangeably by all members of the CERR Operating and G&A staff.²³⁵ There are two problems with this approach. First, in order to make sure that vehicles are flexible and can be used by all necessary employees, Consumers proposed purchasing large full size, four door, Crew Cab pickup trucks. These trucks are expensive to buy and expensive to operate. And, no one on the CERR staff requires all of the features that these

²³² See CSXT Reply WP "P&W Proxy.pdf" at 9.

²³³ One outside director is not compensated subject to a separate agreement. *Id.*

²³⁴ *Id.*

²³⁵ See Consumers Op. III-D-76.

trucks would offer. Second, maintaining a single vehicle pool when there are two locations several hundred miles apart would create logistical challenges. On Reply, CSXT opts for a more common sense approach that provides vehicles specifically matched to the functional needs of the employees and assigns them either individually, by department pool, or by location pool. While Consumers proposed a fleet of fifteen vehicles each costing \$11,018 per year to own and operate, CSXT proposes a total of eleven vehicles for Operating with an average cost of \$9,781 and an additional fifteen cars for G&A with an average cost of \$9,273. The increase of 11 vehicles is largely due to increases in staff, particularly in the police function. It also reflects the inefficiency of having the Headquarters location far away from the majority of the railroad activity and personnel as proposed by Consumers.²³⁶

Office Supplies. CSXT accepts Consumers' proposal for the cost of office supplies but scales the purchases to meet the needs of the CERR staff as put forth by CSXT.

Utilities. CSXT accepts the cost estimate for utilities based on \$2.06 per square foot for the Headquarters Building in West Olive²³⁷ and calculates total utility cost based on the 17,850 square feet in the headquarters proposed by CSXT.

²³⁶ Details of vehicle assignment can be found in CSXT Reply WP "Vehicle Ownership Cost.xlsx."

²³⁷ See Consumers Op. WP "CERR Utility Cost_Open.xlsx."

iv. Other**(a) IT Systems**

Consumers proposed a number of software and hardware solutions to be used by the CERR. Mr. Brown has reviewed these solutions and believes they are generally appropriate. CSXT accepts the IT systems that Consumers has proposed, but makes several adjustments necessary for a functioning railroad and to correct apparent errors in Consumers' submission.

First, the total amount of computer equipment Consumers proposed must be increased to provide equipment for the additional staff that the CERR would need. CSXT increases the desktop computers, laptop computers, and printers proposed by Consumers to provide equipment for the larger workforce it proposes. Because the larger workforce will mean more end users, the amount of hardware must increase accordingly.

Second, Consumers did not purchase all of the necessary Oracle modules. The CERR would require three additional modules: (1) Asset Tracking, to track and depreciate assets; (2) Inventory Management, to track purchasing inventory; and (3) Project Procurement, to manage project activities for purchasing and expenditure. These capabilities are not found in any other IT system used by the CERR. CSXT adds these modules and updates the Oracle expenses in CSXT Reply workpaper "CSXT Reply CERR-Oracle.xlsx."

Third, the CERR relies on the RMI system which uses an Atlanta, GA-based server. In order to ensure that there is always communications between the CERR and RMI, without which the railroad could not operate, CSXT proposes a T1 back-

up line. CSXT has obtained an estimate from a real-world company for both the initial capital expense and monthly operating cost.²³⁸

Fourth, the Consumer's proposed implementation cost for Oracle is wholly inadequate as compared to real-world costs. Consumers assumed a \$10,000 cost for the HR module and \$37,985 cost for the Accounting module.²³⁹ CSXT obtained a third party estimate on implementation costs from {{ }} a real-world vendor with railroad clients the calculated an estimated cost for a short-line railroad. It calculated an implementation cost for a railroad with the CERR's needs of \$2,125,000.²⁴⁰ To be conservative, CSXT maintains Consumers' proposed \$10,000 implementation cost for the HR module and proposes to use the four times software implementation cost approved by the Board in the *DuPont* decision for the accounting modules.²⁴¹

(b) Other Out-Sourced Functions

CSXT accepts most of the outsourced costs Consumers proposed.²⁴² But Consumers' proposed outsourcing cost for financial audit is too low. Consumers proposed a cost of \$32,903, but the P&W has an audit cost of approximately \$120,000 per year.²⁴³ Consumers' lower figure was calculated on the basis of CSXT's real-world percentage of revenue financial audit costs. But Consumers

²³⁸ {{ }}

²³⁹ See Consumers Op. WP "CERR – Capital Budget (2).xlsx," Tab "Sheet1."

²⁴⁰ See CSXT Reply WP "CERR Estimates for Oracle Financials and PeopleSoft."

²⁴¹ See *DuPont*, STB Docket No. 42125, at 96.

²⁴² See Consumers Op. WP "CERR G&A Outsourcing_Open.xlsx."

²⁴³ See CSXT Reply WP "P&W Proxy.pdf" at 15.

would not have the economies of scale that the much larger CSXT organization has, making the P&W figure a better comparable.²⁴⁴

(c) **Start-up and Training Costs**

CSXT generally accepts Consumers' proposed start-up and training costs but applies its own attrition figure described below.

**Table III-D-20
Training**

	Consumers Opening		CSXT Reply		Difference	
	No.	Total Training	No.	Total Training	No.	Total Training
Engineers	26	\$1,245,445	34	\$1,628,658	31%	31%
Conductors	26	\$581,790	34	\$ 760,802	31%	31%
Train Dispatchers	9	\$201,389	9	\$ 201,389	0%	0%
Maintenance of way	41	\$254,594	41	\$ 254,594	0%	0%
Equipment Inspectors	9	\$67,228	12	\$89,637	33%	33%
Executives	12	\$299,614	14	\$337,502	17%	13%
All other Employees	35	\$37,625	68	\$73,100	94%	94%
Total	158	\$2,687,684	212	\$3,345,682	34%	24%

**Table III-D-21
Restaffing**

	Consumers Opening		CSXT Reply		Difference
	Attrition	Cost	Attrition	Cost	
Engineers	4.4%	\$54,177	9.1%	\$148,390	\$94,214
Conductors	4.4%	\$25,308	9.1%	\$69,318	\$44,010
Train Dispatchers	4.4%	\$8,760	7.4%	\$14,930	\$6,169
Maintenance of way	4.4%	\$11,075	6.0%	\$15,289	\$4,214
Equipment Inspectors	4.4%	\$2,924	7.9%	\$7,084	\$4,160
Executives	4.4%	\$13,033	7.3%	\$24,655	\$11,621
All other Employees	4.4%	\$1,637	7.3%	\$5,340	\$3,703
Total		\$116,914		\$285,006	\$ 168,092

²⁴⁴ See CSXT Reply WP "CERR G&A Outsourcing_Reply.xlsx."

(d) Travel Expense

CSXT concurs with Consumers' decision to include travel costs for all CERR employees at the Director level and higher and accepts the proposed benchmark.²⁴⁵

CSXT adds fourteen travelers to Consumers' total, all of whom are also at the Director level and higher but were added by CSXT in reply.²⁴⁶

(e) Attrition

Consumers' evidentiary submission on attrition is also seriously flawed. Despite CSXT's production of complete and thorough data on CSXT employment and attrition of the past four years, Consumers elected to simply use the total number of employees *terminated* from the attrition data and the total number of employees from Wage Form A&B to construct an attrition rate. Even though the data provided attrition data for employees who left for reasons other than being terminated (*i.e.*, Deceased, Furloughed, or Retired), Consumers opted to just use the terminated column. The result of that omission is that Consumers either ignored deaths and retirements or chose to believe that their organization would not have any. Neither assumption is reasonable.

Consumers' attrition approach is also improper because it needlessly applies a one-size-fits-all figure. The major use for attrition rates in the SAC process is to calculate the ongoing training and hiring costs. By simply using a system-wide average, Consumers ignores the vastly different training and hiring costs by category of employee.

²⁴⁵ See Consumers Op. III-D-89 to III-D-90.

²⁴⁶ See CSXT Reply WP "CERR G&A Travelers.xlsx."

To correct these errors, CSXT takes the actual attrition data and employee data it produced in discovery. All employees are divided into categories based on the way in which training and hiring costs are calculated and, using Deceased, Retired and Terminated categories calculates attrition rates for each category. This straightforward calculation results in attrition rates by category shown below in Table III-D-III-D-22.

Table III-D-22

Three Year Average Attrition Rates, 2012-2014	
Admin	9.0%
Dispatch	7.5%
Mechanical	7.9%
MOW	6.0%
Train Engine	9.1%

**Table III-D-23
Total G&A Cost Comparison**

G&A Category	Consumers Opening	CSXT Reply	Difference
Salaries Compensation	\$5,399,778	\$ 8,883,363	\$3,483,585
Materials, Supplies & Equipment	\$1,482,013	\$2,346,660	\$864,647
Total	\$6,881,791	\$ 11,230,022	\$4,348,232

4. Maintenance of Way

The fundamental flaw in Consumers’ maintenance of way (“MOW”) evidence is that it fails to grapple with the significant difference between the maintenance needs of the Chicago portion of the CERR’s network and the remainder of its network. For purposes of MOW maintenance resource planning, the CERR is actually two distinct pieces of railroad infrastructure: an Urban Segment in Chicago between 22nd Street and Curtis, and a Rural Segment from Porter to West Olive.

(The Urban and Rural Segments are separated by over 15 route miles of Norfolk Southern trackage rights between Curtis and Porter.) The Urban Segment runs through a highly congested urban area and consists of lines with high traffic density, many switches, and CTC traffic control. In contrast, the Rural Segment from Porter to West Olive consists of un-signalized lines with low traffic density and few switches. The Urban and Rural Segments thus present very different challenges, for the Urban Segment has both more intensive maintenance needs and more obstacles to maintenance such as train traffic, road traffic and accessibility. Table III-D-24 below illustrates these issues.

**Table III-D-24
Comparison of Maintenance Workload per Mile and Train Traffic²⁴⁷**

Activity Indicator	22nd St. - Curtis	Porter - West Olive	22nd St. - Curtis as % of Porter - West Olive
Track Miles/Rt. Mile	2.5	1.1	237%
Avg. MGT/Mi./Yr.	55.7	7.5	744%
Bridges/Rt. Mile	1.1	0.3	374%
Switches/Rt. Mile	1.7	0.2	819%
Protected Crossings/Mile	1.3	1.2	108%
% Curved Track	0.5	0.2	241%
Traffic Control Equipment	CTC	None	-
Surrounding territory	Urban	Rural	-
Average Trains/Yr.	8,233	680	1211%

Consumers did not recognize this key distinction between the Urban Segment and Rural Segment, and it instead designed a maintenance of way taskforce that

²⁴⁷ CSXT Reply WP "Inventories for MOW_Reply.xlsx."

assumed that essentially the entire CERR would have the maintenance needs of the Rural Segment. Consumers argues that the CERR can have lower track staff than past SARRs because of the low densities of the Rural Segment, without mentioning that the Urban Segment would require more intensive staffing.²⁴⁸ And Consumers similarly argues that the CERR can have lower signals staff than past SARRs because the Rural Segment supposedly can tolerate signals malfunctions without immediate repairs.²⁴⁹ But Consumers' use of the Rural Segment as an excuse to slash MOW expenses cannot justify its failure to provide sufficient resources to address the challenging and intensive MOW needs of the Urban Segment.

In contrast, CSXT's MOW expert David J. Hughes has designed a MOW plan that recognizes both the lighter MOW needs of the Rural Segment and the more demanding needs of the Urban Segment. Mr. Hughes has accepted Consumers' staffing for many positions, but in certain critical areas like track and signal maintenance Consumers has not provided a sufficient workforce.

a. CSXT's MOW Plan Is Based on Careful Consideration of the Maintenance Needs of Both the CERR's Urban Segment and Its Rural Segment.

Mr. Hughes's MOW analysis is based on an in-depth consideration of the specific MOW needs of the SARR in light of his extensive real-world experience in overseeing railroad maintenance and planning for MOW needs. Mr. Hughes has over three decades of railroad infrastructure maintenance and construction

²⁴⁸ See Consumers Op. III-D-97 (arguing that SARR could have a single track supervisor for entire railroad because "the segment between Porter and West Olive . . . is a light density segment").

²⁴⁹ See *id.* III-D-107.

experience. He served as Chief Engineering officer of the National Railroad Passenger Corporation (Amtrak) from 2002 through 2005 and as Acting President and Chief Executive Officer from 2005 through 2006. Mr. Hughes also served for five years as president of Pandrol Inc., a manufacturer of railroad track fastening systems and president of Speno Rail Services Inc., a railroad maintenance contracting company. He has held several other railroad executive and senior engineering positions, and has over a decade of consulting experience in dozens of engagements with over 40 railroads in 25 countries. He also has extensive experience with regional and short line railroads, affording him valuable insight into the latest infrastructure maintenance practices of railroads with few or no work rules restrictions. He has over 30 years of experience as a registered professional engineer and is a past director and member of the board of governors of the American Railway Engineering and Maintenance-of-Way Association.²⁵⁰

Mr. Hughes began his railroad career as first line maintenance supervisor and rose to become the chief engineering officer of two major railroad companies, giving him a bottom to top perspective on railroad maintenance practices, costs, and strategy. Mr. Hughes also has an extensive worldwide practice in railroad consulting on operational, financial and maintenance of way matters. He has provided expert testimony on maintenance of way in several recent Stand Alone Cost cases.²⁵¹

²⁵⁰ See Section V for a full statement of Mr. Hughes's qualifications.

²⁵¹ Mr. Hughes provided MOW testimony in *AEPCO*, *IPA*, *Sunbelt*, *NS-DuPont*, and *TPI*.

Mr. Hughes developed his MOW plan by first analyzing data relevant to determine the MOW workload on both the Urban and the Rural Segments of the CERR. This data included the total track and route miles to be maintained; number of switches; tonnage; train frequency; and track accessibility. After evaluating this data and identifying the relevant characteristics that drive workforce requirements, Mr. Hughes then assigned the appropriate number of field employees to each segment and developed an appropriate managerial structure. Wherever possible, Mr. Hughes accepted Consumers' staffing and assumptions. Mr. Hughes's analysis was informed by STB decisions relating to MOW staffing and spending, including *SunBelt*, *DuPont*, *WFA I*, and *AEPCO 2011*, and it was guided by the principle that an efficient, least-cost SARR does not require unionized employees and does not face the same constraints as Class I railroads in terms of the level of supervision required and ability to cross-train²⁵². This enables field MOW employees to be utilized in a more versatile manner, such that an employee can perform more than one function where consistent with the level of specific qualifications that are required. Mr. Hughes' MOW staffing is set forth in CSXT Reply WP "CERR MOW Costs_Reply.xlsx," Tab "MOW Staff-Reply."

²⁵² Mr. Hughes has called on his knowledge of flexible operating practices on short line and regional railroads as well as the maintenance requirements of heavy haul railroads in determining the staff requirements of CERR. Mr. Hughes has experience with dozens of regional, short line, and Class I railroads.

b. A Feasible MOW Plan Must Account For The Very Different Needs of The Urban Segment and the Rural Segment.

Mr. Hughes’s analysis recognizes that CERR consists of two very different sets of MOW assets with very different maintenance needs and impediments to maintenance. From Porter to West Olive, the railroad is 122 route miles of single track in a rural environment. Between Curtis and Ogden, it is 35 route miles of high density, multiple track in an urban environment. The differences in workload per mile are dramatic. As Table III-D-24 above shows, the Urban Segment has over twice the track miles per route mile, seven times the traffic density, eight times more switches per mile, double the amount of curved track, and twelve times the train moves than does the Rural Segment.

Table III-D-25 below shows the breakdown between the Urban and Rural Segments. Excluding BRC and the lead track to the Consumers Plant that is maintained at Consumers’ expense, CERR is responsible for maintaining 158.7 route miles and 218.7 main track miles.²⁵³

**Table III-D-25
CERR Maintained Miles**

	Main Track	Route
22nd St to Pine Jct. & Dolton Wye (Urban)	86.5	36.5
Porter - West Olive (Rural)	132.2	122.2
Total Miles Maintained	218.7	158.7

CERR maintains approximately 86 track miles (36 route miles) in the Urban Segment. Table III-D- 26 shows relevant maintenance metrics for this segment.

²⁵³ Consumers Op. at III-D97.

Table III-D-26
Important Maintenance Metrics for Urban Segment²⁵⁴

Route Miles	Track Miles	Avg. MGT/Mi /Yr	Bridges	Switches	Crossings	Miles of Curved Track	Average Trains/Yr
36	86	57	35	57	43	42	8,233

With heavy traffic of 57 MGT per year, 57 switches, and track that is nearly 50% curved track, the Urban Segment has unusually high maintenance needs per mile. Its per-mile needs on this segment are significantly higher than the per-mile needs of SARRs operating in relatively unpopulated areas. Moreover, any MOW plan for the Urban Segment must account for the fact that movement by MOW forces around the urban area would be constrained by heavy traffic at almost all times and by extreme high congestion during both the morning rush hour (before 10:00 AM) and the evening rush hour (after around 3:00 PM).

Not only must Urban Segment maintenance crews travel through city streets at low speeds, their ability to access track for maintenance is constrained by the proximity of buildings and other structures to the track and by frequent train moves. These factors mean that even highly efficient MOW crews will be less productive on a per-mile basis on the Urban Segment than they would have been on more rural lines.

The Rural Segment is just the opposite. It consists of 122 route miles and 130 track miles with traffic of less than 8 MGT per year. The Rural Segment has a relatively small number of switches, and its proportion of curved track is in line with

²⁵⁴ CSXT Reply WP "Inventories for MOW_Reply.xlsx."

past SARRs. In short, the Rural CERR is physically more like a typical SARR with lower traffic density.

Travel conditions are also quite different than on the Urban Segment. For the Rural Segment, travel is mostly at highway speeds, access to the railroad is relatively easy, and train traffic is light. All these factors tend to make maintenance easier. However, Consumers’ decision to base MOW crews at the end of the CERR in West Olive, rather than at the center of the CERR, increases travel times. Under Consumers’ plan CERR Crews must travel as much as 122 miles one way in a heavy truck to perform maintenance.

**Table III-D-27
Important Maintenance Metrics for Rural Segment**

Route Miles	Track Miles	Avg. MGT/Mi/Yr	Bridges	Switches	Protected Crossings	% Curved Track	Average Trains/Yr
122	130	7.5	35	35	26	21%	680

Because these two stretches of CERR are so dramatically different, the CERR maintenance workforce requirement cannot be determined without considering each of them independently. Consumers has failed to do that in developing its MOW plan for CERR.

c. MOW Personnel

Table III-D-28 summarizes the CERR’s MOW personnel requirements, and the differences between Consumers’ opening presentation and CSXT’s Reply Evidence.

Position	Consumers Opening	CSXT Reply	Difference
HQ Office/Supervisory			
Track Engineer	1	1	0
Communications & Signals Engineer	1	1	0
Bridge Engineer/Inspector	1	1	0
Public Projects Engineer	0	1	1
Engineer of Programs, Budgets, Safety & Training	1	1	0
Administrative Assistant	0	1	1
Subtotal	4	6	2
Field			
Track Supervisor	1	2	1
Assistant Track Supervisor	3	2	-1
Track Crew Foremen	3	4	1
Track Crew Members	6	12	6
Roadway Machine Operators	5	6	6
Welders/Helpers/Grinders	2	4	2
Roadway Equipment Mechanic	1	1	0
Smoothing Crew Foreman	1	1	0
Smoothing Crew Member/Machine Operator	2	2	0
C&S Supervisor	1	1	0
Signal Maintainers	7	12	5
Signal Inspector / Technician	0	1	1
Communications Technician	1	1	0
Communications Maintainer	1	1	0
B&B Machine Operator	1	1	0
B&B Foreman	1	1	0
B&B Carpenter/Helper & Water Service	1	1	0
Subtotal	37	52	16
Total	41	59	18

This 59-person MOW workforce translates to roughly 3.7 main track miles per employee. This ratio is in line with those for MOW workforces approved in past cases. Table III-D-28 below shows the track-mile-per-MOW-employee ratios for five recent cases with small- to medium-sized SARRs (SARRs with less than 2,500 track miles). The ratios range between 3.3 for *Xcel* and 4.0 for *WFA*. Consumers' Opening evidence, in contrast, proposes that the SARR could have a much higher ratio of 5.1 track miles per MOW employee. As demonstrated below, this is not realistic and depends upon short staffing several key functions like track crews and signals maintenance. CSXT's Reply MOW workforce corrects these errors and produces a ratio of 3.7 track miles per MOW employee, in the midst of the range of past cases.

TABLE III-D-29
MOW Staffing in Recent SAC Cases With Smaller SARRs²⁵⁵

	<i>WFA</i>	<i>AEP Texas</i>	<i>Otter Tail</i>	<i>Xcel</i>	<i>SunBelt</i>	<i>Consumers Opening</i>	<i>CSXT Reply</i>
MOW Staff	97	452	437	166	185	41	59
Track Miles²⁵⁶	391	1664	1485	553	714	216	218.7
Track Miles-to-MOW Staff	4.0	3.7	3.4	3.3	3.9	5.1	3.7

i. Headquarters Location

CERR proposes to put the MOW headquarters at West Olive, 135 miles and 3 hours drive from the 22nd Street terminus of the CERR. This arrangement is infeasible. As demonstrated above, the vast majority of maintenance occurs on the

²⁵⁵ See *WFA I*, STB Docket No. 42088, at 57; *AEP Texas II*, STB Docket No. 41191, at 27, 67; BNSF Reply in *AEP Texas* at III-D-167; *Otter Tail*, STB Docket No. 42071, at A-1, C-20; BNSF Supp. Reply in *Otter Tail* at III-D-28; *Xcel*, STB Docket No. 42057, at 48, 79; *SunBelt*, STB Docket No. 42130, at 20, 77, 82, 85, 88.

²⁵⁶ The track mile calculations exclude yards, set-outs and helper tracks, as the Board did in *WFA I*. *WFA I*, STB Docket No. 42088, at 57.

Urban Segment in Chicago, and it would be inefficient for the CERR's maintenance headquarters to be based so far from the center of the CERR's maintenance needs.

Because MOW supervision needs to be as close as possible to the Urban Segment that is the center of work activity, CSXT places MOW field headquarters in Barr Yard. The general office MOW staff is located at the Barr Yard headquarters to provide adequate supervisory and administrative support to the MOW management and to field forces. The Chief Engineer is nominally located in the West Olive headquarters building to interact with the other CERR executives as proposed by CERR, but also maintains an office at Barr Yard to have ready access to assets and asset maintenance operations.

ii. General Office Staff

Consumers proposed a four-person General Office Staff consisting of a Track Engineer, Communications & Signals Engineer, Bridge Engineer, and Engineer of Programs, Budgets, Safety, and Training. CSXT accepts these four positions, but adds two functions that Consumers has overlooked. The first is a Public Projects Engineer, who would be responsible for interfacing with government agencies and other entities for various types of public projects, including rail/highway grade separations, new grade crossings, utility projects, and right-of-way encroachments. The Public Projects Engineer would be responsible for negotiating terms of agreements, monitoring their implementation, and coordinating with in-house engineering staff as needed. The Board has recognized the need for a Public Projects

Engineer in past SAC cases,²⁵⁷ and the need for this position is particularly acute for the CERR, which is located in a dense metropolitan area where large and frequent public projects occur on a regular basis.

Second, Consumers provided no administrative assistants for the MOW department, instead assuming that the MOW department would rely on administrative support from the G&A departments. This proposal is not workable, both because the G&A department will have its own administrative needs that will fully occupy those personnel and because the CERR would need MOW administrative support in the Barr Yard headquarters to support the MOW staff there. CSXT places one administrative assistant at Barr Yard to support the Track, Signal and Bridge departments.

iii. Track Department

The CERR's Track Department consists of 35 employees, organized into the positions shown in Table III-D-30 below.

²⁵⁷ See, e.g., *SunBelt*, STB Docket No. 42130, at 85.

**TABLE III-D-30
TRACK DEPARTMENT**

Position	Consumers Opening	CSXT Reply	Difference
Track Engineer	1	1	0
Track Supervisor	1	2	1
Assistant Track Supervisor	3	2	-1
Track Crew Foremen	3	4	1
Track Crew Members	6	12	6
Roadway Machine Operators	5	6	1
Welders/Helpers/Grinders	2	4	2
Roadway Equipment Mechanic	1	1	0
Smoothing Crew Foreman	1	1	0
Smoothing Crew Member/Machine Operator	2	2	0
Total	25	35	10

The annual compensation associated with each position, by employee and in total, is shown below.

TABLE III-D-31			
CSXT REPLY TRACK EMPLOYEES			
Position	No. of Employees	Comp. Per Employee	Total Comp.
Track Engineer	1	{ }	{ }
Track Supervisor	2	{ }	{ }
Assistant Track Supervisor	2	{ }	{ }
Track Crew Foremen	4	{ }	{ }
Track Crew Members	12	{ }	{ }
Roadway Machine Operators	6	{ }	{ }
Welder/Helper/Grinders	4	{ }	{ }
Roadway Equipment Mechanic	1	{ }	{ }
Smoothing Crew Foreman	1	{ }	{ }
Smoothing Crew Member/Machine Operator	2	{ }	{ }
Total	34		{ }

Track Engineer. CSXT accepts Consumers' proposal for one Track Engineer.

The Track Department reports to the Track Engineer, who is responsible for MOW safety, operating and capital budgets and maintenance of all CERR maintained track. The Track Engineer should be in the field four out of five days, observing safety practices, inspecting, and overseeing field maintenance.

Track Supervisor and Assistant Track Supervisors. Consumers provides only one Track Supervisor and three Assistant Track Supervisors. Consumers recognizes that the size of the territory covered by this Track Supervisor would be 215 track

miles—well in excess of what has been found reasonable in past cases.²⁵⁸

Consumers nevertheless alleges that the low densities of the Rural Segment make this reasonable. But in doing so, Consumers again ignores the intensive maintenance needs of the Urban Segment.

Moreover, it is simply unworkable for a single Track Supervisor to effectively supervise maintenance over such a wide territory. Not only is this territory far larger than that in past cases, Consumers fails to account for the 15 miles between Pine Junction and Porter which CERR does not maintain, but which the Track Supervisor must transit to reach the Urban segment. So, a Track Supervisor actually must cover 175 miles from West Olive to 22nd Street. With the last 40 miles or so of that distance through urban traffic, total driving time would be about three hours.²⁵⁹ In previous SARR cases, the Track Supervisor's headquarters typically has been placed at the midpoint of a 100 route mile territory, meaning he only has to travel 50 miles or about an hour to cover any point on his territory from his headquarters. The three-hour drive proposed by Consumers is inefficient and not feasible.

²⁵⁸ See, e.g., *SunBelt*, STB Docket No. 42130, at 72-73 (rejecting proposed roadmaster territories of over 200 miles and accepting territories averaging 140 track miles); *AEPSCO 2011*, STB Docket No. 42113, at 67 (accepting territories averaging 167 track miles).

²⁵⁹ Assuming travel speed from West Olive to Pine Jct (124+15=139 miles) of 55 MPH, travel time is 2.5 hours. Assuming travel speed of 40 mph from Pine Jct to 22nd St (35 miles) of 40 mph, with the last few miles on city streets would be 53 minutes. Thus a one way trip one end of his district to another would take almost 3 hours.

As an alternative, Consumers proposes two Track Supervisors and two Assistant Track Supervisors. One pair of Supervisors and Assistants would be located at West Olive, and another pair would be located at Barr Yard. Two Assistant Track Supervisors would be dedicated to inspection, as proposed by Consumers.²⁶⁰ CSXT thus effectively replaces the third Assistant Supervisor proposed by Consumers with a Track Supervisor, leaving the total count of Supervisors and Assistant Supervisors at four, but properly located to fulfill their duties with minimal wasted time.

The Urban Segment Supervisor and Assistant Track Supervisor maintain and inspect 36 route miles and 86 track miles that include 57 switches and 43 crossings. The switch density is 1.6 switches per route mile, which is almost double the switches-per-mile of a typical SARR. While the 36 route miles in the Urban segment is shorter than a typical territory, it contains 86 track miles with high tonnage, high switch counts and 50% curved track, which amounts to an extraordinary workload per mile. Moreover, the entire route length is in urban territory where congestion is an issue and travel speeds are low.

In contrast, the Rural Segment Supervisor and Assistant Track Supervisor would have a longer-than-normal territory of 122 miles. However, the low traffic density and tonnage, small number of switches and crossings, and limited curvature on this segment makes the longer territory manageable.

²⁶⁰ Consumers Op. III-D-97.

Track Crews. Consumers proposes three field track crews, each consisting of a Foreman and two Crew Members who are track laborers. Consumers is thus proposing three-man track crews, which is a significant departure from both standard practice in the industry and past SAC precedent. But Consumers does not provide any justification for this departure or any reason to believe that three-man crews are a workable solution.

Throughout the rail industry, both union and nonunion workforces commonly use four-man track crews consisting of a Foreman and three Crew members. This industry practice has developed because smaller crews are not efficient in handling day to day maintenance activities. On any crew, the crew foreman is in charge of the safety of the crew, and as such the foreman needs to be in a position to observe the work, ensure safe working practices, manage track occupancy and time limits, and communicate with trains and dispatchers. It is unsafe and inefficient to plan on the foreman being a working member of the crew.

Furthermore, a crew with two workers is not safe or productive. For example, when unloading a rail from the Hi-rail boom truck, one workman must operate the crane controls, and two workmen are required to handle the rail and safely guide it into place. Many other activities such as replacing a frog or switch point requires a three-man working crew plus a foreman to ensure safety.

Consumers suggests that the backhoe operator “effectively is a third track crew member.”²⁶¹ Consumers does not explain what it means by that, but it is

²⁶¹ Consumers Op. III-D-98.

mistaken if it means that the machine operator can regularly abandon his equipment to assist with ground work. The backhoe is a multipurpose machine that is quite active in track maintenance. In fact, the addition of a backhoe to maintenance crews years ago is what allowed what used to be five to seven man crews to be slimmed down to four. The backhoe is the key working machine for replacing ties, handling materials and other tasks that eliminate the need for manual labor. It is not feasible and indeed is potentially hazardous for the backhoe operator to continuously mount and dismount the backhoe to lend a hand with ground work.

For these reasons, four-person crews have been accepted as standard in all SAC cases.²⁶² If Consumers believes the Board should depart from that precedent, then it was incumbent on Consumers to demonstrate in its opening evidence why a three-person crew would be a feasible solution for the CERR and why a three-person crew could be as productive as a four-person crew. It failed to do so. CSXT therefore proposes standard track maintenance crews made up of a foreman and three workmen plus a backhoe and backhoe operator.

Consumers also provides only three track crews, two based at Barr Yard and one at West Olive. This number is inadequate and out of line with past decisions, and CSXT adds a fourth track crew for the reasons detailed below.

²⁶² See, e.g., *SunBelt*, STB Docket No. 42130, at 73 (both parties proposed four-person crews); *DuPont*, STB Docket No. 42125, at 103 (same); *AEPCO 2011*, STB Docket No. 42113, at 67 (same); *WFA I*, STB Docket No. 42088, at 58 (same).

The CERR must maintain 211 track miles, so Consumers' proposal would amount to over 70 track miles per crew. These are larger districts than the Board has accepted in recent cases.²⁶³ Moreover, the Urban Segment has intensive maintenance needs, and there is no support for assuming that the CERR as a whole could have track crew territories so much higher than the average. For example, the Urban Segment has 57 switches (many of which are located on curved track, significantly raising the maintenance requirements). Spread over the 35.9 miles of the Urban territory, 57 switches amounts to 1.6 switches per mile, which is about triple the switches per mile compared to a typical SARR.

CSXT's MOW plan adds a fourth track crew, which results in track crew districts averaging 53 track miles (almost identical to those in *SunBelt*). Two track crews are located at Barr Yard to maintain the Urban Segment, which for reasons discussed above requires more intense staffing in light of relative train frequency, traffic density, mileage, switches, crossings and travel difficulty in an urban area. Two other crews are dedicated to the longer but less-maintenance-intensive Rural Segment. In consideration of the distances involved and lower workload per mile, Mr. Hughes has assigned one track maintenance crew at West Olive to cover the northern part of the Rural Segment and a second crew at Barr yard to cover the southern portion of the Rural Segment.

²⁶³ See *DuPont*, STB Docket No. 42125, at 103 (accepting track crews with average districts of 59 track miles); *SunBelt*, STB Docket No. 42130, at 73 (accepting average districts of 54 track miles).

Roadway Machine Operators. Consumers has staffed the CERR with a total of five Roadway Machine Operators. CSXT accepts Consumers' proposals to assign one backhoe operator to each track crew, but adds one operator to account for the track crew CSXT adds. CSXT also accepts Consumers' proposed excavator operator and Prentice Loader operator.

Welder/Helper/Grinders. CERR proposes one welding crew, but offers no basis for providing a single crew in light of the welding workload on CERR. In reality, the CERR requires two, two-person welding crews, coinciding with the two Track Supervisor districts.

Combined, the Urban and Rural sections of CERR have 83 switches, of which 57 are in the Urban segment. In total, CERR has one switch every 2.1 route miles, which is on par with other SARRs, but two thirds of those switches are in the Urban segment. Accordingly, both welding crews are located at Barr Yard, but both crews can work anywhere on CERR. Two welding crews is consistent with past SARR cases, which recognized that the work load of each Track Supervisor normally justifies one welding crew.²⁶⁴ The high traffic density in the Urban segment along with the high switch count demands more than one welder, and the workload on the Rural segment fills out the requirement for two welding crews.

Roadway Equipment Mechanic. CSXT accepts Consumers' proposal for one Roadway Equipment Mechanic.

²⁶⁴ See *DuPont*, STB Docket No. 42125, at 105; *SunBelt*, STB Docket No. 42130, at 75.

Smoothing Crew. CSXT accepts Consumers' proposal for one, three-person smoothing crew.

iv. **Communications & Signals Department**

CSXT proposes a Communications & Signals (C&S) Department for the CERR of 17 employees, 6 more than Consumers provided.

**Table III-D-32
MOW Communications and Signals Department**

Position	Consumer Opening	CSXT Reply	Difference
Communications & Signals Engineer	1	1	0
C&S Supervisor	1	1	0
Signal Maintainers	7	12	5
Signal Inspector / Technician	0	1	1
Communications Technician	1	1	0
Communications Maintainer	1	1	0
Total	11	17	6

The specific positions and compensation levels in this department are shown in Table III-D-33 below.

**Table III-D-33
C&S Employee Salaries**

Position	No. of Employees	Comp. Per Employee	Total Comp.
Communications & Signals Engineer	1	{ }	{ }
C&S Supervisor	1	{ }	{ }
Signal Technician/Inspector	1	{ }	{ }
Signal Maintainers	12	{ }	{ }
Communications Technician	1	{ }	{ }
Communications Maintainer	1	{ }	{ }
Total	17		{ }

Communications and Signals Engineer. CSXT accepts Consumers' proposal of one Communications and Signals Engineer to oversee the Communication and Signals workforce.

Communications and Signals Supervisor. CSXT accepts Consumers' proposed Communications and Signals Supervisor, who is responsible for field supervision of the Signal Maintainers, Communications Maintainer and Communications Technician. Because signals maintenance is more intensive on the Urban Segment, the C&S Supervisor is located at Barr Yard.

Signal Maintainers. Consumers again attempts to break with industry practice and Board precedent when it claims that one maintainer can maintain 1750 AREMA units on the Rural Segment and 1100 AREMA units on the Urban Segment. Consumers' proposal relies not on some new efficiencies it has discovered, but rather on an explicit proposal to undermaintain grade crossing signals on the Rural Segment. This proposal is plainly inconsistent with the realities of real-world railroading and should be rejected.

The crux of Consumers' argument is that it can shortchange maintenance on the Rural Segment because "only a few trains traverse this territory a day, [and] a grade crossing signal will not substantially impair the operation of the CERR."²⁶⁵ Essentially Consumers' proposal is that there is no need for staff to adequately maintain and quickly repair grade crossing signals, since its trains could simply

²⁶⁵ Consumers Op. III-D-107.

“proceed under a 10MPH slow order . . . or manually flag the intersection.”²⁶⁶

CERR’s argument fails for two reasons. First, it has done nothing in its operating plan or RTC model to incorporate its assumption that grade crossings on the Rural Segment could be allowed to fail and that trains could simply stop or slow down at the failures. Second, Consumers’ plan to allow grade crossing signals to deteriorate threatens the safety and transportation reliability of the communities in which it operates. Consumers says that its trains could operate satisfactorily through failing grade crossing signals, but what of the local residents who depend on those grade crossings for safe and reliable vehicle transportation? A proposal to explicitly sacrifice the safety and public benefits of an adequately-maintained railroad in order to hire a few less signals maintainers should be rejected out of hand.

As discussed above, the CERR is unique in that it contains one segment with highly intense signals maintenance requirement and another segment which is dark territory and only signaled at grade crossings. To develop signal maintainer requirements for this unique railroads, Mr. Hughes analyzed four real world signal maintainer territories.²⁶⁷ Two of the territories are single track CTC, one territory is in a terminal area (like the Urban Segment) and one is for a dark branch line with only grade crossing warning devices (like the Rural Segment).

In the case of the terminal area, the maintainer maintained 917 signal units on a seven route mile long territory (137 AREMA units per mile) with 24 trains per

²⁶⁶ *Id.*

²⁶⁷ “Signal Maintainer Capacity Study,” David Hughes, January, 2016.

day (traffic similar to CERR). In the case of the dark branch line, the maintainer maintained 896 AREMA units on a territory of 106 miles (8 AREMA units per mile).

Based on this analysis, the CSX MOW plan for signals maintenance employs 12 Signal Maintainers. Five maintainers are assigned to the Urban Segment, which has 4,515 AREMA units (thus averaging 903 units per maintainer), and six maintainers are assigned to the Rural Segment which has 5,995 AREMA units (999 AREMA units per maintainer).

The remaining maintainer is a relief maintainer for the 11 maintainer territories.²⁶⁸ The relief signal maintainer replaces regular signal maintainers who are off for vacation or other reasons for more than a day or two. The primary duty of a signal maintainer is the task of making required Federal Railroad Administration (“FRA”) tests in a timely manner. Proper maintenance and testing is vital in ensuring the equipment is in compliance with FRA regulations. The testing and maintaining required to meet the FRA regulations must be completed on “not to exceed” frequencies; some of which are every 30 days,²⁶⁹ some of which are every 90 days, some of which are every two years and some of which are every four years.²⁷⁰ Failure to make and record the required tests by the due date for the test results in fines.²⁷¹ A history of failure to comply with testing requirements not only results in fines, but creates a permanent record that could imply insensitivity

²⁶⁸ Maintainers are located at West Olive (2), Grand Junction (4) and Barr Yard (6).

²⁶⁹ Thirty days does not mean once a month—it means every 30 calendar days, or less.

²⁷⁰ See, e.g., 49 C.F.R. §§ 236.101–236.110; 236.376–236.387

²⁷¹ See 49 C.F.R. § 234.6.

to safety on the part of the railroad. It is therefore essential to keep a signal maintainer territory manned to keep the tests and inspections up to date. Beyond the regulatory imperative to comply with testing schedules, there is an operational imperative to ensure quick responses to failures of train control signals or grade crossing protection systems to avoid train delays and delays to automobile travel.

Because of the stringency of regulatory requirements and because of the importance of rapid response to train control signal failures or grade crossing signal failures, the relief signal maintainer will cover any signal maintenance vacancies lasting over a day or two.

Signal Inspector/Technician. Consumers failed to supplement its signals maintainer workforce with specialized support for more intensive FRA tests and more complex troubleshooting of the signal system. A specialized signal inspector is required to perform two-year, four-year and ten-year FRA mandated tests with the assistance of the Signal Maintainer.²⁷² These tests are beyond the qualifications of a typical signal maintainer and frequently require two people (inspector and the signal maintainer). And a specialized signal technician is required to perform maintenance beyond the skills of a typical signal maintainer, such as troubleshooting and repairs on electronic signal equipment such as code units, electronic track circuits, electronic grade crossing gate controls, and data radio handling CTC signals at control points. CSXT proposes that one combined Signal Inspector/Technician would be responsible for both these functions.

²⁷² 49 C.F.R. Part 234 for grade crossing signs, 49 C.F.R. Part 236 for train control signals.

Communications Technician and Maintainer. CSXT accepts CERR's proposals for one Communications Technician and one Communications Maintainer.

v. Bridge & Building Department

CSXT accepts Consumers' four-person Bridge & Building (B&B) Department.

d. Compensation of MOW Employees

Salaries of CERR MOW personnel, other than the Chief Engineer (who is included in the Operating personnel discussed earlier in Part III-D), are set forth in Tables III-D-30 and III-D-32 above. The total annual compensation of these MOW personnel in the Base Year (excluding fringe benefits) equals \$4,874,250.

e. Non-Program MOW Work Performed by Contractors

CSXT generally accepts both Consumers' assumptions about MOW work that can be contracted out and its estimates of those costs. CSXT's specific agreements and disagreements with that evidence are detailed below, and its cost estimates are detailed in CSXT Reply WP "CERR MOW Costs_Reply.xlsx."

i. Planned Contract Maintenance

Track Geometry Testing. CSXT accepts Consumers' proposed track geometry testing expense of \$24,325.

Ultrasonic Rail Testing. CSXT accepts Consumers' proposed ultrasonic rail testing expense of { } and annual joint bar inspection expense of { }.

Rail Grinding. CSXT accepts Consumers' proposed rail grinding expense of { }, with one exception. Specifically, Consumers asserts that all grinding of

switches and crossings is done in the normal course of other rail grinding and by the same grinding train. This is not accurate for the grinding of switches and crossings, because a standard machine that grinds open track cannot grind in the confined spaces of switches and crossings because the grinding stones are too large in diameter to fit in the confined spaces. Grinding switches and crossings requires a specialized grinding train with smaller grinding stones.²⁷³ In light of the high density of switches in the Urban CERR and the large number of grade crossings on the Rural CERR, additional grinding costs of 25% are required in order to provide for necessary rail grinding services. CSXT therefore adds { } to Consumers' proposed cost.

Yard Cleaning. CSXT accepts Consumers' proposed \$17,000 as the annual expense for yard cleaning.

Vegetation Control. CSXT accepts Consumers' proposed vegetation control expense of \$50,388.

Crossing Repaving. CSXT accepts Consumers' proposed track geometry testing expense of \$299,936.

Equipment Maintenance. CSXT accepts Consumers' methodology for calculating vehicle and equipment maintenance and fuel costs, including its assumed vehicle equipment life of four years. But CSXT disagrees with Consumers' assumption that track machinery would have a useful life of twenty years. This exceeds the realistic life of track machinery. Modern track machinery is equipped

²⁷³ An example of such a specialized grinding train is shown at the following web link: <http://www.loram.com/services/default.aspx?id=1478>.

with electronic sensors and has higher annual utilization rates than other equipment, and in Mr. Hughes's experience it is not reasonable to assume that this machinery would have a twenty-year useful life.

The Bureau of Economic Research sets the depreciable life of construction machinery at 8-10 years.²⁷⁴ While BEA does not have a category that specifically tracks railroad maintenance equipment, railroad maintenance machines are very similar to construction machinery in that they are diesel motors powering hydraulic pumps that provide pressure to actuate cylinders and hydraulic motors and that they work outdoors in all weather. Accordingly, and with the benefit of his experience with construction and railroad work equipment, Mr. Hughes has selected 10 years as the appropriate depreciation and amortization period.

CSXT applies this adjusted methodology to its Reply equipment count (which is detailed below).

Communications System Inspection and Repair. CSXT accepts Consumers' proposal to use two percent of the original cost of the equipment as the annual maintenance expense. Based on CSXT's estimate of communications equipment cost of \$12,087,279 set forth in III-F-6, the annual maintenance cost is \$241,746.

Bridge Inspections. CSXT accepts Consumers' proposed bridge repair costs of \$8,000.

²⁷⁴ See CSXT Reply WP "BEA Depreciation Estimates.pdf" (available at <http://www.bea.gov/national/FA2004/Tablecandtext.pdf>).

Building Maintenance. CSXT accepts Consumers' proposal to estimate building maintenance cost at 2% of construction price. Adjusted for CSXT's building construction costs set forth in III-F-7, the cost for building maintenance is \$115,464.

ii. Unplanned Contracted Maintenance

Snow Removal.²⁷⁵ Consumers suggests that all snow can be removed from the CERR using a single company-owned snow blower equipped ballast regulator, two back hoes, and \$100,000 per year in contract snow removal. No part of that plan is feasible.

Roadways and parking areas can be cleared by contractors, as proposed by Consumers, and that work is usually contracted. However, the \$100,000 annual cost is unreasonably low for Chicago and along the shore of the Great Lakes, considering the number of expected snow storms and their intensity and the drifting that occurs in the "windy city."

A contractor will use a mid-sized bucket loader²⁷⁶ and dump truck to load and remove the snow from parking lots and roads. Rental cost for this loader and dump truck with operator and truck driver, would be around \$500 per hour, in Mr. Hughes' experience, and could be more during a snow emergency due to high demand. The \$100,000 proposed by Consumers for all snow removal thus would buy only 200 hours of service per year, which is unreasonably low in Mr. Hughes' experience.

²⁷⁵ This section discusses outside contracting expenses for snow removal from roadways and parking lots. Section III-D-4-g-iii below discusses necessary snow removal equipment for CERR staff to clear yards and tracks.

²⁷⁶ For example, a Caterpillar 966H bucket loader.

Mr. Hughes estimates contract snow removal costs of \$40,000 per storm (80 hours of service) for four significant snow events per year, or a total of \$160,000 per year.

Storm Debris Removal. CSXT accepts Consumers' estimate of \$25,000 for storm debris removal.

iii. Large Magnitude, Unplanned Maintenance

Derailments and Clearing Wrecks. CSXT accepts Consumers' estimate of \$154,794 per year as the cost of Derailments and Clearing Wrecks.

Washouts. CSXT accepts Consumers' estimate of \$30,000 as the cost of washouts.

Environmental Cleanups. CSXT accepts Consumers' estimate of \$10,000 as the cost of Environmental cleanups.

f. Contract Maintenance

CSXT generally accepts Consumers' assumptions about program maintenance that is contracted out and capitalized in the DCF model. CSXT's specific agreements and disagreements with that evidence are detailed below.

Surfacing. CSXT accepts Consumers' proposed staffing and equipment for surfacing.

Bridge Substructure and Superstructure Repair. CSXT accepts \$8,000 as the cost for Bridge and Superstructure Repair.

g. Equipment

CSXT generally accepts Consumers' equipment evidence, with the exceptions noted below. CSXT's equipment costs are detailed in CSXT Reply WP "CERR MOW Costs_Reply.xlsx," tab "Annual MOW Equipment Cost."

i. Hi-Rail Vehicles

CSXT accepts the type of hi-rail vehicles proposed by Consumers, but adds additional snow fighting equipment described below. The Reply count of vehicles and annual cost is shown in "Reply MOW Costs.xlsx" Tab "Reply Annual MOW Eqpt Cost."

ii. Equipment for Track and Related Work

CSXT accepts Consumers' unit prices and equipment types for MOW equipment used by field workers. CSXT adjusts the quantities of these items to match the additional MOW staffing in CSXT's MOW plan, and adjusts the amortization period for track machinery as discussed above. Equipment counts and costs are shown in "Reply MOW Costs.xlsx," Tab "Reply Annual MOW Eqpt Cost."

iii. Snow Removal Equipment

Consumers misjudges the equipment necessary for snow removal. Consumers provides one snow blower equipped ballast regulator and two backhoes as a snow removal plan. This is not adequate. In half of the winters since 1884, snowfall from Great Lakes snow events has been between 37 and 89 inches.²⁷⁷ Chicago wind frequently creates blizzard conditions, and the challenge of snow fall is

²⁷⁷ National Weather Service, Chicago, IL Seasonal Snowfall Amounts from 1884 to Present, http://www.weather.gov/lot/Chicago_seasonal_snow_

substantially magnified as snow blows from place to place and drifts. The same location may need to be cleared multiple times during blizzard conditions, and snow will need to be trucked away to avoid snow occupying pavement otherwise required for operations. CERR thus needs more company-owned equipment to deal with significant snow events.

Consumers' proposal to rely on two backhoes for snow is removals not feasible, because backhoes are not useful for anything but minor storms. Backhoes are not considered as snow removal equipment due to their small bucket capacity, low power, and light weight. Significant snow events that necessitate the rapid removal of larger quantities of snow require mid-sized bucket loaders like a Cat 966 due to their larger bucket, higher horsepower, and higher weight and traction on slick surfaces.

To clear snow on the Chicago and Great Lakes Divisions, CSX maintains thirteen jet snow blowers, one AF-1 truck-mounted cold air blower, and seventeen ballast regulators.²⁷⁸ At Barr Yard, CSXT keeps two jet snow blowers. On the Grand Rapids Subdivision, there are two snow fighters; one at Grand Rapids and one at Holland to protect Saugatuck hill. In addition, a Russel plow and a Jordan Spreader are available to CSXT if needed.²⁷⁹

²⁷⁸ Consumers Op. WP "CSX Owned MOW Machines.xls," Tabs "Chicago" and "Great Lakes."

²⁷⁹ CSXT is conservatively not providing a Jordan Spreader or Russel plow for the CERR. The occasional, brief service disruption that would occur if they were needed and not available does not justify CERR acquiring them.

While parking lots and roads are readily cleared by contractors and normally are, the main tracks, yards and operating facilities are almost entirely not accessible by rubber tired vehicles, and the CERR must have equipment available to do so. The single snow blower equipped ballast regulator and backhoes Consumers proposed, are inadequate. In reality, at least four jet snow blowers²⁸⁰ and one cold air blower truck would be required. These resources are far less than those that CSXT maintains, and they are the minimum required for CERR operations.

It is of course possible that in some years snowfall might be below average or spread over multiple minor events rather than individual major events. However, no operationally dense railroad like CERR could run the risk of having operations shut down for days at a time for a snow event, even if the event did not occur every year. The fact that CSX maintains 13 jet snow blowers and a cold air blower truck is evidence of the importance of having the right equipment at hand when needed.

No additional staffing is needed to man the snow fighting equipment as the snow blowers can be operated by existing roadway machine operators. The ballast regulator operator will operate the ballast regulator for snow removal, and the cold air blower truck can also be operated by existing MOW staff.

h. Contributions from Michigan DOT

CSXT accepts \$202,582 as the compensation received by CSXT for the maintenance of road crossings.

²⁸⁰ Two jet snow blowers would be located in Barr Yard, one at Grand Junction, and one at West Olive.

5. Leased Facilities

In its Opening evidence, Consumers estimates that the SARR will incur \$1.5 million in annual operating expense (at 2015 Q1 price levels) for payments to the BRC, NS, and IHB for the use of four joint facility agreements. Consumers' estimate of such expenses contains three calculation errors: (1) Consumers failed to include costs for locomotives traversing the trackage rights segments; (2) Consumers understated traffic levels that would operate over the joint facilities; and (3) Consumers understated the route miles that the CERR would traverse over the trackage rights segments. In addition, Consumers omits entirely the expenses for use of the Dolton Interlocker—controlled by IHB—that the CERR would utilize. Finally, Consumers has inappropriately assumed that the CERR would be entitled to a reciprocal trackage rights rate used between CSXT and NS that applies to the routes used by the issue traffic. As the current rate that CSXT pays NS was established as part of a broader agreement where CSXT provided NS access to the same rate for operations over nearly 800 miles of CSXT's system—and the CERR cannot provide that same reciprocity—the SAC analysis should include costs based on the formula the Board uses to establish trackage rights compensation. First, CSXT describes the three errors in Consumers' opening calculations of the CERR's joint facility expense.

1. Excluded Locomotives. For three of the agreements that the CERR would use—one with each of the BRC, NS, and IHB—the expenses are determined on a “per car” or “per car-mile” basis.²⁸¹ The invoices for these three agreements indicate that when determining the units to which the rates are

²⁸¹ See Consumers Op. WP “Open_ConsumersJointFacCharges2014.xlsx.”

to be applied, cars and locomotives are included.²⁸² Consumers includes only freight cars in its calculation, and incorrectly omits locomotives.

2. Understated Traffic Levels. Consumers calculates operating statistics for 2014, but fails to index the traffic levels to the first year of the SARR's operation, 2015, as is done for calculating other operating expenses such as T&E crew, locomotive, and freight car requirements.²⁸³ By understating traffic levels, Consumers depresses the expenses that the CERR would incur for the three trackage-rights agreements for which the charges are calculated on the basis of traffic levels.²⁸⁴

3. Excluded Miles. Consumers understates the miles traversed by CERR trains on the NS segments, which include the majority of the loaded and empty issue-traffic trains. In its workpaper, Consumers calculates the CERR's expenses based on the miles from Rock Island Junction to Pine Junction, and from Curtis to Porter, but fails to include the 2.5 miles that CSXT operates on NS between Pine Junction and Curtis.²⁸⁵ Those trains do not leave the NS lines in the real world. However, Consumers proposes that the trains would hop off NS to travel over the CERR for 2.5 miles only to return to the NS line. Consumers proposed operations are not only infeasible, but also impermissible, as a SARR cannot alter the operations of a third-party carrier. Even if Consumers' proposed routing were feasible, the CERR could not re-route additional trains through the single-busiest interchange on its system.

The result of the corrections to these three errors in Consumers' use of the joint facilities agreements is an increase to Consumers' operating expense. CSXT notes that in incorporating these corrections for its Reply evidence, it makes a further adjustment to align its estimate of the CERR's joint facility expenses with its Reply traffic group. As explained in Section III-A above, CSXT eliminates from

²⁸² See, e.g., Consumers Op. WPs "BRC204X__441101.pdf" and "NS552__90032637A.pdf."

²⁸³ Consumers Op. WP "Open_ConsumersJointFacCharges2014.xlsx."

²⁸⁴ CSXT notes that Consumers' loaded and empty trains serving the issue traffic comprise 94% of the CERR cars using the BRC and NS joint facilities. Consumers Op. WP "Base Unit Merch Trains v6_Statistics.xlsx," worksheet "2014 Full Base Year Unit Merch," columns J and M.

²⁸⁵ Consumers Op. WP "Base Unit Merch Trains v6_Statistics.xlsx," worksheet "Pivot-Cars by OnSarr OffSARR," columns M-O.

its Reply CERR traffic group trains that would operate on the CERR for less than 10 miles between Calumet Park and Curtis, as the proposed operations fail to match the existing level of service that CSXT provides in the real world. Because these trains use the trackage rights over the IHB, CSXT also eliminates all costs for the IHB trackage rights agreement that Consumers included.

In addition to the three errors discussed above, Consumers omits the joint facility expense that CSXT pays IHB to operate and maintain the interlocker at Dolton. As it is for CSXT, the Dolton interlocker is critical to the CERR's operations, utilized by three separate groups of SARR trains: (1) those that traverse this location on the Barr Sub, (2) those that are interchanged with the Residual CSXT at Dolton, and (3) those that Consumers' CERR operates to/from the IHB's Blue Island yard to enter/exit the SARR's lines at Calumet Park.²⁸⁶ CSXT's invoices for the joint facility agreement, "IHB 201X," indicate that CSXT pays the IHB approximately { } annually for the maintenance and operation of this interlocker.²⁸⁷ Including these costs increases the CERR's annual trackage rights expense for Consumers' Opening traffic group to \$2.0M.²⁸⁸

Finally, Consumers fails to commit to providing for all of the resources that CSXT committed in obtaining the trackage rights rate that apply to CERR

²⁸⁶ As indicated above, CSXT eliminates this third group of trains from its Reply CERR traffic group.

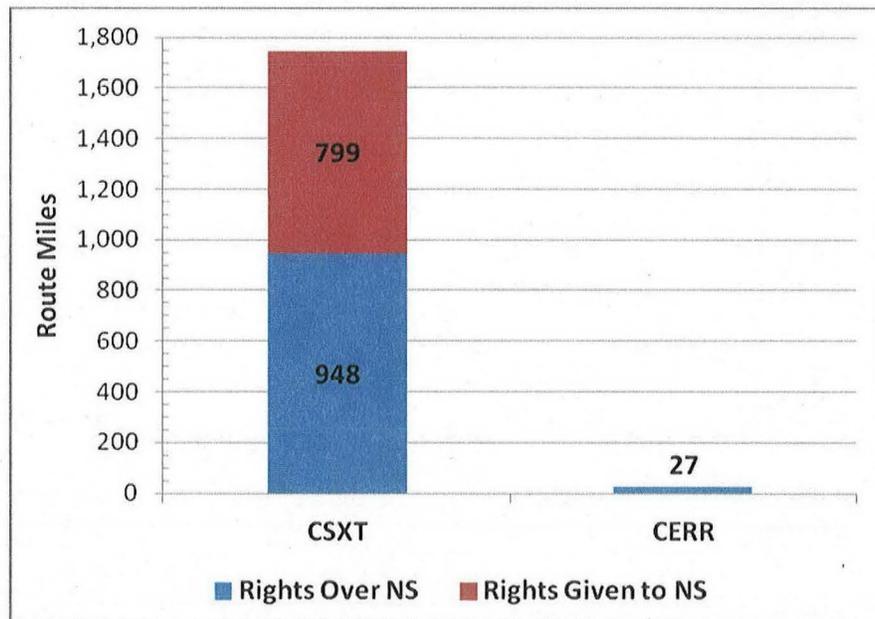
²⁸⁷ See CSXT Reply WP "IHB201X.pdf."

²⁸⁸ As this joint facility is utilized by through traffic on the Barr Sub and Dolton interchange traffic, these costs will be incurred by the CERR regardless of the treatment of the Calumet Park trains.

operations on the NS segments. Under joint facility agreements NS 552 and NS 657 that apply to CSXT movements over NS's Rock Island to Pine Junction and Pine Junction to Porter segments, CSXT currently pays NS a rate of { } per car-mile. However, these two JFAs constitute only two out of dozens of JFAs that are part of an umbrella reciprocal agreement between CSXT and NS that covers more than 1,700 miles. The SARR, on the other hand, will utilize just 28 miles over the NS system without providing NS access to any facilities of its own, and therefore cannot offer the same reciprocity to NS that CSXT does. The disparity in the reciprocal operations offered between NS/CSXT and the purported agreement between NS/CERR is illustrated in the following table:

Table III-D-34

The CERR Cannot Reciprocate The NS Grant of Trackage Rights as CSXT Does In the Real World



CSXT describes below the many reasons why Consumers cannot take advantage of the CSXT/NS reciprocal arrangement.

a. Consumers' Proposed Use Of The NS/CSXT Reciprocal Trackage Rights Agreement Must Be Rejected.

Consumers posits that it will operate 90% of its issue traffic trains—or more than 500 loaded and empty trains per year²⁸⁹—over the NS line between the connection to the BRC at Rock Island Junction, IL and Porter IN at a cost of { } per car mile.²⁹⁰ In doing so, Consumers seeks to take advantage of a reciprocal agreement entered into between CSXT and NS as a result of the Conrail acquisition in 1999. In 1999, CSXT and NS entered into a Master Trackage Rights Agreement,²⁹¹ pursuant to which each carrier “agreed to grant to each other various trackage rights over the respective lines of railroad operated by each of the parties.” Agreement at 3. The Master Agreement covered numerous trackage rights arrangements in a wide variety of locations across both the CSXT and NS systems, including NS granting CSXT operating rights over NS trackage on the Pine to Rock Island Junction route.²⁹² In exchange, CSXT granted NS trackage rights over a multitude of routes on CSXT's system.

²⁸⁹ Consumers Op. WP “Base Unit Merch Trains v6_Statistics.xlsx,” worksheet “2014 Full Base Year Unit Merch.”

²⁹⁰ Consumers Op. WP “Consumers Op. WP “Open_ConsumersJointFacCharges2014.xlsx,” Tab “NS_RockPorter,” Cell K23.

²⁹¹ See CSXT Reply WP “NS558.pdf.”

²⁹² The Pine to Rock Island Junction route is covered by NS552, an addendum to the Master Agreement. See CSXT Reply WP “NS552.pdf.”

In 2002, NS and CSXT entered into a letter agreement under which NS and CSXT “agreed to the use of a reciprocal rate to be applied to the Trackage Rights Agreements between the parties.”²⁹³ That agreement established a reciprocal Base Charge of { } per car mile for trackage rights covered by specified Joint Facility Agreements—including NS552 (Pine, IN to Rock Island Junction, IL). *Id.* That charge has been indexed to the higher figure included in Consumers’ calculations.

By the very words of the Agreement, the rate structure is “reciprocal.” Because each railroad makes extensive use of trackage rights over the other’s lines on routes across their respective systems, having a standard reciprocal rate simplifies billing for both railroads. The rate reflects the fact that each railroad has an extensive system with broad reach and that there are benefits to each carrier in having the right to operate over the other system in a variety of geographic areas. The reach of the agreements is illustrated in Exhibit A to the 2002 Letter Agreement. As the Exhibit reflects, the reciprocal charge is implemented in a range of states from Illinois, through Ohio, Michigan and New York, and south through Virginia, Tennessee, and Georgia among others.

The Agreement reflects negotiations between two large carriers that saw the benefit in foregoing income on individual track segments in exchange for the right to operate over similar segments in other areas of the country. The broad reach and reciprocal nature of the agreement make it unique. By its nature, the agreement

²⁹³ CSXT Reply WP “CSXT NS Reciprocal Trackage Rights Rate (2002).pdf” at 1.

does not represent the full costs of the trackage rights segments and, compared to the URCS fully allocated maintenance of way operating expenses, includes little, if any, of the rental component inherent in conventional trackage rights agreements. Nor does it represent the cost that would be agreed upon in an arms-length transaction of the sort that a SARR of limited geographic scope would be required to negotiate with a third-party carrier.

i. STB Precedent Requires That A SARR Accept All Terms, Conditions, And Prerequisites Of An Agreement In Order To Step Into The Incumbent's Shoes.

Under SAC principles, a SARR may “step into the shoes” of a defendant railroad as to an agreement, but in doing so, the SARR must accept all the terms, conditions, and prerequisites of that agreement.²⁹⁴ While a SARR is permitted to take advantage of an incumbent carrier’s existing joint use and trackage rights arrangements, it is not allowed to hypothesize that it could obtain better terms than the incumbent. *See id.* at 328-29. Nor may a complainant “hypothesize non-existent revenue or cost-sharing arrangements” or assume that the SARR could secure operating rights that it “could not [otherwise] unilaterally create.” *Id.*

The SARR is allowed to be optimally sized to serve the selected traffic and to assume efficiencies that are consistent with real-world railroading. *See Coal Rate Guidelines*, 1 I.C.C. 2d at 542. But the SARR must account for all the costs necessary to serve the selected traffic, a precedent that is in keeping with well-established agency policy in other areas as well. *See id.* at 542-43. For example, in

²⁹⁴ *See AEPCO 2002*, 6 S.T.B. at 328.

setting compensation for switching agreements between carriers, it has long been agency policy that a carrier must pay a fee that covers the “full operating expenses, taxes, and reasonable return on investment” of the services that that carrier utilizes.²⁹⁵ In the area of reciprocal switching, the ICC has been clear that

Where no substantial reciprocity exists and where the maximum level of reasonableness is in issue, as in this proceeding, the cost of performing the service is the most important element for our consideration in determining whether a proposed switching charge is just and reasonable. In addition to the actual cost, the respondent is entitled to recover a fair return on the value of that portion of its property devoted to the switching charge.²⁹⁶

In the case of trackage rights over third-party non-defendants, it has historically been true that a trackage rights fee alone can account for the full costs to the defendant, because in that case the trackage rights fee is the only cost that the defendant incurs for operations over the third party’s line. In such instances, the SARR pays the full compensation incurred by the incumbent railroad. But such is not the case here. In this instance, the fee agreed to between NS and CSXT most emphatically does *not* reflect the full compensation for the rights bestowed upon the respective parties. Instead, NS and CSXT have negotiated an agreement at rates substantially below market based rates or those that would be determined by the Board’s procedures by virtue of the reciprocal nature of the operating rights

²⁹⁵ *Des Moines Union Railway Switching*, 231 I.C.C. 631, 665 (1939); *see also Increased Switching Charges at Kansas City, Missouri-Kansas*, 344 I.C.C. 62, 88 (1972) (rejecting argument that a switching carrier should be precluded from receiving a return on investment).

²⁹⁶ *Routing Cancellation at Waterloo, Iowa*, 302 I.C.C. 447, 488 (1957).

afforded over one another. In essence, the difference between the market and reciprocal rates, including any allowance for a rental factor is recuperated through use of other routes, rather than through a monetary payment. It is only because of the reciprocal nature of the trackage rights that CSXT is able to operate over the Rock Island Junction to Pine segment at such a low rate.

In keeping with long-standing precedent, the CERR must pay a charge that reflects the full usage of the track, as well as a rental factor—that is, a “fair return on the value of that portion of [the] property.” *Id.* The fee negotiated between NS and CSXT does not reflect that full payment. Indeed, when the Board approved the NS/CSXT acquisition of Conrail, the Board approved the 29 cents per car-mile trackage rights fee as reasonable in that it “will allow the carrier receiving trackage rights to compete effectively.”²⁹⁷

ii. It is Impossible For The CERR To Step Into CSXT's Shoes Under The Reciprocal Trackage Rights Agreement.

The CERR cannot step into CSXT's shoes under this agreement because it is impossible for the CERR to comply with the *prerequisites* (*AEPCO 2002* at 328) of the agreement by the very nature of the CERR's limited geographical scope. One of the primary prerequisites of the reciprocal agreement is that NS and CSXT will both reduce costs by virtue of having the right to operate over various routes elsewhere on the other carrier's system. This key premise of the agreement is the reason that the monetary charge is so low.

²⁹⁷ *Conrail Acquisition Order*, 3 S.T.B. at 344.

Here, the CERR is not capable of offering NS the same reciprocal benefits that CSXT offers in the real world. The CERR is a 169-mile system, limited in geographical scope. The premise underlying the reciprocal agreement is therefore missing in this context. The CERR does not have the same geographical reach as CSXT and thus is unable to offer NS the same benefit under the agreement that CSXT provided: access to a variety of trackage rights segments across the CSXT system.

To be sure, the Complainant is entitled to select the scope of the SARR. *Coal Rate Guidelines*, 1 I.C.C. 2d at 542. However, where it cannot fulfill the incumbent's responsibilities under a contract, it cannot take advantage of the benefits enjoyed by the incumbent as a result of that contract. *AEPCO 2002*, 6 S.T.B. at 329.

In this context, no third party—NS included—would be willing to agree to such a low trackage rights fee where there were no opportunities to offset the below market rate that the CERR seeks to use from a grant of reciprocal trackage rights on the CERR system. As illustrated below, the \$.33 per car mile rate is grossly below that which would be—by the Board's own methodology—permissible in an arms-length transaction. The calculations show that the reciprocal rate does not come close to covering the full cost to the owning carrier of allowing operations over its line. In an arms-length transaction, trackage rights fees typically encompass the variable costs incurred by the owning carrier; the tenant carrier's share of

maintenance and operations expenses; and a rental component.²⁹⁸ Here, although the rate presumably reflects the variable costs incurred as a result of the tenant carrier's operations, there does not appear to be any provision for a rental component typically included in conventional trackage rights agreements.

b. The SSW Compensation Methodology Should Be Used to Determine the Rate that Consumers Would Have to Pay to Utilize the NS Trackage Rights.

In calculating the appropriate charge in trackage rights matters, the STB has adopted a formula that calculates a fixed charge per car based on an evaluation of the following factors:

1. the variable costs incurred by the owning carrier as a result of the tenant carrier's operations over the owning carrier's tracks;
2. the tenant carrier's proportionate share of the track's maintenance and operation expenses; and
3. the interest rental component designed to compensate the owning carrier for the tenant carrier's use of its capital dedicated to the track.²⁹⁹

This formula is also periodically referred to as the "SSW Compensation Methodology," developed in *SSW (1987)*.³⁰⁰ The Board has not restricted its use of

²⁹⁸ *St. Louis Southwestern Ry. Co. Compensation – Trackage Rights*, 4 I.C.C.2d 668 (1987) ("*SSW 1987*")

²⁹⁹ See *Dardanelle* at 3-4; see also *Pyco Indus., Inc. – Alternative Rail Service – South Plains Switching, Ltd. Co.*, STB Docket No. 34889, at 6 (served Jan. 11, 2008) ("*Pyco*") (addressing a request to determine compensation under 49 U.S.C. § 11123 and 49 U.S.C. § 11102 for carrier's use of incumbent's facilities and outlining the Board's formula for establishing compensation).

³⁰⁰ 4 I.C.C.2d at 668 (reconsidering the issue of trackage rights compensation, which was originally set in a 1984 decision); see also *Arkansas & Missouri R.R. Co. v. Missouri Pac. R.R. Co.*, 6 I.C.C.2d 619 (1990) ("*Arkansas & Missouri*") (evaluating

this formula to trackage rights compensation matters. In 2008, the Board used the same methodology to establish compensation for the use of facilities in alternative rail service pursuant to 49 U.S.C.

§ 11123 and on a temporary basis under 49 U.S.C. § 11102(a), noting that under Section 11102(a) “we employ a formula similar to the one used to determine compensation under section 11123(a).”³⁰¹

Because the CERR has not fulfilled the reciprocal requirement of CSXT’s trackage rights rate over NS, the SSW formula is the only viable approach to estimate a trackage rights fee absent the reciprocal component. The first two factors (variable costs and proportionate share of maintenance and operation expenses) are easily computed. Variable costs are traditionally evaluated using regional data from the Uniform Railroad Costing System (“URCS”). *Pyco* at 6. These costs are necessarily included because “the incremental cost represents the expenses that are most directly and causally related to the operations by the tenant carrier.”³⁰²

The second factor, the proportionate share of maintenance and operation expenses, is established on the basis of those expenditures, minus any offset due to any such expenditures made by the tenant carrier. *Pyco*, STB Docket No. 34889, at

the price to be paid to the Arkansas and Missouri Railroad Company (“A&M”) by Missouri Pacific Railroad Company for trackage rights over 1.63 miles of A&M’s line between Van Buren and Fort Smith, AR).

³⁰¹ *Pyco Indus.*, STB Docket No. 34889, at 6.

³⁰² *Arkansas & Missouri*, 6 I.C.C.2d at 623.

7. In *Arkansas & Missouri*, the Commission relied upon a “usage” allocation method to identify these costs. 6 I.C.C. 2d at 623.

The third factor, the rental factor, requires the Board to “determine the value of the line, the appropriate interest or rental rate, and the proportionate usage of the tenant carrier.” *Pyco*, STB Docket No. 34889, at 7. The Board will “develop the rental or interest rate by using the current nominal pre-tax cost of capital.” *SSW (1987)* at 670. The ICC has stated that “valuation [of the property] should be based on fair market value, rather than book or replacement value.” *Id.* at 674. The agency’s preferred approach to calculating the rental factor is the capitalized earnings method. Under this approach, the agency estimates the value of the line by multiplying the earnings from the line by an “earnings multiple” (which relates overall corporate value to overall corporate earnings). *Id.* at 671.

In accordance with the principles established in *SSW*, CSXT has developed a trackage rights rate for the NS trackage rights segment that more accurately reflects the true costs imposed upon the NS line by the CERR’s presence. First, CSXT has identified the variable costs incurred by the owning carrier (NS) as a result of the tenant carrier’s (CERR’s) operations over the NS tracks. These costs include the non-maintenance-of-way related variable costs that CSXT calculates using a portion of the below-the-wheel URCS cost formula first submitted by BNSF and UP in the UP/SP merger proceedings and approved by the Board in “Joint Report on Section 12 Implementation of the BNSF Settlement Agreement”. See STB Finance Docket No. 32760. This formula also includes an estimate of variable costs

per GTM for dispatching, as reported in URCS Phase II worktables.³⁰³ CSXT adopts this approach and calculates these costs using NS's 2014 URCS Phase II workpapers. CSXT determined that the variable costs attributable to the CERR's operations over the NS trackage segment would be 0.02 mills.³⁰⁴ *See id.*

Second, a proportionate share of the track's maintenance and operation expenses were calculated using the below-the-wheel components of the same URCS cost formula, except that fully allocated URCS unit costs were substituted for variable URCS unit costs consistent with the Board's development of trackage fees in SSW where the maintenance of way component is based on a usage proportion of fully allocated costs.³⁰⁵ This formula calculates maintenance of way costs per GTM that are based on a maintenance of way and roadway depreciation unit costs in URCS including overheads as reported in URCS Phase II worktables.³⁰⁶ CSXT adopts this approach and calculates these costs using NS's 2014 fully allocated URCS Phase II workpapers. The CERR's proportionate share of the maintenance of way and operation expenses would be 4.28 mills.

Third, CSXT has developed the interest rental component using an estimate of the capitalized earnings value of the NS segment. CSXT developed these costs based on an average of 78 trains per day operating over the segment, as reported by

³⁰³ *See* CSXT Reply WP "NS Trackage Fee Calculation.xlsx," Tab "URCS BTW Calc," Column D.

³⁰⁴ One mill represents 1,000 gross ton-miles (GTM).

³⁰⁵ *See* Compensation 1 at 790 and 807.

³⁰⁶ *See* CSXT Reply WP "NS Trackage Fee Calculation.xlsx," Tab "URCS BTW Calc," Column E.

CREATE.³⁰⁷ CSXT then developed a system average revenue per ton mile and system average URCS cost to estimate earnings. CSXT's calculations were based on the system average revenue per GTM identified in the 2014 NS R-1 statement. The earnings were then capitalized using the earnings multiple approach described in the *SSW* decision.³⁰⁸ CSXT adjusted the interest rental base based upon the 2014 Board's pre-tax Cost of Capital identified in Ex Parte 558 and developed an interest rental per GTM of 0.01407.

The resulting total fee per GTM would be \$0.01837. Using an estimated CERR GTM of 80 per car mile,³⁰⁹ CSXT determined that the total *SSW*-Based Fee Per car mile would be \$1.47. Therefore, the total charge for the CERR's use of the NS track between the Rock Island Junction and Pine would be \$3.3 million.

This fee accurately reflects the rate that the Board would establish in a trackage rights compensation proceeding. It also reflects the types of charges—variable cost, maintenance, and rental—that a market participant would charge in an arms-length transaction. Unlike the reciprocal fee agreed to between CSXT and NS, the fee calculated using the *SSW* methodology accurately represents the fee that the CERR could negotiate in the real world.

³⁰⁷ See CSXT Reply WP "CREATE T11 Tower.pdf" and "CREATE E4.pdf."

³⁰⁸ See *SSW*, 1 I.C.C.2d at 787-88. See CSXT Reply WP "NS Trackage Fee Calculation.xlsx," Tab "SSW Capitalization Calc."

³⁰⁹ This is based on the assumption that Consumers issue traffic travels in cars with 20 ton tare weight, 120 freight weight, and an empty to loaded ratio of 2.0. $(120 \text{ loaded freight tons} + 20 \text{ tare tons loaded} + 20 \text{ tare tons empty}) / 2.0 \text{ empty to loaded ratio} = 80 \text{ tons}$.

c. In The Alternative, the Board Should Apply the Earlier, Arms-Length Negotiated Trackage Rights Fee.

In the event that the Board does not agree that the SSW methodology is the appropriate methodology for calculating the trackage rights fee, the Board should not settle on the charge negotiated in the reciprocal agreement, for the reasons explained above. Instead, the Board could impose a charge agreed to between NS and CSXT at an earlier date. Prior to the NS/CSXT Conrail acquisition, the railroads had entered into a trackage rights agreement that provided a rate of { } per car mile for CSXT's use of the NS route. This contract was negotiated at arms-length and contains no reciprocal provisions.

Indeed, the agreement itself is one-sided, in that it was Penn Central (now NS) providing trackage rights to the Chesapeake and Ohio (now CSXT) over the same segment between Rock Island Junction, IL and Pine, IN.³¹⁰ The agreement is a typical trackage rights agreement, in which one party offers trackage rights over its system in exchange for a monetary payment. No part of the agreement contemplates a reciprocal arrangement between the carriers. As a result, this agreement reflects a conservative estimate of a rate that the CERR might be able to negotiate with NS today—keeping in mind that this rate was negotiated on the basis of 1974 traffic levels and does not reflect the current realities of operating in the Chicago terminal or the current value of the line (which impacts the market rental component of the rate). The CERR seeks access to NS' line without offering

³¹⁰ See CSXT Reply WP "NS552.pdf."

any benefit to NS in return (via trackage rights elsewhere on its system). This rate, indexed to current costs ({ } per car mile) is a conservative approximation of what the CERR could negotiate with NS in an arms-length transaction. While CSXT believes that the SSW methodology offers the most accurate reflection of what a railroad could reasonably negotiate today, if the Board disagrees, the rate negotiated in the 1974 agreement would offer an alternative that does not reflect the reciprocal aspect of the current NS/CSXT agreement.

d. Requiring Consumers to Pay Market Rate for These Trackage Rights Does Not Constitute a Barrier To Entry.

Undoubtedly Consumers will argue on rebuttal that precluding the CERR from taking advantage of the reciprocal trackage rights rate constitutes a barrier to entry. It is true that it is a principle of SAC theory that a SARR “is hypothesized that could serve the traffic if the rail industry were free of barriers to entry or exit.” *FMC*, 4 S.T.B. at 721. In this context, however, requiring the CERR to pay the trackage rights rate that would be charged in an arms-length transaction would not constitute a barrier to entry. In fact, this fee would be the same fee that CSXT would pay if the only route in question were the Porter to Rock Island Junction line segment.

The actual costs of the current reciprocal agreement are greater than the monetary charge. Rather than charge a market rate, the railroads mutually agreed to provide access to one another on multiple line segments. The railroads do receive additional compensation under the agreement that, while not quantified monetarily, is reflected through the usage component of the agreement. NS agreed

to forego a heightened rental charge on the Rock Island Junction to Porter segment in exchange for its ability to use, for example CSXT's line between Porter, IN and Ivanhoe, IN, and vice versa. Requiring the CERR to pay a market rate does not, in fact, require the CERR to pay more than CSXT does. Instead, it would put the CERR in the same shoes as CSXT would be if the only route in question were the Rock Island Junction to Pine corridor. In other contexts the Board has required the SARR to pay, not the precise cost paid by the railroad historically, but the cost that would be required of the SARR at the time it began operations.³¹¹ Such a requirement is not a barrier to entry. To the contrary, it is the very fee that would be paid by CSXT in this same circumstance and is the fee that is required under SAC theory.³¹²

6. Loss & Damage

Consumers estimated CERR's loss and damage costs based on CSXT's actual 2014 loss and damage costs by commodity.³¹³ CSXT accepts Consumers' methodology, and updates it to reflect its Reply traffic group.³¹⁴

7. Insurance

Consumers proposes an insurance ratio for the CERR of 3.75% of operating expenses, based on the 2010-2014 experience of the Providence and Worcester

³¹¹ Cf. *SunBelt*, STB Docket No. 42130, at 103 (finding that it was not a barrier to entry to require a SARR to pay the current cost of easements); *Xcel 2004*, 7 S.T.B. at 669 (same).

³¹² *Coal Rate Guidelines*, 1 I.C.C. 2d at 542-43.

³¹³ Consumers Op. III-D-138 to III-D-139.

³¹⁴ CSXT Reply WP "CERR FCD1_by_STCC_Reply.xlsx."

Railroad (“P&W”).³¹⁵ CSXT accepts this proposal and applies it to the operating expenses in its Reply Evidence.³¹⁶

8. Ad Valorem Tax

The Board has made clear in recent cases that ad valorem taxes for Stand Alone Railroads should be calculated as they are in the real world, which in most states means using a “unit value” approach that values railroads as a whole and then taxes the railroad based on the percentage of that unit value that the state allocates to rail property within its borders.³¹⁷ Consumers accepts this precedent, and proposes to calculate ad valorem taxation for the three SARR states based on how those states have calculated CSXT’s taxes.³¹⁸ CSXT accepts this approach, and further accepts Consumers’ calculations for both Indiana and Michigan.

CSXT disagrees, however, with Consumers’ calculations for Illinois. Consumers attributes only 18.2% of the CERR’s unit value to the State of Illinois, because that is the percentage of constructed CERR miles in Illinois. But a substantial majority of the SARR’s traffic volumes and thus its revenues are attributable to its operations in Illinois (and specifically in and around Chicago), and it is not reasonable to think that only 18.2% of its value would be assigned there. {{

³¹⁵ Consumers Op. III-D-139.

³¹⁶ CSXT Reply WP “CERR Operating Expense_Reply.xlsx,” worksheet “DCF Transfer,” cell D32.

³¹⁷ See *SunBelt*, STB Docket No. 42130, at 66-67; *DuPont*, STB Docket No. 42125, at 136-37.

³¹⁸ See Consumers’ Op. III-D-139 to III-D-40.

}} CSXT's Reply Evidence uses an allocation factor for Illinois ad valorem taxes that averages a property factor (the percentage of route miles in Illinois) with a usage factor (the percentage of trains originated and terminated in Illinois) to produce an allocation factor. The resulting ad valorem tax calculations for the CERR are \$1.2 million.

9. Other

a. Intermodal Lift and Ramp Cost

Consumers' operating expense estimate included \$5.9 million in lift and ramp costs for handling CERR intermodal shipments.³²² Consumers posited that the CERR would handle the vast majority of CSXT's shipments to/from the 59th Street

³¹⁹ See Consumers Op. WP "Ad Valorem State Workpapers" at CSXT-CNSMR-HC-019172, -019180, and -019188.

³²⁰ See *id.*

³²¹ {{

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³²² See Consumers Opening III-D-142.

facility, yet its lift and ramp costs per unit represent *less than* { } of the costs actually incurred at that terminal.³²³ The reason for that discrepancy is that Consumers erroneously assumed that the CERR would not be responsible for many of the costs at 59th Street that CSXT incurs in the real world. Specifically, Consumers excluded the cost of maintaining and operating the facility—including the costs of utilities—and the costs of clerical staff necessary to ensure successful operation of intermodal facilities and coordination with the broader transportation network.³²⁴ Further, Consumers included none of the costs for the additional personnel and resources that CSXT provides at the facility. For example, CSXT produced to Consumers in discovery records of the thousands of inspections to intermodal trains performed at 59th Street annually—which identify “Intermodal ramp - inspection performed by 3rd party.”³²⁵ Yet Consumers’ proposal includes neither the payments to third party inspectors nor the CERR’s own inspection personnel for this necessary function.

As discussed in Section III-A, Consumers’ position on the CERR’s expenses for 59th Street are in direct contradiction to its efforts to seize for the CERR a disproportionate share of revenue based on an assumption that the SARR will be performing all of the activities associated with originating and terminating intermodal container shipments. Such activities require operating expenses—and

³²³ See Consumers WP “CSXIT Costs and Volume.xlsx,” worksheet “2014,” column C.

³²⁴ See CSXT Reply WP “Consumers 59th Street Costs.xlsx.”

³²⁵ See CSXT Reply WP “Inspections.xlsx,” worksheet “Locations and counts.”

assets—that Consumers fails to consider. In this Reply evidence, CSXT adjusts the ATC allocation to align the CERR revenues with the services and facilities that Consumers selected to provide. And consistent with this treatment of 59th Street as a CERR interchange with the hypothetical CSXT, CSXT eliminates the \$5.9 million in lift costs from the CERR’s operating expenses.