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May 26, 2016

**240786**

**By Hand Delivery**

Cynthia T. Brown  
 Surface Transportation Board  
 395 E Street, SW  
 Washington DC 20423

**ENTERED**  
**Office of Proceedings**  
**May 26, 2016**  
**Part of**  
**Public Record**

Re: Consumers Energy Co. v. CSX Transp. Inc., STB Docket No. 42142

Dear Ms. Brown,

Enclosed for filing in the above-referenced matter are the original and ten copies of an Errata to Defendant CSX Transportation Inc.'s ("CSXT's") Reply Evidence in the above referenced matter. CSXT files this Errata for the single purpose of providing a workpaper that was inadvertently omitted from its Reply Evidence. CSXT was not aware of the missing workpaper until Consumers noted the omission in its Rebuttal Evidence filed on May 20.

The Errata contains a highly confidential and public version of a revised page III-D-155 and three disks containing an electronic copy of the workpaper in question.

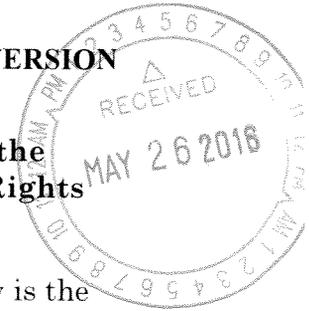
Please file-stamp the additional copies of the attached Errata and return them with our messenger for our files.

Thank you for your assistance. Should you have any questions or need additional information, please contact me.

Sincerely,

Matthew J. Warren

cc: Kelvin J. Dowd



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.<sup>310</sup> 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

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<sup>310</sup> See CSXT Reply WP "NS552.pdf;" CSXT Reply WP "June 1974 Trackage Rights.pdf."